

Letter 24

HARRIS, MOY, SOLLAZZO

LAW GROUP LLP

Don F. Harris, Esq.
Rodney R. Moy, Esq.
Michael A. Sollazzo, Esq.

OF COUNSEL
Sean D. Richmond, Esq.

March 19, 2012



VIA FEDEX

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

Re: Lake of the Pines Ranchos Community Service District
Response to Draft Environmental Impact Report for Rincon del Rio Continuing
Care Retirement Community

Dear Mr. Foss:

Enclosed please find the Lake of the Pines Ranchos Community Service District ("LOPRCSD") comments to the Rincon del Rio Continuing Care Retirement Community Project Draft Environmental Impact Report ("EIR"), State Clearinghouse No. 2011052030 (the "Project").

For reasons stated in the attached comments, the LOPRCSD believes that the draft EIR is woefully inadequate and respectfully requests that Nevada County exercise appropriate discretion prior to certifying the EIR or approving the Project.

Sincerely,

Don F. Harris
Senior Partner

DFH:amj

Enclosure

cc: Nancy Bolton (*via email*)

SOLANO COUNTY OFFICE
7005 Mills Lane
Vacaville, CA 95688

MAIN OFFICE
455 Capitol Mall, Suite 605
Sacramento, CA 95814
916•252•0200 P.
916•244•0447 F.

Letter 24 Continued

Lake of the Pines Ranchos Community Service District (LOPRCSD) Response to Draft Environmental Impact Report for Rincon del Rio Continuing Care Retirement Community

Historical Perspective of Lake of the Pines Ranchos Roads

The roads within the Lake of the Pines Community Services District (LOPRCSD) are maintained by assessments and taxes collected from property owners of the Ranchos. These roads currently terminate at cul-de-sacs and are rural in nature with horse trails crossing the roads and extensive pedestrian traffic.

The attached graphic clearly shows every road within the District's boundaries serves only residential parcels within the LOP Ranchos (see [Map 1](#)). One can see that at present unless a person lives within or for some reason has to visit a parcel within the district boundaries there is no reason to enter the LOPRCSD road system.

If the roads within Lake of the Pines Ranchos (LOPR) were maintained by Nevada County they would be expected to meet County standards. These standards are identified within the Nevada County General Plan and the County's Road Ordinance. Yet, the LOPR roads did not meet County standards at the time Boise Cascade offered them for dedication to Nevada County. In a letter from Nevada County Public Works Department to the County Service Area #3 Advisory Committee (the precursor to the LOPRCSD) dated July 30, 1981 (see [Attachment 1](#)), the County official states "Those roads were not deeded to the County but they were offered for public use as road right-of-way on the final subdivision map that created Lake of the Pines Ranchos. The roads were accepted for public use but they were specifically not accepted into the County Maintained Road System."

Subsequently the Lake of the Pines Ranchos Community Services District (LOPRCSD) was established for the express purpose of "opening, widening, extending, straightening, servicing and maintaining in whole or in part, any street within the boundaries of the District.

A letter dated June 8, 1984 from the LOPRCSD chairman directed to Nevada County Planning Department, Nevada County Building Department, LOP Association, Pac. Bell, PG&E, NID and Nevada Union High District (see [Attachment 2](#)) stated, "Boise Cascade Recreation Communities has quitclaimed to Lake of The Pines Community Service District, all rights of way, easements, roads, streets and interests of any kind which it may possess." The Quitclaim deed was recorded on July 23, 1984 (see [Attachment 3](#)).

To allow LOPRCSD to perform its stated duties the County and the LOPRCSD entered into an agreement on July 12, 1983 which was adopted by the BOS pursuant of Resolution # 83-231 (see [Attachment 4](#)). The agreement provided that:

Whereas the Lake of the Pines Ranchos District has recently been formed under the Community Service District Law (Government Code Section 61000 et seq) for the stated

1

LOPR-CSD
Comments to RDR DEIR

24-1

Letter 24 Continued

purpose of opening, widening, extending, straightening, servicing and maintaining in whole or in part, any street within the boundaries of the District, and

Whereas, it is the desire and intent of both the District and the County to allow the District to perform the road maintenance and other road service functions on the County roads within the District upon the District's assumption of the liability for such activities.

NOW, THEREFORE, it is hereby mutually agreed as follows:

1. That the Board of Supervisors hereby expressly consents to the District's assumption of the continuing maintenance responsibility for those County roads within the District boundaries conditioned upon the District maintaining a policy of general public liability insurance with a minimum coverage of one million dollars (\$1,000,000) for each incident.
2. The district agrees to hold the County harmless from any liability and to defend the County in any litigation resulting from any injury associated with the use of any of the County roads within the District.
3. That the County may rescind the consent given herein at any time that it deems appropriate upon giving sixty (60) days written notice to the District"

The district has been given the authority by the County for decisions regarding maintenance and road service functions of these local neighborhood roads using revenues generated solely from residents within the District and in return accepted legal liability for the roads.

On April 13, 2010 the County adopted County Ordinance No. 2310 (see [Attachment 5](#)), which added Section L-XVII 3.4(M)(3)(a) "GATES ON ACCESS ROADS" to the County Road Standards, Land Use and Development Code. This Section provides:

M. GATES ON ACCESS ROADS

1. Gate entrances shall be at least two feet wider than the width of the traffic lanes serving the gate.
2. All gates providing access from a road to a driveway or another road shall be located at least thirty (30) feet away from the primary road right-of-way or easement and shall open to allow a vehicle to stop without obstructing traffic on that primary road.
3. All gates installed on emergency access roads after May 14, 2010 shall be subject to the following provisions:
 - a. At no time shall a gate on an emergency access road be locked.
 - b. The following standard signage shall be required on all gates on emergency access roads: "Emergency Access Only. This Gate Shall Remain Unlocked."
 - c. Pursuant to the enforcement powers established by the Nevada County Land Use and Development Code Section L-XVII 8.3 and 8.4, the County, or an agent of the County, reserves the right to remove locks from gates or to remove other encumbrances, including but not limited to boulders, ditches, and berms, that inhibit the use of an emergency access road for its intended purpose.

2

LOPR-CSD
Comments to RDR DEIR

24-1
cont.

Letter 24 Continued

It is relevant to note that, notwithstanding the prohibition on locked gates, the County issued a variance allowing a locked gate to a former member of the County Board of Supervisors by Resolution No. 11-125 (see [Attachment 6](#)). In this instance the County clearly stated its concerns about relying on a privately-owned roadway as reliable "secondary emergency access."

The County has grappled with this issue for quite some time. There is an inherent tension between the need for emergency access and the impact of general public use of those same roads. See for example, Letter from Supervisor John Spencer to the Board of Supervisors dated November 4, 2008 (see [Attachment 7](#)). In a letter to Mike Caston of Caston Land Surveying from Fire Marshall Vern Cannon dated October 23, 2008 (see [Attachment 8](#)), the fire department has "found that any gate which would be fragile enough to allow a vehicle to open the gate would continually be a maintenance problem. We have previously approved installation of similar gates, which have resulted in the residents becoming irate as motorists continue to use the road as a through road."

24-1
cont.

The practical effect of an unlocked gate is to render emergency access roads de facto unrestricted access roads, in short "through roads".

An unlocked gate creates a very signification impact on LOPRCSD roads. An unlocked automatic closing gate with a sign indicating "for emergency use only" is not a sufficient mitigation measure. LOPRCSD will accept only a secure gate with a locking or code mechanism accessible exclusively by emergency personal.

THE DRAFT EIR IS INADEQUATE IN DEALING WITH THREE ISSUES OF CONCERN TO LOPRCSD.

The California Environmental Quality Act (CEQA) Statue and Guidelines provide the following which is applicable to the RDR DEIR and its impacts on LOPR-CSD:

Section 15126.2 CONSIDERATION AND DISCUSSION OF SIGNIFICANT ENVIRONMENTAL IMPACTS. States

- (c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified. (See Public Resources Code section 21100.1 and Title 14, California Code of Regulations, section 15127 for limitations to applicability of this requirement.)

24-2

Letter 24 Continued

Section 15358. EFFECTS

“Effects” and “impacts” as used in these Guidelines are synonymous.

(a) Effects include:

- (1) Direct or primary effects which are caused by the project and occur at the same time and place.
- (2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(b) Effects analyzed under CEQA must be related to a physical change.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21068 and 21100, Public Resources Code.

Section 15064. DETERMINING THE SIGNIFICANCE OF THE ENVIRONMENTAL EFFECTS CAUSED BY A PROJECT of CEQA state:

- (e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

24-2
cont.

The above CEQA criteria apply to the Lake of the Pines Community Services District as they relate to:

- A. The increased traffic, safety and maintenance burden imposed on the District roads and its residents as a result of an unlocked gate at the terminus of Rodeo Flat.
- B. The granting of slope and pavement structure exemptions in designating Rodeo Flat to function as a regional emergency egress route. The increased liability for the District created by the County in granting these exemptions and the resultant extension of Rodeo Flat to create a de facto connector road between State Route 49 (SR49) and Combie Road may result in the demise of the District. The long term impacts on the area of this occurrence would be extremely significant.

Letter 24 Continued

- C. The damage to LOPRCSD roads that would result from the laying of a sewer line along or in the Rodeo Flat/Timber Ridge roadways as well as from additional traffic, heavy vehicles and erosion.

24-2
cont.

A. Regarding the Traffic Impact of an Unlocked Gate at the End of Rodeo Flat

The Emergency Vehicle Access section of the Transportation and Circulation Chapter of the DEIR states:

The project site would have a single public access connecting to SR 49 via Rincon Way. A second emergency vehicle access, which would be gated (not locked), has been identified along Rodeo Flat Road. Rodeo Flat Road provides access to single-family houses beginning at Combie Road and extends to its terminus at the northeast corner of the project site. The project proposes to extend the road onto the project site, providing the gated access for emergency vehicle traffic.

It further states:

The proposed emergency vehicle access would provide emergency access from two directions. First, emergency vehicle access could occur via Rincon Way from SR 49 or via Rodeo Flat Road from Combie Road, depending on the responder's location. Second, emergency vehicle access could provide a secondary access to SR 49 should evacuation of the Lake of the Pines community be required during a catastrophic event. Traffic would proceed from Combie Road, along Rodeo Flat Road, and through the project site to access SR 49.

24-3

Impact 3.14.5 of the DEIR states, "The proposed project would provide adequate emergency access; however emergency access via Rodeo Flat Road would not be locked. This impact would be potentially significant."

The proposed mitigation measure for the before mentioned impact states:

MM 3.14.5 The project applicant shall include visually prominent signage on or beside the proposed emergency access gate separating the site and Rodeo Flat Road. The signage shall indicate that the access is intended for emergency vehicle access only, or other wording limiting the access roadway to emergency vehicle traffic. The gate shall be designed to close automatically via spring, gravity, or other means to ensure that it presents a "closed" visual to drivers on Rodeo Flat Road. The roadway in front of the gate shall have a Fire Marshall approved turnaround that does not involve entering the gate.

Timing/Implementation: Prior to issuance of occupancy permit
Enforcement/Monitoring: Nevada County Department of Public Works

Although the connection between Rodeo Flat Road and the proposed project site would be gated, mitigation measure MM 3.14.5 would clearly identify the gated connection as

Letter 24 Continued

emergency access and would ensure that the gate would remain closed except during emergencies. Furthermore, as the proposed project would provide two options for emergency access and would generally improve emergency access in the entire Ranchos/Combie Road corridor area, impacts associated with emergency access would be less than significant.

An unlocked gate creates a very significant impact on LOPRCSD roads and the neighborhood. An automatic closing gate with a sign indicating emergency use only is not a sufficient mitigation measure. As noted above this will create a de facto through road with all the attendant problems that accompany that situation. Section D 108 of the ICC California Fire Code Title 24, Part 9 allows a locked gate provided that "Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access." Chapter 15.56.104, Section D503.6 of the California Fire Code also allows for locked gates with similar stipulations. LOPRCSD will accept only a gate with a locking or code mechanism accessible exclusively by emergency personnel and a guarantee from the County that the gate will remain locked in the future.

The Draft EIR analysis of the traffic issue is inadequate for the following reasons:

- The Draft Environmental Impact Report (DEIR) makes the assumption that an automatic closing gate with appropriate signage will deter drivers from using the emergency exit as convenient short cut connecting Rodeo Flat to SR49. The LOPRCSD position is that this assumption is not correct and that assumption is backed by the aforementioned letter from the Fire Marshall dated October 23, 2008 (see Attachment 8). Two LOPRCSD roads, Rodeo Flat and Timber Ridge, the latter not even mentioned in the DEIR, would become a de facto connector roads between SR49 and Combie road. The DEIR is inadequate because it did not assess the ADT that could be generated from this new connection between Combie Road and SR49.
- Although the RDR entrance guard, when present, might deter east bound traffic from SR49 to Rodeo Flat, there are projected to be up to 450 residents and perhaps an equivalent number of employees and visitors inside the RDR project that might find Rodeo Flat a convenient short cut to shopping, golf or other activities. There is also no guarantee that over the years there will always be funding for an entrance guard. In addition there is no guarantee that the entrance guard will not be cut from the budget if the project falters as has Dark Horse, Higgins Corner and Winds Aloft in the immediate vicinity. Once created the road will not go away even if the guards at the entrance disappear and maintenance of the gate ceases.
- The potential for west bound traffic is considerably more significant. The Rodeo Flat connector would avoid the Combie/SR49 intersection which is rated LOS D, and LOS F for east bound traffic. There are 1996 single family residential (SFR) units within the gated community of Lake of the Pines. There are 195 SFR units in Lake of the Pines Ranchos. Dark Horse has 330 SFR parcels. The SFR neighborhood on the Nevada County side of Lake Combie has 90 SFR units. This totals 2,611 SFUs which, at a 9.47 per unit trip generation factor would generate 24,987 ADT. There are 1,026 students

24-3
cont.

6

LOPR-CSD
Comments to RDR DEIR

Letter 24 Continued

and 45 teachers at Bear River high school. Using the Institute of Transportation Engineers Trip Generation Manual, trip generation for such school at a rate of 2.49 ADT the total trips would be 2,667 ADT for this high school. Magnolia Intermediate school has 634 students and 26 teachers with a rate of 1.69 ADT which totals 1,072 ADT. Cottage Hill Elementary school has 432 students and 21 teachers at a rate of 1.29 = 584 ADT. Forrest Lake Christian School K-12 has 700 students and 43 teachers at a rate of 2.49 = 1850 ADT. Care Campus pre-school has 87 students and teachers at a rate of 4.48 = 390 ADT. Forrest Lake Christian pre-school has 12 children at 4.48 = 54 ADT. Total school ADT is 6,617 ADT. Dark Horse golf course had 27,455 rounds of golf in 2011. An eighteen-hole golf course has a rate of 643 ADT. The total of residential units, schools and Dark Horse Golf course generate a total of 32,247 ADT not including properties using Hacienda. The DEIR never assessed trips generated by these uses. It would be a matter of months before word got out that the gate provides a permanent shortcut between these communities, golf courses and schools to SR49.

- These roads were never intended for any use other than local traffic. There is significant pedestrian and horse traffic on LOPRCSD roads. Currently Rodeo Flat carries under 400 ADT using the DEIR reported 9.57ADT per parcel. Assuming only one third of the 32,247 ADT choose to avoid the Combie from Magnolia to SR 49 at LOS D&F, and drove Timber Ridge and/or Rodeo Flat to reach SR 49, that would increase traffic on Rodeo Flat from less than 400 ADT to 10,642 ADT.
- The two roads that would be used by area residents to reach Rincon Del Rio Continuing Care Retirement Community (CCRC) from Combie Road are Timber Ridge and Rodeo Flat; both are steep, narrow and winding. A proper assessment of ADT generated by these communities/facilities and a trip distribution assigned to Rodeo Flat and Timber Ridge would show a significant addition of ADT to the current ADT generated by these local roadways. If Rodeo Flat is opened de facto to through traffic it is certain that Rodeo Flat would become a Minor Collector road and it is probable that average daily trips (ADT) would increase to beyond 10,000 ADT thereby making Rodeo Flat a Major Collector (Rural) Road. Table III of the County standards show requirements for Class 1, Class 2 and Collector roads. The DEIR is inadequate because it did not address this issue.
- Using the DEIR reported standard of 9.57 ADT per unit for 5 acre parcels, and the number of parcels that access Rodeo Flat; it is already a Class 1 road. It is very clear in reviewing current County road standards and prior reports prepared specifically for LOP Ranchos that the Rancho roads do not meet acceptable slope or structural standards for even existing traffic, much less for added traffic. Table III, of the Nevada County standards provide the standards relative to base material and AC by which Local Class 1 and 2 roads should be maintained. For grades over 10% the required base is 2" AC over a 6" AB. LOPRSCD roads don't come close to those standards. Both Rodeo Flat and Timber Ridge have gradients exceeding 16%, in the case of Timber Ridge it is 18%. The increase in traffic on these roads would result in added noise, maintenance costs and safety issues for the residents of LOPRCSD. The DEIR is inadequate because it did not assess this issue.

24-3
cont.

Letter 24 Continued

- Sections of both Rodeo Flat and Timber Ridge have gradients of greater than 16%. According to County regulations this is too steep a gradient for both a Fire Standard Access Road (16% max), a Class 1 road (10%) and for a Class 2 road (10%) and for a Collector road (10% max). In addition Collector roads must be 24' wide; District roads are only 20' wide and often less. To change the designation of LOPRCSD roads would violate several County standards.
- Noise Impact Mitigation measure 3.11.2 is inadequate because it did not consider the traffic noise generated by increased traffic using the unlocked gate at the end of Rodeo Flat which will result in permanent through traffic.
- Traffic Mitigation Measures 3.14.1, 3.14.2, 3.14.3, 3.14.5, 3.14.8 and 3.14.9 within the DEIR are inadequate because they did not assess the impacts of through traffic using the unlocked gate at the end of Rodeo Flat Road.
- The DEIR is inadequate because Chapter 5.0, Project Alternatives, did not assess other potential emergency access roads. In addition there was no analysis as to why Rodeo Flat Road was the preferred alternative as an emergency access.

24-3
cont.

- B. The liability issue and consequent financial viability of the District created by the County granting access and the necessary slope and pavement exemptions when designating Rodeo Flat as a regional emergency egress route.

Presently the LOPRCSD roads end in cul-de-sacs, essentially serving only residents and guests of the Ranchos. With an unlocked gate the project would change the use and classification of these roads with no analysis of the consequences of these changes on the environment in which these roads exist. The DEIR is deficient because it did not consider these issues.

- The DEIR is inadequate because the description of the "Project" is inaccurate. One of the twelve requested entitlements, as shown in the Notice of Availability, is an "Approval of Road Standard Exceptions" which would provide an "emergency" access to Rodeo Flat Road via an unlocked gate. The DEIR is asking for an exception on the grade of Rodeo Flat using the designation of Rodeo Flat as a Fire Standard Access road, which according to County standards is a road handling up to 100 Average Daily Trips (ADT). The request is for an exception of a grade over 16%. Rodeo Flat and Timber Ridge exceed that 16% grade. As noted earlier, Rodeo Flat is already a Class 1 road. The description in the DEIR of the function of Rodeo Flat is that of a regional emergency access road, consequently the traffic handled on Rodeo Flat would qualify it as a major collector (rural) or minor arterial road—it would provide access to a major highway. Merely designating Rodeo Flat as a Fire Standard access road will not reduce the ADTs so that it meets the definition of a fire standard access road. The maximum grade on a Class 1 or higher road is 10%, not 16%. In the case of death, injury or property damage, this erroneous designation and granting of exception creates a huge safety and liability exposure.

24-4

Letter 24 Continued

The DEIR is inaccurate in its description of the emergency access/egress route.

- The DEIR designates only Rodeo Flat as the emergency connector road between SR49 and Combie Road. A survey of Rodeo Flat in the DEIR stated “the proposed project includes a Petition for Exception to the 16% grade requirement because approximately 97.7 feet of Rodeo Flat Road has been surveyed at a 16.3% grade.” The DEIR considers this to be a minor problem, but that is because they did not adequately study the issue. A cursory look at the map of the area indicates that for emergency vehicle access to RDR or emergency egress out of RDR the route would involve Timber Ridge. Timber Ridge intersects Combie Road one mile closer to SR49 and the local fire station than does Rodeo Flat. The appropriate survey would have been from Rodeo Flat down Timber Ridge to Combie Road. Timber Ridge has a steeper grade (18%) but is clearly the route that would be taken by emergency egress from RDR and for emergency vehicles trying to reach RDR. The District is requesting that a survey of the Timber Ridge be done. The District believes that the slope that would need to be exempted is much higher (18%) and the distances of extreme slope are greater. The DEIR is inadequate because it did not consider this issue.

24-5

In addition to the immediate environmental consequences of these changes in use of LOPRSCD roads there are unintended and longer term environmental consequences which the DEIR did not address.

- Because the District road system is closed, the District’s insurance premiums are based on the number of parcels served and our claims record. The unlocked extension of Rodeo Flat to RDR makes Rodeo Flat a connector road which drastically changes the character and legal classification of the road system, i.e. LOPRSCD roads will no longer be a closed system. This is important because it increases the dangers of using District roads as a route to SR49 for emergency access/egress and adds to the liability risk for our District. This change of classification will significantly increase the liability exposure. Hence the loss of District’s current insurance is likely, forcing the District to higher costs, lower rated carriers in the surplus insurance market and non-admitted carriers. Because of the unlimited liability that the District could incur, the District would be faced with the possibility of dissolution since the residents of the District could not assume that financial burden. This could lead to deterioration of the road system with attendant environmental impacts.
- In addition to grade standards that require exemptions, the DEIR should also have looked at structural standards. The LOPR roads are substandard for the amount of traffic they will carry in the case of an emergency evacuation. Map 2 shows the areas that may have to be evacuated if there were a wildfire outside the boundaries of LOP gated and un-gated communities. With the inadequate roads of Timber Ridge and Rodeo Flat as evacuation routes they could turn into death traps for unknowing citizens that were directed to take these escape routes. The DEIR did not properly study the condition of the proposed emergency access route.
- The DEIR identifies the Rodeo Flat route as an evacuation route for the entire area around the Ranchos. No alternate routes were identified. Because the DEIR did not properly assess the impacts of using this route as an evacuation route between Combie and SR49, LOPRSCD

24-6

24-7

Letter 24 Continued

had to perform its own rough calculations. If the obvious Combie Road to SR49 escape route is not available or is grid locked, the Rodeo Flat/Timber Ridge evacuation route could have up an estimated 7,000 vehicles trying to use windy, steep (up to 18% grade) roads which are often less than 20 feet wide and in places have very narrow shoulders. The County's own road standards for roads that carry that much traffic require 24 feet width and 4 foot shoulders. Again the DEIR did not address the consequences of those exemptions.

24-7
cont.

The District requests that the County undertake actions to identify and/or create additional emergency access routes for our region since the one identified in the DEIR is clearly inadequate. While Mitigation Measure 3.8.7 requires that the project applicant prepare an emergency evacuation plan for the project, no such emergency evacuation plan is required for the LOP gated or Rancho communities, Dark Horse, nor the many schools in the area. This action must be taken before the EIR is certified by the BOS.

- C. The environmental and physical damage to LOPRCSD roads that would result from the laying of a sewer line along or in the Rodeo Flat roadway.

Section 3.13.5 Wastewater Service of the DEIR indicates:

Project Wastewater Disposal

The project proposes to construct an on-site sewer lift station (and possibly an intermediate lift station) and extend a 6-inch force-main from the project site to Rodeo Flat Road. From the high point near the intersection of Rodeo Flat and Timber Ridge, wastewater which would then flow by gravity to Timber Ridge Road eventually terminating at an existing manhole located on Riata Way near the Lake of the Pines WWTP. All onsite sewer lines and conveyance facilities would be constructed and placed within the project's roadways and rights-of-way to lessen potential environmental impacts. All off-site improvements will be within a public utility easement and/or existing road prism.

24-8

Impact 3.13.5.2 Implementation of the proposed project would require construction of wastewater conveyance infrastructure. This infrastructure would be installed within rights-of-way on- and off-site within existing public utility easements and road prism. Impacts to wastewater conveyance are considered less than significant.

The project proposes to construct an on-site gravity wastewater system, directed to a lift station. The lift station will pump wastewater through a force-main toward the northeast to another onsite lift station. The force main will continue off-site to the north along Rodeo Flat Road, then gravity-flow down Timber Ridge Road and eventually terminate at an existing manhole located on Riata Way near the Lake of the Pines WWTP. All off-site construction of the sewer main will be located within existing PUEs and/or road prism. Annexation to Nevada County Sanitation District #1 will be necessary, requiring approval of the Nevada County Local Agency Formation Commission (LAFCO). The final EDU calculations will be made at the time of building permit submittal. The proposed wastewater system is illustrated on Figure 2.0-16.

Letter 24 Continued

Impacts associated with the construction of the conveyance infrastructure, such as biological, cultural, air quality, and noise impacts, are addressed as part of the analysis of the project as a whole and disclosed in the appropriate sections of this Draft EIR. The proposed infrastructure would be adequate to convey project wastewater. Therefore, impacts to wastewater conveyance are considered less than significant.

Mitigation Measures
None required.

Because the LOPRCSD roads have a substandard roadbed structure, the roads have a 7 ton weight limit for vehicles accessing the roads. The heavy equipment required to lay this line would exceed the weight limit of LOPRCSD roads, and would inflict considerable damage on District roads. The DEIR is inadequate because it does not address the impact on LOPRCSD roads and single family residents fronting those roads from the laying of this line. To limit the damage from the Project, the LOPCSD will require that all construction equipment for any on-site RDR work, including the building of the emergency access road or the installation of sewer pumps take access from the project site, not from Combie Road.

- The DEIR indicates in Section 3.13.15 that sewer access for RDR would be provided by laying a sewer line along the Rodeo Flat/Timber Ridge route to the Waste Treatment facility off Timber Ridge, or in the “road prism” of that route.
- A June 21, 1984 Cranmer Engineering report prepared for the LOPRCSD stated the following: “Your existing road structural section is too thin to determine a weight limit using normal road design formulas”. Because of the thin road base, the LOPRCSD Board adopted ordinance No. 5 on February 27, 1985 setting a weight limit on Rancho roads to not exceed a total gross of 14,000 lbs. The heavy equipment needed for this project would inflict considerable damage to District roads. The DEIR is inadequate because it did not consider this issue.
- There is an existing treated water line laying in the PUE along Rodeo Flat and Timber Ridge. The new sewer line must be separated from the water line by 10 feet and the water line lies on the west side of Timber Ridge. The east side of Timber Ridge has a steep drop-off and narrow shoulder in several sections which will mean that a substantial amount of the sewer line would have to be built in the roadway—creating a significant impact on Rancho residents. The DEIR is inadequate because it did not consider this issue.
- The steep slopes of the LOPRCSD roads are subject to erosion if the soil is disturbed with the laying of the line. A future rupture in the system and the resultant erosion and road failure could isolate residents along the route and pollute wells in the area.

24-8
cont.

Letter 24 Continued

Other Specific Commits to Draft EIR

- Connecting Rodeo Flat to SR49 via RDR functionally makes Rodeo Flat a Regional Emergency Access Road. Regional Emergency Access Roads are defined in the General Plan as access roads that connect between roads classified as collectors or greater AND reduce emergency travel distance by 1 mile or greater. However, using Rodeo Flat to evacuate Rincon Del Rio CCRC or the Lake of the Pines area creates an evacuation route that is longer in distance than the primary evacuation route.
- If Nevada County approves the Project, resulting in its connection to Rodeo Flat with an unlocked access, it only seems reasonable that Rodeo Flat and Timber Ridge should be brought up to Nevada County road standards at Nevada County or Rincon's CCRC expense. In addition, based on anticipated ADT generated by the open access, there would need to be continued financial prorated participation within the Development Agreement for perpetuity for the continued improvement, maintenance and insurance of said roads. The DEIR is inadequate because it did not address this issue.
- There is no definition of Secondary Emergency Only access in the DEIR. The DEIR is inadequate because it does not define this term.
- The DEIR is inadequate because the Project Description within the "Notice of Preparation" and the "Notice of Availability" does not adequately describe the unlocked gate at the terminus of Rodeo Flat Road.

24-9

General Plan Text and Zoning Code Text amendment Issues

It is the purpose of the General Plan is to protect the County's environment. The Project is requesting numerous exemptions to the General Plan text and maps, Zoning Code text and maps and to other County standards. The DEIR did not address how these amendments and exemptions would protect the environment.

24-10

General Plan and Zoning Text amendments apply Countywide. Thus far page 4.009 of the DEIR has identified twenty two areas within the County that, at the moment, could accommodate a CCRC. However, a property owner could ask for and receive a Planned Development or a Specific Development Area approval and be eligible for a CCRC. Some of those areas could be along Magnolia Road north of LOPR. If a CCRC were to develop along Magnolia, it too could take access to SR 49 using LOPR roads.

24-11

The DEIR is inadequate because it did not address any impacts of other potential CCRCs within the County.

Letter 24 Continued

Other Specific Commits to Draft EIR

- Connecting Rodeo Flat to SR49 via RDR functionally makes Rodeo Flat a Regional Emergency Access Road. Regional Emergency Access Roads are defined in the General Plan as access roads that connect between roads classified as collectors or greater AND reduce emergency travel distance by 1 mile or greater. However, using Rodeo Flat to evacuate Rincon Del Rio CCRC or the Lake of the Pines area creates an evacuation route that is longer in distance than the primary evacuation route.
- If Nevada County approves the Project, resulting in its connection to Rodeo Flat with an unlocked access, it only seems reasonable that Rodeo Flat and Timber Ridge should be brought up to Nevada County road standards at Nevada County or Rincon's CCRC expense. In addition, based on anticipated ADT generated by the open access, there would need to be continued financial prorated participation within the Development Agreement for perpetuity for the continued improvement, maintenance and insurance of said roads. The DEIR is inadequate because it did not address this issue.
- There is no definition of Secondary Emergency Only access in the DEIR. The DEIR is inadequate because it does not define this term.
- The DEIR is inadequate because the Project Description within the "Notice of Preparation" and the "Notice of Availability" does not adequately describe the unlocked gate at the terminus of Rodeo Flat Road.

24-9

General Plan Text and Zoning Code Text amendment Issues

It is the purpose of the General Plan is to protect the County's environment. The Project is requesting numerous exemptions to the General Plan text and maps, Zoning Code text and maps and to other County standards. The DEIR did not address how these amendments and exemptions would protect the environment.

24-10

General Plan and Zoning Text amendments apply Countywide. Thus far page 4.009 of the DEIR has identified twenty two areas within the County that, at the moment, could accommodate a CCRC. However, a property owner could ask for and receive a Planned Development or a Specific Development Area approval and be eligible for a CCRC. Some of those areas could be along Magnolia Road north of LOPR. If a CCRC were to develop along Magnolia, it too could take access to SR 49 using LOPR roads.

24-11

The DEIR is inadequate because it did not address any impacts of other potential CCRCs within the County.

Letter 24 Continued

Chapter 3 Public Facilities and Services of the Nevada County General Plan include Policy 3.10 which reads as follows:

Policy 3.10 The following specific level of service standards shall be applicable to Community Regions and Rural Regions for public facilities which the County has responsibility for providing:

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

Recognize existing Level of Service (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.

These standards shall be used by the County as a basis for the long range Capital Facilities Plan.

Approval of the Project would be inconsistent with this policy because an unlocked gate at Rodeo Flat would provide an open access which would result in a decline in the LOS on Rodeo Flat and Timber Ridge.

24-12

Chapter 4: Circulation of the Nevada County General Plan includes Goal and Policies as follow:

Goal LU-4.5 – Provide for long-term, ongoing roadway maintenance.

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.

Policy LU-4.1.3 The land use pattern reflected in the Nevada County General Plan Land Use Map is correlated with the future ability of the transportation system, including the major roadway network, to adequately serve said land uses based upon the service criteria and levels of service. All General Plan amendments shall be required to show that the proposed development is also correlated with the future provision of transportation facilities and levels of service according to the same criteria.

Letter 24 Continued

By approving permanent vehicle access from Combie to SR 49 and SR 49 to Combie approval of the project would violate these policies.

**24-12
cont.**

The following Policy is taken from the Circulation Chapter pertaining to movement of goods and people:

Policy MV-4.2.11 To expand the County's network of Regional Emergency Access Roads, the County will accept existing offers of dedication and amend the General Plan to classify the Road as a Regional Emergency Access Road on a case-by-case basis where the road:

- 1) meets the definition of a Regional Emergency Access Road as follows, Regional Emergency Access Roads are defined as access roads that connect between roads classified as collectors or greater and reduce emergency travel distance by 1 mile or greater;
- 2) will not be gated or will be only be gated with an unlocked gate approved by the appropriate Fire District; and
- 3) meets the criteria shown in either a, b, or c.
 - a. Where the Regional Emergency Access Road is identified as part of a discretionary project, the following must apply for acceptance:
 - i. Offers of dedication are available; and
 - ii. The discretionary project is responsible for the construction of and upgrade to fire safe standards and a PRD or CSA is formed for ongoing maintenance.
 - b. Where the Regional Emergency Access Road is initiated by existing owners in a neighborhood, the following must apply for acceptance:
 - i. Offers of dedication are available;
 - ii. The road meets the minimum fire safe standards; and
 - iii. At least 50% of the roadway maintenance costs are borne by a PRD or CSA.
 - c. Where the Regional Emergency Access Road is initiated by the County, the following must apply for acceptance:
 - i. Offers of dedication are available;
 - ii. The road meets fire safe standards; and
 - iii. Road funds are available for maintenance.

24-13

The DEIR erroneously designates the Rodeo Flat corridor as a "fire standard access road" while it would functionally (according to the DEIR) serve as a regional emergency access road. To serve as a regional emergency access road it would have to satisfy one of the above criteria. Clearly the criteria in section "b" do not apply since LOPRCSD is not initiating this process. Unless Nevada County accepts the offer of dedication for the LOPR roads and accepts liability and financial responsibility for these roads the designation also cannot be approved under sections "a" or "c".

Letter 24 Continued

Other Important Environmental Issues

The DEIR is severely inadequate in accessing impacts which will be created by approval of the "Project". Various issues were brought up by area residents during the response to the Notice of Preparation (NOP), many of which were not addressed in the DEIR. The issues that LOPRCSD have raised in this response to the DEIR were noted in a letter from the LOPRCSD Board dated June 13, 2011. We are particularly concerned that the items our Board asked to be addressed in the DEIR were largely ignored. The Nevada County Planning Staff continues to turn over and shrink. As a result the LOPRCSD board respectfully requests a Peer Review, by a professional environmental firm, of the responses to the DEIR. The Peer Review firm shall review the responses to the DEIR and make recommendations to the County's Environmental Consultant so that legitimate concerns are properly addressed. The final EIR must address the environmental, financial and liability burdens that would be imposed on the LOPRCSD by an extension of Rodeo Flat which will provide permanent access between Combie Road and SR49, if unlocked.

24-14

In a response to Caltrans in The Higgins Corner 3.0 Comments and Responses to Comments on the Draft EIR, the following response is made:

Response E-2: The widening of Combie Road is a planned improvement that is included in the Nevada County Road Maintenance and Capital Improvement Program. The segment of Combie Road from Highway 49 to Magnolia Road is scheduled to be widened to five lanes in 2011. Expenditures for design are scheduled for 2008-2010. Maintenance of roadways that would be impacted by the project is funded primarily by sales, property, and gas taxes. The County is expected to condition the project to ensure widening of Combie Road to five lanes between SR 49 and Higgins Road will be completed prior to occupancy. The fee program includes five lanes of pavement but does not include signalization of the Combie Road/Higgins Road intersection.

24-15

As of this writing Combie Road has not yet been improved to five lanes as referenced in the above response. In preparing a proper trip generation/distribution for properties which could use Lake of the Pines Ranchos roads as access to and from Highway 49 and Combie Road, it should be based on current conditions and not be based on the assumption that Combie Road will be widened to five lanes.

Section 3.13.1 of 3.13, Public Services and Utilities, of the DEIR indicates that average response time for 2010 from Station 21 (Higgins Fire District) was 6.5 minutes. In addition Station 21 provides three pumpers, each carrying a minimum of 500 gallons, and one 3,000 gallon water tender. It is presumed that fire apparatus would take the shortest distance or shortest time, depending on where the fire apparatus is located, to respond to an emergency at the project site. However, the DEIR is mute regarding emergency routes from Station 21 or where the apparatus is locate to the project site. With a request to providing an unlocked gate at the terminus of Rodeo Flat one would suspect that gate would be used by Higgins Fire District apparatus as access to the project site. Yet the DEIR makes no mention and therefore no analysis of environmental impacts associated with that use of LOPR roads. The primary issue of importance to the LOPRCSD is the weight of loaded emergency apparatus. Because the LOPR roads do not even meet Local Class 1 standards the LOPRCSD is concerned of the impact heavy fire

24-16

Letter 24 Continued

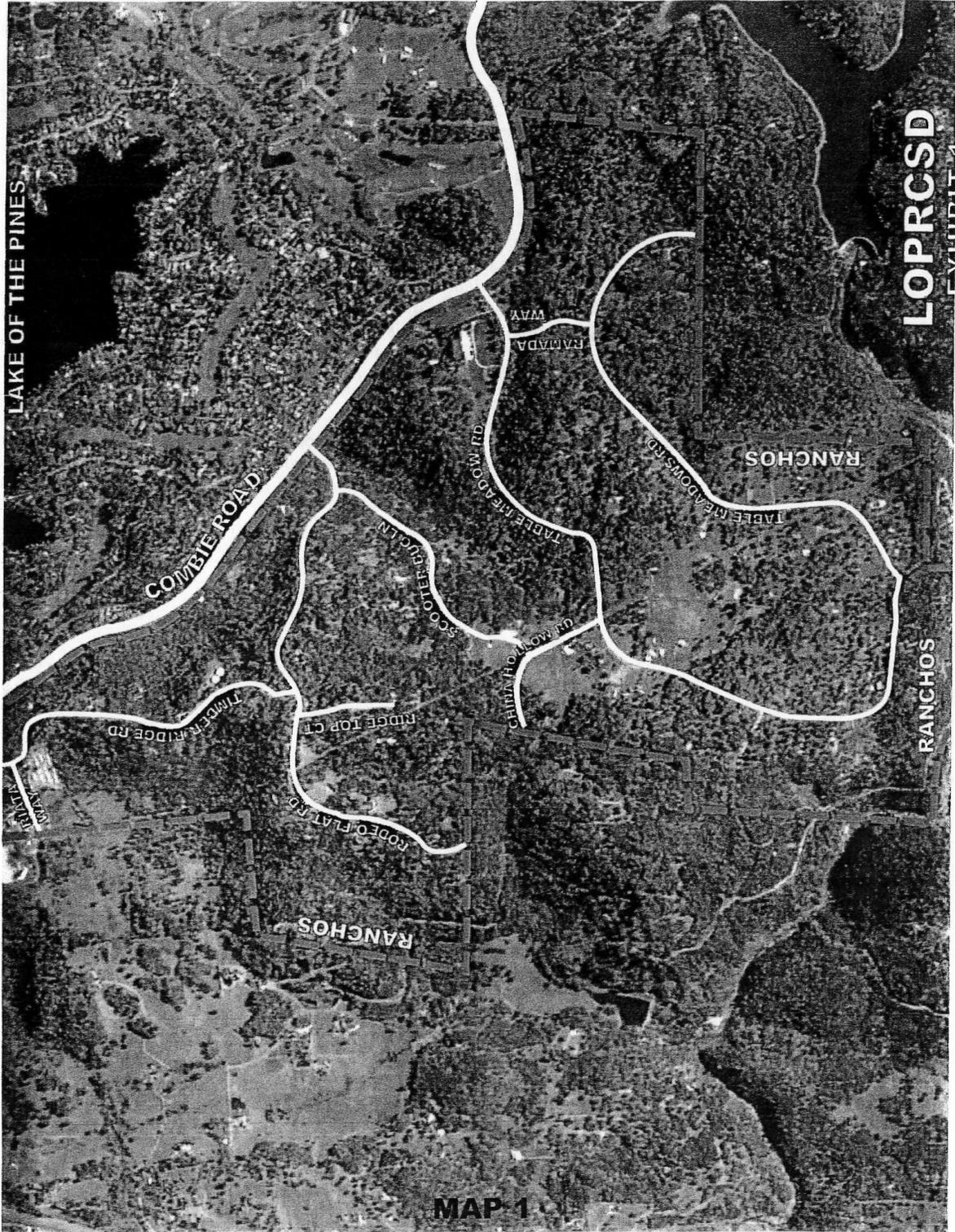
apparatus will have on Rancho roads. When an ambulance call is received from RDR and both an ambulance and fire truck respond will they use LOPRSCD roads? This would create a traffic, environmental, safety and financial burden on the District's residents. The DEIR is inadequate because it does not address emergency access using LOPR roads.

**24-16
cont.**

As a result of these issues, the LOPRSCD Board is putting Nevada County on notice, for the administrative record, that if Nevada County requires that Rodeo Flat is used as an emergency access, that action will breach the agreement referenced in County Resolution 83-231 and the LOPRSCD will not be liable for ensuing claims that people could not escape because of inadequate roads within the Ranchos. The failure of the County to effectively mitigate the aforementioned significant impacts resulting from this project could force LOPRSCD to dissolve, resulting in the County becoming responsible for the road system currently maintained by LOPRSCD. The potential dissolution of LOPRSCD is yet another potential project impact that should be analyzed in the final EIR.

These comments along with the District presentation and oral testimony at the Planning Commission public hearing on March 8, 2012 constitute the District's comments to the Rincon del Rio CCRC DEIR and are part of the Administrative Record.

Letter 24 Continued



Letter 24 Continued

630.1502 001

COUNTY OF NEVADA

DEPARTMENT OF PUBLIC WORKS

Mailing Address: Courthouse
Nevada City, California 95959

July 30, 1981

Ron Fallick, Chairman
County Service Area No. 3 Advisory Committee
25739 Table Meadow Road
Auburn, California 95603

Dear Ron:

Thank you for coming in last week. I think it cleared the air on what the responsibilities of the County Service Area Advisory Committee are and how the County must proceed. I would like to summarize briefly, what we discussed at the meeting in hopes that this letter will be passed onto the next Chairman of the Advisory Committee.

In your letter of July 5, 1981 you made some statements about the roads in Lake of the Pines Ranchos being deeded to the County. Those roadways were not deeded to the County but they were offered for public use as road rights-of-way on the final subdivision map that created Lake of the Pines Ranchos. The roadways were accepted for public use but they were specifically not accepted into the County Maintained Road System. At the time Lake of the Pines Ranchos was created, the County standard for roads to be accepted for County maintenance was for the road(s) to be constructed to a paved road standard. In lieu of constructing the roads in Lake of the Pines Ranchos to that high paved road standard so that they could be accepted for maintenance by the County, the subdivider chose not to pave the road in order to substantially reduce the construction price and thence the final selling price of the lot. Therefore, as a "trade-off" the subdivider chose not to incur the expense of constructing the roads to a high standard so that the lots could be sold at a lower price. As a consequence, the lot owners were able to save money at the time they bought the lot but incurred the obligation to pay for the cost of maintaining the roads.

I would also like to clarify the role of the County Service Area Advisory Committee. By law, the County Board of Supervisors is the conducting authority for providing all of the services authorized by the County Service Area. The County Service Area Advisory Committee has no specific authority. The Board of Supervisors, however, wants a local Committee to provide liaison between all of the property owners in a Service Area and the Department of Public Works. In this way, County administrative costs can be reduced. This is accomplished by having the committee, and not every property owner, discuss with, and aid the Department of Public Works in establishing construction/maintenance programs that fit the desires and the resources of all the property owners in the service area. In addition, the Advisory Committee serves as a way of disseminating information to those owners, rather than have those owners contact the Department individually and thereby, incur costs on behalf of the County Service Area.

ADMINISTRATION • LAND USE • TRANSIT • TRANSPORTATION
582 SEARLS AVENUE
NEVADA CITY
(916) 265-2461 EXTENSION 411

ENGINEERING • SURVEY • OPERATIONS • ACCOUNTING
107 ARGALL WAY
NEVADA CITY
(916) 265-2461 EXTENSION 415

ATTACHMENT 1

Letter 24 Continued

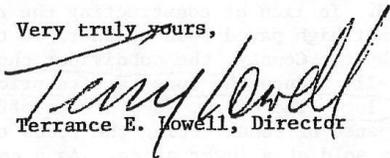
Ron Fallick Letter, July 30, 1981

Page 2

Insofar as providing the actual work, I reiterate that the County Service Areas are a legal district under the jurisdiction and control of the Board of Supervisors and, as such, are subject to all laws, rules and regulations effecting the County. In particular, this means that all County Service Area funds must be spent in strict compliance with the laws governing the expenditure of County funds. Also, all work to be done, or contracted for, must be done strictly according to the laws governing County work. Insofar as road construction/maintenance work is concerned, that work must be done, or contracted for, under the dictates of Section 1071 through 1074 of the Streets and Highway Code of the State of California. Therefore, the work your Advisory Committee and the property owners desire, must be contracted for by the County under the requirements of the Streets and Highways Code. The Advisory Committee has no authority to solicit bids or contract for work. Bid solicitation must be by the County in accordance with the requirement of the Streets and Highways Code. The expeditious, economical way for the County to arrange for the work in your Service Area is for the Committee to tell us what is desired. We will prepare the documents that are necessary; i.e., Plans, Specifications, etc., as required for the particular work desired. In some cases, plans are not necessary. Plans are only prepared when; (1) The estimated cost of the work is \$20,000.00 or greater, or (2) It is necessary to clearly describe the work to be done. I am happy to report that the work your County Service Area wants done will be added to the bid solicitation for the other County Service Areas. Bids for those other Service Areas and your Service Area will be opened on August 10, 1981 at 2:00 P.M. in our office. You are invited and welcome to attend that bid opening.

I hope this letter clarifies these points and will be useful to you and future Advisory Committee Chairmen.

Very truly yours,



Terrance E. Lowell, Director

TEL:dr

cc Supervisor Robert Wilder
Wesley W. Zachary, Assistant Director
Carl E. Barnes, Assistant Engineer

mc

Letter 24 Continued

COUNTY OF NEVADA

GILBERT L. SHOTWELL

ASSESSOR

Courthouse Annex

Nevada City, California 95959

(916) 265-1238

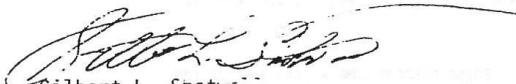
13 June 1984

Lake of the Pines Ranchos
Community Services District

The owner of record for the Lake of the Pines Rancho Roads, Unit #1 dated 9/19/69 and Unit #2 dated 1/28/70, was Boise-Cascade Properties, Inc.

This office is not aware of any change in ownership of Unit #1 nor Unit #2 since their respective 9/19/69 and 1/28/70 recorded dates.

Sincerely,



Gilbert L. Shotwell
Assessor

GLS/mh

ATTACHMENT 2

Letter 24 Continued

RECORDING RECEIPTS BY
 Boise Cascade Home & Land Corporation
 MAIL RECORDS MAIL TO
 Robert M. Jenky, Inc.
 4 W. Fourth Ave., Suite 311
 San Mateo, CA 94402

84 19842

RECORDED

ADVISORY NOTICE OF THE SALE OF PROPERTY DELETED
 IN PLACE OF THE NOTICE OF SALE AND
 DELETED IN CONNECTION WITH THE SALE

Chairman/DOPRCS

CORPORATION GUYOLAH DEED

BOISE CASCADE HOME & LAND CORPORATION, a Delaware corporation, successor by merger to BOISE CASCADE PROPERTIES, INC., consequently renamed BOISE CASCADE RECREATION COMMUNITIES, a Nevada corporation ("transferor"), hereby conveys to LAND OF THE PINES COMMUNITY SERVICE DISTRICT, a public agency organized under the laws of the State of California ("grantee"), any and all rights or interests of any kind which it may possess, without any warranty whatsoever that it has title to the same or in any interest in the same, all roads, streets, or rights-of-way, which have not been subdivided and each part of any individual lots, which are part of LAND OF THE PINES REVENUE TRUST NO. 2, situated in the County of Nevada, State of California, and previously approved as subdivisions by the filing of trust maps with such County on October 14, 1969, in Book 1 of Subdivisions, Page 46, Official Records, County of Nevada, State of California, and January 28, 1970, in Book 4 of Subdivisions, Page 5, said Official Records.

BOISE CASCADE HOME & LAND CORPORATION, a Delaware corporation, successor by merger to Boise Cascade Properties, Inc., formerly renamed Boise Cascade Recreation Communities, a Nevada corporation.

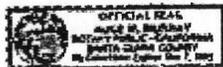
Dated July 23, 1984

By *Robert M. Jenky, Inc.*
 Robert M. Jenky, Vice President
 By *Severly A. Arslanian*
 Severly A. Arslanian, Assistant Secretary

STATE OF CALIFORNIA :
 SANTA CLARA : ss.
 COUNTY OF ALAMEDA :

On July 23, 1984, before me, the undersigned, a Notary Public for and for said County and State, personally appeared Ross M. Jones, known to me to be the Vice President, and Beverly A. Arslanian, known to me to be the Assistant Secretary of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.



Steve J. Grayson
 Notary Public

ATTACHMENT 3

Letter 24 Continued

DATE: October 18, 1984

TO: Pacific Bell
Pacific Gas & Electric
Nevada Irrigation District
Higgins Fire District

Lake of the Pines Assoc.
N. C. Planning Department
N. C. Building Department
Nev. Union High District

FROM: Lake of the Pines Ranchos C.S.D.

BOISE CASCADE RECREATION COMMUNITIES has quitclaimed to LAKE OF THE PINES RANCHOS COMMUNITY SERVICE DISTRICT, a public agency organized under the laws of the State of California, all rights of ways, easements, roads, streets and interests of any kind which it may possess.

This Quitclaim Deed was recorded in the Nevada County Recorder's office on August 7, 1984.

All public agencies are compelled by law to notify this District office of all issues affecting this Community Service District.

Sincerely,

Henry M. Nugent, Chairman
Lake of the Pines Ranchos C.S.D.
27075 Table Meadow Road
Auburn, CA 95603
(916) 269-0235

Letter 24 Continued



RESOLUTION No. 83231

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

(A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT OR AGREEMENT)

BE IT HEREBY RESOLVED by the Board of Supervisors, of the County of Nevada, State of California, that the Chairman of the Board of Supervisors be and he is hereby authorized to execute, on behalf of the County of Nevada, that certain

AGREEMENT

dated the 12th day of July, 19 83 by and between said County and LAKE OF THE PINES RANCHOS ROAD DISTRICT

pertaining to Lake of the Pines Ranchos Road District performing road maintenance and other road service functions on the County roads within the District upon the District's assumption of liability for such activities.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 18th day of July, 19 83, by the following vote of said Board:

Ayes: Supervisors Ilse E. Barnhart, Robert H. Wilder, Karsten Hansen, Eric W. Rood
 Noes: Patricia S. Sutton

Absent: None

Abstain: None

ATTEST;

CATHY R. THOMPSON

Clerk of the Board of Supervisors

By Cathy R. Thompson

Robert H. Wilder
 Chairman

DATE	COPIES SENT TO
7/19/83	LOP Ranchos Rd. Dist. %Nugent
	DPW <u>WR</u>
	Co. Counsel <u>OR</u>

ATTACHMENT 4

Letter 24 Continued

A G R E E M E N T

AN AGREEMENT made and entered into this 12 day of July, 1983, by and between the Board of Supervisors of the County of Nevada (hereinafter referred to as "COUNTY") and the Lake of the Pines Ranchos Road District (hereinafter referred to as "DISTRICT").

WITNESS

WHEREAS, the Lake of the Pines Ranchos Road District has recently been formed under the Community Service District Law (Government Code Section 61000 et seq) for the stated purpose of opening, widening, extending, straightening, servicing and maintaining in whole or in part, any street within the boundaries of the District; and

WHEREAS, pursuant to Government Code Section 61600(j), the District may perform such road maintenance and other road construction activities only with the express consent of the Board of Supervisors of the County of Nevada, wherein the District lies; and

WHEREAS, it is the desire and intent of both the District and the County to allow the District to perform the road maintenance and other road service functions on the County roads within the District upon the District's assumption of the liability for such activities.

NOW, THEREFORE, it is hereby mutually agreed as follows:

1. That the Board of Supervisors hereby expressly consents to the District's assumption of the continuing maintenance responsibility for those County roads within the District boundaries conditioned upon the District maintaining a policy of general public liability insurance with a minimum coverage of one million dollars (\$1,000,000) for each incident. Such insurance to be

Letter 24 Continued

maintained in full force and effect at all times and said insurance to name the County of Nevada as additional insured. A copy of the certificate of insurance shall be provided to the Clerk of the Board of Supervisors within ten (10) days of the execution of this agreement and any notice of cancellation of said insurance policy shall be sent to the Board of Supervisors at least twenty (20) days before the effective date of any such cancellation. The amount of minimum coverage may, from time to time, be increased as the County deems appropriate.

2. The District agrees to hold the County harmless from any liability and to defend the County in any litigation resulting from any injury associated with the use of any of the County roads within the District.

3. That the County may rescind the consent given herein at any time that it deems appropriate upon giving sixty (60) days written notice to the District.

LAKE OF THE PINES RANCHOS
ROAD DISTRICT

By: Henry M. Nugent
HENRY M. NUGENT, President

COUNTY SERVICE AREA #3

By: Robert H. Wilder
ROBERT H. WILDER, Chairman

By: Larry Traynor
LARRY TRAYNOR, Director

APPROVED AS TO FORM:

By: John A. Coppin
JOHN A. COPPIN, Director

By: James A. Curtis
JAMES A. CURTIS
Assistant County Counsel

By: Ronald H. Fallick
RONALD H. FALLICK, Director

By: Gary K. Daniels
GARY K. DANIELS, Director

- 2 -

Letter 24 Continued

2



RESOLUTION No. 11-125

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION OF FINAL ACTION ON THE APPEAL FILED BY CRAWFORD AND JOBLE BOAT REGARDING THE ZONING ADMINISTRATOR DENIAL OF PARCEL MAP PM09-069 AND PETITION FOR EXCEPTIONS TO ROAD STANDARDS M114-064

WHEREAS, the Nevada County Board of Supervisors finds and declares as follows:

- A. On September 1, 2009, Crawford and Joble Boat submitted a parcel map application to subdivide their 60 acre AG-10 zoned property located at 19100 B-4 Ranch Road into three parcels ranging in size from 11 to 35 acres; and
- B. On November 17, 2010, the Nevada County Zoning Administrator denied the application for the Tentative Parcel Map (PM09-069) and Petition for Exceptions to Road Standards on the basis that a legal right of access had not been established for emergency access along the full length of Deerhaven Lane; that the proposed secondary emergency access route along Purdon Road was not appropriate due to inadequate width, the Purdon Bridge crossing is one-way and not capable of supporting fire apparatus and that the decision on the Jackson Parcel Map PM04-007 was not precedent setting as to the use of Purdon Road for secondary emergency access; and
- C. That while the Nevada County Consolidated Fire District will support a Petition for Exception to Road Standards for Deerhaven Lane the use of gates is discouraged and finds are prohibited on gates installed after May 14, 2010.
- D. Neither the applicant nor the County have legal right of access or control over the privately owned Deerhaven Lane roadway and therefore cannot ensure its permanent availability as a legal, unobstructed access road for purposes of providing secondary emergency access for the proposed parcel map until such time that signatures of Deerhaven proprietors have been secured on a legal agreement acceptable to County Council;
- E. That otherwise, adequate public services do exist within the project area and are available to serve the project, including public roads, fire service and public utilities, as evidenced by concurrence from the Environmental Health, the Nevada County Consolidated Fire District, and the Nevada County Department of Public Works;
- F. That otherwise, the site is physically suitable for the type of development and the proposed density of development evidenced by its consistency with the General Plan and the ability to comply with the development standards of the "AG-10" zoning district and the resources standards of the County Zoning Regulations; and

G. That otherwise, the design of the proposed subdivision and its improvements, including the incorporation of the Biological Inventory, Agricultural Management Plan, Fire Prevention Plan, Oak Management Plan, and Wetlands and Wetlands Management Plan recommendations as mitigation measures, are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, as supported by the Initial Study.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COUNTY OF NEVADA, that the Board of Supervisors has reviewed the appeal of Applicants Crawford and Joble Boat and hereby finds, determines and directs as follows:

I. The Applicants are directed to revise the Parcel Map indicating the new proposed secondary access route, revise the Exception to Road Standard to indicate Declaration of secondary emergency access and develop an Offer of Dedication, or other agreement acceptable to County Council, establishing secondary emergency access along the full length of Deerhaven.

II. Staff is directed to revise the Initial Study and circulate a proposed Mitigated Negative Declaration for a minimum of 20 days.

III. Staff is directed to allow one offsite located gate located on the Colyer/McKenna property, based on the unique circumstances presented by this Parcel Map application. The Board finds and determines that a one-time exception to the currently adopted County Road Standards, Land Use and Development Code Section L-XVII 3.0(A)(3)(A) GATES ON ACCESS ROADS be granted based on the following:

- a. the application for the subject Parcel Map was "in the pipeline" for review when the new standard was adopted; and
- b. the locked gates existed for many years before the application was submitted; and
- c. the gate is located offsite from the proposed Parcel Map; and
- d. the Applicants have and will continue to provide mitigation to allow for access during an emergency; and
- e. this exception is unique to this application and does not set a precedent for future Board actions.

IV. The current appeal (PM09-069, M110-004) is hereby denied, but the Application shall be and hereby is remanded to the Zoning Administrator for final action.

V. Pursuant to Section 15060(g)(2) of the CEQA Ordinance, this action is "not a project" under CEQA because it is a policy and administrative action and it can be seen with certainty that the Board's action will not have an adverse physical effect on the environment.

ATTACHMENT 6

Letter 24 Continued

3 85

COUNTY OF NEVADA
 STATE OF CALIFORNIA
 590 Main Avenue, Nevada City, California 95959-6637
 Telephone: (530) 265-1480 - FAX: (530) 265-9896



BOARD OF SUPERVISORS

John C. Spencer
 Supervisor, 3rd District
 Email: john.spencer@co.nevada.ca.us
 http://my.nvadacounty.com/board/supervisors

November 4, 2008

The Honorable Board of Supervisors
 930 Main Avenue
 Nevada City, CA 95959

DATE OF MEETING: November 13, 2008

SUBJECT: Discussion and possible direction to staff regarding secondary access requirements for subdivisions of land.

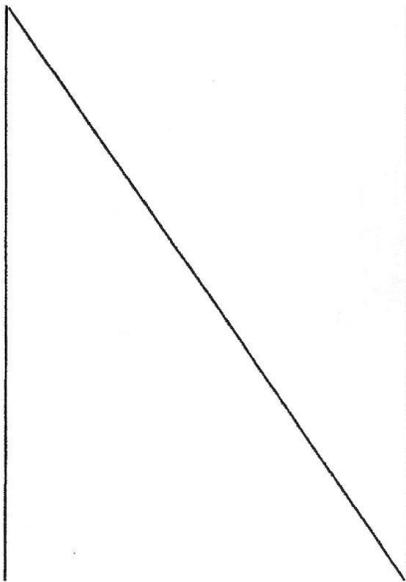
RECOMMENDATION: Hold a discussion regarding secondary access requirements, emergency access easements and the Planning Department using "application and complete letters" for subdivisions of land, with possible direction to staff to return to the Board with recommendations.

FUNDING: None.

BACKGROUND: Currently, in order for the Planning Department to process an application for a subdivision, if secondary or emergency access is required, the site individual (contractor) or the applicant must provide a letter from the Planning Department indicating that the applicant has met the secondary access requirements. This process is a public benefit, improved circulation for emergency access, that might occur if the project were to proceed.

It is my belief that the County could and should take an active role in providing assistance with some of these projects in an effort to encourage construction to roads that might otherwise never happen. One way of doing so would be to accept offers of dedication when needed, or use certain options to make needed connections.

Also, the Fire Districts do not want gates installed on emergency access roads. This presents a problem because land owners might otherwise be willing to grant emergency access rights if they can prevent the flow of traffic from general public use. If we were to come to some agreement with the Fire Districts to allow fire-approved emergency access gates, I believe this would help improve circulation for emergency access. Having a few more emergency access roads in our County is a positive for everyone. Holding to our land use (old) rules is counterproductive.



PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 22nd day of March, 2011.
 by the following vote of said Board:
 Ayes: Supervisors Ed Scofield, Hank Newton & Ted S. Owens.
 Nays: None.
 Absent: None.

ATTEN: CATHY R. THOMPSON
 Clerk of Board of Supervisors
 by: *[Signature]*
 Edward C. Scofield,
 Supervisor

DATE	COMMITTEE
3/29/11	Nevada City Engineering Board
	Planning
	DPW
	E. Health
	BCDFP

ATTACHMENT 7

Letter 24 Continued

CASTON LAND SURVEYING
P.O. Box 1865 • Grass Valley, CA 95945 • (530) 265-8738

RECEIVED

OCT 17 2008

NEVADA COUNTY
BOARD SUPERVISORS

October 16, 2008

Mr. Vern Canon
Nevada County Consolidated Fire District
11229 MacArthur Highway Road
Grass Valley, CA 95949

RE: Emergency Access Road Gates

Dear Vern,

As you are aware, we are proposing a land division for John Engelhardt with a resulting three parcel increase in density. The proposed division would join Allison Ranch Road and Suncyvale Lane to Engine Star Mile Road and back to Allison Ranch Road for through circulation of emergency access which would ultimately benefit approximately 45 properties. We have all had one property owner in agreement to give reciprocal emergency only easements. The holdout is reluctant for a few reasons, one of which being the "no gate" restriction being imposed by your current department standards/restrictions.

Speaking with District III Supervisor, John Spencer, regarding this issue, I was made aware of a similar project just of Nevada City (near Highway 20) being held up due to the same situation. I personally know of three subdivisions that have gained their access after the projects were completed as there isn't any "backlog" by the departments for maintaining open access. I'm not sure if these gates are locked or not, but I do know that if there were gate standards in place, i.e. crash gates, lock only gates, etc., we could move forward with not only better fire egress routes, but also medical emergency routes.

The Engelhardt land division, if approved, would consist of Lot Lane to a 2 lane fire sub standards roadway (2 - 9 ft. travel lanes with 1' shoulders) through the project joining Suncyvale Lane to Engine Star Mile Road. Suncyvale would be improved to a Nevada County Class I Collector street (2 - 9 ft. travel lanes with 2 ft. shoulders) and Engine Star Mile Road would be improved to a 2 lane fire sub standards roadway (2 - 9 ft. travel lanes with 1 ft. shoulders). An unadvised gate could allow for these improvements, which would benefit many, not just Mr. Engelhardt.

3

Letter to Board of Supervisors
Re: Emergency access standards
Date of Meeting: November 18, 2008
Page 2 of 2

In this time of economic uncertainty, resolving County policy to help facilitate development is called for.

The attached letter from Caston Land Surveying to Vern Canon, Nevada County Consolidated Fire District, illustrates the type of situation which I believe is happening throughout the County.

I am requesting the Board to have a discussion to see if emergency access rights instead of double standards are a part of the County Code. In addition, I would like to discuss whether the Board would be interested in requesting the fire districts to work with County staff to develop a workable gate standard for emergency access roads.

Thank you for your consideration of my requests.

Respectfully submitted,
John C. Spencer
John C. Spencer
Supervisor, 3rd District

Printed on Recycled Paper

Letter 24 Continued

11-20-09
Nevada County Consolidated Fire District
 7500 Highway 10, Marysville, CA 95901
 11309 McCumberly Road, Grass Valley, CA 95949
 (530) 273-3136 FAX (530) 273-3138
 www.nccfd.com

October 28, 2010
RECEIVED
 OCT 27 2010
 NEVADA COUNTY
 BOARD SUPERVISORS

Mike Casini
 Carlson Land Surveying
 Post Office Box 1385
 Grass Valley, CA 95945

Dear Mr. Casini:

I received your letter dated October 16, 2010, which you also carbon-copied to Nevada County Supervisors Hank Weston, John Spencer, and Sue Horne, regarding issues surrounding the installation of gates on access roadways. It is my opinion, when a gate is placed across an access roadway to restrict access, the road would no longer be considered a true access roadway as the general public would not be able to utilize the roadway under normal conditions. That being the case, the fire department arrives to unblock the gate. In an emergency situation, this may not occur in a timely manner and people may be trapped behind the gate while trying to escape a fire or some other type of emergency.

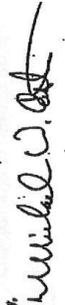
After numerous meetings with various County fire planning along with local fire service representatives, we have been unable to come up with a standard for gates or solutions to the on-going problems with existing gates. We have previously requested your suggestion of installing crash gates and found that any gate which would be fragile enough to allow a vehicle to open the gate would certainly be a maintenance problem. We have previously approved installation of similar gates, which have resulted in the residents requesting that we make a continuous to see the road as a through road. Chains and locks would appear on the gates. As these locks get cut off, heavier chains and locks are added to the point that we could not cut the chains or locks to open the gate. In extreme situations, people have even placed boulders on both sides of the gates to block access, which totally defeats the purpose of having a roadway.

The fire service does not have sufficient personnel or the time to inspect and maintain gates on a regular basis. I recently talked to your client regarding the subdivision that you are working on in the Surrency Lane area. I again reiterated to your client that I was opposed to gates, but indicated if he would submit a design for a gate, we would review the design and consider the proposal. To date, I have not received a proposal from your client.

Regarding the statement that you made about the subdivision to the east of Nevada City, I believe you were talking about the Harmony Ridge Estates project. The primary problem with this particular project is the applicant is having difficulty demonstrating to

These "fire safe emergency access gates" (as your specified design) may also work for projects that aren't building a development but rather the community safety through transportation ability. These "fire safe" access gates may be another idea that the Fire Safe Council could look into along with their fire reduction project. I would greatly appreciate any help and input on emergency response, when an unblock gate is standard approved emergency access only, gates would allow. As the Nevada County needs emergency access, as a point in time at which we face a critical wildfire danger.

I am wondering if we can put our heads together and create something that will work for and benefit Nevada County. I hope to hear from you soon.

Sincerely,


Michael W. Casini, P.L.S. 6304
 Licensed by the Board for Professional Engineers and Land Surveyors
 License expires September 30, 2010
 CC: Hank Weston, Nevada County Supervisor District IV
 John Spencer, Nevada County Supervisor District III
 Sue Horne, Nevada County Supervisor, District II

Letter 24 Continued

06-930
Nevada County Consolidated Fire District
 "The Authority for Emergency Services"
 11220 McCarty Road, Grass Valley, CA 95949
 (530) 273-3158 FAX (530) 273-3799
 nevadacountyfire.com

October 23, 2008

RECEIVED
 OCT 31 2008
 NEVADA COUNTY
 BOARD SUPERVISORS

Mike Canton
 Caspan Land Surveying
 Post Office Box 1380
 Grass Valley, CA 95946

Dear Mr. Canton:

I reviewed your letter dated October 16, 2008, which you also carbon-copied to Nevada County Supervisor Hank Wieston, John Spencer, and Sue Horns, regarding issues surrounding the installation of gates on access roadways. It is my opinion, when a gate is placed across an access roadway to restrict access, the road would no longer be considered a true access roadway as the general public would not be able to utilize the roadway until somebody, most likely the fire department, arrives to unlock the gate. In an emergency situation, the way not occur in a timely manner and people may be trapped behind the gate while trying to escape a fire or some other type of emergency.

After numerous meetings with various County fire districts, along with local fire services in response, we have been unable to come up with a standard for gates or vehicles to the emergency personnel with existing plans. We have previously mentioned your suggestion of installing gates on the fire department's property, which would be highly problematic to allow a vehicle to operate in the area without a permit, which has been a problem. We have previously approved installation of similar gates, which have resulted in the residents becoming less as mobile continues to use the road as a through road. Gates and locks did not appear on the gates. As these locks get out of hanger chains and locks are added to the point that we could not get the chains or locks to open the gate. In extreme situations, people have even placed barriers on both sides of the gate to block access, which totally defeats the purpose of having a roadway.

The fire service does not have sufficient personnel or the time to inspect and maintain gates on a regular basis. I recently talked to your client regarding the submission that you are working on in the Harmony Lane area. I again reiterated to your client that I was opposed to gates, but indicated if he would submit a design for a gate, we would review the design and consider the proposal. To date, I have not received a proposal from your client.

Regarding the statement that you made about the submission to the east of Nevada City, I believe you were talking about the Harmony Ridge Estates project. The primary problem with this particular project is the applicant is having difficulty demonstrating a

A subdivision of County Counsel that advises emergency exist to serve the project and whether the applicant has the legal right to use these easements. At a recent meeting regarding this project, we did talk about the possibility of installing a gate to restrict use of the road. I indicated that we would be receptive to a gate, provided the gate was an electrically-operated gate with an approved fire department key switch for operation of the gate. The project would be responsible for providing funding that would allow for both repairs and maintenance of the gate if it becomes damaged or destroyed, and for inspections services and maintenance by a licensed contractor on a bi-annual basis. The road easement, however, is maintained or some other approved body would be responsible for ensuring the gate is maintained to the satisfaction of the fire department. We would likely be looking at a similar type installation for your client's project.

By having an electrically-operated gate that is solely controlled by the fire service we would hopefully eliminate the concerns that we often receive as to who is able to use the gate or has keys controlling the gate.

To summarize, if you would like to proceed with the installation of the gate on the Harmony Road project, either you or your client would need to submit drawings and specifications for the gate. Again, the gate would be looking for an electrically-operated gate with an approved fire department key switch. The drawings would need to provide provisions for the on-going maintenance and inspections of the gate which would be incorporated into the documents that are recorded with the parcel map.

Please call me at (530) 273-3158 should you have any questions.

Mike Canton
 Vern Canton
 BAC Fire Marshal

cc: Hank Wieston, Nevada County Supervisor District IV
 John Spencer, Nevada County Supervisor District III
 Sue Horns, Nevada County Supervisor District II
 Tim Fliss, Nevada County Consolidated Fire District Chief

06-930

ATTACHMENT 8

Letter 24 Continued

of satisfaction of County Council that adequate easements exist to serve the project and whether the applicant has the legal right to use these easements. At a recent meeting regarding this project, we did talk about the possibility of installing a gate to restrict use of the roads. I indicated that we would be receptive to a gate, provided the gate was an electrically-operated gate with an approved fire department key switch for operation of the gate. The project would be responsible for providing funding that would allow for total replacement of the gate if it became damaged or destroyed, and for inspections, service, and maintenance by a licensed contractor on a bi-annual basis. The road association, homeowner's association or some other approved body would be responsible for ensuring the gate is maintained to the satisfaction of the fire department. We would likely be looking at a similar type installation for your client's project.

By having an electrically-operated gate that is solely controlled by the fire services we would hopefully minimize the complaints that we often receive as to who is able to use the gate or has keys controlling the gate.

To summarize, if you would like to proceed with the installation of the gate on the Sunnyvale Road project, either you or your client would need to submit drawings and specifications for the gate. Again, the gate we would be looking for is an electrically-operated gate with an approved fire department key switch. There would need to be provisions for the on-going inspections and inspections of the gate which eventually would be incorporated into the documents that are recorded with the parcel map.

Please call me at (530) 273-3188 should you have any questions.

Michael W. Canton
 Vern Canton
 EIC Fire Marshal

cc: Hank Weston, Nevada County Supervisor District IV
 John Spencer, Nevada County Supervisor District III
 Sue Horne, Nevada County Supervisor District II
 Tim Pike, Nevada County Consolidated Fire District Chief

08-10-09

These "fire safe emergency access gates" I'm proposing (of your specified design) may also work for properties that aren't looking at development, but rather for emergency safety through recreation ability. These "gates" access links may be providing the Fire Safe Council could look into along with their final selection projects. Locked gates only stop honest people and provide emergency response, whereas an un-locked fire safe standard approved emergency access only gate would allow for what Nevada County needs - emergency access, at a point in time at which we face a critical wildfire danger.

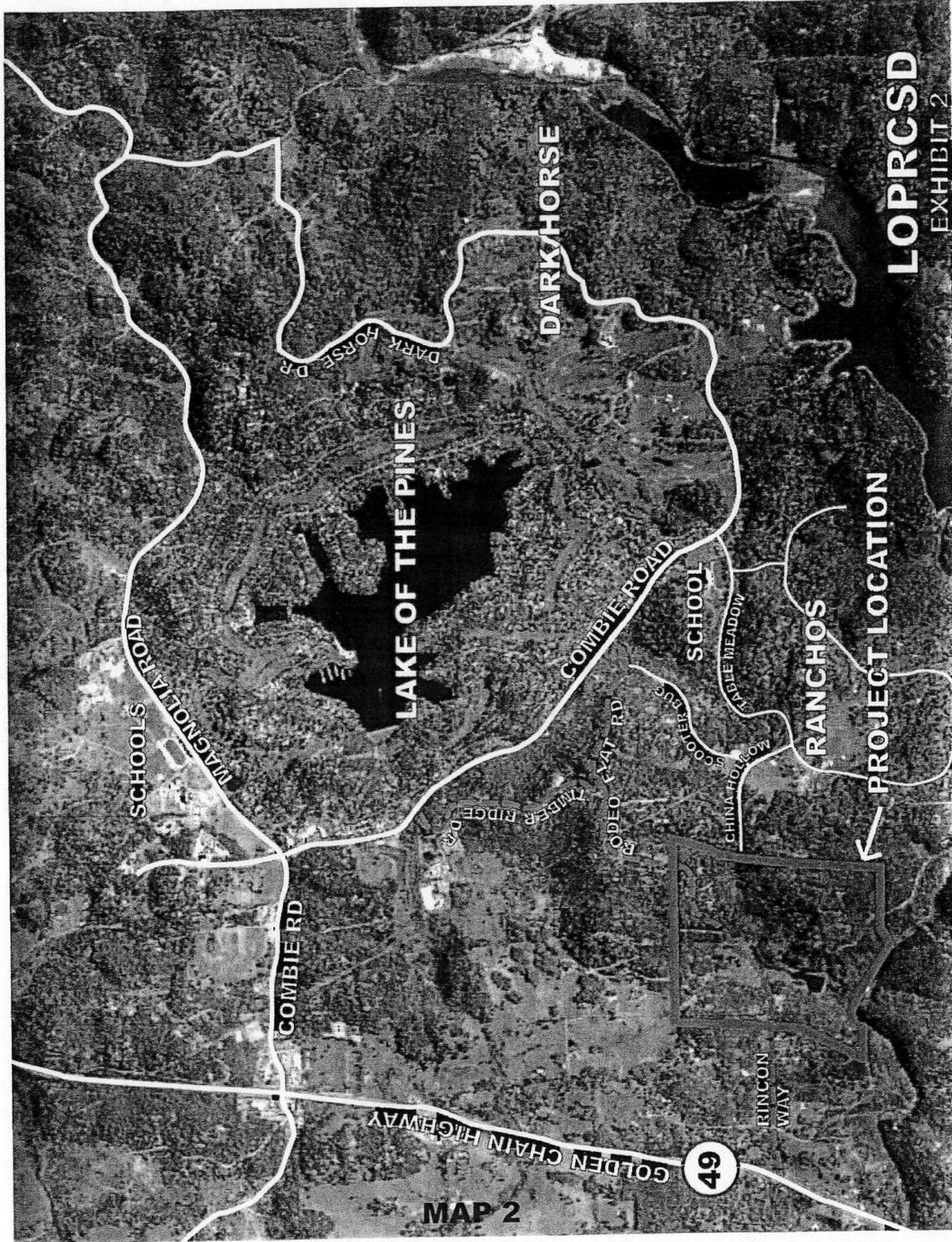
I am wondering if we can put our heads together and create something that will work for and benefit Nevada County. I hope to hear from you soon.

Sincerely,
Michael W. Canton

Michael W. Canton, P.L.S. 6304
 Licensed by the Board for Professional Engineers and Land Surveyors
 License expires September 30, 2010

cc: Hank Weston, Nevada County Supervisor District IV
 John Spencer, Nevada County Supervisor District III
 Sue Horne, Nevada County Supervisor, District II

Letter 24 Continued



3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Letter 24 – Don F. Harris, Harris, Moy, Sollazzo Law Group

- Response 24-1:** The comment provides background on the Lake of the Pines Ranchos roads and states that an unlocked gate, as that included in the project for Rodeo Flat Road, would in effect render that road a through road. See Master Response 1.
- Response 24-2:** The comment introduces potential impacts of the project, which are addressed in more detail in subsequent comments. Please refer to responses that follow.
- Response 24-3:** The comment states that an unlocked gate at Rodeo Flat Road would in effect render that road a through road. See Master Response 1.
- Response 24-4:** The comment states there would be a liability issue associated with the use of Rodeo Flat Road, but provides no discussion of the physical environmental effects that could or would occur. This comment is noted.
- Response 24-5:** The comment states Timber Ridge would be the emergency route used by emergency vehicles and therefore there would be greater impacts than disclosed in the Draft EIR. The use of Rodeo Flat Road as emergency access was requested by the Higgins Fire Protection District when developing the emergency access for the project site. Timber Ridge access is not proposed as part of the project; therefore, no change to the Draft EIR is required.
- Response 24-6:** The comment states the dissolution of the Lake of the Pines Ranchos Community Service District (LOPRCSD) could result from the project and claims it would result in environmental effects from roadway deterioration. The proposed project is not proposing any changes to the LOPRCSD. The physical environmental effects of construction the emergency access connection to Rodeo Flat Road has been addressed in the Draft EIR. The commenter is also referred to Master Response 1.
- Response 24-7:** The comment states the LOPRCSD roads are substandard for the amount of traffic they would carry during an emergency. The comment estimates the traffic during an emergency, but provides no data to show how much traffic the roads could accommodate or the physical effects of traffic during an emergency. The comment also requests an emergency evacuation plan for other developments in the project vicinity. As these developments are part of the existing setting conditions and are not part of the proposed project, such a plan would be beyond the scope of the EIR. See also Master Response 2.
- Response 24-8:** The comment contends the construction of utilities in Rodeo Flat Road and Timber Ridge Road would result in significant impacts. To the extent that the use of heavy equipment could damage the roadway, the project would be required to return the road to its original condition. As identified on Draft EIR pages 2.0-52 through -61, water and wastewater pipeline facilities and improvements would be placed with the existing public utility easements (PUEs) located along the roadways. Excavations and other disturbance to the roadways would be reclaimed as part of construction as part of standard construction practices. Off-site pipeline construction must ensure that no unstable or erodible slope conditions are created and that storm water

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

quality is addressed (Nevada County Land Use and Development Code Section L-V19.3B). Regarding the potential for a water or sewer pipeline rupture, the comment provides no data to suggest that such a rupture would occur or what characteristics of this location would make a rupture likely. As such, to analyze such an event would be speculative given that these facilities would be constructed to County and Nevada Irrigation District standards.

Response 24-9: The comment provides a definition of Regional Emergency Access Roads. The proposed project does not intend for the emergency access to be classified a Regional Emergency Access Road. The access to Rodeo Flat Road would be an Emergency Access Road. The General Plan describes emergency access roads as "Roadways providing emergency access between arterial or collector roads but are not needed by the County for general circulation purposes" (Nevada County General Plan, page 4-2).

Regarding ongoing maintenance, as discussed on page 2.0-65 of the Project Description (Draft EIR Section 2.0), the project would include a Road Maintenance Agreement between the applicant and the County, which will provide a legal description of all properties that have the right to use Rincon Way and Rodeo Flat Road, the way that responsibility for repairs is to be shared by the parties, how the costs for repairs will be incurred by the parties, and the consequences for non-participation in the maintenance.

The comment provides no discussion of how the definition of secondary emergency access affects the adequacy of the document. No response is required. The Notice of Preparation (NOP) includes a description of a proposed gate at Rodeo Flat Road, but does not describe it as locked or unlocked. The Notice of Availability refers to the availability of the Draft EIR, which includes a description of the unlocked gate. The comment provides no discussion as to how the lack of description in the NOP of an unlocked gate would render the Draft EIR inadequate. The commenter is also referred to Master Response 1.

Response 24-10: The comment states the Draft EIR does not evaluate how the proposed General Plan amendments would protect the environment. The intent of the Draft EIR is to evaluate the impacts of the proposed project on the environment. The potential effects of the proposed General Plan amendments are evaluated throughout the Draft EIR.

Response 24-11: The comment states the Draft EIR is inadequate because it does not analyze a CCRC along Magnolia Road. The General Plan amendment proposed for the project includes a Land Use Diagram amendment for the proposed project site. No other Land Use Diagram amendments are proposed as part of the project. The Draft EIR describes the general effects of the Land Use Diagram changes throughout the Draft EIR, but because no other CCRCs would be approved as part of the project, a site-specific analysis as requested in the comment is not required. It should be noted that any future CCRC proposal would also require a General Plan amendment to change the Land Use Diagram and would also require a project-specific environmental analysis.

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

- Response 24-12:** The comment states the unlocked gate at Rodeo Flat Road would result in through traffic on Rodeo Flat Road, which would degrade the level of service on the road to below County standards. To result in degradation of LOS to below County standards, the comment assumes a sufficient number of drivers would disregard the posted signs warning that access through Rodeo Flat Road is for emergency access only. The comment provides no data to support such a conclusion. See also Master Response 1.
- Response 24-13:** The comment claims the Rodeo Flat Road corridor would serve as a Regional Emergency Access Road, but does not satisfy the criteria for a Regional Emergency Access Road. See Master Response 1 and 2.
- Response 24-14:** The comment states there are many issues that could result in impacts which were not addressed in the Draft EIR; however, the comment provides no specific inadequacies. No response is required.
- Response 24-15:** The comment states improvements at Combie Road have not been constructed and the Draft EIR should base the analysis on existing conditions. The existing conditions at Combie Road are assumed in the Existing Plus Project analysis. The cumulative analysis assumes full development of the area, and logically, also assumes construction of planned roadway improvements associated with that development.
- Response 24-16:** The comment questions the route an emergency vehicle leaving Station 21 would take to the project site. The physical address of Station 21 is 10106 Combie Road, approximately 500 feet east of SR 49. The most logical route to the project site would be Combie Road to SR 49. In the event of an emergency in which the west access to the project site is not accessible, the emergency vehicle would access the site via Rodeo Flat Road. While the comment claims that the use of LOPRSCD roads during an emergency would damage those roads, the comment provides no evidence that periodic use by emergency vehicles would result in damage. It should also be noted use of these roads by emergency vehicles may occur to service existing development irrelevant of the proposed project.

Letter 25

LANTEX

Landscape Architecture Inc.

March 8, 2012

Planning Commission
Nevada County, California
Eric W. Rood Administrative Center
950 Maidu Avenue, Nevada City CA 95959

Re; Rincon del Rio

Dear Planning Commissioners

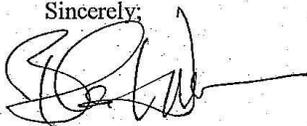
Rincon del Rio includes residential and associated support uses and, from a land use perspective, would not conflict with the adjacent land uses which are also residential in nature. No development is proposed in the site's northernmost portion, allowing for a greater buffer between proposed development and the existing homes to the north.

The rural character of the site will also be enhanced with the addition of landscaping throughout the developed portion of the project. The landscaping would be designed to incorporate areas of native vegetation and would utilize native and adaptive plant materials. These project features are intended to foster compatibility and minimize conflicts with adjacent land uses as well as reduce fire danger.

All this planning and attention to detail does not come cheap and could have been avoided by the applicant. I'm not certain those neighbors in proximity to the project realize how hard the development team has worked to make this project increase property values in the areas and eliminate negative impacts that could have come with subdividing the entire property into 72 parcels.

I appreciate the opportunity to meet with you and hope you will approve this project.

Sincerely:



Blake Hinman
Principal

18426 Chaparral Drive, Penn Valley CA 95946
Telephone 530 432-0141 Email blake.hinman@lantexla.com License CA # 2403, FL #1052

25-1

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Letter 25 – Blake Hinman, Lantex Landscape Architecture

Response 25-1: The comment states the project would include landscaping with “native and adaptive plan[t] materials” to minimize conflicts with adjacent uses and reduce fire danger. The comment is noted.

Letter 26

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

NEVADA COUNTY
RECEIVED
MAR 19 2012
COMMUNITY DEVELOPMENT
AGENCY

RE: Rincon Del Rio

Sir,

My name is William Kinney, and I reside at 16565 Aileen Way, Grass Valley, 95949. My wife and I retired to Nevada County 7 years ago, and built a home on 4 acres in Alta Sierra. We have become involved in the community, and love it here. We have concluded during the past year that we will soon be unable to maintain our property by ourselves and began a search for places to downsize to. We were familiar with Continuous Care Facilities, as my wife's mother had lived in one in the Bay Area, having moved in when she was 65, and living there until she died at age 100. She loved living there, and we knew that she was being well cared for. We therefore were interested in finding something similar in Nevada County.

26-1

Our search revealed that there were no such facilities within the county, and the closest that we could find was in the Sacramento area. Moving there would require that we give up the numerous friends we have made here, and the natural beauty of the place. We therefore would like to urge the timely approval of the Rincon project. It offers all of the amenities we desire, and would allow us the opportunity to remain in our beloved Nevada County. This project offers many benefits to the County and to it's residents, including but not limited to jobs, tax revenue, and a wonderful place to retire.

Thanks very much.



William E and Judith B Kinney

CC: County Supervisor Ed Scofield

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Letter 26 – William & Judith Kinney

Response 26-1: The comment expresses support for the project. The comment is noted and forwarded to the decision-makers for their consideration.

Letter 27

David A. Kirk
24031 Timber Ridge Drive
Auburn, Ca 95602

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

Re: Rincon del Rio Project

3/7/12

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 Rincon del Rio project and the adequacy of the Draft Environmental Impact Report and should be included as part of Nevada County's administrative process in the event a court action occurs.

Water and Roadways

With regard to the water needed to service the Rincon del Rio project, there are significant issues that need to be in place **before** development of Rincon del Rio can be approved.

Per the Draft EIR report, at 3:13-20: *"While adequate water would be available to serve the project, there is no timing and enforcement mechanism currently in place that would ensure the timing related to the design and construction of the project's water distribution system. This is a potentially significant impact."*

A **performance bond** needs to be put in place so that the timing of the installation of the water distribution system is put in at the beginning phase of this project. If a fire should occur at this property early on in the building of this project, there may not be sufficient water for the fire department to deal with the fire, which would place the existing surrounding residences in danger as well as impacting the existing water supply to local residents. The Draft EIR must include an interim emergency water flow plan that would guarantee water availability throughout the construction process to all residences currently served by NID water in the Ranchos community. Interrupted water service due to project construction issues, especially during peak fire danger months, must not occur.

27-1

Letter 27 Continued

The Draft EIR report states at 3.13-20: *"An approximately 300,000-gallon on-site non-potable water tank is proposed to augment the required storage for fire flow. A 10- or 12-inch mainline would be extended from the new tank to the developed area of the project. The project will also need to install new water pumps in the existing Timber Ridge tank/pump building. Final location and alignment of the water lines would be subject to NID review and approval. The placement of the new infrastructure and extending existing pipelines would require trenching, earthmoving, and other construction activities. However, all new pipelines and water conveyance facilities would be constructed and located within existing roadways and rights-of-way to lessen potential environmental impacts."*

The Rincon del Rio project is seeking to usurp use of private roads for its own profits. The developer has no authority to alter these privately maintained roads and install their piping for the necessary groundwork for their water needs. That is a road over which the Rincon del Rio owners have no jurisdiction. Installing pipelines would have a significant negative impact on all existing homeowners who live on the streets of Timber Ridge Drive, Rodeo Flat Road, and Hilltop Circle as this will significantly impact their ability to use and traverse these winding, hilly roads daily during many months of construction. The EIR needs to examine alternate routes besides Rodeo Flat Road for the water lines. The proposed route of the water lines is accessing private property.

27-2

Rodeo Flat Road is not part of the County maintained road system. If the County inspected Rodeo Flat, it would see it exceeds slopes for emergency vehicles and does not meet minimum County width requirements acceptable to the County road system. A more direct route needs to be looked into rather than one which would require continuous pumping of raw sewage up a very steep hill and down another steep and winding hill at considerable noise levels to existing homeowners residing near the pumping stations.

Rodeo Flat as a Fire Access

DEIR 3.14 states, *"Rodeo Flat Road provides access to single-family houses beginning at Combie Road and extends to its terminus at the northeast corner of the project site. The project proposes to extend the road onto the project site, providing the gated access for emergency vehicle traffic."*

The Draft EIR does not examine descriptions of environmental impacts of using Rodeo Flat Road as an emergency exit from the Rincon del Rio project. An environmental impact needs to be studied more thoroughly. An alternate emergency exit needs to be studied, such as one that will connect up to other roads that exist in the area or that are planned to be built in the area.

27-3

DEIR 3.14 also states, *"The proposed project includes a Petition for Exceptions for both Rincon Way and Rodeo Flat Road. The exception for the Rincon Way easement is necessary as the existing 30-foot-wide road width does not meet the County's 50-foot easement standard and the existing 30-foot-wide road easement does not allow for the required 10-foot-wide brush clearing zones adjacent to the roadway. The exception for Rodeo Flat Road is necessary as County road standards currently require that fire standard access roads not exceed a 16 percent grade."*

Letter 27 Continued

These petitions for exceptions should not be granted. This is a safety issue, and there should never be exceptions when public safety is at issue. Rodeo Flat Road was not developed for speedy travel, and its slope, design, and condition would thwart emergency access to and from the area which could result in countless accidents, injuries, and even deaths. Neither the Ranchos Road District nor Ranchos homeowners should have to assume liability for injury as a result of Rincon's desire to use Rodeo Flat Road as an unsafe emergency access. Further in-depth environmental study needs to be conducted into alternate emergency routes.

27-3
cont.

Wastewater

The Draft EIR states, "Impact 3.13.5.1 The proposed project would generate 280 EDUs worth of wastewater. The Lake of the Pines WWTP has sufficient capacity to accommodate wastewater treatment and disposal requirements for the project. This would be a potentially significant impact. Based on unit calculation provided in Appendix 3.13-A, the project is anticipated to generate approximately 280 equivalent dwelling units (EDU) worth of wastewater (Joslyn 2011). The design value per EDU in Lake of the Pines Zone 2 is 204 gallons per day for average dry weather flow. Therefore, the proposed project is estimated to generate approximately 57,120 gallons of wastewater per day for average dry weather flow. The specific EDU calculations will be completed at the time of building permit application. The proposed project's 280 EDU wastewater demand would require 3.3 cassettes at the LOP WWTP, but the minimum installation is two cassettes per basin so eight cassettes would be required (Joslyn 2011). The LOP WWTP currently serves approximately 2,810 connected, standby and committed EDUs. Including the proposed project's 280 EDUs, there is a potential for an additional 590 EDUs for planned future projects. The WWTP is currently designed to handle 2,707 EDUs but can be expanded up to 4,700 EDUs with the purchase of additional cassettes (Joslyn 2011). The LOP WWTP has been designed to accommodate such modifications, and expansion has been planned for at the WWTP. However, this expansion does not have a funding mechanism in place. This impact is therefore considered potentially significant."

27-4

As a licensed California plumbing contractor in my 22nd year in business, I spoke with a worker at the treatment plant facility today. Although the Draft EIR does address that the wastewater facility could handle the Rincon project, I was told that the project would put them at peak capacity, and their facility will certainly need to be added to with further disruption to neighbors during the construction at the plant. He added that the construction of this expansion would have to be paid for by someone which may raise the rates to existing users. The plant worker indicated that if sewer lines are run down Timber Ridge Drive that existing homeowners, who now utilize individual septic systems, may then be **required without option** to hook up to that new sewer line at the homeowner's expense, thus costing each homeowner an additional \$10,000 at a minimum. The Draft EIR does not address this environmental impact to homeowners in any way.

The treatment plant worker and I spoke about the impending Higgins shopping center development and the plans to run a sewage line from there along the 49 highway up to the plant, which the Rincon

27-5

Letter 27 Continued

project could certainly connect to without impacting existing homeowners on Rodeo Flat Road or Timber Ridge Drive. The Draft EIR needs to address this alternative route for the sewer lines.

The plans show the development running the sewer line up to Rodeo Flat Road and down Timber Ridge Drive to the plant. These are privately maintained roads of the Ranchos, not County maintained roads. The Ranchos Roads District has not given the Rincon del Rio owners permission to use this land or roadways. There has been no compensation offered to homeowners or the road association for use of those roadways or to maintain them.

27-5

I contend that all issues I have raised in this letter are significant environmental impacts that need to be thoroughly addressed before the EIR is approved.

Thank you,

David A. Kirk

Letter 27 – David A. Kirk

- Response 27-1:** The comment states water needs to be available at the site at the beginning of the project to ensure safety in the event of a fire. As noted on page 2.0-34 of the Draft EIR (see Section 2.0, Project Description), the first phase of the project would consist primarily of construction of the sewer and water system, primary and emergency access roads, and a portion of the Village Center. It should also be noted that there is an existing pond on site that would provide water for firefighting if required.
- Response 27-2:** The comment states the project seeks to usurp the use of private roads [for placement of utilities] for its own profits and states the steep slopes would require a pump station that would result in noise impacts at adjacent residences. The use of the roads as discussed in the comment is not a physical impact of the project. Note too that there are easements within the roads which are intended for the placement of utilities. Noise associated with pump stations is discussed in Impact 3.11.3 on pages 3.11-23 through -31 of Draft EIR Section 3.11, Noise.
- Response 27-3:** The comment states the Draft EIR needs to analyze alternatives to the emergency access via Rodeo Flat Road. The comment notes the steep slopes presenting a hazard to drivers. The comment assumes “speedy travel” on the road, which the commenter asserts would result in “countless accidents, injuries, and even deaths.” As the comment is based on speculation regarding the amount of traffic and recklessness with which drivers would use the road, it cannot be considered evidence of a potential impact.
- Response 27-4:** The comment refers to a conversation with an unnamed worker at the wastewater treatment plant. As discussed in Impact 3.13.5.1 on Draft EIR page 3.13-27 (see Section 3.13, Public Services and Utilities), the proposed project's wastewater demand would require 3.3 cassettes at the Lake of the Pines Wastewater Treatment Plant. Mitigation measure MM 3.13.5.1 requires the applicant to fund the project's fair share for additional membranes at the Lake of the Pines Wastewater Treatment Plant. Regarding connection to a sewer line, if it were to be constructed in Timber Ridge Drive, per Nevada County Land Use and Development Code, Section L-VI 1.7, Connection to Public Sewer System, connection to a public sewer system is required for all new construction when the public sewer system is within 200 feet of the property boundary.
- Response 27-5:** The comment requests an alternative alignment of the sewer line from Rodeo Flat Road to SR 49. CEQA Guidelines Section 15126.6 requires alternatives that “would avoid or substantially lessen any of the significant effects of the project.” Because the sewer line does not result in significant unavoidable impacts, an alternative alignment need not be analyzed.

Letter 28

March 6, 2012

Marty Koulax
25748 Table Meadow Road
Auburn, CA 95602
E-mail; mr.koul@yahoo.com

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

RE: Response to Rincon Del Rio Draft EIR

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 the County's administrative process in the event a court action occurs.

I am writing in regards to very significant impact that this project will have on our Fire Department, water and sewer resources. I am opposed to this project for many reasons. I am surprised with all or the changes required to the General plan and zoning codes that this has come as far as it has.

In looking at impact number 3. 13. 1. 1

The draft EIR states that they will need to double their 24/7 staff to meet the requirements and that it will be funded by fees and projected sales tax. Yet the fees indicated are only to be used for facilities or equipment, as it is stated in the EIR, not staff and most, if any sales taxes, will be collected by Placer County due to the fact that they have the closest business and facilities to this location, not Nevada County.

28-1

The Firefighters will have to be in place long before vacancies are filled at the project. And if the project should fail, as did others, our community would still have the burden of funding the extra staff and in this economy we have been laying off, not expanding.

3. 13. 5. The negative impact on our water and sewer will be very significant, both financially and environmentally.

I have read the Draft EIR and have many more concerns that seem to be inadequately addressed within it and it would take hours to point out the inconsistencies in which the conclusions were obtained when the conclusion was stated as a "less than significant impact".

28-2

Nevada County General Plan's land use guidelines and zoning codes were established for the specific reason of stopping a project just like this. Disregarding or manipulating the General Plan and Zoning Codes for the purpose of pushing this project thru, is an injustice to the people that these codes were meant to protect.

Sincerely,

Marty Koulax

Letter 28 – Marty Koulax

Response 28-1: The comment states fire department staff would be paid from sales tax and that most sales taxes would be collected in Placer County. The comment is based on speculation regarding the location of businesses that would be patronized by project residents. As identified on Draft EIR page 3.13-2, the Higgins Fire Protection District does collect fire mitigation fees for new development.

Response 28-2: The comment states impacts on water and sewer will be significant environmentally and economically. Water and sewer are addressed in Section 3.13, Public Services and Utilities. The comment states there are many significant impacts not addressed in the Draft EIR, but the comment provides no specifics. County staff considers the Draft EIR adequate in evaluating the physical environmental effects of water and sewer service extension for the proposed project.

Letter 29

March 20, 2012

Brian Foss, Interim Planning Director
NEVADA COUNTY
Community Development Agency
950 Maidu Avenue
Nevada City, CA 95959-8617

Re: Response to Rincon Del Rio Draft EIR.

To Mr. Foss and the Planning Dept.:

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

I am in full support and agreement with the concerns expressed by all of the opponents of the DEIR as it relates to the RDR project. There is little point in reiterating the detailed arguments and concerns so eloquently and adequately presented in the letters submitted by the opponents to RDR, but I will summarize those concerns as follows:

- the significant increase in traffic on Rincon and the intersection of HW 49 and Rincon will result in a very dangerous intersection; **29-1**
- the permanent increase of noise and light pollution to our rural area long after construction ends; **29-2**
- the noise, smell and impact on roads in the Ranchos of proposed sewer pumping station and its pipelines; **29-3**
- the significant fire danger to the residents of RDR who may be trapped in this remote area and the resulting decrease in fire protection to existing surrounding residents when limited fire fighting resources are required to assist/evacuate the high density population of RDR; **29-4**
- the negative impact to our rural lifestyle, property values and enjoyment and protection of our rural environment; and **29-5**
- the complete disregard of the Nevada County General Plan's land use guidelines and zoning codes as they relate to rural lands will render the General Plan ineffectual and moot with regard to all future projects brought for consideration to the Community Planning Agency. A bad and irreversible precedent will be set if the Community Planning Agency approves the RDR project.

Of all the concerns listed above, probably the one that concerns me the most is the last one -- the complete disregard of the Nevada County General Plan. Why have this Plan if it is going to be disregarded? Whether a resident of Nevada County supports or opposes the RDR project, the complete disregard of the Plan by the Community Planning Agency will impact each and every resident of Nevada County. Since the RDR project has come this far and has all but been approved, we see the evidence that money talks. Let's be democratic about this and let the voting residents of Nevada County vote on whether they want the Nevada County General Plan to be disregarded for the RDR project and all future **29-6**

Letter 29 Continued

projects. Let the voters decide if we want the beautiful rural areas of Nevada County to look like Folsom with its high density population, shopping malls, residential neighborhoods as far as the eye can see and high crime rate. Disregard of the General Plan will put Nevada County on a slippery slope to out of control development.

29-6
cont.

On another administrative matter, Mr. Scofield should not be allowed to vote on the RDR project due to the conflict of interest he has resulting from his close relationship with the Youngs. We don't need cronyism playing a part in this consideration.

29-7

Thank you,

Peggy LeMasters (resident of Hidden Ranch Road)

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Letter 29 – Peggy LeMasters

- Response 29-1:** The comment states the project would result in dangerous conditions at the SR 49/Rincon Way intersection. The commenter's concerns are noted, but the overall level of service (LOS) with the project for the intersection would not indicate that the intersection would pose a substantial risk for drivers. The commenter is also referred to the traffic hazard impact analysis provided on Draft EIR page 3.14-20 that identifies no safety issues for the SR 49/Rincon Way intersection.
- Response 29-2:** The comment refers to long-term noise and light pollution effects of the project. No specific impacts are noted. Noise is addressed in Section 3.11, and effects of light from the project are addressed in Section 3.1, Aesthetics, of the Draft EIR.
- Response 29-3:** The comment refers to noise, smell, and impact on roads due to the sewer pump stations and pipelines. Noise associated with sewer pump stations is discussed in Section 3.11, Noise, on pages 3.11-23 and -31. See also Response 14-5. Regarding odors from sewer lines, the system would be underground and would have minimal exposure to the air to result in odor impacts. The project would result in temporary impacts on the road during construction, but the road would be repaired after installation of the pipeline as part of standard construction practices. Off-site pipeline construction must ensure that no unstable or erodible slope conditions are created and that storm water quality is addressed (Nevada County Land Use and Development Code Section L-V19.3B).
- Response 29-4:** The comment refers to fire safety. See Master Response 2.
- Response 29-5:** The comment refers to general impacts to rural character. The impacts of developing the project are addressed in several technical sections in the Draft EIR. With no specific impacts noted, no response or referral to a particular section in the Draft EIR is possible.
- Response 29-6:** The comment states there is a disregard for the General Plan and zoning. See Master Response 3.
- Response 29-7:** The comment claims a potential conflict of interest for Supervisor Scofield. The comment is noted and forwarded to the decision-makers for their consideration.

Letter 30

LAW OFFICE OF
LEMMON – LAND & LAW
A Professional Corporation
505 Coyote Street, Suite C
NEVADA CITY, CALIFORNIA 95959
530.265.6100
530.265.6110 (Facsimile)
EMAIL: peter@lemmonlaw.net
http://www.lemmonlandlaw.net



March 6, 2012

Mr. Brian Foss
Interim Planning Director Nevada County
950 Maidu Avenue
Nevada City, CA 95959

Dear Mr. Foss :

This Office represents Young Enterprises, L.P., the project applicant in connection with the project known as Rincon Del Rio (the "Project"). We are writing to address a portion of the draft Environmental Impact Report ("EIR") concerning the Project.

In Section 3.8 of the EIR entitled "Hazardous Materials/Human Health, there is discussion under the heading "Wildland Fires". On page 3.8-4, the EIR states: "... the proposed project site is located within the SRA [State Responsibility Area] and is primarily in a high Fire Hazard Severity Zone." The impact identified for this category in the EIR is "Significant and Unavoidable" ("SU") as shown on the Executive Summary, page ES-37, which further identifies the impact as: "The proposed project, along with increased urban development in Nevada, Yuba, and Placer counties, would result in cumulative wildland fire hazard impacts."

We have difficulties with listing this impact at all in the EIR, let alone with its SU designation. Such an impact must be based on some objective CEQA criterion. In Section 3.8.3, "Impacts and Mitigation Measures" the EIR states that the impact analysis is based on:

"... the following State CEQA Guidelines Appendix G thresholds of significance, which indicate that a project would have a significant impact if it would: ... 8. Expose people or structures to a significant risk of loss, injury, or death involving fires, including where wildlands are adjacent to

30-1

Letter 30 Continued

Mr. Brian Foss
Interim Planning Director Nevada County
March 6, 2012
Page 2

urbanized areas or where residences are intermixed with wildlands.”
(p.3.8-14).

Accordingly, Appendix G to the CEQA Guidelines appears to be the basis for the analysis of this “impact”. Further, in discussing “Impact 3.8.7”, the EIR states:

“The proposed project would result in increased population (maximum of 415 residents in 345 housing units) on the project site and thus would increase exposure of people and structures to significant risk of loss, injury, or death involving wildland fires originating off-site and spreading to the project site. Unique project impacts associated with this hazard would include the additional handling time to accommodate persons living in assisted and nursing care conditions if required to evacuate during a wildland fire event.” (pg. 3.8-21.) (Emphasis added.)

Further, in Section 3.8.4, “Cumulative Setting, Impacts, and Mitigation Measures” the EIR states:

“... safety impacts as described in CEQA Appendix G are generally site-specific and not cumulative by nature. . . . However, the cumulative setting for wildland fires consist of the project site as well as the entire CAL FIRE NEU Unit, which consists of Nevada, Yuba, and Placer counties.”

30-1
Cont.

The EIR goes on in Section 3.8.8 “Cumulative Wildland Fire Hazards” to state:

“The proposed project, along with increased urban development in Nevada, Yuba, and Placer counties, would result in cumulative wildland fire hazard impacts. This impact would be **cumulatively considerable**.”
(pg. 3.8-23, Emphasis added.)

And finally:

“The proposed project, along with increased urbanization in other areas of Nevada, Yuba, and Placer counties . . . would contribute to increased exposure of people and structures to the risk associated with wildland fire hazards.” “ . . . regardless of existing regulations and mitigation measure MM 3.8.7, it is very likely that the entire NEU Unit will be affected by a wildland fire at some point in the future and, as stated above, cumulative development of homes and personal property in these areas makes

Letter 30 Continued

Mr. Brian Foss
Interim Planning Director Nevada County
March 6, 2012
Page 3

wildfire suppression more difficult and leads to increased hazards. As such, impacts are considered to be **cumulatively considerable and significant and unavoidable.**" (pg. 3.8-23, Emphasis added.) "While implementation of mitigation measures . . . would address site-specific wildland fire hazards, it would not eliminate the increased cumulative hazard of locating additional population in the Higgins area that would be exposed to this hazard."

Accordingly, it seems clear that Appendix G to the CEQA Guidelines *together with* a recognition of the cumulative impact of increased population on the likelihood of wildland fires is the basis for the inclusion of this "impact" in the EIR. However, Appendix G to the Guidelines -- as well as the alleged cumulative nature of wildland fires in a project area -- have been discussed and dispensed with in two recent California cases. Such analyses, which attempt to turn CEQA on its head by considering the environment's impact upon a project, rather than the other way around, have been flatly rejected.

In *South Orange County Wastewater Authority [(“SOCWA”)] v. City of Dana Point* (2011) 196 Cal.App.4th 1604, the Court discussed a challenge to the City's amendment of its general plan, including the adoption of zoning changes to authorize residential development near a sewage treatment plant—and an associated mitigated negative declaration. In the Court's discussion of CEQA and the very same Appendix G of the Guidelines, it stated:

"SOCWA has not cited any cases in which the environment's effect on a project was held to require an EIR. Likewise, it has not given us any statutory authority for extending the EIR requirement to situations where the environment has an effect on a project, instead of the other way around. SOCWA refers to an appendix to the guidelines, Appendix G, which is a sample checklist form that is *suggested* for use in preparing an initial study. (Citations omitted) A few questions in the nine-page checklist deal with exposure of people to environmental hazards. ("Would the project . . . [e]xpose people or structures to a significant risk of loss, injury, or death involving wildland fires . . .?") A few questions on a suggested checklist in an appendix to the guidelines do not seem to us to provide a strong enough foundation on which to base a reversal of the entire purpose of CEQA."

30-1
cont.

Letter 30 Continued

Mr. Brian Foss
Interim Planning Director Nevada County
March 6, 2012
Page 4

The Court continued:

"SOCWA also refers to one of the guidelines . . . entitled 'Consideration and Discussion of Significant Environmental Impacts,' which deals with the content of an EIR. Subdivision (a) states, in part, 'The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people to the area affected. . . . Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) . . . The Legislature did not enact CEQA to protect people from the environment. Other statutes, ordinances, and regulations fulfill that function. (citations omitted)." (p. 1618.)

In *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th, 455, the Court stated: "Thus, the purpose of an EIR is to identify the significant effects of a project on the environment, not the significant effects of the environment on the project." The Ballona Court also specifically discussed the very Appendix G of the CEQA Guidelines used in the EIR at issue, as follows:

"Appendix G of the Guidelines is a sample checklist form that is *suggested* for use in preparing an initial study. . . . A few of the questions on the form concern the exposure of people or structures to environmental hazards and could be construed to refer to not only the project's exacerbation of environmental hazards but also the effects on users of the project and structures in the project of preexisting environmental hazards. (E.g., 'Would the project . . . [e]xpose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving . . . [r]upture of a known earthquake fault . . .') We believe that to the extent that such questions may encompass the latter effects, the questions do not relate to environmental impacts under CEQA and cannot support an argument that the effects of the environment on the project must be analyzed in an EIR."

It might be urged on your part that the explanation for including the wildland fire danger, notwithstanding the reasoning in the *SOCWA* and *Ballona* decisions that such an "impact" analysis turns CEQA on its head, is that the cumulative nature of this "impact" justifies including it in the EIR. However, the cumulative effects/impacts

30-1
cont.

Letter 30 Continued

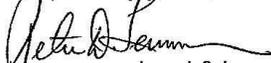
Mr. Brian Foss
Interim Planning Director Nevada County
March 6, 2012
Page 5

analysis only applies where the project impacts the environment. In SOCWA, the Court reasoned:

"This principle [cumulative effects] certainly holds true for projects that actually affect the environment. . . . But these cases do not apply to this situation. The odors from the sewage plant are what they are. Whether the Makar project proceeds in one phase or in a hundred phases will not affect what emanates from the plant. Because SOCWA is trying to make CEQA work in reverse, the cases about the cumulative effects of multiple small environmental changes are inapposite."

Accordingly, a cumulative impacts analysis cannot be used to find a CEQA impact to the environment where there wasn't one before. For these reasons, we respectfully request that the issue of wildland fire impacts be removed in its entirety from the draft EIR.

Respectfully yours,



Lemmon -- Land & Law, P.C.

By: Peter D. Lemmon

30-1
cont.

CC: County Counsel Alison Barratt-Green

3.0 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR

Letter 30 – Peter D. Lemmon, Law Offices of Lemmon – Land & Law

Response 30-1: The comment states the fire impact discussion in the EIR is an impact of the environment on the project, not the project on the environment, so it needn't be addressed in the EIR.

As noted on page 3.8-21 of the Draft EIR (see Section 3.8, Hazardous Materials/Human Health, project site is located in the State Responsibility Areas and is primarily in a high Fire Hazard Severity Zone with the southeastern corner of the site in the very high Fire Hazard Severity Zone. Neither the County nor the state prohibits development in such zones, but rather uses these zones to identify the need for fire prevention and protection measures. The proposed project would comply with the California Building Standards Code, the defensible space requirements included in the Public Resources Code, and all applicable Nevada County Code requirements, including the provision of sprinklers and emergency access, fuel modification, and an evacuation plan as required by Mitigation Measure MM 3.8.7. As such, this impact is identified as less than significant.

However, as stated on page 3.8-22 of the Draft EIR, cumulative development of homes and personal property in wildland fire areas makes wildfire suppression more difficult and leads to increased hazards. Therefore, the cumulative impact discussion is not referring to the effects of potential wildland fires on the project site, but to the physical effect on the environment resulting from implementation of the proposed project – in this case the physical effect on the environment is introducing homes and increased population to an existing fire hazard area, which would increase hazards for the entirety of the cumulative setting, not just those on the project site. The proposed project would not only increase cumulative wildland fire hazards by exposing more people to the hazard, but also by increasing the hazard itself (i.e., increase in the likelihood of fires and increased fuel loads).

This would be a significant impact pursuant to CEQA. In order to clarify this issue, the following changes are made to the last paragraph on page 3.8-23 of the Draft EIR:

While implementation of mitigation measure MM 3.8.7 and compliance with County and state regulations would address site-specific wildland fire hazards, it would not eliminate the increased cumulative hazard of locating additional population in the Higgins area that would be exposed to this hazard, nor would it eliminate the increased risk for wildland fires associated with increased development in the area. Thus, this impact is considered **cumulatively considerable** and **significant and unavoidable**.

~~While implementation of mitigation measure MM 3.8.7 and compliance with County and state regulations would address site-specific wildland fire hazards, it would not eliminate the increased cumulative hazard of locating additional population in the Higgins area that would be exposed to this hazard. Thus, this impact is considered **cumulatively considerable** and **significant and unavoidable**.~~