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May 14, 2018

VIA EMAIL

William Witt, Esq., Sr. Deputy County Counsel
Office of County Counsel
County of San Diego
County Administration Center
1600 Pacific Highway, Room 355
San Diego, CA 92101
Email: william.witt@sdcounty.ca.gov

Re: Enforcement of County Contracting Requirements for Newland Sierra Project

Dear Mr. Witt:

I am writing on behalf of my client Golden Door Properties LLC (“Golden Door”) regarding what appears to be the use of unauthorized/unapproved consultants for the Newland Sierra Project environmental impact report (“EIR”). We understand that you may be handling legal matters regarding the County staff’s processing of the developer’s application for the Newland project. This letter concerns Newland’s compliance with the County of San Diego’s CEQA contracting rules, as set forth in the County’s officially approved CEQA Guidelines. I am writing to you to request that processing of this project halt until this matter is resolved. (If you are not the County Counsel responsible for this type of matter, please forward this letter to the individual in your office who would be responsible for handling this matter.)¹

The County of San Diego CEQA Guidelines² state clearly that consultants used to author technical studies in support of EIRs for projects within the County’s jurisdiction must be pre-approved through inclusion on the County’s “CEQA Consultants List for Privately Initiated

¹ I have also cc’d your client to this letter in case your office is not the appropriate office to initially handle this matter.

² Available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CEQAGDLN.pdf> (“All technical studies and environmental impact reports (EIRs) for privately initiated projects not prepared by staff shall be prepared by a consultant on the County of San Diego CEQA Consultant List for Privately Initiated Projects, to be further known as the ‘CEQA Consultant List.’”).

Projects,”³ unless the retention of such consultants have been secured “through the standard County procurement processes.”

These approved consultant list requirements have been included in the County’s CEQA Guidelines to assure that the consultants retained are objective, qualified, and retained by the County using fairly applied and standard consultant contract terms in any agreement with the County.⁴ The contracting rules and procedure set forth in the County’s CEQA Guidelines ensure that County has examined the record of performance, professional qualifications, and specialized experience, among other things, of potential consultants, that staff have access to all the relevant consultant documents and work product, and as a result the public is given access to these same documents through the Public Records Act. Failure to hire the approved consultants on the list, with the approved standard form contracts, frustrates the public’s interest in objectivity and transparency in work on public documents.

We also note that there has been recently a considerable amount of controversy regarding what appears to be the County’s plan to “bundle” or “batch” several General Plan amendment applications this summer in order to avoid new potential Supervisors and/or potential voter initiatives that may be chosen by the voters this fall.⁵ The County’s unprecedented rush to approve these projects has required short-circuiting either or both of the County’s traditional planning practices (such as meaningful involvement and consultation of community sponsor groups) and the County’s clearly expressed legal requirements (such as the CEQA contracting requirements discussed herein). We suspect, therefore, that the County may be engaged in an improper pattern and practice of allowing EIR technical studies to be authored by unauthorized and unvetted consultants. Can you confirm that no other project that may be scheduled to go before the Planning Commission or the Board of Supervisors this summer or fall has used, in the project draft or final EIR, consultants not listed on the County’s approved CEQA consultant list?

Upon our review of the Newland draft EIR and the County’s disclosure so far of documents in relation to a request under the Public Records Act, it seems clear that the Newland draft EIR has violated the clear requirements of the County’s CEQA Guidelines.

³ Available at

<https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/docs/CeqaConsultantsList.pdf>.

⁴ See, e.g., County of San Diego CEQA Guidelines, at A-6–A-7 (“Consultants may be removed from the CEQA Consultant List at any time for any of the following reasons: ... Quality of judgment, i.e., objective and scientific, regarding determination of environmental significance of impacts.”), & Attachment B (Form Memorandum of Understanding Environmental Impact Report / Technical Study Preparation).

⁵ See, e.g., J. Harry Jones, *Provision allowing county to expedite housing projects draws ire* *Provision allowing county to expedite housing projects draws ire*, S.D. UNION TRIB. (May 12, 2018), available at <http://www.sandiegouniontribune.com/business/growth-development/sd-no-development-bundle-20180504-story.html>.

In particular, we noted that the following technical studies offered in support of the Newland EIR do not have authors that appear on the County’s “CEQA Consultants List for Privately Initiated Projects”:

Name	Firm	Topic Area	EIR Reference
Unspecified	Ecology Artisans	Agricultural Resources	Appendix GG, Newland Sierra Agricultural Alternative Report
Robert Stroh	Leighton & Associates	Groundwater	Appendix J-4, Groundwater Resources, Newland Sierra, San Diego County, California
Unspecified	Fusco Engineering	Transportation & Traffic	Appendix HH, Newland Sierra Parkway Feasibility Study, Evaluation of Alternatives to Widening of Deer Springs Road
Katy Cole, Greg O’Donnell, and Ronald T. Milam	Fehr & Peers	Transportation & Traffic	Appendix R-2, Newland Sierra VMT Analysis to Respond to SB 743
Katy Cole, Ryan Caldera	Fehr & Peers	Transportation & Traffic	Appendix R-3, Newland Sierra TDM Program - VMT Reduction Evaluation

Though we received some CEQA contracts in response to our October 10, 2017 request under the Public Records Act, we noted that there were no contracts disclosed in regards to the consultants listed above.⁶

⁶ On October 10, 2017, my firm requested under the Public Records Act “Any and all documents submitted to the County pursuant to the aforementioned contracts or agreements,” among other categories of documents. On October 20, this was subsequently confirmed to the County as including “all documents and communications in the County’s possession provided by such third party to the County, provided by the County to that third party, or otherwise shared between the County and that third party pertaining to the Newland Sierra Project’s environmental review.” After receiving a relatively limited disclosure of documents in October and November 2017, I inquired as to the completeness of the County’s disclosure in an email letter to the County on April 10, 2018. I have yet to receive a substantive response to my April inquiry other than that a response is forthcoming, and so I assume that the County does not have any additional contracts responsive to the October 10th request. To be clear, we still consider the County’s disclosure in response to the October 10 request to have been inadequate and still await the County’s further response or disclosure. Finally, as you know, we prefer to raise our client’s concerns as early as possible in the process. It seems that sufficient time has passed, given our multiple requests under the Public Records Act, to presume that the County does not have evidence that the unauthorized consultants noted herein were properly retained pursuant to the County’s CEQA Guidelines (i.e., through inclusion on the approved list or retention “through the standard County procurement processes.”)

Because the County's CEQA Guidelines clearly require the use of specifically authorized consultants for these issue areas, the Newland EIR may not incorporate these technical studies and cannot proceed in its current form. Fortunately, we believe that the County has options that may resolve this problem, going forward:

Option 1: Halt processing of the Newland project until the County amends its approved CEQA consultants list to include the consultants listed above and each of the consultants noted above execute the standard contract as described in the County's CEQA Guidelines. Upon execution of any new contract, the consultant should review, revise, and update his/her work on the Newland project following the requirements of the County's contracting rules, as well as provide access to all his/her documents used for this work product to County staff as required by that contract. The revised and updated work should be made available to the public, as well as the documents made available to County staff, prior to any action on the Newland project by the Planning Commission.

Option 2: Halt processing of the Newland project, delete the technical studies noted above from the Newland EIR, provide Newland the opportunity to provide whatever analysis County staff believes is necessary to replace the deleted technical studies but using approved CEQA consultants, and recirculate the draft EIR for a new round of public review and comment pursuant to the CEQA Guidelines.

We believe that further processing and/or certification of the Newland EIR using these unauthorized consultants violates the County's clear CEQA consulting contracting rules. We hope that the County will remedy this serious error by halting processing the Newland project until the Newland EIR comes into compliance, either by amending the approved consultants list or by re-doing the affected technical studies and EIR analysis using approved consultants.

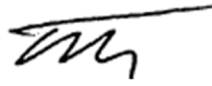
We would appreciate a response to this letter by May 23, 2018, so we can determine how best to proceed. If we do not hear from you by then, we will assume that the County intends to take no action and will proceed with processing the Newland EIR using these unauthorized consultants and technical studies, and we will proceed accordingly, which may include seeking judicial intervention for enforcement of its CEQA contracting rules.⁷

Please include this comment letter in the administrative record for the project, and thank you for your time and attention to this matter.

⁷ Judicial intervention is warranted presently, since the Newland EIR has been released using unauthorized consultants, i.e., in violation of the County's CEQA Guidelines. Therefore, waiting to challenge the Newland EIR on this basis only after the County has rendered its decision on the project is not an adequate remedy. As the case law demonstrates, a local government's CEQA Guidelines are enforceable. (See, e.g., *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1474-75; *Kennedy v. City of Hayward* (1980) 105 Cal.App.3d 953, 960 & fn.10; *AAGLA v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1173; *California Bldg. Indus. Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2016) 2 Cal.App.5th 1067, 1088; see also *Golden Door Properties, LLC v. County of San Diego* (37-2016-00037402, Apr. 28, 2017) Superior Court San Diego, Minute Order, at p. 8.)

LATHAM & WATKINS^{LLP}

Very truly yours,



Taiga Takahashi
of LATHAM & WATKINS LLP

cc: Mark Wardlaw, County of San Diego PDS
Darin Neufeld, County of San Diego PDS
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