Supplemental Memo

Meeting Date: November 18, 2014

To: Board of Supervisors

From: Department of Planning and Development

Subject: Supplemental Memo regarding (a) modification to proposed Boulder Ridge fitness and swim facility and (b) response to correspondences received from Camas Steinmetz and environmental organizations regarding the proposed Boulder Ridge swim and fitness facility and associated Zoning Ordinance Amendment

RECOMMENDED ACTION

As previously stated in the June 10, 2014 staff report, staff recommends the Board to consider the Major Modification of Use Permit, Architecture and Site Approval and Grading to construct a fitness and swim facilities at Boulder Ridge Golf Club and a minor expansion of the existing maintenance facility, and Zoning Ordinance Amendment to clarify the types of related uses allowed at golf courses. (County File No. 2195-13P-13A-13G)

i. Open public hearing
ii. Close public hearing
iii. Adopt Resolution certifying the final Environmental Impact Report for the Zoning Ordinance Amendment and Major Modification of Use Permit, Architecture and Site Approval and Grading
iv. Adopt Ordinance amending Section 2.10.040 and 4.10.040 of the County Zoning Ordinance to identify swimming pools, tennis courts and fitness facilities as related uses allowed within Golf Course and Country Clubs, with limitations on size and intensity.
v. Adopt Resolution approving the proposed Major Modification of Use Permit, with ASA and Grading for the Boulder Ridge Fitness and Swim Facilities project, subject to conditions outlined in the conditions of approval.

SUMMARY

On June 10, 2014, the Board of Supervisors continued the public hearing on the proposed Boulder Ridge Swim and Fitness facility to August 26, 2014. Subsequently, the applicant requested the item to be further continued to October 7, 2014, November 4, 2014 and November 18, 2014.

This supplemental memo is intended to update the Board regarding recent modifications to the proposed swim and fitness facility and to respond to correspondence received from neighborhood and environmental groups regarding the proposal. This supplemental memo provides the following information and analysis:

1. Revisions to proposed Boulder Ridge fitness and swim facility (Attachment 1)
2. Modified analysis of conformance with Zoning Ordinance and General Plan based on project revisions.
3. Modified CEQA analysis based on project revisions.
5. Response to August 26, 2014 letter from Santa Clara Valley Audobon Society, Greenbelt Alliance, Committee for Green Foothills, Loma Prieta Chapter, Sierra Club, People for Livable and Affordable Neighborhoods, California Native Plant Society, Santa Clara Valley Chapter (Attachment 4).

1. **Revisions to Boulder Ridge Swim and Fitness Facility**

In concurrence with continuance of the August 26, 2014 Board hearing, the applicant indicated an intent to revise the design of the proposed fitness and swim facility to reduce its size to create less visual appearance from the Almaden valley floor.

In September 2014, the applicant submitted to the Planning Department a revised design of the proposed project that includes a reduction of the overall building footprint for the proposed fitness facility, from approximately 20,000 s.f. to approximately 14,500 s.f.. The revision is of a reduction of approximately 26% from the original proposal (Attachment 1). The revised project separates functions previously included within the one 20,000 s.f. building into three smaller buildings: a main fitness building of 12,443 s.f., a pool shower building of 517 s.f., and a group exercise building of 1,705 s.f..
The main fitness building has been reduced from the previous three-story design down to two-story (main level and pool level) building. The building pad area supporting the three buildings, the 25-yard pool and pool deck has been lowered approximately eight to ten feet from the previous design to further minimize visual appearance as seen from the Almaden valley floor. Although the overall area of the proposed fitness facility is reduced approximately 5,500 s.f. in size, the number of parking spaces (total of additional 61 spaces to be installed), septic system, leach field and erosion control and storm drain measures will not change. Since the revised design further lowers the proposed building pad, pool and the pool deck into the existing natural ground onsite, approximately 6,430 cubic yards of cut will be excavated from the building area. The additional excess in cut will be used to re-contour the existing driving range, adjacent to the new septic system leach field as shown on sheet C 1.0 and C 5.0 of the revised plans (Attachment 1).

In the previous design, the proposed 20,000 s.f. fitness center was classified as a Tier 3 ("very large") building (> 12,500 s.f.) under the County’s Viewshed Ordinance (Section 3.20.040(A)(2) of the Zoning Ordinance). With the revised design, the main fitness building is approximately 12,443 s.f., and is re-classified as a Tier 2 building, a category for smaller buildings than Tier 3. Additional analysis on how the revised design conforms to the findings for all Tier 2 buildings is provided below. The following chart summarizes the two proposed designs:

<table>
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<tbody>
<tr>
<td><strong>Total Building Area</strong></td>
<td>14,665 s.f.</td>
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<tr>
<td></td>
<td>Approx. 20,000 s.f.</td>
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<tr>
<td><strong>Number of Building(s)</strong></td>
<td>Three</td>
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<tr>
<td></td>
<td>One</td>
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<tr>
<td><strong>Height</strong></td>
<td>Avg. 33-feet</td>
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<td></td>
<td>Avg. 35-feet</td>
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<tr>
<td><strong>Number of Story</strong></td>
<td>Two</td>
</tr>
<tr>
<td></td>
<td>Three</td>
</tr>
<tr>
<td><strong>Additional parking</strong></td>
<td>61 spaces</td>
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<td></td>
<td>61 spaces</td>
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<tr>
<td><strong>Grading</strong></td>
<td>7,500 c.y. cut, 7,500 c.y. fill (15,000 c.y. total)</td>
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2. **Modified analysis of conformance with Zoning Ordinance and General Plan based on project revisions.**

The June 10, 2014 staff report explains how the previous proposed project (20,000 s.f. fitness and swim facility) conforms to necessary Zoning Ordinance findings and General Plan policies.
Included here is modified analysis of the project's conformance with these findings and policies, based on the revisions to the project. The revised design will drop the building area and height reduces the scale and intensity of the proposal. Therefore, much of the previous analysis does not change. The revised design is in full conformance with the required use permit, architecture and site approval findings and general plan policies, specifically General Plan Policy R-LU 25 requiring that any non-residential development allowed in the Hillsides area shall be of a generally low density or low intensity nature.

Reducing the original design of one 20,000 s.f. fitness building to three smaller separate buildings with different functions will further reduce the overall intensity of the fitness and swim facility. The overall reduction in size results in less showers stalls and locker areas in men’s and women’s locker rooms, smaller fitness equipment areas and less storage space (Attachment 1).

**Viewshed (-dl) Design Review District findings**

As previously stated, the original design of one 20,000 s.f. fitness center was classified as a Tier 3 building per the County’s Santa Clara Valley Viewshed Ordinance (Zoning Ordinance Section 3.20.040(A)(3)). This ordinance is intended to minimize the visual appearance of new buildings within the hillsides visible from the Santa Clara Valley floor. Under the Ordinance, the County is required to make findings regarding Tier 3 buildings (buildings over 12,500 s.f. in size), concluding that the building has been sited and designed to minimize its visibility from the valley floor.

With the revised design, the proposed fitness center is classified as a Tier 2 building, as the main building is less than 12,500 s.f..

All Tier 2 buildings are subject to the following findings in accordance with Section 3.20.040(A)(2) of the Zoning Ordinance:

- **Design Review Required.** A building or structure classified under Tier 2 shall be subject to design review, per Chapter 5.50, and will not be eligible for a discretionary exemption or administrative design review approval except when subsection G, Exemption for Sites Not Visible, applies.

- **Siting.** A Tier 2 category building should, to the extent possible and practical, be sited where natural topography, or a combination of topography and existing vegetation, provide at least a fundamental and sufficient measure of visibility mitigation.

- **Story Poles.** Story poles shall be required of all new buildings subject to Tier 2 design review. Story poles shall be fully erected, per the County's story poles standards, and approved by the Zoning Administrator.
The proposed project, with the revised design, meets the Tier 2 findings as the proposed location is sited where natural topography and existing vegetation provide a fundamental and sufficient measure of visibility reduction to views from the Almaden valley floor. As demonstrated in the updated photo-simulations prepared for the revised design (Attachment 5), the reduced building size and lower height have substantially reduced the building massing and its visibility from the Almaden valley floor.

Story poles of the revised design will be erected seven days prior to the November 18, 2014 meeting. Staff will submit verification at the November 18, 2014 meeting.

Grading findings Per County Code Section C12-433

The revised design to lower the overall building pad, pool and pool deck area results in the excavation of an additional 6,430 cubic yards of cut from the building site. The applicant proposes to use the excess in cut to re-contour the existing on-site driving range. This new padded area is proposed to be located adjacent to the new septic system supporting the fitness and swim facility. The fill will be kept a minimum of 10-feet setback from any septic system(s) per standards stipulated through Department of Environmental Health.

The staff report prepared for the June 10, 2014 Board meeting analyzed how the previous proposal satisfies the required findings by the County to approve grading projects. As the revised design has resulted in a modification of the grading plans, an updated analysis of the proposed project's conformance with the required grading findings per Section C12-433 is included below. Staff has concluded that the revised project remains in conformance with the required Grading Findings. The Grading findings per Section C12-433 and revised conformance analysis are listed below. Facts supporting each finding are shown in *italics*.

(a) The amount, design, location, and the nature of any proposed grading is necessary to establish or maintain a use presently permitted by law on the property.

*A total of 15,000 cubic yard (c.y.) of grading are associated with the proposed project. Estimated quantities of 7,500 c.y. of cut and 7,500 c.y. of fill are associated with the proposed project to establish the fitness buildings, two swimming pools, additional parking spaces, landscape area, pool patio, maintenance yard expansion, a padded flat area adjacent to the storage yard, a stock pile and re-contouring the existing driving range. The building pad excavation requires a 2,500 c.y. cut (a 600 c.y. increase from the previous design). In order to maintain the pool and pool decking at the same elevation as the fitness center, a 3,800 c.y. of cut is required, (a 2,000 c.y.in cut increase from the previous design). The total difference in grading quantities resulted from the revised design generates an additional 2,600 c.y. of cut which will be used to re-contour the on-site driving range; a use presently permitted on*
the property. A summary explaining various grading quantities is shown on Sheet C3.0 (Attachment 1). Establishment of a related fitness center and re-contouring an existing golf course are permissible uses for an approved Golf Course and Country Club in the HS zoning district.

(b) The grading will not endanger public and/or private property, endanger public health and safety, will not result in excessive deposition of debris or soil sediments on any public right-of-way, or impair any spring or existing watercourse.

*Proposed grading associated with the project will not endanger public or private property. An approximately 400 c.y. of fill will be placed to create a flat area and a stockpile to the west of the maintenance yard for additional storage. In addition, approximately 6,430 c.y. of fill will be used to re-contour the existing golf driving range. Through submittal and conformance to a Department of Planning and Development erosion and sediment control plan, proposed padded and cut areas will not result in excessive deposition of debris or soil sediments on any public right-of-way, or create impact on any watercourse. The additional fill to be used to reconfigure the existing driving range will be conditioned to maintain a minimum of 10-feet setback to any new or existing septic system(s) and leach field(s).*

No creeks or natural drainages will be impacted by the proposed grading and no areas are subject to flood risk.

(c) Grading will minimize impacts to the natural landscape, scenic, biological and aquatic resources, and minimize erosion impacts.

*The proposed grading has been designed to contour into the natural topography, to minimize impacts to existing landscape and will not have any impact to biological resources. The proposed padded area adjacent to the storage yard is proposed approximately 200 feet to the east of the existing pond where no additional erosion impact will be created. The existing driving range area that is to be reconfigured is not near any known creek and will not create any erosion impacts by conforming to required Best Management Practices reflected in an approved erosion and sediment control plan. Further, there will be no significant / visual impacts caused by re-contouring the existing driving range. The proposed fill to re-contour the existing driving range will blend into the existing golf course topography.*

(d) For grading associated with a new building or development site, the subject site shall be one that minimizes grading in comparison with other available development sites, taking into consideration other development constraints and regulations applicable to the project.
The proposed Fitness and Swim facility is located at the existing golf practice green area and the proposed storage expansion is an extension of the existing facility on a flat area. In order to further lower the building pad and the surrounding pool and pool deck from the previous design, an additional 2,500 c.y. of cut will be excavated from the building site (previous design estimates 3,800 c.y. of cut to establish the building and the pool deck while the revision estimates 6,300 c.y. of cut). The location of the proposed building, the storage yard expansion and the driving range reconfiguration are at a flatter topography on the golf course property than other possible building sites, minimizing the need for extensive grading to create a building pad.

(e) Grading and associated improvements will conform to the natural terrain and existing topography of the site as much as possible, and should not create a significant visual scar.

The proposed grading is designed to conform with natural terrain and existing topography to the maximum extent possible, to minimize grading and visual impacts. The siting of the proposed Fitness and Swim facility is not visible to the broader Santa Clara valley floor but can be seen from the Almaden valley floor, which is an extension of the Santa Clara valley floor. With the lower revised design, the proposed building will be less visible to the Almaden Valley floor. Specific exterior color, lighting, and additional landscaping, imposed as required conditions of approval, will further mitigate visual impacts created by the proposed building to the Almaden Valley floor. The additional fill to re-contour the existing driving range will be landscaped to blend with the existing terrain. The maintenance storage yard expansion and the driving range reconfiguration will not create any visual impact to the Santa Clara or Almaden Valley floors.

(f) Grading conforms with any applicable general plan or specific plan policies; and

The proposed grading cut is designed to follow the natural terrain in the vicinity of the fitness center as evidenced by the proposed building plans and grading plan finish cut contours. The cut is necessary to reduce visual impacts from hillside development in keeping with General Plan policy R-GD 22- 36. The fill location and finished contours in the driving range area will blend with the surrounding terrain and driving range design. The proposed grading will not detract from the natural resources and the hillside characteristics.

(g) Grading substantially conforms with the adopted "Guidelines for Grading and Hillside Development" and other applicable guidelines adopted by the County.
The proposed grading for the revised design is in conformance with the adopted “Guidelines for Grading and Hillside Development” that Guidelines 1, 3 & 4 relates to Siting area adhered to. The siting of the proposed Fitness and Swim facility is located on the existing golf putting green which contains a gentle slope and the proposed location does not encroach into any sensitive biological or cultural resources. Also, the location of the proposed Fitness and Swim facility is in close proximity to the existing clubhouse so that no extensive grading is proposed to alter the existing terrain.

Guidelines related to Road Design (Guidelines 5 through 9) are applied to the proposed grading where minimal improvement is proposed on the existing road and / or driveway.

Moreover, the proposed grading related to the Fitness and Swim facility, the storage yard expansion and driving range reconfiguration is neither located at steep hillside areas nor requires major re-contouring of the natural terrain. Guidelines 10 through 12 related to Building form and Design and Land for Grading are adhered to as well.

In sum, the proposed grading associated with the revised design to construct the Fitness and Swim facility and re-contouring of the driving range area is in full conformance with the required Grading findings.

Proposed Zoning Ordinance Amendment

In the June 10, 2014 staff report, staff evaluated how the proposed fitness center meets the required findings to be classified as a related use to the existing golf and country club. The revised design to reduce the overall building area of the fitness facility, lower the overall building height and remove the third-floor from the original design, will reduce the size and scale of the facility further demonstrating that the proposed fitness and swim facility is of a low intensity use that acts as a related use to the existing golf and country club per the proposed zoning ordinance Section 2.10.040 and Section 4.10.040.

3. Modified CEQA analysis based on project revisions.

In conformance with the California Environmental Quality Act (CEQA), a draft and final Environmental Impact Report (EIR) was prepared and published by County staff to evaluate the potential environmental impacts from the project as originally proposed, including the previous design for a 20,000 square foot fitness facility and associated improvements. Acknowledging the change in the proposed design of the fitness center and modification to the grading plans, staff has prepared a first amendment to the Final EIR evaluating if these changes could result in any new environmental impacts or changes to the analysis and conclusions within the EIR. This amendment determines that the modifications to the proposed project do
not substantially change the environmental analysis within the Final EIR and no additional environmental review is required, necessitating a recirculation of the EIR. Detailed analysis demonstrating how re-circulation of the EIR is not necessary is provided under “Environmental Analysis of Project Revisions” in the Amendment. Overall, the revised design will further minimize potential visual impacts from the building and will not generate any additional visual, traffic or noise impacts. The reduction in size of the fitness facility will result in a building that is similar in nature to the “Reduced Scale Alternative” evaluated within the EIR. This “Reduced Scale Alternative” evaluated the construction of the main fitness building of less than 12,500 square feet in size and the Draft EIR determined that this alternative was the Environmentally Superior Alternative as part of the EIR analysis. It should be noted that in the revised project, the main fitness building has been reconfigured as a two-story main building of 12,442 square feet, (which is also less than 12,500) and two smaller single-story buildings of 1,705 square feet (group fitness building) and 571 square feet (pool/show building). Therefore, the revised project is roughly is equivalent to the Reduced Building Size Alternative evaluated in the Draft EIR.

4. Response to July 22 and August 18, 2014 Letter from Camas J. Steinmetz

Two letters were received from legal counsel representing the Graystone of Almaden Neighborhood Association and Almaden Hills Estates Homeowner Association (collectively referred to hereafter as “the neighbors”) regarding the proposed Boulder Ridge fitness facility. This includes a letter dated July 22, 2014 (addressed to Elizabeth G. Pianca) (Attachment 2) and a letter dated August 18, 2014 (addressed to the Board of Supervisors) (Attachment 3). A summary of the concerns raised within each letter are shown below in italics, followed by staff response

July 22, 2014 Letter (addressed to Elizabeth G. Pianca, Deputy County Counsel) (Attachment 2)

This letter addresses the current applicability of Condition #3 to Boulder Ridge Golf Course and the proposed fitness center and swim facilities. Condition #3 was adopted by the Board of Supervisors when approving the Use Permit to construct Boulder Ridge Golf Club in 1994. The letter states that Condition #3 is still in effect and no future development can be approved unless a General Plan and Zoning Ordinance amendment is approved.

The staff report submitted to the Board for the June 10, 2014 public hearing provides background and analysis regarding the applicability of previous findings and conditions (including Condition #3) to the proposed project. (See pg. 23 of the August 26, 2014 BOS staff report.) The staff report concludes that the 1997 settlement agreement ending lawsuits involving the owner, neighbors, and County, and specifically addressing the future
development of the property, superseded the prior findings and related conditions placed on the Boulder Ridge Golf Club in a resolution adopted by the Board in 1994. A copy of the 1994 Resolution is attached as Attachment 7 and a copy of the 1997 settlement agreement is attached as Attachment 8.

The July 22, 2014 letter takes the position “that Condition No. 3 of the 1994 Resolution is still in effect and has not been superseded, amended, replaced, terminated or revoked. As such, the additional athletic facility and competition swimming pool uses now proposed at the Golf Club (referred to herein sometimes as “the project”) cannot be approved unless a General Plan Amendment – in addition to a modification of the Use Permit and a change in the property’s zoning designation – is also obtained.” (Attachment 2, pg. 1.)

Condition No. 3 of the 1994 Resolution adopted by the Board states:

“As and for a further condition of the permit, consistent with the finding of this Board of Supervisors that this project maximizes the development potential of the site under existing General Plan and Zoning designation, the construction of homes, overnight accommodations, the expansion of the club house or other facilities, or the introduction of new uses on the property, such as pools, tennis courts, or any other uses permitted with the Hillside zoning district shall be prohibited. (Attachment 2, Pg. 8.)”

Condition No. 3 incorporates a finding made earlier in the 1994 Resolution. This earlier finding states:

“The Golf Club at Boulder Ridge, as proposed, represents the maximum development allowable under the Hillside Zoning District, and any incremental expansion or increase in use or intensity, would be inconsistent with the Hillside General Plan designation of the project, as well as the County Zoning Ordinance, and, therefore, could not be permitted, absent a General Plan Amendment and zoning amendment. Any such proposal would require the written approval of the City of San Jose, or waiver of its rights thereto. (Attachment 2, Pg. 3.)”

1 The proposed use permit modification does not require written approval of the City of San Jose. The project property is outside the City’s urban service area and no referral for General Plan conformance is required pursuant to the County’s Zoning Ordinance. (Zoning Ordinance, § 5.20.060.) The proposed zoning ordinance amendment to clarify the types of related uses allowed at golf courses is not a substantive amendment to the County’s Zoning Ordinance which would significantly affect the consistency between the County land use policies and City development standards.
As stated above, staff has determined that the terms of the 1997 Settlement agreement between the County, Boulder Ridge, and the neighborhood groups, superseded these conditions. Notwithstanding the application of the 1997 Settlement Agreement (Attachment 7 & 8) if the Board determines that Condition No. 3 still applies to the Boulder Ridge facility, it does not restrict the ability of the Board to modify or delete Condition No. 3 as part of its consideration of the project.

In order to allow for this option, the proposed conditions of approval for the use permit have been revised since consideration by the Planning Commission to make clear that the new Use Permit conditions, if adopted by the Board, will supersede any prior conditions approved for the Golf Club, including Condition No. 3. The updated conditions of approval are attached as Attachment 9.

Letter dated August 18, 2014 (addressed to the Board of Supervisors) (Attachment 3)

The August 18, 2014 letter from legal counsel for the neighbors addresses the inconsistency of the proposed health and fitness center at Boulder Ridge with the required findings to approve Use Permit and Zoning Ordinance Amendment, including failure of the project to conform to the County General Plan and Zoning Ordinance. The letter also points out that the approval of the project would violate CEQA. Staff responses to points raised in the letter are listed below following a summary of the point raised.

A) The Proposed Use is Inconsistent with the General Plan and Zoning Ordinance (pg.2-7).

This comment states that the proposed fitness center neither conforms to the required findings in approving the Use Permit nor is consistent with specific General Plan policies. The letter takes the position that the proposed fitness center will not be an ancillary use of the existing Boulder Ridge Golf Club; rather it would become a separate independent use.

The proposed fitness center is consistent with General Plan polices because it qualifies as a related use to the existing golf course and country club, which is an allowed primary use in the Hillside General Plan designation. The fitness center would not be allowed as a stand-alone use, in the same way a residential garage is impermissible on a single-family parcel without the primary residential dwelling. Consideration of the appropriate size, scale and intensity of the fitness and swim facilities is required by Zoning Ordinance section 5.65.040(B)(2) which states: "[t]he size, design and intensity of any related use shall be of an appropriate scale to the size of the golf course and country club development." (Zoning Ordinance, § 5.65.040(B)(2).
The proposed development area for the fitness and swim facility is about two acres in size which includes three buildings totaling 14,665 s.f. in size, a 25-yard, six-lane swimming pool, a children’s instructional pool, and associated improvements. In comparison with the total size of the Boulder Ridge golf club, this facility encompasses 1% of the total property (2 acres to 200 acres).

Existing golf and country club improvements on the 200 acre property includes a 19,000 s.f. clubhouse, a 4,200 s.f. reception facility and a 15,000 s.f. cart and maintenance building; totaling 38,200 s.f. of building area. The proposed fitness and swim facility building is approximately 5,000 sq. ft. smaller than the golf clubhouse. The ratio of the proposed fitness building square footage to the total square footage of all other structures on the property is 14,665 s.f. to 38,200 s.f., or approximately 38%.

Based on these relative size and scale parameters, and specifically considering the reduced building area within the revised proposed design, staff believes the size and scale for the proposed fitness and swim facilities are appropriate in relation to the overall golf course and club development.

Proposed construction will occur adjacent to the existing clubhouse in a developed area. The fitness and swim facilities will incorporate color, design features, façade materials and the characteristics of the existing clubhouse. The location and design of the fitness and swim facilities as a related use effectively complement and blend with the golf club development as the primary use.

As outlined in the project description submitted by the applicant and in testimony provided by the applicant to the Planning Commission, users of the fitness and swim facilities must be current golf, social or corporate members of the Boulder Ridge Country Club.

Therefore, staff believes the proposed fitness and swim facility does qualify as a related use to the existing golf course and country club and thus is consistent with the County’s General Plan and Zoning Ordinance. The Board, however, has discretion to consider alternative designs and sizes. A required supplemental finding for approval of uses related to the golf club is “[t]he size, design and intensity of any related use shall be of an appropriate scale to the size of the golf course and country club development.” (Zoning Ordinance, § 5.65.040.B.2).

B) The Project Site is Inadequate for the Proposed Use (pg. 7)
This Comment states that the proposed Boulder Ridge Health and Fitness Center does not comply with County Use Permit Findings that require that a site is adequate in size and shape to accommodate a proposed use, including buffers between the proposed fitness annex and surrounding areas. The comment states that the project will not comply with adopted noise standards due to an “amphitheater” effect and the noise reflectivity of concrete surfaces in the swimming pool area, and references noise impacts to residences from the swim meets. The response does not provide any evidence supporting the “amphitheater” effect of noise reflectivity from the swimming pool area.

As identified in the Draft EIR prepared for the project, construction and operation of the swim facility will comply with applicable noise standards, including those for both the City of San Jose and County of Santa Clara. The noise analysis (conducted by a qualified acoustical consultant retained by the County) prepared for the EIR considered all potential acoustical factors that could affect noise exposure, including the additional concrete surfaces at the facility and any “amphitheater” effect.

The closest residence to the proposed swimming pool is approximately 1,800 feet (1/3 of a mile) away, downslope from the proposed swim center. According to the noise report, noise exposure to these residences from the six swim events a year (including the starting buzzer and cheering), with the recommended mitigations in place, would be between 20 and 30 decibels (dBA), well below the San Jose and County standard of 55 decibels. As shown in Table 1 of the noise report prepared for the Draft EIR, noise levels of 20 to 30 decibels are similar to “whispering” and “leaves rustling”. As such, the recommended mitigation measures regarding the design of the swim meet starter buzzer and pool orientation as stated in the Draft EIR will ensure that noise exposures at the closest property line meet San Jose noise standards. Such mitigation has been identified in the MMRP and required as part of condition of approval. In an October 15 addendum, the noise consultant confirmed that the revised design of the swim and fitness center will not have a distinguishable effect on noise exposure from the site.

Per these findings, staff believes that the proposed project complies with the referenced County Use Permit Findings regarding appropriate buffers between a use and surrounding areas.

C) The Proposed Use will Impair the Integrity and Character of the Zoning District and Neighborhood (pg. 8-9)

This Comment takes the position that the proposed fitness center will impair the integrity and character of the neighborhood and that the fitness center is not of an appropriate size and scale.
The proposed project is designed of an appropriate size and scale to complement the existing golf club and the operation of the fitness center will not create significant impact to the surrounding neighborhood with its proposed hours of operation and maximum building occupancy as stipulated in the conditions of approval. In addition, the proposed youth swim program will have only six (6) dual meets a year and these will be held on Saturday mornings between 8 am to 12 pm during the summer hours. The anticipated swimmers at these meets are 80. With spectators, parents and others, there might be a maximum of 200 people onsite due to the swim meet.

Contrary to the points stated in the August 18, 2014 letter, swim and tennis clubs, similar to a fitness center, are an allowed primary use in the Hillside zoning district. However, as described under response A) above, a stand-alone health and fitness club is not allowed in the Hillside zoning district.

In sum, as previously stated in the staff report, the proposed fitness center project, as a related use to the golf club, will not impair the character of the surrounding neighborhood.

D) The Proposed Use Will be Detrimental to the Public Health, Safety, and General Welfare (pg. 10-11)

Comments in this section of the letter state that the project will not comply with Use Permit Finding No. 4 (Section 5.65.030 (D) of the County Zoning Ordinance), specifically stating that the project will not have adequate parking or adequate emergency access, will negatively affect water quality, and will worsen traffic and cause excessive noise.

Each of the areas addressed by this comment have been thoroughly evaluated and explained within the June 10, 2014 Board staff report and past Planning Commission staff reports that specifically analyze the consistency of the project with the referenced finding. In addition, the potential for the project to impact the referenced environmental areas was more thoroughly evaluated within the Draft EIR prepared for the project (appendix B of the Draft EIR - initial study). The Draft EIR includes a traffic and parking study prepared by a qualified traffic engineer (Pang Engineers Inc.) that evaluated both average and “peak” parking demand, including the six Saturday mornings proposed for youth swim meets. With the construction of 61 additional spaces for the proposed fitness center and swim facilities, a total of 252 parking spaces will be available onsite. During the six Saturday mornings for youth swim meets, the peak parking demand is estimated to only occupy 75% of these parking spaces. Considering other parking demands onsite (golf, health club, reception center), the parking study estimates that a minimum of 62 parking stalls will be available to accommodate the 200 participants in
the swim meet (including both parents and swimmers). As there is a high ratio of carpooling to swim events (often 3-4 people per car), the provision of 61 additional spaces is expected to be sufficient to accommodate these six events.

Emergency access is adequately provided to the site, both from the main access road to the Golf Course (Old Quarry Road) and an additional secondary access road originating from Crossview court, which is currently used by utility maintenance vehicles. The Fire Marshal's Office has reviewed the project and determined that the existing main driveway into Boulder Ridge provides adequate emergency access.

The project will not adversely affect water quality, specifically with respect to wastewater treatment. The proposed septic system will not conflict with General Plan policy R-RC 12 regarding the over-concentration of septic system. As specified under Condition #48 of the Architectural and Site Approval conditions for the project (Attachment 3 to the Use Permit), the Department of Environmental Health has reviewed the expected amount of wastewater effluent from the fitness facility, the soil profile information where the on-site leachfield is proposed, and determined that there is adequate space and separation to groundwater to support the installation of an onsite wastewater system for the project. Per typical County procedures, final design and location of the septic system will be reviewed during the building permit process.

As referenced under response to Comment B, a noise study was prepared that evaluated noise exposure from the proposed swim meets and consistency with City and County noise standards. This included a determination that noise from the swim meets would meet the San Jose noise standard, which uses a Lmax (maximum single event noise) threshold. The study concluded that operation of the swim meets will be in compliance with the imposed mitigation measures as documented in the MMRP.

A traffic report was prepared for the proposed health and fitness facility that evaluated new traffic that would be generated from operation of the facility and potential impacts on nearby streets and intersections. The traffic report did assume that the swim and fitness center would not operate as a "stand alone" facility and instead provide additional amenities and services to members already traveling to the golf course, minimizing the amount of new traffic generated, as there is not a combined facility of fitness and swim center to an existing golf club in ITE (Institute of Transportation Engineers). However, the report also evaluated the project as a "stand alone" facility and used the ITE trip generation rate to determine a worse-case scenario of potentially new traffic (traffic report prepared by Pang Engineers Inc.). Under this "worse-case
scenario”, new traffic would still generate fewer than 100 peak-hour trips for both weekday usage and weekend swim meets, below traffic screening thresholds. Increases in weekend traffic volumes will not cause congestion at intersections because these intersections are not subject to commuter traffic on weekends and would be operating at high levels of service. County Roads and Airports staff reviewed the submitted traffic report and concurred that the proposed project will not create any significant impact to the surrounding neighborhood.

2. Zoning Amendment Findings Cannot Be Made.

This Comment states that the proposed Zoning Ordinance Amendment regarding the allowance of health and fitness centers as accessory uses to golf and country clubs cannot be approved as it is inconsistent with the General Plan and other parts of the Zoning Ordinance. This comment also states that the proposed health and fitness center at Boulder Ridge cannot be approved because its size and scale are not ancillary to the golf course, and will also create a visual impact.

The proposed zoning ordinance text amendment would allow for swimming pools, tennis courts, and fitness centers at golf courses and country clubs. The intent of the proposed zoning ordinance amendment is to acknowledge that many golf and country clubs have traditionally provided these facilities for members that complement the main golf course use. In addition, recent changes in industry trends for golf clubs indicate a higher demand for onsite fitness facilities (in addition to golf, tennis, and swimming pools) as part of the amenities provided with a country club membership. The County Zoning Ordinance currently allows for “Swim and Tennis Centers” in the Hillsides zoning district (where the Boulder Ridge Golf Club is located), but does not specifically acknowledge these facilities as part of golf and country clubs. Thus, the zoning ordinance amendment is intended to provide better consistency and clarity regarding where these facilities can be located. The proposed zoning ordinance text amendment specifies that the size, design and intensity of these facilities must be of an appropriate scale in proportion to the golf course and country club. As discussed under section “A). The Proposed Use is Inconsistent with the General Plan and Zoning Ordinance” of this memo, the fitness and swim facilities are appropriate in scale to the size of the golf course and country club development.

The visibility of the proposed fitness and swim center was evaluated extensively in the Draft EIR, the staff report, as well as within this memo. Under the revised design, the main fitness building has been reduced in size to be less than 12,500 s.f. in size, a Tier 2 building, and is sited at a location where existing topography and vegetation are utilized to provide fundamental and efficient visual mitigation. The updated photo-simulation
(Attachment 5) also confirms that the revised design further minimizes visual impacts created by the proposed project to the valley floor.

Although the facility is located in a hillside setting, its location has limited visibility from the Santa Clara Valley floor. The building is not visible from the wider Santa Clara valley floor outside of Almaden valley as the Santa Teresa hillsides create an intervening ridgeline screening the building site. Within Almaden valley, both the existing built environment (buildings) and tree cover on the valley floor limit visibility of the building from prominent public viewpoints (such as Almaden Expressway). The building is only visible from several residential streets immediately below Boulder Ridge and the private residences. Thus, as the building has limited visibility from wider public viewpoints, and it has been designed to minimize visual massing and complement the existing clubhouse, staff recommends approval, consistent with the Zoning Ordinance findings.

3. General Plan Amendment and Change of Zoning Designation is Required

This Comment states that the proposed fitness center requires a General Plan Amendment and Zoning Designation Change review, following the 1994 Board Resolution.

This comment is the main subject of the July 22, 2014 letter, responded to by staff at the beginning of this memo.

4. Approval of the Project Would Violate CEQA

This section of the letter states that the Environmental Impact Report (EIR) prepared for the project is inadequate, specifically citing impacts to water supply, water quality (wastewater impacts), land use, traffic, noise and aesthetics.

The EIR prepared for the project evaluated all potentially significant environmental impacts that could result from construction and operation of project, encompassing the topical areas addressed in this comment. Potential environmental impacts related to water quality, land use, traffic, noise, and aesthetics are raised within other parts of the August 18 letter and have been previously responded to within this Staff memo. Therefore, this response is focused on water supply.

The potential for construction and operation of the swim and fitness facility to impact water supply was both evaluated within the EIR and also addressed in written and oral testimony before the Planning Commission, during its consideration of the project. Boulder Ridge Golf Course currently obtains water from San Jose Water. While the construction and operation of the swim and fitness facility could increase water demand (associated with the pool usage, showers, etc.) it is not expected to be significant. The
facilities must comply with the County's Green Building Ordinance, which requires the new buildings meet both LEED standards (U.S. Green Building Council) and California Green Building Code Standards, minimizing water demand in new buildings. In addition, the County green building code requires a 25% water demand reduction in new buildings (a higher standard than LEED and CalGreen), applicable to the proposed swim and fitness center.

During the March and April, 2014 Planning Commission hearings on the project, Commissioners inquired about water usage and the potential impacts from constructing and operating the swim and fitness center. In response, the owner provided water calculations prepared by a civil engineer (Schaaf & Wheeler, memo dated April 21, 2014) demonstrating that construction and operation of the facility would reduce overall water demand at Boulder Ridge, considering the removal of over 2 acres of irrigated turf, which has a higher water demand. The proposed conditions of approval (Attachment 9) state that the facility must operate according to these water demand assumptions.

For these reasons and others as outlined within this memo, the EIR does not contain any inadequacies and there is no substantial evidence presented that the EIR did not fully evaluate any potential significant impacts from the project.

An amendment to the Final EIR was prepared to evaluate any changes in environmental analysis associated with the reduced fitness annex revised design. This amendment concluded that the design revision would not create any additional significant environmental impact.

Responses to August 26, 2014 letter to the Board of Supervisors from Santa Clara Valley Audubon Society, Greenbelt Alliance, Committee for Green Foothills, Loma Prieta Chapter, Sierra Club, People for Livable and Affordable Neighborhoods, California Native Plant Society, Santa Clara Valley Chapter (Attachment 4). This letter expresses opposition to the proposed fitness and swim annex project. Specific points in the letter are listed below in italics with staff's responses following.

**Local and Regional Impacts** - The letter states that the location of Boulder Ridge Golf Course is highly visible and that the original development of the golf course resulted in the removal of hundreds of oak trees and negative wildlife impacts that were not mitigated for until much later. The letter further stated that the required mitigations were largely done off-site, which is not preferable.

As previously stated in this memo and demonstrated in the updated photo-simulation (Attachment 5), the proposed fitness center is not visible to the broader Santa Clara valley
floor, and is only minimally visible to the selected areas within the Almaden valley floor.
The proposed revised design of a smaller and lower profile fitness building, in combination
with proposed landscaping will further minimize visibility of the building and prevent any
significant visual impacts.
Regarding the oak tree impacts and mitigation associated with original establishment of the
golf course, the property owner was required to plant Oak trees on the Boulder Ridge site
(not off-site) to compensate for the removal of trees. This replanting requirement accounted
for the temporal loss of habitat values associated with the delay in planting the new trees
and woodland areas. The status report presented to the Planning Commission in April 2013
stated that the subject property is in full compliance with its required conditions, including
oak woodland replacement.

Straining to Make Findings - The letter argues that County staff struggles to make the
required low-intensity finding for the proposed project. The proposed use is essentially an
urban use that should be located within the urban areas.

As previously explained, the proposed fitness and swim center is a related use to the existing golf
course and country club. Its overall size and scale is of an appropriate intensity to the 200-acre
property. Detailed analysis how the proposed project is a low-intensity use is provided earlier on
page 3 & 8.

Repeated Use Expansions Represent a Problematic Form of Planning - The letter states
that there has been incremental expansion allowed on the subject site while CEQA analysis
should emphasize the need on “the whole of a project.” The letter recommends the Board of
Supervisors to deny the current request and any future incremental expansion.

The history of development approvals for the Boulder Ridge Golf Course site and previous restrictions
placed on the property have been well documented both within this Supplemental Memo (see response
to July 22 letter under 4. above) and the staff report for the project. With respect to CEQA, the EIR
prepared for the proposed swim and fitness center did not provide any “piecemeal” analysis of
environmental impacts. The environmental analysis in the EIR accounted for past environmental impacts
from the original golf course development, and considered existing noise and traffic associated with
ongoing operations. This was evaluated within a cumulative context to avoid piecemeal environmental
analysis. Although staff has determined that the proposal conforms to the Zoning Ordinance and
General Plan, the Board will independently consider approval or denial of the project.

Conditional Uses Versus Uses of Right - The letter states that the proposed expansion
should not be considered as a matter of right, and should be reviewed as a use permit where
special circumstances and environmental factors should be appropriate in order to approve the project.

The proposed fitness and swim center is subject to review of a modification of the existing use permit. Detailed analysis how the proposed project satisfies required findings of a use permit is provided in the previous staff report as well as this supplemental memo.

5. Full Project Description Including Revised Design

The project description provides a comprehensive description of both the Zoning Ordinance Amendment and Fitness and Swim Center project, including the revised changes to the Center as proposed by the Applicant.

Zoning Ordinance Amendment

Proposed Zoning Ordinance Amendment is to identify different types of related uses that can be allowed as part of the primary golf and country club use and to limit the size and intensity of such related use at an appropriate scale to its primary use. Proposed text revision is included for both Section 2.10.040 and Section 4.10.140 of the County Zoning Ordinance.

Fitness and Swim Center

A two-story fitness building of 12,443 s.f., with a pool shower building of 517 s.f. to the west and a group exercise building of 1,705 s.f., a 25-yard swimming pool, and a children’s instructional pool are proposed to be constructed approximately 150 feet north of the existing clubhouse in the northeast corner of the golf course. The proposed pool shower building (517 s.f.) is located between the parking lot and the 25-yard swimming pool. The group exercise classroom building (1,705 s.f.) is situated between the fitness annex and the existing clubhouse so that the building can be used for both golf instructional lessons as well as group exercise lessons, such as yoga or dance classes. Additional 61 parking spaces are proposed to be installed next to the existing parking lot for the new Fitness and Swim Center. The total building area (main fitness building, pool shower building and group exercise building) is approximately 14,500 s.f. in size. The main fitness building includes a lobby, a daycare center, a juice bar, office and sales area and a fitness equipment area on the main entry level. On the pool level, locker rooms, additional fitness equipment area and a Pilates classroom are proposed. There will be one ADA-compliant restroom with group shower area and lockers in the pool shower building that is locked at the pool elevation. In the group exercise building, located between the main fitness center and the existing clubhouse, three group exercise classrooms of 435 s.f. each are proposed.

Competitive Youth Swim Program
The proposed 25-yard, six-lane, swimming pool and the children instructional pool will host a competitive age group swimming program, where weekday practices are to be held year round between 4pm and 7pm. A total of six (6) dual youth swim meets is proposed as part of the program for up to 200 people (120 swimmers and 80 spectators) during Saturday mornings of the summer month (June 1 to August 31). No amplified sound and/or music is proposed to be associated with the swim program.

**Maintenance Storage Yard Expansion**
Minor expansion of the existing maintenance / storage yard that is south of the existing clubhouse. The existing maintenance facility is approximately 1000 feet south of the clubhouse. The proposed expansion will be paved and is to accommodate additional storage for the Boulder Ridge Golf Club.

**Driving Range Reconfiguration**
Approximately 6,430 c.y. of fill will be used to re-contour and reconfigure the existing driving range that is located to the west of the proposed fitness and swim facility. The excess fill generated from the proposed fitness center building pad will be deposited at the existing driving range, adjacent to the new septic system that is to support the proposed fitness center.

**Final EIR**
A Final EIR was prepared to evaluate the potential environmental impacts for the proposed project. The Draft EIR was published on December 20, 2013 for a 60-day public review period. The public review period ended on February 18, 2014. Included in the Final EIR are comments received and responses prepared by planning staff. The Final EIR was released on March 17, 2014.

**Attachments Included With This Memo**

**Attachment 1** – September submitted revised design of the fitness annex (site plan, elevation, floor plans, grading plans, and etc.)

**Attachment 2** – July 22, 2014 Letter submitted by Camas J. Steinmetz

**Attachment 3** – August 19, 2014 Letter submitted by Camas J. Steinmetz

**Attachment 4** – August 26, 2014 Letter submitted by Santa Clara Valley Audobon Society, Greenbelt Alliance, Committee for Green Foothills, Loma Prieta Chapter, Sierra Club, People for Livable and Affordable Neighborhoods, California Native Plant Society, Santa Clara Valley Chapter
Attachment 5 – Revised photo-simulation

Attachment 6 – Updated memo prepared by the noise consultant regarding the design revision

Attachment 7 – 1994 BOS Resolution

Attachment 8 – 1997 Settlement Agreement

Attachment 9 – Updated Conditions of Approval
ATTACHMENT 1
THE ANNEX

1000 OLD QUARRY ROAD, SAN JOSE, CA

LOCATION MAP

SCOPE OF WORK

Deferred Submittals

PROJECT SUMMARY

ASSessor's PARCEL MAP

APPLICABLE CODES

New construction of an 14,694 s.f. fitness center, associated pool and 41 new parking spaces. The fitness center will include: (1) 12,460 s.f., multi-building, building B - 87% of Building B, building for classes (Building B) and 2,034 s.f., building for change rooms and showers (Building C).

Deferred Submittals

Owner

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Scope of Work

The Annex Grading
1000 Old Quarry Road, San Jose, CA 95113

Sheet Index

Project Team

Applicable Codes

Building A

First Floor Area 585.1 s.f.
Second Floor 565.3 s.f.
Total Area 1,150.4 s.f.

Building B

First Floor Area 240 s.f.

Building C

First Floor Area 691 s.f.

Total Area 1,466.4 s.f.

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Second Floor 565.3 s.f.
Total Area 1,150.4 s.f.

Building B

First Floor Area 240 s.f.

Building C

First Floor Area 691 s.f.

Total Area 1,466.4 s.f.
SECTION AA - AVERAGE ELEVATION = 33'-8"
SECTION BB - AVERAGE ELEVATION = 35'-9"
TOTAL AVERAGE ELEVATION = (33'-8" + 35'-9") / 2 = 34'-9"
34'-9" < 35' - 0" ·· OK

HEIGHT CALCULATION
1) Property boundaries taken from records information.
2) Proposed leachfields will be connected to existing leachfield rows that the leachfields are allowed to meet
while the other row is in operation.
3) Water quality: It is anticipated that in order to address water quality and provide reuse opportunities, all storm
water will be connected to the existing irrigation system via a common pipe. This water will be applied to the golf
course via the existing irrigation system. Sanitary sewer (black water) and gray water will be directed
appropriately via separate conveyance systems.
GREAT WATERRAIN
PROPOSED LEACHFIELD
(SEE SHEET C10)

BUICK WATERRAIN
PROPOSED LEACHFIELD
(SEE SHEET C10)

OLD QUARRY ROAD (PRIVATE)

LEGEND

ABBREVIATIONS
BW - BOTTOM OF WALL
CL - CENTERLINE
CW - CURB
EL - ELEVATION
EP - EDGE OF PAVEMENT
EX - EXISTING
F - FINISH
FF - FIRE HYDRANT
FG - FINISHGRADE
GW - GRAYWATER
GWCO - GRAY WATER CLEANOUT

LEGEND

MATERIALS USED

SCALE: 1" = 20'

ABBR.
Building A
- First Floor Area: 6361.1 s.f.
- Second Floor: 6081.3 s.f.
- Total Area: 12442.4 s.f.

Building B
- First Floor Area: 1705 s.f.

Building C
- First Floor Area: 517.1 s.f.

Total Area: 14664.5 s.f.
ATTACHMENT 2
July 22, 2014

Elizabeth G. Pianca
Deputy County Counsel
County of Santa Clara
Elizabeth.Pianca@cco.sccgov.org

VIA EMAIL

Re: Boulder Ridge Golf Club Expansion – General Plan Amendment Required

Dear Ms. Pianca:

Thank you very much for taking the time last Monday July 14, 2014 to meet with me and my clients, Graystone of Almaden Homeowner Association and Almaden Hills Estates Home Owners Association, to discuss the enforceability of the conditions contained in the Resolution ("1994 Resolution") adopted by the Board of Supervisors on November 1, 1994 to modify the original Use Permit approval for the Golf Club at Boulder Ridge ("Golf Club"). Since we met I have had the opportunity to review the materials and documents contained in the record.

Based on this review, it is my position that Condition No. 3 of the 1994 Resolution is still in effect and has not been superseded, amended, replaced, terminated or revoked. As such, the additional athletic facility and competition swimming pool uses now proposed at the Golf Club (referred to herein sometimes as the project) cannot be approved unless a General Plan Amendment -- in addition to a modification of the Use Permit and a change in the property’s zoning designation -- is also obtained.

Please note that this letter focuses solely on the issue of the enforceability of Condition No. 3. We reserve our right to raise other concerns with and objections to the project as it continues through the administrative approval process, including but not limited to whether the County-initiated zone text amendment to add “swimming pools, tennis courts and fitness centers” satisfies the separate requirement of Condition No. 3 of a “zoning amendment”, whether the County-initiated zone text amendment complies with the General Plan, whether the findings of approval for the project can be made and whether the Environmental Impact Report prepared for the project is adequate under the California Environmental Quality Act.

1994 Resolution Imposed Condition No. 3

The 1994 Resolution was adopted to comply with a court order requiring that the County further
analyze and mitigate the impacts of the Golf Club on the loss of open space. It consists of a series of findings and a series of conditions which modify the original Golf Club Use Permit that was successfully challenged by the Coalition to Save Open Space ("Coalition") on California Environmental Quality Act ("CEQA") grounds.

Finding No. 2 states as follows: "The Golf Club at Boulder Ridge, as proposed, represents the maximum development allowable under the Hillside Zoning District, and any incremental expansion, or increase in use or intensity, would be inconsistent with the Hillside General Plan designation of the project, as well as the County Zoning Ordinance, and therefore could not be permitted absent a General Plan Amendment and zoning amendment. Any such proposal would require the written approval of the City of San Jose, or waiver of its rights thereto." 1

Condition No. 2 states as follows: "As for a further condition of the use permit, no further development of the remaining portion of the property shall be permitted, with the exception of minor adjustment of the greens, tees and fairways, and the repair and maintenance of Utilities and improvements."

Condition No. 3 states as follows: "As for a further condition of the permit, consistent with the finding of this Board of Supervisors that this project maximizes the development potential of the site under existing General Plan and zoning designation, the construction of homes, overnight accommodations, the expansion of the club or other facilities, or the introduction of new uses on the property, such as pools, tennis courts or any other uses permitted with the Hillside zoning district, shall be prohibited." By its terms, Condition No. 3 imposes an additional procedural protection against further development of the Golf Club, requiring that in addition to a modification of the Use Permit such development would also require a General Plan Amendment and a change in the property's zoning designation.

In addition to these conditions, Condition No. 1 of the Use Permit was imposed to require dedication of dedicate a permanent open space easement over 97 acres of the project site to the County in perpetuity to mitigate for the loss of open space.

**Law Governing Use Permit Conditions**

A conditional use permit is a permit issued by a local agency to a landowner allowing a particular use or activity not allowed as a matter of right within a zoning district. A local agency may not approve a conditional use permit unless it is consistent with its General Plan. *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176. Conditional use permits run with the land and bind and benefit successive owners. "The original permittee and his successor in interest are barred from challenging a condition imposed upon the granting of a conditional use permit if they have acquiesced therein by specifically agreeing to the condition or failing to challenge its validity, and accepted the benefits afforded by the permit." *Imperial County v. McDougal* (1997) 19 Cal.3d. 505, 510. Challenges to conditional use permits and conditions contained in conditional use permits must be commenced within 90 days after approval of the conditional use permit. California Government Code Section 65907(a).

1 As noted above, this letter does not specifically address the requirement that further development require the written approval of the City of San Jose, or waiver of its rights thereto. We expressly reserve the right to address this issue under separate cover.
Settlement Agreement did Not Terminate Condition No. 3

The applicant of the Golf Club, Rocke Garcia and Garcia Development Company (collectively, "Mr. Garcia"), contested Condition No. 1 during the administrative proceedings for the 1994 Resolution and, on January 27, 1995, filed a Petition for Administrative Mandamus and Complaint for Inverse Condemnation and Violation of Civil Rights, Case No. 947010 challenging Condition No. 1 (the “Petition”). Mr. Garcia did not challenge any of the other conditions imposed by the 1994 Resolution either in the administrative proceedings, or in the lawsuit brought against the County and Mr. Garcia by the Coalition.

On May 20, 1997 the Board of Supervisors, Garcia Development Company and Rocke Garcia, and the Coalition to Save Open Space and Charles Smith entered in a settlement agreement (the "Settlement Agreement") to settle the lawsuit filed by Mr. Garcia as well as the lawsuit filed by the Coalition, and a separate pending matter regarding Mr. Garcia’s interim farming activities.

The Settlement Agreement modifies the 1994 Resolution in two ways. First it adds an additional condition of approval which requires that Mr. Garcia not apply for any further development on the Golf Club property for a period of either four years from issuance of the grading permit for the Golf Club or two years from the date the Golf Club is open to the public, whichever is later. (Settlement Agreement, p. 2-3). Second, it eliminates Condition No. 1 requiring the 97-acre open space easement and sets forth the irrevocable offer of Mr. Garcia to voluntarily donate to the County a 50-acre open space preserve.

Errors in 2008 Memorandum from County Counsel

During our meeting, County Planning staff referenced the Memorandum from the Office of the County Counsel to Supervisor Gage dated May 23, 2008 (the "Memorandum") in support of the proposition that Conditions No. 2 and No. 3 in the 1994 Resolution may no longer be in effect. The Memorandum was issued in response to questions raised regarding Mr. Garcia's application to modify the Use Permit to allow erection of an event tent (which later was modified to be a permanent building) at the Golf Club (the “2009 Use Permit Modification”).

The Memorandum indeed concludes that “the language in the settlement agreement setting discrete time limits on Mr. Garcia’s ability to apply for further development on the property contradicts the absolute “no further development” restriction that was part of the use permit before it was challenged in court. It is clear that the later settlement was intended to supersede and replace the challenged portions of the existing use permit.”

This conclusion is based on errors and misstatements that should be noted and considered by the current County Counsel in the evaluation of the new application to expand the allowable uses at the Golf Club. The most glaring error in the letter is the statement that Mr. Garcia’s lawsuit challenged the “‘no further development’ condition on the basis that it amounted to a ‘general requirement of the County intended to prohibit any further development of the property and acquire an interest in the land without prior payment of compensation.’ (Note that the Memorandum contains no citation for the quoted language.)

However, the lawsuit did nothing of the sort. Mr. Garcia’s lawsuit explicitly limited its
challenge to Condition No. 1 requiring the 97-acre preserve. It did not challenge any other condition set forth in the 1994 Resolution. Nowhere in the cause of actions listed does Mr. Garcia challenge the “no further development” conditions set forth in Condition No. 2 or 3.

Instead, Mr. Garcia not only acknowledged and accepted the “no further development” conditions but he used these very conditions to argue that the additional requirement of a 97 acre easement was unnecessary and therefore invalid. The Petition states on page 2, lines 11-14 that “[t]he 97 acres in question are protected by design considerations in terms of the layout and landscape of the golf course, and by the development restrictions in the use permit, which leave the area in natural hillside character.” Nonetheless, the County went beyond these restrictions to exact an open space easement of 97 acres from this site, which is to be dedicated to the public.” In Mr. Garcia’s Memorandum of Points and Authorities in support of the Petition (“Opening Brief”) he argues that Condition No. 3 and other imposed conditions already mitigated the loss of open space to the level of non-significance required by CEQA and therefore the additional condition of a 97-acre open space easement was unwarranted. (See Opening Brief, p. 29, 49, 55-56.) Mr. Garcia’s Reply Brief explicitly acknowledges that “Mr. Garcia’s ability to utilize [his] property is governed by the County’s zoning ordinance. The conditional use permit obtained by Garcia for this Project comprehensively and completely shapes the use which Garcia may make of the Property. The permit which Garcia has received allows Garcia to develop a golf course and clubhouse, and nothing more. Garcia has no ability to further develop the Property without participating in further public processes to amend the zoning and General Plan designation for this Property...” (Trial Brief, pp. 12-13, emphasis added)

Therefore, Mr. Garcia acquiesced to the “no further development” conditions set forth in Conditions Nos. 2 and 3 by specifically agreeing to these conditions, failing to challenge their validity, and accepting the benefits afforded by the Use Permit which allowed him to construct and operate the Golf Club which otherwise would not have been allowed in the Hillsides zoning district. As such, Mr. Garcia and any successor in interest is barred from challenging Condition No. 3 on grounds of estoppel. See Imperial County v. McDougal (1997) 19 Cal.3d. 505, 510.

Even if the Settlement Agreement’s time restriction on bringing an application for further development of the Golf Club effectively modified Condition No. 2 (which prohibits any further development of the property), which we do not concede, the Settlement Agreement did not in any way modify, supersede, terminate, replace or revoke Condition No. 3. As explained above, Condition No. 3 imposes an additional procedural protection against further development of the Golf Club by requiring that any further development of the Golf Course would trigger both a General Plan Amendment and a change in the property’s zoning designation in addition to modification of the Use Permit. The Settlement Agreement did not alter this requirement. Therefore, because the County’s General Plan and the Zoning Ordinance have not since been modified or amended to allow further development of the Golf Club, the current application proposing the additional athletic facility and competition swimming pool uses requires a General Plan Amendment in addition to a change in the property’s zoning designation and a modification of the Use Permit.

2009 Use Permit did Not Terminate Condition No. 3

County Planning staff speculated in our meeting that even if the Settlement Agreement did not supersede or terminate Condition No. 3, the 2009 approval of the 2009 Use Permit Modification
did. However, your reading of a provision of the 2009 Use Permit Modification directly contradicted this notion. As you read out loud during our meeting, the conditions of approval for the 2009 Use Permit Modification state as follows: “these Conditions of Approval encompass and include previous conditions of approval approved by the Board of Supervisors on November 1, 1994 which govern ongoing operation of the Golf Course and Clubhouse.” The plain language of this sentence is that the conditions set forth in the 1994 Resolution — including Condition No. 3 — are encompassed and included in the 2009 Use Permit conditions and therefore continue to apply.

Therefore, because there is nothing in the record which supersedes, replaces, terminates, revokes or amends Condition No. 3 (which requires that a General Plan Amendment — in addition to a modification of the Use Permit and a change in the property’s zoning designation — be obtained prior to any further development of the property), the current proposal to expand the Golf Club to include the additional athletic facility and competition swimming pool uses cannot be approved unless a General Plan Amendment is obtained.

I look forward to the Office of the County Counsel’s response to our position. I would be happy to schedule a meeting with you in the next week or two as you have suggested if you would like to discuss further.

Very truly yours,

Camas J. Steinmetz

Cc: Orie P. Korb, County Counsel
    Rob Eastwood, Principal Planner
    Pamela Wu, Planner
## Attachment 2
### Survey of Santa Clara County Golf Courses

<table>
<thead>
<tr>
<th>Course/Club</th>
<th>Address/Jurisdiction</th>
<th>Zoning</th>
<th>Pool</th>
<th>Swim Team</th>
<th>Fitness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almaden</td>
<td>6663 Hampton Dr, San Jose, CA 95120</td>
<td>R-1-8 Residence District (8DU/Acre)</td>
<td>Yes</td>
<td>No</td>
<td>Yes – one room</td>
</tr>
<tr>
<td>Blackberry Farm</td>
<td>22100 Stevens Creek Blvd, Cupertino, CA 95014</td>
<td>Open Space / Public Park / Recreational</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Cinnabar Hills</td>
<td>23600 McKean Rd, San Jose, CA 95141</td>
<td>A(PD) Agricultural</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>CordeValle</td>
<td>1 Cordevalle Club Dr, San Martin, CA 95046 (unincorporated County)</td>
<td>HS-d1 Hillside-Santa Clara Valley Viewshed</td>
<td>Yes</td>
<td>No</td>
<td>Yes – as part of hotel complex</td>
</tr>
<tr>
<td>Coyote Creek</td>
<td>1 Coyote Creek Golf Dr, Morgan Hill, CA 95037</td>
<td>A(PD) Agricultural</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Deep Cliff</td>
<td>10700 Club House Ln, Cupertino, CA 95014</td>
<td>FP-o Open Space / Public Park / Recreational</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Eagle Ridge</td>
<td>2951 Club Dr, Gilroy, CA 95020</td>
<td>R1 single family residence / RH residential hillside</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Gavilan College</td>
<td>5055 Santa Teresa Blvd, Gilroy, CA 95020</td>
<td>-</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Gilroy</td>
<td>2695 Hecker Pass Rd, Gilroy, CA 95020</td>
<td>PF park/public facility</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>La Rinconada</td>
<td>14595 Clearview Dr, Los Gatos, CA 95032</td>
<td>R-1:12:PZ Residential Zone</td>
<td>No</td>
<td>No</td>
<td>Yes - 2 rooms</td>
</tr>
<tr>
<td>Los Altos</td>
<td>1560 Country Club Dr, Los Altos, CA 94024 (unincorporated County)</td>
<td>PCF Public and Community Facilities</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes; – 3,400 SF</td>
</tr>
<tr>
<td>Los Lagos</td>
<td>2995 Tuers Rd, San Jose, CA 95121</td>
<td>A Agricultural / R-1-8 Residence District (8DU/Acre) / R-1-8 –</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Moffett Field</td>
<td>934 Macon Rd, Moffett Field, CA 94035</td>
<td>-</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Palo Alto</td>
<td>1875 Embarcadero Rd, Palo Alto, CA 94303</td>
<td>PF(D) Public Facilities District</td>
<td>No</td>
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<tr>
<td>Palo Alto Hills</td>
<td>3000 Alexis Dr, Palo Alto, CA 94304</td>
<td>OS Open Space District</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes – 35,000 SF</td>
</tr>
<tr>
<td>Pruneridge</td>
<td>400 Saratoga Ave, San Jose, CA 95050</td>
<td>CG Commercial General District</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Rancho Del Pueblo</td>
<td>1649 Hermocilla Way, San Jose, CA 95116</td>
<td>A(PD) Agricultural/ PQP Public/Quasi-Public –</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Course/Club</td>
<td>Address/Jurisdiction</td>
<td>Zoning</td>
<td>Pool</td>
<td>Swim Team</td>
<td>Fitness</td>
</tr>
<tr>
<td>------------------</td>
<td>----------------------------------------------------------</td>
<td>------------------------------------</td>
<td>------</td>
<td>-----------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>Ridgemark Resort</td>
<td>3800 Airline Hwy, Hollister, CA 95023</td>
<td>-</td>
<td>Yes</td>
<td>No</td>
<td>Yes -- in hotel</td>
</tr>
<tr>
<td>San Jose CC</td>
<td>15571 Alum Rock Ave, San Jose, CA 95127</td>
<td>-</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>San Jose Municipal</td>
<td>1560 Oakland Rd, San Jose, CA 95131</td>
<td>A Agricultural / R-1-8,R-MH,LI</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>San Juan</td>
<td>32120 San Juan Creek Rd, San Juan Capistrano, CA 92675</td>
<td>OSR Open Space Recreation</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Santa Clara</td>
<td>5155 Stars and Stripes Dr, Santa Clara, CA 95054</td>
<td>-</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Santa Teresa</td>
<td>260 Bernal Rd, San Jose, CA 95119</td>
<td>-</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Saratoga CC</td>
<td>City of Saratoga 21990 Prospect Rd, Saratoga, CA 95070</td>
<td>HR Hillside Residential</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Shoreline</td>
<td>City of Mountain View 2940 N Shoreline Blvd, Mountain View, CA 94043</td>
<td>PF Public Facility</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Silver Creek Valley</td>
<td>5460 Country Club Pkwy, San Jose, CA 95138</td>
<td>A(PD) Agricultural</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes -- multiple rooms</td>
</tr>
<tr>
<td>Spring Valley</td>
<td>3441 Calaveras Rd, Milpitas, CA 95035</td>
<td>POS Park and Open Space</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Stanford</td>
<td>198 Junipero Serra Blvd, Stanford, CA 94305</td>
<td>-</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Summitpointe</td>
<td>City of Milpitas 1500 Country Club Drive, Milpitas, CA 95035</td>
<td>R1-H Single Family Residential with Hillside Combining District</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Sunken Gardens</td>
<td>1010 South Wolfe Road, Sunnyvale CA 94086</td>
<td>PF Public Facilities</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Sunnyvale</td>
<td>City of Sunnyvale 605 Macara Avenue, Sunnyvale CA 94085</td>
<td>PF Public Facilities</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>The Institute</td>
<td>14830 Foothill Ave, Morgan Hill, CA 95037</td>
<td>PUD Planned Unit Development District</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>The Ranch</td>
<td>4601 Hill Top View Ln, San Jose, CA 95138</td>
<td>A(PD) Agricultural/ PQP Public/Quasi-Public</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Villages</td>
<td>5000 Cribari Ln, San Jose, CA 95135</td>
<td>R-1-1(PD) Residence District (1DU/Acre) / PQP</td>
<td>Yes</td>
<td>No</td>
<td>Yes, in the retirement complex, not adjacent to</td>
</tr>
<tr>
<td>Course/Club</td>
<td>Address/ Jurisdiction</td>
<td>Zoning</td>
<td>Pool</td>
<td>Swim Team</td>
<td>Fitness</td>
</tr>
<tr>
<td>------------</td>
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<td>-----------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public/Quasi-Public</td>
<td>Yes = 8</td>
<td>Yes = 3</td>
<td>Yes = 9; only 1 comparably sized center</td>
</tr>
<tr>
<td>Summary of 35 Golf Courses</td>
<td></td>
<td></td>
<td>No = 27</td>
<td>No = 32</td>
<td>No = 26</td>
</tr>
</tbody>
</table>
ATTACHMENT 3
August 18, 2014

Members of the Board of Supervisors
Santa Clara County
mike.wasserman@bos.sccgov.org
Supervisor.Yeager@bos.sccgov.org
Cindy.Chavez@bos.sccgov.org
dave.cortese@bos.sccgov.org
supervisor.simitian@bos.sccgov.org

VIA EMAIL

Re: Boulder Ridge Golf Club Expansion -- Fitness and Swim Centers

Dear Supervisors:

This law firm represents nearly 300 households comprising Graystone of Almaden Homeowner Association (158 households) and Almaden Hills Estates Home Owners Association (137 households), and submits this letter on their behalf with respect to the proposed expansion of the Boulder Ridge Golf Club which you will consider at your August 26th meeting. Now that over 20 years have passed since the golf club’s original -- and very controversial -- approval, the applicant Mr. Rocke Garcia is banking on a loss of institutional memory in again proposing what your predecessors not only rejected the first time around, but explicitly prohibited as a condition of the original approval.

Mr. Garcia proposes to more than double both the developed square footage and the intensity of use of the existing golf club by adding a 20,000 sf, three-story fitness center and competition swim center that would serve a separate target membership from the current golf club membership.¹ Not only did your predecessors deny these uses outright as incompatible with the property’s General Plan and Zoning designation of “Hillsides”, but they very explicitly prohibited

¹ The PC Staff Report states on page p. 2 that the proposed project will “provide additional amenities...for Boulder Ridge members.” This assumption is not correct. As indicated in his oral testimony before the Planning Commission at the March 27, 2014 meeting, Mr. Garcia has always been clear that the proposed fitness and swim centers are intended to draw a new and separate membership from the golf club will not be available to golf club members unless they join this membership. As such, these are additional primary uses on the site -- not ancillary uses -- as indicated in the PC Staff Report.
these specific uses as a condition of the original approval. As explained in our attached letter to County Counsel dated July 22, 2014 (Attachment 1), the existing Conditional Use Permit explicitly prohibits further development of the site absent a change in the site’s General Plan and Zoning designation, neither of which is sought.

Based on our review of the documents and materials contained in the record, and as explained in detail below, even if the proposed fitness and swim center uses were not prohibited as a condition of the original approval (which we contend they are), they cannot be approved for the same reason your predecessors denied them and imposed procedural protections against them 20 years ago. The findings required to approve the proposed uses -- including the findings of General Plan and Zoning Ordinance consistency -- simply cannot be made based on the evidence in the record. Approval of these proposed uses on the project site would severely compromise the integrity of the County Hillsides General Plan Designation (whose purpose is to preserve lands so designated "largely in natural resource related and open space uses", General Plan Policy R-LU-16) and the Hillsides Zoning District (whose purpose is to "preserve mountainous lands unplanned or unsuited for urban development primarily in open space", Zoning Ordinance Section 2.20.010B).

Moreover, as summarized below, the Environmental Impact Report (EIR) fails to adequately analyze the impacts of the project. The EIR completely fails to even address the proposed project's impact on water supply and water quality, and its analysis of the project's impact on land use, traffic, noise and aesthetics is utterly flawed. Therefore, approval of the project without correcting these inadequacies in a revised and recirculated EIR would violate the California Environmental Quality Act (CEQA).

1. **Use Permit Findings Cannot Be Made**

   County Zoning Ordinance Section 5.65.030 compels the Board to deny the Use Permit application because the four mandatory findings for Use Permit approval cannot be made based on the evidence in the record.

   **A. The Proposed Use is Inconsistent with the General Plan and Zoning Ordinance**

   *Finding No. 1 (Section 5.65.030 (A)): The proposed use conforms with the general plan, with the zoning ordinance or with other standards and guidelines applicable to the proposed use that have been adopted by the planning commission or board of supervisors.*

   This finding cannot be made. As explained below, the proposed use DOES NOT conform with the general plan or zoning ordinance.
Proposed Use is Inconsistent with the General Plan

The General Plan land use designation of the project site is "Hillsides", a subcategory of Resource Conservation Areas. The purpose of the Hillsides designation is to "preserve mountainous lands unplanned or unsuited for urban development primarily in open space..." (General Plan Policy R-LU-17.) "The largely undeveloped hillsides visible from the valley floor... help distinguish Santa Clara County from its neighboring counties and cities, furthermore enhancing the overall attractiveness and competitiveness of the county's economy." (General Plan, p. O-49.) Allowing the proposed development would severely compromise these General Plan purposes, opening the gates for further and more intense development in our protected Hillsides lands.

The following General Plan policies govern use of Hillsides designated lands:

General Plan Policy R-LU-16 states that lands designated "Hillside" "shall be preserved largely in natural resource-related and open space uses in order to (a) support and enhance rural character; (b) protect and promote wise management of natural resources; (c) avoid risks associated with natural hazards characteristic of those areas; and (d) protect the quality of reservoir watersheds critical to the regions water supply."

General Plan Policy R-LU 18 states that the range of allowable commercial, industrial, or institutional uses within the Hillsides General Plan designation "shall be limited to (a) agriculture and grazing; (b) mineral extraction; (c) parks and low-density recreational uses and facilities; (d) land in its natural state; (e) wildlife refuges; (f) very low density residential development; and (g) commercial, industrial, or institutional uses, which by their nature 1) require remote, rural settings; or 2) which support the recreational or productive use, study or appreciation of the natural environment."

In a failed attempt to support its conclusion that that the proposed project conforms to General Plan policies R-LU-16 and R-LU-18, the Planning Commission PC Staff Report dated March 27, 2014 ("PC Staff Report") presents a circular and paradoxical argument. It states that "A golf course by its nature, requires a rural and remote setting... The current project... is in compliance with these findings because the location of such related use is determined by the location of the existing golf club. The proposed fitness center as part of the Boulder Ridge golf club is required to be at the same property as the rest of the development. Therefore, the proposed project conforms to General Plan policies R-LU 16 & R-LU 18."

By this logic, any proposed development placed on the same property would conform to the General Plan, whether it be a three-story fitness center, or a high rise casino. That is simply NOT the consistency analysis that is required. The Board must find that the proposed 20,000 sf fitness club and competitive swimming pools -- which nearly doubles the size of the existing development -- are consistent with the General Plan Hillsides designation and all other applicable General Plan policies. They clearly are not.
When the Board first approved the golf club in 1992, it is clear, based on the evidence in the record, that it struggled with whether a golf club use was consistent with the property's Hillsides General Plan and Zoning designations. The unsupported conclusion in the PC Staff Report (p. 10) that golf, by its nature, requires a rural and remote setting is simply false. As evidenced in the attached survey of 34 golf courses in the County (Attachment 2), many golf courses are situated within a city boundaries and in urban areas, for example Los Lagos golf club, La Rinconada Country Club, Pruneridge, and Almaden Country Club.

The proposed 20,000 sf three-story fitness center and competition swim center uses do not fall under any of the allowable uses for Hillsides designated lands set forth in R-LU-18. Arguably, golf courses fall under "low-density recreational uses" (General Plan Policy R-LU 18 (c)) but a 20,000 sf 3-story fitness center and competitive swim center operating 7 days a week, 18 hours a day from 5 a.m. – 11p.m. surely do not. The proposed fitness center, which includes a daycare center, a juice bar, lobby, locker rooms, and fitness and equipment rooms, is more than 20,000 sf and three-stories high making it a Tier 3 structure that nearly doubles the square footage of the existing 22,000 club house and reception facility structures on the site. The swim center consists of a six-lane 25-yard pool and a children's instructional pool of about 1,000 sf. The fitness and swim centers will operate 7 days a week, 18 hours a day from 5am to 11pm.

Nor are the fitness center and swim center uses "commercial, industrial, or institutional uses, which by their nature 1) require remote, rural settings; or 2) which support the recreational or productive use, study or appreciation of the natural environment." (General Plan Policy R-LU 18 (g).) On the contrary, these types of uses are typically placed in the middle of urban areas, providing access to members within close proximity of their homes or businesses. Competitive swim meets with starting buzzers and an extensive fitness center intended for a completely new set of members not only does not support recreational use or appreciation of the natural environment, it *hinders* it by adding additional traffic to the surrounding area, noise issues with outside crowds and starter buzzers, and an increased strain on resources. Moreover, it would in fact encroach on the appreciation of the natural environment by requiring further grading and paving of such environment to provide these truly urban uses.

Moreover, a Tier 3 20,000 sf fitness center and swim center with two pools does not support or enhance "rural character" nor does it "protect and promote wise management of natural resources" as required by General Plan Policy R-LU-16, especially considering the current drought conditions, nor does it "protect the quality of reservoir watersheds." Instead, it is an incremental use of water providing no public benefit.

The propose project is also inconsistent with General Plan Policy R-LU 25 states: "Non-residential land uses allowed in 'Hillsides' areas shall be of a generally low density or low intensity nature, depending on the use, as is consistent with the basic intent of the Hillsides designation to preserve the resources and rural character of land." Additionally, it requires that non-residential development in the Hillsides "not create adverse visual impacts as viewed from the Valley floor...and cause no significant increase in the demand for public services."
The PC Staff Report concludes that the addition of the Fitness and Swim Center would "remain low in density and intensity in nature" in compliance with General Plan Policy R-LU-25 because it is "designed to be an ancillary use of the existing golf club development." This is the not case. Substantial evidence in the record demonstrates that these uses will not be ancillary to the golf course; they will be separate primary uses. The proposed fitness center at 20,000 sf is almost double the size of the existing clubhouse and event center combined. Furthermore, as stated by Mr. Garcia in his testimony before the Planning Commission at the March 27, 2014 meeting, the fitness and swim centers will have separate and independent memberships from the golf course. Given this evidence, it is quite possible that the golf course use will ultimately become ancillary to the new fitness and swim center primary uses if approved.

Staff cites no comparable golf courses with a Hillside designation in the County that allow this level of development, nor can they. While the PC Staff Report states that "[m]any of the existing golf and country clubs within the unincorporated areas of the County contain swimming pools, fitness facilities and tennis courts", this is an exaggeration at best. Of the 34 golf courses surveyed (see Attachment 2), only eight contain both fitness facilities and swimming pools. Of these eight, only three (Los Altos, Palo Alto Hills, and Silver Creek Valley) have year round competitive swim teams, only one (Palo Alto Hills) has a fitness center of comparable size to the proposed 20,000 sf fitness center, and only one is zoned Hillsides (CordeValle).

Without explanation or any supporting evidence, Planning contends that the project complies with General Plan Policy R-LU-25 because "the proposed building is not visible to the Santa Clara Valley Floor." The original golf course was required to be sited to prevent any visibility from the Valley floor. However, as shown in the attached photos (Attachment 3), this requirement was not met, nor enforced. The proposed Tier 3 three-story 20,000 sf fitness center would sit higher and more prominently on the hillside than the existing clubhouse. Therefore, contrary to the EIR’s conclusion, and as demonstrated in the attached photos, the proposed development - due to both its size and siting -- will be quite easily viewed from the Valley Floor, constituting an adverse impact as viewed from the Valley floor in violation of General Plan Policy R-LU-25.

Additionally, the proposed development conflicts with the following provisions of the General Plan which were not addressed either in the EIR or the PC Staff Report:

R-RC 95: The scenic and aesthetic qualities of both the natural and built environments should be preserved and enhanced for their importance to the overall quality of life for Santa Clara County.

R-RC 96: The general approach to scenic resource preservation for the rural unincorporated areas consists of the following strategies:

1. Minimize scenic impacts in rural areas through control of allowable development densities.

2. Limit development impacts on highly significant scenic resources, such as,
Ridgelines, prominent hillsides, streams, transportation corridors and county entranceways.

R-RC 98: Hillsides, ridgelines, scenic transportation corridors, major county entryways, stream environments, and other areas designated as being of special scenic significance should receive utmost consideration and protection due to their prominence, visibility, and overall contribution to the quality of life in Santa Clara County.

R-RC 101: Roads, building sites, structures and public facilities shall not be allowed to create major or lasting visible scars on the landscape.

R-RC 102: Structures on ridgelines must be located, constructed or landscaped so that they do not create a major negative visual impact from the Valley floor. Land should be divided in such a way that building sites, if possible, are not located on ridgelines.

As is apparent in the photos and even more apparent to the Almaden Community, further development on the Hillside and Ridgeline should be given "the utmost consideration and protection". Allowing ridgeline development of this nature and intensity cannot be squared with the specific policies and strategies of the general plan and would open floodgates into further development of hillsides and ridgelines. As such, the first finding of approval cannot be made because the proposed project is inconsistent with the General Plan.

(2) The Proposed Use is Incompatible with the Zoning Designation

The project site is zoned Hillsides (HS) with a Design Review (d1) overlay. The purpose of the HS zoning district is to "to preserve mountainous lands unplanned or unsuited for urban development primarily in open space and to promote those uses which support and enhance a rural character, which protect and promote wise use of natural resources, and which avoid the risks imposed by natural hazards found in these areas." County Zoning Ordinance Section 2.20.010(C).

The PC Staff Report concludes that "Golf course and country club development including its related uses are allowed in HS zoning districts subject to a Use Permit." This statement rests on the false assumption that the proposed fitness and swim centers are related or ancillary uses to the golf course. They are not. They are completely separate and independent facilities with a separate target membership. Furthermore, they nearly double the size of the existing clubhouse and reception facility. As such, they are really primary uses, not related or ancillary uses.

While Golf Courses & Country Clubs are listed as conditional uses in the HS zoning district, fitness centers notably are not. (Zoning Ordinance Table 2.20-2) Zoning Ordinance Section 2.20-040 lists all of the non-residential use classifications within the County. Included in these use classifications are "Health & Fitness Centers". The proposed fitness center clearly fits within this use classification, yet this use classification is glaringly missing from the list of permitted and conditional uses in the HS zone—and for good reason: fitness centers are not consistent with the purpose of the HS zone to "preserve mountainous lands... primarily in open space and to support and enhance a rural character." As such, the fitness center use is incompatible with the
property's HS zoning designation and therefore, the first finding of approval cannot be made.

B. The Project Site is Inadequate for the Proposed Use

Finding No. 2 (Section 5.65.030 (B)): “The site is adequate for the proposed use, including, but not limited to being of adequate size and shape to ... provide necessary or appropriate buffers between the use and the surrounding area.”

Contrary to the PC Staff Report's unsupported conclusion, this second finding cannot be made because the buffer between the use and the surrounding area -- particularly with regard to noise impacts -- is inadequate. Residential homes immediately abut the area where the development is proposed. The EIR notes that “[t]he property is immediately adjacent to a portion of the Almaden Hill Estates residential neighborhood and surrounds it on three sides.” (EIR, p. 18.) The EIR fails to acknowledge that the Graysone of Almaden neighborhood also immediately abuts the subject property. As recognized by the prior Board in the original golf club approval, mitigation measures must address “the close proximity of the neighboring community, and the need to create a physical buffer between commercial and residential uses.” November 1, 1994 Board of Supervisors Resolution, p. 4.

The EIR concludes that the project will have a potentially significant noise impact because “sound exposure from the starter buzzer using a maximum sound level would exceed the noise limits of the City of San Jose Zoning Ordinance at the eastern property line regardless of where the buzzer is placed within the swim area.” (EIR, p. 72.) The mitigation identified by the EIR to reduce this impact (location of the pool and calibration of the starter buzzer) is inadequate and does not guarantee that this impact will be reduced to a less than significant level (i.e. below 55 dBA) because the EIR does not take into account the natural amphitheater effect of the Boulder Ridge hillside and the fact that this proposed fitness and swim center will be situated at the apex of this site. The hard concrete surface surrounding the swimming pool, along with the reflective stone and glass structure of the proposed fitness center, will reflect the sound down into the neighborhoods, and that sound will be amplified by the contours of the hillside.

Furthermore, the noise generated around a swimming pool during a competition meet, as well as parties and social events happening at this site, are not activities of the same level and intensity as foursomes playing golf, staggered throughout the day around the entire 18 holes. With a swim event or party there will be hundreds of people concentrated in a reflective noise environment and that noise will be directed right down the hillside into adjacent neighborhoods. Moreover, the proposed early 5am morning practices and swim meets will create significant disturbance to the neighbors in extremely close proximity, who can currently already hear golfers talking on the greens from their backyards.

Therefore, the required finding -- that the site provides an adequate buffer between the proposed commercial use and surrounding residential neighborhoods -- cannot be made.
C. The Proposed Use Will Impair the Integrity and Character of the Zoning District and Neighborhood

Finding No. 3 (Section 5.65.030 (C)): "The proposed use, by its nature, scale, intensity or design, will not impair the integrity and character of the zoning district or neighborhood, and will not be significantly detrimental to any important or distinctive features of the site's natural setting."

Contrary to the PC Staff Report's conclusion, this finding cannot be made. The proposed fitness center and swim center uses by their nature and intensity absolutely will impair the integrity and character of the HS zoning district and the neighborhood. These uses will operate 7 days a week, 18 hours a day from 5am to 11pm leaving the surrounding neighborhoods only 6 hours rest – not even a full night’s sleep! Hundreds of individuals going back and forth between competitive swim meets and making multiple trips to a fitness center throughout the day is a much different and more intense use than golfers walking through the greens. The intensity of these commercial uses will have a significant impact on the character of the surrounding neighborhood, whose homes were built and purchased with the expectation of a neighborhood surrounded by rural uses permitted for lands designated Hillsides, not urban development.

The PC Staff Report incorrectly states that the proposed fitness center and swim center uses are allowed in the Hillsides (HS) Zoning district. These uses fit within the established "Health & Fitness Centers" category of uses which was purposefully omitted from the list of allowable uses in the Hillsides zoning district. And for good reason – because they are incompatible with the applicable Hillsides General Plan and Zoning policies, particularly General Plan Policy R-LU 18, because Health & Fitness Centers do not either (1) require remote, rural settings or (2) support the recreational or productive use, study or appreciation of the natural environment." The Board recognized this in 1994 when it explicitly prohibited these uses as a condition of the original approval golf course approval.

In determining whether this finding can be made, the Board must consider that the additional 20,000 sf fitness club plus swim center nearly doubles the existing 22,000 sf club house and reception facility of the existing golf club, and more than doubles the intensity use by adding additional primary uses. The PC Staff Report distorts the impact of the development on the integrity and character of the zoning district and neighborhood by stating that the "total area developed ... uses less than 1% of the entire property." It is important to remember that 50 acres, roughly 25% of this land, is dedicated open space and therefore this should be subtracted from the acreage total. Moreover, 115 acres of the remaining land comprises the 18-hole golf course and therefore should be included in the developed area. 5 acres are developed with the existing club house, reception facility, maintenance building and roadways. (See EIR, p. 17.) Therefore, the accurate percentage of the developed property is 76%, not 1% as contended by Staff.

Finally, the PC Staff Report states (p. 12) that “the proposed project will not be detrimental to the site's existing setting because the proposed locations will not result in any additional removal
of existing trees and/or natural vegetation.” This is true because 498 native oaks have already been removed as part of the original golf course development project. The replanting of these trees in the 3:1 ratio required by the County has been a problematic issue over the past 15 years. It has taken citizen action and a special effort by the County to ensure that a reasonable effort has been made on the tree restoration project. To this day, photographs of the land show the devastation created by the removal of these trees. It is a specious argument to say that this project will not result in further environmental damage because the environmental damage has already been done. This project merely capitalizes on the fact that this damage has occurred.

D. The Proposed Use Will Be Detrimental to the Public Health, Safety and General Welfare

Finding No. 4 (Section 5.65.030 (D)): “The proposed use will not be detrimental to the public health, safety or general welfare. In this respect the Planning Commission shall further find, without limitation, that:

(1) "Adequate off-street parking, loading and unloading areas (if applicable), and handicapped access will be provided"

This finding cannot be made. Only 61 additional parking spaces are proposed to accommodate the fitness center and swim center uses. While staff claims this meets County parking standards, these standards are based on square footage of the facility, not maximum number of expected members and visitors to competition swim meets during peak periods. Based on the local swimming clubs and related facilities in the immediate area, which include five cabana clubs, the Almaden Swim and Racket Club, the Almaden Valley Athletic Club, and the Almaden Country Club, we believe that the estimated peak parking demand for a swim event is grossly understated. At a typical swim meet in Almaden Valley there are approximately 200 swimmers, not the 120 expected by the developer, with at least the equivalent number of spectators. Moreover, staff’s estimated parking demand only appears to account for peak swim meet demand and does not account for simultaneous fitness center use. As such, while 61 extra spaces may meet County parking requirements, they do not adequately accommodate parking demand that will be generated by the proposed new uses based on existing similar uses in the immediate area, the numbers of individuals that attend, and the traffic patterns that are involved. Therefore, this finding cannot be made.

(2) "Appropriately designed site access will be provided, including safe and adequate access for fire and emergency vehicles."

Contrary to the PC Staff Report’s conclusion which is completely unsupported, this finding cannot be made. Furthermore, the project conflicts with related General Plan Policy R-LU 25 (e) which states that “Non-residential uses shall cause no significant increase in the demand for public services...” Contrary to the Initial Study’s completely unsupported conclusion, the proposed project will substantially increase the number of people on the site – especially during swim meets -- and therefore add an additional strain on existing emergency response capability. On a crowded weekend day, approximately 80 golfers might be on the course if operating at full
capacity. However, at a swim meet, there could be 400 people present. If a significant emergency such as a structural fire were to occur, emergency responders would have to plan to reach potentially dozens of victims in an area high on a hillside with only one narrow two-lane access road as the method of entry. Therefore, this finding is not supported by evidence in the record and cannot be made.

(3) "The use will not adversely affect water quality. Adequate wastewater treatment, disposal and sanitation facilities will be provided and will satisfy all applicable local, state and federal requirements."

Contrary to the conclusion in the Staff Report and the Initial Study, evidence in the record does not support this finding. The PC Staff Report states (on p. 14) that the proposed fitness center will be served by a new sewage disposal system including a 600 foot and a 1100 foot leach field that will be located to the west of the building. No evidence is provided that these leach fields will serve the volume of wastewater produced by the number of individuals using the fitness center and swim facilities over any given period of time. Although the project states that construction and operation of the system will adhere to conditions stipulated by the Department of Environmental Health and be consistent with requirements of the Regional Water Quality Control Board, anticipated flow and total volume estimates are not provided either in the EIR or staff report. Furthermore, there is no evidence that this new septic system complies with General Plan Policy R-RC 12 which provides: "Excessive concentrations of septic systems shall be avoided, especially in areas vulnerable to groundwater contamination or in which normal functioning may be impaired by hydrologic constraints." As such, this finding cannot be made.

(4) "The use will not be detrimental to the adjacent area because of excessive noise, odor, dust or bright lights."

This finding cannot be made. Contrary to the PC Staff Report conclusion, the proposed use absolutely will be detrimental to the adjacent area because of excessive noise, odor, dust and bright lights. The PC Staff Report (pp. 14 to 15) acknowledges that the project will have a significant impact on noise because the swim race starting buzzer and spectator cheering will exceed the limits of City of San Jose Zoning Ordinance at a portion of the property in San Jose depending upon the orientation of the swimming pool, location of the swim meet starter and location of the spectators. While the EIR identifies relocation of the start buzzer systems and containing spectators to mitigate this impact, such mitigation is inadequate because it fails to account for the fact that these excessive noise levels in violation of San Jose Zoning Ordinance standards will continue for anywhere from 4 to 5 hours in duration. This is not a "short-term" impact as contended in the PC Staff Report. Unlike a round of golf, a competitive swim meet generates ongoing, sporadic, loud noise just like any athletic competition would. The PC Staff Report and the EIR minimize the anticipated impact of noise by avoiding discussion of the duration of the noise.
(5) "The use will not substantially worsen traffic congestion affecting the surrounding area."

The EIR's conclusion that the project will not significantly impact traffic is based on the flawed assumption that the proposed fitness and swim center uses are not separate and independent uses but rather ancillary uses to the existing golf course use. (EIR, p. 78.) As explained above, the fitness and swim center uses are not ancillary uses, but rather primary uses that will be housed in separate facilities and will have a separate target membership. Therefore, the EIR should have used the Institute of Transportation Engineers (ITE) rate to determine trip generation. Instead, the EIR based its trip generation on counts conducted at the Palo Alto Hills Golf and Country Club, resulting in substantially lower trip generation than what would have resulted if the ITE rates were used and thereby avoiding the requirement for a Traffic Impact Analysis (TIA).

Because a TIA was not even prepared to determine how the trips generated by the project would affect the levels of service at surrounding intersections either directly or cumulatively, there is no evidence in the record to support this finding (that the proposed use will not substantially worsen traffic congestion affecting the surrounding area).

2. **Zoning Amendment Findings Cannot Be Made**

Presumably in an attempt to rectify the project's inconsistency with the Zoning Ordinance discussed above, County Staff is initiating proposed "modifications to the Zoning Ordinance to clarify the types of related uses that occur at golf courses and country clubs." Staff's attempt fails because the required findings of approval for the Zone text amendment cannot be made.

County Code Section 5.75.040 requires the Board to deny the Zoning Amendment unless it can find that it is consistent with state law, the general purposes of the Zoning Ordinance and the General Plan and the land use designations in the General Plan. As explained below, none of these findings can be met.

Staff concludes without any supporting evidence that these findings can be made because the proposed text amendment "would not change the intent of the primary golf and country club use. The revision is only to further clarify the different types of related uses that can be accommodated at a golf and country club..." (PC Staff Report, p. 8)

As discussed above, this "clarifying" County-initiated zone text amendment is essentially sneaking in a use category – Health & Fitness Centers – that was purposefully omitted from the list of allowable uses in the Hillsides zoning district for a reason – because it is inconsistent with the Hillside general plan and zoning policies, particularly R-LU 18 as it does not either (1) require remote, rural settings or (2) support the recreational or productive use, study or appreciation of the natural environment." The Board recognized this in 1994 when it explicitly prohibited these uses as a condition of approval.

Allowing swimming pool, tennis court and fitness center uses into the Golf Course & Country Club use category would therefore result in expansion and intensification of the golf course use
in violation of the General Plan. It also expressly contradicts the 1994 resolution's conditions which expressly state that adding these specific uses to the project site would require a zoning amendment and general plan amendment.

Moreover, contrary to the PC Staff Report conclusion, the proposed project is also inconsistent with the supplemental provisions for Golf Courses & Country Club uses set forth in Zoning Ordinance Section 4.10.140. These provisions require that "[t]he size, design and intensity of any related use shall be of an appropriate scale to the size of the golf course and country club development." The proposed 20,000 fitness and swim centers almost doubles the existing 22,000 sf club house and reception facility. As such, the size design and intensity of the proposed fitness and swim centers are not appropriately scaled to the size of the golf course and country club development. Furthermore, the proposed fitness and swim centers do not serve the golf course use and therefore they are not related or ancillary to the golf course use. They are separate primary uses that target a separate membership. As clearly stated by Mr. Garcia in his testimony before the Planning Commission on March 27, 2014, members of the existing golf club do not automatically receive privileges to use the swim and fitness centers, they must obtain separate memberships for use of these facilities. It is foreseeable that over time, use of these facilities could eventually dwarf the golf course, making the golf course use ancillary to the fitness and swim center uses.

Finally, the proposed project is inconsistent with the purpose and intent of the –d1 combining district which is to conserve the scenic attributes of those hillside lands visible from the Valley Floor. As discussed above and depicted in the photos in Attachment 3, the existing club house and reception facility already is prominently visible from the valley floor in violation of the –d1 combining district purpose. More than doubling this square footage with the 3-story 20,000 sf fitness and swim centers will only further exacerbate this violation.

3. **General Plan Amendment and Change of Zoning Designation is Required**

As explained in the enclosed letter to County Counsel dated July 22, 2014 (Attachment 1), the 1994 Resolution approving the original golf club, imposed a condition of approval that prohibited any further development of the property including "the expansion of the club or other facilities... pools, tennis courts, or any other uses permitted in the Hillside zoning district" unless a change in the property's General Plan and Zoning designation of Hillside was approved. As explained further in the attached letter, this condition was never amended, revoked or superseded either by the subsequent settlement agreement or the 2008 use permit modification. Further, Mr. Garcia explicitly acquiesced to this condition by agreeing to the condition, failing to challenge its validity, and accepting the benefits afforded by the use permit. As such he is bound by this condition requiring. See Imperial County v. McDougal (1997) 19 Cal.3d 505, 510.

This condition does not, as the County Counsel's office contends, unlawfully bind future Boards. Instead, it imposes a lawful procedural protection against further development of the golf club, a protection that the prior Board determined was necessary in order to make the required finding that the original golf course proposal was consistent with the General Plan. See Neighborhood
Action Group v. County of Calaver (1984) 156 Cal.App.3d 1176. Because imposing this condition was entirely within the Board’s police power, because it has not since been modified, superseded or revoked, and because Mr. Garcia acquiesced to this condition by receiving the benefits of the original use permit which allowed Mr. Garcia to build the golf course, this condition must be upheld and enforced by requiring any further development on the property be subject to approval of a change in the property’s Hillsides designation under both the General Plan and Zoning Ordinance.

4. **Approval of the Project Would Violate CEQA**

The EIR is inadequate under CEQA for the reasons stated in the record, including the following reasons, and therefore must be revised to address these inadequacies and recirculated prior to project approval:

- **Water Supply.** The EIR fails to analyze the impact of the project on the existing water supply. The EIR explains that this topic area was omitted because the Initial Study concluded that the impact would be less than significant. The Initial Study concludes that "the golf course is already served by San Jose Water Company, and no entitlements would be required to serve the new facilities." (Initial Study, p. 25.) Yet there is no evidence in the Initial Study or elsewhere in the record supporting this conclusion -- i.e. no information on how many gallons per day the new facilities would require and whether San Jose Water Company has the capacity to serve this demand under its existing entitlements. Especially in this time of severe state-declared drought, this impact must be analyzed before the project can be approved.

- **Water Quality.** The EIR fails to analyze the project's impact on water quality. The EIR explains that this topic area was omitted because the Initial Study concluded that the impact would be less than significant. Yet there is no evidence in the Initial Study or elsewhere in the record supporting this conclusion -- i.e. no evidence is provided that the new proposed septic system will serve the volume of wastewater produced by the number of individuals using the fitness center and swim facilities over any given period of time. Nor is there any analysis of whether the project complies with General Plan Policy R-RC 12 which provides: "Excessive concentrations of septic systems shall be avoided, especially in areas vulnerable to groundwater contamination or in which normal functioning may be impaired by hydrologic constraints."

- **Land Use.** The EIR's analysis of the project's impact on land use is inadequate. Contrary to the unsupported conclusion in the Initial Study and the EIR, and as explained in the discussion above, the proposed project conflicts with the General Plan and the Zoning Ordinance.

- **Traffic.** As discussed above, the EIR's traffic analysis is inadequate because it is based on the flawed assumption that the fitness and swim center uses are ancillary uses that would serve the existing golf course use when in fact these are separate primary uses that...
target a separate membership from the golf course. As a result, the estimated trip
generation of the project is artificially reduced. ITE rate should be applied to the
proposed use and a Traffic Impact Analysis should be conducted to analyze the project's
impact on surrounding intersections and to take into account the cumulative impact of the
project and other pending approved and planned projects in the area.

- **Noise.** The noise analysis is inadequate because, as discussed above, it erroneously
  characterizes the noise impact of the swim team meets as "short term" and fails to take
  into account the natural amphitheater effect of the site.

- **Aesthetics.** As discussed above and as shown in the attached photos (Attachment 3), the
  aesthetic impact analysis is inadequate because it underestimates the existing impact of
  the golf course on the Valley Floor and therefore underestimates the expansion of this
  impact by the proposed facilities.

In sum, (1) the required findings of approval for the Use Permit and the Zoning Amendment
cannot be made; (2) the original approval explicitly prohibited further development of the golf
club absent a change in the property's General Plan and Zoning designations (which are not
sought by Mr. Garcia); and (3) the EIR is inadequate under CEQA. Therefore, we respectfully
urge this Board to deny Mr. Garcia's proposed doubling of the size and intensity of use of the
original golf club with the addition of a 20,000 sf three-story fitness center and competition swim
center.

Very truly yours,

Camas J. Steinmetz

Cc: Winifred Botha, Assistant County Counsel
    Elizabeth Pianca, Deputy County Counsel
    Rob Eastwood, Principal Planner
    Pamela Wu, ASA Secretary
    Kirk Girard, Planning Manager
Tuesday, August 26, 2014

President Mike Wasserman and Board Members
Santa Clara County Board of Supervisors
70 West Hedding Street, 10th Floor, East Wing
San Jose, California 95110

Via Email to: BoardOperations@cob.sccgov.org and Board Members

Re: Boulder Ridge Fitness and Swim Center and Associated Zoning Code Change

Dear Supervisor Wasserman and Board Members,

On behalf of the undersigned organization, we respectfully write to express opposition to the expansion of the use permit for the Boulder Ridge Golf Course to accommodate a 20,000 square foot fitness center and 25-yard, competition pool, with associated events (Project). In addition, this letter relates concerns regarding proposed changes to the County’s zoning code. Both the instant situation and the zoning code changes raise larger issues for County planning. As representatives for the region’s conservation organizations, these implications are troubling to us.

We have heard from County planners that, while the Boulder Ridge Golf Course probably should never have been approved in the first place, “relatively small” expansions of such a use are not a big concern. This seems a strange logic. If the land use itself is problematic, then expansion should only be seen as more so. As far back as 1992, the City of San Jose wrote of the site,
"The intensity of the golf course use is incompatible with the site’s physical characteristics and would result in a significant change in the visual character of the hillsides."

That statement still rings true today—and argues against expansion of the use.

We hope the Board of Supervisors will put years of controversy to rest by making a statement that the Boulder Ridge property has been built-out and that neither this proposed expansion, nor any foreseeable future expansion, is warranted.

**Local and Regional Impacts**

The location of the Boulder Ridge Golf Course makes it highly visible—not only to local residents but to the public in general along the Los Alamitos Creek Trail and those enjoying nearby, publicly-protected lands. The building of the golf course and related facilities to date required significant alteration of the terrain, much of which is still highly visible today. The Boulder Ride Golf Course construction also required the removal of hundreds of oak trees, thus creating negative wildlife impacts. The developer then neglected to mitigate for the tree loss for years until the public exposed the problem. Mitigation was largely done off-site, which is not preferable.

**Straining to Make Findings**

County staff’s analysis of compliance with the General Plan and Zoning Designation standards for the site appears strained. This is natural, as it is tough to argue that a three-story building, approximately doubling the square footage on the site, and used for a fitness center not directly related to the golf course, qualifies as the kind of rural use that enhances the environment and provides for low-intensity activity, as the General Plan and Hillside Zoning call for. Combined with the existing buildings on the site, this expansion seems to cross the line into urban uses that are more appropriately located within urban areas. Hillside zoning simply does not support the findings proposed by County staff as written.

**Repeated Use Expansions Represent a Problematic Form of Planning**

There is an exhaustive history of Boulder Ridge, as has been well documented by the local residents. We hope you have a chance to review some of that history, as it explains well the perspectives and actions taken over time, dating back to when Supervisor Mike Honda said nothing more should be allowed on the site, “even a pool.” *(Mercury News editorial, 1994)* Reading those materials, it seems clear that proponents of this current expansion proposal have been placed on notice long ago that the site has reached its capacity. In fact, the developers themselves have made similar comments in public previously. Nonetheless, the Project proponents return with another expansion of the use on the site.

An incremental expansion such as the Project proposes represents a particularly problematic situation for planning. While each increment may, in itself, seem
relatively minor, the end result can be a site that is overbuilt and imposes too many impacts on surrounding lands and people. For this reason, CEQA emphasizes the need to describe “the whole of a project” initially, discouraging what the law calls “piecemeal” proposals—what we call here incremental expansion.

We understand that there will be occasional circumstances that warrant adjusting a use permit within County jurisdiction. We are not stating that no such possibilities should ever be considered. In this case, the project proponents have the right to ask for a use expansion. However, in this situation, the Supervisors have every reason to deny that request.

Further, Project proponents offer no reason to believe that this expansion proposal will be the final one. One can imagine, in a few years, a large-scale restaurant proposal, followed a few years later by “just a few” homes. It should be recalled that the Project proponents were asked repeatedly back in the 1990's for an open space easement on the remainder of the undeveloped land to prevent expansion—and they refused. It seems past time for the County Board to define the ultimate build-out of this site and spare the local and regional community from continued controversy over the Project proponents’ desire for incremental expansion.

**Conditional Uses Versus Uses of Right**

It is important to note that sites like the Boulder Ridge Golf Course typically operate under a conditional use permit. There is no right to such expansion as the Project envisions. The Project proponents make the argument that other golf courses in County jurisdiction, such as Corde Valle, have these uses. In other words, the argument is, “They were allowed this, so we should be too.” This is a dangerous logic, as it appears to be the logic of a use that is a right rather than conditional. If the County were to amend the zoning code and approve the Boulder Ridge expansion at this point, it would only add to this “of right” logic, and it would make it that much more difficult to restrict other such requests in the future.

Conditional uses should be evaluated individually. Site circumstances, location within the County, relationship to neighbors, and environmental factors alter from site to site, and it is thus appropriate to make individual determinations. In the case of Boulder Ridge, these factors weigh against expansion, and we hope the Board sees that. Turning down this proposed expansion would also send a message to other landowners and developers that conditional uses are exactly that—conditional, and approvals are not to be assumed.

**Conclusion**

Again, we urge the Board to deny the proposed expansion of Boulder Ridge, for the reasons cited above. We also urge care with regards to proposed changes in the zoning code. Uses tend to expand rather than contract over time. Given the long-term nature of any such change, and the great importance of protecting our hillsides in this region, any such changes should only be taken on after serious thought.
We appreciate your support on this issue.

Sincerely,

Shani Kleinhaus, Environmental Advocate  
Santa Clara Valley Audubon Society

Michele Beasley, Regional Director  
Greenbelt Alliance

Alice Kaufman, Legislative Advocate  
Committee for Green Foothills

Dave Poeschel, Open Space Committee Chair  
Loma Prieta Chapter, Sierra Club

Ernest Goitein  
People for Livable and Affordable Neighborhoods

Linda Ruthruff, Conservation Committee Chair  
California Native Plant Society, Santa Clara Valley Chapter
ATTACHMENT 5
Attachment 5 – Revised Photo-Simulation

September 2014 Redesign

2013 Original Proposal
Attachment 5 – Revised Photo-Simulation

September 2014 Redesign

2013 Original Proposal
ATTACHMENT 6
October 15, 2014  
Project No. 45-016-2

Mr. Rob Eastwood  
Planning Department  
County Government Center, East Wing, 7th Fl.  
70 West Hedding Street  
San Jose, CA 95110

Subject: Boulder Ridge Fitness Center Revised Site Plan Review

Dear Rob:

Upon review of the revised site plan for the Boulder Ridge fitness center and swimming pool, the addition of the second building spaced away from the main building will not have a significant effect on the swimming pool noise levels at the easterly property line. The second building will provide a small “shadow zone” at the property line, however, the nearest sections of the property line will still be impacted by swimming pool activity noise that transmits between the buildings. Therefore, the findings and recommendations contained in the latest noise assessment study remain valid.

If you have any questions, please call me.

Sincerely,

EDWARD L. PACK ASSOC., INC.

Jeffrey K. Pack  
President
ATTACHMENT 7
RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CLARA CERTIFYING ENVIRONMENTAL IMPACT
REPORT SUPPLEMENTS AND ADDENDUM, ADOPTING RELATED
MONITORING PROGRAM, AND CONDITIONALLY GRANTING
USE PERMIT FOR THE GOLF CLUB AT BOULDER RIDGE

File No. 2195-42-53-92EIR-92B

WHEREAS, following duly noticed public hearings before the Santa Clara County
Planning Commission and Board of Supervisors on January 7, 1993 and February 23, 1993,
respectively, the Board of Supervisors unanimously voted to certify pertinent
environmental documents, to adopt a related monitoring program, and to conditionally
approve a use permit for The Golf Club at Boulder Ridge; and

WHEREAS, a Resolution setting forth the findings, conclusions and conditions of
the Board of Supervisors in taking such actions was duly agendized and formally adopted
on April 6, 1993; and

WHEREAS, on March 29, 1993, CHARLES SMITH and the COALITION TO
SAVE OPEN SPACE filed a Petition for Writ of Mandate (Superior Court No. 730166) to
challenge the aforesaid environmental certification and conditional granting of said use
permit; and

WHEREAS, trial of the Petition for Writ of Mandate was held on September 29,
and on October 1, 4, and 5, 1993, before the Honorable Thomas P. Hansen; and

WHEREAS, on January 31, 1994, Judge Hansen issued his Statement of Decision
and Writ of Mandate, vacating the aforesaid actions of the Board of Supervisors, and
remanding the matter "... for the purpose of amending or supplementing the FEIRS to
address, discuss, and analyze all proposed mitigation measures to the impact on loss of
open space, to circulate the same for public comment, to make specific findings with
respect to the feasibility or infeasibility of such mitigation measures, and, where alternative
feasible mitigation measures exist, to set forth some meaningful articulation as to why one
was adopted over the other;" and

WHEREAS, on March 15, 1994, a Draft Second Supplement to the Final
Environmental Impact Report for the Golf Club at Boulder Ridge was published and duly
circulated for public comment; and

WHEREAS, upon the preparation of responses to comments and text changes, an
Addendum to the Second Supplement to the Environmental Impact Report for the Golf
Club at Boulder Ridge was published on June 22, 1994; and

WHEREAS, on August 2, 1994, the Board of Supervisors conducted a duly noticed
WHEREAS, on that date public testimony was taken, and numerous variations of proposed mitigation measures were suggested for further study by Supervisors Honda and Gonzales; and

WHEREAS, the proposed alternative mitigation measures did not identify new potentially significant environmental impacts, but offered refinements to mitigation measures studied in the Supplements; and

WHEREAS, following discussion between the Board of Supervisors and counsel for CHARLES SMITH and the COALITION TO SAVE OPEN SPACE, and counsel for applicant ROCKE GARCIA, it was agreed that an Addendum would be prepared to study such alternative mitigation measures by no later than September 2, 1994, in order to provide adequate opportunity for public review prior to further public hearing and consideration by the Board of Supervisors on September 20, 1994; and

WHEREAS, said Addendum was published and distributed on August 30, 1994; and

WHEREAS, on September 20, 1994, the Board of Supervisors conducted a duly noticed public hearing in order to consider the certification of the Addendum and Supplements to the Final Environmental Impact Report, the adoption of a related Monitoring Program, and the conditional granting of a use permit for the Golf Club at Boulder Ridge; and

WHEREAS, based upon the documentary evidence before it, and the testimony received at the public hearings of August 2, 1994, and September 20, 1994, the Board of Supervisors unanimously voted to certify the Addendum and Supplements to the Environmental Impact Report, to adopt the related Monitoring Program, and to grant the subject use permit, based upon designated findings and conditions.

NOW, THEREFORE, the Board of Supervisors of the County of Santa Clara finds as follows, as summarized in the remarks of Supervisor Honda, and in the motion he then presented:

1. The Final Environmental Addendum and Supplements have been completed in compliance with the California Environmental Quality Act, and they reflect the independent judgment of Santa Clara County. Further, the Board of Supervisors has reviewed and considered the information contained in the Final Environmental Impact Report, and each of its Supplements and Addendum, prior to making its decision regarding conditional approval of the use permit application for the Golf Club at Boulder Ridge.
2. The Golf Club at Boulder Ridge, as proposed, represents the maximum development allowable under the Hillside Zoning District, and any incremental expansion, or increase in use or intensity, would be inconsistent with the Hillside General Plan designation of the project, as well as the County Zoning Ordinance, and therefore could not be permitted, absent a General Plan Amendment and zoning amendment. Any such proposal would require the written approval of the City of San Jose, or waiver of its rights thereto.

3. Accordingly, the Board of Supervisors finds it necessary to take lawful measures to ensure that the project does not expand or increase in intensity by exerting development restrictions, in one form or another, over the entire site.

4. Restrictions placed on the project must not only adequately mitigate the loss of open space, but must also be comprehensive and, at a minimum, meet the following 5 objectives:

   a) Permanent preservation of as much open space as is constitutionally permissible;

   b) Development restrictions over portions of the site that shall prohibit physical expansion of the golf course;

   c) Development restrictions over portions of the site that shall prevent intensification of uses within the existing boundaries of the golf course;

   d) Disincentives to abandon the golf course use and develop the site for more intensive uses; and

   e) Prevention of any increase in allowable housing density as a result of the grading of the site.

5. Restrictions must also meet basic constitutional standards by clearly addressing the following:

   a) What are the impacts that are sought to be mitigated?

   b) Is there a nexus between the project impacts and a legitimate government purpose?

   c) Are the proposed mitigation measures roughly proportional in nature and extent to such project impacts?

6. Site specific project impacts to be addressed by mitigation measures include:
a) The physical alteration of more than 100 acres of the site, including 750,000 cubic yards of grading.

b) The development of a property listed among the top priorities for preservation in the Preservation 2020 Plan, prepared by the County of Santa Clara.

c) Potential impacts on the steep sloping portions of the site, and rock outcrop areas, which are the most environmentally sensitive and most visible to the surrounding community.

d) Impacts associated with the siting and construction of a 22,000 square foot club house and other ancillary structures.

e) The close proximity of the neighboring community, and the need to create a physical buffer between commercial and residential uses.

f) Potential impacts associated with the loss of habitat for special status species.

g) Potential impacts to sensitive archaeological features.

h) Potential impacts of construction and operation on adjacent properties.

i) All other impacts evaluated in the Final Environmental Impact Report Supplements and Addendum, and in staff reports to the Board of Supervisors.

7. Of proposed mitigation measures to the loss of open space, the following 6 are infeasible for the following reasons:

a) Open space easement of 120 or more acres in perpetuity: Although effective in preserving the undisturbed lands, and in preventing the expansion of the golf course, this mitigation is not likely to meet the constitutional test of *Dolan v. City of Tigard*.

b) 90 - 100% open space easement in perpetuity: As in the previous case, although effective in restricting the expansion and intensification of the project, this mitigation is not likely to sustain a constitutional challenge.

c) 90% open space easement extending 20 years beyond the life of the use permit: This mitigation is likely to be constitutionally infirm, and since it does not provide permanent protection of open space, is ultimately indistinguishable from use permit conditions. Further, it does not provide a disincentive for the conversion of the golf course to other, more intensive
uses.

d) 90% open space easement, effective until the General Plan and zoning are amended: Although arguably effective in the long-term preservation of open space, this mitigation measure is not permanent, and is also unlikely to pass the constitutional test of Dolan v. City of Tigard.

e) Purchase of an open space easement by the Santa Clara County Open Space Authority: This mitigation measure relies on the actions of a third party agency over which the County exercises no authority. Further, there is no identified funding source, no acquisition plan, and hence no guarantee that an easement can or would be purchased. An effective mitigation cannot be based upon a possible outcome, and this mitigation measure does not restrict the intensification of the project within the boundaries of the golf course.

f) Purchase of public or private open space easement through the creation of a special assessment district: This mitigation requires the creation of an assessment district, which can be overridden with a majority protest, and would rely on the levying of a substantial fee on neighboring properties.

8. Of proposed mitigation measures to the loss of open space, the following 4 are feasible, but inadequate, because they do not meet the additional objectives stated in paragraph 4, above:

a) Development restrictions over 97 acres (all undisturbed and rehabilitated areas of the site) as a condition of the use permit: This mitigation is inadequate because there is no long-term preservation of open space, and no disincentive to the conversion of the property to other uses.

b) A 50 acre open space easement in perpetuity (slopes in excess of 30%): This mitigation measure is insufficient in size to mitigate the significant conversion of open space lands represented by the golf course project.

c) Right of First Refusal Agreement: Given the lack of identified funding sources for the eventual purchase of this site, and the absence of any plan which would support the eventual acquisition of the site, this alternative, while feasible, is problematic, and fails to meet all of the objectives for the mitigation of the loss of open space, as set forth in Paragraph 4, above.

d) 97 acre open space easement in perpetuity: This mitigation measure appears to represent the uppermost limit of a constitutionally permissible requirement for the dedication of an open space easement, in that it is
roughly proportional in nature and extent to the projects impacts identified in paragraph 6, above. Alone, however, it does not meet all of the objectives stated in paragraph 4, above. If coupled with other forms of development restriction, this mitigation measure appears to be the environmentally and legally superior alternative.

9. Based upon the foregoing findings, on the information in the Final Environmental Impact Report, its Supplements and Addendum, and upon analysis of staff reports and the testimony and documentary evidence received, the Board of Supervisors concludes that potentially adverse environmental impacts in the areas listed below have been identified. Appropriate mitigation measures, as summarized in the Summary of Impacts, attached hereto as Exhibit A, and fully incorporated herein by reference, together with such further mitigation measures as set forth in the following motion, have been proposed for each category of potential environmental impact noted below. These mitigation measures, and those specified in the following motion, when incorporated as conditions of the use permit, minimize such categories of potential impact to the extent feasible, and will reduce such potential environmental impacts to a less than significant level.

- Land Use Compatibility
- Wastewater Treatment
- Archaeology
- Geology
- Public Safety
- Utilities and Services
- Traffic
- Storm Drainage
- Vegetation and Wildlife
- Drainage and Flooding
- Water Quality
- Noise
- Air Quality
- Aesthetics
- Water Supply
- Parks, Recreation & Open Space

10. The loss of open space is mitigated to a less than significant level because the nature and design of the proposed golf course development, as conditioned, including the siting and environmental sensitivity of the golf course design, and the siting of the club house and ancillary facilities, effectively minimize the predominant aesthetic and visual components of the loss of open space. Further, the requirement of the dedication of an open space easement of approximately 97 acres in perpetuity, designed to permanently protect undisturbed and rehabilitated areas of the site, assures to the maximum extent feasible, the further mitigation of impacts summarized in paragraph 6, above.

11. Concerns regarding drainage from the golf course, and seepage into residential areas from golf course watering, have been adequately mitigated through the computerized watering system and other requirements of the Monitoring Program. These concerns are feasibly further mitigated by the incorporation of a Voluntary Drainage Monitoring Plan into the Monitoring Program. Such Voluntary Drainage Monitoring Plan is described in Exhibit B, attached hereto and incorporated herein by reference, and shall be incorporated as a further condition of the use permit.
12. Impacts from ancillary nighttime uses of the club house are feasibly mitigated by requiring that normal club house activities take place no later than 10:00 p.m. on Sunday through Thursday, inclusive, and no later than midnight on Fridays and Saturdays, provided, however, that such curfews shall not apply to occasional special events, such as receptions and tournaments. Impacts on the surrounding neighborhood are further reduced by conditions which eliminate the possibility of extending Mazzone Drive as a secondary access to the project site, time restrictions on hours of construction during the weekends which are at least as restrictive as those applicable during weekdays, and conditions to be implemented during the Architectural and Site Approval Committee process which shall implement identified mitigations, such as berms, to reduce the noise and visual impacts of the road and traffic to properties located at the end of Crossview Court.

13. The use, as designed, and as further conditioned through the Architectural and Site Approval Committee process, will not substantially alter the natural environment, in that the completed project will rehabilitate areas disturbed during grading, including the replacement of native trees at a 3:1 ratio, and the recreation of lost habitat types at approved rations. Further, the steepest, most visible portions of the site shall remain undisturbed, as will the natural rock outcrops in the central portion of the site.

14. A suitable location exists on the site which can safely handle the size of expected sanitation waste generation. The project will be served by septic systems, in suitable locations for the drainfields that have been approved by the Department of Environmental Health, and are placed on natural slopes of 30% or less, unless they otherwise meet or exceed all requirements of the Department of Environmental Health.

15. Based upon the mitigations set forth in the Final Environmental Report, each of its Supplements and Addendum, as summarized in the Summary of Impacts (Exhibit A), and further provisions of the following motion, all of which are subject to the monitoring provisions of the Monitoring Program, and shall be incorporated as conditions of the use permit, the Board of Supervisors makes each of the general findings set forth in Section 47-5 of the Zoning Ordinance of the County of Santa Clara, and incorporates each of said findings as if fully set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Clara that the Final Environmental Impact Report, and each of its Supplements and Addendum, be, and hereby are, certified as adequate, and as having been completed in compliance with the California Environmental Quality Act.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Monitoring Program, attached hereto as Exhibit C, incorporated herein by reference, be, and hereby is, adopted.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a use permit for the
Golf Club at Boulder Ridge, subject to the Conditions of Approval set forth in Exhibit D, attached hereto and incorporated herein by reference, and as modified by the following additional conditions, be and hereby is, granted:

1. As and for a further mitigation of the loss of open space, and other impacts designated in Paragraph 6, above, a permanent open space easement, in substantially the form set forth in the Addendum to the Final Environmental Impact Report, over approximately 97 acres of the project site shall be granted to the County of Santa Clara in perpetuity. Said easement shall be drafted in order to permit the installation of utilities, drainage systems, and minor ancillary structures within the open space area, consistent with the present design of the project, and to permit minor adjustments of the greens, tees, fairways, as well as the repair and maintenance of utilities and improvements. Cart paths, small directional signs, golf course "rough" areas, the relocated PG&E access road (which will also serve as a golf course service road), horticultural areas, and fences are all depicted as part of the current design and shall be permitted. In addition, where necessary, portions of golf course bridges and support structures may encroach into the easement area.

2. As and for a further condition of the use permit, no further development of the remaining portion of the property shall be permitted, with the exception of minor adjustment of the greens, tees and fairways, and the repair and maintenance of utilities and improvements.

3. As and for a further condition of the permit, consistent with the finding of this Board of Supervisors that this project maximizes the development potential of the site under existing General Plan and zoning designation, the construction of homes, overnight accommodations, the expansion of the club house or other facilities, or the introduction of new uses on the property, such as pools, tennis courts, or any other uses permitted with the Hillside zoning district, shall be prohibited.

4. As and for a further condition of the use permit, to be specifically implemented during the Architectural and Site Approval Committee process, identified mitigations measures, such as berms, shall be incorporated into the project design in order to reduce to the extent feasible the noise and visual impacts of the road and traffic to properties located at the end of Crossview Court.

5. As and for a further condition of the use permit, Mazzone Drive shall not be used as secondary access to the project site.

6. As and for a further condition of the use permit, hours of construction on the weekends shall be limited as restrictively as construction during the weekdays.

7. As and for a further condition of the use permit, the applicant shall be required to post security sufficient to provide for the rehabilitation of the site in the event the project is abandoned before completion, such security to be tendered prior to the
undertaking of any alteration of the hillside, including the cutting of any trees, or the commencement of any grading.

8. As and for a further condition of the use permit, in the event residential uses are in the future proposed for the site, and in view of the project’s significant alteration of the site’s natural grade, any future entitlement for residential development which depends upon slope density calculations shall be based upon calculations prior to alteration of the site. In this manner there shall be no increase in the number of residential units permitted as a result of the grading done for the golf course.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California on NOV 1 1994 by the following vote:

AYES: Supervisors

NOES: NONE

ABSTAIN: Supervisor

LOFGREN

APPROVED AS TO FORM AND LEGALITY

James E. Lewis
Deputy County Counsel
ATTACHMENT 8
SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement"), effective May 20, 1997, is entered into by and between the Board of Supervisors of the County of Santa Clara and the County of Santa Clara (collectively "County") as the first party, Garcia Development Company and Rocke Garcia (collectively "Garcia") as the second party, and The Coalition to Save Open Space, and Charles Smith, individually and on behalf of all similarly situated property owners (collectively "Coalition") as the third party, with reference to the following facts:

REQUITALS

A. Garcia Development Company owns that certain 202 acre parcel of real property located in the County of Santa Clara and sometimes known as Boulder Ridge (the "Property");

B. Garcia is desirous of constructing and operating a golf course on the Property;

C. Two lawsuits have been filed regarding the County's approval of Garcia's golf course use: Smith, et al. v. Board of Supervisors (Garcia) (Action No. 730166; the "Smith Case"), and Garcia v. County of Santa Clara (Coalition) (Action No. 747010; the "Inverse Case"), and an additional suit is pending regarding Garcia's interim farming activities on the Property: Coalition v. Garcia, et al. (Action No. 754469; the "Farming Case");

D. Without any admission of liability, the parties hereto desire to resolve all issues concerning the Smith case, the
Inverse Case, the Farming Case, and expected approval of those project-related implementing permits which the golf course use permit requires Garcia to obtain, and, while the absence of future controversy cannot be assured, to establish procedures aimed at allowing the construction and operation of the golf course on the Property to move forward without further litigation.

AGREEMENT AND RELEASE

FOR AND IN CONSIDERATION of the mutual releases and other valuable considerations set forth in this Agreement, County, Garcia and Coalition hereby agree as follows:

1. Covenant to Construct and Operate Golf Course. Garcia, and its assigns or successors in interest (if any), covenant(s) to the County that it will build and operate the Boulder Ridge Golf Club. Garcia, and its assigns and successors in interest (if any), covenant(s) to the County not to make any commercial agricultural use of the Property during the construction and operation of the Boulder Ridge Golf Club. Garcia, and its assigns and successors in interest (if any), covenant(s) to the County not to apply to the County, the City of San Jose, or any other governmental entity for any further development on the Property, including, but not limited to, residential development for a period of either (a) four (4) years commencing upon the issuance of the grading permit for the golf course on the Property, or (b) two (2) years commencing from the date that the golf course (including the completion of construction and commencement of operation of the cart barn, pro shop, and grill) is open for public use.
play, whichever is later. This covenant shall run with the land and shall be transferred to any entity to which Garcia transfers title. This covenant is not intended to and does not imply that the County is agreeable to any further development of the Property under any circumstances. This covenant shall be included as a condition to the use permit.

2. **Preservation of Open Space.** Pursuant to Judge Flaherty's Statement of Decision in the inverse case filed April 8, 1997, the County shall promptly eliminate the 97 acre open space easement as a condition to approval of Garcia's golf course project, and shall reaffirm Garcia's use permit for the golf course without any additional conditions, except for the covenant described in Paragraph 1 above and the open space preserve described below. Garcia does not concede that an open space easement of any size is legally required to address any open space impact of the golf course project. Nonetheless, Garcia hereby irrevocably offers to donate to the County a 50 acre open space preserve, pursuant and subject to the terms and conditions of that certain document entitled "Grant of Open Space Preserve" attached hereto as Exhibit 1 and incorporated herein by this reference. Exhibit 1 contains the final language of the Grant of Open Space Preserve, but the parties hereby acknowledge that the map attached thereto is not in final form because the exact location of the preserve area cannot be known until rough completion of the golf course. Upon rough completion of the golf course and prior to the opening of the golf course, Garcia shall cause the preserve area to
3. Monitoring of Golf Course Construction. Garcia hereby agrees to allow George Bettisworth, or a mutually agreed upon successor, as a representative of the Coalition to Save Open Space, to monitor the construction of the Boulder Ridge Golf Course under the terms and conditions stated herein. The monitoring period shall commence on the date that the County issues the grading permit to Garcia and shall end on the date that the golf course is opened for public play. During that period, Mr. Bettisworth may tour the Property with a representative of Garcia a maximum of once per calendar month, at times to be mutually agreed upon within 72 hours after notice by Mr. Bettisworth. The sole and exclusive purpose for Mr. Bettisworth’s onsite visits is the visual observation of construction matters that could directly impact the adjacent Almaden Hills Estates residential area. Examples of matters which could result in direct impacts include, but are not limited to, noise, dust, drainage and erosion. Examples of matters which do not relate to direct impacts, and which are not to be the subject of Mr. Bettisworth’s site visits, include but are not limited to, the number or location of trees removed and impacts to sensitive habitats. Garcia will designate a representative to accompany Mr. Bettisworth on the site visits at
the time Mr. Bettisworth provides notice of his request for a site visit.

4. **Payment of Attorneys Fees.** Within thirty (30) days of the effective date of this Agreement, County shall deposit with Richard Wylie, the mediator agreed upon by Garcia and Coalition, the amount of $82,500. Within forty-five (45) days of the effective date of this Agreement, Garcia shall deposit with Mr. Wylie either (1) the amount of $82,500 or (2) a note in that amount payable to McManis, Faulkner & Morgan, signed by Garcia Development Company, and providing for interest at the rate of ten percent (10%) per annum from the 46th day after the effective date of this Agreement until paid, with payment to occur no later than the 120th day after the effective date of the Agreement, along with a letter from Rocke Garcia stating: "If Garcia Development Company does not make payment pursuant to the note when due, I will make that payment immediately" (collectively the "Note"). The sums and/or Note delivered to Mr. Wylie pursuant to this Paragraph 4 shall be delivered by Mr. Wylie to McManis, Faulkner & Morgan in the manner provided in Section 6 below.

5. **Dismissals of Pending Litigation.** Within thirty (30) days after the effective date of this Agreement, the following shall occur:

   a. The Coalition shall deliver to Mr. Wylie all fully executed documents in fileable form necessary to dismiss its two attorneys fees claims currently pending in the Smith Case, a dismissal with prejudice of its Complaint in the Farming Case, and
a letter from Jim McManis to Rocke Garcia as attached hereto as Exhibit 2.

b. Garcia shall deliver to Mr. Wylie all fully executed documents in fileable form to effect a final judgment for Garcia in the Inverse Case, which documents shall include an explicit waiver by Garcia of any claim for attorneys fees and any damages which Garcia may have incurred as a result of any temporary taking arising from the imposition of the 97 acre open space easement.

c. Garcia shall prepare, with language to be agreed upon by all parties, and all parties shall sign, a Stipulation in the Inverse Case wherein the parties agree (1) to the filing of an interlocutory judgment and issuance of a writ by Judge Flaherty, in the form submitted to the Court on March 18, 1997, commanding County to set aside the 97 acre open space easement condition and to take such other actions as are consistent with his Statement of Decision filed April 8, 1997, and (2) a return to that Writ wherein Judge Flaherty acknowledges that, by virtue of this Agreement and the County’s approval of it by resolution, the writ has been fully satisfied. The parties agree that the Board’s resolution implementing the Agreement is in compliance with the California Environmental Quality Act based on the existing certified Environmental Impact Reports for the project. The interlocutory judgment and writ shall be presented to the Court immediately upon execution of the Agreement by Garcia and Coalition in anticipation of Board approval on May 20, 1997; and the return
shall be prepared and delivered after said Board action to Mr. Wylie for filing with the Court together with the above-mentioned dismissals.

6. **Disbursement and Filing.** The parties hereby authorize Mr. Wylie to release the payments and/or Note to McManis, Faulkner & Morgan described in Section 4 only after he has received all documents described in Section 5, and to file all documents in Section 5 immediately after disbursing to McManis, Faulkner & Morgan the payments and/or Note described in Section 4.

7. **No Appeal in Inverse Case.** The Coalition and County each agree not to appeal Garcia’s judgment in the Inverse Case.

8. **Fees and Costs.** Except as explicitly described in this Agreement, each party hereto shall bear all of its own fees and costs (including attorneys fees) regarding the Smith Case, the Inverse Case, the Farming Case, and all administrative proceedings to date related to the approval, construction and operation of the golf course and related facilities which have been approved by the County.

9. **Enforcement of Use Permit.** Nothing in this Agreement is intended, or shall be interpreted, as limiting County’s ability to enforce the conditions to Garcia’s use permit governing construction and operation of the golf course and related facilities.

10. **General and Mutual Release.**

   a. Each party hereto hereby releases and forever discharges each other party of and from any and all legal or
equitable claims, demands, causes of action, liabilities or obligations of any kind, known or unknown, which any party has or may have against any other party, arising out of or in any way connected with Garcia's prior farming activities on the Property and/or the County's prior and current (i.e. pursuant to this Agreement) approvals of Conditional Use Permit No. 2195-42-53-92EIR-92B, including but not limited to the expected issuance of those project-related implementing permits (such as ASA, grading and building permits) which said conditional use permit requires Garcia to obtain, for construction and operation of the golf course and related facilities which have been approved by the County for the Property. Coalition agrees not to challenge such permits on any ground existing before or at the effective date of this Agreement.

b. The acts described in Sections 1 through 8 above, and the execution of this Agreement, are entered into by way of compromise and to avoid the expenses and uncertainties of continued litigation, without any admission of any liability or responsibility on the part of any party hereto. It is understood and agreed that liability for any of the claims, demands or causes of action referred to herein specifically is denied.

c. Each party hereto agrees that if the facts with respect to this Agreement or the facts alleged in the Smith Case, the Inverse Case or the Farming Case, are found hereafter to be different from the facts now believed by them to be true, each party hereto expressly accepts and assumes the risk of such
possible difference in facts and hereby agrees that this Agreement is and will remain effective notwithstanding such difference in facts.

d. It is understood and agreed that this is a full and final release applying to all unknown and unanticipated injuries, debts or damages to the undersigned, or to any of them, as well as those now known or disclosed. Each party hereto understands and agrees that this is a general release of each other party, and each party expressly waives the provisions of California Civil Code §1542, which provides as follows:

"A general release does not extend to claims which each creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

e. In that connection, each party hereto realizes and acknowledges that one or any of them may have sustained losses that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future which are not now anticipated. Nevertheless, each party acknowledges that this Agreement has been negotiated and agreed upon in light of this realization and, being fully aware of this situation, they do, and each of them does, nevertheless intend to release, acquit and forever discharge each other as set forth above from any and all such unknown claims, including damages which are known and anticipated.

f. This general and mutual release shall extend to all conduct occurring through date of expected passage by the
County Board of Supervisors of a resolution accepting this Settlement Agreement and the new conditions of the use permit. This general and mutual release shall not constrain or limit the parties from pursuing legal claims for conduct occurring after such date, except for the County's expected issuance of the above-mentioned implementing permits, so long as the approved conditions of the use permit as of the date of this Agreement are not modified or revised in any manner affecting said implementing permits.

11. **Final Expression.** The terms of this Agreement are intended by the parties as a final expression of their agreement and understanding with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement, including its exhibits, constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced to vary its terms in any judicial proceedings involving this Agreement.

12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same document.

13. **Authority.** Each person executing this Agreement on behalf of an entity warrants and represents that it has fully authority to execute the Agreement on behalf of that entity and to fully bind that entity to the terms of this Agreement.

14. **Execution.** This Agreement shall be void and of no
force and effect whatsoever unless it is fully executed by all parties hereto no later than the Effective Date of this Agreement as stated in the Preamble.

15. Future Disputes Regarding the Golf Course Project.

Prior to taking any formal action, Coalition will try to resolve future disputes regarding perceived violations of the terms and conditions of the permits for the golf course project in the following manner: To the extent it is feasible to do so, Coalition intends to have Mr. Bettisworth (or his successor) contact Garcia to discuss the dispute and make a good faith effort to resolve it. If they cannot resolve the dispute, they will contact the office of Supervisor Gage (or his successor) to discuss the dispute and make a good faith effort to resolve it. Coalition will provide a written notification to its members advising them of this dispute resolution procedure.

16. Future Development of the Property. Nothing in this Agreement is intended to, nor shall it be interpreted to imply that Coalition is agreeable to any development of the Property other than the golf course project as currently described and approved through the use permit and this Agreement.

17. Approval of Homeowners Association. The effectiveness of this Agreement is expressly preconditioned upon the execution, by the effective date of this Agreement, of a separate document whereby the Almaden Hills Estates Homeowners Association agrees to be bound by the terms and conditions of this Agreement.
18. Pac Bell Mobile Services' Conditional Use Permit Application. Pac Bell Mobile Services has submitted to the County a permit application, No. 62J2-41-52-96A, for a mobile/wireless communications facility on the Property (the "Pac Bell Permit"). Regarding the Pac Bell Permit, it is the intent of the parties that this Agreement be interpreted as follows: (1) Nothing in this Agreement, including Section 1 hereinabove, is intended to preclude the County from processing the Pac Bell Permit and rendering a decision in its discretion; (2) nothing in this Agreement (including Section 10 hereinabove), is intended to limit, in any manner, the Coalition's ability to take any position regarding the Pac Bell Permit or to pursue any legal remedy regarding the Pac Bell Permit; and (3) for the purposes of this Agreement, the Pac Bell Permit shall not be construed as a permit implementing the golf course project.

"COUNTY"

COUNTY OF SANTA CLARA and BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA

Dated: __________________________
By: __________________________
Name: __________________________
Title: __________________________

APPROVED AS TO FORM:

______________________________
County Counsel

12
"GARCIA"

Dated: ____________________________  ROCKE GARCIA

GARCIA DEVELOPMENT COMPANY, a California Corporation

Dated: ____________________________  By: ROCKE GARCIA, President

APPROVED AS TO FORM:
MATTEONI, Saxe & NANDA

By: ________________________________  NORMAN E. MATTEONI

"COALITION"

Dated: ____________________________  By: GEORGE BETTISWORTH, individually and as a Coalition member

Dated: ____________________________  By: DENNIS MULVIHILL, individually and as a Coalition member

Dated: ____________________________  By: CARL RAND, individually and as a Coalition member

Dated: ____________________________  CHARLES SMITH, individually and on behalf of all similarly situated property owners

McManis, Paulkner & Morgan hereby approves the form of this Agreement for Coalition and, as consideration for the payment of
attorneys fees described in Section 4 above, agrees to forever forbear from seeking from Garcia, County, or any entity or person related to either of them, any costs or fees, including attorneys fees, arising from the efforts of any member of the law firm related in any way to the Property through and including the effective date of this Agreement.

MCMANIS, FAULKNER & MORGAN

Dated: _________________________  By: _________________________

JAMES MCMANIS, Partner
ATTACHMENT 9
EXHIBIT A

Use Permit Conditions

File Number: 2195-13P-13A-13G
Owner/Applicant: Boulder Ridge Golf Club / Rocke Garcia

Project Description: Major Modification of Use Permit for the Boulder Ridge Golf Course and Country Club to construct and operate a 20,000 s.f. three-story Fitness and Swim Center. The project also includes a minor expansion of the existing storage yard.

The following conditions for the Boulder Ridge Golf Course and Country Club include conditions for the fitness and swim center and the competitive youth swim program (conditions #1-11) and conditions for the operation (conditions #12-26) and ongoing maintenance (conditions #27-29) of the golf course, clubhouse and reception uses. These conditions supersede and replace all prior conditions.

PROPOSED CONDITIONS FOR THE FITNESS AND SWIM CENTER / COMPETITIVE YOUTH SWIM PROGRAM

1. The Modification of Use Permit approving the proposed development to construct the Fitness and Swim Center and the minor maintenance storage yard expansion is effective on the effective date of Ordinance No NS-1200-343 amending Zoning Ordinance Section 2.10.040, Use Classification - Golf and Country Club, and Section 4.10.140, Supplemental Regulation.

2. Development for the proposed Fitness and Swim Center and maintenance storage yard minor expansion shall take place in accordance with approved plans for the Use Permit, Architecture and Site Approval and Grading dated April 24, 2013. The project includes a 20,000 s.f. three-story Fitness and Swim Center, a 25-yard six-lane swimming pool, a children’s instructional pool and a minor expansion of the existing maintenance / storage yard.

3. Comply with conditions of Architectural & Site Approval (Exhibit C).

Hours - Fitness and Swim Center
4. Operation Hours: 5am – 11pm, daily.
Competitive Youth Swim Program

5. Up to six (6) dual swim meets (home team vs. visiting team) are to be held during the summer months (June 1 to August 31) between the hours of 8am and 12pm, on Saturdays only.


7. Weekday practices are to be held in the afternoon between 4pm to 7pm, all year around. Weekend practices are to be held on Saturdays prior to 12pm, excluding Saturday on which a dual swim meet occurs.

Noise

8. No outdoor amplified music or other outdoor amplified broadcasting is allowed at the Fitness and Swim Center except the use of approval start buzzer system associated with the competitive youth swim program.

9. To minimize noise exposure at the easterly property line, the final configuration of the pool, including the location of the starter buzzer and designated spectator areas, shall be evaluated by a qualified acoustical engineer prior to the issuance of building permit for the construction of the facility. The acoustical engineer shall evaluate the configuration of these features to ensure that noise exposure would not exceed 55 dBA at the easterly property line. Per the analysis in the noise report prepared in the EIR and as shown in Table 6 of the Draft EIR, the configuration shall comply with one of the following:

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<th>Pool Orientation</th>
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<th>Spectator Location</th>
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10. Prior to final inspection and occupancy for the facility, a qualified acoustical engineer will evaluate the noise exposure from the starter buzzer at the easterly property line. This evaluation, which may include noise monitoring, shall be done for the purpose of calibrating the starter buzzer volume to set volumes at a
level that will ensure that noise levels at the easterly property line will remain below 55 dBA.

11. The proposed project is designed in accordance with the memo prepared by Schaaf and Wheeler on April 21, 2014 regarding the estimation of outdoor water demand.

Post-Approval Monitoring

12. The developer/operator shall be responsible for paying all reasonable costs associated with work by the County Planning Office, or under the supervision of the County Planning Office, that is conducted in conjunction with, or in any way related to, the conditions of approval for the Use Permit and Architecture and Site Approval and the associated Mitigation Monitoring Program for the subject property. This includes, but is not limited to, costs for staff time, consultant fees and direct costs associated with report production and distribution.

13. Submit one-year status report detailing the following areas, with accompanying Post-Approval Monitoring (PAM) fee (minimum of two (2) hours of staff consultation time subject to current fee schedule establish by the Board of Supervisors) for 3 years (3 reports total), commencing upon final occupancy of Fitness and Swim Center. The report should include the following:
   a. Fitness and Swim Center
      - Analysis prepared by a qualified traffic consultant assessing whether sufficient parking is provided onsite for the golf course, clubhouse, reception facility, the fitness center and the competitive youth swim program. The analysis should also address if the assumed increase in traffic is consistent with the addendums prepared by Pang Engineering Inc.
      - Parking survey should be conducted during peak usage of all golf and related uses, i.e. course, clubhouse, reception facility, the fitness center and the competitive youth swim program uses.
      - If parking is found to be insufficient, at the Planning Manager’s discretion, the Use Permit can be scheduled for modification, reaffirmation or revocation by the Planning Commission.

   b. Competitive Youth Swim Program
      - Dates of each swim meet that occurred;
      - Number of total swim meets that occurred each year;
• Number of maximum people (swimmers and spectators) that attended each event;
• Duration and hours of each event;
• Evidence of starting gun / buzzer that was used during the event, such as a manufacturer's specification sheet of the buzzer used during each event;
• Analysis that evaluates the noise exposure from the starter buzzer at the easterly property line during one of the six dual swim meets. This evaluation, which may include noise monitoring, shall be done with the purpose of calibrating the starter buzzer volume to set volumes at a level that will ensure that noise levels at the easterly property line will remain below 55 dBA.

EXISTING CONDITIONS RELATED TO THE DAILY OPERATION OF THE GOLF COURSE, CLUBHOUSE AND RECEPTION USE.

Golf Course
14. Grass clippings and other green waste shall be composted onsite, or at an approved off-site location. The compost pile shall be underlain with a plastic liner and be properly maintained, including such measures as sufficient mixing and control of moisture content. Composting operations shall comply with applicable regulations and necessary permits shall be obtained.

15. A system to collect and recycle glass, aluminum, plastic containers, newsprint, and corrugated cardboard shall be developed and implemented.

16. The success of the solid waste composting program and recycling shall be contained in the annual report prepared by the course superintendent which is submitted to the Planning Office.

17. All construction, landscaping, and security activities in the PG&E easement are subject to review and approval by PG&E.

18. A computerized golf course irrigation control system shall be provided. This system shall facilitate the application of turf grass chemicals.

Clubhouse
19. Activities at the Clubhouse shall comply with the County Noise Ordinance.
20. Windows and doors of the Clubhouse shall remain closed when the interior maximum noise level reached 110dBA or 90dBA for 30 minutes of any hour.

Reception Facility

21. Intended occupancy of the Reception Building is 224 people. The maximum occupancy for all reception uses onsite (clubhouse and reception facility) at any one time is 290 persons. No Reception uses are allowed at the 5,000 square foot outdoor covered deck north of the Clubhouse.

22. Hours of Operation for the Reception Facility and Clubhouse are from 7am to 2am, daily.

23. No outdoor amplified music or other outdoor amplified broadcasting is allowed at the Reception Facility between 10pm and 7am.

24. All doors on the northern and eastern sides of the Reception Building shall be maintained with self-closing doors. During all reception events, doors and windows on the northern and eastern sides of the reception facility shall remain shut (not propped open) and only opened as necessary for entrance/exiting.

25. This approval does not authorize any entertainment event such as musical or theatrical performances to which the public is invited is allowed. Any entertainment events of this nature shall comply with the County’s Entertainment Event and Circuses Ordinance that requires license, fees, referrals, noticing and hearing.

26. When noise exposure within the Reception Building exceeding 90 dBA, all doors and windows (including the front doors on the western façade) shall remain closed.

27. All written contracts or other agreements between the owner and users of the Reception Facility shall clearly state:
   a. All music, amplified music, and amplified broadcasting is prohibited between the hours of 10pm and 7am,
   b. All amplified music shall be located within the Reception Building,
   c. The doors on the northern and eastern sides of the reception facility shall remain closed during reception events,
   d. All doors and windows shall remain closed when noise exceeds 90 dBA, referencing the sound meter inside the building and its purpose, and
e. Submit a standard contract containing the abovementioned language to the Planning Office.

28. One handicapped space is to be provided at the Reception Facility at all time.

EXISTING CONDITIONS RELATED TO ONGOING MAINTENANCE OF EXISTING FACILITY (Staff has determined that the performance standards in the following conditions have been satisfied, no further action is required).

29. Oak woodland / Tree Replacement
Submit an annual Oak Woodland Restoration / Tree replacement monitoring report for a period of three years (from final inspection) from a qualified landscape architect / restoration ecologist indicating the survival rate of trees planted and overall adherence to required performance targets of oak woodland restoration and tree replanting, as outlined in the HT Harvey Memorandum dated July 15, 2008. Tree planning must meet performance measures described in the report, including the required planting of 861 trees (total) and establishment of 19.4 acres of oak woodland and oak savannah habitat (total).

The report shall be reviewed and approved by the Planning Office. The report shall describe any replanting necessary to maintain survival rates as outlined in the HT Harvey Memorandum. These reports shall be included within the Status Report to the Planning Commission as outlined under Condition #14.

30. The golf course superintendent shall submit a report to the Planning Office regarding the following measures regarding issues to potential nitrate leaching shall be reduced by:
   a. Proper application rate;
   b. Optimum time of year;
   c. Proper irrigation,
   d. Use of grasses and plants with low nitrogen requirements;
   e. Collecting, treating, or reducing runoff or drainage water;
   f. Amending soils to better retain nitrogen.

31. The golf course operational plan, prepared by a qualified biologist, is to be submitted to the Planning Office for review and approval no less than six months prior to the opening of the course. The plan is to implement the following components:
a. Adherence to the manufacturer's recommendations and procedures for all chemical applications;
b. Use of only County or USDA approved chemicals,
c. Use of short life pesticides;
d. Application of chemicals only under the direction of State licensed personnel;
e. No over-use of chemicals;
f. Proper storage of chemicals;
g. Proper disposal of chemical containers;
h. Irrigation flow regulations so that the pools will not be flooded or filled artificially during the dry season;
i. The pool monitoring program to check for presence of fertilizers, pesticides and herbicides.