

**LL-4**  
**Latham & Watkins LLP**  
**on behalf of the Golden Door Properties, LLC**  
**Dated: December 1, 2017**

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated December 1, 2017, 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 December 1, 2017, 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.

1. The EIR does not rely on the proposed project being a hardline area in the Draft North County Plan.

The letter states that one of the Major Project Issues addressed in the Scoping Letter is consistency with the Draft NC MSCP Plan and that the Newland Sierra Project must comply with the Planning Agreement. The letter states that, because the Wildlife Agencies have not agreed to the inclusion of the Newland Sierra Project as a hardline area in the Draft NC Plan, the EIR should not assume a hardline in the project's EIR or in the Draft North County Plan. The letter goes on to state that the hardline is assumed to be approved for the purpose of the projects' environmental analysis. The County does not agree.

The EIR does not rely on the project site being a hardline area in the North County Plan or the ultimate adoption of the North County Plan. The EIR discloses that the project site has been

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included in the Draft North County Plan as a hardline area and identifies four possible pathways for the project to receive take authorization, with adoption of the North County Plan being only one of them. The EIR also analyzes the project's consistency with the Planning Agreement in light of the Draft North County Plan not being adopted yet.

For issues pertaining to the Project Scoping Letter, refer to the **Response to Late Comment Letter LL-5**.

2. The project analyzes its consistency with the Planning Agreement conservation objectives and preserve design principles.

The letter states that the project's Draft EIR determined the project would result in a less than significant impact with regard to preventing or precluding preparation of the NC MSCP based on the DEIR's improper assumption of a hardline and the remainder of the future NC MSCP as the reason why there would be no significant adverse effects and refers to Section 2.4.12.5, page 2.4-82 of the EIR. The County does not agree with this comment. As addressed in more detailed in **Response to Late Comment Letter LL-22**, the analysis presented in this section of the EIR relates to 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." This analysis just discloses that the project is included as a hardline project in the Draft North County Plan. The analysis that follows, however, is related entirely to the Preliminary Conservation Objectives and the Interim Project Preserve Design Principles outlined the Planning Agreement. No express reliance on the project being a hardline project in the Draft North County Plan is made. Instead, the analysis is specific to the Planning Agreement conservation objectives and preserve design principles.

3. The EIR's analysis of biological impacts is a "standalone" biological analysis.

The letter states "[t]o break this 'chain' of circular logic, the County must either: (1) first finish and certify the County's DEIR for the proposed NC MSCP containing the hardline before completing the Newland DEIR; or (2) rewrite the Newland DEIR to contain 'standalone' biological analysis for potential impacts, including cumulative biological impacts and regional wildlife corridors, without assuming approval of the (as yet unapproved) NC MSCP and using the NC MSCP as a substitute." The County does not agree. There is no circular logic created by disclosing the fact that the project has been included as a hardline area in the Draft North County Plan. As addressed in more detail in **Response to Late Comment Letter LL-22**, the project is analyzed independently for consistency with the conservation objectives and preserve design principles of the Planning Agreement *because* a Draft North County Plan is being prepared.

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4. Responses to the various attachments included with this letter have been separately prepared, as follows:

**Enclosure 1:** U.S. Fish & Wildlife Service Comment Letter on Draft Habitat Loss Permit for the proposed Newland Sierra Project and Newland Sierra Draft EIR: Refer to **Responses to Comment Letter A-1**.

**Enclosure 2:** Caltrans Comment Letter on Newland Sierra Draft EIR: Refer to **Responses to Comment Letter A-2** and **Appendix JJ-16** to the Final EIR.

**Enclosure 3:** California Department of Fish & Wildlife Comment Letter on Newland Sierra Draft EIR: Refer to **Responses to Comment Letter A-3**.

**Enclosure 4:** Golden Door Comment Letter on the Newland Sierra Draft EIR: Refer to **Responses to Comment Letter O-1**.

**Enclosure 5:** Jennings—Landscape Connectivity Issue Review: Refer to **Responses to Comment Letter O-1.5**.

**Enclosure 6:** Schaefer Review Comments of Biological Resource Sections and Reports of the DIER: Refer to **Responses to Comment Letter O-1.6**.

**Enclosure 7:** Fairy Shrimp Video Attachment to Schaefer Report: The attached video shows fairy shrimp swimming in pools. For responses related to fairy shrimp surveys conducted in January and February 2017 on the Newland Sierra Project site, refer to **Responses to Comments O-1-106, O-1.6-19, and O-1.6-20**. As stated in **Response to Comment O-1.6-20**:

“Dudek located 45 puddles on the Site, with 17 occurring within the proposed development area. The non-listed versatile fairy shrimp (*Branchinecta lindahli*) were identified by permitted biologist Paul Lemons in nine puddles. Three of the puddles occur within the development footprint (two from the vicinity of the southeastern area near the northern cul-de-sac at Mesa Rock Road, and the other one from the central portion of the Site). The puddle identified in the comment letter is shown on Figure 1 of Appendix H of the BTR. This puddle is located within the open space preserve. Because the only fairy shrimp species to be identified is not sensitive, and the listed species only has a low chance of occurring based on numerous geographic and habitat features, significant impacts to listed invertebrates, including fairy shrimp, are not anticipated.”

**Enclosure 8:** Endangered Habitats League Comment Letter on Newland Sierra Draft EIR: Refer to **Responses to Comment Letter O-2.1**.

**Enclosure 9:** Hamilton Bio Letter on Newland Sierra Draft EIR: Refer to **Responses to Comment Letter O-2.2**.

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**Enclosure 10:** California Native Plant Society, San Diego Chapter, Comment Letter on Newland Sierra Draft EIR: Refer to **Responses to Comment Letter O-7**.

**Enclosure 11:** Environmental Center of San Diego Comment Letter on Newland Sierra Draft EIR: Refer to **Responses to Comment Letter O-9**.

**Enclosure 12:** Sierra Club, San Diego Chapter, Comment Letter on Newland Sierra Draft EIR: Refer to **Responses to Comment Letter O-16**.