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.

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

Attachments:

1. Additional Public Comment Letters

Matt Kelley

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

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

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

This an article from 2014-

"After the project was approved and while the lawsuit against the County and the development project was going through the court process Supervisor Lamphier took the $5,000 campaign contribution from the south county project developer.
The conflict of interest issue is taking a $5,000 campaign contribution while at the same time participating in closed door legal negations where the County and the Rincon del Rio developer were named defendants in a law suit to over turn the approval."

Steve Enos
November 11, 2014 at 9:57 am
Earlier this year Supervisor Lamphier voted to approve the highly controversial south county, Rincon del Rio development project. The project and it's general plan amendments and zoning changes were approved by a 4-1 vote after much controversy.
Supervisor Lamphier voting to approve the highly controversial Rincon del Rio development project and then taking a $5,000 campaign donation from the developer was not the conflict of interest issue raised.
The $5,000 donation was Supervisor Lamphier's largest, single supervisor campaign donation. It was the largest, single campaign donation in the supervisors election. This $5,000 donation came from a developer and development project that is not even in Supervisor Lamphier's District and it was made in the middle of the lawsuit process to over turn the development project approval.

A few weeks after the controversial project approval a group of concerned neighbors, "Keep Nevada County Rural" group opposing the development project filed the lawsuit against Nevada County to overturn the Board of Supervisors approval.
The "Keep Nevada County Rural" group followed the time tested path of the "Rural Quality Coalition" (RQC) to try and protect this rural area from urban development, development that was not allowed under the Nevada County General Plan.
After the project was approved and while the lawsuit against the County and the development project was going through the court process Supervisor Lamphier took the $5,000 campaign contribution from the south county project developer.
The conflict of interest issue is taking a $5,000 campaign contribution while at the same time participating in closed door legal negations where the County and the Rincon del Rio developer were

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

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

The dates and what took place:

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

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

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

11/12/13; In a final closed door session the Board of Supervisors approves the lawsuit settlement agreement between the County, the Rincon Del Rio developer and the "Keep Nevada County Rural" group that filed the lawsuit. Supervisor Terry Lamphier participated in the closed door discussions and negotiations and voted to approve the settlement agreement.
A series of meetings, negotiations and closed door sessions took place from 5/14/13, when the law suit was filed against the County and the developer to 11/12/13, when the Board voted and approved the terms of the settlement agreement. The meetings, negotiations and vote took place in closed door sessions.
On 9/30/13 Supervisor and candidate Terry Lamphier reported receiving his $5,000 campaign contribution from the Rincon Del Rio Del developer while the legal action and negotiations were taking place. Less than six weeks later, Supervisor Lamphier voted to approve the Rincon del Rio project law suit settlement agreement.

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

If one was to replace "Supervisor Lamphier" in the above with a conservative Supervisors name, let's say "Drew Bedwell", how would some react?
I believe Supervisor Lamphier or any other Supervisor in the same position should have declared a conflict of interest and recused himself from the closed door legal negations regarding the lawsuit against the County and the developer that gave him a $5,000 campaign donation.

Regards,

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Elizabeth Vian-Jones
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VIAN Enterprises

MANUFACTURER OF PUMPS, GEROTORS, LUBRICATION SYSTEMS, AND ACCESSORIES

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Matt Kelley

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

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

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

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

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

Re: Rincon del Rio project

Dear Mr. Kelley:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Board of Supervisors

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

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

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

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

Dear Mr. Kelley:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your consideration.

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

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