

LL-13
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: April 12, 2018

1. Introduction

The letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 12, 2018, is a late letter that references the Newland Sierra Draft EIR and the related Newland Sierra project, but the focus of the letter is on the County's response to Golden Door's August 8, 2017, Public Records Act (PRA) request for records relating to the Draft North County Multiple Species Conservation Program (MSCP) Subarea Plan ("Draft North County Plan"). The April 12, 2018, letter does not require a written response from the County for the reasons explained below.

Under CEQA Guidelines section 15105, the County was legally required to provide a 45-day public review period on the Draft EIR. In order to provide additional time, the County instead afforded 60 days for public review and comment. The public comment period for the Draft EIR began on June 15, 2017, and ended on August 14, 2017. All comment letters received after expiration of the public review and comment period ending on August 14, 2017, are considered late comments.

A lead agency is required to consider comments on the Draft EIR and to prepare written responses if a comment is received within the public comment period. (Pub. Resources Code, §21091(d); CEQA Guidelines, §15088.) When a comment letter is received after the close of the public comment period, however, a lead agency does not have an obligation to respond. (Pub. Resources Code, §21091(d)(1); Pub. Resources Code, §21092.5(c).) Accordingly, the County is not required to provide a written response to late comment letters, including the April 12, 2018, letter from Latham & Watkins. (See, CEQA Guidelines, §15088(a)).

Nonetheless, for information purposes, the County has elected to respond to such letters, but without waiving its position that written responses to late comment letters are not required by law.

2. The County has responded to Golden Door's PRA request.

The April 12, 2018 letter states that the County's response to Golden Door's PRA request "appears incomplete" and that some documents "appear to have been improperly withheld or redacted." Golden Door requested a response within ten days of April 12, 2018. The requested documents include (a) the "preliminary conservation analysis," referenced in the County's June 5, 2017 letter from County Planning & Development Services Director, Mark Wardlaw; (b) documents relating to "County Biologists," as referenced in Director Wardlaw's June 5, 2017, letter; (c) the project applicant's request to be included as a "hardline" project in the draft NC MSCP; and (d) biological

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surveys. The letter also commented on documents “improperly withheld” and/or “redacted” by the County.

The County has responded to Golden Door’s PRA request, and the record relating to that response is incorporated by reference and available for public review and inspection upon request to the County’s Planning & Development Services.

3. The Newland Sierra Project EIR does not rely on the project being a “hardline” project in the Draft North County Plan.

The letter states that analysis contained in the Draft EIR relies on the project being included as “hardline” project in the Draft North County Plan and that the lack of analysis and evidence to support this inclusion is evidence of a political concession rather than a good faith, substantive planning effort based on biological principles and evidence or an objective good faith environmental review. The letter then restates information contained in the County’s June 5, 2017, letter and concludes that if such evidentiary support actually exists, the County must provide it to the public and recirculate the Draft EIR.

The County does not agree with these claims. Refer to **Responses to Late Comment Letters LL-4 and LL-22**. As addressed in more detail in those responses, the Newland Sierra Project Draft EIR does not rely on the project being included as a hardline area in the Draft County Plan. Instead, consistent with the County’s *Guidelines for Determining Significance and Report Format and Content Requirements: Biological Resources* (County of San Diego 2010a), specifically whether “the project would preclude or prevent the preparation of the subregional NCCP Process,” the Draft EIR discloses the project’s inclusion as a hardline area in the Draft North County Plan and conducts an analysis of the project’s consistency with the Planning Agreement conservation objectives and preserve design principles which govern the planning framework for the North County Plan.

The project’s inclusion as a proposed hardline project in the Draft North County Plan reflects the County’s view that the project’s proposed development footprint and open space preserve area, including the project’s proposed offsite mitigation site of 212 acres in a Biological Resource and Core Area of the Draft North County Plan, should be considered when analyzing the conservation aspects of the draft plan. Indeed, the main purpose of identifying the projects and including them as proposed hardlines is so they can be properly incorporated in the conservation analysis of the draft plan.

Inclusion of a project as a proposed hardline is not unprecedented. Please see **Appendix JJ-1**, “Hardline Projects in MSCP and MHCP Subarea Plans,” to the Final EIR. **Appendix JJ-1** identifies 65 projects in San Diego County alone that were previously included as hardline projects

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or hardline areas in Draft MSCP and MHCP Subarea Plans, including 11 project sites included as hardline areas in Appendix E to the 2009 Draft North County Plan¹.

In conclusion, as stated, the April 12, 2018, letter focuses primarily on a dispute between the County and Golden Door over responses to Golden Door's PRA request. It does not raise environmental issues concerning the adequacy of the Newland Sierra Draft EIR; and, thus, no further substantive responses are needed or required. Nonetheless, the letter and this response will be made available to the decision makers prior to a final decision with respect to the Newland Sierra project and Final EIR.

¹ 2009 Draft North County Plan, Appendix E:

<https://www.sandiegocounty.gov/content/dam/sdc/pds/mscp/docs/AppendixEHardlineprojects.pdf>