California
Fair Political
Practices Commission

January 9, 1987

Jeffrey D. Huffaker
Huffaker & Stephens
1407 "A" Street, Suite D
Antioch, CA 94509

Re: Your Request for Advice
Our File No. A-86-343

Dear Mr. Huffaker:

You have written requesting advice on behalf of Stan Planchon, a member of Contra Costa County's East County Regional Planning Commission. At your request, we have expedited this response. Our response is limited to the facts provided in your letter.

QUESTIONS

(1) May Mr. Planchon participate in consideration of amendments to the Oakley General Plan?

(2) If Mr. Planchon is disqualified from participation in amendment of the entire general plan, may he participate in consideration of amendments to certain aspects?

CONCLUSIONS

(1) Mr. Planchon must disqualify himself from participation in consideration of amendment of the entire general plan.

(2) If the area around his property can be considered first without his participation, he may be able to participate in subsequent deliberations relative to other geographic areas covered by the plan.

FACTS

Mr. Planchon was recently advised by Kevin Kerr of the Contra Costa County Counsel's Office that it would be advisable for Mr. Planchon to refrain from voting on amendment of the Oakley General Plan. Mr. Planchon, who is a resident of Oakley, is Oakley's representative to the East County Regional Planning Commission. He would like to vote on the general plan

amendments if participation is legally permissible. Accordingly, he has requested that you seek written advice from the Fair Political Practices Commission.

Stan Planchon is the owner of 6-1/2 acres of undeveloped real property located on Empire Road in the Oakley area of eastern Contra Costa County. The property is currently planted in vineyards. Mr. Planchon is also the heir of his mother, Edna Planchon, whose estate is currently being probated. Mrs. Planchon's estate includes 12.52 acres located immediately to the east of Mr. Planchon's 6-1/2 acres. This parcel fronts on Laurel Road to the north of Mr. Planchon's property. Mr. Planchon will inherit an undivided two-thirds interest in that property, which is currently the subject of a contract of sale for approximately $450,000.

For the last three years, the County of Contra Costa has been formulating a general plan revision for the Oakley area, encompassing approximately 9,000 acres. In the process of developing a land use map for the Oakley area, county planning staff designated Mr. Planchon's property as medium-density, single-family residential. This permits his property to be subdivided into three to five residential units per acre.

The Oakley Municipal Advisory Council (OMAC), established by the Contra Costa County Board of Supervisors at the end of 1983 pursuant to Government Code Section 31010, has also proposed a land use map for the Oakley area. This land use map also designates Mr. Planchon's property as medium-density, single-family residential.

All of the maps which have been considered by the county planning staff and by OMAC since the general plan review process commenced in 1983 have designated Mr. Planchon's property as medium-density, single-family residential. Mr. Planchon's property is located near the corner of Empire Avenue and Laurel Road. Both the OMAC general plan map and the staff proposal provide for high-density zoning to the north of the Planchon property, on the north side of Laurel Road.

The current zoning for Mr. Planchon's property is A-2. Under the existing general plan of 1978 for eastern Contra Costa County, the property is designated as "interim agricultural." This designation was used to identify lands that would be held back from development until the area north of Laurel Road was developed. In 1983, the number of general plan amendment requests for areas south of Laurel Road became so great in number that the board of supervisors decided to revise the general plan for Oakley to create land use designations for the lands south of Laurel Road where

Mr. Planchon's property is located. Since that time, Mr. Planchon's property has not been considered for any other designation than medium-density, single-family residential.

The East County Planning Commission was formed by the Contra Costa County Board of Supervisors during the Fall of 1986. The Board was established with nine members, with each member representing a different area within the east county. Mr. Planchon is the representative from the Oakley area. Mr. Planchon previously sat as a member on OMAC from the date of its inception in December of 1983 to the date he resigned to take his seat on the East County Planning Commission.

ANALYSIS

The Political Reform Act (the "Act")1/ prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which he has a financial interest. (Section 87100.) Mr. Planchon is a public official. (See, Sections 82041, 82048 and 87200.) Section 87103 specifies when an official has a financial interest in a decision:

> An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:
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> * * *
>
> (b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars ($1,000) or more.
>
> (c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars ($250) or more in value provided to, received by or promised to the

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1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

public official within 12 months prior to the time when the decision is made....

Section 87103(b) and (c).

Mr. Planchon has an "interest in real property" within the meaning of Section 87103(b) as to each of the parcels described in your letter. (Section 82033.) The decision in which he wishes to participate is one which will effectively rezone his property from its current agricultural use to medium-density residential use.2/ Regulation 18702.1 provides:

> (a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:
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> * * *
>
> (3) The decision concerns the zoning or rezoning, annexation or deannexation, sale, purchase or lease, actual or permitted use, or inclusion in or exclusion from any city, county, district or other local government subdivision of, or taxes or fees assessed or imposed on, or any similar decision as to real property in which the official has a direct or indirect interest (other than a leasehold interest) of $1,000 or more....
>
> (c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:
>
> (1) The effect of the decision on the official or his or her immediate family, on the source of income (including gifts) to the official, . . . or on real property in which the official has a direct or indirect investment, will not be distinguishable from its effect on the public generally....

2/ The general plan law of California requires that real property zoning be consistent with the general plan for the jurisdiction. (See, Sections 65359, 65454 and 65860.) The zoning ordinance shall be amended to achieve consistency if the general plan is amended. (Section 65860(c).)

> (3) Although disqualification would otherwise be required under subsection (a)(1), (a)(2), or (a)(3) the decision will have no financial effect on the person or business entity who appears before the official, or on the real property.

Consequently, disqualification is required unless the decision will affect Mr. Planchon's property interests either not at all or in substantially the same manner as it will affect the interests of a significant segment of the public.

The general plan amendment will have a financial effect upon Mr. Planchon's property. The tax statements which you have furnished show that his mother's property is assessed at approximately $74,000, but you have stated that it is currently being sold for $450,000. This price increase appears to be due to the anticipated change in permissible use of the property.3/

In addition, the purchaser of his mother's property will become a source of income to Mr. Planchon. Under Section 87103(c), Mr. Planchon will be required to disqualify himself as to any decision having a reasonably foreseeable material financial effect upon this source of income for a 12-month period extending from the last payment of $250 or more.

It is also apparent that the effect upon Mr. Planchon's interests will be distinguishable from the effect upon a significant segment of the general public. The map which you have provided indicates that the general plan amendments will affect a number of large parcels which are held by relatively few owners when compared with the total public of the jurisdiction, Contra Costa County. Thus, a significant segment of the population will not be affected in substantially the same manner. (See, Legan Opinion, 9 FPPC Ops. 1 (August 20, 1985), copy enclosed.) Consequently, we conclude that Mr. Planchon must disqualify himself from participating in any way in that portion of the general plan amendments which involve his properties.

You have also asked whether Mr. Planchon may participate in any of the deliberations involving other properties. In the

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3/ It should be noted that a sizeable financial effect upon this property would necessitate disqualification even if the property was not directly subject to the decision. (See, Regulation 18702(b)(2).)

past, in certain limited circumstances, we have advised that large, complex decisions may be divided into separate decisions when an official has a disqualifying interest in one component of the decision which is not interdependent upon other components. The official may then participate as to the other components in which he has no financial interest. (See, Advice Letters to: Lance Olson, No. A-85-242; John Cook, No. A-83-163, and Joy Ann Fitzhugh, No. A-80-091, copies enclosed.)

Here, because of the necessary interrelationship of land use planning areas, we believe that Mr. Planchon may participate as to other areas only if the decision on any specific property will not have a reasonably foreseeable material financial effect upon his interests.4/ If the decision will not have such an effect, he may participate if the procedure outlined below is adhered to by the East County Planning Commission. Whether the Commission desires to use this procedure is obviously its decision.

(1) The area including and surrounding Mr. Planchon's properties must be severed so that the hearing can be bifurcated.5/

(2) That area must be considered first, and a final decision reached by the Commission without Mr. Planchon participating in any way.

(3) Once a final decision has been made on that area, Mr. Planchon may participate in the deliberations regarding other areas within the general plan, so long as those deliberations do not result in a reopening of deliberations for his area.

4/ For instance, a decision on another property some distance away might be of such significance for the surrounding area that a material financial effect on his interests would be foreseeable. For example, a decision to locate a major employment center for high tech nearby might enhance the value for medium density housing within a wide area.

5/ The area referred to is bounded on the east by O'Hara Road, on the south and southwest by Neroly Road, on the west by Live Oak Avenue, and on the north by Cypress Road.

If you or Mr. Kerr, the deputy county counsel, have any questions regarding this letter, you may reach me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosure
cc: Kevin Kerr, Deputy County Counsel

HUFFAKER & STEPHENS
ATTORNEYS AT LAW
1407 "A" STREET
SUITE D
ANTIOCH, CALIFORNIA 94509

JEFFREY D. HUFFAKER
RANDY L. STEPHENS

TELEPHONE
(415) 757-0771

December 19, 1986

State of California
Fair Political Practices Commission
Legal Division
P. O. Box 807
Sacramento, CA 95814

RE: Determination of Conflict of Interest
for Stan Planchon

Dear Sir or Madam:

I have been retained by Stan Planchon to forward a request to the Fair Political Practices Commission as to whether or not Mr. Planchon has a conflict of interest in voting on the Oakley General Plan Refinement as a member of the East County Regional Planning Commission. Mr. Planchon was recently advised by the Contra Costa County Counsel's Office that it would be advisable for him to refrain from voting on the Oakley General Plan due to the fact that Mr. Planchon owns 6½ acres in the area, and has a two-thirds ownership interest in another 12.52 acres which has been sold. Mr. Planchon, who is a resident of Oakley, and is Oakley's representative to the East County Regional Planning Commission would like to vote on the matter if it is legally permissible, and has, accordingly, requested that we seek a written opinion from the Fair Political Practices Commission.

The next meeting of the East County Regional Planning Commission will be held on January 12, 1987. If at all possible, we would appreciate receiving a written opinion prior to that date.

For your convenience, I provide the following issues which we would like to see addressed, together with background relating to those issues.

ISSUES

1. Does Stan Planchon have a conflict of interest which would prevent him from voting on approval of an Oakley Area General Plan involving approximately 9,000 acres, by reason of his ownership in fee simple of 6½ acres and

by reason of his being a beneficiary of an undivided two-thirds interest in an adjacent 12.52 acres, both of which parcels reside in an area designated as medium density single family residential (3-5 units per acre) in both General Plan Maps currently being considered by the County Planning Commission?

2. If Mr. Planchon is found to have a conflict of interest and thereby is prevented from voting on the entire General Plan, can the consideration of the general plan be broken down so that Mr. Planchon can vote on all aspects of the General Plan, with the exception of the specific land use for the parcels he owns?

BACKGROUND

Stan Planchon is the owner of 6½ acres of undeveloped real property, currently planted in vineyard located on Empire Road in the Oakley area of Eastern Contra Costa County. Mr. Planchon is also the heir at law of his mother, Edna Planchon, whose estate is currently being probated. Mrs. Planchon's estate consists of 12.52 acres, which acres are located immediately to the East of Mr. Planchon's 6½ acres. These acres front on Laurel Road to the North of Mr. Planchon's property. Mr. Planchon will inherit an undivided two-thirds interest in that property, which is currently the subject of a contract of sale, for approximately $450,000.00.

The County of Contra Costa has been formulating a General Plan revision for the Oakley area encompassing approximately 9,000 acres for the last three years. In the process of developing a Land Use Map for the Oakley area, County Planning Staff designated property Mr. Planchon's property as medium density single family residential, which permits that property to be subdivided into three to five residential units per acre.

The Oakley Municipal Advisory Council (OMAC), established by the Contra Costa County Board of Supervisors at the end of 1983 pursuant to the authority granted them by California Government Code Section 31010 has also proposed a Land Use Map for the Oakley area. This Land Use Map also designates the property Mr. Planchon's property as medium density single family residential.

All of the maps, both draft and refined which have been considered by the Contra Costa County Planning Staff,

and the Oakley Municipal Advisory Council, since the General Plan review process commenced in June of 1983, have designated Mr. Planchon's property as medium density single family residential.

For your reference, I enclose herein a color coded map providing the Oakley Municipal Advisory Council's recommendation with respect to Land Use designations in the Oakley area, and another map representing the Contra Costa County Community Development Department's recommendations with respect to the Land Use Map for the Oakley area General Plan.

You can locate Mr. Planchon's property near the corner of Empire Avenue and Laurel Road which I have circled with red pen for your convenience and labeled as Parcels One and Two.

I might note, that both the OMAC General Plan Map, and the Community Development Staff Proposal provides for high density single family residential to the North of the Planchon property, on the North side of Laurel Road.

The East Contra Costa County Planning Commission was formed by the Contra Costa County Board of Supervisors during the fall of 1986. The Board was established with nine members, with each member representing a different area within the East County. Mr. Planchon is the representative from the Oakley area. Furthermore, Mr. Planchon previously sat as a member on OMAC from the date of its inception in December of 1983, to the date he resigned to take his seat on the East County Planning Commission. The current zoning for Mr. Planchon's property is A2 and under the existing General Plan of 1978 for Eastern Contra Costa County, is designated as "interim agricultural". This designation was used to identify lands that would be held back from development until the area North of Laurel Road was developed. In 1983, the number of General Plan Amendment Requests for areas South of Laurel Road became so great in number that the Board of Supervisors decided to revise the General Plan for Oakley to create Land Use designations for the lands South of Laurel Road where Mr. Planchon's property is located. Since that time, Mr. Planchon's property has not been considered for any other designation than medium density single family residential.

I also enclose herein for your reference, a copy of Mr. Planchon's property tax statements, both for his 6½

acres (parcel No. 034-010-014-8) and for the property belonging to the estate of his mother, Edna Planchon (parcel No. 034-010-005-6).

In early November, 1986, the Oakley General Plan refinement came before the Regional Planning Commission for public hearings. At that time, Mr. Planchon and the Chairman of the Regional Planning Commission, Ron Nunn requested County Counsel to give them an opinion with respect to whether they had a conflict of interest. Just prior to the Regional Planning Commission meeting held on December 8, 1986, Deputy County Counsel, Kevin Kerr rendered a verbal opinion that in fact Mr. Nunn and Mr. Planchon were both barred from voting.

As a result, we are making the request herein.

If you have any questions, or require any additional materials, please call my office immediately so that I may expedite the production of those materials.

We look forward to receiving your opinion.

Sincerely,

HUFFAKER & STEPHENS

Jeffrey D. Huffaker

JDH:ch
cc: Stan Planchon
cc: Kevin Kerr, County Counsel

PROPERTY TYPE	FULL VALUE	BOND/CHARGE DESCRIPTION	ASSESSMENT NO.	PRINCIPAL	INTEREST	TOTAL AMOUNT
LAND	37356	CC WTR LEVY LAN				478
IMPROVEMENTS	34348					
PERSONAL PROPERTY	1844					
GROSS VALUE	73548					
LESS: EXEMPTION *HO (SEE REVERSE)	7000				TOTAL BONDS AND CHARGES	478
NET FULL VALUE	66548	← NET FULL VALUE X RATE = TAX →	$73.56	COUNTYWIDE RATE & TAX FOR ALL TAXING AGENCIES	10000	66547
				ADD: VOTER APPROVED DEBT SERVICE:		
				BART	0421	2801
				LIBERTY HIGH	0016	107
				OAKLEY ELEM	0072	479
				TOTAL RATE	10509	70412

* TAX REDUCTION DUE TO STATE FINANCED HOMEOWNERS TAX RELIEF

ASSESSEE AS OF MARCH 1, 1986: PLANCHON STANLEY E

PROPERTY DESC.: POR SEC 35 T2N R2E

OWNER'S NAME AND ADDRESS: PLANCHON STANLEY E
RT 1 BOX 176
OAKLEY CA 94561

REMARKS:

ADDITIONAL INFORMATION ON REVERSE SIDE OF CARD.

TOTAL AMOUNT

CONTRA COSTA COUNTY-INFORMATION CARD

SECURED TAXES FOR FISCAL YEAR 1986-87 (KEEP FOR YOUR RECORDS)

BILL NO. [illegible] 0 | PARCEL NUMBER 034-010-005-6 | SUFF 00 | TAX RATE AREA 82002

PROPERTY TYPE	FULL VALUE	BOND/CHARGE DESCRIPTION	ASSESSMENT NO.	PRINCIPAL	INTEREST	TOTAL AMOUNT
LAND	51089	CC WTR LEVY LAN				653
IMPROVEMENTS	22773					
PERSONAL PROPERTY						
GROSS VALUE	73862					
LESS: EXEMPTION *HO (SEE REVERSE)	7000				TOTAL BONDS AND CHARGES	653
NET FULL VALUE	66862	← NET FULL VALUE X RATE = TAX →	$73.56	COUNTYWIDE RATE & TAX FOR ALL TAXING AGENCIES	10000	66862
				ADD: VOTER APPROVED DEBT SERVICE:		
				BART	0421	2814
				LIBERTY HIGH	0016	107
				OAKLEY ELEM	0072	482
				TOTAL RATE	10509	70918

* TAX REDUCTION DUE TO STATE FINANCED HOMEOWNERS TAX RELIEF

ASSESSEE AS OF MARCH 1, 1986: PLANCHON EDNA E

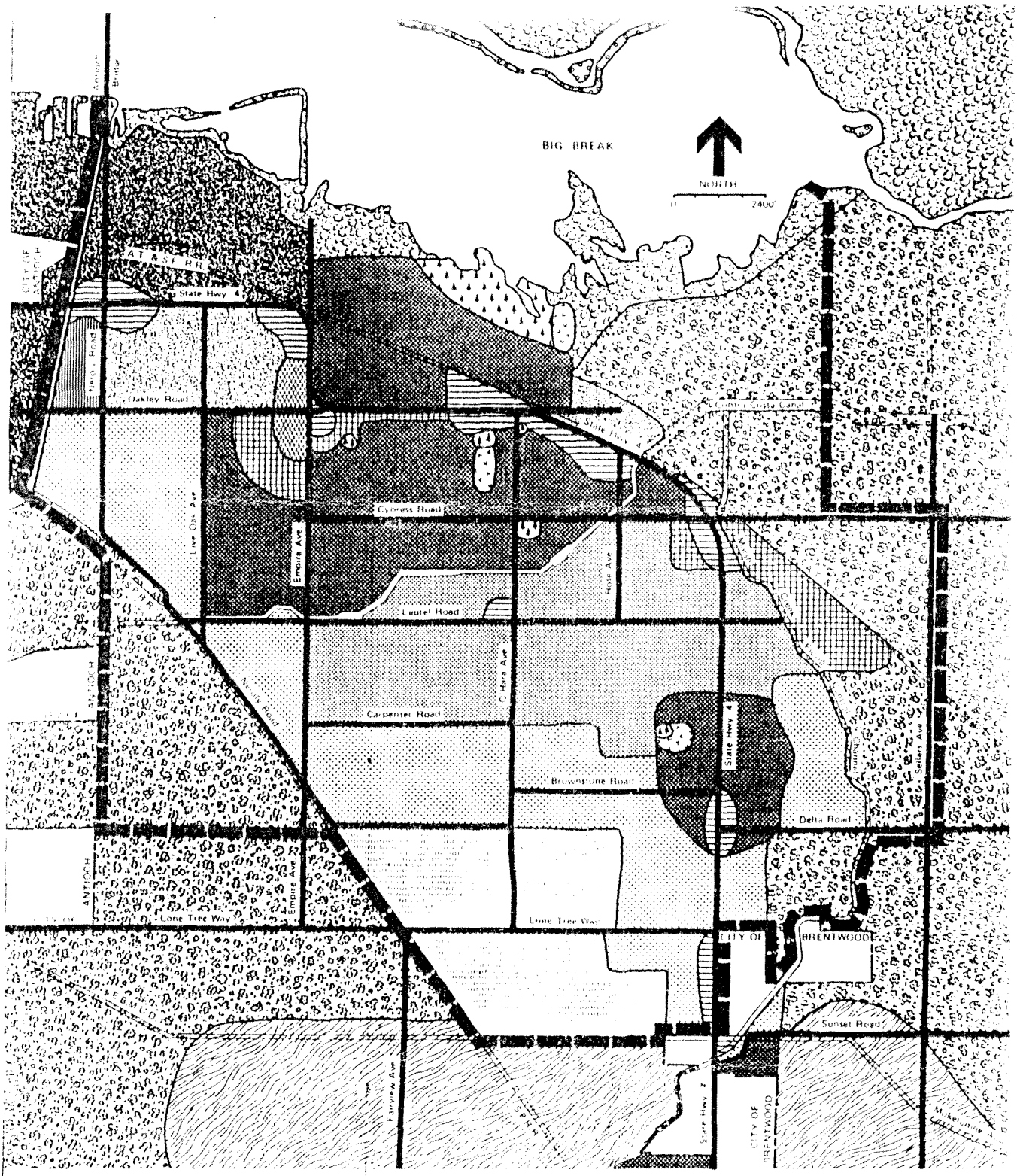
PROPERTY DESC.: POR SEC 35 T2N R2E

OWNER'S NAME AND ADDRESS: PLANCHON EDNA E
RT 1 BOX 182
OAKLEY CALIF 94561

REMARKS:

ADDITIONAL INFORMATION ON REVERSE SIDE OF CARD.

TOTAL AMOUNT



OAKLEY AREA GENERAL PLAN
Staff Proposal

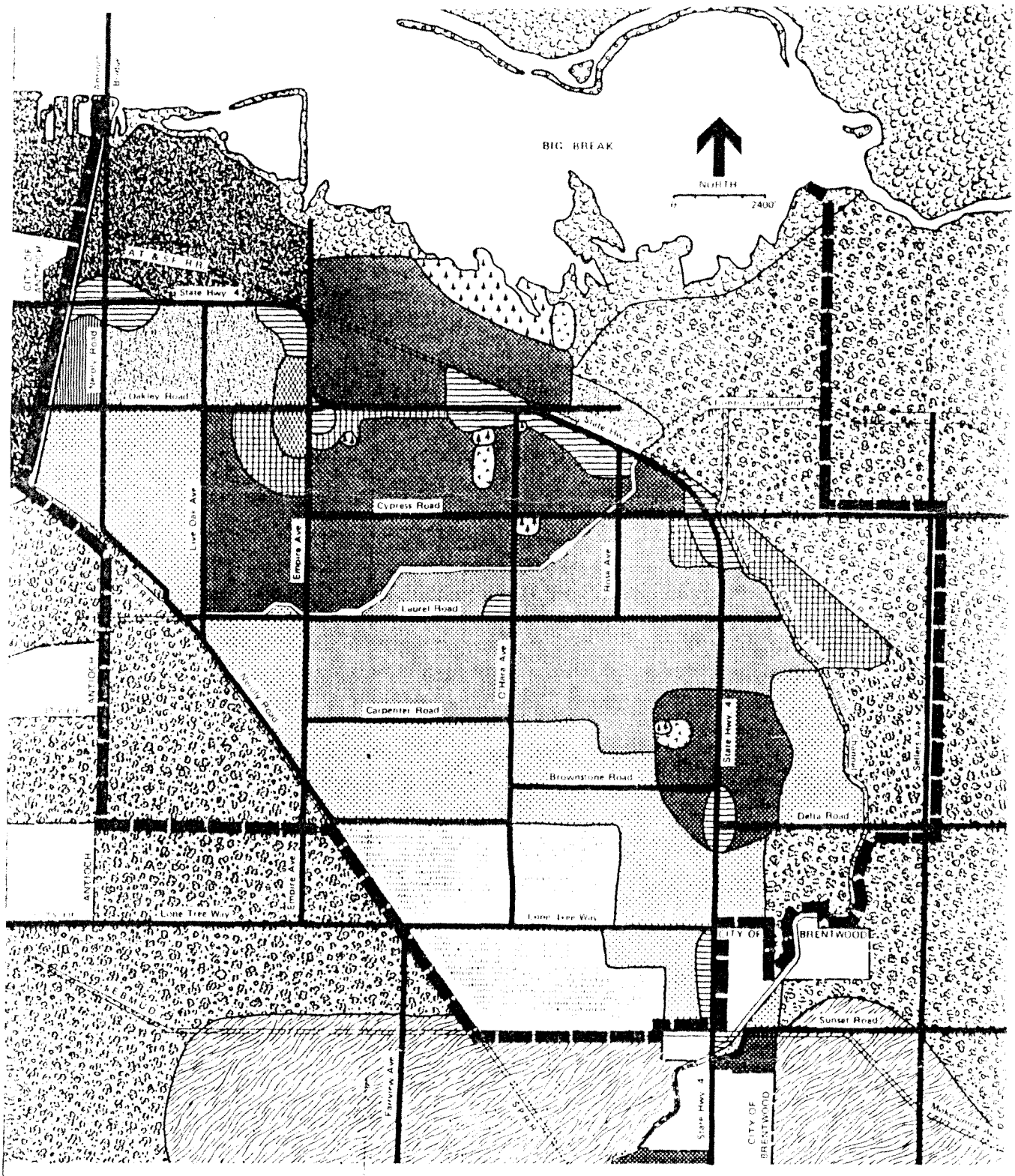
LEGEND

RESIDENTIAL

- 1 Acre Minimum Lot Size
- 1 to 3 D.U. /acre
- 3 to 5 D.U. /acre
- 5 to 7 D.U. /acre
- 7 to 12 D.U. /acre
- 12 to 21 D.U. /acre

- Commercial
- Light Industry
- Heavy Industry
- Office
- Public & Semi-Public

- Agriculture Residential
- Agriculture Recreation
- Agricultural Core
- Park & Recreation
- Recreation
- Project Area



OAKLEY AREA GENERAL PLAN
Staff Proposal

LEGEND

RESIDENTIAL

- 1 Acre Minimum Lot Size
- 1 to 3 D.U. /acre
- 3 to 5 D.U. /acre
- 5 to 7 D.U. /acre
- 7 to 12 D.U. /acre
- 12 to 21 D.U. /acre

- Commercial
- Light Industry
- Heavy Industry
- Office
- Public & Semi-Public

- Agriculture Residential
- Agriculture Recreation
- Agricultural Care
- Park & Recreation
- Recreation
- Project Area

California
Fair Political
Practices Commission

December 29, 1986

Jeffrey D. Huffaker
Huffaker & Stephens
1407 "A" Street, Suite D
Antioch, CA 94509

Re: 86-343

Dear Mr. Huffaker:

Your letter requesting advice under the Political Reform Act was received on December 23, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths

Diane M. Griffiths
General Counsel

DMG:km

cc: Stan Planchon