

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

#6

October 24, 2008

Santa Barbara County
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

*By email to sbcob@co.santa-barbara.ca.us
and by hand delivery*

RE: October 28, 2008 Hearing on the Stoker Residential Project, Agenda Item #6

Dear Chair Carbajal and Members of the Board,



This office represents Santa Barbara County Action Network (SBCAN) in this matter. The Stoker Residential Project (Stoker Project or Project) proposes the construction of fourteen large two-story, densely packed residences on land designated for recreation and open space. To accommodate the Project at its proposed location, the Board must change the land use designation in the General Plan from Recreation/Open Space to Residential, and must amend the Zoning Map to change the zoning from Recreation to Residential, in addition to other actions.

The Planning Commission denied the Project because it could not make the required finding that approval of the General Plan amendment is in the interest of the public. We agree with the Commission that this required finding cannot be made because building upscale densely packed homes on these recreational and open space lands is *not* in the interest of the public. The proposed denial findings correctly state that “[t]he subject Comprehensive Plan Amendment to the Land Use Element would not be in the public interest as the potential for the loss of Recreation/Open Space designated land could be detrimental to the surrounding community.” September 24, 2008 Staff Memo, Attachment 2, § 2.1. Findings required for the Rezone similarly cannot be made because, as stated in the proposed denial findings, the “[t]he requested Zoning Map Amendment would not be in the interest of the general community welfare as it would result in the conversion of land zoned for Recreation to Residential land uses.” *Id.*, § 2.2.

There are also additional reasons why the Board cannot approve the Project including that the California Environmental Quality Act (CEQA) requires an Environmental Impact Report (EIR) for this project rather than a Mitigated Negative Declaration (MND), that the Project violates applicable General Plan policies and the General Plan as a whole, and that other required findings regarding consistency with General Plan policies and consistency with the Open Space Plan cannot be made. For all these reasons we strongly urge the Board to deny the Project.

1. Required Findings Regarding Policy Consistency Cannot Be Made

Even if the Board finds, contrary to the conclusions of the Planning Commission, that the proposed General Plan Amendment *is* in the interest of the public, the Board still cannot approve the Project because it cannot make other required findings regarding the Project's consistency with policies in the General Plan. Discussed below, the proposed project violates numerous other General Plan policies and furthermore is inconsistent with the General Plan as a whole.

The General Plan is the constitution for all future development; any and all decisions of the County affecting land use and development must be consistent with the General Plan. *Citizens for Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 570. Projects inconsistent with the General Plan may not be approved. *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal. App. 4th 1332, 1336. "An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." Governor's Office of Planning and Research, General Plan Guidelines 128 (1998). A Project may be inconsistent with the General Plan as a whole even where the proposed development violates only one policy in the general plan. *See San Bernardino Valley Audubon Soc'y v. County of San Bernardino* (1984) 155 Cal. App. 3d 738, 753; *see also Families Unafraid*, 62 Cal. App. 4th at 1341.

a. The Project Violates Applicable General Plan Policies

Hillside and Watershed Protection Policy #1 states "[p]lans for development shall minimize cut and fill operations." The Project proposes 700 cubic yards of cut and 7,600 cubic yards of fill, 6,900 of which will be imported from offsite. This is an excessively large amount of grading for a less-than-three-acre site, and therefore the Project does not comply with this policy. The MND states, "the relatively large quantity of fill is required to level the site as the parcel currently contains a large, informal drainage basin." P. 20. The MND does not disclose whether the Project could be modified (e.g. include fewer homes) to avoid filling in the drainage and thus avoid this policy inconsistency.

Hillside and Watershed Protection Policy #2 states, "All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum." As stated above, the Project will fill-in the large informal drainage basin located on the site. As such, the development is not designed to fit the site topography or hydrology. Discussed in the context of potentially significant environmental impacts, the project site provides an essential drainage and flood control function that will be compromised if not lost by the proposed development. The Project squarely conflicts with this important policy.

Hillside and Watershed Protection Policy #2 states, “[p]rovisions shall be made to conduct surface water to storm drains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development. Water runoff shall be retained onsite whenever possible to facilitate groundwater recharge.” Here, an existing drainage feature collects surface water, retaining it onsite to facilitate groundwater recharge. The Project proposes filling in this drainage feature, paving it over and building homes a-top it, providing only several small drainage-ways designed to accommodate only a 25-year storm event. The Project is not designed in a manner that complies with this policy.

Visual Resources Policy #3 states “new structures shall be in conformance with the scale and character of the existing Community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.” As stated in numerous public comments and evidenced by the project plans, this project does not conform to the character of the existing community. The Project places 14 homes in under 3 acres, aligned in a slightly curved row, with minimal spacing between them. Development in the immediate vicinity is comprised of larger homes, on larger parcels, with more open space between the homes. *See Exhibit 1.* A densely packed row of homes along one portion of the golf course’s edge will be out of character and violates Visual Resources Policy #3.

b. The Project Violates the General Plan as a Whole

In this case, numerous General Plan policies would be violated if the proposed development were constructed. The Project involves the major reconfiguration of existing drainage features, which affects the area’s hydrology and creates a significant flood hazard. Replacing a large drainage with a several small retention basins will not provide the same level of flood protection, and may reduce groundwater recharge, increase erosion, and otherwise detrimentally alter the site’s hydrology. Discussed above, numerous General Plan policies are violated by this dramatic re-engineering of the site. These policies protect the geology, hydrology and environmental integrity of lands within the County—the numerous violations of these significant policies clearly show that the Project is inconsistent with the General Plan as a whole. Discussed above, the Project also violates other significant General Plan policies designed to protect the environment and neighborhood character. This further adds to the Project’s inconsistency with the General Plan. Given these numerous instances of facial inconsistency between the project and applicable General Plan policies, it would be an abuse of the Board’s discretion to approve this project as proposed.

2. The Board Cannot Approve the Stoker Project without an EIR

CEQA establishes a low threshold for the preparation of an EIR, “which reflects a preference for resolving doubts in favor of environmental review.” *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal. App. 4th 689, 703. Accordingly, the lead agency must prepare an

EIR, as opposed to a Negative Declaration or Mitigated Negative Declaration, whenever substantial evidence in the record supports a “fair argument” that the Project may have significant environmental impacts, even where substantial evidence also supports the opposite conclusion. *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75. “[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” Guidelines § 12080 (e)(1). Here, substantial evidence in the record supports a fair argument that the Stoker Residential Project may have significant environmental impacts; as such, the County must prepare an EIR in order to comply with CEQA. *See Id.*

a. Potentially Significant Land Use Impacts

Insofar as it proposes a high-density residential development on land designated Recreation/Open Space, this project causes significant impacts related to land-use conflicts. In response to comments objecting to the proposed change in land use from Recreation/Open Space to Residential, the MND states, “the proposed development of new residences (in a style and density consistent with the surrounding community) is preferable to the potential development of incompatible land uses allowed in the REC zone district.” P. 2. This response ignores the fact that higher-density recreational uses are compatible with the land use designation where as residential uses are not. The response to comment and the MND’s discussion of land use impacts reveals a fundamental misunderstanding of the nature of land use conflicts, and of the particular concerns raised by the public in the context of this specific case. An EIR must be prepared to evaluate the significant land use impacts of this Project.

Additionally, conflicts with applicable policies designed at least in part to mitigate or avoid environmental effects are considered significant impacts under CEQA, requiring the preparation of an EIR. MND, p. 24; CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 934, 936. (EIR required where petitioner demonstrated substantial evidence supporting a fair argument that the Project conflicted with land use policy that was “adopted for the purpose of avoiding or mitigation an environmental effect”). Here, there is substantial evidence supporting a fair argument that the Stoker Project violates the General Plan policies discussed above. For this reason an EIR must be prepared for the Project. *Id.*

b. Potentially Significant Impacts to Biological Resources

The Project site is located between a large open space area and a large golf course. Wildlife including Coast Range Black-tailed Deer uses the Project site as a corridor to pass from the open space area to the golf course. MND p. 3.

During the County Biologist’s investigation of the site, substantial evidence was discovered (i.e. hoof tracks and game trails) indicating that local populations of deer are

traveling across the project site to pass between the open space to the north and the golf course to the south.

Id.

The MND contends that there are “at least two other locations (besides the project site) in Vandenberg Village where deer and other animals can still enter and exit the golf course.” *Id.* Upon viewing an aerial photo it is abundantly clear that the golf course is nearly completely blocked off to wildlife. *See Exhibit 2.* The two openings referred to in the MND are small and much more difficult to access. Wildlife would need to pass down narrow strips of open space between rows of homes, near more roadways to access the other ‘openings’. The Stoker property appears to be the most direct and easily accessible wildlife corridor through to the golf course.

The MND contends that it is not necessary for deer to access the golf course for water, because

[w]hile the golf course pond may serve as a convenient source of water for the local deer population, maintaining access to this body is not imperative. A series of natural ponds are located within the Burton Mesa Preserve approximately 4000 feet south of the project site. Local deer populations can easily revert to the use of this system of natural ponds as a source for drinking water.

P. 3.

Not only does the MND provide no evidence whatsoever for this proposition, but it also provides no evidence that the natural ponds have sufficient water, or water year-round, in order to satisfy the needs of the local deer population. Moreover the golf course pond is large and kept full year-round, making it particularly valuable during drought conditions. Closing off the last remaining easily accessible wildlife corridor between Burton Mesa and the Village Golf Course, with no evidence that the deer will not be harmed by this closure is a potentially significant impact which must be analyzed in an EIR.

c. Potentially Significant Impacts to Visual Resources

A Project may have a significant impact to visual resources where it changes the visual character of an area and/or includes visually incompatible structures. MND p. 8; County Environmental Thresholds and Guidelines Manual, p. 180. “As on other CEQA topics, the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic.” *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 937 (citing *Ocean View Estates Homeowners Association v. Montecito Water District* 116 Cal.App.4th at 402.) In *Pocket Protectors* the court found that the opinions of area residents including that the

project included “excessive massing of housing with insufficient front, rear, and side yard setbacks” sufficed “to raise the potential of a significant aesthetic impact from the proposed project.” *Ocean View Estates* established that impacts to private views must be considered in the environmental review process.

The proposed residential development project includes closely packed two story homes, which one commenter likens to Orange County development. Waldon Letter, MND p. 64. Another public comment letter submitted by two individuals specifically states that the project is not compatible with existing homes in the area due to the denser zoning, and stating that “existing single homes in the area are on one half acre or more lots.” Hedrick Letter, MND p. 66. Site plans evince the extraordinary density proposed for a very small lot. See MND Attachment B. The other homes in the immediate area are not so closely packed and appear to be on much larger lots. See Exhibit 1. The apparent visual incompatibility, together with observations of area residents that the proposed development would be visually inconsistent with the surrounding area, constitutes substantial evidence supporting a fair argument that the Project may have significant visual resources, requiring analysis in an EIR.

The obstruction of any scenic vista or view open to the public is also a potentially significant visual impact that must be evaluated in an EIR. MND p. 8; County Environmental Thresholds and Guidelines Manual, p. 180; see *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal. App. 4th 1597. The Village Golf Course submitted a comment letter stating that the project and the two-story homes proposed would impair existing views. MND p. 61. Indeed members of the public utilize the golf course and can see Burton Preserve through the Project site. The project site in fact appears to be the only view corridor from the golf course to Burton Preserve. The obstruction of public views is also a potentially significant impact of the Stoker Project that must be evaluated in the EIR.

Similarly, the Project will adversely affect views of the existing private residences of the open space features on the Project parcel as well as across the Project parcel onto surrounding open space lands, including the Golf Course. Impacts to private views can constitute a significant impact under CEQA. *Ocean View Estates, supra*, 116 Cal.App.4th at 402.

d. Potentially Significant Impacts to Water Resources/Flooding

The Project site is located on a floodway and its large drainage basin functions to retain water during storm events.

Currently the proposed project site contains an informal retention basin which is fed by two underground drainage pipes extending from the vacant land to the north under Oakhill Drive and terminating on the project site....the basin has continued to retain small storm events, however, when larger storm events occur, stormwater overflows a concrete spillway located on the southeast corner of the project site and sheet flows

across the golf course fairway. After flooding across the fairway, the excess stormwater re-enters a concrete drainage that travels further south into the golf course. Stormwater re-enters a concrete drainage that travels further south into the golf course. As designed the project would result in the complete removal of this existing retention basin.

MND P. 2

The “improvement” incorporated into the project to “minimize periodic flooding of the fairway”, as described, is not sufficient to mitigate the loss of the site’s existing flood control features. *See Id.* The additional “smaller, vegetated retention basins” that would be constructed behind each residence are only capable of withstanding a 25-year storm event, and do not begin to compensate in terms of size and retention capabilities of the existing drainage on the site. Removal of this significant hydrological and flood control feature jeopardizes the golf course and nearby homes. CEQA requires an EIR to evaluate potentially significant impacts related to flooding and hydrology.

There can be little dispute that the record reflects substantial evidence supporting a fair argument that this project may cause a significant environmental impact due to its inconsistency with adopted local land use and General Plan policies intended to protect the environmental values affected by the Project, as well as from direct and cumulative Project impacts to visual, biological, water resources and flooding. CEQA imposes a “low threshold” for preparation of an EIR in this instance, and it is evident that information in the record easily meets this standard. The Board may not approve this Project without first preparing an EIR.

3. Failure to Adopt an Open Space Action Program as Required by State Law

The County is experiencing a rapid increase in the rate and amount of development and conversion of open space and rural lands. Once developed, open space lands are rarely re-created. The Stoker Project is a key example of the conversion of open space land to residential use. Unfortunately, the County has failed to maintain the currency and adequacy of the open space element of our General Plan, such that it no longer provides guidance for the preservation of open space lands and there are no objective standards to determine that development decisions conform to the open space element and the mandatory action program.

California law states: “in order to assure that the interests of all its people are met in the orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands. Government Code § 65561(d)(emphasis added). The purposes of the open space action program is “[t]o assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program.” Government Code § 65562(b).

Government Code § 65564 establishes that “Every local open-space plan **shall contain an action program consisting of specific programs which the legislative body intends to pursue in implementing its open-space plan**” (emphasis added).

The open space element is antiquated and lacks an action plan. As such, it is desperately in need of revision to reflect current conditions, to articulate the County’s goals and policies concerning the presentation, management and development of open space lands, and to identify those specific programs the County intends to pursue to implement its open space plan.

Government Code § 65566 provides that “Any action by a county or city by which open-space land or any interest therein is acquired or disposed of or its use restricted or regulated, whether or not pursuant to this part, **must be consistent with the local open-space plan**” (emphasis added). Government Code § 65567 dictates that “**No building permit may be issued, no subdivision map approved, and no open-space zoning ordinance adopted, unless the proposed construction, subdivision or ordinance is consistent with the local open-space plan**” (emphasis added).

The above-quoted provisions establish that the County has an on-going duty to maintain its open space element and to adopt and implement a unified open space action program. There is no apparent County open space action program and the open space element is vague and devoid of standards. The failure of the County to maintain an adequate open space element and action program potentially jeopardizes every entitlement granted, but more importantly, results in missed opportunities to protect and preserve open space land. The Board may not consider approval of this or any Project affecting County open space resources unless and until it adopts an adequate open space-plan.

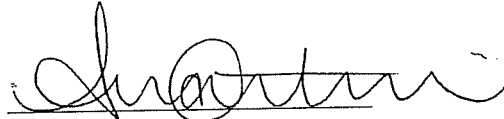
4. Mandatory Findings of Consistency with the Open Space Element and Action Plan Are Improperly Omitted and In Any Case Cannot Be Made

To the extent that any such local open space plan exists, no findings are proposed for the Stoker Project regarding its consistency with the local open-space plan as required by Government Code §§ 65566 and 65567. Nor could any such findings be made, as the Open Space Element refers to recreationally zoned lands as protected open space. The Board may not consider approval of this Project unless and until it makes a fact-based determination and legally adequate findings that the Project is consistent with the Open Space Element and open space plan.

In light of the above-stated objections, SBCAN contends that the County may not legally approve this project. As noted by the Planning Commission, approval of this Project is not appropriate for a variety of reasons. We respectfully request that the Board deny this Project.

Sincerely,

LAW OFFICE OF MARC CHYTILO

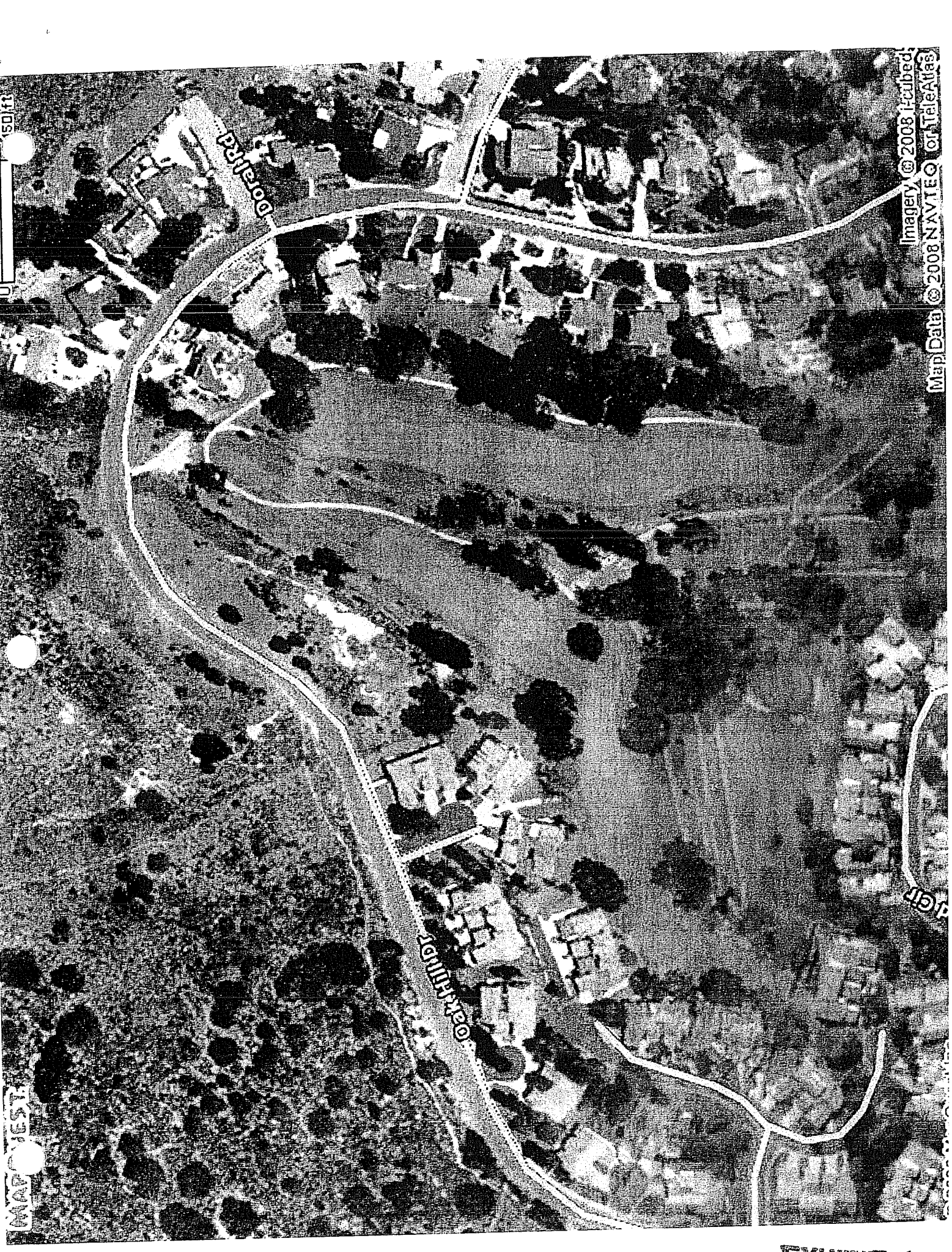


Ana Citrin

- Exhibit 1: Aerial photo of the project area including nearby homes, mapquest.com
- Exhibit 2: Aerial photo of the Village Golf Course, mapquest.com

MAPQUEST

150 ft



Imagery © 2008 i-cubed
Map Data © 2008 NAVTEQ or TeleAtlas

MARQUEST

600 ft



Village Country Club

Village Country Club

Vandenbergh Village

Alcor Ave

Mizap Rd

Ridge Ave

Vandenbergh

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EXHIBIT 7