CITY OF MARTINEZ **City Council Agenda**

TO: **HONORABLE MAYOR SCHRODER AND CITY COUNCIL MEMBERS**

FROM: **JEFFREY A. WALTER, CITY ATTORNEY** JAW

SUBJECT: ***OSTROSKY v. CITY OF MARTINEZ***

HEARING DATE: **SEPTEMBER 15, 2010**

RECOMMENDATION:

Adopt the resolution setting aside and rescinding Resolution No. 099-07, which said Resolution No. 099-07 denied a lot line adjustment application submitted by Ostrosky Enterprises, Inc., pertinent to the real property located at 370 Lindsey Drive, Martinez, California.

BACKGROUND:

On December 19, 2007, and after a public hearing, the City Council adopted Resolution No. 099-07. This Resolution denied Ostrosky Enterprises, Inc.'s (Ostrosky), application to adjust the lot lines of the four parcels which comprised Ostrosky's real property located at 370 Lindsey Drive.

Ostrosky sued the City, claiming, that the City Council improperly adopted Resolution No. 099-07. The City contended otherwise.

On August 16, 2010, the Court issued its ruling in this case and found that the City Council's decision may have been affected by this open space easement and Resolution No. 099-07 was based, in part, on an incomplete understanding of the nature, location and extent of the easement.

Consequently, the Court ordered the Council to set aside its December 19, 2007, action adopting Resolution No. 099-07. A copy of the Court's August 16, 2010, Judgment is attached.

REQUEST:

Adopt the attached Resolution Setting Aside the Council's Resolution No. 099-07 Pursuant to Court Order.

ATTACHMENTS:

Resolution No. 099-7
Resolution Setting Aside the Council's Resolution No. 099-07 Pursuant to Court Order
August 16, 2010, Judgment Quieting Title and Granting Peremptory Writ of Mandate

RESOLUTION NO. -10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ SETTING ASIDE AND RESCINDING RESOLUTION NO. 099-07 PURSUANT TO COURT ORDER

WHEREAS, on December 19, 2007, and after a public hearing, the City Council adopted Resolution No. 099-07. This Resolution denied Ostrosky Enterprises, Inc.'s (Ostrosky), application to adjust the lot lines of the four parcels which comprised Ostrosky's real property located at 370 Lindsey Drive; and

WHEREAS, Ostrosky sued the City, claiming that the City Council improperly adopted Resolution No. 099-07. The City contended otherwise; and

WHEREAS, on August 16, 2010, the Court issued its ruling in this case and found that the City Council's decision may have been affected by this open space easement and Resolution No. 099-07 was based, in part, on an incomplete understanding of the nature, location and extent of the easement; and

WHEREAS, the Court ordered the Council to set aside its December 19, 2007, action adopting Resolution No. 099-07.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Martinez that Resolution No. 099-07 is hereby set aside and rescinded.

* * * * * *

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 15TH day of September, 2010, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

RESOLUTION No. 099-07

UPHOLDING A PLANNING COMMISSION DECISION TO DENY 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 IN CONFORMANCE WITH THE ADOPTED ALHAMBRA HILLS SPECIFIC PLAN, AND A FINDING OF CONFORMANCE WITH THE MARTINEZ GENERAL PLAN CANNOT THEREFORE 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 located at 370 Lindsey Drive; and

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

WHEREAS, the proposed location of lot D does not conform to the Alhambra Hills Specific Plan ("Plan") in that the site falls outside of the permitted "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, implementation document for the General Plan for this planning area, and was adopted in 1987 to allow limited development in this environmentally sensitive area, and in approving the Plan the Martinez City Council adopted a specific finding under the California Environmental Quality Act ("CEQA") expressly prohibiting development in portions of the subject 160 acre parcel (south of Christie Drive). Proposed lot D is located entirely within the area in which the Council proscribed development; and

WHEREAS, on November 13, 2007, at a duly noticed public hearing, the Planning Commission voted unanimously to deny the project; and

WHEREAS, on November 14, 2007 the project was appealed to the City Council; and

WHEREAS, a duly noticed public hearing was held on December 19, 2007 by the City Council, public comment was received and the public hearing was closed; and

WHEREAS, the City Council 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 City Council 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.

2. That the proposed lot line adjustment, and specifically lot D, does not conform to the land use policies and requirements of the adopted Alhambra Hills Specific Plan.

3. That because the proposed lot line adjustment does not conform with the Alhambra Hills Specific Plan it also does not conform with the General Plan.

BE IT FURTHER RESOLVED that the City Council hereby upholds the Planning Commission decision to deny Lot Line Adjustment application #06-04 and 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 City Council of the City of Martinez at a regular meeting held on the 19th day of December, 2007:

AYES: Councilmembers DeLaney, Kennedy, Menesini, Vice Mayor Ross, and Mayor Schroder

NOES: None

ABSENT: None

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

FILED

2010 AUG 16 P 2:59

K. TOWNE, CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
BY _____
L. Contreras, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

OSTROSKY ENTERPRISES, INC, Plaintiff and Petitioner, v. CITY OF MARTINEZ, et al., Defendants and Respondents.	No. N08-0408 **JUDGMENT QUIETING TITLE AND GRANTING PEREMPTORY WRIT OF MANDATE**

The first Cause of Action to Quiet Title of the above-entitled cause came on regularly for trial and was tried on December 7, 2009, and January 19, 21, 22 and 28, 2010, in Department 7 of the above-entitled Court, the Hon. Barry Baskin, Judge, presiding. The third Cause of Action for Administrative Mandate was also heard on January 19, 2010. Plaintiff and petitioner OSTROSKY ENTERPRISES, INC. ("OSTROSKY") appeared by Scott A. Sommer and Pillsbury Winthrop Shaw Pittman LLP. Defendant and respondent CITY OF MARTINEZ ("CITY") appeared by William Bates III and Bingham McCutchen LLP, and Jeffrey A. Walter and Walter & Pistole.

Evidence, oral and documentary, was introduced by the parties in the quiet title trial. The record of the administrative proceedings was received into evidence in the hearing on the petition for writ of mandate, and no additional evidence was admitted by the Court in that

hearing. The causes were argued, briefed, and submitted for decision. The Court, having considered the evidence and arguments of counsel, and being fully advised, and having made and filed its tentative decisions pursuant to California Rule of Court ("Rule") 3.1590, with good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

On the First Cause of Action:

1. Plaintiff OSTROSKY is vested with all right, title, estate and interest in and to the real property described in that certain Grant Deed recorded November 8, 2002, Document 2002-0417175-00, Contra Costa County Official Records. The perimeter boundary of that property is as surveyed and depicted in that certain Record of Survey RS2961 ("Record of Survey"), filed January 27, 2005, Book 130 of Licensed Surveyors Maps at pages 48-51 inclusive, Contra Costa County Official Records (herein the "Ostrosky Property"). The Ostrosky Property is subject to the Open Space Easement as decreed herein. (OSTROSKY believes that the description of the property as set forth in the Record of Survey is accurate and requested judgment in this regard (reflecting that the property consists of 7 parcels). The CITY contends that the passage of time (statue of limitations) has passed and the property consists of 4 parcels. Nothing in the trial addressed this issue specifically and I declined both parties' invitations to rule on these issues, not litigated at this trial. Thus, both sides have preserved whatever rights they may have as the Court does not reach this issue.)

2. The Ostrosky Property is subject to that certain Open Space and Scenic Easement Deed dated July 27, 1984, and recorded July 25, 1985, Book 12423, pages 124-127 inclusive, Contra Costa County Official Records (herein the "Open Space Easement"), which was recorded with a copy of Resolution No. 117-84 of the Martinez City Council, Book 12423, pages 122-123, Contra Costa County Official Records. The purported description for the Open Space Easement recorded on July 25, 1985, at Book 12423, pages 128-133 inclusive, was erroneous and incorrect, and said pages at Book 12423, pages 128-133 inclusive are hereby cancelled and declared to be of no force and effect, as to the Ostrosky Property, nor any other real property, and expunged from the Contra Costa County Official Records, and neither said

pages previously recorded at Book 12423, pages 128-133 inclusive, nor any information derived there from, shall constitute actual or constructive notice of any of the matters contained, claimed, alleged or contended therein, or of any matters related to the Ostrosky Property, or create a duty of inquiry in any person hereafter dealing with the Ostrosky Property.

3. The true and correct legal description for the Open Space Easement consists of that net area of approximately 5,227,200 square feet (120 acres), more or less, as described on Exhibit "A" attached hereto and incorporated herein by this reference and depicted on Exhibit "B" attached hereto and incorporated herein by this reference.

4. The legal description for the Open Space Easement described on Exhibit "A" and depicted on Exhibit "B" attached hereto is hereby decreed to be the true and correct description for the Open Space Easement set forth at Book 12423, pages 124-127 inclusive. A certified copy of this Judgment Quieting Title shall be recorded and indexed to OSTROSKY and the CITY OF MARTINEZ, and shall from and after the date of said recording constitute constructive notice of the true and correct legal description for the Open Space Easement recorded at Book 12423, pages 124-127 inclusive.

5. A portion of the Ostrosky Property defined on Exhibit "C" and depicted on Exhibit "D" attached hereto and incorporated herein by this reference (herein the "Exhibit C Area") is restricted as follows: Within the Exhibit C Area there shall be no public or city street for vehicular access purposes without the mutual consent of OSTROSKY, or OSTROSKY's successor-in-title, and the CITY OF MARTINEZ; provided, however, that this restriction applies to public or city streets only and shall not in any manner restrict or limit present or future private streets or roads in or through the Exhibit C Area, nor limit access by governmental vehicles for fire protection and police purposes, nor trails for hiking and equestrian purposes, in or through the Exhibit C Area.

6. The location of the single-family residence building pad referred to in article Fourth, section 1 of the Open Space and Scenic Easement Deed dated July 27, 1984, and recorded July 25, 1985, Book 12423, page 126, has been designated by the parties and is described on Exhibit "A" and depicted on Exhibit "B".

On the Third Cause of Action:

7. A peremptory writ of mandamus shall issue, remanding the proceedings to CITY; commanding CITY to set aside its decision of December 19, 2007, denying OSTROSKY's lot line adjustment application; and requiring CITY to file a return to the writ, stating what it has done to comply, within 60 days after service of the writ.

8. The writ shall further command CITY to reconsider its action in the light of this Court's statement of decision, and to take any further action specially enjoined on it by law; but nothing in this judgment or in that writ shall limit or control in any way the discretion legally vested in CITY.

9. Costs (and attorney's fees, if any) shall be reserved for later determination in a timely motion.

Dated: August 16, 2010.

BARRY BASKIN

JUDGE OF THE SUPERIOR COURT

Ostrosky Enterprises, Inc.
A.P.N.'s 366-150-026 – 029

EXHIBIT "A"
LEGAL DESCRIPTION
of Scenic Easement

Real property in the City of Martinez, Contra Costa County, California, being a portion of the Rancho Las Juntas and the Rancho del Hambre described as follows:

Being a 120 acre (more or less) portion of the real property described in the Grant Deed from Phillips to Ostrosky Enterprises, Inc. recorded November 8, 2002, Document No. 2002-0417175 Contra Costa County Records as real property is shown on the Record of Survey filed January 27, 2005 in Book 130 of Licensed Survey Maps at page 48, Series No. 05-30811 Contra Costa County Records further described as follows:

Beginning at the most southerly corner of said Record of Survey (130 LSM 48), thence northerly along the westerly lines of said Record of Survey (130 LSM 48) the following courses:

- North 45°51'21" West, 574.40 feet; thence
- North 41°34'38" West, 422.53 feet; thence leaving the westerly line of said Record of Survey (130 LSM 48) along the following courses:
- North 16°17'55" West, 183.48 feet; thence
- North 37°30'04" East, 35.50 feet; thence
- North 40°00'00" West, 250.00 feet; thence
- South 82°18'25" West, 125.80 feet; thence
- North 38°58'27" West, 57.20 feet; thence
- North 31°10'10" East, 172.24 feet; thence
- North 38°58'27" West, 322.00 feet; thence
- South 77°19'21" West, 180.70 feet; thence
- North 38°58'27" West, 808.40 feet; thence

- North 85°37'05" East, 446.28 feet; thence
- North 04°22'55" West, 300.00 feet; thence
- South 85°37'05" West, 467.75 feet; thence
- North 04°22'55" West, 196.54 feet; thence
- North 56°45'00" East, 438.26 feet; thence
- North 17°13'58" West, 419.22 feet more or less to a point on the boundary line of said Record of Survey (130 LSM 48), also being a point on the southerly boundary line of lot 141 of Tract 2626, "Forest Hills Estates Unit No. 4", filed March 30, 1960 in Map Book 77 Pages 5-6, Contra Costa County Records; thence
- continuing easterly along the boundary line of said Record of Survey (130 LSM 48) and Tract 2626 the following courses:
- South 81° 51' 21" East, 56.70 feet, thence
- North 64° 57' 15" East, 255.22 feet, thence
- North 61° 01' 24" East, 293.95 feet, thence
- North 42° 30' 15" East, 428.90 feet, thence leaving said boundary line of said Record of Survey (130 LSM 48)
- North 42° 30' 15" East, 36.62 feet more or less to a point on the easterly boundary line of said Record of Survey (130 LSM 48), also being a point on the westerly boundary line of lot 41 of Tract 2308 filed October 20, 1955 in Map Book 61 Page 28, Contra Costa County Records ; thence
- continuing southerly along the lines of said Record of Survey (130 LSM 48) on the following courses:
- South 31° 14' 17" East, 783.97 feet, thence
- South 36° 27' 22" East, 314.36; thence
- North 53°45'00" East, 169.42 feet; thence
- South 36°15'14" East, 277.03 feet; thence
- South 38°49'16" East, 531.95 feet; thence
- South 51°05'37" East, 32.78 feet; thence
- South 38°21'30" West, 250.00 feet; thence

- South 40°13'40" East, 230.00 feet; thence
- South 49°46'20" West, 496.70 feet; thence
- South 41°18'20" East, 112.05 feet to the beginning of a non-tangent curve whose center bears South 11°29'27" East; thence
- Southerly along said curve having a radius of 60.00 feet, through a central angle of 49°27'33" an arc length of 51.79 feet to the beginning of a non-tangent line; thence
- North 41°18'20" West, 108.54 feet; thence
- South 49°46'20" West, 8.39 feet; thence
- North 79°17'00" West, 231.00 feet; thence
- South 14°05'00" West, 156.00 feet; thence
- North 89°02'00" East, 172.00 feet; thence
- South 49°10'00" East, 115.00 feet; thence
- South 19°24'00" East 225.00 feet; thence
- South 71°59'15" East, 61.18 feet; thence
- North 09°22'00" East, 226.06 feet; thence
- South 49°41'45" West, 77.26 feet; thence
- North 09°22'00" East, 75.97 feet to the beginning of a non-tangent curve whose center bears North 12°47'30" East; thence
- Northeasterly along said curve having a radius of 60.00 feet, through a central angle of 54°05'50" an arc length of 56.65 feet; thence
- North 48°41'40" East, 407.17 feet; thence
- South 41°18'20" East, 32.32 feet; thence
- North 49°44'46" East, 165.19 feet; thence
- South 40°15'14" East, 500.71 feet; thence
- North 52°11'54" East, 177.85 feet; thence
- North 52°27'30" East, 45.61 feet; thence
- South 46°31'59" West, 602.05 feet; thence
- South 13°55'32" West, 678.28 feet; thence
- South 46°29'45" West, 752.08 feet more or less to the point of beginning.

Containing an area of 120 acres (more or less).

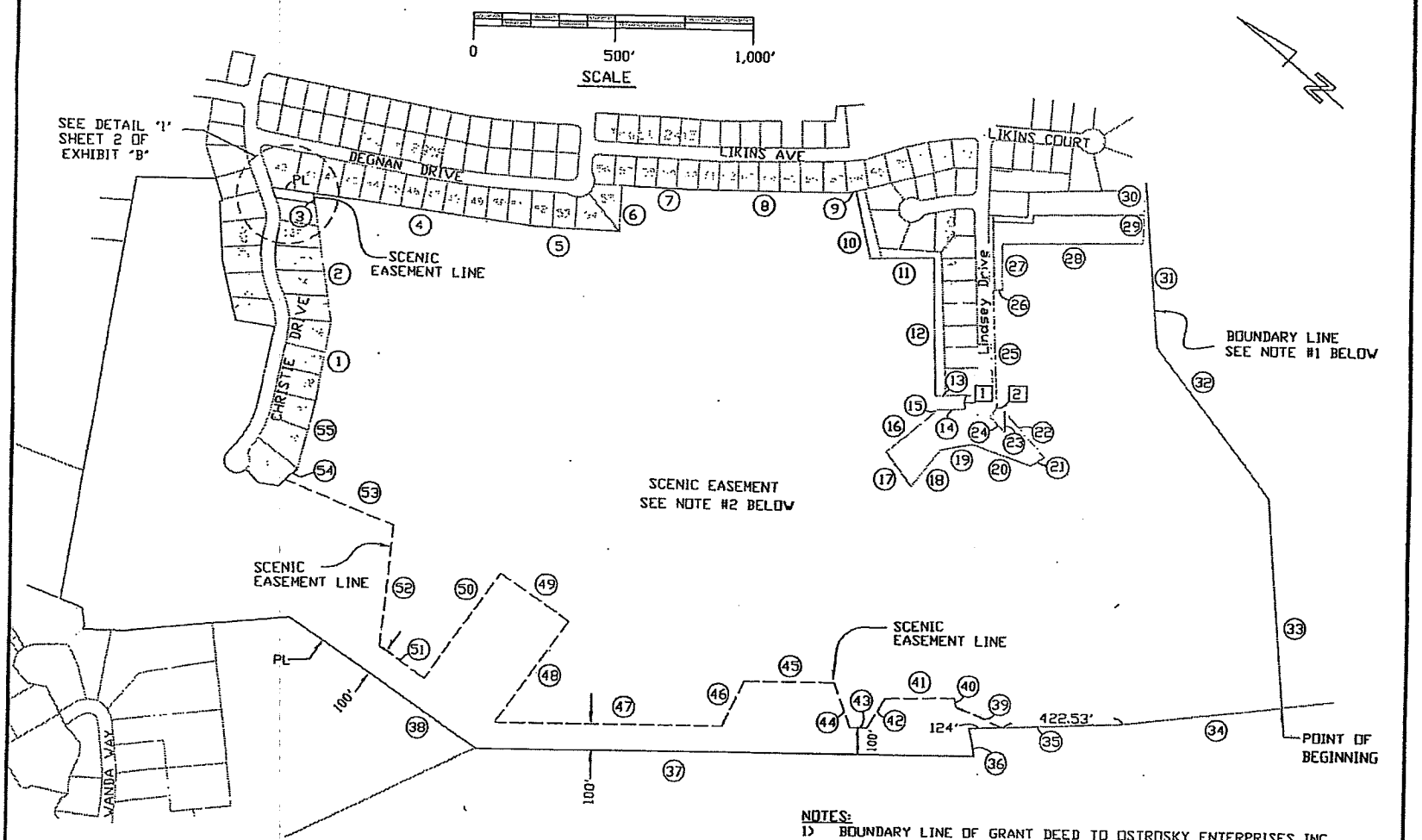
Attached hereto is a plat entitled Exhibit "B" and by this reference made a part hereof.

END OF DESCRIPTION

LICENSED LAND SURVEYOR
JOSEPH C. ENGE
No. 7169
Exp. 12/31/11
STATE OF CALIFORNIA

8-11-10

APN's: 366-150-026, 027, 028 & 029



LEGEND:

PL PROPERTY LINE (SEE NOTE NO. 1)

(38) LINE DATA (SEE SHEET 2)

[3] CURVE DATA (SEE SHEET 2)

NOTES:

1) BOUNDARY LINE OF GRANT DEED TO OSTROSKY ENTERPRISES INC. DATED NOVEMBER 8, 2002, SERIES NUMBER 2002-0417175-00, AS SHOWN ON THE RECORD OF SURVEY MAP FILED ON JANUARY 27, 2005 IN BOOK 130 OF LICENSED SURVEYOR'S MAP AT PAGES 48-51, SERIES NUMBER 05-30811, CONTRA COSTA COUNTY RECORDS.

2) SCENIC EASEMENT IS THE SHADED AREA (120 ACRES, MORE OR LESS).

EXHIBIT 'B'

OSTROSKY ENTERPRISES, INC. PROPERTY - SCENIC EASEMENT PLAT MAP

DATE:	8-2-10
SCALE:	1"=500'
BY:	KY

SHEET 1 OF 2

LINE DATA ○

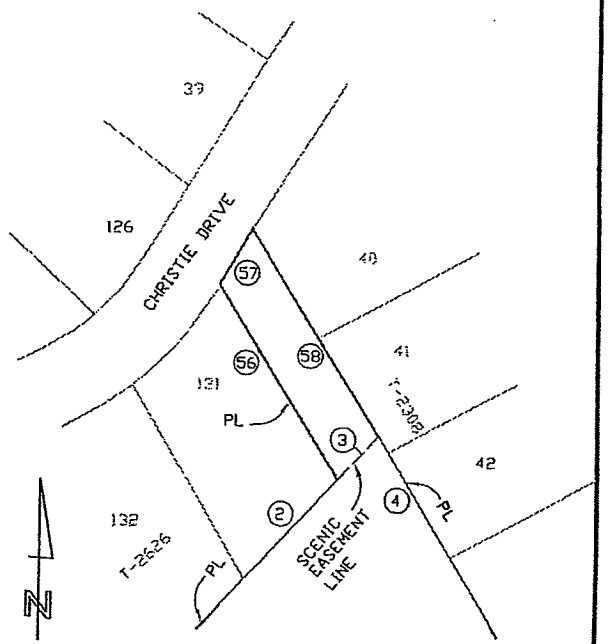
LINE NUMBER	BEARING	LENGTH (FT)
1	N 61°01'24" E	293.95'
2	N 42°30'15" E	428.90'
3	N 42°30'15" E	36.62'
4	N 31°14'17" W	783.97'
5	N 36°27'22" W	314.36'
6	N 53°45'00" E	169.42'
7	N 36°15'14" W	277.03'
8	N 38°49'16" W	531.95'
9	N 51°05'37" W	32.78'
10	N 38°21'30" E	250.00'
11	N 40°13'40" W	230.00'
12	N 49°46'20" E	496.70'
13	N 41°18'20" W	112.05'
14	N 41°18'20" W	108.54'
15	N 49°46'20" E	8.39'
16	N 79°17'00" W	231.00'
17	N 14°05'00" E	156.00'
18	N 89°02'00" E	172.00'
19	N 49°10'00" W	115.00'
20	N 19°24'00" W	225.00'
21	N 71°59'15" W	61.18'
22	N 09°22'00" E	226.06'
23	N 49°41'45" E	77.26'
24	N 09°22'00" E	75.97'
25	N 48°41'40" E	407.17'
26	N 41°18'20" W	32.32'
27	N 49°44'46" E	165.19'
28	N 40°15'14" W	500.71'
29	N 52°11'54" E	177.85'
30	N 52°27'30" E	45.61'
31	N 46°31'59" E	602.05'
32	N 13°55'32" E	678.28'
33	N 46°29'45" E	752.08'

LINE DATA ○

LINE NUMBER	BEARING	LENGTH (FT)
34	N 45°51'21" W	574.40'
35	N 41°34'38" W	546.53'
36	N 39°37'51" E	103.14'
37	N 38°58'27" W	1,784.51'
38	N 04°22'55" W	823.24'
39	N 16°17'55" W	183.48'
40	N 37°30'04" E	35.50'
41	N 40°00'00" W	250.00'
42	N 82°18'25" E	125.80'
43	N 38°58'27" W	57.20'
44	N 31°10'10" E	172.24'
45	N 38°58'27" W	322.00'
46	N 77°19'21" E	180.70'
47	N 38°58'27" W	808.40'
48	N 85°37'05" E	446.28'
49	N 04°22'55" W	300.00'
50	N 85°37'05" E	467.75'
51	N 04°22'55" W	196.54'
52	N 56°45'00" E	438.26'
53	N 17°13'58" W	419.22'
54	N 81°51'21" W	56.70'
55	N 64°57'15" E	255.22'
56	N 31°14'17" W	142.51'
57	N 30°09'13" W	40.04'
58	N 31°14'17" W	151.43'

CURVE DATA □

CURVE NUMBER	RADIUS	DELTA	LENGTH (FT)
1	60.00'	49°27'33"	51.79'
2	60.00'	54°05'50"	56.65'



DETAIL "1"

NOT TO SCALE

EXHIBIT "B"

OSTROSKY ENTERPRISES, INC. PROPERTY - SCENIC EASEMENT PLAT MAP

DATE:	8-2-10
SCALE:	NONE
BY:	KY

SHEET 2 OF 2

EXHIBIT "C"

LEGAL DESCRIPTION

(FOR A ONE FOOT WIDE x 100 FEET LONG RESERVATION STRIP)

Real property in the City of Martinez, Contra Costa County, California, being a portion of the Rancho Las Juntas and the Rancho del Hambre described as follows:

Being a portion of the real property described in the Grant Deed from Phillips to Ostrosky Enterprises, Inc. recorded November 8, 2002, Document No. 2002-0417175 Contra Costa County Records as said real property is shown on the Record of Survey filed January 27, 2005 in Book 130 of Licensed Survey Maps at page 48, Series No. 05-30811 Contra Costa County Records further described as follows:

Commencing at point on the boundary of said Record of Survey (130 LSM 48), and the most Southerly corner of Lot 140 of Tract 2626 as set forth on said Record of Survey (130 LSM 48); thence Westerly along the boundary of said Record of Survey (130 LSM 48) being also the Southerly boundary of Lot 141 of said Tract 2626, North 81°51'21" West 56.70 feet; thence leaving the boundary of said Record of Survey (130 LSM 48) South 17°13'58" East 419.22 feet; thence South 56°45'00" West 438.26 feet; thence South 4°22'55" East 196.54 feet to the Point of Beginning; thence South 85°37'05" West 100.00 feet to the Westerly boundary of said Record of Survey (130 LSM 48) ; thence along said Westerly boundary of said Record of Survey (130 LSM 48) North 4°22'55" West 1.00 feet; thence leaving said Westerly boundary North 85°37'05" East 100.00 feet; thence South 4°22'55" East 1.00 feet to the Point of Beginning of the herein described reservation strip.

The above described reservation strip contains 100 square feet (.002 acres) more or less.

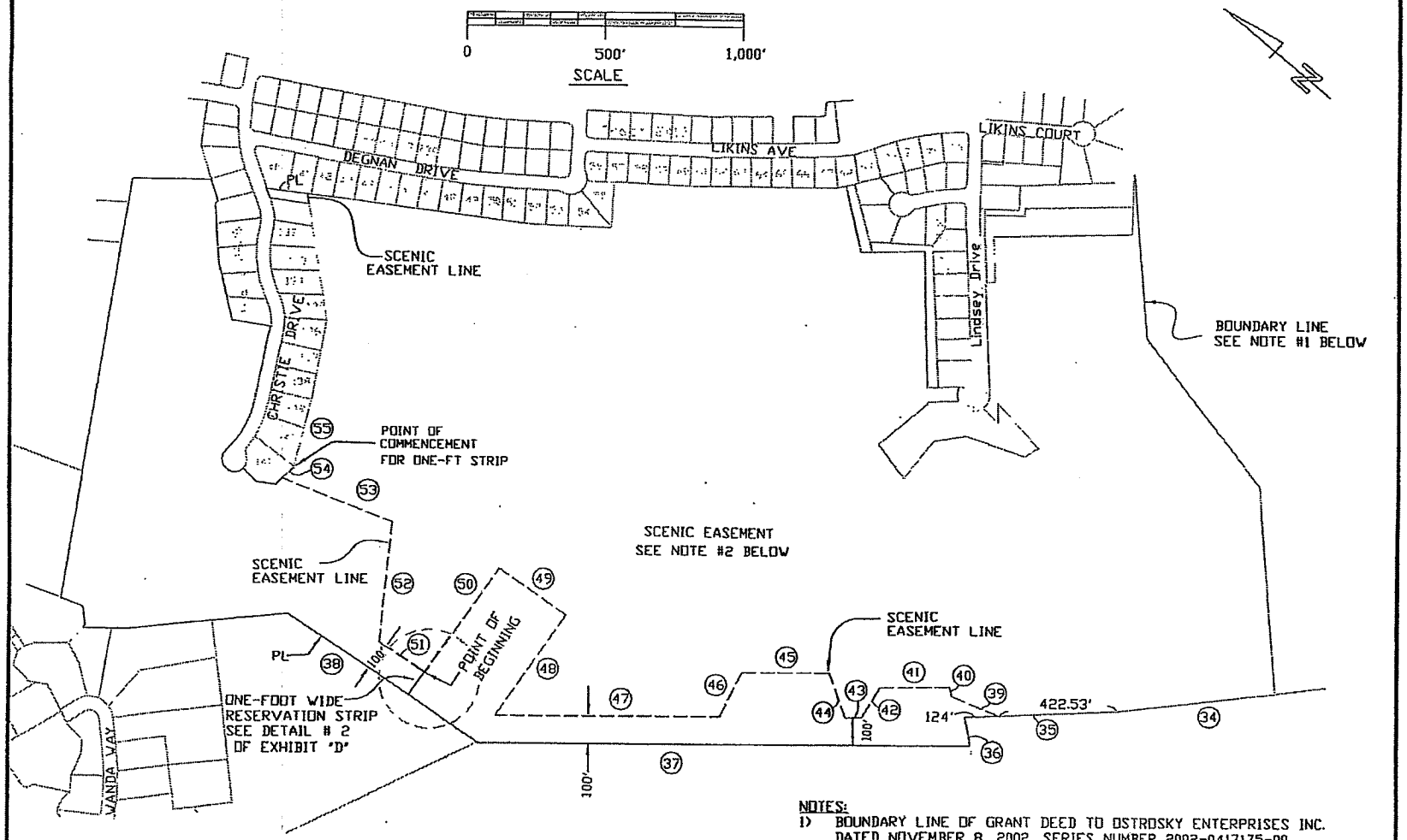
A plat (Exhibit D) showing the above described reservation strip of land is attached hereto and made a part hereof.

END DESCRIPTION

LICENSED LAND SURVEYOR
JOSEPH C. ENNIS
No. 7169
Exp. 12/31/11
STATE OF CALIFORNIA

8-11-10

APN's: 366-150-026, 027, 028 & 029



LEGEND:

PL PROPERTY LINE (SEE NOTE NO. 1)

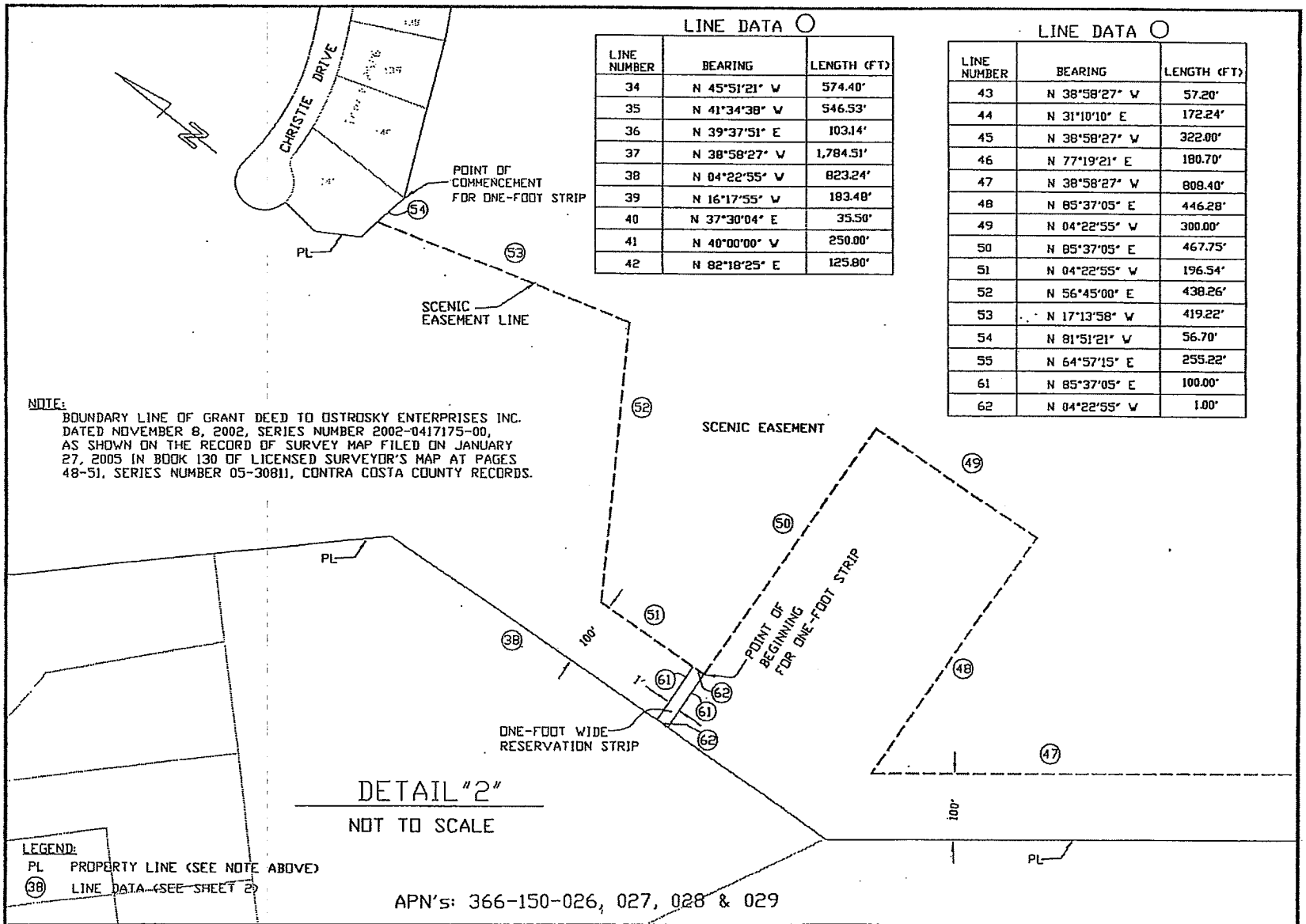
(38) LINE DATA (SEE SHEET 2 EXHIBIT 'D')

NOTES:

1) BOUNDARY LINE OF GRANT DEED TO OSTROSKY ENTERPRISES INC. DATED NOVEMBER 8, 2002, SERIES NUMBER 2002-0417175-00, AS SHOWN ON THE RECORD OF SURVEY MAP FILED ON JANUARY 27, 2005 IN BOOK 130 OF LICENSED SURVEYOR'S MAP AT PAGES 48-51, SERIES NUMBER 05-30811, CONTRA COSTA COUNTY RECORDS.

2) SCENIC EASEMENT IS THE SHADED AREA (120 ACRES, MORE OR LESS).

		EXHIBIT 'D' OSTROSKY ENTERPRISES, INC. PROPERTY - PLAT MAP FOR ONE- FOOT WIDE RESERVATION STRIP	DATE:	8-2-10	SHEET 1 OF 2
			SCALE:	1"=500'	
			BY:	KY	



NOTE:
BOUNDARY LINE OF GRANT DEED TO OSTROSKY ENTERPRISES INC. DATED NOVEMBER 8, 2002, SERIES NUMBER 2002-0417175-00, AS SHOWN ON THE RECORD OF SURVEY MAP FILED ON JANUARY 27, 2005 IN BOOK 130 OF LICENSED SURVEYOR'S MAP AT PAGES 48-51, SERIES NUMBER 05-30811, CONTRA COSTA COUNTY RECORDS.

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50	N 85°37'05" E	467.75'
51	N 04°22'55" W	196.54'
52	N 56°45'00" E	438.26'
53	N 17°13'58" W	419.22'
54	N 81°51'21" W	56.70'
55	N 64°57'15" E	255.22'
61	N 85°37'05" E	100.00'
62	N 04°22'55" W	1.00'

EXHIBIT "D"
OSTROSKY ENTERPRISES, INC. PROPERTY - PLAT MAP FOR ONE- FOOT WIDE RESERVATION STRIP

DATE:	8-2-10
SCALE:	NTS
BY:	KY

SHEET 2 OF 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

ACTION NO. N08-0408

CERTIFICATE OF MAILING

I, the undersigned, certify under penalty of perjury that I am a citizen of the United States, over 18 years of age, employed in Contra Costa County, and not a party to the within action; that my business address is Court House, Martinez, California, that I served the attached Notice, order, or Paper by causing to be placed a true copy thereof in an envelope addressed to the parties or attorneys for the parties, as shown below, which envelope was then sealed and postage fully prepaid thereon, and thereafter was deposited in the United States Mail at Martinez, California, on date shown below; that there is delivery service by the United States Mail between the place of mailing and the place addressed.

Scott A. Sommer, Esq.
Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
P.O. Box 7880
San Francisco, CA 94120-7880

Jeffrey A. Walter, Esq.
Walter & Pistole
670 West Napa Street, Suite F
Sonoma, CA 954766

William Bates III, Esq.
1900 University Avenue, 4th Floor
East Palo Alto, CA 94303-2223

I declare under penalty of perjury that the foregoing is true and correct. Executed at Martinez, California, on 08/16/10.

KEN TORRE, CLERK OF THE COURT

BY M. JONES
MARILYN JONES, Deputy Clerk

pillsbury

Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street | San Francisco, CA 94105-2228 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS: P. O. Box 7880 | San Francisco, CA 94120-7880

Scott A. Sommer
tel 415.983.1813
scott.sommer@pillsburylaw.com

September 9, 2010

Via U.S. Mail and Electronic Transmission (rschroder@cityofmartinez.org)

Mayor Rob Schroder
City of Martinez – City Hall
525 Henrietta Street
Martinez, CA 94553

Re: Ostrosky Lot Line Adjustment Application #06-04
Hearing Before City Council – September 15, 2010 at 7:00 p.m.

Dear Mayor Schroder:

The Statement of Decision on Mandamus Cause of Action and Judgment Quieting Title and Granting Peremptory Writ of Mandate in Superior Court of the State of California Action No. N08-0408 require that City set aside and reconsider its decision of December 19, 2007, Resolution No. 099-07. The reconsideration is to include the Court's ruling on the location of the 120-acre open space easement and such other materials as may be presented at the time of hearing.

Ostrosky Enterprises, Inc. has been prejudiced in its ability to present materials at this hearing due to the apparently intentional failure of the City and/or the City Attorney's Office to provide any notice of the hearing to the undersigned as counsel of record for Ostrosky in the administrative proceeding and the litigation. A mailing of the notice to Peter Ostrosky occurred by the City Clerk immediately prior to the long Labor Day weekend on September 2, 2010. Undersigned counsel received notice only on Tuesday, September 7, 2010. Undersigned counsel was advised by the City Attorney

at 5:41 p.m. on September 8, 2010 that any materials would have to be submitted to the City Clerk by close of business on Thursday, September 9, 2010. The City Attorney has not forwarded a staff report or any other materials to be submitted to the City Council to the applicant or undersigned counsel through the issuance of this correspondence. This is not good faith compliance with the Court's directive that the City Council is to reconsider its previous decision based on such other materials as may be presented for the hearing. Refer to attached correspondence to the City Attorney dated September 8, 2010.

Previously, the Staff Report to the City Council for the December 19, 2007 agenda, in pertinent part, incorrectly represented that "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..." Testimony at trial established that the City itself attached the overbroad 160-acre legal description to the package of documents it recorded in 1985, without the knowledge or consent of Phillips. At the hearing on December 19, 2007, Councilmember Menesini represented that he could "remember those hearings [in 1984]" (Administrative Record ("AR"), page 148). Mr. Menesini told the Council:

> In 1984, the bargain was that this area was going to remain entirely a scenic easement. ... [T]he fact of the matter is, in this specific instance, **this 163 acres, per the bargain struck in 1984, was to remain a scenic easement**. (AR 161-162)

The Court cited these comments in its Statement of Decision, referring to this as a "fundamental error" and "erroneous." It is to be noted that Councilmember Menesini appeared at the trial as a witness and did not make these statements when he testified under oath.

Ostrosky has not seen a current Staff Report and does not currently know what will be stated to the Council by staff and/or the City Attorney, nor will it be privy to statements, if any, that may be made to the City Council on this matter in closed session. The undersigned has only had one afternoon to submit materials. Subject to these handicaps, Ostrosky respectfully calls the attention to City Council to the following facts.

Resolution No. 099-07 and the Staff Report to the City Council for the December 19, 2007 City Council agenda also incorrectly stated that the proposed location of Lot D does not conform to the Alhambra Hills Specific Plan because it falls out of a purported "Development Area." To the contrary, Parcel D includes areas open to development under the Court's easement determination. In addition, there is nothing in the Specific Plan nor the Ordinances of the City of Martinez that requires a parcel to have a "Development Area" on it; lesser uses including agricultural and open space are expressly encouraged under the Specific Plan. The Specific Plan does not provide any ground for a denial; to the contrary, development is expressly permitted for areas under 30% slope. Refer to attached copy of pages 1-3 and 12 of the Specific Plan.

In addition, the purported interpretation of the Specific Plan set forth in the Staff Report for December 19, 2007 and adopted by the City Council was false and discriminatory. Contemporaneous with the Ostrosky denial, the City applied a different reading of the Specific Plan to the approval of a three-residential lot subdivision on the immediately adjacent property owned by Mollich. This approval was not known to Ostrosky at the time of the hearing on December 19, 2007, but it was known to staff and presumably the City Attorney. Refer to Supplemental Request for Judicial Notice on Mandamus Cause of Action filed January 22, 2010 (copy attached hereto). As set forth in that material, the Mollich property shows the same plain configuration (without any cross-hatched development area) as exists on

the Ostrosky parcels. By May 4, 2006, the City was telling Mollich that determination of the development area (quoting from the Specific Plan) "shall consist of all Plan areas under 30% slope which shall be considered developable..." and that a "slope density map" was required. This same Specific Plan analysis was confirmed by the City on September 12, 2007, and adopted in the approval of the three-lot Mollich residential minor subdivision 551-07 issued by the City on March 28, 2008.

Accordingly, City should not purport to continue to apply a discriminatory Specific Plan interpretation to Ostrosky, inconsistent with the actual language of the Specific Plan and the customary interpretation that the City applies to neighboring parcels.

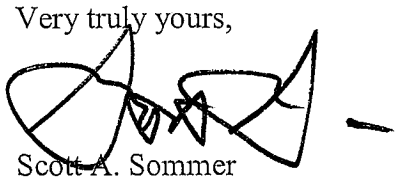
The Ostrosky property consists of seven parcels of record based upon the chains of title, as confirmed and set forth in the Record of Survey filed January 27, 2005. The City Attorney represented to Ostrosky that no issue would be made of the open space easement if Ostrosky applied for a four-lot lot line adjustment, which resulted in Ostrosky's submission of the current application. Of course, City then cited the open space easement as a ground for denial as set forth in the Staff Report and proceedings on December 19, 2007 (see, *e.g.*, comments of Councilmember Menesini cited above). However, Ostrosky is simply trying to reconfigure this property so it can be marketed and sold. The City should stop tying this property up by misuse of its administrative authority.

Ostrosky does not waive any of its rights by the late notice or any other acts by the City, but respectfully requests that the City Council recognize that the proposed parcels are far in excess of minimum lot sizes and in complete compliance with applicable zoning, the Specific Plan, and the judgment of the Court on the open space easement. Approval of the lot line adjustment will allow Ostrosky to finally being

able to sell and make use of this property. Denial will be discriminatory and deprive this property owner of its lawful rights.

Notwithstanding the City Attorney's comments, Ostrosky may attempt to submit additional material once a staff report has become available. Thank you for your attention and consideration.

Very truly yours,



Scott A. Sommer

Attachments:
1. Pages 1, 2, 3 and 12 of Alhambra Valley Specific Plan;
2. Supplemental Request for Judicial Notice;
3. Record of Survey approved by Contra Costa County Surveyor, January 27, 2005;
4. Correspondence dated September 8, 2010 to City Attorney.

cc (w/attach.): Mercy G. Cabral, Deputy City Clerk (mcabral@cityofmartinez.org)
Lara DeLaney, Vice Mayor (ldelaney@cityofmartinez.org)
Mark Ross, Councilmember (mross@cityofmartinez.org)
Janet Kennedy, Councilmember (jkennedy@cityofmartinez.org)
Michael Menesini, Councilmember (mmenesini@cityofmartinez.org)
Jeffrey A. Walter, Esq. (jwalter@walterpistole.com)

ALHAMBRA HILLS SPECIFIC PLAN

PLAN AREA

The Specific Plan Area is shown in Fig. 31.30.

31.3 POLICIES

31.31 LAND USE

F 31.31 Development Areas, remote homesites and land use designations are shown on Fig. 31.30. The Development Area shall consist of all Plan areas under 30% slope which shall be considered developable unless site constraints prevent development of that particular area (see Policies 31.321 and 31.322).

31.311 Development in the Plan Area shall be limited to single family residential use, except that professional offices may be allowed by Use Permit in the Development Areas adjoining the west side of Alhambra Avenue if the parcels meet the following criteria:

A. Site depth is inadequate to buffer residential development from Alhambra Avenue noise.

B. Office traffic would not significantly affect nearby existing uses or traffic on Alhambra Avenue.

C. Office use of the site would be compatible with adjoining uses.

31.312 Development and grading shall comply with Site Development criteria (Section 31.34), and shall be limited to the Development Area except under the following circumstances:

A. Development of designated Remote Homesites;

B. Access roads and residences as allowed by Policy 31.314;

The overall number of units permitted on a property shall under no circumstances be increased.

31.313 No development on areas of 30% or greater slope shall be permitted except:

A. Where no alternative exists, roads connecting Development Areas may pass over areas of 30% slope, subject to approval by the Planning Commission. Grading shall be limited to that necessary for the road or to the minimum amount which will create the most natural appearing contours. If such grading creates buildable areas (under 30% slope) residential development fronting the road may be permitted subject to approval by the Planning Commission.

B. Small areas (10,000 sq. ft. or less) of 30% and over slope entirely surrounded by areas under 30% slope may be developed. Small infringements on areas of 30% slope may be permitted where the existing topography of the majority of the building area and area to be graded are under 30% slope.

31.314 Development outside of the Development Areas (homesites and access roads) shall comply with the following criteria:

A. Soils stability shall be demonstrated prior to development approvals;

B. Minimal visual impact shall result from development;

C. Minimal grading or vegetation removal shall be required;

D. Compliance with Site Development Policies (Section 31.34).

31.32 DEVELOPMENT DENSITY

31.321 The Alhambra Hills plateau including the Habitat property shall be rezoned R-10. Slope Density shall be applied to each parcel to determine the maximum number of units permitted on the site. In no case shall the number of units permitted exceed the maximum unit counts established below. The range listed below is the number of units which may be approved for proposals in minimal conformance with Specific Plan criteria up to the maximum permitted for exceptional projects. These numbers are based on slope density calculations performed on the upper portions of the sites and do not include possible development on the lower fringe of the hills, except for the Habitat unit count which is based on a slope density calculation for the entire site.

L & M - Habitat (parcels 164-150-021, 022) *	76-90 units
H, J & K - Waters Inc. (parcels 164-150-016, 164-010-002 and 019)	77-84 units
D & E - Trebino (parcels 366-010-006 and 366-060-001)	94-99 units
N - Kinney (parcel 164-010-007)	12-14 units
Q - Monteros (parcel 164-010-017)	22-26 units
C - Lawrence (parcel 366-102-020)	3-4 units
TOTAL	284-315 units

* See map for property locations.

NO MAXIMUM COUNT SET FORTH FOR AREA F, AND AREA F REMAINS SUBJECT TO SLOPE DENSITY ANALYSIS. OSPREY HAS RIGHT TO DEVELOPMENT AREA UNDER 30% SLOPE PER FUTURE ANALYSIS PLUS 4 REMOTE HOMESITES NORTH OF CHRISTIE DRIVE.

These unit counts are the maximums permitted for each property. If it is determined that a Development Area is actually larger than shown on the Land Use Map (Fig. 31.30) no additional units shall be added to the maximums listed above. It is not guaranteed that either the high or the low unit counts will be approved for any particular site. Each development proposal will be judged

on its merits and must demonstrate that the requested proposal and number of units are in compliance with all Specific Plan policies. Geotechnical, access, grading and visual constraints (among other criteria listed in this Specific Plan), and final Slope Density calculations for the site may reduce the number of units approved for any particular site from the range listed above and may limit the portion of the site that may be developed. Approval of the maximum permitted number of units on a site will require an exceptional project exceeding the development and design criteria of this plan. The following criteria shall be used to determine the appropriate density for individual development proposals.

YET TO OCCUR ON OSTROSKY PROPERTY

A. Soil Stability/Grading - Development density shall be limited to the lower portion of the density range on sites requiring major geologic reconstruction work or requiring major grading to insure safe development.

SAME PROCESS AS APPLIED FOR MOLLICA SUBDIVISION APPROVAL IN 2007-8

B. Visual Impacts - Density shall be limited to the lower portion of the density range on sites where significant visual impacts will result or where extensive grading would be required to mitigate visual impacts.

C. Tree Preservation/Landscaping - Proposals which preserve significant numbers of existing trees within the developed area shall qualify for higher density. Extensive planting of mature, native landscaping may to a limited degree compensate for removal of existing vegetation.

D. Residential Design and Materials - site plans designed to fit the topography and well designed structures with higher quality materials may allow higher density.

31.322 A preliminary soils report on each parcel shall be prepared and reviewed by the City's geotechnical consultant as part of each application for project approval by the Planning Commission. Soils report findings may affect project layout, density and total unit count.

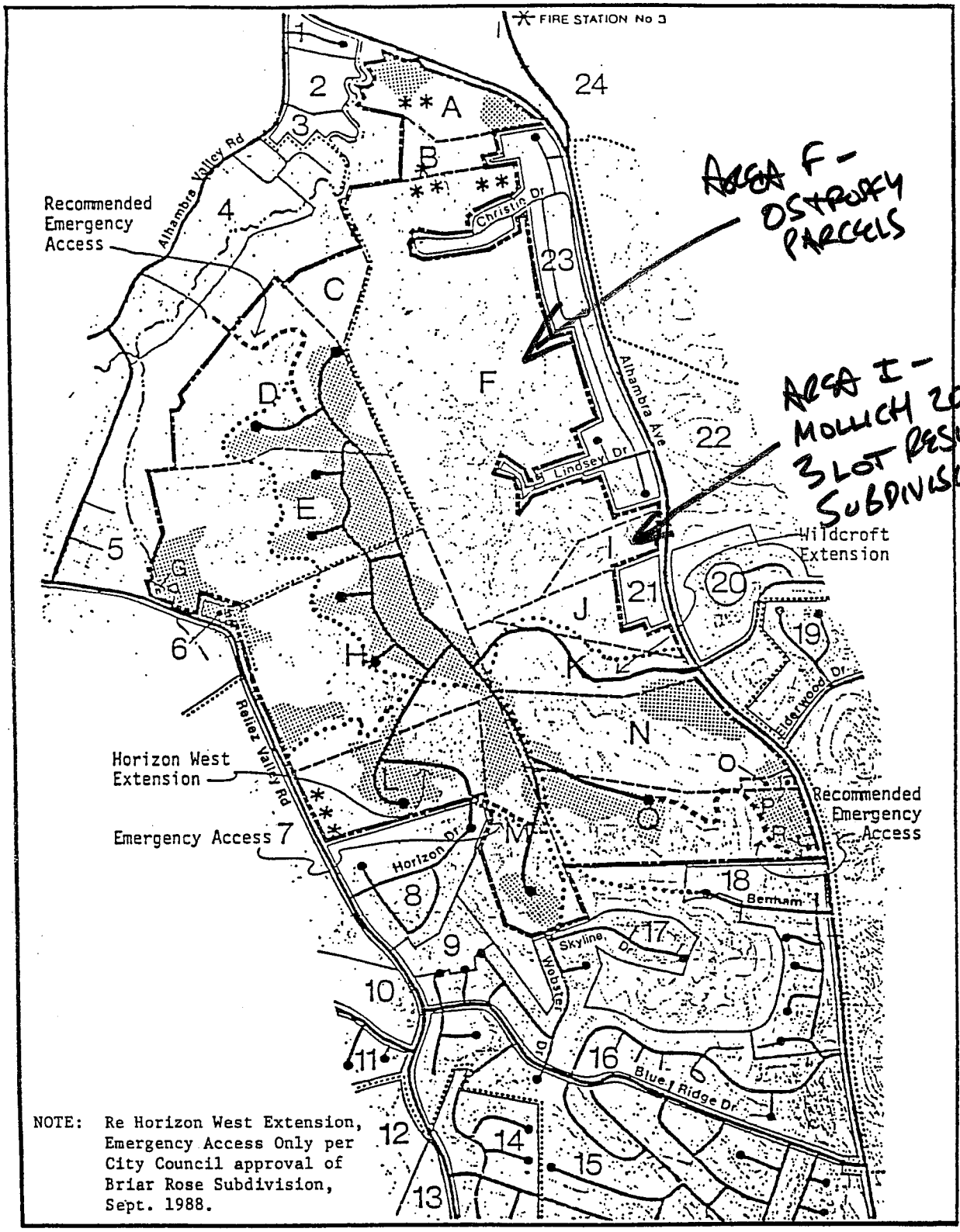
31.323 Project densities shall not exceed, and housing type shall be compatible with, nearby existing development.

31.324 Compliance with Site Development and Building Design policies shall be considered in determining final project densities (see Sections 31.34 and 31.35 for policies).

31.325 Reliez Valley Road densities shall vary from .5 to 1.5 units per Developable Area acre and shall not exceed the density of nearby existing development.

31.326 Densities along Alhambra Avenue shall vary from 3 to 5 units/per Developable Area acre and shall not exceed the density of existing development.

31.327 Remote homesites shall have a minimum 1 Ac lot size, with the building area consisting of existing topography of at least 10,000 sq. ft. under 30% slope.



LEGEND

- Planning Area Boundary
- Martinez 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

1AC 10 AC 0 200 400 600 800

SCOTT A. SOMMER (Bar No. 72750)
STACEY C. WRIGHT (Bar No. 233414)
PILLSBURY WINTHROP SHAW PITTMAN LLP
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000
Facsimile: (415) 983-1200

Attorneys for Plaintiff and Petitioner
OSTROSKY ENTERPRISES, INC., a California Corporation

FILED
JAN 22 2010
K. TORRE, CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF CONTRA COSTA
By D. WASSER, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA - MARTINEZ

OSTROSKY ENTERPRISES, INC., a California Corporation, Plaintiff and Petitioner, vs. CITY OF MARTINEZ, DOES 1 through 10 inclusive, and all other persons unknown claiming any right, title, estate, license, lien, or interest in the real property adverse Plaintiff's title, Defendant and Respondent.	No. N08-0408 **SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE ON MANDAMUS CAUSE OF ACTION** Trial Date: January 28, 2010 Time: 1:45 p.m. Dept: 7 Judge: Hon. Barry Baskin Action Filed: March 17, 2008

TO THE HONORABLE BARRY BASKIN, JUDGE OF THE ABOVE-ENTITLED COURT:

Petitioner OSTROSKY ENTERPRISES, INC. hereby requests that the Court take judicial notice of the following matters:

RJN 5: That certain correspondence dated May 4, 2006 from Richard Pearson of the City of Martinez to Isolde Mollich.

This request is made pursuant to Evidence Code §§ 452(b) and (h) on the ground that these documents are records of a public entity, which include "records of a city", and as such are the proper subject of judicial notice.

Attached hereto as Exhibit 1 is a true and correct copy of the above-referenced correspondence.

RJN 6: That certain correspondence dated September 12, 2007 from Corey M. Simon of the City of Martinez to William Bruegmann and Don Fitch.

This request is made pursuant to Evidence Code §§ 452(b) and (h) on the ground that these documents are records of a public entity, which include "records of a city", and as such are the proper subject of judicial notice.

Attached hereto as Exhibit 2 is a true and correct copy of the above-referenced correspondence.

RJN 7: That certain correspondence dated March 28, 2008 from Albert V. Lopez of the City of Martinez to Don Fitch.

This request is made pursuant to Evidence Code §§ 452(b) and (h) on the ground that these documents are records of a public entity, which include "records of a city", and as such are the proper subject of judicial notice.

Attached hereto as Exhibit 3 is a true and correct copy of the above-referenced correspondence.

Dated: January 20, 2010.

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: _____
Scott A. Sommer
Attorneys for Plaintiff and Petitioner
OSTROSKY ENTERPRISES, INC., a California Corporation

EXHIBIT 1

City of Martinez
525 Henrietta Street, Martinez, CA 94553-2394

May 4, 2006

AUG 1 3 2007

Mrs. Isolde Mollich
5808 Alhambra Avenue
Martinez CA 94553

Re: APN 366-150-20

Dear Mrs. Mollich:

We were able to retrieve the old Alhambra Hills Specific Plan files from retention. In looking through the files, I was not able to find anything specific indicating why there is no Development Area shown on the plan map for your property. I did find a reference to a discussion between staff and the Planning Commission indicating that there would be some flexibility allowed in the plan by defining Development Area as all property under 30% slope, rather than relying on only the map designation. This was adopted as part of the plan text, after the first sentence under F31.31:

"The Development Area shall consist of all Plan areas under 30% slope which shall be considered developable unless site constraints prevent development of that particular area (see Policies 31.321 and 31.322."

31.326 states that **"Densities along Alhambra Avenue shall vary from 3 to 5 units per Development Area acre and shall not exceed the density of existing development."**

Taken together, these two policies would allow you to develop portions of your property under 30% slope, assuming that there are no problems with soil stability or other factors listed under 31.321 and 31.322. You would not need a general plan amendment, or a rezoning. You would need a slope density map, a tentative subdivision map, and a soils report. You, or someone who purchases the property, should do some preliminary work, then come in for a meeting with our Deputy Community Development Director, Albert Lopez, before you get too far into design. Staff can review it at a preliminary level, and give you suggestions.

If you have any further questions, please call me.

Sincerely,

Richard Pearson
Community Development Director

cc: Albert Lopez
William J. Bruegmann

EXHIBIT 2

City of Martinez
525 Henrietta Street, Martinez, CA 94553-2394
COMMUNITY DEVELOPMENT DEPARTMENT (925) 372-3515

September 12, 2007

William Bruegmann
2255 Contra Costa Blvd, # 305
Pleasant Hill, CA 94523

Don Fitch
Gilbert Fitch and Associates, Inc.
1320 Galaxy Way # 101
Concord, CA 94520

RE: MOLLICH PROPERTY; PRELIMINARY Application review for a 4-Lot minor subdivision, and possible variances to maximum density allowed per requirements of the *Hillside Development Regulations*, and minimum required front yard setback requirements on an approximate 10 acre parcel located at 5808 Alhambra Avenue (APN: 366-150-020); FILE: [preliminary]

Dear Mr. Bruegmann & Fitch:

Staff has reviewed the preliminary material you submitted on August 13, 2007, including a revised slope density exhibit on August 30, in regards to possible subdivision of the Mollich property. We took in your material as a "preliminary" application, as your client wished to assess the possibility of a 4-lot subdivision prior to completing the geotechnical reports that are required for all minor subdivision applications. The first part of this letter outlines staff's initial observations, following with possible courses of action for your client:

I. BACKGROUND AND INITIAL COMMENTS

- Any development subject to regulations of the Alhambra Hills Specific Plan and Hillside Development Regulations. Former Director Richard Pearson's letter of May 4, 2006 clarified the Alhambra Hills Specific Plan allows the possibility for development on those portions of your property with less than 30% (without the need for a general plan or Specific Plan amendment). But his letter also states that a subdivision application would require a slope density map (to show compliance with the City's Hillside Development Regulations). The maximum number of possible units on a hillside parcel is determined by the slope density map. The map initially submitted on August 13 (showing a maximum allowance of up to 4 units) incorrectly assigned the flat area of the existing Mollich homesite as if it was naturally level; City policy in implementing slope density limitations is to consider the "natural" slope of the entire site. A corrected slope density map (showing a maximum allowance of up to 3 units) was submitted received from Din Fitch and Associates on August 30, 2007.

- Parcel "C" is not consistent with R-7.5 Zoning District requirements. The placement of a 9' high retaining wall approximately 5' from the Alhambra Avenue right-of-way would require a variance, as no structures over 3' are typically allowed in the 20' deep minimum required front yard. Furthermore, policy 31.324 of the Alhambra Hills Specific Plan states that the nature of development and "*housing*

type shall be compatible with nearby existing development." It appears any development on the proposed parcel "C" would be much higher than, and/or closer to, Alhambra Avenue than that of neighboring houses, thus creating an incompatible urban image along amongst the established suburban to semi-rural setting.

- Current plan would require approval of variances. Due to the above, the applicant's August 3, 2007 (received August 13, 2007) is not correct when he states that the current proposal is "meets all of the City requirements for the General Plan and zoning and setback requirements... there will be no need for variances or any action beyond the simple parcel map process." Should you precede with the design as proposed, variances to the development standards of the R-7.5 zoning district and slope density limitation of the *Hillside Development Regulations* would be required.

II. OPTIONS FOR APPLICANT

- Complete application for conforming 3-lot subdivision, for action by Zoning Administrator.

  Were Parcel "C" to be removed from the request (area to remain within Parcel "D"), the request would become a "simple parcel map" and could be approved by the Zoning Administrator, acting a sole decision-maker at a public hearing. Should the property owner chose this option, you would need to complete the tentative map application submittal requirements for the Zoning Administrator's hearing, but baring some yet unforeseen issue, approval would be likely. That portion of fees paid for the "preliminary review" can be applied to the tentative map application fee, as Planning Commission review would not be required (unless Zoning Administrator's decision were to be appealed).

- Proceed to Planning Commission *study session* with Preliminary application for non-conforming 4- lot subdivision.

  Since only the Planning Commission can approve variances to slope density limitations, you could present the 4-lot proposal, prior to completing the soils report, to the Planning Commission at a study session. For the reasons outlined above, staff will not be supportive of allowing Parcel "C", and would recommend that the Planning Commission not support such a proposal.

Once you have reviewed these options with the property owner, staff would be happy to meet with you both and the property owner to facilitate whatever direction you choose. Please feel free to contact me at 925-372-3518. You may also wish to contact Khalil Yowakim, Associate Engineer at 925-372-3569.

Sincerely,

Corey M. Simon
Senior Planner

cc: Karen Majors, Assistant City Manager, Community & Economic Development
Khalil Yowakim, Associate Engineer
file

F:\Community Development\All Projects\MINOR SUBDIVIGNS PRELIM-Molitch-5508 Alhambra\Molitch-Prelim&incompl.ltr1.doc

EXHIBIT 3

City of Martinez
525 Henrietta Street, Martinez, CA 94553-2394 [925] 372-3515

March 28, 2008

Don Fitch
Gilbert Fitch and Associates, Inc.
1320 Galaxy Way # 101
Concord, CA 94520

SUBJECT: MINOR SUBDIVISION #551-07 APPROVAL – 3 LOT SUBDIVISION

Dear Mr. Fitch:

On Wednesday, March 26, 2008, acting as Zoning Administrator, I approved the request for a minor subdivision to allow an approximate 9 acre parcel to be divided into 3 lots; one approximately 7 acres (existing residence) and two new lots of approximately 1 acre each. This project is located at 5808 Alhambra Avenue, in Martinez.

The conditions of approval are attached.

This decision may be appealed to the Planning Commission by yourself or any interested person. There is a 10-day appeal period which ends on Friday, April 4, 2008.

You may proceed in applying for your building permit after the appeal period has expired. For more information on obtaining a building permit, please contact Rigo Casarez, Building Permit Technician, at 372-3550.

Sincerely,

Albert V. Lopez
Deputy Community Development Director

Attachment

cc: Josef & Isolde Mollich, 5808 Alhambra Avenue, Martinez, CA 94553
Rigo Casarez, Building Permit Technician
Engineering
Project File
Chron
Binder

CONDITIONS OF APPROVAL

AS APPROVED BY ZONING ADMINISTRATOR

Project Name: Mollich Minor Subdivision

Location: 5808 Alhambra Avenue (APN 366-150-020)

I. Description of Permit

These conditions apply to and constitute the approval of Minor Subdivision No. 551-07, allowing a 8.8 acre parcel to be subdivided into 3 lots; one of approximately 6.8 (with existing single-family residence) and 2 new single-family residential parcels of approximately 1 acre each.

II. Exhibits

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Tentative Map for MS 551-07	Mar 4, 2008	Gilbert Fitch & Assoc.	4

All construction plans shall conform to these exhibits, expected as modified by these conditions. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division and/or Building Department, or as noted.

III. Required Easements, Disclosures, Access Areas and Shared Maintenance Responsibilities

A. Easements to be shown on Parcel Map: In addition to existing and proposed easements shown on Tentative Parcel Map, the following easements are required (final wording, which to be provided in both CC&R's and "owner's statement" on the Parcel Map, and easement configurations subject to approval of City Engineer and Community Development Director):

1. The westerly portions of Parcel "A", "B" and "C" (as approximately shown on tentative map), and as conceptually modified in Staff exhibit entitled "*Attachment B – Scenic Easement as recommended by Staff, March 26, 2008*"), shall be placed within a private *Scenic and Drainage Easement*. The easement shall be a non-exclusive private easement for the purpose of preserving the naturalistic appearance of the undeveloped hillside and preserving existing topography and drainage patterns, by generally prohibiting the erection of structures and obscuring (i.e. solid wood) fencing, grading, paving, tree removal

and outdoor storage of vehicles or similar items. Two exceptions to the above prohibition are:

a) Repair/Mitigation of geotechnical hazards: Grading and/or drainage improvements as such may become necessary to mitigate and/or repair future geotechnical hazards, as such may be permitted by the City Engineer and Community Development Director.

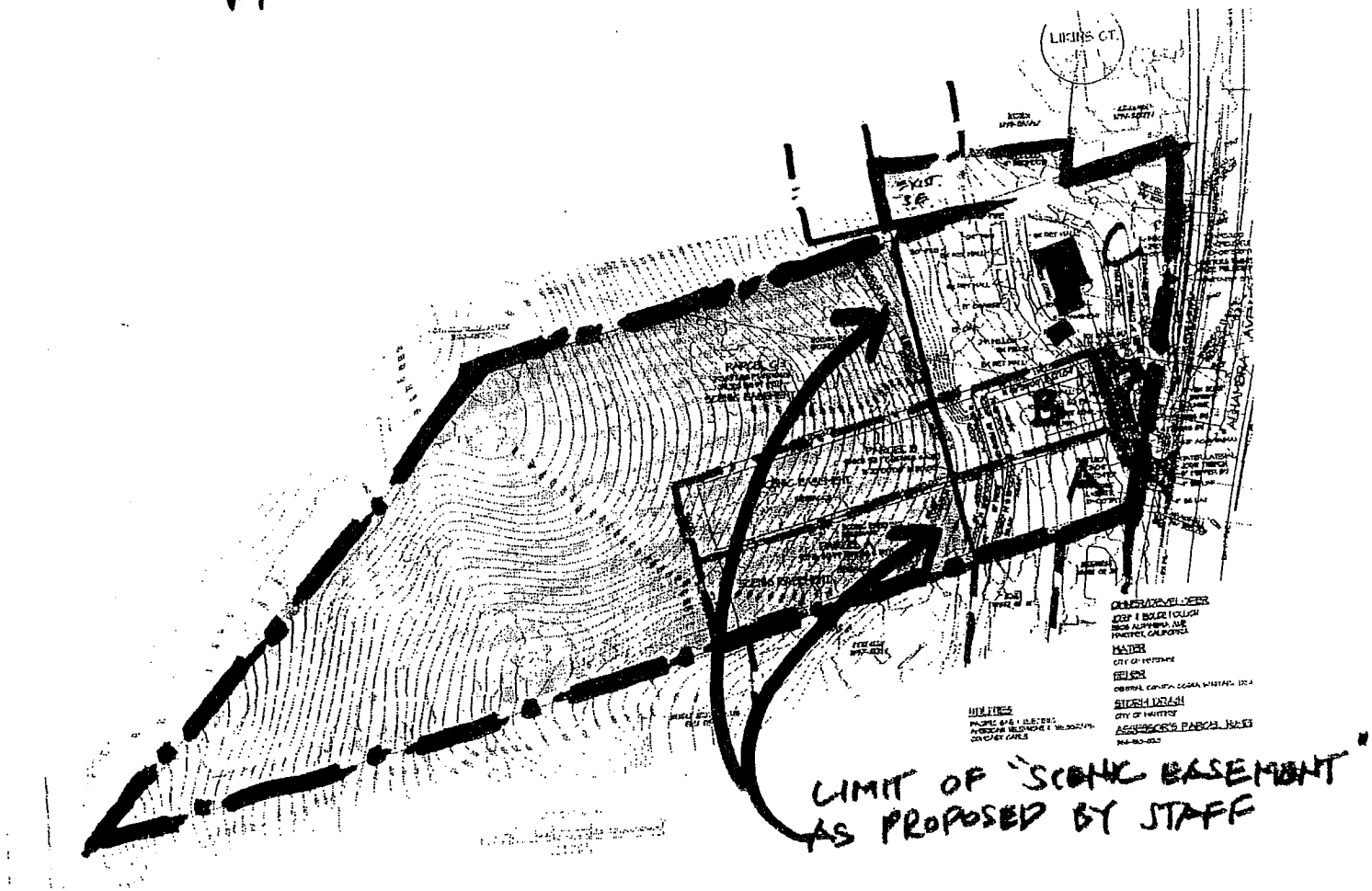
b) Addition of "Remote Homesite" should City amend Alhambra Hills Specific Plan: (NOTE: "owner's statement" on the Parcel Map only to reference CC&R's provision regarding the potential application(s) for "Remote Homesite" approval, and subject Scenic easement exception) CC&R's shall specify that the development of the "Remote Homesite" is subject to the City's approval of the necessary entitlements, which may include but are not limited to: 1) General Plan Amendment to add designation of a "Remote Homesite" to the Alhambra Hills Specific Plan, 2) subdivision approval and concurrent approval a variance to the slope density limitations, 3) Design Review approval of residence and residential access and site plan; as well as completion and adoption of applicable Environmental Documents pursuant to CEQA - a 10,000 sq. ft. homesite may be developed, without the need to amend the subject Scenic Easement described above, at the property's northwesterly knoll (at approximate 610' elevation). The City's approval of the potential remote homesite is also subject to the property's owner' ability to secure and construct legal access (with a design that meets Fire District and Engineering Division standards) from the neighboring property to the south ("Waters Incorporated" aka "Alhambra Highlands"; parcel, APN 164-010-019). Such access must generally be from the planned Wildcroft Drive extension and traverse northeasterly from the "Alhambra Highlands" property at approximately the 600' elevation. The City will not take any action on applications for approval of this potential homesite prior to the City's approval of final maps/improvement plans for "Alhambra Highlands" and Wildcroft extension, or equivalent access as to be developed off-site. Access to the possible homesite from the property to the north "Ostrosky/DeVries"; APN 366-150-019) or through the subject Scenic Easement below the approximate 600' elevation shall not be permitted. This exemption to the Scenic Easement shall not be construed as an endorsement, or recommendation of approval, of such possible future entitlement applications.

2. The Parcel map shall reference and continue the limitations of the existing scenic easement (71 PM 41).

ATTACHMENT B

ZONING ADMINISTRATOR STAFF REPORT 2008 MAR 26

PROPOSED SCENIC EASEMENT



3. The Shared Driveway shall be placed within a "P.U.E., private storm drainage and access easement" The CC&R's shall include joint maintenance agreement provisions.

B. CC&R's are required for this project, and draft CC&R's shall be submitted for City review and approval with the parcel map and improvement plans. The CC&R's shall contain a clause giving the City the right, but not the duty, to enforce the CC&R's. Prior to recordation, the City Attorney shall review and approve the proposed CC&R's. The applicant shall be responsible for the review fee of the CC&R's and shall enter into an agreement with the City in order to reimburse the City's cost of the Attorney's review, or as approved by the Community Development Director.

1. Disclosures for development of Parcels "B" and "C": The following limitations and requirements for the development of Parcels "B" and "C" shall be included in the CC&R's to be recorded concurrently with the parcel map. Final wording subject to approval of the Community Development Director and City Engineer:

a. Design Review (Code section 22.34.030-070) is required for any development. No grading shall be permitted on any parcel until Design Review approval and subsequent Building Permit approval is given, expect for the grading required for the construction of the subdivision improvements as approved by the City. The building section provided with the tentative parcel map (page 2 of 4, dated 2.28/2008 and received March 4, 2008) is provided for "illustration purposes only" and does not constitute approval of a house design.

b. In addition to the required two enclosed parking spaces, two auxiliary guest parking spaces shall be provided on each lot (such on the driveway, as illustrated on page 2 of 4 of tentative parcel map, dated 2.28/2008). No parking shall be allowed on the private driveway, including the hammerhead turnaround.

2. The CC&R's shall include Sections for the maintenance of common improvements within the shared access driveway, the common drainage facilities, and the stormwater control facilities, and trees located between shared access drive and Alhambra Avenue. The City shall not be included in the maintenance responsibility of the shared access driveway or adjacent landscaping

IV. Access and Site Improvements (Shared Private drive, grading and landscaping adjacent to Alhambra Avenue)

A. As a required subdivision improvement, the subdivider shall construct the shared private drive (providing access to all three parcels) with a

hammerhead turnaround at the end of the drive as approved by the City. Disturbed area between the shared private drive and Alhambra Avenue, and areas immediately adjacent to new path shall be:

1. Graded to echo a naturalistic appearance of rounded transition between new and proposed topography.

2. Revegetated with seasonal grasses and clusters of native trees and shrubs, such as coast live oaks. Continuous ground/shrub cover for erosion control shall be provided for entire area between Alhambra Avenue and the new shared driveway, and immediately adjacent to new path along Alhambra Avenue. Automatic irrigations system to establish trees shall be provided, and area shall be maintained by owner of Parcel "A" in perpetuity. Final planning and irrigation plans shall be prepared on the grading/improvement plan as a base map and shall be submitted for review and approval by the City at the same time grading and improvement plans are submitted. Final plans must receive City approval prior to filing of the Parcel Map.

3. No steep graded slopes (i.e. over 4:1) shall be constructed within the public right of way unless otherwise approved by the City. Graded slopes within the right of way required for the construction of the private drive shall be kept to a minimum.

B. The owner(s) and shall cede abutters' rights to the City for all portions of the Alhambra Avenue, except at the shared driveway on the parcel map.

C. The following specific requirements shall be incorporated into the planning and irrigation plans.

1. Be prepared in accordance with the City's adopted water conservation and landscaping ordinance (Martinez Municipal Code Chapter 22.35).

2. Final landscape plans shall contain a table showing the amounts of landscape area, plus a count of trees and shrubs to be planted by size.

3. Specify trees sizes of at least 15 gal. in size. Shrubs shall be 5 gal. size and drought tolerant.

4. Where such is required above, ground/shrub shall be planted and maintained so that complete coverage is achieved within 3 years.

D. Once final planning and irrigation plans are approved, the applicant shall submit reproducible copies for signature. Once the landscaping is accepted by the City, as-built mylars shall be submitted.

E. The satisfactory installation of all landscape and irrigation improvements shall be guaranteed by posting a bond or equivalent surety with the City

equal to 100 percent of the cost of materials and installation prior to issuance of building permits or City approval of the Parcel Map, whichever comes first; or alternate as approved Community Development Director.

F. The maximum height for all walls, fences and/or fences on retaining walls within required minimum yards shall be 6 feet. Fences off-set from retaining walls 18 inches or greater shall be considered separate structures with a maximum height of 6 foot each.

V. Architecture

A. Individual units shall comply with the R-7.5 Zoning District Development Standards, which include, but is not limited to, minimum required yards and maximum building heights and lot coverage. "Building Envelopes" as illustrated on the Tentative Map, are for illustration purposes only, and are not indented to grant exceptions to the R-7.5 District standards.

B. Design Review approval is required for the individual development plans for each of the three units prior to issuance of building permits. Where applicable, plans shall include:

1. Consistent trim of all exterior doors and windows.

2. Window frames and doors shall be color coordinated to match the building.

3. Composition shingles, if proposed, shall be architecturally laminated style, minimum weight of 280 lbs./square.

4. Final color schemes.

VI. Noise Control, Dust and Conditions for Construction Activity

A. All construction activities shall conform to the City's Noise Control Ordinance, Chapter 8.34 of the Municipal Code: Construction activities are limited to the hours of 7:00 a.m. to 7:00 ., Monday through Friday; and 9:00 a.m. to 5 p.m. Saturday and Sunday. The permittee shall post a sign on the site notifying all workers of these restrictions.

B. No equipment shall be started or delineation take place on the streets before or after the specified operations hours.

C. Contractors shall be required to employ the quietest construction equipment available, and to muffle noise from construction equipment and to keep all mufflers in good working order in accordance with State law.

D. Adequate dust control measures shall be employed throughout all grading and construction periods. The Contractor shall regularly water areas that are exposed for extended periods to reduce wind erosion

E. Contractor shall ensure that surrounding streets stay free and clear of silt, dirt, dust, tracked mud, etc. coming in from or in any way related to project construction. Paved areas and access roads shall be swept on a regular basis. All trucks to be covered.

F. Speeds of construction equipment shall be limited to **10** miles per hour. This includes equipment traveling on local streets to and from the site.

G. Access shall be maintained to all driveways at all times.

H. There shall be no parking of construction equipment or construction worker's cars on residential streets at any time.

I. Truck routes for the import or export of cut/fill material shall be identified and approved by the City Engineer prior to the issuance of any permits. Developer shall be responsible for the repair of any damage to city streets (private and public) caused by the import or export of soils materials necessary for the project.

VII. Agreements, Fees and Bonds

A. All improvement agreements required in connection with said plans shall be submitted to and approved by City and other agencies having jurisdiction prior to City approval of the Parcel Map or issuance of the Building, Encroachment, Grading or Site development permit, whichever comes first.

B. All required faithful performance bonds and labor materials bonds in penal amount equal to 100 percent of the approved estimates of construction costs of improvements shall be submitted to and approved by City and other agencies having jurisdiction prior to City approval of the Parcel Map or issuance of the Building, Encroachment, Grading, or Site Development permit, whichever comes first.

C. Prior to approval of the plans and issuance of permits, applicant shall pay all applicable fees and deposits including plan check fees, inspection, drainage impact fees, and Impact Mitigation Fees for single-family residential units. Impact fees include but are not limited to: transportation facilities fees, park (in lieu of land dedication) fees, park and recreation facilities fees, cultural facilities fees, police facilities fees, as required by the Community Development Director. The final amount for the above fees shall be in accordance with the fee schedule in effect of time of payment.

D. All fees and deposits required by other agencies having jurisdiction shall be paid prior to City approval of the Parcel Map or issuance of the Building, Encroachment, Grading or Site Development Permit, whichever comes first.

VIII. Grading

A. All grading shall require a grading and drainage plan prepared by a registered Civil Engineer, a soils report prepared by a registered Geotechnical Engineer and a Grading Permit approved by the City Engineer. The grading plans and soils report shall require review by the City's geotechnical consultant with all costs to be borne by the applicant.

B. All recommendations made in the Soil Engineers report, (unless amended through the City's review) and all recommendations made by the City's geotechnical consultant shall be incorporated into the design and construction of the project.

C. The on-site finish grading shall require drainage to be directed away from all building foundations at a slope of 2 percent minimum to 20 percent maximum toward approved drainage facilities or swales. Non-paved drainage swales shall have a minimum slope of 1 percent. A minimum 4-ft. wide clear access shall be provided around each building.

D. Contour grading techniques with spot elevations shall be employed throughout the project to achieve a more natural appearance, even where this will increase the amount of grading. Tops of cuts or toes of fills adjacent to existing public rights-of-way or easements shall be set back two feet minimum from said rights-of-way and easements, unless otherwise approved by the City Engineer. Grading shall be designed in a manner that will not cause runoff to concentrate and drain on existing slopes. Graded slopes between lot lines shall be design in manner that prevents runoff from one parcel to another. For areas that are to remain natural, runoff from each lot shall be collected before it crosses the property line and conveyed to adequate storm drainage facilities or as approved by the City Engineer.

E. Erosion control measures shall be implemented per plans approved by the City Engineer for all grading work not completed before October 1. At the time of approval of the improvement and/or grading plans, an approved Erosion Control Plan prepared by a registered Civil Engineer shall be filed with the City Engineer.

F. All graded slopes in excess of 5 ft. in height shall be hydroseeded or landscaped no later than September 15 and irrigated (if necessary) to ensure establishment prior to the onset of the rainy season.

G. The applicant's engineer shall certify the actual pad elevation for the lot in accordance with City standards prior to issuance of Building Permit.

H. All front yard landscaping or alternate erosion control measures shall be installed prior to release for occupancy to mitigate erosion problems on each lot.

I. The finished grading shall be inspected and certified by the developer's engineer that it is in conformance with the approved Grading Plan and Soils Report pursuant to the provisions of Title 15 of the Martinez Municipal Code.

J. Where applicable, the grading and finished lot pads shall meet or exceed the requirements of a 100-year (1 percent) flood zone.

K. All existing trees shall be clearly indicated on the grading plan.

L. Any grading on adjacent properties will require written approval of those property owners affected.

M. If cultural resources are discovered during subsurface excavations, the Contractor shall cease construction and a qualified archeologist shall be contacted to make recommendations for mitigation.

N. The plans shall include the boundary treatment shown on cross sections, drawn to scale, for retaining walls, fencing and drainage.

O. Where grading is proposed over an existing easement(s) shall be designed in a manor that will impact the use and enjoyment of such easement(s). Where significant grading is required, the developer shall obtain the written approval of the easement(s) owner(s) prior to City approval of the parcel map and improvement and grading plans.

IX. Drainage

A. A hydrologic study shall be prepared and submitted to the City for review and approval to ensure discharge of storm runoff to facilities of adequate capacity. The developer shall make necessary upgrades to existing systems as required. Drainage area is defined as all that area draining into, and including, the area of the proposed development.

B. All concentrated runoff shall be collected and conveyed to an approved storm drainage system. Existing slopes that have no additional discharge directed onto them or are not substantially regraded can remain as natural runoff.

C. Applicant shall not increase storm water runoff to adjacent downhill lots unless either, (1) a Drainage Release is signed by the property owner(s) of affected downhill lots and recorded in the office of the County Recorder; or (2) site drainage is collected and conveyed in approved drainage facilities within a private drainage easement through a downhill property. This condition may require collection of on-site runoff and construction of an off-

site storm drainage system. All required releases and/or easements shall be obtained prior to filing of Parcel Map or issuance of the Building, Encroachment, Grading or Site Development Permit, whichever comes first.

D. The storm drain system shall be designed per City and County Flood Control District Standards to carry at least a 10-year storm. Furthermore, the system shall be designed to ensure that local streets remain passable during a 100-year storm. Passable is defined as one 10-ft. travel lane in each direction, pavement free of water runoff. The developer shall install a drainage system to ensure passability. Should the runoff due to the proposed development contribute incrementally to an existing flooding problem, then the developer may be required to contribute funds for his proportional share of future drainage system costs as required by the City Engineer.

E. All public drainage facilities which cross private lots and to be maintained by the City shall require a 10-ft. (minimum) width storm drain easement. Private storm drain facilities to be maintained by individual lot owners shall be contained within 10-ft. private drainage reserves. Said easements and/or reserves shall be delineated on the Parcel Map or recorded by separate document prior to City approval of the Parcel Map or issuance of Building Permit, whichever comes first.

F. Concentrated drainage flows shall not be permitted to cross sidewalks, pavement, or driveways.

G. The developer shall comply with Contra Costa County Flood Control District Design requirements.

H. 15 inch minimum RCP (reinforced concrete pipe) shall be used for all public storm drain lines and 12 inch minimum pipe shall be used for laterals and for private storm drain lines.

X. <u>NPDES Requirements</u>

A Efficient irrigation, appropriate landscape design and proper maintenance shall be implemented to reduce excess irrigation runoff, promote surface filtration, and minimize use of fertilizers, herbicides, and pesticides.

B All storm drain inlets (catch basins) shall be imprinted with the sign "No Dumping, Flows to Creek" as per City Standard #SD-1.

C Developer shall comply with the State Water Resources Control Board requirements for a construction NPDES permit and shall maintain a Storm Water Pollution Prevention Plan (SWPPP) at the job site and provide the City with a copy of same.

D Stormwater Control Plan:

1. To the maximum extent practicable, as determined by the City Engineer, drainage from roof and paved surfaces shall be routed through grassy swales, buffer strips or sand filters prior to discharge into the storm drain system. The applicant shall submit to the City for review and approval a complete stormwater control plan and operation and maintenance plan prepared by the applicant's engineer prior to the approval of the Parcel Map. All required facilities shall be designed and constructed in conformance with methods and design recommendation described in the current edition of Contra Costa County Clean Water Program C.3 Guidebook. If the applicant wishes to use facilities that are not listed in the C.3 Guidebook, developer shall submit information and support documentation to the City, for review and approval, to proof that it meets or exceed the requirements.

2. All required stormwater control facilities (C.3 facilities) shall be installed onsite. The location of these facilities including access, methods of operation, maintenance and reporting shall be subject to the City Engineer's approval. The Owner(s) shall be the responsible for the operation, maintenance, and future reporting for the C.3 facilities. Theses facilities shall be included within a private storm drain easement(s).

3. Stormwater control plan and the operation and maintenance plan shall be included as a part of the CC&R for the subdivision. If required by the City, a maintenance agreement between the owner(s) shall be executed to insure the proper maintenance and operation of the facilities, and for providing the City and other regulatory agencies the right of entry to perform periodic inspections to insure compliance with requirements.

4. The Stormwater Control Plan, the Operation and Maintenance Plan, and the construction plans for the stormwater control facilities (C.3 facilities) shall be submitted and approved by the City Engineer prior to the approval of the parcel map and the improvement plans, or the issuance of permits.

5. Drawings and details shall be submitted with the subdivision's improvement plans. The drawing and details should include calculations, structural, mechanical, architectural, grading, drainage, site, landscape, and other drawings to show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants.

6. The permit application for future building, grading, site improvements, or landscaping shall be consistent with the applicant's approved Stormwater Control Plan.

7. The applicant shall be responsible to implement and pay all costs associated with stormwater control plan, the operation and maintenance of the facilities, and the preparation of all documents and future reporting.

8. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall submit as built drawings showing that it conform to the approved stormwater control plan.

E. Development shall include adequate accessible and convenient areas for collecting and loading recyclable materials, to the satisfaction of the City Engineer, in conformance with the California Integrated Waste Management Board Recycling Ordinance.

XI. Street Improvements

A. Pursuant to Chapter 12.30 of the Martinez Municipal Code, frontage improvements along Alhambra Ave is required. Said frontage improvements include, but not limited to, constructing a new 5.5 feet wide asphalt concrete walkway as measured form back of the existing curb; installing new street lights; repairing or replacing damaged pavement on Alhambra Ave to center line of the street (even if it not damaged as a result of the construction) as determined by the City Engineer; and installing the necessary storm drainage improvements to collect and convey runoff to adequate downstream facilities. All improvements shall be constructed to the satisfaction of the City Engineer.

B. All streets shall be paved and improved, after utilities are installed, in accordance with City of Martinez Standard Drawings and Design Guidelines.

C. Paving design and construction control shall be based on State of California "R" value method, using Traffic Indices (T.I.'s) approved by the City Engineer.

D. All new utility distribution services on-site and off-site shall be installed underground.

E. A City Encroachment Permit is required for any work within the City Right-of-Way.

F. **Compete striping and signage plan, in accordance with the City standards, shall be submitted to the City Engineer for review and approval.** All traffic control devices, including Stop signs, No Parking signs,

legends and striping shall be installed in accordance with plans approved by the City Engineer.

G. The private access drive structural section shall be determined by the "R" value method suing a T.I. of 5.5 with a minimum 0.2 ft. AC pavement section over a minimum 0.50 ft. Class 2 aggregate base.

H. Private access drive shall provide a minimum 20 ft. wide unobstructed paved width within a 25 ft. wide (minimum) right-of-way and utility easement, with a maximum of 16 percent grade and approved provisions for the turning around of Police Department and Fire Department apparatus. Curb returns at intersection with Alhambra Ave shall be a 30-ft. radius, unless otherwise approved by the City Engineer. Turnaround shall be installed to conform to City standard details or as shown on the tentative map unless otherwise approved by the City Engineer and the Fire Department.

I. The onsite driveways plan and profile to homes on Parcels A & B shall conform to City standard details. The minimum length for the driveways shall be in accordance with City code restrictions, but in no case shall they be less than 20 ft. as measured from the garage door to the street right-of-way, or access easement line, unless otherwise approved by the City Engineer.

J. Applicant shall comply with TSM Ordinance.

XII. Water System & Fire Protection

A. Water system facilities shall be designed to meet the requirements of the **City of Martinez** water service agency and the fire flow requirements of the Contra Costa County Consolidated Fire Protection District All requirements of the water agency shall be guaranteed prior to approval of the improvement plans.

B. Water system connection, including installation of the water meter, shall be made in accordance with water agency standards. Prior to obtaining water service, fees shall be paid in accordance with the water fee schedule in effect at time of payment.

C. Backflow prevention, required as part of the water service installation, must be completed before occupancy of the building.

D. Fire hydrant(s) shall be installed as required by the Fire Department.

C. This subdivision is located within the water district service Zone 2. The maximum service elevation of this Zone is 320. For building(s) above elevation 320, private booster pumps may be required. If it becomes desirable for owner(s) to increase his water service pressure with a booster pump, then Owner shall install an interim "air gap" pump system to serve the parcel(s). Owner shall

submit plans and apply for a permit for such an installation of the booster pump.

D. Prior to providing water service for building(s) above elevation 320 feet, the applicant shall sign a low-pressure acknowledgement agreement with the City. Until future improvements to the water system that serve the property are constructed, installed or completed, the property owner(s) shall provide and maintain alternate means for fire protection for the building(s) constructed on said property as approved in writing by the Fire District. Said protection plan shall be filed with the City before and as a condition to the City's provision of water service to the property.

XIII. Sanitary Sewer System

A. Sewer system connections and plans for sanitary sewer facilities shall be approved by the **Central Contra Costa County Sanitary District (CCCSD).** All requirements of that District shall be met before approval of the improvement plans.

XIV. Other Requirements

A. Construction shall comply with all applicable City and State building codes and requirements including handicapped and energy conservation requirements, grading and erosion control ordinances.

B. Design of all public improvements shall conform to the City of Martinez Design Guidelines, Standard Special Provisions, and Standard Drawings. Prior to preparation of improvement plans, the developer or his representative should contact the City's Engineering Development Review section of the Community Development Department.

C. Complete grading, site and improvement plans, specifications and calculations shall be submitted to and approved by the City Engineer, Community Development Director, and/or other agencies having jurisdiction for all improvements within the proposed development prior to filing of the Parcel Map or issuance of a Building, Site, Grading or Encroachment Permit whichever comes first. Approved plans shall become the property of the City of Martinez upon being signed by the City Engineer and Community Development Director.

D. Prior to City approval of the Parcel Map, all fees, bonds, and deposits shall be paid and posted; all agreements shall be executed and all grading and improvement plans shall be approved by the City Engineer and Community Development Director. No construction shall take place until recordation of the Parcel Map and issuance of the appropriate Encroachment, Site, Grading and/or Building Permits.

E. Prior to issuance of the first building permit, the access to building sites shall be graded and improved to at least an all-weather surface condition, and

operating fire hydrants shall be in place.

F. Prior to issuance of the first certificate of occupancy, the public improvements including streets, sewers, storm drains, street lights, and traffic signs required for access to the sites of that phase of the project shall be completed. All public improvements shall be completed and accepted by the City prior to issuance of certificate of occupancy on final dwelling unit in the project.

G. Prior to acceptance of improvements, offers of dedication, and release of bonds and deposits by the City, the City's record copies of the grading, site, and improvement plans shall be updated to show "As Built" conditions of the project. Said plans shall be prepared by the responsible Civil Engineer of work and shall reflect all changes made during the course of project construction. Grading and improvement plans shall be 24" x 36" in size. The as built plans and Parcel map shall be provided in 4 mil photo mylars and in the form of electronic files compatible with AutoCad.

H. All on-site improvements not covered by the building permit including sidewalks, driveways, paving, sewers, drainage, curbs and gutters must be constructed in accordance with approved plans and/or standards and a Site Development Permit approved by the City Engineer.

I. Building permits for retaining walls shall be obtained as follows:

1. For major walls to be constructed during the mass grading phase, obtain permit prior to issuance of the Grading Permit.

2. For all other walls, obtain permit prior to issuance of Permits for structures on the respective lot.

J. Any existing water wells on the property shall be filled and sealed off or otherwise disposed of as directed by the City Engineer.

K. Approval by the applicant's Soils Engineer, the City's Soils Consultant, the Fire District, Sewage District, and the water agency of all improvements and buildings is required prior to City approval of construction plans **and the issuance of permits**.

L. Parcel Map and/or CC & R's clearly showing lot numbers and property lines shall be submitted with building permit applications. Parcel Map shall be 18" x 26" in size.

M. There shall be no parking of construction vehicles or equipment on the surrounding residential streets, including all workers vehicles.

XIII. Validity of Permit and Approval

A. Zoning Administrator approval is subject to appeal to the Planning Commission ten calendar days of the approval + 56 333 - 2012 · 03 · 26

B. The tentative map shall expire on March 26, 2010 (24 months from approval date) unless:
   1. The final map, the Improvement plans and all required documents are filed with City Engineer prior to the expiration date;
   2. Or if an application for extension with all required fees are received prior to the expiration date as state in item B below.

C. Extension of the tentative map approval: Extension(s) shall be in accordance with the City's Municipal Code and Subdivision Map Act requirements. Tentative map extension can be considered upon receiving an application with required fee at least 45 days before the original expiration date of March 26, 2008 If the tentative map is expired a new application is required. A public hearing will be required for all extension applications. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.

D. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.

E. The permittee and property owner, Josef & Isolde Mollich, and their successors in interest, shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Zoning Administrator's decision to approve MS 551-07, and any environmental document approved in connection therewith. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by the permittee and property owner, Josef & Isolde Mollich, and their successors in interest, the City, and/or the parties initiating or bringing such action.

F. Josef & Isolde Mollich, and their successors in interest, shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if the permittee and property owner, Josef & Isolde Mollich, and their successors in interest, desire to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.

G. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify the permittee and property owner, Josef

& Isolde Mollich, and their successors in interest, the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that the permittee and property owner, Josef & Isolde Mollich, and their successors in interest, is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably be withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the permittee and property owner, Josef & Isolde Mollich, and their successors in interest, in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where the permittee and property owner, Josef & Isolde Mollich, and their successors in interest, has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.

H. Josef & Isolde Mollich, and their successors in interest, shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.

I. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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Docket No. N08-0408

PROOF OF SERVICE

I, Starla D. Cole, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

2. My business address is 50 Fremont Street, San Francisco, CA 94105-2228. My mailing address is 50 Fremont Street, P.O. Box 7880, San Francisco, CA 94120-7880.

3. On January 21, 2010, at 50 Fremont Street, San Francisco, California, I served a true and correct copy of the attached document titled exactly, **SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE ON MANDAMUS CAUSE OF ACTION,** on the parties in this action as follows:

Jeffrey A. Walter, City Attorney
Walter & Pistole
670 W. Napa Street, Suite F
Sonoma, CA 95476
(707) 996-9690
(707) 996-9603 [Fax]
E-mail: jwalter@walterpistole.com

William Bates III
Bingham McCutchen, LLP
1900 University Avenue, Building B
East Palo Alto, CA 94303
(650) 849-4998
(650) 849-4605 [Fax]
E-mail: bill.bates@bingham.com

☒ **(BY MAIL)** I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Francisco, CA. I am readily familiar with the practice of Pillsbury Winthrop Shaw Pittman LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

☐ **(BY FACSIMILE)** The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error to the numbers listed above.

☒ **(BY EMAIL TRANSMISSION)** The above-referenced document was transmitted via electronic transmission to the persons at the electronic-email addresses indicated above.

☐ **(BY PERSONAL SERVICE)** I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.

☐ **(BY OVERNIGHT COURIER)** I am readily familiar with the practice of Pillsbury Winthrop Shaw Pittman LLP for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by_____ for overnight delivery.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 21, 2010, at San Francisco, California.

Starla D. Cole

Starla D. Cole

RECORD OF SURVEY

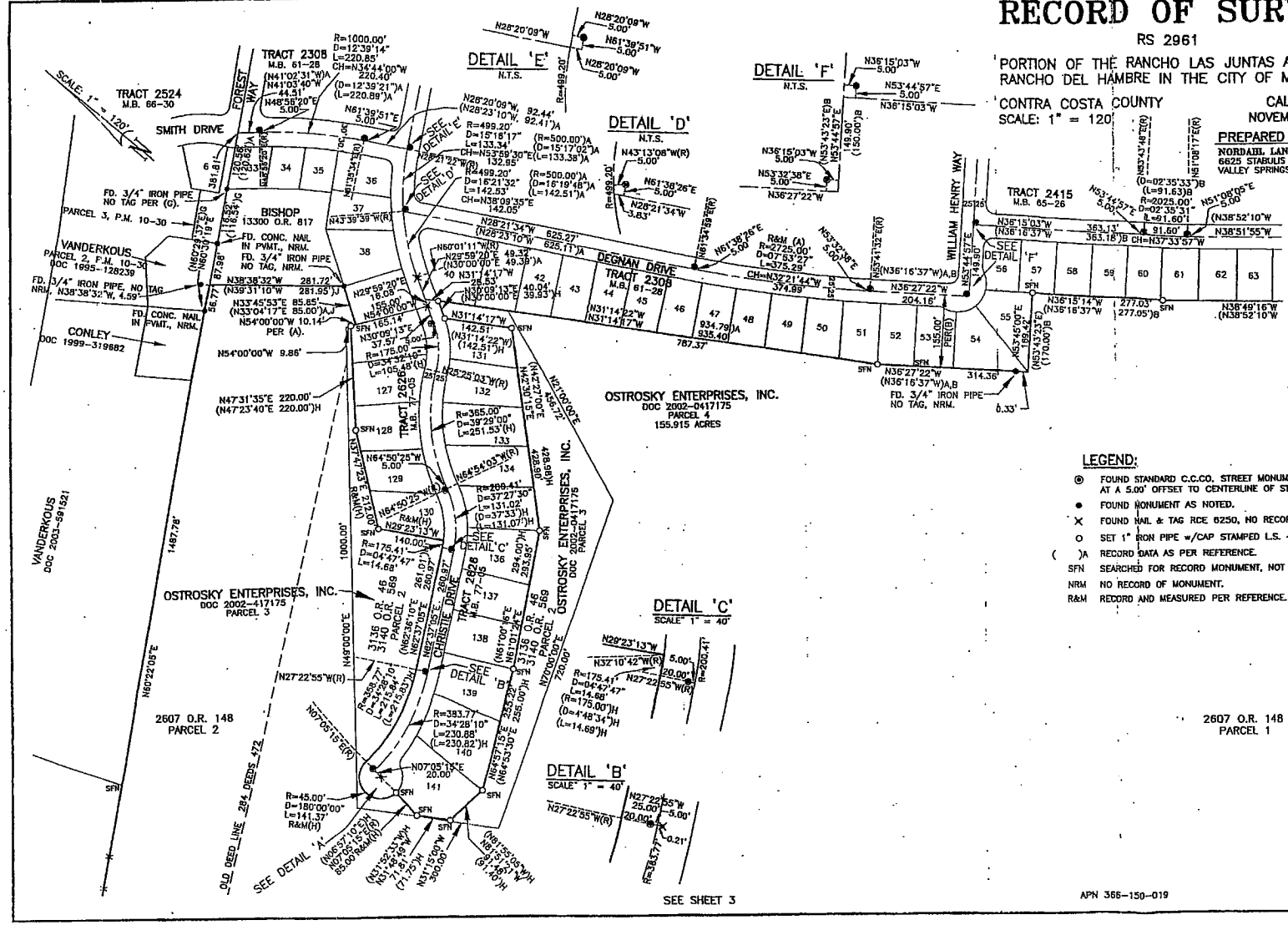
RS 2961

PORTION OF THE RANCHO LAS JUNTAS AND THE RANCHO DEL HAMBRE IN THE CITY OF MARTINEZ

CONTRA COSTA COUNTY — CALIFORNIA

SCALE: 1" = 120' — NOVEMBER 2004

PREPARED BY:
NORDAHL LAND SURVEYING
6625 STABULIS ROAD
VALLEY SPRINGS, CA 95252



LEGEND:

- ⊛ FOUND STANDARD C.C.CO. STREET MONUMENT AT A 5.00' OFFSET TO CENTERLINE OF STREET.
- ● FOUND MONUMENT AS NOTED.
- × FOUND NAIL & TAG RCE 6250, NO RECORD.
- O SET 1" IRON PIPE w/CAP STAMPED L.S. 4233.
- ( )A RECORD DATA AS PER REFERENCE.
- SFN SEARCHED FOR RECORD MONUMENT, NOT FOUND.
- NRM NO RECORD OF MONUMENT.
- R&M RECORD AND MEASURED PER REFERENCE.

APN 366-150-019

SHEET 4 OF 4

130/61

P054-001

RECORD OF SURVEY

RS 2961

PORTION OF THE RANCHO LAS JUNTAS AND THE RANCHO DEL HAMBRE IN THE CITY OF MARTINEZ

CONTRA COSTA, COUNTY — CALIFORNIA

SCALE: 1" = 120' — NOVEMBER 2004

PREPARED BY:

NORDABL LAND SURVEYING
6625 STABULIS ROAD
VALLEY SPRINGS, CA 95252

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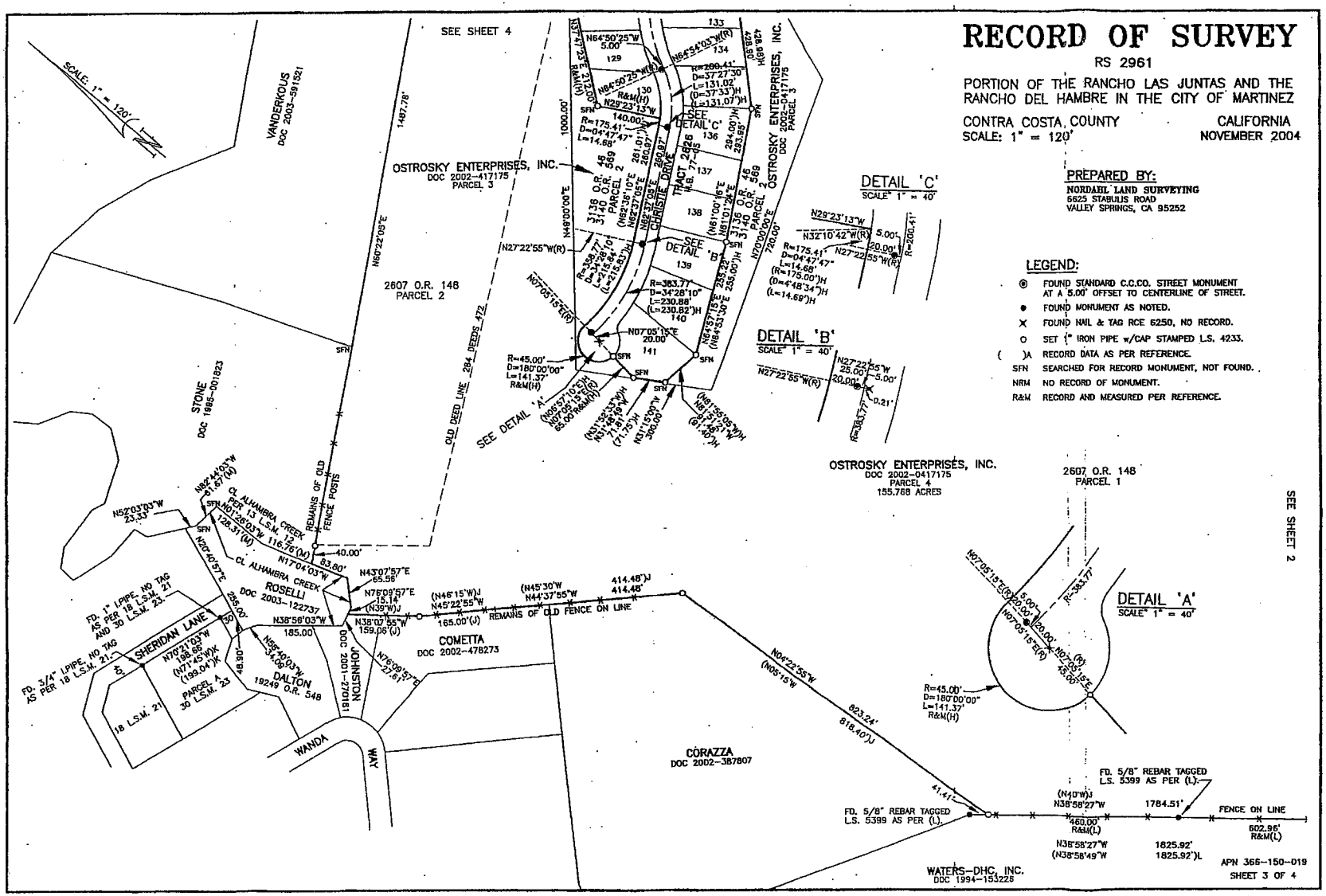


130/50

P054-00

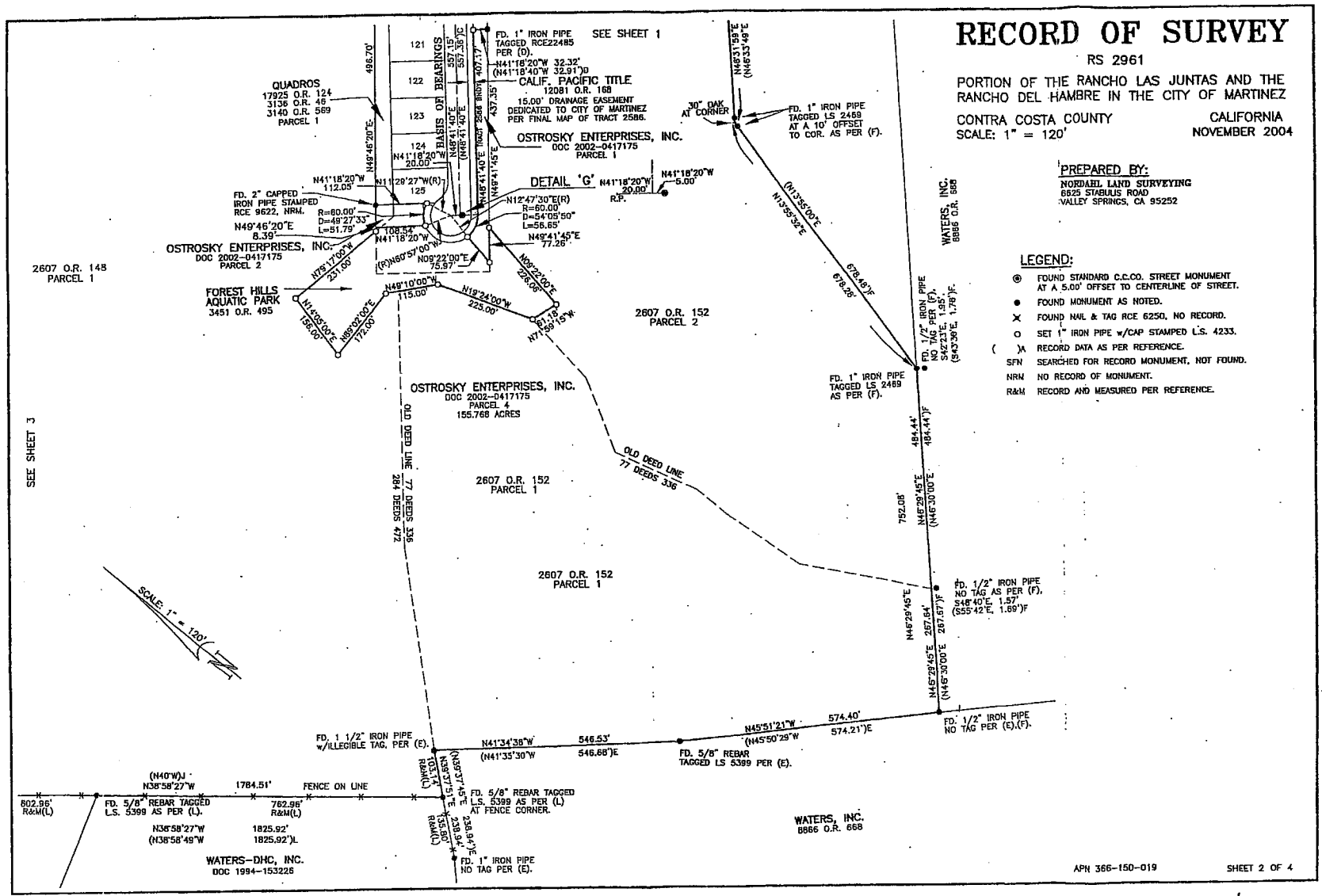
RECORD OF SURVEY

RS 2961

PORTION OF THE RANCHO LAS JUNTAS AND THE RANCHO DEL HAMBRE IN THE CITY OF MARTINEZ

CONTRA COSTA COUNTY — CALIFORNIA

SCALE: 1" = 120' — NOVEMBER 2004



PREPARED BY:
NORDAHL LAND SURVEYING
6825 STABLUS ROAD
VALLEY SPRINGS, CA 95252

LEGEND:

- ⊛ FOUND STANDARD C.C.CO. STREET MONUMENT AT A 5.00' OFFSET TO CENTERLINE OF STREET.
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- R&M RECORD AND MEASURED PER REFERENCE.

APN 366-150-019

SHEET 2 OF 4

130/49

P054-003

RECORD OF SURVEY

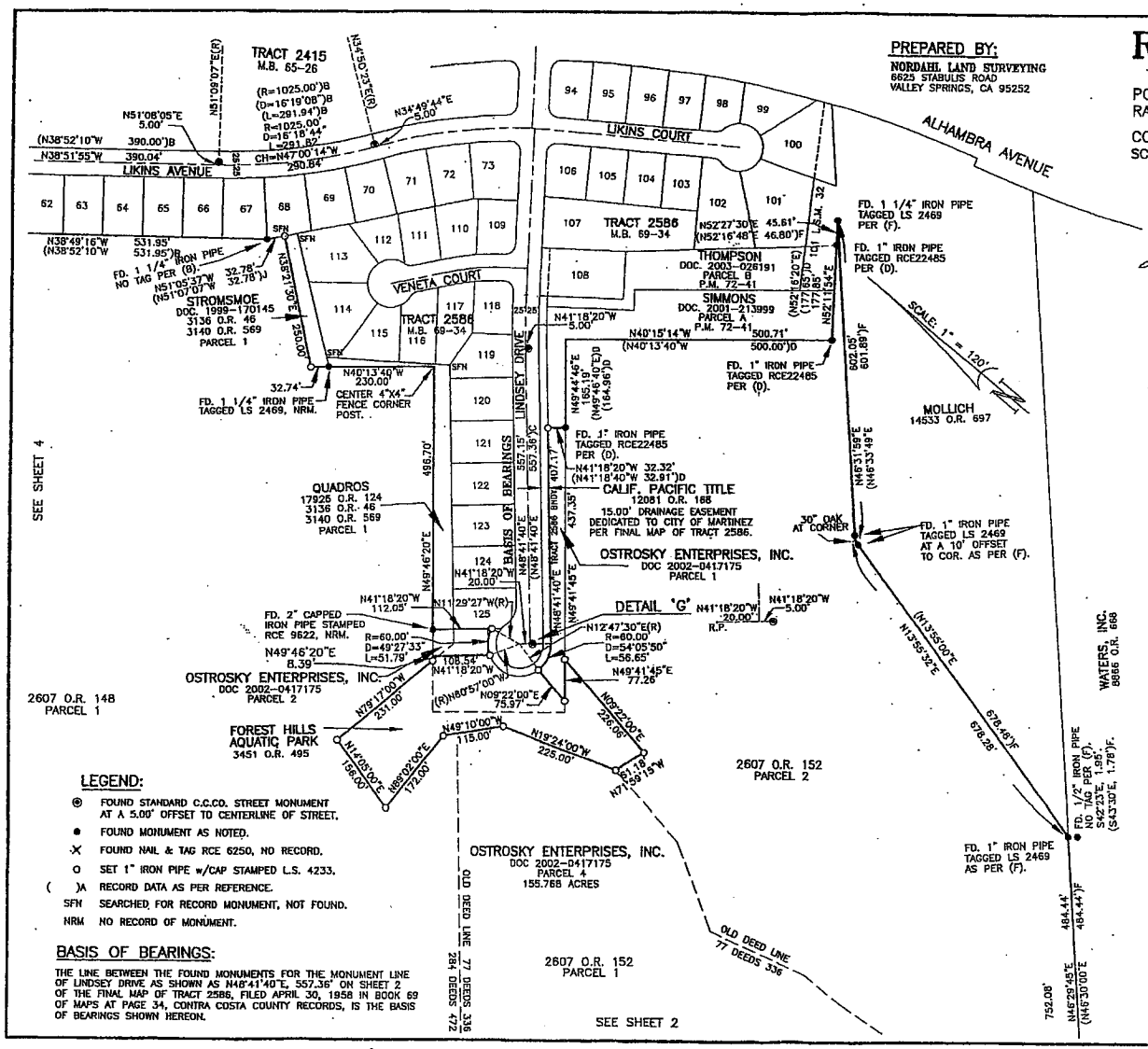
RS 2961

PORTION OF THE RANCHO LAS JUNTAS AND THE RANCHO DEL HAMBRE IN THE CITY OF MARTINEZ

CONTRA COSTA COUNTY — CALIFORNIA

SCALE: 1" = 120' — NOVEMBER 2004

PREPARED BY:
NORDAHL LAND SURVEYING
6625 STABULIS ROAD
VALLEY SPRINGS, CA 95252



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- ( )A RECORD DATA AS PER REFERENCE.
- SFN SEARCHED FOR RECORD MONUMENT, NOT FOUND.
- NRM NO RECORD OF MONUMENT.

BASIS OF BEARINGS:

THE LINE BETWEEN THE FOUND MONUMENTS FOR THE MONUMENT LINE OF LINDSEY DRIVE AS SHOWN AS N46°41'40"E, 557.36' ON SHEET 2 OF THE FINAL MAP OF TRACT 2586, FILED APRIL 30, 1958 IN BOOK 69 OF MAPS AT PAGE 34, CONTRA COSTA COUNTY RECORDS, IS THE BASIS OF BEARINGS SHOWN HEREON.

SURVEYOR'S STATEMENT:

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYOR'S ACT AT THE REQUEST OF OSTROSKY ENTERPRISES, INC. IN OCTOBER 2004.

1-21-05

LEE M. NORDAHL L.S. 4233
EXPIRES: 6-30-2006

DATE:

PROFESSIONAL LAND SURVEYOR — LEE M. NORDAHL — No. 4233 — Exp. 6-30-06 — STATE OF CALIFORNIA

COUNTY SURVEYOR'S STATEMENT:

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYOR'S ACT ON THIS 27th DAY OF January, 2005.

MAURICE M. SHIU
COUNTY ROAD COMMISSIONER – SURVEYOR

BY: RENE ZWEMMER, L.S. 5999
EXPIRES: 12/31/06
DEPUTY COUNTY ROAD COMMISSIONER – SURVEYOR

LICENSED LAND SURVEYOR — RENE ZWEMMER — Exp. 12-31-06 — No. 5999 — STATE OF CALIFORNIA

RECORDER'S STATEMENT:

FILED THIS 27th DAY OF January, 2005, AT 2:27 pm
IN BOOK 130 OF LICENSED SURVEYOR'S MAPS AT PAGE 48-51
AT THE REQUEST OF OSTROSKY ENTERPRISES, INC.
Series 05-30811

STEPHEN L. WEIR
COUNTY RECORDER

BY: E. Martinez
DEPUTY COUNTY RECORDER

REFERENCES:

(A) FINAL MAP OF FOREST HILLS ESTATES, TRACT 2308, FILED OCTOBER 20, 1955 IN BOOK 61 OF MAPS AT PAGE 28, C.C.CO. RECORDS.

(B) FINAL MAP OF FOREST HILLS ESTATES UNIT 2, TRACT 2415, FILED SEPT. 5, 1956 IN BOOK 65 OF MAPS AT PAGE 26, C.C.CO. RECORDS.

(C) FINAL MAP OF FOREST HILLS ESTATES UNIT 3, TRACT 2586, FILED APRIL 30, 1958 IN BOOK 69 OF MAPS AT PAGE 34, C.C.CO. RECORDS.

(D) PARCEL MAP FILED DEC. 12, 1978 IN BOOK 72 OF PARCEL MAPS AT PAGE 41; C.C.CO. RECORDS.

(E) RECORD OF SURVEY MAP FILED SEPT. 22, 1988 IN BOOK 88 OF L.S.M. AT PAGE 29, C.C.CO. RECORDS.

(F) RECORD OF SURVEY MAP FILED NOV. 9, 1992 IN BOOK 101 OF L.S.M. AT PAGE 29, C.C.CO. RECORDS.

(G) PARCEL MAP FILED SEPT. 23, 1969 IN BOOK 10 OF PARCEL MAPS AT PAGE 30, C.C.CO. RECORDS.

(H) FINAL MAP OF FOREST HILLS ESTATES UNIT 4, TRACT 2626, FILED MARCH 30, 1960 IN BOOK 77 OF MAPS AT PAGE 5, C.C.CO. RECORDS.

(J) GRANT DEED TO OSTROSKY ENTERPRISES, INC., RECORDED NOV. 8, 2002 AS DOCUMENT 2002-0417175 OF OFFICIAL RECORDS OF C.C.CO.

(K) RECORD OF SURVEY MAP FILED JUNE 16, 1959 IN BOOK 18 OF L.S.M. AT PAGE 21, C.C.CO. RECORDS.

(L) RECORD OF SURVEY MAP FILED MARCH 24, 1988 IN BOOK 87 OF L.S.M. AT PAGE 18, C.C.CO. RECORDS.

(M) RECORD OF SURVEY MAP FILED NOVEMBER 29, 1948 IN BOOK 13 OF L.S.M. AT PAGE 12, C.C.CO. RECORDS.

APN 366-150-019

1/27/05 @ 2:27 pm

130/48

P054-004

pillsbury

Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street | San Francisco, CA 94105-2228 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS: P. O. Box 7880 | San Francisco, CA 94120-7880

Scott A. Sommer
Phone: 415.983.1813
scott.sommer@pillsburylaw.com

September 8, 2010

Via Electronic and U.S. Mail

Jeffrey A. Walter, City Attorney
Walter & Pistole
670 W. Napa Street, Suite F
Sonoma, CA 95476

William Bates III, Esq.
Bingham McCutchen, LLP
1900 University Avenue, Building B
East Palo Alto, CA 94303

Re: *Ostrosky Enterprises, Inc. v. City of Martinez, et al.*
Contra Costa County Superior Court Case No. N08-0408

Gentlemen:

On August 31, 2010, our office served you electronically with copies of motions sent out for filing that day, which commented, in pertinent part, that the City was making no attempt to schedule a hearing of the City Council to comply with the mandamus portion of the judgment. Apparently, some hours later, at 5:00 p.m. that afternoon, the City did take steps to schedule a hearing according to a notice and proof of service, a copy of which is attached hereto.

However, neither of your offices made any attempt to serve the notice on our office. Mr. Ostrosky received the attached notice in the mail, referring to a posting at 5:00 p.m. on August 31, 2010, and a mailing just before the Labor Day weekend on September 2, 2010. Given the City's actual knowledge that Ostrosky was represented by counsel, the failure to serve our office is inexcusable. It also reflects a lack of courtesy on your part.

Given the short amount of time to prepare for the hearing, I have two questions: First, will your offices or the City provide us with copies of the reports, staff reports, and/or documentary material to be considered by the Council for the hearing now scheduled for September 15, 2010 and, if so, how do we obtain such copies and when will they be available? Second, is there a deadline for any materials to be submitted

on behalf of Ostrosky to be received by the City for inclusion in any packets that go to the Councilmembers prior to the hearing?

I would like your assurance that you will not exclude our office from future mailings or any other notices or communications relative to this matter. Also, the proof of service submitted with the two-page notice, which refers to a mailing to parties listed on attached pages, did not contain any attached pages. I would like to receive a complete copy of the notice via electronic transmission as soon as you can make it available.

Very truly yours,

Scott A. Sommer

Attachment

cc: Hon. Barry Baskin
Ostrosky Enterprises, Inc.

City Hall, 525 Henrietta Street Martinez, CA 94553-2394

Notice is hereby given that the City Council of the City of Martinez will hold a Public Hearing on

September 15, 2010 - 7:00 P.M.
City Hall Council Chambers
525 Henrietta Street, Martinez CA 94553

to consider setting aside its December 19, 2007, decision denying the lot-line adjustment application submitted by Ostrosky Enterprises pertaining to the real property located at 370 Lindsey Drive. Said action on the part of the Council is mandated by the Contra Costa Superior Court in its August 16, 2010, Judgment Quieting Title and Granting Peremptory Writ of Mandate entered in the case entitled *Ostrosky Enterprises, Inc. v. City of Martinez, et al.,* bearing Civil Case No. N08-0408. Said hearing shall take place at the City Council Chambers located at 525 Henrietta Street, Martinez, California.

All interested persons are invited to attend this Hearing and take the opportunity to speak. In accordance with Section 65009 of the California Government Code, anyone wishing to challenge action taken on the above item in court may be limited to raising only those issues he/she or someone else raised at the above-described Public Hearing(s) or in written correspondence addressed and delivered to the City at or prior to the Public Hearing.

For further information contact Community Development at 925) 372-3515.

RICHARD G. HERNANEZ, CITY CLERK

I certify under a penalty of perjury under the Laws of California that on August 31, 2010 at 5:00 p.m., this notice was posted at City Hall, 525 Henrietta Street, Martinez CA 94553.

Mercy G. Cabral

By: Mercy G. Cabral, Deputy City Clerk

p. 3

City Hall, 525 Henrietta Street

Martinez, CA 94553-2394

PROOF OF SERVICE BY MAIL
(CCP SECTION 1013a (3))

STATE OF CALIFORNIA} ss
COUNTY OF CONTRA COSTA}

I, Mercy G. Cabral, certify and declare as follows:

I am a citizen of the United States and a resident of the Contra County; I am over the age of 18 years and not a party to the within above entitled action; my business address is City Hall, Martinez, California 94553.

On September 2, 2010, I mailed the enclosed Notice of Public Hearing regarding Ostrosky Enterprises, Inc. v. City of Martinez to those listed on the attached pages in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at City Hall, Martinez, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 2, 2010, in Martinez, California.

Mercy G. Cabral, Deputy City Clerk