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From: **Rescue Deervalley** <[rescuedeervalley@gmail.com](mailto:rescuedeervalley@gmail.com)>

Date: Thu, Sep 11, 2025 at 10:11 PM

Subject: Rescue Deer Valley County Guidance Response to Native Directions' Legal Argument for Sept 16 Closed Session

To: <[bosfour@edcgov.us](mailto:bosfour@edcgov.us)>, David A Livingston <[david.livingston@edcgov.us](mailto:david.livingston@edcgov.us)>

Cc: <[Karen.L.Garner@edcgov.us](mailto:Karen.L.Garner@edcgov.us)>, <[edc.cob@edcgov.us](mailto:edc.cob@edcgov.us)>

From: Rescue Deer Valley

To: Supervisor Parlin, David Livingston

CC: EDC BOS, Karen Garner

RE: September 16 Closed Session

### **Opening Statement:**

The Rescue Deer Valley community group (RDV) is composed of hundreds of local residents who live daily with the conditions these projects would directly affect. We respectfully remind the Board of Supervisors that the community has already placed on record, through extensive public testimony at the January 30, 2024 hearing and in our June 4, 2024 letter, many serious safety, environmental, and community concerns raised by the proposed Native Directions projects off Deer Valley Road. These include wildfire evacuation risks, road safety and traffic hazards, incompatibility with rural residential zoning, strain on limited infrastructure, and the broader impacts on community character and environmental resources.

These concerns are not hypothetical or speculative; they are fundamental issues of public health and safety that this Board has a duty to consider. They cannot be brushed aside merely because a developer chose to pursue a low-cost parcel of land without regard to its suitability for such a facility.

The law is clear that local governments retain the authority and responsibility to ensure developments meet zoning standards, safety codes, and community welfare protections before proceeding. That obligation is especially critical in high-fire-risk areas like the parcels in Rescue, where lives and livelihoods are at stake.

We urge the Board to reaffirm its prior position: this project, as proposed, does not qualify for ministerial approval or statutory exemption, and must undergo full CEQA review and permitting scrutiny to ensure the safety and well-being of both program participants and the surrounding community. We strongly believe that independent review will demonstrate clearly that these parcels are NOT suitable for these proposed projects.

RDV would like to submit the following **draft points for EDC consideration** when responding to this legal threat from Native Directions/HomeCA/6beds.ORG:

### **1. Statutory Framework (BHCIP) Supports County Oversight/Approval**

California Welfare & Institutions Code (WIC) § 5960.3 establishes that Behavioral Health Continuum Infrastructure Program (BHCIP) projects may qualify for streamlined approvals and a CEQA exemption, but only if all statutory conditions are met. These conditions include:

- A support letter or durable proof from a local public entity (§ 5960.3(b)(5));
- No expansion of the project's development footprint (§ 5960.3(b)(9));
- Compliance with prevailing wage and other labor standards (§ 5960.3(b)(4));
- Public financing and long-term use covenants (§ 5960.3(b)(6)-(8)); and
- The concurrence of the CEQA lead agency that the exemption applies (§ 5960.3(c)).

If any of these requirements are not satisfied, the project cannot rely on the statutory exemption and must undergo standard CEQA review.

### **2. Local Support Requirement Required**

Subdivision (b)(5) is explicit: a project involving new construction, rehabilitation, or major alterations must obtain a letter of support or equivalent durable proof from the relevant local government. Without that letter, the exemption fails.

Courts and County Counsel have consistently interpreted this provision to mean a county's refusal to issue a support letter prevents a project from claiming CEQA immunity.

### **3. County Authority Under CEQA (BHCIP) A Legal Prerequisite**

WIC § 5960.3(c) requires the CEQA lead agency (here, El Dorado County) to publicly concur that a project is exempt before a Notice of Exemption may be filed. This makes the County's concurrence a legal prerequisite. Absent concurrence, the exemption does not apply, and normal CEQA procedures control.

### **4. State Agencies Have Confirmed Local Authority (BHCIP, CCE)**

In a February 15, 2024 joint letter to Senator Marie Alvarado-Gil, the Directors of DHCS and CDSS reaffirmed counties' role in overseeing BHCIP and CCE projects. They wrote:

*"For BHCIP and CCE projects to progress, awardees are required to work within their local jurisdiction to obtain necessary permits through local Planning and Building Departments and meet relevant zoning requirements to ensure programmatic and local requirements are met. This includes ensuring construction work complies with the minimum standards of safety, and protecting public and program participant health, safety, and welfare."*

This official confirmation directly rebuts any claim that BHCIP funding compels automatic project approval or eliminates local oversight. It confirms El Dorado County retains authority — and responsibility — to ensure compliance with zoning, permitting, fire safety, and community welfare standards.

### **5. County Findings Regarding CCE (§ 18999.97(l)) Projects**

While CCE-funded projects are deemed by statute to be "ministerial" and exempt from CEQA, the County's permitting authority remains intact:

- **Ministerial Is Not "No Permits"**
  - CEQA Guidelines § 15268 makes ministerial projects exempt from CEQA, but they still require ministerial permits. Counties must apply objective standards in building, fire, grading, and health codes before issuing approvals. These codes exist primarily to protect life and property.
- **Scope of Zoning Consistency**
  - § 18999.97(l) removes discretionary zoning barriers (like CUP denials based on subjective compatibility) but does **not** eliminate objective zoning and safety standards (e.g., fire safety, height limits, water and septic capacity, evacuation routes).
  - Enforcing these objective standards is part of the County's duty to safeguard both program participants and surrounding residents.
- **Continuing Police Power**
  - Under California's Constitution (Art. XI, § 7), counties have broad "police power" to regulate land use and construction for public health and safety. Nothing in § 18999.97(l) preempts this authority. Courts presume against preemption absent explicit statutory language.
- **State Agency Confirmation**
  - DHCS/CDSS explicitly confirmed in their February 15, 2024 letter that: *"For BHCIP and CCE projects to progress, awardees are required to work within their local jurisdiction to obtain necessary permits ... includ[ing] ensuring construction work complies with the minimum standards of safety, and protecting public and program participant health, safety, and welfare."*
  - This official guidance is clear that counties remain responsible for ensuring public safety through permitting, zoning compliance, and building oversight.
- The County's obligation to protect public safety cannot be waived by statute, grant, or developer demand as it is a core responsibility that remains fully intact under California law.

### **6. Proposed County Response to this Legal Threat**

The statute, case law, and official state agency guidance align: BHCIP and CCE funding do not override local control or environmental review when statutory prerequisites are unmet and there is significant risk to public safety. El Dorado County has both the authority and the duty to require CEQA compliance, zoning conformity, and building safety assurances before any project may advance.

### **RDV Conclusion:**

At the end of the day, this issue is not complicated. The Rescue parcels selected for these projects simply do not fit the scale and intensity of the facilities being proposed. These are rural residential lots with significant constraints that have been pointed out many times prior: wildfire evacuation limits, narrow road access, water and septic limitations, and surrounding neighborhoods that were never designed to absorb commercial-scale institutions. The proposed density would create serious risks to public safety and to the very patients these facilities are supposed to serve. That reality cannot be ignored or papered over with legal arguments.

Equally troubling, the developers pursued these projects without transparency, sidestepping open dialogue with the community most directly affected. No amount of procedural maneuvering erases the County's responsibility to the community. Facilities must be built safely, in locations that match patient needs and align with the community's infrastructure and capacity to support them.

Our Sheriff, the Rescue Fire Chief and our local tribe have all voiced strong opposition to these developments. Mr. Livingston asked all the right questions last June, which remain unanswered. The residents who live here every day, who must evacuate in a wildfire, who drive these roads, and who rely on limited local services, are asking you to stand firm. These parcels are the wrong place for projects of this size and nature.

Sincerely,  
Rescue Deer Valley community group