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May 21, 2018

**VIA EMAIL**

Ed Pert  
Regional Manager, South Coast Region  
California Department of Fish and Wildlife  
3883 Ruffin Road  
San Diego, CA 92123

Mendel Stewart  
Field Supervisor  
United States Fish and Wildlife Service  
2177 Salk Avenue, Suite 250  
Carlsbad, California 92008

**Re: Newland Sierra Project Conflicts with General Plan Collaboration Requirements**

Dear Mr. Pert and Mr. Stewart:

As you know, we represent Golden Door Properties, LLC (“Golden Door”), a world-class resort and agricultural operation in rural Twin Oaks Valley. The Golden Door has restored farming and beekeeping on its property, including the replanting of many new trees on the property—sharing its bounty at a community Farm Stand and through retail operations. The Golden Door has raised many concerns with the County about the proposed Newland Sierra Project and the impacts of adding urban density the size of the City of Del Mar in our rural community.

As discussed in greater detail in our comment letter on the Draft EIR, the Newland Sierra Project site is located on an important core habitat area that provides for regional linkage. It is located within pre-approved mitigation area (“PAMA”) land in the Draft North County Multiple Species Conservation Program (“NC MSCP” or “Plan”) and surrounded by PAMA on all sides. (See **Attachment A** [PAMA map].) The Project Site is the second largest block of contiguous natural habitat west of I-15 in PAMA. The draft NC MSCP habitat evaluation model indicates habitat on and adjacent to the Project Site is moderate, high, and very high quality habitat. The Newland Sierra Project threatens to fragment important core habitat area and sever regional wildlife connections.

We are concerned that the County has violated its own General Plan requirements to consult with federal and state agencies, such as yours, regarding the project’s potential environmental impacts in connection with its analysis of the Newland Sierra Project. San Diego

County General Plan Policy COS-1.4 requires collaboration with adjacent federal and state agencies, providing in full:

Collaborate with other jurisdictions and trustee agencies to achieve well-defined common resource preservation and management goals.

Therefore, the County was clearly required to collaborate with the California Department of Fish and Wildlife (“CDFW”) and the United States Fish and Wildlife Service (“FWS”).

The Draft EIR for the Newland Sierra Project indicates the County has failed to satisfy this requirement because it concludes that the policy is “not applicable,” as the “project applicant supports the County’s collaboration with other jurisdictions and trustee agencies.” (Draft EIR, Appendix DD, p. DD-16.) As an initial matter, it is a faulty conclusion to determine that Policy COS-1.4 does not apply to the Project because it only applies to the County. Ultimately, the County is responsible for the content of the EIR. (See *Friends of La Vina v. Cty. of Los Angeles*, 232 Cal.App.3d 1446; see also Pub. Res. Code § 21082.1, [“[A] draft EIR shall be prepared directly by, or under contract to, a public agency” and “draft documents” must reflect the independent judgment of the County.]; CEQA Guidelines § 15084(c) [agency required to “subject the draft to the agency’s own review and analysis.”].) Therefore, the County must abide by its General Plan, inclusive of Policy COS-1.4, in its analysis of the Newland Sierra Project and collaborate with your agencies.

In addition, the Draft EIR claims that the project applicant and the County have “coordinated and consulted” with the wildlife agencies. But, while meetings may have occurred, there is no evidence that the Project design has been altered to accommodate agency comments or that the County and Project applicant have reached an agreement with the agencies. Caselaw is clear that mere consultation does not amount to “collaboration.” In *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, the court determined that the project was inconsistent with the city’s general plan’s policy requiring “consultation” and “coordination” with the state and federal wildlife agencies. There, the court noted that the city approved the project despite FWS’ “repeated objections that the proposed biological resource mitigation measures were inadequate,” analyzing the definitions of “coordinate” and “consultation” to determine that coordination requires more than just mere solicitation and consideration of input:

[W]e believe that even under this definition the concept of “coordination” means more than trying to work together with someone else . . .

Although the City suggests “coordination” is synonymous with “consultation”—and therefore the City satisfied its “coordination” obligation under the general plan at the same time it satisfied its “consultation” obligation under the plan—that is not true. While the City could “consult” with the Service by soliciting and considering the Service’s comments on the draft EIR, the City

could not “coordinate” with the Service by simply doing those things. The City may be correct in asserting that “[c]onsultation is not a synonym for ‘agreement,’” but Action NR.1.7.1 required more than “consultation” with the Service; it required “coordination,” and by definition “coordination” implies some measure of cooperation that is not achieved merely by asking for and considering input or trying to work together. Had the City intended the obligation under Action NR.1.7.1 to be one of mere “consultation,” it could have used that word, as it did in Action NR.1.1.3. The fact that it did not do so supports the conclusion that the City intended “coordination” to have a different meaning than “consultation,” consistent with the dictionary definitions of those words.

That the word “coordination,” as used in the City’s general plan, implies a measure of cooperation is apparent not only from the dictionary definition of the word, but also from the context in which the word is used in the plan.

(*Id.*, pp. 640-41.)

Here, General Plan Policy COS-1.4 requires the County to “collaborate,” with CDFW and FWS for resource preservation. Similar to “consult” in *California Native Plant Society v. City of Rancho Cordova*, “collaborate” carries with it a heavier burden than mere discussion with the agencies. CDFW and FWS levied serious concerns regarding the Newland Sierra Project’s potential wildlife impacts due to the important biological resources in the Project’s footprint, and proposed alternatives aimed at preserving wildlife corridors. Rather than take these comments seriously and engage with the agency in order to reach a mutually beneficial outcome, the Draft EIR designed alternatives based on the agency comments in a manner fundamentally designed to fail.

For example, the DEIR concludes that these alternatives would have increased land use planning impacts (DEIR at pp. 4-68, 4-77, 4-85, Table 4-1), whereas the Draft EIR concludes that the Project itself would have no such impacts. As discussed in the Golden Door’s comment letter on the Draft EIR, this is not the case. In addition, the Draft EIR failed to analyze easy solutions to the perceived issues with the agency alternatives, which could have been easily remedied through engagement with the agencies. For instance, the Draft EIR concludes that these alternatives would have an increased hazards impact due to the delay in fire services, but failed to analyze placing a fire station on the Project site to reduce the impact to a less than significant level.

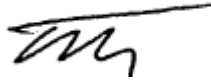
Despite concluding that the Wildlife Agency Alternatives would reduce the impacts to biological resources, the Draft EIR rejects the alternatives. This does not amount to “collaboration” with the agencies to ensure the County’s resource preservation goals are met, but rather a cursory dismissal of valid agency concerns. As such, the Newland Sierra Project is inconsistent with the County’s General Plan requirements to collaborate with the wildlife

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agencies. The agencies should ensure that the County does not abrogate its collaboration requirement in order to protect the important biological resources within the Project site.

We thank you for your time and attention to our comments. Should you have any questions, please do not hesitate to contact me at 858.523.5400.

Best regards,




Taiga Takahashi  
of LATHAM & WATKINS LLP


cc: Karen Goebel, U.S. Fish & Wildlife Service  
Doreen Stadtlander, U.S. Fish & Wildlife Service  
County Board of Supervisors  
County Planning Commission  
Darin Neufeld, County Planning and Development Services  
Mark Slovick, County Planning and Development Services  
William W. Witt, Office of County Counsel  
Claudia Silva, Office of County Counsel  
Dan Silver, Endangered Habitats League  
George Courser, Sierra Club  
Duncan McFetridge, Cleveland National Forest Foundation  
Stephanie Saathoff, Clay Co.  
Denise Price, Clay Co.  
Kathy Van Ness, Golden Door Spa


# **ATTACHMENT A**




Draft North County MSCP PAMA Map  
and Resource Conservation Areas  
Newland Sierra Project


 Newland Sierra Project Boundary


 Newland Sierra Project Impacts


 Municipal Boundary


 Resource Conservation Areas<sup>1</sup>

**Draft North County MSCP**

 PAMA in the NCMSCP

 Not PAMA in the NCMSCP

 Preserve Areas in the NCMSCP

 Special Districts

<sup>1</sup> North County Metropolitan Subregional Plan

