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August 24, 2007

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

Re: Project: 2004-114 Neeme ZA, TSTM, CUP
The Ridge At Trinitas
My client: Keep it Rural, Calaveras

Dear Mr. Sellman:

I have been retained by "Keep it Rural, Calaveras" which is a group of concerned citizens of Calaveras County. Many of these citizens have submitted comments that are contained in the "Comments on the DEIR for The Ridge at Trinitas" submitted by Thomas P. Infusion, Esq.

Keep it Rural joins in all the comments contained in the "Comments on the DEIR for The Ridge at Trinitas" and will not repeat all those comments in this letter.

This letter contains my comments, on behalf of Keep it Rural, made in addition to those submitted by Attorney Infusion.

Introduction

The history of this project shows that the project proponents the Nemee's (Hereinafter "Developer") sought to avoid CEQA review by building a golf course without grading permits, well drilling permits or an EIR in a zone that does not allow golf courses in violation of the Williamson Act. The Developer consistently lied to Calaveras County enforcement officers to achieve this objective. The Developer hope was to have an EIR which had a baseline that included the illegal golf course.

The tactic of changing the EIR baseline, legally or illegally, is becoming more common as developers are prevented from fragmenting a project into multiple smaller parts thus avoiding an EIR that considered the entire project.

Although this DEIR's baseline may include the illegal golf course, the DEIR is defective because the "no project" alternative assumes the golf course will continue to exist even if the project is not approved.

The DEIR misrepresents the allowed uses in the A1 zone, misrepresents that zoning has changed from the AP zone to the AI zone, misrepresents that a golf course is an allowed use in either zone and misrepresents that a zone change is necessary **to allow public use** of the golf course, when in fact the zone change is needed to allow the golf course **to continue to exist rather than be abated and removed** as a public and private nuisance either by government or private citizen action. The golf course is an illegal use. The above misrepresentations are necessary as a basis for the "no project" alternative which incorrectly assumes the golf course will remain.

The above misrepresentations in the DEIR occur on much more than one occasion in the DEIR. The DEIR misrepresents that the zoning changes are necessary to open the golf course, rather than make its existence legal. (DEIR 2-1, 3-1) The DEIR represents that the property has a general Plan Designation of NRL/AP and that the current zoning is General Agriculture (A1). (DEIR 13-2) The DEIR falsely states that a golf course, either private or public, is consistent with the A1 zone. Chapter 17.16 does not list or allow golf courses. It specifically lists recreational uses allowed, even for personal use, but does not list golf courses. For example, an equestrian center is allowed for personal use or private use for up to 15 clients, but golf courses for personal or public use are not included in the allowed uses. (See Chapter 17.16.020(21)(d)and (e). The DEIR then falsely represents that in 2001 the county responded positively to the Developer's question as to whether a golf course was consistent with the A1 zone. (DEIR 3-6) The record shows that the county and Developer understood a golf course was not allowed. There is no evidence in the Calaveras County file concerning this property that the property was ever rezoned from AP to A1. The property remains AP today in spite of representations in the DEIR of such a rezoning. The entire assumption that the golf course is an allowed use and should therefore be included in the no project alternative is incorrect.

As a result of the above false assumptions, the DEIR is defective because it makes the baseline with existing illegal golf course the same as the "no project" alternative. The "no project" alternative should assume the existing illegal golf course is removed, abated or enjoined from further operation. The DEIR makes the baseline and "no project" alternative analysis identical, and therefore does not tell the reader the impacts of not approving the project. The "no project" alternative must analyze the removal and return to its pre-golf course condition the 95 acres of property, and the environmental benefits that will be reaped from that action.

History:

A review of the history of the project is necessary to demonstrate several facts. First, the developer lied to and deceived county enforcement officers in order to violate county, state and federal laws and contractual agreements with the state. This is shown by the inconsistency between what the county files contain and what the DEIR says was

occurring. For example, the developer tells the county he is not grading for grazing when he was building a golf course. Second, it establishes that the county and developer knew that golf course was not and is not allowed to exist at all in an AP or A1 zone. Third, it shows that there was no zoning change documented anywhere in the record from AP to A1 as to this property. Fourth, it shows the magnitude of the CEQA violation that occurred in building the golf course, which is relevant to show what the "No Project" alternative will have to analyze as being reversed.

The following facts are from the County file as to these parcels and the DEIR:

April 29, 2001: A complaint to Compliance Department is made that grading by the developer is for an illegal golf course. This establishes that over 5 years ago the first documented complaint of construction of an illegal golf course is received.

June 28, 2001: A Memorandum from Dan Hendricks to Jerry Howard, Agricultural Commissioner, indicates that inquiry has been received about the "extensive surveying and grading activity affecting APN 050-052-003" and that the surveyor had mentioned a golf course to the complainant."

June 28, 2001: e-mail from Jearl Howard, Agricultural Commissioner, to Dan Hendrycks stating: **"Our County does not recognize gold courses as an agricultural use."** This directly contradicts the representations in the DEIR that a golf course is consistent with either the AP or A1 zones.

August 6, 2001: Dan Hendryicks, Planner II, writes the developer indicating that complaints had been received about the construction of golf course. **The letter indicates a golf course, either private, or public, was not allowed until the County initiates rezoning to the A1 Zone.**

August 9, 2001: Dan Hendricks writes the developer Re **"Possible Zoning violation APN 050-0520003" indicating that Complaints had been received about the construction of a private golf course on property zoned Agricultural Preserve and in Williamson Act Contract until March 1, 2006. The letter indicates that a golf course, public or private, is not allowed in the Agriculture Preserve Zone as either as a permitted or conditional use.** Demand is made that construction of a golf course stop. The developer continues to construct the golf course.

August 20, 2001: Jeffries Engineers, representing the Developer, writes Dan Hendrycks, Planner II, of the Calaveras County Planning Department indicates by letter that **"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" and "a golf course is not under construction"**. (Tom Jeffries letter of August 20, 2001) This representation was false. The letter directly contradicts the DEIR which states **"the construction of the Trinitas Golf Course began in 2001 with the staking and surveying of a layout for a 6 hole golf course covering 20 acres.** By the end of 2002, the design was expanded into an 18-hole course that would cover 95 acres of irrigated turf

grass." (DEIR 3-5) **The developer, through is agent lied to the county officials in order to proceed with the construction of the illegal golf course.**

October 9, 2001: Public Complaint received "re: 9209 Ospital Road, APN 50-052-002, Extensive grading being done, especially on weekends. No grading permit' residential encroachment finaled 8-15-01. **Land is zoned Agricultural Preserve. Neighbors believe a golf course is being constructed."** At this point the property is zoned AP according to county records, and the DEIR admits the illegal golf course is being constructed: "the construction of the Trinitas Golf Course began in 2001 with the staking and surveying of a layout for a 6 hole golf course covering 20 acres. **By the end of 2002, the design was expanded into an 18-hole course that would cover 95 acres of irrigated turf grass.**" (DEIR 3-5).

August 11, 2003: Public Complaint that "neighbor Michael Nemee is doing excessive grading on APN 50-052-40 between Ospital and Warren, without a permit. **Nemee told (the complainant) that he is constructing a golf course.**"

August 12, 2003: Building Department receives written complaint alleging grading of property. (Statement of Facts Case #03-29)

August 22, 2003: Compliance Officer Sowards conducts a site visit and observes **"a large amount of grading on the property"**. The Developer says he was moving dirt **for grazing.** County Enforcement officer **Sowards said it appeared he was building a golf course. The Developer says he is thinking of putting in a private golf course for personal use**. (Statement of Facts Case #03-29) The developer is continuing to lie to the enforcement officers. He told the complainant that he was building golf course, but tells the Enforcement officer that he is just moving dirt for grazing. The DEIR indicates that a year earlier 20 acres of the 95 acre golf course were constructed or being constructed and the design was for a full 95 acre golf course. (DEIR 3-5) The developer lied to the enforcement officer that the grading was for grazing when in fact he was in the process of constructing an 18 hole golf course, and had been for a year according to the DEIR.

August 27, 2003: Ray Waller advises the Developer to stop all grading on the property and to submit a report for all grading done. The DEIR indicates that grading, shaping and drainage work had been done by this time for the golf course. (DEIR 3-5)

October 1, 2003: The Developer writes Wes Hodgson, Planning Commission, District 5, to "request initiation of a zone change" ..."seeking the addition of Golf Course to the list of Conditional Uses authorized within this zone." The Developer acknowledges the property is in the AP zone and that a golf course is not allowed. There is no record of any zone change since 2003 from the AP zone to any other. According to the DEIR the golf course was well under construction with a series of drainage ditches constructed in the months before. (DEIR 3-5)

November 12, 2003: An Administrative Citation is requested against Nemee as "there had been **no attempt by Nemee to submit a report or plans for his grading problem**

to the Public Works Department or the Building Department". (Statement of Facts Case #03-29) The developer is simple ignoring County officials and continuing the construction of his illegal golf course.

November 12, 2003: G. J. Sowards, Code Compliance Officer, writes the developer indicating that "**Due to continuing the code violations on your property located at 9209 Ospital Road in Valley Springs, CA, it has become necessary to issue you an Administrative Citation**." The hearing was set for December 4, 2003.

November 12, 2003: **Administrative Citation 03-29 issued.**

November 19, 2003: The Statement of Facts in Case #03-29 against the Developer is based on Public Nuisance, Grading without a permit, failure to submit engineering plans and failure tin install erosion control. (Statement of Facts Case #03-29)

January 9, 2004: Tom Jeffries writes Ray Waller indicating its not really grading, just **"clearing and brushing project to develop a private golf course"** Waller closes case even though a golf course of any kind is not allowed in an AP or A1 zone. The fact that neither a private golf course or public golf course is allowed in the AP zone is not mentioned in Jeffries letter. In fact, a massive grading, paving and construction project for the construction of a 95 acre golf course is underway. (See next entry)

July 2004-April 2005: The DEIR indicates the irrigation system was installed involving trenching and installation of **90,000 feet of pipe and wire** and **900 cubic yards of sand** were imported onto the site. (DEIR 3-5)

August 5, 2004: The developer now has to irrigate his illegal golf course, but as he had done with the golf course's construction, he does so illegally. Terry M. Mingo of Calaveras County Environmental Health Department writes the Developer indicating that **"the following violations occurred in conjunction with the construction of these wells: Initiation of drilling without a permit, Initiation of drilling on an unapproved site, Destruction of a well without a permit; destruction of a with unauthorized methods and materials, and Failure to complete a proper surface seal.** (August 5, 2004 Environmental Health Department Letter)

August 5, 2004: Again the County makes belated objections, but fails to stop the illegal actions. **"Notice, Stop Work Order" issued to A&A Gross Drilling as to Assessor's Parcel Number 050-052-041** by Brian Moss, Director of the Calaveras County Environmental Health Department

August 4, 2005: **Application for Land use Development by Michael and Michelle Nemee is submitted stating existing zoning is Agricultural Preserve (AP) and proposed zoning is Recreation-Existing Parcel Size-Planned Development (Rec-X-PD)** Again Developer is acknowledging that the illegal golf course is not allowed under the existing zoning of AP. By this point the Golf Course is substantially completed according to the DEIR. (DEIR 3-5) It has been constructed in violation of the Williamson

Act Contract, which was still in effect as this application concerning the already completed golf course was submitted.

December 2005: Notice or Public Scoping Meeting notes on Agriculture section: **Existing zoning for the subject property is AP (Agricultural Preserve) which will revert to A1 (General Agriculture) when the Williamson Act contract expires in January 2006.** It is undisputed that the property is still AP at this point.

January 30, 2006: Stockton Record prints an article titled "Calaveras Wishes and PGA Dreams" stating "…Nemee will likely pull it off, **converting a 280-acre ranch and its 100 year-old olive orchard on the far western edge of the county into one of the West's premiere destination golf resorts.**" The property is still zoned AP and under Williamson Act Contract at this point but with a fully constructed operating golf course. The developer's illegal golf course is an amazing achievement: built by use of fraud, deception and blatant violation of the Williams Act, a state law, CEQA, the Federal Endangered Species Act, and Calaveras County ordinance relating to zoning, wells and grading.

February 9, 2006: Robert Sellman, Director, Department of Planning, writes letter to the Developer re Golf Course Construction instructing that **all construction on Golf Course cease citing Section 17.04.010 of the County Zoning Code**. Section 17.04.010 prohibits any land use commenced, enlarged or altered unless permitted in the zone. The golf course is still not allowed in the AP or A1 zone at this point.

February 2, 2006: Department of Conservation indicates by letter that "**It is likely that construction of the course and facilities, if they occurred while the contract was in effect, were breaches of contract.**" (Department of Conservation letter February 2, 2006) There is on doubt that the Developer breached the Williamson Act Contract by building the golf course while the Williamson Act was still in effect.

February 13, 2006: Shaelyn Stratten, Planner III, writes Michael Milne of Central Sierra Environmental Resource Center indicating **the Golf Course is the base line and the EIR will not consider Golf Course impacts**. She also indicates that the developer has stopped all "on going activities at the project site." (Appendix H: Calaveras County Supplemental Scoping Comment Letter)

February 20, 2006: Letter from Nemee "Trinitas Ranch" describing "maintaining the existing General Plan designation of **Agricultural Preserve** and twenty acre (20) density."

June 12, 2006: Letter by Shaelyn Strattan, Calaveras County, to Keith S. Dunbar, project consultant, which **incorrectly concludes that "Reversion of the property to agricultural use only might also be another alternative. However, because the golf course already exists, this may not be used as the "no project" alternative."** This is legally incorrect. The "no project" alternative must be based on the grazing and olive

orchard use allowed under the AP or A1 zone, contrary to Ms. Stratten's limitation which equates the "baseline" with the "no project" alternative.

There does not appear to have been any rezoning of this property pursuant to Chapter 17.86.010 though 17.86.060. Any rezoning requires Board of Supervisors approval. (DEIR 3-22) The property is still zoned AP. The DEIR concludes that the General Plan designation is still NRL/AP, but somehow the zoning is now A1. (DEIR 3-9; 3-12)) There is no support in the county records to support this alleged rezoning from AP to A1. Even if there was, the DEIR is incorrect when it states that the zoning change is necessary to allow **public use** of the golf course. The zoning change is necessary because the golf course is **illegal under either the AP or A1 zones for private or public use.** Its existence must be abated. Golf Courses are specifically mentioned and allowed in the REC-X-PD zone. (DEIR 3-14)

The "No Project" Alternative Must exclude the Illegal Golf Course.

Contrary to the basic assumption of the DEIR, the "No Project" alternative and the baseline are not the same:

> "The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125)."
>
> (CEQA Guideline 15126.6)

The EIR is defective because the "No Project" alternative does not evaluate the property as it was, and may be again, grazed or operated in part as an olive orchard as allowed in either the AP or A1 zones. Unless the property is rezoned for recreational use and a conditional permit for operation of the golf course issued, the golf course will be abated, enjoined and removed. The DEIR "No Project" alternative is not a correct "No Project" alternative because it includes the golf course which is not allowed under the existing AP or A1 zone designation.

The EIR erroneously applies the "base line" for evaluation purposes to determine the appropriate "no project" alternative. To the DEIR authors the baseline and no project alternatives are identical. Since the developers have built an illegal golf course in the hope of evading CEQA requirements, this incorrect approach is essential to their success.

A golf course is not allowed in the AP or A1 zones under any conditions:

The property is still zoned AP. There is no evidence in the County file of any zone change. It is undisputed that the AP zone does not allow golf courses. Not only is it clear from Chapter 17 itself, this was established as early as June 28, 2001 by the Agricultural

Commissioner in response to initial complaints that an illegal golf course was being constructed. On August 6, 2001 this was confirmed by letter from the Planning Department to the Developer. On October 1, 2003 the Developer wrote requesting a change to allow a golf course to be added as a conditional use in the AP zone, indicating the Developer knew a golf course was not an allowed use under any conditions on his property. On August 4, 2005 the developer submitted his application to have the property zoning changed from AP to Rec, again acknowledging that the Developer that the then already constructed golf course was illegal in the AP zone.

Even if the property was rezoned to A1, Golf Courses are not allowed in the A1 zone. The A1 zone seems to be the alternative agricultural zoning after termination of the Williamson Act. So even if the property would have been rezoned after the non-renewal of Williamson Act Contract to A1, the golf course will still be an illegal use. (See Title 17.16.010-17.16.070)

Since a golf course is not allowed in either the existing AP or A1 zones, the "No Project" alternative cannot consider the golf course as part of the "No Project" alterative under CEQA Guidelines, but must consider the pre-golf course uses and condition of the property.

CEQA Guidelines are promulgated by the Resources Agency. They are authorized by Public Resources Code Section 21083. The Guidelines are accorded great weight by the courts. (Laurel Heights Improvement Association vs. Regents of University of California (1993) 6 Cal.4th 1112, 1123, fn.4 (Laurel Heights II); Bakersfield Citizens for Local Control vs. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1197; Vineyard Areas Citizens for Responsible Growth, inc. vs. City of Rancho Cordova (2007)S132972 fn.5)

The CEQA Guidelines make it clear that under the circumstances of this case, the no project alternative must be based on uses allowed in the AP zone, which does not include the existing golf course:

> "The 'no project' analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, **as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.**"
> CEQA Guidelines Section 15126.6(e)(2)
>
> "(3) **A discussion of the "no project" alterative will usually proceed along one or two lines:**
> (A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the

proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, **for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed.** Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. **If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed.** In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. **However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the projects non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.**

(c) After defining the no project alternative using one of these approaches, **the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans** consistent with available infrastructure and community services."

CEQA Guidelines Section 15126.6(e)(3)(A)-(C)

Subsection (3) (B) is applicable to this particular project. That section requires the no project alternative consider the realistic result which would be the golf course would have to be discontinued. Under subsection (3) (C) it is only reasonable to project that the existing agricultural zoning for the property will be enforced, and the golf course will be enjoined either by public agency enforcement, or private nuisance or trespass lawsuits.

Instead in this case the "no project" alternative assumes that an illegal golf course on agriculturally zoned property will continue indefinitely. It cannot continue unless all County, State and Federal agencies abandon their responsibility to enforce the law, and private citizens do not seek injunctive relief.

The "no project" alternative in this case would have to assume that the AP, or at least the A1, zoning remains in effect as to this property. Since a golf course, either public or private, is not an allowed use, the no project alternative has been with no golf course or the golf course removed or abandoned. It is this venturing into what reasonable could be expected to occur that does not occur in this DEIR:

"CEQA requires that the no project alternative discussed in an EIR address "existing conditions" as well as **"what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services."** (Guidelines, former § 15126, subd. (d) (4), now § 15126.6, subd. (e) (2).) The existing conditions,

supplemented by a reasonable forecast, are characterized as the no project alternative. The description must be straightforward and intelligible, assisting the decision maker and the public in ascertaining the environmental consequences of doing nothing; requiring the reader to painstakingly ferret out the information from the reports is not enough. (Environmental Planning & Information Council v. County of El Dorado (1982) 131 Cal.App.3d 350, 357 [182 Cal.Rptr. 317]; Dusek v. Redevelopment Agency, supra, 173 Cal.App.3d 1029, 1043.)"

Planning and Conservation League vs. Department of Water Resources (2000) 83 Cal.App.4th 892,911)

The EIR seems to skip around the Guidelines, but never mentions the above sections. It quotes Section 15126.6(f) dealing with the rule of reason. (DEIR 20-1) It cites Section 15126.6(e), but it skips any mention of the relevant subsections cited above. The DEIR is wrong and illogical when it states the Guidelines require comparison of impacts of the proposed project with impacts of not approving it, then acknowledges that the zoning amendment would not be approved, the current designation of AP and zoning A1 would not be affected, but somehow the golf course which would remain an illegal use, would continue! It cannot be assumed that the golf course is "anticipated to remain if the project is not approved as proposed."? (DEIR 20-5) The DEIR highlights its own defective analysis in a single paragraph.

Neither can the No Project alternative assume the planting of grapes, or some other high water use in an attempt by the developer to avoid the benefits of lower water consumption, return of wetlands, and the return of flora and fauna. Such an assumption would be pure speculation. The no project alternative could use information, including information on surrounding parcels and information on this same parcel prior to the construction of the illegal golf course to make a very accurate and meaningful no project alternative.

There would also be great social justice in such an approach. The Developer, who sought to escape CEQA analysis by destroying wetlands and the natural condition of the property would have to face that analysis anyway in the no project alternative analysis. The County should not allow itself to be the victim of fraud and deception, and then reward that fraud and deception.

The No Project Alternative must evaluate the property in its pre-illegal golf course condition because even if Federal, State or County agencies did not enjoin or abate it after denial of the project, private citizens would.

CEQA law is not the only law that applies in this unique circumstance. A developer has illegally constructed a golf course and without permits drilled illegal wells impacting wells and water of other property owners. This type of use is a nuisance and can be enjoined by private citizens in a civil action.

An illegal golf course drawing water from illegal wells impacting other property owners is a classic nuisance, both private and public. Private nuisance concerns injury to a property interest. Public nuisance is not dependent on an interference with rights of land:

> "[A] private nuisance is a civil wrong based on disturbance of rights in land while a public nuisance is not dependent upon a disturbance of rights in land but upon an interference with the rights of the community at large." (Venuto v. Owens-Corning Fiberglass Corp. (1971) 22 Cal.App.3d 116, 124 [99 Cal.Rptr. 350])

Civil Code section 3479 provides:

> "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or **an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property**, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance."

Civil Code section 3480 provides: "A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

Civil Code section 3493 allows a private person to maintain an action for a public nuisance, if it is especially injurious to that person. The overdraft of water is such an injury. Each of the property owners whose wells and water supply at their property has been adversely affected by the illegal wells, golf course and pumping, could bring an action to enjoin the illegal golf course as a private nuisance as well. "[T]he essence of a private nuisance is its interference with the use and enjoyment of land. The activity in issue must 'disturb or prevent the comfortable enjoyment of property,' such as smoke from an asphalt mixing plant, noise and odors from the operation of a refreshment stand, or the noise and vibration of machinery." (Oliver v. AT&T Wireless Services (1999) 76 Cal.App.4th 521, 534) Illegally depriving other property owners of water in their wells is such an injury.

"Unlike public nuisance, which is an interference with the rights of the community at large, private nuisance is a civil wrong based on disturbance of rights in land. A nuisance may be both public and private, but to proceed on a private nuisance theory the plaintiff must prove an injury specifically referable to the use and enjoyment of his or her land. The injury, however, need not be different in kind from that suffered by the general public." (Koll-Irvine Center Property Owners Assn. v. County of Orange (1994) 24 Cal.App.4th 1036, 1041 [29 Cal.Rptr.2d 664)

It is guaranteed that even if the United State Government, (Department of Interior, Corps of Engineers, etc.), State, (Dept. of Fish and Game, Attorney General, etc) and County fails to enforce its zoning, private citizens will enjoin the illegal use.

The defective No Project Alternative Causes Defective Impact Analysis.

The DEIR no project alternative should have analyzed the removal of the golf course and the use of the property in its prior allowed AP or A1 use. To understand the significance of this omission, it must be understood how massive the construction of the illegal golf course was.

Attached is an aerial photograph of the site from 1993 showing the land in its natural undeveloped state. DEIR Figure 3-6 shows a highly developed site with miles of graveled roads, and traps, and other man made structures and scars on the land. If the land was required to be returned to its natural state and the illegal golf course removed, there would be a significant positive impact to the visual character of the project site, water, flora and fauna, wetlands, traffic and the surrounding property.

The DEIR Impact analysis as relating to the no project alternative incorrectly ignores the significant changes resulting from the illegal building of the golf course. It was constructed on 95 acres of open space wetland and agricultural land. (DEIR 3-1) It required clearing, grading, shaping, blocking creeks with a series of cobble rock dams, construction of ditches, installation of concrete dams, installation of 90,000 feet of pipe, importing and burying 900 cubic yards of sand, covering natural habitat with 40,000 linear feet of concrete paths, building of 10 arched culvert bridges, construction of 19 putting greens, hauling onto the property and covering native habitat with 720 tons of pea gravel and 2400 tons of screened sand, tilling and power raking the entire 95 acres of wetlands and habitat, raking it again by hand, covering habitat to create fairway areas with 900 tons of sand, spreading 200 pounds of fertilizer over the property, replacing native grasses and flora using 400 pounds of rye and fescue seed, 32 acres of Bermuda sprigs, and 3 acres of bent grass. (DEIR 3-5 – 3-6) The DEIR analysis of the no project alternative is defective as it does not analyze the benefit of removing these changes, done illegally without the benefit of an EIR, and returning the property to its natural state.

All the above work was done without the mitigation measures that should have been required, and in fact are required in the DEIR as mitigation measure for the non-golf course portions of the project. For example, use of fertilizers is carefully regulated in mitigation measures for the balance of the project, but in destroying 95 acres of native habitat there was no such control. This is just one example. Another, wetlands were destroyed, creeks blocked, and native grassland paved with absolutely no environmental review.

The DEIR fails because is does even consider the positive environmental impacts of the no project alternative caused by the return of the property from a golf course to its preexisting agricultural use. By including the existing golf course in the no project alternative, rather than a return to its natural agricultural use with the removal of the illegal golf course, the DEIR incorrectly analyzes most impacts.

Impact 5.3: The DEIR incorrectly concludes that because the golf course exists the no project alternative will not have any impact on the existing visual character of the project site and its surroundings. The aerial photographs and photographs contained in the DEIR show that both building the golf course illegally, and its removal, would have a significant impact on the visual character of the project site and its surroundings.

Impacts 6.1-6.3: The DEIR ignores the fact that 95 acres of agricultural land was removed from agricultural use by construction of the golf course, and the corresponding increase in 95 acres of productive agricultural land that would be gained by the golf course's removal in a correct no project alternative. (DEIR 2-8)

Impact 7.3: Air quality: If the golf course were removed there would be an obvious reduction in pollutants and decreased emissions. Traffic both to and from the golf course, and on the property would be greatly decreased. The DEIR needs to quantify this significant benefit to the no project alternative.

Impact 7.4: Elimination of the golf course and its traffic would reduce to levels of insignificance the level of significant unavoidable the impacts on global warming. The DEIR does analyze this benefit.

Impact 8.1: The DEIR spends 9 pages of fine print outlining Mitigation Measures for biological resources, all of which were not required for the illegal golf course. None of these mitigation measures were required for the golf course, but should have been. (DEIR 2-10 - 2-19) However, the no project alternative must consider the biological benefits of removal of the golf course. There would be a significant positive impact of elimination of the golf course and a return of the property to its natural state. Species were undoubtedly eliminated by the massive grading and illegal construction of the golf course, but the DEIR must analyze the potential of the site for such species if the golf course was removed.

Impact 8.2: Riparian habitat and other sensitive natural communities were destroyed by the illegal construction of the golf course. The DEIR however must quantify the positive impact, or reduced negative impact of the project, on such natural communities by the return of the property from a golf course to its natural state.

Impact 8.3: The positive impact of the no project alternative on federally protected wetlands is not analyzed. If the golf course is returned to natural habitat, then based on the 1993 photographs and even the current topography of the illegal golf course, federally protected wetlands will either be returned or be created.

Impact 8.4: The illegal golf course construction undoubtedly destroyed native wildlife nursery sites. Regardless of that fact, the no project alternative must describe the positive impact of the return of such sites if the golf course was removed and the site returned to its native condition.

Impact 12.1: It is well documented that golf courses cause polluted runoff or otherwise degrade water quality. The DEIR fails to analyze the reduction of this problem if the golf course were removed and the property returned its natural condition.

Impact 12.3: Depletion of groundwater is described as a significant unavoidable impact. If the DEIR correctly used a no project alternative that removed the golf course, then a significant unavoidable impact could be reduced to a less that significant, or no impact analysis, as water usage would be returned to pre-golf course levels.

Impact 12.4: The aerial photographs contained in the EIR show massive grading and paving. No impact analysis of the effect of this grading or illegal golf course construction occurred. However, the DEIR must analyze the elimination of the golf course and return of the property to its pre-illegal golf course condition. The DEIR completely fails to engage in any discussion of this correct no project alternative.

Impacts 14.1 and 14.3: There is a complete failure to analyze the reduction of noise impacts if the property is returned to its natural condition with the removal of the illegal golf course.

Impact 18.1: The significant unavoidable impact of the project will be reduced to insignificance if the golf course were eliminated from no project alternative. Again, the DEIR fails to even engage in this analysis.

Impact 18.2: The level of service analysis is likewise incorrect because the significant unavoidable impact will be reduced by elimination of the golf course.

Impact 19.1: Water supply will be greatly increased by the no project alternative. The golf course is documented in the EIR to consume massive quantities of water. A correct no project alternative without the golf course will save vast amounts of water and provide a significant environmental benefit.

During summer months 700,000 gallons per day will be used to irrigate the golf course. (Appendix C: 17) According to the DEIR there are 6 groundwater wells on site with a total production of 1,430 gallons per minute. (DEIR 12-4) There are currently 6 groundwater wells on site, and one offsite well. Four wells, pumping 1275 per minute are dedicated to the golf course. (DEIR 12-5) Four new wells are proposed. According to the DEIR there would be 10 wells on site pumping an unspecified amount of water from a groundwater basin in overdraft in the amount of 70,000 acre feet per year. The no project alternative must calculate the water **saving** by the return of the golf course to its permitted AP or A1 use.

Elimination of the Golf Course should be considered as mitigation for impacts caused by the housing portion of the project.

In many of the subjects described in the above section and the DEIR no mitigation measures are required. Elimination of the golf course is a possible mitigation measure and the return of the property to its natural condition would be one mitigation measure

that would offset entirely many of the impacts. For example, water savings from elimination of the golf course would offset the water usage by the residential portion of the project, providing mitigation. Again, social justice would be well served. A developer who violated the law and lied to build an illegal golf course would have to sacrifice that illegal golf course as mitigation for the balance of his project.

The Two Alternatives discussed in the Project are not really Alternatives, just fragmented parts of the same project.

The EIR does not select meaningful alternatives, instead choosing fragments of the same project, which it then rejects because none of the fragments accomplish all of the objectives of the project. The EIR intentionally selects improper alternatives which it can then reject.

CEQA Guideline 15126.6(a) requires an EIR describe a range of reasonable alternatives to the project which would reasonably attain most of the basic objectives of the project and evaluate the comparative merits of each. Section (c) requires selection of a range of alternatives that include those that could feasible accomplish most of the basic objectives of the project and avoid one or more of the significant impacts. The DEIR fails to satisfy either Sections (a) or (c).

Only two alternatives were selected, not considering the mandated "no project" alternative the deviancies of which have already been discussed.

Alternative #2 was the construction of the Golf Facilities Only. This is just a fragment of the proposed project. It is not at a different location. It is not different in any way other than it is a fragment of the larger project. Because it is a fragment, the DEIR therefore arrives at the predetermined and inevitable conclusion it cannot satisfy the objectives that would be satisfied by the housing portion of the project, which is to supply housing at this location.

Alternative #3 is Construction of Residences only. Again this is just the residential portion of the project. In a classic "Catch 22" of alternative analysis, the DEIR therefore sets the stage for the rejection of this alternative because it does not satisfy the golf objective of the project. In summary, these are not alternatives, or even scaled down portions of the project, they are just parts of the same project. They do not allow the reasonable alternatives to the project that could feasible accomplish most of the basic objectives of the project and avoid one or more of the significant impacts but instead alternatives chosen and designed to insure the basic objectives of the project cannot be met.

Several alternatives were rejected on flawed analysis. One alternative was "Offsite Residential Lots, Clubhouse, Lodge and New Golf Course". The DEIR (See Page 20-4) engages in flawed and unsupported analysis in rejecting this potential alternative. First, it assumes the golf course will remain at this location and a second golf course will be built at another location. If the project is rejected, the existing golf course will be abated, enjoined and removed. Its massive use of water will be terminated. The

unsupported assumption that water consumption will not be reduced ignores the fact that the existing golf course is an illegal use. The DEIR concludes, with nothing more than pure speculation, that groundwater problems at some other unknown location may be exacerbated. There is no support for this pure speculation. What about a golf course location where it could rely on surface water? This summary rejection based on unspecified water impacts at an unknown location does not satisfy the requirement that "The EIR should also identify any alternatives that were considered by the lead agency buy were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination." (CEQA Guideline 15126.6(c))

Another unsupported reason for rejecting this alternative of offsite Lots, Clubhouse, Lodge and new Golf course was that a large parcel of land would have to be converted to accommodate this entire project in one location. No consideration was given to building a golf course, and accompanying lodge and club house near existing development or urban areas in the county where surface water, or even reclaimed water, could be used for the golf course. This alternative was rejected from consideration without any reasoned analysis.

The next alternative allegedly considered is not an alternative at all but a mitigation measure. Providing "Shuttle/Transit to the golf course" is merely a mitigation measure that should be considered to reduce traffic impacts, but it is not an alternative project.

The final alternative to the project that was considered but rejected from consideration is another selection of fragments of the same project. It is reduction of the golf course by half and building of the Lots, Clubhouse and Lodge. With no supporting financial analysis, this alternative was rejected as being not financially feasible. The developer must provide some information to support the argument that this is not financially feasible. None is provided. Most importantly, this again merely consideration of parts of the project.

An alternative that should have been considered was elimination of the illegal golf course completely, and construction of the remainder of the project. This alternative would sacrifice the illegal golf course as an offset for water, habitat loss, agricultural land loss, and most other impacts of the project. A conservation easement on the 95 acres of the golf course to insure it remain in its natural condition should be required as a mitigation measure. This alternative would virtually eliminate traffic impacts. Instead of rejecting, without any supporting evidence, an alternative reducing the golf course in half, there should be an alternative showing the golf course eliminated completely. If the Developer wants to present financial information showing the financial infeasibility of this alternative, he may certainly do so.

Conclusion:

The County should not allow itself to be lied to, deceived and ignored. The illegal construction of a golf course should be a public embarrassment. The no project alternative must consider the property as it was prior to the illegal construction of the golf

course. The DEIR is limited to only considering alternatives that were parts of this same project, and then rejecting them because the did not satisfy all the objectives of the project. This is a formula that predetermines rejection of the alternatives. The only other two alternatives considered but rejected was a transportation plan that is actually a mitigation measure and an alternative location concept rejected because of the false assumption that golf course would continue in both areas and both rely on ground water.

Another true alternative would be removal of the golf course as offset for the impacts of the balance of the project. If it is financially infeasible, let the developer present evidence. True social justice would occur with the adoption of that alternative. White collar crime should not be tolerated in Calaveras County.

Very truly yours,

MARK V. CONNOLLY

cc: Clients