

**LL-16**  
**Latham & Watkins LLP**  
**on behalf of the Golden Door Properties, LLC**  
**Dated: April 25, 2018**

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 25, 2018, is a late letter that does not require a written response from County.

Under CEQA Guidelines section 15105, the County was legally required to provide a 45-day public review period on the Draft Environmental Impact Report (EIR). To provide additional time, the County instead afforded 60 days for public review and comment. The Draft EIR public comment period 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 25, 2018, submitted by EHL. (See, CEQA Guidelines §15088(a)).

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

2. The EIR's analysis of the Existing General Plan Alternative commercial and office development intensity is correct.

The letter states that the project applicant and its primary environmental consultant Dudek have set forth to the public an inaccurate and misleading project comparison (between the proposed project and the Existing General Plan Alternative land uses and environmental impacts) and, in reference to the California Code of Regulations Section 15088.5 addressing recirculation of an EIR, makes several claims behind the commenter's position that the Draft EIR should be recirculated. The letter is reiterating comments and claims made by the commenter in response to the Draft EIR, including in **Comment Letters O-1 and O-1.9** and **Late Comment Letter LL-15**. In light of that, the County refers the commenter to the responses prepared to those letters.

To the four claims made in the letter, the County offers the following responses:

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**Claim 1:** *Dudek and the project applicant’s claim that two million square feet of commercial and office development could be built under the Existing General Plan land uses violates CEQA Guidelines Section 15125.*

The County does not agree with this claim. CEQA Guidelines Section 15125 addresses the requirement to properly describe the “physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation is published”, that “[t]his environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant” and, in the case where the project is proposing a change or amendment to an existing plan, the project should be compared as well to “the potential future conditions discussed in the [existing General P]lan.” The Newland Sierra Project EIR has satisfied these requirements.

**Claim 2:** *The Draft EIR uses an erroneous and misleading baseline to analyze the project’s environmental impacts.*

The letter then refers to two court cases (*Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal. 4th 310, 322 and *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 658) addressing how baseline conditions need to be established for an environmental analysis under CEQA and refers to several Enclosures included with the letter as supporting this claim, including Enclosure 1 (public communication material prepared by the project applicant), Enclosure 2 (a Cushman & Wakefield Demand Study, dated July 31, 2017, and submitted with the commenter’s letter on the Draft EIR-refer to Comment Letter O-1.8), Enclosure 3 (Late Comment Letter LL-15 and the revised technical analysis prepared by DELANE Engineering attached LL-15), and Enclosure 4 (a technical memorandum prepared by the commenter entitled “SANDAG Growth Forecast Data on Newland Sierra Project Site Commercial Area”). The letter also states that Chapter 2.14 (Utilities and Service Systems) uses full buildout of the General Plan as a baseline for assessing the water demand of the project.

The County does not agree with this claim. The Newland Sierra Project Draft EIR did not use the existing General Plan land uses as a baseline for analyzing environmental impacts, it used the existing conditions of the project Site (as undeveloped land) and the existing conditions in the vicinity of the project Site to analyze the project’s environmental impacts. The mitigation measures for the project’s impacts are also based on the existing conditions (on and offsite) as the baseline. Neither the EIR analysis of the project’s impacts nor the project’s mitigation measures bear any relation to how the project’s impacts compare to the impacts that would occur under the Existing General Plan land uses (i.e., the Existing General Plan Alternative). As it relates to the four Enclosures referenced and discussed in support of the commenter’s claim, responses to those Enclosures are provided separately below. Finally, specific to the comment that the project uses buildout of the General Plan as a baseline for assessing water demand for the project, the County does not agree and refers the commenter to EIR Chapter 2.14 (Utilities and Service Systems), **Responses to Comments O-1-303, O-1-338, and O-1-339**. As addressed in **Response to Comment O-1-303**:

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The Draft EIR discloses the “baseline” of the project Site. According to the Draft EIR, page 2.14-36, the “proposed project would increase overall water demand compared to existing undeveloped conditions.” Thus, the Draft EIR acknowledges that the site is currently undeveloped, with no notable water usage, and that the project, if approved, would increase overall water demand compared to the project’s existing physical condition. The Draft EIR also analyzes the project’s forecasted water demand based on four different methodologies (see Draft EIR, pages 2.14-45 through 2.14-48). All four water demand methodologies show an overall increase from the existing property’s water use condition, which is essentially zero. Thus, the County, its decision-makers, and the public are fully informed of a projected increase in water demand at the project area from zero to a range of 1,825 afy, 1,624 afy, 1,196 afy, and 870.3 afy, depending on the methodology identified in the Draft EIR (see Draft EIR, Tables 2.14-1 through 2.14-5).

***Claim 3: The project applicant’s claim that “two million square feet of office and big box retail” is not supported by any substantial evidence.***

The letter then refers to CEQA Guidelines Section 15384 and states that the applicant’s claim the site can support two million square feet of office and big box retail constitutes “argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or inaccurate.” The letter states that the project applicant’s claim is spurious and based on an overly simplistic and fundamentally misleading calculation of the total acreage zoned for General Commercial and Office Professional on the project Site, refers to Enclosures 2 and 3 to the letter, and concludes that the two million square feet of office and commercial is neither physically possible nor economically feasible.

The County does not agree with this claim and notes that this issue was responded to extensively in **Response to Comment Letter O-1.9, Responses to Comments O-1-385 through O-1-389, Responses to Comments O-1-514 through O-1-520, and Response to Late Comment Letter LL-15**. The County also notes that Enclosure 2, the Cushman & Wakefield Demand Study for the project Site, provides a range of commercial and office development that is consistent with the analysis contained in the EIR, stating specifically:

Under the current zoning of C30, the maximum FAR (Floor Area Ratio) is .80 of the site area for Village areas and .45 for semi-rural areas. Based on the estimated site area at 53.6 acres, at a maximum, this translates to a total building area from 1,050,667 ***to 2,008,116 square feet***, [and] [u]nder the current zoning of C34, the maximum FAR is .70 of the site area for Village areas and .45 FAR for semi-rural areas. The estimated site area is 4.6 acres. At a maximum, this translates to a total building area from 90,169 to 140,263 square feet. (*emphasis added*)

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**Claim 4:** *The purported “two million square feet...” is not consistently applied in the Draft EIR and the Traffic Impact Analysis (Appendix R1 to the EIR) concedes that “two million square feet...” is unlikely.*

The letter claims that the analysis of traffic generation under the Existing General Plan as presented in the Traffic Impact Analysis (**Appendix R1**) shows far fewer trips than 2 million square feet of office and commercial development and refers to Enclosure 5, an analysis prepared by STC Traffic entitled “Newland Sierra Office Trip Generation”. The County does not agree with this claim. The analysis of trip generation under the Existing General Plan Alternative in the Traffic Impact Analysis is based on gross acreages of office and commercial development. The SANDAG (*Not So*) *Brief Guide of Vehicular Traffic Generation Rates for the San Diego Region* (April 2002) includes two different trip generation rates for each type of office and commercial development in the Guide, one rate based on gross acreages of development and a second rate based on building square footage. The Traffic Impact Analysis used the rate based on gross acreage of office and commercial development allowed under the Existing General Plan and zoning.

As it relates to the five Enclosures included with this letter, the County offers the following responses:

**Enclosure 1** (public communication material prepared by the project applicant): As this is material is not part of the EIR and, instead, reflects the project applicant’s communication with the general public about the project, the County has no comment or position on this material.

**Enclosure 2** (Cushman & Wakefield Demand Study, dated July 31, 2017—Comment Letter O-1.8): Refer to **Response to Comment Letter O-1.8**.

**Enclosure 3** (Late Comment Letter LL-15): Refer to **Response to Late Comment Letter LL-15**

**Enclosure 4** (a technical memorandum prepared by the commenter entitled “SANDAG Growth Forecast Data on Newland Sierra Project Site Commercial Area”): Enclosure 4 is a technical memorandum prepared by the Clifton Williams, Land Use Analyst, for the commenter’s legal counsel Latham & Watkins LLP that appears to present various information about SANDAG’s Series 13 Growth Forecast for the project Site. The technical memorandum claims that SANDAG’s Series 12 2050 Growth Forecast contradicts the project applicant’s claim of two million square feet of commercial and office development and offers an alternative calculation for the maximum allowable commercial and office building square footage for the project Site based on results and calculations contained in the memorandum based on the Series 12 forecast.

There are several issues with this analysis that make the results not applicable to the analysis contained in the Newland Sierra Project EIR. First, the technical memorandum is based on results from a SANDAG Series 13 Growth Forecast, but incorrectly refers to the forecast as Series 12 throughout. The analysis contained in the Draft EIR was conducted using Series 12 (as Series 13

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was not yet available) and there is an important difference between the structures of the two models. Series 12 is based on land use inputs (acres of commercial or office development and dwelling units of residential development) that translate into traffic generation for individual Traffic Analysis Zones (TAZs) whereas Series 13 is based on socio-economic data (e.g., employment capacity for non-residential uses). Second, the Series 13 results presented in the technical memorandum are a forecast which changes with different points in time (e.g., 2030 versus 2040 versus 2050), but they are not a buildout condition, however the EIR is required to analyze the impacts of the buildout condition (under the proposed project, under the Existing General Plan Alternative, and other project alternatives). Therefore, a SANDAG forecast is not an appropriate tool for constructing a buildout condition. Third, the technical memorandum relies on City of San Diego employee per square foot (employment density) generation rates to back into the calculation of commercial and office square footage for the project Site. Employment densities are different for different parts of the County and SANDAG employment generation rates do not match the City of San Diego's. Fourth, SANDAG does not have land use authority over the project Site and is not charged with approving and regulating the implementation of either the County's General Plan or General Plan Amendments in the County of San Diego. Therefore, while the County is withholding an opinion on the validity of the results presented in Enclosure 4, for the reasons cited herein, the results are not applicable to the analysis contained in the Newland Sierra Project EIR.

**Enclosure 5** (Newland Sierra Office Trip Generation Assessment prepared by STC Traffic): The analysis prepared by STC uses the trip generation results from Table 11-1 of the Traffic Impact Analysis (Appendix R1 to the EIR) and, using SANDAG's trip generation rates based on building square footage, concludes that "the traffic associated with the General Plan analysis...does not support the 2 million square feet statement." The County does not agree with the results presented in this Enclosure. The analysis is misapplying per square foot trip generation rates to back into building square footages using the trip generation results, which are based on gross acreage rates, presented in Table 11-1. The SANDAG (*Not So*) *Brief Guide of Vehicular Traffic Generation Rates for the SAN Diego Region* (April 2002) provides a range of rates based on building square footage and gross site acreages, but leaves the decision on what rates to use and what approach to take to calculating trip generation up to the discretion of the local agency with land use authority. Per square footage rates are typically more appropriately applied when a specific project proposal or building and site plan proposal is being considered in a specific location and potentially in association with other existing or proposed uses (e.g., a 200,000 square foot medical office building in an urban setting with a user or users identified) whereas rates based on gross acreage are typically more appropriately applied at the plan level (where a specific building or site plan is not proposed). This is the case with the Existing General Plan Alternative and, hence, why the gross acreage rates were used. Therefore, the County does not agree with the results presented in Enclosure 5.