

**LL-8**  
**Chatten-Brown & Carstens**  
**on behalf of the Sierra Club**  
**Dated: January 16, 2018**

1. Introduction

The comment letter submitted by Chatten-Brown & Carstens (“Chatten-Brown”) on behalf of Sierra Club, dated January 16, 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 January 16, 2018, letter submitted by Sierra Club. (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 comment letter, in total, addresses the County’s Climate Action Plan (CAP), not issues specifically associated with the Newland Sierra Project.

The comment letter begins by stating that Chatten-Brown represents the Sierra Club on matters relating to the County’s environmental review of its revised Climate Action Plan (“CAP”), its draft Supplemental EIR (“SEIR”), and pending General Plan Amendment (“GPA”) projects. The comment states Sierra Club has consistently opposed any new GPAs until the County adopts a legally adequate CAP. The comment asserts the CAP was unduly delayed and now proposes to achieve emission reductions primarily through out-of-County carbon offsets.

The County acknowledges the comment letter’s introduction, and notes that the letter does not address the adequacy of the environmental analysis prepared for the Newland Sierra project, but

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instead addresses the County's CAP. The County is aware that Sierra Club has raised numerous issues about the CAP. The commenter is referred to the County's website for the 2018 CAP and responses prepared by the County to the commenter's input on that undertaking: [https://www.sandiegocounty.gov/content/sdc/pds/ceqa/Climate\\_Action\\_Plan\\_Public\\_Review.html](https://www.sandiegocounty.gov/content/sdc/pds/ceqa/Climate_Action_Plan_Public_Review.html). Specifically, the County provided a full response to this comment letter within the Revised Final SEIR prepared for the CAP at Response to Comment Letter X33, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>. The County also refers the commenter to Chapter 8.0 of the Revised Final SEIR prepared for the CAP, available online at: [https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0\\_%20Revised%20Final.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0_%20Revised%20Final.pdf).

Specifically, Master Response 3 of the CAP Revised Final SEIR addresses the commenter's apparent confusion concerning the local direct investment program, Measure T-4.1, which was adopted as a GHG reduction measure as part of the overall CAP and under which all protocols would be used to reduce GHGs locally; and CAP Mitigation Measure M-GHG-1, which was adopted to address cumulative impacts. These responses also are appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**.

To the extent comments are directed to the Newland Sierra project, the County acknowledges the comment as an introduction to comments that follow. Responses are provided, if appropriate, below.

### 3. Nothing Requires the County to Halt Processing Projects

Concerning the comment stating that GPAs should be halted pending adoption of a legally adequate CAP, the County does not concur with these comments.

First, Sierra Club previously sought an injunction to prohibit the County from processing and approving new, large scale developments pending CAP approval. (*Sierra Club v. County of San Diego* (2012), San Diego Superior Court Case No. 2012-0101054; *Golden Door Properties LLC v. County of San Diego* (2016), San Diego Superior Court Case No. 37-2016-00037402.) On April 28, 2017, the Court denied Sierra Club's request and a copy of the Court's ruling is contained in **Appendix JJ-21**. The Court stated that prohibiting the processing of projects would prejudice applicants who have expended time and financial resources processing their projects with the County, and deprive such applicants of basic due process. The Court additionally found that prohibiting the County from undertaking its planning process was an act too intrusive into County operations. Accordingly, the Court has already ruled that, contrary to the opinion expressed by the commenter, the County need not cease processing and approving projects until the CAP is completed.

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Second, the comment has become moot as the CAP has been completed and was adopted by the County Board of Supervisors on February 14, 2018. For more information on the County's Final CAP as adopted in February 2018, please see **Topical Response GHG-3 [County's 2018 CAP]**.

On March 19, 2018, the Sierra Club, joined by other environmental groups, filed suit against the County challenging its approval of the CAP. (*Sierra Club v. County of San Diego*, San Diego Superior Court Case No. 37-2012-00101054-CU-TT-CTL, and *Sierra Club et al. v. County of San Diego*, San Diego Superior Court Case No. 37-2018-00014081-CU-TT-CTL.) A lawsuit was also filed by the Golden Door Properties, LLC, on March 15, 2018. (*Golden Door Properties, LLC v. County of San Diego*, San Diego Superior Court Case No. 37-2018-00013324.) Litigation in these cases is ongoing.

The County notes that the filing of petitions by Sierra Club, Golden Door and other groups does not automatically stay operation of the CAP. (*Kriebel v. City Council* (1980) 112 Cal.App.3d 693, 702; Pub. Resources Code, §21167.3; CEQA Guidelines, §15112.) Under CEQA, an EIR is presumed adequate and the County's decision to certify the EIR is presumed correct. (*Id.*; *Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1617; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530.) The plaintiffs have the burden of proving otherwise.

Third, as concerns the Newland Sierra project and its proposed GPA, the CEQA analysis prepared for the Newland Sierra project was not linked to the County's separate CAP development process. This is because the draft version of the CAP was not published until *after* release of the Newland Sierra project's Draft EIR. The Draft EIR thus uses thresholds from Appendix G of the CEQA Guidelines, rather than those contained in the 2018 CAP's implementing documents. The project is not tiering from the CAP or otherwise reliant on that document, but instead has been processed separate from the County's CAP.

Further, the County specifically addressed this issue in Section 8.4.12 of the CAP's Revised Final SEIR, Master Response 12 - Mitigation Hierarchy and Use of Carbon Offset Credits, pages 8-51 to 8-52. Chapter 8.0 of the Revised Final SEIR is available online at: [https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0 %20Revised%20Final.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0%20Revised%20Final.pdf), and is appended to the Sierra project's Final EIR in **Appendix JJ-21**. As discussed therein, because the project requires a GPA, the CAP would not afford the project any streamlining benefits under CEQA Guidelines Section 15183.5, which allows certain, non-GPA projects to tier from and incorporate by reference the GHG emissions analysis presented in the CAP SEIR. Instead, the project is required to prepare a project-specific GHG emissions analysis; demonstrate consistency with applicable CAP measures outlined in the CAP Checklist; and reduce the increase in emissions in accordance with one of the two options set forth in Mitigation Measure M-GHG-1 of the CAP's SEIR. Those two options include: (1) Option 1: achieve no net increase in GHG emissions from

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additional density above the 2011 General Plan Update, or (2) Option 2: achieve a reduction in GHG emissions to no net increase over baseline conditions (net zero).

The County acknowledges that, now that the CAP has been adopted, any inconsistency with the CAP or the corresponding General Plan amendments associated with its approval process that has environmental consequences would be an impact under Appendix G of the CEQA Guidelines. As discussed in the Newland Sierra Final EIR, **Topical Response GHG-3**, and specifically therein at Table 1, Climate Action Plan Consistency Review Checklist, the project would comply with relevant measures in the CAP Checklist. In addition, because the project achieves carbon neutrality (i.e., a net zero emissions level), thereby resulting in no net increase in GHG emissions relative to existing environmental conditions, the project would not conflict with the CAP or its associated General Plan amendments. The project's commitment to the achievement of carbon neutrality is consistent with Option 2 (Net Zero) of CAP Mitigation Measure M-GHG-1. Further, **Appendix DD, Land Use Consistency Analysis, Table DD-1** has been revised in the Final EIR to include the General Plan amendments adopted as part of the CAP (i.e., amendments to General Plan policy COS-20.1 and General Plan Update EIR mitigation measures CC-1.2, CC-1.7, and CC-1.8). As shown therein, the project would be consistent with these amendments to the General Plan.

In addition, while the proposed project is not included in the CAP's emissions inventories, as the CAP is based on the existing land use designations in the County's General Plan (2011), the CAP does account for some level of development on the project. The Final EIR has been supplemented to disclose the GHG emissions that would be anticipated under the existing land use designations; please see the **Newland Sierra Existing General Plan Alternative - Greenhouse Gas Emissions Analysis**, incorporated at **Appendix JJ-18**. As detailed therein, estimated emissions under the General Plan Alternative would total 42,146 MT CO<sub>2</sub>e per year. If unmitigated, the project would generate 43,498 MT CO<sub>2</sub>e per year, an increase of around 3.2% when compared to the estimated emissions under the General Plan.

Notably, the project as mitigated would reduce emissions to net zero levels; conversely, a General Plan-consistent alternative would not be required to reduce its emissions to net zero. Therefore, the project would actually result in a decrease in GHG emissions compared to development currently allowed under the General Plan, and as considered in the CAP based on the Site's land use designations. Further, the Newland Sierra project is also included in the cumulative analysis of the CAP's Supplemental EIR.<sup>1</sup> In sum, the project's mitigation measures reducing emissions

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<sup>1</sup> See County of San Diego, Final Supplement to the 2011 General Plan Update Program Environmental Impact Report for the Climate Action Plan, General Plan Amendment, GHG Threshold, and Guidelines for Determining Significance for Climate Change (SCH No. 2016101055), Table 1-3, Cumulative Projects List (see, e.g., page 1-74). As demonstrated therein, the County considered the Newland Sierra project as a reasonably foreseeable cumulative project in its environmental analysis for the 2018 CAP.

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to net zero levels would not only ensure the project would not interfere with the CAP's projections or implementation, but would actually achieve further reductions below CAP projections.

Fourth, the CAP does not preclude future General Plan amendments. Indeed, the *Guidelines for Determining Significance: Climate Change and Climate Action Plan Consistency Review Checklist* developed by the County in conjunction with the 2018 CAP are designed to ensure that individual development projects proposed for approval after the CAP's adoption do not obstruct attainment of the CAP's reduction targets. Like the "net zero" approach proposed for the Newland Sierra project, in order to support a determination of less-than-significant impacts attributable to GHG emissions, the County's documentation requires General Plan amendment projects achieve "no net increase in GHG emissions from additional density above the 2011 GPU" or "no net increase over baseline conditions (carbon neutrality)." The County's Supplemental EIR for the 2018 CAP determined that implementation of this approach – which is required by Mitigation Measure M-GHG-1 in that Supplemental EIR – would ensure that GHG emissions from in-process and future General Plan amendment projects would be offset, such that the CAP's emissions inventories would not be affected. The same rationale applies here; specifically, because the Newland Sierra project proposes to reduce its GHG emissions to net zero, the project would not impair the CAP's ability to achieve the contemplated emission reductions.

In sum, there is no reason the County should cease processing the Newland Sierra project; the EIR has evaluated the project's GHG impacts including consistency with the General Plan and CAP; and the EIR proposes certain, enforceable mitigation measures for GHG emissions.

#### 4. The Arguments Made by Other Organizations and Endorsed by Sierra Club Also Relate to the CAP and Not the Newland Sierra Project

Chatten-Brown comments that Sierra Club endorses arguments raised by other commenters. The comment states these issues include the County's perceived failure to: (1) consider the incompatibility of additional GPAs with the SANDAG Regional Transportation Plan (RTP) and Sustainable Communities Strategy (SCS); (2) coordinate planning efforts with federal and State agencies, SANDAG, and other jurisdictions; and (3) address concerns with the CAP's mitigation measures.

The County acknowledges the comment and notes the comment addresses the County's CAP, not the Newland Sierra project or its Draft EIR. The County specifically addressed these issues in the CAP's Revised Final SEIR, Master Response 2 - CAP and SB 375; and Response to Comment X33-2. (See, Chapter 8.0 of the Revised Final SEIR is available online at: [https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0 %20Revised%20Final.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0%20Revised%20Final.pdf); and Response to Comment Letter X33, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardD>

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[ocs/X33.pdf](#). These responses also are appended to the Newland Sierra project’s Final EIR in **Appendix JJ-21**.)

### 5. County Control of Transportation Emissions via Land Use

Sierra Club recommends that no GPAs be permitted to “allow greenfield developments ... until the County is on target to achieve 2030 emission targets.” The comment states out-of-County offsets should not be used to “enable the County to continue authorizing large-scale projects, like Newland Sierra, which create sprawl and increase vehicle miles traveled (VMTs).” The comment contends increased VMT will dramatically increase GHG emissions, and thus the CAP should limit GPAs to growth in SANDAG Smart Growth Areas.

The County acknowledges the comment and notes the comment addresses the County’s CAP. The County specifically addressed these issues by the County in the CAP’s Revised Final SEIR, Master Response 5 – Community Plan Updates, and Master Response 12 – Mitigation Hierarchy and Use of Carbon Offset Credits; and Response to Comment X33-3. (See, Chapter 8.0 of the Revised Final SEIR is available online at: [https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0 %20Revised%20Final.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0%20Revised%20Final.pdf); and Response to Comment Letter X33, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>. These responses also are appended to the Newland Sierra project’s Final EIR in **Appendix JJ-21**.)

As excerpted from Response to Comment X33-3 of the Final SEIR prepared for the County’s CAP:

The CAP does not propose and/or facilitate the development of new land uses or changes in land use density, nor does it propose to change land use designations that were adopted with the 2011 General Plan. The authority for land use policy and regulations continues to be governed by the 2011 General Plan. Consideration of whether to approve or deny GPAs lies with the discretion of County decisionmakers. As such, a strategy that would regulate the processing of GPAs would not be appropriate. The CAP through the CAP Consistency Review Checklist and the Final SEIR through CAP Mitigation Measure M-GHG-1 provides a framework to be followed and performance standards to be met when GPAs are under consideration by decision-makers. GPAs do not receive the streamlining benefits pursuant to CEQA Guidelines Section 15183.5. At the time GPAs are considered, those project’s must demonstrate to the County’s satisfaction that they would not conflict with implementation of the CAP (i.e., that GPAs would not result in increase in GHG emissions above what is allowed in the General Plan land use designations), if adopted, and where significant impacts would occur, must demonstrate how they would reduce impacts in alignment with the mitigation

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hierarchy identified in Mitigation Measure M-GHG-1 of the Final SEIR. Regarding the use of out-of-county offsets, in accordance with the identified hierarchy in Mitigation Measure M-GHG-1 of the Final SEIR, only when projects have demonstrated that no other feasible onsite or within County offsets are feasible, could out-of-county offsets be proposed.

The County also notes that the adopted CAP demonstrates that the County has a strategy for achieving its 2030 emissions target.

Concerning the Newland Sierra project, the County does not concur the project will result in significant GHG emissions. As discussed in the Draft EIR in Section 2.7, Greenhouse Gas Emissions, the project's mitigation measures M-GHG-1 and M-GHG-2 would require the project to offset 100 percent of its annual GHG emissions, for a 30-year period, in order to achieve carbon neutrality (i.e., net zero emissions level). The utilization of carbon offsets to mitigate GHG emissions is expressly authorized by CEQA Guidelines Section 15126.4(c)(3) – (c)(4). Because the project achieves carbon neutrality (i.e., a net zero emissions level), thereby resulting in no net increase in GHG emissions relative to existing environmental conditions; the project would not conflict with the CAP or its associated General Plan amendments.

### 6. Completion of Feasibility Studies and Selection of Reduction Measures for the County's CAP

The comment summarizes concerns from the Golden Door Properties, LLC suggesting that specified elements and measures in the CAP were still being determined as of the date of the comment letter. The comment also expresses concern that studies related to the cost and feasibility of GHG reduction measures were not released for public review prior to publication of the CAP's Draft SEIR.

The County notes that the comment addresses the County's CAP, and does not raise any specific issue with the Newland Sierra project's Draft EIR. The County specifically addressed these issues in the CAP's Revised Final SEIR, at Response to Comment X33-4. (*See*, Response to Comment Letter X33, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>. The referenced response also is appended to the Sierra project's Final EIR in **Appendix JJ-21**.) As the comment does not pertain to the project (Newland Sierra), no further response is provided.

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### 7. The County's Allowance for Out-of-County Offsets

The comment states the County's General Plan requires that GHG emissions reductions occur from inside the County. Thus, according to the comment, out-of-County offsets are inconsistent with the General Plan. The comment expresses dissatisfaction that the County changed the text of 2011 GPU PEIR Mitigation Measure CC-1.2, and states the County must achieve GHG reductions within the County.

The County notes the comment addresses the County's CAP, and does not raise any specific issue with the Newland Sierra project's Draft EIR. The County specifically addressed these issues in the CAP's Revised Final SEIR at Master Response 12 - Mitigation Hierarchy and Use of Carbon Offset Credits, Master Response 13 - GHG Reduction Measures, CAP Mitigation Measures, and 2011 General Plan Update PEIR Mitigation Measures, and Response to Comment X33-5. (See, Chapter 8.0 of the Revised Final SEIR containing these responses is available at: [https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0\\_%20Revised%20Final.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0_%20Revised%20Final.pdf), and Response to Comment Letter X33, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>.) These responses also are appended to the Sierra project's Final EIR in **Appendix JJ-21**.

As discussed in Response to Comment X33-5 of the CAP's Revised Final SEIR, the County adopted an amendment to the language of its General Plan Mitigation Measure CC-1.2 concurrent with CAP approval for the following reason:

In preparing the CAP, the County has also proposed to update the language of 2011 GPU PEIR Mitigation Measure CC-1.2 to better reflect the current State regulatory requirement pertaining to GHG reduction targets and CEQA requirements for qualified plans for the reduction of GHG emissions (CEQA Guidelines Section 15183.5). To not update [Mitigation Measure] CC-1.2 would result in a plan that only demonstrates reductions to achieve 2020 targets, as opposed to this CAP which demonstrates achieving 2020 targets, 2030 targets, and a pathway to 2050 goals. The 30 GHG reduction measures comprising the CAP will be implemented within the unincorporated area of the County and from County operations. All measures in the CAP will be achieved locally. See Master Response 4 for the targets used in the CAP. As indicated in Master Response 4, the County's current targets for 2020 and 2030 comply with the latest CARB 2017 Scoping Plan and would be more stringent (i.e., results in more GHG reductions due to a more stringent target) than if the County left General Plan Mitigation Measure CC-1.2 unchanged as the commenter suggests.



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The commenter is referred to the County’s website for the General Plan Amendments approved concurrent with 2018 CAP approval: [https://www.sandiegocounty.gov/content/sdc/pds/ceqa/Climate\\_Action\\_Plan\\_Public\\_Review/](https://www.sandiegocounty.gov/content/sdc/pds/ceqa/Climate_Action_Plan_Public_Review/). These General Plan Amendments are also appended to the Newland Sierra project’s Final EIR in **Appendix DD**.

The County does not concur with the commenter’s interpretation of General Plan Mitigation Measure CC-1.2 as exclusively requiring reduction of GHG emissions through measures implemented locally. General Plan Update EIR Mitigation Measure CC-1.2 requires preparation of a CAP to reduce emissions generated within the unincorporated County. This measure does not require individual projects undergoing CEQA review to limit their GHG mitigation reduction opportunities to San Diego County.<sup>2</sup>

Particularly in the scientific realm of *global* climate change, such an interpretation of the goal is over-broad and unsupported. The California Supreme Court recently acknowledged this point in *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal. 4th 204. Page 219 of this case states that, “[f]irst, because of the global scale of climate change, any one project’s contribution is unlikely to be significant by itself.... With respect to climate change, an individual project’s emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe.... Second, the global scope of climate change and the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local.” Further, as stated on pages 219–220, “[f]or many air pollutants, the significance of their environmental impact may depend greatly on where they are emitted; for greenhouse gases, it does not.” Therefore, the use of carbon offset credits to mitigate significant cumulative impacts from future General Plan Amendment projects is consistent with the purpose and intent of 2011 General Plan Update Program EIR Mitigation Measure CC-1.2 to address *global* climate change impacts.

### 8. Out-of-County Offsets Proposed for the Newland Sierra Project Adequately Address the Global, Cumulative Nature of GHG Emissions

The comment identifies the County’s geographic priority list for the purchase of carbon offsets, and states that the Newland Sierra project Draft EIR provides the exact same language. The comment states the Newland Sierra project’s Draft EIR then adds, “[t]he project applicant or its designee shall first pursue offset projects and programs locally within the unincorporated areas of the County of San Diego to the extent such offset projects and programs are financially competitive

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<sup>2</sup> As part of development of the 2018 CAP, CC-1.2 was updated to reflect the preparation of a CAP that complies with the requirements of CEQA Guidelines Section 15183.5 and to establish reduction targets consistent with current legislative emissions reduction targets included in SB 32.

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in the global offset market.” The comment states the standard is subjective and “provides almost no restriction at all.” The commenter further references several reports and articles, and states that, concerning international carbon credit schemes, the vast majority likely fail to reduce emissions.

### a. Geographic Prioritization of Offsets

As concerns the geographic prioritization of offsets, the County specifically addressed this issue in Section 8.4.12 of the CAP’s Revised Final SEIR, Master Response 12 - Mitigation Hierarchy and Use of Carbon Offset Credits, pages 8-49 through 8-53; and Responses to Comments O14-10 through O14-12. Chapter 8.0 of the Revised Final SEIR is available online at: [https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0\\_%20Revised%20Final.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0_%20Revised%20Final.pdf); and Response to Comment Letter O14 is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/RTCs/O14%20Golden%20Door.pdf>. These responses also are appended to the Sierra project’s Final EIR in **Appendix JJ-21**.

With respect to the Newland Sierra project, the Draft EIR, Section 2.7, Greenhouse Gas Emissions, recommends mitigation measures that, in combination with identified project design features, would reduce the project’s GHG emissions to net zero and thereby support a determination that project impacts would be less than significant. GHG reductions would be achieved through a combination of on- *and* off-site reduction strategies. As discussed in the EIR, only upon exhaustion of all on-site feasible mitigation options can an applicant consider off-site mitigation options. International offsets would be last on the geographic hierarchy and would only be allowed if the applicant demonstrates infeasibility of the other options in the order of hierarchy. This geographic priority system recognizes that the availability of carbon offsets should be determined on a “real time,” as-needed basis because the market conditions for carbon offsets are constantly changing and evolving.

The County received comments on the project’s Draft EIR that “the developer should be required to submit proof to the County that offsets are unavailable in one priority category before seeking offsets from the next priority category.” In response, the relevant language of M-GHG-1 and M-GHG-2 has been revised as shown in **Response to Comment No. O-1-137**. The mitigation as revised addresses the commenter’s concern that too much deference would be provided to the developer concerning the purchase of offsets. As revised, additional proof must be submitted to the County concerning the unavailability or infeasibility of offsets.

While the mitigation has been revised, CEQA provides lead agencies with discretion to formulate feasible mitigation measures for the reduction of GHG emissions. Specifically, CEQA Guidelines Section 15126.4(c) addresses the mitigation of GHG emissions and provides a non-exclusive list of potentially feasible mitigation concepts for consideration by lead agencies and project

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proponents. Of importance, CEQA Guidelines Section 15126.4(c) does not establish a hierarchy of allowable mitigation options – there are no limits imposed on the geographic or locational attributes of the mitigation options, and there is no imperative to secure additional on-site reductions before utilizing carbon offsets.

Unlike criteria pollutants where individual districts are characterized by varying levels of pollutant concentrations and source types, GHGs and their attendant climate change ramifications are a global problem (CAPCOA 2008). Climate change is a global phenomenon in that all GHG emissions generated throughout the earth contribute to it; the action of GHGs is global in nature, rather than local or regional (or even statewide or national) (CAPCOA 2008). The California Supreme Court recently acknowledged this point in *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal. 4th 204: “the global scope of climate change and the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local.” Accordingly, geographical limits to mitigation options does not align with the science and understanding of GHGs and the global, cumulative nature of GHG emissions. As all GHG emissions generated throughout the earth contribute to climate change, a reduction in GHG emissions on earth would offset the generation of GHG emissions and their contribution to climate change regardless of geographic location.

Indeed, as discussed in **Response to Comment No. O-1-137**, in adopting CEQA Guidelines Section 15126.4(c), the California Natural Resources Agency expressly rejected invitations to establish any sort of mitigation hierarchy for GHG emissions. Similarly, on page 102 of *California’s 2017 Climate Change Scoping Plan* (November 2017), CARB “recommends that lead agencies prioritize on-site design features that reduce emissions, especially from VMT, and direct investments in GHG reductions within the project’s region that contribute potential air quality, health, and economic co-benefits locally.” On that same page, CARB recognizes that “[w]here further project design or regional investments are infeasible or not proven to be effective,” it also “may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits.” As such, much like the framework established in CEQA Guidelines Section 15126.4(c), CARB recognizes the utilization of a portfolio-based approach in the development and selection of feasible mitigation measures for the reduction of GHG emissions, while simultaneously recommending the prioritization of GHG emissions-reducing strategies in a project’s vicinity due to the corresponding economic and air quality co-benefits.

Here, the project includes 32 *on-site* project design features (PDFs) (see Draft EIR, Table 2.7-7) to reduce GHG emissions, the implementation of which would be secured through Mitigation Measure M-GHG-3. These design requirements include a Transportation Demand Management (TDM) Program (PDF-1 through PDF-20), solar photovoltaic panels on all residences (PDF-22), pre-plumbing for the use of greywater systems where feasible (PDF-26), water efficient landscaping and irrigation equipment to reduce water usage (PDF-24 and PDF-25), energy

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efficient appliances (PDF-31), installation of electric vehicle chargers in all single-family homes (PDF-23), and other features to reduce energy usage, water consumption and limit GHG emissions. The Draft EIR conservatively only accounts for GHG emission reductions from those PDFs which are readily quantifiable, and thus likely underestimates the amount of GHG emissions reductions achieved by the project. Specifically, GHG emission reductions attributable to PDFs 1 through PDF-20, and PDF-22 are accounted for in EIR Section 2.7; however, GHG emission reductions attributable to PDF-21 and PDF-23 through PDF-32 are not included in the EIR.

In conjunction with implementation of these 32 on-site PDFs, the EIR recommends adoption of Mitigation Measures M-GHG-1 and M-GHG-2, which require the purchase and retirement of carbon offsets associated with off-site reductions to reduce project GHG emissions to net zero consistent with the geographic priority system<sup>3</sup>. The County's development of this combination of on- and off-site reduction strategies is consistent with the discretion afforded to it by CEQA for purposes of mitigating GHG emissions.

b. Out-of County Offsets are Effective and Enforceable

i. Out-of County Offsets are Generally Effective and Enforceable, as discussed Relative to the CAP

The County addressed the issue raised in the comment concerning the effectiveness and enforceability of the out-of-County offsets in the CAP's Revised Final SEIR. Please refer to at Master Response 12 - Mitigation Hierarchy and Use of Carbon Offset Credits; Master Response 13 - GHG Reduction Measures, CAP Mitigation Measures, and 2011 General Plan Update PEIR Mitigation Measures; Response to Comment X33-6; and Responses to Comments O14-12 through O14-16. (Chapter 8.0 of the Revised Final SEIR is available at: [https://www.sandiego.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0\\_%20Revised%20Final.pdf](https://www.sandiego.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0_%20Revised%20Final.pdf); Response to Comment Letter X33 is available at: <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>; and Response to Comment Letter O14 is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/RTCs/O14%20Golden%20Door.pdf>. These responses also are appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**.)

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<sup>3</sup> The County does not concur with the comment that 82% of the project's GHG emissions reductions would necessarily come from out-of-County. The location of on- or off-site reductions will depend on the availability of GHG reduction measures at the time when the offsets are required to be purchased.

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ii. Out-of-County Offsets for the Newland Sierra Project also are Effective and Enforceable

Concerning the Newland Sierra project, first, for the reasons discussed in the CAP's referenced Revised Final SEIR responses, the mitigation measures proposed for the project will likewise ensure that offsets achieve the necessary emissions reductions. Second, please see **Topical Responses GHG-1** and **GHG-2**, which address offsets and the mechanisms and protocols in place to ensure enforceability and verifiability.

Third, in response to comments received on the project's Draft EIR, please note that M-GHG-1 and M-GHG-2 have been revised in the Final EIR to provide further information regarding the selection of an acceptable registry; please see **Response to Comment No. O-1-140**.

Fourth, as demonstrated by the State's approval of the *Newhall Ranch Greenhouse Gas Reduction Plan* particularly Section IX.B therein (see Appendix 6 of the Final Additional Environmental Analysis for the Newhall project, available at <https://www.wildlife.ca.gov/regions/5/newhall> and included in **Appendix JJ-4** to the Newland Sierra project Final EIR), the Climate Action Reserve, the American Carbon Registry and the Verra (formerly, "Verified Carbon Standard")<sup>4</sup> use accounting, quantification and monitoring protocols, and implement eligibility and procedural performance standards, which CARB has determined achieve an acceptable degree of environmental integrity for the CEQA process. As such, by supplementing M-GHG-1 and M-GHG-2 to require a demonstration of equivalency between option (i) and option (iii) registries, the comment's concern has been addressed.

Further, as demonstrated by projects certified under AB 900, both CARB and the Governor of California have repeatedly approved the use of offsets to reduce GHG emissions. Under AB 900, the Jobs and Economic Improvement through Environmental Leadership Act, certain CEQA streamlining benefits were provided to "environmental leadership" projects. One of the key conditions was that such projects offset or reduce all emissions to be GHG neutral. (Pub. Resources Code, §21183(c).)

To date, twelve (12) AB 900 projects have been certified by the Governor of California, and all but one of them use carbon offsets to achieve a net zero GHG emissions level. Furthermore, only two projects have been subject to *any* form of prioritization concerning the location of offsets -- the 10 Van Ness Avenue Mixed-Use Project (San Francisco) and 6220 West Yucca Project (Los Angeles)<sup>5</sup>. Those geographic priorities have been drafted consistent with the policy

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<sup>4</sup> In February 2018, Verified Carbon Standard changed its name to "Verra." Verra remains a CARB-approved registry and continues to operate the Verified Carbon Standard (VCS) Program. Please see, <https://www.arb.ca.gov/cc/capandtrade/offsets/offsets.htm> and <http://verra.org/vcs-is-now-verra/> for more information.

<sup>5</sup> 2017072018 – 10 Van Ness Avenue Mixed-Use Project, Carbon Offset Commitment Letter, December 5, 2017. Available online at: [http://www.opr.ca.gov/docs/20171211-GHG\\_Offset\\_Approach\\_Letter\\_to\\_ARB\\_2017-12-05\\_Signed.pdf](http://www.opr.ca.gov/docs/20171211-GHG_Offset_Approach_Letter_to_ARB_2017-12-05_Signed.pdf).

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recommendations included in CARB’s 2017 Climate Change Scoping Plan Update, and in a manner comparable to mitigation measures M-GHG-1 and M-GHG-2 proposed for the Newland Sierra project.

c. The County Has Exercised its Independent Judgment in Preparation of the Project’s Draft EIR

In response to the comment stating that the County must independently review the Newland Sierra EIR and “should have rejected the out-of-County approach,” please refer to **Response to Comment O-1-13**, which details that the County’s iterative process and extensive review of the proposed project, the draft EIR, and its analyses to ensure the EIR reflects the County’s own independent judgment. The County has thus exercised independence, objectivity, and thoroughness in this matter to ensure the EIR is a CEQA-compliant environmental document that reflects the County’s independent judgment. For this reason, the County does not concur with the comment’s statements or implication it did not independently review the EIR.

9. The CAP’s Perceived Conflicts with CARB’s Scoping Plan and Updated Regional SB375 Targets

The comment states that the CAP is not consistent with CARB’s 2017 update to the Scoping Plan, SANDAG’s RTP/SCS, and SB 375, and does not provide separate metrics for measuring VMT. The County notes it addresses the County’s CAP, and does not raise any specific issue with the Newland Sierra project’s Draft EIR. The County specifically addressed these issues by the County in the CAP’s Revised Final SEIR at Master Response 2 – CAP and SB 375 and Master Response 4 – GHG Baseline and Reduction Targets, and at Response to Comment X33-7. (See, Chapter 8.0 of the Revised Final SEIR containing these responses is available at: [https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0\\_%20Revised%20Final.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0_%20Revised%20Final.pdf), and Response to Comment Letter X33, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>. These responses also are appended to the Newland Sierra project’s Final EIR in **Appendix JJ-21**.)

With respect to the project’s VMT, as described in **Response to Comment O-1.4-19**, the project’s GHG emissions were estimated using CalEEMod, the industry standard modeling platform for CEQA analysis, which models emissions from VMT. For purposes of the Draft EIR’s GHG emissions analysis, traffic information for each project land use was provided by LLG, a transportation engineering firm. (See Draft EIR, Appendix C to Appendix K.) Hence, the Draft

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2015111073 – 6220 West Yucca Project, ARB Determination, June 15, 2017. Available online at: [http://www.opr.ca.gov/docs/FINAL\\_6220\\_Yucca\\_Street\\_CARB\\_Determination.pdf](http://www.opr.ca.gov/docs/FINAL_6220_Yucca_Street_CARB_Determination.pdf).

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EIR modeled and evaluated GHG emissions, including those resulting from project-related VMT emissions.

Further, Mitigation Measure M-GHG-3 calls for implementation of Project Design Features 1-20, which constitute the Newland Sierra Transportation Demand Management Program (TDM Program). The TDM Program serves to reduce the VMT by project residents, employees and visitors by 11.1% and, therefore, potentially reduces congestion. (See Appendix D of Draft EIR Appendix K; Appendix R-3 to the Draft EIR, Newland Sierra TDM Program – VMT Reduction Evaluation, prepared by Fehr & Peers.) VMT will be reduced by, for example, providing a mix of land uses so residents of the project have access to basic shopping, school, and recreation opportunities without having to travel outside of the project site (PDF-1). The project will also incorporate a number of travel and commute services for residents and employees, see PDF-2 through PDF-20.

The Draft EIR considered project consistency with the RTP/SCS (see pages 2.7-42 through 2.7-44, and Table 2.7-15), and determined impacts would be less than significant. The Draft EIR also considered project consistency with SB 32 and CARB’s Scoping Plan (see pages 2.7-44 through 2.7-45), and determined impacts would be potentially significant. However, with mitigation incorporated reducing GHG emissions to net zero (M-GHG-1 through M-GHG-3), all potentially significant impacts associated with construction and operational emissions of GHGs would be reduced to less than significant. To further demonstrate that the project has incorporated appropriate and applicable recommended on-site reduction strategies, **Appendix JJ-2** to the Newland Sierra project Final EIR evaluates the project’s consistency with potentially feasible mitigation measures for individual projects undergoing CEQA review, as identified by CARB in Appendix B of its *2017 Climate Change Scoping Plan*.

For additional information concerning Newland Sierra project’s consistency with CARB’s Scoping Plan, SANDAG’s RTP/SCS and SB 375, please see **Responses to Comments O-1-137** and **O-1-149** through **O-1-156**. As discussed therein, the project would not conflict with the statewide and regionwide planning frameworks for the reduction of GHG emissions due to the project’s mitigation framework calling for achievement of net zero GHG emissions.

### **10. Coordination of CAP with SANDAG’s Efforts to Reduce Transportation Emissions**

The comment states that the CAP should be coordinated with the efforts of SANDAG to reduce transportation emissions. The comment discusses SB 375 and states the CAP should consider the impact of the recently published *Cleveland National Forest Foundation v. San Diego Association of Governments* opinion. The County notes it addresses the County’s CAP, and does not raise any specific issue with the Newland Sierra project’s Draft EIR. The County specifically addressed these issues in the CAP’s Revised Final SEIR at Master Response 2 – CAP and SB 375, and at Response to Comment X33-8. (See, Chapter 8.0 of the Revised Final SEIR containing these responses is available at:

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[https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0\\_%20Revised%20Final.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0_%20Revised%20Final.pdf), and Response to Comment Letter X33, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>. These responses also are appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**.) As the CAP has been approved by the County, no further response is required.

### 11. Sierra Club's Recommended GHG Reduction Measures

The comment states that the County must consider the commenter's GHG reduction measures related to parking, and cites response to comment letter O22 of the Final SEIR. The County notes it addresses the County's CAP, and does not raise any specific issue with the Newland Sierra project's Draft EIR. The County specifically addressed these issues in the CAP's Revised Final SEIR Response to Comment X33-9, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>. The referenced response also is appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**. As the CAP has been approved by the County, no further response is required.

### 12. Wildfires, Water Supply and Climate Change

The comment provides a list and summary of studies related to wildfires, water supply and climate change. The comment states that the CAP should be updated every two to three years and the County should develop a Scientific and Technical Advisory Committee to advise the County and a Community Advisory Committee that would recommend improvements to the CAP to the Planning Commission and the Board.

The County notes it addresses the County's CAP, and does not raise any specific issue with the Newland Sierra project's Draft EIR. The County specifically addressed these issues in the CAP's Revised Final SEIR Response to Comment X33-10, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X33.pdf>. These responses also are appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**. As the CAP has been approved by the County, no further response is required.

Nonetheless, for informational purposes, the Newland Sierra project's impacts relative to wildfire and water supply were studied in Section 2.8, Hazards and Hazardous Materials, and Section 2.14, Utilities and Service Systems, of the Draft EIR, respectively. Two Fire Protection Plans have been prepared for the project – one for each fire protection district with jurisdiction over the project; an Evacuation Plan also has been prepared. A Water Supply Assessment also has been prepared for



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the project. Additional information regarding the subject plans and studies is located in the referenced sections of the Draft EIR.