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December 1, 2017

VIA EMAIL AND FEDEX

Rami Talleh, Deputy Director
Planning and Development Services
County of San Diego
5510 Overland Avenue, Suite 310
San Diego, CA 92123

Re: Response to Your August 24, 2017 Letter re North County MSCP Steering Committee Presentation

Dear Mr. Talleh:

As you know, we represent Golden Door Properties, LLC (“Golden Door”). We appreciate your August 24, 2017 response to our May 22, 2017 letter titled “North County MSCP Steering Committee Presentation.”

As you are aware, County of San Diego Planning and Development Services (“PDS”) is processing the proposed Newland Sierra project (“Project”). On May 7, 2015, PDS published a scoping letter (“Scoping Letter”) for the Project listing “Major Project Issues. (A copy of the Scoping Letter may be accessed online at <http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/newlandsierra/NewlandSierraScopingLetter.pdf>.) One of the Major Project Issues addressed in the Scoping Letter is “MSCP Draft North County Plan and Natural Communities Conservation Program (NCCP) Consistency.” (See Scoping Letter at 4, Attachment A Item 1-2.)

The Scoping Letter specifically addresses the potential for a hardline agreement for the Newland Project:

Please note that if the Wildlife Agencies Hardline Agreement is not approved, the project would be required to comply with the North County Plan and its requirements for projects in Pre-approved Mitigation Areas (PAMA), including avoidance of critical populations of sensitive species and adherence to preserve design and linkage principles. If the North County Plan has not been approved prior to the project moving forward, the project will require compliance with the Habitat Loss Permit (HLP) Ordinance and the County and Wildlife Agencies Planning Agreement.

(Scoping Letter at 4.) The Scoping Letter's decision in the absence of an approved hardline agreement or approval of the North County Multiple Species Conservation Program ("NC MSCP"), therefore, is to require the Newland Project to comply with the Planning Agreement, including its preliminary conservation objectives and requirements for pre-approved mitigation areas ("PAMA"). The public has received no notice from County staff that the Scoping Letter has been revoked or modified, and it remains posted on the County's website as of today's date.

As your letter notes, the U.S. Fish and Wildlife Service ("USFWS") and California Department of Fish and Wildlife ("CDFW," together the "Wildlife Agencies") must agree to any hardline included in the NC MSCP. The Wildlife Agencies have not agreed to the County's proposed hardline for the Newland Project. Consequently, the County should adhere to the Scoping Letter's decision and not assume a hardline for the purpose of environmental analysis—in either the project-specific environmental documents for the Newland Project or the County's draft of the NC MSCP.

The approach set forth in your August 24 letter contradicts the County's decision contained in the Scoping Letter. Your letter states on page 2 that "if [the Newland Project] is denied by the Board or significantly revised, it will be removed or modified within the Draft Plan." Under this approach, the hardline is assumed to be approved for the purpose of environmental analysis unless or until it is specifically denied. This assumption of a hardline contradicts the Scoping Letter's clear directive and decision that a hardline should not be relied upon unless or until it is specifically approved. The Scoping Letter was posted on the County's website and has been relied upon by members of the public in understanding the nature and scope of the County's environmental review for the Newland Project.

Further, the Newland Project's draft environmental impact report ("DEIR") adopted the same flawed approach as your letter, which contradicted the County's decision contained in the Scoping Letter. The DEIR determined the Project would result in a less than significant impact with regard to preventing or precluding preparation of the NC MSCP based on the DEIR's improper assumption of a hardline and the remainder of the future NC MSCP as the reason why there would be no significant adverse effect. (See Newland Sierra DEIR at 2.4-82, available at <http://www.sandiegocounty.gov/content/sdc/pds/ceqa/SP-15-001/NSDEIR.html>.) This assumption is inconsistent with the Scoping Letter's decision and represents completely circular logic in assuming a hardline for the purpose of environmental analysis for the Newland Project, even though no hardline has been approved by the County and the County has not completed any environmental review for its proposed NC MSCP or any hardline that may be proposed within the NC MSCP.

To break this "chain" of circular logic, the County must either: (1) first finish and certify the County's DEIR for the proposed NC MSCP containing the hardline before completing the Newland DEIR; or (2) rewrite the Newland DEIR to contain "standalone" biological analysis for potential impacts, including cumulative biological impacts and regional wildlife corridors, without assuming approval of the (as yet unapproved) NC MSCP and using the NC MSCP as a substitute.

The Golden Door submitted a comment letter and reports from expert biologists describing the flaws in the DEIR's biological analysis, improper assumption of a hardline, and inconsistency with the Planning Agreement's preliminary conservation objectives. A copy of the Golden Door's letter and attachments, as well as reports from expert biologists Megan Jennings and Schaefer Ecological Services, are provided on a disk included herein. Because the Newland DEIR and the NC MSCP are proceeding concurrently, and many comments on the DEIR are also relevant to the NC MSCP and its treatment of the Newland project site, we submit this material on the record with the County for consideration with respect to the NC MSCP.

In addition, various environmental organizations and public agencies also submitted comments on the Newland DEIR, which are relevant to the NC MSCP and its treatment of the Newland project site. We have included herein a second disk with these materials, which we also submit for the County's record and consideration of the NC MSCP. The comment letters on the second disk are from CDFW, USFWS, the California Department of Transportation, Endangered Habitats League (a letter and a report from expert biologist Hamilton Biological, Inc.), Sierra Club (San Diego), Environmental Center of San Diego, and the California Native Plant Society (San Diego).

Because the County is processing the Newland Project and the NC MSCP concurrently as separate projects, we are providing you these materials to ensure the County staff processing the NC MSCP is able to consider the same material as the County staff processing the Newland DEIR.

Thank you for your time and attention to this matter. Please do not hesitate to contact me at 858.523.5400 or christopher.garrett@lw.com if you would like to discuss these matters further.

Best regards,

Christopher W. Garrett

Christopher W. Garrett
of LATHAM & WATKINS LLP

LATHAM & WATKINS LLP

Enclosures

Cc (email):

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