



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

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

Mali LaGoe
Acting Community Development Agency Director

Brian Foss
Planning Director

MEMORANDUM

March 25, 2021

TO: Nevada County Planning Commission

FROM: Matt Kelley, Senior Planner *MK*

HEARING DATE: March 25, 2021

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

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

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

Staff Response:

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

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

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

Staff Response:

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

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

Staff Response:

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

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

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

Condition of Approval A.37

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

Applicants Response:

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

Staff Response:

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

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

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

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

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

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

Attachments:

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

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

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

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

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

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

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

CCRC Operation

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

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

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

Matt Kelley

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

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

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

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

Re: Rincon del Rio Project Approval

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

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

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

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

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

March 19, 2021

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

RE: Support for Rincon Del Rio

Dear Commissioners:

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

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

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

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

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

Sincerely,



Brittany Young and Team at Youngs Carpet One



In The Home Center

330 Idaho Maryland Road
Grass Valley, California
95945

530.273.5568

530.273.1849 Fax

SCL 622809

QUALITY INTERIORS SINCE 1972

Attachment 2



NEVADA COUNTY CONTRACTORS' ASSOCIATION

149 Crown Point Court, Suite A • Grass Valley • Tel. # (530) 274-1919 • Fax # (530) 274-3373
www.nccabuildingpros.com • email: info@nccabuildingpros.com

Board of Directors

OFFICERS

President

Steve Piziali
Piziali Construction, Inc.

Vice-President

Martin Wood
SCO Planning & Engineering,
Inc.

Secretary/Treasurer

Jeff Hansen
Hansen Bros. Enterprises

PAC Chairman

Keoni Allen
Sierra Foothills Construction

Immediate Past President

Charles Faber
C & D Contractors, Inc

DIRECTORS

Ray Byers, Jr.

Byers Enterprises Inc.

Sam Marsico, Jr.

Marsico Custom Homes,
Inc.

Daniel Swartzendruber

Tru-Line Builders, Inc.

Josh Van Matre

Caseywood Corporation

Brittany Young

Youngs Carpet One

Bob Zucca

Weiss Landscapes, Inc.

March 19, 2021

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

RE: Support for Rincon Del Rio

Dear Commissioners:

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

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

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

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

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

Sincerely,

Barbara Bashall

Barbara Bashall
Government Affairs Manager

NEVADA COUNTY CONTRACTORS' ASSOCIATION

Weiss

Landscaping/Maintenance/Installs

Weiss Landscaping

402 Lower Grass Valley Rd,

Nevada City, CA 95959

CSL #992981

www.goweisslandscaping.com

March 22, 2021

Nevada County Planning Commission

950 Maidu Avenue,

Nevada City, CA 95959

RE: Support for Rincon Del Rio

Dear Commissioners:

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

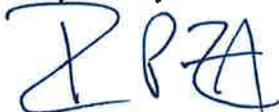
I also serve on several committees at Eskaton and have become friends with many of the homeowners. They are so thankful for their community within our community and have said if it were not for the Eskaton lifestyle and services, they would have moved out of our community seeking those services elsewhere.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

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

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

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

Thank you for your consideration,



Bob Zucca

Co-Owner Weiss Landscaping, Inc.

Office: 530.271.7478; Cell: 530.913.320

www.goweisslandscaping.com

t. 800.300.1658

f. 530.272.3450



March 22, 2021

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

RE: Amendments to the approved Rincon Del Rio Master Plan

Dear Planning Commissioners,

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

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

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

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

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

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

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

Sincerely,

Robin Galvan Davies

Robin Galvan Davies, CEO

Robert Medlyn

Robert Medlyn, Chair of the Board

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



"Committed to a Higher Standard"

March 19, 2021

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

Cc: Matt Kelley, Senior Planner

Dear Nevada County Planning Commissioners:

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

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

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

Sincerely,

Diane Spooner, 2021 President

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

March 20, 2021

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

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

Re: Rincon del Rio project

Dear Mr. Kelley:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,



Virginia I. Akers



Peter D. Guilbert

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

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

George David Walker

~~_____~~

~~_____~~

Elaine Chamberlain

Lexi Walker

~~_____~~

Tim H. Elmer

Juanita M. Rutter

Carrol Elkins

Maureen Waters

Mary Kuler

James Rubey

~~_____~~

Barbara Long

~~_____~~
Dorinda Perma

Audrey Mcintosh

Melba Whitelock

Trint Taylor

~~_____~~

Janet Jones Ph.D.

A. F. Gross

Rebecca Zup

~~_____~~

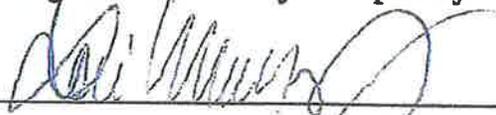
Renée Taylor

Audrey J. Johnson

Adrian Newen

Alton R. Johnson

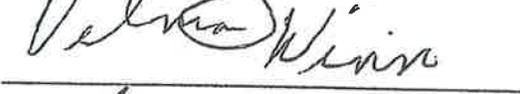
The Undersigned hereby join in and concur with the statements contained in the attached letter as though made individually and separately.



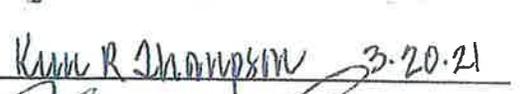
Steve P. Murphy



Paula Murray



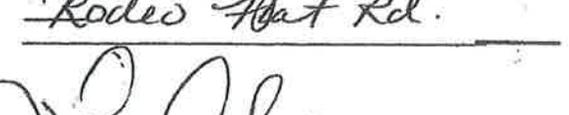
Wil G.



Valma Winn



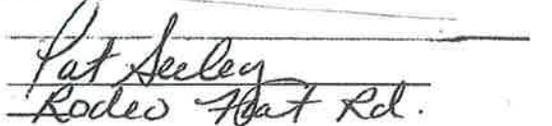
Kim R. Thompson 3-20-21



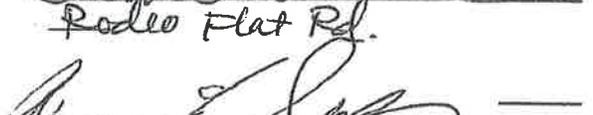
Arnold 3/21/21



Norman Spaulding 3/22-21

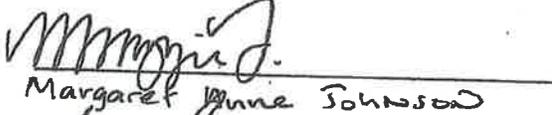


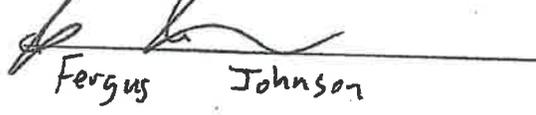
Pat Seeley
Rodeo Flat Rd.



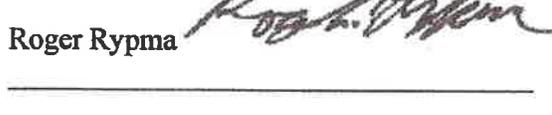
Lisa Orlanson
Rodeo Flat Rd.





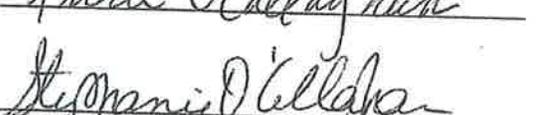
Margaret Anne Johnson


Fergus Johnson



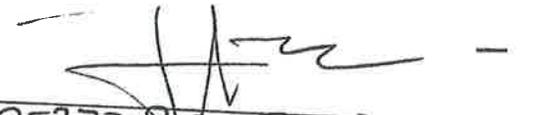
Roger Rypma

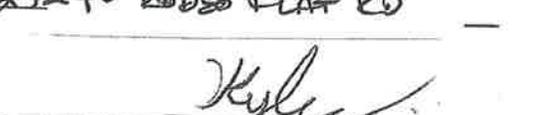

Susan Rypma



Kiri O'Callaghan


Kyranni O'Callaghan



25270 RODEO FLAT RD


Kyle

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

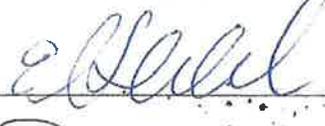
David Vian  Kristie Vian Kristie Vian

Hugh Staples  CRISTERICSON 

Luis M. Valenzuela  Monica Christie Monica Christie

Shannon Simmons  Cathy S. Minnick

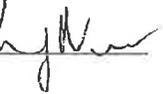
Brandon Strine  Peter W. Coe

Eric Moroz, ERIC MOROZ 

Don Wakefield Don Wakefield

Robert B. Nickel Robert B. Hick OK

Missu Graham 

LONG NGUYEN  Ly Nam

Joel Gomez Joel Gomez

Chris Helms 

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

Nicole Black Nicole Black

Katelin Vian

Kathleen Haas

Kathleen Haas

Jason S Dell

Jason S Dell

Aaron Keroyes

Aaron Keroyes

Michael Hoskin

Michael Hoskin

Jenny Linarez

Jenny Linarez

Adam Seal

Adam Seal

Bucki Broscon

Bucki Broscon

Robert Oyer

Robert Oyer

Nathan Block

Nathan Block

Garrett Markoul 3/24
GARRETT MARKOUL

Rebecca Funk
p.p. Rebecca Funk Funk

Janeen S Oyer
Janeen S. Oyer

Aaron Hill

Zachary Hill

Zachary Hill

Bryan Obrien

BRYAN O'BRIEN

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

De H. L.

[Signature]

[Signature]

Lois L. Hernandez

Asunt

[Signature]

[Signature]

Elizabeth

Paula Thompson

Chad K. Booy

[Signature]

Anthony Davis

Wes Kim

[Signature]

Stuart Aird

[Signature]

[Signature]

Hal

Jocely

[Signature]

Dave Ebbert

Kenn Lawrence

Br Wyal

[Signature]

[Signature]

[Signature]

Sten Alclass

[Signature]

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

Ary Wang

Carol A. Viano

Le Vran

Cheryl D

Darin Zinola

Kym Zinola

[Signature]

Halle Murray

Manny Spreen

[Signature]

Mark Vin

Pamela Vin

Janette M. Mower

Max Mower

Darin Zinola

Kimberly Zinola

[Signature]

Laurel Vian

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

[Signature]

Patricia Coe

M.A. Enil

Michael Coe

Old Linsky

Shamir Prunby

Maria Quinby

Audr R. Hall

April Quary

Mari Sybak

Clad Jarrow

William Stark

Jared Shuster

Natt Juss

Justin Shuster

D. Noddly

Tina Noddly

Elizabeth Jones

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

George Simmons

Mary Mills

Kon Johnson

Steve

Randy Meadows

Bi. Miles

Paul

Demetrius DeLaney

J. Ward

Neil Bernhardt

Bruce Newby

Antony Maguire

Tom

Irena Kojowski

Justin

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

Karen M Abbott 3/21/2021
KAREN M. ABBOTT

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

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

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

Rosalind R Nice 3/21/21
Rosalind Nice

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

Peggy L. Lemasters 3/21/21
Peggy L. Lemasters (Pastor)

Sherry Warren 3/21/21
Sherry Warren

Terry D. Warren 3/21/21
Terry D. Warren

Selicia Ecker 3-21-21
Selicia Ecker

Darcy Ecker 3-21-21
Darcy Ecker

Julianne Dixon 3/21/21
JULIANNE DIXON

Bobo Diaz 03/21/21
Bobo Diaz

Donna Mickel 3/21/21
Donna Mickel

allyson mickel 3/21/21
ALLYSON MICKEL

Carley Mickel 03/21/2021
Carley Mickel

Wanda & Gutierrez 3-21-2021
Wanda & Gutierrez

Jan Acosta 3/21/2021
Jan Acosta

Belle Proski 3/23/21
Belle Proski

LAW OFFICE OF DONALD B. MOONEY

417 Mace Blvd, Suite J-334
Davis, CA 95618
530-758-2377
dbmooney@dcn.org

March 23, 2021

VIA ELECTRONIC MAIL

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

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

Dear Commissioners:

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

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

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

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

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

Paragraph 5 further provides that:

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

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

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

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

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

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

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

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

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

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

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

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

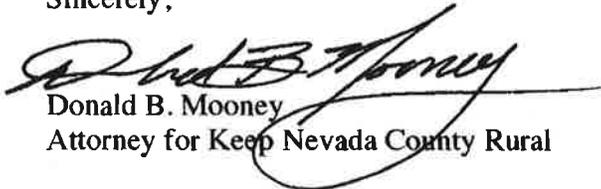
It is clear that neither Young Enterprises nor the Community Association can guarantee that the resident population never goes above 415 on *any* given day, not once a year or even quarterly especially since most of the residences will be privately owned. Deed restrictions will not address number of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

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

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

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

Sincerely,


Donald B. Mooney
Attorney for Keep Nevada County Rural

Nevada County Planning Commission

March 23, 2021

Page 5

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

Rincon del Rio Response to Comment Letter

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

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

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

A. Population limit of 415 will be met

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.4 Occupancy by Additional Persons

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

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

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

7.2 Sale to Qualified Buyer

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

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

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

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

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

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

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

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

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

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

DEFENSE AND INDEMNIFICATION AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

Amendments or any portion thereof.

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

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

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

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

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

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

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

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

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

by all parties.

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

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

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

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

COUNTY:

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

By: _____
Alison Lehman
County Executive Officer

APPLICANT:

YOUNG ENTERPRISES, L.P.
a limited partnership

By: _____
Carol Young
Partner

Approved as to form:

By: _____
Katharine Elliott
County Counsel

Approved as to form:

By: _____
Marsha A. Burch
Attorney for Developer