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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
23 FOR THE COUNTY OF SOLANO

24 FRIENDS OF LAGOON VALLEY,  
25  
26 Petitioner and Plaintiff,  
27  
28 vs.  
29 CITY OF VACAVILLE and CITY OF  
30 VACAVILLE CITY COUNCIL,  
31 Respondents and Defendants,

32 TRIAD COMMUNITIES, L.P., LAGOON  
33 VALLEY MPC LLC, et al.  
34  
35 Real Parties in Interest  
36 and Defendants.

Case No. FCS025789

ASSIGNED FOR ALL PURPOSES TO THE  
HONORABLE DONALD R. FRETZ (RET.),  
DEPARTMENT TBA

**CITY'S AND REAL PARTIES' JOINT  
OPPOSITION TO PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
INJUNCTIVE RELIEF**

DATE: August 25, 2005  
TIME: TBD  
DEPT: TBD  
JUDGE: Hon. Donald R. Fretz

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1 I. INTRODUCTION

2 The City of Vacaville ("City") and Real Parties in Interest Triad Communities and Lagoon  
3 Valley MPC (collectively "Triad") hereby submit this joint opposition to Petitioner's brief.

4 The City fully complied with the State Planning and Zoning Law, including the State  
5 Density Bonus Law, in approving the Lower Lagoon Valley Policy Plan Implementation Project  
6 (the "2005 Project"). Petitioner claims that the City could not have done so because the  
7 2005 Project is not identical to the development originally anticipated by the Lower Lagoon  
8 Valley Policy Plan. Petitioner picks three General Plan policies out of over one hundred, and one  
9 aspect of a one-hundred page Policy Plan, and claims that variations between the 2005 Project  
10 and these items render the Project legally inconsistent with these plans. Reduced to its essence,  
11 Petitioner's claim is that legal consistency with a general plan requires a project to be identical to  
12 the plan. This is contrary to the overwhelming weight of statutory and case law authority.

13 Petitioner's arguments ignore the fact that the City has discretion under the law to balance  
14 competing policies and objectives to protect the environment and implement the most current  
15 thinking and innovation in land use planning. Specifically, in this instance, the City balanced the  
16 massive development allowed under the 1990 Policy Plan with a desire to build a more  
17 environmentally sensitive project, with 70 percent less traffic than maximum allowable Policy  
18 Plan buildout. The result is a walkable, livable, sustainable, mixed-use community, that is  
19 consistent with the goals of the General Plan and the Policy Plan, and is strongly supported by the  
20 City Council as well as members of the public. Under Petitioner's interpretation of the law, the  
21 City would have no choice but to include a six-lane road where only four lanes are needed.  
22 Similarly, Petitioner would force the City to approve construction of a massive big-box retail  
23 development on sensitive wetlands, even though neither the developer, nor the City, nor the  
24 public desire it. This is contrary to common sense as well as settled law.

25 An exact match between a project and a plan is not legally required. Moreover, variation  
26 from certain policies or aspects of a plan is expressly allowed. Petitioner seems to argue that the  
27 Policy Plan demands one specific, inviolate project. That is simply not how the Planning and  
28 Zoning Law works.

1 In particular, Petitioner claims the 2005 Project is inconsistent with the Policy Plan  
2 because it involves more residential development, less commercial development and less traffic  
3 than the Policy Plan anticipated at full buildout. These variances are proper under the law,  
4 however, because they: (1) reflect the inherent balancing of policies, goals and objectives within  
5 a plan, which the City has broad discretion to undertake; (2) are specifically authorized under the  
6 Policy Plan itself; and (3) are specifically authorized under the State Density Bonus Law, which  
7 effectively preempts the Vacaville General Plan and the Policy Plan with respect to these issues.

8 Petitioner also claims that the City violated the State Density Bonus Law in approving the  
9 Project. These claims are rife with unsupported speculation and are not substantiated by any  
10 authority. Moreover, most of them are barred by Petitioner's failure to exhaust administrative  
11 remedies. For example, Petitioner claims that the Density Bonus Law prohibits a City from  
12 granting a density bonus in excess of 35 percent. Petitioner's claim relies on a subsection of that  
13 law that is not relevant to this case. The relevant subsection, which Petitioner attempts to ignore,  
14 provides that, *notwithstanding any other provision of the law*, a city may grant a density bonus of  
15 *any amount*. In other words, a developer cannot force a city to grant a density bonus greater than  
16 35 percent, but a city can grant a greater density bonus if conditions warrant. Thus, the City's  
17 approval of a 40 percent density bonus for the 2005 Project, in exchange for substantial  
18 considerations from the Project in the form of senior and affordable housing, permanent public  
19 open space, and financial contributions to community benefits, was proper.

20 For all of the foregoing reasons, the City and Triad respectfully urge the Court to deny the  
21 Petition and Complaint and uphold the City's approval of the 2005 Project.

## 22 II. STATEMENT OF FACTS

23 The Lower Lagoon Valley sits at Vacaville's southern boundary, adjacent to Interstate 80.  
24 It is a largely fallow open area that includes a major commercial nursery operation, one occupied  
25 ranch house and is adjacent to the Lagoon Valley Park. 63 AR 015792.<sup>1</sup> In recent years, the park  
26 has begun to appear rundown, and the lake within the park has become filled with silt, which is

27 <sup>1</sup> "AR" refers to the Administrative Record of these proceedings. A volume containing excerpts  
28 of frequently cited documents from the Administrative Record is included with this brief.

1 affecting its overall health and discouraging many Vacaville citizens and families from using it  
2 because they consider it unsafe, particularly for children. 2 AR 000337-40.

3 **A. The City of Vacaville Adopted the Lower Lagoon Valley Policy Plan in 1990.**

4 In 1990, the City of Vacaville annexed the Lower Lagoon Valley and adopted the Lower  
5 Lagoon Valley Policy Plan (the "Policy Plan"), as well as corresponding General Plan and zoning  
6 amendments.<sup>2</sup> 63 AR 015761-82. The City amended the Policy Plan in 1991, and it has since  
7 remained in full force and effect. The original approval of the Policy Plan represented  
8 Vacaville's official commitment to support mixed-use urban development in the Lower Lagoon  
9 Valley. 10 AR 002550. It has never wavered from that commitment, although the anticipated  
10 development has never materialized.

11 The Policy Plan anticipates the eventual buildout of 730 homes on about 255 acres  
12 integrated with an approximately 175-acre "tournament-level" golf course, about four million  
13 square feet of office space in a "landscaped campus-like office setting[]" and about one million  
14 square feet of "big-box" retail. 63 AR 015800, 15818.

15 The mix of uses is intended to contribute to the overall  
16 employment, commercial and residential components of the City of  
17 Vacaville, while providing additional recreation opportunities as  
18 well as enhancing the existing regional park. . . . The basis for the  
19 planning concept included the physical requirements of  
improvements to the access roads to the site, the location of  
wetlands and the lake . . . , and the community's desire to create and  
maintain a view corridor element . . . . The enhancement of Lagoon  
Valley [] Park was also a key element of the land use concept.

20 63 AR 015802; *see also* 63 AR 015790-96, 15802, 15837, 15854-59. In addition, the Policy Plan  
21 calls for a large open space buffer to help protect and separate development from Interstate 80.  
22 *Id.*; 63 AR 015854-60. Ridges and slopes of 25 percent or more must generally remain  
23 undeveloped. *Id.*; 63 AR 015796-802. The Policy Plan also contains generalized layouts for  
24

25  
26 <sup>2</sup> A "policy plan" is a specific document recognized in the Vacaville Municipal Code  
27 (section 14.09.112.040) and required in certain areas, including the Lower Lagoon Valley. It is  
28 very similar to a specific plan, as described in Government Code sections 65450 through 65457.  
Thus, consistency with a policy plan should be determined under the same standards as  
consistency with a specific plan. Petitioner appears to concur with this approach. Pet. Br. at 11.

1 internal arterial streets, open space pathways and trails, and land uses, as well as express  
2 authorization to modify each of these attributes, as described below. 63 AR 015804-10.

3 The Policy Plan does not contain any requirement that all of the anticipated development  
4 occur. 63 AR 015799. Rather, the plan sets the stage for a residential community, a “regionally  
5 significant” office park, some regional retail, and some neighborhood-serving retail, all within the  
6 Plan’s overall objectives and the area’s physical constraints. 63 AR 015800-02.

7 Vacaville General Plan Land Use Element Implementing Policies 2.3-I 4 and 2.3-I 8  
8 generally governed the Policy Plan at the time of its adoption.<sup>3</sup> 56 AR 014167,  
9 63 AR 015790-91. Policy 2.3-I 4 required “upper-end” housing the Lower Lagoon Valley,  
10 meaning high standards of community design, including building design, streetscaping,  
11 landscaping and public amenities. 56 AR 014167. Commercial areas must also be of the highest  
12 quality design, must protect view corridors from Interstate 80, and must maintain the open space  
13 feel of the northern end of the valley where Lagoon Valley Park is located. *Id.*;  
14 63 AR 015790-92, 15804, 15821. Policy 2.3-I 8 is recited in the Policy Plan and contains a list of  
15 key goals and objectives for development in the Lower Lagoon Valley. 63 AR 015789-90.

16 The Policy Plan allows a great deal of flexibility within its basic objectives by expressly  
17 granting discretion to the Planning Director to permit, as conditional and accessory uses, uses  
18 other than those specifically targeted for various areas if he finds that doing so is consistent with  
19 the purposes of the Policy Plan and that the conditional or accessory use is compatible with  
20 surrounding uses. 63 AR 015819. Thus, for example, the Director is expressly authorized to  
21 allow residential and golf course uses in areas designated Office/Business Park upon making  
22 these findings. 63 AR 015818-19.

23 The Policy Plan also requires development to proceed under a Planned Development  
24 permit. That procedure adds a substantial layer of both regulation and flexibility by requiring an  
25 entire set of more specific regulations and design guidelines before actual development may  
26 proceed. Specifically, the Planned Development permit process:

27 <sup>3</sup> Policy 2.3-I 4 and Policy 2.3-I 8 are now set forth in substantially their prior form in a Policy  
28 numbered 2.3-I 14. 56 AR 014167; 63 AR 015790.

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is the proper mechanism in this case to clarify and update some of the standards in the Policy Plan, to adjust some of the development standards based on the proposal, and for the density bonus request. . . . The City’s Planned Development process is the proper vehicle to implement these various aspects into a development that is consistent with the overarching goals, policies and objectives of the Policy Plan.

3 AR 000688, 692; Vacaville Municipal Code § 14.09.111.010; 6 AR 001459 - 7 AR 001803 (2005 Project Planned Development submittal).

Unlike the Planned Development submittal, the Policy Plan is not itself a specific development proposal. Rather, it provides general guidelines, goals, policies and objectives to ensure a cohesive, mixed-use development, centered on a golf course and protective of the Lagoon Valley Park, views from Interstate 80 and the other environmental features of the Lower Lagoon Valley. That, in a nutshell, is the 2005 Project.

**B. Triad Communities Proposed a High Quality Mixed-Use Community Pursuant to a New Specific Plan for Lagoon Valley.**

In 1999, Triad Communities acquired property interests in the Lower Lagoon Valley. Triad subsequently proposed to construct 1,325 homes, approximately one million square feet of commercial space and a tournament-level golf course in the Lower Lagoon Valley (the “2004 Project”). 10 AR 002550-53. This proposal built upon and carried forward the fundamental policies, goals and objectives of the 1990 Policy Plan, and in many ways substantially resembled that plan. 10 AR 002550. Triad’s proposal was also governed by General Plan Implementing Policy 2.3-I 14 (described above under its former numbering as 2.3-I 4 and 2.3-I 8), as well as seventeen “Expectations of Public Benefits” formally adopted by the City Council. 10 AR 002562, 2564-65. These items reflect the City’s most current and refined policy goals and objectives for Lower Lagoon Valley.

Despite the fact that the major themes carried forward from the 1990 Policy Plan, the City and Triad decided that a new specific plan was necessary for the 2004 Project because it would nearly double the number of homes anticipated from 730 to 1,325 (no density bonus was proposed). The specific plan was also promulgated to require and ensure the implementation of enhancements to the environmental protection mechanisms and sustainable development

