

September 9, 2009

Via eMail (to Planner Emily Minton) and Personal Delivery

Lake County Planning Commission
Commissioners Gary Briggs, Michael Van Der Boon,
Clelia Baur, Cliff Swetnam, and Gil Schoux
255 North Forbes Street
Lakeport, CA 95453

***Re: Comments Regarding the Inadequacy of the
Final Environmental Impact Report for the
Cristallago Project***

Honorable Planning Commissioners:

We own Hidden Lake Ranch, a 202 acre agricultural operation in the Williamson Act. Our property is immediately adjacent to the westernmost edge of the “panhandle portion” of the Cristallago Development Project (the “Project”). Our property consists of one legal parcel but two assessor parcels (APN Numbers 003-046-090 and 005-007-030). We submit these comments regarding the inadequacy of the Final Environmental Impact Report (DEIR) with respect to the proposed Cristallago development project.

Incorporation of Prior Comments

The comments in this response to the DEIR are without prejudice to the objections to the form and content of the Notice of Preparation of the DEIR set out in our letter dated July 13, 2007, regarding the scope and content of the DEIR; our letter of December 29 2008, regarding the Draft EIR; and our oral comments made at the February 19, 2009, hearing before the Lake County Planning Commission. The entirety of each of the foregoing prior comments regarding the inadequacies of the Cristallago environmental impact report are incorporated by reference in this comment to the adequacy of the final EIR.

The Only Action That Can Be Taken by the Planning Commission is to Either Certify or Order Recirculation of the EIR; No Decision Can be Rendered Regarding the Merits of the Project Itself

We have received the Notice of Public Hearing for the hearing to be held on September 10, 2009. That Notice of Hearing states that the Planning Commission will hold a public hearing on “consideration of certification of a FINAL ENVIRONMENTAL IMPACT REPORT (FEIR)” for the Cristallago Project. That is the entire extent of what the Planning Commission may do at the September 10, 2009, hearing. However, based upon recent news reports (Lake County News, September 8, 2009, <http://lakeconews.com/content/view/10229/764/>), it appears that the Planning Commission may make a recommendation to the Board of Supervisors regarding the approval or denial

of the requested general plan amendments and rezonings. This the Commission may not do absent adequate public notice and hearing on the planning merits of the project.

Because there was no notice of a hearing on the merits of the project, there can be no decision at the September 10, 2009, hearing to recommend either approval or denial of the project on a policy basis. The sole action the Commission may take on September 10, 2009, is what is in the notice of hearing: certification or rejection of the final EIR.

The Final EIR Responses to Comments Made Concerning Inadequacies of the Draft EIR are Dismissive and Do Not Provide the Legally Required Analysis

Section 15146(b) of the EIR Guidelines states:

The response of the Lead Agency to comments received may take the form of a revision of the Draft EIR or may be an attachment to the Draft EIR. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular the major issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments **must be addressed in detail** giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

It is not enough for the Final EIR simply to contain information submitted by the public and experts. Problems raised by the public and responsible experts require a good faith reasoned analysis in response. *Cleary v. County of Stanislaus*, 118 Cal.App.3d 348, 357 (5th Dist. 1981). The requirement of a detailed analysis in response ensures that stubborn problems or serious criticism are not "swept under the rug." *Ibid*.

However, the final EIR in this case does not contain that required analysis. Repeatedly and consistently, the responses to the comments raised simply restate the original conclusion and do not provide any analysis of why that original conclusion should stand despite the comments made. The Final EIR is dismissive of valid, reasoned comments and, as held in the *Cleary* case, it is inadequate as a matter of law.

Misuse of a Program EIR for the Cristallago Development Project Violates

CEQA

The Program EIR in this case has been misused to deny a full and adequate examination of the environmental impacts of the Cristallago Project. The intent of the Program EIR process is to provide a more complete, comprehensive and broad examination of the environmental impacts of a development program. As stated in the Draft EIR:

“Section 15168(b) of the CEQA Guidelines indicates that use of a Program EIR can provide the following advantages. The Program EIR can:

- 1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action;
- 2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis;
- 3) Avoid duplicative reconsideration of basic policy considerations;
- 4) Allow the Lead Agency to consider broad policy alternatives and programwide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts; and
- 5) Allow reduction in paperwork.”

(Cristallago Project Draft Environmental Report, Page I-3).

None of those laudable goals have been met here. The “programmatic EIR process” has been misused in this case to deny examination into many areas. In almost all areas where there is a significant potential environmental impact from this project, the final EIR dodges the environmental issue by claiming that this is only an “program” EIR and therefore, no examination of that environmental impact is required. The result is that the current EIR is not exhaustive. The current EIR does not examine cumulative impacts. The current EIR defers or creates potentially duplicative consideration of basic policy considerations. The current EIR prevents the Planning Commission and the Board of Supervisors from considering broad policy alternatives and program-wide mitigation measures now when there is greater flexibility in the alternatives. The inherent duplication will cause numerous future EIR processes and mountains of future paperwork.

This is a project. It is pretty straightforward. The applicants want to take 862 acres of land and put in a golf course, some resort uses and 650 suburban

residential houses. The applicant has been clear on what is desired in the final development. Their desires are in their application and really haven't changed since the start of this process. The outlines of this project are sufficient to enable full and complete environmental review. However, in a bid to deny Lake County the ability to examine the impacts of the proposed development, the applicant has failed and refused to pay for an EIR that truly examines those impacts. The result is an incomplete EIR.

What is before the Planning Commission is a project, but the Planning Commission, the Board of Supervisors and the public does not have an EIR that fully examines the project. Instead, the EIR defers real environmental examination to a time after real and potentially irrevocable land use entitlements have been granted.

By way of example only, and without waiving the right to subsequently raise other areas where adequate environmental examination was denied, the "Program EIR" was used to deny full and complete examination into the following areas:

Impact on Scenic Views.

Illumination/Lighting

Wastewater Treatment.

Biological Resources

Wetlands Delineation

Geotechnical Analysis

Use and Disposal of Hazardous Materials

Fire Safety

Hydrology and Drainage

Archeological and Cultural Resources

Traffic and Parking

Paper Water Cannot be the Basis For an Adequate EIR

Cristallago has almost no water entitlements. According to the EIR, one portion of the project area has an entitlement to 100 hookups to the water system. That is all; not nearly enough to put in a golf course, hundreds of resort units and many more hundreds of suburban homes. The entire water analysis depends

upon the assumptions that:

CSA No. 21 agrees to extend its area of service to include the entire project area and to supply all the water needs of Cristallago;

LAFCO exercises its discretion and determines that the expansion of the CSA No. 21 boundaries is permissible;

The Yolo County Flood Control and Water Conservation District exercises its discretion to agree to an modification of the water supply agreement with CSA No. 21; **and**

The substantial required expansions of the water treatment plant are done.

All those are speculative and cannot serve as the basis for the required water analysis. See, *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*, 106 Cal.App.4th 715 (2nd Dist. 2003).

The Change in the Source of Water for the Golf Course is Significant New Information Requiring Recirculation of the EIR

The Applicant, conceding that its water supply is entirely speculative, has now produced a proposal that the golf course would be watered for some undefined period of time with water drawn from Clear Lake. However, this substantial change in the project, which has taken place after the consideration of the Draft EIR, has undergone absolutely no environmental analysis. The only discussion is a the dismissive statement that “The use of raw water from Clear Lake to irrigate the golf course at Cristallago has no net impact on Clear Lake when compared to the use of reclaimed water from the NWRWWTP. Because of the structure of the Geysers Geothermal reuse system, whatever reclaimed water that is not provided by the LACOSAN to the Geysers Geothermal user is made up for using raw lake water injected into the system. ” Response 3-5. That statement completely ignores the fact that using raw lake water for the golf course will be a new and substantial additional withdrawal of water from Clear Lake. The impacts of that new draw on the Lake have not been examined.

Because of the failure to fully analyze the environmental impacts of the significant new change in the supply of water to the project, the Final EIR is inadequate and defective as a matter of law.

Examination of The Potential for Illumination of the Night Sky Is Dismissed Without Factual Support

Response 17-14 concedes that the EIR “does not include any modeling or

study of the lumens of light that would be added by the project.” Page II-128. However, the comment concludes that because, without any modeling or study, there was a conclusion reached that there would be no nighttime illumination impact, no such study is needed. This is a classic tautology that precludes the type of information that should be before the Supervisors when they make their policy decision. In order to make an informed decision, the permitting agency needs to know the actual light impacts – with detailed investigation and modeling rather than the summary dismissal of such impacts without analysis or study.

The question is how can the EIR conclude there is no impact when there has been no technical analysis? The answer is that it cannot. The EIR is inadequate.

The EIR Does Not Examine the Impact of the Project on Views from Scotts Valley

The Final EIR concedes that there has been no analysis whatsoever of the view impacts from Scotts Valley Road or properties adjacent to or off of Scotts Valley Road. The County has, as the EIR concedes, identified the project site as a scenic area by zoning it with a Scenic Combining Overlay. However, In order for the Planning Commission and the Board of Supervisors to understand and analyze the visual impacts of this project on that scenic view, the EIR must show what the impact will be. While there are “before and after” views of the site from Hill Road, no “before and after” views have been prepared showing the visual impact of the project on Scotts Valley. The EIR is fatally inadequate and incomplete without showing what the scenic impact will be.

The Alternatives Analysis is Fundamentally Flawed

The Final EIR rejects examination of “[a]n alternative that considered development of the proposed project on an alternate site in the Clear Lake area . . . because the project applicant does not own any other property that would be feasible for this project and can not ‘reasonably acquire, control or otherwise have access to [an] alternative site.’” Response 17-12, Page II-126. This EIR examines a General Plan Amendment to change the designation of this property. The desires of the applicant should not drive the alternatives analysis; the needs of the **County** must be the basis of that analysis. The County needs and wants destination resort development, including a golf course. The County, over the long-term, will need moderate growth in residential development. The question that the EIR must examine is whether there are alternative ways to meet the County’s needs in those areas than by changing its general plan to put a golf course resort and hundreds of suburban lots in this project.

The Economic Analysis is Unreliable and Must Be Redone

We questioned the validity and reliability of the economic analysis because of is

overly rosy assumptions and the significant change in the economy since the analysis was done. In response our concerns, the Final EIR says: “Refer to Response 13-2.” Response 13-2 in response to the questions posed by the Lakeport Fire District and has absolutely nothing to do with the concerns raised about the economic analysis.

The Board of Supervisors needs to know whether this project is viable and whether this developer will be financially able to make the environmental mitigations that are referenced in the EIR. Further, if the Board were to allow this project to proceed despite the numerous significant and unavoidable environmental impacts, it must make factually supported findings of overriding consideration. If the Board were to make any such findings based upon the fundamentally flawed economic analysis, then those findings would be completely without merit and invalid.

Concerns about the flawed economic analysis deserve a full and complete response. The dismissal of the concerns by reference to something not even close to on point is absurd and leaves the EIR inadequate.

The EIR Must Be Recirculated

As found in the comments submitted to date, the current version of the EIR is hopelessly inadequate. There is no reasonable way that the permitting authorities can truly judge the environmental impacts, potential mitigations and reasonable alternatives for the Cristallago project as studied.

As so clearly stated by the California Supreme Court:

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account.

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, 40 Cal. 4th 412, 450 (2007).

Where an EIR is inadequate, it must be recirculated. *Mountain Lion Coalition v. Fish & Game Dept.*, 214 Cal. App. 3d 1043, 1051-52 (1st Dist., 1989). That is the only reasonable option before the Planning Commission. Send this EIR back so that you, the Board of Supervisors and the public can truly understand the environmental impacts of the proposed Cristallago

project.

Sincerely yours,

Kevin and Eileen Goodwin, dba
Hidden Lake Ranch

This letter addresses comments only to the EIR and not to the numerous and substantial planning issues that this project raises. We will submit our planning comments when this matter comes before the Planning Commission on proper notice.

There is the same failure of the EIR to examine the scenic impacts of the project on views from Clear Lake and the towns and properties across Clear Lake from the Project.

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September 9, 2009
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