

# FEDERAL JUDGE RULES TRINITAS OUT OF BOUNDS

## *GOLF COURSE ORDERED TO CLOSE BY LATE JANUARY*

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SAN ANDREAS - The 280-acre Trinitas golf course near Burson must cease operations by Jan. 27, a federal bankruptcy judge ruled this week, declaring the site a "public nuisance."

The 65-page opinion by U.S. Bankruptcy Judge Ronald Sargis criticized Trinitas owners Michael and Michelle Nemees for being "sophisticated" business professionals who spent millions on a scheme to illegally build a golf course on ranch land in Calaveras County zoned for agriculture - and then seek permission later.

That scheme, Sargis said, ultimately failed.

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

Calaveras supervisors in 2009 twice voted against measures that would have given Trinitas legal status. After those votes, the Nemees filed for bankruptcy.

The Nemees also filed several lawsuits against county officials. One argued that Trinitas was a legal form of agritourism under an ordinance the county adopted in 2005.

That lawsuit was ultimately heard in U.S. Bankruptcy Court. Winning legal status for the golf course was key to the Nemees' plans for repaying the more than \$7 million they borrowed to build the course.

The opinion Sargis posted this week represents his decision based on the three-day agritourism trial held in October.

Michael Nemees did not respond Wednesday to a telephone message asking for comment. Attorney Ken Foley of San Andreas, who represented the Nemees in the agritourism suit, was out of town and unavailable to comment, according to a staffer in his office.

Malcolm Gross, an attorney representing the Nemees in the bankruptcy proceedings, said he had done only an initial review of Sargis' ruling and was not prepared to say whether the Nemees would appeal.

Calaveras County Director of Planning Rebecca Willis declined to comment on the ruling, noting that additional litigation involving Trinitas continues.

In addition to the bankruptcy case and the agritourism suit, the Nemees more recently filed a lawsuit arguing that county officials violated their constitutional rights by denying them the ability to operate a golf course. They are asking county taxpayers to pay the Nemees \$12 million in compensation.

The dispute between the Nemees and the county began a decade ago, when neighbors complained the Nemees were building a golf course.

Sargis wrote in his ruling that trial testimony and documents showed the Nemees knew they should have obtained county permits. Sargis said the Nemees adopted a "calculated business strategy" of doing what they wanted first and asking for forgiveness later.

Sargis wrote that the Nemees had done business this way even before the golf course construction began when they illegally remodeled a barn into living space and documented the work only later when asked about it by code inspectors.

Sargis said that the Nemees and their representatives portrayed themselves as "simple folk" who "relied upon the advice of county representatives" before they spent millions to build the golf course. Sargis, however, concluded that the Nemees are "sophisticated business persons" who knew perfectly well what they were doing.

Trinitas will be back in court Dec. 7, when Community Bank of San Joaquin asks permission to proceed with a foreclosure sale of the property. That sale has been on hold for two years due to the bankruptcy proceedings.

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### **Trinitas golf course ruling**

Excerpts from the 65-page opinion issued on Nov. 21 by U.S. Bankruptcy Court Judge Ronald Sargis, finding that golf is not legal on land zoned for agriculture in Calaveras County. Sargis ordered the golf operation to end by Jan. 17. *[correction: Jan. 27]*

Sargis presided over a three-day trial on the question in October.

p. 11: The August 14, 2001 letter from Mr. Nemees and the August 20, 2001 letter from Mr. Jeffries are typical of what has been shown to be recurring conduct of the Plaintiffs in dealing with the County.

First, the Plaintiffs take a portion of comments by one County representative and attempt to utilize it out of context to advance their desired development of The Property. Next, the Plaintiffs and their representative issue carefully worded statements which fail to fully or accurately disclose actual facts concerning the development of The Property and Plaintiffs' conduct.

(The documents indicate that the Nemees and their agents had discussed their golf course construction with some officials and attempted to conceal it from others.)

p. 11: The court finds the statements for Plaintiffs made by Mr. Jeffries for his principals in this letter to be creatively misleading at best and intentionally false at worst. (Refers to an Aug. 20, 2001 letter in which Jeffries said the Nemees were contemplating a golf course in the future but had not yet done any site work.)

p. 18: The court finds that as early as 2002 the Plaintiffs were obtaining business loans for construction of a commercial 18-hole golf course, which was not intended for the personal, private use of the Plaintiffs.

p. 23: From her testimony and other evidence, the court finds that as of the November 9, 2006 meeting the Bank was developing an exit strategy from this loan, other than a bank liquidation of The Property. The Bank was not going to finance the entire development project, but believed that once the EIR was completed, a larger lender would provide sufficient financing for the project, pay off the Bank's loan, and carry the development through the final map with the County. (Refers to testimony by Community Bank of San Joaquin President Jane Butterfield.)

p. 25: The "build it first and then seek approval after the fact" approach generated a number of complaints and otherwise unnecessary issues for the County and Plaintiffs to address with respect to The Property and the development the Plaintiffs desired.

pp. 27-28: As an undercurrent to the arguments presented by Plaintiffs, a theme is developed that Plaintiffs are simple folk and relied upon the advice of County representatives to embark on this multimillion dollar development of The Property. ....

The court does not find the testimony and arguments presented by the Plaintiffs that they relied upon the advice and direction of County representative to be either credible or plausible. The court

finds that the Plaintiffs were and are sophisticated business persons who hired professionals to represent them in the development and marketing of their destination golf resort, Trinitas.

p. 29: At the heart of this strategy is a “it is better to seek forgiveness than to get permission” approach to land use and real estate development. This strategy for development and use of The Property was first demonstrated when Plaintiffs acquired The Property and set out to remodel a barn into a residence. It was not until the County code officers contacted the Plaintiffs about work having been done on the barn without permits that the Plaintiffs undertook an after-the-fact documentation of the construction.

p. 36: First, the Ag-Coalition, as the sponsor of the 2005 amendments, intentionally drafted and proposed a definition of Agritourism in a manner to leave open and uncertain what actual economic activities the Board of Supervisors intended to constitute Agritourism. This stands in contrast to other provisions in the Calaveras County Zoning Ordinances which permits specific activities. In doing so the Ag-Coalition was insuring that future disputes would arise as to what is permitted and that some governmental body would have to make the ultimate determination. (Refers to Calaveras County 2005 agritourism ordinance and the advisory group that drafted it.)

p. 42: The court does not find persuasive Plaintiffs' contention that since they grow olives on The Property, then whatever other use they make of The Property, such as building a multi-million-dollar golf course is an agricultural activity.

p. 43: The Plaintiffs' argument that so long as they grow something on the land, then it is an agricultural activity and then they can do whatever such activity they want is incorrect.

p. 51: The multi-million dollar development of agricultural land into a commercial 18-hole golf course is not consistent with the enumerated examples provided by the Board of Supervisors. (refers to Calaveras County's 2005 Agritourism ordinance.)

p. 52: This commercial 18-hole golf course is clearly no crosscountry ski, hiking, nature walking trail. By the Plaintiffs' own accounting, the development of the commercial golf course on The Property has cost in excess of \$7,093,517.00 since 2004. There has been significant grading and altering of the natural terrain and flora. Not only is The Property not being used in its agricultural form, the existence of the golf course precludes its use for growing, harvesting, and sale of any agricultural commodity.

pp. 51-52: Golf is expressly provided for in 11 of the 21 Calaveras County-base property zoning districts. The court will not presume that the Board of Supervisors had a secret, unstated intention to have golf included as Agritourism on property zoned for agriculture.

p. 53: The Plaintiffs request this court to ignore what the Board of Supervisors expressly permits in the Zoning Ordinances, and instead have the court rewrite the statute to state what the Plaintiffs desire. The court will not insert itself into making the economic, societal, political, and practical decisions for the Calaveras County Board of Supervisors, or presume that this court has greater wisdom to write a permitted use which does not exist into the Zoning Ordinance.

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

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

p. 63: The 18-hole commercial golf course being operated on The Property is a public nuisance.

p. 65: The court shall enter judgment in favor of the Defendant Calaveras County on the Seconded Amended Complaint denying all relief requested by the Plaintiffs. Further, the court shall enter judgment on the Counterclaim in favor of Calaveras County and against the Plaintiffs, and each of them, for a permanent injunction enjoining the use of the 18-hole golf course on The Property, authorizing the County to abate the continued used of the 18 hole golf course on The Property through the enforcement of the permanent injunction issued by this court, and awards costs, fees, and expenses to the County. The permanent injunction is granted based on the Calaveras County Zoning Ordinances in effect as of the date of the injunction, and is subject to modification based on future amendments to the Zoning Ordinances for the permitted uses of The Property.

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

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