



**City of Austin Watershed Protection and Development Review Department**  
 505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

12-02-08P04:58 RCVD

## SITE PLAN APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Planning Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SP-06-0411C (R1)

DATE APPEAL FILED December 2, 2008

PROJECT NAME Colina Vista Duplex

YOUR NAME Andrew Martin

Development

SIGNATURE Andrew Martin

PROJECT ADDRESS 9716 FM 2222 Rd.

YOUR ADDRESS 111 Congress Ave., Suite 1400

APPLICANT'S NAME Continental Homes

Austin, Texas 78701

CITY CONTACT Lynda Courtney

YOUR PHONE NO. (512) 479-9714 WORK  
 (512) 619-4043 HOME

**INTERESTED PARTY STATUS:** Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☐ I am the applicant or agent representing the applicant
- ☒ I communicated my interest by speaking at the Planning Commission public hearing on (date) 11/18/08
- ☐ I communicated my interest in writing to the Director or Planning Commission prior to the decision (attach copy of dated correspondence).

In addition to the <sup>Agent for the</sup> above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I occupy/as my primary residence a dwelling located within 500 feet of the subject site.
- ☒ I am the record owner of property within 500 feet of the subject site.
- ☐ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

**DECISION TO BE APPEALED\*:** (Check one)

- |  |  |
|--|--|
| <input type="checkbox"/> Administrative Disapproval/Interpretation of a Site Plan            | Date of Decision: _____                    |
| <input type="checkbox"/> Replacement site plan   | Date of Decision: _____                    |
| <input type="checkbox"/> Planning Commission Approval/Disapproval of a Site Plan             | Date of Decision: _____                    |
| <input type="checkbox"/> Waiver or Extension   | Date of Decision: _____                    |
| <input type="checkbox"/> Planned Unit Development (PUD) Revision                             | Date of Decision: _____                    |
| <input checked="" type="checkbox"/> Other: <u>Revision to Hill Country Roadway Site Plan</u> | Date of Decision: <u>November 18, 2008</u> |

\*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

**STATEMENT:** Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

See attached letter

(Attach additional page if necessary.)

Applicable Code Section: Secs. 25-5-147(C); 25-5-41(B) and (C); 25-8-41(A); 25-8-302(A)(1); 25-2-1123(A);

December 2, 2008

Victoria Li, Director  
Watershed Protection and Development Review Department  
City of Austin  
505 Barton Springs Road, 12<sup>th</sup> Floor  
Austin, Texas

*By email and hand-delivery*

Re: Appeal of November 18, 2008 decision by the Zoning and Platting Commission  
regarding Colina Vista Duplex Development, SP-06-0411(C)(R1) ["Colina  
Vista"]

Dear Ms. Li:

Our firm represents AJHSCCM LP, the limited partnership that owns the property at 9512 FM 2222, commonly referred to as the Tumbleweed Hill project. Eddie Jones, as president of Aquaplex, Inc., is the manager for AHJSCCM LP.

The Tumbleweed Hill project shares the southern border the Colina Vista project, and fronts on RR 2222. The property is within 500 feet of Colina Vista.

On November 18, 2008, the Zoning and Platting Commission ("ZAP") approved the request of Continental Homes of Texas, Inc., to grant a variance pursuant to Sec. 25-8-41 from the prohibition against constructing a building on a slope with a gradient of more than 25 percent established by Sec. 25-8-302(A)(1). Approval of the requested variance was a necessary prerequisite for ZAP's approval of the revised site plan for Colina Vista pursuant to Sec. 25-5-147(C), as that revision was filed with the city on July 3, 2008. ZAP's approval of the revised site plan is required by Sec. 25-5-41(B) and Sec. 25-5-61(A) because the requested revision is to an approved and released Hill Country Corridor Roadway site plan, SP-06-0411(C).

The Zoning and Platting Commission erred in approving SP-06-0411(C)(R1) because:

1. The applicant failed to meet the criteria for approval of the requested variance established by Sec. 25-8-41(A). At the very least, the applicant did not and cannot establish that the variance "is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance." The applicant's

Virginia Li, Director,  
Watershed Protection and Development Review Department  
December 2, 2008  
Page 2 of 2

mistake in identifying and locating the steep slopes on the property is not a sufficient basis to support this variance, when simply moving the buildings off the slope is an available solution to their error.

2. The revised site plan should have also been denied because that site plan does not provide a joint-use access easement as required by Sec. 25-6-417.

Additional information and facts supporting this appeal will be provided to you prior to and at the hearing on the appeal.

Very truly yours,

A handwritten signature in black ink that reads "Andrew Martin". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

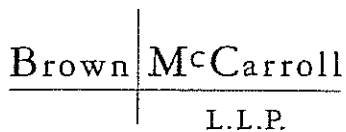
Andrew Martin

## Chronology

Site Plan (Env. Variance) Appeal, SP-06-0411C(R1)

Colina Vista

- ZAP Approval of HCRO plan 7-17-2007, Expiration 8-10-2009
  - *Original plan was 73 duplex condos, a total of 136 units, with on-site detention and water quality ponds, totalling 10.491 acres of impervious cover (38.93% out of the 40% allowed)*
  - Approval and release of the site plan , 1-17-2008
  - Submittal of SP-06-0411C(R1) due to unforeseen grading difficulties after topo survey error discovered , 7-3-2008
  - *Construction clearing began (as per SP-2007-0029D clearing plan) and the slope that was shown on the plan (and had been shown on the previously approved plans for this site) was not a smooth-edged slope but had "inlet" valleys that extended up into the previously-shown construction area. Clearing was immediately halted and after discussions with city staff, an application for a correction to the approved site plan was submitted. Since the change would involve construction on slopes, the process was deemed to be a revision, requiring ev variance approval.*
  - EV Board recommended approval of variance to construct on slopes greater than 25% , 8-20-2008
  - ZAP approval of EV variances 11-18-2008 (after multiple postponements)
  - Approval and release of the revised site plan 12-17-2008  
*The site plan changes only involved grading changes. The number of units, amount of impervious cover, densities, location of the drives, heights, etc. did not change and no other change was made to any of the HCRO conditions. The duplexes that were affected by the grades will be the same elevation height as previously approved. The only differences will be that the foundations will be on piers rather than with a retaining wall base. Since no changes were made that affected the HCRO conditions, it was deemed to be an administrative revision to the HCRO, and it was not sent back to ZAP for reconsideration. Generally, if a commission-approved site plan has any change made to it that increases the conditions of the approval, it is sent back to the commission for reconsideration and approval.*
-



111 Congress Avenue, Suite 1400, Austin, Texas 78701-4043  
512-472-5456 fax 512-479-1101

direct 512-479-9714 amartin@mailbmc.com

December 19, 2008

Victoria Li, Director  
Watershed Protection and Development Review Department  
City of Austin  
505 Barton Springs Road, 12<sup>th</sup> Floor  
Austin, Texas

*By email and hand-delivery*

Re: Appeal of November 18, 2008 decision by the Zoning and Platting Commission  
regarding Colina Vista Duplex Development, SP-06-0411(C)(R1)

Dear Ms. Li:

This letter supplements information provided with the above-referenced appeal filed with your office on December 2, 2008.

On December 11 I received an email from Brent Lloyd, assistant city attorney, advising that your or other staff at the Watershed Protection and Development Review Department had determined that my client lacked standing to file the appeal. A copy of that email is attached for your reference. According to the email, SP-06-0411(C)(R1) is an "administratively approved minor revision" pursuant to subsections (C) and (D) of Sec. 25-5-61, and the administrative decision to approve that site plan may not be appealed.

The pending appeal, as it clearly states, is of the Zoning and Platting Commission decision to approve SP-06-0411(C)(R1) on November 18, 2008. I did not appeal an administrative decision to consider or approve a "minor revision." If, in fact, such an approval has been granted, that action exceeds the authority granted to the director of WPDR by the Austin City Code.

Although there have been inexplicable and significant errors in how SP-06-0411(C)(R1) was processed, and notwithstanding those errors, the facts clearly demonstrate that this application was filed and processed, as it should have been, as a site plan revision to a Hill Country Roadway Corridor site plan. This revision must be approved by the Zoning and Platting Commission, and the Zoning and Platting Commission's action to approve or deny a Hill Country Roadway Corridor site plan revision is an action that may be appealed to the City Council.

Even if WPRD disputes the facts or disagrees with my argument, my client's standing to bring this appeal is not a decision delegated to city staff. Under Sections 25-1-181(B) and 25-1-191(A), the City Council has reserved for itself the power to decide if my client has standing to appeal this decision and if SP-06-0411(C)(R1), as approved by the Zoning and Platting Commission, complies with the requirements of the Austin City Code.

Consider the following records, copies of which are attached to this letter:

**Item 1.** The June 4, 2008, **APPLICATION FOR SITE PLAN CORRECTION REQUEST** by Benjamin Gammie as the owner's agent for the Colina Vista Duplex Development site plan, approved as SP-06-0411(C). Despite language on the city's form that characterizes this as a request for "administrative corrections" (a term undefined by it is clear the form serves as the applicant's written request that identifies "proposed minor revisions" pursuant to Section 25-5-61(C). You will note on the second page of that form that this request for an "administrative correction" was not "approved," but was, instead, "Determined to be a Revision."

**Item 2.** The **DETERMINATION OF SITE PLAN CORRECTION REQUEST** dated June 9, 2008, that also responds to Item 1 with the statement: "Your request has been determined to be a Revision."

**Item 3.** A copy of a July 23, 2008, city staff report on the Colina Vista Duplex Development. This report includes the **SITE PLAN APPLICATION** and related documents submitted by the applicant's agent, dated and apparently submitted on July 3, 2008. Also included are receipts that indicate payment of application fees on July 3, 2008, and on July 23, 2008, the date handwritten notations indicate was the "formal" application date. On July 23, the applicant's agent paid a fee of \$752.50, representing a "Consolidated Dev Rev" fee of \$852.50, and "Consolidated Env/Drainage" fee of \$100, offset by a \$200.00 "Fair Notice Credit" for the \$200.00 "Fair Notice Fee" paid on July 3, 2008.

**Item 4.** **NOTICE OF PUBLIC HEARING SITE PLAN VARIANCE** with a stated mailing date of September 26, 2008, advising that the "application for a site plan variance" for the Colina Vista project was scheduled to be heard by the Zoning and Platting Commission at its meeting on October 7, 2008, beginning at 6:00 p.m.

This notice also states: "(The site plan will also be re-reviewed for approval of the Hill Country Roadway Ordinance for the affected limits of construction in Revision # 1.)

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For your convenience of reference, here is the text of Sec. 25-5-61:

**§ 25-5-61 REVISIONS TO RELEASED SITE PLANS.**

(A) Except as provided in Subsections (C) and (D) of this section, an applicant shall file a new application for site plan approval to revise a released site plan.

(B) If the Land Use Commission considers a request to revise a planning commission approved site plan and imposes additional conditions under Section 25-5-146 (*Conditions Of Approval*), the applicant may withdraw the request and develop in accordance with the previously approved site plan.

(C) The director may approve a minor revision to a released site plan if the director determines that the minor revision satisfies Subsection (D) of this section. An applicant shall submit a written request to the director identifying proposed minor revisions. A formal application or public hearing is not required. The director's approval of a minor revision shall be in writing.

(D) A minor revision to a released site plan is a revision that:

- (1) does not have a significant effect on a neighboring property, the public, or a person who will occupy or use the proposed development;
- (2) is necessary to relocate approved building square footage or parking areas out of a condemned right-of-way area; or
- (3) is necessary to comply with the Americans With Disabilities Act.

Section 25-5-61 establishes that a **revision** to a released site plan must be processed as either: (1) a new application for site plan approval, or (2) as a "minor revision" if the criteria of subsections (C) and (D) are met. There are no other choices. Because the Colina Vista site is located in a Hill Country Roadway Corridor, the revised site plan must be approved by the Zoning and Platting Commission as required by Sections 25-5-142(B), 25-5-147(C), and 25-5-41(B)(1), just as the original site plan was required to receive that approval.

If WPDR had, in fact, approved the applicant's request to process the proposed revision as a "minor revision" from its inception, one would expect the city's records to reflect the following:

- A. Both Item 1 and Item 2 would have "Approved" the applicant's request for "administrative corrections." They did not. No written response on the June 4 application (Item 1) or the June 9 determination approves the applicant's request. Instead, the applicant is required to file a "Revision" to the Hill Country Roadway Corridor site plan previously approved by the Zoning and Platting Commission as SP-06-0411(C). A "revision" is not an "administrative correction," nor is it a "minor revision." A revision to a Hill Country Roadway Corridor site plan is also not an administrative site plan, because it must be approved by the appropriate Land Use Commission as noted above.
- B. Subsection (C) of Section 25-5-61 provides that "A formal application or public hearing is not required." Here, the applicant *was* required to file a "formal" **SITE PLAN APPLICATION** (Item 3) then processed as SP-06-0411(C)(R1). A public hearing on that site plan was scheduled for October 7, 2008, and notice of that public hearing was provided as required by Sec. at the Zoning and Platting Commission on October 7, 2008. Postponements of that and subsequent scheduled public hearings requested by city staff and the applicant ultimately led to the public hearing on November 18, 2008, where the Zoning and Platting Commission took the action which is the subject of this appeal.

Virginia Li, Director,  
Watershed Protection and Development Review Department  
December 19, 2008  
Page 4 of 5

The only applicable criteria under which WPDR could determine that the proposed revision to SP-06-0411(C) qualified as a "minor revision" pursuant to the applicant's June 3, 2008, written request is subsection (D)(1) of Sec. 25-5-61. This criteria requires a finding that the proposed revision "does not have a significant effect on a neighboring property, the public, or a person who will occupy or use the proposed development." The absence of any written decision that this site plan, which required consideration and approval of environmental variances by the Zoning and Platting Commission, should come as no surprise. I cannot imagine WPDR concluding that a slope variance to build houses on 25% or steeper slopes would be deemed insignificant to the public or a neighboring property owner.

In addition to the above circumstances, and apparently a further result of the unexplained and inexplicable error in how SP-06-0411(C)(R1) has been processed, notice that the applicant filed the **SITE PLAN APPLICATION** on July 3, or July 23, or both dates, was never provided to my client, much less within the required time frame of fourteen days from the date the application was filed. This notice is required by Sec. 25-5-4(A) and Sec. 25-1-133(A)(2), because my client owns property that abuts the Colina Vista site on its southern boundary.

The first time my client became aware of the existence of this application was on September 16, 2008, when he received an email from a colleague who noted that a Colina Vista-related item was on the agenda for that evening's Zoning and Platting Commission meeting. His knowledge of these applications, of course, came after the variance and site plan had been considered and recommended for approval by city staff and by the Environmental Board. My client thus had no opportunity to comment on these applications, and city staff and members of the Environmental Board were oblivious to his interests and concerns as the adjoining landowner.

At the September 16 ZAP meeting, we alerted Ms. Courtney, the case manager, to the fact that my client had received no notice of that public hearing, as required by Sec. 25-1-214(B), Sec. 25-5-144(B), and Sec. 25-1-132(A)(2). After checking the city's records, she confirmed that this notice had not been provided. The Zoning and Platting Commission postponed the hearing to October 7 so the required notice could be provided. A copy of that notice is attached as Item 4.

Given my understanding of the applicable facts and code provisions as discussed above, I would appreciate your prompt action to (i) schedule my client's site plan appeal for the first available meeting of the City Council, (ii) ensure that all required notices are provided, and (iii) confirm by response to this letter that those actions are under way. If you have any questions or need additional information to clarify this letter or my requests, please let me know immediately.

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Very truly yours,



Andrew Martin



Virginia Li, Director,  
Watershed Protection and Development Review Department  
December 19, 2008  
Page 5 of 5

Enclosures

Cc: Eddie Jones  
Brent Lloyd  
Lynda Courtney  
Deborah Thomas

**ZONING AND PLATTING COMMISSION SITE PLAN  
ENVIRONMENTAL VARIANCE REVIEW SHEET**

**CASE NUMBER:** SP-06-0411C (R1) **ZAP COMMISSION DATE:** 11-18-2008

**ADDRESS:** 9716 FM 2222 Rd.

**WATERSHED:** West Bull Creek (Water Supply Suburban)

**AREA:** 33.07 Acres

**EXISTING ZONING:** SF-6-CO

**PROJECT NAME:** Colina Vista Duplex Development

**PROPOSED USE:** Condominium duplexes

**AGENT:** Ben Gammie  
Bury & Partners, Inc.  
221 W. 6<sup>th</sup> Street., Ste. 600  
Austin, TX 78701  
(512) 328-0011

**APPLICANT:** Continental Homes of Texas  
12554 Riata Vista Circle, 2<sup>nd</sup> Floor  
Austin, TX 78727  
(512) 345-4663

**NEIGHBORHOOD ORGANIZATION:**

- 157- Courtyard Homeowner Assn.
- 426- River Place Residential Community Association
- 475- Bull Creek Foundation
- 416- Long Canyon Phase II Homeowner's Association
- 269- Long Canyon Homeowner's Association
- 190- Middle Bull Creek Neighborhood Assn.
- 762- Steiner Ranch Community Association
- 448- Canyon Creek Home Owners Association
- 439- Concerned Citizens for the P&B of FM 2222
- 434- Lake Austin Business Owners
- 965 - Old Spicewood Springs Rd. Neighborhood Association

**APPLICABLE WATERSHED ORDINANCE:** Current/ Comprehensive watershed ordinance

**EV VARIANCE REQUESTED:** LDC Sections 25-8-302 (B) 1, To allow construction of buildings on slopes greater than 25%.

**SUMMARY STAFF RECOMMENDATION:** Recommended.

**EV BOARD RECOMMENDATION:** Recommend conditional approval 8-20-2008 (4-2-0)

- 1) All disturbed areas associated with realignment of the duplex units shall be revegetated with COA 509-S specification;
- 2) Mitigate 100% for all trees removed due to plan revisions necessary to minimize construction on slopes over 25%; all mitigation trees shall be Class I natives;
- 3) Implement a city-approved IPM plan;
- 4) Structurally contain any fill greater than 4' that is associated with the construction of the duplex units along the ravine;
- 5) Employ pier and beam construction for the duplex units along the ravine, and utilize redundant erosion controls.

**ZONING AND PLATTING COMMISSION ACTION:** 9-16-2008, Postponed due to Notification error (7-0); 10-7-2008, Postponed , staff (7-0); 10-21-2008, Postponed, applicant; 11-4-2008, Postponed, applicant; 11-18-2008, Approved staff recommendation (7-0)

**CASE MANAGER:** Lynda Courtney, 974-2810

**PROJECT INFORMATION:** 33.07 Acres

**NUMBER OF PROPOSED UNITS:** 146 (73 Duplex Structures)

**EXIST. ZONING:** SF 6-CO

**MAX. BLDG. CVRG ALLOWED:** 40%      **PROPOSED BLDG. CVRG:** 247,856 sq. ft. (21.11%)

**MAX. IMPERV. CVRG.:** 40%      **PROPOSED IMP. CVRG:** 456,944 sf (38.93%)

**MAX HEIGHT ALLOWED:** 35      **PROPOSED HEIGHT:** 31.58'

**REQUIRED PARKING:** 297

#### **SUMMARY COMMENTS ON SITE PLAN:**

**Land Use:** The proposed site plan is for the construction of 73 duplex structures (146 units) with associated parking, water quality, access drive and other improvements. This site is within the Hill Country Roadway as it applies to F.M. 2222 and the site plan was approved for Hill Country Roadway Ordinance compliance on July 7, 2007. The site plan was approved 1-17-2008 and began construction. The applicant complies with the 100 ft. vegetative buffer along F.M. 2222. The applicant is using building materials that are compatible with the Hill Country environment and all on-site utilities are located underground unless required by the utility to be otherwise. During the course of construction a survey discrepancy emerged which showed the slopes at a ravine to be significantly different than what was originally anticipated. Construction was halted for the duplexes along the edge of the slope to obtain a variance to be able to construct the duplexes.

This site is located in a Moderate Intensity zone of the Hill Country Roadway Ordinance. The closest building construction is proposed to be located approximately 350' from the FM 2222 right-of-way. The construction on sloped proposed as the revision # 1 to the site plan meets the requirements of LDC Section 25-2-1123, Construction on Slopes in the Hill Country Roadway Ordinance section.

**Environmental:** This site is located in the West Bull Creek watershed, and is not located over the Edwards Aquifer Recharge Zone. Water quality is provided by the proposed site plan. This site will have an Integrated Pest Management Plan for pollution prevention and source control of

pesticides and herbicides. This IPM plan is also a condition of the Environmental Board approval recommendation for the EV variance proposed.

**Transportation:** A traffic impact analysis was not required for this property because the projected traffic does not meet the threshold for a TIA. Access to this property is by means of a private drive connecting to Ribelin Ranch Blvd., which in turn will connect to F.M. 2222. As required by the Hill Country Roadway Ordinance (Sec. 25-6-418), the developer left sufficient area for the construction of an access drive to the Tumbleweed project on the adjacent tract to the south. This is consistent with the City Council's action on April 20, 2005 to extend the Tumbleweed site plan with the condition that Tumbleweed close its driveway to FM 2222 and take access through Colina Vista when it becomes available. The developer of Colina Vista is not required to construct the access drive, but only to provide sufficient area for it.

**SURROUNDING CONDITIONS: Zoning/ Land Use**

**North:** PUD, Residential

**East:** DR, Vacant

**South:** I-RR, SF-2, Vacant

**West:** Vacant, Residential

<u>Street</u>	<u>R.O.W.</u>	<u>Surfacing</u>	<u>Classification</u>
F.M. 2222	100'		



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BOOK PAGE 1145







July 3, 2008

Ms. Lynda Courtney, Case Manager  
Ms. Ingrid McDonald, Environmental Reviewer  
City of Austin  
Watershed Protection and Development Review  
505 Barton Springs Road, Fourth Floor  
Austin, Texas 78704

Re: Variance Request  
Colina Vista Duplex Development  
9716 FM 2222  
Austin, Texas 78730  
City of Austin Case No. SP-06-0411C

Dear Staff:

As an agent for D.R. Horton Homes, Bury+Partners, Inc. is requesting a variance from Section 25-8-302 of the City of Austin Land Development Code for the above-referenced project. This adopted code section defines the requirements for construction of a building or parking area as related to slopes.

**Justification:**

The following arguments can be made in favor of allowing D.R. Horton to proceed with the current permitted site plan design and grant the variance to the code sections defined above:

The grading design of the subject site as currently permitted is based upon on-the-ground topography from Carson and Bush Professional Surveyors as well as City of Austin two (2)-foot aerial contours. Working with J.C. Evans Construction during the site clearing process, it was determined that the location of the ravine as depicted on the combined existing topography plan differed from the actual field location. The utilization of City two (2)-foot topography, while accepted under code, did not accurately represent the ravine due in part to the dense tree cover in the area. The bluff line encroaches approximately 20 to 40 feet into the site as compared to the permitted topography. This encroachment affects the foundation of 11 duplex units which overlook the bluff.

Our proposed solution will utilize a pier and beam foundation method to suspend the home foundation over the existing slope. The homes will maintain their current location on plan.

BURY+PARTNERS, INC.  
221 West Sixth Street, Suite 600  
Austin, Texas 78701

TEL (512) 328-0011

FAX (512) 328-0325

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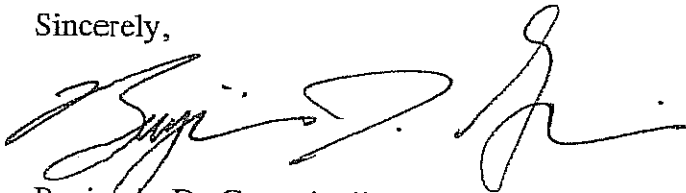
www.burypartners.com

Our office has worked with Danze-Davis Architects and MLA Labs, Inc. to integrate a comprehensive architectural and structural design specific the home sites in question. As stated in the Environmental Criteria Manual, Section 25-8-302.B, several measures must be taken to ensure adequate protection of any disturbed slopes. Bury+Partners, Inc. proposes to implement the City's 609-S native plant seeding mix to reestablish native upland vegetation. A permanent turf reinforcement matting will be incorporated into the slope for additional stability.

This proposed plan will allow D.R. Horton to eliminate approximately 505 linear feet of six (6)-foot high rock retaining wall and the associated 12,800 cubic yards of fill material that had previously been incorporated into the permitted grading scheme. Due to the slope encroachment, it is no longer feasible or aesthetically appealing to fill the site and allow for slab-on-grade construction. The proposed pier and beam construction will be less invasive and incorporate the natural slope into presenting the rear yard hill country views.

Please accept this letter along with an associated cut and fill exhibit included in this update package as our formal request for a variance. We thank you for your favorable consideration of this request. If you should have any questions or require additional information, do not hesitate to contact our office at 328-0011.

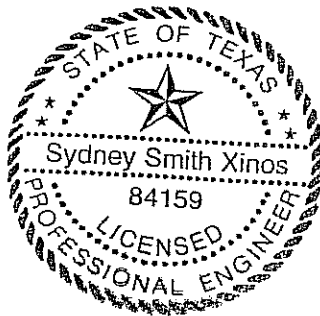
Sincerely,



Benjamin D. Gammie, E.I.T.



Sydney S. Xinos, P.E., R.P.L.S.  
Principal



Enclosure: Watershed Variances - Findings of Fact



### Watershed Variances - Findings of Fact

As required in LDC Section 25-8-41, in order to grant a variance the Planning Commission must make the following findings of fact (include an explanation with each applicable finding of fact):

Project: Colina Vista Duplex Development

Ordinance Standard: Section 25-8-302

### JUSTIFICATION:

1. Are there special circumstances applicable to the property involved where strict application deprives such property owner of privileges or safety enjoyed by other similarly situated property with similarly timed development? YES/NO

*Though the LDC does permit utilization of the City of Austin two (2)-foot aerial topography drawings for site plan permitting, the circumstances on this site lead to the topography not being accurate in the mesa to ravine transition area. This resulted in a permitted plan with initiated site construction in need of a variance to construct a limited number of structures over slopes.*

2. Does the project demonstrate minimum departures from the terms of the ordinance necessary to avoid such deprivation of privileges enjoyed by such other property and to facilitate a reasonable use, and which will not create significant probabilities of harmful environmental consequences? YES/NO

*Only approximately 3.0% of the proposed development is in need of the subject variance request. The nature of the variance is significantly mitigated by the proposed limited portion being constructed over slopes versus constructed on the slopes, thus preserving the existing land form. D.R. Horton wishes to maintain site layout and building locations as previously approved. Home construction along the bluff line will now be less invasive by utilizing a suspended pier and beam construction over the existing slope, whereas the original approved plan called for a rock retaining wall and significant fill material to be placed under the home foundations. In all other regards, the proposed project strictly complies with the City of Austin codes and regulations.*

3. The proposal does not provide special privileges not enjoyed by other similarly situated properties with similarly timed development, and is not based on a special or unique condition which was created as a result of the method by which a person voluntarily subdivided land. YES/NO

---

*The site has been designed to create a cohesive civil development in accordance with all City of Austin design criteria. No special privileges are being requested. Furthermore, the project has allocated 11.8 acres of land to be dedicated as preserve (Golden Cheek Warbler habitat) as per the U.S. Fish & Wildlife 10-a permit necessary for development of this property.*

4. For a variance from the requirements for development within the Critical Water Quality Zone and/or Water Quality Transition Zone: Does the application of restrictions leave the property owner without any reasonable, economic use of the entire property? YES/NO

*This site does not contain any CWQZ or WQTZ land.*

5. For variances in the Barton Springs Zone, in addition to the above findings, the following additional finding must be included: Does the proposal demonstrate water quality equal to or better than would have resulted had development proceeded without the variance? YES/NO

*This site is not located in the Barton Springs Zone.*

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**§ 25-2-1123 CONSTRUCTION ON SLOPES.**

(A) Development of property in a hill country roadway corridor must comply with Chapter 25-8, Subchapter A, Article 7, Division 3 (*Construction On Slopes*) and this section. If a conflict exists between this section and another section of this title, the more restrictive provision applies.

(B) A person who constructs a structure uphill of a slope with a gradient of 15 percent or more:

(1) must use a pier and beam technique to construct the structure; and

(2) may not extend a vertical wall below the lowest finished floor elevation of the structure, except as necessary to screen mechanical equipment.

(C) A person who constructs a structure downhill of a slope with a gradient of 15 percent or more may not exceed a depth of eight feet for structural excavation.

(D) To restore a cut or fill for a roadway, driveway, or structure, a person may construct a terraced wall and fill with a finished gradient of 100 percent. The wall may not exceed a height of four feet. More than one level of terracing may be constructed.

(E) If a person does not use terracing to restore a cut or fill, the person must revegetate and restore the cut or fill to a slope have a finished gradient of 33 percent.

(F) A cut or fill restored under Subsection (E) may not exceed eight feet in length. If additional restoration is required, a terrace that complies with Subsection (D) must be constructed between each eight-foot slope segment.

(G) A person must place fill to blend with the natural contour of the slope.



**ITEM FOR ENVIRONMENTAL BOARD AGENDA**

**BOARD MEETING**

**DATE REQUESTED:** August 20, 2008

**NAME & NUMBER  
OF PROJECT:** COLINA VISTA DUPLEX DEVELOPMENT  
SP-06-0411C(R1)

**NAME OF APPLICANT  
OR ORGANIZATION:** Bury & Partners, Inc.  
(Contact: Benjamin Gammie (512) 328-0011)

**LOCATION:** 9716 FM 2222 Road

**PROJECT FILING DATE:** July 3, 2008

**WPDR/ENVIRONMENTAL  
STAFF:** Craig Carson, 974-7690  
craig.carson@ci.austin.tx.us

**WPDR/  
CASE MANAGER:** Lynda Courtney, 974-2810  
lynda.courtney@ci.austin.tx.us

**WATERSHED:** West Bull Creek (Water Supply Suburban)  
Drinking Water Protection Zone

**ORDINANCE:** Comprehensive Watershed Ordinance (current Code)  
**REQUEST:** Variance requests are as follows:  
1. To allow construction of buildings on slopes greater  
than 25% [LDC Section 25-8-302(B)].

**STAFF RECOMMENDATION:** Recommend approval.

**REASONS FOR  
RECOMMENDATION:** Findings of fact have been met.

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**Watershed Protection and Development Review Department  
Staff Recommendations Concerning Required Findings  
Water Quality Variances**

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<b>Application Name:</b>	<b>Colina Vista Duplex Development</b>
<b>Application Case No:</b>	<b>SP-06-0411C(R1)</b>
<b>Code Reference:</b>	<b>Land Development Code Section 25-8-302(B) Construction of a Building or Parking Area</b>
<b>Variance Request:</b>	<b>To allow construction of buildings on slopes greater than 25%.</b>

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**A. Land Use Commission variance determinations from Chapter 25-8, Subchapter A – Water Quality of the City Code:**

1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development.

*Yes. Given the circumstances and revisions to the current plan, the property construction is not dissimilar to construction on development on similarly situated developments that have had similar approved variance requests.*

2. The variance:

- a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;

*Yes. Once the permit was issued and the applicant began surveying the site, discrepancies between the City of Austin topography (which is allowed to be used by City Code) and actual surveyed topography appeared. As a result of these discrepancies, when the development was laid out, approximately 11 duplex units located along the southern edge of the development were on slopes greater than 25%. In order to minimize impacts to the slope, and provide better environmental protection, the applicant has re-designed the roadway and duplex units adjacent to this slope to minimize construction on slopes over 25%. In order to further minimize construction on the slope, the applicant has revised the plan to construct the units along this slope with pier and beam construction. Under the approved permit, the applicant was going to build a retaining wall along the edge of this slope to build these units on. This would have required approximately 4,270 cubic yards of fill that would have been placed at the top of this slope and been a major potential source for sedimentation. Lastly, the applicant has moved a flow spreader located on this same slope up topographically from where it was originally approved. This means that the construction of the flow spreader will not impact as much of the slope. In making these revisions*

*this same slope up topographically from where it was originally approved. This means that the construction of the flow spreader will not impact as much of the slope. In making these revisions the applicant has provided greater overall environmental protection for the natural area below these duplex units.*

- b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property;

*Yes. Although these topographic discrepancies have created the need for this variance, the applicant has revised the proposed development to remove as much development on slopes over 25% as much as possible. Initially, there was approximately 20,061 square feet (0.46 acres) of buildings on slopes over 25%. After the applicant's revisions, there now is approximately 10,752 square feet (0.25 acres) of buildings of slopes over 25%, a reduction of approximately 53%. This reclaims approximately 16,390 square feet (0.376 acres) of the natural slope back from the approved and permitted version of the plan.*

- c) Does not create a significant probability of harmful environmental consequences; and

*Yes. The applicant's design has minimized the construction of the duplex units on slopes greater than 25%. Additionally, the use of pier and beam construction will decrease impacts to this slope. Lastly, enhanced erosion controls will be in place to ensure the environment is protected from erosion.*

3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

*Yes. The applicant's latest revisions to minimize impacting slopes over 25% and to replace large terraced and filled areas at the top of this slope with pier and beam construction will provide overall better environmental protection than building the project as originally designed. The limited construction on slopes greater than 25% should not impact water quality.*

**B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transition Zone), Section 25-8-453 (Water Quality Transition Zone), or Article 7, Division 1 (Critical Water Quality Zone Restrictions):**

1. The above criteria for granting a variance are met;

*Not applicable.*

2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and

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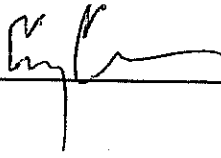
*Not applicable.*

3. The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.

*Not applicable.*

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Reviewer Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'J. K.', written over a horizontal line.

Date: August 20, 2007

*Staff may recommend approval of a variance after answering all applicable determinations in the affirmative (YES).*



## ENVIRONMENTAL BOARD MOTION 082008-4d

Date: August 20, 2008

Subject: Colina Vista Duplex Development SP-06-0411C (R1)

Motioned By: Phil Moncada

Seconded by: Mary Gary Maxwell

### Recommendation

The Environmental Board recommended conditional approval to a variance request to Land Development Code Section 25-8-302(B) 1) To allow construction of buildings on slopes greater than 25%.

### STAFF CONDITIONS:

1) All disturbed areas associated with the re-alignment of the duplex units along the southern ravine shall be revegetated with City of Austin 509 -S specification; 2) Mitigate 100% for all trees being removed due to the plan revisions necessary to minimize construction on slopes over 25%. All trees used for mitigation will be Class I native trees; 3) Implement a City approved Integrated Pest Management Plan; 4) any fill greater than 4 feet that is associated with construction of the duplex units along the southern ravine will be structurally contained; 5) Employ pier and beam construction for the duplex units along the southern ravine and redundant erosion controls.

### RATIONALE:

Findings of facts have been met. The owner has provided 11.21 acres of land for Balcones Conservation Preserve and donated 360,000 significant tree canopy will reduce erosion potential of preserve land.

**Vote** 4-2-0-0

**For:** Ahart, Anderson, Maxwell, and Moncada

**Against:** Beall and Neely

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**Abstain:**

**Absent:**





## MEMORANDUM

**TO:** Betty Baker, Chairperson  
Members of the Zoning and Platting Commission

**FROM:** Craig Carson, Senior Environmental Reviewer  
Watershed Protection and Development Review Department

**DATE:** August 20, 2008

**SUBJECT:** Colina Vista Duplex Development [SP-06-0411C(R1)]  
9716 FM 2222 Road

Variance Request:

Variance from LDC 25-8-302(B) – Construction of buildings on slopes greater than 25%.

### Description of Project Area

This is a 33.07 acre tract of undeveloped land which is located at 9716 FM 2222. This site is located in the West Bull Creek Watershed, which is classified as Water Supply Suburban. Topographically, the site ranges from approximately 870 to 1026 feet above mean sea level. The applicant is currently conveying 11.21 acres of this tract, the ravine area along the southern edge of the property, to Travis County as Preserve Area. Additionally, the applicant contributed \$360,000.00 for purchase of additional off-site Preserve Area.

The original owner applied for a commercial project called "2222 Research Park" (SP-03-0483B), but it was withdrawn. The tract was then sold to the applicant and permitted as "Colina Vista" (SP-06-0411C) for residential use. Both plans used the same topographic base file. This base file consisted of on-the-ground survey data prepared by professional surveyors for all areas of the project, but was terminated at the bluff line of the edge of the southern most ravine. In order to create a complete the topographic base for the entire site, the survey was supplemented with City of Austin aerial 2-foot contours for the ravine area that was actually surveyed.

The site was cleared of vegetation as permitted by March 15, 2008, to comply with the U.S. Fish & Wildlife 10-A permit that accompanied this tract. As the contractor established control and staked the roadway alignments, they noticed that there were topographic discrepancies

along the southern bluff line. An on-the-ground survey was completed and it was found that the bluff line was 20 to 40 feet into the site in some areas as compared to the permitted topography. As a result, approximately 11 duplex units located along this bluff line were actually located on slopes over 25%. The case has been re-submitted as a revision showing the topographic changes. As a result, the applicant needs a variance to construct on slopes over 25% to complete the project.

In discussions with staff, the applicant has re-aligned the roadway and buildings along this bluff line to minimize construction on slopes over 25%. This has reduced the square footage of buildings on slopes over 25% from 20,061 square feet to 10,752 square feet, a reduction of approximately 53%. Additionally, the approved plan allowed for terracing and the placement of approximately 4,270 cubic yards of fill along the top of this bluff to allow construction of these duplex units. As part of the revision, the applicant is now proposing to construct these duplex units with pier and beam construction, thus eliminating the need for the terracing and fill. This will also greatly reduce the impact to this steep slope. The applicant will use enhanced erosion controls while the project is being constructed which will ensure erosion and sedimentation doesn't impact the Preserve Area. Lastly, the applicant has moved a flow spreader located along this bluff line topographically higher along the bluff line, which also has less impact on the sloped area.

### **Vegetation**

The site is located within the Live oak –Ashe juniper woodlands vegetation region of Texas. The vegetation is characterized as woodland with a low percentage of grassy openings. Tree species are dominated by Ashe juniper, Live oak, Texas oak, Cedar elm, and Hackberry. Shrub species include bumelia, Texas persimmon, Yaupon, Wafer ash, and American beautyberry. Woody vines include wild grapevine and greenbriar. Herbaceous species include Virginia creeper, twistleaf yucca, prairie verbena, wood sorrel, yellow columbine, and cedar sage. Grassy areas are dominated by silvery bluestem, little bluestem, threeawn, buffalograss, and various herbs and forbs. The upland tree species are dominated by Ashe juniper with occasional live oak, and shin oak.

Canyon areas along the eastern and southern edges of the property have higher diversity and structure in the overstory. Within the canyon areas, Ashe juniper is dominant, but Texas Oak, Cedar elm, Hackberry, and Live Oak become more prevalent.

### **Critical Environmental Features**

A June 2, 2005 Escarpment Environmental report indicates that one unrecorded water well, one potential karst feature, and four rimrock features were located on this tract of land. The Escarpment Environmental report stated that after further investigation, the potential karst feature does not meet the City of Austin's definition of a Critical Environmental Feature (CEF). According to the applicant, the water well is now properly abandoned according to State requirements. The four rimrock features are all located within the 11.21 acre area designated as Preserve Area. The applicant is in the process of conveying this Preserve Area to Travis County. City Environmental Resource Management (ERM) staff concur with the findings of this report.

## Water/Wastewater

Water and wastewater will be provided by the City of Austin.

## Variance Requests

### 1. Variance from City Code Section 25-8-302(B)- Construction on slopes > than 25%.

As stated earlier, after this project was permitted by the City of Austin, the contractor noticed that there were topographic discrepancies along the southern bluff line. An on-the-ground survey was completed and it was found that the bluff line was 20 to 40 feet into the site in some areas as compared to the permitted topography. As a result, approximately 11 duplex units located along this bluff line are actually located on slopes over 25%. The applicant has re-submitted a revision showing these topographic changes. As a result, the applicant needs a variance to construct on slopes over 25% to complete the project.

## Similar Cases

The following projects had similar construction issues related to construction on slopes (one under LDC 25-8-301 and one under LDC 25-8-302):

Cold Water Garden Homes (SP-04-0287D) requested variances from LDC 25-8-301 (Construction on slopes) and 25-8-341 and 25-8-342 (Cut/fill in excess of 4 feet). The EV Board recommended approval on 9/15/04 by a vote of 8-0-0-0, with the following conditions:

1. All disturbed areas are to be revegetated with a native and naturalized landscaping;
2. Structural containment of driveways is required to stabilize cuts and prevent erosion;
3. An IPM plan to be provided by restrictive covenant;
4. Tree replacement is provided at a minimum of 25% with Class one trees;
5. A Conservation Easement will be dedicated for all undeveloped portions of the tract. Metes and Bounds of the easement will be determined by staff in coordination with the applicant; and
6. If the applicant has not already done so, the applicant will obtain a letter from U.S. Fish & Wildlife Service or the Balcones Canyonlands Conservation Plan regarding participation in BCCP.

Alexan at Vaught Ranch (SP-05-1499D) requested variances from LDC 25-8-341 and 342 (Cut/fill over 4 feet), LDC 25-8-302(A) (Construction of a building or parking structure on slopes over 25%), and LDC 25-8-261(E) (A utility line may cross a Critical Water Quality Zone). Staff recommended granting the variance to LDC 25-8-261(E), but certain parts of the findings of facts for the other variances couldn't be met and therefore staff did not recommend granting the variance for construction on slopes or exceeding cut/fill limits. The EV Board recommended conditional approval on 5-3-06 by a vote of 7-2-00, with the following conditions

1. The entry way into the site from FM 2222 shall be by way of a bridge structure in order to minimize the impact that the crossing has on the creek;

2. All parking for the project except for 15 surface parking spaces shall be structured parking which will minimize the footprint of the construction;
3. All structured parking for the project will be wrapped with residential units;
4. Water quality pond discharge shall be by overland sheet flow rather than direct discharge into the waterways;
5. An Integrated Pest Management Program shall be implemented;
6. Coal tar based sealants shall be prohibited;
7. There shall be no development on the remaining portions of the tract;
8. Landscaping and tree planting shall be submitted and approved as part of the site plan documents. Landscaping and trees shall principally be native plants and trees;
9. The applicant will restore disturbed areas with 609.S standard specifications;
10. The applicant will provide tree mitigation for Class 1 trees removed to develop the site;
11. The applicant will work with City of Austin staff (Watershed Engineering) to provide stream bank stabilization and erosion hazard mitigation;
12. The applicant will participate in the BCCP Program to address endangered species issues;
13. The applicant will provide light shielding per neighborhood agreement/restrictive covenant;
14. Participation in traffic issues per neighborhood agreement/restrictive covenant;
15. Native planting coordination per neighborhood agreement/restrictive covenant;
16. Screen road from FM 2222 per neighborhood agreement/restrictive covenant;
17. Comprehensive Neighborhood Agreement and Restrictive Covenant;
18. The applicant shall adopt and implement an advanced environmental management plan during construction which will limit construction area, provide redundant erosion and sedimentation control facilities, provide innovative erosion and sedimentation control management practices and provide a third party independent inspector to monitor erosion and sedimentation controls. In addition, the permanent storm water run-off control facilities will be installed in a timeframe allowing these facilities to function to receive storm water run-off from the construction site.

#### **Board Conditions:**

1. Rainwater captures facility to irrigate site landscaping.

#### **Recommendations**

Staff recommends approval of the variance request because the findings of fact have been met.

#### **Conditions**

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Staff recommends granting the variances with the following conditions:

- 1 All disturbed areas associated with the re-alignment of the duplex units along the southern ravine shall be revegetated with City of Austin 609-S specification;
- 2 Mitigate 100% for all trees being removed to due to the plan revisions necessary to minimize construction on slopes over 25%. All trees used for mitigation will be Class I native trees;

- 3 Implement a City approved Integrated Pest Management Plan;
- 4 Any fill greater than 4 feet that is associated with construction of the duplex units along the southern ravine will be structurally contained;
- 5 Employ pier and beam construction for the duplex units along the southern ravine.

If you have any questions or need additional information, please feel free to contact me at 974-2711.

*Ingrid McDonald for Craig Carson*

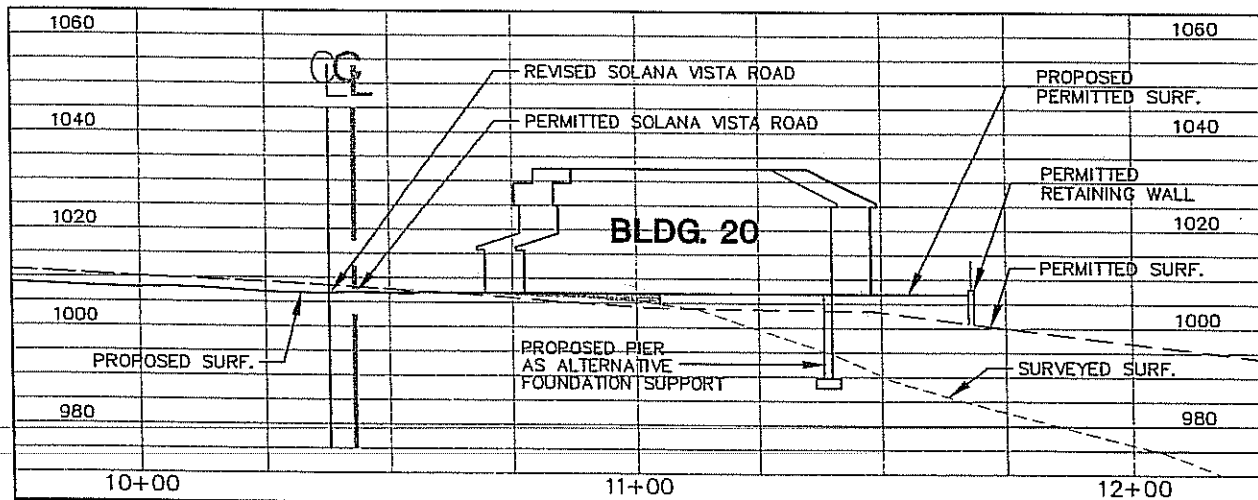
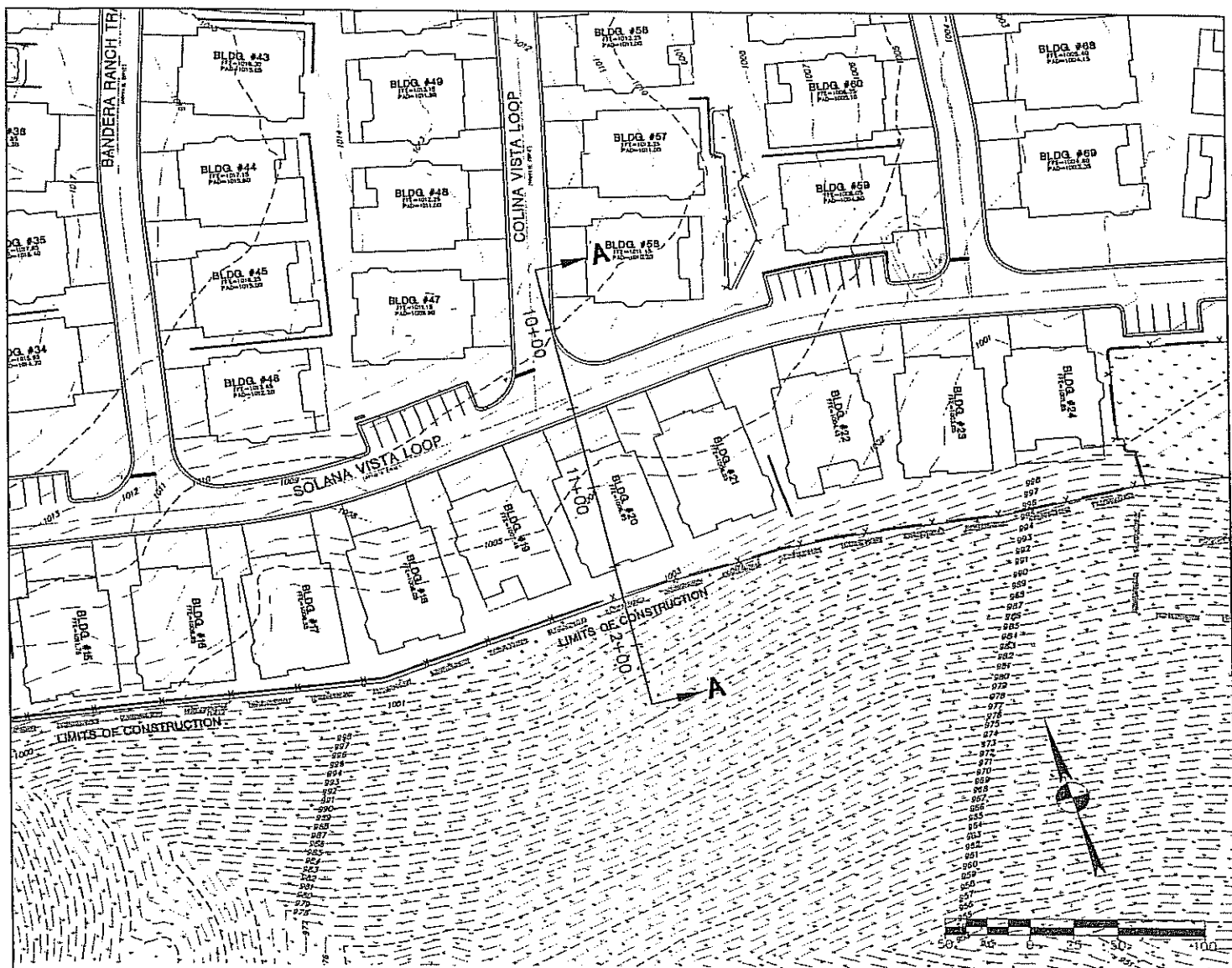
Craig Carson, Environmental Review Specialist  
Watershed Protection and Development Review

Environmental Program Manager:

*Ingrid McDonald*  
Ingrid McDonald

Environmental Officer:

*J. Patrick Murphy*  
J. Patrick Murphy



**PROFILE SCALE:**  
HORIZONTAL: 1" = 40'  
VERTICAL: 1" = 40'

## SLOPE ADJUSTMENT EXHIBIT PERMITTED TOPOGRAPHY

SHEET 1 of 2

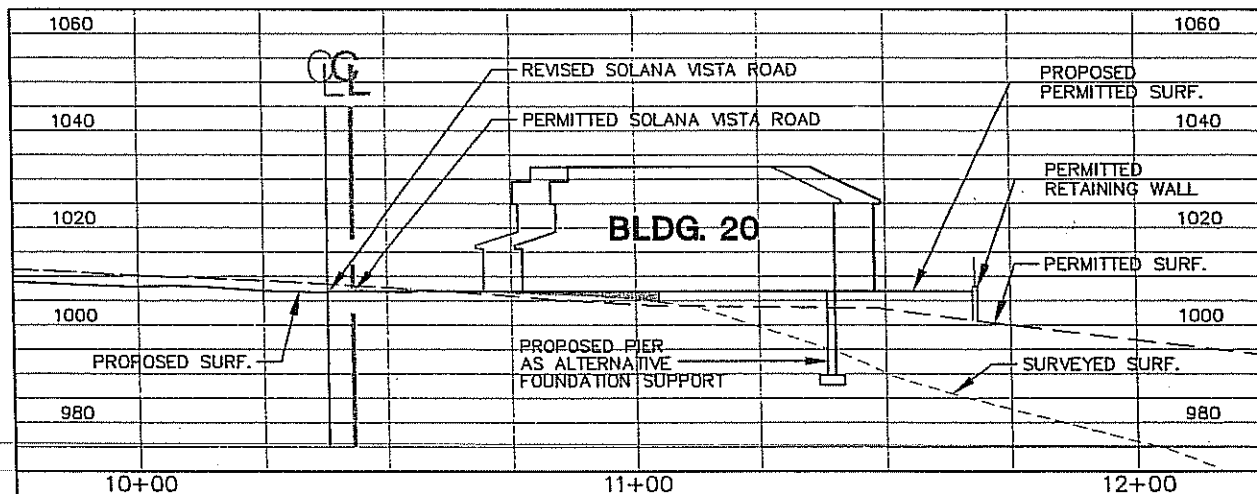
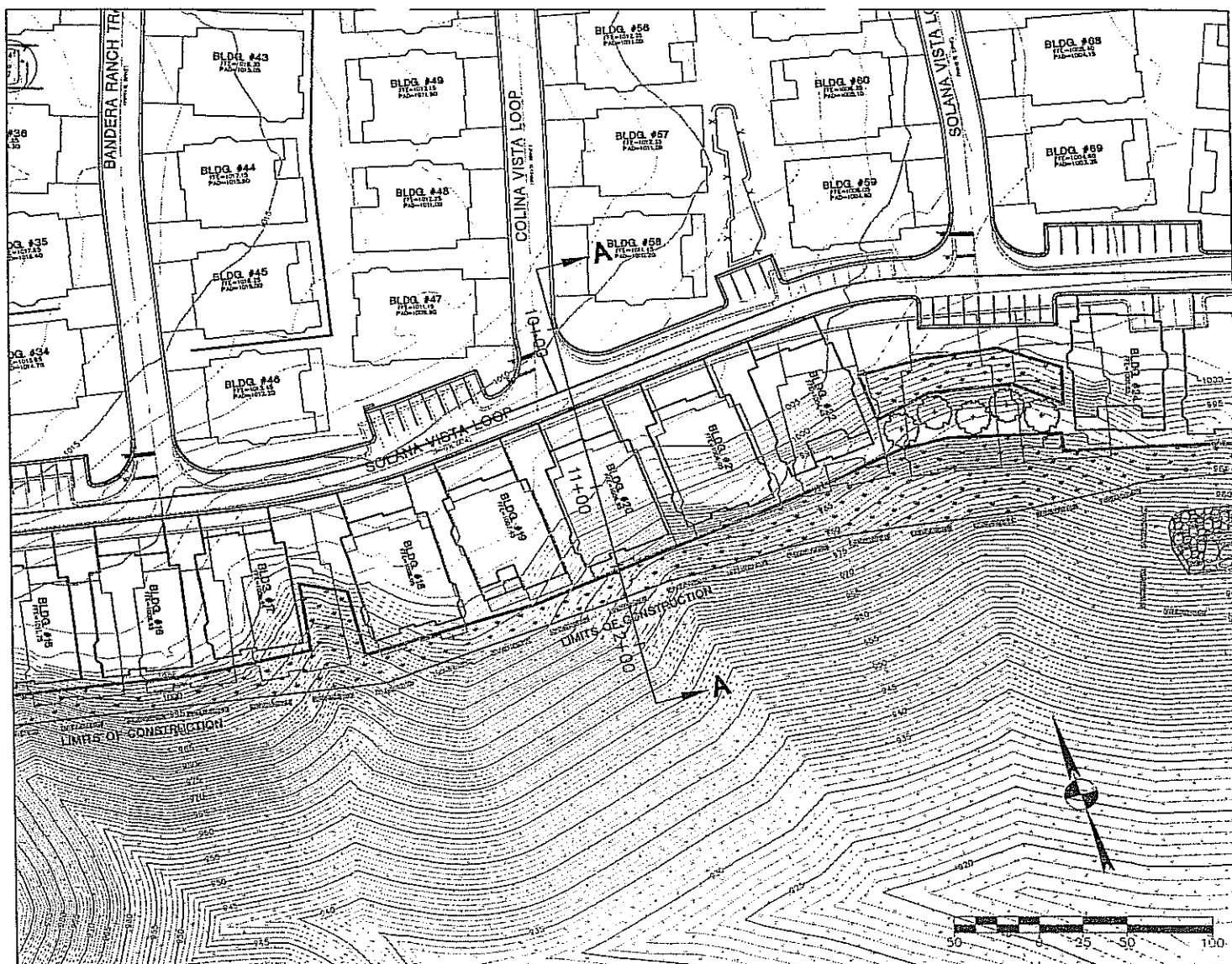
FILE: G:\1273\07\EXHIBITS\127307EXH50

PROJECT No.: 1273-07.72

SCALE: 1" = 100'

**Bury+Partners**  
ENGINEERING SOLUTIONS  
221 West Sixth Street, Suite 600  
Austin, Texas 78701  
Tel. (512)328-0011 Fax (512)328-0325  
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1. DMS ADDITION SITE DIAG



**PROFILE SCALE:**

HORIZONTAL: 1" = 1'

VERTICAL: 1" = 1'

## SLOPE ADJUSTMENT EXHIBIT

### SURVEYED TOPOGRAPHY

SHEET 2 of 2

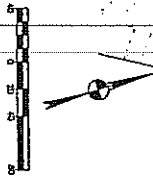
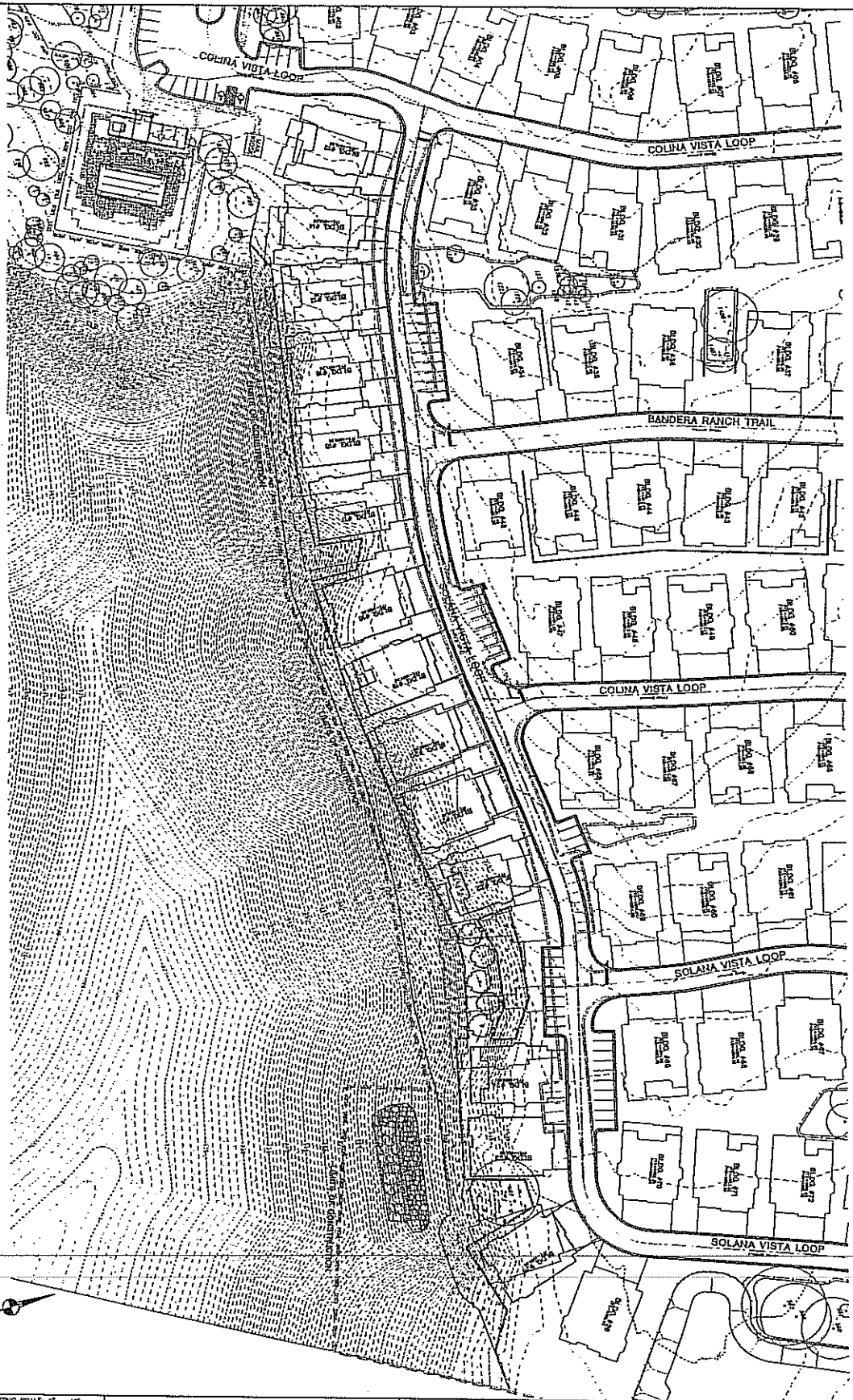
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PROJECT No.: 1273-07.72

SCALE: 1" = 100'

**Bury+Partners**  
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Austin, Texas 78701  
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AS PER VARIANCE REQUEST



**EXH**  
SHEET

PLATTING SCALE: 1" = 40'  
DATE PLOTTED: 04/12/09  
FILE: A:\VISTAS\PROJECTS\2222\2222.DWG  
DRAWN BY: AM  
DESIGNED BY: RGS  
REVIEWED BY: RGS  
PROJECT NO.: 1273-07.31

**COLINA VISTA**  
9718 R.M. 2222, AUSTIN, TEXAS  
**DR Horton**  
*America's Builder*

**REVISED BUILDING LAYOUT  
FOR BLUFFLINE**

**Bury+Partners**  
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