

LL-20
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: May 21, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated May 21, 2018, is a late letter that does not require a written response from the County.

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 May 21, 2018, letter from Latham & Watkins. (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 County is in compliance with General Plan Policy COS-1.4

The letter states that the County has violated its own General Plan requirements by failing to consult with the Wildlife Agencies on the Newland Sierra project, citing General Plan Policy COS-1.4. The letter also contends that the Draft EIR's conclusion (set forth in Appendix DD, p. DD-16) that this policy does not apply to the Newland Sierra Project serves as evidence that the County is failing to abide by this policy. The letter references *Friends of La Vina v. Cty. of Los Angeles*, 232 Cal.App.3d 1446, Pub. Res. Code § 21082.1, and CEQA Guidelines § 15084(c). The County does not concur with these claims.

General Plan Policy COS-1.4 requires that the County:

Collaborate with other jurisdictions and trustee agencies to achieve well-defined common resource preservation and management goals.

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This policy does not apply to County review of private development projects. Rather, it applies to County efforts to set and accomplish resource preservation and management goals in concert with various other public agencies. There is no connection between the County's obligations under Policy COS-1.4 and the goals and policies that apply to an individual project such as the Newland Sierra Project. Specifically as it relates to the preparation of MSCP-style plans, these conservation plans are prepared by the local jurisdiction (i.e., the County) as the applicant in consultation with the Wildlife Agencies and industry, environmental, and other stakeholder interests. Individual developers and property owners are not in a position to act on behalf of or represent the local jurisdiction to advance these conservation plans or consult with or collaborate with the Wildlife Agencies on plan-wide conservation objectives or outcomes. Instead, their role is confined to their specific property interests. No further response is required because the comment does not present any evidence that either (a) the County has failed to comply with Policy COS-1.4 or (b) that the lack of applicability of Policy COS-1.4 to the Newland Sierra Project somehow means that the County has failed to comply with this policy.

Nevertheless, the County has complied and continues to comply with its General Plan Policy COS-1.4, and the County has a 25-year-long track record of complying with this policy. Beginning in the early 1990's, through the creation of the MSCP Working Group, the County partnered with the City of San Diego, the City of Chula Vista, the City of Santee, the City of Poway, the Wildlife Agencies, Caltrans, the Navy, the San Diego County Water Authority, the San Diego Metropolitan Transit Board, SDG&E, the Farm Bureau, and various environmental and conservation organizations, landowners, and developer interests over a five-year-period to prepare the 50-Year Multiple Species Conservation Program (MSCP) Plan for approximately 900 square miles of southwestern San Diego County.¹

To date, the MSCP has been and continues to be a national conservation success that became the model for other regional Habitat Conservation Plan (HCP)/Natural Communities Conservation Program (NCCP)-style plans in California and around the country. Since plan adoption in 1997, the City of San Diego's MSCP Subarea Plan has resulted in the conservation of nearly 36,000 acres of land, which is 67% of the total land targeted for preservation less than half way through plan implementation.² The County MSCP Subarea Plan has achieved a greater level of success. As summarized in the County's 2016 MSCP South County Subarea Plan Annual Report³:

¹ MSCP Plan:

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

² City of San Diego's 2016 MSCP Annual Report:

https://www.sandiego.gov/sites/default/files/2016_mscp_ar_ltr.pdf

³ County of San Diego 2016 MSCP South County Subarea Plan Annual Report (Year 19):

<https://www.sandiegocounty.gov/content/dam/sdparks/en/pdf/Development/03.30.17%20FINAL%20LUEG%202016%20SC%20MSCP%20Annual%20Report-8-17.pdf>

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“From the adoption of the Subarea Plan in 1997 through 2016, the County and its MSCP partners have assembled 79 percent of the Preserve. In 19 years of this 50-year program, the County and its public agency and private conservation partners (i.e., the Wildlife Agencies, the Nature Conservancy, etc.) have assembled 77,552 acres of the proposed 98,379-acre MSCP Preserve.”

(2016 Annual Report, Executive Summary, page 2)

In accordance with Policy COS-1.4, the County’s 2016 MSCP Annual Report documents the ongoing efforts to “*achieve well-defined common resource preservation and management goals.*”

“During this reporting period there were 555 acres of habitat gain within the MSCP Preserve. Of this, 33 acres were associated with local acquisitions by the County (23 acres) and non-profit conservation partners (The Nature Conservancy’s Proctor Valley 10-acre acquisition). The remaining acreage gains in the preserve were associated with federal and state acquisitions (212 acres) and private land dedication required as a County condition of private development (310 acres). In 2016, 30 acres of habitat were impacted in the Preserve and another 198 acres were impacted outside of the Preserve, but within the South County Subarea boundaries. The numerical gains show a significant investment toward the creation of a functional preserve. Acreage gains continue despite the previously slow pace of land acquired through private mitigation; that acreage is now supplemented by additional acquisitions above the original public agency acquisition goal targeted in 1997.”

(2016 Annual Report, Executive Summary, page 2)

“More than 38,000 acres of open space (among the nearly 50,000 acres DPR owns and manages) are actively maintained, managed, and monitored by the County. This is roughly comprised as follows:

- 6,500 acres acquired and managed¹ within the SC MSCP Subarea, Tijuana River Valley, Otay Valley Regional Park since 1998,
- 5,800 acres in future North County Plan Area since 2001 and 55 acres in City of Encinitas HCP,
- 6,700 acres East County Plan Areas since 2001, and
- 19,000 acres of open space owned and managed in all plan or potential plan areas within the County upon Subarea Plan adoption. More than 7,000 of these acres are within the SC Plan Subarea.

(2016 MSCP Annual Report, Executive Summary, page 2)

“The County provides of County-owned/managed preserves that includes environmental

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education and regular on-going maintenance and monitoring activities such as public access control and enforcement, fencing, gate installation and repair, combustible fuel management, as well as adaptive management activities, such as invasive plant removal. Management and monitoring activities were conducted on County preserves as well as on private mitigation lands in accordance with their respective Resource Management Plans (RMPs). The County continued implementation of the Comprehensive Monitoring Plan (CMP), including performing habitat and resource specific surveys of County Preserves identified in the CMP.”

(2016 MSCP Annual Report, Executive Summary, page 3)

Since 1993, the County has collaborated with the Wildlife Agencies, other public agencies, conservancies, and a broad spectrum of stakeholders from the environmental community, the building and development community, and the general public to “achieve well defined common resource preservation” goals with the conservation of over 77,500 acres of land. The County’s 19 years of MSCP Annual Reports beginning in 1998 document this ongoing implementation of the County’s resource preservation goals.⁴

Consistent with General Plan Policy COS-1.4, the County has also achieved success in its preserve management and monitoring goals. Since 2005, the County has participated in regional conservation planning efforts through formal service and action through San Diego Association of Governments (SANDAG) in the following ways:

- The County serves on the SANDAG Board of Directors which implements the Environmental Mitigation Program (EMP) established by the *TransNet* Ordinance;
- The County serves on SANDAG’s Regional Planning Committee which provides, among other duties, recommendations to the SANDAG Board of Directors for funding the acquisition and management of preserve land through the EMP; and
- The County serves on the EMP Working Group which advises SANDAG’s Regional Planning Committee on preserve management and monitoring, including adaptive management strategies that aid in the survival and recovery of specific threatened and endangered species within MSCP and MHCP preserve areas. “The EMP is a unique component of the *TransNet* Extension in that it goes beyond traditional mitigation for transportation projects by including a funding allocation for habitat acquisition,

⁴ MSCP Annual Reports from 2002 through 2016:
<https://www.sandiegocounty.gov/content/sdc/parks/openspace/MSCP.html>

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management, and monitoring activities as needed to help implement the Multiple Species Conservation Program and the Multiple Habitat Conservation Program.”⁵

The EMP Working Group includes representatives of the Wildlife Agencies, Army Corps of Engineers, Caltrans, U.S. Forest Service, U.S. Geological Survey, the Wildlife Conservation Board, the Cities of San Diego, Santee, Carlsbad, Poway, and Chula Vista, and environmental, land conservancy, and building and development industry stakeholders. Since 2005, the EMP Working Group has met over 75 times (approximately every two to three months) to evaluate and recommend funding of preserve management and monitoring through the EMP. A Fact Sheet⁶ on the EMP published in July 2016 documents the accomplishments of the EMP and the regional collaboration and oversight that made it possible:

Accomplishments

As of July 2016, the EMP has helped conserve more than 8,600 acres of habitat with a value of nearly \$158 million, in partnership with nonprofit conservation groups and local, state, and federal agencies. In addition, the program has supported scientific research and regional collaboration on land management, joint use of resources, promotion of best management practices, and strategies for long-term funding.

Regional Collaboration and Oversight

Through the EMP Working Group, SANDAG coordinates with local, state, and federal agencies, as well as nonprofit groups to manage, monitor, and acquire land. This collaborative approach ensures that best practices are disseminated, gaps in resources are identified, and duplicate efforts are eliminated. To learn more about the strategic implementation plan for management and monitoring efforts, visit SDMMP.com.

(*TransNet* EMP Fact Sheet)

Under the EMP, the San Diego Monitoring and Management Program (SDMMP) was created, serving as the San Diego region’s first region-wide public funding source for preserve management and monitoring of MSCP and MHCP preserve areas. Over the 40-year life of the *TransNet* sales tax, the EMP will provide \$850 million in funding for preserve acquisition, management, and monitoring, including \$200 million for regional habitat conservation (acquisition). The County, through its participation on the SANDAG Board, Regional Planning Committee, and the EMP Working Group, continues to actively collaborate with the Wildlife Agencies, other trustee

⁵ SANDAG *TransNet* EMP Webpage:

<https://www.sandag.org/index.asp?classid=17&projectid=263&fuseaction=projects.detail>

⁶ *TransNet* EMP Fact Sheet: https://www.sandag.org/uploads/publicationid/publicationid_1138_4880.pdf

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agencies, and a broad spectrum of stakeholders “to achieve well-defined common resource preservation and management goals.”

The County’s collaborative efforts go beyond the local and regional level. Beginning in 1994, the County joined a broad-based coalition of Southern California trustee agencies, the Wildlife Agencies, the Navy, public utilities, and other stakeholders originally known as the Five County Funding Group and now known as the California Habitat Conservation Planning Coalition to advocate for state and federal funding of conservation efforts in Southern California. CHCPC has four primary goals, to secure funding for HCPs and NCCPs, to improve coordination with other permitting and regional plans, to improve the effectiveness of HCPs/NCCPs, and to build support among local, state, and federal representatives for these efforts. Key coalition members include USFWS, CDFW, the City of San Diego, the County of San Diego, the City of Chula Vista, the Navy, SANDAG, the Wildlife Conservation Board, the Western Riverside County Regional Conservation Authority, PG&E, and various environmental, conservancy, and industry stakeholders partnered around the common goal of promoting and expanding regional conservation.

The County continues to collaborate with the Wildlife Agencies and other stakeholders locally on the development of two additional MSCP Subarea Plans, the North County MSCP Subarea Plan (North County Plan), covering approximately 345,000 acres of land, and the East County MSCP Subarea Plan (East County Plan), covering approximately 1.6 million acres of land. The County has prioritized moving forward with the North County Plan. A public review draft of the North County Plan was released in 2009 which included a conservation analysis, proposed coverage for 63 plant and animal species, plan-wide expected conservation inside Pre-Approved Mitigation Areas of 114,430 acres (71% of PAMA), and 11 separate properties with proposed hardline development and preserve areas (refer to the 2009 North County Plan, Appendix E—Hardline Development Projects).

Due to shifting County project priorities, namely the General Plan Update, the 2009 Draft Plan was not finalized and, in 2016, in cooperation and collaboration with the Wildlife Agencies and interested stakeholders, work on a revised plan began. As part of the development of this revised plan, the County reconstituted the North County MSCP Steering Committee that included the Wildlife Agencies, environmental organizations, and landowner, farming community, and developer interests, and held nine (9) separate public Steering Committee meetings in 2017. Representatives of the Wildlife Agencies attended and participated in all of those meetings. Work on the Draft North County Plan is ongoing and the County continues to collaborate with the Wildlife Agencies and other stakeholders on plan development.

In summary, the County has an unbroken 25-year-long track record of collaboration with the Wildlife Agencies and other trustee agencies that has resulted in the preservation of over 77,500 acres of native habitat in the South County MSCP Subarea Plan alone, over 12,000 acres of

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additional conservation in the proposed North County and East County MSCP Subarea Plans, and hundreds of millions of dollars in funding for preserve acquisition, management, and monitoring through the *TransNet* Environmental Mitigation Program and other local, state, and federal funding sources.

3. The Newland Sierra Project design was altered to address Wildlife Agency input

The letter claims that there is no evidence that the Newland Sierra Project design was altered to accommodate agency comments or that the County and the project applicant have reached an agreement with the agencies and refers to the case *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, where the court found that “coordination” requires more than just mere solicitation and consideration of input.

The County does not agree that there is no evidence that the project design was altered to address Wildlife Agency comments. Exhibit B to the commenter’s May 17, 2017, letter (refer to Enclosure 8 to the commenter’s June 22, 2018, letter regarding the County’s Role in the Newland Process) provides a description and timeline of the revisions that were made to the project design in an effort to address the input provided by the Wildlife Agencies. Specifically, in accordance with Exhibit B to Enclosure 8 provided by the commenter, between October 2013 and January 2017, the following actions were taken in response to input from the Wildlife Agencies on the project design:

October 2013 through April 2014

- Newland initiates meetings with the Wildlife Agencies and the County on the project design.
- The Merriam Mountains “All South” plan (the hardline agreed to by the Wildlife Agencies in the Merriam Mountains Project Points of Agreement executed in 2005) was used as a baseline for the Newland Sierra Project footprint.
- The Newland Sierra Project footprint was then reduced by removing ridgeline development, adding habitat linkages, creating new preserve areas by working with the County Fire Authority and Deer Springs Fire Protection District to reduce fuel modification requirements, by removing the secondary access road (Lawrence Welk Court) from the plan that previously bisected the large block of open space in the north under the Merriam plan.

April 2014 through November 2014

- Newland met with and separately conducted a property site visit with the Wildlife Agencies, submitted a 177-page biological technical memorandum addressing USFWS concerns, and presented additional project design changes including redesign of the trail system and relocation of the equestrian staging area.

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June 17, 2015

- Newland meets with USFWS to present information indicating how conditions have not changed:
 - Foundational biological data for the NC MSCP is unchanged
 - Overall goals of the NC MSCP are unchanged
 - PAMA boundaries are largely unchanged
 - General Plan land use designations in NC MSCP Subarea Plan area are largely unchanged from the prior General Plan

November 5, 2015

- Meeting between County, USFWS, and CDFW where Newland presents revisions to the site plan with a “pullback” in certain areas based on USFWS requests and an analysis of acreage and biology for fifteen (15) parcels for potential offsite mitigation.

November 2015 through January 2016

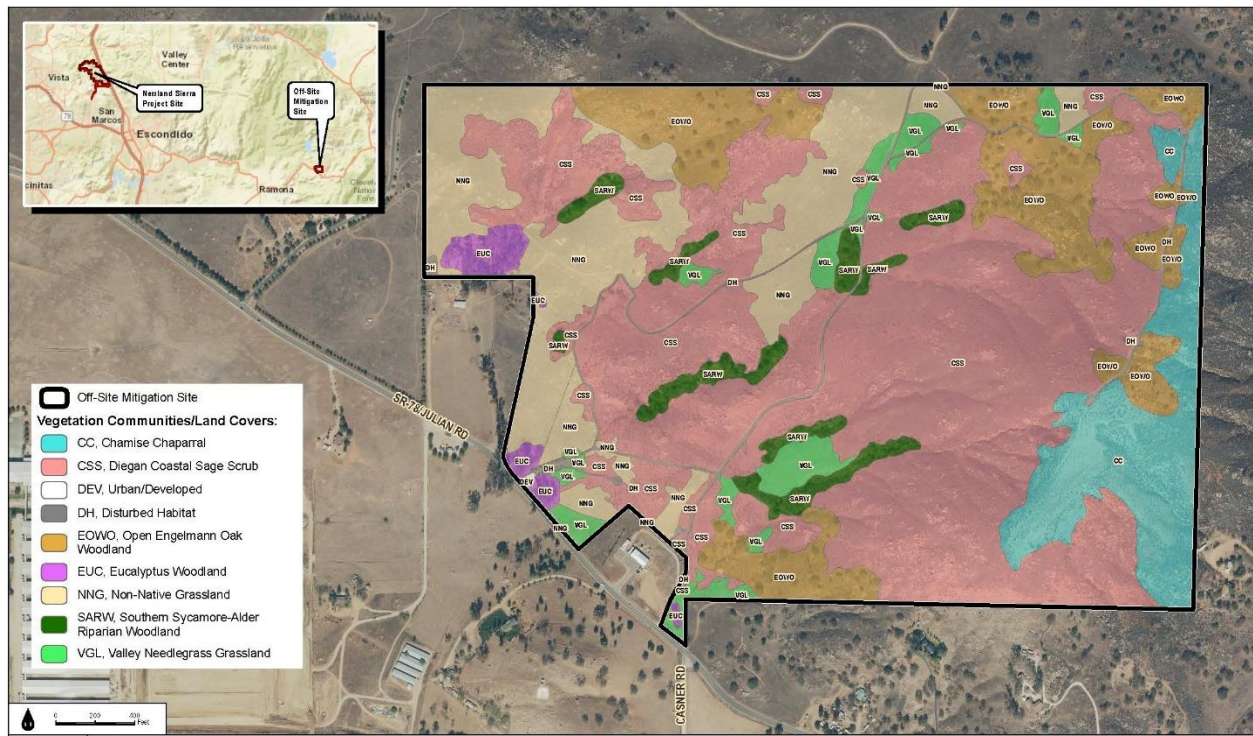
- Newland engages in additional meetings and correspondence with the Wildlife Agencies and the County on offsite mitigation sites.
- After over 2 years of negotiations, and despite beginning with the Merriam Mountains Project footprint as the baseline (which the Wildlife Agencies had previously agreed to), despite revising the project design multiple times to reduce biological impacts and the footprint of the project, and despite presenting ten different offsite mitigation properties, the Carlsbad office of the USFWS indicated that they would not be able to support a hardline agreement with Newland.

December 2016

Newland meets with Paul Souza, Regional Director of the USFWS, to present the project design and the various revisions that were made between October 2013 and January 2016 to reduce the development footprint and biological impacts in an effort to address the Carlsbad office of the USFWS’s concerns, and to discuss offsite mitigation for the project.

January 2017

Newland purchases the 212-acre Ramona parcel as offsite mitigation for the project. The mitigation site is situated between the Cleveland National Forest and San Diego County Parks land and is mapped as High Quality Habitat in the North County Plan, contains coastal sage scrub, chamise chaparral, open Engelmann oak woodland, southern sycamore-alder riparian woodland, valley needle (native) grasslands, and non-native grasslands. The mitigation site also serves as a Biological Core and Linkage Area connecting the North County MSCP Subarea Plan with the East County MSCP Subarea Plan. EIR Figure 2.4-3 of the Ramona Parcel is shown below.



EIR Figure 2.4-3: Biological Resources Map of the Ramona Parcel

4. The EIR correctly analyzed the Wildlife Agency Project Alternatives

The letter claims that the Wildlife Agency project alternatives were designed to fail, that the Draft EIR failed to analyze easy solutions to the perceived issues with the Wildlife Agency alternatives which could have been easily remedied through engagement with the agencies, and gives an example of where the Draft EIR failed to analyze placing a fire station on the project Site to reduce the impact to a less than significant level.

The County does not agree that the Wildlife Agency-recommended project alternatives were designed to fail. They were prepared based on specific Wildlife Agency input and direction and analyzed consistent with standard practice by the County to evaluate projects and project alternatives from the standpoint of environmental impacts, land use impacts (i.e., consistency with adopted plans and programs), and consistency with the County's transportation planning and fire code requirements. Specific to the comment about putting a fire station onsite, placing another fire station within close proximity to Station 12 would be an inefficient distribution of public safety services. Alternatively, closing Station 12 and opening up a fire station on the project Site would not be consistent with Deer Springs Fire Protection District's long-term plans for the provision of service. Broadly speaking, the planning and distribution of public services must be orderly and efficient to optimize the agency's ability to provide the highest quality of service to the largest geographic area in the most cost efficient manner possible.

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5. The EIR does not support or reject project alternatives, it merely analyzes them by disclosing their impacts.

The letter claims that the Draft EIR rejects the Wildlife Agency project alternatives and that this does not amount to “collaboration” with the Wildlife Agencies to ensure the County’s resource preservation goals are met. The County does not agree with this claim.

First, the EIR does not support or reject project alternatives, it analyzes project alternatives in comparison to whether they would result in increased or decreased impacts compared to the proposed project. The County Board of Supervisors can choose the proposed project or any one of the alternatives, including one of the Wildlife Agency alternatives, analyzed in the EIR.

Secondly, the comment appears to suggest that collaboration with the Wildlife Agencies requires the County to accept one of the Wildlife Agencies’ proposed alternatives in lieu of the proposed project. This is not required. For a detailed explanation of how the County has collaborated with the Wildlife Agencies for the past 25 years on resource preservation and management goals, please see the response related to County General Plan Policy COS-1.4 above.

Thirdly, the County notes that the Wildlife Agencies do not have land use authority; they do not devise land use plans or manage projects. Their role is confined to evaluating proposed development and conservation planning efforts and projects from the standpoint of how those efforts and projects affected state and federally listed threatened and endangered species.