



Central Sierra Environmental Resource Center
Box 396 • Twain Harte, CA 95383 • (209) 586-7440 • FAX (209) 586-4986

August 25, 2007

Calaveras County Planning Department
Robert Sellman, Interim Planning Director
891 Mountain Ranch Road
San Andreas, CA 95249

Re: The Ridge at Trinitas 2004-114 Zoning Amendment, Tentative Subdivision Tract Map, Conditional Use Permit, and draft EIR

Introduction

The following comments and concerns from CSERC are provided on behalf of our members in Calaveras County. In the following pages, we share detailed reasons why the EIR for the Trinitas project is legally inadequate, strongly and openly biased in favor of the applicant, and based upon a great deal of false information and misleading conclusions. The slanted analysis and conclusions appear blatantly intended to justify a project that cannot reasonably be twisted in any manner to be consistent with the County's General Plan nor with other applicable regulatory requirements.

Any County approval of the proposed project, or of Alternative 2 or Alternative 3, would reward a recalcitrant property owner who surreptitiously created an illegal 18-hole golf course in violation of Williamson Act requirements and without CEQA analysis or appropriate permits, and who blatantly ignored objections from neighbors and County personnel concerning his actions.

The proposed project and Alternative 2 would entitle the unrepentant applicant to now construct major commercial facilities on lands that are inarguably designated for natural resource and agricultural purposes – not for commercial development. Approval of the project would create a significant draw of golfers to this rural agricultural area, directly affecting traffic levels and air quality, placing significant demands on County services, and inarguably harming the quality of life for neighbors who have relied upon County regulations and State laws to protect their rights.

In CSERC's 17 years of dealing with development projects and land planning debates, we have never seen a property owner progress so recklessly to develop property without proper approvals and without compliance with direction provided by County staff. Now the applicant seeks new approvals that are completely inconsistent with both County regulations and the best interests of neighbors in the surrounding area.

In the following comments, CSERC staff respectfully provides the following specific reasons for the County to reject the EIR as failing to meet legal requirements -- due not only to numerous errors or issues that might at least be possible to correct and resolve in the final EIR, but due also to the extreme bias displayed in the document -- bias which undermines the credibility of the overall analysis and document. CSERC believes that the lack of neutral, objective analysis and the inclusion of so many inaccurate statements and conclusions in the draft EIR result in a document that does not fill the necessary purpose of accurately informing the public and decision-makers.

To date, the applicant has acted in a fashion that appears intended to make fools out of County authorities. He has acted as if he believes that he is above the law.

For legal reasons and in consideration of the numerous negative impacts that would be caused by the project, CSERC urges the County to reject the project now being promoted by the applicant. CSERC also urges that the County require the applicant to speedily and dutifully implement appropriate mitigation measures for the many illegal, unapproved, and harmful actions that he has taken without authorization and without CEQA-consistent studies or field surveys .

- **The Project is completely inconsistent with the General Plan designation for the property.**

In the Executive Summary and elsewhere in the EIR, the consultant provides a description of the applicant's objectives. Those objectives include the opening and operation of an 18-hole golf course, the construction of a clubhouse, lodge, snack shack, and other facilities for events, the construction of parking lots, and subdivision of the property into 14 lots for high-end residential units to create a gated golf community of custom homes.

The applicant's objectives fly directly in the face of the General Plan Land Use designation for the project site, which is Natural Resource Land-Agricultural Preserve (NRL/AP). The intended uses identified for the project property as spelled out in Table 3.1 on page 3-9 show clearly that the Land Use Designation for the property is intended to be Wildlife, Botanical, Agricultural Preserve, Timber Lands, Dam Inundation, or Mineral Resource 2A and 2B. While Agricultural Preserve areas can be allowed to have a housing density of one dwelling unit per twenty acres when not in Williamson Act contract, the clear purpose of NRL / AP lands is still to be Wildlife, Botanical, Agricultural Preserve, Timber Lands, Dam Inundation, or Mineral Resource -- not a gated golf community or a commercial golf course operation.

Any objective by the applicant to open a commercial golf course or to construct a clubhouse or to create a 30-unit lodge or to build a snack shack or to host wedding / conference events or to construct a restaurant facility or to do any other commercial enterprise tied to a golf course is completely inconsistent with the General Plan designation.

Page 13-3 of the EIR points out that the General Plan divides the County into two basic categories – Natural Resource Lands and Community Development Lands. “Land uses dedicated as Natural Resource Lands are lands which are most productive when used for resource development such as agriculture, timber and mining, or which contain sensitive habitat. Community Development Lands are lands which do not fall into a natural resource category.”

The project lands are not designated for community development nor commercial development. The project lands are clearly and inarguably designated for agriculture. Yet the EIR is biased and incorrect for attempting to claim that the project is consistent with the General Plan designation. This important error needs to be corrected in the final EIR.

- **The Project as proposed is inconsistent with the current zoning designation for the project site.**

As identified in the EIR, the current zoning designation for the project site is General Agriculture. Allowable uses shown for the A1 zone in Table 3.2 reveal that allowable use are clearly intended to be general farming and ranching activities. A commercial golf course, clubhouse, lodge, snack shack, etc. cannot reasonably be construed to be general farming and ranching activities. Furthermore, they cannot be construed to be special events tied to general ranching and farming activities.

Based on the General Plan designation of the property, as well as the fact that the project area is surrounded on three sides by properties with the same General Plan designation of Natural Resource Land-Agricultural Preserve, it is clear that the current zoning is consistently agricultural in intent and in fact. There is no justification nor any measurable public benefit from changing the zoning as requested. On the contrary, there would substantial negative significant impacts that would affect not only the environment, but also County residents, as will be shown in these comments.

The project is inconsistent with both the current General Plan designation and the property’s current zoning. Neither the proposed project nor the two action alternatives that would diminish the agricultural value of the property or which would convert the property to a commercial golf course enterprise should be approved. The final EIR should correct the incorrect claim of consistency with the current zoning designation.

- **The EIR falsely shows that the project would have a Less than Significant impact for Impact 6.1, Convert Farmland to non-agricultural use.**

The consultant appears to try to stretch the public’s credibility by suggesting that the cumulative effects of converting 95 acres of the property to a golf course, combined with the clearing and additional conversion of acres to a clubhouse facility, lodge

facility, parking lots, a snack shack, and a widened, expanded road system do not somehow add up to a total result that clearly converts farmland to non-agricultural use.

It is not legally necessary to remove every bit of agricultural use from a property to significantly diminish the agricultural use of the property or to convert it to an opposing use. Simply because olive trees will be grown on part of the property does not magically wipe away the significant impact of so many other acres being converted from agricultural use. A golf course cannot in any way be reasonably deemed to be agriculture, and neither can a clubhouse, restaurant facility, parking lot, or overnight lodge facility. The EIR must acknowledge that the cumulative actions or proposed actions of the property owner, as analyzed as required by CEQA, clearly reveal that there has been a significant conversion of agricultural land that does require mitigation for the significance of the impact. The EIR is incorrect in dismissing this impact. This needs to be corrected in the final EIR.

- **Likewise, the same incorrect claim is made in the EIR on page 2-8 for Impact 6.2 - Conflict with zoning for agricultural use.**

Again, it would take someone intentionally seeking to twist zoning language to even begin to suggest that the commercial golf course facilities and lodging proposed by the applicant somehow are consistent with agricultural zoning. The EIR must be corrected for both impacts and show “Significant” impacts for both impacts (6.1 and 6.2).

- **The EIR and the County are legally required by CEQA to consider the project as a whole, not as a piece-meal set of individual actions that only need analysis beginning at the filing date of the Notice of Preparation for the EIR.**

The Baseline Discussion on page 3-6 continues to provide misleading and incorrect analysis and information that attempts to justify the EIR’s failure to consider the environmental effects of the illegally created golf course, the construction of connected facilities, the destruction or alteration of natural ephemeral drainages, the alteration and destruction of natural habitat, and the drilling/pumping of high volume wells that have lowered subsurface water levels – potentially affecting seeps and springs both within and outside the property’s boundaries.

CSERC staff has consistently pointed out that CEQA requires consideration of the project as a whole, not in pieces. Whether or not the applicant’s consultant or a particular County employee wishes to set a baseline for project review as beginning at a particular date, the overall project still clearly includes the connected illegal, unapproved, unpermitted actions that are a part of the overall project, even if those pre-baseline actions are only considered in terms of the cumulative effects.

Either way, the applicant has a responsibility to mitigate (and the EIR consultant has the responsibility to develop mitigation measures for) any significant impacts caused by cumulative negative impacts created by the unapproved, non-permitted, overall connected actions taken by the applicant on the project site, as well as the newly proposed actions that now are up for approval.

- **The EIR fails to accurately list and describe the significant and unavoidable impacts to wildlife caused by the overall project and proposed development actions.**

The EIR lists Impact 7.3, 7.6, 9.1, 12.3, 18.1, and 18.2 as either Potentially Significant or Significant and Unavoidable after implementation of mitigation measures. CSERC believes that this judgment falls short of numerous clear and inarguable other impacts that are also Significant and Unavoidable or which have no appropriate mitigation measures identified to reduce the significance of their impact. As one obvious example, the EIR fails to accurately identify or provide mitigation for the significant and unavoidable negative impacts to wildlife.

First, CSERC believes that the overall project in its entirety clearly has caused and would cause a significant and unavoidable cumulatively negative impact to biological resources – in particular, to wildlife habitat on the property. The past alteration of habitat on 95 acres has resulted in the retention of most of the oaks, but that work by the applicant has wiped out all of the native groundcovers, bushes, and understory trees that provide the ecological niches and critical habitat for so many species on that 95 acres.

Second, moving beyond the illegal golf course construction that did not entail CEQA analysis, wildlife studies, or mitigation measures, the overall project creates a significant and unavoidable cumulative risk to wildlife through many other impacts. There is the greatly increased mortality that would occur for many species due to far higher traffic in the area – with many non-local drivers hurrying to arrive at their tee time or other potentially inebriated drivers leaving the project site after imbibing at the clubhouse or restaurant. Traffic levels would inarguably mushroom in volume in the area if the proposed golf course operation and lodging are approved, and the more cars on the local roads, the greater the risk to wildlife.

Third, it is clear that direct disturbance to wildlife would take place, not only through the development of 14 residences on land now zoned for agriculture, but additional disturbance that would also come from thousands of golfers annually, and from the considerable amount of noise and activity in the area proposed for the clubhouse, lodge, parking area. There is the additive impact of pesticide and herbicide use introducing chemicals into the ecosystem, as well as the unavoidable contamination of some percentage of the property through increased leaks, spills, or emissions of petroleum products from thousands of cars parking in the parking lots. When rain events wash those contaminants downslope, at some point they will enter receiving waters.

There would be increased dogs and cats or other pets at the residences, raising the level of disturbance and predation on native wildlife in the vicinity. All of these impacts, and especially the direct impacts of loss of habitat value, result in a total cumulative impact to wildlife that is clearly negative and significant in scope. CSERC asks that the omitted information be provided in the final EIR and that reasonable, feasible mitigation be described for consideration by decision-makers.

- **The EIR fails to accurately list and describe the significant and unavoidable impacts to the County's public services that would be caused by the overall project and proposed development actions.**

This is another clear example of the legally deficient, biased, and inaccurate EIR. Section 15-1 describes public services of the area and supposedly identifies the potential environmental impacts to public services. Instead of complying with this alleged objective, the section fails to even begin to describe the current situation.

There is no information concerning the overload facing the Sheriff's Department, the critical need for additional facilities and manpower, the lack of adequate budget dollars, or other vitally important information. The EIR fails to acknowledge that a new commercial operation located so far from any existing sheriff's station or facility will stretch the department even further beyond its capacity. There is no information pointing out that when the sheriff's department is answering a call out at the new Trinitas golf site that the deputies will not be available to respond to other calls for an extended period, due to the long drive to the Trinitas location.

There is no explanation that the new project will place a greater strain on fire crews, ambulance services, or other county services. The EIR states that the closest medical facility and ambulance service is a 17-minute drive away. How does that adequately provide for the health and safety of thousands of golfers (many who may be elderly) if the project is approved for commercial operation?

The nearest CHP station is located in San Andreas. With thousands of additional vehicle trips annually on this remote area's road system, how will CHP enforcement of traffic laws and emergency response availability be affected in the project area and elsewhere. These overall problems combine to create a significant negative impact for public services. The EIR failed to describe that impact or to consider mitigation measures to reduce the impacts.

CSERC asks that the EIR provide a thorough, correct, and adequate description of the true potential impacts and provide possible mitigation measures to reduce the significance of the negative impacts.

- **The EIR's "Background" section's version of what occurred on the property appears to be inaccurate and biased, without providing important information that is valid and necessary for the public and**

decision-makers to be able to fully understand the impacts of the overall project. For instance, the EIR fails to identify that the applicant violated county grading requirements without appropriate mitigation.

A prime example of the bias and lack of accurate information in the EIR can be found under item 2 on page 3-5, where the consultant writes that the applicant's engineer and the County found that the grading done for the construction of the Trinitas Golf Course "was less than the 50 cubic yard threshold that would require a grading permit." Any such allegation is beyond ridiculous and beyond the laugh test. A small building project on a tiny lot often moves more than 50 cubic yards of soil. It takes only seven or fewer dump truck loads to reach 50 cubic yards. The construction of the 95-acre 18-hole golf course moved materials well beyond thousands of cubic yards, not "less than 50 cubic yards." The amount of soil moved during the re-contouring of the ephemeral drainages alone obviously exceeded the 50 cubic yard level, and the digging out of the three small adjoining ponds near one well site also easily exceeded the 50 cubic yard level as well.

Even a careful read of the EIR proves the fallacy of the EIR's biased conclusion concerning the grading threshold. On page 3-5, the document reports specific amounts of materials that were graded/shaped to alter the site. Just for construction of the greens alone, for instance, the applicant imported 720 tons of pea gravel and 2,400 tons of screened sand. The amount of grading to construct those greens and tees boxes was obviously enormous and far, far beyond any minimum County threshold for grading. The same page reveals: "A series of cobble rock dams were pushed up creeks..." and a "series of drainage ditches were constructed in the summer of 2003 to direct runoff to holding ponds and seasonal streams." Those also resulted in material being moved/graded during the golf course construction phase.

Perhaps most revealing, the EIR notes that the applicant also installed an automated irrigation system that "involved trenching and installation of 90,000 feet of pipe." That means that over sixteen miles of trenches were dug on the property for the irrigation system. The bias and inaccuracy of the EIR on this matter alone is problematic. The claim is stated (and allowed to stand by the EIR consultant) that the County's grading threshold was not exceeded because the amount of materials being moved in golf course construction was less than 50 cubic yards.

Yet on the same page, the EIR acknowledges that the applicant imported 900 cubic yards of backfilling sand to bury irrigation lines installed in the rocky landscape. If 900 cubic yards of rocky material was dug up during trenching so that 900 cubic yards of sand was necessary to backfill afterwards, it is clear that at least 900 cubic yards of native material was dug up and removed. That single minor part of the project far exceeded the grading threshold.

The EIR should correct this and the many other cases in the document where a version of what took place during the illegal construction of the golf course is provided which favors the applicant, rather than objectively describing the actual physical impacts on the environment or objectively describing appropriate mitigation to reduce the significance of the impacts.

- **The EIR fails to identify the extent of potential harm to Special Status plant species from the overall, cumulative impacts of the total project and the applicant's project-related actions.**

The EIR shows on page 2-10 that the level of significance is Less than Significant for plant resources due to Mitigation Measure 8.1a, which requires that prior to grading and construction for project activities, rare plant floristic surveys shall be conducted on the Ridge at Trinitas project site by a qualified botanist during the appropriate times of the year (April through June).

In the EIR's section on Special-Status plants on page 8-17, the consultant fails to discuss the significant potential for plants caused by the applicant's connected action of creating an unapproved, illegal golf course. That massive construction and grading across 95 acres already likely eliminated suitable habitat for sensitive, at-risk plant species. Thus, the identified mitigation measure doesn't even begin to consider that not only is there no way to go back and undo the applicant's already completed grading and site alteration that was done without the proper plant surveys done before-hand, but the document also fails to provide any mitigation measure for the cumulative impacts. Those cumulative impacts have been created not only on the portion of the project now up for approval, but also for the previously done portion of the overall project where extensive clearing and chemical treatments were done without sensitive plant surveys or any carefully developed mitigation measures.

CSERC asks that the final EIR correct the failure and appropriately describe the extent of risk to plants from the overall cumulative effects of the total project – of past, present, and foreseeable future actions on the project site and surrounding properties. CSERC also asks that there be clear, feasible mitigation suggested to compensate for those cumulative impacts.

- **The EIR incorrectly claims that the project site does not support distinct riparian habitat.**

The EIR on page 8-20 falsely states that the project site does not support distinct riparian habitat. This is a major contradiction with other information in the document and with observations that CSERC staff made while visiting the site. The EIR acknowledges that some riparian vegetation is associated with the large onsite ponds, but the claim is made that the large ponds and associated vegetation would not be affected by the proposed project. CSERC respectfully disputes both claims.

First, there was certainly riparian vegetation in the form of willows in many of the ephemeral drainages that were graded, re-contoured, gunnited, rocked, and landscaped. Willows are still present to a minimal degree in some spots on the property, and the applicant during a tour acknowledged that he did not know willows

had value and that he had removed them during operations in the past. The removal of riparian vegetation as part of the development of the golf course is a project-related action and a connected action that needs to be considered as part of the cumulative effects to riparian vegetation and habitat on the project site.

Furthermore, riparian vegetation still does exist on the project site, both along some drainages and assuredly at the seasonal wetland, wetland swale, seep, and pond habitats located and mapped on the project site. In addition, page 12-1 of the EIR acknowledges that there are three unnamed intermittent streams and several ephemeral drainages on the project site. All of these categories of waters of the U.S. will have at least some minimal to significant component of riparian vegetation present.

Second, the applicant and consultant are incorrect in claiming that the large ponds are not being affected by the project. The ponds are the receiving waters for all of the fertilizers, pesticides, and herbicides that are applied to the turf on the golf course and the sites where the olive trees are growing. While CSERC staff was present on the property, we saw intensive algae growth and unusually lush growth of vegetation along the ponds and near the entries into the ponds. It appears evident that at least fertilizer, and likely pesticides as well, is indeed washing down into riparian areas and the receiving waters of the ponds. CSERC believes that there should be holding ponds constructed, with filters to reduce water quality contamination caused by the fertilizer and pesticides.

In the final EIR, we specifically ask for the creation of mitigation measures to reduce impacts to riparian areas and to provide restoration onsite or to require off-site enhancement to make up for the loss of ephemeral riparian habitat that was altered or lost during the unapproved construction of the golf course.

We note that page 8-31 of the EIR lists in Mitigation Measure 8:3b that one of the Best Management Practices listed is the requirement to maintain 50-foot setbacks for construction and grading activities from intermittent and ephemeral stream, riparian areas, and wetlands, and 100-foot setbacks for construction and grading activities from perennial streams. This seems to be an appropriate mitigation measure, but we ask the County to consider this in the big picture.

If it is appropriate for the project site to now have 50-foot setbacks from intermittent and ephemeral streams, it was also appropriate before the illegal construction of the golf course. Yet the setback buffering of the ephemeral streams and riparian areas was not followed during the development of the golf course or the re-contouring and gunniting of the ephemeral drainages. Thus, what is clearly a solid, reasonable mitigation measure was not followed during the applicant's years worth of grading and construction work for the golf course. As a consequence, the applicant has a responsibility to compensate for the damage that was caused by his uninformed choice to gunnite and re-contour all the ephemeral drainages within the golf course.

CSERC asks that the final EIR consider the cumulative impacts to ephemeral and intermittent streams from the cumulative actions taken by the applicant. We ask that a clear and reasonable mitigation measure be required to reduce the significance of those impacts.

- **The EIR fails to appropriately evaluate the potential environmental impacts that would be caused by wastewater generated by the proposed project.**

On page 21-9 the EIR consultant describes the wastewater treatment issue. The project would create septic waste from 13 new single-family residences, a major new clubhouse, the new lodge, and any associated restaurant/bar/snack shacks, etc. Simultaneous with discharge of a substantial amount of septic waste into the ground, the project would draw huge amounts of domestic water or irrigation water up out of the ground.

Many areas across the San Joaquin Valley and surrounding foothill region have already experienced contamination of the underlying water table and water supply that is essential to so many users. Adding the septic wastewater from the 13 new single-family residences, by itself, may be considered a minor impact. The clubhouse, bar, restaurant, and lodging however, add the potential for up to many hundreds of people per day during busy weekends to create biological waste that would increase the amount of subsurface discharge.

That would add cumulatively to the water quality contamination already taking place from fertilizers, pesticides, and herbicides, as well as the increased potential for petroleum products to leak, spill, or otherwise contaminate the underground water resource. The EIR does not adequately consider the specific impact of wastewater discharge or the cumulative effects of all pollutants that would be generated by the project during operations or through maintenance of the golf course facility. CSERC asks that the final EIR correct this problem and fully describe and create mitigation for the wastewater impacts that would be created by the project.

- **The EIR fails to adequately discuss or provide mitigation for the project's likely impacts to agriculture in the affected area.**

In a February 2, 2006 email from Sue Shalvey, Vice Chair of the Linden Community Advisory Council, sent to K.S. Dunbar and Associates and the Calaveras Planning Commission, the e-mail noted: "San Joaquin County is a 'right to farm county.' Additional development in Calaveras County puts pressure on agriculture in the Linden area. The roadways have become dangerous for livestock trailers, tractors with sprayers, pick-ups towing trailer loads of walnuts or cherries, etc."

In a February 17, 2006 letter from project neighbor Lew Mayhew to K.S. Dunbar & Associates, Mr. Mayhew wrote: "It will make pursuit of agricultural activities on surrounding land difficult with conflicts sure to arise between agricultural activities and the constant influx of those using the recreational, retail and related facilities. There

will be significant pressure on the surrounding agricultural land owners to sell their land for or convert their land to recreational, commercial, or housing uses.”

The EIR fails to fully address the potential for direct and indirect harm to agriculture for the affected area if the project proposal is approved. CSERC urges that the final EIR more fully analyze the impacts on agriculture if the project, as proposed, brings in heavy traffic, retail customers, golf and special event customers, customers for the restaurant and bar, and high-end housing residents.

• The EIR fails to adequately discuss or consider mitigation for the apparent violations by the applicant related to a lack of compliance with the Williamson Act. While this is a past action prior to the baseline analysis for this EIR, it is a connected action that is part of the past, present, and foreseeable future impacts that need consideration for appropriate mitigation of the cumulative effects of the project and past, present, and foreseeable future connected actions.

The February 2, 2006 letter from the State Department of Conservation, Division of Land Resources Protection, states that the golf course was built illegally while the property was still under Williamson Act contract (apparently expired January 2006). *“Golf courses are not allowed as compatible uses under statutory definitions. It is likely that construction of the course and facilities, if they occurred while the contract was in effect, were breaches of contract.”* Mitigation measures proposed in the letter include *“use of agricultural conservation easements on land of at least the quality and size as partial compensation for the direct loss of agricultural land. If a Williamson Act contract is to be terminated, or if growth inducing or cumulative agricultural impacts are involved, we recommend that this ratio be increased. We highlight this measure because of its acceptance and use by lead agencies as mitigation under CEQA.”* The State official elaborated further on this proposed mitigation: *“Mitigation using agricultural conservation easement can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements.”* *“Although the direct conservation of agricultural land and other agricultural impacts are often deemed to be unavoidable by and agency’s CEQA analysis, mitigation measures must nevertheless be considered.”*

County records indicate that a Notice of Non-Renewal for Williamson Act Contract was filed February 24, 1997, which would inarguably indicate a 2006 expiration date. If that is the case, then the EIR fails to fully describe the situation where the applicant illegally constructed a golf course in violation of Williamson Act requirements. The final EIR should carefully discuss this matter and lay out the recommended mitigation measures and consequences suggested by the State Department of Conservation in its letter on the subject.

In a Stockton Record article by Dana Nichols, the following information was provided on this topic. This information appears to further contradict information listed as fact in the draft EIR. The Record’s article reported: *“The California Department of Conservation said in a letter that it would investigate whether the golf course was built illegally while the land*

Nemee owns was considered as agricultural preserve under the Williamson Act, which gives tax breaks to landowners in exchange for keeping their land in agricultural uses." "County and state officials said the Williamson Act contracts for Trinitas expired in 2006, but Nemee says they expired in 2005 - before he planted turf and made other changes that converted the former grazing land to a golf course." "According to the draft environmental impact report, construction of Nemee's course began in 2001. Complaints from neighbors and conflicting statements from county officials began that same year. The draft report and Nemee say county officials told him in 2001 that it was acceptable for him to build a private-use golf course on agricultural preserve land. But at least one county official - planner Dan Hendrycks - wrote Nemee a letter in August 2001 saying it was illegal." (Dana Nichols, Stockton Record, July 10, 2007).

The article contains information that contradicts the EIR and the applicant's assertion that he did not violate the Williamson Act. The article points out that complaints from neighbors and the County came in about the construction of the golf course as early as 2001. Thus, whether or not the intent was to violate the Act, the applicant not only began a golf course many years before the termination of his contract, but he appears to have falsely claimed otherwise. The credibility of other claims by the applicant may be measured against the clear facts in this instance.

CSERC requests that the final EIR report clear, accurate information concerning whether or not the Williamson Act requirements were met or violated, and then also clarify as to whether or not appropriate mitigation has already been required as a consequence. CSERC asks that strong mitigation measures (at least as strong as recommended by the State Department of Conservation) be required for any illegal action taken in violation of the Williamson Act as part of the overall cumulative effects mitigation tied to the proposed application. Again, it is not a question of what the existing baseline was at the time of the initiation of this CEQA review. It is a question of how the overall cumulative effects of connected actions by the applicant on this project site and on adjoining lands do or don't create a significant impact on the environment -- on agriculture, on water resources, on wildlife, on traffic, on neighbors, and on other values. It is also a question of what measures should be taken to mitigate for the significant cumulative impacts created by those connected actions.

- **The illegal encroachment of the 3.4 acre tee box and the related golf course construction on the applicant's adjacent Williamson Act property further underscores the lack of analysis and legal review tied to the overall golf course construction. The complete lack of surveys, failure to do CEQA analysis, failure to perform field studies for at-risk species, and the lack of any clear protection for cultural resources are all highlighted by the fact that the applicant didn't even place the full golf course on the correct parcel.**

As is typical of the EIR author, the consultant inappropriately determines that there is no significance to the problem of the applicant having erroneously built a tee box and related golf course construction on 3.4 acres on a parcel not connected to the current application. The consultant does acknowledge that there is the need to correct the placement of a portion of the golf course on Williamson Act property, but he finds no

impact occurred. CSERC respectfully points out that if a property owner does an activity that is illegal on Williamson Act land, then some mitigation and consequence appears logical and necessary. For the EIR to claim that abandonment is sufficient reflects a clear bias for the applicant.

Furthermore, the judgment shown by the EIR consultant in this instance directly conflicts with opposing claims made by the consultant elsewhere. If placing a tee box on 3 acres of land in Williamson Act is shown on page 6-5 to be a conversion of Farmland to non-agricultural use (as shown for Impact 6.3), then placing 95 acres of golf course on the present project site is likewise a conversion of Farmland to non-agricultural land. CSERC asks that the final EIR acknowledge that on all agricultural land that is designated and zoned for agriculture, any golf course be shown to be a conversion to non-agricultural use.

• Out of all of the incorrect or misleading information in the EIR, the analysis and consideration of impacts related to groundwater pumping are among the most blatantly biased, incorrect, and in need of revision.

CSERC first notes that the EIR consultant appears to provide only one discussion of the possible need for well permits, which the applicant apparently did not obtain for drilling any of his major existing wells that are used for irrigating the golf course. On page 12-11 and 12-12, the EIR asserts that a groundwater well is not subject to SWRCB regulations unless it is considered to extract water from a subterranean stream. Thus, the bias of the EIR consultant assumes that any authority of SWRCB relating to well permits does not apply to the project property. Specifically, on page 12-12, the EIR states that the burden of proof “is on the party seeking to establish that the water is underflow or a definite subterranean stream.”

The projected water use chart on Page 12-8 shows that the projected water demand for the golf course alone equals roughly 100 MILLION gallons per year. CSERC restates this incredible acknowledgement by the EIR. The illegally created golf course purportedly uses @100,000,000 gallons of subsurface water per year.

Even this figure is significantly understated, because the Table 12.1 false shows that there would be zero irrigation of the golf course from November 1st through March 31st each fall-winter season. In reality, almost every year there are extended dry periods where turf would need to be irrigated during that five month period, and in dry to critical dry water years, the amount of irrigation could be enormous. In particular, watering may be required in the month of November in many years, and almost all years, watering would be required during some period in the months of March.

Thus, the EIR incorrectly shows that there would be no water demand for golf course irrigation during two months when hundreds of thousands of gallons of water are likely to be actually required.

More important, however, is the incredible bias and twisting of logic that the EIR uses to attempt to show that the project's impact to groundwater supplies would be Less than Significant. On this point alone, the lack of credibility of the EIR's author underscores the blatant bias favoring the applicant.

Even using the low estimate of annual water demand shown on page 12-8, the combined golf course water use and "other water use" totals well over 100,000,000 gallons per year. The project site is acknowledged to be located above the Eastern San Joaquin Subbasin of the San Joaquin Valley Groundwater Basin. The groundwater level in that basin is acknowledged on page 12-3 to have dropped as much as 100 feet due to agricultural and residential overdraft during the last 40 years, "which has reduced storage in the basin by as much as 2 million acre feet." Furthermore, page 12-3 also acknowledges that the estimated annual average agricultural pumping of 761,828 acre-feet exceeds the average total inflow and infiltration. Put simply, the groundwater level has fallen greatly and the trend continues. The EIR further acknowledges on page 12-6 that the Department of Water Resources bulletin from 2006 also states that regional water quality of groundwater in the basin is at risk as saltwater intrusion is extending eastward slowly at a distance west of the project site of approximately 20 miles.

Given all of that information, the EIR's discussion reveals that the applicant is pumping roughly 100 million gallons per year to water his illegally created golf course and needs roughly an additional 10 million gallons per year for the requested project. All of that water would come from subsurface water out of a groundwater basin that is acknowledged to be dropping precipitously over recent decades. Yet the EIR consultant incorrectly claims that the project's pumping of over 100 million gallons per year from subsurface sources will have a "Less than Significant" impact on groundwater supplies.

The basis for this illogical, false claim is based on the consultant's belief that the applicant's deep wells will tap into a completely separate deep water aquifer which lies lower down under the basin than the aquifer in which most shallower wells are sucking water. The EIR author bases this wild premise entirely on a personal comment provided to the consultant from G. Nelson. This personal comment is used to justify the claim that it is unlikely there is a connection between the upper and lower aquifers... and therefore it can be expected that the massive amount of pumping from the deep aquifer will not logically affect the shallow water wells and its depleted aquifer.

This is a specious claim that is completely unsupported by any science, fact, or proof of any sort. It relies on the hypothetical premise that water that is pooled below the project site in the "upper aquifer" is somehow completely sealed off from and is not draining further down into the "lower aquifer." This wild claim cannot in any manner hold up as legal justification for dismissing the pumping of 100 million gallons per year as having no impact on the wells of neighbors or on the overall groundwater supplies of the area. The final EIR should clearly acknowledge that there is no proof that the deep wells for the golf course irrigation are pumping water out of any aquifer separate from the same aquifer that neighbor wells depend upon for their water supply.

The final EIR should clearly acknowledge that the project will substantially deplete groundwater supplies and interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume and a lowering of the local groundwater table level.

The final EIR should show that even without additional new wells (such as those proposed by the applicant), the applicant's current six wells, including one on non-project property, already collectively pump roughly 100,000,000 gallons per year and already harm or threaten the groundwater supplies of neighboring properties and the region's groundwater resources.

The final EIR should also provide appropriate mitigation measures for consideration by the County that could reduce the significance of the impact of the existing wells that were drilled without apparent permits. Such mitigation measures might include:

- 1) Limit the amount of pumping the applicant is allowed to do monthly or annually, and require the placement of pump monitors that record pumping duration and volume to ensure compliance.
- 2) Require the applicant pay to have an independent, neutral contractor drill test wells on his property between his main wells and neighbors' wells. Have the contractor record present groundwater levels. If future groundwater levels drop more than 20' from current levels, require that the applicant either pay to deepen the wells of any affected neighbors whose wells are diminished, or require the applicant to provide pure, high quality water to fully meet the demands needed by those neighbors.
- 3) Deny any request for approval of new wells. Require the capping and halt to pumping from all existing wells used for irrigate the golf course except for a single well that will provide limited irrigation water.
- 4) Require the applicant to stop the pumping of water for golf course irrigation in any critical dry water year when groundwater supplies are certain to be already stressed and of critical value to other groundwater users who may be further harmed by the applicant's overall depletion of the aquifer.

• The EIR does not fully acknowledge the potential for the project to harm at-risk amphibians or other aquatic species.

In a February 2006 letter from the United States Fish and Wildlife Service (in reply refer to 1-1-06-TA-0391), the agency wrote regarding the Trinitas Project: "At issue are the potential effects of the project on the threatened California tiger salamander (*Ambystoma californiense*) and the vernal pool fairy shrimp (*Branchiencya lynchii*)." "The service notes that on page four of the notice of preparation it states that wetlands, stock ponds, and seasonal drainages are present. These areas provide habitat for the California tiger salamander (salamander). According to the California Natural Diversity Database, there

are recorded sighting of the salamander within a 10 mile radius of the proposed project. Also, there are records of vernal pool fairy shrimp in the area. The presence of these species may trigger Service involvement under the ACT with this proposed project. "We recommend that the Final Environmental Impact Report for this activity address project effects to the salamander, vernal pool crustaceans, and other listed species. A detailed inventory of the area must be conducted in order to confirm the presence of federally listed species at the site."

In further communications with this government agency about the project, agency staff expressed concern about impacts that may have already occurred from the unauthorized work done to create the "private" golf course. *"Unfortunately, it doesn't appear that there is much left on the Trinitas site to survey since they have eliminated most of the habitat. We are reviewing pre-project conditions and will move forward based on what 'was' there, the fact that CTS critical habitat is less than one mile away, and that there are documented occurrences of CTS very close to the site"* (Mary Hammer, USFWS email August 14, 2007).

"The property is not located within the designated critical habitat of any threatened or endangered species, but is in relatively close proximity to California tiger salamander Critical Habitat Unit 5 (50 CFR part 17; August 23, 2005)" (p. 4 Notice of Preparation 2004-114 The Ridge at Trinitas EIR, Calaveras County Planning Department).

Overall, CSERC believes that is important for the final EIR to carefully acknowledge not only the known information about presence of at-risk amphibians on the property, but to recognize that there has already been substantial degradation of available habitat that is suitable for the Western spadefoot, California tiger salamander, or California red-legged frog. Any assessment of the impacts of the new proposed action should be described (and mitigation considered) in light of the overall cumulative impacts of actions taken by the applicant as part of the overall project, including non-permitted, unauthorized actions.

CSERC asks that the EIR provide mitigation for those cumulative impacts, and not simply aim to provide protection if an incidental observation or fortunate survey visit actually spots one of these highly reclusive species.

- **The EIR fails to acknowledge the cumulative impact that the project and applicant have caused or may have caused to cultural resources.**

The EIR reveals on pages 9-2 and 9-3 that there are at least four prehistoric cultural resources on site. The precise boundaries of associated anthrosols were not defined, but they are acknowledged on some sites to affect substantial areas within the property. On page 9-7 the EIR acknowledges that the prehistoric cultural resources identified as PA-06-110A, PA-06-111A, and PA-06-112A have potential to be impacted by site disturbance related to construction of facilities onsite, including the lodge, parking areas, custom homes, and the golf course.

Page 9-8 contains the information that "...onsite evidence of prehistoric use of the project site increases the potential for Native American human remains to be found on the project site."

Based on avoidance requirements and mitigation measures written to reduce the potential for direct impacts to sites, the EIR consultant claims that the project will pose a "Less than Significant" impact to these cultural resources. CSERC believes that the EIR fails to consider the cumulative effects of the overall activities done by the applicant and the cumulative effects of past, present, and foreseeable future actions on prehistoric cultural resources of the area.

First, the EIR admits that increased public use of the site would result in increased visitation and would put more people in close proximity to cultural resources identified onsite. This admittedly could lead to degradation of the resources through direct or indirect disturbance associated with operation of the golf course and associated support facilities.

But what the EIR does not acknowledge is the fact that 95 acres of the property have been graded, re-shaped, and further modified to create the golf course... all without a pre-project cultural survey or protection plan. On a site with at least four identified prehistoric sites, it appears there was high potential for the applicant's previous actions to have disturbed prehistoric sites, even perhaps less-than-obvious human remains of Native Americans. The EIR fails to acknowledge that the trenching of 17 miles of irrigation piping and the gunniting and cobbling of ephemeral stream drainages potentially altered prehistoric or historic sites on the property.

The EIR should have provided a full and complete cumulative effects analysis of what the full project (both the current proposal and the connected construction of the illegal golf course) have cumulatively done to create impacts of significance for cultural resources. This should be done in the final EIR, along with a clear list of consequences and mitigation measure requirements to compensate for the unknown impacts that were caused by clearing/grading/altering portions of the 95 acres of the golf course. These additional potential mitigation measures should be added to the potential mitigation measures now listed that would kick in only if new grading, construction, or trenching was approved for the project site.

- **The range of project alternatives in the EIR does not provide the full, appropriate range of feasible alternatives**

Out of the existing project alternatives now provided in the draft EIR, Alternative 1 (No Project Alternative) is the best alternative when considering the interests of County residents, compliance with existing laws and regulations, and the overall harm or benefit for the environment. Under no circumstance should the recalcitrant applicant be rewarded for so much illegal, unauthorized, and non-permitted alteration of the environment.

CSERC notes, however, that the current range of alternatives does not appropriately provide a reasonable range of alternatives. In particular, one important alternative is missing from consideration. CSERC requests that the following alternative be considered in the final EIR:

Alternative 4 – Regulatory Compliance Alternative

Under this alternative, the applicant would not gain any approval for developing the clubhouse, lodge, associated parking lots, or any accessory structures. The applicant would not be authorized to open up the golf course for any commercial use by members of the public. The applicant would not receive approval for 13 new residences, nor for the drilling of any new wells. The applicant would not be given approval for any commercial operation or any related enterprise that would benefit from the unauthorized, non-permitted, illegal construction of the golf course that was initiated during the time period when the property was under Williamson Act contract.

Rather, under Alternative 4, the applicant would be directed by Calaveras County to bring his property into compliance with its General Plan designation and existing zoning and to also move to correct unapproved actions.

Despite the conflict with allowable legal uses, the County would not require the applicant to remove or naturalize the entire unauthorized private golf course or to tear up the 90,000 feet of irrigation piping, or to remove the gunnite and rockwork along the ephemeral drainages, or replace the half a billion gallons of golf course irrigation water that may have been pumped out of the groundwater supplies on which neighbors depend for a water supply.

Instead of requiring the active removal of all the inconsistent non-agriculture features on the property, the County would require the applicant to naturalize and restore habitat value approximately 20 acres composing the entire complex of three/ four long fairways/tee box/golf areas located at the central eastern portion of the project property (directly west/southwest of the large pond bisected by the eastern boundary of the property). The applicant would be required to enhance those @20acres of the site with replanted native oaks, restored native brush species, and a diversity of other native plants, including the restoration of riparian plants along any swale or drainage within the area.

Next, under this alternative, the County would require the applicant to select at least 20 additional acres of the existing golf course on the site and, within three years, convert that acreage back into active agricultural use for either irrigated agricultural or dryland grazing.

Under this alternative, the County would allow the applicant – in the spirit of compromise by the County -- to retain at least nine holes of the existing golf course for private use. Reducing the irrigated golf course acreage by at least 40 acres would significantly reduce the amount of overall irrigation required and the amount of water pulled out of the depleted groundwater basin. It would reduce fertilizer and pesticide use, reduce impacts on wildlife, and reduce visual impacts. As part of this compromise alternative, once the applicant completed the restoration of the 20-acre natural area and

the conversion of the 20-acre area back to agriculture, the County would agree to consider without prejudice a new application by the applicant for approval of a development agreement allowing approval of no more than 13 single family residences on the subject property. Any such future application would be required to ensure that agricultural use would accompany any residential development.

CSERC urges that this Alternative be described and considered in the final EIR. It would move the project site towards compliance with the existing General Plan designation and current zoning requirements. It would reduce impacts to neighbors and to county services, as well as impacts to traffic/roads, wildlife, water, air quality, and plant resources.

If the County does not choose to include this compromise alternative in the final EIR, CSERC asks that the County craft a similar alternative that would not only bring the property back into legal compliance with its existing General Plan and zoning requirements, but which could provide mitigating conditions that could reduce the negative impacts of unauthorized actions taken by the applicant on the project site.

• Important bits and pieces of information that may not have been available to the EIR author(s), but which may help County decision-makers and the public to consider who to believe concerning issues of dispute surrounding the project:

The following items are bits and pieces of pertinent information that directly affects the validity or inaccuracy of versions of issues referred to in the EIR. Many of these items were in project files, or local papers or magazines, or in e-mails shared by members of the interested public concerning The Ridge at Trinitas project.

In 2001 and 2002, the applicant applied for (application no. 1-23) and was granted boundary line adjustments for parcels that are now part of the proposed project. These boundary line adjustments were requested in order "...to accommodate two building sites". It is noteworthy that the lot line adjustments also consolidated the parcels where the golf course and other proposed project elements would be located.

In a June 28, 2001 memo from planner Dan Hendrycks to Jerry Howard, Agricultural Commissioner: "Today our office received an inquiry regarding extensive surveying and grading activity affecting APN 050-052-003...The inquiring party owns adjacent property. He inquired of a surveyor what was being planned for the 229 acres and he mentioned a golf course." (underlining added)

An August, 2001, letter from Dan Hendrycks, Calaveras County Planning Department, to Mike and Micelle Nemea states: "*This office has received complaints about the possible construction of a private golf course on the 229 acres you recently acquired from the Brehm family. Please be advise that this property is currently zoned Agricultural Preserve (AP) and is under a Williamson Act Contract, Contract 55, with a notice of Non-Renewal filed for the contract in 1997. Non-renewal of the contract will be effective March 1, 2006.*" "A golf

course, whether for private or public use, is not allowed in the Agricultural Preserve Zone as either a permitted or conditional use. Additionally, Agricultural Preserve Contract 55 expressly specifies that the described property shall not be used for any primary purpose other than the production of agricultural products including timber and compatible uses." "The construction of a golf course on this property, even for you private use, violates both County Code Chapter 17.18 and the provisions of Agricultural Preserve Contract 55." "Please be advised any further golf course instruction activity on the property could result in legal action by the County." (bold added)

An August 20, 2001 letter from Jefferies Engineers (representing Mike Nemea) to Dan Hendryks, Calaveras County Planning Department in response to Mr. Hendryks' letter of August 15, 2001 regarding the receipt of complaints regarding the subject property claims that no golf course is being constructed. *"I am not certain of the source of the complaints about which your letter refers nor what has led you to the conclusion that a golf course is under construction. While the landowners have contemplated the idea of installing a golf course in the future, there has been nothing done onsite to install or develop any such use. What is occurring onsite is that our crews have been surveying the property in order to accurately depict boundaries and other natural features. Due to this activity, there are a fair number of survey markers, which have been placed onsite." The applicants wish to install a vineyard to compliment the other established agricultural uses onsite, thus our surveying efforts are being used as part of planning for this endeavor. It will in fact be necessary to grade a portion of the property to properly install the vineyard. Hopefully these activities will not continue to be misconstrued by County Staff." "It appears that this letter was written on the basis of misleading or false information, since the County has not presented any evidence of the construction of a golf course on the subject property." "In light of the fact that a golf course is not under construction, I remain puzzled by your letter, other than to perhaps conclude that you were misled by complaints and/or the work that is being done for other purposes, as delineated above." "At this juncture, I will advise my clients that the matter has been sufficiently resolved and that the record associated with the complaint file will be sufficiently corrected and closed."*

CSERC notes that if such a letter from Jefferies Engineers did indeed represent the applicant, and if the applicant falsely told the County that a vineyard was the purpose for the grading, then the applicant lied to the County and intentionally hid the true intent of the grading.

An October 1, 2003 letter from Mike Nemea to Planning Commissioner Wes Hodgson requests an initiation of zone change modifying provisions of the Agricultural Preserve zoning district (for the project site). It specifically discusses "...the addition of Golf Course to the list of Conditional Uses authorized within this zone."

A February 9, 2006 letter from the Calaveras County Planning Department to Mike Nemea: "During a recent public scoping meeting for your proposed project (The Ridge at Trinitas), comments were made that construction of the golf course or related facilities is occurring, it is important for you to understand that a golf course and related facilities (public or private) are not permitted uses under the current zoning of your property. No additional project-related work, including grading; installation of utilities or irrigation, installation of cobbles along banks of drainages; construction of golf cart paths, bridges, on site roads, or maintenance structures; landscaping; or any other activities, other than maintenance to maintain the existing level of course development, is allowed until the final decision on the

application for a zoning amendment, tentative subdivision tract map, and conditional use permit has been made by the Planning Commission and/or Board of Supervisors." Observations made during CSERC staff's visit to the site in July 2007 appeared to show that much more than "maintenance to maintain the existing level of the golf course" has occurred since the County's February notice. Instead, work appeared to be continuing to occur. Observations and reports by neighbors of the project site support this reported work that continued throughout 2006 and into 2007 despite County direction to halt such work until project approval was finalized.

In a February 27, 2006 letter from project neighbors (Beverly Dir, Jeff Hart, Sarah Hart, and Jeremy Dir) *"We observed the Calaveras County Board of Supervisors, Bill Claudino representative of the Wallace area District #1 voting constituents, left the February 2, 2006 Scoping Meeting with and in the Nemees' vehicle. We are offended that our elected representative does not appear to demonstrate impartiality toward this project."*

"Calaveras County Supervisor Bill Claudino said his understanding is that Nemees is doing things that he can legally do on farm land." (Dana Nichols, Stockton Record February 3, 2006)

"The 18th hole will finish in a natural bowl just below the clubhouse. Stadium seating will allow hundreds to view the action there, although it also will be visible from the pool to be built next to the lodge" (Dana Nichols, Stockton Record, January 30, 2006).

During CSERC's tour of the project site, Mike Nemees, in response to our questioning, confirmed that he had been considering "bleacher systems" in the area of the 18th green. No consideration of stadium seating or bleachers is made in the EIR.

Excerpts from an e-mail exchange between Shaelyn Stratton and K.S. Dunbar, May 23, 2006:

Dunbar - "Also what about the newspaper article that Mr. Mayhew mailed to us regarding the 'stadium'? This will now have to be discussed one way or another."

Stratton - "Here is what I received from Susan [Larson] this morning...any comments? Regarding the stadium, this is her understanding: 'Relative to Mr. Dunbar's comments relative to the 'stadium', I assume that we are clear on that item. No stadium is proposed for construction, however, I believe that Mr. Nemees was referring to the area along the 18th hole being a natural rounded area, like an amphitheater. Such an area could provide a natural area for viewing -- I believe that he was trying to convey how natural the site was for a golf course in many ways.'"

Dunbar - "Yes, but this implies that we are going to have events. A normal golf course does not have a 'stadium' or amphitheater seating unless people are going to utilize it for some function."

"Mike Nemees, an idea-per-second entrepreneur, has dived headfirst into the golf business, risking everything on an ambitious project in the rolling cattle country of Calaveras County". "We've traded it all in and bet it all on this project" Nemees said. "Most people wouldn't do that'" "Trinitas will be open to the public three days each week, with the cost to run around \$100 per round. Large groups will be sought to fill the remaining four days, as Nemees hopes to

brand his venue as 'the Northern California leader in tournament golf'" (Ron Agostini, Modesto Bee, September, 20, 2006).

*"The buzz in the golf industry is all about a golf course in the Sierra foothills that flew so far under the radar **no one knew of it's existence.**" **"How could a masterpiece be built in such secrecy?** This seemed impossible. Architects always file their plans and drawings in the public domain. And no golf course construction company ever began construction without insiders knowing about it." "...Nemee bought **two bulldozers and a bellyscrapper** from a friend whose business went defunct. Nemee had never operated machinery like this, but he learned, and **graded the land** on his own". "...from the beginning Nemee has a tournament course, a stadium course in mind. One time a few years ago Nemee walked the Plantation Course at Kapalua the day after the Mercedes Championship, and felt every golfer should be able to live that kind of PGA Tour experience. That was his business model. Included at Trinitas is a **jumbotron** by the 18th green, so that golfers can see themselves up there as the tour guys do." "The final hole is a demanding uphill 593-yard par 5 with **stadium seating** on the left which resembles the 18th hole at the Olympic Club." "Nemee still kind of shakes his head at the way the while thing came together from nowhere. **'God built it,' was his only explanation**" (Ron Salig, NCGA Golf, Spring 2007). (bold added)*

CSERC notes: No "jumbotron" is considered or described in the EIR. An additional CSERC note is that nowhere in the EIR is there information provided that any religious inspiration participated in the deception of County officials and neighbors. Nor does the EIR explain how religion could be consistent with the applicant claiming that no golf course was being constructed, then admitting that he had personally created exactly what he claimed wasn't being constructed.

"Memberships are a sweet deal as well. For an investment of \$50,000 deposit, one secures free golf as a member (you only pay cart fees) for twenty years with no annual dues, minimums or assessments. At the end of twenty years, the deposit amount is returned. For corporate memberships, a \$75,000 deposit will secure playing privileges for three people" (Bob Fagan, Golf Today Magazine, date unknown).

"Don Winters, Trinitas' head golf professional says the operation is accepting members; people speak freely about obtaining \$50,000 memberships to the club, and others talk about play \$150 rounds at the course, but Nemee denies he is selling memberships, nor are people paying to play golf on his property. Nemee says the public can buy a bottle of olive oil at his property, take a tour of it, and he won't charge then to play a round of golf. He is selling his olive oil for \$75 to \$80 a bottle, he added." "Dave Tanner of Tanner Consulting Group, which provides golf-engineering services, said a lot of work has been done at the site without all the necessary permits, which were required by other courses before being built in the county. He said Trinitas has not gone through a fraction of the public scrutiny Saddle Creek in Copperopolis went through and wondered why the county has turned a blind eye on the work that has already been done by Nemee." Rod Metzler, a general partner for La Contenta Golf Club, said he couldn't believe the county has not stepped in to stop Nemee from charging green fees and memberships without the proper permits." "'It appears that Mr. Nemee believes in asking for forgiveness instead of permission,' Metzler said." "Trinitas is located within Supervisor Bill Claudino's district. Claudino said he had no problem with Nemee selling memberships prior to the county granting approval." "District 5 Supervisor Russ Thomas said he has to keep an open mind as the project goes through the planning process, but he had a problem with the appearance of

memberships being sold prior to any approval from the county." "Residents also complained about the way Nemee initially circumvented the county's planning process by installing what was first called a personal golf course that did not need a permit, and now it was the cornerstone of his proposed commercial development" (Nick Baptista, Valley Springs News, May 2, 2007).

Information pertinent to the Groundwater issue and Water Quality:

An August 5, 2004 letter from the Terry Mingo REHS of the Calaveras County Environmental Health Department to Mike Nemee: *"During discussions with Department Staff and the Director, it was concluded that a 'test well' was drilled at an unapproved location in the vicinity of Site #2; a permit was not issued for that location; construction of the 'test well' was terminated when drilling encountered a 'cavern'; the 'test well' was abandoned, and drilling was then initiated at Site #2. Following the installation of the annular seal at Site #2, further development of the well occurred washing away the upper portions of the surface seal and the annular seal. The following violations occurred in conjunction with the construction of these wells: 1) Initiation of drilling without a permit; 2) Initiation of drilling on an unapproved site; 3) Destruction of a well without a permit; 4) Destruction of a well with unauthorized methods and materials; and 5) Failure to complete a proper surface seal." "You are hereby informed that a Stop Work Order has been issued to A&A Gross Well Drilling, effective this date to cease and desist from well construction activities on the above identified property." "Please be advised that additional well permits shall not be issued for the above identified property pending resolution of the issues herein disclosed." It should be noted that improper sealing of well heads with annular seals risks the potential of groundwater contamination from surface sources, as does improper sealing of abandoned wells.*

In a May 3, 2006 letter from Wagner and Bonsignore Consulting Civil Engineers to Mike Nemee : *"We understand that you have three existing groundwater wells on the property that have an approximate capacity of 1,300 gpm, and that you plan to install a fourth well." "It is our understanding that your wells provide 100% of the water required for the entire development, both for irrigation as well as domestic and industrial purposes".*

In a January 30, 2006 letter from the Linden Municipal Advisory council (LMAC) to K.S. Dunbar and Associates, they expressed their concern for the project's impacts to groundwater availability for agricultural purposes in the Linden area.

In a February 2, 2006 email from Sue Shalvey, Vice Chair Linden Community Advisory Council to K.S. Dunbar and Associates and the Calaveras Planning Commission *"We urge you not to consider the Trinitas project at this time." "Farmers and ranchers have concerns about the long-term negative impact on water resources."*

In a July 23, 2007 e-mail local resident (neighbor?) Don Kuhn reports that at least eight private wells in the vicinity of the Trinitas project have been having problems recently. Four have had to be re-drilled an additional 50-100 feet, two are pumping below pressure causing the pumps to run for long periods of time, and two are producing mineral concentrations that are staining pools or fixtures.

In a February 17, 2006 letter from project neighbor Lew Mayhew to K.S Dunbar & Associates *"An estimate of how much groundwater the golf course will consume should be estimated and compared to typical agricultural uses."* *"There are some reports of wells in the area starting to pump sand and dry up"*.

"Back to the Trinitas Golf Course, which has about 70 acres to water. If you take that formula of 1/2 inch of water per watering, you get a little less than a third of a gallon per square foot. Spread that over 70 acres with 43, 560 sq. ft. to the acre, and one day of watering would use over 900,000 gallons of water. If you figured about a hundred irrigations a year, that is about 90 million gallons." *"They report that they irrigate the golf course from a few lakes that capture runoff and supplement with wells. Their wells are 600' deep and producing water from 300' down. Most of the wells in our area get water anywhere from 200 to 300 feet down so even if they are tapping into the valley aquifer, it sounds as if they are also tapping into the local aquifer."* *"Where I am, in Burson and Jenny Lind, we are definitely not pumping from any valley aquifer. If you go to deep here, you risk the danger of getting Boron toxicity"* (Don Urbanus, Calaveras Enterprise, February 21, 2006)

"State officials have threatened to step in to decide how much groundwater should be used in San Joaquin County. Such a move could slap meters on farmers' wells, reducing groundwater pumping by 25 percent in the North San Joaquin district and hurting the economy" (Alex Bretler, Stockton Record, May 15, 2007)

Information pertinent to the issues of Wetlands/Drainages

In an e-mail from Kathy Norton ACOE to K.S. Dunbar & Associated, January 26, 2006 *"Please be aware that any proposed fill into waters of the United States, including wetlands, will require a permit from our office prior to placement of fill into these waters."*

"The 17th hole, a 163-yard par 3, is likely the first golf hole in the world to have a green built over a creek" (Ron Salig, NCGA Golf, Spring 2007).

*"Always one to utilize his available resources, Neme found an abundance of cobblestone on his property and **had it all cemented to form the borders of the creeks** that meander through his property and are featured in 16 of the 18 holes. In all, there are **two and one half miles of rockwork** that cost a million dollars per mile to construct"* (Bob Fagan, Golf Today Magazine, date unknown).

Information pertinent to Fertilizers/Pesticides

In a February 3, 2006 letter from Calaveras County Agricultural Commissioner Mary Mutz to Shaelynn Strattan *"The operator or authorized representative shall have a qualified applicator certificate, issued by the State of California if restricted use pesticides are used on the golf course. In addition, a licensed pest control advisor shall write recommendations for all pesticide applications."* *"Sod farms require intensive irrigation, fungicide applications, herbicide applications, and possible soil fumigations. If the soil is fumigated, there are requirements for*

buffer zones between the area of application to any sensitive area, up to 500 feet in some situations. The sod farm operator or his/her agent is required to obtain an operator identification number or a restricted material pesticide permit from the Calaveras County Department of Agriculture, if any pesticides are used in this operation."

In a January 30, 2006 letter from the Linden Municipal Advisory council (LMAC) to K.S. Dunbar and Associates, they expressed their concern for the project's impacts to surface water quality: *"There will be wastewater and runoff as well. Golf course runoff is notable for the higher content of fertilizer and pesticides. Will runoff enter the watershed of local rivers, where sensitive fish populations are present?"*

Agricultural Commissioner Mary Mutz raised her concerns about pesticide use on the course. She said that use of pesticides of any kind requires a permit, and most golf courses require a restricted material permit, which is issued to people using large amounts of harsher pesticides. Nemeo said that he has addressed the pesticide issue by not using them and has hired a specialist to help him implement organic pest control methods. Regardless of how he uses the pesticides, a permit is still required. Nemeo acknowledged that he needs to get approval from the county and said he had scheduled an appointment to get certified to use harsher pesticides if needed. (Colin Rigley, Calaveras Enterprise, June 1, 2007)

- **Closing comments and summary**

CSERC believes that the information provided above proves that the applicant chose to create an unauthorized golf course by intentionally avoiding direct requirements and regulatory constraints. The applicant has communicated with reporters and golf enthusiasts with clear messages that reflect a far different story than what is contained in the EIR. The final EIR should be neutral, balanced, accurate, and focused primarily upon environmental risks and mitigation, rather than attempting to justify past actions or minimize descriptions of potential risks from the proposed project.

CSERC urges the County to carefully evaluate the compromise Alternative 4 contained within these comments. What has been done cannot be completely undone, but a compromise solution that reduces harm to the environment and to the interests of neighbors can be adopted.

Respectfully submitted,

John Buckley, executive director

Tom Hofstra, staff scientist