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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 MODESTO DIVISION
8

9 In re) Case No. 09-93249-E-11

10 MICHAEL KENNETH NEMEE and)
MICHELLE SEOBHAN McKEE NEMEE,)
11)
Debtors.)
12 _____)

13 MICHAEL KENNETH NEMEE and) Adv. Proc. No. 09-9088
MICHELLE SEOBHAN McKEE NEMEE,)

14)
Plaintiffs,)
15)

16 v.)

17 COUNTY OF CALAVERAS,)

18 Defendant.)
_____)

19 This memorandum decision is not approved for publication and may
20 not be cited except when relevant under the doctrine of law of the
case or the rules of claim preclusion or issue preclusion.

21 MEMORANDUM OPINION AND DECISION

22 This Adversary Proceeding presents the court with competing
23 contentions by Michael and Michelle Neme, the Plaintiff/Counter-
24 Defendants ("Plaintiffs"), the Chapter 11 Debtors, and the County
25 of Calaveras, California, the Defendant/Counter-Claimant ("County")
26 as to the proper interpretation and application of the Calaveras
27 County Zoning Ordinances. The real property at issue consists of
28 a 160-acre parcel and 120-acre parcel, both in Calaveras County

1 ("The Property") which are owned by the Plaintiffs and are property
2 of their bankruptcy estate.¹ On this bankruptcy estate property,
3 the Plaintiffs have constructed and are operating a commercial 18-
4 hole golf course through Trinitas Enterprises, LLC, a limited
5 liability company they own, which is also property of the
6 bankruptcy estate. Plaintiffs assert that the development and
7 operation of a commercial golf course on The Property are permitted
8 as "Agritourism" under the Calaveras County Zoning Ordinances.
9 Alternatively, if the commercial 18-hole golf course is not
10 Agritourism, Plaintiffs assert that the County is equitably
11 estopped from asserting that the use and operation of this
12 commercial golf course by the Plaintiffs violates the Zoning
13 Ordinances. The County has not only answered the Second Amended
14 Complaint denying the allegations and requesting judgment in its
15 favor, but also filed a counterclaim for injunctive relief from
16 this court to enjoin the alleged violations of the County Zoning
17 Ordinances.

18 Prior to and during the pendency of this litigation, the
19 development and use of The Property as a commercial 18-hole golf
20 course was the subject of County review and nonjudicial political
21 proceedings before the Calaveras County Board of Supervisors. When
22 that nonjudicial process failed to produce a satisfactory
23 resolution for the Plaintiffs, they continued with the prosecution
24 of this Adversary Proceeding, which concluded with a three-day
25 court trial. Through this trial the parties presented extensive
26 evidence concerning the decade-long odyssey involving the

27
28 ¹ Calaveras County, California Assessor Parcel Nos. 50-052-
41 and 050-052-42.

1 Plaintiffs, the County, investors, members of the golf club
2 operated on The Property, and other persons who envisioned a golf
3 course and destination resort known as the Ridge at Trinitas on The
4 Property.²

5
6 **PROCEDURAL HISTORY OF THE ADVERSARY PROCEEDING,**
7 **FEDERAL COURT JURISDICTION,**
8 **AND**
9 **FINAL DETERMINATION BY THE BANKRUPTCY COURT**

10 This Adversary Proceeding was originally commenced by
11 Plaintiffs in the California Superior Court, Calaveras County. The
12 original state court complaint was filed on May 15, 2009, with a
13 first amended state court complaint filed on September 15, 2009.
14 On October 7, 2009, the Plaintiffs commenced their voluntary
15 Chapter 11 case in this court.³ The Plaintiffs filed a second
16 amended complaint in the state court action on December 7, 2009
17 ("Second Amended Complaint"). While a demurrer to the Second
18 Amended Complaint was pending, Plaintiffs removed the state court
19 action to this court pursuant to 28 U.S.C. § 1452 on December 29,
20 2009. The County then filed a motion with this court to remand the
21 action back to the state court or abstain hearing the issues in
22 this Adversary Proceeding. The County also filed a motion for the
23 remand of or abstention by this court for a second adversary
24 proceeding which Plaintiffs removed to this court.⁴ In the second

25 ² Though the development concept for The Ridge at Trinitas
26 is much greater than an 18-hole golf commercial golf course, the
27 matter before the court does not seek a determination as to the
28 proposed subdivision, lodge, spa, and other amenities which the
Plaintiffs sought to develop on The Property in Calaveras County.

³ Eastern District of California Case No. 09-93249.

⁴ Eastern District of California, Adversary Proceeding No.
09-9089

1 removed action, Plaintiffs sought a writ of mandate against the
2 County relating to their land use application for The Property.⁵
3 The court granted the motion to remand the adversary proceeding for
4 a writ of mandate, in large part based on the representations by
5 the County that the matter was ready to proceed to trial in the
6 state court, that a CEQA-experienced judge was assigned to the
7 state court proceedings, and that matter would be tried on
8 April 10, 2010, if remanded to the state court.⁶ This court denied
9 the motion to remand this Adversary Proceeding, determining that
10 the bankruptcy court was the proper forum to address the issues
11 concerning the use and reorganization of The Property in the
12 Chapter 11 bankruptcy estate.⁷

13 Following the decision not to remand or abstain from this
14 Adversary Proceeding, the County filed a motion to dismiss the
15 Second Amended Complaint. The court granted the motion and
16 dismissed all claims except (1) for declaratory relief that the
17 commercial 18-hole golf course was permitted as "Agritourism" on
18 The Property and (2) that the County was equitably estopped from
19 asserting that the 18-hole commercial golf course was not permitted
20 as Agritourism on The Property.

21
22 ⁵ The writ of mandate sought relief under the California
23 Environmental Quality Act ("CEQA") and a declaration that County
24 employees acted in violation of CEQA and state planning laws.
25 The Plaintiffs requested that the court order the County to
26 complete an environmental impact report ("EIR"), and order which
27 employees and consultants of the County would be permitted to
28 work on the EIR.

26 ⁶ Though remanded, this state court action has not gone to
27 trial and neither party asserted that any determinations made in
28 that action resolved issues in this Adversary Proceeding.

⁷ Dckt. 34, 38.

1 The County then filed its Answer denying the allegations for
2 the two remaining causes of action in the Second Amended Complaint
3 and requesting that the court enter judgment on all claims against
4 the Plaintiffs. In addition, the County filed a counterclaim for
5 injunctive relief from this bankruptcy court to enjoin the
6 Plaintiffs from using The Property as a commercial golf course
7 because such development and use violates of the Calaveras County
8 Zoning Ordinances and thereby constitutes a public nuisance.

9 **Federal Court Jurisdiction and Bankruptcy Court Proceedings**

10 Jurisdiction for this matter arises under 28 U.S.C. § 1334(b),
11 which provides for original but not exclusive federal court
12 jurisdiction for all civil proceedings arising under Title 11 (the
13 Bankruptcy Code), or arising in or related to cases under Title 11.
14 Federal court jurisdiction is exclusive for all property, wherever
15 located, of a debtor as of the commencement of the case and of
16 property of the estate. 28 U.S.C. § 1334(e)(1). A party may
17 remove a state court action to federal court if federal
18 jurisdiction exists under 28 U.S.C. § 1334. See 28 U.S.C. § 1452.

19 Congress vests in the bankruptcy courts, for matters referred
20 by the district court, jurisdiction for all proceedings arising
21 under Title 11, or arising in or related to a case under Title 11.
22 The United States District Court for the Eastern District of
23 California has referred to this bankruptcy court all matters
24 arising under, arising in or related to Title 11 as authorized in
25 28 U.S.C. § 157(a).⁸ This bankruptcy court may thereon enter final
26 judgments and orders on all cases under Title 11, core proceedings

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28 ⁸ United States District Court, Eastern District of
California, General Orders 182 and 223.

1 arising under Title 11 or arising in a case under Title 11, and
2 non-core proceedings to which the parties have consented, with all
3 such rulings being subject to appellate review. 28 U.S.C.
4 § 157(b)(1), (2), and (c)(2).

5 The issues in this Adversary Proceeding relate to the
6 character and use of a commercial 18-hole golf court located on
7 property of the Plaintiffs' bankruptcy estate. Congress has
8 defined core proceedings in a non-exclusive manner to include
9 (1) matters concerning administration of the estate, (2) order to
10 turn over property of the estate, (3) determinations of the extent,
11 validity, and priority of liens, (4) orders approving the use or
12 lease of property of the estate, and (5) other proceedings
13 affecting the liquidation of assets of the estate or the adjustment
14 of the debtor-creditor relationship.⁹ These matters arising in and
15 under the Bankruptcy Code for management and administration of the
16 bankruptcy estate and reorganization of a bankruptcy estate are
17 essential parts of the federal bankruptcy scheme for reorganization
18 as enacted by Congress. The specific issues presented to this
19 court seek a determination of rights and interests in The Property
20 (development and use as a commercial golf course), the ongoing
21 operation of the commercial business on The Property as part of the
22 bankruptcy estate, the rights and interests of the County
23 concerning the use of this property of the bankruptcy estate, and
24 the ability of the Plaintiffs to use this property of the
25 bankruptcy estate and business through a Chapter 11 bankruptcy
26 reorganization. This reorganization may include the continued
27

28 ⁹ 28 U.S.C. § 157(b)(2)(A), (E), (K), (M), and (O).

1 operation of The Property as a commercial golf course, ownership
2 and operation of Trinitas Enterprises, LLC, and liquidation of The
3 Property, or realization of the value of The Property and operating
4 business either through a sale or generating payments from such
5 operations under a confirmed Chapter 11 Plan. As such, the matters
6 presented to this court constitute core proceedings.

7 In the Counterclaim filed by the County, it is asserted that
8 jurisdiction exists and is invoked by the County pursuant to
9 28 U.S.C. §§ 1334 and 157. The County seeks injunctive relief from
10 this bankruptcy court, to be determined and granted based upon
11 determination of the same issues of law and fact as asserted in the
12 Second Amended Complaint. The facts and law for the Second Amended
13 Complaint and Counterclaim are the same, with the determination of
14 such facts and law necessary to grant the relief requested by each
15 party. The County has affirmatively and voluntarily invoked the
16 jurisdiction of this bankruptcy court pursuant to 28 U.S.C. §§ 1334
17 and 157, and has not only requested that this court deny the relief
18 requested by the Plaintiffs, but has filed its Counterclaim for
19 this court to enjoin the Plaintiffs from using this property of the
20 bankruptcy estate as a commercial golf course. To the extent that
21 this is a related matter under 28 U.S.C. § 157, all parties to this
22 Adversary Proceeding have consented to and requested that this
23 bankruptcy court hear and determine all of these matters, each
24 affirmatively invoking the jurisdiction and power of this
25 bankruptcy court. 28 U.S.C. § 157(c)(2).

26 Federal court jurisdiction existing for this Adversary
27 Proceeding and this bankruptcy court having the authority to issue
28 a final judgment thereon, the court makes the final ruling on all

1 issues in this Memorandum Opinion and Decision, and shall enter its
2 judgments on the Second Amended Complaint and the Counterclaim.

3 **FACTUAL FINDINGS CONCERNING THE ACQUISITION, USE, AND DEVELOPMENT**
4 **OF THE PROPERTY, CONDUCT OF THE DEBTORS**
5 **AND COUNTY CONCERNING THE DEVELOPMENT AND USE OF**
6 **THE PROPERTY AS A COMMERCIAL GOLF COURSE**

6 **Acquisition and Construction of Golf Course**

7 The Plaintiffs began acquiring parcels of real property
8 located in Calaveras County, California, in 2001, which include The
9 Property. Prior to that time, the Plaintiffs lived in Northern
10 California and owned property on which Michael Nemea constructed
11 several golf holes for his private, personal use. At the time the
12 parcels were purchased in Calaveras County, The Property was being
13 used as a cattle ranch and olive orchard. Though planted with
14 trees, the olive orchard was not producing a marketable crop. The
15 Plaintiffs purchased several parcels, obtained lot line
16 adjustments, transferred title to portions of these properties, and
17 had other persons added to title on portions of these properties.
18 These include the 160-acre and 120-acre parcels which are zoned for
19 agriculture and on which the commercial 18-hole golf course has
20 been constructed and is being operated.

21 When The Property was acquired by Plaintiffs, it was zoned as
22 Agriculture Preserve, which is limited to property that is subject
23 to a Williamson Act Contract, thereby restricting the uses of and
24 the tax basis for such Agriculture Preserve properties.¹⁰ In 2001,
25 the Plaintiffs commenced a survey of The Property, which resulted
26 in the County receiving complaints of potential unauthorized
27

28 ¹⁰ Cal. Gov. Code § 51200 *et. seq.*

1 development on The Property. Dan Hendrycks, a planner with the
2 County, wrote a letter dated August 9, 2001, informing the
3 Plaintiffs that the County had received complaints that the
4 Plaintiffs were constructing a golf course on The Property.
5 Mr. Hendrycks states in his letter that a golf course, whether for
6 public or private, personal use, was not allowed on property zoned
7 as Agriculture Preserve under the County's ordinances in 2001.

8 Michael Nemea sent a written response, dated August 14, 2011,
9 directing Mr. Hendrycks to speak with Tom Jeffries (an engineer
10 hired by the Plaintiffs) concerning The Property and any
11 development thereon. Further, Michael Nemea asserted in his letter
12 that he had spoken with Jerry Howard, the Calaveras County
13 Agricultural Commissioner, concerning the agricultural uses for The
14 Property. Michael Nemea did not discuss or disclose in his letter
15 any ongoing or intended construction of a golf course on The
16 Property.

17 With respect to the referenced conversation with Jerry Howard,
18 Michael Nemea testified at trial only that Jerry Howard told him
19 that Mr. Howard did not believe the construction of a golf course
20 for private, personal use by the property owner was a violation of
21 the Williamson Act. Michael Nemea did not testify that Jerry
22 Howard told him that a golf course was a permissible use of The
23 Property under the Calaveras County Zoning Ordinances. Jerry
24 Howard testified at trial that he had one meeting with Michael
25 Nemea at The Property, saw an existing olive orchard and the
26 construction of golf holes which he understood from Michael Nemea
27 would only be for the private, personal use of the Plaintiffs.
28 Further, Jerry Howard testified that any discussion that he had

1 with Michael Nemeo concerning use of The Property as a private,
2 personal use golf course were only in the context of Williamson Act
3 restrictions and not the Calaveras County Zoning Ordinances. Jerry
4 Howard further testified that Zoning Ordinance issues were not
5 within his jurisdiction as the Calaveras Agricultural Commissioner
6 and he would not purport to make statements concerning compliance
7 with the Zoning Ordinances.

8 Based on the evidence before the court, Jerry Howard's
9 communications with Michael Nemeo were limited to Plaintiffs
10 constructing a private, personal use a golf course on The Property,
11 and that Mr. Howard did not see such private, personal use as
12 conflicting with the Williamson Act. At that point in time,
13 Michael Nemeo represented to Jerry Howard that any golf hole
14 construction work being done on The Property was solely for the
15 private, personal use of the Plaintiffs as the land owners.

16 By a letter dated August 20, 2001, Tom Jeffries of Jeffries
17 Engineering, the agent of the Plaintiffs, responded to Mr.
18 Hendrycks' correspondence concerning the complaints. In this
19 letter, Mr. Jeffries affirmatively states that the Plaintiffs
20 contemplated installing a golf course in the future, but no on-
21 site work had been done to install or develop such use. Further,
22 the Plaintiffs had crews surveying The Property to accurately
23 depict boundaries and other natural features. Though no golf
24 course construction was disclosed, Mr. Jeffries informed Mr.
25 Hendrycks that the Plaintiffs wished to install a vineyard, and to
26 do so would require that a portion of The Property be graded.¹¹

27
28 ¹¹ No evidence was presented to the court of the
construction of a vineyard or any grading work done for a

1 Mr. Jeffries further asserts in his letter that the County has not
2 presented "any evidence of the construction of a golf course" and
3 affirmatively represents for the Plaintiffs that a golf course is
4 not under construction. This stands in contrast to the testimony
5 of Mr. Nemea and Mr. Howard of their conversation, which pre-dates
6 Mr. Jeffries August 20, 2011 letter, that the Plaintiffs were in
7 the process of constructing a private, personal use golf course on
8 The Property.

9 The August 14, 2001 letter from Mr. Nemea and the August 20,
10 2001 letter from Mr. Jeffries are typical of what has been shown to
11 be recurring conduct of the Plaintiffs in dealing with the County.
12 First, the Plaintiffs take a portion of comments by one County
13 representative and attempt to utilize it out of context to advance
14 their desired development of The Property. Next, the Plaintiffs
15 and their representative issue carefully worded statements which
16 fail to fully or accurately disclose actual facts concerning the
17 development of The Property and Plaintiffs' conduct. In the Summer
18 of 2001, the Plaintiffs have their agent Mr. Jeffries stating to
19 the County that no construction is taking place for a golf course
20 on-site. However, Jerry Howard testifies that not only had he
21 observed a golf course being constructed, but that he and Michael
22 Nemea discussed the then ongoing construction of a private,
23 personal-use golf course for the Plaintiffs. The court finds the
24 statements for Plaintiffs made by Mr. Jeffries for his principals
25 in this letter to be creatively misleading at best and
26 intentionally false at worst.

27 _____
28 vineyard. The grading work done by the Plaintiffs was for
construction of the 18-hole commercial golf course.

1 The Plaintiffs' activities continued and by 2003 the Calaveras
2 County Building Department became involved with respect to the
3 ongoing construction and development of The Property. By a letter
4 dated August 27, 2003, Ray Waller of the Calaveras County Building
5 Department notified the Plaintiffs that the County had received
6 numerous complaints about a massive grading project on The
7 Property. Mr. Waller notified the Plaintiffs that they were
8 required to obtain and submit engineering and grading plans
9 pursuant to the Calaveras County Ordinances. With respect to this
10 grading activity and the development of The Property, Michael
11 Neme's testimony establishes that as of August 2003, the
12 Plaintiffs were in the process of constructing the commercial 18-
13 hole golf course, which is on The Property today.¹² Further,
14 Michael Neme testified that starting in 2001, he had begun the
15 drawings to develop The Property for an 18-hole golf course. The
16 court finds that the Plaintiffs intended, as early as 2001, to
17 construct an 18-hole golf course on The Property. Further, that
18 this was done as an intended larger commercial development
19 including a lodge, clubhouse, restaurant, bar, and golf academy,
20 not one for the private, personal use by the Plaintiffs as the

22 ¹² The court uses the term "commercial 18-hole golf course"
23 as one in which the Plaintiffs were engaged in an economic
24 enterprise to generate revenues or other remuneration from the
25 operation of the golf course for use by persons other than the
26 Plaintiffs as the owners of The Property. The testimony provided
27 is that the Debtors have been charging fees to the public and
28 selling memberships for the use of the golf course, as well for
tournaments open to the public or for closed groups. The phrase
"private, personal use" of a golf course means the actual use by
the two Plaintiffs personally or with their friends and family
for which no monetary or other remuneration is obtained, either
directly or indirectly, by the Plaintiffs for such use.

1 owners of The Property.¹³

2 On October 1, 2003, Michael Nemeë sent a letter to Wes
3 Hodgson, a Calaveras County Planning Commissioner. The letter does
4 not disclose the then ongoing development of the 18-hole golf
5 course on The Property, but only that the Plaintiffs sought a
6 change in the Calaveras County Zoning Ordinances to allow golf
7 courses as a conditional use for any property zoned Agriculture
8 Preserve. This letter dated October 1, 2003, demonstrates that the
9 Plaintiffs clearly understood that a golf course was not permitted
10 on The Property under the then existing Calaveras County Zoning
11 Ordinances. Though this letter is on Michael Nemeë's letterhead,
12 is signed by Michael Nemeë, and sent by Michael Nemeë intending to
13 communicate specific information to Mr. Hodgson, Michael Nemeë
14 disavowed portions of his statements in the letter. Michael Nemeë
15 testified at trial that while he signed the October 1, 2003
16 letter, it had been prepared for him by one of his professionals
17 and that he did not read the letter before signing it. Several
18 times during trial Mr. Nemeë attempted to disavow knowledge of
19 information in correspondence or documents signed and sent by him
20 or by his professionals, upon which others persons and the County
21 were to rely, by testifying that he did not read the correspondence
22 or documents before signing them. The court does not find such
23 testimony by Michael Nemeë credible.

24
25 ¹³ The court has not found evidence to support a contention
26 that the Plaintiffs intended to develop and use the 18-hole golf
27 course for their private, personal use. Further, as borne out by
28 the creditors in this case and the loans obtained by the
Plaintiffs, no evidence has been presented that the Plaintiffs
had or have the economic resources to develop and construct an
18-hole golf course on The Property for their private, personal
use.

1 It is clear that the Plaintiffs were intimately involved in
2 the development of The Property, the construction of the golf
3 course, and the intended development of The Ridge at Trinitas as a
4 destination resort.¹⁴ The court is not persuaded by Michael Nemee's
5 testimony and the other evidence submitted that the Plaintiffs were
6 unaware of the representations which they, directly and through
7 their professionals, were making to the County, Community Bank of
8 San Joaquin, and other persons.¹⁵

9 By November of 2003, the Plaintiffs were notified by the
10 Calaveras County Code Compliance Unit that an administrative
11 hearing had been set to address alleged Zoning Code violations on
12 The Property. The alleged violations focused on grading being done
13 on The Property by Plaintiffs without a permit. At the request of
14 a member of the Board of Supervisors, the administrative hearing
15 was removed from the agenda so that the County and the Plaintiffs
16 could attempt to resolve the issue. In response to the notice of
17 administrative hearing, Robert Bliss of Jeffries Engineers, Inc.,
18 an agent of the Plaintiffs, sent a letter dated November 20, 2003,
19

20 ¹⁴ Michelle Nemee, the other Plaintiff, chose not to
21 testify at trial. Her allegations in the Second Amended
22 Complaint are the same as Michael Nemee's, and she has relied
23 upon and presented testimony of witnesses and evidence through
her attorney and co-plaintiff.

24 ¹⁵ As developed in this decision, based on the evidence
25 presented the court finds the Plaintiffs to be sophisticated
26 business persons who engaged the services of multiple
27 professionals to implement the Plaintiffs' economic goals; and
28 conceived, developed, and actively participated in a complex real
estate development, securities, and economic enterprise. The
Plaintiffs created the idea for The Ridge at Trinitas, drawings
for the golf course, financing, issuance of securities for golf
memberships, and Michael Nemee performed some of the physical
construction of the golf course.

1 to Ray Waller at the Calaveras Building Department. In this letter
2 Robert Bliss affirmatively states that the work being done is "more
3 of a clearing and brushing project to develop a private golf
4 course." Mr. Bliss further states that there are only a small
5 amount of cuts and fills to construct greens and tees, isolated to
6 only 75 acres within the 400 acres owned by the Plaintiffs.¹⁶
7 Finally, Robert Bliss concludes that a grading plan is not
8 warranted because of the "small isolated nature" of the grading
9 contained well within the boundaries of the 400 acres. As actual
10 events demonstrate, these statements by the Plaintiffs'
11 representative are again creatively misleading at best and
12 intentionally false at worst.¹⁷

13 The issue of the alleged violation was dropped due to a
14 determination by department heads at the County that the
15 represented limited nature of the grading being done on The
16 Property, zoned for agriculture, did not require a permit. No
17 determination was made or represented that the purpose for which
18 the grading was being done was allowable under the Calaveras County
19 Zoning Ordinances.

20 In July of 2004, the Plaintiffs filed an application with
21 Calaveras County for a General Plan Amendment, Zoning Amendment,
22 and Tentative Subdivision Tract Map for The Property. In this
23 Application the Plaintiffs sought to subdivide the 160-acre parcel
24 of The Property to create twelve 5-acre parcels, one 98.8-acre

25
26 ¹⁶ The commercial 18-hole golf course constructed by the
Plaintiffs is located on 380 acres of The Property.

27 ¹⁷ Tom Jeffries, the Plaintiffs' agent, repeats these
28 statements in his letter of January 9, 2004, to Ray Waller at the
Calaveras County Building Department.

1 parcel, and to do minor grading for house pads and roadways. The
2 application makes no reference to a golf course, and the attached
3 maps of the proposed development do not show a golf course on The
4 Property. Though not shown on the map with this application,
5 Michael Nemee testified that at the time of making this application
6 the Plaintiffs actually intended to construct six golf holes for
7 the homeowners, who they expected to be family members and friends.
8 This testimony as to only six golf holes is inconsistent with the
9 drawings and intentions of the Plaintiffs to develop an 18-hole
10 golf course on The Property. The July 2004 application identifies
11 Jeffries Engineers and Susan Larson as the Plaintiffs' agents for
12 this application. By letter dated July 7, 2004, Don Ratzlaff, who
13 was a Calaveras County Planner II, notified Tom Jeffries of
14 deficiencies in the application, that it must be amended, and it
15 will not be processed due to it being incomplete.

16 By August of 2005, Ray Waller, of the Calaveras County
17 Building Department, communicated in an email his opinion to Robert
18 Sellman, the then Calaveras County Interim Planning Director, and
19 other county personnel, that the Plaintiffs could construct a
20 private golf course on The Property for their personal use and use
21 of their friends. Mr. Waller makes no reference in his email to
22 construction of a commercial golf course on The Property, and
23 expressly states that his personal opinion is limited to a private,
24 personal-use golf course by owners of The Property. While this was
25 Ray Waller's opinion, Robert Sellman testified that he disagreed
26 with Mr. Waller, and that even a private, personal-use golf course
27 was not permitted on property zoned for agriculture. While
28 Mr. Waller was discussing a private, personal-use golf course with

1 the Plaintiffs, in a letter to Robert Sellman dated February 7,
2 2005, the Plaintiffs communicated their larger development plans
3 for The Property. This larger development included an 18-hole golf
4 course with 10,000 to 12,000 rounds per year; private golf
5 tournaments; private golf lessons; two-story, 18,000-square-foot
6 clubhouse/olive tasting facility; bar and grill; banquet
7 facilities; sale of golf equipment; 22,000-square-foot lodge with
8 30 guest rooms; swimming pool; exercise room; spa; and a facility
9 to be used as dormitory housing for group lessons (also described
10 as an academy in Michael Nemees's testimony). This was to be
11 placed on 440 acres of property owned by the Plaintiffs and other
12 family members.

13
14 **Loans Obtained by the Plaintiffs From Community
Bank of San Joaquin**

15 In September of 2002, the Plaintiffs sought and obtained a
16 loan from Community Bank of San Joaquin (also referenced as
17 "Bank"). This loan was in the amount of \$370,000.00 and is
18 evidenced by a Note dated September 9, 2002.¹⁸ The Disbursement
19 Authorization Request signed by the Plaintiffs, which is included
20 as part of this loan documentation, states that the primary purpose
21 of the loan is for "Business (including Real Estate Investment)".
22 The specific purpose is stated by Plaintiffs in the Disbursement
23 Authorization Request to be "Refinance of bare land, to be

24
25 ¹⁸ Exhibit III is the August 13, 2002 County Bank of San
26 Joaquin Credit Authorization Memorandum for the Plaintiff's then
27 existing loan with the Bank. In addressing the purpose of the
28 then existing loan in 2002, the Memorandum states, "As mentioned
previously, CBSJ [Bank] provided funds to the Nemees's [sic.] to
assist with the purchase of the land. The property that was
purchased is to be developed in the next several years into a
golf course."

1 developed to a golf course." Based on the testimony of Jane
2 Butterfield, president of Community Bank of San Joaquin, if the
3 Plaintiffs had been obtaining a personal loan, then it would have
4 so stated on the Disbursement Authorization Request.

5 Mr. Nemee's testimony at trial was that he had not bothered to
6 read this part of the note and loan documentation stating that the
7 purpose of the loan was for business, the development and
8 construction of a golf course. The court finds that such testimony
9 is not credible and is inconsistent with the attention to detail
10 exhibited by Plaintiffs in advancing the development of this
11 commercial 18-hole golf course, their involvement in the
12 development of The Property, and Plaintiffs' communications
13 (directly and by their professionals) made during the ten-year
14 period from acquisition of The Property through this trial. The
15 court finds that as early as 2002 the Plaintiffs were obtaining
16 business loans for construction of a commercial 18-hole golf
17 course, which was not intended for the personal, private use of the
18 Plaintiffs.

19 The Plaintiffs obtained a line of credit, their second loan,
20 dated August 25, 2005 in the amount of a \$500,000.00. The primary
21 purpose of this loan is stated on the Reimbursement Request and
22 Authorization signed by the Plaintiffs to be "Business (including
23 real estate development)," with the specific purpose stated as,
24 "Capital for construction, and related expenses of Trinitas Golf
25 course." This credit line was used to repay a \$300,000.00
26 obligation owed by the Plaintiffs. A third loan obtained by the
27 Plaintiffs is evidenced by a promissory note dated January 27,
28

1 2006, in the amount of \$1,300,000.00.¹⁹ This loan was used in part
2 to pay \$503,477.37 for the obligation owed on the August 22, 2005
3 credit line. The Disbursement Request and Authorization signed by
4 the Plaintiffs states that the primary purpose of the loan is
5 "Business (including Real Estate Investment), and the specific
6 purpose to "Provide capital for construction, and development
7 related expenses for Trinitas Golf Course." The \$1,300,000.00 loan
8 was modified by a change in terms agreement dated December 28,
9 2006, increasing the loan amount to \$1,600,000.00.³⁰ The purpose
10 of the loan continued to be for construction and payment of
11 development expenses for the Trinitas Golf Course.

12 In the Fall of 2006, before the final loan modification and
13 \$300,000.00 of additional credit, the Community Bank of San Joaquin
14 was concerned with the slowness of the Plaintiffs in advancing
15 their development of The Property and application for the land use
16 changes with Calaveras County. A meeting was held between Michael
17 Nemea and Bank representatives on November 9, 2006. Michael Nemea
18 requested that Stephanie Moreno, the then Community Development
19 Director for Calaveras County, attend the meeting. While all
20 parties agree that Ms. Moreno attended the meeting, there are
21 significantly different versions as to the substance and alleged
22 purpose of her attendance. Michael Nemea testified that Ms. Moreno
23 attended the meeting to assist Plaintiffs in getting additional
24 loans from the Bank and an extension of the due date for the then

26 ¹⁹ Steve Nemea, Michael Nemea's parents, and Patricia Nemea
27 are added co-borrowers on this note.

28 ³⁰ Steve Nemea and Patricia Nemea signed this extension
agreement and remain as co-borrowers on the note.

1 existing loan. Further, that Plaintiffs relied upon statements by
2 Ms. Moreno that their land use application was going to be approved
3 by the County.

4 From the testimony presented, the court finds that Michael
5 Nemee invited Ms. Moreno to attend because Plaintiffs thought it
6 would enhance their ability to convince the Bank to extend the due
7 date on the loan and give the Plaintiffs the additional credit they
8 desired. Michael Nemee's testimony and arguments attempt to paint
9 a picture that but for Ms. Moreno attending the meeting, the
10 Plaintiffs would not have obtained an additional loan from
11 Community Bank of San Joaquin in the amount of \$300,000.00.
12 Therefore, if Plaintiffs had not obtained the loan, they would not
13 have proceeded with investing millions more in the development of
14 the golf course. Michael Nemee's testimony at trial was that
15 through 2006 the Plaintiffs spent \$3,345,390.00 in developing the
16 golf course on The Property. The court finds that the additional
17 \$300,000.00 of credit extended following the November 9, 2006
18 meeting between Michael Nemee and the Bank was not the cause of the
19 prior and subsequent expenditures of monies by the Plaintiffs in
20 construction of the golf course and development of The Property.

21 Michael Nemee's testimony and argument stand in stark contrast
22 to the testimony of Ms. Moreno and the other persons at the
23 meeting. Robert Puchenelli, then a Business Development Officer
24 for Community Bank of San Joaquin, attended the November 9, 2006
25 meeting for the Bank. He testified that the Bank was concerned
26 about the delays in the project and development of the golf course.
27 He stated that at the meeting Ms. Moreno described the zoning
28 application process and what she was doing to keep the application

1 moving. Mr. Puchenelli further testified that the Bank knew in
2 2005 that the golf course was under construction, and that doing so
3 was unusual because the Plaintiffs did not have the real-property
4 entitlements to develop the golf course. Further, Mr. Puchenelli
5 and the Bank knew that the Board of Supervisors must approve any
6 zoning or land use application for the golf course to be legal, and
7 that such a decision did not rest with Ms. Moreno or County staff.
8 Mr. Puchenelli's testimony supports this court finding that the
9 Plaintiffs knew that they had to obtain approval of their land use
10 application from the Board of Supervisors to obtain the
11 entitlements for their existing and future development and use of
12 the 18-hole golf course to be legal under the Calaveras County
13 Zoning Ordinances.³¹

14 Robert Daneke, who was employed at Community Bank of San
15 Joaquin in 2006, testified that he also attended the November 9,
16 2006 meeting with Mr. Nemea, other bank representatives, and
17 Ms. Moreno.³² At the time of the meeting the Plaintiffs had already
18 borrowed \$850,000.00 and were seeking an additional \$300,000.00.
19 Mr. Daneke's testimony was that Ms. Moreno provided background
20

21 ³¹ The Plaintiffs assert that Ms. Moreno said that her
22 predecessor had mishandled the processing of the Plaintiffs' land
23 use application and that the County faced legal exposure for it.
24 In addition to this contention being in dispute, it has no
25 bearing on the Plaintiffs acquiring loans and developing the golf
26 course before they obtained a changing for the zoning on The
Property. Additionally, there is testimony that the potential
"legal exposure" could have been in connection with an EIR not
being adequately prepared to sustain a legal challenge if raised
by members of the public, not exposure to the Plaintiffs.

27 ³² Mr. Puchenelli and Mr. Dandke were presented as
28 witnesses by the Plaintiffs. Jane Butterfield, the president of
Community Bank of San Joaquin, was called by the County as a
witness.

1 about the application process and that she believed that the EIR
2 would be processed in a timely manner. Mr. Daneke confirmed that
3 based on their discussions, he and everyone at the meeting,
4 including Michael Nemee, knew that the Board of Supervisors had to
5 approve the application and that the application had not yet been
6 approved.

7 An excerpt from a Credit Authorization Memorandum for
8 Community Bank of San Joaquin prepared by Mr. Daneke was introduced
9 by the Plaintiffs as Exhibit 38. The County introduced as Exhibit
10 KKK a complete copy of the Bank's Credit Authorization Memorandum
11 dated December 14, 2006. This Credit Authorization Memorandum is
12 a document maintained by the Bank in its ordinary course of
13 business, with additions made over time by the credit officers, and
14 contains a history of information provided to the Bank concerning
15 the Plaintiffs' loan transaction. The Credit Authorization
16 Memorandum, and as confirmed by Mr. Daneke, documents that the Bank
17 proceeded with the loan under the belief that the golf course being
18 developed by the Plaintiffs was illegal absent the zoning
19 application being approved by the Board of Supervisors. The
20 granting of a further loan was based on the then existing value of
21 The Property, not the value based on there being a legal golf
22 course constructed on The Property. Finally, the Bank acknowledged
23 that the Plaintiffs proceeding with the development of the golf
24 course before obtaining approval of the land use application was
25 unusual for this type of loan, and the illegal construction was a
26 "key risk" for the Bank.

27 Jane Butterfield, President of Community Bank of San Joaquin,
28 testified as to the Bank's dealing with the Plaintiffs following

1 the November 9, 2006 meeting. Though not present at the meeting,
2 Ms. Butterfield reviewed the Credit Authorization Memorandum
3 because the amount of credit exceeded the lending limit of the loan
4 officer. From her testimony and other evidence, the court finds
5 that as of the November 9, 2006 meeting the Bank was developing an
6 exit strategy from this loan, other than a bank liquidation of The
7 Property. The Bank was not going to finance the entire development
8 project, but believed that once the EIR was completed, a larger
9 lender would provide sufficient financing for the project, pay off
10 the Bank's loan, and carry the development through the final map
11 with the County.

12 From the evidence present, the court finds that Ms. Moreno did
13 not represent to anyone at the November 9, 2006 meeting, or anytime
14 prior to or thereafter, that the Plaintiffs' zoning and land use
15 application would be approved by the Board of Supervisors.
16 Further, everyone involved in the meeting with the Bank, including
17 the Plaintiffs, clearly understood that the necessary land use
18 application had to be approved by the Board of Supervisors, not
19 Ms. Moreno. Neither the Plaintiffs nor the Community Bank of San
20 Joaquin relied upon any representations by Ms. Moreno, or any other
21 representative of the County, as to the ultimate approval of the
22 application in proceeding with any additional loans or further
23 development of The Property. The court does not find credible the
24 Plaintiffs contention or testimony asserting that Plaintiffs relied
25 on Ms. Moreno's or other County representatives' advice or
26 recommendations in obtaining any additional financing or proceeding
27 with their development of The Property.

28 At trial much was made by the Plaintiffs that they did not

1 feel Ms. Moreno's predecessor as Community Development Director
2 supported the project and had taken an adversarial position to
3 their development of The Property. While trying to place blame and
4 question the conduct of others, the Plaintiffs do not provide
5 sufficient evidence of any improper conduct of County
6 representatives or reliance on representations by county
7 representatives in proceeding with the golf course and development
8 of The Property. The court finds that any of the complained of
9 hostility and difficulty asserted by Plaintiffs is not out of the
10 ordinary for someone attempting to obtain a significant land-use
11 change. The Plaintiffs have not shown that they were deprived of
12 the opportunity to properly and fairly present the requested land-
13 use change to the Board of Supervisors.

14 The Plaintiffs also complain about the work done by Keith
15 Dunbar, who was hired by the County to prepare an EIR the
16 Plaintiffs' land-use application,³³ and the termination of
17 Mr. Dunbar by the County. Plaintiffs' complaints about the
18 termination of Mr. Dunbar as the consultant for the County and that
19 Mr. Dunbar had been paid some fees do not establish a basis for
20 finding improper conduct by the County. The County terminated
21 Mr. Dunbar when it was concluded that he was not making sufficient
22 progress in preparing the EIR, that the work product consisted of
23 little more than generic boilerplate EIR text, and that the product
24 was not sufficient to warrant further payment to Mr. Dunbar.
25 Additionally, in his testimony, Michael Nemea neglected to disclose

26
27 ³³ Though employed by the County, Mr. Dunbar's fees were
28 paid from monies that the Plaintiffs were required to deposit
with the County as a condition of processing the land use
application.

1 that upon termination of Mr. Dunbar, the County returned to
2 Plaintiffs the \$30,000.00 balance of the Plaintiffs' deposit for
3 Mr. Dunbar's fees held by the County.

4 Though on a professional level the communication concerning
5 the termination of Mr. Dunbar could have been better managed
6 between the County and the Plaintiffs, it does not support a
7 finding that the County acted improperly. The fact that a
8 professional is paid a portion of the fees before the client
9 ascertains that the product is inadequate is not unusual. The
10 contract between the County and Mr. Dunbar for the preparation of
11 the EIR documents provided that payments would be made before the
12 draft administrative EIR would be presented to the County. There
13 is nothing unusual about paying a professional as they are doing
14 the work to develop a draft for a client. As discussed in this
15 decision, what the Plaintiffs describe as an adversarial
16 relationship with the County may well have arisen from the friction
17 which is created by their business strategy to develop a golf
18 course not permitted by the Zoning Ordinances. The "build it first
19 and then seek approval after the fact" approach generated a number
20 of complaints and otherwise unnecessary issues for the County and
21 Plaintiffs to address with respect to The Property and the
22 development the Plaintiffs desired.

23 **Real and Personal Property Taxes**

24 The Plaintiffs also contend that increases in the real and
25 personal property taxes relating to the development and operation
26 of a commercial 18-hole golf course on The Property is evidence
27 that the County was responsible for the Plaintiffs proceeding with,
28 or that the County approved, the construction of the golf course.

1 The assessed values of the real and personal property used by
2 Calaveras County to increase or decrease property taxes were based
3 upon the information provided to the county assessor by the
4 Plaintiffs themselves. As the Plaintiffs made substantial
5 improvements to the real property through the golf course
6 construction, they reported those improvements to the County
7 Assessor. The Assessor then valued The Property based upon such
8 information. The assessed value was then used by other officials
9 to compute and collect the taxes. Subsequently, in 2008 the
10 Plaintiffs sought a reassessment of the real property value based
11 upon the County asserting that the development of the golf course
12 was illegal. The real property taxes were reduced by the County.

13 Personal property used in the operation of the golf course was
14 also taxed by Calaveras County based on personal-property business
15 assets being reported to the Assessor by the Plaintiffs. Whether
16 or not the business assets are put into active service by the
17 owner, they are taxed by the County.³⁴ Again, the Plaintiffs
18 advised the County of events which triggered the assessment, and
19 the increase in value based on the reported information then
20 resulted in the tax collector seeking payment of higher real and
21 personal property taxes.

22 The reassessment of The Property and the tax statements
23 generated by the County were not dependent upon a determination
24 that the operation of a commercial golf course by the Plaintiffs
25 was legal, but based upon information provided to the County by the
26
27

28 ³⁴ Cal. Rev. & Tax. Code § 30800 *et. seq.*

1 Plaintiffs.³⁵ No law or facts have been shown that the assessor or
2 tax collector determine zoning compliance and legal uses of land
3 under the Calaveras County Zoning Ordinances.

4 **Sophistication of the Plaintiffs**

5 As an undercurrent to the arguments presented by Plaintiffs,
6 a theme is developed that Plaintiffs are simple folk and relied
7 upon the advice of County representatives to embark on this multi-
8 million dollar development of The Property. By the Plaintiffs
9 accounting, they have expended \$7,093,517.00 through 2009 in
10 developing The Property for the commercial 18-hole golf course.
11 The monies expended are broken down in the following annual
12 amounts:³⁶

13	2004	\$ 563,302
14	2005	\$1,753,027
15	2006	\$1,029,061
16	2007	\$2,128,760
17	2008	\$1,089,570
18	2009	\$ 529,797

19 The court does not find the testimony and arguments presented
20 by the Plaintiffs that they relied upon the advice and direction of
21 County representative to be either credible or plausible. The
22 court finds that the Plaintiffs were and are sophisticated business
23 persons who hired professionals to represent them in the
24 development and marketing of their destination golf resort,

25 ³⁵ Even to the extent that the Plaintiffs could show that
26 the Assessor thought that he or she was valuing The Property for
27 a golf course properly built on the property zoned for
28 agriculture, "payment of taxes on an illegal structure does not
prove that upon payment of taxes the structure becomes legal or
that the illegality of the structure renders the entity immune
from taxation." *Golden Gate Water Ski Club v. County of Contra*
Costa, 165 Cal. App. 4th 249, 258 (2008).

³⁶ Pls.' Ex. 48.

1 Trinitas. The Plaintiffs chose and were actively represented by
2 land-use and engineering professionals throughout the development
3 of The Property and land use application process. The Plaintiffs
4 did not rely upon advice and direction from the County in making
5 their land use and business decisions, but relied upon the advice
6 and counsel of their professionals and their own business judgment.
7 This development of The Property and creation of a private
8 membership golf club for the commercial 18-hole golf course was a
9 complex real estate, land use, and business transaction. In
10 addition to the land use and engineering professionals, the
11 Plaintiffs engaged counsel to obtain approval from the State to
12 sell securities for membership in the golf club for the commercial
13 18-hole golf course.

14 Further, the Plaintiffs and their professionals clearly knew
15 that it was the Board of Supervisors who must approve, by a
16 majority vote, the application for the land-use changes. When that
17 failed, the Plaintiffs and their professionals knew that the Board
18 of Supervisors must determine, by a majority vote, an appeal of the
19 Planning Commission determination that golf course was not
20 Agritourism under the Calaveras County Zoning Ordinances. The
21 Plaintiffs did not rely on County representatives in development of
22 The Property, their strategy for developing The Property under the
23 existing Zoning Ordinances, or advocating the land use application
24 before the Board of Supervisors. The strategy of how, what, and
25 when to present matters to the Board of Supervisors was developed
26 and adopted by the Plaintiffs with the advice and direction of the
27 professionals they hired to achieve their economic goals for The
28 Property.

1 The court finds that construction of the golf course and
2 development of The Property by the Plaintiffs was not done based
3 upon being misled by representatives of the County or a
4 misunderstanding of the law, but as part of a calculated business
5 strategy of the Plaintiffs. At the heart of this strategy is a
6 "it is better to seek forgiveness than to get permission" approach
7 to land use and real estate development.³⁷ This strategy for
8 development and use of The Property was first demonstrated when
9 Plaintiffs acquired The Property and set out to remodel a barn into
10 a residence. It was not until the County code officers contacted
11 the Plaintiffs about work having been done on the barn without
12 permits that the Plaintiffs undertook an after-the-fact
13 documentation of the construction. The action by which they sought
14 forgiveness for having done the remodeling without permits was to
15 provide the County with letters represented to be from licensed
16 contractors verifying the work they had done on the barn.³⁸ This
17 act-first-and-then-deal-later-with-the-problems approach permeates
18 the Plaintiffs' conduct in the matters before the court.

20 ³⁷ This phrase and aggressive approach to achieving results
21 is attributed to Rear Admiral Grace Hopper, USN.

22 ³⁸ Even this simple process was not without controversy
23 between the Plaintiffs and the County. Two licensed contractors
24 provided written confirmations of the work previously done on The
25 Property. One letter was provided for the electrical work (with
26 Michael Nemees's father being the certifying licensed electrical
27 contractor) and the other for plumbing work (with an unrelated
28 contractor providing the plumbing certification) done in
remodeling the barn. When verifying the written confirmations
delivered to the County by Michael Nemees, the County's
investigation disclosed that the plumber denied having provided a
written confirmation to Michael Nemees for presentation to the
County. The plumber did confirm for the County representative
that he had done the plumbing work for Michael Nemees.

1
2 **EXPERT WITNESS TESTIMONY CONCERNING**
3 **CALAVERAS COUNTY AGRITOURISM ZONING ORDINANCE**

4 The court is required to determine the meaning of the term
5 "Agritourism" as it is used in the Calaveras County Zoning
6 Ordinances as amended in 2005. To assist the court, both parties
7 have presented expert and percipient witnesses concerning the
8 adoption of the 2005 amendments to the Zoning Ordinances by the
9 Calaveras County Board of Supervisors. The Property at issue in
10 this case was and is zoned either Agriculture Preserve (AP) or
11 General Agriculture (A-1). In addition to reviewing the Zoning
12 Ordinances, the court has been presented with a determination by
13 the Calaveras County Board of Supervisors that a commercial golf
14 course is not Agritourism under the Calaveras County Zoning
15 Ordinances.

16 Testimony by experts is governed by Fed. R. Evid. 702, which
17 limits such testimony to "scientific, technical, or other
18 specialized knowledge [which] will assist the trier of fact to
19 understand the evidence or determine a fact in issue . . ." The
20 expert testimony in this case has been considered by the court
21 consistent with the strictures of Fed. R. Evid. 702.

22 David Zilberman, Ph.D., testified for the Plaintiffs
23 concerning his interpretation of agriculture and agritourism, as
24 those terms are used in the 21st Century. Dr. Zilberman's
25 credentials were presented in the record and he approached this
26 issue as an economist. He advocates the court adopt an expansive
27 definition of the terms agriculture and agritourism as any use of
28 the land that produces something of economic utility. Though a
golf course does not produce something which is harvested for food,

1 clothing, fuel, building materials, aesthetics, or other on- or
2 off-property use, the ground is used to grow products (grass,
3 trees, plants) and utilize resources (waterways, features of the
4 land) for reusable use by consumers (the golfers). It is his
5 opinion that utility derived from the agricultural activity, not
6 the mere destruction or consumption of an agricultural product,
7 should be the basis of the court's interpretation of the Zoning
8 Ordinances. From the perspective of an economist, Dr. Zilberman
9 concludes that a golf course represents one of the highest and best
10 uses of agricultural property, and therefore a golf course is
11 agriculture and Agritourism.

12 The materials presented by Dr. Zilberman as part of his
13 testimony include an analysis which monetizes the value for the use
14 of the agricultural land on a per acre foot of water consumed and
15 per acre of land basis. This data³⁹ includes the following
16 information for the court:

Agricultural Commodity	Revenues (Product Value) \$1,000	Revenues per Unit of Water \$/acre foot	Revenues per Unit of Land \$/acre
Grains	\$113,621	\$79	\$204
Rice	\$231,001	\$72	\$422
Cotton and Cottonseed	\$1,025,523	\$367	\$1,122
Sugar Beets	\$111,835	\$309	\$1,196
Corn	\$157,985	\$89	\$610
Beans, Dry	\$56,700	\$205	\$506
Tomatoes, Processing	\$617,190	\$742	\$2,277

39 Cited Source: Hawkins, Tom. 2009. Agricultural Water
Use Collection Program. Department of Water Resources, State of
California, Sacramento SC, June 9.

Tomatoes, Fresh Market	\$333,840	\$2,840	\$7,800
Cucubits	\$382,549	\$1,535	\$4,096
Garlic and Onions	\$443,047	\$1,711	\$5,001
Potatoes	\$271,613	\$2,479	\$5,154
Other Truck Crops	\$8,607,152	\$5,724	\$9,429
Almonds and Pistachios	\$919,789	\$376	\$1,601
Other Deciduous Nuts and Fruits	\$1,308,940	\$571	\$2,294
Subtropical Crops	\$1,103,130	\$752	\$2,948
Grapes, All	\$2,836,313	\$1,661	\$3,430
Alfalfa and other Sources of Hay	\$730,422	\$127	\$477
Safflower and Other Field Crops	\$552,892	\$131	\$584
All Crops	\$19,903,533	\$645	\$2,264
Golf Courses	\$1,744,839	\$5,126	\$14,431

From an economist's perspective, this chart demonstrates that the use of agricultural property for a golf course is substantially more valuable in the revenues per acre golf produces than other traditional agricultural activities. On an average basis for all crops, golf produces 795% more value per acre foot of water and 637% more value per acre of land. When compared to a subset of the five highest revenue crops, on average golf produces 727% more

1 value per acre foot of water and 366% more value per acre of land.⁴⁰

2 In his testimony Dr. Zilberman acknowledged that he did not
3 review the Calaveras County Zoning Ordinances at issue, nor was he
4 providing testimony as to any specific zoning code. His testimony
5 was as an economist concerning the most productive use of
6 agricultural property. Additionally, his testimony does not take
7 into account the societal, political, and non-economic
8 considerations underlying Zoning Ordinances in general and the
9 specific ordinances at issue for Calaveras County in this case.

10 For the Defendant, Thomas Jacobson testified as an expert
11 witness. Mr. Jacobson's qualifications were presented in the
12 record. His testimony addressed the Calaveras County Zoning
13 Ordinances at issue and he opined that the County was reasonable in
14 determining that the Plaintiffs' golf course was not Agritourism as
15 that term is used in the Calaveras Zoning Ordinances. His
16 testimony focused on the interpretation of the examples provided in
17 the Ordinance, which he found to indicate an intention of the Board
18 of Supervisors to limit Agritourism to uses which did not require
19 any significant change to the land from its traditional
20 agricultural uses. In coming to his conclusions, Mr. Jacobson
21 considered the hearings conducted by the Board of Supervisors in
22 adopting the 2005 amendments to the Zoning Ordinances, the 2009
23 hearing denying the Plaintiffs' appeal of the Calaveras County

24
25 ⁴⁰ The five largest revenue crops in the study are Other
26 Truck Crops, Almonds and Pistachios, Other Deciduous Nuts and
27 Fruits, Subtropical Crops, and Grapes. This represents 74% of
28 the total crop revenue and excludes some of the outlying low-per-
dollar-per-acre crops.

1 Planning Department, and the Planning Commission rulings that the
2 golf course was not Agritourism.

3 The third witness, Kenneth Churches, the former UC Davis
4 Cooperative Extension Branch in Agriculture Farm Advisor for
5 Calaveras County, was presented as an expert and percipient witness
6 to the 2005 amendments to the Zoning Ordinances. Mr. Churches
7 participated with a group called the Ag-Coalition, which was the
8 sponsor and drafter of proposed zoning ordinance amendments which
9 were presented to the County and ultimately led to the 2005
10 amendments. The members of the Ag-Coalition met with members of
11 the Planning Department, including Robert Sellman, Supervisors, and
12 other members of the public.

13 Mr. Churches expressed his opinion that Agritourism is a type
14 of rural tourism which is intended to enhance and promote the
15 economic viability of more traditional agricultural endeavors. The
16 Ag-Coalition was formed to update the Zoning Ordinances to allow
17 activities on property zoned for agriculture which are consistent
18 with agricultural uses and improve the economics of such
19 agricultural properties. The Ag-Coalition drafted the language
20 which was ultimately enacted by the Board of Supervisors without
21 any substantial change. Mr. Churches testimony is that the Ag-
22 Coalition intentionally drafted the proposed definition of
23 Agritourism in open-ended, nonspecific terms, and did not provide
24 enumerated permitted uses, as is done in the other provisions of
25 the Zoning Ordinances, to allow for future changes in Agritourism
26 uses without having to amend the Zoning Ordinances. Such non-
27 identified uses would be dependant upon subsequent interpretations
28 of the Zoning Ordinances, though Mr. Churches did not state whom he

1 though would be responsible for such determinations.

2 The draft language prepared by the Ag-Coalition included a
3 series of nonexclusive examples of Agritourism. These examples
4 were included in the Zoning Ordinance ultimately enacted by the
5 Board of Supervisors. Notwithstanding these examples, Mr. Churches
6 asserts that so long as there is some form of agricultural activity
7 on a property, the owner could engage in any other activity as a
8 form of Agritourism to help make agricultural property more
9 economically viable. Additionally, Mr. Churches testified that
10 Michael Nemee was involved with the Ag-Coalition when the 2005
11 zoning amendments were being advanced, he did not recall Michael
12 Nemee ever asserting that golf was Agritourism. With respect to
13 golf courses, Mr. Churches testified that while it was discussed,
14 it was not included on the descriptive list to be stated in the
15 ordinance, nor was it expressly excluded from the definition of
16 Agritourism.

17 Finally, Robert Sellman, the Calaveras County Planning
18 Director when the 2005 amendments were adopted, testified as to his
19 participation in the process on behalf of the County. Mr. Sellman
20 testified that he affirmatively told the Ag-Coalition that golf was
21 not considered to be Agritourism, though there is not a reference
22 to this exclusion in the written record. Further, he directs the
23 court to the negative declaration and environmental documents
24 relating to the Board of Supervisors amending the Zoning Ordinances
25 in 2005 which make no reference to a golf course. This negative
26 declaration states that the changes to the Zoning Ordinances in
27 2005 would not cause a significant effect on the environment.
28 Given the nature of the other examples, allowing a use which so

1 dramatically changes and develops agricultural property into a golf
2 course, Mr. Sellman testified that a negative declaration of the
3 environmental impacts would not be sufficient. Mr. Sellman was
4 clear in his testimony that while the Ag-Coalition drafted proposed
5 amendments to the Zoning Ordinances, these were delivered to the
6 Calaveras County Planning Department which prepared the actual
7 amendments and supporting documents which were considered by the
8 Board of Supervisors.

9 The testimony and evidence presented leads to the court making
10 a number of findings. First, the Ag-Coalition, as the sponsor of
11 the 2005 amendments, intentionally drafted and proposed a
12 definition of Agritourism in a manner to leave open and uncertain
13 what actual economic activities the Board of Supervisors intended
14 to constitute Agritourism. This stands in contrast to other
15 provisions in the Calaveras County Zoning Ordinances which permits
16 specific activities. In doing so the Ag-Coalition was insuring
17 that future disputes would arise as to what is permitted and that
18 some governmental body would have to make the ultimate
19 determination. No governmental body at the County, other than the
20 Board of Supervisors, is identified to make the determination as to
21 what is included in the term Agritourism. While creating an
22 opportunity to have theretofore un contemplated uses subsequently
23 determined to be Agritourism, the proponents of this nonspecific
24 definition also insured that there was a risk that some activities
25 would not be within their unstated intentions of what should be
26 Agritourism. Secondly, the Calaveras County Board of Supervisors
27 enacted the 2005 amendments after having the language prepared by
28 the Planning Department and receiving extensive documentation from

1 County staff. While the personal opinion of Mr. Churches as to
2 what he intended, but did not specify in the draft language, when
3 submitting it to the Planning Department gives the court an insight
4 to the agricultural business interests which were being advanced,
5 it does not provide substantial assistance to determining the
6 intent of the Board of Supervisors.

7 Third, the Plaintiffs embrace Dr. Zilberman's opinion that
8 agricultural land should be put to the most profitable use without
9 regard to traditional definitions and concepts of agriculture.
10 Dr. Zilberman was clear in this testimony that he envisioned an
11 economic-use policy which allowed the land owner to use it for the
12 most profitable purpose possible. This did not attempt to take
13 into account theoretical or actual Calaveras County land-use
14 policies, zoning issues and general-welfare policies.

15 **INTERPRETATION OF THE CALAVERAS COUNTY**
16 **ORDINANCES FOR PROPERTIES ZONED**
AGRICULTURE PRESERVE AND GENERAL AGRICULTURE

17 The County has argued that because the Board of Supervisors
18 determined that a commercial golf course is not Agritourism, the
19 only role for the court is to defer to that decision, so long as
20 the process by which it was made was procedurally proper. This
21 contention is incorrect. The California Supreme Court has
22 established the court's role in considering land-use zoning
23 ordinances and their proper application. The rules of statutory
24 construction are applicable to zoning ordinances in the same manner
25 as they are to statutes. *Professional Engineers in California*
26 *Government v. Kempton*, 40 Cal. 4th 1016, 1037 (2007); *Stolman v.*
27 *City of Los Angeles*, 114 Cal. App. 4th 916, 923-924 (2003). To
28 determine the intent of the statute or ordinance, the court looks

1 first to the plain language and ordinary meaning of the words used.
2 The words are read in context of the ordinance, considering the
3 nature and purpose of the enactment. If the language is clear,
4 then no further interpretation of the statute is necessary. If the
5 language is ambiguous, then the court considers extrinsic evidence,
6 *Kempton*, 40 Cal. 4th at 1037, which includes the legislative
7 history, public policy, and the statutory scheme of which the
8 statute is a part. Finally, if after reviewing the plain language
9 and extrinsic aids the meaning of the statute remains unclear, the
10 court, proceeding cautiously, applies reason, practicality, and
11 common sense to the statute. *Woodland Park v. City of East Palo*
12 *Alto Rent Stabilization Board*, 181 Cal. App. 4th 915, 920 (2010).

13 Ordinarily, questions of law such as interpretation of an
14 ordinance are subject to *de novo* review by the court. *Stolman*, 114
15 Cal. App. 4th at 927-928. The court may consider the zoning
16 administrator's interpretation, but is not bound by it. *Id.*
17 Another District Court of Appeal panel expanded this concept,
18 finding that the court should accord great weight to the
19 contemporaneous administrative interpretation given to a statute
20 unless that interpretation is palpably erroneous. "Where the
21 administrative agency interpreting the statute 'has special
22 expertise and its decision is carefully considered by senior agency
23 officials, that decision is entitled to correspondingly greater
24 weight.'" *McKell v. Washington Mutual, Inc.*, 142 Cal. App. 4th
25 1457, 1479 (2006), (internal citation omitted). While the court
26 has the ultimate responsibility for the construction of a statute,
27 great weight and respect is given to administrative construction of
28 the statute. *Yamaha Corp. of America v. State Board of*

1 *Equalization*, 19 Cal. 4th 1, 12 (1998); *Sharon S v. Superior Court*,
2 31 Cal. 4th 417, 436 (2003).⁴¹ When assessing a nonjudicial
3 interpretation of a statute or ordinance, the court must consider
4 a complex set of factors material to the legal issue before it.
5 The court begins with the assumption that the agency has expertise
6 and technical knowledge concerning the matter, especially if it is
7 technical, obscured, complex, open ended, or entwined with issues
8 of fact, policy, and discretion. Additionally, the court will give
9 deference to an interpretation by senior officials made after
10 public notice, that evidences a consistently made interpretation,
11 which is made contemporaneous with the enactment of the statute.
12 *Yamaha Corp.*, 19 Cal. 4th at 13.

13 The County provided the transcript from the public hearing on
14 the Plaintiffs' appeal of the Planning Department determination
15 that the commercial 18-hole golf course on The Property was not
16 Agritourism as that term is used in the Calaveras Zoning
17 Ordinances. The County argues that the court should give great
18 deference to this decision, based upon the specialized knowledge of
19 the Planning Department, the public consideration of the issue, and
20 a consideration of the broad land use policies. However, this
21 court also considers that this decision was not made
22 contemporaneous with the enactment of the Zoning Ordinances, and in
23 fact was made in light of pending litigation on the issue commenced
24

25 ⁴¹ See also *Evans v. Unemployment Insurance Appeals Board*,
26 39 Cal. 3d 398, 407 (1985), and *Employment Development Department*
27 *v. California Unemployment Insurance Appeals Board*, 190 Cal. App.
28 4th 178, 179 (2010) (nonjudicial interpretations must be rejected
when they are contrary to statutory intent or incorrect).

1 by the Plaintiffs against the County. As opposed to the more
2 normal situation where a landowner approaches the Board of
3 Supervisors with a proposed prospective future use of real
4 property, the Plaintiffs were already millions of dollars into the
5 development of the golf course (though not the lodge and other
6 amenities they envision for The Property) and were engaged in
7 litigation to enforce alleged rights against the County. To give
8 great deference to the County in this situation would effectively
9 be turning over the resolution of a then ongoing judicial
10 proceeding to one of the adversary parties.

11 Notwithstanding the pending issues which preclude giving great
12 deference to and adopting the interpretation of the County on the
13 meaning of the zoning ordinance, the court determines that the
14 interpretation by the Board of Supervisors is correct-the
15 commercial golf course is not Agritourism as defined under the
16 Calaveras County Zoning Ordinances. The court reaches this
17 conclusion based on its own interpretation of the ordinance as set
18 forth in this decision.

19 **Meaning of Agritourism under Calaveras County Zoning Ordinances**

20 The Calaveras County Zoning Ordinances are set upon a
21 foundation that no building or structure shall be constructed, nor
22 any land use commenced, enlarged, or altered unless it is permitted
23 in, and meets the requirements of, the zone in which the land is
24 located.⁴² This is a permitted-use structure of zoning ordinances
25 in which the County specifies the allowed uses of real property.
26 This is contrasted to a statutory scheme in which any and all

28 ⁴² Calaveras County, Cal., Code § 17.04.010.

1 activities are permitted unless expressly prohibited.

2 The Plaintiffs argue, though not pled in the Second Amended
3 Complaint, that a golf course is an Agricultural Operation as
4 defined by the Calaveras County Zoning Ordinances,⁴³ and therefore
5 the court does not need to consider whether it is Agritourism. The
6 court rejects this argument for several reasons. First, the
7 Ordinance is clear that Agricultural Operation relates to the
8 growing, harvesting, and sale of plants, food, and fiber crops, and
9 livestock. Calaveras County, Cal., Code § 17.06.0132. The other
10 activities described relate to or are consistent with serving such
11 growing, harvesting, and sale activities. The preparation of the
12 land, including land leveling and clearing, is for this
13 agricultural purpose, and not as the Plaintiffs have argued, any
14 and all land-leveling or clearing for whatever purpose. Range
15 management practices relate to improving real property in its
16 natural condition, not completely remaking it at multi-millions of
17 dollars of expense. Second, merely because something may have to
18 do with plants or animals does not mean that it is permitted in
19 either Agricultural Preserve or General Agriculture zoned
20 properties. Focusing on whether something involves plants or
21 animals is merely the beginning of the analysis of whether it is
22 permitted under the Zoning Ordinances.

23 Third, the Board of Supervisors has specifically identified
24 livestock and ranching activities on property zoned for
25 agriculture. These activities are consistent with the common
26 definition of agriculture which goes with using the land for the

28 ⁴³ Calaveras County, Cal., Code § 17.06.0132

1 harvesting and sale of plants, food, and fiber crops, or the
2 raising, production, and sale of livestock. The court does not
3 find persuasive Plaintiffs' contention that since they grow olives
4 on The Property, then whatever other use they make of The Property,
5 such as building a multi-million-dollar golf course is an
6 agricultural activity.

7 Fourth, permitted "customary uses clearly incidental and
8 secondary to the agricultural operation" on property zoned for
9 agriculture do not include golf.⁴⁴ No showing has been made that
10 the multi-million-dollar golf course developed on The Property is
11 an activity which is a (1) customary use of agricultural property,
12 and (2) which is incidental and secondary to the olive orchard on
13 The Property. To the contrary, the expert witnesses presented by
14 the Plaintiffs provided clear testimony that golf is not a
15 customary agricultural use of property. Rather, they argued that
16 golf should be a future best economic use of agricultural property.
17 Additionally, as Dr. Zilberman testified for the Plaintiffs, golf
18 course use of property produces dramatically higher economic
19 returns than the traditional harvesting and sale of plants, food,
20 and fiber crops. Golf is not incidental and secondary to such use
21 of The Property, but becomes the primary and dominant use of The
22 Property.

23 Finally, the court does not find the Plaintiff's contention
24 that the provision in § 17.06.0132, ¶G stating that "the foregoing
25 definition of Agricultural Operation shall be broadly construed
26 unless limited by the strict provisions of the specific uses listed
27

28 ⁴⁴ Calaveras County, Cal. Code § 17.06.0132 ¶G

1 as permitted uses" means that golf, or any other activity is an
2 "Agricultural Operation" so long as it involves the land and a
3 plant. The "broadly construed" direction is within the scope of
4 the definitions within this section and the Zoning Ordinances.
5 These sections are clear that they relate to the land being used
6 for the harvesting and sale of plants, food, and fiber crops, or
7 the raising, production, and sale of livestock. The Plaintiffs'
8 argument that so long as they grow something on the land, then it
9 is an agricultural activity and then they can do whatever such
10 activity they want is incorrect.

11 As a separate and independent ground in denying this
12 contention, the Plaintiffs did not raise this claim that golf is a
13 free standing Agricultural Operation on The Property until the
14 trial. This Adversary Proceeding had been pending in this court
15 for twenty-two months, and even longer in state court before it was
16 removed to this court. In addition to failing on the merits, the
17 Plaintiffs cannot engage in a trial-by-ambush strategy. Even if
18 the court were not to determine that a golf course was not an
19 Agricultural Operation, it would not be a basis for the Plaintiffs
20 to prevail in this litigation by raising this new contention at the
21 start of the trial.⁴⁵

22 **Permitted Agriculture Zone Uses**

23 In establishing the Agriculture Preserve and General
24 Agriculture Zoning Ordinances, the Board of Supervisors states the
25 general purposes underlying each of these Ordinances. Property
26 zoned General Agriculture (A1) is to be the main resource

27
28 ⁴⁵ The County timely objected to the Plaintiffs attempting
to raise other claims at the time of trial.

1 production zone in the County.⁴⁶ The Zoning Ordinance classifies
2 these areas for general farming and ranching practices, with such
3 as the primary emphasis for these properties. Residential uses are
4 placed in a position of secondary importance when compared to the
5 commercial scale production of food and fiber. Property zoned
6 Agricultural Preserve (AP) is to protect and preserve lands for
7 intensive agriculture and ranching production.⁴⁷ The Agriculture
8 Preserve property may also be utilized for open-space protection
9 and preservation, with the County stating that the enumerated uses
10 in the Zoning Ordinances are consisted with the Williamson Act.

11 The Calaveras Zoning Ordinances are express in both nature and
12 scope of the activities permitted on property zoned for
13 agriculture.⁴⁸ The activities described are traditional
14 agricultural activities by which the owner uses the land for the
15 harvesting and sale of plants, food, and fiber crops, or the
16 raising, production, and sale of livestock. Express provisions are
17 made for permitted nontraditional agricultural activities such as
18 a residential care facility (six or fewer clients), private
19 equestrian facility (1 to 15 clients), contractor base/yard, rural
20 veterinary clinic, veterinary clinic, child day care (12 or fewer
21 children), medical services/rural home doctor offices, heliport,
22 and power generation (on-site residential or agricultural use).

23 In specifying the conditional uses, the Board of Supervisors
24

25 ⁴⁶ Calaveras County, Cal., Code § 17.16.010.

26 ⁴⁷ Calaveras County. Cal., Code § 17.18.010

27 ⁴⁸ *Id.* § 17.18.020 (AP permitted uses), § 17.18.021 (AP
28 conditional uses), § 17.16.020 (A1 permitted uses), and
§ 17.16.021 (A1 conditional uses).

1 has identified uses which have a much greater change to real
2 property from the harvesting and sale of plants, food, and fiber
3 crops, or the raising, production, and sale of livestock for which
4 a use permit must be obtained from the County. Examples included
5 in these additional, conditional use, activities are (1) larger
6 dairies, hog farms, livestock feed lots, and poultry and rabbit
7 facilities, (2) retail agricultural equipment sales and rental,
8 farm supply and feed store, farmer's market, and flea market, (3)
9 equestrian facility (over 15 clients), special events (less than
10 1,000 people), (4) private cemetery, (5) recreational vehicle
11 storage, (6) personal landing field, (7) telecommunications
12 facility, (8) public utility facility, (9) slaughter/butchering
13 (10) fabrication/storage/transport, (11) surface and subsurface
14 mining, (12) developed campground, (13) nonmunicipal air strips and
15 glider ports, and (14) waste disposal, food/septic. It is
16 significant that the Board of Supervisors expressly describe the
17 uses which are permitted without further consideration by the
18 County, those which require further review, and those for which the
19 issuance of an or conditional use permit are required. Not every
20 activity is permitted merely because it is "agricultural."

21 **A Commercial Golf Course is Not Agritourism Under**
22 **the Calaveras County Zoning Ordinances**

23 The Plaintiffs contend that since the commercial 18-hole golf
24 course winds through the olive orchard, that significant revenues
25 would be generated from golf to support the olive orchard and
26 activities related to the olive crop, and that they will sell olive
27 orchard products to golfers, the commercial 18-hole golf course and
28 all of its development is permitted Agritourism as a matter of

1 right. The Plaintiffs focus the court on the argument that it was
2 the intention of the Ag-Coalition in drafting its definition of
3 Agritourism to allow farmers to engage in any activities which will
4 generate income to help underwrite the costs of the traditional
5 agricultural activities. To accept this interpretation of the
6 Ordinance would result in almost any and every money-making
7 activity to be conducted by a landowner on the property, and allow
8 activities not intended by the Board of Supervisors on agricultural
9 property. This would render the carefully crafted permitted
10 activities and administrative/conditional use activities a hollow
11 shell, with Agritourism trumping this detailed set of ordinances in
12 the County statutory scheme.

13 Consideration of the definition of Agritourism and the
14 permitted uses thereunder begins with the plain language enacted by
15 the Board of Supervisors. The definition of Agritourism is,

16 **17.06.0151 - Agritourism.**

17 "Agritourism" means an enterprise located at a working
18 farm, ranch, or other agricultural operation or
19 agricultural plant/facility conducted for the enjoyment
20 and education of visitors, guests or clients that
21 generates income for the owner/operator. Agricultural
22 tourism refers to the act of visiting a working
23 farm/ranch or to any agricultural, horticultural or
24 agricultural operation for the purpose of enjoyment,
25 education or active involvement in the activities of the
26 farm/ranch or agricultural operation that also adds to
27 the economic viability of the agricultural operation.

28 Examples of agritourism enterprises include, but are not
limited to, the following:

A. Outdoor recreation:

1. Camping/picnicking;
2. Cross country skiing;
3. Game preserve;
4. Gold panning;
5. Guide/outfitter operation;
6. Horseback riding/hiking/nonmotorized biking;

7. Wagon/sleigh rides;
8. Wildlife viewing and photography.

B. Direct agricultural sales:

1. Agricultural-related crafts/gifts.

C. Entertainment:

1. Special events;
2. Festivals;
3. Hunting/working dog trials/training;
4. Petting zoo.

D. Educational experiences:

1. Agricultural technical tours;
2. Crop sign identification program;
3. Exotic animal farm;
4. Garden/nursery tours;
5. Historical agricultural exhibits;
6. Historical reenactments;
7. Natural history tours;
8. Ranch/farm tours;
9. School tours;
10. Winery/vineyard tours.

E. Accommodations:

1. Farm/ranch vacations;
2. Guest ranch;
3. Youth exchange.

Calaveras County, Cal., Code § 17.06.0151.⁴⁹

This general description of Agritourism activities requires that the activities must be, "an enterprise located at a working farm, ranch, or other agricultural operation or agricultural plant/facility conducted for the enjoyment and education of visitors, guests, or clients." The Board of Supervisors has included a second definition within this section, stating that "Agricultural tourism refers to the act of visiting a working

⁴⁹ See also *id.* §§ 17.18.020, ¶ 21.a. and 17.16.020, ¶ 21.a. providing that Agritourism is a permitted use on property zoned Agriculture Preserved and General Agriculture, respectively.

1 farm/ranch or to any agricultural, horticultural or agricultural
2 operation for the purpose of enjoyment, education or active
3 involvement in the activities of the farm/ranch or agricultural
4 operation that also adds to the economic viability of the
5 agricultural operation." This second defined term is not used
6 anywhere else in the Calaveras County Code, and is the
7 corresponding definition of what the visitors, guests, or clients
8 are doing when attending the enterprise of the property owner on
9 the working farm, ranch, or other agricultural operation as
10 Agritourism.

11 At this point in their argument, the Plaintiffs contend that
12 golfers observing the olive trees from the golf carts or as they
13 are setting up a shot to the green are enjoying the activities of
14 the Agricultural Operation. Further, that when they purchase the
15 olive products, they are either being educated or involved in the
16 farming activities. Plaintiffs argue that the court should
17 determine the plain language of the Zoning Ordinances to allow the
18 commercial 18-hole golf course as Agritourism, or divine this as
19 the unstated intention of the Board of Supervisors. The only
20 limitation on Agritourism in the Plaintiffs' interpretation is that
21 there must be less than 75 persons involved in the activity at any
22 one time.⁵⁰ However, the plain language of these Ordinances does
23 not end with the general definition of Agritourism. The Board of
24 Supervisors provides specific examples of the type, nature, and
25 quality of Agritourism under the Calaveras County Ordinances.

26 ///

28 ⁵⁰

Id.

Canons to Assist in Statutory Construction

To assist and provide for consistency in statutory interpretation, the courts have developed additional rules to be applied in determining what is meant by a statute which is either unclear or is based on a general definition. One common textual canon, *in pari materia* (literally, "part of the same material") directs that statutory language should not be looked at in isolation, but in the entire textual context. The meaning of the enactment may not be determined from a single word or sentence, but the language must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. *Dyna-Med, Inc. v. Fair Employment & Housing Com.*, 43 Cal. 3d 1379, 1387 (1987). The context of the statutory language takes into consideration the statutory purpose, other statutes, and statutory sections relating to the same subject so that they are harmonized, both internally and with each other, to the extent possible. *Cal. Mfrs. Assn. v. Public Utilities Com.*, 24 Cal. 3d 836, 844 (1979).

A second canon of statutory construction of assistance in determining the correct meaning of these Zoning Ordinances is *noscitur a sociis* ("it is known from its associates"). *Cal. Farm Bureau Fed. v. Cal. Wildlife Conservation Bd.*, 143 Cal. App. 4th 173 (2006). This canon provides that the meaning of words which are placed together in a statute should be determined in light of the words with which they are associated. *Id.* This is closely related to *Ejusdem Generis* ("of the same kind"), a canon which directs that where general words follow specific words, or specific words follow general words in a statutory enumeration, the general

1 words are construed to embrace only things similar in nature to
2 those enumerated by the specific words. *Id.* at 181 (looking to
3 examples enumerated in the statute to understand the scope of the
4 ambiguous portion of the statute and narrowing that scope according
5 to the examples provided).⁵¹

6 While general in its description of Agritourism, the Board of
7 Supervisors provides specific examples of the scope and nature of
8 Agritourism which qualify under the ordinance. There are five
9 general categories of activities: (1) Outdoor recreation,
10 (2) Direct agricultural sales, (3) Entertainment, (4) Education,
11 and (5) Guest ranch. A commonality to each of these categories,
12 and the enumerated activities thereunder, is that none of them
13 provide for significant site improvements or alternation of the
14 agricultural land for the Agritourism activity. Described
15 Agritourism activities include camping, picnicking, game preserve,
16 gold panning, horseback riding, sleigh rides, wildlife viewing,
17 tours, and historical reenactments, which utilize the agricultural
18 property in its existing form. The Board of Supervisors has used
19 a consistent set of examples demonstrating a rural, natural state
20 use of property for Agritourism. The multi-million dollar
21 development of agricultural land into a commercial 18-hole golf
22 course is not consistent with the enumerated examples provided by
23 the Board of Supervisors.

24 Several examples specified by the Board of Supervisors in the
25 definition of Agritourism highlight the natural use, no substantial

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27 ⁵¹ Not surprisingly, parallel Rules and Canons exist in
28 federal court and provide for a similar analysis of a statute or
administrative rule if it had been enacted by Congress or other
federal authority.

1 development activities. Agritourism includes the outdoor
2 recreation activity of cross-country skiing. However, downhill or
3 alpine skiing is not listed as an example. As is commonly known,
4 downhill skiing requires the substantial and complex development of
5 the land, creation of ski runs through the removal of trees and
6 boulders, reshaping of the hill, construction of ski lifts and
7 generators for power, and construction of other support structures.
8 Cross country skiing is an activity designed to utilize the land
9 in the form it exists, with minimal alteration. Another two
10 examples are horseback riding and hiking, where one traverses the
11 existing countryside on horse or foot rather than on a manicured
12 course dramatically altered from its natural state.

13 Though the Plaintiffs argued that under the Zoning Ordinances
14 a permitted use for property zoned for agriculture could include an
15 equestrian center, no provision is made for creating an equestrian
16 center, stables, or arena as Agritourism. Rather, the use of an
17 equestrian center is expressly provided as a permitted use in
18 another part of the Ordinances (which requires a conditional use
19 permit for more than 15 clients), and subject to significant
20 limitations before such a development is made by the landowner.⁵²

21 This commercial 18-hole golf course is clearly no cross-
22 country ski, hiking, nature walking trail. By the Plaintiffs' own
23 accounting, the development of the commercial golf course on The
24 Property has cost in excess of \$7,093,517.00 since 2004. There has
25 been significant grading and altering of the natural terrain and
26 flora. Not only is The Property not being used in its agricultural
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28 ⁵² Calaveras County, Cal., Code §§ 17.16.030, 17.18.030.

1 form, the existence of the golf course precludes its use for
2 growing, harvesting, and sale of any agricultural commodity.

3 The plain language used by the Board of Supervisors in
4 defining Agritourism and permitting other activities does not
5 include a golf course on property zoned Agriculture Preserved or
6 General Agriculture in Calaveras County as Agritourism or other
7 permitted use. It is clear that the Board of Supervisors has
8 expressly permitted, and conditioned in some cases, uses on
9 agricultural property which requires any significant development or
10 change to such property. When it has intended to permit golf as
11 a use for land, the Board of Supervisors has expressly included it
12 in the Zoning Ordinances. Golf is allowed for single-family, two-
13 family, and multifamily residential (in conjunction with a master
14 planned community), two-family residential (in conjunction with a
15 master planned community), rural commercial, rural home industry,
16 local commercial, general commercial, professional offices, light
17 industrial, business park, and recreation zoned properties.⁵³ Golf
18 is expressly provided for in 11 of the 21 Calaveras County-base
19 property zoning districts. The court will not presume that the
20 Board of Supervisors had a secret, unstated intention to have golf
21 included as Agritourism on property zoned for agriculture.

22 In attempting to counter the language of the Zoning
23 Ordinances, express provision for golf in other zoning districts,
24 the rules and canons of statutory construction, and the language
25 used in defining Agritourism, the Plaintiffs direct the court to
26

27 ⁵³ See *id.* at §§ 17.24.020, 17.26.020, 17.28.020, 17.30.030,
28 17.32.020, 17.34.020, 17.36.020, 17.38.020, 17.40.020, 17.44.020,
and 14.46.020.

1 consider more physically intrusive permitted activities allowed in
2 the Zoning Ordinances on property zoned for agriculture. However,
3 in doing so the Plaintiffs do not direct the court to Agritourism
4 activities, but to other expressly permitted uses on properties
5 zoned for agriculture which are not Agritourism. The Plaintiffs
6 request this court to ignore what the Board of Supervisors
7 expressly permits in the Zoning Ordinances, and instead have the
8 court rewrite the statute to state what the Plaintiffs desire. The
9 court will not insert itself into making the economic, societal,
10 political, and practical decisions for the Calaveras County Board
11 of Supervisors, or presume that this court has greater wisdom to
12 write a permitted use which does not exist into the Zoning
13 Ordinance.

14 Golf is not a permitted activity under the Calaveras County
15 Zoning Ordinances either prior to or after the 2005 amendments
16 which created a permitted use for Agritourism, as defined by the
17 Calaveras County Ordinances, for property zoned Agricultural
18 Preserve or General Agriculture.

19 **THE PLAINTIFFS FAIL TO ESTABLISH THAT CALAVERAS COUNTY**
20 **SHOULD BE ESTOPPED FROM ENFORCING ITS ZONING ORDINANCES**

21 Notwithstanding the court determining that the golf course on
22 the Plaintiffs' property is not a permitted purpose under the
23 Calaveras County Zoning Ordinances, the Plaintiffs assert that the
24 County is estopped from enforcing that Zoning Ordinance with
25 respect to the Plaintiffs' commercial 18-hole golf course. It is
26 argued that due to County employees making representations to
27 representatives at Community Bank of San Joaquin and the
28 Plaintiffs, including at the November 9, 2006 meeting, the

1 Plaintiffs and Bank would not have proceeded with the development
2 of the golf course. As set forth in this decision, the court finds
3 that no such representations or reliance exists, and concludes that
4 no grounds exist to estopp the County from enforcing its Zoning
5 Ordinances.

6 The fact that the defendant is the County or the conduct to be
7 enjoined is the enforcement of a zoning ordinance does not preclude
8 the application of equitable estoppel. The California Supreme
9 Court addressed this issue in *City of Long Beach v. Mansell*, 3 Cal.
10 3d 462, 493 (1970), holding,

11 It is settled that "doctrine of equitable estoppel may be
12 applied against the government where justice and right
13 require it. (*United States Fid. & Guar. Co. v. State*
14 *Board of Equalization* (1956) 47 Cal.2d 384, 388-389 [303
15 P.2d 1034] and cases there collected.)" (*Driscoll v. City*
16 *of Los Angeles*, *supra*, 67 Cal.2d 297, 306.) (See
17 generally 28 Am.Jur.2d, Estoppel and Waiver, §§ 122- 133,
18 pp. 782-802; 31 C.J.S., Estoppel, §§ 138-147, pp.
19 675-733.) Correlative to this general rule, however, is
the well-established proposition that an estoppel will
not be applied against the government if to do so would
effectively nullify "a strong rule of policy, adopted for
the benefit of the public, . . ." (*County of San Diego v.*
Cal. Water etc. Co. (1947) 30 Cal.2d 817, 829-830 [186
P.2d 124, 175 A.L.R. 747], see also cases there cited.)
The tension between these twin principles makes up the
doctrinal context in which concrete cases are decided.

20 All four elements must be present for the doctrine of equitable
21 estoppel to apply: (1) the party to be estopped must be apprised of
22 the facts; (2) he must intend that his conduct shall be acted upon,
23 or must so act that the party asserting the estoppel had a right to
24 believe it was so intended; (3) the other party must be ignorant of
25 the true state of facts; and (4) he must rely upon the conduct to
26 his injury. *Id.* at 489.⁵⁴

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28 ⁵⁴ However, citing back to its earlier decision, the court
in *Mansell* quoted *Sacramento v. Clunie*, 120 Cal. 29, 30 (1898),

1 The California District Court of Appeal recently addressed the
2 issue of equitable estoppel being applied against a governmental
3 entity in *Golden Gate Water Ski Club v. County of Contra Costa*, 165
4 Cal. App. 4th 249 (2008). The District Court of Appeal noted that
5 a party faces "daunting odds" in establishing estoppel against a
6 governmental entity in a land-use case. The court balances,

7 the injustice done to the private party with the public
8 policy that would be supervened by invoking estoppel to
9 grant development rights outside of the normal planning
10 and review process. . . . Accordingly, estoppel can be
invoked in the land use context in only 'the most
extraordinary case where the injustice is great and the
precedent set by the estoppel is narrow.

11 *Id.* at 259 (internal citation to *Toigo v. Town of Ross*, 70 Cal.
12 App. 4th 309 (1998) omitted). The District Court of Appeal stated
13 this conclusion, citing to *Mansell*, for the proposition that while
14 the doctrine of equitable estoppel is not barred in land-use cases,
15 it will not be applied if to do so would effectively nullify a
16 strong rule of policy adopted for the benefit of the public. *Id.*

17 In considering the claim of equitable estoppel, the court does
18 not have to address the more complex balancing of injustice to the
19 Plaintiffs and impact on the public policy because the Plaintiffs
20 have not established the basic elements for estoppel. The
21 Plaintiffs have not show that there were statements made by the
22 County or its representatives concerning facts relating to the
23 approval of the land use application upon which the Plaintiffs were
24 intended to rely. The testimony is clear that to the extent that
25 Ms. Moreno made any representations to the Plaintiffs and

26 _____
27 holding that equitable estoppel will be applied against a public
28 agency only in those special cases where the interests of justice
clearly require it. *Mansell*, 3 Cal. 3d 462, 493 & n.30 at 396
(Cal. 1970).

1 representatives of Community Bank of San Joaquin, such statements
2 were merely an explanation of the land use application process,
3 what the County staff was doing to move the process forward, that
4 Ms. Moreno did not foresee opposition, and that the ultimate
5 decision was that of the County Board of Supervisors.

6 The testimony from Mr. Nemea and the various Bank
7 representatives was that they all understood that it was the Board
8 of Supervisors who must approve any land use application, not Ms.
9 Moreno or any of the County staff. In feigned outrage, Michael
10 Nemea now testifies that it was Ms. Moreno attending the meeting
11 which resulted in the Bank extending the due date on the
12 Plaintiffs' loan and extending an additional \$300,000.00 in credit
13 so that the Plaintiffs could continue with the land use
14 application. Michael Nemea's outrage and attempted placing of
15 blame on the County ignores the fact that it was he who requested
16 that Ms. Moreno attend the meeting, and it was the Plaintiffs who
17 were seeking an extension of the due date on the Plaintiffs' loan
18 and additional credit.

19 To the extent that Michael Nemea had conversations with other
20 County staff, such as the Agriculture Commissioner or Planning
21 Director, none made any representations or provided any assurances
22 that the development of a commercial golf course was permitted on
23 the Plaintiffs' property.⁵⁵ As Jerry Howard, the then Calaveras

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25 ⁵⁵ "No government, whether state or local, is bound to any
26 extent by an officer's acts in excess of his authority."
Horsemen's Benevolent & Protective Assn. v. Valley Racing Assn.,
4 Cal. App. 4th 1538, 1563-1564 (1992).

27 "One who deals with the public officer stands presumptively
28 charged with a full knowledge of that officer's powers, and is
bound at his peril to ascertain the extent of his powers to bind

1 County Agricultural Commissioner, testified, Michael Neme
2 represented that the golf holes being constructed were for private,
3 personal use of the Plaintiffs, and that Mr. Howard did not
4 consider such personal use to be contrary to the Williamson Act.
5 Jerry Howard also testified that he did not consider, and did not
6 make any representations to the Plaintiffs concerning, land use
7 zoning issues because that was beyond the scope of his office. It
8 is clear that at most, the Plaintiffs were aware that there was at
9 best a disagreement between members of the County staff whether a
10 private, personal use golf course could be constructed on property
11 zoned for agriculture.⁵⁶

12 The December 14, 2006 Credit Authorization Memorandum from the
13 Community Bank of San Joaquin clearly states that the Bank knew
14 that golf course was illegal under the existing ordinances when
15 constructed. Consistent with the Credit Authorization Memorandum,
16 Robert Daneke, the Bank Credit Officer at the time of the 2006
17 meeting testified that the Bank made the loan based on the raw land
18 value and not based on any of the golf course improvements being
19 made by the Plaintiffs.

20 It is also clear that the Plaintiffs proceeded with the
21 development of The Property knowing that it did not meet the then
22 existing zoning for The Property. There was no reliance on any
23 representations of anyone at the County that the construction of an

24 _____
25 the government for which he is an officer, and act of an officer
26 to be valid must find express authority in the law or be
necessarily incidental to a power expressly granted." *Id.*

27 ⁵⁶ Any alleged agreement to permit development without
28 application of land-use regulations would be invalid and
unenforceable as contrary to public policy. *Burchett v. City of
Newport Beach*, 33 Cal. App. 4th 1472, 1480 (1995).

1 18-hole commercial golf course was legal.⁵⁷ From the evidence
2 presented to the court, the Plaintiffs' intentionally proceeded
3 with building the golf course banking on obtaining an after-the-
4 fact land use change by the Board of Supervisors. Given the
5 representation of the Plaintiffs by various professionals and
6 sophistication of the business endeavor, including the issuance of
7 securities for membership in the golf club, this is not a naive,
8 innocent use of The Property by the Plaintiffs.

9 In California, the Brown Act governs the conduct of county and
10 local governmental entities.⁵⁸ This law requires that government
11 decisions be made at public open hearings, with specified
12 exceptions not applicable to the Plaintiffs' land use application
13 at issue. This serves the obvious purpose of allowing the public
14 to know the decisions being made by their public officials, who
15 make the decisions, and an opportunity to address those public
16 officials before making the decision. Additionally, it insures
17 that members of the public, such as the Plaintiffs, are not taken
18 into the "backroom" and improper demands made of them, or that
19 special treatment is secretly provided which is not obvious to the
20 public. *Epstein v. Hollywood Ent. Dist. II Bus. Improvement Dist.*,
21 87 Cal. App. 4th 862, 868 (2001). Here, the decision was
22

23
24 ⁵⁷ When a company purchases property "relying on the
25 initial finding of consistency by the Board, before a final
26 decision by the zoning administrator on the use permit
27 application, it takes a business risk." *Penn-Co v. Board of*
28 *Supervisors*, 158 Cal. App. 3d 1072, 1081 (1984). That landowner
cannot reasonably have assumed that this finding was "absolute
assurance that its application would not falter at another step
along the way." *Id.*

⁵⁸ Cal. Gov. Code §§ 54950 *et. seq.*

1 ultimately made at a public hearing by the Board of Supervisors
2 which everyone knew was the decision making authority.

3 The Plaintiffs may not like the decision of the Board of
4 Supervisors on their land-use application, but they are not
5 entitled to a different decision because they gambled and developed
6 the land for a commercial 18-hole golf course in the belief that
7 they could convince a majority of the Board of Supervisors to make
8 it legal after the fact.⁵⁹

9 The Plaintiffs have also attempted to weave into the argument
10 that because the County may allow uses of other property by the
11 owner of Ironstone Vineyards which the Plaintiffs contend are
12 inconsistent with the Court's interpretation of Agritourism, the
13 County cannot enforce the Ordinances against the Plaintiffs. This
14 contention misses the mark for several reasons. Though referenced
15 by the Plaintiffs, the use of property by Ironstone is not now
16 before the court. Further, as argued by the County, there are
17 other permitted uses under the Zoning Ordinances which may apply to
18 the Ironstone uses. The court has not, and cannot, determine the
19 uses of property by Ironstone in the case now before the court.

20 Purported ignorance of the law is not an excuse for either a
21 civil or criminal violation of the law. *Jerman v. Carlisle,*
22 *McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. ___, 130 S. Ct. 1605,
23 1612 (2010). To the extent that the Plaintiffs contend that based
24 on Ironstone's conduct the Plaintiffs believed that their
25 development was permitted, it is not a valid argument. First, the

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27 ⁵⁹ The construction of additional structures nor the cost
28 associated with those structures, support the application of
equitable estoppel. *Golden Gate Water Ski Club*, 165 Cal. App. 4th
at 259.

1 Plaintiffs are responsible for their conduct, not the conduct of
2 Ironstone. To the extent that Ironstone is violating the law, the
3 County and State have the responsibility to enforce the laws, or
4 for other residences of Calaveras County to assert their rights if
5 the County is engaging in differential enforcement of the law. The
6 Plaintiffs cannot argue that since someone else is allowed to break
7 the law, then the Plaintiffs are allowed to break the law. Second,
8 the Plaintiffs knew that developing and operating the commercial
9 18-hole golf course is not permitted under the Zoning Ordinances.
10 Third, as stated above, permitted uses other than Agritourism may
11 exist for the Ironstone uses, and those uses are not determinative
12 of the Plaintiffs' development and use of The Property.

13 The Plaintiffs have failed to establish by a preponderance of
14 the evidence each of the independent necessary elements of
15 estoppel: that (1) the County made representations intended to
16 induce reliance by the Plaintiffs in developing an 18-hole golf
17 course, (2) the County acted in a manner causing the Plaintiffs to
18 believe that it was legal for them to construct a commercial golf
19 course on The Property, (3) that the Plaintiffs were ignorant of
20 the fact that an 18-hole commercial golf course was not a legally
21 permitted use on The Property as it was and is currently zoned, and
22 (4) that the Plaintiffs relied on the representations or acts of
23 the County in proceeding with the development of the 18-hole
24 commercial golf course on The Property. The request for equitable
25 estoppel to be applied to prevent the County from enforcing the
26 Calaveras County Zoning Ordinances as to the golf course use on The
27 Property is denied.

28 ///

1 **CALAVERAS COUNTY IS ENTITLED TO INJUNCTIVE RELIEF**

2 In its Counterclaim, the County requests that the court
3 determine that the use of The Property as a commercial golf course
4 is a violation of Calaveras County Code § 17.18, and that such use
5 is a public nuisance because it constitutes an actual or threatened
6 injury to the public health, safety or welfare and interferes with
7 the comfortable enjoyment of life or property by residents and
8 property owners of the County. Further, that the court issue
9 injunctive relief ordering the Plaintiffs, and their employees,
10 servants, and assigns, and all persons acting in concert with them
11 to:

- 12 1. Stop all commercial use of the golf course on The
13 Property, including the use of the golf course with a
 payment for any other activity on The Property.
- 14 2. Stop all use of the golf course by any person who has
15 purchased a golf membership or other financial interest
16 in The Property, or in any adjacent property owned or
 controlled by either Plaintiffs or relatives of
 Plaintiffs in exchange for the right to use the golf
17 course.
- 18 3. Stop any private, public, or charitable events on The
19 Property that involve the payment of money, purchase of
20 raffle tickets, or any other financial payment in
 conjunction with attending an event when the event
 includes the use of the golf course by attendees.
- 21 4. Stop advertising or otherwise marking commercial use of
22 the golf course located on The Property, including but
23 not limited to advertising free golf when payment is made
 to use The Property for any permitted use under the
 Calaveras Zoning Ordinances.
- 24 5. Stop using The Property for any purpose which does not
25 comply with all applicable laws and regulations or for
26 which all required permits and approvals have not been
 obtained, including but not limited to failure to comply
 with parking standards and event requirements.

27 The County further requests that the court authorize the
28 County to abate the nuisance at the Plaintiffs' expense if the

1 Plaintiffs have not complied within 60 days of the court's judgment
2 for the permanent injunction. Further, that pursuant to California
3 Civil Code § 3491 and Government Code § 54988, the County seeks an
4 award of its costs, including but not limited to investigation and
5 enforcement costs, costs of this Adversary Proceeding, and
6 attorneys' fees.

7 A local governmental entity may invoke appropriate civil
8 remedies to enforce its ordinances pursuant to the police power
9 granted to it under the California Constitution. Art. XI, § 11.
10 This includes obtaining injunctive relief to restrain the violation
11 or to cause the wrongful effect thereof to be removed. *City of*
12 *Santa Clara v. Paris*, 76 Cal. App. 3d 338, 342 (1977); *see also*,
13 *Yuba City v. Cherniavsky*, 117 Cal. App. 568, 572 (1931); *Stockton*
14 *v. Frisbie & Latta*, 93 Cal. App. 277, 289 (1928). As discussed by
15 the District Court of Appeal in *San Francisco v. Burton*, 201 Cal.
16 App. 2d 749, 757 (1962), there is no need for the governmental
17 entity to show that a nuisance *per se* exists; the right of a
18 governmental entity to enforce its ordinance by injunction was not
19 open to question.

20 The County, by the actions of the Board of Supervisors in
21 enacting the Zoning Ordinances, has determined what uses may be
22 made of real property in various parts of Calaveras County. The
23 use of The Property for a commercial golf course is not permitted
24 and is determined to improper under the zoning ordinance. The
25 Plaintiffs have shown no basis for why or how their use of The
26 Property as a commercial golf course does not violate the Zoning
27 Ordinances or why they should be allowed to operate a commercial
28 golf course in violation of the Zoning Ordinances. The 18-hole

1 commercial golf course being operated on The Property is a public
2 nuisance.

3 The court grants the request for injunctive relief and the
4 judgment on the Counterclaim shall provide that the Plaintiffs, and
5 each of them, and their agents, representatives, assigns,
6 transferees and anyone asserting an interest or right from the
7 Plaintiffs, and any entities in which the Plaintiffs have an
8 interest, are permanently enjoined and shall, effective January 27,
9 2012, and continuing thereafter

10 a. Terminate and cease the use of the golf course on The
11 Property as a commercial golf course for which payment,
12 remuneration, credit, transfer, or anything of value is
13 given to or for the benefit of Michael Nemea and Michelle
14 Nemea, and each of them, and their respective family
15 members, agents, employees, servants, representatives,
16 and any entity in which Michael Nemea or Michelle Nemea
17 have an ownership, equitable, or other interest, directly
18 or indirectly, from any other person or entity for the
19 use of said golf course.

20 b. Terminate and cease allowing the use of the golf course
21 on The Property by any person who claims or asserts that
22 they have purchased a golf membership, obtained any other
23 right, or have received authorization to use the golf
24 course for any purpose for which remuneration, credit,
25 transfer, or anything of value is given to or for the
26 benefit of Michael Nemea and Michelle Nemea, and each of
27 them, and their respective family members, agents,
28 employees, servants, representatives, and any entity in
which Michael Nemea or Michelle Nemea have an ownership,
equitable, or other interest, directly or indirectly.

c. Terminate and cease the using or allowing the use of the
golf course on The Property for any private, public, or
charitable events for playing golf or any golf related
activity.

d. Terminate and cease advertising or otherwise marking for
commercial use the golf course located on The Property,
and the use of the golf course on The Property by any
person other than the Owners in exchange for payment,
remuneration, credit, transfer, or anything of value is
given to or for the benefit of Michael Nemea and Michelle
Nemea, and each of them, and their respective family
members, agents, employees, servants, representatives,
and any entity in which Michael Nemea or Michelle Nemea

1 have an ownership, equitable, or other interest, directly
2 or indirectly, from any other person or entity for the
use of the golf course.

- 3 e. Michael Nemea and Michelle Nemea, and each of them, and
4 their respective family members, agents, employees,
5 servants, representatives, and any entity in which
6 Michael Nemea or Michelle Nemea have an ownership,
equitable, or other interest, shall comply with the
7 Calaveras County Zoning Ordinances for the use of The
Property, for the use and maintenance of the golf course
on The Property.

8 Michael Nemea and Michelle Nemea, and each of them, may seek
9 to modify this injunction to the extent that it becomes
10 inconsistent with future amendments to the Calaveras County,
11 California Zoning or other ordinances concerning the use of the
12 property identified in this judgment.

13 The County may obtain from this court further orders for the
14 enforcement of this injunctive relief as necessary for the
15 abatement of the public nuisance, and seek the award of costs and
16 expenses of such abatement, if Michael Nemea and Michelle Nemea,
17 and each of them, and their respective family members, agents,
18 employees, servants, representatives, and any entity in which
19 Michael Nemea or Michelle Nemea have an ownership, equitable, or
20 other interest, fail to comply with this injunction on or before
21 January 27, 2012.

22 Further, that pursuant to California Civil Code § 3491 and
23 Government Code § 54988, the County may file a costs bill and
24 motion for award of attorney's fees and expenses in connection with
25 enforcing the Zoning Ordinances for the conduct subject to the
26 permanent injunction, as determined reasonably and necessary by
27 this court pursuant to a post-judgment costs bill and fee
28 application filed on or before December 9, 2011.

1 **CONCLUSION**

2 The court shall enter judgment in favor of the Defendant
3 Calaveras County on the Seconded Amended Complaint denying all
4 relief requested by the Plaintiffs. Further, the court shall enter
5 judgment on the Counterclaim in favor of Calaveras County and
6 against the Plaintiffs, and each of them, for a permanent
7 injunction enjoining the use of the 18-hole golf course on The
8 Property, authorizing the County to abate the continued used of the
9 18 hole golf course on The Property through the enforcement of the
10 permanent injunction issued by this court, and awards costs, fees,
11 and expenses to the County. The permanent injunction is granted
12 based on the Calaveras County Zoning Ordinances in effect as of the
13 date of the injunction, and is subject to modification based on
14 future amendments to the Zoning Ordinances for the permitted uses
15 of The Property.

16 The court shall by supplemental order issue a draft of the
17 proposed judgment form, affording the parties to state any
18 objection to the from and content of the order, and propose any
19 corrected or additional language in writing.

20 Dated: November 21, 2011

21 /s/

22 _____
23 RONALD H. SARGIS, Judge
24 United States Bankruptcy Court
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