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March 7, 2008

Jacqueline R. Onciano
Planning Department
Monterey County Resource Management Agency
168 W. Alisal St., 2nd Floor
Salinas, CA 93901

Re: Rancho Canada Village Draft Environmental Impact Report

Dear Ms. Onciano:

My client The Open Monterey Project appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR).

The DEIR Does Not Provide The Independent Investigation Required by CEQA.

The environmental analysis is inadequate due to the incomplete project description, incomplete and inaccurate baselines, failure to analyze project components, and reliance on speculative mitigation measures. Further, the discussion of mitigation measures is flawed because the DEIR defers preparation of many mitigation plans and fails to analyze the impacts that will be caused by some of the proposed mitigation measures.

Public Participation in the CEQA Process.

The presentation of the DEIR to the public was lacking. Public participation is an essential part of the CEQA process. In this case, the cost of obtaining a hard copy of the DEIR was prohibitively expensive for many members of the public. The option of using an electronic or web-based format cannot compensate for the inaccessibility of the DEIR, due to the difficulties that arise in navigating these versions. For example, it is impossible to cross-reference between different DEIR sections using the electronic or Web-based format. Also, the document often references other sections (especially when discussing impacts and policy consistency), but with the electronic or Web-based format the public is not able to scroll back and forth between sections within the many pages of text, figures and appendixes. Having copies in the library also does not solve the problem with a document of this size and complexity. The DEIR is so large that interested members of the public need to have their own copies to review during the comment period, for a reasonable cost.

Future Versions of the DEIR and the Response to Comments.

If the Response to Comments/Final EIR makes changes to the text, please re-issue the chapter that is being changed. It is too confusing to have some changes in

responses to comments, and others in actual changed text to chapters. This is far too big a project. This request is reasonable in light of the extensive public interest in this project, and complexity and length of EIR materials, which are primarily electronic, not hard copy. The County cannot expect the public to read multiple electronic documents (draft and revisions) simultaneously. Here, there should be a single final EIR in one document, with all changes and updates to the EIR incorporated in that single document. Recent completed County EIRs have been very difficult for the public to read. For example, the Response to Comments for the September Ranch subdivision did not have sequentially numbered pages. Worse, the EIR preparer made some changes to the draft EIR information in the response to comments sections, and other changes in a chapter describing edits and changes to the EIR text. These two sets of changes did not overlap, and involved different sets of information. Without a single document incorporating all of the changes in a cognizable fashion, the EIR does not fulfill its informational role to the public and decision makers.

The DEIR Fails to Adequately Analyze Greenhouse Gas Emissions as an Indirect Impact.

The County has failed to adequately identify or address the significance of the project's contribution to cumulative global warming impacts or to require any adequate specific mitigation measures to address those impacts. Because any increase in emissions will make it more difficult for the State to achieve the greenhouse gas reductions required by Assembly Bill 32, and this project will produce an increase in annual greenhouse gas emissions, the EIR must evaluate global warming impacts and discuss feasible alternatives and mitigation measures to avoid or reduce those impacts. The project's contribution towards greenhouses gas (GHG) emissions and global warming is not adequately analyzed in the DEIR. The DEIR should analyze the project's contributions to significant environmental problems related to increased levels of atmospheric gases such as carbon dioxide via energy consumption (e.g., vehicle trips, etc.). These indirect effects must be analyzed within the DEIR. (CEQA Guidelines, § 15126.2(a); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1204.)

Threshold of Significance – The DEIR must identify the project-specific and cumulative greenhouse gas emissions of the project as a significant effect. According to a multitude of reports by the Intergovernmental Panel on Climate Change ("IPCC")[1] and other scientific institutions, current trends of climate change will reach catastrophic proportions unless existing levels of greenhouse gas emissions are significantly reduced. According to the California Global Warming Solutions Act of 2006, emissions in the State

[1] IPCC reports are available at www.ipcc.ch/pub/pub.htm.

must be reduced to 1990 levels by 2020[2] (a 25% reduction from current levels[3]). Therefore, any new emissions must be considered significant.

The lack of established thresholds does not negate this requirement. As noted by the Attorney General:

> [E]ven if there is no established threshold in law or regulation, lead agencies are obligated by CEQA to determine significance. Neither CEQA, nor the regulations, authorize reliance on the lack of an agency-adopted standard as the basis for determining that a project's potential cumulative impact is not significant.[4]

Impacts of the Project on Global Climate Change – The DEIR must disclose specific impacts of adding to global climate change, including rising temperatures, increased droughts, shifting habitats, loss of species and biodiversity, increased severity and frequency of storms and extreme weather events, famine, increases in pests and diseases, sea level rise, flooding, etc.

An EIR must contain a "detailed statement" of all significant effects on the environment of the proposed project. (Pub. Resources Code, § 21100(b)(1).) In addition, an EIR must analyze and disclose any irreversible effects. (Pub. Resources Code, § 21100(b)(2)(B).) The emission of greenhouse gases and resulting climate change will cause irreversible harm in California and around the world.[5] The IPCC,

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[2] California Global Warming Solutions Act of 2006, Health & Safety Code, § 38500 et seq.; see § 38550.

[3] 9/27/06 Press Release from the Office of the Governor, available at http://gov.ca.gov/index.php?/print-version/press-relase/4111.

[4] Even if a project complies with a regulatory plan adopted to address a cumulative environmental problem, this cannot automatically support a finding that the cumulative impact of a project is not significant. An agency must still consider the evidence and circumstances and determine if the possible effects of the project, even with compliance with the plan, are still cumulatively considerable. *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114-116; CEQA Guidelines, § 15064(h)(2); see also §§ 15064(b), 15126.2(a).

[5] Baer, Paul and Michael Mastrandrea (Institute for Public Policy Research). 2006. High Stakes: Designing Emissions Pathways to Reduce the Risk of Dangerous Climate Change. Available at www.ippr.org; Cayan et al. 2006. Our Changing Climate

Union of Concerned Scientists, and the California Climate Change Center have published several studies that identify how climate change will affect the environment.[6] These impacts include an increase in water temperatures, rise in sea level, reduction of the Sierra snowpack, increase in intensity of storms, changes in ecosystems, and increase in heat waves, ozone formation, and the potential for wildfires. These impacts must be disclosed in the DEIR.

Impacts of Global Climate Change on the Project – The DEIR must also analyze the potential effects of increased climate change on the project, in terms of sea level rise, increased coastal erosion and blufftop retreat, and other potential impacts.

Cumulative Impacts – The DEIR must evaluate the cumulative impacts relating to the project's greenhouse gas emissions and the resulting contribution to climate change. In a case such as this, where the existing environmental problems are severe, the threshold for determining that a project's contribution to a cumulative impact is significant is that much lower. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120.) Therefore, the DEIR must fully analyze the project's cumulative impact on global climate change.

The DEIR Uses Confusing and Ambiguous Terminology Which Defeats CEQA's Intent that the EIR Inform the Public and Decision Makers.

Throughout the DEIR, there is confusing and ambiguous use of the terms "may," "should" and "must." See, e.g., Project Description, Housing, page 2-5, line 22 ("inclusionary units must be compatible"), 26 ("inclusionary units should be scattered"), 28 ("However, inclusionary units may be clustered"). As can be seen by these examples, as a result of the ambiguous language, the DEIR is unclear what is part of the project application, what is being required or recommended by the County or another regulatory agency, who is requiring what, who has discretion to authorize changes and under what

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– Assessing the Risks to California. Available at http://www.climatechange.ca.gov/biennial_reports/2006report/index.html.

[6] Union of Concerned Scientists. 2006. California Global Warming Impacts and Solutions, available at http://www.ucsusa.org/clean_california/ca-global-warming-impacts.html. California Climate Change Center reports include: Baldocchi and Wong, 2006; Battles et al., 2006; Cavagnaro et al., 2006; Cayan et al., 2006a; Cayan et al., 2006b; Cayan et al., 2006c; Drechsler et al., 2006; Franco and Sanstad, 2006; Fried et al., 2006; Gutierrez et al., 2006; Joyce et al., 2006; Lenihan et al., 2006; Luers et al., 2006; Luers and Moser, 2006; Medellin et al., 2006; Miller and Schlegel, 2006; Moritz and Stephens, 2006; Vicuña, 2006; Vicuña et al., 2006; Westerling and Bryant, 2006.

circumstances and to what extent that discretion may be used. It is also unclear whether the Rio Road extension is part of the proposed project. It appears that the applicant is proposing the extension if imposed by the County as a mitigation, which means that the extension is de facto part of the project description.

Also unclear is the basis for the term chosen by the DEIR. Different terms imply different things, with varying interpretations. For example, is "may" used because it is something that is discretionary, or after the County approvals have been given? If so, who exercises the discretion, and is there public review of that discretionary action? Is "should" used because there is an applicable advisory recommendation by the CVMP or other plan or policy? Is "must" used to reflect a legislative mandate, and if so, which one? As shown by these few examples (which are by no means exhaustive), it is unclear to the public reading the DEIR what is negotiable, what is already committed to by the applicant, and who will be enforcing any of it. These problems exist throughout the DEIR, and should be corrected, and the DEIR recirculated so the public can understand what it is being asked to comment on. It is not reasonable to expect the public to go through the entire DEIR and point out all the examples. The EIR preparer has created or fostered the ambiguities, and should revise the DEIR and recirculate it.

Due to these problems throughout the DEIR, the public cannot comment meaningfully on the document. For example, as shown by the examples above, the project description is unclear and shifting. Under CEQA, the project description must be fixed. This project description is a shifting, moving target.

Please explain the DEIR comment that "inclusionary units may be clustered if it is found that such an arrangement better meets the objectives of the program" (p. 2-5, lines 28-29). Are the "objectives of the program" different from the project goals stated in the Project Description? How are they the same or different, and why are two different terms used? Under the project goals, the inclusionary units must be scattered throughout the project, and not clustered.

Water Analysis.

The discussion of water rights and water demand is deeply flawed and does not meet CEQA's mandates. Many of the "facts" reported in the DEIR were apparently provided by the applicant without independent confirmation by the EIR preparer. (See, e.g., "Lombardo 2006" (p. 3.10-7) which is a 2006 communication from applicant Tony Lombardo to the County (p. 6-12, list of sources).) An EIR may not rely unquestioningly on the applicant's unsupported representations, as the Sixth District Court of Appeal held on another of Mr. Lombardo's representations about water for another Carmel Valley subdivision. *Save Our Peninsula Committee v. Monterey County* (2001) 87 Cal.App.4th 99, 121 ("the only evidence that the terrace on the September Ranch property was irrigated pasture was the representation of the applicants themselves, who clearly had a

vested interest" in the outcome of the application). Why is the EIR analysis relying upon unsupported applicant representations here? An independent investigation and analysis must be performed – and included in the EIR discussion -- for each such representation.

The water on Table 13 of Decision 1632 does not represent perfected rights. The DEIR does not address proof of perfected water rights for the project site. Separately, "Rancho Canada" is a business, not a site. "Rancho Canada Golf Course" includes multiple parcels owned by different persons. The DEIR failed to analyze which of those parcels and owners has a claim to any of the 700 AF. The DEIR apparently assumed that the RCV has rights to the entire 700 AF. The RCV site is a fraction of the Rancho Canada Golf Course area, and there is no evidence that RCV can claim all 700 AF.

We have been told from multiple sources that some of the 700 AF assigned to Rancho Canada in Table 13 is for the use or benefit of Rancho San Carlos. Please investigate. The DEIR failed to adequately investigate the facts and background of the applicant's claimed water right.

As to water demand, the DEIR reports applicant ("Lombardo 2006") claimed that the Golf Club wells have produced between 309 and 684 AFY over the past 20 years. The DEIR failed to investigate how much of that water was produced from the project site, rather than from the Golf Club property as a whole, and whether that would affect the analysis. What other analytical approaches or methodologies did the EIR consider before selecting the "average per acre" usage approach to determining baseline? As presented in the DEIR, the baseline site-specific analysis on water is lacking. DEIR Table 3.10-3 is missing WY 2006. If WY 2007 is available before the Final EIR is released, please include that in the analysis, as well.

There is no guarantee that water demand will be reduced, because there is no condition placed on the project to that effect, and no condition that will allow public monitoring and enforcement of the actual project water demand. Further, because the County has no authority at this time over the other property owners of the Golf Club property, the County cannot condition those properties now with any limitation of water use.

Decision 1632 was related to the Los Padres Dam; it decided future water rights if the dam were to be built. The DEIR failed to analyze whether the Decision 1632 (and the tables therein) have meaning if the dam is not built. The DEIR also fails to investigate or analyze its relevance in the present project context.

What are project impacts on the river and on the Carmel Bay (a designated Area of Special Biological Significance) from unfiltered water that will come through a pipeline directly to the river? What are the impacts on the endangered species who rely on the river, such as the steelhead and the red legged frog?

Grading and Related Impacts.

The April 22, 2004 and April 20, 2005 development applications for the project on file with the County state there will be 220,000 CY of fill. The DEIR estimated only 200,000 CY fill (see, e.g., p. ES-6), of which 100,000 CY would be brought on site (p. 3.7-28). If 100,000 CY is to be cut from on site, then 120,000 CY would have to be imported, which means that it underestimated all resulting impacts by 20% (calculated as 120,000 CY actual less 100,000 CY analyzed). The DEIR failed to analyze the project's amount of fill. The EIR should investigate and explain fully the impacts of the project applicant's stated amount of fill. The DEIR analysis must be corrected and recirculated for public review.

Where is all the 220,000 CY of fill going to be placed on the project site? Please be specific, and show it on a map. Where is the fill going to come from? There is no information about that issue, which may have environmental impacts such as air quality, traffic, and hazardous materials.

From where is all the 100,000 CY of cut going to be removed onsite? Please be specific, and show it on a map.

According to the DEIR, its analysis of Impact TR-8 relied entirely on the developer's representations (p. 3.7-28), without any independent investigation or analysis by the EIR preparer. That is inadequate under CEQA. As explained above, an EIR may not rely unquestioningly on the applicant's unsupported representations. *Save Our Peninsula Committee v. Monterey County* (2001) 87 Cal.App.4th 99, 121. Further, the project is not conditioned to require any specific days or limits to grading, and the developer's representations are not enforceable.

The DEIR appears to be devoid of any independent analysis of grading for the project. On other projects, recent applicant-provided analysis accepted by the County has been shown by the public to have significantly underestimated actual grading. The EIR should do its own investigation and analysis, rather than merely repeat the developer's bare conclusions.

What size of trucks will actually be used for this project? The developer's analysis is only for "typical" trucks. The DEIR analysis must be based on the project's actual impacts, not a guess about what is "typical."

The developer claims that all project grading will be done in a single effort of 28 working days. Why is that not part of the project description? Is it a condition of the project? What would be the impacts of that proposed intensive grading effort? What route would the trucks take to access the project?

In the usual grading season from May to September, an intensive 28-working-day period of heavy truck travel on Carmel Valley Road and either of its access roads (Los Laureles Grade or Highway One) would significantly impact the roads and interfere with the predictable and foreseeable heavy traffic on those roads, such as that due to summer visitors, special events that draw attendees from all over California and the United States, Cal Trans road repairs, and Cal Am water main repairs. The actual routes and the actual impacts should be analyzed and mitigated. Mitigations considered should include limiting the number of trucks, limiting the hours of truck traffic, limiting the routes, and limiting the specific days of truck traffic to avoid weekends, special events and roadwork. Due to its flawed analysis, the DEIR conclusion that this truck trip impact would be "less than significant" is incorrect.

The DEIR analysis is flawed because it seems to compare the impact of construction truck traffic with that of regular residential vehicle traffic (p. 3.7-28). That comparison is neither logical nor supported. The DEIR should investigate the actual traffic impacts of the loaded trucks (and related impacts, including dirt, noise, and safety).

Eyewitnesses say that the baseball/softball fields at Carmel Middle School, to the south of the school buildings, were underwater in the 1990s floods. It does not appear that the DEIR considered this information in its analysis. The 220,000 CY of fill will create a large raised earthen plateau or berm along the north side of the property, which will create a funnel that will channel river water toward the narrow west end of the property. Under flood conditions, the raised plateau will block the flow of river water from its historic floodway. This plateau has been referred to by others as an "earthen dam." As a result of this proposed fill placement, the floodwaters would be displaced from their historic pattern, and would back up much faster than before, thereby affecting upstream properties. The DEIR fails to analyze these impacts, or the impacts to the south side of the river at the project site, or the impacts downstream.

Health Risk Assessment.

Attached is the only air-related risk assessment that we have seen related to this project. Even using the incorrect lower figure of 100,000 CY of fill instead of the applicant's numbers indicating 120,000 CY of fill, the assessment concludes that "the acrolein and cancer risks associated with this project as modeled are **significant**" (emphasis in original). Why was this assessment not included in the DEIR?

Has there been a change to the attached analysis? Is there a subsequent assessment?

How does the information in the health risk assessment change the EIR analysis?

What mitigations have been considered by the EIR preparer to address these impacts? Which mitigations have been proposed for this project?

What are the impacts of the proposed mitigations?

Can the health risk impacts be reduced with certainty to zero? If not, what are the consequences?

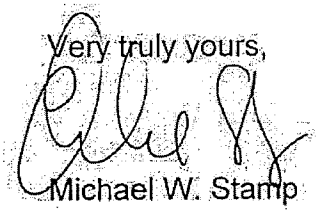
Because this issue is such a critical aspect of the project, a complete and thorough assessment using accurate information should be included in the DEIR analysis. Because it was not in the January 2007 DEIR, the DEIR should be revised to include this analysis, and the DEIR should be recirculated for public review.

Notice Requested.

Please put The Open Monterey Project, in care of my Office, on the distribution list for notice of hearings and all other actions by the County regarding this project.

Thank you.

Very truly yours,



Michael W. Stamp

Attachment

Document entitled "Rancho Canada Health Risk Assessment – First Draft"
(total: seven pages)

Dispersion Modeling Results

The ISC3 dispersion model was used to estimate downwind concentrations of pollutants from on-site construction and hauling activities. Meteorological data collected at the nearby Castroville station for 1992 was used for ISC3 modeling, which was provided by the MBUAPCD. As shown in Figure 1, the 1-hour maximum acrolein concentration for the assumed project configuration was 8.5 ug/m^3 which is approximately 45 times greater than the MBUAPCD reference concentration of 0.19 ug/m^3. Based on one month of continuous exposure to earthwork activities, the maximum 70-year cancer risk was determined to be approximately 20 excess cancers per million people.

Both the acrolein and cancer risks associated with this project as modeled are **significant**. It is recommended that the client make more refined estimates of construction activities to avoid the worst case assumptions used in this analysis.

References

[1]CEQA Air Quality Guidelines Prepared by the Monterey Bay Unified Air Pollution Control District (MBUAPCD). Adopted October 1995, last revised June 2004.

[2]Personal Correspondence with David Craft at Monterey Bay Unified Air Pollution Control District. February 27, 2007.

Table 1. Rancho Cañada project assumed on- and off-road vehicle distributions.

Usage Type	Equipment Type	Equipment Type Example	# Vehicles	Horsepower	Fuel	Load Factor	Average Speed (mph)	Model Year
Off-road	Graders	CAT 14H Motor Grad	5	220	Diesel	0.61	Variable	1997
Off-road	Tractors/Loaders/Backhoes	John Deere 8570	2	250	Diesel	0.55	Variable	1997
Off-road	Scrapers	CAT 615C II	2	265	Diesel	0.72	Variable	1997
Off-road	Crawler Tractors	CAT D8R	2	310	Diesel	0.64	Variable	1997
Off-road	Soil Compactor	CAT 825H Soil Comp.	4	315	Diesel	0.62	Variable	1997
Off-road	Off Road Water	CAT 623G Water Pull	5	365	Diesel	0.72	Variable	1997
Off-road	Excavators	Komatsu PC 750 LC	2	454	Diesel	0.57	Variable	1997
On-road	Street Sweeper	Variable	1	Variable	Diesel	N/A	15	Variable
On-road	Water Truck	Variable	5	Variable	Diesel	N/A	15	Variable
On-road	Bottom Dump	Variable	Variable	Variable	Diesel	N/A	15	Variable
On-road	On site Pickup	Variable	3	Variable	Diesel	N/A	15	Variable

Table 2. Rancho Cañada project on-site emission factors (EFs).

			Single Vehicle EF (g/s)					Total Fleet Emission Factors (g/s)				
Equipment Type	**Location**	**# Vehicles**	**VOC**	**Acrolein**	**CO**	**NOX**	**PM**	**VOC**	**Acrolein**	**CO**	**NOX**	**PM10**
Graders	On-site	5	0.012	0.000	0.034	0.233	0.006	0.060	0.001	0.172	1.165	0.028
Tractors/Loaders/Backhoes	On-site	2	0.012	0.000	0.035	0.239	0.006	0.025	0.000	0.070	0.477	0.011
Scrapers	On-site	2	0.017	0.000	0.049	0.331	0.008	0.034	0.000	0.098	0.663	0.016
Crawler Tractors	On-site	2	0.018	0.000	0.051	0.344	0.008	0.035	0.000	0.101	0.689	0.016
Soil Compactor	On-site	4	0.017	0.000	0.050	0.339	0.008	0.070	0.001	0.200	1.356	0.032
Off Road Water	On-site	5	0.024	0.000	0.067	0.456	0.011	0.118	0.001	0.336	2.281	0.055
Excavators	On-site	2	0.023	0.000	0.066	0.449	0.011	0.046	0.000	0.132	0.899	0.022
Street Sweeper	On-site	1	0.007	0.000	0.062	0.052	0.002	0.007	0.000	0.062	0.052	0.002
Water Truck	On-site	5	0.007	0.000	0.062	0.052	0.002	0.034	0.000	0.311	0.262	0.009
On site Pickup	On-site	3	0.003	0.000	0.035	0.009	0.000	0.008	0.000	0.106	0.026	0.001
Total On-Site Emission (not including the haul route)								**0.436**	**0.004**	**1.588**	**7.871**	**0.191**

Table 3. Rancho Cañada haul road emission factor determination.

Haul Road Emission Constants	
Project Duration (days)	28
Round Trips	7200
Round Trips / day	257.143
Effective Vehicles / day	514.286
Effective Vehicles / sec	0.143
Roadway Width (feet)	60
Roadway Width (m)	18.288

Haul Road Emissions	VOC	Acrolein	CO	NOX	PM10
Single Vehicle EF (g/mile)	1.615	0.016	14.927	12.587	0.414
Fleet EF (g/mile-sec)	0.231	0.002	2.132	1.798	0.059
Feet EF (g/m-sec)	0.000	0.000	0.001	0.001	0.000
Fleet EF (g/m^2-sec)	7.839E-06	7.839E-08	7.245E-05	6.110E-05	2.009E-06

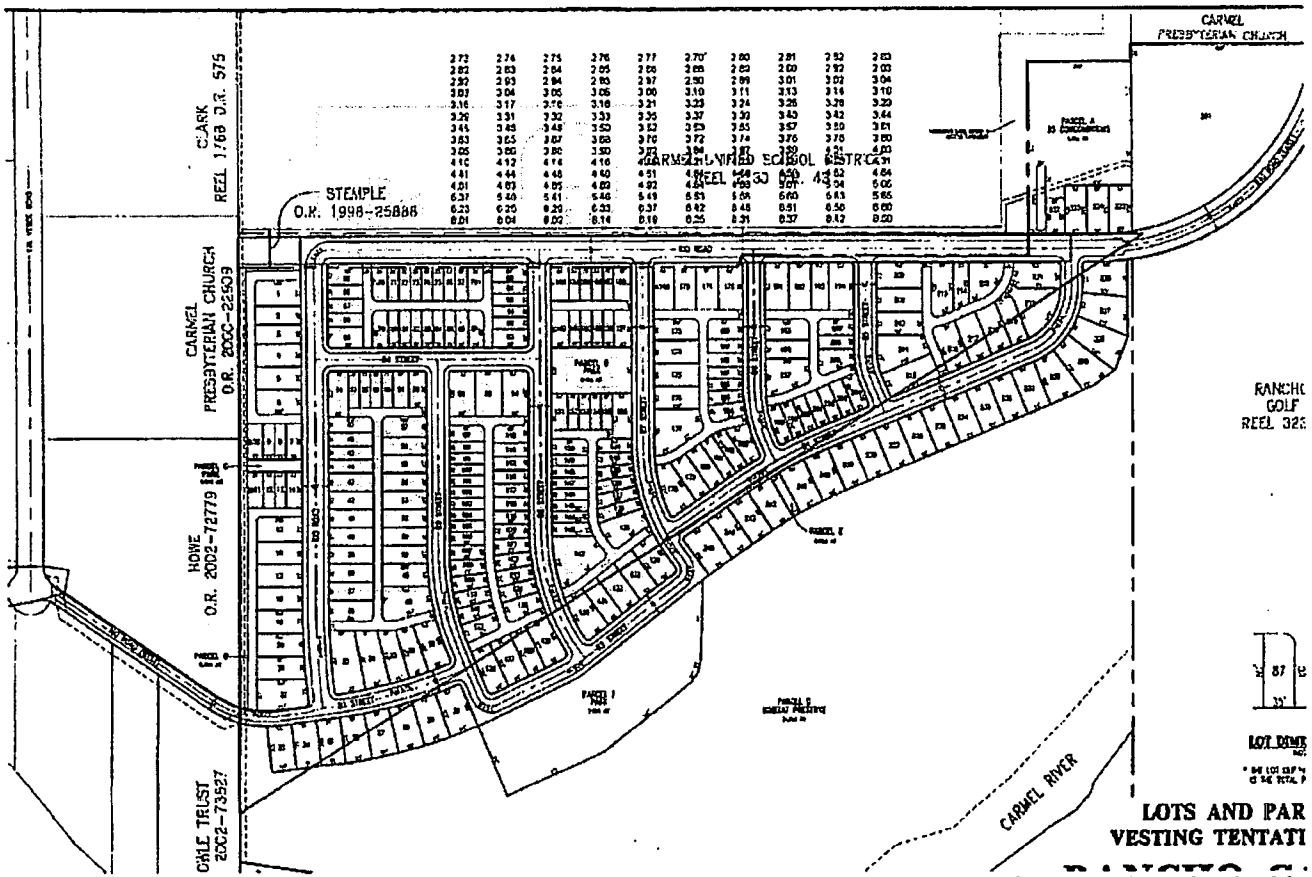


Figure 1. ISC3 modeling of the Rancho Cañada project. The haul road area source is shown in red coincident with the northern section of the proposed Rio Road. The earthwork activity is modeled as a triangular area source shown above. The blue numbers located in the north of the figure are the estimated 1-hour maximum acrolein concentrations on the school property at the location of the number. The maximum 1-hour acrolein concentration is approximately 8.5 ug/m^3.