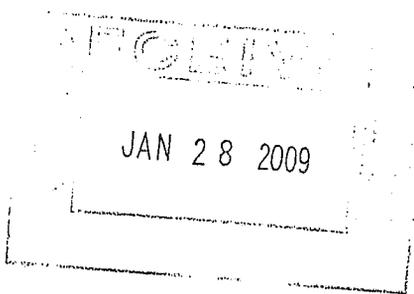


EXHIBIT G

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11 OSTROSKY ENTERPRISES, INC., a California Corporation

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF CONTRA COSTA
14 UNLIMITED JURISDICTION

15 OSTROSKY ENTERPRISES, INC., a
16 California Corporation,
17 Plaintiff and Petitioner,
18 vs.
19 CITY OF MARTINEZ, DOES 1 through 10
20 inclusive, and all other persons unknown
21 claiming any right, title, estate, license, lien,
22 or interest in the real property adverse
23 Plaintiff's title,
24 Defendant and Respondent.

No. N08-0408

**SECOND AMENDED COMPLAINT
TO QUIET TITLE AND FOR
DECLARATORY RELIEF;
VERIFIED PETITION FOR WRIT
OF ADMINISTRATIVE MANDATE
(C.C.P. §§ 760.010, 1060, 1094.5)**

25 By this Second Amended Complaint to Quiet Title and for Declaratory Relief, and
26 Petition for Writ of Administrative Mandamus, OSTROSKY ENTERPRISES INC. alleges as
27 follows:

PARTIES

28 1. OSTROSKY ENTERPRISES INC. (hereinafter "OSTROSKY", "Plaintiff" or
"Petitioner") is a California Corporation with its principal place of business in Alamo,

1 THE DATE AS TO WHICH THE DETERMINATION IS SOUGHT

2 23. Plaintiff seeks a declaration of the rights and obligations of the parties as of the
3 date of filing of this action.

4 WHEREFORE, Plaintiff prays for judgment as herein after set forth.

5 SECOND CAUSE OF ACTION

6 (Declaratory Relief)

7 (Code of Civil Procedure § 760.010)

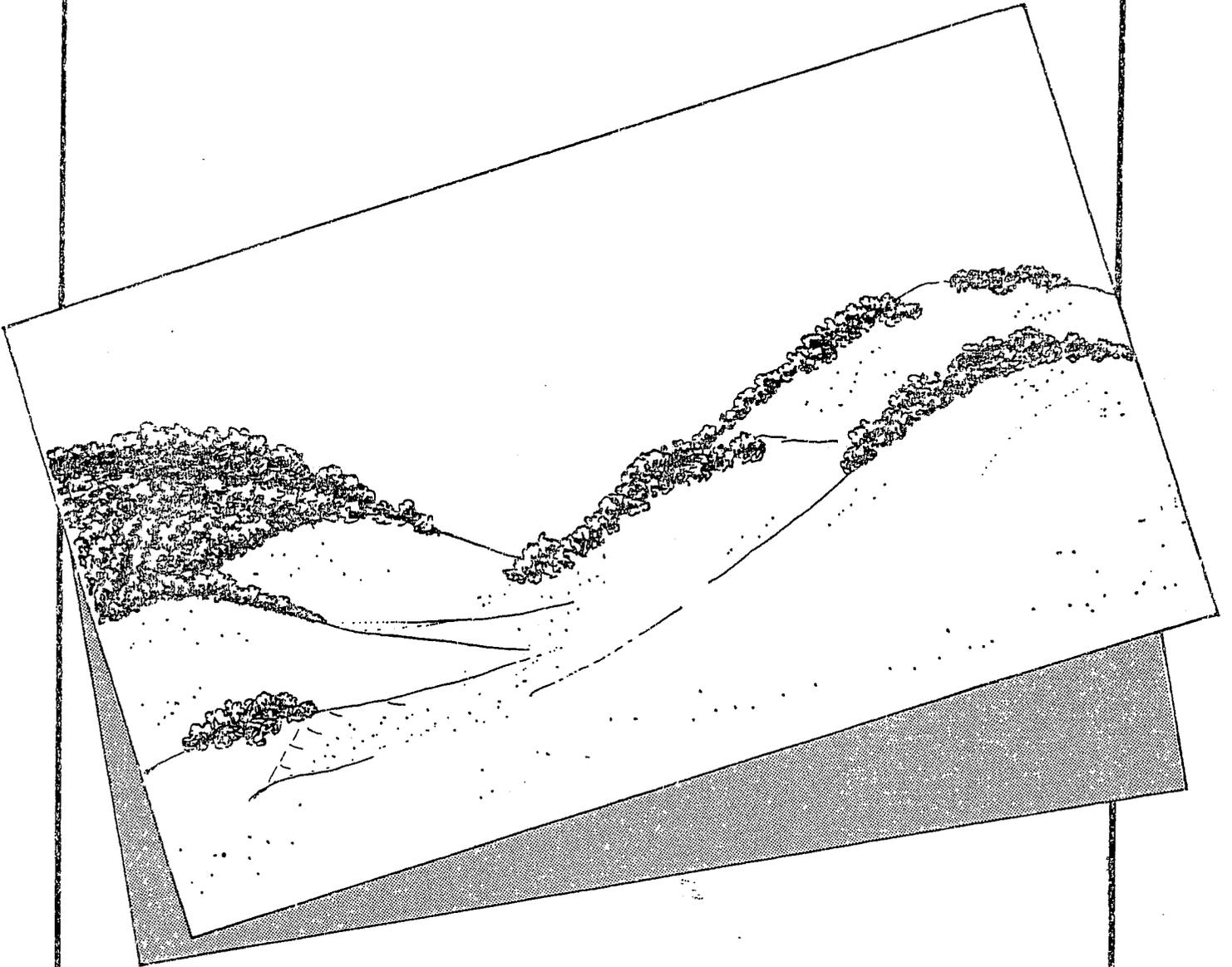
8 24. OSTROSKY incorporates by reference the allegations in paragraphs 1 through
9 23 above as though fully set forth herein.

10 25. OSTROSKY acquired the Property on November 8, 2002 by grant deed
11 recorded as Document 2002-0417175-00, Contra Costa County Official Records, and has at all
12 times thereafter been in the exclusive possession of, and has paid taxes on, the Property, and
13 has improved and maintained the Property with fences on all boundaries, gates in multiple
14 locations which are at all times locked and exclusively controlled by OSTROSKY, roads,
15 watering facilities and feeding facilities for cattle, fire breaks in accordance with law, and has
16 continuously used the Property for cattle grazing and agricultural use. Prior to November 8,
17 2002, OSTROSKY's predecessors in title likewise had exclusive possession of the Property,
18 and leased possession of the Property to Robert DeVries, a principal of OSTROSKY, who as
19 tenant exclusively possessed the Property, and improved and maintained the Property with
20 fences on all boundaries, gates in multiple locations which were at all times locked and
21 controlled by Robert DeVries, roads, and watering facilities and feeding facilities for cattle,
22 and continuously used the Property for cattle grazing and agricultural use. At no time from
23 and after 1984 has CITY had any possession of the Property and CITY claims only a non-
24 possessory interest in and to all, or portions of, the Property.

25 26. From and after November 8, 2002, OSTROSKY sought a certificate of
26 compliance and lot line adjustments from CITY, and was in communication with CITY staff
27 concerning the Property and OSTROSKY's applications. At no time did CITY staff, the City
28 Attorney, or any other person on behalf of CITY, inform or give notice to OSTROSKY that

EXHIBIT H

**ALHAMBRA HILLS
SPECIFIC PLAN
AND
FINAL ENVIRONMENTAL
IMPACT REPORT**



PRINTED 11/88

EXHIBIT H

000100

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 <u>units</u>
TOTAL	284-315 units

* See map for property locations.

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.

- 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.
- 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.

31.33 . CIRCULATION

The Circulation Plan for the Alhambra Hills is shown in Figure 31.30.

31.331 Access to the plateau shall be provided by public streets dedicated to the City connecting Wildcroft Drive and Horizon Drive (from its current terminus at A.P.164-150-029). A turnaround bulb shall be constructed near the existing end of Horizon Drive and at the lower end of the street from the plateau. These turnaround bulbs shall be connected by a 28 ft. wide two-way street with a stop sign at the lower turnaround bulb. The intent of this design is to limit the amount of traffic using Horizon Drive. If it is determined that these measures do not sufficiently limit traffic, the City Council may further limit the use of the 28 ft. street connecting the turnaround bulbs to one-way traffic or emergency use only. Streets shall conform to the design shown in Fig. 31.30. Emergency access roads shall be provided with development of properties farther than 600 ft. or 16 lots from the Wildcroft/Horizon connection. Recommended locations are at the north end of the plateau, at the east end of the Monteros development, and at the southeastern section of the Habitat development; see Figure 31.30.

31.332 Innovative grading techniques as discussed in the EIR Road Alignment Geotechnical Addendum (pgs. 4, 5, 8) shall be required for the construction of Wildcroft Drive and, if required by the Planning Commission, for other access and plateau roads. Mitigation measures required by the EIR on pages E-52, 53 and J-13, 14 shall also be required for all road construction.

31.333 Site planning of projects shall allow through access to other parcels as required.

31.334 Private roads for up to five residences shall be permitted for remote homesites and for parcels within the Development Areas where significant grading reductions result.

31.335 Direct access to Alhambra Avenue and Reliez Valley Road shall be minimized. Where possible, streets or driveways shall be shared by adjoining development.

31.336 Off-site street and intersection improvements listed as mitigation measures on pages E-50 - 52 of the EIR, and on pages 24 - 25 of the Traffic Study prepared by the Goodrich Group, shall be required with timing of installation to be determined by the City Engineer, except for off-site cumulative impact mitigation measures, which shall be funded by mitigation fees. On-site streets shall be constructed to standards listed in the EIR on pages E - 52, 53.

31.337 Costs for improvements within the Alhambra Hills which benefit more than one property in the Plan Area shall be distributed among the benefited parties within the Plan Area. Costs for improvements outside the Plan Area shall be covered by mitigation fees. The method of calculating and distributing costs shall be approved by City staff prior to issuance of any building or grading permits or approval of any subdivision Final Map. The City staff decision may be appealed to the Planning Commission by any property owner subject to cost allocation under this section. A fee-benefit area may be established by the City Council to implement this section.

31.338 No development shall be permitted on the plateau or the Habitat site (excepting Reliez Valley Road remote site prior to completion of Wildcroft Drive to the development site. No construction equipment shall be allowed to use Horizon Drive.

31.34 SITE DEVELOPMENT

31.341 Planned Unit Developments which implement the design review criteria shall be required for all plateau sites and other sites averaging over 10% slope.

31.342 Site plans shall minimize the visual impacts of development where possible while maintaining the natural topography. Repair of slides, and other soil stability hazards shall be required for the protection of public safety and shall be reconstructed with a natural appearance.

31.343 Grading for the sole purpose of creating Development Area or buildable lots shall not be permitted (e.g. substantial cutting or filling of slopes over 30% to create lots shall not be permitted).

31.344 Grading shall comply with the following policies except as provided in Section 31.345 below.

- A. Street Grading - Sites shall be planned to preserve the natural topography. Street grading shall be limited to that amount necessary for safety and to achieve natural appearing finished contours.
- B. Lot Grading - Grading of individual lots with existing slope over 20% shall be limited to driveways and within the house foundation. Grading of lots under 20% slope shall resemble natural contours.
- C. If corrective grading outside these limits is necessary for geotechnical safety reasons, the finished grading shall closely resemble the pre-existing natural appearance of the topography.

All mitigation measures for grading alternative 1b (pages 3 - 8) in the Rogers/Pacific Grading Concepts Addendum shall be required for grading under this policy.

31.345 First priority shall be given to siting streets, residences and public facilities to avoid geologic hazards and instabilities, prevent the creation of drainage hazards which would threaten slope stability and to minimize visual impacts of plateau development. Where serious geologic or drainage conditions which threaten public safety, or where significant visual impacts which would result from development cannot be mitigated by locating development away from the hazards or by grading in compliance with Policies 31.342 and 31.343, additional grading may be permitted subject to approval by the Planning Commission after evaluating the proposed grading for compliance with the following requirements:

- A. The safety hazards or visual impacts cannot be mitigated by relocating development or by grading in compliance with Policies 31.342 and 31.343; and

- B. More extensive grading is required because of geotechnical constraints. Such constraints shall be defined as known unstable soils (Martinez formation) or areas of proven geologic failure (as shown by a soils report); and
- C. More extensive grading is required to mitigate significant visual impacts of residences around the periphery of the plateau. Areas of significant visual impacts shall be determined by review of Scenic Roads and Residential Neighborhoods Visual Sensitivity Maps and the Vegetation Map (maps prepared by Goodhue, Haisley and Barker, September 20, 1982). More extensive grading shall be permitted in those areas shown as: 1) Visually Sensitive, and 2) shown as not being screened from view by existing vegetation; i.e. if a Visually Sensitive Area is screened from view by existing vegetation more extensive grading in order to screen the view of residences shall not be permitted.
- D. More extensive grading of the site to eliminate safety hazards or to eliminate visual impacts will not create other unmitigable impacts. In other words, finished grading must have a natural appearance; "table topping" or "stair stepping" hillsides must be minimized.

In all cases it shall be the responsibility of the applicant to provide factual evidence supporting these findings. "Public safety" shall include private homes and roads, as well as all public facilities (streets, trails, utilities, etc.). The level of grading approved for each portion of a site or development area shall be consistent with the specific geotechnical conditions and visual impact constraints in that portion of the site.

31.346 In those instances where additional grading is approved for geotechnical reasons site grading shall comply with the following policies:

- A. Street Grading - Street grading shall be limited to that amount necessary for roads and to achieve front yard areas and driveways which drain toward the street.
- B. Lot Grading - All lot grading shall be limited to achieving front yard areas and driveways which drain toward the street. The remainder of the lot shall have natural appearing contours.

All mitigation measures for grading Alternative 2 (pages 3 - 8) in the Rogers/Pacific Grading Concepts Addendum shall be required for grading under this policy.

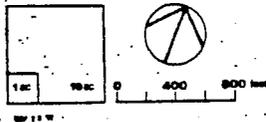
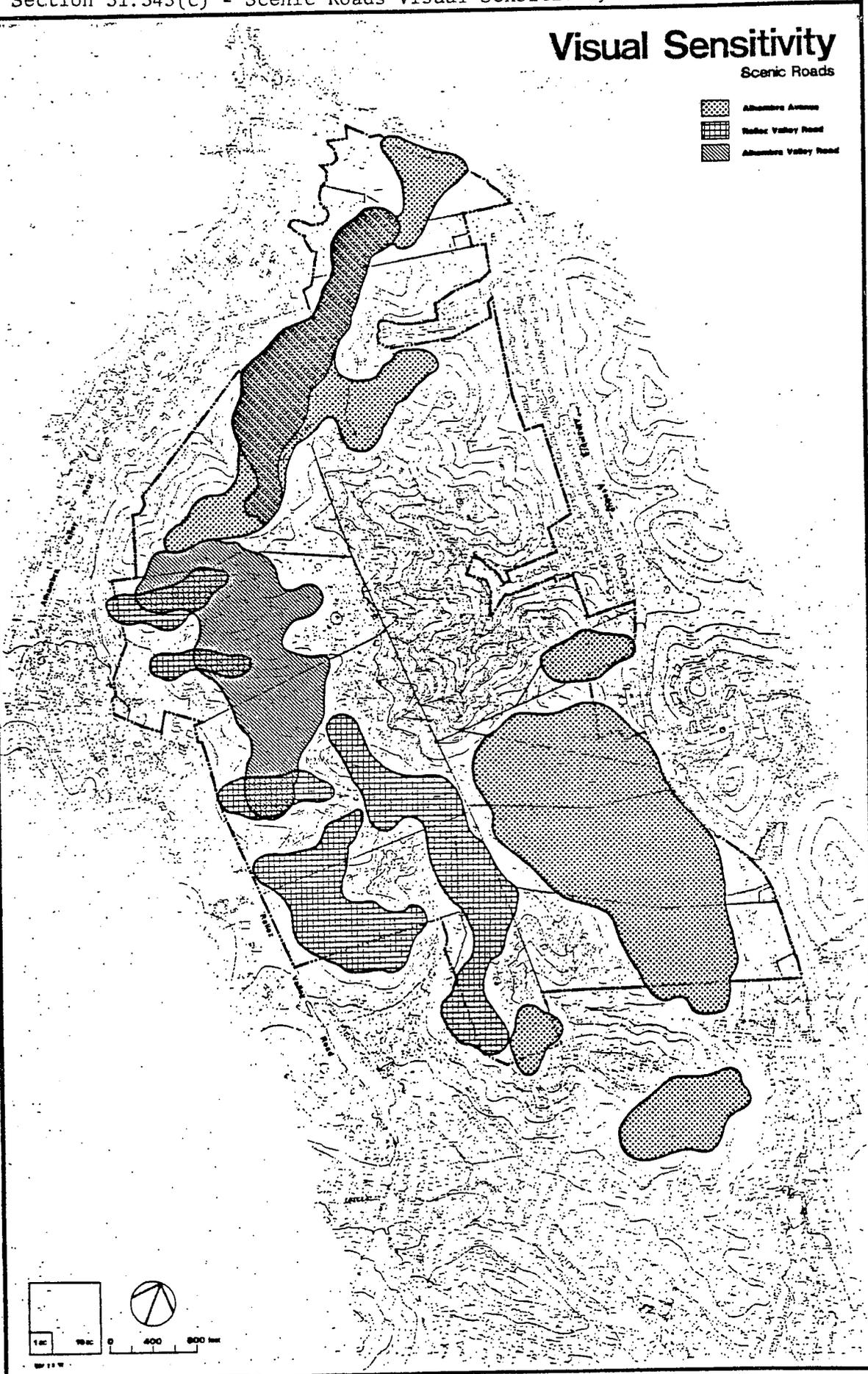
In situations of serious geologic hazard and in limited areas where significant visual impacts would result without more extensive grading, grading in compliance with the following policies may be permitted.

- C. Street Grading - Expanded street grading shall be allowed to recontour slopes and create large flat pad lots.

Visual Sensitivity

Scenic Roads

-  Alhambra Avenue
-  Redox Valley Road
-  Alhambra Valley Road



Alhambra Hills Specific Plan - Martinez, California

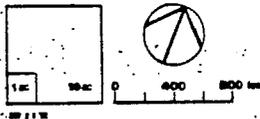
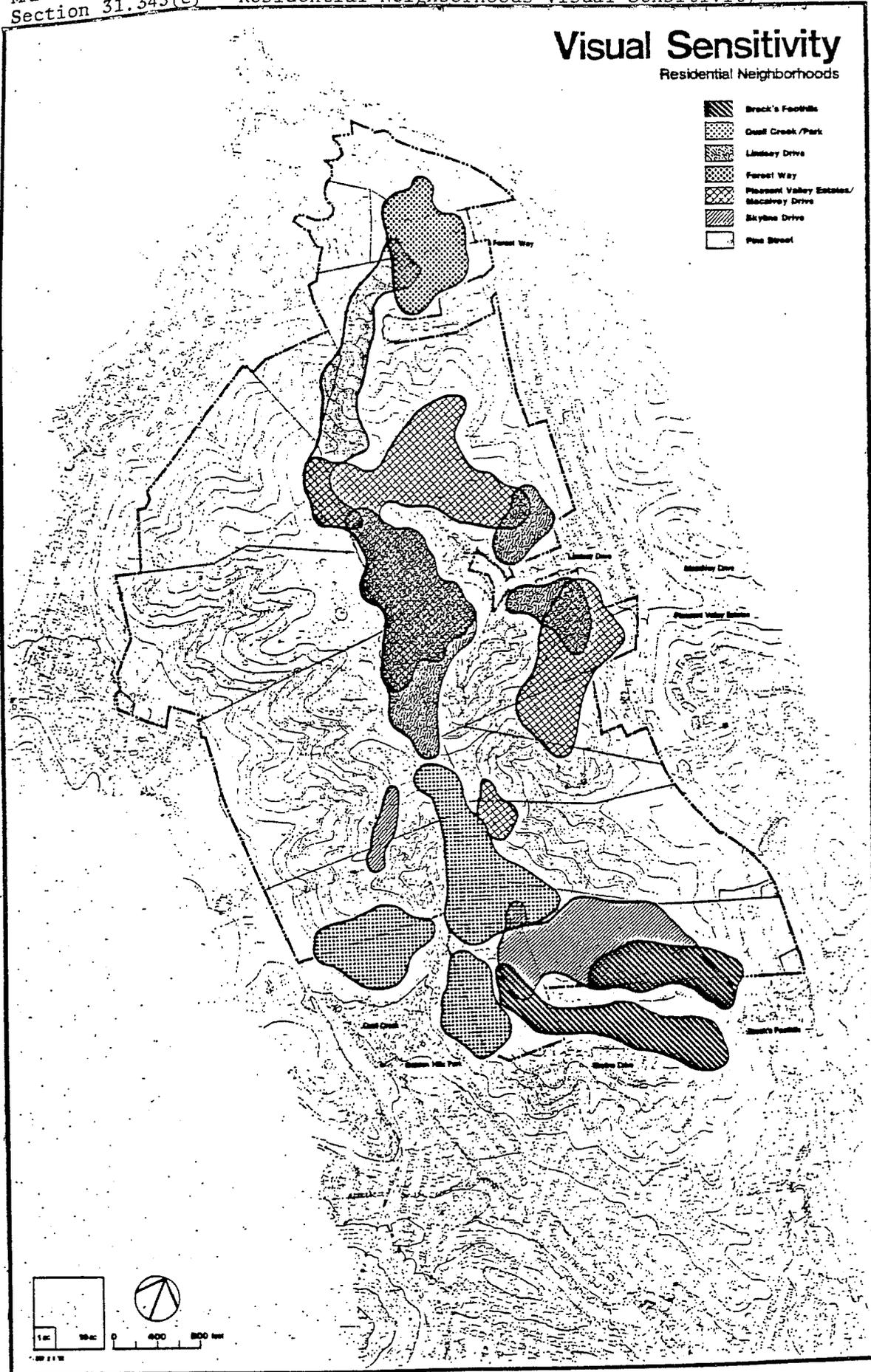
Prepared by Hill Goodhus Hestley and Barker 100 Stevenson St. San Francisco CA 94106 415/843-1212 550 Harritt St. Monterey CA 93940 408/375-8594

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Visual Sensitivity

Residential Neighborhoods

-  Brack's Footfalls
-  Quail Creek /Park
-  Lindsey Drive
-  Forest Way
-  Pleasant Valley Estates/
Macalvey Drive
-  Skyline Drive
-  Post Street



Alhambra Hills Specific Plan - Martinez, California

Prepared by Hill Goodhue Haisley and Barker 100 Stevenson St. San Francisco CA 94106 415/764-1212 850 Hartwell St. Monterey CA 93940 408/375-9504

D - Lot Grading - Grading of individual lots shall be allowed to create large flat pad lots draining toward the street. The periphery of the developed area shall be tapered and rounded into the existing contours.

Mitigation measures for Rogers/Pacific Alternative 3 (pages 3 - 8) shall be required for grading under this policy.

31.347 Up to 20% of the lots may meet R-7.5 Zoning Code requirements. All other lots shall conform with R-10 minimum requirements. Overall density shall average at least 10,000 sq. ft. of Development Area per residence.

31.348 Sites shall be planned to preserve open space, existing vegetation (especially on ridgelines) and knoll tops as much as possible. Sites along Alhambra Creek shall provide an open space buffer along the creek as required by the EIR.

31.349 Site layout and grading shall provide continuity of design between parcels.

31.35 BUILDING DESIGN

31.351 Building design and materials shall be compatible with and better than nearby existing development.

31.352 Structures shall be designed to blend into, rather than dominate, the natural setting.

31.353 Buildings shall be sited and designed to fit the natural topography and preserve existing vegetation as much as possible.

31.354 Buildings which can be viewed from below shall be sited, designed and landscaped so that supporting columns, piers and building undersides are not visually dominant.

31.355 Buildings on hillsides shall step down to follow the topography.

31.356 Natural appearing colors and building materials shall be required. Visually obtrusive/reflective colors and materials shall be prohibited.

31.357 Buildings shall be designed to meet all Fire District requirements (roof materials, alarms, sprinklers, etc.).

31.36 OFFICE DESIGN

31.361 Office development shall be of a residential scale and appearance. Building site coverage shall not exceed the coverage allowed in the nearest residential district.

31.362 Parking shall be located primarily away from the street, behind the building. When the property adjoins a residential area the parking shall also be located away from the residential area or shall be screened with extensive landscaping.

31.363 Building Design guidelines (Section 31.35) shall apply to office, as well as residential, buildings.

31.364 Office buildings shall be primarily one story structures and shall have varied facades to provide architectural interest.

31.365 Landscaping shall be used to screen offices and parking, and to provide transitions to neighboring residential areas and Open Space areas. Extensive landscaped areas shall be provided to attain a campus setting.

31.37 LANDSCAPING, FENCING AND LIGHTING

31.371 The character of the natural setting shall be enhanced with natural landscape designs emphasizing native species and retaining existing vegetation.

31.372 Visually significant man-made improvements along the periphery of plateau or hilltop development areas should be landscaped to blend into the natural setting. Yard improvements and solid fencing which extend into the periphery area shall be prohibited by scenic easement.

31.373 An overall natural landscape theme for the major access road should be provided to unify the development areas.

31.374 Fencing which would be visible from outside the development areas shall be non-obscure and natural in appearance. A wood frame open wire fence is recommended.

31.375 Exterior lighting shall be compatible with and sensitive to surrounding uses and the natural setting. Necessary lighting shall be situated as much as possible in the interior portion of visually sensitive development areas.

31.38 OPEN SPACE/TRAILS

31.381 Open Space areas shall be privately owned and maintained. Maintenance of such areas shall be by homeowners association rather than individuals.

31.382 Animal grazing may be permitted in Open Space areas as a fire prevention measure. Grazing shall be limited in location and intensity to prevent erosion. Grazing plans shall be prepared and reviewed by an outside consultant to ensure that overgrazing and/or erosion does not result.

31.383 Public trail easements shall link the plateau area to surrounding development and the general plan riding and hiking trail system. Minimum connections shall include the California Riding and Hiking Trail to the east near MacAlvey Drive, Briones Regional Park, Golden Hills, the Foothills area and John Swett School. Recommended linkages are shown in Figure 31.30. Trails shall be constructed by the developer when the City or other public agency will accept maintenance responsibility for the trail.

31.384 As development occurs along Alhambra Avenue and Reliez Valley Road, bikeways shall be constructed along these streets. Bikeways shall also be

provided along major access roads to be constructed including Horizon Drive, Wildcroft Drive and the ridge road. Bus turnouts along Alhambra Avenue as discussed in the EIR (page E-53) shall be required.

31.385 Sound barriers shall also be provided along major roads where needed (see Noise Element). Sound Barriers shall be designed to fit into the surrounding visual environment; large masonry walls are discouraged.

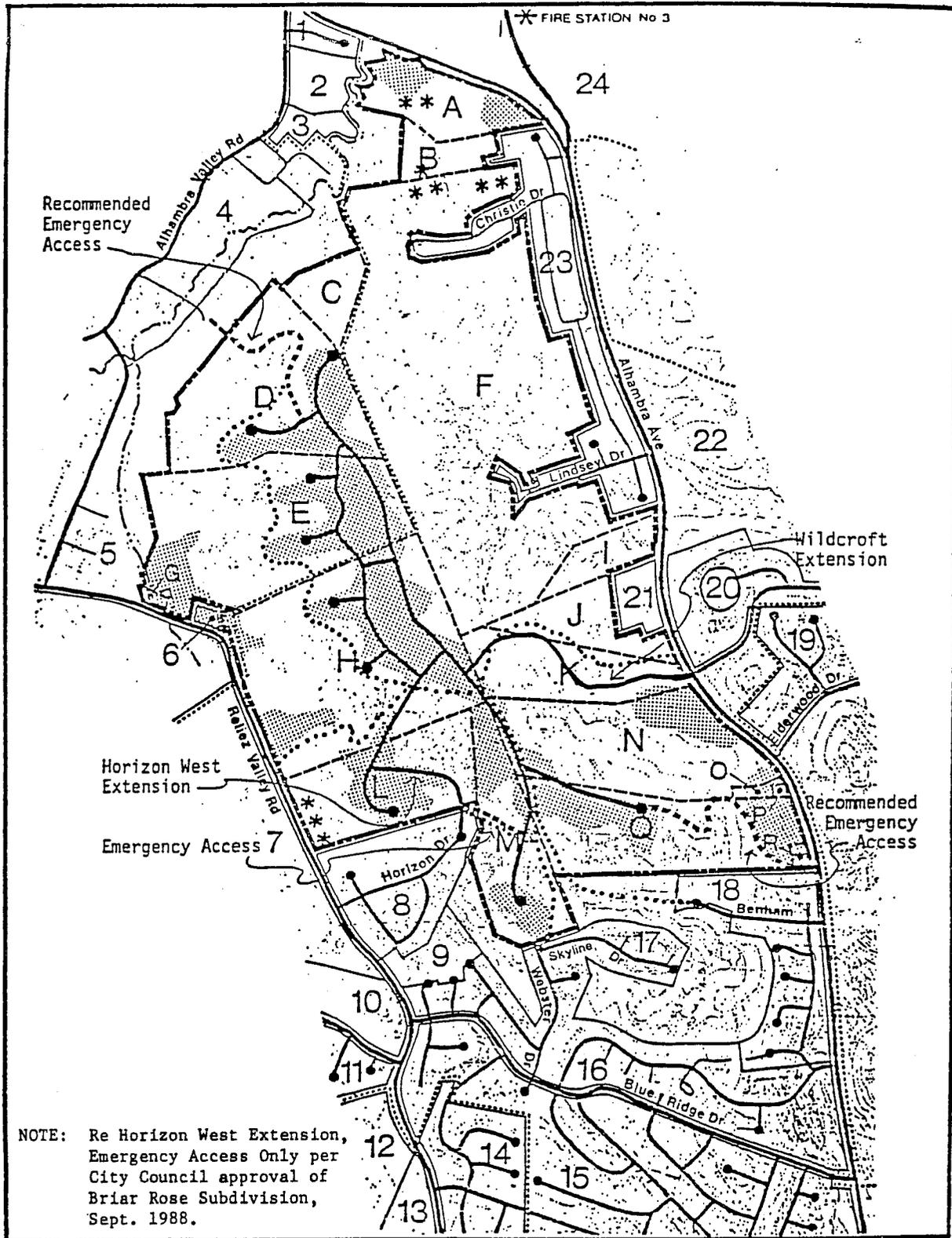
31.39 MITIGATION MEASURES

31.391 Mitigation measures for significant environmental impacts identified by the EIR and addenda are hereby required and incorporated into this policy plan. Mitigation measures shall be amended or eliminated as necessary to address plan modifications (e.g. Elderwood extension mitigations shall be amended or eliminated as necessary to address Wildcroft extension impacts.).

31.40 IMPLEMENTATION

31.401 Alhambra Hills Specific Plan IMPLEMENTATION ELEMENT, Section C, pages 13-29 are hereby required and incorporated into this policy plan. Implementation measures shall be amended or eliminated as necessary to address plan modifications.

wb:nb.270
4-24-87



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



EXHIBIT I

FINAL

ALHAMBRA HILLS SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT

CITY OF MARTINEZ
MARCH 1986

EXHIBIT I

000113^{AL}

P R E F A C E

A Draft Environmental Impact Report on the proposed "Third Draft" Alhambra Hills Specific Plan was prepared and distributed in September 1985. On October 29, 1985, a Martinez Planning Commission Public Hearing was conducted to solicit Planning Commission and public responses to the Draft EIR. Copies of the Draft EIR were also referred by the city to interested agencies and individuals for review and comments.

In keeping with California Environmental Quality Act EIR Guidelines, this Final EIR incorporates revisions to the Draft EIR upon comments received from the public, city staff, Planning Commission, planning area landowners, and interested agencies during the state-mandated Draft EIR public hearing and review period. This report, together with a separate response to comments addendum (Final EIR Addendum Response to Comments, March 15, 1986), constitute the Final Environmental Impact Report for the proposed "Third Draft" version of the Alhambra Hills Specific Plan. Copies of the Response to Comments addendum are available for review at the offices of the City of Martinez Planning Department, 525 Henrietta Street, Martinez.

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A. INTRODUCTION

I. PURPOSE AND APPROACH

This chapter provides a draft documentation of environmental impact potentials and mitigation needs associated with the development policies proposed in the Third Draft of the Alhambra Hills Specific Plan Summary of Findings and Recommendations Report. Upon approval of a final version of the Alhambra Hills Specific Plan, this chapter will be revised to become the plan EIR. This environmental impact chapter has therefore been prepared pursuant to all relevant provisions of the California Environmental Quality Act. The analysis is general in scope, discussing cumulative impacts expected to result from anticipated absorption of the planning area under "Third Draft" Plan policies. The chapter has been designed to do the following:

1. Fully inform Martinez decision makers, other responsible agencies, and the public of the consequences of "Third Draft" Plan approval;
2. Describe the differences between the potential impacts of planning area development under: (a) the proposed "Third Draft" Plan, (b) current city land use policies for the areas which are now in effect, i.e., the 1973 specific plan, or (c) development under a modified version of the "Third Draft" Plan;
3. Thereby provide a basis for city refinement of the "Third Draft" Plan;
4. Provide a master environmental impact assessment for the adopted plan which will enable a reduced cope of environmental review for future project applications which are consistent with the plan; and
5. Meet latest CEQA requirements for specific plan impact assessment.

2. BACKGROUND

In 1973, an Alhambra Hills Specific Area Plan (1973 Plan) was adopted by the city as an element of the Martinez General Plan. Upon its adoption, the 1973 Plan became the official policy document for guiding future development in the Alhambra Hills. The adopted 1973 plan map designated various fringe areas at the toe of the hills, and portions of the hilltop plateau area, for residential development. The area's steeper, more visually prominent hillsides were preserved in the plan as open space. The 1973 plan map also diagrammed a circulation system comprising two peripheral four-lane collectors (Alhambra Avenue-Pleasant Hill Road, and Reliez Valley Road) to serve the site and surrounding areas, and an internal two-lane road connecting the plateau residential area with both Alhambra Avenue and Reliez Valley Road via a circuitous through route. The alignment of the through route appears to have been governed by: (1) a goal to preserve the natural crestline of the hills and to avoid extensive grading and related disturbance to existing topog-

raphy and vegetation, and (2) a desire to provide dual access to the plateau for purposes of convenience, dispersal of plan traffic impacts, adequate emergency access, and alternative access in case of a road blockage due to landslide or other event.

No environmental impact assessment was prepared in conjunction with the 1973 Plan. Such a report might have described the logical development sequence that could be anticipated, and the future internal traffic, noise, visual, drainage, and other impacts that would be experienced by residents in the initial "downstream" phases of development at lower planning area elevations, as subsequent plateau areas above were developed as set forth in the plan.

In the decade since approval of the 1973 Plan, four residential subdivisions--Foot-hills, Valley Ridge, Quail Creek, and Skyline--have been approved and developed in the lower fringe areas, guided by the policies of that plan (see Figure E-6 in the EIR). These four subdivisions include a total of 850 homes, or roughly 45 percent of the overall planning area capacity allowed by the 1973 plan. The Quail Creek and Foothills subdivisions included construction of two roads, Horizon Drive and Benham Drive, whose alignments correspond to the two opposing ends of the plan-designated through road. The city required that both of these roads be designed and built to city collector standards, with asphalt rather than concrete curbing at their cul-de-sac "bulbs," in anticipation of eventual extension to serve the plateau areas above and interconnection to provide the plan-designated through route.

With buildout of the four initial fringe area subdivisions came the concerns of their new residents regarding the appropriateness of 1973 Plan policies for the remaining undeveloped portions of the planning area above (i.e., buildout of the remaining 1,050 units allowed by the plan) and, in particular, future completion of the plan-designated road system. This history is described in pages 1 through 6 of the "Third Draft" Plan. In summary, concerns expressed primarily by residents of the new fringe neighborhoods precipitated a 1979 reevaluation of the adopted plan, followed by establishment in 1982 of the Alhambra Hills Specific Plan Advisory Committee (AHSPAC) to work with city Planning Department staff towards preparation of a new specific plan. After nearly a 2-year policy formulation process, the AHSPAC in February of 1985 submitted a third draft of its Alhambra Hills Specific Plan Summary Findings and Recommendations Report, i.e., the subject "Third Draft" Plan.

3. PROPOSED ACTION

The proposed action is the adoption by the city of Martinez of the "Third Draft" Alhambra Hills Specific Plan Findings and Recommendations as prepared by the City of Martinez Planning and Building Department for the Alhambra Hills Specific Plan Advisory Committee (AHSPAC). The "Third Draft" represents a general revision and updating of the adopted 1973 Alhambra Hills Specific Area Plan, now over a decade old. The "Third Draft" document is a Preliminary Draft Specific Plan which conveys the results of a 20-month plan revision process (July 1982 to February 1984), including 23 meetings of the AHSPAC. The "Third Draft" Plan documents the AHSPAC's findings and recommendations with respect to a new specific plan for the Alhambra Hills planning area.

The proposed "Third Draft" Plan includes the following six policy elements submitted on February 21, 1984:

- A. Land Use,
- B. Density,
- C. Access and Circulation,
- D. Open Space,
- E. Utilities, and
- F. Design.

The "Third Draft" also includes a new Draft Implementation Element submitted with this EIR in September 1985, that: (1) recommends a specific set of capital improvement measures, layouts, and sequences necessary to accommodate planning area buildout under the policies of elements A through F; (2) describes the cost implications of these capital improvement needs; (3) describes choices for financing these costs; and (4) recommends a development review and regulatory process to effectively enforce plan policies and standards.

The plan's basic land use, density, access, and open space policies are diagrammed on Figure E-5 and summarized in Table E-2. The AHSP Advisory Committee's "Third Draft" Plan recommendations differ from the adopted 1973 specific plan in a number of ways. The differences include:

1. A 38 percent decrease in overall development area acreage, from 173 acres (1973 plan) to 108 acres (Third Draft);
2. A 29 percent decrease in the total number of residential units allowed in the remaining undeveloped areas, from 1,052 units (1973 plan) to 750 units (Third Draft);
3. A change in designated access routes to the remaining undeveloped portions of the Alhambra Hills in order to avoid, where possible, permanent additional traffic on streets which extend through existing neighborhoods; and
4. An increase in the specificity of development guidelines affecting the design and layout of individual projects in the planning area.

4. EIR SCOPE

As provided for in California State EIR Guidelines, the scope of this environmental impact assessment includes those specific issues and concerns identified as possibly significant by the city of Martinez (the Lead Agency) in their Initial Study of the proposed action (see EIR Appendix B), or by other interested agencies and members of the public in response to the city's Notice of Preparation. These concerns are:

- a. Land Use. The compatibility of "Third Draft" Plan buildout characteristics with land uses in surrounding Martinez neighborhoods, existing and planned, needs evaluation; and these "Third Draft" land use compatibility characteristics should be compared with those of the 1973 specific plan.

b. Transportation. The potential impacts of the plan on the local and community-wide circulation network need careful evaluation, including the ability of the local road system to adequately and safely serve Alhambra Hills development, in combination with cumulative development anticipated in the vicinity. Temporary impacts on the Quail Creek Subdivision of the proposed interim use of Horizon Drive should also be carefully assessed. These "Third Draft" transportation impacts should be compared with those of the current 1973 specific plan development scenario.

c. Geotechnical Factors. Geotechnical risks and potential impacts associated with the proposed "Third Draft" land use and circulation layout should be described, with special consideration for the ground stability and engineering implications of the proposed Elderwood Drive extension.

d. Drainage and Water Quality. The potential impacts of planning area development on downstream drainage and water quality need evaluation, including potential adverse effects on drainage conditions in adjacent neighborhoods and on flood potentials along Alhambra and Grayson Creeks.

e. Municipal Services. The municipal service needs associated with the "Third Draft" development scenario, in combination with other cumulative development anticipated in the planning area vicinity, need to be estimated and compared with the capabilities and plans of the various serving agencies (water, sewer, fire protection, law enforcement, and schools).

f. Visual Factors. The potential impacts of the "Third Draft" development configuration and proposed road alignments on planning area visual values need to be evaluated.

g. Air Quality. The direct effects of planning area buildout under the "Third Draft" Plan should be described, including effects on mobile sources and construction period impacts.

h. Noise Impacts. The effects of "Third Draft" Plan related changes in traffic patterns on roadside noise conditions should be evaluated, as well as temporary noise intrusion impacts on adjacent neighborhoods during the project construction period.

i. Vegetation and Wildlife. Any significant alteration of the planning area ecosystem likely to result from development under the "Third Draft" plan should be identified. Potentials for loss of particularly valuable vegetative or animal habitats should be examined.

j. Population and Housing. Plan impacts on local population and housing characteristics should be summarized, including effects on the city's population growth rate, housing types and costs and household characteristics, and housing-job relationship.

k. Plan Consistency with Local Planning Policies Now in Effect. "Third Draft" Plan consistency with city land use policies now in effect should be evaluated, including goals and objectives of the current Martinez General Plan.

In addition to these evaluations, mitigation measures will be recommended in this report as warranted, including possible modifications and refinements to the proposed "Third Draft" Plan to reduce or eliminate identified adverse impact potentials.

5. ALTERNATIVES TO THE PROPOSED ACTION

The "Third Draft" Plan is treated in this environmental impact assessment as the principal policy proposal for the planning area, and has thus been subjected to detailed impact assessment. In addition, this report compares "Third Draft" Plan effects with three alternatives to the plan in order to meet CEQA requirements and to provide city decision makers with a further understanding of the potential impacts of the "Third Draft" policies and possible approaches to reducing these impacts. The two alternatives evaluated include: (1) the CEQA-required "no-project" or status quo alternative, i.e., continued planning area development under the adopted 1973 specific plan; and (2) development under a modified, "reduced intensity" version of the proposed "Third Draft" Plan.

Adverse Land Use Impacts (continued)

The "Third Draft" Plan on page 22 calls for a development of single-family detached homes exclusively in plateau areas 1-7 (i.e., implying a net density of 6 units/acre or less). The density language on page 23 of the "Third Draft" (4-5.5 units per gross land capable acre) translates in net densities considerably higher than 6 units per acre.

The owner of the Phillips property has stated an objection to any urban development on that parcel south of Christie Drive. Portions of development areas 6 and 7 (4.2 acres, up to 56 cluster units, plus 4 remote homesites), are shown in the "Third Draft" for this area.

Mitigation Measures (continued)

The city should resolve the present ambiguity between these two "Third Draft" Plan policy recommendations. The development area and density modifications suggested above for areas 5-7 would reduce net densities and encourage single-family semi-detached development.

If the city wishes, these development provisions could be eliminated from the "Third Draft," along with associated impact mitigation responsibilities, contingent upon rezoning of this portion of the planning area to permanent open space.

CIRCULATION

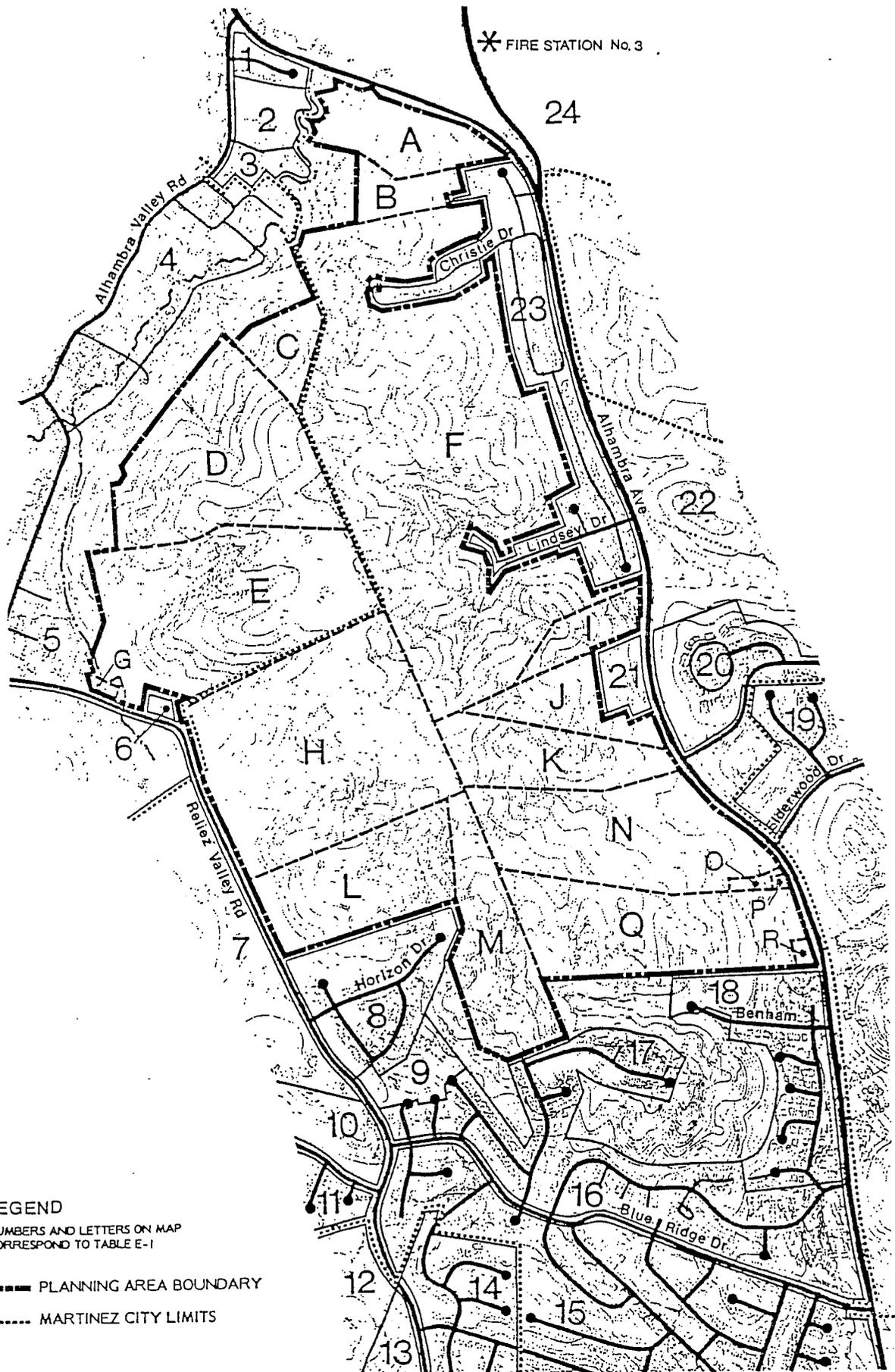
During current commute periods under non-landslide conditions:

- All analyzed intersections along Alhambra Ave.-Pleasant Hill Rd. now operate at good to acceptable levels of service (C or better) with three exceptions:
 - (1) The Alhambra Ave./State Route 4 eastbound on-off ramp intersection now operates at level of service D (poorest acceptable level of operation);
 - (2) The Pleasant Hill Rd./Taylor Blvd. intersection now operates at PM level of service F (over capacity, "jammed conditions"); and
 - (3) The Pleasant Hill Rd./Deer Hill Rd. intersection now operates at AM level of service E (at capacity, major delays).
- Traffic safety problems currently exist at the Reliez Valley Rd. intersections with Blue Ridge Dr. and Horizon Dr. due to the lack of left-turn lanes and the Reliez Valley Road approaches
- Existing conditions at three intersections in the vicinity already warrant installation of traffic signals (all are on Alhambra Ave.):
 - (1) Alhambra Ave./Alambra Valley Rd.;
 - (2) Alambra Ave./John Muir Rd.; and
 - (3) Alhambra Ave./State Route 4 westbound on-off ramps.

Table E-1
 PLANNING AREA OWNERSHIP AND SURROUNDING LAND USE
 Note: The numbers and letters in this table correspond to Figure E-4 on the opposite page

Planning Area Parcelization and Ownership			Surrounding Land Use		
Map Letter	Assessor's Parcel Number	Owner	Acres	Map Number	Land Use (Bold = Subdivisions since 1971)
A	366-140-006	Gilbert	19.6	1	Gilbert Court
B	366-140-013	Vanderkous	8.4	2	John Swett Elementary School
C	366-102-020	Lawrence	9.2	3	Gilbert Lane
D	366-010-006	Trebino	64.2	4	Wanda Way area
E	366-060-001	Trebino	48.8	5	Quail Hollow Road/Monteira Lane
F	366-150-013	Phillips	159.6	6
G	366-010-001	Trebino	0.6	7	Fox Stables (Synergy School)
H	164-150-016	Waters, Inc.	84.3	8	Quail Creek Subdivision
I	366-150-006	Mollich	9.4	9	Golden Hills Neighborhood Park
J	164-010-019	Waters, Inc.	13.3	10	Corte Briones
K	164-010-002	Waters, Inc.	23.1	11	Tavan Estates Subdivision
L	164-150-022	Bellecci & Solla	33.7	12	Saddlehorse Ranch Subdivision
M	164-150-021	Bellecci & Solla	26.9	13	Muchlinski property
N	164-010-007	Kinney	45.1	14	Francis Drive area
O	164-010-008	Pereira	0.8	15	Virginia Hills Subdivision
P	164-010-004	Silvera	0.5	16	Valley Ridge Subdivision
Q	164-010-017	Monteros	42.3	17	Skyline Subdivision
R	164-010-016	Ford	1.0	18	Brook's Foothills Subdivision
Totals			590.7	19	Elderwood Drive area
				20	Heather Hills Subdivision
				21
				22	Pleasant Valley Estates Subdivision
				23	Forest Hills Subdivision
				24	Muir Oaks Subdivision

SOURCE: Wagstaff and Brady.



LEGEND

NUMBERS AND LETTERS ON MAP
CORRESPOND TO TABLE E-1

----- PLANNING AREA BOUNDARY

..... MARTINEZ CITY LIMITS

FIGURE E-4
PLANNING AREA AND VICINITY

ALHAMBRA HILLS SPECIFIC PLAN · MARTINEZ, CA.
WAGSTAFF AND BRADY · URBAN AND ENVIRONMENTAL PLANNERS · BERKELEY, CALIFORNIA



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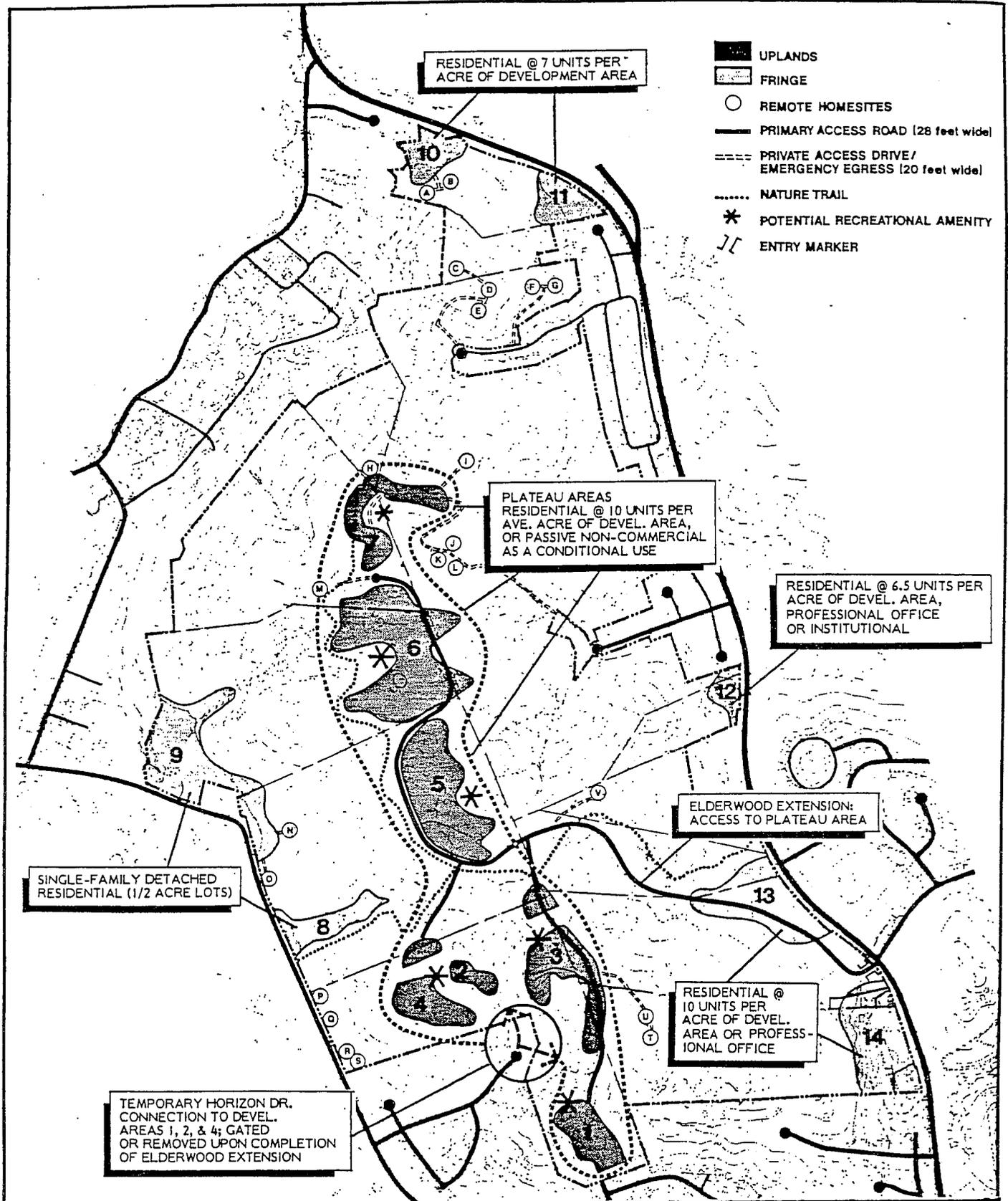
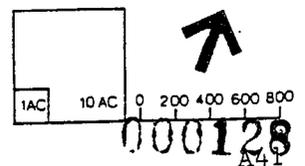


FIGURE E-5
PROPOSED "THIRD DRAFT" PLAN

ALHAMBRA HILLS SPECIFIC PLAN · MARTINEZ, CA.

WAGSTAFF AND BRADY · URBAN AND ENVIRONMENTAL PLANNERS · BERKELEY, CALIFORNIA



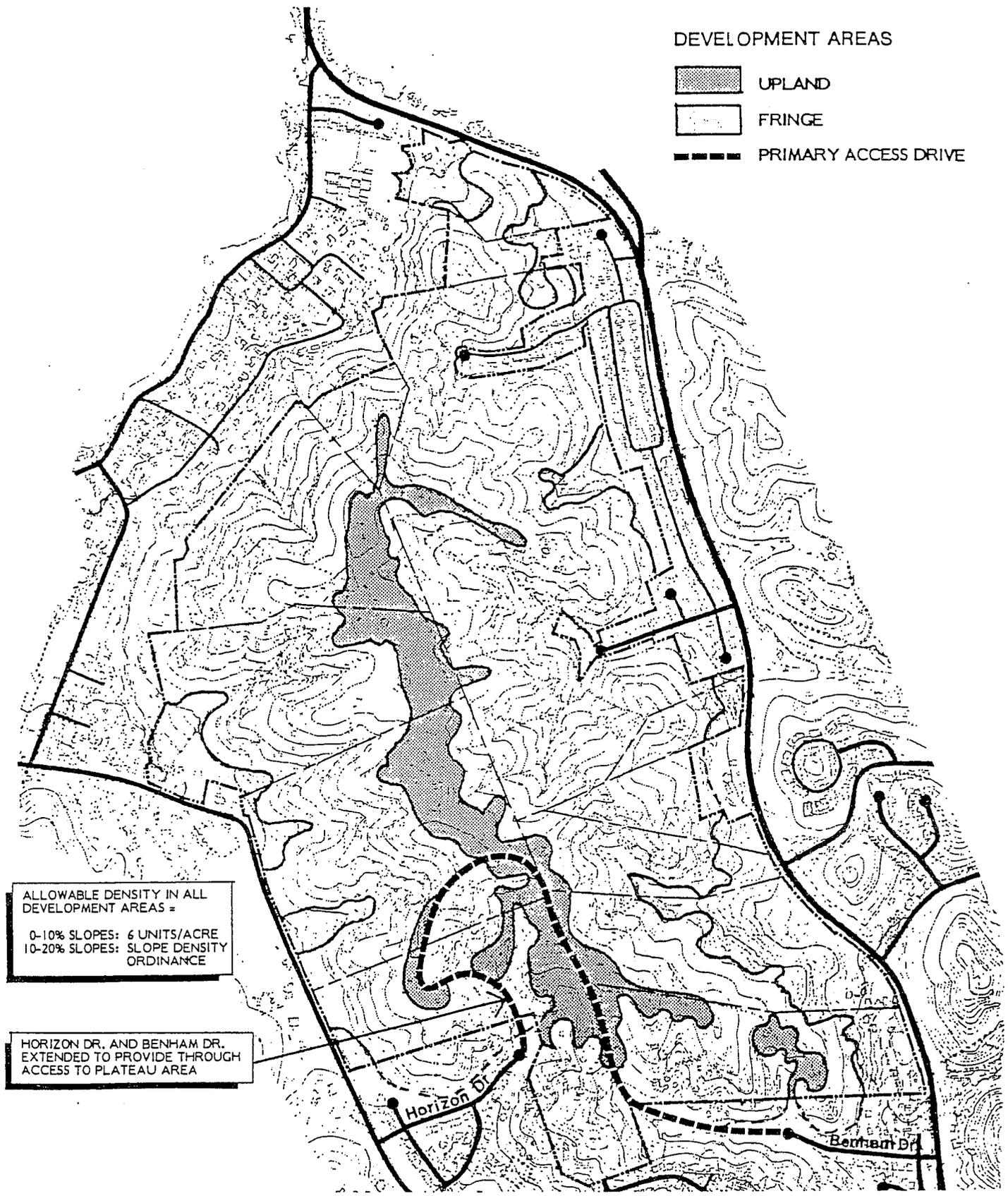
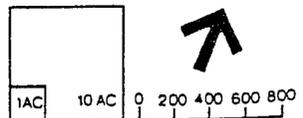


FIGURE E-6
1973 ALHAMBRA HILLS SPECIFIC PLAN

ALHAMBRA HILLS SPECIFIC PLAN · MARTINEZ, CA.
WAGSTAFF AND BRADY · URBAN AND ENVIRONMENTAL PLANNERS · BERKELEY, CALIFORNIA



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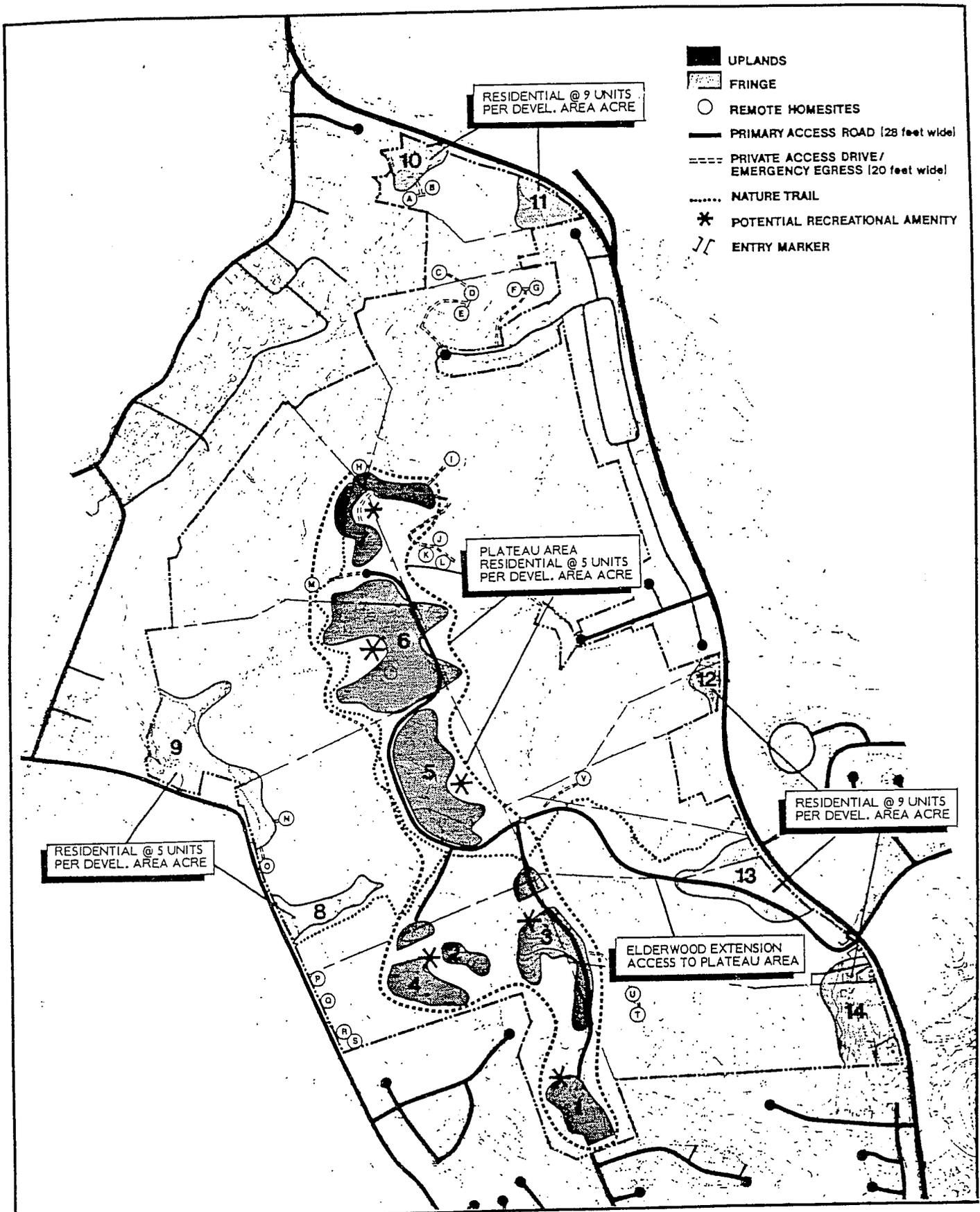
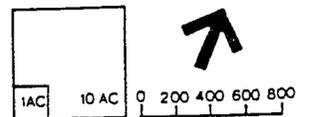


FIGURE E-7
MODIFIED "THIRD DRAFT" PLAN ALTERNATIVE

SOURCE: WAGSTAFF AND BRADY

ALHAMBRA HILLS SPECIFIC PLAN · MARTINEZ, CA.

WAGSTAFF AND BRADY · URBAN AND ENVIRONMENTAL PLANNERS · BERKELEY, CALIFORNIA



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Table E-6
 MAXIMUM DEVELOPMENT CAPACITY--1973 SPECIFIC PLAN

Parcel Name (Map Key)	Plateau Development Areas		Fringe Development Areas		Total Units ^a
	Acres	Units	Acres	Units	
Gilbert (A)	0	--	11.5	56	56
Vanderkous (B)	0	--	1.2	5	5
Lawrence (C)	1.1	4	0	--	4
Trebino (D,E,G)	18.4	161	10.1	88	249
Clancy & DeGennaro (F)	3.8	14	10.5	38	52
Waters, Inc. (H,J,K)	17.9	153	14.6	125	278
Mollich (I)	0	--	1.8	11	11
Bellecci & Solla (L,M)	12.0	86	1.3	3	89
Kinney (N)	3.2	20	23.3	145	165
Monteros (Q)	8.3	73	7.5	66	139
TOTALS	63.6	511	81.7	537	1,048

SOURCE: Wagstaff and Brady.

^aFrom Table A, p. H-1, "Third Draft" Plan, except for Lawrence parcel which was calculated based upon development area takeoffs and estimated density allowances.

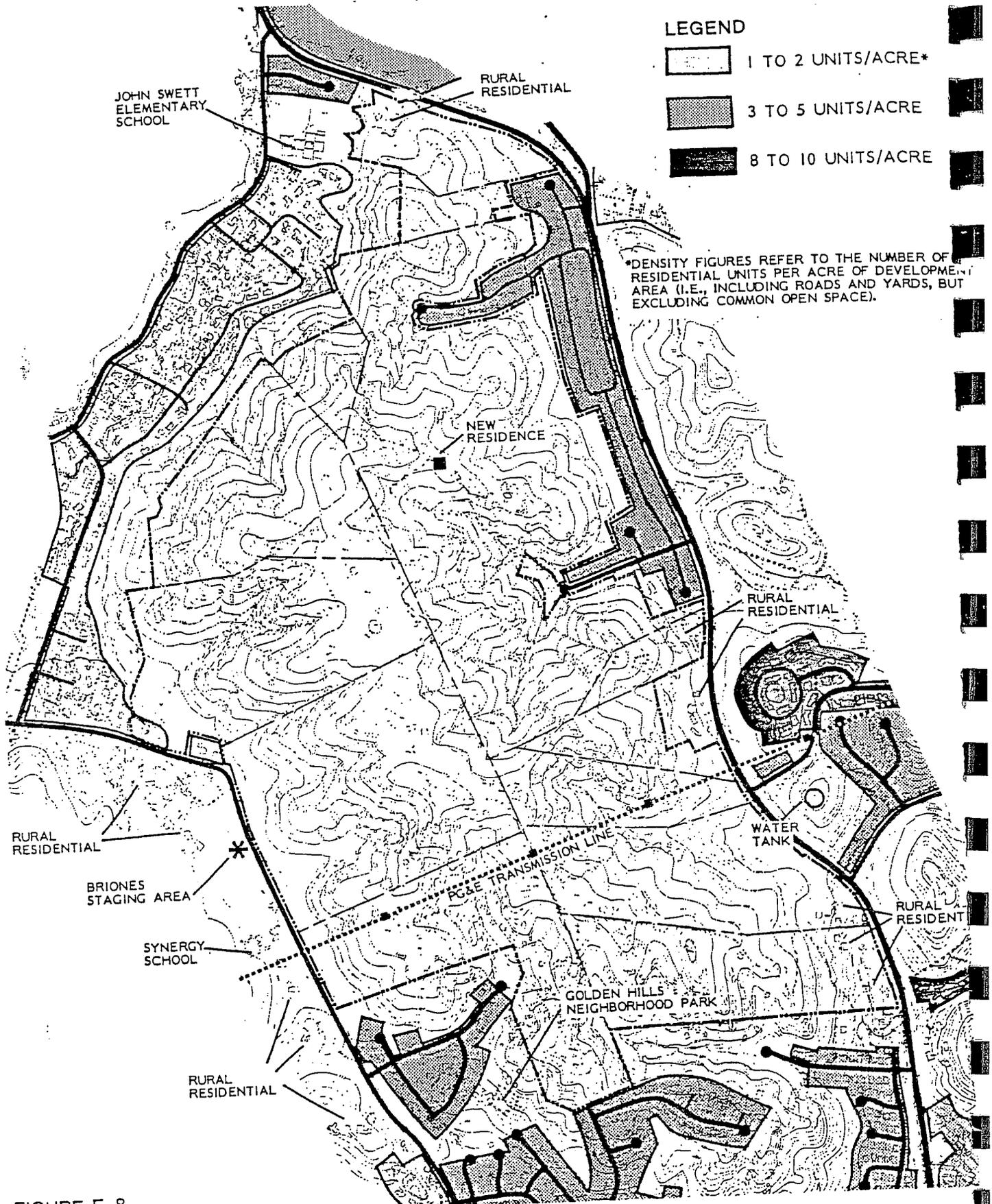
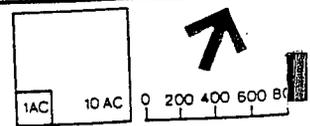


FIGURE E-8
EXISTING LAND USE

ALHAMBRA HILLS SPECIFIC PLAN · MARTINEZ, CA.
WAGSTAFF AND BRADY · URBAN AND ENVIRONMENTAL PLANNERS · BERKELEY, CALIFORNIA



planning area would be mitigated by the substantial open space and elevation separations recommended in the plan. Areas 11, 12, and 14 are exceptions, however.

c. Development plans for areas 11 and 12 should incorporate landscaping and other site design features to minimize impacts on adjacent Smith Drive and Likins Court homes.

d. Development plans for area 14 should be encouraged or required to include density reductions at the southern edge or adequate landscape treatments to reduce potential conflicts with existing rural residential or future R-7.5 infill development on the small adjacent area to the south.

e. Development plans for areas 1-4 should be submitted to PG&E for review to ensure against possible land use conflicts with the existing transmission line.*

Table E-12 compares the effect of these plateau area revisions on the plan's maximum development capacity with the "Third Draft" as currently proposed.

f. Phillips Property Changes. The owner of the Phillips property has recently expressed his desire not to accommodate any future residential or infrastructure development on this 159.6-acre parcel (parcel F on Figure E-4) south of Christie Drive. In response to this comment, Scenario 5, a scheme which includes all portions of areas 6 and 7 and all remotes on the Phillips property south of Christie Drive, is shown in Table E-12. The "Third Draft" could be revised to show this change if and when the landowner agrees to rezone the Phillips property to permanent open space. Plateau area unit capacity remains same as called for in the "Third Draft" for all other properties (i.e., same as shown in DEIR Table E-5). As the table shows, the scheme would result in 56 fewer plateau area units, for a maximum planning area capacity of 690, rather than 750 units (a 7 percent reduction). In addition, development area configurations for area 5 and the remaining portions of areas 6 and 7 would revert back to the 1973 plan (i.e., same as shown in DEIR Figure E-6 and Table E-6).

* October 3, 1984, letter from Fred Purman, New Building Representative, PG&E, Walnut Creek, to the Martinez Planning Department.

Table E-12
CAPACITY AND DENSITY COMPARISONS: MITIGATION SCENARIOS 4 AND 5

	Scenario 1: Proposed <u>"Third Draft"</u>	Scenario 4: Revised <u>"Third Draft"</u>	Scenario 5: Revised "Third Draft," <u>No Phillips</u>
Plateau			
Development areas:			
Total acres	45 ^a	66 ^b	62 ^c
Max. units allowed (capacity)	458 ^a	458 ^a	402 ^c
Net density (units/dev. area ac.)	10.2	6.9	6.5
Remote homesites (capacity)	9	9	5 ^d
Fringe			
Development areas:			
Total acres	41	41	41
Max. units allowed (capacity)	270	270	270
Net density (units/dev. area ac.)	6.6	6.6	6.6
Remote homesites (capacity)	13	13	13
Totals			
Development areas:			
Total acres	86	107	103
Max. units allowed (capacity)	728	728	672
Ave. net density (units/dev. area ac.)	8.5	6.8	6.5
Remote homesites (capacity)	22	22	18
Total units	750	750	690

^aFrom Table E-5.

^bAssumes area 5-7 will revert back to 1973 plan configuration = 63.6 acres (from DEIR Table E-6) minus 12 remotes = 51.6 acres; assumes areas 1-4 will keep devel. area configuration shown in Subdivision 6474 application = 13.9 acres (from Table E-5; 51.6 + 13.9 = 65.5).

^cDevelopment areas 6 and 7 include 4.2 acres and 56 units on the Phillips property; 66 - 4.2 = 62 acres; 458 - 56 = 402 units.

^dThere are 4 plateau remote homesites on the Phillips property which are south of Christie Drive, 9 - 4 = 5.

garages, private entries, private rear and side yards, offstreet parking on private driveway aprons, and so on. Modifications to proposed "Third Draft" development area boundaries and associated density provisions for these plateau areas appear warranted to improve development feasibility and increase assurances that the Elderwood extension will be constructed in the near future.

3. RECOMMENDATIONS TO IMPROVE PLAN VIABILITY

In the interest of improving the viability of the "Third Draft" Plan, the city should consider modifying plan policies for development areas 5, 6, 7, 8, 9, 13, and 14 as follows:

a. For **fringe areas 8 and 9** on Reliez Valley Road, density allowances could be adjusted upward to 4.0 units per acre to increase development viability in light of the particularly high infrastructure costs associated with these two areas. As shown in Tables E-52 and E-53, the result would be to substantially increase the residual per acre (from \$4,400 and \$16,200 under the proposed plan to around \$72,000 and \$85,000, respectively). A "footprint" density of 4.0 units per acre would be similar to the density of the Quail Creek subdivision, also on Reliez Valley Road (3.5 units per acre). To mitigate potential adverse impacts on the pastoral quality of Reliez Valley Road, development plans for areas 8 and 9 should incorporate substantial building setbacks (75 feet minimum).

b. Based on the market demand and economic feasibility findings in this chapter, the city should carefully consider modifying the "Third Draft" plan development area configurations and density provisions for plateau areas 5, 6, and 7 as follows:

(1) Re-adopt (i.e., retain) the plateau development area configurations established for these properties* in the 1971 Alhambra Hills Specific Plan, and

(2) Adopt a net density limitation of 7 units per acre for these revised development areas (which would result in the same approximate capacity totals as currently recommended in the "Third Draft."

(3) Since this change would increase potentials for visual impacts in these three plateau development areas, the revision should be accompanied by the addition to the "Third Draft" of a more specific set of detailed design guidelines as recommended in Section V.4.a of this EIR. These density allowances could be adjusted downward to around 7.0 units per acre in response to demonstrated market demands, underlying site characteristics, and the need for a more harmonious development pattern throughout the seven plateau development areas. The effect of this density adjustment on plan viability is shown in Tables E-52 and E-53. The result would be: (1) an increase in the special infrastructure cost per average unit for the plateau from \$23,900 to \$34,134, (2) a more consistent range of housing types and sales prices for the plateau area (prototype 3 would apply to all seven areas), (3) a leveling out of total

* Properties involving areas 5, 6, and 7 are the Trebino (APN 366-060-001 and 366-010-006) and Waters (APN 164-150-016) parcels.

EXHIBIT J

FINAL

ALHAMBRA HILLS SPECIFIC PLAN
ENVIRONMENTAL IMPACT REPORT

ADDENDUM: RESPONSE TO COMMENTS

CITY OF MARTINEZ
MARCH 1986

EXHIBIT J

000138

B. MELVIN D. PHILLIPS, 370 LINDSEY DRIVE, MARTINEZ

Comment 1. Secondary Access Needs. Mr. Phillips expressed concern about only one access, the Elderwood extension, to 600-plus homes on the ridge above the Phillips property, and that access is being constructed over an existing landslide. Even though the plan proposes stabilization of the slope, it is not unreasonable to assume that the road could be closed as a result of an additional landslide, leaving all the homes without access.

Response. Comment acknowledged. The EIR authors agree with Mr. Phillips that long-term stability of this road is a concern. (Moreover, an automobile accident, fire trucks, or other emergencies could obstruct access to the ridge crest for a period of hours or longer.) The Elderwood extension would eventually serve up to 458 plateau area homes. The DEIR conveys similar emergency access concerns, particularly as expressed by the Contra Costa Consolidated Fire District. For a variety of reasons it would be desirable to have an alternate/emergency access. In response to this concern, the DEIR includes a mitigation measure on page E-52 recommending that emergency access to the plateau be provided via bollards or gated connection to both Horizon Drive and Lindsey Drive.

Elderwood extension segments underlain by the upper member of the Martinez Formation (Tmzu) and, to a lesser degree, the Meganos Formation (Tmgc), present slope stability problems. During final design, specific recommendations for grading and drainage along this roadway would be formulated. For segments of the main access road that traverse areas of questionable stability, the grading concept should be conservative on the side of safety. Standard 2:1 cut slopes and drainage terraces at 30-foot vertical intervals may, in fact, prove to be inadequate. The Implementation Element (page I-2) recommends alignment of the lower segment of the Elderwood Drive extension to minimize grading, use of a rock-filled crib wall in lieu of cut slopes in the outcrop belt of Tmgc, and repair of the existing slide area that overlooks the road (slide is shown on Figure I-1).

It should be recognized that the risk of slope failure can never be totally eliminated. But, with conservative design, adequate inspection during grading, and routine long-term maintenance, risk of slope failure along the access road could be kept to a minimum.

Comment 2. Development and Infrastructure on the Phillips Property. Mr. Phillips states that "it is not my desire to have any building whatsoever on any portion of my property that lies south of Christie Drive." The plan also shows four estate lots in areas which have since been included in a scenic easement which prohibits all single family development. Appropriate changes should be made to the "Third Draft" Plan.

Response. Comment acknowledged. In response to this comment, the Implementation Element and the Final EIR (Land Use and Plan Viability sections) have been revised to incorporate references to an additional plan alternative, "Scenario 5" which would eliminate Phillips property development and all infrastructure south of Christie Drive (see Table E-12 in the Final EIR). The

scheme would result in 56 fewer plateau area units (from 458 to 402), and the elimination of all road, water, sewer, and storm drainage infrastructure on this property which, at 159.6 acres, is the largest parcel in the planning area (indicated on figure E-4, DEIR page C-7, as property "F"). The maximum development capacity of Scenario 5 would be 690, rather than 750, units.

The "Third Draft" Plan could be revised to show this change, if the landowner agrees to a rezoning of the Phillips property to permanent open space.

Comment 3. Drainage Facilities. The Draft Implementation Element calls for three retention dams and related drainage channels on the hilltop property. The owner states "I am not willing, nor have any desire, to have any items constructed on my property" by the city "whatsoever. I would suggest that the planners of this project develop other means of drainage that would not require any construction or easements on my property."

Response. If development of the plateau area (Areas 5, 6, and 7) does not include construction of homes on the Phillips property, then there would be no need for additional drainage to flow to the west. Grading and installation of storm drains could take the water to the east.

The preferred alternative to onsite detention basins is participation in the financing and use of an offsite basin. It is significant that planning for such an offsite detention system is now in the preliminary stages by the Contra Costa County Flood Control District (CCCFCD). Presumably this would eliminate Mr. Phillips's concern. Because no plan has been completed or approved, the use of in-lieu onsite detention remains in the Implementation Element as an onsite approach to providing adequate storm drainage provisions for Alhambra Hills development. The onsite scheme is necessary as an "in-lieu" commitment to mitigate planning area drainage impacts. The scheme should not be disregarded without a definite alternative plan in place.

Comment 4. Sewer. One of the sewer alternatives shows a line through the Phillips property. "I do not have any desire to have any sewer lines installed on my property. The alternative that calls for a sewer constructed on any portion of my property should be eliminated from consideration."

Response. Two sewer alignments were developed in the Implementation Element. Alternative 1, the preferred alternative, does not contain the line in question. If the portion of Development Area No. 7 on the Phillips property is eliminated, there would be no reason to extend a sewer line down the fire trail to Lindsey Drive. In any event, the sewer line is not included in the preferred alternative and is not being recommended.

Comment 5. Elderwood Extension. Suggests that the Elderwood extension be moved approximately 75 to 100 feet north of the existing location on Alhambra Avenue, and that the road be slightly modified through the hills to accommodate four lanes of traffic, with the four lanes split so that the two northbound lanes could be constructed on the eastern side of the plateau development area, and the two southbound on the west side. The four-lane road could continue along the ridge down to and through area 10 where it would tie back into Alhambra Avenue. Such

a scheme would allow drainage to be taken beneath streets directly to Alhambra Avenue, thereby eliminating any additional flow to Alhambra Creek in the Forest Hills area. A common detention basin could also be constructed in the open space area near area 10. Also, such a scheme would allow a sewer line along this street alignment down to the Alhambra Avenue sewer line near area 10. In addition, Alhambra Avenue would not have to be widened at city expense, and needed secondary access to the planning area would be provided.

Response. Comment does not pertain to adequacy of DEIR. In any event, an alternative Elderwood extension access point 75 to 100 feet north of the existing Elderwood location would provide insufficient intersection separation and would not allow provision of adequate left-turn lanes on the Alhambra Avenue approaches to either intersection. Signalization of one or the other of the two intersections would also require sequential signalization of the other.

Regarding the suggested one-way "couplet" through the site, a four-lane facility is not warranted to handle projected traffic flows through the site. One-way couplets are not typically used in residential areas because they require additional development of cross streets which would otherwise be unnecessary. One-way couplets of one lane each can, however, reduce grading requirements on hillside sites.

Regarding the suggested ridge road connection to Alhambra Avenue via area 10, similar schemes were considered in the DEIR (see access alternative 15 on DEIR Figure E-14 and Table E-12). The alternative was rejected in favor of other choices, because the alignment would be very steep, require a number of steep and costly switchbacks, and would promote high traffic speeds at the bottom.

Regarding the widening of Alhambra Avenue, this widening need is largely due to projected cumulative traffic increases in the area (with or without the planning area units), and would not be done at city expense. The Implementation Element recommends that the widening be financed by benefitting local developers.

The comment pertaining to secondary access is valid. See response to similar Phillips comment #1.

With respect to the sewer line comment, there would be no advantages associated with extending a line via an Elderwood extension alignment down from Area 7 to Area 10. The sewer system is planned to divert as much flow to the south as possible, since the downtown Martinez sewer system is inadequate. The preferred alternative shows the flow from areas 5, 6, and 7 going down the Elderwood extension; these schemes would remain unchanged under Mr. Phillips's plan, which would move the road slightly to the north.

There may be drainage advantages to the proposed road alignment if the goal is to move all drainage off the project site as quickly as possible. However, this approach would aggravate flooding problems downstream in Alhambra Creek. The approach used in the Implementation Element was to hold the runoff back using detention basins. Only if there were an offsite detention

basin that would receive the northerly runoff would it be desirable to run a storm drain from area 7 down the proposed new road to area 10. Any cost savings realized from not building detention basins on the Phillips property may be needed for the Alhambra Hills project's contribution to the cost of an offsite detention basin system, and should not be counted on for use in realigning the road.

Comment 6. Additional Development Area. Another development area could be designated in the hills slightly above development area 10 with enough additional units to offset any increase in the unit cost over the existing proposal due to the changes proposed in this letter.

Response. Comment does not pertain to adequacy of DEIR. Development designations in the open areas above area 10 were avoided by the AHSPAC due to their visual prominence from Alhambra Avenue.

C. CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (B. V. Kerekes, Flood Control Planning Engineer; October 29, 1985)

Comment 1. Re: Page iii (Summary)--Section C. Storm Drainage. The area designated as area 6 should be included with areas 5 and 7. According to Figure 1-5, area 6 appears to drain in the same manner as areas 5 and 7.

Response. Comment acknowledged. Correction to this EIR section has been made.

Comment 2. Re: Page 1-21, Section 5, Storm Drainage System. The capacity of the existing drainage system between Lindsey Drive and the point of discharge into Alhambra Creek would have to be increased, as well as the Lindsey Drive system, to safely accommodate project flows.

Response. The Flood Insurance Study done in 1978 indicates that the channel along Pleasant Hill Road East, north of Lindsay Drive, can carry the 100-year flood. However, the EIR team civil engineers have observed that the channel crossing at Barber Lane is inadequate, causing flooding in the vicinity of Nancy Boyd Park. This has been confirmed by discussions with Mr. Rich Cullen, Assistant City Engineer. Under high storm flows, Nancy Boyd Park functions unintentionally as a detention basin, helping the downstream problems on Alhambra Creek.

The Implementation Plan shows planned improvements on Lindsey Drive. It now appears that the Phillips property may not be developed as a part of the Alhambra Hills project (see response V.B in this addendum). Therefore, runoff in the Phillips property component of the system would not increase and proposed improvements to this system would not be necessary. At the present time, the Implementation Plan has been left unchanged with respect to the Phillips property to provide a description of storm drainage options (extra components), should the Phillips property change ownership over the next 20 years.

MELVIN D. PHILLIPS
370 Lindsey Drive
Martinez, CA 94553
372-3610

October 30, 1985

City of Martinez
525 Henrietta Street
Martinez, CA 94553

Attn: Mr. Pierson
City Planning Director

HAND DELIVERED

Dear Mr. Pierson:

I have had an opportunity to review the draft of the Alhambra Hills specific plan that you gave me during our recent meeting. The draft has caused me to have some concerns about the project as it has been proposed. The concerns I have are as follows.

The project, when completed, will have some 600 plus homes on the ridge above my property with only one access, that being the Elderwood Drive extension. The extension is being constructed over an existing landslide. The stability in the area has already proven itself unstable, and even though the project proposes a stabilization of the slope, it is not unreasonable to assume that some time in the future the road could very easily be completely closed as a result of an additional landslide in the area. A closure of the road would leave all of the homes without any access whatsoever.

The next issue is concerning the top portion of my property. I had previously asked for a lot split from the City, and was refused at that time. To date, the three portions of property showing development on my property will not be for sale, and therefore, cannot be constructed as shown in the proposed draft. It is not my desire to have any building whatsoever on any portion of my property that lies south of Christie Drive. In addition, four estate lots are shown on my property. The estate lots are shown in areas that are the subject of a scenic easement at the present time with the City of Martinez, and all single family dwellings are prohibited in the scenic easement. The draft should be changed to show that no estate lots are contemplated for any of the area within the scenic easement. I know that some of these developments occurred after the drafting of portions of these documents, but the latest circumstances concerning my property should be communicated to the drafters of this plan so that appropriate changes may be made.

City of Martinez
Re: Alhambra Hills
October 30, 1985
Page Two

The next item I would like to discuss is the proposal of drainage channels on my property. The proposal also calls for three retention dams to be constructed on my property to control the drainage run off into Alhambra Creek. I am not willing, nor have any desire, to have any items constructed on my property City of whatsoever. I would suggest that the planners of this project develop other means of drainage that would not require any construction or easements on my property.

Another rather minor item, is one of the alternatives to the sewer proposals. One of the alternatives of the sewer proposals shows the sewer line also being constructed through my property. I do not have any desire to have any sewer lines installed on my property. The alternative that calls for a sewer constructed on any portion of my property should be eliminated from consideration.

Above are the lists of major concerns I have concerning the proposed specific plan. Below I will attempt to set out some resolutions to the problems as I view them.

I believe that all of the above situations could be eliminated by a slightly modified alignment of the road accessing the ridge. My suggestion is that the Elderwood extension not be constructed exactly across from the existing Elderwood Drive. It is my suggestion that the access point be moved approximately 75 to 100 feet north of the existing location, and that the road be slightly modified through the hills to accommodate four lanes of traffic. The four lanes of traffic could be split so that two lanes going north could be constructed on the eastern side of the developable areas, and two lanes south bound could be constructed on the west side of the developable areas. The four lane road could be continued through the Alhambra Hills ridge down to and through development areas ten, wherein it would tie back in to Alhambra Avenue.

The advantages of this modified plan would allow for the drainage to be taken underneath the streets directly to Alhambra Avenue, in thereby eliminating any additional flow into the Alhambra Creek in the Forest Hills area. The drainage catch basin that was

000141

City of Martinez
Re: Alhambra Hills
October 30, 1985
Page Three

suggested as being under consideration for construction then could be incorporated in this program and possibly constructed in the open space area near development area number ten.

The second advantage to this proposal is that a sewer line could be constructed in the street down to, and intersect, the Alhambra Avenue sewer line in the area of development ten.

Two other advantages are that Alhambra Avenue would not have to be widened at city expenses, and in case of a future landslide that may possibly remove the southern end of the ridge access road, the northern end would still be opened.

The cost for this modification should be just slightly more than the existing proposed cost. The \$800,000.00 that had been proposed for building drainage retention basins on my property could be utilized for the roadway extension. The second modification that could be made is that, in the hills, slightly above development number 10, another development area could be designated. The additional development area could include enough units to offset any additional unit cost over the existing proposal.

I believe the proposed modification would be a superior plan to the presently proposed plan, and in addition, would not increase the cost per unit of construction. I would ask that the above recommendations be considered before the approval of the plan as submitted.

Very truly yours,


Melvin D. Phillips

MDP/dsr

000142

EXHIBIT K

RESOLUTION NO. 56-87

ADOPTING THE ALHAMBRA HILLS SPECIFIC PLAN

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

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

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

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

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

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

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

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

A. The Alhambra Hills Specific Plan as shown on Exhibit A is adopted; and

B. The written findings (recommended by the Planning Commission Exhibit B) required by CEQA to approve a project are adopted.

C. Properties within the 1973 Alhambra Hills Specific Plan Area and not within the new Specific Plan Area shall remain within the jurisdiction of the 1973 Alhambra Hills Plan.

* * * * *

000143

EXHIBIT K

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

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

NOES: None.

ABSENT: None.

GUS S. KRAMER
City Clerk

By: Sherry M. Kelly
Sherry M. Kelly
Deputy City Clerk

nb:57

EXHIBIT B
CEQA FINDINGS

Impact Cited in Final EIR

Land Use Impacts

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

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

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

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

Circulation System Impacts

Offsite Roadway Links

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

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

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

Recommended Finding

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

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

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

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

Recommended Finding

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

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

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

EXHIBIT L

huon

City of Martinez

May 14, 1987

525 HENRIETTA STREET • MARTINEZ
CALIFORNIA 94553 • (415) 372-3515

Mr. Melvin Phillips
P.O. Box 1979
Martinez, CA 94553

Dear Mr. Phillips:

On May 12, 1987, the City of Martinez Development Review Committee (DRC) reviewed your preliminary proposal for an 18 lot subdivision with 2 remainder lots located on your 160 acre parcel west of Forest Hills and Alhambra Avenue. The DRC is a committee made up of representatives from various City departments established to review development proposals. DRC comments are intended to help applicants design their projects to conform with City plans and policies. In this way, we try to help applicants present projects to the City in a form which will maximize their chances of approval. The DRC had the following comments:

1. At this time your application is not complete because information required by the City Subdivision Code has not been provided. I have attached Sections 21.42.050 thru .070 so that you may prepare a complete application. Missing items are circled.
2. As we discussed, a general plan amendment will be necessary for approval of your proposal. The previous general plan, and previously proposed general plan revisions would have allowed development on other portions of your property, primarily on the uppermost elevations. Partly at your request and partly as a result of changed perceptions of the appropriate development for the Alhambra Hills the Specific Plan adopted by city Council on May 6, 1987 eliminated all future development on your property except four remote homesites. It is uncertain whether the Planning Commission and City Council would approve the general plan amendment necessary for your current proposal.
3. The new Alhambra Hills Specific Plan requires that the upper portions of the hills (including portions of your property) be rezoned R-10. This would reduce the maximum possible number of lots in the proposed subdivision to 16.
4. It is our understanding that a Scenic Easement dedicated to the City was recorded with an incorrect legal description covering your entire parcel except the building area for your residence. This issue must be resolved.
5. Because of the number of lots you are proposing on the western private drive, this road must be a public street. In addition, City Codes allow cul-de-sacs to serve a maximum of 16 residences or be a maximum of 600 feet long, whichever is greater. The Christie Lane cul-de-sac already serves more than 16 lots and is over 600 feet long. Under the Alhambra Hills Specific Plan cul-de-sacs not meeting these criteria may be permitted only if alternative emergency access is provided.

EXHIBIT L

000146



6. If your proposal were to be approved we would recommend that access and utility easements to the Alhambra Hills plateau be provided and that the intersection of the eastern private drive and Christie Dr. be a right angle.
7. At this time there is no water available from the City above 300 feet elevation.
8. Staff questions why the large northern area (surrounding the large "A" on the grading plan) was excluded from the subdivision and retained as a portion of your property, rather than being available as a common area to the residents of the subdivision.
9. The City would not accept the "park" parcel in lieu of park dedication fees, as it is unusable as a park.
10. Under City Codes you may draw up the tentative map. However, under state law only a registered Civil Engineer may prepare the Final Map if the subdivision is approved. Business and Professional Code 6744 does not apply for the purposes of a subdivision of this size.

The above comments are preliminary only. More detailed comments can be made as your proposal is refined. We are always available to work with you in revising your plans in response to these comments. If you have any questions, or need further help from us, please call.

Sincerely,



David Wallace
Project Planner

cc: Engineering

DW:rh/251.355

000147

21.42.050 The tentative map shall be clearly and

legibly drawn on tracing cloth or tracing paper of good quality. The size of the sheet shall be 24 inches by 36 inches. The scale of the map shall be 1 inch equals 100 feet or a decimal fraction of 100 feet. (Prior code § 4534.)

- (W.) Locations of boundary lines of the school district, sanitary districts and other taxing districts;
- (X.) Contours shall be shown drawn to the scale prescribed by the city planning director. Elevations shall be shown as prescribed by the city planning director. (Prior code § 4535.)

21.42.060 Required information on map designated.

A tentative map shall contain the following information:

- A. The tract name;
- (B) Name and address of the record owner of the property to be subdivided, and name and address of the subdivider if the owner is not the subdivider;
- (C) Name and address of the person who prepared the map;
- (D) Date of preparation;
- E. North point;
- (F) Scale;
- G. A key map showing the proposed subdivision and surrounding subdivisions and streets located within 1/4 mile radius of the boundaries of the proposed subdivision;
- H. Boundary lines;
- (I) Locations and widths of all streets within the proposed subdivision;
- (J) Names, locations and widths of streets adjacent to the proposed subdivision;
- K. Locations and widths of alleys;
- (L) Approximate grades of all streets. Profiles may be required where the topography may present a problem;
- (M) Approximate radii of street curves;
- N. Locations and widths of pedestrian ways within the proposed subdivision;
- (O) Typical cross section of streets, alleys and pedestrian ways;
- (P) Lot lines and approximate dimensions;
- (Q) Lot numbers; 1-?
- R. Locations and approximate dimensions of proposed community facilities sites;
- (S) Limitations on rights of access to and from streets, lots and other parcels of land, and locations and widths of nonaccess strips and reserve strips;
- (T) Location of existing utilities together with widths and locations of all existing and proposed public and private easements;
- (U) Locations and widths of watercourses and areas subject to inundation from floods;
- (V) Locations of structures, canals, pipelines, railroads and other physical features;

21.42.070 Statements to accompany map

The tentative map shall show thereon accompanied by the following statements:

- A. Legal description of the property;
- B. Existing use or uses of the property including the location of all existing structures to remain on the property;
- (C) Purposes of all existing and proposed easements and all building and restrictions pertaining to such easements;
- D. Proposed uses of the property, including statement of the relative proportions of total area of the subdivision proposed to be devoted to each use;
- (E) Source of water supply;
- (F) Method of sewage disposal;
- (G) Provisions for drainage and flood control;
- (H) Types of street improvements and utilities which the subdivider proposes to install;
- (I) Description of street tree planting plan and other landscaping plans;
- (J) Statement of other improvements to be made or installed;
- K. Statement of the time when improvements are proposed to be made or installed;
- L. Tract or deed restrictions, if any;
- (M) Description and location of public and private community facilities, including parks, playgrounds, schools, shopping centers and other facilities, which would serve the proposed subdivision;
- (N) Description of the proposed subdivision, including the number of lots, average and minimum sizes of lots, type of development and any other information which would be useful to the city planning commission in reviewing the tentative map. (Prior code § 4536.)

21.42.080 Planning director action.

The city planning director shall set a date for consideration of the tentative map, which date shall be within 45 days after the map was filed.

20. ENVIRONMENTAL CONTROL
21. SUBDIVISIONS

18. MOBILE HOME PARKS

EXHIBIT M

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

OCT 21 11 10

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

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA - MARTINEZ
10 UNLIMITED JURISDICTION

11 _____
12 OSTROSKY ENTERPRISES, INC., a
California Corporation,
13
14 Plaintiff and Petitioner,
15
16 vs.
17 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,
18
19 Defendant and Respondent.
20 _____

No. N08-0408
**OPENING BRIEF IN SUPPORT OF
PETITION FOR WRIT OF
MANDATE**
Trial Date: February 5, 2009
Time: 8:30 a.m.
Dept: 22
Judge: Hon. Joyce M. Cram
Action Filed: March 17, 2008
Filed Concurrently Herewith:
1. Request for Judicial Notice

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28
EXHIBIT M

000149

1 City “divined” that the lot line adjustment was a harbinger for some as yet unspecified
2 future development. “Fortune telling” is not a statutorily prescribed grounds for denial,
3 however.

4 The sole “policy” to which City points to support its denial is Figure 31.30, which
5 purportedly shows the permitted “Development Area” and “remote home sites” where
6 development may occur and finds that “[p]roposed lot D is located entirely within the area
7 in which the Council proscribed development.” AR 1. This finding assumes either that a
8 lot line may only be adjusted for development purposes, or that lots outside of the
9 designated “developable” area have no purpose or potential constructive use. Both
10 assumptions are fundamentally wrong as a matter of law, and neither is supported by any
11 evidence in the record.

12 1. City’s Denial of Ostrosky’s Lot Line Adjustment Based on Its
13 Fundamental Premise That a Lot Line Adjustment is a Harbinger to
Future Development was an Abuse of Discretion.

14 City’s denial of Ostrosky’s lot line adjustment based on its concern regarding future
15 development is unfounded and not a prescribed ground for denial. *Loewenstein v. City of*
16 *Lafayette, supra*, 103 Cal.App.4th at 732 (“Unlike the summary lot line adjustment
17 procedure, the SMA provides opportunities for neighborhood input on the effects of
18 development and detailed study of all impacts on the community.”). In *San Dieguito*
19 *Partnership, L.P. v. City of San Diego, supra*, 7 Cal.App.4th at 760 the court stated that
20 concerns about future possibilities were of no import:

21 Any of the horribles sought to be created if these parcels in this lot line
22 adjustment are not held to be subject to the SMA should be considered in
23 light of the multitude of zoning and regional planning regulation application
24 to this land. The situation is not one in which uncontrolled use of the land is
25 available to the Owner. Part of the land...is subject to building restrictions;
all of the land is apparently subject to...open space requirements under
the...zoning. Governmental land-use planning and control is present with
respect to this land, notwithstanding its exclusion from the SMA.

26 The same analysis applies here. As argued before the City Council, the City still
27 retains land use planning and control with respect to the property after the lot line
28 adjustment occurs. AR 124-126 (City’s discretion “will not change. [City] will still be able

1 to review any development application that may or may not come down...the road, on any
2 of these four lots. [City] will still be able to apply the specific plan, the zoning ordinance,
3 the general plan, and [City] will still be able to make a discretionary decision and either
4 deny or approve an application...All [the lot line adjustment] does is change the
5 configuration of the lots, and any application that comes forward in the future would still
6 have to conform to it.”), AR 138-139. Ostrosky’s lot line adjustment application was not an
7 application for development and City erred in treating it as such.

8 2. City’s Finding That Ostrosky’s Property is Located in an
9 Environmentally Sensitive Area Has No Bearing on a Lot Line
10 Adjustment And, as Judicially Construed, is an Improper
11 Consideration.

12 Because a lot line adjustment is just that – a reconfiguration of the boundary *lines*
13 and nothing more – it is not concerned with the type or nature of property at issue. *San*
14 *Dieguito Partnership, L.P. v. City of San Diego, supra*, 7 Cal.App.4th at 761 holds:

15 ...just as the statute [§ 66412(d)] does not mention such things as the
16 amount of acreage...and does not contain any mention of the word “minor,”
17 it also does not carve out any special consideration or contain any provision
18 for “environmentally sensitive” areas which the trial court mentioned twice
19 in its statement of decision. Thus, whether particular land is
20 “environmentally sensitive” plays no role in determining the applicability of
21 the statute. If the trial court factored the “environmentally sensitive” aspect
22 into its decision, it erred. (Emphasis added.)

23 Similarly, here, the City Council, based on the foregoing and on the plain language
24 of § 66412(d), erred in factoring in the “environmentally sensitive” nature of portions of
25 Ostrosky’s property, as listed in City’s findings and recitals. AR 1.¹¹ In addition, City cites
26 to a CEQA finding in the EIR. *Id.* However, this finding, and the entire EIR, is not a part
27 of the Specific Plan itself. Regardless, City’s finding that the lot line adjustment must be
28 denied because the Property is purportedly in an “environmentally sensitive” area was an
abuse of discretion.

¹¹ While City uses the term “environmentally sensitive” in its Resolution, it makes no attempt to specifically define that term as it applies to the Property.

1 98, 111, 159, 163, 135, 169. This was not a legislatively prescribed ground for denial of a
2 lot line adjustment, nor did it have any basis in fact.

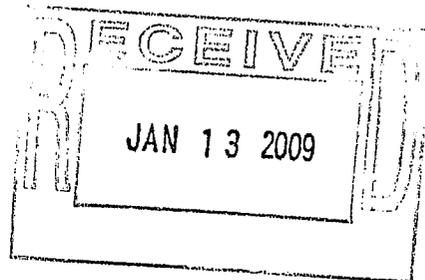
3 In addition, the Staff Report to the Planning Commission and the City Council were
4 inconsistent as to whether existing lots C and D did not allow a development AR 13, 36-37.
5 City relied exclusively on Figure 31.30 of the AHSP, instead of the text and AHSP as a
6 whole as it was required to do. City misapplied the AHSP and improperly denied the lot
7 line application.

8 For example, Section 31.31 of the AHSP is mandatory: "The Development Area
9 shall consist of Plan Areas under 30% slope which shall be considered developable . . . (see
10 Policies 31.321 and 31.322)". Under 31.312, the Remote Homesites are an exception to the
11 Development Area. 31.321 provided for slope density calculations (which had not been
12 performed for Area F, the subject property) adjustment of a development area if "actually
13 larger" than shown on Figure 31.30, and "final Slope Density calculations". Without these
14 calculations, it cannot be said under Sections 31.31 and 31.321 that the balance of 163 acres
15 (which has many areas throughout which are less than 30% slope) could not be developed.
16 Area F was not exempted from Section 31.31 and 31.321 and other provisions of the plan;
17 all Figure 31.30 reflects is that the slope density calculations have not yet been performed
18 for Area F; Figure 31.30 would not be in harmony with 31.31 if read to prohibit
19 development on land less than 30% slope. It was arbitrary for City to assume that these
20 calculations would not allow development even assuming, *arguendo*, development could
21 have been a consideration on the lot line adjustment.

22 However, development is not the purpose of the lot line adjustment as discussed
23 above. Comments by staff and at the City Council about the lot line adjustment being a
24 "harbinger to development" reflect an abuse of discretion because the AHSP did allow
25 certain development.

26 Alternatively, as admitted in the general plan, AHSP, applicable zoning, and all
27 other matters to be considered under Section 66412(d), use of all or portions of Area F for
28 grazing and agriculture was entirely permitted, if not encouraged. There is no provision of

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7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF CONTRA COSTA - MARTINEZ

10 UNLIMITED JURISDICTION

11 _____)
 12 OSTROSKY ENTERPRISES, INC., a)
 California Corporation,)

13 Plaintiff and Petitioner,)

14 vs.)

15 CITY OF MARTINEZ, DOES 1 through 10)
 16 inclusive, and all other persons unknown)
 17 claiming any right, title, estate, license, lien,)
 or interest in the real property adverse)
 Plaintiff's title,)

18 Defendant and Respondent.)
 19 _____)
 20 _____)

No. N08-0408

**REPLY BRIEF IN SUPPORT OF
 PETITION FOR WRIT OF
 MANDATE**

Trial Date: May 11, 2009

Time: 8:30 a.m.

Dept: 7

Judge: Hon. Barry Baskin

Action Filed: March 17, 2008

Filed Concurrently Herewith:
 1. Request for Judicial Notice

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1 because the denial was not supported by the findings and the findings were not supported
2 by substantial evidence in light of the whole record. C.C.P. §§ 1094.5(b),(c).

3 City's Opposition is devoid of any support for its underlying premise that to
4 "conform" to the AHSP, a parcel, specifically Lot D, must purportedly contain at least one
5 homesite or development area. There is no provision of the AHSP or any other City
6 document, that requires development of a homesite or other structure on each and every
7 parcel. Existing Lots B, C, and D lack such a homesite under Figure 31.30. City's
8 "assumption" that Ostrosky seeks the lot line adjustment as a "harbinger" in order to
9 facilitate development on Lot D (Opposition, 11-12) and treatment of the Application as a
10 development application is contrary to the strictly circumscribed regulatory authority
11 granted under Govt. Code § 66412(d) ("§ 66412(d)").

12 C. City Abused Its Discretion by Treating Ostrosky's Lot Line Adjustment
13 Application as a Development Application, Which is Impermissible
Pursuant to Govt. Code § 66412(d).

14 As discussed in Ostrosky's Opening Brief, potential future development is not a
15 proper consideration in review of a lot line adjustment. Opening Brief, 18-19; *San*
16 *Dieguito*, 7 Cal.App.4th at 760; *Loewenstein v. City of Lafayette*, *supra*, 103 Cal.App.4th at
17 732. Indeed, the purpose of a lot line adjustment is irrelevant to a city's statutorily
18 prescribed grounds for review.

19 The Application merely proposed to reconfigure the internal boundary lines of four
20 parcels used for grazing and equestrian use into more manageable and equally sized lots.
21 City abused its discretion by basing its denial on the Easement dispute and a speculative
22 concern of a "harbinger" to an unspecified future development.

23 As City admits in its Opposition, it treated Ostrosky's Application as a "harbinger"
24 to facilitate future development, including with respect to proposed Lot D, and denied the
25 Application on that basis. City's Opposition provides in pertinent part:

26 It was reasonable for the Council to assume... that Ostrosky's lot-line
27 adjustment was sought for the purpose of facilitating the development of
those lots. Opposition, 11:22-24 12:2 (emphasis added).

28 ...
Permitting [Ostrosky] to create a lot [proposed Lot D] that cannot be built
upon under the AHSP [in the same location as existing Lots B, C, and D