

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

# LATHAM & WATKINS<sup>LLP</sup>

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June 13, 2018

## VIA EMAIL

Ashley Smith  
Planning and Development Services  
County of San Diego  
5510 Overland Avenue, Suite 310  
San Diego, CA 92123

**Re: Newland Sierra (Log No. PDS2015-ER-15-08-001; SCH No. 2015021036, Project Numbers: PDS2015-GPA-15-001, PDS2015-SP-15-001, PDS2015-REZ-15-001, PDS2015-TM-5597, PDSXXXX-HLP-XXX) – Newland Sierra Project Inconsistency with North County MSCP**

Dear Ms. Smith:

As you are aware, 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, including replanting many new trees, on its property, and shares its products through a community Farm Stand and other 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.

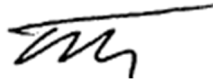
We write today with respect to the Project’s critical inconsistencies with the draft North County MSCP, as a follow-up and supplemental comment to our prior correspondence, in particular our letters dated May 21, 2018, and May 31, 2018. As noted in the enclosed report by Dr. Megan Jennings, there are many procedural and substantive deficiencies in the draft EIR with regarding to this issue. In particular, the draft EIR’s assumption that the Newland project will be designated as “hardline” in the draft North County MSCP “will threaten the functionality of the preserve in the central coastal zone of the [Gopher Canyon-Twin Oaks] plan area.” We believe that these defects are of sufficient severity that the project’s review and processing cannot proceed until these defects are corrected and the project’s environmental review documents are re-published to the public for review and comment under CEQA and other laws. Specifically, the County must evaluate a non-MSCP hardline alternative in the Newland EIR. As noted by the Fourth District Court of Appeal, a valid CEQA analysis should include an evaluation of the project against the current regulations, e.g.: “[E]stimates based on current

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regulations were also required since the anticipated revised regulations had not yet been enacted.” As you know, the draft North County MSCP has not yet been enacted.

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,



Taiga Takahashi  
of LATHAM & WATKINS LLP

Enclosure

cc: 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  
Stephanie Saathoff, Clay Co.  
Denise Price, Clay Co.  
Christopher Garrett, Latham & Watkins  
Kathy Van Ness, Golden Door

**ENCLOSURE**

## **Draft North County Multiple Species Conservation Plan Issues Relating to the Proposed Newland Sierra Project**

Megan K. Jennings, Ph.D.

June 12, 2018

Based on a review of the May 23, 2017 working draft of the North County Multiple Species Conservation Plan (NC MSCP), there are several issues of NC MSCP consistency and feasibility as it relates to the proposed Newland Sierra project and the proposed hardline of the project area in this draft of the NC MSCP. The proposed Newland Sierra project will preclude implementation of the conservation goals of the NC MSCP, challenging connectivity and the overall functionality of the reserve design of the NC MSCP as well as vegetation conservation targets.

### **Connectivity and Reserve Design Issues**

The proposed open space design for the Newland Sierra project is inconsistent with the conservation and connectivity goals of the North County MSCP and precludes resilient reserve design in the western portion of the plan area.

### ***Proposed Hardline Not Reviewed or Approved by Wildlife Agencies***

The proposed hardline of the Newland Sierra project was put into the draft plan by the County at the developer's request but not yet been reviewed by wildlife agencies or been available for public comment. Hardline projects are areas where development impact areas and the preserved open space areas have been predetermined and hardlined for the purposes of a conservation plan. Hardline projects are included and analyzed in Habitat Conservation Plans approved pursuant to 16 U.S.C. section 1539(a)(2)(A) and Natural Community and Conservation Planning Act (California Fish and Game Code section 2800 et seq.) plans such as the NC MSCP. These plans must receive concurrence from the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) prior to implementation.

In the case of the NC MSCP, the plan must also be approved by the County Board of Supervisors. To date, the NC MSCP has received neither the required concurrence from the wildlife agencies nor the approval of the Board of Supervisors. The determination to place this area into hardline is in direct conflict with the management goals of the NC MSCP and is based on an inadequate assessment of connectivity and is in direct conflict with Wildlife Corridor Conservation Goal and Actions (p. 5-83) stated in the Draft NC MSCP dated May 2017 (and see below).

### ***Connectivity Design of Project Inconsistent with NC MSCP Corridor Conservation Goal and Actions***

The main goal relating to connectivity is to “conserve wildlife corridors within the Preserve, and connect adjacent HCP core areas for a range of wildlife species.”

More specifically, the Corridor Conservation Actions (p. 5-83) state that:

- Large contiguous blocks of habitat are preferred
- Stepping stones are not a goal, rather a minimum
- Corridors should have edge buffering
- Design should consider factors that impact wildlife passage like human developments, edge effects, roads and driveway, reduced structural and compositional diversity of vegetation, agricultural cultivation, free roaming pets, lighting, and noise

- Whenever possible, include deliberate redundancies linking cores in more than one way to establish and/or retain functional connectivity

The proposed design of open space “Blocks” and “Corridors” in the Newland Sierra project is not consistent with these draft guidelines for connectivity planning and implementation in the NC MSCP. Instead, the proposed design separates the second largest block of open space remaining in the Draft NC MSCP Plan area in three separate blocks. The three separate blocks are 870.2, 153.9, and 185 acres and are described as “interconnected” (DEIR, p. 2.4-1). All are considered “medium” in size according to the Draft NC MSCP (pp. 4-4 to 4-5), and two are on the small end of medium. These three blocks are separated from each other by large sections of the development, roads, or passage through narrow pinch points that constrain wildlife movement. The design creates stepping stones that are separated and confined by the proposed development features and the “corridors” are not buffered from these effects. Furthermore, the most likely movement pathways in the proposed plan area will be permanently altered by development.

In the DEIR, the two smaller habitat blocks (Block 2 and Block 3) in the proposed project are included in a description of the proposed open space design as “large, interconnected open space blocks within the project” (DEIR, p. 2.4-1). The size of the proposed open spaces under the proposed development plan are compared to that of other preserved lands in the vicinity of the project area (DEIR, Table 2.4-24, p. 2.4-168) to assert that the two smaller habitat blocks (Block 2 and Block 3) in the proposed project are of adequate size and support a reserve design consistent with the Draft NC MSCP. However, what this in fact demonstrates is that the project would take the second largest block of habitat remaining west of I-15 in the NC MSCP Plan area and fragment it resulting in three smaller “medium” blocks, as defined by the Draft NC MSCP (pp. 4-4 to 4-5), two of which are on the small end of medium. This is directly in conflict with the stated connectivity and conservation planning goals of the NC MSCP.

In addition, the flawed logic justifying the open space design that would fragment this large habitat block ignores the fact that the configuration and location of these blocks is just as important as their size to supporting wildlife movement. Reducing the overall size of the habitat patch in this area will significantly impact wildlife habitat and movement and cannot be adequately mitigated by an open space design that introduces more fragmentation and exposure to edge effects.

### ***Site-Specific Connectivity Issues***

Under the Draft NC MSCP, the Valley Center Planning Unit (PU) and Gopher Canyon-Twin Oaks PU would more appropriately be treated as one piece, similar to the Santa Margarita-Mt. Olympus PU that crosses over I-15. The pre-approved mitigation area (PAMA) in the combination of these two units primarily functions to preserve wildlife connectivity, particularly east-west connectivity across I-15, and as such, should be interconnected when considering the stated goals and conservation actions for each PU. The Merriam Mountains is critical to accomplishing conservation actions stated in each of these Planning Units.

For the Valley Center PU, there is a Conservation Action that states (bold type added to emphasize critical elements of the NC MSCP objectives and actions that are threatened by the proposed Newland-Sierra hardline):

**Conserve land within this Planning Unit to ensure the ecological functionality of the Valley Center Linkage** (see Section 5.4)

*Issue: However, there is a conflict between specific proposed activities in the Newland-Sierra hardline area and this NC MSCP action, because the Merriam Mountains area is a key pinch point for this implementing this action.*

For the Gopher Canyon-Twin Oaks PU, one Conservation Action is to:

**Conserve land to provide for wildlife movement between the Gopher Canyon-Twin Oaks Planning Unit and conserved lands within adjacent MHCP Plan Areas (San Marcos).**

*Issue: Again, there is a conflict between specific proposed activities in the Newland-Sierra hardline area and this NC MSCP action, because the Merriam Mountains area is a key pinch point towards accomplishing this goal.*

Further, in the section on Regional Linkages under Section 5.4 “Preserve Connectivity” (p. 5-69), the description of the Valley Center Linkage (NC3) acknowledges “Several impediments to connectivity exist within this linkage including Interstate 15 and Old Highway 395. Portions of Moosa Creek, particularly west of Interstate 15, are heavily constrained by existing agricultural and residential development.”

As such, the Merriam Mountains area should be considered in planning for landscape connectivity between Valley Center and Bonsall, in particular for species that may move along ridges or mid-slopes and through chaparral rather than riparian areas.

The I-15 linkage should also have a wide buffer so as not to incur edge effects from adjacent development, wherever possible. There is already development in a number of locations along this linkage, so preserving larger blocks of high quality habitat for resting and foraging along the corridor are important for its functioning as a stepping stone corridor.

### **Vegetation Community Conservation Issues**

There are no specific vegetation community conservation acreage targets for each of the North County NC MSCP Planning Units (PUs), but this the scale at which impacts will occur and preservation of these vegetation communities requires a consideration of the spatial distribution of intact communities of each vegetation type as well as the distribution of the proposed activities (e.g., development projects such as the Newland Sierra project) that will fragment the natural vegetation in those areas.

There are 15,645 acres of chaparral vegetation, the predominant vegetation type in the Merriam Mountains, currently in the baseline preserve of the NC MSCP For chaparral vegetation. Another 24,885 acres of chaparral is within Pre-approved Mitigation Area (PAMA) and an additional 9,470 acres are likely to be acquired by public agencies and land conservancies.

The goal for this vegetation type is to establish: “Large areas of conserved chaparral vegetation, featuring a variety of chaparral types, throughout the Plan Area sufficient to maintain sustainable occurrences of covered species utilizing this habitat.”

The distribution of the types of chaparral vegetation mentioned is not mapped or described in the NC MSCP. According to the SANDAG vegetation layer, the Merriam Mountains chaparral is southern mixed chaparral.

**Chaparral Objectives** (bold type added to emphasize the critical element of the NC MSCP objectives and actions threatened by the proposed Newland-Sierra hardline):

- Conserve a total of X acres of chaparral vegetation featuring a variety of chaparral types, within publicly held and privately owned conserved lands (including Baseline Preserve).
- **Maintain the viability** of 15,645 acres of chaparral vegetation within the Baseline Preserve

- Conserve X acres of chaparral vegetation within the PAMA through avoidance and mitigation for private development projects during the 50-year permit term.
- Conserve X acres of chaparral vegetation within the PAMA through acquisition by public agencies and land conservancies during the 50-year permit term.

Chaparral Conservation Actions (bold type added to emphasize critical elements of the NC MSCP objectives and actions that are threatened by the proposed Newland-Sierra hardline):

- 1) **Conserve chaparral vegetation throughout the PUs**, particularly within the Santa Margarita-Mount Olympus (PU-1), Guejito-Pauma (PU-2), and Ramona (PU-8) PUs

*Issue:* There is a conflict between specific proposed activities in the Newland-Sierra hardline area and this NC MSCP objective, because the viability of entire vegetation communities cannot be accomplished if conservation targets are focused only on certain locations within the Plan Area. These targets must be set in a programmatic fashion (i.e., at the PU level), not on an ad-hoc, project-by-project basis.

- 2) **Conserve large areas of chaparral contiguous with other natural vegetation communities to provide linkages and corridors for covered species and other sensitive species within the plan area.**
- 3) **Manage chaparral vegetation within conserved lands to benefit covered species**, including Hermes copper butterfly, Del Mar manzanita, and Encinitas baccharis

*Issue:* There is a conflict between specific proposed activities in the Newland-Sierra hardline area and this NC MSCP objective, because this objective cannot be achieved if there are very few conserved lands within a PU. Acquisitions and conservation in PAMA must also be targeted to benefit covered species.

- 4) **Implement the North County BMO, RPO, and Conservation Subdivision Program to require avoidance, minimization, and mitigation measures for impacts to chaparral vegetation for private and public projects**

*Issue:* The Newland Sierra project should be held to this standard. The draft EIR proposes to exempt the project entirely from the RPO and essentially asserts that there are no requirements or standards of the BMO that may be applied, even though there is a draft BMO for North County in the draft NC MSCP.

Although the Objectives for the planning unit focus on the viability of natural vegetation within the baseline preserve, the 321 acres in the Gopher Canyon-Twin Oaks PU make up less than 7% of the chaparral vegetation within the PU. The viability of the vegetation is dependent on what is happening in the surrounding environs. This includes fragmentation that may introduce or increase the spread of invasive plants and increased fire risk that, through repeated fires at short intervals, could result in vegetation type conversion from chaparral to non-native annual grasses in this planning unit.

Fire-return intervals (the average time between two fire events) in southern Californian shrubland habitats are now 30% shorter now than during pre-settlement (Keeley *et al.* 1999, Safford *et al.* 2011). This shifting disturbance regime with shortened intervals between fires interrupts the successional cycle, reduces plant diversity, and can result in large-scale vegetation type conversion to non-native annual grasslands (Zedler *et al.* 1983, Bachelet *et al.* 2001, Lenihan *et al.* 2003, Syphard *et al.* 2006, Keeley and Brennan 2012), and has been linked to increased human development, particularly at intermediate densities (Syphard *et al.* 2007, 2009). As human populations in southern California have grown dramatically over the last century, particularly in coastal areas, short fire-return intervals paired with habitat fragmentation may have synergistic and long-term impacts on landscape connectivity that present a formidable conservation challenge.

In the NC MSCP Plan Area, the proposed hardline for the Newland Sierra project would result in loss and degradation of over 35% of the chaparral vegetation in the Gopher Canyon-Twin Oaks PU (1,760 acres out of 4,779). Overall, this represents a nearly 23% reduction of native cover across the entire planning unit (1,760 acres out of 7,752), contrary to chaparral Conservation Action 1.

With only 719 acres of baseline preserve in this PU to start with and over 7,000 acres of natural vegetation, development of greater than one-quarter of the land available for PAMA in this Planning Unit will threaten the functionality of the preserve in the central coastal zone of the plan area.

This is particularly concerning because the Gopher Canyon-Twin Oaks PU is one of only three PUs west of the I-15, and it is a critical component of the western portion of the plan area.

Further, the loss and fragmentation of this large, contiguous block of chaparral is inconsistent with Conservation Action 2 because potential linkages between the Valley Center PU immediately to the east will be separated and there will be no viable connection between the chaparral vegetation in these two PUs. This connection is important because the Valley Center PU is primarily made up of long, linear strings of preserve and PAMA, and large core areas are needed adjacent to these areas to preserve viable vegetation communities and populations of covered and listed plant and animal species.

In addition, if the NC MSCP covered species associated with chaparral are to maintain viable populations, then distribution of adequate blocks of contiguous habitat comprised of chaparral vegetation should be preserved throughout the plan area, rather than just in the 3 largest Planning Units (Santa Margarita-Mount Olympus, Guejito-Pauma, and Ramona), which are primarily east of I-15. These covered species include western spadefoot toad, coast horned lizard, golden eagle, and pallid bat.

Accordingly, it is critical that these important programmatic biological conservation issues are resolved through the NC MSCP process, before the Newland Sierra project should assume either the nature or extent of the NC MSCP's treatment of the Merriam Mountains area in developing any project in this area. Given the importance of the Merriam Mountains area to biological conservation objectives and actions in the draft NC MSCP and as set forth in federal and state laws and regulations, the best practice would be for the NC MSCP to be fully studied, analyzed, and approved before moving forward with any consideration of large-scale development in the Merriam Mountains area.

## References

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