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Jefferson County Planning Commission
Commissioner Jim Cole, Chairman
Commissioner James R. Spaanstra, Vice Chairman
Commissioner Joe Siccardi
Commissioner Alan Fox
Commissioner Larry Anna
Commissioner Jim Allred
Commissioner Shirley Johnson
Associate Commissioner Alan Jones
Associate Commissioner Rick Nelson
100 Jefferson County Parkway, Suite 3550
Golden, CO 80419-3550

Re: *Proposed Lyons Ridge Rezoning*
Jefferson County Case No. 06-107245RZ
Revised ODP Dated January 22, 2008

Dear Planning Commissioners:

This firm represents the Hogback Conservancy Coalition ("HCC"). HCC is an organization comprised of eleven homeowner associations, as well as Red Rocks County Club and the Willow Springs Open Space Owners Association. HCC represents over 1,000 homes and over 2,000 Jefferson County residents in the area west of the Dakotah Hogback, south of US Hwy 285 and north of Ken Caryl North Ranch. The members of the HCC are as follows:

Willow Springs Property Owners Association, Inc. (Filing 1 & 2)
Willow Springs Block 3 Property Owners Association, Inc. (Filing 3)
Willow Springs Block 4 (Filing 4)
Sundance at Willow Springs (Filing 5)
Dakotah at Willow Springs Homeowners Association, Inc.
Dakotah Pointe Homeowners Association, Inc.
Hillsborough at Willow Springs - WSNMA
Willow Springs North (Filing 7)
Willow Springs North Master Association
Weaver Gulch Homeowners Association
Willowbrook Association, Inc.
Red Rocks Country Club
Willow Springs Open Space Owners Association, Inc.

The Lyons Ridge ODP application substantially deviates from the recently adopted South Jefferson County Community Plan ("SJCCP" or "Plan"), fails to comply with the Plan Exception requirements of the Plan, does not appear to conform to the requirements of the Urban Growth Boundary ("UGB"), and fails to comply with the Jefferson County Zoning Resolution. The remainder of this letter specifically documents:

1. The specific areas in which the proposed ODP does not conform to the SJCCP.
2. The failure of the ODP to meet the burden required Plan Exceptions to the SJCCP.
3. The apparent failure of the ODP to comply with the Urban Growth Boundary.
4. Additional issues regarding the ODP submittal, graphics and written restrictions.
5. Other failures of the applicant to comply with the Jefferson County Zoning Resolution.

For the reasons set forth below, HCC respectfully recommends the Planning Commission deny the proposed rezoning:

1. The proposed ODP proposes densities, lot sizes, setbacks and building separations that are a major deviation from the land use policies and guidelines set forth in the SJCCP.

On March 14, 2007, the SJCCP was adopted by the Planning Commission. 174 citizens and 20 government agencies worked together in the preparation of the Plan. No less than 38 community meetings were held over a thirteen month period prior to the Plan's adoption. Many HCC members were involved in the community planning process that resulted in the adoption of SJCCP. HCC recognizes the importance – to its neighborhoods and to the entire South Jefferson County community - that land use decisions within the SJCCP area should be made in conformance with this Plan. The SJCCP was approved less than one year ago; conditions have not changed since the interim and final approval of Plan.

My client has no objection to a rezoning consistent with the SJCCP. HCC members recognize that there will be additional development west of the hogback, and that many of the presently open areas will be developed. HCC is simply requesting that development occur in accordance with the SJCCP, and that the integrity of the SJCCP not be compromised. We trust that you will find the community's concerns to be reasonable, consistent with good land use and planning practices, and consistent with promoting conformance with the SJCCP.

My client knows that the Planning Commission and the Board of County Commissioners also played a major role in the formulation of the Plan. It is anticipated that the members of the Planning Commission share HCC's sense of the importance in maintaining the integrity of the community planning process and will honor the specific recommendations of the SJCCP.

The chart attached hereto as Attachment A compares the guidelines set forth in the SJCCP with the applicant's January 22, 2008 ODP submittal. The extent to which the proposed ODP varies from the policies and guidelines of the SJCCP is substantial. The most significant deviations from the Plan are as follows:

- Densities proposed for Use Area 1 are as much as five times greater than the densities called for by the SJCCP.
- The proposed ODP requests as many as 150 houses in Use Area 1; the SJCCP calls for no more than 29 to 42 (depending on whether gross or net densities are used for the calculation; see #9b below).
- The proposed ODP requests as many as 150 houses in Use Area 2; the SJCCP calls for no more than 56 to 73 (see #9a and #9b below).
- The SJCCP calls for lot sizes in Use Area 1 be a minimum of five acres; the ODP proposes minimum lot sizes of only 15,000 square feet (0.34 acre).
- The SJCCP calls for a minimum lot size of 20,000 square feet in Use Area 2; the ODP proposes a minimum of only 7,000 square feet.
- The SJCCP calls for building separations of 100 feet for Use Area 1 and 50 feet for Use Area 2; the ODP proposes building separations of only 30 feet for Use Area 1 and only 10 feet for Use Area 2.

Attachment A also shows land use allowances under the existing zoning, which is primarily A-2 Agricultural (233.3 acres of the total 284.4 acres). The proposed ODP not only calls for five times more density in Use Area 1 than that permitted by the SJCCP, it also calls for more than ten times the density allowed under the existing zoning. In other words, development in conformance with the SJCCP would still double the densities now permitted in the areas zoned A-2, allowing a generous increase in density to the property owner.

2. The proposed ODP does not conform to more than 40 important SJCCP goals, policies and guidelines dealing with land use, resource protection, view preservation, preservation of wildlife corridors, and provision of trails.

A list of more than 40 SJCCP goals, policies and guidelines is detailed in Attachment B, together with comments about the extent and consequences of non-conformance. A few of the key points from Attachment B are:

- There is no commitment in the ODP written restrictions to cluster development, despite SJCCP policies that call for clustering.
- The SJCCP states that “projects should be done in concert with the community to ensure compatibility with surrounding uses”; the applicant has not solicited any community input or involvement in this project since the initial (required) community meeting more than two years ago.
- In Use Areas 3, 4, and 5 the proposed ODP requests telecommunication uses that would allow as many as three telecommunication poles, ranging up to 50 feet tall, with eleven antennas attached to either those poles or the existing water tank (there is no indication in the ODP if it would be functional). The requested telecommunications uses fail to satisfy the Highest Design Standards as set forth in Section 7. C. 2 of the Jefferson County Zoning Resolution, and also the relevant provisions of the SJCCP and Jefferson County Telecommunications Land Use Plan, with regard to site location, concealment, camouflage, and overall limiting of the visual impact. The applicant should be required to specifically address the need for the number of antennas requested, their height and

location, compatibility, how they will be concealed and camouflaged, and how they will meet the Highest Design Standards,

- Despite the numerous SJCCP policies regarding the protection of wildlife corridors and habitat, the word “wildlife” is neither addressed nor even mentioned in the ODP.
- According to the conceptual platting plan included with the January 22, 2008 ODP cover letter, the major trail corridor proposed in the Open Space Master Plan (the north/south trail to the west of the Dakotah Hogback) would cross at least 28 private lots (in many cases the trail would run through the middle of the lot). The ODP proposes that this major regional trail be only six feet wide.
- The proposed ODP does not address view corridors and does not identify visually sensitive areas as called for in the SJCCP. The proposed ODP fails to address the importance of preserving views for the existing residents, future residents and the general public.
- The proposed ODP would allow privacy fences, which are impediments to wildlife travel and are incompatible with the surrounding neighborhoods, which prohibit privacy fences.

Pursuant to the court’s decision in Canyon Area Residents for the Environment v. Board of Commissioners of Jefferson County, Colorado Court of Appeals Case No. 04CA0810, decided May 4, 2006, and CRS Sec. 24-67-104, the SJCCP is not merely advisory and the proposed ODP must comply with the Plan.

3. The proposed ODP does not include or reference important Design Guidelines listed in the SJCCP.

The SJCCP contains five pages of Design Guidelines (See pages 39-43 of the SJCCP) and states that the Design Guidelines “should be used at the time of zoning, and should be incorporated into all Official Development Plans.” Few of these guidelines have been adequately addressed in the ODP. HCC understands that the County Planning staff’s position is that the SJCCP design guidelines generally do not apply to the applicant’s ODP since the applicant proposes residential uses only. HCC does not believe that staff’s position is supported by the SJCCP. The first General Guideline in the Design Guidelines section of the SJCCP states that “These guidelines apply to *all* projects...” (emphasis added). Many of the general guidelines mention “residential” use and there is even an entire section of special criteria applicable only to low density residential development.

The SJCCP lists more than fifty design guidelines that are relevant to this site and to the type of development being proposed, yet only a handful of these guidelines are addressed by the proposed ODP. If adequate design guidelines are not set forth in the ODP, as called for by the SJCCP, County staff will have little authority to require proper land planning, site design and architectural design in the later stages of development review and approval. Attachment B lists several of the design guidelines that are particularly important for development on this unique site, and HCC believes that it is critical that these guidelines are addressed and, as required in the SJCCP, incorporated into the ODP.

4. The proposed ODP does not provide adequate justification for the granting of required SJCCP Plan Exceptions.

The SJCCP contains four specific provisions and requirements that the applicant has a burden to meet before exceptions to the SJCCP can be granted. The applicant's cover letter attached to its January 22, 2008 submittal acknowledges that two Plan Exceptions are needed: one to justify the rezoning of dedicated open space in Use Area 2 and the second to justify the significant increases in density in both Use Areas. The applicant has not only failed to meet the burden for granting Plan Exceptions, it has used a strained interpretation of the goals and policies of the SJCCP to provide its justification for the Plan exceptions. Under the applicant's analysis, the goals of the SJCCP are only to preserve the unique features of each Sub Area and the unique features are predominately the property's geological features. In fact, the SJCCP policies (Policy B5 on page 14 and Policy C4 on pages 14 and 15) list numerous "unique qualities" upon which the SJCCP densities are based:

Policy B5. "Subarea A East is within a water and sanitation district, and gross density should not exceed 1 du/5 acre lot, due to the following unique features:

- Geology, including fossils, and spring discharge points
- Wildlife
- Vegetation
- Slopes
- Views
- Minimal traffic
- Rural area/character (adjacent to the Historic Bax Farmstead)
- Quiet – lack of noise
- No pollution (traffic, lights, smog)
- Low Density"

Attachment C to this letter sets forth the SJCCP criteria for Plan Exceptions and demonstrates in detail why none of the four criteria can be satisfied by the ODP. Per the SJCCP, a Plan Exception can be granted only if all four criteria are satisfied. Approval of unjustified and unsupported exceptions would undermine the Plan. Attachment C clearly shows that the justification provided by the applicant falls far short of meeting the criteria for Plan Exceptions.

My client understands from its meetings with the Planning staff that it is their position that the Plan Exception provisions apply only when there is a change of use, and that, with the campus deleted from the proposal, there is no change of use. We can find no reference in the SJCCP that Plan Exceptions apply only in cases where there is a change of use, and therefore agree with the applicant that Plan Exceptions are required. Moreover, there is most certainly a change of use proposed in the ODP. The property's present uses are vacant land, agricultural use and campus (abandoned) use; the proposed use is residential.

5. The proposed trigger event for the removal of the dilapidated, abandoned campus buildings may not occur for years, leaving the community saddled indefinitely with an eyesore, nuisance and crime generator.

The proposed ODP would allow the existing campus buildings to remain until the first building permit is issued for Use Area 2. Given the current housing market and the long processing time of subdivision plats and site plans, the existing buildings could remain for years. The abandoned buildings on the applicant's property are unsafe, an eyesore and a nuisance, and have been the subject of numerous calls to the County Sheriff over the past several years. The abandoned buildings and refusal to remove same despite numerous demands, have come to demonstrate the lack of respect and concern the campus landowners seem to have for the well-being of the adjacent community.

Since approval of the ODP would make the existing campus a non-conforming use and would make several of the buildings non-conforming structures, the buildings should be demolished and cleared as soon as possible. HCC believes it is reasonable for the Planning Commission and Board of County Commissioners to require that the campus buildings be removed within six months of any ODP approval.

6. The ODP attachment labeled "Conceptual Photo Simulation" includes what appears to be a conceptual plat map showing lot configurations that have been severely gerrymandered in an apparent effort to try to overcome Urban Growth Boundary (UGB) issues. One consequence of this odd lot configuration is that required open space and trail dedications may bring the ODP densities (and average lot sizes) out of conformance with the UGB in both the 2030 and the 2035 plans.

Since none of Use Area 1 is within the Urban Growth Boundary, and since the applicant's efforts to adjust the boundary or otherwise overcome the UGB issue have apparently been problematic, much of the density originally proposed for Use Area 1 has been shifted to Use Area 2. This has resulted in twice as many houses in Use Area 2 than called for by the SJCCP. It appears from the conceptual plat map that, in order to meet the UGB limitations of not less than 1 du/acre with the remaining Use Area 1 density, lots have been configured in abnormal shapes, some more than 1200 feet deep, and many with lot lines that run from mid-valley to the top of the hogback. The building envelopes on these lots would be near the proposed roads, with the rest of the area on the lots essentially unbuildable.

Attachment D, an enlargement of this conceptual platting plan, shows the proposed lot configurations. We think it is important for the Commissioners to understand the extent to which lot manipulations will be necessary in order to meet UGB density limitations, and that the UGB density limitations may automatically be exceeded when the land is platted. There are at least two problems with the way the proposed lots have been configured:

- When the time comes for platting land in Use Area 1, the land areas within the rockfall hazard zones will have to be platted into private ownership lots, rather than the more desirable public open space, and as many as 28 separate homeowners may have to deal with the issue of rockfall hazards. Additionally, the Open Space Master Plan calls for a

major trail corridor that will have to pass through as many as 28 separate lots, in several cases through the middle of lots. If the land for this trail is dedicated to the County, as it should be according to the SJCCP, such dedication will sever the continuity of the deep lots, resulting in average lot sizes that are inconsistent with both the UGB and the ODP. Locating a major trail corridor through the middle of private lots, possibly with fences on either side of the trail, is not consistent with the goals and policies for public trail construction.

- The ODP contains no clear standards as to where privacy and split rail fencing can and cannot be located. The only control seems to be that fencing is not permitted in “no-disturb” areas. The combination of so many oddly configured lots with the lack of specificity in the ODP as to where fences can be located raises the prospect of long (hundreds of feet) rows of parallel fences which will be an eyesore and will block wildlife travel.
- We suggest that the Planning Commission should defer ruling on the ODP until the UGB issues are resolved,

7. The color concept plans attached to the ODP show some sensitivity to the SJCCP Design Guidelines, but these concept plans have no official status as part of the ODP, and the design concepts they illustrate are not set forth in the ODP written restrictions.

The HCC is concerned that most people who see the ODP submittal package will assume that the colored concept plans (labeled as “Exhibit B, Proposed Entitlements” and “Conceptual Lotting Plan”) attached to the ODP have some official status and are at least somewhat binding. Planning staff has confirmed that attachments to the ODP are, in fact, non-binding, and that any design and land use principles that they suggest are meaningless unless they are spelled out in the written restrictions, or included as graphics within the ODP itself.

Since the design concepts and lot layouts shown on the concept plans are non-binding, and since the ODP written restrictions contain little, if any, of the design guidelines that would assure their use at the platting stage, the concept plans submitted by the applicant are misleading. It is also misleading that Exhibit B shows only 130 lots in Use Area 2, even though the ODP would allow 150 lots. The concept plans should not misrepresent the development potential under the ODP.

Additionally, the “Conceptual Lotting Plan” does not appear (from the 8-1/2 x 11” version provided) to show any lot lines and is not consistent with the plan discussed in Paragraph No. 6 above and shown as Attachment D.

8. The proposed ODP does not contain sufficient written restrictions addressing this unique property.

The Jefferson County Zoning Resolution requires that rezoning applications for PD zoning include specific written restrictions addressing “issues unique to the property” being rezoned (see Zoning Resolution, Section 1, page 6, item 15). The ODP does not adequately address the unique issues of the land proposed for rezoning, a recognized gateway to the Rockies

containing exceptional topography, vegetation and geology. Although the SJCCP lists the issues unique to Use Areas 1 and 2, there is no indication that these unique attributes were actually considered or incorporated in the formulation of the proposed ODP.

9. The Final SJCCP adopted by the Planning Commission on March 14, 2007 contains at least two substantive changes from the Interim SJCCP adopted August 24, 2005.

The cover page of the Interim SJCCP (adopted by the Planning Commission on August 24, 2007) specifies the following:

“The Interim Plan will be edited for grammar, punctuation and clarification, ***with no change to Plan content***, presented to the Planning Commission with the request for adoption as a Final Plan, then published.” (Note: the bold and italic type is what appears on the cover page, stressing the importance of restricting any significant changes)

Additionally, one of the “Whereas” clauses included in the Planning Commission resolution adopting the Final SJCCP reads:

“**WHEREAS**, the INTERIM plan has been revised for final publication and only minor editorial changes have been incorporated to produce the FINAL South Jefferson County Community Plan;”

We believe that two substantive changes were made from the time between the adoption of the Interim SJCCP and the Final SJCCP:

- a) The boundary line between Subarea A West and Subarea A East was shifted as much as 500 feet to the east, thereby increasing the density and number of lots in Subarea A West. Documentation of this shift and the consequences it has on SJCCP-recommended densities is detailed in Attachment E. HCC believes that this shift in the boundary line was a substantive change not authorized by the language in the Interim SJCCP, and HCC understands that the Planning Commission was not informed of this shift prior to its adoption of the Final SJCCP.
- b) There appears to have been a substantive change in the way lot counts are calculated – from a basis on net acreage to a basis on gross acreage. The Interim SJCCP contains the following policy (Policy B5 on p. 18) on density in Subarea A East:

“While Subarea A East is within a water and sanitation district, the minimum lot size should be 1 du/5 ac. due to the following unique features:” (emphasis added)

This language was changed in the Final SJCCP (see Policy B5 on p.14) to read:

“Subarea A East is within a water and sanitation district, and gross density should not exceed 1 du/5 ac lot, due to the following unique features:” (emphasis added)

The phrasing in the Interim Plan calls for all lots in Use Area 1 to be a minimum of 5 acres in size, and that the calculation of the number of allowable lots is based on *net* acreage, after the dedication of open space, streets and any other required dedications. For instance, if open space dedications in Use Area 1 totaled 25% of the total 210.5 acres of Use Area 1, and if street dedications amounted to another 5% of the total 210.5 acres, the *net* area used to calculate density would be 147.4 acres (210.5 acres minus 30% of the land required for dedication). To determine the number of lots allowed under SJCCP policies, this 147.4 acres would be divided by 5 acres (the minimum lot size) to yield a maximum lot count of 29 lots.

The change in phrasing in the Final SJCCP appears to change the basis for lot count calculations from *net* density to *gross* density, allowing lot calculations to be based on total land area prior to the dedication of open space and streets. Using the example above, the Final SJCCP language would seem to allow 42 lots, almost a third more lots. We consider this to be a substantive, though perhaps unintended, change from the Interim SJCCP.

10. The cover letter attached to the proposed ODP refers to the entitlements of the present PD zoning for the campus in Use Area 2, suggesting that the proposed ODP will constitute a major down-zoning of the area.

HCC has determined that the realistic development potential of the campus site under the PD is far below what is allowed, and that the limited development potential is probably why the campus was abandoned and remains undeveloped.

The biggest zoning-imposed limitation of the PD zoning for this site concerns parking. The PD is limited to only five acres of parking, and the PD requires a parking ratio of one parking space for each enrolled student. A planning standard of 350 square feet of land area should be used for each parking space, which includes not only the striped space, but a portion of the drive aisles to access it. Using this standard, five acres of surface parking would accommodate only 662 parking spaces. Although structured or underground parking would accommodate more spaces, structured parking can cost five times as much per space as surface parking, and underground can cost twice as much as structured parking. So while the PD allowances make the present PD zoning sound quite intimidating, the PD limitations, together with the realities of providing costly parking, seriously limit the desirability of developing the site as a campus.

11. Exhibit A of the colored attachments to the ODP, labeled "Current Entitlements" shows residential development potential under the SJCCP, not under the existing zoning.

Exhibit A is misleading, because the "current entitlements" of the site should be what the current zoning allows, not what the SJCCP would allow. Exhibit A claims that 35 lots are allowed under current entitlements, when, in fact, fewer than 21 lots would be allowed under the current A-2 zoning (the A-2 zoning allows 1 du/10 acres). Similarly, Exhibit A shows that 20 lots would be allowed under the residential portion of Use Area 2, when, in fact, only 2 lots would be allowed under the current A-2 zoning.


12. The applicant has apparently failed to comply with Section 1, K, L and M of the Jefferson County Zoning Resolution.

Applicant was granted a total of six extensions between June 30, 2006 and July 26, 2007, each based on a written request from the applicant, in apparent violation of sections 1.M.3.g and 1.M.3.k of the Zoning Resolution which provide that after the initial 60 day period applicant may request an (indicating one) extension, and that the deadline may be extended only if the delay in response is beyond the applicant's control. Accordingly, the applicant's multiple extension requests, which did not include a statement of circumstances beyond the applicant's control, were simply not authorized under Jefferson County's Zoning Resolution, and the application should therefore be considered withdrawn.

Based on the foregoing, HCC respectfully requests that you deny the rezoning request. Thank you for your consideration.

Yours truly,

SELLS & ASSOCIATES, LLC
a Colorado limited liability company

By: 
Edward C. Sells

cc: Willow Springs Property Owners Association, Inc. (Filing 1 & 2)
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Attachments:

- Attachment A: Comparisons between the Existing Zoning, the South Jefferson County Community Plan and the Proposed Lyons Ridge ODP dated 1/22/08
- Attachment B: Analysis of Major Inconsistencies between the Lyons Ridge ODP (1/22/08) and the South Jefferson County Community Plan (SJCCP)
- Attachment C: Analysis of Plan Exception Criteria and Failure of ODP to Satisfy Plan Exception Criteria
- Attachment D: Enlargement of Lot Layout Plan Attached to 1/22/08 ODP
- Attachment E: Analysis of Land Use Boundary Shift