

KENNETH BARKER

2349 Royal Oaks Drive

Alamo, California 94507

Phone ( 925 ) 820-0198

ALTA COSTA

OCT 23 PM 3:15

APPLICATION & PERMIT CENTER

HAND DELIVERED

Ms Catherine Kutsuris  
Director, Department of Conservation and Development  
651 Pine Street,  
Martinez, CA. 95453.

**RE: APPEAL OF DECISION BY THE SAN RAMON VALLEY REGIONAL PLANNING  
COMMISSION. COUNTY FILE: LP07-02078**

Dear Ms. Kutsuris,

This letter constitutes a formal appeal of the October 22, 2008, decision rendered by the San Ramon Valley Regional Planning Commission.

The basis for the Appeal is as set forth in the undersigned's appeal letter of September 9, 2008 including all previous letters, papers and correspondence.

Additionally, the undersigned protests and appeals the conduct of County Planner ( Ms. Christine Louie ) who has acted unprofessionally throughout the entire application process. Critical issues such factual evaluation of the application, compliance with applicable law and ordinance codes, verification of engineering calculations for distance and trajectory of golf balls, and violations of CEQA were ignored. Furthermore, her determination that the proposed 45 foot high fence falls under the ordinance code as an " accessory building " or a " house " constitutes sheer idiocy. From several years of history dealing with your department, these horrifically low levels of competence and professionalism are the regrettable standard for your mis managed County department.

The County, and the Planning Commission, allowed concealed and undisclosed vital information pertaining to the height of the proposed fence to be introduced as part of the Public Hearing without prior review by the undersigned. That unlawfully violates due process for timely notice for a Public Meeting. As requested, the Public Meeting should have been postponed for 30 days to allow the undersigned to review the concealed information.

A check in the amount of \$ 125.00 is attached for the Appeal fee.

Sincerely ,

Dated: Oct/23/08



Kenneth Barker

Check # 510

KENNETH BARKER  
2349 Royal Oaks Drive  
Alamo, California 94507

Phone ( 925 ) 820-0198

**HAND DELIVERED**

CONTRA COSTA  
08 SEP -9 PM 2:55  
APPLICATION & PERMIT CENTER

Mr. Robert H. Blake  
Principal Planner,  
Community Development Department,  
Administration Building  
651 Pine Street,  
2nd Floor, North Wing,  
Martinez,  
CA. 94553-0095

September 9, 2008.

**RE: APPEAL OF COUNTY APPROVAL OF ROUND HILL COUNTRY CLUB  
APPLICATION FOR FENCE 45 FEET HIGH BY 172 FEET LONG.  
COUNTY FILE: LP07 02078**

Dear Mr Drake,

This letter constitutes a formal Appeal of County approval of the subject application on September 8, 2008, for the following reasons:

- 1 ) County approval of the application has violated the Constitution Of The United States, 5th and 14th Amendments. It constitutes an illegal taking of the Barker's property without compensation.
- 2 ) County approval of the application has violated Article 1 of the Constitution of California. It constitutes an illegal taking, and damage to the Barker's property, without compensation.
- 3 ) County approval of the application has violated multiple Federal and State laws It constitutes a private nuisance.
- 4 ) County approval of the application has violated the County Ordinance Code by willfully playing illegal word games which classify a fence as an accessory structure, and thus utilize the incorrect ordinance code section.
- 5 ) County approval of the application has violated County permits previously issued to the applicant for construction of the golf course facilities and driving range. County is grossly negligent by not enforcing these permits

**Letter To Robert Blake September 9, 2008 Page No. 2**

6 ) County approval of the application is biased, unprofessional, and grossly negligent. County has not verified applicant's trajectory study that the 45 high fence will stop the golf ball trespass problem. Nor has County checked the elevations of the top of the new fence: the elevation of the top of the existing fence: the elevation of the Barker's property : and the elevation of the top of the Barker's house. A cross section is mandatory to understand what is being proposed. These basic requirements were not performed by County. That constitutes gross negligence.

7 ) County approval of the application is erroneous and absurd. It is based upon alleged concerns by the County for the safety of the Barker's property. However, the Barker's don't want the fence, and from 13 years of experience, strongly deny that a 45 foot high fence will resolve the golf ball trespass problem, nor resolve the safety problems

8 )It is grossly unprofessional, negligent, absurd, and ridiculous, for county to willfully classify the proposed 45 foot fence as a “ driving range netting structure.” and thus, have the unprofessional gall to claim the fence is a structure, therefore, the accessory building ordinance code applies rather than the applicable fence code. Unquestionably, such idiocy shows illegal County bias in favor of applicant.

9 ) Barker's incorporate by reference for this Appeal, all previous letters and papers, the Hand delivered letter and attachments dated September 3, 2008 as if set forth in full herein.

10 ) Be hereby notified the Barker's shall hold the County fully responsible for the reduction in the value of their home ( estimate to range between \$500,000.00 to \$700,000.00 ) from County approval of the fence application, and the applicant's subsequent installation of the subject 45 high by 172 long fence.

11 ) Check Number 502 in the amount of \$125.00 is attached for the Appeal fee.

Sincerely,



Kenneth Barker.

KENNETH BARKER

2349 Royal Oaks Drive

Alamo, California 94507

Phone ( 925) 820-0198

**HAND DELIVERED**

ALAMO COSTA  
08 SEP -3 PM 2:34  
APPLICATION & PERMIT CENTER

Catherine Kutsuris,  
Deputy Director-Community Development  
651 Pine Street,  
Martinez,  
CA. 94553.

**RE: REVISED NOTICE OF SEPTEMBER 8, 2008 PUBLIC HEARING-ROUND HILL  
COUNTRY CLUB-- COUNTY FILE LP07- 2078. - BARKER PROTEST**

Dear Ms. Kutsuris,

Barker's response was provided on August 29, 2008 for the “ Notice Of A Public Hearing ”

( hereinafter, Notice ). set for September 8, 2008. On August 30, 2008, a Revised Notice was received. The Revised Notice is even more untimely for county compliance with the legal 20 day time requirement for the September 8, 2008 Public Hearing.

County's recommended approval of the project and attached approval conditions are rife with negligence, error, constitutional violations, violations of law, and violations of county building codes.

Therefore, Barker's demand the project application be denied for the following reasons:

1 ) County representative Christine Louie firmly committed the county to provide a draft copy of the county's proposed recommendation to Barker's for comment, at least 30 days before the recommendation was finalized. Negligently, that was not done. As a result, Barker's were not given a reasonable opportunity to provide a full slate of reasons for rejecting the proposed project. Instead, only 4 working days have been allowed to review the proposed recommendation, when at least 20 days

notice is mandated by CEQA Section 15105. Therefore, holding the Public Hearing on September 8, 2008 will be a material violation of law, and reason to void all decisions that are rendered.

2 ) **Repeating**: Notice states a Negative Declaration has been issued for compliance with the California Environmental Quality Act ( CEQA ). Section 15105 mandates a public notice period of **not less than 20 days** be allowed for review of the Negative Declaration before a public hearing, which has not been done.

3 ) **Repeating**: Due to the sensitivity of the proposed project, an Environmental Impact Report and an Environmental Impact Statement must prepared. It is demanded county comply with CEQA for an Environmental Impact Report and Environmental Statement. Special emphasis must be placed on the 45 foot high by 172 feet long one inch black mesh fence which is a death sentence for native birds.

4 ) **Repeating**: Notice has materially **misrepresented** what is being proposed. Notice has violated Constitutional guarantees, Federal and State law, and county ordinance codes. These are fatal defects, and county proceeds at it's peril and liability for resulting damages.

5 ) Barker's incorporates by reference, the Fax and Certified Mail letter dated August 29, 2008, and all previous papers and correspondence provided to the county, as though fully set forth herein.

#### **CONSTITUTIONAL VIOLATIONS-- INVERSE CONDEMNATION**

6 ) Project approval will constitute uncompensated taking of a large part of Barker's property.

The 45 foot high by 172 feet long fence will prevent Barker's from utilizing their premises and garden areas in a reasonable and normal fashion as allowed by Constitutions of the United States and State of California. The fence will cast long shadows blocking out light, air, and blocking the view

of the golf course and surrounding open areas. Established fruit trees, grape vines, and flower gardens, will be damaged and negatively impacted. As a proximate result, virtually all of Barker's property will become useless for the reasonable and normal use as a garden.

7 ) Project approval constitutes an uncompensated taking of the Barker premises in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and Article One of the California Constitution. County will be liable for Barker's damages including, consequential damages, and legal fees.

**ABUSE OF DISCRETION**

8 ) County abused it's discretion to recommend approval of the project. In so doing, county violated Barker's Constitutional rights, Federal and State law, county ordinance and building codes. County is liable for damages that flow there from, including consequential damages.

**APPROPRIATENESS OF USE**

9 ) The 45 foot high by 172 feet long black mesh fence will be any ugly eyesore and a carbuncle on the appearance of the high end Round Hill Golf Club Development. The Round Hill Development consists of homes in the \$1,500,000.00 to \$12,000,000.00 range.

10 ) In violation of the General Plan, the ugly eyesore 45 foot high by 172 feet long black mesh fence, will be visible from Stone Valley Road which is an officially designated scenic route by the Contra Costa General Plan.

11 ) House prices throughout the Round Hill Development development will be materially reduced and the entire Development of some 400 expensive houses will be negatively impacted by county's illegal approval of the ugly eye sore fence. County will liable for the resulting loss in home values to the tune of multi- tens of millions of dollars, plus multiple lawsuits.

### VIOLATION OF LAW FOR COUNTY TO APPROVE PROJECT

12 ) California Code Sections 3479 to 3482.1 defines the project as unlawful. The project is a

“ nuisance ”. Code Section 3479, states the following:

“ *Anything ... ( that is ) an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use... is a private nuisance.* ” ( Emphasis added ).

13 ) The ugly eye sore 45 foot high by 172 feet long fence will be located 2 feet from Barker's property line. It will interfere with Barker's comfortable enjoyment of life and property.

It will block, impair, and ruin, Barker's view of the golf course, the surrounding open spaces, and hills, and will decrease the value of Barker's property. *County does not have authority to approve a project that violates law.* The fence will reduce the value of the Barker's home by an estimated \$500,000.00 to \$700,000.00. County will be liable for Barker's damages.

14 ) The 45 foot high fence will reduce light and air flow and cast harmful shadows on numerous existing mature fruit trees, hedges, ivy fence, multiple grape vines, and flower beds, causing irreparable damage and a large reduction in the value of the Barker premises. All items will “ *interfere* ”with Barker's “ *comfortable enjoyment of life and property* ”.County will be liable for resulting damages.

### FENCE IS A DEATH TRAP FOR THOUSANDS OF NATIVE BIRDS

15 )The 45 ft high by 172 feet long one inch black mesh fence is a death trap for birds. The on inch mesh fence will trap, injure, maim, and kill, thousands of native birds that inhabit the golf course area. In violation of CEQA and other laws, county *negligently* ignored the killing of thousands of birds from the one inch fence mesh death trap. Barker's demand, this vital issue be addressed by county.

**PROJECT APPROVAL WILL CAUSE COUNTY TO BECOME EMBROILED**

**IN ONGOING LITIGATION**

16 ) On July 13, 2007, Kenneth Barker and Lois Anne Barker sued the Round Hill Country Club ( hereinafter RHCC ) for illegal trespass on Barker's property by innumerable (i.e. multi- thousands ) of driving range golf balls. When Barker's purchased their home in 1`974 the driving range was 270 yards long and aligned away from the Barker premises. For almost twenty five years, there were no driving range golf ball trespass problems.

17 ) Commencing on or about 1995, RHCC commenced making preparations to demolish the existing club house and replace it with a very much larger 48,000 S.F. facility. Additional changes included: enlarged and relocated putting green, enlarged and relocated landscaping, enlarged and relocated golf cart paths, and major improvements to the golf course. As a proximate result, the driving range is now far too short being reduced in length from 270 yards to 160 yards to 200 yards and realigned directly at the Barker premises. Modern day golf course design requires a driving range to be at least 375 yards long. Golf balls can be lethal. Multi thousands of golf balls have trespassed on to the Barker premises. The driving range operation is extremely dangerous, and Barker's are unable to use their garden areas, or safely use rooms with windows that face the driving range.

18 Dangerous conditions were caused by county's failure to provide adequate RHCC project over sight, not requiring an Environmental Impact Report, not requiring appropriate land use permits, nor proper building permits for RHCC projects that exceeded \$25,000,000.00. That constitutes

**negligence.**

19 ) County **negligence** is at the root of the ongoing driving range golf ball trespass problems.

**COUNTY NEGLIGENTLY INTERPRETED THE EASEMENT**

20 )The Easement is included as part of the recommendation. It states at Book Page 24:



“ ( c ) Second party ( RHCC ) shall indemnify First Parties ( Barker's) *against all loss and damage* which shall be cause by the exercise of said ingress and egress *or by any wrongful or negligent act or omission of second party* ( RHCC ) *or of it's agents or employees in the course of their employment .*” ( emphasis added )

21 ) Project approval, will result in wrongful,or negligent acts or omissions.

#### COUNTY NEGLIGENTLY INTERPRETED THE LAND USE PERMIT

22 ) County issued Land Use Permit 235-58 in 1953 for construction of the golf club and related facilities and included a copy of this permit in the recommendation package. However, subject application is made as an amendment to Land Use Permit Number 409-59,which is not included in approval package. Permit 409-59 is for the golf club construction, which is inapplicable for fence construction. Neither permit trumps, or voids, Barker's Constitution and legal rights. Nor do these permits allow county to ignore and/or approve unlawful modifications to the Land Use Permit including unlawful golf course modifications. County's conduct constitutes negligence.

#### COUNTY WRONGFULLY DENIED CONTRARY EVIDENCE.

23 ) Barker's were notified by county ( Christine Louie ) that a draft of the recommendation would be provide for comment at least 30 days before being finalized. County wrongfully failed to do so, thereby denying the registration of contrary evidence.

24 ) County illegally placed the burden of proof on Barker's, rather than on RHCC, who as applicant bears the burden of proof. County illegally accepted representations made by RHCC without checking to see if they are logical, and factual. That constitutes negligence.

25 ) These are fatal defects, and county proceeds at it's peril with liability for resulting damages.

## CORRECTION OF COUNTY MISREPRESENTATIONS

26 ) **Alamo Improvement Association**. County grossly mis-states the AAA review comments and has

*negligently* ignored the two key recommendations: Namely:

27 ) Firstly: “ *County ...needs to verify the engineering calculation for distance and trajectory of Golf Balls hit from RHCC Driving Range toward the Barker property and for corresponding fence heights needed.*”

28 ) County never verified the so called RHCC engineering calculations. That constitutes *negligence*.

Moreover, if such a verification were made, it would show a fence at least 100 feet high, and even at that height, it would not stop all driving range golf balls.

County has ignored fact that a 45 foot high fence is inadequate to stop driving range golf balls from leaving the driving range area. That constitutes *negligence* .County will be liable for damages from approval of a known flawed fence installation.

29 ) Secondly: In violation of the AAA recommendation, county never required applicant to install

“ story poles ” in the location of the proposed fence in order to identify the visual impact on Barker's property. Thus, county's conclusions as to the visual and actual impact upon the Barker's property are pure guess work, erroneous, and *negligent* .

30 ) **Public Comments** County has *misrepresented* public comments presented by RHCC. These comments were only taken from Round Hill residents that do not live in the vicinity of the proposed fence. It is *negligent* for county to state that these comments are representative of the those impacted by the fence. None of the residents impacted by the fence are listed on the Public Comment sheet. All strongly oppose the fence, yet county *negligently* failed to record their opposition.

31 ) **Visual Impacts** County has unlawfully placed the burden of proof on Barker's to prove

the fence violates the Stone Valley Road General Plan Scenic Route mandates. Under law, applicant RHCC has the burden to prove that the fence does not violate the General Plan, which it did not do.

**FENCE HEIGHT IS INADEQUATE-- AT LEAST A 100 FOOT HIGH FENCE IS REQUIRED.**

32 ) County never checked the RHCC engineering study to confirm the height of the fence needed to stop all driving range golf balls from trespassing from the driving range area. That constitutes ***gross negligence.*** Attached as evidence, is a sworn Affidavit by Kenneth Barker that the 45 foot high fence is grossly inadequate to stop all driving range golf balls from trespassing from the driving range area.

**Exhibit No. 1**

**FENCE WILL BE AN UGLY EYE SORE.**

33 ) County ***misrepresentation*** : “ There are many ***similar*** structures ( i.e. fences ) located on golf courses throughout the county ”. County failed to name any of these golf courses. Two mesh fence installations on golf courses are known to the Barker's. One is in Clyde, the other on Route 4 in Hercules. Both mesh fences protect major highways from errant mis hit golf shots made during a round of golf. None are located at the end of a driving range. None are located in the middle of an expensive housing development. None were built 48 years after the development was established to correct county approved illegal changes to the golf course and driving range. These fences are not similar to what is being proposed, and county's unsupported claim that that they are similar is wrong, unprofessional, and ***negligent.***

**FENCE WILL RESTRICT AIR FLOW AND CAST AN UGLY SHADOW ON PREMISES.**

34 ) County has made no study to confirm that the fence will not restrict air flow of cast large shadows.

County's conclusions that air flow and shadows will not negatively impact the Barker's premises, made without any evidence whatsoever to support it's conclusions, are text book examples of unprofessional conduct and ***negligence*** per se.

**COUNTY NEGLIGENTLY FAILED TO ADDRESS POINTS AT ISSUE.**

35 ) Barker's purchased their home in 1974. For almost 25 years there were no golf ball trespass problems. However, commencing in 1995 and steadily getting worse, multi thousands of driving range golf balls have illegally bombarded Barker's premises. Therefore, the critical points at issue are:

A ) After almost 25 years of no problems, what has caused the bombardment of Barker's property with innumerable driving range golf balls ?

B ) Who is responsible for the violation of Barker's constitutional rights for being unable to safely enjoy the use of their premises for many years ?

36 ) **The answer to the first question is simple.** RHCC reduced the 1974 length of the driving range from 270 yards to 150 yards to 200 yards depending on teeing areas. RHCC realigned the driving range from the 1974 location, which was away from the Barker premises, to directly facing the Barker premises. Thus, the driving range is now misaligned and far too short, being about half the 375 yard minimum length required of modern day golf courses. Shorting and realigning of the driving range is confirmed by comparison of aerial photographs of the driving range taken in 1974 with those taken in 2006. **Exhibit No. 2** . A marked up drawing also shows these changes to the driving range. **Exhibit No. 3**

37 ) **Which entities are responsible for Barker's damages?** RHCC and county are responsible.

**SUMMARY**

38 ) Barker's are wrongfully required to accept an estimated \$500,000.00 to \$700,000.00 reduction in the value of their home from county approval of a monstrosly ugly 45 foot by 172 feet long black mesh fence located 2 feet from the property line. The fence requirement is without the fault or negligence of Barker's. Fault and negligence, and damages therefrom, lie with RHCC and county.

**BARKER'S HAVE A LEGAL DUTY TO MITIGATE DAMAGES**

39 ) Barker's have a legal duty to mitigate damages. These papers fulfill that duty by providing written notice of county negligence, errors and omissions, and county's resulting liability for multi-millions of dollars in damages.

40 ) County should contact the undersigned if there are any questions.

Dated: Sept/3/2008

Kenneth H. Barker

Kenneth Barker

**AFFIDAVIT OF KENNETH BARKER**

**KENNETH BARKER**, being duly sworn, deposes and says:

1 )In August 1974, my wife Lois Anne Barker an I, jointly purchased our house which is located at 2349 Royal Oaks Drive, Alamo, CA. 94507. The house is located at the end of the Round Hill Country Club driving range. In 1974 the length of the driving range was 270 yards and aligned away from the Barker premises. For almost 25 years, there were no problems from trespassing driving range golf balls.

2 ) Commencing on or about 1995, Round Hill Country Club started to make major changes to the golf club house, golf club, and driving range. These changes resulted in the length of the driving range being reduced from 270 yards to about 155 yards to 200 yards, depending on teeing area. As a proximate result innumerable ( i.e. multi-thousands ) of driving range golf balls have trespassed on to the Barker premises.

3 ) A lawsuit was filed against the Round Hill Country Club in July 2007 to abate the golf ball trespass problem.

4 ) Round Hill Country Club has proposed to erect a 45 foot high fence to prevent the golf ball trespass.

5 ) I oppose county approval of a 45 high by 172 feet long mesh covered fence on many grounds. One ground is that a 45 high fence will not stop golf balls from trespassing on to the Barker property and beyond. Even a fence 100 feet high would not stop all trespassing driving range golf balls.

6 ) I have personally seen hundreds of driving range golf balls fly over the top of our double story 35 foot high house, clearing it by 20 to 50 feet, landing on Royal Oaks Drive and beyond, ending up to the eleventh fairway.

7 ) On several occasions with following winds, I have seen driving range golf balls not only carry over the Barker house, but also carry over houses on the opposite side of Royal Oaks Drive, landing on the

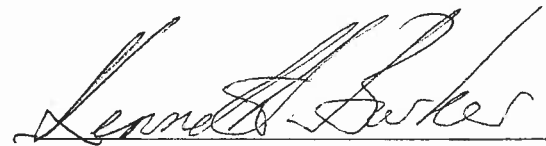
eleventh fairway. Not even a 100 foot high fence will not stop these trespassing driving range golf balls.

8 ) From over 13 years of experience in monitoring the Round Hill driving range golf balls, I firmly declare that a 45 feet high fence will not stop them from trespassing out side of the driving range areas.

Moreover, any alleged engineering study that claims the contrary is either wrong or concocted.

9 )This affidavit is made in opposition to the installation of the proposed 45 high fence, and if requested, I can, and will competently testify thereto.

Dated Sept/3/08.

A handwritten signature in black ink, appearing to read "Kenneth Barker", written over a horizontal line.

Kenneth Barker.

*See Attached  
Loose Certificate*

# ACKNOWLEDGMENT

State of: CALIFORNIA

County of: CONTRA COSTA

On Sept. 3, 2008, before me, Laura Zaragoza, Notary Public

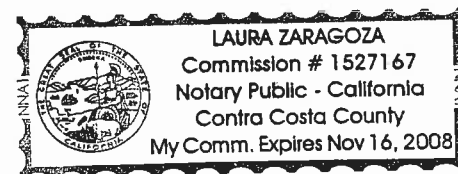
personally appeared

Kenneth Barker \_\_\_\_\_  
\_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(Seal)

Signature of Notary Public

My Commission Expires: November 16, 2008

OPTIONAL

Description of Attached Document

Title or Type of Document: Affidavit of Kenneth Barker

Document Date: 9/3/08

Number of Pages: 2



EXHIBIT N° 2  
1974.

Driving Range  
270 yards long  
aligned away from  
Barker premises



Santa Clara, California  
Honolulu, Hawaii  
www.airphoto.com (408) 988-0107  
Neg# CC-78 Flown: 08/08/74

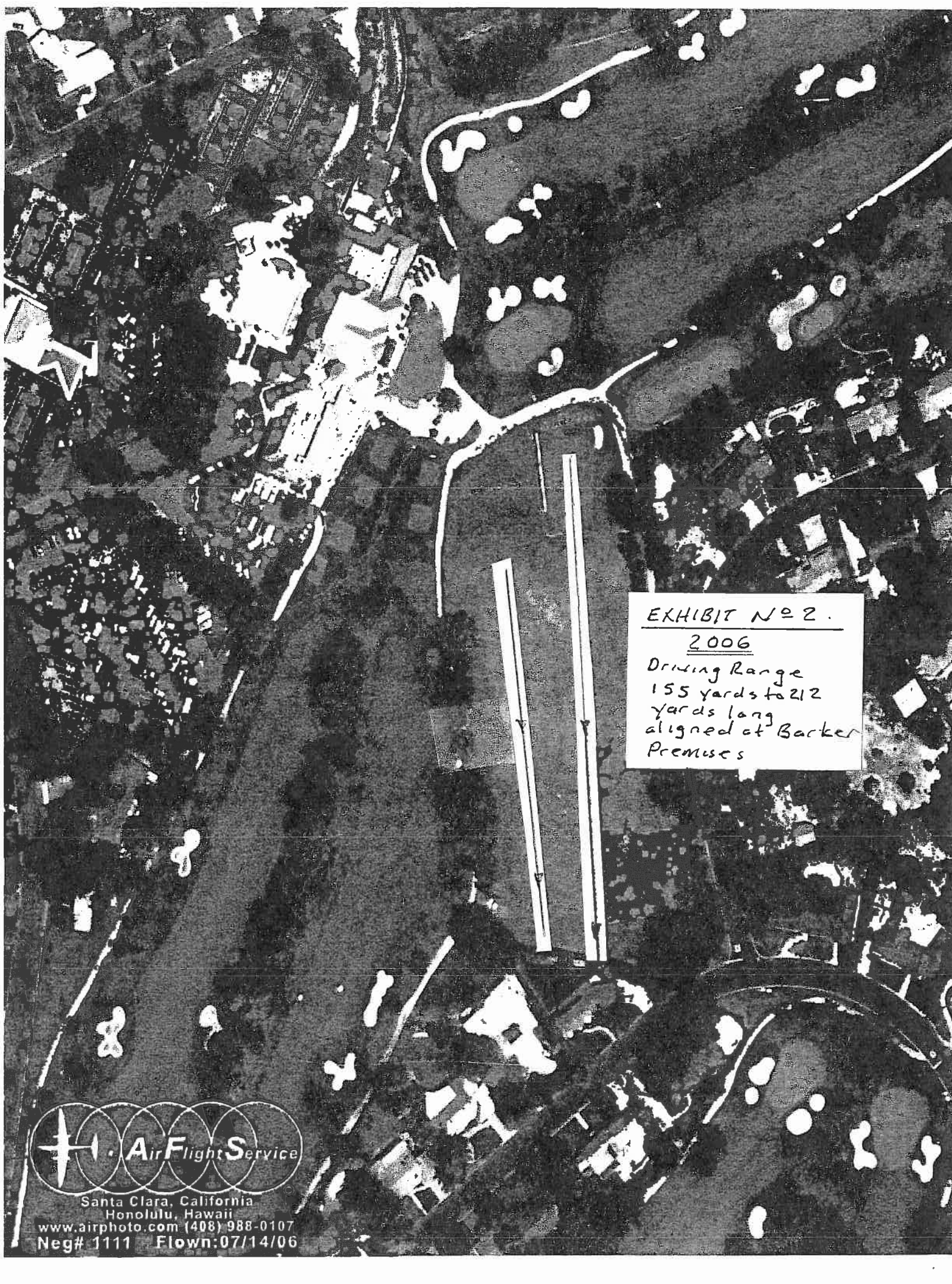
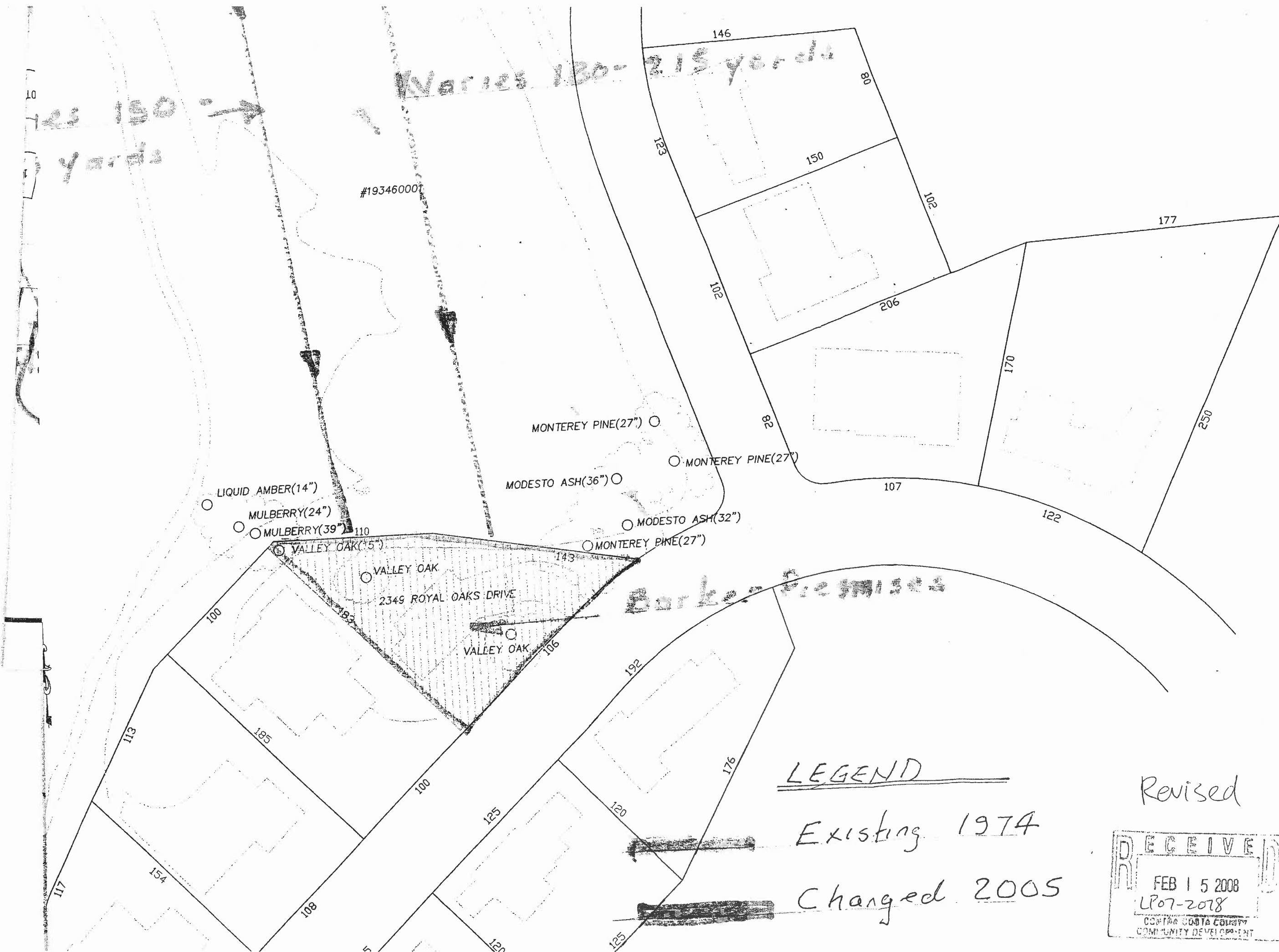
An aerial photograph of a driving range. A long, narrow, light-colored strip of land, likely a golf course fairway or driving range, runs vertically through the center of the image. The surrounding area is dark and appears to be forested or undeveloped land. In the upper left, there are some buildings and a road. In the lower right, there is a curved road or path. A handwritten label is placed over the central strip of land.

EXHIBIT No 2.  
2006  
Driving Range  
155 yards to 212  
yards long  
aligned at Barker  
Premises



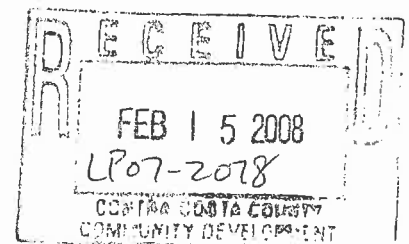


LEGEND

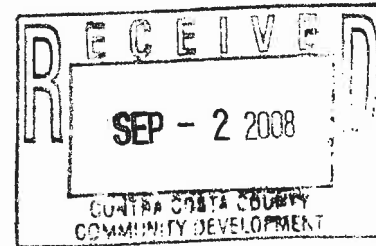
Existing 1974

Changed 2005

Revised



KENNETH BARKER  
2349 Royal Oaks Drive  
Alamo, California 94507



Phone ( 925) 820-0198

VIA FAX AND CERTIFIED MAIL RETURN RECEIPT REQUESTED  
7007 0710 0003 2075 1172

Catherine Kutsuris,  
Deputy Director-Community Development  
651 Pine Street,  
Martinez,  
CA. 94553.

August 29, 2008.

RE: NOTICE OF A PUBLIC HEARING SCHEDULED FOR SEPTEMBER 8, 2008 --ROUND HILL  
COUNTRY CLUB-- COUNTY FILE LP07- 2078.

Dear Ms. Kutsuris,

The above referenced " Notice Of A Public Hearing " ( hereinafter, Notice ) was received by the undersigned by U.S. Mail on August 27, 2008. The Notice is not only untimely, it is also in material error for accurately describing the proposed construction and applicable building codes that apply to the requested variance. Therefore, the undersigned protests the said Notice Of A Public Hearing presently scheduled for September 8, 2008, for the following reasons:

1 ) The Notice states that a Negative Declaration has been issued for compliance with the California Environmental Quality Act (CEQA ). Therefore, pursuant to CEQA Section 15105 it is mandatory that a public notice period of not less than 20 days be allowed for review of the Negative Declaration before a Public Meeting can be held. The Notice was received on August 27, 2008. That only provides 11 days for public review up to September 8, 2008 instead of the mandatory minimum of 20 days. Therefore, pursuant to Section 15105 please reschedule the Public Hearing for a 20 minimum day notice period --all as required by CEQA law.

2 ) Due to the sensitivity of the proposed project, an Environmental Impact Report and an Environmental Impact Statement should have been prepared. It is requested that the County comply with these CEQA requirements and have an Environmental Impact Report and an Environmental Statement prepared.

3 ) The Notice has materially **misrepresented** what is being proposed to be constructed. Also, the Notice has materially **misrepresented** the County Ordinance and Building Codes that apply. These are serious fatal defects. They must be corrected before any legal Public Hearing can be held.

Correction and clarification is provided as follows:

#### **PUBLIC HEARING -- MISREPRESENTATION NUMBER ONE**

The Notice states that the "County Zoning Administrator will consider a LAND USE PERMIT application...to install a **driving range netting structure** 45 feet in height with 45 feet tall posts extending 172 feet in width " ( emphasis added )

#### **CORRECTION NUMBER ONE**

i )The proposed project actually consists of a **fence** 45 feet high by 172 feet long. Therefore, it is a material **misrepresentation** of fact, and a violation of law, to **misrepresent** to the Public that a 45 foot high **fence** as a really a 45 high " driving range netting structure. Unquestionably, this **misrepresentation** has been made by the county to avoid compliance with it's own fence code which only allows a fence to be 6 feet high.

ii )The proposed construction is **not** a " driving range netting structure ". It is a **fence** . The Random House Dictionary of the English Language defines a **fence** as a " **barrier... to ward off ... to keep out...** ". For the subject variance application, the " **barrier** " is for the purported ( and vain ) purpose of trying to " **ward off** " and " **keep out** " driving range golf balls from bombarding the Barker property.

A fence by a **misrepresented** name is still a fence. Therefore, it is inexcusable and outrageous for the county to play word games, and thereby **misrepresent** the building codes, in order to conceal the true nature of the requested variance.

#### **PUBLIC HEARING-MISREPRESENTATION NUMBER TWO**

The Notice further erroneously states: “ a request for variances for a **2 foot side yard set back** ( where a minimum of 10 feet is required ) **and a 45-foot tall accessory structure ( where 15 feet is allowed for accessory buildings )** ( emphasis added )

#### **CORRECTION NUMBER TWO**

i )The requested variance is for a 2 foot side yard set back instead of 10 feet. That allows the 45 high fence be built 2 feet from the Barker property line. Even a 10 feet set back distance for a 45 foot high fence would be totally unacceptable, being in violation of law and county building codes.

ii )The proposed construction is **not** for a 45 foot tall **accessory structure, nor for a 45 foot tall accessory building**. The plain facts are the proposed construction is a 45 foot high **fence** where a maximum height of 6 feet is allowed, not 15 feet. Therefore, **county fence codes apply**-- not accessory structure codes, nor accessory building codes, as **misrepresented** in the Notice.

Round Hill Country Club is requesting a variance of 500% for the fence set back distance, and a variance of 750% for the height of the fence. These critical facts are missing from the Notice.

Inexcusably, the Notice has again materially **misrepresented** what is proposed, and has also materially **misrepresented** the applicable building codes.

#### **PUBLIC HEARING-MISREPRESENTATION NUMBER THREE**

The Notice further states “ The **structure** will be set back **55.8 feet from the property's street frontage along Royal Oaks Drive...**”( emphasis added )

**CORRECTION NUMBER THREE**

i ) As corrected above, the so called “ structure ”, is in fact a 45 foot high fence. Therefore, a fence, not a driving range netting structure will be constructed, and that fact must be made clear in the Notice.

ii ) Gross misrepresentation, and concealment of material facts flow from the statement that the set back distance will be: 55.8 feet from the property's ( alleged ) street frontage along Royal Oaks Drive.”

Round Hill Country Club has no property frontage whatsoever on Royal Oaks Drive. The frontage onto Royal Oaks Drive is held by the undersigned, not the golf club. Therefore, it is gross misrepresentation to state that the Golf Club has street frontage along Royal Oaks Drive.

iii ) The Notice also fails to notify the Public that Barker home is between the 55.8 feet distance and the structure location. Therefore, the fence location is only 2 feet from the Barker property line.

Pursuant to the county building codes, the distance from the Barker property line is the controlling factor, not some immaterial 55.8 feet distance from a non existent “ street frontage on Royal Oaks Drive.” Again, the Notice inexcusably misrepresents the facts.

**Summary** : The Notice is untimely. Therefore, it is a violation of law for the 20 day notice requirement of CEQA Section 15105, to hold the Public Hearing on September 8, 2008, when only 11 days notice has been given.

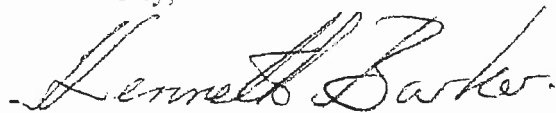
The Notice is rife with county misrepresentation of the proposed construction, and misrepresentation of the county building codes that apply. It is inexcusable and outrageous for the county to irresponsible play word games misrepresenting the 45 foot high fence as a “ driving range netting structure.” in order to avoid compliance with the county's own fence code.

It is well recognized that even the county can have a bad day and get things wrong. However, and most regrettably, this is not the cause of the county's many misrepresentations of material facts. The county's multiple misrepresentations, and its word games to avoid compliance with its own fence codes and the law, sadly shows they are deliberate, willful, county misrepresentations designed to mislead the Public, in order to approve a fence that is not permitted by law or county codes.

Therefore, it is respectfully demanded that the county correct the many misrepresentations in the Notice, and also reschedule the Public Hearing for compliance with the mandatory 20 day CEQA notice requirement. Numerous other objections to the proposed fence will be made, however, they are deferred pending the corrections demanded above.

Please promptly notify the undersigned in writing of the county's response to the above demands.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Barker". The signature is written in a cursive, flowing style.

Kenneth Barker.

VIA FAX TO : 925-335-1222.

Copy : Christine Louie.



9/8/08

to: Mr. Bob Drake  
 W.D. Zoning adm.

from: Betty Jane Best  
 2350 Rayal Oaks Dr.  
 Alamo, Ca. 94504

DEPARTMENT OF  
 CONSERVATION  
 AND DEVELOPMENT

2008 SEP - 8 P 1:18

CONTRA COSTA  
 COUNTY

Dear Mr. Drake,

My home is directly across  
 the street from the structure you  
 want permission to build on Rayal  
 Oaks Drive.

I strenuously object. This would  
 reduce my property value - more  
 likely, prevent me from getting a buyer.  
 It would close out what light I get  
 between the trees above and greenery  
 below. Move the driving range, enforce  
 the club rule, use balls that don't go  
 over, anything but a 4.5 lb mauler.