

Letter 15

Brian Foss

From: mcdye [mcdye@genesisprocess.org]
Sent: Tuesday, March 20, 2012 3:56 PM
To: Brian Foss
Subject: Rincon Del Rio Project

Michael Dye
25363 Rodeo Flat Rd
Auburn Ca 95602

March 20, 2012 Re: Rincon Del Rio Project

Dear Mr. Foss:

Please add this correspondence as part of the public record and the administrative record related to the Rincon Del Rio project.

General Plan Conformity: It has already been noted that the EIR finds that the **Project conforms to the General Plan ONLY because the General Plan amendments the project it is requesting**, if granted, will ipso facto make it conform. We have already pointed out that CEQA does not allow this determination to be validly made because the EIR must compare future uses to current uses---not future uses to uses the developer proposes. All these matters need to be mitigated.

15-1

The EIR fails to address the following objectives for the County's land use determinations as set out in the Goals, Objectives and Policies section of the 1995 General Plan: "Promote and encourage growth in Community Regions **while limiting growth in Rural Regions**" (Goal 1.1); **the Project site is currently designated as a rural region**; there is no compliance with the affordable housing exclusionary set-aside as required by Housing Policy 8.4, since there is merely a statement that such housing will be provided, but no demonstration that it financially will be provided---no rent or sales prices are given; **there does not appear to have been a 5 year review of the General Plan within the last 5 years** as required by Land Use Policy 1.35; **the Safety Directive Policy that uses outside Community Regions having high hazard status where fires are concerned, low density land uses are required, and the present Project site is entirely within high fire threat zones** (Safety Policy 10.6);

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in a county with no public parks at all the **Project does not provide any public park** (recreational) space nor does the County provide for the formation of a local park district to comply with Recreation Policy 5.3. All these matters need to be mitigated.

The County's planning by way of simply amending the General Plan to conform to a project, rather than doing thoughtful general planning first and then having a project conform to that planning effort, becomes simply "political" planning. Those with the money to hire consultants to promote their agendas and get the attention of the revenue hungry decision makers, get anything approved even when that process results in one unjustified amendment after another of the County's major planning document. As noted by The Sierra Business Council, an organization composed almost entirely of businesses operating in the Sierra Nevada: All these matters need to be mitigated.

15-3

Letter 15 Continued

Waiver of Fire Safety Road Standards: The project proponent is asking for a waiver of fire safety emergency exit road standards. The slopes of both Rincon and Rodeo Flat exceed in part the maximum slopes for emergency vehicle traffic, and **Rodeo Flat nowhere meets the minimum County width or road construction materials requirements.** Rodeo Flat has never been inspected by the County or improved by the County nor is it part of the accepted County Road system. All these matters need to be mitigated.

15-4

The proposed access **gate from Rincon to Rodeo Flat** is supposed to be unlocked at all times. **It is not clear if the locked requirement is one that is sought to be waived** along with the slope and width requirements. If the gate is to remain unlocked, or if there are to be paths around the gate accessible by motorized bicycles, there will be additional traffic on Rodeo Flat even if it is subject to a locked gate.
All these matters need to be mitigated.

15-5

Emergency Exit Waivers: The applicant for the Project has applied to the County to waive the road width and slope minimum requirements in order to connect emergency exits from the Project to the existing Rodeo Flat Road.
There is simply no justification for this and **Rodeo Flat is not a road over which the County has any control** according to the Attorney General and the County's own Counsel (Opinion of County Counsel June 8, 1984; Opinion No. 83-1106, April 10, 1984, California Attorney General, 67-145). All these matters need to be mitigated.

15-6

Therefore, not only are the emergency exit requirements ones that should not be waived they are also promulgated on the use of a road that can't be used by a private developer for any purposes that the Community Services District which maintains the roads does not concur with.

The proposed access **gate from Rincon to Rodeo Flat** is supposed to be unlocked at all times. **It is not clear if the locked requirement is one that is sought to be waived** along with the slope and width requirements. If the gate is to remain unlocked, or if there are to be paths around the gate accessible by motorized bicycles, there will be additional traffic on Rodeo Flat even if it is subject to a locked gate.
All these matters need to be mitigated.

15-7

There is no analysis in the EIR of the effects (safety) from additional traffic on Rodeo Flat. Further, there is no analysis in the EIR to support the required waiver findings of the Land Use Code (Sec. L-XVI 2.6) that the proposed waiver will result in safety impacts that are not adversely greater than if the County's regular standards were being met. This waiver if granted would in fact serve only to grant a special favor to a developer to the detriment of other private property owners' safety, traffic and aesthetic concerns. All these matters need to be mitigated.

15-8

Planning: This Project will be an intrusion of housing units and commercial business in an almost totally undeveloped area designated as rural agricultural on the General Plan and Zoning plans of the County. The EIR finds that there will be no significant impact on the environment arising from either the zoning changes or General Plan amendments needed to accommodate the Project?? It does so because it finds that the changes themselves will make the Project consistent with the County General Plan and Zoning requirements (impacts 3.2.2 and 3.10.2) All these matters need to be mitigated.

15-9

CEQA does not sanction these types of findings or the methodology to arrive at the conclusion that no mitigation is required. **CEQA requires that you analyze the Project in light of the current development already on the Project site or its surrounding sites, and not, as is done here, allow an**

15-10

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analysis that starts with what the current zoning or General Plan would allow, or whether the project would have no environmental impacts once the approvals sought for the project are granted. All these matters need to be mitigated.

15-10
cont.

Population impacts: The EIR only looks at the impacts based on the increase over what could exist on the project site (72 units if the total zoning allowance was granted) (impact 3.12.1). **CEQA requires that you analyze the population increases based on the change in use from the present use of the Project site** (one 14,000 sq. ft. single family home) and not what might have been permitted if 72 units had been the scope of the project. All these matters need to be mitigated.

15-11

Air Quality: The EIR admits that air quality impacts in terms of both CO₂ and PM₁₀ particulate matter will not be met and that the Project is located in federal and state non-attainment areas where those pollutants are concerned. It is impossible to make a rationale "overriding" finding that placing seniors (an estimated 415+ of them), who already in many if not most cases will have impaired breathing due to the physical degeneration accompanying old age, is a smart idea, let alone one that rational county planning would sanction. All these matters need to be mitigated.

15-12

Impact on Residential Land Values: There is no economic analysis of the effect of this project on property values adjacent to the project or in the Ranchos along the proposed rights of way for emergency exits and sewers. There are already a number of foreclosed and vacant properties in the area and if prices of existing houses are driven further down by the development of the Project, further vacant and unkempt properties may result from the project causing blight. All these matters need to be mitigated.

15-13

Commercial Impacts: Several commercial uses are proposed to be built as part of the project including grocery and sundry store, beauty shop/hair salon, barber shop, post office, retail gift shop, etc. **There is no analysis in the EIR if these uses will further weaken the existing commercial uses in the Higgins's Corner area and the Combie Center**, resulting in still more vacant retail space in the area. This could be particularly important if these commercial uses are open to the general public. All these matters need to be mitigated.

15-14

Sewer Line: The Project proposes a sewer line to run the length of Rodeo Flat Road. As already noted that is a road over which **the County and hence the developer has no jurisdiction**. The EIR has no description whatsoever of any environmental impacts from putting the sewer into Rodeo Flat Road even though that sewer line is clearly part of the project. Similarly, there is no description of any impacts from using Rodeo Flat Road as an emergency exit from the Project. All these matters need to be mitigated.

15-15

Project Alternatives: The EIR rejects all project alternatives because essentially they are not what the developer wants even though several are less environmentally damaging than others. What the EIR does not do is to examine alternatives to the sewer line and emergency exit use of Rodeo Flat Road, by studying on a topographic and geologic basis the use of other road alignment alternatives, through properties not owned by the developer. For example, sewer lines could be placed in the Highway 49 right of way and run up Rincon Road. An emergency exit can connect up to other roads that exist in the area or that are planned for the area, such as the new-improved Higgins Road. All these matters need to be mitigated.

15-16

Aesthetics: The "aesthetics" analysis of the EIR concludes there will be no adverse aesthetic impacts from the project because it is not visible from Highway 49. **It does not analyze in any meaningful way, the aesthetic impacts on properties that are visible to and from the Project**, or the impact of the construction related traffic on the aesthetics of the homes and

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ranches in the area, and the EIR simply concludes without any factual foundation that the aesthetic impacts on these properties are minimal. All these matters need to be mitigate

I respectfully submit these critiques of the planning process and draft EIR for the Rincon del Rio Project and request that the County not proceed further with the Project until such time as it has before it a project for this site that conforms to the existing Nevada County General Plan, and to CEQA. **All these matters need to be mitigated.**

Sincerely, Michael Dye

Michael Dye
25363 Rodeo Flat Rd.
Auburn Ca. 95602
Tel/Fax 530 269-1072
Email. mcdye@genesisprocess.org

15-17
cont.

Letter 15 – Michael Dye

Response 15-1: The comment refers to General Plan amendments included in the project. See Master Response 3.

Response 15-2: The commenter contends the project is inconsistent with specific General Plan policies referenced in the comment. See Master Response 3. In addition, the first referenced policy does not preclude development in rural areas, so the project would not be considered inconsistent with that policy. The comment refers to Housing Policy 8.4 related to affordable housing. It is assumed that the comment is referring to Housing Element Goal HD-8.4, “Coordinate affordable housing efforts with the Town of Truckee, City of Grass Valley and City of Nevada City.” Policy HD-8.1.7 states “All subdivisions creating 20 or more parcels or dwelling units within the UHD, UMD, and USF land use map designations shall have an inclusionary affordable housing component...” As the proposed project is not located in these land use designations, this policy would not apply. The policy regarding a five-year review of the General Plan would not apply to individual projects, but to the County itself. Consequently, there would be no inconsistency. The safety policy to which the comment refers does not appear to be a Nevada County General Plan policy. There are no policies that restrict low-density uses to high fire zones. The General Plan does include policies that are intended to reduce fire-related risks, with which the proposed project would be required to comply. For parks, as discussed on page 3.13-36 of the Draft EIR, the Bear River Recreation and Parks District (BRRPD) reviewed the proposed project and determined that, with the more than 4 miles of improved walking trails and soft surface trails throughout the project site, as well as picnic areas and social gathering areas along the Bear River, no new recreational facilities would be required and no deterioration of existing park facilities would occur as a result of project implementation.

Response 15-3: The commenter takes exception with the concept of changing the General Plan to allow the development of a project. See Master Response 3.

Response 15-4: The comment states that Rincon Way and Rodeo Flat Road exceed, in part, the maximum slopes for emergency vehicle traffic and do not meet the County width or materials requirements. The comment is incorrect regarding the slope of Rincon Way; it does not exceed maximum slopes for emergency vehicle traffic. Regarding the slope on Rodeo Flat Road, the comment is correct. As discussed in Draft EIR, Section 2.0, Project Description, page 2.0-66, the project would require approval of a road standard exception to allow for use of Rodeo Flat Road as an emergency access route even though portions of the existing road exceed 16 percent grade. Regarding standards for Rincon Way, the project would require approval of a road standard exception to allow for a 30-foot easement on Rincon Way.

Response 15-5: The comment refers to the emergency access gate at Rodeo Flat Road. See Master Response 1.

Response 15-6: The comment provides an opinion regarding the suitability of Rodeo Flat Road for emergency access. The comment is noted. See also Master Response 1.

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

- Response 15-7:** The comment repeats Comment 15-5. Refer to Response 15-5.
- Response 15-8:** The comment states there is no analysis of traffic on Rodeo Flat Road. The comment is correct. As discussed in Draft EIR Section 3.14, Traffic and Circulation, Rodeo Flat Road is intended as an emergency access only. The project proposes the use of Rodeo Flat Road for emergencies only; consequently the traffic analysis for the project does not assume daily traffic on Rodeo Flat Road.
- Response 15-9:** The comment notes that the Draft EIR determined there would be no significant impacts associated with the General Plan amendments. See Master Response 3.. While it is true that the amendments themselves would not directly result in physical environmental effects, the proposed General Plan amendments would allow development of the proposed project, which would result in physical environmental effects. The Draft EIR discloses the physical effects of construction and operation of the project. As the impacts of the project have been adequately disclosed, no change to the Draft EIR is required.
- Response 15-10:** The commenter again takes exception to the finding that the project would not result in an inconsistency with the General Plan which would result in a physical effect that would require mitigation. See Master Response 3 and Response 15-9.
- Response 15-11:** The comment states that the Draft EIR only looks at the impacts of increasing the population of the project site relative to the existing land use designation, not based upon the project site's current population. While the Draft EIR discloses the change in the population from the population that could occur under the current land use in Section 3.12, Population, Housing, and Employment, for information purposes, the calculations for service and utilities demands and traffic generation are based upon the proposed land uses of the project, not taking into consideration the existing use of the site or the existing land use designations. Therefore, the physical effects of the entire population of the project at buildout are considered in the Draft EIR.
- Response 15-12:** The comment states that the County cannot make a rational finding for placing seniors in a nonattainment area for air pollutants. The comment is noted and forwarded to the decision-makers for their consideration.
- Response 15-13:** The comment states there is no economic analysis of the project and that the project could further reduce property values in the area and result in blight. The comment provides only speculation on, but no evidence of, the potential for reduced property values such that foreclosures and blight would occur. The County also has no evidence to substantiate a conclusion that blight would occur. As identified under CEQA Guidelines Section 15131, economic or social effects of a project are not considered significant environmental effects subject to review under CEQA.
- Response 15-14:** The comment states the Draft EIR contains no analysis about whether the proposed commercial uses would weaken the existing commercial uses in the Higgins Corner and Combie Center. On-site commercial uses are intended to only residents of the project. In addition, with regard to on-site commercial uses, access to the project site would be controlled at the gate house on

Rincon Way (see Master Response 1), and access to the commercial uses would be limited to residents and visitors of the site with some relationship to the project residents, not the general public (see Response 3-24). It is anticipated that the residents of the project would also patronize local commercial establishments outside of the project site. Therefore, some visitors to the project could patronize the commercial uses in the project site, but not to an extent that it would weaken nearby commercial uses and result in physical deterioration of those uses.

Response 15-15: The comment states the County and project developer have no jurisdiction to put a sewer line in Rodeo Flat Road and there is no discussion of impacts of putting the sewer line in Rodeo Flat Road or impacts of using the road for emergency access. Existing public utility easements on Rodeo Flat Road allow for the placement of utilities (see Draft EIR page 2.0-60). The environmental impacts of on-site improvements and off-site utilities are considered throughout the Draft EIR. Extension of sewer services to the project site would require annexation to County Sanitation District #1 and associated approval by the Nevada County Local Agency Formation Commission. The temporary construction impacts of the placement off-site improvements during phase 1 (see Draft EIR page 2.0-66) have been addressed in the Draft EIR related to air quality emissions (see Impact 3.3.1 and Table 3.3-7), construction water quality impacts (Impact 3.9.1), and construction noise impacts (Impact 3.11.1). The County would require that the roadway be returned to its original condition after construction was complete. The commenter is referred to Master Response 1 regarding concerns of emergency access connection to Rodeo Flat Road.

Response 15-16: The comment states the EIR rejects all the alternatives and fails to analyze alternatives to the sewer line route and the use of Rodeo Flat Road for emergency access. As discussed on Draft EIR page 5.0-1 and in Response 3-3, the Draft EIR, consistent with the CEQA Guidelines, describes and analyzes a range of reasonable alternatives to the project. The discussion of the environmentally superior alternative (see Draft EIR pages 5.0-54 and -55) is a requirement of CEQA Guidelines Section 15125.6(e)(2) and is not intended to be construed as an endorsement or rejection of any alternatives. The Draft EIR does not reject or endorse any of the alternatives. Regarding alternatives to the sewer line route and the use of Rodeo Flat Road for emergency access, the intent of the alternatives analysis is to identify alternatives that could avoid or substantially lessen one or more of the significant environmental impacts of the project (CEQA Guidelines Section 15125.6[a]). Neither the sewer line nor the use of Rodeo Flat Road for emergency access was found to result in significant impact on the physical environment; thus, alternatives to those project components were not analyzed.

Response 15-17: The comment states the Draft EIR does not analyze aesthetic impacts of the project on nearby homes, nor does it analyze impacts of construction traffic on the aesthetics of the nearby homes. The discussion of aesthetic impacts on the surrounding area, including nearby homes, is included in Draft EIR Section 3.1, Aesthetics, Impact 3.1.2, pages 3.1-14 through -16. The comment provides no information as to how construction-related traffic would differ visually from any other traffic or how this intermittent occurrence would result in a substantial change to the visual character of the site.

Letter 16

Darryl Ecke
22880 Beaver Ct.
Auburn, CA 95602

Response to Rincon Del Rio Draft EIR.

To the Planning Dept.

Please add this correspondence and any attachments as part of the public record and the administrative record related to the Rincon del Rio project. This correspondence addresses serious issues and concerns regarding the Rincon del Rio project and the adequacy of the Draft EIR and should be included as part of Nevada County's administrative process in the event a court action occurs.

My property, which is located off Hidden Ranch Road, is at ground zero for the Rincon del Rio(diculous) development. After reading the EIR for the development, it is becoming clear that greed and politics will very likely win the day in favor of RDR. This is unfortunate not only for those of us who will be most affected by this specific development, but for all of the residents of Nevada County, as the proposed rezoning and change to the General Plan will unravel the fabric of our rural county and encourage similarly ridiculous projects in other pristine areas of our county. Since there are so many issues to address, I will focus on only two.

Cumulative Wildland Fire Hazards

Impact 3.8.8 The proposed project, along with increased urban development in Nevada, Yuba, and Placer counties, would result in cumulative wildland fire hazard impacts. (**Cumulatively Considerable and Significant and Unavoidable**)

We all saw the devastation caused by the recent fire at Hwy 49 and Dry Creek Road in Auburn. That fire should illustrate the potential for disaster that a similar fire in the much more difficult to access Rincon del Rio site would create. In the probable event of a wildfire, the difficulties of evacuating some 500 seniors, their support staff, residents from the LOP Ranchos and residents located along Rincon Way and Hidden Ranch Road from this difficult to access area are staggering. An army of trucks, helicopters and on-the-ground fire fighters were needed to extinguish the Dry Creek fire and that was an easily accessible site. Still, the devastation was considerable. In Rincon del Rio, you have the potential housing of roughly 600 seniors, many who will be handicapped and have special needs and nearly inaccessible conditions for both fire crews and evacuation efforts. These seniors and all of the support personnel that they will require will be stranded in a hard to reach death trap with one road leading in from Hwy 49 and a steep, gated, fire access road leading out to the Lake of the Pines Ranchos. This does not even address the safety concerns of those of us who currently live there.

16-1

The potential destruction of a fire in the proposed densely populated, difficult to access "Senior Village", Rincon del Rio, would be DEVASTATING! **Cumulatively Considerable and Significant and Unavoidable?** Of course, it is avoidable and it is your jobs to avoid it!

Cumulative Traffic Impacts

Impact 3.14.8 Implementation of the proposed project, along with other traffic generated

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by existing and future development in the project area, would increase traffic in the project area. (**Less than Cumulatively Considerable**)

Driving safety on Hwy 49 is a constant struggle. The additional impact created by the occupants of 600 residential units, their families, friends, real estate agents, food service vehicles, miscellaneous service vehicles and emergency vehicles will be extreme. All of these vehicles will use Rincon Way to access and leave Rincon del Rio from Hwy 49 with no traffic light. The fact that **Cumulative Traffic Impacts** appears as **Less than Cumulatively Considerable** in the EIR confirms to me that either this report was generated by a gifted high school freshman, *or the very serious issues of safety have been intentionally glossed over to force Nevada County to conform to this development, instead of forcing Rincon del Rio to conform to the established zoning and General Plan of Nevada County.*

16-2
cont.

Last but not least are the wellbeing, peace and safety of those of us who live here already. Those of us who live here do so for a reason. We did not move here, buy land here and pay taxes here so we could live with the noise, traffic and frustration of a "village" being created literally in our back yards. If any of us had wanted that, we would have bought property in Roseville. At night, we can open our windows and hear the coyotes sing and the owls call. If Rincon del Rio is permitted, we will hear sirens from emergency vehicles instead. Our lives and the lives of every local resident, including by the way the seniors who will be settled here, will be disrupted and the safety of every one of us will be forever forfeit. The residents here and the children we raise here deserve the benefit of safe driving conditions and the basic expectation of safe evacuation in the event of a fire.

16-3

Sincerely,
Darryl Ecke

Letter 16 – Darryl Ecke

Response 16-1: The comment refers to access during a fire. See Master Response 1.

Response 16-2: The comment questions the qualifications of the traffic consultant for the project and implies the traffic impacts would be worse than disclosed in the Draft EIR. The traffic analysis was prepared by KD Anderson and Associates, Inc., a consulting engineering firm serving Northern California, the Central Valley, Oregon, and Nevada since 1990 that prepares regional planning studies, traffic impact and air quality studies, and traffic operation and safety studies to private clients and government agencies. Regarding the impacts of the project, the reader is referred to Section 3.14, Traffic and Circulation, in the Draft EIR, which discusses methodologies used in the analysis to reach the conclusions disclosed in the analysis. In short, although the perception of the existing condition by current residents is of poor operations at SR 49 and Rincon Way, the Draft EIR found that the traffic generated by the project would not reduce the level of service (LOS) below County or Caltrans standards or result in volumes that would trigger a signal warrant at SR 49. See comment letter C from the California State Department of Transportation (Caltrans). The comment also notes that the project would include 600 residential units; the commenter is referred to Table 2.0-1 on Draft EIR page 2.0-28, where it shows to project would include 345 units.

Response 16-3: The comment contains general statements regarding concerns about noise, traffic, and safety, but makes no particular statement regarding any inadequacy of the Draft EIR. The comment is noted. The Draft EIR found that impacts related to noise and traffic would be reduced to less than significant levels (see Sections 3.11 Noise and 3.14 Transportation and Circulation, respectively). With the exception of the cumulative contribution to increased urban development in Nevada, Yuba, and Placer counties and the potential for wildland fire hazard, impacts related to safety were found to be less than significant (see Section 3.8 Hazardous Materials/Human Health).

Letter 17

EcoSynthesis

SCIENTIFIC & REGULATORY SERVICES, INC.

March 27, 2011

Brian Foss
Nevada County Planning Department
950 Maidu Avenue
Nevada City, CA 95959

Subject: Comments on Draft EIR, Rincon del Rio Project

Dear Mr. Foss,

I conducted the biological inventory for the Rincon del Rio project site, and am familiar with the resources of the site, the effectiveness and feasibility of various available mitigation actions, and the applicable regulatory environment. The Draft EIR for the Rincon del Rio project (Project) includes some inaccuracies and mitigation measures which should be corrected in the Final EIR.

Existing Conditions

The EIR maps and describes the majority of the western portion of the project site, where the project construction will occur, as Montane Hardwood, and states that "...for the project site..." this cover type is dominated mostly by California black oak, with scattered canyon live oak, ponderosa pine, Coulter pine, and white fir. The text further notes (or merely implies; the writing is not entirely clear) the occurrence of Oregon oak in this area. This text is incorrect: the majority of the oak woodland in that portion of the project site is blue oak, with interior live oak and relatively few black oaks. To the best of my knowledge, neither Coulter pine, white fir, nor Oregon oak occurs within the site. This kind of mis-identification or mis-characterization of existing terrestrial communities should be revised, because it can create an incorrect impression in readers of the EIR that there may be uncommon plant communities present, or individual plants that represent huge extensions of the known geographic range of their species, when this is not in fact the case.

I am confident that the description of the species composition of the existing plant communities of the site that was included in the biological inventory report is correct at (or well above) the level of detail that is normally included in inventory reports to the County. If the EIR preparers observed anything on site that conflicts with the descriptions in that report, I would urge them to contact me to discuss such differences in observations. If not, it would be best for the EIR's description of plant communities, specifically the oak woodlands, on the site to be revised to conform more closely with the biological inventory descriptions.

The EIR states that "Oak woodland is a CDFG-designated sensitive natural community." California's oak woodlands undeniably provide important environmental values, but I am not aware of any reference that characterizes the totality of oak woodland communities as sensitive. This statement should be deleted or fully referenced and explained. One very standard reference that provides an indication (albeit unsupported by specific data of any kind) of the subjective attitude of the

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16173 Lancaster Place, Truckee, CA 96161 • Telephone: 530.582.6810 • Fax: 530.582.5882 • www.ecosynthesis.com

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Biogeographic Data Branch of California Department of Fish and Game regarding the rarity of plant communities is the List of Terrestrial Natural Communities Recognized by the California Natural Diversity Data Base. Reference to this publication quickly shows that a great many, probably the majority, of the many oak woodland associations in California are not considered to be rare or worthy of consideration by the CNDDDB. This is corroborated to reference to various other online resources including web sites of NatureServe and other organizations. The oak woodland types within the Rincon del Rio site fall into this non-rare category, according to the List.

17-1
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Impacts and Mitigation Measures

Mitigation Measure 3.4.2a: The words “by a USFWS-approved biologist” should be deleted from the first sentence of the measure. The USFWS Guidance reference cited by the EIR specifically states that there is no USFWS approval process or requirement for a Section 10 take permit or any other paper qualification; only that the work be conducted in accordance with specified procedures. In the event that, following review of the habitat assessment, USFWS determines that one or more aquatic features within the site provide potentially suitable breeding habitat for California red-legged frog, then a full protocol survey for the species would be required, as stated in the mitigation measure. The protocol survey does not require a qualification either (as stated in the Guidance), but it is highly advisable for the wildlife biologist to have a take permit in the event that it is necessary to capture an individual in order to make definitive identification. This mitigation measure should simply adhere to the contents of the USFWS Guidance.

17-2

Mitigation Measure 3.4.2b: The words “and upland” should be deleted from the mitigation measure. In effect, this would require the removal of existing development and restoration to native vegetation of an acreage of upland habitat equal to the entire project footprint. Where this action would occur is unclear, because there is simply no amount of existing developed acreage within the site to do this action. If off site, there is no plausible biological scenario under which restoration of upland habitat off site would provide mitigation for whatever impact the project has on frogs breeding within the site. There is no scientific or regulatory justification or precedent for this extreme of a mitigative action in order to reduce the project impact to a less-than-significant level. In the event that California red-legged frogs breed in the pond (which is either the only, or at any rate certainly the most likely, potential breeding habitat within the site), the project design preserves plenty of upland habitat for aestivation, as well as ample movement corridors along water courses, to provide sufficient upland habitat for this species. In addition to the flaws identified above, Mitigation Measure 3.4.2b as worded is almost certainly infeasible and is therefore in conflict with basic CEQA policy (namely, that mitigation measures be both feasible and effective).

17-3

Mitigation Measure 3.4.2c(3) should be deleted. This is not justified by the project impacts. It would be ineffective, given that the pond is relatively large and deep and the amount of aquatic habitat to which the biologist(s) will have access is an insignificantly small portion of it. Finally, it is infeasible for a biologist conducting a survey for California red-legged frog to digress into capturing fish and crayfish, which are very elusive and are generally captured in traps or (for the former) by electrofishing, not by a wading biologist. Bullfrogs are easier to capture, but still not feasibly eliminated by one or two wading biologists. Finally, the meaning of “permanently remove” is unclear; if this means to institute a program of capture of exotic species in perpetuity, this is similarly unjustified, dubiously effective, and almost certainly infeasible.

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Mitigation Measure 3.4.2c(4) is misplaced. Procedures to avoid or minimize the possibility of contributing to the spread of amphibian pathogens should be a part of the survey mitigation (measure 3.4.3(1) above). The cited reference, dated 1991, is over 20 years old and may be obsolete. Recommendations contained in the USFWS 2005 Guidance should be followed.

17-5

Mitigation Measure 3.4.2c(7): In my opinion, the distance "60 feet" is not nearly enough; this should be an absolute minimum of 100 feet, and I would prefer 200 feet if (and only if) a practical evaluation of the realities of project construction show that this greater distance is feasibly achieved. However, due to the unique construction and situation of irrigation canals, it is not necessary to keep construction equipment maintenance and staging areas more than 100 feet from irrigation canals. Also, this particular measure should be removed to some other location in the EIR because it should be required whether California red-legged frogs are found or not.

17-6

Mitigation Measure 3.4.3a: There is no feasible means of reliably surveying for western pond turtle nests ("reliably" meaning being more or less certain to find a high proportion, say 95 percent, of nests). Survey for this species should occur only within and along the immediate banks of the pond, where, if present, turtles would be found basking on emergent objects such as logs or rocks (if any), or on nearby banks. The mitigation measure seems to imply that fencing should be installed regardless of whether pond turtles are found or not. This is unwarranted; no such mitigative action is needed if pond turtles are not found.

In the event that western pond turtles are found during the survey, then appropriate mitigation measures should be implemented. Gravid females of this species leave the aquatic environment in early summer (roughly, June) to nest in upland locations, usually in relatively open herbaceous vegetation, and generally less than 300 feet from the water. Hatchlings return to the aquatic environment the following spring. I am not personally familiar with the efficacy and level of risk of entrapment associated with putatively one-way turtle fencing; or whether it might be preferable simply to install ordinary drift fencing at the end of May (neither earlier, which might interfere with returning hatchlings, nor much later, which might be too late to prevent females from leaving the pond to nest) and leave it in place until the construction season is over. Such fencing would only be of mitigative value on the side of the pond toward construction activity, and should not be required in all directions. Provision for relocation of nests should be triggered only if a nest is encountered inadvertently in the course of construction. Except in such a circumstance, it is almost never appropriate to excavate and relocate reptile nests as a means of mitigation. If the location of an undisturbed nest is known, it should simply be avoided until the hatchlings depart from the nest. However, once one is uncovered in the course of construction, it becomes at risk of predation even if it is re-covered and avoided, so it then becomes appropriate to salvage the eggs and try to rear them, or to bury them in a man-made nest in a safe location, perhaps install a simple predator screen, and hope for the best.

17-7

These mitigation measures do not provide absolute assurance that there would be no possibility of loss of an individual turtle, nest, egg, or hatchling. However, neither are western pond turtles so extremely rare that the slightest impact is a significant one. I think that these measures would provide a reasonable level of reduction of impact to a level that would be less than significant under present applicable CEQA guidelines.

Mitigation Measure 3.4.3b: This measure pertains to active migratory *bird* nests, which should be made explicitly clear. The way this page is laid out tends to indicate this might be pond turtle nests.

17-8

Letter 17 Continued

Brian Foss
March 27, 2012
page 4

Impact 3.4.4: It is my understanding that the correct procedure under CEQA is to rely upon the existing regulatory background, and not to make assumptions that are plainly contrary to that regulatory environment. Irrigation canals/ditches excavated or formed by berms constructed on dry land, and which are aquatic solely by virtue of artificial hydrology (pumped or manually diverted water) are not included in the list of waters of the U.S. in CFR Part 328 and are specifically intended to be excluded from Section 404 jurisdiction by the preamble to CFR Part 328.3. Specific guidance regarding irrigated features was provided by the U.S. Army Corps of Engineers, Sacramento District, in a Regulatory Branch Memorandum (No. 2007-01, dated March 13, 2007). Based upon this guidance, it is correct to assume that the replacement of the segment of the Weeks Ditch within the project site by an underground pipe would not require any Section 404 permit. Thus, the table included in this impact discussion is not correct and should simply be deleted. Incidentally, removal of 0.8 acre of jurisdictional waters of the U.S. would not be authorized by the existing (recently reissued) nationwide Section 404 permits; in almost all cases, aggregate project impacts under nationwide permits are limited to 0.5 acres even if multiple permits authorize different project elements.

17-9

The EIR and supporting appendices do not provide enough information to quantify the impact on waters of the U.S.; only enough to identify a potentially significant impact of this kind. Incorrect detail should be eliminated from the impact discussion and mitigation measure; or the basis and context should be presented in full, so that statements in other sources that, for example, there might be a maximum of 0.1 or 0.2 acre of one sort of impact or another do not become transformed into statements that this area of impact has been conclusively determined to result from the present project design, under the present regulatory structure.

The mitigation measure should require that a delineation of wetlands and other waters of the U.S. be completed and submitted to the U.S. Army Corps of Engineers for verification; and that, if project construction will directly affect any federally jurisdictional features, then a nationwide permit authorization or individual permit must be obtained; and that all construction and mitigation actions would be implemented and monitored in accordance with the conditions of whichever permit authorizes the discharge of fill into jurisdictional waters.

Please do not hesitate to contact me, or to refer the EIR preparers, in the event that any further discussion of these or other aspects of the biological resources section may help to ensure that the EIR is complete and correct.

Sincerely,



Adrian Juncosa, Ph.D.
Senior Ecologist

Letter 17 – Adrian Juncosa, Eco Synthesis

Response 17-1: The comment states that the areas identified as montane hardwood in the Draft EIR is better characterized as oak woodland and that some of the tree species identified under the description of montane hardwood in the DEIR are not present on site. The commenter recommends using the vegetation communities provided in his authored report “Rincon Del Rio Project Biological Inventory.”

Draft EIR text on page 3.4-7, Section 3.4, Biological Resources, has been revised as follows:

Montane Hardwood

~~Montane hardwood is typically composed of a pronounced hardwood tree layer, with an infrequent and poorly developed shrub stratum, and a sparse herbaceous layer (McDonald 1988). Snags and downed woody material generally are sparse throughout the montane hardwood habitat. For the project site, these areas are dominated by California black oak mixed with ponderosa pine and support a whiteleaf manzanita and/or ceanothus in the understory. Canyon live oak (*Quercus chrysolepis*) is scattered in the overstory among ponderosa pine, Coulter pine (*Pinus coulteri*), and white fir (*Abies concolor*). Knobcone pine (*Pinus attenuata*), gray pine, and Oregon white oak (*Quercus garryana*) are abundant at lower elevations. Understory vegetation is mostly scattered woody shrubs (i.e., manzanita (*Arctostaphylos* spp.)), birchleaf mountain mahogany (*Cercocarpus montanus* var. *glaber*), poison oak, and a few forbs (McDonald 1988). Wildlife species found in montane hardwood conifer also occur in montane hardwood.~~

Foothill Hardwood

~~There are several types of oak woodland that occur on the project site. The largest expanse of oak woodland is dominated by blue oaks (*Quercus douglasii*). The blue oak woodland has relatively little shrubby understory. The herb stratum supports mostly nonnative species. Small patches of pure or primary interior live oaks (*Q. chrysolepis*) occur within or adjoining blue oak woodland. In the eastern part of the project site, oak woodland comprises a mixture of canyon live oaks and interior live oaks occurring on the extensive steep southwest-facing slopes between the Magnolia Ditch and the Bear River. Due to relatively dense canopy and steep dry southwest-facing slopes, there is relatively little understory in this area, but gaps in the tree canopy support poison oak, deer brush, grasses, and a variety of forbs (Juncosa 2009).~~

Text on page 3.4-17 of the Draft EIR has been revised as follows:

The term “oak woodland” refers to an oak stand with greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover (Oak Woodland Conservation Act, FGC Section 1361). ~~Foothill Montane~~ hardwood and montane hardwood-

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

conifer have at least 10 percent canopy cover of oak trees. Valley foothill riparian may also have a 10 percent canopy cover of valley oaks although this habitat is already considered a sensitive community by the CDFG. ~~Oak woodland is a CDFG-designated sensitive natural community that occurs within the project site.~~ Oak woodland is rapidly disappearing in California and, as defined in CEQA, further elimination would result in significant adverse impacts.

The following revisions have been made to Table 3.4-3 on page 3.4-34:

**TABLE 3.4-3
PERMANENT IMPACTS TO VEGETATIVE COMMUNITIES**

Vegetative Community	Conversion to Agriculture (acres)	Direct Impact (acres)
Foothill Montane Hardwood	-	34.1
Montane Hardwood - Conifer	-	0.6
Annual Grassland*	4.0*	8.6
Seasonal Wetland	0.1	0.2
Urban/Ruderal	<0.1	5.5
Canal	-	0.5
Total	4.1	47.9

Note: The annual grassland habitat that will be converted to row crops and an orchard is currently used as pasture for cattle. Although urban/ruderal habitat is listed as an impact, it does not provide suitable habitat for listed wildlife species.

The comment also questions the validity of the EIR statement that "oak woodland is a CDFG-designated sensitive natural community."

The following paragraph has been added on Draft EIR page 3.4-17, following the second paragraph:

The Resources Agency and the Wildlife Conservation Board acknowledge the importance of oak woodlands in California through their oversight of the Oak Woodlands Conservation Act. As stated in the Oak Woodlands Conservation Act of 2001 (State of California Resources Agency and California Wildlife Conservation Board Program Application and Guidelines 2011), "In response to the continuing loss of oak woodlands, Chapter 588, Statutes of 2001, enacted the Oak Woodlands Conservation Act. The Act specifically recognizes the importance of oak woodlands and how oak trees enhance the natural and scenic beauty of this State. Further, the Act acknowledges the important role oak woodlands play in the economic, social, environmental and ecological matters of this State."

These revisions do not alter the conclusions of the Draft EIR.

Response 17-2: The comment states that mitigation measure MM 3.4.2a should be revised to not require a USFWS-approved biologist to conduct the surveys, since the USFWS does not have this specification.

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Mitigation measure MM 3.4.2a on page 3.4-36 has been revised as follows:

MM 3.4.2a A habitat assessment for California red-legged frog shall be conducted ~~by a USFWS approved biologist according to~~ consistent with the *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (USFWS 2005). If suitable habitat is found on the project site, then field surveys should be undertaken consistent with the aforementioned guidance. If California red-legged frog is found, consultation with the USFWS and additional mitigation measures will be required. If California red-legged frogs are present on the project site, an on-site biological monitor shall be present on the project site to ensure that special-status species are not harmed during construction activities. In the event that a special-status frog is found during project construction, construction activities shall stop until the frog is moved by a qualified biologist outside of the construction zone.

Response 17-3: The comment states that no net loss of California red-legged frog upland habitat should not be required mitigation. As identified in the "Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*)," upland habitat adjacent to viable aquatic habitat is a requirement for the species. Upland areas provide important dispersal, estivation, and summer habitat for this species. (Richter and Azous 1997) observed that wetlands adjacent to undeveloped upland areas were more likely to have richer populations of native amphibians. Therefore, upland habitat should be an element of mitigation for the species.

The comment states that restoring the upland to no net loss would require removal of existing development and restoration of the equivalent acreage of the project. The Draft EIR does not state the entire site is potential upland habitat for California red-legged frog. The intent of the mitigation measure is to ensure adequate upland habitat is preserved with the restored wetland.

The comment questions the viability of allowing off-site mitigation for impacts to on-site populations. The mitigation is to provide benefits to the species, not to the individual frogs that occur on the site. Off-site mitigation is a recovery action recommendation in the "Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*)" when on-site conditions are not likely to be beneficial for the frog.

Mitigation measure 3.4.2b on page 3.4-36 has been revised to ensure that the intent of providing adequate upland preservation to support restoration efforts is clear.

MM 3.4.2b If California red-legged frogs are identified during the aforementioned survey (MM 3.4.2a), the project applicant will implement mitigation that would result in no net loss of aquatic ~~and upland~~ California red-legged frog habitat. Restored and preserved habitat will be protected in perpetuity through dedication of the conservation

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

easement. The specific determination of the appropriate measures will be determined through consultation with USFWS but will include one of the following: create habitat suitable for California red-legged frog, purchase mitigation credits at a USFWS-approved conservation bank, or pay an in-lieu fee into a USFWS mitigation plan.

Response 17-4: The comment questions the efficacy and the feasibility of mitigation measure 3.4.2c, item 3. The intent of this mitigation measure is to minimize effects to California red-legged frog, though the feasibility of implementation of this measure is questionable. The third requirement of the mitigation measure (page 3.4-37) is revised as follows:

3. A ~~USFWS-approved~~ qualified biologist will permanently remove any individuals of exotic species, such as bullfrogs, crayfish, and centrarchid fishes, from the project area to the maximum extent possible, as feasible, if they are encountered. The ~~USFWS-approved~~ biologist will be responsible for ensuring his or her activities are in compliance with the California Fish and Game Code.

Response 17-5: The comment states that mitigation measure MM 3.4.2c, item 4, pertains to mitigation measure MM 3.4.1, not to mitigation measure MM 3.4.2c, and minimizes effects to the species from biologists conducting surveys. The comment also states that the reference is obsolete and should be replaced with more current standards. Since mitigation measure MM 3.4.2a ensures that the surveys conform to the minimization measures identified in the "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" (USFWS 2005), item 4 of mitigation measure MM 3.4.2c is redundant and has been removed from the text.

- ~~4. To ensure that diseases are not conveyed between work sites by the USFWS-approved biologist, the fieldwork code of practice developed by the Declining Amphibian Populations Task Force to prevent the spread of disease and parasites will be followed at all times (DAPTF 1991).~~

Response 17-6: The comment suggests that the 60-foot buffer from riparian habitats and vehicles should be a minimum of 100 feet. The comment also suggests that this measure should be applied more broadly to the project and not limited to the presence of California red-legged frogs as presented in the Draft EIR. A greater set back applied more broadly throughout the project will provide for better protection for riparian habitat, water quality, and aquatic organisms within these systems.

The seventh requirement of the mitigation measure MM3.4.2c is revised as follows:

7. All refueling, maintenance, and staging of equipment and vehicles will occur at least ~~60~~ 100 feet from riparian habitat or water bodies and not in a location from where a spill would drain directly toward aquatic habitat. The monitor will ensure contamination of habitat does not occur during such operations. Prior to the onset of work, the project applicant will

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

ensure that the contractor's stormwater pollution prevention plan (SWPPP) includes provisions for prompt and effective response to any accidental spills. All workers will be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.

Mitigation measure MM 3.4.7 is revised as follows:

A 100-foot setback of wetland and riparian habitat from construction shall be established. For all project elements that must unavoidably be constructed within 100 feet of riparian or wetland areas, the project shall implement water quality and wildlife habitat mitigation measures provided on pages 7 through 9 of the Rincon del Rio Habitat Management Plan.

~~For all project elements that must unavoidably be constructed within 100 feet of riparian or wetland areas, the project shall implement water quality and wildlife habitat mitigation measures provided on pages 7 through 9 of the Rincon del Rio Habitat Management Plan.~~

Response 17-7: The comment discusses the minimization measure provided in the Draft EIR for western pond turtle. The intent of the mitigation measure is to minimize construction-related impacts to western pond turtle. The appropriate methodologies will depend on the time of the year in which the construction is occurring. The comment also states that nest relocation may not be effective; though when nests are uncovered, relocation may be the only feasible mitigation.

To provide latitude in designing efficient minimization measures that are on site and season-specific, mitigation measure MM 3.4.3a on page 3.4-40 of the Draft EIR has been amended as follows:

MM 3.4.3a A preconstruction survey for western pond turtle shall be conducted at least one week prior to the onset of construction activities adjacent to suitable habitat. The survey area shall encompass a 325-foot radius of the area to be affected. If juvenile or adult turtles are found within the survey area, the individuals should be moved to a predetermined location with suitable habitat. If a turtle nest is found within the survey area, construction activities should not take place within 100 feet of the nest until the turtles have hatched ~~or the eggs have been moved to an appropriate location.~~ Additional mitigation measures, such as nest relocation Furthermore, ~~one-way and barrier fencing shall be constructed within 325 feet of suitable aquatic habitat to prevent turtles from moving into the construction area to nest, hibernate, or aestivate while allowing turtles already in the construction area to move back to water, will be employed after coordination with the CDFG.~~

Response 17-8: The comment states that the mitigation measure MM 3.4.3b should be clarified to ensure the reader understands that it applies to birds' nests.

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

The following revision has been made to the first sentence of the mitigation measure (see page 3.4-40):

MM 3.4.3b If vegetation removal or ground surface disturbance (any form of grading) is to occur between March 1 and August 31, the project applicant shall retain a qualified biologist to conduct a focused survey for active bird nests within 14 days prior to the disturbance of the construction area and periodic field surveys during construction to ensure nests have not been established during construction activities.

Response 17-9: The comment suggests that the Weeks Canal is not within the jurisdiction of the US Army Corps of Engineers, as assumed in the Draft EIR. The Draft EIR uses a conservative approach to estimating impacts (worst-case analyses), assuming that all aquatic features are within the Corps' jurisdiction, since neither the EIR author nor the County can make a jurisdictional determination on the project site. Mitigation measure MM 3.4.4 provides for an adjustment to the impacts and mitigation after the Corps has made its jurisdictional determination of the wetland features at the project site, which can include the determination that Weeks Canal is not under its jurisdiction. The comment notes that 0.8 acres of wetland impact cannot occur under the Corps Nationwide Permit Program.

Letter 18

March 17, 2012

William R. Fortier
Colonel, Retired USAR
26250 Table Meadow Road
Auburn, CA 95602



TO: Nevada County Planning Department

RE: Response to Rincon Del Rio Draft EIR

To Whom It May Concern:

Please add this correspondence to the Rincon Del Rio (RDR) project. This correspondence addresses issues and concerns regarding the RDR project and the adequacy of the DRAFT EIR and should be included as part of Nevada County's administrative process in the event a court action occurs.

I will not repeat the details of various studies and factual descriptions that have already been presented to the Planning Department over and over again explaining why development of this project should not be allowed to continue at its proposed location. You already have access to all the technical information you need to make a decision...now I ask you to consider common sense in protecting the citizens of Nevada County that depend on you.

You have been told that the proposed location of Rincon Del Rio will become a death trap should there be a fire, the proposed sewer system will not support the project, the roads and elevation of the mountains behind it will not be safe for exits, the probability of flooding exists, the entrance to Hwy 49 will cause great problems to traffic and probably death for some...the list goes on and on.

18-1

But, that being said, we know that Nevada County needs income. However, the question is; does this justify selling out the citizens of Nevada County?

Just as the Native Americans were deceived by the US Government after being promised peace for... "as long as the grass shall grow", the citizens of Nevada County will now be deceived by the Nevada County Government if this project is approved.

You will be breaking a promise made to the citizens of Nevada County that was established many years ago with the creation of the Nevada County General Plan, a plan that was created and agreed upon for good reason. Approval of Rincon Del Rio will destroy the protective aspects of the General Plan and open the door for similar projects and major changes to the rural complexion of all parts of Nevada County.

18-2

As said many times before, Rincon Del Rio is an excellent project but it is in the wrong location.

I urge you to deny approval the development of Rincon Del Rio at its proposed location.

Sincerely,

William R. Fortier,
Colonel, Retired USAR

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Letter 18 – William R. Fortier

Response 18-1: The comment makes general statements about the project regarding fire safety, sewer, emergency access, flooding, and safety on SR 49. These are comments on the project and not the adequacy of the Draft EIR. For a discussion of these issues, the reader is referred to the technical sections of the Draft EIR, specifically Section 3.8, Hazardous Materials/Human Health; Section 3.9, Hydrology and Water Quality Section 3.13, Public Services and Utilities; and Section 3.14, Traffic and Circulation.

Response 18-2: The comment generally expresses opposition to the project, specifically the location of the proposed project. The comments are noted and forwarded to the decision-makers for their consideration.

Letter 19

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

March 5, 2012

Nevada County Planning Department
Brian Foss: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Re: Draft EIR – Rincon del Rio project

Dear Mr. Foss:

I wish to provide comments on the Draft EIR for the Rincon Del Rio project. I have expertise in the Fire Danger aspects of the document. My concern is that the document does not delve into the consequences of a serious fire occurring in the vicinity of the project. For the following reasons, the DEIR is inadequate, flawed and not detailed enough to accurately and fully analyze the fire danger aspects of the RDR project.

I have spent 25+ years fighting wildland fires and 11 years teaching classes in California and throughout the western United States on analysis of Fire Danger and the expected fire intensity based on historic and current weather and climate. I have attended many fires and analyzed the effects of extreme fire weather for large wildland fires including the 49er fire in 1988.

19-1

Extreme weather conditions occur many times in this area during the latter part of summer into fall every year. As these conditions occur, the possibility of a large, fast moving fire can result in a very dangerous situation for residents in the foothills where we live. If a fire were to occur during extreme weather conditions, flames would reach 20-30 feet and fires can start from embers up to one half mile ahead of the main body of the fire.

Placing 400+ residents, many of whom are not ambulatory, in a concentrated community will potentially place these people in harm's way of a large fire. Depending on the location of the fire's origin, the evacuation window would be minimal. These vulnerable residents would not have time to evacuate. These elderly and otherwise health-impaired residents would also likely suffer serious injuries or death from smoke inhalation.

As for evacuation of residents, the document makes reference to the availability of a fire access road from the Lake of the Pines Ranchos. This will just make evacuation much more difficult trying to evacuate the RDR residents, Rincon Road residents, Hidden Ranch Road residents, LOP Ranchos residents, Dark Horse and other Combie Road residents on a one or two lane road onto Hwy 49 or through Rodeo Flat Road. There could be a backup of cars, evacuation buses, and fire equipment trying to use these roads. This would expose those waiting to evacuate to the flames and smoke from the fire. This was the situation in the Oakland Fire where 25 people burned to death trying to escape to the freeway only one half mile away.

19-2

Letter 19 Continued

Since I cannot address all of my concerns and inadequacies in the DEIR, and this correspondence only addresses the most serious and life-threatening issues rather than aesthetic aspects, peaceful enjoyment of our property and decrease in property values that will be seriously impacted by this project, I hereby incorporate all of the points and issues raised in my previous letter to you dated June 10, 2011, re-raise all the points and concerns made in that letter and incorporate it by reference herein. I also reserve the right to further expound and amplify on the issues and concerns raised in this letter as they relate more particularly and specifically to portions of the DEIR, the parameters of the General Plan, zoning ordinances, the County's Housing Element, fire and other codes, road safety and any other issues or the contents of the DEIR.

19-2

Please add this correspondence including my June 10, 2011 letter to you as part of the public record and the administrative record related to the Rincon del Rio project. This correspondence and my June 10, 2011 letter address serious issues and concerns regarding the RDR project and the adequacy of the Draft EIR and should be included as part of Nevada County's administrative process in the event a court action occurs.

Thank you,

Peter D. Guilbert

Letter 19 – Peter D. Guilbert

Response 19-1: The comment provides background on the commenter's qualifications and past fires in California. No response is required.

Response 19-2: The comment states the location of the project and the physical condition of future residents will place future project residents at risk of fire and that the additional access provided by the project would make it more difficult to evacuate residents of Rincon Way, Hidden Ranch Road, Lake of the Pines, Dark Horse, and Combie Road. The comment refers to a backup of cars, but does not explain how an *additional* emergency route for the adjacent neighborhoods would result in worse access. See Master Response 2.

The comment also refers to a previous letter by the commenter on the Notice of Preparation for the project. There are no comments in that letter pertaining specifically to the adequacy of the Draft EIR.

Letter 20

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

March 16, 2012

Nevada County Planning Department
Brian Foss: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Re: Draft EIR – Rincon del Rio project

Dear Mr. Foss:

I wish to provide comments on the Draft EIR for the Rincon Del Rio project. I have expertise in the Fire Danger aspects of the document. My concern is that the document does not delve into the consequences of a serious fire occurring in the vicinity of the project. For the following reasons, the DEIR is inadequate, flawed and not detailed enough to accurately and fully analyze the fire danger and subsequent evacuation aspects of the RDR project.

I have spent 25+ years fighting wildland fires and 11 years teaching classes in California and throughout the western United States on analysis of Fire Danger and the expected fire intensity based on historic climate and current weather. I have attended many large destructive fires and analyzed the effects of extreme fire weather for large wildland fires including the 49er fire in 1988 where 312 structures were destroyed and the Oakland Hills Fire where 2900 structures were destroyed and 25 lives were lost.

20-1

Extreme weather conditions that were present at the above fires occur many times in this area during the latter part of summer into late fall every year. As these conditions occur, the possibility of a large, fast moving fire can result in a very dangerous situation for residents in the foothills where we live. If a fire were to occur during extreme weather conditions, flames would reach 20-30 feet and fires can start from embers up to one half mile ahead of the main body of the fire. Once a fire gets established in these conditions, little can be done to stop the fire. Most resources will be deployed to protect the lives and property ahead of the fire. Due to the remote location, there is a large lag time in getting sufficient resources to the fire.

Placing 400+ residents, many of whom are not ambulatory, in a concentrated community will potentially place these people in harm's way of a large fire. If the fire's origin were within a few miles of this proposed community, the evacuation window would be minimal. These vulnerable residents would not have time to evacuate. These elderly and otherwise health-impaired residents would also likely suffer serious injuries or death from smoke inhalation. Twenty five people died trying to evacuate the Oakland Hills fire when that fire started less than a mile away. Evacuation for these casualties was to a major Interstate freeway just about the same distance on city streets that this project is from Hwy 49.

20-2

Letter 20 Continued

Impact 3.8.7 in the Draft EIR states there is a potentially significant impact due to fire danger. Then the document whitewashes the danger by stating that this project will comply with state and county law with proper clearances and utilizing adopted building codes. This would suffice during “normal” summer fire weather conditions. During Very High and Extreme Fire Danger conditions, a fire could expose the project buildings and residents to flames and smoke with disastrous and deadly results. **20-2 cont.**

As for evacuation of residents, the document makes reference to the availability of a fire access road from the Lake of the Pines Ranchos. This will just make evacuation much more difficult trying to evacuate the RDR residents, Rincon Road residents, Hidden Ranch Road residents, LOP Ranchos residents, Dark Horse and other Combie Road residents on a one or two lane road onto Hwy 49 or through Rodeo Flat Road. There could be a backup of cars, evacuation buses, and fire equipment trying to use these roads. This would expose those waiting to evacuate to the flames and smoke from the fire. This was the situation in the Oakland Fire where 25 people burned to death trying to escape to the freeway only short distance away. **20-3**

The project is asking a variance to the road grade to greater than 16 percent. The current situation where the road is greater than 16 percent only services a small number of residences. Asking this variance for a large community of elderly residents is criminal. The laws were created to protect the citizens as well as the fire responders of rural areas. Ignoring the laws in this case would only be for the enrichment of the developer.

Since I cannot address all of my concerns and inadequacies in the DEIR, and this correspondence only addresses the most serious and life-threatening issues rather than aesthetic aspects, peaceful enjoyment of our property and decrease in property values that will be seriously impacted by this project, I hereby incorporate all of the points and issues raised in my previous letter to you dated June 10, 2011, re-raise all the points and concerns made in that letter and incorporate it by reference herein. I also reserve the right to further expound and amplify on the issues and concerns raised in this letter as they relate more particularly and specifically to portions of the DEIR, the parameters of the General Plan, zoning ordinances, the County's Housing Element, fire and other codes, road safety and any other issues or the contents of the DEIR. **20-4**

Please add this correspondence including my June 10, 2011 letter to you as part of the public record and the administrative record related to the Rincon del Rio project. This correspondence and my June 10, 2011 letter address serious issues and concerns regarding the RDR project and the adequacy of the Draft EIR and should be included as part of Nevada County's administrative process in the event a court action occurs.

Thank you,

Peter D. Guilbert

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Letter 20 – Peter D. Guilbert

Response 20-1: The comment provides background on the commenter's qualifications and past fires in California. No response is required.

Response 20-2: The comment compares the danger of a fire at the project site with a fire in Oakland and states the Draft EIR "whitewashes" the danger of fire by referring to compliance with existing regulations, which include requirements for proper clearances, sprinklers, and other fire safety components. The comment, however, provides no detail as to how the requirements in these regulations fall short in the provision of protective measures to the proposed project. Regarding the Oakland Hills Fire to which the comment refers, according to Cal Fire, "[o]ne of the major contributing factors to the inferno was the dense landscaping vegetation of eucalyptus and juniper that surrounded the expensive homes in the hills."¹ Cal Fire also refers to extreme weather conditions at the time of the fire, including temperatures in the 90s, humidity in the single digits, and powerful hot and dry easterly winds blowing at up to 65 mph. While extreme weather conditions could occur in the vicinity of the project site, the project is required to comply with County defensible space requirements, which would reduce the potential for spread of fire through the developed portions of the project site. The project would also be required to prepare an evacuation plan that would be enforced and implemented by the Nevada County Community Development Agency and the Higgins Fire Protection District (see mitigation measure MM 3.8.7, page 3.8-22, in Draft EIR Section 3.8, Hazardous Materials/Human Health). This would further reduce risks to residents associated with fire at the project site. See also Master Response 2.

Response 20-3: The comment states the emergency access via Rodeo Flat Road provided by the project would make it more difficult to evacuate residents of Rincon Way, Hidden Ranch Road, Lake of the Pines, Dark Horse, and Combie Road. See Response 19-2. Regarding the variance due to the grade on Rodeo Flat Road, the comment provides no evidence to support a conclusion that the variance to the grade on this road would result in any additional risk in the event of a fire. See Master Response 2.

Response 20-4: See Response 19-2.

¹ Cal Fire News, <http://calfire.blogspot.com/2008/10/oakland-hills-firestorm-october-20-1991.html>, Oakland Hills Firestorm, October 20, 1991, accessed 4-13-12.

Letter 21

Virginia A. Guilbert
23189 Hidden Ranch Road
Auburn, CA 95602

March 5, 2012

Nevada County Planning Department
Brian Foss: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Re: Draft EIR – Rincon del Rio project

Dear Mr. Foss:

I feel somewhat disadvantaged in attempting to respond to the DEIR on the Rincon del Rio (hereafter “RDR”) project. I was under the distinct impression based on prior notices from the County that we had until March 20, 2012 to lodge our responses and objections to the DEIR. However, in a letter dated February 24, 2012, we were notified that any objections, etc., must be made by the March 8, 2012 Planning Department meeting. This deadline was clarified by you in an email to Karen Abbott that was received after we left the State for vacation on February 28, 2012. Consequently, I have very limited access to the Internet and the DEIR. As a consequence, this letter contains only references to certain portions of the DEIR. I intend to further expound on these issues with more specificity upon my return and before March 20, 2012.

21-1

Pending a fuller and more expansive review and more specificity with regard to particular sections of the DEIR, I submit that the DEIR is invalid, faulty, flawed and inadequate because it ASSUMES a number of facts that do not currently exist. First, it ASSUMES the General Plan will be changed FOR THIS PROJECT. It further ASSUMES the zoning will be changed FOR THIS PROJECT. In addition, it ASSUMES a CCRC designation will be granted FOR THIS PROJECT. It also ASSUMES the County will grant exceptions and exemptions for road width, road grade standards and other road and fire safety standards FOR THIS PROJECT. Specifically, road safety standards as outlined by fire codes have been adopted by Nevada County and ignored FOR THIS PROJECT. In order to allow the RDR to be built as specified in the DEIR, the County will have to ignore its own General Plan guidelines, specifically, those that require the project to be in conformity with surrounding properties. Granting the CCRC designation for this project also violates the County's Housing Element. The DEIR ignores these “pesky” inconveniences as well as nearly every other aspect raised in the DEIR when it proclaims that each element would present a “less than significant impact” notwithstanding the conclusion that fire danger (one of the MOST important elements) could not be mitigated.

21-2

In addition to the above, the DEIR is inadequate because it fails to adequately, correctly and completely analyze the project's actual and cumulative impact on roads and traffic and in particular, the impact of an evacuation caused by a fire that could require evacuation over Rincon onto Highway 49.

21-3

Page 1 of 4

Letter 21 Continued

Again, I am at a distinct disadvantage in attempting to elucidate on the road and traffic issues and am doing so based on memory. To say that this project will have a less than significant impact on roads and traffic is ludicrous to say the least.

21-4

For purposes of this letter and based on historical useage, I will refer to the roadway serving RDR as Rincon. Hidden Ranch Road shall be referred to as the road that turns north from Rincon just pst the mailboxes. Rincon as well as Hidden Ranch and all of the roads within the Hidden Ranch subdivisions I and II are, and have always been, PRIVATE ROADS. Rincon from Highway 49 to Hidden Ranch is barely wide enough for two passenger vehicles/SUV's to pass let alone large commercial vehicles to pass each other. There is a ditch on the south side of Rincon so the roadway cannot be widened in that direction. Rincon narrows considerably just east of Hidden Ranch and Angelina. It is doubtful that a passenger and commercial vehicle can pass on that narrow portion of the road. It would be nearly impossible for a large commercial vehicle and a fire truck to pass on this portion of Rincon. It is my understanding that the Youngs do not have a wide enough easement over this section of Rincon for the RDR project, hence the request for road exceptions and exemptions. The DEIR is inadequate because it ASSUMES the County will grant the exceptions required by RDR to allow the project to be built. The fact that Rincon is too narrow on this portion cannot be mitigated and presents an extreme danger to the surrounding residents as well as the RDR residents in case of a fire and required evacuation.

21-5

During the 25 years we have resided on Hidden Ranch, the 12 parcels in the front section have borne the cost of maintaining Rincon from Hidden Ranch to Highway 49 with the exception of a one-time contribution from the back 24 or so parcels on Hidden Ranch and 1 or 2 individuals on the east end of Rincon. The Youngs, who have a right of ingress and egress over Rincon have NEVER contributed one dime to repair or maintain Rincon despite using it for construction of their 14,000 square foot mansion or for ongoing use of Rincon.

The DEIR is inadequate, insufficient and fails to address how maintenance of Rincon will be apportioned. A construction bond is very nice but who will bring Rincon up to county standards BEFORE construction begins and before total destruction of Rincon occurs? It must be recognized that Rincon is not a Class A road and was originally only marginal in meeting minimum road requirements at the time the Hidden Ranch subdivisions were developed. In addition to not being wide enough to accommodate the proposed vehicular traffic, Rincon is a substandard road that will disintegrate with the addition of approximately 1000 trips per day proposed in the DEIR, not to mention construction traffic.

21-6

The DEIR is inadequate in that it fails to accurately reflect the impact nearly 1400 trips a day will have on a substandard, narrow PRIVATE road. It also fails to address the gross overburden of the ingress/egress easement the Youngs have on this PRIVATE road. Even assuming arguendo that each parcel will pay a pro-rata share of maintenance, no fair formula is address as to how the gross overuse by RDR as compared to the residential use can or will be apportioned. Since there is a commercial aspect to the RDR project, the DEIR is inadequate because it failed to address the consequences of allowing commercial vehicles to use our PRIVATE road. It also failed to address the consequences of allowing the public to access our PRIVATE road. Neither commercial vehicles nor the public have any easement over our PRIVATE road.

Letter 21 Continued

The DEIR is grossly inadequate because it fails to address the liability issues that will be placed on not only the easement holders but the property owners who actually own the real property over which Rincon traverses. I do not believe either the Youngs nor Nevada County can force the surrounding easement and property owners to assume legal, civil liability for RDR project vehicles, the public and attendant users of our PRIVATE road. The DEIR fails to address this serious issue.

21-6
cont.

This leads me to what I further consider to be inadequate and incomplete treatment of traffic issues addressed (or not) in the DEIR. It is patently obvious that the projected traffic count trips per day were derived from some textbook and analyzed with some computer software. In order to properly assess this project's trips per day, an identical project would have to be used as a reference for comparison. This comparison should include a highly commercialized project with the housing density, employee count and commercial enterprises including eating and drinking establishments plunked down in a totally rural environment with no proper infrastructure and attendant shopping and medical facilities. Did the drafters of the DEIR compare apples to apples in deriving these imaginary figures or did they compare apples to watermelon? I doubt this project can be compared to any other similar project because it is highly unlikely that a substantially identical project in a rural area exists. Similarly, in computing mathematical formulas, in order to arrive at a sound conclusion, the premise must be accurate. Here, as in math, when the underlying premise (the 1000 pages of the DEIR) is incorrect, inadequate and unfounded, the conclusion is likewise faulty. To say that this project will have less than significant impact is unbelievable at best!!

21-7

Getting back to the traffic portion of the DEIR, I believe the statistics are inadequate and inaccurate for a number of reasons. For one, the traffic counts on Highway 49 are outdated and understated. As a real human being, not a textbook or computer, I drive Rincon/Highway 49 nearly every week day during the commute hours. I can categorically state that there is more traffic on Highway 49 in 2012 than there was when the traffic study (and its data) were conducted nearly four years ago. Even using their outdated data, at peak hours, Rincon received an "F" or slightly better rating. The wait times listed are not supported in real world usage. I can't remember the last time I only waited a few seconds to either turn southbound on Highway 49 or turn into Rincon from southbound 49, yet the traffic statistics in the DEIR indicate these short wait times. As anyone who drives Rincon/Highway 49 knows, due to the traffic signal synchronization from the Combie and Dry Creek signals, there is rarely a time (especially during commute hours) when traffic is clear from both northbound and southbound allowing for the short wait times listed in the DEIR.

The traffic study is further inadequate because it does not distinguish what percentage of daily trips will be large commercial trucks, i.e. garbage trucks, propane trucks, delivery trucks, etc. These vehicles require a longer clearance in traffic in order to accelerate onto 49, especially to turn southbound. The wait times do not distinguish between passenger vehicles and these larger commercial vehicles and therefore, the wait times are inaccurate and misleading. The traffic study indicated that 74% of the morning traffic turns southbound onto 49. The increased wait time for these larger commercial vehicles will further impact wait times for passenger vehicles attempting to turn southbound onto 49 as well as onto Rincon from southbound 49.

21-8

In the "real" world, the estimated almost 1400 trips per day (I believe it will be more than that due to the size and amenities of RDR) will occur between 7:00 a.m. And 7:00 p.m. This is based on my 25 years of driving Rincon/Highway 49. Taking 1400 cars over a 12 hours period (not 24 hours) results in approximately 117 cars per hour during this high traffic period accessing Highway 49 at Rincon. While the DEIR does not consider this to be a dangerous intersection because no one has been killed there and there have been no "real" accidents there, putting 117 cars through that intersection

Letter 21 Continued

cannot be said to be an insignificant event. That is almost 2 cars per minute going into or out of that intersection. Wait times on Rincon to southbound 49 increase significantly when there is a vehicle turning from southbound 49 onto Rincon. When those 2 cars per minute start stacking up, tempers and patience will be tried. I also do not believe the textbook and computer analysis took into effect 117 cars per hour going into, crossing or otherwise negotiating traffic traveling at least 65+ mph. If you don't think speeding is an issue, ask the CHP officers who routinely work the Linnett/Rincon/49 circuit. The DEIR is silent as to the miles per hour clocked on tickets given in that section of Highway 49. 21-8 cont.

Nor did the textbook or computer take into account the impairments either age-related or alcohol-related for the users of Rincon. There are 2 pubs at RDR (apparently open to the public) and a wine tasting business at Linnett whose patrons also use the frontage road to access 49 via Rincon even though they do not have an easement over either roadway. I do not recall off-hand if the DEIR counted the additional trips or potentially impairment caused by the wine tasting facility. The DEIR did not address the liability of alcohol-impaired residents, guests, the public or employees who would use Rincon to access Highway 49. 21-9

The DEIR also contends that traffic is not affected by whether school is in session because the school is north of the RDR project. Again, my 25 years of driving experience on Rincon and Highway 49 says otherwise. There is a noticeable decrease in traffic, especially on Highway 49 during the Christmas school break and the summer break. Another faulty conclusion derived from textbooks and computers and not real life. 21-10

All of the traffic issues will be further exacerbated by a fire, most especially if Lake of the Pines, the Ranchos, Dark Horse and Combie are all evacuating toward Highway 49 through the RDR project. Add this to the residents of Hidden Ranch and Rincon as well as non-ambulatory residents of RDR and those requiring special assistance to evacuate and it is a recipe for disaster and loss of life on an incomparable scale. The DEIR does not adequately address these issues. 21-11

Since I cannot address all of my concerns and inadequacies in the DEIR, and this correspondence only addresses the most serious and life-threatening issues rather than aesthetic aspects, peaceful enjoyment of our property and decrease in property values that will be seriously impacted by this project, I hereby incorporate all of the points and issues raised in my previous letter to you dated June 10, 2011, re-raise all the points and concerns made in that letter and incorporate it by reference herein. I also reserve the right to further expound and amplify on the issues and concerns raised in this letter as they relate more particularly and specifically to portions of the DEIR, the parameters of the General Plan, zoning ordinances, the County's Housing Element, fire and other codes, road safety and any other issues or the contents of the DEIR. 21-12

Please add this correspondence including my June 10, 2011 letter to you as part of the public record and the administrative record related to the Rincon del Rio project. This correspondence and my June 10, 2011 letter address serious issues and concerns regarding the RDR project and the adequacy of the Draft EIR and should be included as part of Nevada County's administrative process in the event a court action occurs.

Thank you,

Virginia A. Guilbert

Letter 21 – Virginia A. Guilbert

- Response 21-1:** The comment expresses confusion regarding the timeline for submitting comments on the Draft EIR. The commenter is referred to the Notice of Availability, posted in *The Union*² on January 20, 2012, which states, “The comment period will start on January 20, 2012, and end on March 20, 2012.” Note too that CEQA allows comments up to and during the public hearing to consider the proposed project. Public notices for subsequent meetings will be posted in the usual method for Nevada County.
- Response 21-2:** The comment states the Draft EIR is inadequate because it assumes the General Plan will be changed for this project. See Master Response 3.
- Response 21-3:** The comment contends the Draft EIR does not accurately analyze impacts of the project on traffic, particularly during a fire. The comment provides no specific inadequacies in the analysis of traffic, so no detailed response is possible. Regarding traffic during a fire, this would not constitute a typical situation in which an EIR would evaluate a project for achieving road standards, such as level of service or signal warrants. In the event of a fire, traffic may be diverted or controlled by emergency services personnel, such as firefighters or law enforcement. Thus, conditions would differ from existing or planned conditions and would not be part of the project. Consequently, those conditions would not be evaluated in an EIR as project-related impacts. It should be noted, however, that primary and secondary access routes for the project were designed and evaluated to provide for access in emergency situations.
- Response 21-4:** The comment reiterates a contention that the traffic analysis is inadequate, but provides no specific inadequacies. The commenter is referred to section 3.14, Transportation and Circulation of the Draft EIR, which describes how traffic modeling and analysis was conducted.
- Response 21-5:** The comment provides opinions about the capacity of Rincon Way as proposed and states that the Draft EIR is inadequate because it assumes the exemption for the width of this road will be approved with the project. The project proposes improvements on Rincon Way that provide a 30-foot-wide easement with two 10-foot vehicle travel lanes (Section 2.0, Project Description, page 2.0-51). This width is adequate for large vehicles to pass one another. The Draft EIR analyzes the project as proposed, including road widths. If the Board of Supervisors decides to approve the project, but not the exemption to the road width, the County would have to determine the width required for that section. The Section 3.14 (Traffic and Circulation) of the Draft EIR determined that the Rincon Way has adequate roadway capacity to accommodate project traffic volumes, but would require mitigation (MM 3.14.4a and b) to ensure adequate sight distance at Connie Court (see Draft EIR pages 4.13-17 through -21).

² The Union, <http://appsstage.theunion.com/utills/c2/app/v2/index.php?do=adDetail&adId=7454864>, accessed April 12, 2012.

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Response 21-6: The comment states the Draft EIR is inadequate because it fails to discuss how the maintenance of Rincon Way would be apportioned. See Response 3-21 regarding the Road Maintenance Agreement. In addition, it should be noted that economic effects are not required to be addressed in an EIR, except to the extent that they result in physical effects of the project (Public Resources Code Section 21080[e][2]). While the County is not aware of any evidence that the distribution of costs of ongoing maintenance of Rincon Way or costs of liabilities related to area roads would result in significant environmental effects, the comment is noted for the consideration of the decision makers.

The comment also refers to 1,400 trips generated by the project and the effect of those trips on a private road (the comment refers to both Rincon Way and Hidden Valley Road), specifically asking how Rincon will be improved prior to construction activities and noting that Rincon Way is a sub-standard road that would disintegrate as a result of both project- and construction-related traffic. As discussed on page 3.14-17 of the Draft EIR, the project would generate 969 trips per day; and while the change in traffic will be noticeable to the neighborhood residents, and in terms of numbers of cars per day the change from the very low existing volumes is substantial, the total traffic is within the design expectations of the roadways and consistent with similarly designed roadways in the county.

Prior the start of construction activities, the project would have no physical effect on Rincon Way and improvement of Rincon Way is required in Phase I of project development. As stated on page 2.0-34 of the Draft EIR, Phase I would consist primarily of construction of the sewer and water system, primary and emergency access roads, and a portion of the Village Center. As such, improvements to Rincon Way will take place during construction of the initial infrastructure for the site and prior to the construction of the majority of the buildings included in the project. Therefore, any impacts to Rincon Way during construction of Phase I would be minimal and temporary.

Response 21-7: The comment contends that the projected trip counts for the project were derived from textbooks and analyzed with computer software. The comment is generally correct. As stated on page 3.14-10 of the Draft EIR (Section 3.14, Traffic and Circulation), "trip generation of the proposed project was computed using trip generation rates published in *Trip Generation* (ITE 2008) based on the projected use of the site." The Traffic and Circulation section of the Draft EIR also states, "Trip generation is determined by identifying the type and size of land use being developed... The project includes development of a continuing care retirement community (CCRC), which is a land use that provides multiple elements of senior adult living." Thus, the transportation engineer determined the various uses associated with the project and used those uses to calculate the trips associated with the uses, which were analyzed with the Nevada County Transportation Commission Traffic model (Draft EIR page 3.14-26), based upon road configuration in the project area. The comment asserts that there is more traffic on SR 49 in 2012 than when the traffic study took place four years earlier. Contrary to this comment, traffic counts were conducted in June 2011 (Draft EIR page 3.14-3), approximately one month after circulating the Notice of Preparation. The commenter's perceptions of traffic conditions in the project vicinity are noted, but the

County believes the traffic analysis for the proposed project accurately depicts existing conditions and the effects of the proposed project relative to the County's standards for traffic impacts. In addition, as referenced in comment letter C, the California State Department of Transportation (Caltrans) has indicated that it is satisfied with the County's traffic analysis.

Response 21-8: The comment states the traffic analysis is inadequate because it does not identify what percentage of vehicles visiting the project site would be larger commercial vehicles, noting that commercial vehicles need a longer clearance to accelerate onto SR 49. The comment also provides a higher trip count than determined in the Draft EIR and states that the wait times on Rincon Way to turn southbound onto SR 49 will be significant. The comment also notes that the analysis did not consider the effect of speeding on SR 49.

Contrary to statements made in this comment, both the traffic analysis (page 11) and the Draft EIR's analysis (page 3.14-10) demonstrates that the project would generate 969 daily trips, with 62 trips occurring in the AM peak hour and 100 trips occurring in the PM peak hour. Both the traffic analysis and the Draft EIR analyze the queuing impacts resulting from this peak hour traffic (pages 3.14-19 to 3.14-20 of the Draft EIR). The queuing analysis utilized SYNCHRO software to determine impacts. SYNCHRO is a traffic signal timing tool recognized by the Transportation Research Board (TRB) that calculates intersection and approach delays either based on Chapter 9 of the TRB's Highway Capacity Manual (HCM) or a new internal method; the HCM procedures for calculating delays and LOS are embedded in SYNCHRO (TRB, September 2000, *Transportation Research Circular Number E-CO14, Traffic Analysis Software Tools*). Therefore, the queuing analysis is based on the appropriate inputs as determined by the TRB, and considerations of commercial vehicles or speeding is not necessary, nor would they change the determinations made in the Draft EIR.

In regards to the comment that the Draft EIR does not consider the intersection of Rincon Way and SR 49 to be dangerous due to a lack of accidents/fatalities, it should be noted that a line of sight analysis was conducted and identified that sight distance looking both northbound and southbound on SR 49 is approximately 1,500 feet (page 3.14-19 of the Draft EIR). In order to clarify the multiple factors that determined safety conditions at the intersection, page 3.14-20 of the Draft EIR is revised as follows:

Only one reported collision was identified in the project area since 2007; no roadway or vehicle factors were associated with that collision. In addition, sight distance looking both northbound and southbound on SR 49 is approximately 1,500 feet. Given the existing condition of SR 49/Rincon Way intersection (substantial line of sight, left turn lane, short acceleration lane for southbound traffic, and northbound right turn lane) along with the general absence of collisions/accidents in recent years, the intersection is not considered dangerous and project traffic would not be expected to substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections).

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Response 21-9: The comment states that the computer and textbook analysis did not take not take in to consideration the age of the residents of the project and the fact that alcohol would be available at the project site. As stated in Response 21-7 and 21-8 above, the traffic analysis is based on the Nevada County Transportation Commission Traffic model, *Trip Generation* (ITE 2008), and the TRB's HCM and, as such, uses adequate inputs to determine traffic impacts. The fact that some people occasionally drive while impaired does not change the validity of the conclusions in the traffic analysis in regards to environmental impacts associated with the project.

The comment also states that the Draft EIR did not consider the liability associated with alcohol-impaired residents, guests, the public, or employees. Economic effects are not required to be addressed in an EIR, except to the extent that they result in physical effects of the project (Public Resources Code Section 21080[e][2]). The costs of liabilities related to area roads would not result in significant physical environmental effects; however the comment is noted for the consideration of the decision makers.

Response 21-10: The comment states school traffic should be considered in the traffic analysis due to the commenter's experience with driving on Rincon Way and SR 49 indicates schools would contribute to traffic on those roadways. The comment is likely referring to the statement on page 3.14-3 of the Draft EIR, "...schools were not in session at the time of the traffic counts. It is not expected that traffic conditions would be substantially higher if schools were in session. This is due to the location of the site, at the south edge of the county, and its relation to the schools in the vicinity. All of the schools are located north of the project, off of Combie Road and Wolf Road; the rural area south of Rincon Way to the Placer County line will add a minor amount of school-based traffic onto SR 49." Draft EIR page 4.13-35 and -36 specifically addresses the project's contribution to traffic operations of the SR 49/Combie Road/Wolf Road intersection, which is impacted by the operation of area schools. Observations and perceptions of the commenter notwithstanding, the County believes the assumption in the Draft EIR regarding the trips generated by school-related traffic to the south of the project site would not substantially alter the findings of the traffic discussion in the Draft EIR.

Response 21-11: The comment states the traffic impacts would be further exacerbated by a fire. The County acknowledges that traffic conditions, such as level of service and queue times at intersections, would differ if an evacuation due to fire were required. However, the analysis in the EIR is intended to disclose impacts of the project, and the standards that are applied are intended to be used to assess roadways during typical conditions. Operation levels during a natural disaster would not be considered a situation under which exceedances of standards would be considered a significant impact. It should be noted that the Higgins Fire Protection District have reviewed primary and secondary access routes for adequacy. See also Master Response 2.

Response 21-12: The comment also refers to a previous letter by the commenter on the Notice of Preparation for the project. There are no comments in that letter pertaining specifically to the adequacy of the Draft EIR. No response is required.

Letter 22

Virginia A. Guilbert
23189 Hidden Ranch Road
Auburn, CA 95602

March 19, 2012

Nevada County Planning Department
Brian Foss: Principal Planner
950 Maidu Ave.
Nevada City, CA 95949

Re: Draft EIR – Rincon del Rio project

Dear Mr. Foss:

As I indicated in my March 5, 2012 letter to you, this letter will attempt to expound more fully my concerns with the inadequacy of the DEIR for the Rincon del Rio project (hereafter “RDR”) project. I will respond based on the section number reference starting with 3.14 Traffic and Circulation.

I wish to start this letter first by saying that I believe the DEIR is not only inadequate but fatally flawed as I stated in my March 5, 2012 letter because it is based on the assumption that the General Plan will be changed, the zoning will be changed, the project will receive a CCRC designation and the various exceptions and exemptions will be granted by the County. Since virtually none of these assumed conditions currently exist, the entire DEIR is not fact-based and should be considered void. I will address these issues separately below.

22-1

General Plan

When the last major General Plan revision occurred in about 1995, the Young’s property (formerly the Denny property) was zoned RA-10. The property was used primarily for grazing cattle and horses. I might note that similar property in Placer County abutting the Bear River is zoned 10 acres with some parcels as large as 17 acres. In their wisdom, Placer County has chosen to protect the Bear River by keeping larger acreage adjoining it. At the time of the public hearings, a number of the surrounding residents voiced their concerns that this property would be zoned from 10 acres to a lower acreage designation. We pleaded with the Board to keep the zoning at 10 acres or at the very least, 5 acres to make the property compatible with the majority of the surrounding parcels in Nevada County. Unbeknownst to us, at the last hour and quite without precedent, rhyme or reason, we later learned that this property had been designated as 3 acre minimum with a PD designation. We assumed the PD designation was given due to the steep topography which would allow for the clustering of homes to be built on the entire 200+ acres with the balance left open space. At the time, we did not feel that 3 acres was adequate or correct but there was nothing we could do after the fact. Fast forward to 2012 and now the Youngs, not being satisfied with the 3 acre PD designation which was the zoning designation when they purchased the property, want to create a small city on their property all to our detriment.

22-2

The Rincon del Rio project violates the Nevada County General Plan including, but not limited to, the following sections:

22-3

Letter 22 Continued

Introduction

The County, in response to key issues affecting the County's quality of life, has established four central themes which articulate the vision for the development of the County:

1. **Fostering a rural quality of life;**
2. **Sustaining a quality environment;**
3. **Development of a strong diversified, sustainable local economy; and**
4. **Planned land use patterns will determine the level of public services appropriate to the character, economy and environment of each region.**

A significant appeal of Nevada County is its **rural character** (emphasis added) and the sense that each resident lives in or near a small town. One such goal of the General Plan is to **minimize conflicts due to incompatible land uses**. The General Plan is to **preserve the character of rural areas** - to prevent the "partial suburbanization" of rural and natural areas. The General Plan is to **preserve the natural environment** of the County. This includes the preservation of natural habitats, water resources, forests, mineral resources, and scenic qualities of Nevada County. All portions of the County not included within a *Community Region* shall be considered to be within the *Rural Regions* of the County. Within these *Rural Regions*, growth is provided for only those types and densities of development which are consistent with the open, rural lifestyle, pastoral character, and natural setting which exists in these areas. **Planned land use patterns will determine the level of public services appropriate to the character, economy and environment of each region.**

In addition to the Central Themes and supporting themes, some of the planning principles used to prepare the General Plan within the *Community Regions* and *Rural Regions* are:

- Orderly development patterns that provide single-use areas for residential, commercial, and industrial activities.
- Avoidance of development in areas of extreme topography or unsuitable soil/geologic types.
- Avoidance of development in areas subject to flooding.
- Preservation of the natural and visual resources of the County.
- Preserves the historic and architectural resources of the area.
- Prevents environmental degradation through control of noise, air pollution, disposal of wastes, grading, tree removal, and other adverse affects.
- Protects the health and welfare of the residents of the County.

22-3

Chapter 1 – Land Use – Goals, Objectives and Policies

Goal 1.1 – Promote and encourage growth in *Community Regions* while limiting growth in *Rural Regions*

Objective 1.1

Define and maintain a distinct boundary between *Rural* and *Community Regions*.

Directive Policies

Policy 1.1 The General Plan divides the County into *Community Regions* and *Rural Regions*. All of the land area of the County is placed in one of these regions. Within the *Rural Regions*, growth is limited to those types and densities of development which are consistent with the open, rural lifestyle, pastoral character and natural setting and surrounding land use patterns which exists in these areas. Within the

Letter 22 Continued

Community Regions, balanced growth is encouraged to provide managed housing, employment, shopping and cultural opportunities appropriate to each community, located for convenience, efficiency and affordability.

The General Plan Land Use Maps delineate specific boundaries for *Community Regions*. All portions of the County not within a *Community Region* shall be considered to be in a *Rural Region*. (RDR is within a *Rural Region*.)

Policy 1.2 Within Nevada County, the *Community Regions* are established as the areas of the County within which growth should be directed to provide compact, areas of development where such development can be served most efficiently and effectively with necessary urban services and facilities. The *Community Regions* are defined by Community boundaries generally based upon the following criteria:

- a. Existing development patterns reflecting higher intensity and density of use and need to provide land area to accommodate a balanced pattern of development in the County;
- b. Existing and potential service areas for major services such as public sewer and water;
- c. Location of major topographic patterns and features;
- d. Major transportation corridors and travel patterns;
- e. Ability to provide and maintain appropriate transitions at Community boundaries.

In addition to the Town of Truckee, Grass Valley and Nevada City, *Community Regions* are established for Higgins Corner/Lake of the Pines, Lake Wildwood and Penn Valley. Boundaries for the *Community Regions* are shown on the General Plan Land Use Maps. I do not believe the property in question lies within any of these *Community Regions* nor does it meet the foregoing requirements.

22-3

Policy 1.4 Non-Residential Land Ratios. The General Plan Land Use Map designations also promote a balanced future growth in population and employment in relation to infrastructure and environmental capabilities and constraints through balanced consideration of the following:

- a. location within a defined *Community Region, Rural Place, Village Center, or Rural Center*;
- b. need for availability and future availability of public water and sewer systems;
- c. topography (erosion hazard)
- d. soil capabilities;
- e. important flora and fauna habitat areas;
- f. commercial timberland;
- g. important agricultural areas;
- h. important mineralized areas;
- i. future capacity of the transportation
- j. existing land use pattern;
- k. watersheds and stream corridors;
- l. important historical; archaeological sites;
- m. known historical faults; and
- n. need for new roads and circulation patterns that **promote safety and reduce vehicular concentration at existing intersections.** (This section is of particular concern when coupled with the gross increase in traffic using the Rincon Way/SR 49 intersection).

In considering any General Plan amendment, the criteria contained in this policy shall be used to evaluate the appropriateness of the amendment.

Letter 22 Continued

Even when considering the PD designation graciously granted to this property during the 1995 General Plan update, the intended development must meet the following criteria. The "PD" designation may allow a variety of land uses, including single-family and multi-family, residential, commercial, industrial, open space, and/or other land uses **consistent with the capability and constraints of the land**. Primary emphasis shall be placed on **clustering intensive land uses to minimize impact on various natural and man-made resources, minimize public health concerns, and minimize aesthetic concerns**.

22-4

Goal 1.3

Within *Rural Regions*, maintain and enhance the County's pastoral character, existing land use patterns, rural lifestyle, and economy in their natural setting.

Objective 1.3

Provide for a land use pattern compatible with preservation of pastoral character, environmental values and constraints, and the form and orderly development of *Rural Places*.

Directive Policies

Policy 1.6 Within these *Rural Regions*, growth is provided for only those types and densities of development **which are consistent with the open, pastoral character which exists in these areas**. Future development within the following land use designations shall be considered appropriate within *Rural Regions*:

- a. Estate (3 acre minimum parcel size) – (Current zoning for Young property with PD)
- b. Rural-5 (5 acre minimum parcel size) – (Current zoning for majority of surrounding properties).

These uses require and support lower levels of service and through low density and intensity of use provide mutual benefits for the maintenance of a rural character and preservation of natural resources.

22-5

Objective 1.7

Encourage land use patterns which minimize use of the automobile and allow for viable alternative transportation modes.

The standards shall identify the basic requirements for site development in the County, including, at a minimum, standards to mitigate the impact of development on environmentally sensitive resources as referenced in the following criteria: RDR will impact the following:

- Wetlands (as delineated in the National Wetlands Inventory (NWI));
- Major deer migration corridors, critical range, and critical fawning areas as defined by State Fish and Game's Migratory Deer Range Maps;
- Landmark oaks, defined as any oak 36" or greater at dbh;
- Landmark groves, defined as areas with 33+% canopy closure based on CDF's Hardwoods Map;
- Rare and endangered species, as found in NDDB and Inventory of Rare and Endangered Vascular Plants of California, 1994;
- Riparian corridors within 100 feet of intermittent or perennial water courses, as shown on USGS quad maps;

Letter 22 Continued

Floodplains, as defined by FEMA, precluding development and land disturbance within floodways and restricting development within the floodway fringe, through the establishment of floodplain setbacks and associated development regulations;
Important agricultural lands, as defined by State Important Farmland map;
Steep slopes (30+%);
Areas with high erosion potential, as delineated in Figure 3.3 of the Nevada County Master Environmental Inventory;
Areas subject to fire hazards, as defined by the State Department of Forestry's Fire Hazard Zone Map;
Visually important ridgelines and viewsheds, as defined by standards developed by Policy 18.3 of the General Plan.

Goal 1.6

Allow for growth while protecting, maintaining and enhancing communities and neighborhoods.

Objective 1.12

Provide land uses which protect, enhance, and complement existing communities and neighborhoods.

Action Policy 1.36 The County recognizes that amending the Plan through individual General Plan amendments for specific site changes may not be compatible with a comprehensive and internally consistent plan. Where General Plan amendments are considered on an individual basis, the following shall apply:

22-6

The proposed amendment must be found to be:

- a. in the public interest; and
- b. consistent with the General Plan's central themes, goals, objectives, and policies.

If this review concludes that additional areas for development are needed to address the above issues and further General Plan goals, objectives, and policies, the County shall encourage the development of Special Development Areas, consistent with the standards of policy 1.5.u., to accommodate future growth, rather than increases in density and intensity of land uses within Rural Regions. This will ensure consistency with the intent of the Plan, particularly policy 1.1, to limit growth in Rural Regions and encourage compact, balanced growth within Community Regions.

Goal 1.8

Coordinate with the cities/town in land use planning and development within their spheres of influence.

Objective 1.20

Encourage compatibility and coordination of land use designations.

Chapter 2 – Economic Development

Objective 2.5

Encourage economic development which increases the percentage of total personal income spent in the County.

Letter 22 Continued

Everyone knows that the majority of South County residents shop primarily in Placer County due to the distance and type of shopping facilities in Grass Valley/Nevada City as compared to Auburn. The only major mall is located in Placer County. 22-7

Objective 2.14

Encourage protection and enhancement of the natural scenic beauty of this County in support of the tourist trade. 22-8

The RDR project, coupled with the Higgins Marketplace, will increase traffic on SR 49 and cause more congestion at the Combie Road/SR 49 intersection thus discouraging tourism 22-9

Chapter 3 – Public Facilities and Services

Provide for public facilities and services commensurate with development type and intensity.

Objective 3.1

Public facilities and services shall be directed as follows: a higher level to *Community Regions* and a lower level to *Rural Regions*.

Directive Policies

Policy 3.1 The levels of service and provision of public facilities in *Community Regions* shall be based upon improving the capacity of public facilities to serve higher levels of development directed to *Community Regions*. The levels of service and provision of public facilities in *Rural Regions* shall be based upon limiting the amount of development to ensure that adequate facilities are available. 22-10

Policy 3.2 The County shall encourage development within *Community Regions* where higher density development can more efficiently be provided with a full range of public facilities and services. (These services are almost totally lacking in the area where the RDR project is proposed to be developed.)

County roads (other than local roads, as identified on the County Road Functional Classification Plan).

Recognize existing LOS, including segment and intersection deficiencies, and at a minimum, maintain the following minimum LOS:

f. For *Rural Regions*

Level of Service (LOS) "C", except where the existing LOS is less than "C". In those situations, do not let the LOS further decline. 22-11

The DEIR clearly indicates that the LOS at Rincon Way/SR 49 will decline to LOS D and F.

Chapter 4 – Circulation

GOAL LU-4.2

In *Rural Regions*, establish and maintain a desired level of service that supports sustainable growth and development.

Letter 22 Continued

GOAL LU-4.7

Provide local and regional road and street systems that are consistent and compatible with local land use patterns and street networks.

Policy LU-4.1.1 The minimum level of service allowable in the *Rural Regions* of the County, as identified in the General Plan, shall be level of service (LOS) C, except where the existing LOS is less than C. **In those situations, the LOS shall not be allowed to drop below the existing LOS.** Level of service shall be based on the typical highest peak hour of weekday traffic. Special events may be permitted which temporarily exceed this minimum LOS.

The DEIR indicates that Rincon at SR 49 is currently above Level C (currently Level A.) According to the DEIR, it will drop to Level C or lower (Level D and F in certain conditions). The DEIR clearly shows that RDR will cause the LOS to drop below its existing Level A.

22-11
cont.

GOAL MV-4.1

Provide for the safe and efficient movement of people and goods in a manner that respects the rural character of Nevada County.

GOAL MV-4.3

Provide for alternative routes for efficient service and for emergency access.

GOAL RD-4.4

Encourage land use patterns that reduce the need for new roadways and promote the use of alternative transportation modes. (There are no alternative transportation modes available for RDR as there is no public transportation in this area.)

Chapter 8 - Housing Element 2009-2014

As shown by the County's own statistics, the majority of housing units needed are in the low and very low range. Additionally, approximately 36% of Nevada County households are persons 60 years and older and these individuals fall statistically more often in the low and very low housing range. Despite its claims of catering to senior households, RDR will not provide housing for this segment of the population.

22-12

Residential Development Standards and Site Improvements

Nevada County has set development standards and site improvements that are required before consideration of a final map for a subdivision. The development standards and site improvements are inspected and approved by the County Engineer and appropriate conditioning agency before approval of the final subdivision map. The site improvements are vital to provide adequate infrastructure for circulation, safety, water and sewer service, etc. **and to retain the existing character of Nevada County** (emphasis added).

22-13

Table 8.34 provides in regard to Roads:

The design, alignment, width, grade, and location of all new roads are in conformance to Chapter XVII, Road Standards, of the Nevada County Land Use and Development Code. New roads are considered in relationship to the volume of traffic, existing and planned roads,

Letter 22 Continued

topographical conditions, public convenience and safety, and the appropriate standard for the potential land uses of the area served by such roads.

Privately maintained roads conform to the same standards as publicly maintained roads.

Considering the condition of Rincon from SR 49 to the project, it will virtually require replacement due to the fact that it is not wide enough, is not constructed to County standards, does not have the proper amount of road base, the chip seal is not up to County Road Standards, is not striped and is not equipped to handle the 1400 trips per day projected by the DEIR. It should be considered a "new road" and be constructed in conformance with all Road Standards contained in Chapter XVII including Fire Safety Standards.

22-13
cont.

In order for a Use Permit or Development Permit to be approved, an additional part of the permit review process is to ensure that all project impacts are adequately mitigated so a given project does not result in a significant impact to public health and safety.

The Housing Element further states: Depending on the location and type of project other findings or slight project specific modifications to the findings may be required. These findings are as follows:

1. The proposed use is consistent with the General Plan and its goals, objectives, and policies, with the General Plan Land Use Maps and with any Area or Specific Plan or development agreements in effect within the project area; (RDR is not consistent with the General Plan, its goals, objectives and policies)

2. The proposed use is allowed within and is consistent with the purpose of the zoning district within which it is located; (RDR is not consistent with the purpose of the current zoning district)

3. The proposed use and any facilities meet all applicable provisions of this Code, including without limitation, design and siting to meet the intent of the Site Development Standards mitigating the impact of development on environmentally sensitive resources; (RDR fails in this regard as well)

4. The design of any facilities for the proposed use are consistent with the intent of the design goals, standards, and elements of this Chapter and will be compatible with the design of existing and anticipated future on-site uses and the uses of the nearby surrounding area; (RDR is not consistent with the surrounding area)

6. The proposed use and facilities are compatible with, and not detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surroundings neighborhood or area; (RDR absolutely and utterly fails to be compatible with and will be detrimental to existing abutting properties and the surrounding neighborhoods)

8. Highways, streets, and roads on and near the site are adequate in width and pavement type to carry the quantity and type of traffic generated by the proposed use and adequate provision has been made for project specific impacts and the cumulative effect traffic generated by the proposed use so that it will not create or add to an identified problem before construction or needed improvements for with a development fee has been established and imposed upon the project;

22-14

Letter 22 Continued

9. Adequate provisions have been made for emergency access to the site; (Use of two private roads are inadequate under this provision)

10. Adequate public facilities and public services exist or have been provided for within the project area which will be available to service the project without decreasing services levels to other areas to ensure that the proposed use is not detrimental to the public welfare.

Police and Fire Protection

Adequate levels of police and fire protection service will be maintained with the additional housing units projected for construction in the County over the current planning period. The projected housing production in the County is not of the magnitude that is expected to adversely affect the delivery of these services to the citizens of Nevada County. Moreover, by closely monitoring new development, any improvements that are needed to maintain adequate service levels can be readily identified and carried out. Any new houses contribute property tax and sales tax to the County General Fund, which is used to fund these emergency services. (Due to the nature of the residents and their mobility-impaired condition, more fire and ambulance service will be required to service these residents to the detriment of the rest of South Nevada County, especially in a fire emergency).

The Housing Element correctly states:

Basic Infrastructure

At present, most of the vacant residentially designated lands within Nevada County are not located in proximity to required infrastructure systems (e.g. streets, water and sewer mains, gas and electrical distribution systems, etc.). This is applicable to RDR.

To combat this potential constraint, the County's General Plan specifically directs higher density residential development to the Incorporated Areas Sphere of Influences and to areas identified as Community Regions or Village Centers. This was intentionally done due to the fact that these areas typically have adequate streets to serve the development and either have access to or are in close proximity to water and sewer mains and other infrastructure necessary to support higher density residential development. RDR does not lie with any Community Region or Village Center and thereby violates this provision of the Housing Element.

The goals stated in the Housing Element include:

GOAL HD-8.3

Ensure that appropriate types and higher density housing development are directed to Community Regions and Rural Centers.

There are a number of existing sites in which a project such as RDR could be located and still be compatible with the General Plan and the Housing Element and which would accommodate a CCRC while providing the amenities and infrastructure required by such a project and which would not require exceptions and exemptions.

Implementation Measures

IMPLEMENTATION MEASURE 2: ADOPT CLUSTERING PROVISIONS

Action: Amend Zoning Ordinance to encourage clustering where natural constraints are present.

22-14
cont.

22-15

Letter 22 Continued

Purpose: To provide a mechanism for preservation of natural resources, environmentally sensitive areas and the **rural character of the County** while maintaining reasonable expectations for development of private property. The *reasonable* expectations for the Youngs to develop their property was in place when they purchased the property, namely that they could develop 3 acre parcels (~70 homes and cluster those homes as prescribed by a PD designation leaving the remaining property as open space.) That was also the *reasonable* expectation of the surrounding neighbors who expected the County to follow its own General Plan, policies, procedures and the general rule of law.

22-15
cont.

IMPLEMENTATION MEASURE 60: PROTECTION OF NATIVE HERITAGE OAK TREES & SIGNIFICANT OAK GROVES

Action: Adoption of an ordinance to protect native heritage oak trees and significant oak groves.
Purpose: To maximize the long-term preservation of said trees and groves and the integrity of their natural setting. There are a significant number of native oak trees on the Young's property and development of the RDR project will destroy a large number of those trees.

22-16

The foregoing does not pretend to be an exhaustive review and quantification of each and every point by which RDR fails to be in conformity with the General Plan.

The following sections of the DEIR are inadequate or otherwise insufficient:

3.14.1 Setting

This section of the DEIR is inadequate, faulty and contains patently false information in that it states that "the study area analyzed in the traffic analysis addresses traffic conditions on State Route 49 and County roads that would be used to access the site". Let there be no mistake, there are NO County roads that would be used to access RDR. Rincon Way is a PRIVATE ROAD. It always has been PRIVATE and is now PRIVATE.

The 2010 traffic study cited as Caltrans data is outdated and I believe that there are more than the 34,500 cars per day that travel the Placer County/Nevada County line which is in the immediate vicinity of this project and the Rincon Way ingress/egress access. The only reason Rincon is 65 feet wide from State Route 49 to the frontage road referenced is that this is State right-of-way. As indicated, the road narrows considerably to from 18 to 20 feet. To differentiate the sections of Rincon Way that I will reference in this letter, the portion from State Route 49 to Hidden Ranch shall be labeled Rincon West and the portion from Hidden Ranch to the RDR project shall be labeled Rincon East. With the decaying condition of Rincon West, it is doubtful that the roadway is 18 to 20 feet wide today as the shoulders are degrading.

22-17

Rincon Way/SR 49 Frontage Road Intersection

This section references the frontage road that runs parallel to SR 49 and dead-end into Rincon West. It is false in that it states there is a stop control along the frontage road. There is no stop sign on the frontage road. The frontage road is also in disrepair and is currently being illegally used for access to SR 49 by the wine tasting business located at Linnett and SR 49 due to the fact that Sierra Knolls does not have an easement over either the frontage road or Rincon West.

22-18

Intersection Levels of Service

I again raise the inadequacy of the LOS statistics shown in Figure 3.14-2. This section fails to

22-19

Letter 22 Continued

differentiate between the traffic counts in the 2008 traffic study or the 2011 traffic study which showed a 22% increase in traffic turning southbound from Rincon onto SR 49. I would reiterate the issues raised in my March 5, 2012 letter regarding the wait time for turning southbound onto SR 49 from Rincon. The DEIR also is inadequate because it fails to distinguish between wait times for turning southbound from Rincon onto SR 49 and wait times after turning southbound and while waiting in the acceleration lane to merge into southbound traffic traveling at 65+ mph. I absolutely challenge the conclusions in this Figure showing wait times of 0.1 seconds and insist on validation and verification of the correctness of these statistics. **22-19 cont.**

While indicating that there is room to stripe a right-turn lane and a left-turn lane on the state right-of-way portion of Rincon, the DEIR is inadequate in that it does not address the sight-of-vision blocking to a vehicle turning northbound while there is a southbound turning vehicle waiting at the stop sign at Rincon/SR 49. This is especially important when the southbound turning vehicle is a large commercial vehicle which would block the view of a northbound turning vehicle and create an accident hazard. The grades of B and C in peak hours is also of concern and while these grades do not require a traffic signal, they nonetheless indicate a potential traffic problem at this intersection. **22-20**

This section does not indicate whether these statistics are for current traffic conditions (or rather conditions on one day in 2008 or 2011, respectively). These statistics are faulty and inadequate because they use traffic statistics from 2008 and/or 2011 and do not include the additional estimated nearly 1000 trips per day projected for the RDR project. **22-21**

The Youngs have had a number of "events" at their property in which they have invited the public to use our PRIVATE road. The DEIR does not specify how many future events will be held at RDR in which the public will be invited to use our PRIVATE roads, the number of trips these events will generate and their impact on the number of trips or increased traffic nor the impact the LOS and wait times as well as the effect pm LOS grading. The project as a whole will encourage unintentional and uninvited traffic. **22-22**

Emergency Vehicle Access

This section is especially troubling when it admits that RDR's existing easement of 30 feet does not meet the County's 50 foot easement standards nor does the 30 foot easement allow for the "required" 10 foot brush clearing zones adjacent to the roadway. This very critical and possibly life-threatening aspect to the project is one of the exceptions and exemptions requested by the Youngs. Why does the County have easement standards if they are willing to ignore them? This is but one of the violations that will be required to be ignored to allow RDR to be built. Inadequate easement for brush clearance when combined with increased traffic will contribute to more possibilities for accidents and injuries. **22-23**

RDR is requesting yet another County road standard be ignored and that is the grade on Rodeo Flat necessitating another exception. **22-24**

The DEIR is inadequate in that it references the proposed emergency access via Rincon Way and Rodeo Flat in the event of a fire evacuation yet provides no traffic figures to support the LOS level or wait times using Rincon to evacuate onto SR 49. There are several thousand homes in Lake of the Pines, the Ranchos, Dark Horse and Combie Lake and when added to the residents of RDR, Hidden Ranch and the Rincon residents, this would portend a disastrous evacuation route. The DEIR provides no clue as to the amount of traffic that would be attempting to use an 18-20 foot wide, disintegrating **22-25**

Letter 22 Continued

roadway nor the impact that evacuating this amount of traffic would have on the Hidden Ranch residents attempting to access Rincon during an evacuation.

22-25
cont.

Another inadequacy in the DEIR is that it does not address the chaos in attempting to get buses or transport vehicles along with fire fighting equipment into the RDR project and attempting to evacuate mobility-impaired individuals while attempting to evacuate the masses from LOP, the Ranchos, Dark Horse, etc. It does not address the impact of so many vehicles on the internal roadway system within RDR and which vehicles will have priority, i.e. fire fighting vehicles, ambulances evacuating critical patients, etc. It does not address the potential for RDR roadway blockage from these vehicles on Rincon during evacuation when coupled with vehicles attempting to evacuate from the Ranchos side of RDR. The consequences of having this massive roadblock within the RDR project during a fire evacuation would lead to a disaster of previously unknown proportions and would surely result in a number of deaths. Peter Guilbert has covered a similar scenario in the Oakland Hills fire in the 1990's wherein a number of people perished while being only one-half mile from a major freeway. The DEIR is also inadequate and silent as to the consequences of any of these evacuating vehicles being involved in a traffic collision further blocking the evacuation route on either Rincon or Rodeo Flat. Nor does it address the effects of smoke on visibility for vehicles attempting to evacuate.

22-26

3.14.2 Regulatory Framework

Section L-II 4.1.9 Transportation Alternatives

The Nevada County Land Use and Development Code , Section L-II 4.1.9 requires projects to consider methods for reducing dependence on the automobile by exploring alternative modes of transportation. This section requires the project to address alternative transportation opportunities for employees, residents and/or customers served by the project by providing an identification of the transportation needs generated by the project, identifying existing and potential alternatives to individual automobile use and to incorporate measures to ensure use of viable alternatives. The DEIR then states that there is no bus service to the RDR project, bicycling and walking "have not been widely used as transportation modes in Nevada County" (and would certainly not be a viable alternative for the type of resident at RDR), not to mention that there is not room for a bike or walking path on Rincon and none exist on SR 49, and there is no fixed rail service in this area. Once again, this project violates a Nevada County Code because the primary source of transportation for this project will be the automobile. The DEIR states that the project will be required to pay mitigation fees to the RTMF program but fails to state how this will alleviate the reliance of this project on automobile transportation.

22-27

Since the primary method for accessing RDR will be the automobile, the DEIR is inadequate because it fails to address the increased vehicular pollution and the effects of that pollution on the local residents and on surrounding vegetation and the effects of that air pollution on the Bear River. Many of the commercial vehicles serving RDR will be diesel and the DEIR fails to address the effects of diesel engines on the environment.

22-28

3.14.3 Impacts and Mitigation Measures

Trip Generation

This portion of the DEIR is inadequate and contradictory because it states that CCRC communities are typically designed as self-contained villages. It states that senior adult housing,

22-29

Letter 22 Continued

detached and attached, assisted living and nursing homes do not represent the overall composition of the project. This statement apparently completely disregards the fact that there will be 78 freestanding two and three-bedroom 2000+ square foot “cottages” as well as 43 duplexes (86 units) and 10 additional “affordable” duplexes (20 units), 4 sixplexes (24 units), memory care of 24 beds, hospice of 16 beds, 28 unit two bedroom “lodges”, 21 assisted living units, and a 98 unit “village center” and more units on the property. Clearly, there are detached housing units, assisted living units and village center units that will have the same effect as a nursing home. With this in mind, and the number of units projected for this project, I submit that the estimate of 415 residents is grossly inaccurate and fails to take into account the number of bedroom units that are included in this project. I leave the discussion on density to others but I wish to address what I consider to be an inadequate trip generation figure. Furthermore, the level of shopping and recreational activities is misrepresented. The nearest large grocery store is six miles away and requires a southbound turn onto SR 49. Likewise, the nearest major shopping area is six miles away and requires a southbound turn onto SR 49 as does the nearest shopping mall in Roseville. The project obviously anticipates that the seniors living in the 78 freestanding “cottages” as well as some of the duplexes will be active seniors and in fact this project is being advertised as one for “active seniors.”

22-29
cont.

As I pointed out in my March 5, 2012 letter, I do not believe that KD Anderson could have found a similar project located in such a rural area as South Nevada County that is some distance from major shopping and recreational activities as well as hospital and medical facilities and completely devoid of public transportation. I also question the calculation of trips per day and why this report shows fewer AM trips than PM trips and the basis for that conclusion. See Table 3.24-3. Nowhere does the DEIR break down the percentages of AM and PM in and out trips and how they were calculated nor what type of vehicular traffic is most likely to use Rincon in the AM or PM. Considering the anticipated population size of this project and their activity level vis-à-vis the current local residents, I believe the number of trips generated by this project is understated and not factually derived.

Level of Service Methodology

The DEIR is inadequate and inaccurate because it appears that the methodology for analyzing signaled intersections were used to analyze the unsignaled intersection at Rincon. This section states that Nevada County considers LOS C as acceptable while Caltrans considers LOS D as acceptable in rural areas. This fails to distinguish between whether these LOS grades are for signaled or unsignaled intersections.

22-30

Traffic Signal Warrants Procedures

The DEIR admits that for this traffic section data was limited to AM and PM peak hour volumes (presumably on that one day in 2008 and one day in 2011 which are hardly statistically reliable). To be more accurate, the DEIR itself admits that a more detailed study should be made during the highest eight hours of the day and volumes during the highest four hours of the day. Thus, the DEIR is inadequate and contradictory in its conclusions based on the scant one-day traffic study from three years ago and one year ago, respectively.

22-31

Impacts and Mitigation Measures

Impact 3.14.1

22-32

Letter 22 Continued

This section states:

Development of the proposed project could cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system surrounding the project site (i.e. result in a substantial increase in the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections.) This impact is considered **less than significant**.

It is totally specious to state that this project "could" cause an increase in traffic when their own flawed data indicates an increase of 969 trips a day over existing road usage. This section is particularly misleading and inaccurate when it states "The increase in traffic of 599 trips per day represents a 162 percent increase over existing conditions, which is considered substantial." Where did 599 trips per day come from? Their own data indicates 969 trips a day which is nearly 300% more traffic that is currently using Rincon. There is no factual basis for the statement that "the total traffic is within the design expectations of the roadways and consistent with similarly designed roadways in the county." There is likewise no factual basis for the statement that "implementation of the project would not exceed the capacity of Rincon Way." Show me another PRIVATE ROAD (dead-end) in Nevada County with 1400 trips a day flowing directly onto SR 49! The DEIR also fails to take into consideration that this road is not a Class A road, is marginal in width and certainly not up to County road standards. Rincon cannot withstand 1400 trips per day. It is disintegrating with the assumed current 370 passenger trips per day, not heavy commercial vehicles. There is no basis for the statement that this impact is considered **less than significant**.

22-32
cont.

Stating that an additional 969 trips per day would not impact traffic on SR 49 does not accurately reflect the true state of affairs. The real impact will be nearly 1400+ trips per day and while it may not directly impact the 34,500 cars per day that travel on SR 49, it will impact the intersection of Rincon and SR 49 and it will certainly impact Rincon and potentially the PRIVATE roads within the Hidden Ranch subdivision as I have discussed elsewhere. Using the study's own figures of 2.81 trips per day, there are 540 parking spaces which will presumably hold at least that many cars. Multiplying 540 parking spaces (cars) times 2.81 trips per day equals 1,517. This is considerably more than the projected 969 trips per day.

Even assuming arguendo that the current project will create a LOS B at 34,500 cars per day, when traffic reaches 51,300 cars per day, the LOS will be D. Although still acceptable to Caltrans, this will exceed the County's standards. At the rate of increase every year on SR 49, the traffic count will reach 51,300 cars per day. How will the County mitigate the danger then?

Using the studies known traffic level of increase of 22% between 2008 and 2011, that is more than a 7% increase in traffic per year. This 7% increase in traffic is not reflected in Table 3.14-5 and therefore, this section of the DEIR is inadequate, flawed and inaccurate. That 7% represents 2,415 additional cars on SR 49 and adding another 969 cars per day, there is an additional 3,384 cars per day. That is no longer the 5% increase in traffic but nearly 10% increase in traffic and taken as a whole, is not **less than significant**.

Based on personal, real time experience, I still question and refute the wait times stated in Table 3.14-6.

Mitigation Measures

Queuing Impacts (Standards of Significance 1 and 2)

22-33

Letter 22 Continued

I do not believe the 969 additional car trips per day will have no effect on queues as stated in Table 3.14-7. How is that possible? I have already covered these issues in my March 5, 2012 letter.

22-33
cont.

Traffic Hazards – Sight Distance and Collisions

I take particular issue with the statement that “Rincon Way, which would provide access to the project site, will be improved to meet the County’s standards.” This is contradictory to the statement that the project seeks an Exception for the Rincon Way easement since it does not meet the County’s 50 foot easement standard. Further, who is going to “improve” Rincon to meet the County’s standards and more importantly, who is going to pay for these improvements? It is patently unfair to expect the existing Hidden Ranch and Rincon residents to pay for upgrading and maintaining a road that will increase traffic by 300%. This is not a County road, it is a PRIVATE road. Why should we be required to bring it up to all County standards including striping and site distance standards? What right does the County have to force landowners to cut their trees and vegetation so that RDR can be built? It is slight consolation that the project applicant will have to pay for striping Rincon. What right does the Nevada County Department of Public Works have to enforce widening, striping, lane designators, etc. on our PRIVATE road? Does the County’s Roadside Vegetation Management Plan apply to PRIVATE roads? If not, how can those provisions be enforced?

22-34

Adequate Emergency Access

Impact 3.14.5

This section states:

The proposed project would provide adequate emergency access; however, emergency access via Rodeo Flat would not be locked. This impact would be **potentially significant**.

I submit that current emergency access via Rincon Way is not adequate. A roadway 18-20 feet wide will not allow certain fire fighting equipment such as a bulldozer to traverse Rincon Way while residential traffic and buses or ambulances attempt to exit Rincon onto SR 49. Nor have wait times in such an emergency been addressed anywhere in the DEIR. I leave the discussion on the Rodeo Flat fire gate to others to discuss in further detail. Needless to say, an unlocked gate is an invitation especially if it saves time and distance for someone.

22-35

3.14.4 Cumulative Setting, Impacts and Mitigation Measures

Background Traffic Volume Forecasts

Once again, the DEIR is utilizing outdated traffic studies. It also assumes that the 70 acre parcel on the south border of Rincon West and SR 49 will be built out on 5 acre parcels as it is currently zoned. As shown by this project, current zoning is apparently superfluous when a developer gets a whim to build a city in a rural area. What is to stop the owner of the 70 acres from seeking a CCRC on his property? A CCRC apparently only requires 50 acres. There is a large parcel at the back of Hidden Ranch that could also request a CCRC designation in the future. This additional potential density and zoning change has not been adequately addressed in the DEIR. The fact that the Youngs are seeking to split their property into additional parcels has also not been addressed. What is to keep those additional parcels from being more densely developed in the future and what would prevent

22-36

Letter 22 Continued

another request to change the zoning, General Plan and whatever other exceptions and exemptions would be required to pack some more people into that project? 22-36

What is even more contradictory is that the DEIR assumes that the 14 homes that could be built on the 70 acres would generate 134 daily trips. That is almost 10 trips per day. When there are 540 parking spaces presumably for 540 cars, why is there only 2.81 trips per day for those cars when everyone else has nearly 10 trips a day ascribed to them? And once again, these additional 134 trips will be no impact. You take 969 here, an additional 134 there added to 370 and pretty soon you have some real traffic!! All of this increased traffic and yet the DEIR states that it is a **less than cumulatively considerable** impact. 22-37

Even when traffic LOS reaches a F with future development, it is still not considered a problem because it is just averaged out and an F when averaged with a C is still only a D which is considered acceptable by Caltrans. 22-38

On a final note, I would again point out that the DEIR is grossly inadequate because it fails to address the liability issues that will be placed on not only the easement holders but the property owners who actually own the real property over which Rincon traverses. I do not believe either the Youngs nor Nevada County can force the surrounding easement and property owners to assume legal, civil liability for RDR project vehicles, the public and attendant users of our PRIVATE roads. Increased traffic can only inevitably lead to more traffic accidents and injuries. A larger percentage of impaired drivers from whatever the cause will also increase this risk. The DEIR fails to address this serious issue. It also fails to address the gross overburden of the easement that the Youngs currently have for their residential property by creating a commercial project that will increase traffic by nearly three-fold. 22-39

The entire section of the DEIR dealing with road and traffic impact fails to address the uninvited public who will either intentionally or accidentally end up on the PRIVATE roads within the Hidden Ranch subdivisions either due to getting lost or sight-seeing. The entire DEIR also fails to deal with the potential for increased crime and increased liability for the public using not only Rincon but the PRIVATE roadways within Hidden Ranch. This is a public safety issue and will increase traffic on our PRIVATE roads. 22-40

Please add this correspondence in addition to my March 5, 2012 and June 10, 2011 letters to you as part of the public record and the administrative record related to the Rincon del Rio project. This correspondence and my previous letters address serious issues and concerns regarding the RDR project and the adequacy of the Draft EIR and should be included as part of Nevada County's administrative process in the event a court action occurs.

Thank you,

Virginia A. Guilbert

Letter 22 – Virginia A. Guilbert

- Response 22-1:** See Master Response 3.
- Response 22-2:** The comment discusses a change in land use designation of the property from a 10-acre minimum lot size to 3-acre minimum with a Planned Development (PD) designation. This change was not associated with the current project and is therefore not addressed in the Draft EIR.
- Response 22-3:** The comment states the project violates the General Plan, with some goals, policies, and objectives included. See Master Response 3.
- Response 22-4:** The comment includes criteria with which a project in a PD designation would be required to comply, including General Plan goals and policies. See Master Response 3.
- Response 22-5:** The comment includes criteria with which a project in a PD designation would be required to comply, including General Plan goals and policies. See Master Response 3.
- Response 22-6:** The comment includes criteria with which a project in a PD designation would be required to comply, including General Plan goals and policies. See Master Response 3.
- Response 22-7:** The comment states the majority of South County residents shop primarily in Placer County. The commenter's perception is noted. It should also be noted that this represents an existing condition and not necessarily a pattern that would represent the proposed project.
- Response 22-8:** The comment includes an objective of the General Plan encouraging protection of scenic beauty in the County to encourage tourist trade. See Master Response 3.
- Response 22-9:** The comment refers to the objective stated in Comment 22-6 and states traffic will discourage tourism. See Master Response 3.
- Response 22-10:** The comment states the project site lacks public facilities and services. As discussed throughout the Draft EIR, facilities and services can and are proposed to be extended to the project site to support the proposed project. Provision of these services and facilities is considered in the Draft EIR. No change to the EIR is required.
- Response 22-11:** The comment states there are no alternative transportation modes in the project area and would not meet County level of service (LOS) standards for the intersection of Rincon Way and SR 49 (LOS "C" is the County standard). As discussed in Draft EIR Section 3.14, Traffic and Circulation, page 3.14-26, in addition to site-specific amenities to reduce the need for automobile travel, the project would include alternative on-site transportation options. These include staff-driven vehicles (golf carts) and employee-facilitated carpooling and organized ridesharing. Shared vehicles, electric cars, and bicycles would also be available for residents. The project also proposes to provide a minimum of two ADA-equipped paratransit vehicles for the purposes of

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

transporting residents within the facility to various business appointments, grocery and service needs, recreation, and special events. As identified on Draft EIR pages 3.14-18 and -35, the proposed project would not alter the existing or future LOS for the Rincon Way/SR 49 intersection, which would be LOS A that is well within County LOS standards.

Response 22-12: The comment states the project would not provide housing for low- and very low-income populations. The County does not require every project to provide housing for these income ranges.

Response 22-13: The comment states Rincon Way is currently not up to County standards and that the road should be constructed to County standards. As discussed in the Draft EIR, Section 2.0, Project Description, page 2.0-51, "Rincon Way would be improved to meet the County's road standards within a 30-foot-wide public roadway and utility easement. The 30-foot-wide easement would include two 10-foot vehicle travel lanes." The proposed project also includes a Petition for Exception for Rincon Way because the existing 30-foot road easement width does not meet the County's 50-foot easement standard. Therefore, the project as proposed includes improvements to Rincon Way to bring it to County standards, with the exception of the width, which cannot be accommodated in the existing easement. If the proposed project is modified, the County will need to determine if there are environmental impacts beyond those analyzed in this EIR.

Response 22-14: The comment states there are a number of existing sites in the county in which the proposed project could be located and still be consistent with the General Plan. The comment is noted. Also see the discussion in Section 5.0, Project Alternatives, for the Off-Site Alternative.

Response 22-15: The comment states that the proposed project would not be considered "reasonable" in the context of the General Plan implementation measure. While this is not a comment on the adequacy of the Draft EIR, Master Response 3 addresses project consistency with the General Plan.

Response 22-16: The comment states the proposed project would remove a significant number of oak trees. As discussed in Draft EIR Section 3.4, Biological Resources, pages 3.4-47 and -48, the project would remove approximately 1.35 acres of the total 39.9 acres of landmark oak groves that occur within the project site, which is less than 3.5 percent of the total landmark oak groves on the project site. County Zoning Regulations allow a project to be approved and constructed if a Habitat Management Plan is prepared and implemented. As referenced in Draft EIR Section 3.4, Biological Resources, page 3.4-2, a Habitat Management Plan (EcoSynthesis 2009) that provides mitigation for both direct and indirect impacts on landmark oak grove habitat has been included as mitigation for the project and is available for review at the County Planning Department.

Response 22-17: The comment states the data used in the traffic analysis is out of date because, the comment contends, it is based on counts from a 2010 Caltrans study. Contrary to this comment, traffic counts were conducted in June 2011 (Draft EIR, Section 3.14, Traffic and Circulation, page 3.14-3), approximately one month after circulating the Notice of Preparation, which is appropriate

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

based on CEQA Guidelines Section 15125 (“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.”)

Response 22-18: The comment states there is no stop control at the intersection of the frontage road and Rincon Way. The comment is noted, and the text on page 3.14-2 of the Draft EIR is amended as follows:

All approaches to the intersection are single lane with no stop control along the frontage road.

This correction does not alter the conclusions in the Draft EIR.

Response 22-19: The comment states the transportation analysis fails to differentiate between the 2008 traffic study and the 2011 traffic study. Information from the 2008 traffic study was provided for comparison only; the data used in the analysis was from the 2011 traffic study and traffic counts performed in June 2011. The comment also disagrees with wait times at the intersection of Rincon Way and SR 49. Consistent with the analysis methodology utilized by the County and Caltrans, the average wait times disclosed in the Draft EIR are for the intersection as a whole, not for individual movements at the intersection. The delay disclosed in the Draft EIR is the average delay for the intersection as a whole, so there would be times at which delays for individual movements would be longer than the average delay disclosed in the Draft EIR.

Response 22-20: The commenter states the Draft EIR is inadequate because it does not address line of sight issues if larger vehicles are turning left from Rincon Way. It should be pointed out that the analysis in the Draft EIR presents average times under typical situations. The analysis is not intended, nor is it required, to provide information on any situation that could occur at the intersection. The analysis assumes drivers will take into consideration the conditions at the time they reach the intersection. If a large vehicle is present, it would be advisable for the driver to wait until the vehicle that is blocking the view to complete the turning movement. Under that scenario, the delay would be longer than disclosed in the Draft EIR. This would not represent a significant effect. The commenter opines that the level of service reported for this intersection in the Draft EIR represents a “potential traffic problem.” As discussed on page 3.14-12 of Draft EIR Section 3.14, Traffic and Circulation, Nevada County identifies LOS C as the acceptable level of service in Rural Regions and the Draft EIR identifies that the intersection of Rincon Way and SR 49 would operate at LOS A with the project under existing and future conditions.

Response 22-21: The comment states the section does not indicate whether data are from the 2008 report or the 2011 report. There is no indication in Draft EIR Section 3.14 that the 2008 report was used for any purpose other than comparison with the traffic counts collected in the 2011 survey (see Draft EIR page 3.14-3). Regarding inclusion of project-related trips, those trips are not included in the background data, but are used in the project analysis (see pages 3.14-9 through -37 for methodology and impact discussions).

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

- Response 22-22:** The comment states the property owner currently has events that are accessed via Rincon Way, which the commenter points out is a private road. As Rincon Way is the only road that provides access to the project site, visitors must use Rincon Way. As noted on page 3.14-10, the continuing care retirement community (CCRC) may contain special services such as medical, dining, recreational, and limited retail supporting facilities, which would reduce the need to travel outside of the site. Continuing care retirement communities are typically designed as self-contained villages. The project applicant has further identified that the project would not be available for outside members of the public to rent or utilize for special events such as weddings, music concerts, and the like. The on-site amenities proposed are for residents only and potentially their immediate family activities if approved by management (Creighton 2012). See Response 3-21 regarding the Road Maintenance Agreement.
- Response 22-23:** The commenter takes issue with exemptions to road standards and expresses safety concerns due to the exemptions. The comment provides only speculation that the road width and vegetation along the roadway would contribute to accidents. It should be noted that, prior to approval of an exception, the County will review the specific conditions on the roadway to determine if a 30-foot roadway width in this location would be acceptable and safe.
- Response 22-24:** The comment notes an exception requested by the project due to the grade on a portion of Rodeo Flat Road. This comment is correct and this request was identified in the Draft EIR.
- Response 22-25:** The comment states the Draft EIR is inadequate because it does not include levels of service during an emergency evacuation. See Master Response 2.
- Response 22-26:** The comment states that, during an emergency, there will be "chaos" with collisions between firefighting vehicles and project shuttles, both trying to use local roads. The comment refers to letters by another commenter. See responses to Comment Letters 19 and 20.
- Response 22-27:** The comment states the project would violate the Nevada County Code because the automobile would be the primary mode of transportation. However, the project includes site-specific amenities to reduce the need for automobile travel and would also include alternative on-site transportation options that would further reduce the need for single-occupancy vehicle trips. See Response 22-11.
- Response 22-28:** The comment states the Draft EIR does not address the pollution generated by the vehicle trips associated with the project. The comment is incorrect. The air quality analysis takes into consideration the emissions generated by stationary and mobile sources from the project. The commenter is referred to Draft EIR, Section 3.3, Air Quality, pages 3.3-13 and -14, for a discussion of the methodology for estimating long-term emissions (pollution) attributed to the project.
- Response 22-29:** The comment states the Draft EIR is inadequate because the traffic section generally characterizes continuing care retirement communities as "self-

contained villages," yet the proposed project includes freestanding residential units. For clarification, the characterization of these communities as self-contained villages refers to continuing care retirement communities as a whole and was not intended to imply that each component within the project is self-contained. The proposed project includes residential, commercial, and healthcare uses that allow a portion of the trips for the project to be internalized, which reduces trips outside the project site. The relationship to the mix of units and perceived inaccuracy in population generation referenced in the comment is unclear. No response is possible. See Draft EIR Section 3.14, Traffic and Circulation, pages 3.14-9 through -11, for a discussion of methodology for trip generation.

Response 22-30: The comment states the level of service methodology is inaccurate because it uses the methodology for analyzing signalized intersections to analyze unsignalized intersections. The comment is incorrect. See level of service methodology discussion on Draft EIR page 3.14-12, which discusses signalized and unsignalized intersections.

Response 22-31: The comment mischaracterizes the statement in the EIR regarding more detailed study during the eight highest hours of the day. The Draft EIR states, "Even if the Peak Hour Warrant is met, a more detailed signal warrant study is necessary before a signal is installed. The more detailed study should consider volumes during the eight highest hours of the day, volumes during the four highest hours of the day, pedestrian traffic, and accident histories." As discussed in Impact 3.14.2 (Draft EIR, pages 3.14-17 through -19), the project would not meet the peak hour signal warrant. Thus, the "more detailed study" referenced in the preceding statement would not be required.

Response 22-32: The comment points out an error in the traffic section. The Draft EIR analysis discloses an increase of 969 trips and then states the project would result in an increase of 599 trips. The increase of 969 trips is correct. Therefore, the text on page 3.14-17 is amended as follows:

The increase in traffic of ~~599~~ 969 trips per day represents a ~~162~~ 262 percent increase over existing conditions, which is considered substantial.

This correction does not alter the findings in the Draft EIR, as the EIR discloses the increase of 969 trips. In addition, the EIR considers the increase in trips (969) in determining the total trips on Rincon Way. Draft EIR page 3.14-17 states, "The total traffic on Rincon Way after implementation of the project would be approximately 1,339 ADT (969 ADT + 370 ADT = 1,339 ADT)." The Draft EIR also considers the capacity of the road in consideration of the impact: "the County's General Plan indicates that a Local Road (e.g., Rincon Way) provides access for areas with traffic volumes between 101 ADT and 2,000 ADT. Therefore, implementation of the project would not exceed the capacity of Rincon Way." Because the project would not exceed the capacity on Rincon Way, this impact would be less than significant.

The commenter employs a method using the parking spaces provided for the project to determine trip generation for the project. This method is incorrect. See Draft EIR pages 3.14-9 through -11 for a discussion of methodology for trip generation.

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

The comment appears to apply a County LOS standard to a Caltrans facility (SR 49). County LOS standards do not apply to Caltrans facilities.

The comment refers to annual traffic increases of 7 and 22 percent per year. The comment is incorrect. The references to 7 and 22 percent changes are those noted from the 2008 traffic counts and those taken in 2011. Because the data used for the traffic analysis in the EIR are counts taken in 2011, any increase from the 2008 counts is already considered in the analysis. Adding 7 or 22 percent would not be required and would overstate the counts.

Response 22-33: The commenter does not agree with the conclusions regarding traffic queues, but provides no reference to the Draft EIR. Draft EIR Section 3.14 (Traffic and Circulation) describes the methodology of how the traffic analysis and modeling was conducted on Draft EIR pages 3.14-10 through -12. The commenter provides no countering analysis to what was provided in the Draft EIR.

Response 22-34: The comment questions who would be responsible for the cost of upgrading Rincon Way as described in the Draft EIR. The project applicant would be responsible for the costs of upgrading Rincon Way.

Response 22-35: The comment states emergency access via Rincon Way is inadequate. Emergency access for the project was developed in coordination with the Higgins Fire Protection District. The commenter's opinion is, however, noted.

Response 22-36: The comment states the Draft EIR utilizes outdated traffic studies. The comment is incorrect. See Response 21-7. The comment also states the analysis should consider possible land use changes on nearby parcels when developing future trip generation. The County is not required to speculate as to what changes could occur on other parcels. There are no applications for the changes in land use noted in the comment; therefore, the assumptions in the Draft EIR use the existing designations.

Response 22-37: The comment states the same trip generation should be used for the proposed project as for single-family residences on rural-residential lots. The methodology suggested by the commenter would not yield accurate results, because different land use types have different trip rates. The trip generation ascribed to different land uses for the proposed project is based on trip generation rates published in *Trip Generation* (ITE 2008) (Draft EIR page 3.14-10), which was developed from thousands of studies conducted in the U.S. and Canada since the 1960s.

Response 22-38: The comment refers to the LOS of the westbound approach SR 49/Rincon Way in the PM peak hour under the future plus project cumulative scenario. The comment is correct in that the Nevada County LOS standard focuses on the average delay experienced by the intersection as a whole, so the LOS F identified for the PM peak hour would not result in a significant impact because the intersection as a whole (all movements) would operate within the standard.

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Response 22-39: The comment refers to liability issues associated with local roads. Economic issues are not required to be addressed in the EIR. See also Response to Comment 21-6.

Response 22-40: The comment refers to traffic from the “uninvited public” on Rincon Way due to people getting lost or sightseeing. The current configuration of Rincon Way does not prevent the “uninvited public” from using Rincon Way. The comment provides no evidence that additional sightseers or lost drivers would access Rincon Way.

Letter 23

Ron & Sandee Gustavson
24102 Timber Ridge Drive
Auburn, CA 95602
530.268.9730

March 19, 2012

Mr. Brian Foss
Nevada County Planning Department
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

Re: Rincon Del Rio Project (Young Enterprises, Developer)

Dear Mr. Foss,

Please add this correspondence and any attachments as part of the public record and the administrative record related to the Rincon Del Rio project. This correspondence addresses serious issues and concerns regarding the RDR project and the adequacy of the DRAFT EIR and should be included as part of Nevada County's administrative process in the event a court action occurs.

Google defines *Environmental* as "**The surroundings or conditions in which a person, animal, or plant lives or operates**".

Well, nobody bothered to knock on our door and study how the effects of this project will impact our lives and how we operate. You cannot selectively break down the definition of a word and only provide answers to a portion of it. We are the people who are part of the environment that live in the vicinity of this life disrupting project and have not been included in this report. Therefore, it is my opinion; this study is not truly an Environmental Impact Report and should be considered incomplete and invalid.

If you require disagreements from all the regurgitated cookie cutter comments and responses written in the EIR just to get approval of this project (that are far from acceptable), then I'll pick these two out to mention:

Impact 3.11.1 Construction activities could result in a substantial temporary increase in ambient noise levels at nearby noise-sensitive land uses, which may result in increased levels of annoyance, activity interference, and sleep disruption. This impact is considered **potentially significant**.

23-1

23-2

Letter 23 Continued

Wow, it actually says "potentially significant." Of course "potentially" should be "absolutely" and the mitigation to control this is unrealistic. I am sorry, but the alleviating measures are not adequate enough to control the construction noise of trucks traveling up and down Timber Ridge Drive, Rodeo Flat, or anywhere else in the project vicinity. Again, who sat in front of my house with dump trucks going up and down and measured the noise level that is acceptable??? Who is going to monitor our environmental disruption? Also, (on a side note) just how long would the annoying reverse beeping coming from all the trucks be heard?

23-2
cont.

Impact 3.11.2 Operation of the proposed project would not result in a significant increase in traffic noise levels at nearby noise-sensitive receptors. This impact would be considered **less than significant**.

23-3

Less than significant, says who? Who are these people that give the answers that don't live in our neighborhood and houses? Again, we are part of the Environment and no measuring or testing was done at our house. Any increase in traffic throughout our area from this project will ruin our daily lives and disrupt the reason of us moving here in the first place.

One of the main reasons we moved to our neighborhood was because these roads are private and secluded. Just because Nevada County was (unofficially) granted access to use our private roads, does not mean you can simply allow a developer to turn them into a thoroughfare and destroy our environment and way of life. Multiple cars traveling up and down our roads (that Nevada County does not upkeep or maintain) would have an environmental impact on our streets and surroundings than is much more significant than the report reads; it will diminish our lifestyle and reason for living in the area. I do not see that in the report. Again, the report is not complete and is not reflecting the true destruction of our environment.

23-4

I could go on for days, but I'd rather submit this now and get back to my wonderful Nevada County home and family. This project is truly an environmental disgrace to us, our neighbors, and especially our county. We did not move here to become forced into what we moved away from! Please put your NEVADA COUNTY hats on and terminate this project now for the hundreds of reasons we have all given you.

23-5

Thank you for your time.

Sincerely,

Ron Gustavson

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Letter 23 – Ron & Sandee Gustavson

- Response 23-1:** The comment provides a definition of “environment” that the commenter obtained from Google. As defined under CEQA, “ ‘Environment’ means the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance” (Public Resources Code [PRC] Section 21060.5). The comment also states the Draft EIR did not consider how the project would impact the commenter. The comment contains no specific inadequacies, however. The Draft EIR considers potential impacts on nearby receptors in various sections throughout the Draft EIR.
- Response 23-2:** The comment states construction noise would be significant and notes noise measurements were not made in front of the commenter’s house. As construction for the project would not occur until such time that the project is approved, noise measurements noted in the comment cannot be conducted as described in the comment. As discussed in the Draft EIR, the noise impacts disclosed in the Draft EIR are based upon typical noise levels associated with various construction equipment and attenuation of sound at certain distances (see Draft EIR, Section 3.11, Noise, page 3.11-18). Although construction noise is exempt from the County’s noise standards, the Draft EIR identified mitigation (See MM 3.11.1, page 3.11-22) that would limit construction activities to the less noise-sensitive periods of the day, require use of manufacturer-recommended noise control devices, and require the provision of contact information for the site manager if noise becomes a nuisance.
- Response 23-3:** The comment states any increase in traffic would ruin residents’ daily lives. While the Draft EIR acknowledges that the traffic increases associated with the project would be substantial, the Draft EIR must use the County standards, such as those related to roadway capacity and level of service, in determining significance of the impacts. Based on these standards, the proposed project would not result in significant traffic impacts.
- Response 23-4:** The comment states cars traveling on private roads would result in impacts, but does not state the impacts that would occur. No response is possible.
- Response 23-5:** The comment expresses opposition to the project. The comment is noted.