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December 19, 2017

VIA EMAIL AND U.S. MAIL

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

Re: Newland Sierra Failure to Comply with County Scoping Letter Requirements

Dear Ms. Smith:

As you know, we represent Golden Door Properties, LLC ("Golden Door") in opposing the proposed Newland Sierra Project ("Project"). As you also know, we have been pro-actively communicating with the County of San Diego ("County") staff and the applicant for several years concerning this project, including extensive comments on the Notice of Preparation ("NOP") in March 2015 and Draft Environmental Impact Report ("DEIR") in August 2017.

On May 7, 2015, the County issued a Scoping Letter to the Project applicant.¹ The Scoping Letter identified "issues" with the Project—including a more than 170-page Project Issues Checklist—that must be resolved by the applicant. Among the issues to be resolved, the Scoping Letter identified at least five "Major Project Issues," which "may require substantial redesign of the proposed project or, if not resolved, would result in a recommendation for project denial by PDS." The due date for the applicant to submit evidence of resolution of such issues was July 7, 2015.

The Project's DEIR was published in June 2017, almost two years after the due date for resolution of the issues identified in the Scoping Letter. Throughout our years-long correspondence with the County about this Project, the County and applicant at various times refused to provide details about the Project to us—and many other members of the public. We were told that such details would be provided in the DEIR. Now that the DEIR has been published, however, not all of the promised information has been disclosed. In particular, the DEIR does not demonstrate that the issues identified in the County's Scoping Letter have been

¹ The Scoping Letter has been made available online since 2015 at <http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/newlandsierra/NewlandSierraScopingLetter.pdf> and remains posted as of December 18, 2017. There are no revisions or updates to this letter.

adequately addressed. Before pointing out the crucial unresolved issues that remain from the Scoping Letter, the important point should be noted that in the interests of transparency and public notice, the County staff should post written copies of any updates or changes that were made to the Scoping Letter in subsequent correspondence with the applicant. It is unfair to the public for the County staff to announce one set of policy decisions in its Scoping Letter, and post the Scoping Letter for public examination, but then for the staff to secretly change the policy decisions they may have made in the Scoping Letter in subsequent private discussions with the applicant that were never documented and provided to the public.

Therefore, we ask that the staff post on the County's website, along with the Scoping Letter, written documentation of any decisions or changes that staff made to the Scoping Letter. We also ask that the County staff update the Newland EIR to include the original May 7, 2015 Scoping Letter, as well as any subsequent written correspondence from the staff to the applicant that may have changed the Scoping Letter.

To emphasize that the Newland DEIR's failure to follow the Scoping Letter is not a minor technicality or problem for the public, we would like to review the important policy decisions which staff made in the Scoping Letter, that appear to have been disregarded in the DEIR released to the public. For the sake of brevity and emphasis, this letter will focus on the five Major Project Issues identified by the County.

County Scoping Letter Major Project Issue #1 - Consistency with the San Diego County General Plan. The Scoping Letter requires further analysis of the Project for General Plan consistency and to ensure the Project "is in the public interest and would not be detrimental to public health, safety, and welfare." As discussed in more detail in the Golden Door's comment letter on the Project's DEIR, the Project is not consistent with County's General Plan, and the DEIR fails to provide adequate analysis.

The County Board of Supervisors has twice determined that the Project Site should remain rural. In 2010, the Board voted against the similar Merriam Mountains proposal, which would have added over 2,500 residential units to rural Twin Oaks Valley. Then, in 2011, after almost a decade of stakeholder input and millions of taxpayer dollars, the Board approved a General Plan that reduced the number of residential units permitted on the Project Site to approximately 100. That 2011 General Plan has provided the basis for other agencies' infrastructure planning—including SANDAG's 2015 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS"), which is necessary for meeting State reduction targets for greenhouse gas ("GHG") emissions and vehicle miles traveled ("VMT"). Notably, SANDAG's RTP/SCS does not include infrastructure improvements on I-15 to accommodate urban growth in the rural areas north of Escondido. Further, in previous staff reports on density increase proposals on the Project Site, County staff indicated that density increases that are less than what Newland proposes would require amendments to the General Plan's Guiding Principles and additional environmental review of the General Plan and recirculation of the General Plan EIR.

Now, before the County has even come close to building out the housing units designated in its General Plan, Newland has proposed to urbanize rural Twin Oaks Valley with over 6,000 new residents—a population the size of the City of Del Mar. Despite the drastic density increase

in this rural area and the divergence from the General Plan's principles, the Project's DEIR incredulously finds no significant land use impacts. No information provided to the public indicates that the Project has been revised since issuance of the Scoping Letter to comport with the General Plan. Instead, the DEIR's analysis relies on the conclusory premise that by seeking a discretionary amendment to certain selected parts of the County's General Plan to add the Project's proposed density, it automatically becomes General Plan-compliant. This is not so. This Project would open the backcountry to large-scale development in contrast to the balanced principles described in the General Plan and the emphasis on protecting rural community character.

In addition, the Project runs afoul of several specific General Plan policies. For example, the Project constitutes leapfrog development in violation of General Plan Policy LU-1.2. A previous staff report for another density increase on the Project Site raised this very issue. In addition, the DEIR relies on a "village" designation on part of the Project Site in its land use analysis; yet, no part of the Project Site is within a designated village boundary in the North County Metro Community Plan—which is part of the General Plan.

Further, the DEIR does not support a finding that the Project is in the public interest and would not be detrimental to public health, safety, and welfare. The Project's opening of the backcountry to massive sprawl development is contrary to the public interest as set forth in the General Plan. Project construction would pose various health risks, including the potential risk of subjecting construction workers and nearby residents to Valley Fever—which was not even studied in the DEIR. The Project also poses safety risks, as it is located entirely in a Very High Fire Hazard Severity Zone and would add thousands of vehicles to the area's evacuation routes for regional fire emergencies. These evacuation routes are already predicted by the traffic analysis to be at a standstill during normal days.

County Scoping Letter Major Project Issue #2 - MSCP Draft North County Plan and Natural Communities Conservation Program Consistency. The Project's DEIR and several letters from County staff indicate that the Newland Project proposes to achieve consistency with the North County Multiple Species Conservation Plan ("NC MSCP") by means of a so-called "hardline designation." 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 approach in the absence of an approved hardline agreement or approval of the NC MSCP, therefore, is to require the Project to comply with the Planning Agreement, including its preliminary conservation objectives and requirements for pre-

approved mitigation areas ("PAMA"). As you are aware, a hardline designation in the NC MSCP requires the agreement of the United States Fish and Wildlife Service and the California Department of Fish and Wildlife. Neither of these Wildlife Agencies has agreed to a hardline designation.

Consequently, the DEIR's statement that there will instead be County reliance on an unapproved hardline agreement conflicts with the statement contained in the Scoping Letter.

County Scoping Letter Major Project Issue #3 – Deer Springs Road. The Scoping Letter notes that Deer Springs Road is classified as a six-lane Prime Arterial in the General Plan's Mobility Element, but that Newland proposes Option A, which would reclassify Deer Springs Road as a two- and four-lane road and construct it as such, and Option B, which would not reclassify Deer Springs Road but would only build to four lanes.

The version of Option B described in the Scoping Letter would include grading a portion of Deer Springs Road to the ultimate six-lane configuration; however, Option B was later revised—subsequent to the public's opportunity to review and comment on the NOP—to eliminate the requirement to grade a portion to six lanes. Newland and the County have not provided any explanation of the revision or analysis of the change in impacts. The Scoping Letter notes disagreement between County staff and the applicant regarding Deer Springs Road's proposed configuration and requires further study and analysis of various options so that County staff can make a final recommendation.

As discussed in more detail in the Golden Door's comment letter on the Newland DEIR, the DEIR's analysis of Deer Springs Road is inconsistent and misleading and fails to provide adequate information about various options for its alignment. The analysis of Option B assumes six lanes of capacity although only proposing to construct four. No analysis of traffic impacts from Option B's proposed four-lane capacity is provided in the DEIR. Yet, the analysis of other impacts (e.g., biology, air quality, noise, property) for Deer Springs Road Option B only considers grading and building four lanes—despite the assumption of extra capacity for a six-lane road in the traffic analysis. In addition, the DEIR's traffic analysis improperly applied trip reduction credits for mixed land uses and an illusory transportation demand management program that inaccurately reduce the number of Project trips on to Deer Springs Road. As such, the impacts of various options for Deer Springs Road have not been analyzed as required by the Scoping Letter.

Further, the Scoping Letter requires that the Project's "Traffic Impact Study should include future Year 2040 and Buildout traffic volumes approved by the County and Caltrans." It appears that the traffic analysis for Deer Springs Road does not analyze impacts in 2040. Further, traffic volumes for Deer Springs Road were not "approved by Caltrans." In fact, Caltrans submitted a comment letter on the Project's DEIR noting that the DEIR inaccurately states that Caltrans has an interchange project at I-15 and Deer Springs Road that would mitigate traffic impacts and that the DEIR's analysis should not rely on such mitigation. The traffic analysis for Deer Springs Road, therefore, has not been "approved by Caltrans," but instead has been discredited.

County Scoping Letter Major Project Issue #4 - Off-Site Improvements. The Scoping Letter requires Newland to provide “suitable evidence” that it possesses the necessary property rights to construct off-site improvements without eminent domain. No such evidence was provided in the DEIR. In fact, the DEIR alludes to the potential for eminent domain on Sarver Lane, Deer Springs Road, and Camino Mayor. Eminent domain may be required in additional off-site locations. Further, we understand representatives of Newland are currently approaching various property owners in the area seeking to acquire property rights—more than two years after Newland was due to resolve issues in the Scoping Letter.

The Golden Door has submitted ample evidence to the County of potential property impacts due to proposed widening of Deer Springs Road as part of the Project. In August 2016, DELANE Engineering produced a technical study detailing property impacts from widening Deer Springs Road to both a four- and six-lane alignment—impacts that had been omitted from Newland’s plans provided by Fuscoe Engineering. DELANE also identified various errors in Fuscoe’s work. After release of the Project’s DEIR, DELANE followed up with an additional report confirming DELANE’s previous analysis and describing property impacts along Deer Springs Road that remained unaddressed—including impacts to private driveways and from proposed drainage channels.

Moreover, on Camino Mayor, Newland proposes significant improvements to a private road across property not owned by Newland. Property owners on Camino Mayor provided the County with extensive comments on the DEIR describing Newland’s lack of property rights. In addition, DELANE submitted a report describing property rights impacts and other issues with Newland’s proposals for Camino Mayor.

County Scoping Letter Major Project Issue #5 - Resource Protection Ordinance. The Project’s DEIR fails to adequately address the County’s Resource Protection Ordinance (“RPO”) as required by the Scoping Letter. Fifty-five percent of the Project Site contains RPO-defined slopes, and the Project would result in impacts to the California Coastal gnatcatcher and RPO-wetlands in violation of the RPO. Yet, instead of analyzing adequate mitigation for the Project’s RPO impacts, the County has proposed to simply exempt the 1,985-acre Project Site from the RPO. Simply changing the applicability of the ordinance does not mitigate impacts to the physical environment. It also fails to provide any analysis of RPO consistency as required by the Scoping Letter.

Further, even the proposed RPO exemption described in the DEIR is inadequate. As described in the DEIR, the proposed RPO exemption would exempt RPO compliance for impacts on the 1,985-acre Project Site. The exemption would not apply to any off-site impacts caused by the Project. The DEIR discloses temporary and permanent significant impacts to off-site RPO resources, including southern willow scrub, mulefat scrub, arundo dominated riparian, coast live oak woodland, and southern coast live oak riparian forest. Moreover, as discussed in more detail in the Golden Door’s comment letter on the DEIR, the County’s analysis significantly underestimates the Project’s off-site impacts, including impacts from grading and constructing a six-lane configuration for Deer Springs Road and an as yet undisclosed design for an interchange at I-15 and Deer Springs Road—as well as operation thereof. The Project’s RPO exemption does not exempt these off-site impacts from RPO-compliance; yet mitigation has not been

analyzed or proposed. Therefore, the DEIR has failed to provide the analysis of consistency with the Resource Protection Ordinance that the County staff specified in the Scoping Letter. The mere fact that the applicant has simply proposed an amendment from the RPO does not mean that the DEIR should omit the analysis of consistency that was specified in the Scoping Letter.

Finally, the Scoping Letter calls for a “Comprehensive Resource Management and Protection Program” to accompany any proposed RPO amendment; yet, none was provided in the DEIR. The DEIR provides a Resource Protection Plan (“RPP”) as Appendix H-2. This RPP, however, is not an actual plan, but merely regurgitates that biological analysis found elsewhere in the DEIR. It lacks performance standards and prescriptive statements against which Project consistency could be measured. Also, while the DEIR mentions a Resource Management Plan (“RMP”), mitigation measure M-BIO-8D defers RMP preparation to the future. M-BIO-8D notes the existence of two “conceptual” RMPs attached as Appendices L and M to Appendix D of the DEIR, but does not provide any specific and enforceable standards for a comprehensive RMP. Although the applicant had more than two years since issuance of the Scoping Letter to prepare a “Comprehensive Resource Management and Protection Program,” none has been provided in the DEIR to justify an RPO exemption. This further underscores that the DEIR has failed to provide any analysis of how the Newland project will comply with the RPO’s policies.

The absence of any details of the “Comprehensive Resource Management and Protection Program” indicates that an essential part of the applicant’s proposed project has not yet been provided to the public for review and analysis. Providing this missing part of the project in the Final EIR for the first time will deprive the public, and the federal and state resources agencies, of the opportunity to review and comment on the Plan, and to compare it to the protections that would have applied to the property if the applicant had not decided to ask for an exemption from the County’s RPO for its project.

* * *

Please provide evidence that the issues identified in the County’s Scoping Letter have been resolved and explain why such evidence was not included in the DEIR circulated for public review and comment earlier this year. Any written staff decisions and revisions to the Scoping Letter should be posted online for the public to examine. Otherwise, it appears that the DEIR has failed to comply with the County staff’s own Scoping Letter.

Without resolution of the Major Project Issues and all other issues on the Project Checklist, the County cannot treat the application for the Newland Sierra Project as complete and must cease processing the Project.

LATHAM & WATKINS LLP

We thank you for your time and attention to this matter. We ask that you include this letter and your response in the administrative record for the Newland Sierra Project. Please do not hesitate to contact us should you have any questions or comments.

Best regards,

Christopher W. Garrett

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of LATHAM & WATKINS LLP

cc: Kathy Van Ness, Golden Door
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