

LL-25
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: June 15, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated June 15, 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 June 15, 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 letter mischaracterizes Wildlife Agency communication and correspondence related to the Newland Sierra Project.

The letter begins with a unsupported statement alleging that the project has “critical inconsistencies” with the Draft North County Plan as a follow up and supplemental comment letter to prior correspondence (LL-20, LL-22, and LL-23) submitted by the commenter. The letter states that the commenter recently obtained correspondence that the commenter alleges show that local Wildlife Agency experts were silenced after project applicant proponents exerted political pressure on senior agency officials and that the documents highlight the concerns of expert biologists regarding the project. The letter states that the expert agency biologists noted that the inclusion of the project as a hardline in the North County Plan “may actually doom the MSCP entirely” and states that these expert agency biologists’ have concerns about cumulative biological impacts

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associated with 10,000 units of housing in the unincorporated area. Finally, the letter states that the Wildlife Agencies have requested update California gnatcatcher surveys.

The County does not agree with the commenter's interpretation of the Wildlife Agency correspondence included as attachments to their letter. The County also notes that the letter is immediately followed by an analysis of the project's biological impacts with no reference to where this analysis came from or who prepared it. And the County notes that the commenter's assertion that "expert agency biologists noted that the inclusion of the Newland project as a 'hardline' in the North County MSCP may actually doom the MSCP entirely" is a statement that cannot be found (either in whole or in part) in any specific Wildlife Agency correspondence (attached to the letter). In light of that, the County perceives this statement to be incorrectly attributable by the commenter to Wildlife Agency biologists.

As to the Wildlife Agency request for updated California gnatcatcher (CAGN) surveys, this issue was addressed during the June 28, 2018, Planning Commission hearing on the project. Once California gnatcatchers are found onsite in coastal sage scrub habitat, that habitat is presumed occupied going forward and the analysis of biological impacts in the EIR assumed this.

As to the issue of cumulative biological impacts associated with other large projects in the unincorporated area, several of these larger projects (Fanita Ranch, Village 13, Village 14, Otay 250) are located either in the Draft Santee MSCP Subarea Plan or in the South County MSCP Subarea Plan, between 25 and 40 miles from the project site. The project has analyzed the cumulative biological impacts associated with the project and other projects within the project's biological impact study area. Refer to **Response to Late Comment Letter LL-2**.

3. Enclosures.

Seven (7) separate Enclosures were attached to the comment letter. With one exception (Enclosure 5, the PSR-PDS Report and related documents pertaining to the project's proposed interchange improvements), these Enclosures pertain to various correspondence both internally between Wildlife Agency staff and managers and externally between Wildlife Agency staff and managers and the project applicant and the project applicant's consultants. Contrary to the commenter's claim that the correspondence shows that "local Wildlife Agency experts were silenced," the County does not agree that these Enclosures are evidence of that. In the County's view, these communications are typical of the process that agencies go through to resolve issues with projects and the steps that project applicants take to reach resolution with resource agencies on project design and mitigation issues.