

12670 High Bluff Drive
San Diego, California 92130
Tel: +1.858.523.5400 Fax: +1.858.523.5450
www.lw.com

LATHAM & WATKINS LLP

September 25, 2017

Maggie Soffel
Land Use/Environmental Planner
5510 Overland Avenue, Suite 310
San Diego, CA 92123

FIRM / AFFILIATE OFFICES

Barcelona	Moscow
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	Rome
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

Re: San Diego County Draft Climate Action Plan

Dear Ms. Soffel:

We represent the Golden Door Properties LLC (the “Golden Door”), an award-winning spa and resort that opened in 1958. This historic haven is situated on approximately 600 acres on the south side of Deer Springs Road in northern San Diego County (“North County”). It was the highest rated establishment in *Travel and Leisure*’s recent list of world’s best destination spas. Its property encompasses a peaceful array of hiking trails, luxurious spa amenities, tranquil Japanese gardens, and a bamboo forest. Agricultural cultivation on the property includes avocado groves and fresh vegetable gardens as well as citrus and olive trees.

The Golden Door is committed to environmental stewardship and sustainability. It uses sustainable and bio-intensive agriculture practices and has eliminated guests’ use of plastic water bottles. The owners are not seeking to expand the Golden Door, but are seeking to further enhance the Golden Door according to guiding principles, including the extensive sustainable agriculture on the surrounding acres. Reducing greenhouse gas (“GHG”) emissions to combat the threat of global climate change is an important issue for the Golden Door.

As such, we appreciate the opportunity to participate in the Climate Action Plan (“CAP”) process and provide input on the County’s efforts to reduce GHG emissions. The Golden Door is particularly concerned about GHG emissions from the proposed Newland “Sierra” Project (the “Newland Project”), a revised Merriam Mountains project on property located near Deer Springs Road. The Newland Project would implement urban residential density in a rural area of the unincorporated County, far from job and urban centers and from transit infrastructure. This unplanned development would contradict modern planning principles and the County’s General Plan and would result in long single-occupant vehicle trips causing significant GHG emissions in contrast to the County’s stated goal in the CAP. We submit the following comments on the draft CAP and draft Supplemental Environmental Impact Report (“DSEIR”).

I. THE COUNTY SHOULD HALT PROCESSING PROJECTS UNTIL THE CAP IS COMPLETED

As an initial matter, the County should cease processing and approving projects until the CAP is completed. While the CAP provides avenues for General Plan Amendments not already considered within the CAP and considers pending projects within its cumulative impacts analysis, the CAP is in draft form and is subject to revisions following the public comment process.

In particular, the County should refrain from processing the Newland Project prior to the adoption of the CAP, as doing so may result in impermissible tiering. We are concerned that the Newland Project may be attempting to tier off the CAP prior to its approval. An environmental impact report (“EIR”) may not tier off of an incomplete or future environmental document. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 440.) Newland’s proposed “net zero” mitigation measures—in its draft EIR published in June—do not meet the requirements of the CAP’s offset mitigation measures as currently drafted. Further, the CAP’s offset measures may be revised to provide stronger environmental protection prior to approval. As such, the Newland Project should not be allowed to tier off of the unapproved CAP, and the County should refrain from processing the Newland Project until the CAP is completed.

The Newland Project purports to be “net zero” but does not provide adequate assurances that its offsets will actually achieve the required emissions reductions. The Golden Door provided more fulsome comments on the Newland Project’s draft EIR and its various deficiencies in its August 14, 2017 comment letter on the Newland Project’s draft EIR.

In particular, the CAP’s offset mitigation measures provides geographic priorities for GHG offset projects, beginning with: “1) project design features/on-site reduction measures; 2) off-site within the unincorporated areas of the County of San Diego; 3) off-site within the County of San Diego; 4) off-site within the State of California; 5) off-site within the United States; and 6) off-site internationally.” (DSEIR at p. 2.7-37.) The Newland draft EIR provides a list of priorities for projects, including a “true up” provision for its operational GHG emissions offset requirement. The Newland EIR’s “true up” provision allows the County’s Planning & Development Services (“PDS”) Director to, after Project approval and without additional public input, decrease the volume of operational emissions that Newland is required to offset. This “true up” provision renders the Newland Project’s offset mitigation measure illusory.

In contrast, the CAP does not contain any such illusory “true up” provision. The Newland Project should not be allowed to bypass more stringent offset requirements in the CAP simply by being approved prior to the adoption of the CAP. Such an approach would be improper here, where the CAP is required mitigation for the County’s General Plan EIR from 2011. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445 [mitigation measures must be implemented, not “merely adopted and then neglected or disregarded”].) Sprawl projects, such as the Newland Project, that cause significant GHG emissions from long automobile trips in contrast to modern planning principles, should not be allowed to bypass any GHG reduction measures in the CAP simply by seeking approval

subsequent to the time in which the County set the requirement for the CAP but prior to actual approval almost seven years later.

The offset requirements and assurances in the CAP provide more certainty of achieving GHG emissions reductions than in Newland's flawed "net zero" approach. Thus, the County should abstain from processing the Newland Project until the CAP is completed.

II. GHG REDUCTIONS SHOULD BE PRIORITIZED WITHIN THE COUNTY

The County's General Plan prioritizes GHG emissions reductions within San Diego County. In 2011, following approximately ten years of substantial input from numerous stakeholders and citizen groups, the County approved an update to its General Plan. (San Diego County General Plan at pp. 1-2.) In the EIR for the General Plan, the County concluded that the GHG and climate change impacts from the County's operations and from community sources were "potentially significant"—that without mitigation the County would fail to comply with AB 32, which requires the State to lower its GHG emissions to 1990 levels by 2020. As a result, the General Plan EIR included mitigation measures for GHG and climate change impacts, including the adoption of a CAP. (San Diego County General Plan, Mitigation Measure CC-1.2.) The CAP, therefore, was intended to mitigate impacts from GHG emissions *within San Diego County*. In addition, Goal COS-20 of the General Plan prioritizes "[r]eduction of *local* GHG emissions contributing to climate change that meet or exceed requirements of the Global Warming Solutions Act of 2006." (Emphasis added.)

The CAP provides the following 2020 and 2030 adjusted reduction targets and 2050 goal for emissions *in the County*: two percent below 2014 levels by 2020; 40% below 2014 levels by 2030; and 77 percent below 2014 levels by 2050. (CAP at 2-11.) "[T]o meet the 2030 target and 2050 goal, the County will need to achieve a reduction of 897,237 MTCO_{2e} by 2030 and 2,253,066 MTCO_{2e} by 2050 beyond legislative-adjusted projections. To close the emissions gap shown in Figure 2.3, this CAP proposes 11 strategies and 29 measures that the County would implement to reduce GHG emissions." (CAP at 2-14.)

The State of California has set an example for all other jurisdictions by making bold commitments to reduce greenhouse gas emissions. The County has explicitly made commitments to reduce emissions in the County consistent with its share of reductions needed for the State to achieve its goals. However, we note that the County has not demonstrated substantial evidence to support the availability of offsets within the County. While the language in the CAP states that the County will fund and implement investment projects, there is no evidence or assurance to suggest that the County is making the investment. Allowing payment for offsets to occur outside of the County is akin to the medieval payment for indulgences. A one-time payment should not absolve emitters for their GHG emissions that occur within the County. The County made a promise to reduce emissions within the County; it should uphold that promise for the benefit of its residents who expect a local reduction in GHGs and copollutants based on the County's plans. There must be some assurance that offset projects will occur within the project site or the County. While we understand each project is unique, the County should incorporate a standard into its offset priorities to promote GHG reductions within the County; otherwise project proponents may be incentivized to devote all or almost all of the

resources to offsets occurring outside of the County. The County should consider at least the following methods for ensuring a certain level of offsets occur within the County in addition to any others that would promote offsets within the County:

- A bright-line percentage requirement for offsets to occur within San Diego County, or if this is deemed infeasible, a proportionate dollar amount or fee paid to facilitate GHG emissions reductions within the County;
- A bonus structure similar to a density bonus approach, that allows greater use of offsets for projects located in infill areas or close to existing transit;
- A more regimented set of findings describing the infeasibility of on-site offsets or offsets within the County that the County must make for a proposed project before it is allowed to use offsets outside of the County;
- A requirement that each project must specifically identify available offsets that the project will use within the County prior to approval; or
- A requirement that each project must meet a defined, impartial criteria, such as LEED Platinum.

III. THE CAP MUST PROVIDE ASSURANCES FOR OFFSETS

Regardless of where offsets occur, the County must provide assurances that the offset projects will achieve their projected reductions. The CAP provides, “[a]fter adoption, the CAP will continue to be maintained by the County Department of Planning & Development Services (PDS). Key staff in PDS, with active participation and assistance from the Sustainability Task Force, will facilitate and oversee implementation, monitoring, and reporting on the progress of each measure.” (CAP at 5-2.) It is unclear if such monitoring extends to the offsets, or how the County staff will be able to monitor offset projects that may occur on the other side of the world. In addition, it is unclear if the County has any mechanism to enforce offsets in other jurisdictions; therefore, it is unclear if the mitigation is actually enforceable. The CAP should provide detailed information on how the County will ensure monitoring and reporting of the mitigation projects funded by offsets, as mere funding by itself does not equate to mitigation. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.)

Moreover, the CAP should ensure that the County is able to meet its 2050 emissions reduction goals that extend to 2050. (CAP at 1-2.) While the CAP maintains that it “demonstrates how the County will achieve GHG emissions targets for 2020 and 2030, and demonstrate progress to 2050,” (CAP at 1-13) it is unclear how the 2050 target will be met if General Plan Amendments approved in the near future only provide mitigation assurances to 2048 (assuming approval of the CAP in 2018). The Appendix B to the DSEIR provides:

Adherence to the protocols listed in this Appendix, as well as any additional protocols subject to the same standards as the protocols

herein, ensures that the carbon reductions generated by CAP Measure T-4.1 are real, permanent, quantifiable, verifiable, and enforceable. Carbon offset registries require projects to comply with approved protocols using rigorous, standardized review processes. The protocols contain rules and procedures governing the retirement or cancellation of carbon offsets. Protocols and processes ensure that offsets retired from County direct investment projects pursuant to CAP Measure T-4.1 and listed on an offset registry satisfy the environmental integrity criteria established by the offset protocols. Carbon offsets achieved through implementation of Measure T-4.1 must be complete and retired before the County can take reduction credits. A registry will ensure that carbon offsets are retired in perpetuity.

(Appendix B at p. i.)

The County should provide similar assurances for General Plan Amendments approved using offsets. The CAP prioritizes “local projects that would offset carbon emissions within the unincorporated county.” (Strategy T-4, DSEIR at p. 2.7-17.) The County must ensure General Plan Amendments are held to the same standards as the County’s own offset projects. Moreover, the County should consider whether and how to ensure mitigation for General Plan Amendment offset projects is continued beyond the 30-year out year. If there are no assurances that the offset projects will continue beyond their specified expiration date or for the full term of the County’s planning period specified in the proposed CAP then, the County is not accurately calculating what the projects’ overall GHG impacts will be for the full term of the County’s planning period specified in the CAP. If the offset projects are no longer operational after their prescribed term or potential expiration date, then the County should carefully consider whether it is still accurate for the County to assume that the GHG emissions from the offset projects can be counted as part of any project’s overall reduction in GHG emissions during the County’s full planning period specified in the CAP.

As such, the County should consider whether to provide assurances that funding for offset mitigation projects will continue, lest the County experience a significant spike in GHG emissions once the funding for offset projects has concluded and they are no longer operational. (See *Cleveland National Forest v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514 [an EIR must adequately describe the nature and magnitude of the adverse effect].) In any event, if the County is proposing to allow offset projects which expire or may no longer be enforceable before the end of the County’s planning period used in the CAP, then the potential increases when these offset project may “expire” should be counted in the County’s overall numerical calculations in the CAP including expected GHG increases due to expiring offset agreements. As the Court of Appeal stated in *Sierra Club v. County of San Diego* (2015) 231 Cal.App.4th 1152, 1170: “Quantifying GHG reduction measures is not synonymous with implementing them. Whether a measure is effective requires not just quantification, but also an assessment of the likelihood of implementation.” Likewise, if offsets counted on by the CAP as a GHG reduction measure are likely or possibly going to expire before the end of the CAP’s planning

period in 2050, or shortly thereafter, this should be disclosed to the public, since it is relevant to whether the mitigation measure will be implemented for the full planning period.

IV. GHG INVENTORY AND REDUCTION STRATEGIES

A. GHG Inventory

The CAP's business as usual projections include "[g]rowth from General Plan Amendments "GPAs" adopted since adoption of the 2011 General Plan Update are also included in the projections." (CAP at 2-7.) "The GHG emissions inventory for the CAP does not include emissions attributable to proposed GPAs that would increase density/intensity above what is allowed in the General Plan. Even though there were GPAs that were adopted between 2011 (adoption of 2011 General Plan Update) and 2014 (inventory baseline year), none of these GPAs were constructed by 2014 and; therefore, their GHG emissions are not included in the 2014 inventory. The 2014 inventory is based on emissions-generating activities that existed on the ground in 2014." (CAP at 2-14.)

The Draft SEIR's Mitigation Measure GHG-1 applies to all future General Plan Amendments, including those discussed in the cumulative impacts section. The County maintains that with the inclusion of this mitigation measure, all future GPAs will not interfere with the County's reduction targets or 2050 goal. (CAP at 2-14.) The County thus concludes that "General Plan Amendments would, therefore, comply with the threshold of significance, which is consistency with the CAP." (CAP at 2-14.) However, there is not enough information presented in the DSEIR or CAP to ascertain the veracity of this conclusion. A project-by-project breakdown of emissions from each project appears to be missing from the CAP and DSEIR.

B. Transportation Reductions

The County concludes that it "has limited options under its control for implementing transportation-based strategies," despite acknowledging that on-road transportation is the largest source of GHG emissions in the County. (CAP at 3-3.) The County should ensure future projects are located in infill locations close to existing transit, in addition to exploring additional methods of implementing transportation-based strategies to reduce the County's reliance on single-occupant vehicles. The CAP provides strategies to reduce VMTs, and notes that the General Plan provides "a framework to accommodate future development in an efficient and sustainable manner that is compatible with the character of unincorporated communities and the protection of valuable and sensitive natural resources. In accommodating growth, the County focuses on the provision of diverse housing choices while protecting the established character of existing urban and rural neighborhoods." (CAP at 3-9.)

Further, Strategy T-1 provides, "This strategy focuses on preserving open space and agricultural lands, and focusing density in the county villages. By not developing housing in the more remote areas, the county will avoid GHG emissions from transportation and energy use associated with conveyance of water and solid waste services. Reductions in Vehicle Miles Traveled (VMT) resulting from this strategy will also improve air quality through reduced

vehicle emissions and contribute to public health improvements by creating opportunities for active transportation choices.” (CAP at 3-9.)

The County should ensure such strategies are appropriately implemented in all pending and future projects. In particular, the County should not allow the Newland Project, which would add over 28,000 daily trips in an area located far from existing transit, to move forward before the CAP is approved. This contravenes the CAP’s stated strategies and risks thwarting the CAP’s comprehensive approach. If the County allows the Newland Project to progress prior to adoption of the CAP, the County enables the Newland Project to avoid the CAP’s goal of “preserving open space and agricultural lands” by developing on a parcel currently zoned for a much lower level of density—primarily RL-20—than the project currently proposes.

The CAP should also include requirements that land use decisions support smart growth development near existing infrastructure and transit and placing housing near jobs in order decrease GHG emissions from long automobile trips. One potential tool to support this approach would be to require General Plan Amendment projects to be consistent with the land use patterns used by SANDAG to general its Regional Transportation Plan and Sustainable Communities Strategy, which is intended reduce GHG emissions by linking land use and transportation planning pursuant to SB 375.

C. Acquire Open Space Conservation Land

The CAP provides:

Acquisition of land by the County under the MSCP would reduce GHG emissions through preservation of land which can otherwise be developed. GHG emissions reductions are realized from reductions in transportation, energy use, waste, and water consumption. Preservation of these lands also helps protect watersheds, improve water quality, and preserves vegetation, which provides carbon sequestration benefits. Reductions for this measure are quantified based on the reduced development potential associated with preservation of lands. Future acquisitions beyond those targeted in this measure will reduce GHG emissions in the county, the benefit of which will be reflected in the County’s biennial GHG inventory updates.

(CAP at 3-10.)

Additional details for this measure are required. For instance, how will the County calculate the reductions from this measure, but allow GPAs such as the Newland Project to move forward? Further, will the County count implementation of the North County MSCP as a potential reduction? If so, would this include a developed Newland Project? Doing so may amount to de facto project approval for the Newland Project prior to the completion of the environmental process, as the MSCP is currently in draft form. Further, the NC MSCP has not been approved and is not scheduled to go before the Board of Supervisors for a decision for

LATHAM & WATKINS LLP

several more years. The NC MSCP must also be approved by the State and Federal Wildlife Agencies before taking effect. It is improper for the CAP to take credit for emissions reductions to be achieved by a plan or program that has not been approved. (*Vineyard Area Citizens for Responsible Growth, Inc.*, *supra*, 40 Cal.4th at 440.)

We thank you for your time and attention to our comments. Please do not hesitate to contact us should you have any questions or comments.

Best regards,

Christopher W. Garrett

Christopher W. Garrett
of LATHAM & WATKINS LLP

cc: Kathy Van Ness, Golden Door
Mark Slovick, County Planning and Development Services
Ashley Smith, County Planning and Development Services
William W. Witt, Office of County Counsel
Claudia Silva, Office of County Counsel
Dan Silver, Endangered Habitats League
Stephanie Saathoff, Clay Co.
Denise Price, Clay Co.
Andrew Yancey, Latham & Watkins