



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

**950 MAIDU AVENUE, SUITE 170, PO BOX 599002, NEVADA CITY,
CA 95959-7902 (530) 265-1222 <http://mynevadacounty.com>**

Mali LaGoe
Acting Community Development Agency Director

Brian Foss
Planning Director

MEMORANDUM

March 25, 2021

TO: Nevada County Planning Commission

FROM: Matt Kelley, Senior Planner *MK*

HEARING DATE: March 25, 2021

SUBJECT: PLN19-0024; TFM19-0008; CUP19-0010; MGT20-0001; PFX19-0003; MIS20-0004; EIS19-0010 – Rincon del Rio. An application for a Use Permit to amend the Comprehensive Master Plan and revise the Tentative Final Subdivision Map, which was approved to facilitate the development of the project site as a Continuing Care Retirement Community known as Rincon del Rio.

Regarding the proposed combined application for a Conditional Use Permit and Tentative Final Map application, the Planning Department has received a number of public comment letters from various Nevada County Organizations and Business Owners who are located within Western Nevada County and who have requested to express their support for the proposed project. As part of the Public Hearing and as part of the record, staff would like to forward these letters to the Planning Commission which are attached to this Memorandum for your review and consideration.

In addition, on March 22, 2021, the Planning Department received a comment from a neighbor, Karen Abbott, with Keep Nevada County Rural concerning the proposed Comprehensive Master Plan and that it appears that it references that the proposed modified project would allow for residents who are 60 years of age or older which is not consistent with the proposed modified project description, which allows for residents who are 55 year of age or older. In reviewing the proposed Comprehensive Master Plan, it appears as indicated on page 2, that the language reads *"The Rincon del Rio campus is designed to serve adults 60 years and older, who are seeking to downsize their living environment by are still physically and socially active."*

Staff Response:

In reviewing the project description for the proposed modified project, along with the Addendum to the certified Final Environmental Impact Report and the Certified Final Environmental Impact Report as well as the project description for the original project as previously approved it appears that this is a typographical error. Thus, for consistency with the project description for the

proposed modified project along with the project description for the original project as previously approved the proposed Comprehensive Master Plan has been revised to read *"The Rincon del Rio campus is designed to serve adults ~~60~~ 55 years and older, who are seeking to downsize their living environment by are still physically and socially active."* This revision is reflected in the attached Comprehensive Master Plan, for consideration and recommendation of the Planning Commission to the Board of Supervisors.

Furthermore, on March 24, 2021, the Planning Department received a public comment letter of objection from Virginia I. Akers and Peter D. Guilbert, regarding the proposed modified project for the Rincon del Rio Continuing Care Retirement Community. In the letter, Ms. Akers and Mr. Guilbert, provide a summary of their concerns regarding the proposed modified project. Their concerns include objections to the use of an Addendum to the Certified Final Environmental Impact Report, concerns regarding the population limitation and how it will be enforced, and concerns regarding how the proposed modified project will be operated as a Continuing Care Retirement Community. In addition, Ms. Akers and Mr. Guilbert also express concerns regarding the proposed secondary emergency access road for the proposed project along with traffic impacts to both Hidden Ranch Road and Rincon Way and the proposed water and sewer alignment for the proposed modified project.

Staff Response:

Regarding the proposed modified project, many of the concerns which have been addressed by Ms. Akers and Mr. Guilbert have been as outlined and addressed in the Staff Report and the proposed Conditions of Approval, along with the proposed Addendum to the Certified Final Rincon del Rio Environmental Impact Report and the proposed Comprehensive Master Plan. The modified project as proposed would be an age-restricted Continuing Care Retirement Community campus which is similar to the original approved project and that it would allow for individually owned residential parcels and condominiums and would operate as an Equity Model CCRC, which is limited to a maximum population of 415 age-restricted residents who are 55 years of age or older within 345 residential units.

Lastly, on March 23, 2021 the Planning Department received a public comment letter from an Attorney, Donald B. Mooney, representing Keep Nevada County Rural regarding the proposed modified project for the Rincon del Rio Continuing Care Retirement Community and the 2013 Settlement Agreement which was entered into between Keep Nevada County Rural, the County of Nevada and the applicant. In the letter, Mr. Mooney provides a background and summary of the proposed modified project and provides an outline of the 2013 Settlement Agreement and the proposed Conditions of Approval for the modified project. As part of the letter, Mr. Mooney discusses the proposed revised project and outlines that while the proposed modified project would serve an age restricted senior population of 415 people within 345 living units as proposed there is concern that the population would exceed the population limitation of 415 people on the project site. In addition, Mr. Mooney also discusses that the project as proposed would not be consistent with the 2013 Settlement Agreement and that there is uncertainty as to how the population limitation can be enforced through the proposed modified project's Conditions of Approval.

Staff Response:

Regarding the proposed modified project, many of the concerns which have been addressed by Mr. Mooney have been as outlined in the Staff Report and the proposed Conditions of Approval, along with the proposed Addendum to the Certified Final Rincon del Rio Environmental Impact Report. The modified project as proposed would be an age-restricted Continuing Care Retirement Community campus which is similar to the original approved project and that it would allow for individually owned residential parcels and condominiums and would operate as an Equity Model CCRC, which is limited to a maximum population of 415 age-restricted residents who are 55 years of age or older within 345 residential units. As outlined in the Staff Report, the Department of Social Services and the Department of Real Estate allow for the operation of an Equity Model CCRC, where there is no entry fee. Residents pay only for services they need personally, as opposed to a sizeable entry-fee. As proposed, each member of the community would receive a continuing care contract in conjunction with the purchase of a single-family residence or condominium. Homeowners' purchase of a residence includes a membership in the Rincon del Rio Home Owners Association which would govern the operation of the CCRC.

Also as proposed, the modified project (similar to the original approved project), would further be required to limit the population to 415 age-restricted residents within 345 residential units, through the implementation of five tools including: 1.) Conditions Covenants and Restrictions (CC&Rs), 2.) Membership Services Agreement, 3.) Department of Real Estate Regulations regarding reasonable burden on common areas, 4.) Occupancy Verification Annual Report and 5.) Limitation of twenty-four (24) Condominium Units to be retained as rental units. Using these tools, the applicant will be able to limit the maximum population to 415 age-restricted residents, as required by the proposed modified project and Condition of Approval A.9, A.37 and B.1.D.

In addition, Mr. Mooney also discusses several of the Conditions of Approval, including Condition of Approval A.37.

Condition of Approval A.37

All construction traffic shall enter and exit the project site, via Rincon Way.

Applicants Response:

The language specified in the Settlement Agreement is not included in the revised Conditions of Approval.

Staff Response:

The 2013 Settlement Agreement modified Condition of Approval A.37, to address construction traffic. For consistency with the modified Condition of Approval, staff therefore recommends that Condition of Approval A.37 be modified as follows:

~~A.37 All construction traffic shall enter and exit the project site via Rincon Way only excepting construction traffic required to facilitate the installation required off-site infrastructure in Rincon Way. Prior to the occupancy of the first dwelling unit, a lockable gate, prohibiting~~

~~the free flow of traffic, shall be provided and maintain on the project site at the intersection of Rodeo Flat Road and the on-site emergency access road connecting to it.~~

All construction traffic shall enter and exit from Rincon Way. Construction traffic shall not be allowed to access or exit the project from the emergency access road that connects to Rodeo Flat Road except for the construction of off-site required utility improvements on Timber Ridge and Rodeo Flat Roads for the extension of the sewer line, water line and other required utilities to the site. After construction is completed, those roads shall be returned to previously existing conditions. Developer will consult with the Rancho Community Service District (CSD) regarding all construction activities necessary on or through the Ranchos road system.

As a result of the proposed revisions to the proposed Conditional Use Permit (CUP19-0010) and supportive Comprehensive Master Plan, subject to the recommended revised Condition of Approval, staff requests that should the Planning Commission choose to recommend that the Board of Supervisors approve the requested Conditional Use Permit and supportive Comprehensive Master Plan, that the action reflect the recommended revised Condition of Approval A.37 as shown above.

Also attached is a copy of the Defense and Indemnification Agreement included as Exhibit G for review by the Planning Commission which is included as Attachment 2 to this Memorandum.

Attachments:

1. Updated Page 2 – Comprehensive Master Plan, Rincon del Rio
2. Public Comment Letters Received
3. Amendment No. 2, Development Agreement, Defense and Indemnification Agreement, Exhibit G

disturbance area to an envelope of approximately 40 acres located on the western half of the site. This allows for more than 170 acres (80%), more or less, of open space.

This Continuing Care Retirement Communities (CCRC's) offer services and housing in an “aged restricted campus setting” that includes independent living, memory/assisted living options, physical rehabilitation, food service, social activities, and cleaning and home maintenance services. Seniors who are independent may live in a single-family cottage or bungalow home, attached condominium unit, or village loft design within a campus setting where the residents can rely on security and services designed to allow one to “age in place”. The Rincon del Rio campus is designed to serve adults 60 55 years and older, who are seeking to downsize their living environment but are still physically and socially active. Occupancy within the CCRC will be by fee title to the residential unit selected.

The campus offers seniors a variety of housing options, all of which will be constructed with Universal Design principles aimed at ensuring an age-in-place option, no matter how challenging the circumstance.

Rincon del Rio is designed to serve a senior population of 415 people within 345 living units consisting of the following:

- Independent Living (Detached) Cottages and Bungalows
- Independent Living 5-plex Condominium Units
- Independent living Condominium Apartment Units
- Independent Living Village Center Loft Condominium Units
- Group Home Memory/Assisted Living facility

The Rincon del Rio CCRC also offers a self-contained Village environment with a variety of amenities and services including, but not limited to the following:

CCRC Operation

The CCRC Campus allows for individually owned residential parcels and condominiums. The uses and membership offers are consistent with Section L-II 2.7.12 – Continuing Care Retirement Combining District of the Land Use and Development Code Zoning Regulations. The Project is an Equity Model CCRC, and land uses proposed are identical to those proposed in the existing CUP approval.

The Department of Social Services and the Department of Real Estate allow for an approval of Equity Model CCRCs, where there is no entry fee. The Model allows consumers to purchase a home and pay monthly fees. If long-term care is ever needed, in-home care is provided, when possible. Otherwise, the resident is moved to assisted living or memory care provided on-site. Residents pay only for services they need personally, as opposed to a sizeable entry-fee required to defray the costs of those who entered suspecting they would be taking advantage of the fixed monthly rate.

Pursuant to Section L-II 2.17(B) of the Land Use and Development Code Zoning Regulations the Project will provide the following:

Matt Kelley

From: Brian Foss
Sent: Monday, March 22, 2021 7:43 AM
To: Matt Kelley
Subject: FW: Rincon del Rio Project Approval

From: Keoni Allen <keoni@sfccinc.com>
Sent: Sunday, March 21, 2021 3:00 PM
To: Brian Foss <Brian.Foss@co.nevada.ca.us>
Subject: Rincon del Rio Project Approval

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Nevada County Planning Commission
950 Maidu Ave,
Nevada City, Ca.

Re: Rincon del Rio Project Approval

Dear Nevada County Planning Commission, please accept my below comments in support of the Rincon del Rio project scheduled for Thursday, March 25, 2021.

We are experiencing an acute housing shortage in Nevada County. Since our senior residents, 55 years of age and older are our largest demographic group, Senior Housing should be our highest priority.

- 1) Rincon del Rio will not only provide desperately needed housing for our seniors, which will allow current senior residents to remain in Nevada County, maintaining their current business, financial and personal relationships locally, it will also:
- 2) Free up Rincon del Rio residents existing homes for purchase by growing local families. Our current existing housing stock is at historic all-time low in number of existing homes on the market. Our existing residents are being forced to move out of the area to secure housing for their families.
- 3) In addition, Rincon del Rio will generate millions of dollars of much needed property tax revenue for Nevada County.

Rincon del Rio was previously approved by Nevada County and is now simply fine-tuning minor issues which reflect new legislation and market driven improvements. Please approve this much needed project as soon as possible. Thank you!

Keoni Allen, 130 East Main St. Grass Valley, Ca. 95945

March 19, 2021

Nevada County Planning Commission
950 Maidu Avenue,
Nevada City, CA 95959

RE: Support for Rincon Del Rio

Dear Commissioners:

The Nevada County Contractors' Association is pleased to support the revised application for Rincon Del Rio.

Nevada County is in dire need of additional housing units especially for seniors looking to age-in-place in a retirement community. It will be a viable option for current residents who want to downsize to sell their current home, yet remain in Nevada County as residents and taxpayers, and maintain their assets, friendships and business connection in Nevada County. It will reduce elder migration out of the County and increase the quality of life for seniors. In addition, it will free up much needed housing for the younger population.

The revised application for Rincon del Rio is the same project that was approved in 2014 by Nevada County, with the exception that the dwelling units will be sold to the residents in fee title, like all homes are. It will still be a Continuing Care Retirement Community (CCRC) but it will be an "equity model," which is more advantageous to the consumer and the provider. This will allow the residents to benefit from the property appreciation and allow Nevada County to assess property taxes. The Rincon del Rio project is still age restricted to seniors 55+ years of age and the population cap is enforceable by the Homeowners Association.

Rincon del Rio will have many positive impacts for Nevada County; it creates a vital linkage for emergency access, which is a huge public benefit for those homeowners in LOP and LOP Ranchos; it generates property tax income for Nevada County, which is estimated at build-out that the property tax income will exceed \$5 million per year. It will provide many well-paying jobs and many local construction jobs. Much of the cost of construction will stay local recirculating through-out our community. Needless to say, it will have a huge economic benefit for the community.

I respectfully request that you recommend approval to the Board of Supervisors.

Sincerely,


Brittany Young and Team at Youngs Carpet One



[In The Home Center](#)

330 Idaho Maryland Road
Grass Valley, California
95945

530.273.5568
530.273.1849 Fax
SCL 622809

QUALITY INTERIORS SINCE 1972



NEVADA COUNTY CONTRACTORS' ASSOCIATION

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March 19, 2021

Nevada County Planning Commission
950 Maidu Avenue,
Nevada City, CA 95959

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The revised application for Rincon del Rio is the same project that was approved in 2014 by Nevada County, with the exception that the dwelling units will be sold to the residents in fee title, like all homes are. It will still be a Continuing Care Retirement Community (CCRC) but it will be an "equity model," which is more advantageous to the consumer and the provider. This will allow the residents to benefit from the property appreciation and allow Nevada County to assess property taxes. The Rincon del Rio project is still age restricted to seniors 55+ years of age and the population cap is enforceable by the Homeowners Association.

Rincon del Rio will have many positive impacts for Nevada County; it creates a vital linkage for emergency access, which is a huge public benefit for those homeowners in LOP and LOP Ranchos; it generates property tax income for Nevada County, which is estimated at build-out that the property tax income will exceed \$5 million per year. It will provide many well-paying jobs and many local construction jobs. Much of the cost of construction will stay local recirculating through-out our community. Needless to say, it will have a huge economic benefit for the community.

I respectfully request that you recommend approval to the Board of Supervisors.

Sincerely,

Barbara Bashall

Barbara Bashall

Government Affairs Manager

NEVADA COUNTY CONTRACTORS' ASSOCIATION

Weiss

Landscaping/Maintenance/Installs

Weiss Landscaping

402 Lower Grass Valley Rd,

Nevada City, CA 95959

CSL #992981

www.goweisslandscaping.com

March 22, 2021

Nevada County Planning Commission
950 Maidu Avenue,
Nevada City, CA 95959

RE: Support for Rincon Del Rio

Dear Commissioners:

I have had the opportunity to serve the homeowners and community in Eskaton Village in Grass Valley for 5 years. I have seen firsthand how this type of community enhances the lives of those who live there. The homeowners can walk together daily, enjoy the rec center, lodge activities and so much more.

I also serve on several committees at Eskaton and have become friends with many of the homeowners. They are so thankful for their community within our community and have said if it were not for the Eskaton lifestyle and services, they would have moved out of our community seeking those services elsewhere. Until now, Eskaton is the only community of its kind in Nevada County.

We have an incredible opportunity for our community with the Rincon Del Rio project. Rincon will allow for over 400 residents to enjoy an incredible lifestyle so needed for our aging population. This new community will be state of the art with amenities second to none. This will attract both relocates from our area as well as transplants from afar.

Rincon del Rio will also have many positive impacts for Nevada County. Many well-paying jobs, increased tax base, many local construction jobs, and new routes for emergency access.

I believe in and support an approval request to the Board of Supervisors for the Rincon del Rio project.

Thank you for your consideration,



Bob Zucca

Co-Owner Weiss Landscaping, Inc.

Office: 530.271.7478; Cell: 530.913.320

www.goweisslandscaping.com

t. 800.300.1658

f. 530.272.3450



March 22, 2021

Nevada County Planning Commission
950 Maidu Avenue
Nevada City, CA 95959

RE: Amendments to the approved Rincon Del Rio Master Plan

Dear Planning Commissioners,

On behalf of the Greater Grass Valley Chamber of Commerce, it is our pleasure to submit a letter supporting the proposed amendments to the approved Rincon Del Rio Master Plan.

We are pleased that the developer reevaluated and changed their CCRC model from an entry-fee to an equity model, which adds the benefit of homeownership and entitlements equal to residential ownership.

Within this unique model, the homeowner's financial investment is truly an investment, building lasting equity. The homeowner within the CCRC may set the listing price, sell the home, retain any profit, and once sold, the house returns to senior housing inventory reselling with reassessed property tax.

The modification supports a diversity of choices for senior housing and continual life care opportunities. The buildings and independent living housing conform to the 2020 Green Building criteria, embracing green construction strategies and practices that support the homeowner's comfort and wellness while working to achieve net-zero goals.

With an emphasis on creating a style of living that enhances spiritual and physical well-being, the amenities and planned programs are within walking distance and support education, creativity, exercise, and outdoor recreation. Group transportation and car-pooling to off-site shopping and social and recreational activities are geared to reduce traffic volume and reduce greenhouse gas emissions.

High-paying jobs for construction, community management and administration, restaurant and retail positions create locally sourced workforce job opportunities contributing to economic vitality and increased sales and use tax.

We ask that the Planning Commission approve the amendments as presented to the Rincon Del Rio project, which will increase senior housing inventory and be a significant contributor to the county's economic vitality.

Sincerely,

Robin Galvan Davies

Robin Galvan Davies, CEO

Robert Medlyn

Robert Medlyn, Chair of the Board

Greater Grass Valley Chamber of Commerce
128 East Main Street, Grass Valley, CA 95945 • (530) 273-4667 • grassvalleychamber.com



"Committed to a Higher Standard"

March 19, 2021

Nevada County Planning Commission
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

Cc: Matt Kelley, Senior Planner

Dear Nevada County Planning Commissioners:

The governing body of the Nevada County Association of REALTORS is pleased to submit a letter of support for Rincon del Rio based upon our belief that our county will benefit from this project in multiple significant ways:

- A) Rincon del Rio will allow seniors who are tired of maintaining properties to sell their homes and downsize to a healthy, abundant-living, successful aging community in Nevada County..
- B) Our residential listing inventory is currently at a historic low (approximately 57% lower than last March), creating an over-heated market that is pushing our affordability index lower as home prices rise. We desperately seek more home stock to meet the demand and our community's ability to balance the home purchasing needs of first-time home buyers, young families and the local workforce.
- C) Rincon del Rio provides an additional option for our current aging population with its green, low carbon footprint, smart growth community to help keep a vibrant portion of our residents in Nevada County rather than them moving to Placer County or out of state. The development will also generate significant property tax revenue vital to the County's financial well-being.
- D) Once Proposition 19 is fully enacted in April of 2021, we will see an increasing demand for homes in Nevada County for the senior population due to the recreational activities and quality of life Nevada County offers, placing further stress on our limited housing stock.
- E) The population that Rincon del Rio will serve is one that is critical to our abundant support of local non-profit organizations that are so vital to our community; This population donates their time and savings to many varied non-profit organizations as well as supporting local businesses.

It is our hope that the Planning Commission will seriously consider our critical need for additional housing stock in Nevada County and issue a favorable determination on Rincon del Rio.

Sincerely,

Diane Spooner, 2021 President

Virginia I. Akers
Peter D. Guilbert
23189 Hidden Ranch Road
Auburn, CA 95602

March 20, 2021

Nevada County Planning Department
Matt Kelley: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Hand Delivered and Sent by Email to Matt Kelley: matt.kelley@co.nevada.ca.us
Please make a part of the official record

Re: Rincon del Rio project

Dear Mr. Kelley:

After reviewing the latest proposed revisions submitted to the County on the above project referred to as the "proposed modified project" (hereafter referred to as the "modified project") set for hearing before the Planning Commission on March 25, 2021 along with the various Attachments and Staff Recommendations, we submit the following objections and concerns as supported by the undersigned.

We contend this modified project is not a minor amendment as defined in County codes and should require a new application along with a new and updated EIR including traffic studies and current fire plan. In addition, the modified project violates the Settlement Agreement and Release executed among Plaintiffs Keep Nevada County Rural, Karen Abbott, Patricia and Benton Seeley, Billie Prestel and Real Party Young Enterprises, L.P. along with Respondent County of Nevada (herein referred to as the "Parties") last dated 11/21/13. In the Recitals, the "Project" as referred to in the lawsuit was strictly defined as follows:

" . . . means the Rincon del Rio project approved by the Nevada County Board of Supervisors on April 9, 2013, including the final project Conditions of Approval and Mitigation Measures, the final Ordinances and Resolutions for the various entitlements associated with the Board's action, the Project Site Plan, Tentative Map, Grading/Infrastructure Plan, Circulation Plan, Comprehensive Master Plan, Architectural Summary, Floor Plans, Elevations, Landscape Plan, Lighting Plan, and the further minor modifications to the Project specified in this Agreement."

In the Agreement section, the Parties agreed that the Recitals were incorporated therein making them an integral and enforceable part of the Settlement Agreement.

Though not Plaintiffs in the original lawsuit, we contend that the recent modified project violates the Settlement Agreement as outlined below. These violations include, but are not limited to, the following:

1. This combined application for a Use Permit to amend the Comprehensive Master Plan and revise the Tentative Final Subdivision Map is by its very nature a violation of the Settlement Agreement. The Project, as approved, did not provide for fee title ownership of any of the residential units which would total 323 individually owned parcels/units governed by a homeowners association (hereafter "HOA"). The approved Project provided for a single owner (Young Enterprises, L.P.) of the CCRC and all of the dwelling units, businesses and related buildings and amenities contained therein thus retaining control over the entire RDR Project.

The modified project provides that virtually all residential units (323 mostly two-bedroom plus a den which could potentially hold 6 people each) would be privately owned and governed by a HOA. Under the modified project, the only remaining CCRC component, (the Group House Memory Care/Assisted Living facility comprising 22 units (with 88 beds and the 24 rental units), would presumably be owned and controlled by Young Enterprises, L.P. **This is a material change to the Project as defined in the Settlement Agreement.** This change of ownership and control also removes the enforcement mechanism for the population cap of 415 residents and none of the "fixes" offered by County Counsel or the Planning Commission are feasible or legally enforceable as regards private property ownership.

We know of no legal authority that gives a HOA the legal right to limit or enforce the number of residents on, or expel homeowners from, privately owned property nor does the Department of Real Estate, the Department of Social Services which is the agency responsible for approving, monitoring and regulations CCRC providers, nor Nevada County Counsel have such authority. In fact, in the conditions of Approval and Mitigation, Monitoring and reporting Plan (MMRP), it clearly states "Notwithstanding any provision of this Declaration to the contrary, and with respect to matters within the regulatory powers of the County, including, but not limited to the development agreement and the conditions of approval for the subdivision map for the Development, the County *has the right, but not the duty, to enforce the terms of this Declaration in the County's absolute discretion* (emphasis added). The County is the last line of defense in enforcing the 415 population cap. A right without a remedy/duty is hollow and worthless and fails to protect the very group for which it was intended. Section 1771(p)(10) of the Health and Safety Code provides that no homeowner's association may be a *provider*, so presumably all of the laws governing CCRC's would not apply to a HOA.

Paragraph 18 under the heading "Use Permit" provides for a maximum of 415 age-restricted residents and states "No increase in population of the site is allowed at any time". Based on that provision, an annual census of the population is not acceptable since that does not assure that the population cap has not been exceeded for the remaining 364 days of the year. Such a census should be conducted no less than quarterly and preferably monthly. In addition to no enforcement provision, there is no penalty provision for exceeding the 415 population cap nor any provision for determining who will be expelled once the 415 population cap occurs. There is even an indemnity and hold harmless clause as to the County for Owners or Occupants' failure to

comply with the CC&R's or Conditions of Approval which begs the question as to who is going to enforce the population cap.

In determining the population cap, guests, roommates and other non-owner residents must be included and there are no provisions to define those individuals nor to ensure they are included in the census and reporting. Also, there is no age-related restriction on guests or who will enforce how long these non-age complying guests could remain on the property. At what point does a "guest" become a resident. What happens when the grandkids come to visit for a month or the summer? This belies the active senior component to the development and veers more toward any common family-oriented subdivision with its attendant noise and traffic.

Despite all of the proposed requirements for maintaining the population cap of 415 including CC&R's, occupancy census and annual reporting, homeowner's response and cooperation requirements, compliance with reporting requirements, etc., all reporting requirements and owner responses are self-regulating with no agency or legal authority oversight. Under Section 2.3, Compliance with Reporting Requirements, it leaves it up to the Owner to ensure compliance. Despite all the verbiage on reporting, there is STILL NO ENFORCEMENT PROVISION OR ENFORCEMENT AGENCY in place to assure compliance with these requirements. Tasking the HOA with enforcement of the population cap by expelling excess residents (their senior neighbors) is untenable and probably illegal.

The County has a provision that no new dwelling units be constructed until the previous ones are 70% occupied. Coupled with that, the ONLY reliable enforcement mechanism for controlling the 415 cap is that no additional dwelling units could be constructed once the population cap of 415 persons has been reached and that moratorium would remain in effect until the population drops below the 415 cap. In addition to the requirement that residents provide proof of age, they must provide the number of individuals who will reside in each dwelling unit at close of escrow. Any time thereafter if the number of persons increases or decreases, it must be reported within a fixed time period such as five to ten days after a change in occupancy. If the occupancy reaches 415 before the entire 323 units are built, so be it. The occupancy cap is the controlling factor in this project, not the number of dwelling units Young would like to build. Though we believe the 415 population cap number was excessive for this location, that number was agreed upon by all of the Parties to the prior lawsuit as a compromise and enshrined in the Settlement Agreement. Young now seeks to build her wished-for senior subdivision (referred to by her as "Del Webb on steroids") and subvert the terms of the Settlement Agreement by changing the project from a Young Enterprises, L.P. owned and controlled CCRC project that had control over the population cap to an HOA which has no mechanism for control or enforcement.

2. The modified project asserts that it is a Continuing Care Retirement Community (CCRC) offering services to a population aged 55 and older. The revised Comprehensive Master Plan (hereafter "CMP") dated February 2020 states that the campus is designed to serve adults 60 years and older which in the latest iteration has lowered to age 55. **The original approved Project had a minimum age of 60 so changing the age to 55 is another material change from terms of the Project as defined in the Settlement Agreement.**

3. The Project as approved has morphed from Cottages, Bungalows, duplexes and 4-Plexes to Cottages and Bungalows on individual parcels, 5-Plexes and 14-Plexes as well as apartment units to loft units in the Village Service Center to now include 24 rental units not previously included in the approved Project. **This new configuration is not what was approved under the Comprehensive Master Plan in the Settlement Agreement.**

4. The approved Project included a separate assisted living component and nursing care both of which components of a CCRC have been removed under the modified project. The modified project now refers to a Group House Memory Care facility/Assisted Living which will not be built, if ever, until the later phase. The Assisted Living designation has been added to what was previously only designated as Memory Care (88 beds) in a careful effort to disguise the fact that there is no traditional independent Assisted Living function in the modified project. Assisted Living Services are defined in H&S Code Section 1771(a)(5) and Assisted Living Unit is defined in H&S Code Section 1771(a)(6). **This is another change from the Comprehensive Master Plan approved by the County as covered under the Settlement Agreement.** Any assisted living or nursing care will now be provided by outside, third-party providers and not as a component of this so-called CCRC.

5. The approved Project's Tentative Map provided that the project site could be subdivided from four lots to 14 lots. The modified project would require at least 102 individual residential lots and 221 other individually-owned parcels/units containing the condominiums, the Village Center, Memory Care facility, other facilities and designated open space for a total of **323** parcels. There are 699 designated parking spaces for a population of 415 which seems excessive. **This is a material change to the approved Tentative Map and a clear violation of the Settlement Agreement.** If Young Enterprises, L.P. wants to build a subdivision, an entirely new EIR should be conducted because the old one is outdated and irrelevant as concerning the modified project.

6. Young Enterprises, L.P. requested, and was granted, several exceptions to the Nevada County Road Standards. The modified project requests an exception for the emergency access roadway exceeding the maximum allowable roadway grade. It further seeks an exception from the road right-of-way widths on Rincon Way from a 50-foot width to a 30-foot width. The petition would allow for the elimination of vegetation management on either side of the roadway previously required of the CCRC. There is also a request for exception for the interior primary access roads including a reduction of the right-of-way width from 50 to 40 feet and shoulder width from 4 feet to 2 feet when AC dike is used. This is yet another deviation from the approved Project and constitutes a fire danger to the existing residents of the surrounding parcels as well as the residents of the RDR project. **This is also a violation of the Settlement Agreement.**

7. Apparently the County intends to form a PRD to enforce road maintenance on Rincon Way from Highway 49 to the project. **This is a violation of the Settlement Agreement** which provides that Real Party and/or the Owner of the CCRC (not a HOA) shall solely bear all road maintenance obligations during Project construction as well as all ongoing maintenance costs for the aforementioned portion of Rincon Way. Portions of the proposal state that these costs will be funded by the CCRC. Future revisions, however, would require approval of 2/3 of the landowners who would be part of the PRD. This is contradictory since the CCRC will no longer

own the entire project while the individual property owners will be part of a HOA that can vote to change the agreement. Any such agreement must include the HOA as well as the CCRC (which only retains ownership of the Memory Care facility and the 24 rental units) as a binding agreement to both entities. Any such agreement must specifically exempt in perpetuity the surrounding property owners from the PRD which was a specific element of the Settlement Agreement.

8. Section 5.2(b) of the Development Agreement provides that the project shall be subject to the applicable substantive and procedural provisions of the County's General Plan, zoning, subdivision and other applicable land use ordinances and regulations in effect when such an amendment or modification request is approved. It also says that the County shall not be precluded from considering and/or applying any County law or other rule, regulation, standard or policy which is in effect at the time such discretionary action is acted upon by the County. The language "shall" is mandatory. Granting exceptions, such as current road safety standards, to current provision of laws, ordinances and regulations would seem to violate this Section.

9. The modified project proposes an Alternative B under the CMP to bringing water and sewer lines through alleged public utility easements along Hidden Ranch Road and Pheasant Court to the subject property. The affected property owners have previously soundly rejected this option. The approved Project provided that water and sewer were to run on Rodeo Flat to the project site (Alternative A) which the County held was feasible and which was approved in the Project. **This is yet another material change to the approved Project and a violation of the Settlement Agreement.**

10. The Settlement Agreement was supposed to be a full and final accord and satisfaction and general release of all of Petitioners' claims against Respondent or Real Parties except for claims for breach of the Agreement. However, the Settlement Agreement further provides:

"Notwithstanding anything in this Agreement to the contrary, this does not constitute a release or waiver by Petitioners of claims that may accrue in the future or are otherwise unrelated to the Petition or the Claims or the Project, including 17(a) Any violation by Real Party of the Project's mitigation measures, Development Agreement or conditions of approval; (b) Any failure by Respondent to enforce the Project's mitigation measures, Development Agreement or conditions of approval; and **(c) Any proposals by Real Party (or its successors or assigns) to revise the Project in a manner that is inconsistent with the Project approvals and this Agreement.**" (emphasis added)

The modifications requested by Young clearly violates the provision in paragraph (c) above as they are patently inconsistent with the previous project approvals.

11. Aside from the above issues, there is still a great concern about how this modified project with its exceptions to the fire road standards will affect the surrounding parcels including fire safety, fire suppression and evacuation. These fire safety concerns have been addressed exhaustively in previous letters to the County who has continued to ignore the very real fire danger this project poses to surrounding property owners. This large project which has now become a subdivision is planned in an area that has a high fire danger rating and putting new homes ten feet

apart along with all of the other building as well as the density of residents and guests presents an increase in the fire danger and safety of not only the residents of the project but the surrounding existing Nevada County residents who should be owed a duty of protection by Board. This project should be required to bring all ingress/egress and fire safety roadways up to current State fire safety standards or the modified project should not be approved. This is placing all of residents in an unsafe situation should evacuation be required either by way of Rincon/Hidden Ranch or through the Ranchos. Any exemption from current required fire roadway standards amounts to malfeasance on the part of the approving agencies and the Board of Supervisors. Some sort of fire impact analysis should be done including how the County intends to evacuate the Higgins area in a fire such as the Paradise fire.

In fact, all references to fire issues in both the EIR and the Planning Commissions responses have addressed issues only as they relate TO the residents of the RDR project such as the type of construction materials, size of the water lines, water flow, holding tank, evacuation plan (there are only 2 ways out), etc. None of these responses have addressed the fire dangers presented BY the RDR project to the surrounding residents. In an evacuation using Rincon, the surrounding residents will be trapped in their subdivision when 415+ vehicles attempt to use Rincon to access Highway 49 which will be jammed up with fleeing residents of LOP, the Ranchos, Combie Road, Dark Horse and basically all of the Higgins area.

12. The Justification for Petition of Exceptions to Waive Subdivision and/or Road Standards letter dated July 30, 2019 addressed to Trisha Tillotson sent from SCO Planning, Engineering & Surveying does not address the exceptions requested by the project for Rincon Way and there are no justifications for granting the exceptions requested for Rincon. In fact, reducing the easement and abdicating the requirement for Young Enterprises, L.P. for vegetation management is irresponsible and further exacerbates the fire danger during evacuation and fire suppression when vegetation on the side of the roadways will be burning as we saw in the Paradise Fire.

13. Due to the requested change in demographics requested by the modified project, a younger and more active population will live at RDR all of which equates to more traffic, more noise, and more pollution. While the average age of a true CCRC is 75-80 this project will include active 55-year olds, many of whom are still of working age. Any traffic analysis needs to include employees, guests, and deliveries (UPS, Fed-Ex, USPS, Amazon, WalMart, Uber, food delivery services, etc.) which would be anticipated to be higher in an active senior subdivision than a CCRC facility due to the higher age of CCRC residents vs. active seniors. Local residents have seen a three-fold increase in such delivery traffic in the past few years. The modified project requires an entirely new traffic study, not a faulty six-page Trip Generation Qualitative Assessment conducted by R. D. Anderson & Associates, Inc. In fact, the Anderson letter should be completely disregarded since common sense dictates that active 55-year olds will make MORE not FEWER trips as indicated. Using statistical traffic from 2011 is laughable since anyone who has lived in the area in the last 10-15+ years can attest to the massive increase in traffic on Highway 49 year-over-year. It should further be disregarded since the CCRC contemplated in his Land Use description included in addition to detached and attached housing, congregate care, assisted living and skilled nursing care, the latter three which are not a component in the RDR project. In addition, it notes "Caution should be used when applying these data. CCRCs are relatively new and unique

land uses.” In fact, no comparable CCRC configuration including individual lot ownership was utilized in arriving at his findings. The Land Use attachment concludes by stating “Users are strongly cautioned to exercise proper professional judgment in applying these data.” A little common sense would also be appropriate. Finally, it states “The sites were surveyed in the 1980’s, the 1990’s and the 2000s in Connecticut, Illinois, Maryland, Massachusetts, Pennsylvania, and Virginia.” None of these states bears a resemblance to the type of driving patterns in California and are beyond outdated!!

The traffic count of 969 vehicle trips a day generated by the project is more accurate and does not include the current trips per day by surrounding residents which when totaled, equates to approximately 1200+ trips per day total on Rincon/Hidden Ranch and this doesn’t include deliveries to homeowners or businesses. There is great concern that the increased traffic will significantly overburden Young’s easement on Rincon Way/Hidden Ranch Road which is and always has been a private road. The so-called traffic study cites traffic counts on Rincon/Hidden Ranch but fails to emphasize the impact of approximately 1200+ cars a day turning onto and off of Highway 49. CalTrans has steadfastly refused to install a traffic light at that intersection and their only solution is to limit left turns in or out which will only serve as a major inconvenience and increased danger to the residents as they seek alternatives to the left-turn restrictions. At the very least, a STOP sign should be erected on Rincon where it meets Hidden Ranch Road as there have already been some near-misses at that intersection even without the increased traffic.

14. Now that there will be over 323 privately owned parcels, there are concerns about the increased amount of lighting which will be required and the impact on the night sky. The amendment claims that new lighting components will be used and this will not be an issue. The new plan calls for a total of 453 lights in the modified project. How do you go from zero light emitting from the project site to 453 exterior lights coupled with interior lights and vehicle lights and claim this would result in no substantial light that would affect our night sky. This light pollution will have a substantial effect on the surrounding residents and obliterate our dark skies.

15. The project will supposedly be constructed in a number of phases. There is no timeline of how long it is anticipated this construction will continue until all of the phases are built out. What safeguards are in place to prevent the surrounding property owners having to endure ten years or more of construction noise, construction traffic, dust, air pollution from construction equipment and attendant construction-related nuisances?

16. What safeguards are in place to protect surrounding property owners if this age-restricted project fails? An enforceable provision needs to be included in any operating agreements executed by Young Enterprises, Inc. or any successor, including the proposed HOA, that provides this project cannot be “amended”, revised, changed or repurposed to become a non age-restricted or low income housing project.

17. This project has been submitted as an Amendment to Approved Tentative Maps, Recorded Final Maps, or Parcel Maps. The County defines an amendment as “any modification or expansion of the approved use or conditions of approval.” Sec. L-IV 2.18 of the County Subdivision Ordinance allows for corrections and amendments to an approved tentative map **if the amendments have a cumulatively minor effect on the subdivision and its impacts.** (emphasis

added). The modifications requested by Young Enterprises, L.P. are anything but minor. Subdividing the four parcels into more than 323 individually-owned parcels/units is not minor. Turning the project from a single owner entity to a HOA is also not minor. The County requires that if the project site is located within the very high wildland fire hazard area severity zone, the applicant shall submit a Fire Protection Plan to be approved by the Nevada County Fire Marshal and/or his/her designee. Considering the very significant impact a subdivision of 323 individually owned parcels/units and the fact that the requested modifications are not "minor", a new subdivision project application should be submitted to include a new EIR along with new traffic studies in addition to the new Fire Protection Plan. Also, current fire safety road standards should be required with no exceptions.

Finally, the Planning Commission concludes "That the proposed project will not:

1. Adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area; and
2. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site; and
3. Jeopardize, endanger, or otherwise constitute a menace to the public health, safety or general welfare; and,
4. Adversely affect the orderly development of property or the preservation of property values."

This statement could not be further from the truth and is not based on fact or logic when one looks at the project. How does subjecting the surrounding residents to increased population, noise, traffic, ongoing construction, pollution, dust, increased fire danger, inconvenience and destruction of our rural way of life along with endangering our property values not adversely affect the surrounding residents. There are at least two property owners in the Hidden Ranch subdivision who are considering suing their sellers for not disclosing this project when they purchased their property and another who decided not to purchase when informed of the RDR project. We contend that this project will definitely adversely affect not only the surrounding residents but all citizens of the entire Higgins Corner area. Increased high population density construction throughout the County has contributed to the vastly increased traffic on Highway 49. This high population density construction has turned this once rural and bucolic area into a crowded, overpopulated bedroom community. Bringing in more people while ignoring the needs of its existing citizens and the necessity of new and modernized infrastructure (such as improved roads, enhanced fire protection and fire evacuation routes) is reckless.

Finally, what safeguards are in place to ensure that Young or its successors do not come back to the County in the future requesting to expand the project and build additional dwelling units on the remaining open space shown in the modified project?

These concerns are not all inclusive and we reserve the right to bring up any additional concerns during the public hearing process.

In short, Young Enterprises, L.P. has an approved project in place that it can build and could have built anytime since 2013. There is a valid Settlement Agreement willingly executed by the Parties and by which Young Enterprises L.P. should be bound including strict enforcement of the 415 population cap even if it means building fewer dwelling units at the project site.

Respectfully submitted,



Virginia I. Akers



Peter D. Guilbert

cc: Brian Foss, Planning
Katherine L. Elliott, County Counsel
Rhetta VanderPloeg, County Counsel
Nevada County Board of Supervisors

The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

George David Walker

~~Ernest David Walker~~

Lexi Walker

Tim H. Walker

Carrol Watkins

Myra K. Walker

James A. Walker

~~William A. Walker~~
Dorothy A. Walker

Trint Taylor

Janet Taylor, Ph.D.

Rebecca Taylor

Renée Taylor

Adrian Terevwe

~~Eric~~

Elaine Chambers

Debbie

Susan M. Reed

William W. Reed

James R. Reed

Barbara Long

Audrey M. Spence

Willa W. Winters

Janet B.

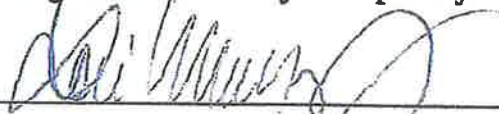
A. F. W. W.

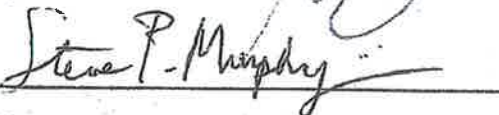
W. W.

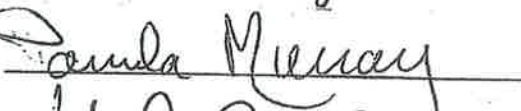
Audrey J. Johnson

Alton R. Johnson

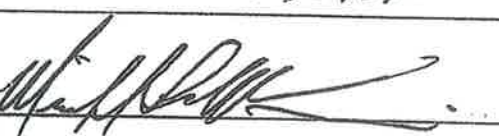
The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

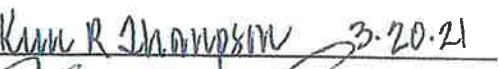

Steve P. Murphy


Paula Murray


Hil G. G.

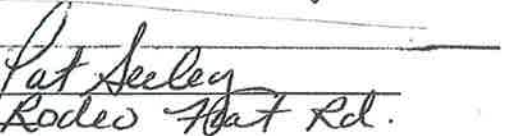

Velma Winn

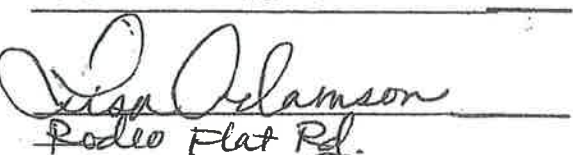

Kim R. Thompson



Norman Spaulding

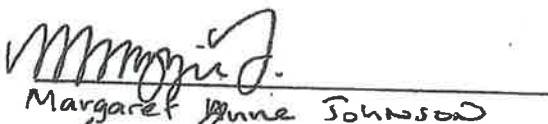

Kim R. Thompson 3/20/21

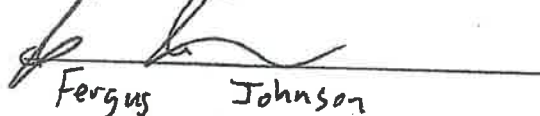

Norman Spaulding 3/22/21


Pat Seeley
Rodeo Flat Rd.


Lisa Orlanson
Rodeo Flat Rd.


Kyle


Margaret Anne Johnson


Fergus Johnson

Roger Rypma

Susan Rypma




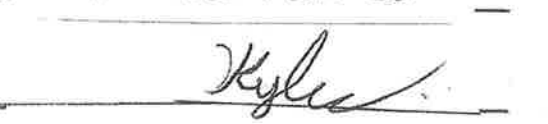



Kevin O'Callaghan


Stephanie O'Callaghan


Kyle


25270 Rodeo Flat Rd


Kyle

The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

David Vian



Kristen Vian

Kristie Vian

Hugh Staples



CHRISTERICSON



Luis M. Valenzuela



Monica Christie

Monica Christie

Shannon Simmons



Cathy S. Minnick

Brandon Strine



Patricia W. Coe

Eric Moroz, ERIC MOROZ



Don Wakefield

Don Wakefield

Robert B. Hickok

Robert B. Hickok

Missu Graham



LONG NGUYEN

Ly Nam

Joel Gomez

Joel Gomez

Chris Helms



The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

Nicole Black Nicole Black

Katelin Vian

Kathleen Haas

Kathleen Haas

Jason S Dell

Jason S Dell

Aaron Kenoyer

Aaron Kenoyer

Michael Hoskin

Michael Hoskin

Jenny Linarez

Jenny Linarez

Adam Seal

Adam Seal

Bucki Broscon

Bucki Broscon

Robert Oyer

Robert Oyer

Nathan Block

Nathan Block

Garrett Markoul 3/24
GARRETT MARKOUL

Rebecca Funk
p.p. Rebecca Funk Funk

Janeen S Oyer
Janeen S. Oyer

Aaron Hill

Zachary Hill

Zachary Hill

Bryan O'Brien

Bryan O'Brien

The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

Ch H L

~~Frank~~

Tom Munn

Lois L. Hernandez

Carol

~~Barbara~~

Angela Smith

Lizeta

David Thompson

Chad K. Booy

Sammy

Anthony Davis

Wes Kim

Pyron H. Delaney

Stacy Ailo

Paul

~~Barbara~~

Al

Janelly

Mark H

Dave Elbert

Karl Jensen

Br Wyal

~~Barbara~~

Chris

~~Barbara~~

Sten Wolcott

Mark H

The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

Ay Waj

Carol A. Viano

Le Viano

Charles D. S.

Darin Z. hola

Kym Z. hola

H. hola

Hallie M. M. M.

M. M. M. S. S. S.

A. S. S.

Max M. M.

Pamela S. V.

Janette M. M.

Max M. M.

Darin Z. hola

Kimberly Z. hola

A. S. S.

Laurel Viano

The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.



M.A. Enil

Old Laidy

Maria Quinby

Ward Quinby

Cliff Quinby

Jared Shuster

Justin Shuster

D. Novally

Tina Novally

Elizabeth Jones

Patricia Coe

Michael Coe

Sharon Quinby

Andru R. Hall

Mari Sybak

William Sybak

Nate Jones

The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

George Simmons

Mary Mills

Ken Johnson

Steve

Randy Meadows

Bi. Miles

Ken

Demetrius A. Demetrius

W. L. L. L.

Neil Bernhardt

Bruce Newell

Antony Maguire

Tom

Irene Kozowski

Scott Hall

The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

Karen M Abbott 3/20/2021
KAREN M. ABBOTT

William M. Abbott 3/20/2021
WILLIAM M. ABBOTT

Linda K. Hoffacker 3-20-2021
LINDA K. HOFFACKER

Edward D Hoffacker 3/21/2021
EDWARD D. HOFFACKER

Rosalind R Nice 3/21/21
Rosalind Nice

Nancy L. West 3/21/21
NANCY L. WEST

Peggy L. Lemasters 3/21/21

Peggy L. Lemasters (Pastor)

Sherry Warren 3/21/21

Sherry Warren

Terry D. Warren 3/21/21

Terry D. Warren

Selicia Ecker 3-21-21

Selicia Ecker

Darryl Ecker

Darryl Ecker 3-21-21

Julianne Dixon 3/21/21
JULIANNE DIXON

Bobo Diaz 03/21/21

Donna Mickel 3/21/21
Donna Mickel

allyson mickel 3/21/21
ALLYSON MICKEL

Carley Mickel 03/21/2021
Carley Mickel

Walter & Gutierrez 3-21-2021

Freddie E. Gutierrez

John Agosto 3/21/2021

Belen P. P. 3/23/21
Belen P. P.

LAW OFFICE OF DONALD B. MOONEY

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March 23, 2021

VIA ELECTRONIC MAIL

Nevada County Planning Commission
County of Nevada
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

Re: Continuing Care Retirement Community Care Facility, PLN 19-0024; TFM19-008; CUP19-0010; MGTT20-0001; PFX19-0003; MIS20-0001; EIS19-0010

Dear Commissioners:

This office represents Keep Nevada County Rural ("KNCR") regarding the Continuing Care Retirement Community Care Facility known as the Rincon Del Rio Project ("Project") and the 2013 Settlement Agreement and Release between KNCR, the County of Nevada and Young Enterprises, L.P.

The proposed modifications to the approved Project as set forth in the Addendum to the Final Environmental Impact Report violate the Settlement Agreement and Release. As approved in 2013, the Project allows for the development of a 345 Unit Continuing Care Retirement Community with a maximum senior population of 415 people. The current Application seeks to change the previous approvals to allow for a revision and relocation of some of the previously approved campus uses and to allow for individual fee title ownership of the proposed independent living single-family residential attached and detached units. The proposed revisions to the Project provide for:

- Independent Living (Detached) Single-Family Residential Cottages and Bungalows.
- Independent Living 5-Plex and 14-Plex multi-tenant condominium single-ownership units.
- Independent Living Residential Loft multi-tenant condominium single-ownership units.
- Group Home Memory/Assisted Living Facility
- Twenty-four (24) Condominium Units that would be retained by the applicant as rental units that would be utilized as Independent Living Units whose ownership would remain the applicant.

These proposed changes violate the spirit and intent of the 2013 Settlement Agreement. The Settlement Agreement sets forth very specific restrictions on future changes to the Project. To that end, paragraph 4 of the Settlement Agreement specifically provides that:

Developer shall not change, alter, operate or utilize the Property for any purposes other than as an age restricted Continuing Care Retirement Community consisting of a maximum of 345-units and 415 senior residents.”

Paragraph 5 further provides that:

Developer shall not change, alter, operate or utilize the Property for any purposes other than as an age restricted Continuing Care Retirement Community consisting of a maximum of 345-units and 415 senior residents. All community residences (village core building units, lodge units, group home and co-housing units, duplexes, four-plexes and cottages) shall never be converted to non-age restricted units such as apartments, condominiums, town-houses or single family residences.

While the Revised Project is designed to serve a senior population of 415 people within 345 living units, there is significant concern that the population will exceed 415 people. Moreover, there is uncertainty as to how Young Enterprises, the Community Association, and/or the County will enforce the population cap of 415 (1.2 persons per unit) with so many individually owned parcels and the size of the dwelling units all of which appear to have two bedrooms and two bathrooms with many having dens which could be used as another bedroom. While the Addendum and Conditions of Approval require an annual report made to the Planning Department certifying the number of residents for the previous year, this does not guarantee year round compliance. The 2013 Settlement Agreement requires that at no time can the Project’s occupancy exceed 415. Thus, any change to the Project must ensure that the population does not exceed 415 senior residents at any time during the year.

It should also be noted that the creation of an HOA (aka Community Association) to ensure that occupancy not exceed 415 violates paragraph 31 of the 2013 Settlement Agreement, which provides that the rights and duties of the parties to the Agreement may not be assigned or transferred, in whole or in part. Under the proposed changes to the Project, including provisions in the Conditions of Approval, Young Enterprises is essentially assigning or transferring its duties under the Settlement Agreement to the Community Association. (See Conditions of Approval, § A(9)(d).) Through these changes Young Enterprises will assign its’ responsibility to the Community Association for compliance with occupancy not to exceed 415. This constitutes a direct violation of the 2013 Settlement Agreement.

The revised Conditions of Approval also violate paragraph 5 of the 2013 Settlement Agreement which required modification of Condition of Approval # 19. The language specified in the Settlement Agreement is not included in the revised Conditions of Approval. Also paragraph 12 of the Settlement Agreement sets forth specific language to be included in the Conditions of Approval regarding construction traffic. The revised Conditions of Approval do not include the specified language.

The Settlement Agreement provided for the construction of off-site utility improvements for water and sewer to be within the right-of-way of Timber Ridge and Rodeo Flat Roads. the proposed Alternative B provides for routing the sewer and water lines down Hidden Ranch

Road, a private road, rather than up Rodeo Flat Road as previously approved. Alternative B also violates the Settlement Agreement. Moreover, it will result in significant impacts to Hidden Ranch Road and Hidden Ranch Estates. All residents owning parcels along the proposed route have rejected several requests for easements, since the County approved the Project. The County, Nevada Irrigation District (NID) and Sanitation Department have all approved the sewer and water lines running up Rodeo Flat Road. In order to maintain consistency with the Settlement Agreement, Alternative B must be rejected.

The revised Conditions of Approval also violate paragraph 9 of the Settlement Agreement that provides that Young Enterprises and/or the owner of the CRCC shall solely bear all road maintenance obligations during Project construction as well as all ongoing maintenance costs for Rincon Way/Hidden Ranch Road from the Project's planned gatehouse to Highway 49. The revised Conditions of Approval make the responsibility of future repairs and maintenance vague, without specifically removing current residents from any and all responsibility for future road repairs or maintenance. (See COA, § B(1)(D).)

The proposed Conditions of Approval provides that "[t]he project occupancy for the entire site and CCRC facility is limited to a maximum of 415 age-restricted residents per the project description and the Development Agreement. No increase in population of the site is allowed at any time." (COA, § A(18).) Since no increase of the population of the site is allowed at any time, does the maximum include "temporary occupants" as referenced in section A(9)(d)(5)(2.2)? How will temporary occupants be reported during the course of the year, since an report is only submitted annually to the County?

The proposed Conditions of Approval also discuss limiting the duration of visits by temporary occupants or those who do not meet the age and occupancy restrictions. (COA, § A(9)(d)(5)(2.2).) The Conditions of Approval, however, fail to define "temporary occupant" nor provide any limits on how long a "temporary occupant" may stay. Is temporary occupancy limited to 1 month, 2 months, six months, or a year? Also, at the time of the occupant survey for the annual report, are temporary occupants included in the survey number? Please note that nothing in the 2013 Settlement Agreement distinguishes between occupant and "temporary occupant." Thus, a "temporary occupant" must be considered an occupant with respect to the maximum occupancy of 415. If temporary occupants result in the population exceeding 415 at any time, that violates the Settlement Agreement.

The proposed revisions to the Project and Conditions of Approval do not provide a reasonable, legal or workable solution to the population cap as required under the 2013 Settlement Agreement. Although the Addendum and Conditions of Approval state that the applicant would impose CC&Rs for the Project, which would include a certificate of occupancy, it is unclear how such CC&Rs would be enforced. While the Conditions of Approval provide that each occupant must respond to all requests by the Community Association for occupancy information, nothing in the Conditions of Approval indicate how an occupancy above 415 would be address. For example, if the annual survey results in 425 occupants, how will the population be reduced to 415?

In light of the 2013 Settlement Agreement, the proposed Conditions of Approval create more questions than solutions. What will be the maximum occupancy for the units owned in fee

title that have 2 bedrooms and 2 bathrooms? How will the County or the Community Association determine which occupants will be removed in order to bring the population into compliance? Does the County and/or the Community Association have the legal authority to evict or remove individuals from their homes, whether rented or owned? Is Young Enterprises, the Community Association and/or the County prepared to evict seniors that may have no other place to go? Will those evicted have a right to an appeal? How will Young Enterprises or the Community Association maintain an average of 1.2 persons per unit?

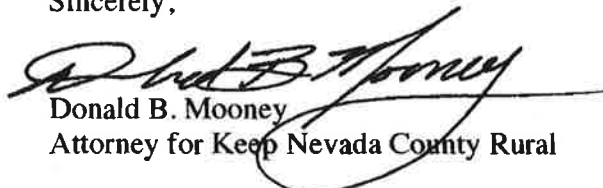
It is clear that neither Young Enterprises nor the Community Association can guarantee that the resident population never goes above 415 on *any* given day, not once a year or even quarterly especially since most of the residences will be privately owned. Deed restrictions will not address number of residents in each privately owned residence, but only for the Project as a whole. If the Deed Restrictions were to address each unit, how will the deed restrictions require a 2 bedroom unit be limited to only one resident if the population already exceeded 415 people? If so, if the population exceeds 415 does the Community Association, Young Enterprises, or the County intend to "evict" individuals from either units retained by the developer or from units that are privately owned? How will the County or the Community Association determine which occupants will be removed in order to bring the population into compliance? Will the County and/or the Community Association have the legal authority to evict or remove individuals from their homes, whether they are rented or owned? Is Young Enterprises, the Community Association and/or the County prepared to evict seniors that may have no other place to go? Will it be done by lottery or last person to have arrived? If it is last person to have arrived, how will that be determined? These unanswered questions reveal the unworkability of enforcing the 415 limit given the changes to the Project.

Under the 2013 Project, enforcement was not an issue as the provider, Young Enterprises would be the "landlord" that could legally enforce the 415 population cap. With the fee simple title based changes that authority has been assigned to the Community Association because Young Enterprises will only own and control twenty four "rental units" and the Memory Care Group Home / Assisted Living Facility, assuming it ever actually gets built. Nothing in revised Conditions of Approval, however, set forth a reasonable and/or legal process for enforcing the 415 occupancy limit.

As the proposed revisions to the Project are inconsistent with the 2013 Settlement Agreement, the Planning Commission should recommend that the Board of Supervisors deny the revised Project.

KNCR reserves the right to bring up additional issues and concerns before the Planning Commission and Board of Supervisors regarding the compliance with the applicable laws and the 2013 Settlement Agreement.

Sincerely,


Donald B. Mooney
Attorney for Keep Nevada County Rural

cc: Clients
Brian Foss, Planning Director
Matt Kelley, Senior Planner

Rincon del Rio Response to Comment Letter

Response to comment letter dated March 23, 2021 from Donald B. Mooney ("Mooney Letter") submitted on behalf of Keep Nevada County Rural ("KNCR"). The Mooney Letter asserts that for various reasons, approval of the Rincon del Rio Project, as proposed to be modified ("Project") will violate the terms of the 2013 Settlement Agreement between KNCR and the project applicant, Rincon del Rio ("Applicant"), and the County of Nevada.

The amended Project is consistent with the spirit and the letter of the 2013 settlement agreement. The changes to the Project include minor revision/relocation of some of the approved campus uses, and a change from an "entry fee" to an "equity" model CCRC.

Notably, the Settlement Agreement does not address in any way the contractual relationship between the Applicant and the residents of the Project, and there are no restrictions in the Settlement Agreement precluding an equity-model CCRC. (See Health and Safety Code Section 10771.)

A. Population limit of 415 will be met

The Mooney Letter quotes the development agreement, and the quoted provisions require that the Project not be converted to "non-age restricted" housing, and it also requires that the Project include age restricted housing with a "maximum of 345 units and 415 residents."

The letter then goes on to argue that there cannot be a single day during any given year when more than 415 people are within the community, including visitors. This is not what the Settlement Agreement provides. The Project has always been proposed to consist of 345 units with a population of 415 "residents." If the population ever reaches 415 (which is unlikely), then there may be times when someone has a relative or friend visiting, and on that day (or days), more than 415 people will be "present," but there will still only be 415 residents.

The Mooney Letter states that there is concern about how the Applicant, the HOA, and/or the County will enforce a population cap of 415, and notes that some of the homes have two bedrooms and two bathrooms. As discussed below, a tremendous amount of data exists regarding occupancy of age-restricted developments in California, and this speculative opinion that fee ownership will suddenly increase occupancy is without any basis in fact, even when considering two-bedroom units.

The assumption that the occupancy level in Rincon del Rio will be 1.2 people per unit is supported by the evidence. Not just as a possibility, but as the clearly probable outcome. In addition to the fact that there is no evidence to support the notion that the population of the Project will ever exceed 415, there are several mechanisms in place that will allow the Applicant and the HOA to enforce the population cap, with the County also having the authority to enforce these requirements against the HOA and the Applicant.

1. The evidence shows that the population level will be less than 415 residents.

KNCR is working under the assumption that because of the shift to fee simple ownership, the number of occupants in each unit will increase and will be unregulated. There is not a single piece of evidence to support this assumption.

All of the data regarding CCRCs and other similar retirement communities supports an assumption that the occupancy will, in fact, be approximately 1.2 per unit. Data also shows that developments of this type usually have an occupancy rate of about 90%. Couple this fact with the Applicant's withholding of 24 units as rental units (that can be left vacant at any time by the Applicant), and compliance with the Population cap is not only possible, but will be easily achieved.

Further, even if one assumes that the Project units will be occupied just like any other residence in Nevada County (non-age-restricted), then the relevant data would be the average the occupancy level of residential units in Nevada County.

Based on the Federal 2010 census (it hasn't changed very much in the last 10 years, per the Nevada County website):

52,590	Nevada County Households
98,680	Nevada County Residents
1.88	Residents per Household

Even without age-restriction and the layers of protection against exceedance of the population cap (described in the next section), if the units were completely unregulated in terms of occupancy, the average occupancy would be 1.88 per unit. KNCR's argument that the population will exceed 415 even *with* the age-restriction, strict deed restrictions, membership agreement, census reporting, and the adaptive pool of 24 rental units, is unsupported by the facts.

The Mooney Letter discusses a shift from the old project having the Applicant as a sort of "gatekeeper" versus the revised project where the perception is that the Applicant has no control whatsoever over the number of occupants in the community. This is not an accurate perception on either of these items. The original project was not set up like a hotel with a desk for check in, and while it did include rental of the units, there is exactly the same possibility that a member of the community may have a relative visit for an extended period, or have a child or grandchild stay with them at times. The size of the units and whether or not they are detached "cottages" or "bungalows" versus condos/apartments has not changed very much between the old project and the revised.

Statistics show that the occupancy in this type of community is not similar to single family homes elsewhere. The following table also includes projects where residents own their unit:

Community	Community Type	Address	City	State	Phone	Number of Units	Number of Residents	Ratio
Eskaton Grass Valley	IL / AL	625 Eskaton Circle	Grass Valley	CA	530-273-1778	267	310	1.161048689
Eskaton Carmichael	CCRC	3939 Walnut Ave	Carmichael	CA	916-974-2000	388	465	1.198453608
Peninsula Regent	CCRC (equity)	1 Baldwin Ave	San Mateo	CA	650-579-5500	207	245	1.183574879
Carlisle	CCRC (equity)	1450 Post Street	San Francisco	CA	415-929-0200	92	75	0.8152173913
Villa Marin	CCRC (equity)	100 Thorndale Drive	San Rafael	CA	415-499-8711	224	275	1.227678571

The number of rooms and square footage does not dictate or even indicate the number of residents. Design elements of open, flexible space with areas to accommodate modern living needs such as technology and the likelihood of retirees continuing to work should be included in unit design.

Since Project residents have the option to help in the design of their living space, they may even join rooms to create an office or hobby room. Also, many 70+ residents do not sleep in the same room and many prefer a private bathroom as well.

There is no basis for “concern” that the population cap will be exceeded because of the shift to an equity-model CCRC. As set forth in detail above, all of the data for similar developments in California shows that 1.2 occupants per unit is the most that one could expect (even in detached homes owned by the residents).

2. The mechanisms in place to ensure compliance with the population limit of 415.

The data regarding age-restricted communities similar to the Project shows that the Project will comply with the population cap. In addition, the following will ensure compliance: (1) **CC&Rs** will be adopted that will enforce the age restriction of the community, collect occupancy data, recognize the population of 415 and the settlement agreement, and comply with DRE regulations prohibition on opening project phases if the common areas/amenities would be overburdened; (2) the **Membership Services Agreement** that limits occupancy to one or two members, precludes roommate situations and/or leasing, governs the length of stay for visitors, and restricts residency to age-qualified members entering into the agreement for services and for long term care; and (3) **Occupancy Verification Annual Report**.

In addition to these layers of regulation regarding occupancy that will be enforced by the HOA and the Applicant, there are two additional safeguards. The Department of Real Estate (“DRE”) regulations do not allow a developer to move forward into phases of a development project where the population exceeds the amenities and common area. Thus, a State regulatory agency also has the authority to halt the Applicant if the population exceeds the capacity of the amenities and common area. This has been included in the proposed CC&Rs for the Project as follows (note that the DRE regulations refer to Project phases as “annexations”):

G. As part of the Declaration of CC&Rs provisions which conform to California Department of Real Estate regulations, additional provisions substantially similar to the following shall be included to clarify the DRE's phased development regulations do not permit the expansion of the subdivision beyond the size permitted by the County's conditions of approval:

The County's Conditions of Approval for the Development establish a maximum number of Units which may be annexed to the Development. Except as permitted by DRE regulation 2792.27(b) and Section ____ of this Declaration [the provision of the CC&Rs which tracks the regulation] no annexation of any real property to this Declaration shall be permitted without the written consent of the County.

Finally, the Applicant has agreed to hold 24 units as rental units. This will allow the Applicant to respond to any unexpected levels in population by leaving one or more (or all) of the units vacant for whatever period of time is necessary to maintain the level of 415 residents. These units may not be sold until the County approves the sale with the specific criteria of ensuring that the terms of the 2013 Settlement Agreement are met. The CC&R deed restricting the properties states as follows:

The subdivider reserves the right to retain up to 24 condominium units as rentals not subject to the commencement of homeowners association regular assessments until the subdivider can document to the County that the individual sale of the condominium units will not result in a violation of the terms of the 2013 Settlement Agreement.

The proposed Membership Services Agreement ("MSA") that will be signed by all residents with the "Sponsor", Rincon del Rio, upon purchase of their unit includes the following provision:

8.4 Occupancy by Additional Persons

Except as provided for guests in the Members' Handbook, a maximum of two (2) Members may live in your Unit, unless Sponsor agrees otherwise in writing in its sole and absolute discretion. If a non-Member wishes to reside with you in your Unit, (s)he must apply for admission to the Community. The decision whether or not to admit the non-Member shall be made by Sponsor in its sole discretion. If the non-Member is accepted for residency by Sponsor, you and the non-Member must sign an amended Membership and Services Agreement and pay the Monthly Fees and Regular Assessments applicable to double occupancy of your Unit. Upon your death or termination of this Agreement, the second Member may remain in your Unit and receive services under this Agreement, provided (s)he continues to pay all applicable fees and otherwise complies with this Agreement. If the non-Member is not accepted for residency at the Community, he/she will be deemed a guest subject to the visitor policies and subject to charges described in the Members' Handbook. If Sponsor permits you to have more than two (2) occupants in your Unit, the terms of residency, including the payment of monthly fees, for such additional occupants will be determined by Sponsor in its sole discretion.

All residents will also agree in the MSA that units may be sold to a "qualified buyer" only, meaning that the units will sold with clear communication to potential buyers of the age-

restriction, the continuing care contract, and the MSA that includes significant limitations on use and occupancy. The MSA provision reads as follows:

7.2 Sale to Qualified Buyer

You (or your estate, as applicable) may sell your Unit to a qualified buyer (a “Qualified Buyer”), subject to the terms and conditions of this Agreement. A Qualified Buyer is a person (or persons) who is prepared to purchase your Unit at the agreed-upon price (the “Resale Price”) and who: (i) has been approved for residency at the Community by Sponsor by meeting the standards for residence at the Community in effect at that time (including any relating to age, income, safety, and other criteria); or (ii) produces another person or persons who are so approved for residency. Sponsor shall also be considered a Qualified Buyer. Your Unit may not be sold to anyone other than a Qualified Buyer. You or your estate agree to give Sponsor thirty (30) days prior written notice of your intent to sell your Unit before offering it for sale or entering into any listing agreement or similar arrangement. The sale must be effected by means of the Resale Agreement. Sponsor has the right to approve the Resale Agreement and to change the terms of such Agreement to comply with changes in the law and to fulfill other purposes. Resales are subject to the rules contained in Section 7.8 below. The price may be whatever you agree with the Qualified Buyer, subject to the rules in Section 7.9 and elsewhere in this Agreement.

The “concerns” of KNCR regarding the resident population have been well addressed by the Applicant and the County. The population will remain at or below 415 residents through the CC&Rs, the MSA, the annual census, the rental units controlled completely by the Applicant, and the fact that all of the data in California and nationally reveals an average of just over 1 occupant per unit in this type of development. (American Senior Housing Association.)

The Mooney Letter asserts that residents will need to be “evicted” and that even one visitor over the 415 on any given day is a violation. None of these dramatic events will ever come to pass. The data shows that population levels hover around 1 per unit for these types of developments. In addition, there are layers of deed restriction, agreement, and oversight (not to mention rental unit capacity that could be left vacant). If the population level ever nears 415, the Applicant has the ability to hold rental units vacant.

The Mooney Letter goes on to assert that Paragraph 31 of the Settlement Agreement precludes the Applicant from “assigning” the duties of the Settlement Agreement. As an initial matter, Paragraph 17(c) of the Settlement Agreement specifically acknowledges the potential for the Agreement to be carried out by a successor or assign of Rincon del Rio.¹ Additionally, there is no contemplated “assignment” of obligations to the HOA. The HOA is the legal entity that will have the ability to implement the CC&Rs. The Applicant will continue to be the Project

¹ It is not necessary to resolve this issue at this time, but it bears noting that Mr. Mooney’s interpretation of the Settlement Agreement precluding any future transfer of the Project property to another owner/operator would mean that Paragraph 31 is unenforceable, as an illegal restraint on alienation. Paragraph 17(c) is a legal provision that would govern the issue of assignment or transfer in the future.

“Sponsor” as noted in the MSA, and will own and maintain the 24 rental units. There is no violation of Paragraph 31 of the Settlement Agreement.

The Mooney Letter asserts that proposed Condition of Approval (“COA”) 19 is not consistent with Paragraph 5 of the Settlement Agreement. COA 19 sets forth *verbatim* the language required by Paragraph 5 of the Settlement Agreement.

The Mooney Letter goes on to note that COA 37 does not include the language stated in Paragraph 12 of the Settlement Agreement. The proposed COA 37 in the agenda packet contains language from the original COA 37, and this was simply an artifact that was not corrected during drafting. The agreed-upon language in the Settlement Agreement will replace COA 37.

KNCR asserts that the agreed-upon language for COA 37 limits the construction of utility improvements to the right-of-way within Timber Ridge and Rodeo Flat Roads. That language (contained in Paragraph 12 of the Settlement Agreement) describes how construction traffic will be routed for construction of utility improvements on Timber Ridge and Rodeo Flat Roads. There is nothing in that Paragraph that precludes the use of Alternative B for the utilities. Alternative B is not feasible at this time because the necessary easements and permissions have not been obtained. It may be that those easements will never be obtained, but Alternative B offers significant benefit to the area in terms of fire protection. At some point the property owners in the area may reconsider and decide they would like to receive the benefits and so would be agreeable to Alternative B. There is nothing in the approval being sought from the County that takes away the authority of the individual property owners to either agree to the route or reject it. It was reviewed in the original EIR, and there is no reason to “reject” it here, particularly where it has been clearly stated that the easements and permissions have not been obtained.

As set forth in detail above, the population cap has been addressed through a multi-pronged approach to be implemented by the applicant and the HOA.

DEFENSE AND INDEMNIFICATION AGREEMENT

This Defense and Indemnity Agreement ("Agreement") is made and entered into between the County of Nevada, a political subdivision of the State of California ("County"), and Young Enterprises, L.P., ("Applicant"), and is effective as of _____, 2021. This Agreement is made with regard to the following facts:

RECITALS

WHEREAS, Applicant is the owner of the real property located in the east terminus of Rincon Way in the unincorporated area of Nevada County, at 10450 Rincon Way, Auburn CA, APNs: 057-240-017, 057-240-018, 057-240-019, and 057-130-013, for which the Applicant has Proposed Amendments to the approved May 2013 Development Agreement and the associated project approvals ("Approved Project", see Exhibit A); and

WHEREAS, the Proposed Amendments to the Approved Project consists of PLN19-0024; TFM19-0008 and CUP19-0010; and

WHEREAS, County, Applicant and persons representing Keep Nevada County Rural ("Petitioners"), entered into a Settlement Agreement and Release in the fall of 2013 to avoid further litigation expenses and disputes ("Settlement Agreement"), see Exhibit B; and

WHEREAS, it is in the public interest for County and Applicant to enter into this Defense and Indemnification Agreement as Applicant will benefit from the County's processing of the Proposed Amendments as well as the Approved Project that may result therefrom.

NOW THEREFORE, in consideration of the processing of the Proposed Amendments, the Approved Project and the mutual promises and agreements contained herein, and in satisfaction of an express condition of the Project Amendments and Approved Project, the Applicant hereby agrees as follows:

1. The Applicant agrees to defend, indemnify, and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding against the County or its elected supervisors individually, agents, officers, or employees (collectively "County Parties") to attack, set aside, void or annul the above-referenced Project Amendments and/or the Approved Project or any of the proceedings, acts or determinations taken done or made as a result of County's processing and/or approval of the Proposed Amendments and/or Approved Project or to impose personal liability against such County Parties based upon or arising out of the Proposed Amendments and/or Approved Project, including any claim, action, or proceeding under the terms of the Settlement Agreement. Applicant's obligation to defend and indemnify under this Agreement shall apply to any lawsuit or challenge against the County Parties alleging

failure to comply with the Settlement Agreement, the California Environmental Quality Act or with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Applicant's obligations under this Agreement to defend and indemnify the County Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against the County, all settlement costs and/or any claim for private attorney general fees claimed by or awarded to any party from the County. Applicant further agrees to cooperate in good faith with County in performance of obligations as set forth in this Agreement.

2. The County Parties shall notify the Applicant promptly of any claim, action or proceeding against any or all of the County Parties as described in Paragraph 1 above, and cooperate fully in the defense. Upon receipt of such notification, Applicant shall assume the defense of the claim, action, or proceeding, including the employment of counsel reasonably satisfactory to the County Counsel's Office and Applicant, and the prompt payment of the attorneys' fees and costs of such counsel. Applicant will consult with the County in good faith concerning litigation issues and in the event of a disagreement between the County and Applicant over litigation issues, the County will provide its position in writing to Applicant and within 30 days therefrom, the County and Applicant will meet and confer in good faith to attempt to resolve the disagreement. Should County and Applicant not resolve the disagreement after a reasonable period of good faith negotiations, the County shall have the authority to control the litigation and make litigations decisions, including but not limited to, settlement or other disposition of the matter. If County reasonably determines that having common counsel would present such counsel with a conflict of interest, or if Applicant fails to promptly assume the defense of the claim, action, or proceeding or to promptly employ counsel reasonably satisfactory to County, then County may employ separate counsel to represent or defend the County, and Applicant shall pay the reasonably attorneys' fees and costs of such counsel within 30 days of receiving an itemized billing therefore. At its sole discretion, the County may participate in the defense of any such claim, action, or proceeding in good faith, either through County Counsel's Office at the Applicant's expense or through outside counsel at the County's expense; but such participation shall not relieve Applicant of its obligations under this Agreement.

3. Applicant's obligations to defend and indemnify under this Agreement shall apply whether or not there is concurrent, active, or passive negligence on the part of County Parties. Applicant's obligations under this Agreement shall be effective regardless of whether any or all Project approvals, Proposed Amendments, terms of the Settlement Agreement and/or actions by the County regarding the Approved Project, Proposed Amendments and/or Settlement Agreement remain valid or are invalidated by the court.

4. Failure to promptly defend or indemnify the County is a material breach which shall entitle County to all remedies available under the law, including but not limited to specific performance and damages. Moreover, failure to defend or indemnify shall constitute grounds upon which the County decision-making body may rescind its approval(s) associated with the Approved Project and/or the Proposed Amendments, and a waiver by Applicant of any right to proceed with the Approved Project and/or Proposed

Amendments or any portion thereof.

5. Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all or any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of ownership of the real property upon which the Project is located (or any interest therein). However, the Applicant may be released from such obligations if the Applicant obtains the County's prior written consent to such transfer, which consent shall not be unreasonably withheld.

6. All notices required under this Agreement shall be in writing and shall be deemed given as of the date of actual delivery if by personal delivery or sent by a nationally recognized overnight carrier, or three days after deposit in the United States mail, first class postage prepaid, to the addresses indicated below:

For Applicant: Young Enterprises, L.P.
P.O. Box 6626
Auburn, CA 95604
Attn: Carol Young

With a copy to: Law Office of Marsha A. Burch
131 S. Auburn Street
Grass Valley, CA 95945

For County: Planning Director
Nevada County Planning Department 950
Maidu Avenue
Nevada City, CA 95959 Attn:
Brian Foss

With a copy to: County Counsel
County of Nevada 950
Maidu Avenue
Nevada City, CA 95959

Either party may change the place for the giving of notice to it by thirty (30) days prior written notice to the other party, as provided herein.

7. This Agreement shall be binding upon Applicant and his heirs, executors, administrators, assigns and successors in interest.

8. This Agreement shall constitute the complete understanding of the parties with respect to the matters set forth herein. Neither party is relying on any other representation, oral or written. This Agreement may not be changed except by a written amendment signed

by all parties.

9. It is agreed and understood that this Agreement shall be interpreted fairly in accordance with its terms to effectuate the intent of the parties and not strictly for or against any party by reason of authorship that none of them is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

10. Each party executing this Agreement represents and warrants that it has been duly authorized to enter into this Agreement, that it has full and complete authority to do so, that it has consulted with or had the opportunity to consult with an attorney prior to executing this Agreement, that it enters into this Agreement knowingly and voluntarily, and that it agrees to be bound by the terms of this Agreement.

11. This Agreement may be signed in counterparts, manually or electronically, each of which will be an original, with the same effect as if the signatures to each were upon the same instrument.

IN WITNESS WHEREOF, the County and Applicant(s) have caused this Agreement to be duly executed, as of the date first set forth above.

COUNTY:

COUNTY OF NEVADA, a political
subdivision of the State of California

APPLICANT:

YOUNG ENTERPRISES, L.P.
a limited partnership

By: _____
Alison Lehman
County Executive Officer

By: _____
Carol Young
Partner

Approved as to form:

Approved as to form:

By: _____
Katharine Elliott
County Counsel

By: _____
Marsha A. Burch
Attorney for Developer



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

**950 MAIDU AVENUE, SUITE 170, PO BOX 599002, NEVADA CITY,
CA 95959-7902 (530) 265-1222 <http://mynevadacounty.com>**

Mali LaGoe
Acting Community Development Agency Director

Brian Foss
Planning Director

MEMORANDUM

March 25, 2021

TO: Nevada County Planning Commission

FROM: Matt Kelley, Senior Planner *ML*

HEARING DATE: March 25, 2021

SUBJECT: PLN19-0024; TFM19-0008; CUP19-0010; MGT20-0001; PFX19-0003; MIS20-0004; EIS19-0010 – Rincon del Rio. An application for a Use Permit to amend the Comprehensive Master Plan and revise the Tentative Final Subdivision Map, which was approved to facilitate the development of the project site as a Continuing Care Retirement Community known as Rincon del Rio.

Attached for review and consideration by the Planning Commission is an additional signature page to be added to the public comment letter dated March 20, 2021 and received on March 24, 2021 by the Nevada County Planning Department.

Attachments:

1. Additional Signature Page

The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.

Angella Russell
Angella Russell

3-24-20

Christopher Russell
Christopher Russell

3-24-20

Cynthia Hall
Cynthia Hall

3-24-20

Michael Hall
Michael Hall

3-24-20

Patricia Russell
Patricia Russell

3-24-20

James Russell
James Russell

3-24-20



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

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Mali LaGoe
Acting Community Development Agency Director

Brian Foss
Planning Director

MEMORANDUM

March 25, 2021

TO: Nevada County Planning Commission

FROM: Matt Kelley, Senior Planner *mk*

HEARING DATE: March 25, 2021

SUBJECT: PLN19-0024; TFM19-0008; CUP19-0010; MGT20-0001; PFX19-0003; MIS20-0004; EIS19-0010 – Rincon del Rio. An application for a Use Permit to amend the Comprehensive Master Plan and revise the Tentative Final Subdivision Map, which was approved to facilitate the development of the project site as a Continuing Care Retirement Community known as Rincon del Rio.

Attached for review and consideration by the Planning Commission are four additional public comment letters which were received today, March 25, 2021 by the Nevada County Planning Department.

Attachments:

1. Additional Public Comment Letters

Matt Kelley

From: Elizabeth Vian <elizabeth@vianenterprises.com>
Sent: Thursday, March 25, 2021 10:00 AM
To: Matt Kelley
Subject: RDR Supervisor on the take

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Just a little History of what we have been dealing with.

You should know that are not the meek group some think we are, and that we can just be pushed aside. We have the deep pockets to fight this.

This an article from 2014-

“After the project was approved and while the lawsuit against the County and the development project was going through the court process Supervisor Lamphier took the \$5,000 campaign contribution from the south county project developer.

The conflict of interest issue is taking a \$5,000 campaign contribution while at the same time participating in closed door legal negotiations where the County and the Rincon del Rio developer were named defendants in a law suit to over turn the approval.”

Steve Enos

November 11, 2014 at 9:57 am

Earlier this year Supervisor Lamphier voted to approve the highly controversial south county, Rincon del Rio development project. The project and it's general plan amendments and zoning changes were approved by a 4-1 vote after much controversy.

Supervisor Lamphier voting to approve the highly controversial Rincon del Rio development project and then taking a \$5,000 campaign donation from the developer was not the conflict of interest issue raised.

The \$5,000 donation was Supervisor Lamphier's largest, single supervisor campaign donation. It was the largest, single campaign donation in the supervisors election. This \$5,000 donation came from a developer and development project that is not even in Supervisor Lamphier's District and it was made in the middle of the lawsuit process to over turn the development project approval.

A few weeks after the controversial project approval a group of concerned neighbors, “Keep Nevada County Rural” group opposing the development project filed the lawsuit against Nevada County to overturn the Board of Supervisors approval.

The “Keep Nevada County Rural” group followed the time tested path of the “Rural Quality Coalition” (RQC) to try and protect this rural area from urban development, development that was not allowed under the Nevada County General Plan.

After the project was approved and while the lawsuit against the County and the development project was going through the court process Supervisor Lamphier took the \$5,000 campaign contribution from the south county project developer.

The conflict of interest issue is taking a \$5,000 campaign contribution while at the same time participating in closed door legal negotiations where the County and the Rincon del Rio developer were

named defendants in a law suit to over turn the approval.
Here's the real conflict of interest issue:

Supervisor Lamphier voted to approve the highly controversial south county development project. Then the lawsuit was filed. Supervisor Lamphier took the \$5,000 campaign donation after the lawsuit was filed. Then the Board of Supervisors conducted closed door legal sessions with the County Attorney to discuss the lawsuit. The Board eventually voted to approve a lawsuit settlement agreement in a closed door session. Supervisor Lamphier participated in the closed door legal discussions and negotiations and voted to approve the settlement agreement.

The dates and what took place:

4/9/13; The Nevada County Board of Supervisors approved the highly controversial south county, Rincon Del Rio development project by a 4-1 vote, Supervisor Terry Lamphier voted to approve the project.

5/14/13; The "Keep Nevada County Rural" group opposing the development project filed the lawsuit against Nevada County to overturn the Board of Supervisors approval ("Keep Nevada County Rural, et al. v. County of Nevada", Nevada County Superior Court, Case No.: CU13-079647).

9/30/13; Supervisor and then BOS candidate Terry Lamphier reported receiving a \$5,000 campaign contribution from the Rincon Del Rio Del developer.

11/12/13; In a final closed door session the Board of Supervisors approves the lawsuit settlement agreement between the County, the Rincon Del Rio developer and the "Keep Nevada County Rural" group that filed the lawsuit. Supervisor Terry Lamphier participated in the closed door discussions and negotiations and voted to approve the settlement agreement.

A series of meetings, negotiations and closed door sessions took place from 5/14/13, when the law suit was filed against the County and the developer to 11/12/13, when the Board voted and approved the terms of the settlement agreement. The meetings, negotiations and vote took place in closed door sessions.

On 9/30/13 Supervisor and candidate Terry Lamphier reported receiving his \$5,000 campaign contribution from the Rincon Del Rio Del developer while the legal action and negotiations were taking place. Less than six weeks later, Supervisor Lamphier voted to approve the Rincon del Rio project law suit settlement agreement.

Supervisor Lamphier participated in the closed door legal sessions and voted to settle the lawsuit against the County and the Rincon Del Rio developer that gave him a \$5,000 campaign donation just six weeks earlier. The County and the Rincon del Rio developer were named defendants in a law suit to over turn the approval.

If one was to replace "Supervisor Lamphier" in the above with a conservative Supervisors name, let's say "Drew Bedwell", how would some react?

I believe Supervisor Lamphier or any other Supervisor in the same position should have declared a conflict of interest and recused himself from the closed door legal negotiations regarding the lawsuit against the County and the developer that gave him a \$5,000 campaign donation.

Regards,

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Elizabeth Vian-Jones

Chief Financial Officer

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Matt Kelley

From: oakknoll@jps.net
Sent: Thursday, March 25, 2021 11:20 AM
To: Matt Kelley
Cc: Dbmooneylaw@gmail.com
Subject: Today's meeting

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Matt, did you get and read my letter I sent to you and the county a few weeks ago asking to postpone this meeting or shall we say computer conversation? Again a matter of this magnitude cannot and should not be done under our current circumstances of the covid 19, State of California, and Nevada County rules that we all are having to adopt too. These restrictions adversely incumber us, us being the neighbourhoods that are involved with the matter from productive group meetings or effective area canvassing face-to-face to rightfully defend our position on this matter. I'm very proplexed buy the need for such urgency In this matter at the county level. The justification for my concern Is the fact that the Youngs have done nothing to their project in the last 8 years following our lawsuit and your subsequent approval of sad lawsuit along with the Young's themselves, accept to try and circumvent that to which the county and the youngs are bound to. So I am again formally requesting that this meeting That is scheduled for 1:30 today be postponed until such time as the state of California and the county of Nevada deem it possible To have a face-to-face meeting in the forum that was used before covid 19. After speaking to you and Scott last week It is apparent to me that neither of you are fully aware of the diverse Issues that surround this project. Quite frankly it is my opinion that you've not been at your job long enough to recognise The very apparent misgivings and short comings of thought in this matter. There is plenty of precedent set forth in the county by laws to call off this meeting of today! This decision would truly be in the best benefit of the people of Nevada County who in fact hold power over our county employees and their opinions. Please remember that if you choose the wrong recommendation it will directly and adversely impact my children and grandchildren that that have grown up in a rural environment living and being good stewart's of there land and cattle ranch they grew up on for the next 25 years, that you so grateful gave the Young's to build this abomination. Thank you for your good work you do on a daily basis Steve Jones...

Keep Nevada County Rural (KNCR)
PO Box 6283
Auburn CA 95604
March 24, 2021

Nevada County Planning Department
Matt Kelley: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Sent by Email to Matt Kelley: matt.kelley@co.nevada.ca.us
Please make a part of the official record

Re: Rincon del Rio project

Dear Mr. Kelley:

After reviewing the latest proposed revisions submitted to the County on the above project referred to as the "proposed modified project" (hereafter referred to as the "modified project or RDR"), set for hearing before the Planning Commission on March 25, 2021 along with the various Attachments and Staff Recommendations, we the undersigned submit the following objections and concerns.

We contend this modified project is not a minor amendment as defined in County codes and should require a new application along with a new and updated EIR including traffic studies and fire plan based on current County and State standards. In addition the modified project violates the Settlement Agreement and Release executed among Plaintiffs Keep Nevada County Rural, Karen Abbott, Patricia and Benton Seeley, Billie Prestel and Real Party Young Enterprises, L.P. along with Respondent County of Nevada (herein referred to as the "Parties") last dated 11/21/13. In the Recitals, the "Project" as referred to in the lawsuit was strictly defined as follows:

" . . . means the Rincon del Rio project approved by the Nevada County Board of Supervisors on April 9, 2013, including the final project Conditions of Approval and Mitigation Measures, the final Ordinances and Resolutions for the various entitlements associated with the Board's action, the Project Site Plan, Tentative Map, Grading/Infrastructure Plan, Circulation Plan, Comprehensive Master Plan, Architectural Summary, Floor Plans, Elevations, Landscape Plan, Lighting Plan, and the further minor modifications to the Project specified in this Agreement."

In the Agreement section, the Parties agreed that the Recitals were incorporated therein making them an integral and enforceable part of the Settlement Agreement.

Plaintiffs contend that the recent modified project violates the Settlement Agreement as outlined below. These violations include but are not limited to the following and Plaintiffs reserve the right to make additional objections as they become ascertainable:

1. This combined application for a Use Permit to amend the Comprehensive Master Plan and revise the Tentative Final Subdivision Map is by its very nature a violation of the Settlement Agreement. The Project, as approved, specifically states: **“Occupancy within the CCRC will be by membership and will not be fee title to land.”** (Rincon del Rio Master Plan 2010, page 3, paragraph 2). It did not provide for fee title ownership of any of the residential units, which would total 323 individually owned parcels/units governed by a homeowners association (hereafter “HOA”). The approved Project provided for a single owner/landlord (Young Enterprises, L.P.) of the CCRC and all of the dwelling units, businesses and related buildings and amenities contained therein thus retaining control over the entire RDR Project and thus bearing the financial responsibility for property taxes, community maintenance and major utilities. The approved CCRC project provided that as the senior residents aged and needed to downsize, or required higher levels of care, they would be able to easily move between the various housing models in the community without ever being subjected to the trials and tribulations of selling another home, especially stressful and costly fee-title based real estate transactions. That is the CCRC model advertised, approved and litigated in 2013; the CCRC we filed suit to ensure was built. The modified project provides that approximately 90% of the residential units would be privately owned and governed by a HOA. Under the modified project, the only remaining CCRC component, (the Group Home Memory Care/Assisted Living Facility comprising 22 units/88 beds and the proposed 24 condominium rental units), would presumably be owned and controlled by Young Enterprises, L.P. **This is a material change to the Project as defined in the Settlement Agreement.** This change of ownership and control also removes the legal enforcement mechanism for the population cap of 415 residents. Suggesting that there could be a deed restriction placed on every parcel easily limiting occupancy to 2 persons is unrealistic. Deed restriction violations, even if easily identifiable, are often ignored and not easily enforceable. Add to that, a HOA does not have the legal right to limit or enforce the number of residents on privately owned parcels nor does the Department of Real Estate or the Department of Social Services which is the agency responsible for approving, monitoring and regulating CCRC providers. Section 1771(p)(10) of the Health and Safety Code provides that no homeowner’s association may be a *provider*.

2. The modified project asserts that it is a Continuing Care Retirement Community (CCRC) offering services to a population aged 55 and older. The revised Comprehensive Master Plan (hereafter “CMP”) dated February 2020 states that the campus is designed to serve adults 60 years and older so there is some confusion as to the actual age-restricted designation developer seeks. In fact prior public notices made available to the general public during the approval process presented the project as follows: **The Rincon del Rio campus is designed to serve adults 60 years and older.** (Rincon del Rio Master Plan 2010, page 3, paragraph 2) (Emphasis added) There were similar public notices also containing the Comprehensive Master Plan, one dated May 2019, November 2019 and the most recent one dated February 2020 stating the 60+ demographic. That is the age-restriction the Settlement Agreement was based on. So

changing the age to 55 is another material change from terms of the Project as defined in the Rincon del Rio Comprehensive Master Plan and thus the Settlement Agreement.

3. The Project as approved was a corporate entity owned/operated CCRC with enforceable restrictions on all structures comprised of independent living Cottages, Bungalows, Duplexes and 4-Plexes and five full-service supportive lodge buildings which included independent and assisted living apartments, nursing services, memory care and hospice units all housed within the RDR community's village center. The modified project now proposes twice as many even larger Cottages and Bungalows on individually owned/fee titled parcels, individually owned/fee titled 5-Plexes and 14-Plexes and individually owned/fee-titled Village Center loft units on shared ownership parcels. They now also feature 24 rental units not previously included in the approved Project. Basically, the project has morphed from approximately 164 independent living units to 323 larger independent living units, and from approximately 150 assisted/nursing/memory/hospice units down to 22 Group Home Memory Care / Assisted Living units with 88 beds. The lack of specifics regarding functionality and resident count within that smaller assisted living component is also of concern. The proposed 90% younger more active demographic occupancy moves more towards a Del Webb Sun City active senior subdivision than it does the CCRC model approved in 2013. A subdivision of that scale increases all negative environmental impacts, most exponentially dangers related to fire evacuation, traffic and all varieties of pollution. This new configuration is not even close to what was approved under the Comprehensive Master Plan in the Settlement Agreement.

4. The approved Project included a substantial assisted living component, nursing care, memory care and even hospice care units. The modified project appears to have dialed back on the "Continuing Care" element of the CCRC project. Now only a 22 unit Group Home Memory Care/Assisted Living Facility remains. Although 88 beds are mentioned for that facility, developer claims it is only 22 units. Assisted Living and Memory Care facilities do not house 4 residents/patients per room. They usually have 2 residents/patients per room at most, and often have private single resident/patient rooms, even for memory care residents. In-home care "offered as available" is also mentioned, but that does not constitute "Assisted Living." Assisted Living Services are defined in H&S Code Section 1771(a)(5) and Assisted Living Unit is defined in H&S Code Section 1771(a)(6). This is another change from the Comprehensive Master Plan approved by the County as covered under the Settlement Agreement.

5. The approved Project's Tentative Map provided that the project site could be subdivided from 4 fee simple rural ag lots to 14 CCRC corporate entity owned lots. The modified project would require additional extensive parcel subdivision of up to 323 individually owned parcels 102 individual fee simple single-family residential lots, as well as additional parcel subdivision of several "common use" lots containing the individually owned fee-simple condominiums. Further subdivision is required to encompass the Village Center, Memory Care/Assisted Living facility, other "Reserve" facilities and structures along with the designated open space, originally the "open space" lot 14, which is restricted from any further subdivision in perpetuity per the settlement agreement with a permanent note that was added to the final map. The proposed extensive subdivision of land from 4 parcels to over 300 parcels, and from 345 units to what appears to be 346 units, is a material change to the approved Tentative Map and a

clear violation of the Settlement Agreement, and would result in numerous additional negative environmental impacts. If Young Enterprises, L.P. wants to build a "Sun City" style subdivision for active adults 55 years and older, an entirely new EIR should be conducted, because the currently approved one is outdated and irrelevant as concerning the modified project.

6. Young Enterprises, L.P. requested, and was already granted, several exceptions to the Nevada County Road Standards. The modified project requests an additional exception for the emergency access roadway exceeding the maximum allowable roadway grade. It further seeks an exception from the road right-of-way widths on Rincon Way from a 50-foot width to a 30-foot width. The petition would allow for the elimination of vegetation management on either side of the roadway previously required of the CCRC. There is also a request for exception for the interior primary access roads including a reduction of the right-of-way width from 50 to 40 feet and shoulder width from 4 feet to 2 feet when AC dike is used. This is yet another deviation from the approved Project and constitutes serious dangers to the existing residents of the surrounding parcels as well as the residents of the RDR project, especially with regard to severe fire evacuation limitations. Extreme fire danger and inadequate evacuation routes have proven deadly the last five years throughout California. County officials granting additional exceptions and variances to "current" necessary fire safety protocols, thereby putting residents in peril would be considered malfeasant. Also of concern, the developer states "homeowners insurance is the responsibility of and expense for the community and has been obtained." This needs to be clarified as most surrounding property owners' insurance has been cancelled and/or increased substantially in the last 3 years. Is the developer saying that they will pay the homeowners' policies for every fee simple parcel, as well as the Reserve and CCRC parcels? Seems very unlikely with the proposed *resident pays all homeowner expenses* model, and proof of such insurance should be provided. Regardless, changes made to the approved project resulting by exceptions to, and deviations from, current safety standards are violations of the settlement agreement.

7. Plaintiffs and other residents have just been informed that the County intends to form a PRD to enforce road maintenance on Rincon Way from Highway 49 to the project. This is a serious violation of the Settlement Agreement, which provides that Real Party and/or the Owner of the CCRC (not a HOA) shall solely bear all road maintenance obligations during Project construction as well as all ongoing maintenance costs for the aforementioned portion of Rincon Way. Portions of the proposal state that these costs will be funded by the CCRC. Future revisions, however, would require approval of 2/3 of the landowners who would be part of the PRD. This is contradictory since the CCRC will no longer own the entire project while the individual property owners will be part of a HOA. It also does not specifically exempt in perpetuity the surrounding property owners from the PRD, which was a very specific element of the Settlement Agreement. That very important element is meant as remuneration for expansive negative traffic related environmental impacts, which will be endured in perpetuity by all Rincon Way residents because of Real Party's over burdening of their original rural easement with their future urban CCRC traffic. The traffic that would result from the proposed higher number of younger active senior residents is further insult to those Rincon Way residents. Not to be dismissed is, new to all neighborhoods since the 2013 project approval, the numerous Amazon and Walmart private Uber style package deliveries, which are tripling traffic in neighborhoods nationwide. The bottom line is that those existing Rincon Way residences, nor any existing Hidden Ranch Road or internal court residences, are ever to be billed by Real Party, future

CCRC owners, HOAs nor Nevada County via assessment or any other fee-based/taxation mechanism for any construction, repair or maintenance of Rincon Way from Highway 49 to the entry gate of the CCRC. As per the Settlement agreement the CCRC owner is responsible for all maintenance and County expenses related to that entry road in perpetuity. This is of utmost importance and a non-negotiable stipulation.

8. Section 5.2(b) of the Development Agreement provides that the project shall be subject to the applicable substantive and procedural provisions of the County's General Plan, zoning, subdivision and other applicable land use ordinances and regulations in effect when such an amendment or modification request is approved. It also says that the County shall not be precluded from considering and/or applying any County law or other rule, regulation, standard or policy which is in effect at the time such discretionary action is acted upon by the County. The language "shall" is mandatory. Granting exceptions to current road safety standards, current provision of laws, ordinances and regulations would seem to violate this Section, as well as the settlement agreement. It is especially significant with regard to fire safety standards, which have been reevaluated and intensified statewide since the project was approved in 2013. It would be negligent not to apply those new more stringent standards to the RDR project based on the newly proposed increased number of younger active senior residents being proposed by the developer.

9. The modified project proposes an Alternative B under the CMP to bringing water and sewer lines through public utility easements along Hidden Ranch Road and Pleasant Court to the subject property. The affected property owners have previously soundly rejected this option. Those rural residents do not want public utilities with their associated fees and assessments run down their private roads. They do not wish to be connected in any way to the urban Rincon del Rio project, and hope that the County will respect their wishes, and enforce the approved alternative A as is their duty stipulated by the Settlement Agreement. The approved Project provided that water and sewer were to run on Rodeo Flat to the project site (Alternative A), which the County held was and still is feasible and which was approved in the Project. Doing anything other than what was approved is a serious material change to the approved Project and thus another violation of the Settlement Agreement.

10. The Settlement Agreement was supposed to be a full and final accord and satisfaction and general release of all of Petitioners' claims against Respondent or Real Parties except for claims for breach of the Agreement. However, the Settlement Agreement further provides:

"Notwithstanding anything in this Agreement to the contrary, this does not constitute a release or waiver by Petitioners of claims that may accrue in the future or are otherwise unrelated to the Petition or the Claims or the Project, including 17(a) Any violation by Real Party of the Project's mitigation measures, Development Agreement or conditions of approval; (b) Any failure by Respondent to enforce the Project's mitigation measures, Development Agreement or conditions of approval; and (c) **Any proposals by Real Party (or its successors or assigns) to revise the Project in a manner that is inconsistent with the Project approvals and this Agreement.**" (Emphasis added)

As you are aware, Paragraph 21 of the Settlement Agreement provides that "In the event any action should be necessary to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and costs, including the fees and costs of enforcing any judgment." Paragraph 26 of the Settlement Agreement provides that "This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by each of the parties affected thereby."

11. The Justification for Petition of Exceptions to Waive Subdivision and/or Road Standards letter dated July 30, 2019 addressed to Trisha Tillotson sent from SCO Planning, Engineering & Surveying does not address the exceptions requested by the project for Rincon Way and there are no justifications for granting the exceptions requested for Rincon. In fact, reducing the easement and abdicating the requirement for Young Enterprises, L.P. for vegetation management is irresponsible and further exacerbates the fire danger during evacuation and fire suppression and violates the settlement agreement.

12. One of the key concerns is how Young Enterprises, L.P. will enforce the population cap of 415 residents on individually owned parcels. That issue has not been adequately addressed. Clearly, a HOA could not be tasked with the proposed deed restriction enforcement mitigation. This project basically assumes 1.2 persons per dwelling unit. These numbers do not reflect the 4-6 persons per cottage possibility available in the enlarged dwellings, nor do they reflect possible long-term guests. The modified project has not addressed the number or frequency of guests, nor an age-related restriction on guests. The mitigation stipulated of 10-day limitations of guest stays seems impossible to reliably monitor and enforce for 323 privately owned residences 365 days a year. At what point is a "guest" considered a resident? Unenforceable 10-day time limits or age restrictions of guests belies the senior component of the development and veers more toward any common family-oriented subdivision, which is definitely a violation of the Settlement Agreement.

15. Now that there will be over 323 single ownership parcels there are concerns about the increased amount of required lighting and its impact on the night skies. The amendment claims new lighting components will be used, and will not be an issue. Who will enforce permitted lighting on hundreds of individual property owners when bulbs need to be replaced? Most relevant to this issue is that the modified project has moved several of the CCRC units closer to existing Hidden Ranch neighborhood and Connie Court property lines. Proper tall thick vegetation site barriers were stipulated along Connie Court as part of the settlement agreement. The same type of barrier would be required along any property line that the RDR units and associated lighting are visible. Moving those units closer to the existing property lines is a material change and thus another violation of the Settlement Agreement.

16. The project proposes construction in 10 phases. The modified project calls for a 20-year extension of the timeframe for the Development Agreement. Subjecting surrounding property owners to twenty years of construction noise, traffic, dust and other negative

development related environmental impacts are material changes and a violation of the Settlement Agreement.

17. This project has been submitted as an Amendment to Approved Tentative Maps, Recorded Final Maps, or Parcel Maps. The County defines an amendment as “any modification or expansion of the approved use or conditions of approval.” Sec. L-IV 2.18 of the County Subdivision Ordinance allows for corrections and amendments to an approved tentative map **if the amendments have a cumulatively minor effect on the subdivision and its impacts.** (Emphasis added). The modifications requested by Young Enterprises, L.P. are anything but minor. Subdividing the 4 rural ag parcels into 323 fee simple single-family residence parcels, 221 single-ownership condominium parcels, and 23 common area parcels, rather than the approved 14 corporation controlled parcels, thereby altering the community demographic to house a higher number of young active seniors, is not minor. Turning the project from a single owner entity to a HOA is also not minor. Violating almost every stipulation of a Settlement Agreement executed in good faith is also not minor. Considering the very significant impact a subdivision of 323 individually owned parcels and the fact that the requested modifications are not “minor”, a new application should be submitted to include a new EIR with all related environmental impact studies. With that new EIR all current fire safety road standards should be required with no exceptions or variances.

These concerns are not all inclusive and we reserve the right to bring up any additional concerns during the public hearing process.

Please pardon redundancies as many topics are related to other topics and are often brought up in several sections of this letter and additional correspondence from me and other concerned citizens.

As we have continuously stated in previous conversations and correspondence, the bottom line is that Young Enterprises, L.P. has an approved and totally viable 345 unit 415 resident project that could have been built anytime since 2013, and still could be built today exactly as approved. There is a valid Settlement Agreement willingly executed in good faith by the Parties and by which Young Enterprises L.P. should be bound. Anything less could prompt future litigation.

Respectfully submitted,
KNCR Coalition Agents
Karen Abbott
Billie Prestel
Pat and Benton Seeley

cc: Katherine L. Elliott, County Counsel
Rhetta VanderPloeg, County Counsel

Board of Supervisors

Keep Nevada County Rural (KNCR)
PO Box 6283
Auburn CA 95604
January 20, 2021

Nevada County Planning Department
Matt Kelley: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Re: Notice of Intent to Adopt Addendum to the Final EIR for Rincon del Rio project

Sent by Email to Matt Kelley: matt.kelley@co.nevada.ca.us
Please make a part of the official record

Dear Mr. Kelley:

After reviewing the Addendum to the Final EIR for the Rincon Del Rio project, we have several issues with the Addendum.

Not surprisingly, the Addendum basically states that since this project will allegedly remain a CCRC with 345 units and a population of 415, this project will have no impact. Without acknowledging or reviewing the change in demographics let alone the major subdivision into private lots and the ramifications, the Addendum merely recites that there will still only be 345 units with 415 residents. Nothing could be further from the truth. The original EIR reviewed a typical CCRC with independent living, assisted living, rehabilitation, nursing care and finally memory and hospice care. In such a scenario, the average age of a resident would typically be older (70-80) as they move from independent living through the cycle to either nursing care or memory care. An older more debilitated population would not be as active as a younger 60+ resident who could very well still be working and commuting every day. By reducing the assisted living, rehab and nursing care services, this project has lost the original CCRC demographic that it was approved to support. This is now clearly an active adult subdivision, not a CCRC. The Addendum fails to make this distinction and the vital differences between an older community and a younger, physically and socially more active community.

Rather than delineate every objection we have to this retirement subdivision masquerading as an "amended" CCRC project, we make the following general objections and reserve the right to further clarify, delineate and expand on the nature of our objections at a later date. Our objections include, without limitation, the following:

1. Section 15162 states that a subsequent EIR would be required if any of the following conditions exist:

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

Based on the evaluation provided in this Addendum, it alleges no new significant impacts would occur

as a result of the proposed modified project, nor would there be any substantial increases in the severity of any previously-identified adverse environmental impacts. This is unbelievable considering the numerous major changes being proposed.

Due to the nature of this proposed modified project, the fact that the project will now effectively be a subdivision should trigger a totally new and updated EIR and comply with the Subdivision Map Act. Rather than 14 lots owned and operated by Young Enterprises, the project will now be subdivided into 102 single family parcels, 221 single ownership condominium parcels, and 23 common area parcels for a total of 346 parcels. The majority of the project will now be privately owned independent living residences governed by a homeowner's association and not Young Enterprises.

2. Despite the fact that there will now be a younger, more active population with many more cars, as per the increase in parking stalls, the traffic analysis astonishingly determined that the daily trip count would be **reduced** from 969 daily trips 863 daily trips. The Addendum estimated volume of traffic on Rincon Way at 370 trips per day. Total traffic is now estimated at 1,233 trips per day, which would represent an increase of 233% over existing conditions, which the report indicated would be considered substantial. This fails to include traffic for employees, guests and numerous deliveries to either the residents or the businesses onsite all of which one would anticipate to be much higher, not lower, in an active senior subdivision than a CCRC facility with a higher population of older less active seniors as was approved. Add to that, since the project was approved in 2013 the number of Amazon and Walmart based on-line shopping deliveries has doubled traffic in all neighborhoods nationwide, and RDR will certainly be no exception. The Addendum then excuses this "substantial" increase in traffic because Rincon Way will be improved. The original EIR anticipated a Class 1 road, which has now become a Class 2 road in this report. Despite the substantial increase in traffic on Rincon Way, the report totally fails to address the impact of ingress/egress onto a very busy and dangerous unlighted Highway 49. Using statistical traffic from 2011 is inappropriate since anyone who has lived in the area in the last 10-15+ years can attest to the massive increase in traffic on Highway 49.

The modified project requires an entirely new traffic study, not a flawed six-page Trip Generation Qualitative Assessment conducted by R. D. Anderson & Associates, Inc. In fact, the Anderson letter should be disregarded since common sense dictates that active 60 year olds will make MORE not FEWER trips as indicated. It should further be disregarded since the CCRC contemplated in the approved Land Use description included in addition to detached and attached housing, congregate care, assisted living, skilled nursing, memory and hospice care, the latter four which are now a reduced component in the RDR project. In addition, it notes, "Caution should be used when applying these data. CCRCs are relatively new and unique land uses." In fact, no comparable CCRC configuration including individual lot ownership was utilized in arriving at his findings. **This cannot lead to a finding of less than significant impact as stated in the Addendum.**

3. With regard to lighting, the modified project will now include new sources of light that currently did not exist on the original project. This includes 89 pole lights (an increase of 1), 139 bollard-style lights (an increase of 91) and 225 wall-mounted lights (an increase of 126). The Addendum admits that these additional light sources may affect adjacent areas with light trespass and could contribute to skyglow conditions in the project area. There are now zero lights at the project site (other than the existing residence), which is situated far from all contiguous property lines. To state that an additional 453 lights "would not result in a change to the finding in the certified EIR of less than significant" impacts that would affect day or nighttime views and that no new or revised mitigation

measures are required is incredulous. How can 453 additional lights, rather than zero lights possibly result in no substantial light that would affect nighttime views requiring no additional mitigation measures? The reality is that this condition **cannot** be mitigated. This does not even take into account interior lights in businesses or residences and vehicular lights.

4. Greenhouse gas emissions over the 6-year estimated construction length would generate 586 metric tons of greenhouse gas emissions and that is just construction-related and does not include the increased emissions from the actual project operation. First, why is the developer requesting to extend the Development Agreement out to 20 years if they claim construction will only last 6-years? Secondly, how does Young Enterprises' purchase of carbon credits clean the air for the surrounding residents? In addition, grading 346 parcels as opposed to 14 will create more dust in the area. There will also be increased air pollution from increased traffic, landscape equipment, private contractors, and again, let's not forget construction related and on-line shopping deliveries.

5. The Addendum claims that construction activities for the proposed modified project would result in temporary, low-level noise impacts at the nearest residences closest to the project. Whoever performed this Addendum is clearly not familiar with the distance sound travels, specifically in rural areas. Under the right conditions, we can hear the train in Auburn six miles away. The so-called mitigation is that construction activities (for 6 years) will be limited to the hours of 7 a.m. to 7 p.m. six days a week. The report admits that the construction and operation of the project would have noise levels in excess of the County noise standards but limiting construction to the above hours was also found to have a less than significant impact. On whom? First of all, those are not the construction hours that were approved in the previous EIR. The approved construction hours were to be no longer than 8 a.m. to 6 p.m. and only five days per week. All construction noise will certainly have a major impact on the surrounding residents, especially considering at present there is usually zero noise from that property. There will be significant noise generated by both the construction and operation of RDR especially in light of all the activities anticipated at the project.

6. A new fire assessment study in light of the recent catastrophic and deadly fires that have occurred in California in the past 6 years should be required, including a review of the previous road exception waivers. The similarity of the population density, roadways, topography and fire protection assets to the Camp Fire, the Carr Fire, Tubbs Fire and Santa Rosa complex fires cannot be overlooked. The original project contemplated evacuation of residents by buses. The evacuation of over 415 residents, employees and guests from RDR along with existing residents from the surrounding homes attempting to evacuate in hundreds of private vehicles from Rincon Way onto a crowded unlighted Highway 49 with fire equipment attempting to enter the area creates a substantial risk that the roadways will be blocked. This scenario was not addressed in the Addendum which simply repeated that "the proposed modified project would not result in a change to the finding in the certified EIR of less than significant impacts relating to the spread of wildfire and fire risks" and thereby ignoring the changed demographics and verifiable fire evacuation inadequacies as recently demonstrated by the above mentioned uncontrollable and deadly fires.

7. One of the most concerning aspects of the project is how the population cap of 415 (1.2 persons per unit) will be enforced with so many individually owned parcels and the increased size of the dwelling units, all of which appear to have two bedrooms and two bathrooms with many having dens that could be used as another bedroom. The Addendum claims that an annual report would be made to the Planning Department certifying the number of residents for the previous year. Would this be the population on a certain date, the average yearly population or a random count? The Addendum states that the applicant would impose CC&Rs for the project, which would include a certificate of

occupancy. The CC&Rs would provide for the formation of a HOA which “shall be responsible for enforcing all property use restrictions and maintenance obligations, age and occupancy restrictions” that are feasible under all Federal and California laws and regulations subject to approval by the CA Dept. of Real Estate and that the HOA shall provide the County with a copy of each verification of occupancy report. The primary concern of the surrounding residents is how either the HOA or Young Enterprises can guarantee that the resident population never goes above 415 on *any* given day, not once a year or even quarterly. The Addendum continually states that the population will be limited to a maximum of 415 age restricted residents, yet neither Young Enterprises nor Nevada County have ever proven that they actually can or will enforce this limit. The County officials have admitted that there is no legal mechanism by which either the Planning Department, County Counsel, the Department of Real Estate, the Department of Social Services, the Department of Housing and Development or a HOA can or will enforce the population cap. Deed restrictions do not address number of residents in privately owned residences. In fact, even senior age-related deed restrictions often encounter age-discrimination litigation in current times. Only the provider, Young Enterprises, L.P., as a “landlord” could legally enforce the 415-person population cap utilizing legally binding lease-based restriction/eviction protocols. With the proposed fee simple title based changes on 323 units within the development, Young Enterprises will only own and control twenty four “rental units” and possibly the Memory Care Group Home / Assisted Living Facility facility, assuming it ever actually gets built. Abdicating authority to a HOA to enforce the 415-person population cap is not a legitimate mitigation to controlling population density within the fee-simple portions of the development. I doubt there is any case law allowing a non-owner of real property to dictate or enforce the number of persons who can live in privately owned property. When, not if, more than 415 residents are found to be living at the project, what reliable enforcement methods will be used to remove them? There is a Settlement Agreement, which among other things specifically limits the resident population of RDR to 415 residents. The Addendum to the EIR fails to address a realistic, legal or workable solution/mitigation regarding the enforcement of that 415-person population cap on the proposed fee simple portions of the development. Any and all proposed changes to the approved project, and there are several, that impede or remove the legal mechanism to enforce the 415-person population density within the development are in direct violation of that settlement agreement and could prompt future litigation.

The bottom line is that Young Enterprises, L.P. has an approved and totally viable project that could have been built anytime since 2013, and still could be built today exactly as approved. There is a valid Settlement Agreement willingly executed by the Parties and by which Young Enterprises L.P. should be bound.

Thank you for your consideration.

Sincerely,
KNCR Coalition Agents
Karen M. Abbott
Patricia and Benton Seeley
Billie Prestel

cc: Katherine L. Elliott, County Counsel
Rhetta VanderPloeg, County Counsel

Nevada County Community Development Agency

January 14, 2021



Regarding: Addendum to Rincon del Rio

To whom it may concern,

I hereby formally reject this attempt to adopt an addendum to the Final Environmental Impact report.

The addendum is a violation of the lawsuit that "Stop Rincon del Rio" brought against the Young's and Rincon del Rio. In settling that lawsuit, they agreed that they would not change, or expanded the project. Is their word no good?

Clearly, there are changes to the scope and size of this project.

I say no to this addendum and feel that the entire development should be denied.

Yours truly,

A handwritten signature in black ink, appearing to read "Carol A. Vian".

Carol A. Vian

22358 Deer Trail Ct.

Auburn Ca 95602

Nevada County Community Development Agency
Nevada County Planning Department
Nevada County Attorney's Office



January 13, 2021

Regarding: Addendum to Rincon del Rio

To all concerned,

I feel the timing of the presentation of this addendum to be highly opportunistic on the part of the Rincon del Rio developers and Carol Young. Shame on them for trying this during a pandemic!

I hereby formally object to this attempt to adopt an Addendum to the Final Environmental Impact report.

This attempt to push through an addendum to the project that includes forcing both a PUE for water and sewer through my Hidden Ranch Road subdivision and the possibility of a additional ingress /egress road (where none exists) out to highway 49 via Hidden Ranch Road across private property and onto SharonJack Road is outrageous. Hidden Ranch Road does not connect with SharonJack Road regardless of what the project map shows.

The addendum is a violation of the very basis of the lawsuit that "Stop Rincon del Rio" brought against the Young's and Rincon del Rio, in settling that lawsuit, it was agreed that the project could not be changed, altered or expanded. Why have they not moved forward in the last 7 years? They already had what they wanted, but now they are searching for a way to get around that agreement and get more to boot. Shameful.

It has been 7 years, since that lawsuit, should not a new EIR be required? Is there no expiration date on this EIR? Since the agreement a lot has changed, California has been *ravaged* by wildfires. The State fire requirements have changed and ought to be applied to the project- not those from 2010 or 2013. Forcing egress points on the surrounding developments to achieve this is not an option.

The ill-suited location of this development has Cal Fire's highest Fire Zone Rating. My insurer and every other insurer dropped or refused to write new fire coverage to our area leaving my home and many, many others uninsured.

What will it cost the County in lives and lawsuits should there be a fire such as the one that hit the community of Paradise?

Further, with the current Covid-19 distancing restrictions, we cannot reach out to our neighbors, gain access to critical records at the county, nor properly seek the legal advice necessary to address this situation. The parties involved are entitled to unrestricted time to investigate and analyze this addendum as well as review the prior lawsuit restrictions that bound this project that allowed it to go forward previously. On these grounds alone the addendum should be denied.

I object to this addendum on its merits and feel that the entire development should be denied.

Yours truly,

A handwritten signature in black ink, appearing to read 'Elizabeth Vian', with a large, stylized flourish extending to the right.

Elizabeth Vian
22990 Hidden Ranch Rd.
Auburn Ca 95602
530-320-2297

CC: DowneyBrand, LLC.

Matt Kelley

From: Erin Sherry <erinsherryprim@gmail.com>
Sent: Wednesday, January 13, 2021 5:51 PM
To: Matt Kelley
Subject: Rincon Del Rio development project

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Matt,

I'm writing to you with concern about significant changes that the developer is asking to be made to the Rincon Del Rio development project. What was originally proposed to be a continuing care residential community, now appears to be a dense housing development that is not like any housing in Nevada County. The recent changes asked by the developer go against what was initially proposed to prevent traffic and safety issues for the surrounding neighbors. The site is not appropriate for this type of development in the middle of agricultural land. This project would cause permanent damage to the people who live and farm in this rural area.

Thank you for your time and consideration,
Erin Prim

--

Erin Sherry Prim
Illustrator
www.erinsherryprim.com

Matt Kelley

From: Gina/Larry Hill <jenshil@sbbmail.com>
Sent: Wednesday, January 20, 2021 3:07 PM
To: Matt Kelley
Subject: Rincon Del Rio draft addendum

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

January 20, 2020

Mr. Matt Kelly, Senior Planner
Nevada County Planning Department

Mr. Kelly:

I recently downloaded the revised EIR for the Rincon project. I live close by the Young's property, and I am in the target age demographic. I've been in the same house for twenty years, and I am not opposed to planned development.

The first thing I noticed about the revised report was that it was a hundred pages long and the very definition of "fine print." I could find no way to enlarge the document for easier reading, so I have a suggestion. In the academic world, the scientific community, and in business when there are changes to important documents which need to be reviewed, the writers use what are called "bullet points." That means that each change is highlighted at the top of the document specifically so it can be evaluated and save everybody's valuable time. I'm not sure why lawyers and developers don't do this. It creates a sense of suspicion and distrust which could be easily eliminated, wasting the goodwill of impartial readers.

The next thing I noticed was the appellation "Continuing Care Retirement Community" near the top of the document. I remember that this was one of the primary selling points that led to the zoning change awarded by the county to the developers. But in this new document the CCRC phase is pushed out years and only appears at the very end of the project. In place of the CCRC, what I see is a high-density condominium development, small lots sold out from ownership by the developers to hundreds of people who then become responsible for the individual lots, with a promise that somewhere in the future the continuing care component will come into play. Sadly, it is hard not to point to another nearby development, Dark Horse, where promises were made, and lot owners and home owners had no access to power, water, or sewage; the developers departed. The solutions to those problems were not easy, and they were expensive. I'm not implying that the Rincon developers will do this, but it is cautionary. It's just my opinion, but the current owners have a fourteen thousand square foot facility which with "leg work" and appropriate permits could have been converted into a large Board and Care Home and given them a real taste of what that business requires. And, again, calm those with a sense of suspicion and distrust through the example of their activities towards their stated goals.

My impression from reading about other developments is that current professional planners believe it is better to bring residents into close approximation of service facilities, even putting residences above retail outlets. It creates a sense of community, and it eliminates the necessity of travel by car or bus for every little thing. The new development at Higgins Corners would be the closest destination for groceries, pharmacy, gasoline, take-out food. It is about four miles travel via the roadways, and although it is a right turn onto HWY 49 North, it is a left turn across a 65mph highway to return. OR a left turn across those multiple lanes of traffic to go to the nearest hospital about ten miles south. When you look at the projected numbers of old people, 415 future residents, the numbers of cars driven by them, turning left across the

busiest highway in this part of the county, easily tops 100 trips daily - that is sobering. In my opinion, without a commitment from Cal Trans to halt traffic with signal light control, the whole project is a non-starter.

There are other issues. I'm told they want to wave grade restrictions on the emergency vehicle access road which would go over Rodeo Flat Road; that the primary access road from Hwy 49 is a single lane in several places. They propose a thirty foot high water tower far from the condominium development for emergency fire suppression, which would be a major industrial sized intrusion on nearby rural properties. And what happened to that "Green Belt" that was promised?

Given the review period for these documents has taken place over the family holidays of Christmas and New Years, and given the very odd social environment of ongoing isolation due to the pandemic, I think it is more than warranted to have a future public meeting where concerns like mine can be aired, and that others more knowledgeable than I can share what they have discovered in the "fine print."

A Continuing Care Retirement Community is warranted. Perhaps there is a more suitable geographic location closer to services.

Thank you for your time.

Lawrence A. Hill
25415 China Hollow Rd
Auburn, CA 95602
(530) 269-1974

cc: Ed Scofield, Supervisor, District II

Matt Kelley

From: Joe Coppin <josephcoppin@gmail.com>
Sent: Monday, January 11, 2021 3:44 PM
To: Matt Kelley
Subject: Re: rincon del rio

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Dear Mr. Kelley

I am writing to express my concern about the proposed modifications of the Tentative Final Map of the Rincon del Rio project. My home is on a parcel adjacent to this planned development. As I review the proposed modifications they seem quite significant to me and I cannot understand the decision of the planning department to recommend going forward without public hearing. I understand that we are in a period where comment is being taken but I think the changes warrant public hearing and more time for review.

See below my previous email (on December 14th). I had no response to my request for further information.

Thank you for your attention
Joe Coppin

On Dec 14, 2020, at 12:59 PM, Joe Coppin <josephcoppin@gmail.com> wrote:

Hello, Mr Kelley

The parcels in question in the Rincon del Rio project proposal border on three parcel I now own. I have some question regarding the proposed modifications of the plan. Would it be possible to talk on the phone. My number is 805 403 9715.

Joe E Coppin

josephcoppin@gmail.com

Please note my new email address. Delsur@pacbell is no longer active.

Matt Kelley

From: Michelle Amador <m.m.amador@gmail.com>
Sent: Monday, January 11, 2021 5:54 PM
To: Matt Kelley
Subject: Public Comment for Rincon Del Rio

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Matt,

I was disappointed to learn today that the developers for Rincon del Rio are all but rescinding the agreements required by the County for them to have preceded in the first place.

The changes they now want to make run in the face of all the community, through the County, requested in order to allow it to move forward. One of the original requirements was that the project build their memory care/medical facility in the early phases in order to reduce emergency vehicle traffic on the tiny one way access road from HWY 49. That build has been moved down to the very last phases of the project. In an era where we are all too present with how we experience emergencies as part of regular life, this is an unacceptable and dangerous change of plans.

It's my understanding as well that part of our community's support for the project overall was that it was meeting a key housing need for our elderly population. The proposed changes significantly shorten the timeframe that the developers are required to maintain this commitment.

Perhaps most significantly, the change in title structure from condos to fee-simple parcels sends red flag as it allows for outrageous density that would have been objected to outright if the project had been presented this way from the start.

I am concerned that all of these changes were only provided to the community during the holidays and that many people are wholly unaware of these changes, the impact, as that the end of public comment is nearing.

I write to object to these changes and to ask that the window for public comment be extended to enable adequate and deserved response from the community.

Michelle Amador
11759 Alta Vista Ave
Grass Valley, Ca 95945

Keep Nevada County Rural (KNCR)
PO Box 6283
Auburn CA 95604
January 20, 2021

Nevada County Planning Department
Matt Kelley: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Re: Notice of Intent to Adopt Addendum to the Final EIR for Rincon del Rio project

Sent by Email to Matt Kelley: matt.kelley@co.nevada.ca.us
Please make a part of the official record

Dear Mr. Kelley:

After reviewing the Addendum to the Final EIR for the Rincon Del Rio project, we have several issues with the Addendum.

Not surprisingly, the Addendum basically states that since this project will allegedly remain a CCRC with 345 units and a population of 415, this project will have no impact. Without acknowledging or reviewing the change in demographics let alone the major subdivision into private lots and the ramifications, the Addendum merely recites that there will still only be 345 units with 415 residents. Nothing could be further from the truth. The original EIR reviewed a typical CCRC with independent living, assisted living, rehabilitation, nursing care and finally memory and hospice care. In such a scenario, the average age of a resident would typically be older (70-80) as they move from independent living through the cycle to either nursing care or memory care. An older more debilitated population would not be as active as a younger 60+ resident who could very well still be working and commuting every day. By reducing the assisted living, rehab and nursing care services, this project has lost the original CCRC demographic that it was approved to support. This is now clearly an active adult subdivision, not a CCRC. The Addendum fails to make this distinction and the vital differences between an older community and a younger, physically and socially more active community.

Rather than delineate every objection we have to this retirement subdivision masquerading as an "amended" CCRC project, we make the following general objections and reserve the right to further clarify, delineate and expand on the nature of our objections at a later date. Our objections include, without limitation, the following:

1. Section 15162 states that a subsequent EIR would be required if any of the following conditions exist:

- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

Based on the evaluation provided in this Addendum, it alleges no new significant impacts would occur

as a result of the proposed modified project, nor would there be any substantial increases in the severity of any previously-identified adverse environmental impacts. This is unbelievable considering the numerous major changes being proposed.

Due to the nature of this proposed modified project, the fact that the project will now effectively be a subdivision should trigger a totally new and updated EIR and comply with the Subdivision Map Act. Rather than 14 lots owned and operated by Young Enterprises, the project will now be subdivided into 102 single family parcels, 221 single ownership condominium parcels, and 23 common area parcels for a total of 346 parcels. The majority of the project will now be privately owned independent living residences governed by a homeowner's association and not Young Enterprises.

2. Despite the fact that there will now be a younger, more active population with many more cars, as per the increase in parking stalls, the traffic analysis astonishingly determined that the daily trip count would be **reduced** from 969 daily trips 863 daily trips. The Addendum estimated volume of traffic on Rincon Way at 370 trips per day. Total traffic is now estimated at 1,233 trips per day, which would represent an increase of 233% over existing conditions, which the report indicated would be considered substantial. This fails to include traffic for employees, guests and numerous deliveries to either the residents or the businesses onsite all of which one would anticipate to be much higher, not lower, in an active senior subdivision than a CCRC facility with a higher population of older less active seniors as was approved. Add to that, since the project was approved in 2013 the number of Amazon and Walmart based on-line shopping deliveries has doubled traffic in all neighborhoods nationwide, and RDR will certainly be no exception. The Addendum then excuses this "substantial" increase in traffic because Rincon Way will be improved. The original EIR anticipated a Class 1 road, which has now become a Class 2 road in this report. Despite the substantial increase in traffic on Rincon Way, the report totally fails to address the impact of ingress/egress onto a very busy and dangerous unlighted Highway 49. Using statistical traffic from 2011 is inappropriate since anyone who has lived in the area in the last 10-15+ years can attest to the massive increase in traffic on Highway 49.

The modified project requires an entirely new traffic study, not a flawed six-page Trip Generation Qualitative Assessment conducted by R. D. Anderson & Associates, Inc. In fact, the Anderson letter should be disregarded since common sense dictates that active 60 year olds will make MORE not FEWER trips as indicated. It should further be disregarded since the CCRC contemplated in the approved Land Use description included in addition to detached and attached housing, congregate care, assisted living, skilled nursing, memory and hospice care, the latter four which are now a reduced component in the RDR project. In addition, it notes, "Caution should be used when applying these data. CCRCs are relatively new and unique land uses." In fact, no comparable CCRC configuration including individual lot ownership was utilized in arriving at his findings. **This cannot lead to a finding of less than significant impact as stated in the Addendum.**

3. With regard to lighting, the modified project will now include new sources of light that currently did not exist on the original project. This includes 89 pole lights (an increase of 1), 139 bollard-style lights (an increase of 91) and 225 wall-mounted lights (an increase of 126). The Addendum admits that these additional light sources may affect adjacent areas with light trespass and could contribute to skyglow conditions in the project area. There are now zero lights at the project site (other than the existing residence), which is situated far from all contiguous property lines. To state that an additional 453 lights "would not result in a change to the finding in the certified EIR of less than significant" impacts that would affect day or nighttime views and that no new or revised mitigation

measures are required is incredulous. How can 453 additional lights, rather than zero lights possibly result in no substantial light that would affect nighttime views requiring no additional mitigation measures? The reality is that this condition **cannot** be mitigated. This does not even take into account interior lights in businesses or residences and vehicular lights.

4. Greenhouse gas emissions over the 6-year estimated construction length would generate 586 metric tons of greenhouse gas emissions and that is just construction-related and does not include the increased emissions from the actual project operation. First, why is the developer requesting to extend the Development Agreement out to 20 years if they claim construction will only last 6-years? Secondly, how does Young Enterprises' purchase of carbon credits clean the air for the surrounding residents? In addition, grading 346 parcels as opposed to 14 will create more dust in the area. There will also be increased air pollution from increased traffic, landscape equipment, private contractors, and again, let's not forget construction related and on-line shopping deliveries.

5. The Addendum claims that construction activities for the proposed modified project would result in temporary, low-level noise impacts at the nearest residences closest to the project. Whoever performed this Addendum is clearly not familiar with the distance sound travels, specifically in rural areas. Under the right conditions, we can hear the train in Auburn six miles away. The so-called mitigation is that construction activities (for 6 years) will be limited to the hours of 7 a.m. to 7 p.m. six days a week. The report admits that the construction and operation of the project would have noise levels in excess of the County noise standards but limiting construction to the above hours was also found to have a less than significant impact. On whom? First of all, those are not the construction hours that were approved in the previous EIR. The approved construction hours were to be no longer than 8 a.m. to 6 p.m. and only five days per week. All construction noise will certainly have a major impact on the surrounding residents, especially considering at present there is usually zero noise from that property. There will be significant noise generated by both the construction and operation of RDR especially in light of all the activities anticipated at the project.

6. A new fire assessment study in light of the recent catastrophic and deadly fires that have occurred in California in the past 6 years should be required, including a review of the previous road exception waivers. The similarity of the population density, roadways, topography and fire protection assets to the Camp Fire, the Carr Fire, Tubbs Fire and Santa Rosa complex fires cannot be overlooked. The original project contemplated evacuation of residents by buses. The evacuation of over 415 residents, employees and guests from RDR along with existing residents from the surrounding homes attempting to evacuate in hundreds of private vehicles from Rincon Way onto a crowded unlighted Highway 49 with fire equipment attempting to enter the area creates a substantial risk that the roadways will be blocked. This scenario was not addressed in the Addendum which simply repeated that "the proposed modified project would not result in a change to the finding in the certified EIR of less than significant impacts relating to the spread of wildfire and fire risks" and thereby ignoring the changed demographics and verifiable fire evacuation inadequacies as recently demonstrated by the above mentioned uncontrollable and deadly fires.

7. One of the most concerning aspects of the project is how the population cap of 415 (1.2 persons per unit) will be enforced with so many individually owned parcels and the increased size of the dwelling units, all of which appear to have two bedrooms and two bathrooms with many having dens that could be used as another bedroom. The Addendum claims that an annual report would be made to the Planning Department certifying the number of residents for the previous year. Would this be the population on a certain date, the average yearly population or a random count? The Addendum states that the applicant would impose CC&Rs for the project, which would include a certificate of

occupancy. The CC&Rs would provide for the formation of a HOA which “shall be responsible for enforcing all property use restrictions and maintenance obligations, age and occupancy restrictions” that are feasible under all Federal and California laws and regulations subject to approval by the CA Dept. of Real Estate and that the HOA shall provide the County with a copy of each verification of occupancy report. The primary concern of the surrounding residents is how either the HOA or Young Enterprises can guarantee that the resident population never goes above 415 on *any* given day, not once a year or even quarterly. The Addendum continually states that the population will be limited to a maximum of 415 age restricted residents, yet neither Young Enterprises nor Nevada County have ever proven that they actually can or will enforce this limit. The County officials have admitted that there is no legal mechanism by which either the Planning Department, County Counsel, the Department of Real Estate, the Department of Social Services, the Department of Housing and Development or a HOA can or will enforce the population cap. Deed restrictions do not address number of residents in privately owned residences. In fact, even senior age-related deed restrictions often encounter age-discrimination litigation in current times. Only the provider, Young Enterprises, L.P., as a “landlord” could legally enforce the 415-person population cap utilizing legally binding lease-based restriction/eviction protocols. With the proposed fee simple title based changes on 323 units within the development, Young Enterprises will only own and control twenty four “rental units” and possibly the Memory Care Group Home / Assisted Living Facility facility, assuming it ever actually gets built. Abdicating authority to a HOA to enforce the 415-person population cap is not a legitimate mitigation to controlling population density within the fee-simple portions of the development. I doubt there is any case law allowing a non-owner of real property to dictate or enforce the number of persons who can live in privately owned property. When, not if, more than 415 residents are found to be living at the project, what reliable enforcement methods will be used to remove them? There is a Settlement Agreement, which among other things specifically limits the resident population of RDR to 415 residents. The Addendum to the EIR fails to address a realistic, legal or workable solution/mitigation regarding the enforcement of that 415-person population cap on the proposed fee simple portions of the development. Any and all proposed changes to the approved project, and there are several, that impede or remove the legal mechanism to enforce the 415-person population density within the development are in direct violation of that settlement agreement and could prompt future litigation.

The bottom line is that Young Enterprises, L.P. has an approved and totally viable project that could have been built anytime since 2013, and still could be built today exactly as approved. There is a valid Settlement Agreement willingly executed by the Parties and by which Young Enterprises L.P. should be bound.

Thank you for your consideration.

Sincerely,
KNCR Coalition Agents
Karen M. Abbott
Patricia and Benton Seeley
Billie Prestel

cc: Katherine L. Elliott, County Counsel
Rhetta VanderPloeg, County Counsel

Matt Kelley

From: Sara Coppin <sara@coppinlaw.com>
Sent: Monday, January 11, 2021 2:11 PM
To: Matt Kelley
Subject: Rincon Del Rio - objections and comments

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Kelly,

I am a neighbor to this project, and I am writing with great concern about the proposed changes to the plan. My first comments however, are that we MUST have a public hearing and extend the comments period. As an attorney dealing with government rulemaking, I am very familiar with the trick of holding a comments period over the holidays to limit the response you get. This is unacceptable, and the comments period must be extended to allow people to respond. Particularly in light of the pandemic and the difficulty that poses for communities to meet and confer about issues important to them. I will also be communicating this request to the Board of Supervisors and to the Planning Director.

Second, the reason why it is so important that the community be given a reasonable amount of time and opportunity to respond is that the changes that are being proposed in this plan are not minor. What is being proposed would erase several of the concessions that the developers made to the county in the first place. Why on earth is that acceptable? Changing the phasing of the plan, allowing the parcels to be subdivided in to hundreds of tiny fee simple lots, and shortening the time in which the development is required to maintain things like age restrictions are essentially turning this into ultra-high-density housing development with no justification whatsoever. This supposed benefits to Nevada County's aging population by offering a CCRC -- which were used to justify making a change to the entire county's general plan in the initial EIR process -- are lost if the project isn't required to maintain those restrictions. In 20 years it will just be another Citrus Heights or Natomas, benefitting the county and our way of life here not at all.

It appears the county plans to give away the house, so to speak. I am very much opposed to these changes. Please lodge my comment in the development's record please.

Sara E. Coppin
Attorney at Law
Law Office of Sara E. Coppin
226 Colfax Avenue
Grass Valley, CA 95945
phone: (530) 401-6891
fax: (530) 302-3629
www.coppinlaw.com

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that reading, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. If you have received this communication in error, please contact the Law Office of Sara E. Coppin, 530-401-6891.

1/15/21

We are very concerned about the changes that the Rincon Del Rio has made to their project. My understanding was that they had made a legal agreement after a lawsuit was brought against them by several of the property owners. Why has that been ignored?

And we are very concerned about putting water lines down our road and the destruction that will happen to it, knowing that no one will be financially responsible for maintaining it except our development. We have invested thousands and thousands of dollars over the 40 yrs. we have lived here and we finally have a decent road.

We are also concerned about fire and having the ability to escape and not be trapped like so many elderly were in Paradise Calif. Now it seems that you are reducing the width of Rincon with no ability of fire trucks to enter and vehicles to escape. I understand there is another exit on Rodeo Flat but how many people will be trying to use that exit to get to Combie Rd. ? Thousands??

With the Covid-19 stay at home order from our governer and the short notice about these changes it seems that these decisions should be put on hold till we can have planned meeting again with all property owners and the county planning department.

Sincerely,

Sherry and Jerry Warren



To the Nevada County Attorney's Office, Nevada County Community Development Agency and the Nevada County Planning Department.

January 13, 2021

In regards to: Rincon del Rio Addendum

To all concerned,

I hereby formally request that all matters regarding the Rincon del Rio notice of intent to adopt an addendum to the final environmental impact report be postponed until such time as the State of California deems it safe to socialize.

As you well know, we are currently under a stay-at-home Mandate from the State and at this time cannot properly seek the complete and thorough legal advice that is necessary to address this situation. It will take more time than given as many of the people are directly dealing with the virus. The parties involved deserve time to heal from their medical issues before analyzing the prior lawsuit provisions that bound this project allowing it to go forward previously as approved.

At first glance, it appears that the addendum has violated the spirit of the law on at least 4 previous stipulations of said lawsuit. First and foremost are the issues of fire danger!. Having been in the fire service, I still know officials at the state level, and I will be contacting them. I am fairly sure the state Fire Marshall office will be wanting to update the fire code issues that have gone into effect since 2013. On that matter, I am sure they will have something to say about the changes too. This matter involves a lot of people and is multi fractional. A decision at this time from our duly elected, appointed officials and trusted Civil Servants would be misfeasance. We and the community directly involved with the situation cannot practicably have a dialogue between all parties involved in the current state of covid 19.

Yours truly,


Mr. Stephen Jones
22990 Hidden Ranch Rd.
Auburn Ca 95602
530-320-2297



CC: Nevada County Attorney's Office,
Nevada County Community Development Agency,
Nevada County Planning Department

Virginia I. Akers
Hidden Ranch Road Association
23189 Hidden Ranch Road
Auburn, CA 95602

January 20, 2021

Nevada County Planning Department
Matt Kelley: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Re: Notice of Intent to Adopt Addendum to the Final EIR for Rincon del Rio project

Sent by Email to Matt Kelley: matt.kelley@co.nevada.ca.us

Please make a part of the official record

Dear Mr. Kelley:

After reviewing the Addendum to the Final EIR for the Rincon Del Rio project, we have several issues with the Addendum. The Addendum basically skims over the issues that have previously been raised and not surprisingly, simply regurgitates that this project will allegedly remain a CCRC with 345 units and a population of 415 all of which will have no impact. It ignores the major changes that have been requested without any in-depth analysis of the changes in demographics or the very real impacts caused by the major subdivision into private lots and the ramifications of reconfiguring the buildings and their changed location. By removing the intermediate services including assisted living, rehabilitation, and nursing care between independent living and memory care, the modified project has gutted the intent of continued care. This is now clearly an active adult subdivision, not a CCRC. The Addendum fails to make this distinction and the vital differences between an older community and a younger, physically and socially more active community. This Addendum alleges no new significant impacts would occur as a result of the proposed modified project and that there would not be any substantial increases in the severity of any previously-identified adverse environmental impacts. This a patently absurd conclusion that defies logic and common sense.

Rather than delineate every objection we have to this retirement subdivision pretending to be an "amended" CCRC project, we make the following general objections and reserve the right to make further objections at a later date. Our objections include, without limitation, the following:

1. The proposed modified project is now effectively a subdivision that should require a totally new and updated EIR and comply with the Subdivision Map Act. Rather than 14 lots owned and operated by Young Enterprises, the project will now be subdivided into 346 parcels. The majority of the project will now be governed by a homeowner's association and not Young Enterprises who will lose control over the privately owned units.

2. Despite the fact that there will now be a younger, more active population with more cars, the traffic analysis astonishingly determined that the daily trip count would be **reduced** from 969 daily trips 863 daily trips. The Addendum estimated volume of traffic on Rincon Way at 370 trips per day. Total traffic is now estimated at 1,233 trips per day which would represent an increase of 233% over existing conditions which the report indicated would be considered substantial. This bogus traffic study fails to include traffic for employees, guests and deliveries to both the residents and businesses

onsite all of which common sense dictates would be estimated be higher, not lower, in an active senior subdivision vs. a CCRC facility. The Addendum then excuses this “substantial” increase in traffic because Rincon will be improved and the roadway as improved can handle that amount of traffic plus some. The original EIR anticipated a Class 1 road which is now for some reason a Class 2 road in this report. Despite the substantial increase in traffic on Rincon, the report utterly fails to address the major impact of 1233+ vehicles attempting ingress/egress onto Highway 49 which has become deadly in its own right. Using statistical traffic from 2011 is beyond ridiculous since residents are painfully aware that traffic has seen a massive increase on Highway 49 in the intervening years. When all of this is taken into account, it is simply not feasible or believable that the increased traffic can lead to a finding of a less than significant impact as stated in the Addendum.

3. The Addendum is deficient with regard to greenhouse gas (GHG) emissions since it only reported an estimated 586 metric tons of GHG during construction-related GHG over the estimated 6-year construction length and did not take into account the GHG emitted by the completed project. There will also be increased air pollution from more traffic, landscape equipment, private contractors, and deliveries after construction at build-out that was not accounted for in the Addendum. Simply purchasing carbon credits will not make the air cleaner for the surrounding residents.

4. As noted in the Addendum, the modified project will now include new sources of light that were not included in the original project. This includes an additional 218 lights for a total of 453 lights in the modified project. Although the Addendum admits that these additional light sources may affect adjacent areas with light trespass and could contribute to skyglow conditions in the project area, incredibly it states that these additional lights “would not result in a change to the finding in the certified EIR of less than significant” impacts that would affect nighttime views and that no new or revised mitigation measures are required. How do you go from no light emitting from the project site (there is no current light glow from the existing residence) to 453 lights and still claim this would result in no substantial light that would affect nighttime views and requiring no additional mitigation measures? In point of fact, this condition simply cannot be mitigated. What about the additional light emitted by interior business and residential lighting or vehicle lights. This light pollution will have a significant impact on the surrounding residents and obliterate our dark skies.

5. The Addendum claims that construction activities for the proposed modified project would result in temporary, low-level noise impacts at the nearest residences closest to the project. Despite the assertions to the contrary, sound travels a long way in rural areas especially in the winter when the trees have lost their leaves. We can all attest to that with the increased noise level just from Highway 49 in the winter. The so-called mitigation mentioned in the Addendum is that construction activities (6 years worth) will be limited to the hours of 7 a.m. to 7 p.m. six days a week. Even though the report admits that the construction and operation of the project would have noise levels in excess of the County noise standards, somehow limiting construction to the above hours would have a less than significant impact. A Sunday respite is not a mitigation! The noise levels anticipated by the construction alone will certainly have a major impact on the surrounding residents for six years considering there is no noise from that property right now. The Addendum also failed to take into account the noise expected to be generated by the completed project especially considering all the anticipated activities at the project. The noise pollution will have a significant impact on the surrounding residents and eliminate what is left of our peace and quiet.

6. Surrounding residents continue to express concern about the effects this project will have on their fire safety. We are mindful of the tragic and deadly fires that have occurred in California

in the past several years. The similarity of RDR's roadways, topography, population density, and available fire protection assets compared to the Camp Fire, the Carr Fire, Tubbs Fire and Santa Rosa complex fires cannot be overlooked. The original project contemplated evacuation of residents by buses. The modified project foresees the evacuation of over 415 residents plus employees and guests from RDR in addition to the surrounding parcels all attempting to evacuate in private cars from Rincon onto a crowded Highway 49 while competing with fire equipment attempting to enter the area. All of this creates a substantial risk that the roadways will be blocked. This scenario was not addressed in the Addendum which simply repeated that "the proposed modified project would not result in a change to the finding in the certified EIR of less than significant impacts relating to the spread of wildfire and fire risks" and thereby ignoring the changed demographics and verifiable fire evacuation conditions as shown by the above fires. Cal Fire statistics will bear out that people cause the majority of fires within California. More people equate to more fires and fire suppression problems. The Addendum has failed to address the fire danger issues.

7. Aside from the above, of overwhelming concern with this modified project is how the population cap of 415 (1.2 persons per unit) will be enforced in light of the many individually-owned parcels and the size of the dwelling units, all of which appear to have two bedrooms and two bathrooms with some having dens with closets (a bedroom by any other name). The Addendum claims that an annual report would be made to the Planning Department certifying the number of residents for the previous year. How does this assure that the population cap would not be violated the other 364 days? The Addendum states that the applicant would impose CC&Rs for the project which would include a certificate of occupancy. It appears that the HOA "shall be responsible for enforcing all property use restrictions and maintenance obligations, age and occupancy restrictions" that are feasible under all Federal and California laws and regulations subject to approval by the California Department of Real Estate and that the HOA shall provide the County with a copy of each verification of occupancy report. How can either the HOA or Young Enterprises guarantee that the resident population never goes above 415 on any given day, not once a year? The Addendum continually repeats that the population will be limited to a maximum of 415 age restricted residents yet neither Young Enterprises nor Nevada County have ever proven that they can or will enforce this limit. The County is fully aware that there is no mechanism stated in the modified project by which either the Planning Department, County Counsel, the Department of Real Estate, the Department of Social Services or a HOA can or will enforce the population cap. Only the provider, Young Enterprises, L.P., could enforce the cap through singular ownership and control and that authority will be turned over to a HOA because Young Enterprises will only own and control the Memory Care facility (assuming it ever actually gets built). What statutory law or authority provides that a non-owner of real property has power or authority to dictate or enforce the number of persons who can live in privately-owned property? What enforcement methods will be used to remove the excess population? Our understanding is that there was a Settlement Agreement which limits the resident population to a cap of 415. The Addendum utterly fails to address any logical, legal or workable solution to maintaining the population cap as required under the prior project approval and the Settlement Agreement.

Thank you for your consideration.

Sincerely,

/s/

Virginia I. Akers