

Section 3.8 LAND USE/PLANNING & AGRICULTURAL RESOURCES

In the Ridge at Trinitas Revised Draft Environmental Impact Report the project is described as follows, “The project proposes to subdivide 280± acres into 14 parcels consisting of 13 single family residential lots (approximately 2.0± acres each); and one additional parcel of 244 acres to accommodate the recreational facilities (golf course, clubhouse, lodge with overnight accommodations), agricultural activities, and one single family residential dwelling unit. The residential area would be in a gated community, with restricted access off Ospital Road. Clubhouse facilities for residents and members and a Lodge with overnight accommodation are proposed on Lot 14, the 244-acre site within the property boundaries. An 18-hole golf course has already been constructed within the boundaries of the proposed Lot 14, but will be analyzed as part of this Revised Draft EIR. The project includes a rezone from AP (Agricultural Preserve) to REC-X-PD (Recreation-Existing Parcel Size-Planned Development) to accommodate both the subdivision and the recreational uses on the property. The Conditional Use Permit (CUP) will regulate the Lodge and other uses requiring a CUP in the REC zoning district.” The project site is located at 9209 Ospital Road in an unincorporated area of Calaveras County near the communities of Wallace, Burson, and Valley Springs. I will primarily be addressing Chapter 3.8 Land Use/Planning and Agricultural Resources.

The Project is Not Consistent with the Land Use Element of the Calaveras County General Plan:

The county’s own consultants have determined that the current general plan does not meet statutory requirements. (See, Mintier and Associates, Calaveras County General Plan Evaluation, October 12, 2006.) That analysis identified substandard aspects of the Land Use, Circulation, Open Space, Noise, and Safety elements of the Calaveras County General Plan. Land use law allows approvals of only those projects that are consistent with the existing general plan, and that do not have a nexus to the legally substandard aspects of the general plan. (Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176; Garat v. City of Riverside (1991) 2 Cal.App.4th 259.) To facilitate project approvals, the project applicant should provide such evidence and argument sufficient for the County to make a valid finding of fact, supported by substantial evidence in the record, that there is no nexus between the effects of the project and the flaws in the general plan. Given the fact that the project will result in significant and unavoidable impacts to land use and traffic (RDEIR, pp 5-8), it is unlikely that the finding necessary for project approval can be made.

Leaving aside the fact that the county’s own consultants have determined that the current general plan does not meet statutory requirements and, therefore, approval of any project

under its auspices is questionable, the proposed The Ridge at Trinitas does not meet the requirements of the current Land Use Element. Specifically, it does not meet the requirements of **Goal II-3** and the policy and implementation measures under it. Goal II-3 states, “Preserve and manage those lands identified as Natural Resource Lands for the future good of the general public.” It seems unlikely that a private golf course that will only be open to the public “until all memberships are purchased” (RDEIR, p.2-6) is for the “future good of the general public,” especially since memberships are being offered for \$50,000. Golf lessons will be offered “by appointment for members only” and privately sponsored golf tournaments will be offered to “groups and corporations.” (RDEIR, p.2-6) Again, this hardly represents the general public.

Though the RDEIR asserts, “The project will retain 240 acres in public recreational facilities and agricultural,” (p.3.8-5) those 240 acres are primarily the golf course, clubhouse, and lodge. The clubhouse would, presumably, be for those who paid the \$50,000 membership fee and their guests, and fees for overnight lodging associated with an exclusive private golf course will undoubtedly be beyond the reach of the general public. The current agricultural activities consist of a 12- or 14-acre olive orchard, oil from which is produced and bottled off-site. The agricultural activities included in the RDEIR (p.2-8) include “20-80 acres of olive trees” and “educational tours of olive orchard operations (planting, cultivation, and harvest).” There is no provision in the project proposal (beyond this vague statement) to increase the amount of acreage planted in olive trees, and while an increase from 12 to 80 acres may be substantial, an increase from 12 to 20 acres is not. Indeed, in another section the RDEIR (p.3.8-11) says, “No changes to the agricultural activities of the olive orchard are proposed...” So it is not at all clear that olive production will increase.

The inclusion of educational tours of the olive orchard is an attempt by the project applicant to promote his project as agritourism. The primary intent of agritourism is to provide farmers, ranchers, and other agriculturalists with options to supplement their income, which, in turn, would allow them to resist the pressure to sell their land for non-agricultural purposes. Agritourism was not intended to help a private golf course resort masquerade as a quaint rural enterprise. Clearly the future good of the general public is compromised by the substantial loss of agricultural land associated with project approval. “The construction of the golf course and related facilities has eliminated approximately 200 acres of grazing land and has resulted in the conversion of farmland to a non-agricultural use. This impact is *significant*.” (RDEIR p. 3.8-10) And the proposed mitigation is inadequate.

The proposed project also does not meet the requirements of **Goal II-20** in the Land Use Element, and the policy and implementation measures under it. Goal II-20 says, “Provide for the development of recreation oriented commercial uses which are necessarily tied to the location of recreation resources.” Ironically, the RDEIR tries to use the golf course as the “recreation resource” to which “recreation oriented commercial uses” will be tied. The golf course cannot be considered a recreational resource, because the project is being environmentally evaluated with a pre-golf course baseline. The Calaveras County Board of

Supervisors determined “that pre-golf course conditions should be evaluated as the baseline for the purposes of the environmental analysis. The County has also determined that golf courses are not a permitted conditional, secondary, accessory or a supporting use under a Williamson Act contract or in the AP zoning district. The county disagrees with statements in the previously circulated DEIR that County staff made determinations that construction of the golf course was legal.” (RDEIR p. 2-3)

The general plan further defines recreational resources as “governed largely by natural features such as caves, lakes and rivers.” Examples of associated commercial uses include “campgrounds, boat rentals and storage, marine fuel stations, and ski area facilities.” (General Plan p.II-23) So when the RDEIR says, “The proposed lodge would be considered a recreation oriented commercial use associated with the golf course,” (p.2-4) there is, in essence, no golf course there with which to associate. Also, a golf course does not meet the intent of the general plan, because it is not “governed largely by natural features.”

The applicant seems to be relying on the largesse of the Board of Supervisors. “The Board of Supervisors has historically interpreted the term ‘direct oriented commercial use’ broadly in their review of past projects.” However, no examples of this broad interpretation are provided. Admittedly, “In the event the Board determines the project is inconsistent a general plan amendment would be required.” (RDEIR p.3.8-9) It is impossible for the project not to conflict with land use plans and policies. Therefore, it will require a general plan amendment.

It is not a “location-specific recreation-oriented commercial use” that can be allowed outside of Community, Special, and Specific Plan areas, and Community Centers.” (General Plan Policy II-20A) There are no “*natural* features appropriate for associated recreation oriented commercial development.” (Implementation Measure II-20A-1) There is no recreation there around which to orient commercial use. (Implementation Measure II-20A-2) It is grazing land.

Further, if the golf course is identified and recognized as the existing recreational resource which will justify the commercial uses associated with the project, including the course’s own creation and operation, not only will this be a stellar case of circular reasoning, but it will reward the illegal actions which produced the golf course on agricultural preserve land far away from any community center or appropriate associated development. Again, the proposed project is not consistent with the Calaveras County General Plan Land Use Element and for approval will require an amendment to the general plan. The County cannot approve a tentative subdivision map, a rezone, or a conditional use permit that is not consistent with the general plan. (Gov. Code, secs. 65860, 66473.5, Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176.)

The Project Will Have an Unacceptable Impact on Agricultural Lands and Activities:

The project site was previously grazing land and is in an area designated as Agricultural Lands. “The construction of the golf course and related facilities has eliminated approximately 200 acres of grazing land and has resulted in the conversion of farmland to a non-agricultural use. This impact is *significant*.” (RDEIR p. 3.8-10) Further evidence of the agricultural viability of the area is shown by the five parcels in the immediate vicinity of the project site which are currently under Williamson Act contracts. (Landowners with a WA contract receive a break on their property taxes, because they restrict their land to agricultural or related open space uses.) Also, the two project site parcels were previously under WA contracts, which expired in 2004 and 2006.

The proposed mitigation ratio of 1:1 or 200 acres for the loss of agricultural land is inadequate, because it does not address the growth-inducing impact of the project on adjoining agricultural lands, which have historically been ranch lands (with more recent scattered low-density rural residential development). If the project is approved, the pressure to develop adjoining and nearby agricultural land will be heightened, because the project also represents “leapfrog” development far from any existing community or services. The monetary value of land will increase in relation to its proximity to the golf course, and owners will face greater inducements to sell agricultural land for conversion to non-agricultural uses. If growth-inducing or cumulative agricultural impacts are involved, the California Department of Conservation recommends a higher than 1:1 mitigation ratio. CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).)

The proposed mitigation ratio of 1:1 also seems inadequate when considered in relation to the RDEIR finding, “The operation of the golf course and related facilities and special events is not compatible with the rural scattered quiet residential nature of the surrounding uses. This impact is *significant and unavoidable*.” (p.3.8-10.) There is no mitigation suggested. Pursuant to CEQA Guideline 15370, mitigation includes measures that “avoid, minimize, rectify, reduce or eliminate, or compensate” for the project. Some minimization and compensation could be provided by increasing the proposed mitigation ratio and protecting additional open space agricultural lands with a conservation easement. This would certainly help address the impacts to “rural” and “quiet” associated with surrounding uses.

The 9th tee box currently encroaches onto an adjacent 60-acre parcel under WA contract, which is in non-renewal. The applicant will remove the tee box to eliminate the encroachment. The RDEIR (p. 3.8-11) says, “It could be expected that this parcel would develop with a minimum lot size of 1 acre and up to 20 acres. This could create between 3 and 42 new residents...” The RDEIR maintains that the proposed project’s pressure on the parcel to develop is minimal compared to the existing pressure from nearby rural residential development, and, therefore, “the potential to convert this parcel to a non-agricultural use is *less than significant*.” However, since the applicant also owns this parcel, and as the WA contract on it is already in non-renewal, it is reasonable to assume it will be developed by the applicant. It’s conversion to non-agricultural use seems assured.

In addition, the RDEIR (p.3.8-12) concludes, “While the project proposes buffering and the utilization of existing barriers to reduce the conflict with existing parcels zoned for agricultural use or lands under Williamson Act contract, the potential to conflict with these lands is still *potentially significant*.” The proposed mitigation addresses the one applicant-owned adjacent WA parcel by removing the 9th tee box encroachment as stated above and addresses the conflict with all other existing agricultural and WA parcels by promising to provide “a note on the Final Map to inform purchasers of property that adjacent agricultural operations have the potential to create nuisance to residential uses.” (p.3.8-12) While this informs prospective buyers of the existence of agricultural operations in the area, it in no way provides any protection for the owners of the existing agricultural lands for the nuisances and distractions of the proposed residential and commercial development, which is the actual source of conflict, other than to put prospective buyers of the residential parcels on notice that they may be inconvenienced by agricultural operations--another example of convoluted reasoning, to wit: your residential parcel may be impacted by agricultural operations, therefore, agricultural operations will not be impacted by your residence if you know the agricultural operations exist.

A Discussion of the Current Draft of the Proposed Agriculture Element for Calaveras County and The Ridge at Trinitas:

As noted above, the county’s own consultants have determined that the current general plan does not meet statutory requirements. (See, Mintier and Associates, Calaveras County General Plan Evaluation, October 12, 2006.) That analysis identified substandard aspects of the Land Use, Circulation, Open Space, Noise, and Safety elements of the Calaveras County General Plan. Under these circumstances, land use law allows the approval of only those projects that, by themselves or in combination with other pending projects, do not foreclose future general plan options. (Committee for Responsible Planning v. City of Indian Wells (1989) 209 Cal.App.3d 1005.) Similarly, the State discourages development approvals that may interfere with implementation of the future general plan, if later found to be inconsistent with it. (Government Code, Section 65360.)

Thus, every effort should be made to avoid the approval of a project that necessitate major alterations to existing communities such as moving streams, expanding community boundaries, or extending infrastructure to open space areas. To help the County meet this obligation, the project applicant should provide such evidence and argument sufficient for the County to make a valid finding of fact, supported by substantial evidence in the record, that the project (by itself or in combination with others) by its size, location, or other characteristics, would not foreclose future general plan options in the County or in the immediate community, and that the project is likely to be consistent with the future general plan. Based upon the information in the record, we do not believe that such findings can be made.

“The draft Agriculture and Forestry Element of the Calaveras County General Plan is the result of a cooperative effort involving the Calaveras Winegrape Alliance, the Cattlemen’s Association, Calaveras Grown and the Farm Bureau of Calaveras County. Members of these groups and other interested members of the public have worked diligently to create a document that will identify and protect agricultural lands and operations within Calaveras County. The draft element and a letter of support were presented to the Calaveras County Board of Supervisors on August 5, 2008. The board voted unanimously to forward the element to Planning Department staff for review, revision and eventual adoption.” (from the Calaveras County University of California Cooperative Extension website) The conversion criteria contained within the draft element for projects requiring a general plan amendment are certainly instructive in regard to The Ridge at Trinitas:

Conversion Criteria:

Proposed amendments to the General Plan that would allow the conversion of agricultural or forest lands to residential or other urban uses shall be approved only if the Board of Supervisors makes the following findings:

- A. Overall, the proposal is consistent with the goals and policies of the General Plan.
Trinitas is not consistent with Land Use Element Goals II-3 and II-20.
- B. There is evidence on the record to show a demonstrated need for the proposed project based on population projections, past growth rates and other pertinent data.
There has never been a demonstrated need for the project.
- C. Other feasible alternative sites in areas already designated for the proposed uses have been considered.
Feasible alternative sites exist but were not utilized.
- D. Approval of the proposal will not constitute a part of, or encourage, piecemeal conversion of a larger agricultural area to non-agricultural uses, and will not be growth-inducing (as used in the CEQA).
The proposed project represents growth-inducing leapfrog development and will certainly result in the conversion of additional agricultural land to non-agricultural use.
- E. The proposed project is designed to minimize conflict and will not interfere with agricultural operations on surrounding agricultural or forestlands, including lands under Williamson Act contracts or adversely affect agricultural water supplies.
Trinitas has been defined by conflict. Adverse impacts to agricultural lands and potential adverse impacts to water are outlined in the RDEIR.
- F. Adequate and necessary public services and facilities are available or will be made available as a result of the development.
Adequate public services and facilities (including but not limited to a public water supply) are not available, and their future availability is in question.
- G. The design of the proposed project has incorporated all reasonable measures, as determined during the CEQA review process, to mitigate impacts to agricultural or forest lands, fish and wildlife resources, air quality, or other natural resources.
The proposed mitigations do not adequately address the impacts and some are completely infeasible and have no basis, for example, surface water cannot be supplied within five years.

Conclusions:

The proposed project is not consistent with the Land Use Element of the Calaveras County General Plan and its approval would require a general plan amendment. The mitigation of impacts to surrounding land uses is inadequate. The proposed project represents leapfrog development far from any community center or adequate supporting infrastructure. The project will result in the unjustifiable conversion of agricultural lands to non-agricultural uses. The illegal construction of the golf course should not now be rewarded with project approval. If the current draft of the Agriculture and Forestry Element were in place, The Ridge at Trinitas project would have never gotten off the ground. I support the "No Project Alternative."