

O-2.1 Endangered Habitats League

Comment Letter O-2.

ENDANGERED HABITATS LEAGUE
DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE



August 11, 2017

VIA ELECTRONIC MAIL

Ashley Smith
Dept. of Planning and Development Services
5510 Overland Ave., Third Floor
San Diego, CA 92123
Ashley.Smith2@sdcounty.ca.gov

RE: DEIR for Newland Sierra General Plan Amendment and Specific Plan

Dear Ms. Smith:

Endangered Habitat League (EHL) appreciates the opportunity to comment on this project and its environmental documentation. Our comments will focus on land use and biology, the latter to also include expert comments (enclosed). For your reference, EHL is a long-term stakeholder in County planning endeavors and served on the Advisory Committee for the 2011 General Plan Update. We also serve on the Steering Committee for the North County Multiple Species Conservation Program (North County MSCP). Our conclusion is that this project violates that basic integrity of the General Plan. Denial is in order.

Land Use and Planning

General Plan Update

As background, the 2011 General Plan achieved a fine balance of environment and development, painstakingly crafted during more than a decade of community and stakeholder input, and with top level professional planning from the Department. It achieved this balance in a “smart growth” manner, maintaining rural and habitat areas and adding growth in established as well as new town centers. It did not pretend that those living in dispersed suburbs would inconveniently travel miles to a transit center, but rather directed growth away from such locations. Infrastructure and service costs were reduced. Countywide, robust targets for accommodating projected population growth were exceeded. These targets were established pre-recession, making them all the more ample.

The Update was stakeholder and community driven, with real estate and development interests and conservation interests finding considerable common ground. That common ground consisted of increasing densities in towns and villages and reducing densities in outlying rural and habitat locations. Common sense criteria for village expansion were also established.

8424 SANTA MONICA BLVD SUITE A 592 LOS ANGELES CA 90069-4267 ♦ WWW.EHLEAGUE.ORG ♦ PHONE 213.804.2750

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The Update represents a comprehensive *planning* regime, not the failed past of piecemeal one-by-one applicant-driven general plan amendments. The latter are a root cause of the land use chaos and gridlock that characterize Southern California. While some individual development projects were proposed and incorporated into the Update, most—including the prior iteration of Newland Sierra—were rejected on planning grounds.

In the North County, a new urban node at SR 76 and I-15 was established, and a new Village created at Harmony Grove. Due to input from the District Supervisor, the balance was further shifted toward greater development as the process evolved. The compromises that comprised the eventual outcome garnered broad support from Community Planning Groups, but this support was predicated upon the assumption that the General Plan meant something: that it would be stable, and could be relied upon for a substantial period of time. The Newland Sierra proposal, if adopted, would shatter the compromises and *void the trust*.

Housing

There has been no data showing that the General Plan lacks housing capacity, or that, even if so, an automobile dependent development distant from transit, in an area with serious existing traffic problems, with high fire hazard, and in high biological value habitat, is the best place to add additional capacity. The unincorporated area has a compliant Housing Element and meets its RHNA. Indeed, no change in the Housing Element is being proposed, which belies any assertion that the project is needed to supply additional housing.

While it is generally acknowledged that the San Diego region lacks housing affordable to households of low to moderate income, it is actually doing fairly well for above-moderate income earners.¹ The high end Newland Sierra project would do little or nothing to satisfy the housing needs of even those with moderate income.² Wringing dollars from highly constrained land with massive blasting is hardly a solution to San Diego's pressing housing issues.

Furthermore, the Newland Sierra proposal turns the planning inherent in the General Plan on its head. The General Plan designates over 50 acres of office commercial at this location, and a miniscule amount of housing. In other words, it is a regional *employment* center geared to improved housing-jobs balance. Newland Sierra would change this to a major *residential* development, turning the location into a *generator* of vehicle trips rather than an *attractor*. The DEIR has not analyzed the effect

¹ Housing production relative to RHNA goals for above moderate income, moderate income, and low income households was, respectively, 80%, 9%, and 13%. (SANDAG, Regional Housing Progress Report 2003-2013, Tables A and B, March 2015)

² "Moderate income households earn between 80 and 120 percent of the Area Median Income (A.M.I.). For a family of four, that would be between about \$50,700 to \$77,160." (SANDAG, Chapter 4c, Regional Comprehensive Plan)

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of this wholesale change on the traffic, air quality, and GHG impacts of the 2011 General Plan. Newland Sierra could potentially invalidate that plan's Programmatic EIR, used for many tiering purposes under CEQA.

Land Use Element

For the above and other reasons, the DEIR's assertions of no significant impact to land use and planning are not credible. Multiple irreconcilable inconsistencies exist with the Land Use Element. Land Use Policy 1.1 requires density assignment that reinforces the Community Development Model and the designated Regional Categories. Turning a Rural location into "master planned" suburban sprawl mocks this policy. Land Use Policy 1.4 requires that expansion of a Village be orderly, contiguous, and reflect its character and scale. Rather, the massive project would overwhelm Twin Oaks, including development on lands *far away* from existing Village. When residents would have to drive over 2 miles to the Town Center, this itself is a *commute*.

The project would actually constitute "leapfrog" development, subject to Land Use Policy 1.2. A gas station is *not* an "established Village," so "leapfrog" is operative.³ Further, massive grading for suburban development *contradicts* the directive of Land Use Policy 1.3 to "Designate land use designations in patterns to create or enhance communities and preserve surrounding rural lands."

The General Plan is clear in its meaning and intent: Village expansions are modest additions to established villages, in keeping with the scale and character of the latter. No common sense reading of the General Plan can justify this textbook example of large-scale suburban sprawl as legitimate village expansion. Such problems were acknowledged by the Department itself when, in the course of evaluating the landowner's request for incorporation into the 2011 Update of a similar though smaller project on the same site, the Department found that recirculation of the General Plan DEIR would be required.

Greenhouse gas emissions

Neither internal project design nor the token transit measures, e.g., multi-mile periodic shuttles to Escondido, can overcome the fundamental and overwhelming automobile dependency of the project, for work, shopping, and other destinations. Rather, a 10-minute *walk* to a major transit stop is considered the benchmark for a transit-friendly development. The carbon emissions from the project's high vehicle miles traveled are proposed for "offsetting" with measures primarily out-of-County and even out-of-state or in foreign countries. This contradicts the General Plan's practice of requiring GHG emissions reduction *within* San Diego County, as reflected in Mitigation Measure CC-1.2. The project's automobile dependency and reliance on unreliable offsets would set a frighteningly low bar for future projects.

³ "For purposes of this policy, leapfrog development is defined as Village densities located away from established Villages or outside established water and sewer service boundaries."

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Impacts to land use and planning should be considered highly significant and unmitigated.

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Biology

Habitat impacts and North County MSCP

The project site is a core habitat area or Pre-Approved Mitigation Area (PAMA) in the draft North County MSCP). Indeed, it is one of the largest habitat blocks west of I-15 and it is this function as an *intact core area* for wildlife populations that must be preserved. The project site connects to the San Marcos Mountains to the west, to the east via an I-15 overpass and various culverts, and to the south over Deer Springs Road.

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The project is an example of development which targets whatever relatively flat ground is available. Post project, there would be a single intact block of habitat left in the north, comprising about 1/3 of the original site, and itself in significant part subject to edge effects from adjacent development. There would also be a remnant narrow strip hemmed between development and Interstate 15 and a second internal fragment surrounded by development. Given the edge effects upon fragments of this size,⁴ only the northern block has the potential to retain long-term biological viability.

The DEIR provides no substantial evidence that the two open space areas in the south would retain species populations and ecological functions and values. Rather, the great majority of the biological value of the site would be lost either directly or indirectly through habitat fragmentation and edge effects, leaving a grossly diminished—and also edge-impacted—870 acres in the north. Nevertheless, absent substantial evidence and contrary to the principles of conservation biology, the DEIR ascribes long-term viability to the two smaller fragments and considers them “preserve” for the purposes of the North County MSCP compliance, RPO analysis, and Habitat Loss Permit findings. In doing so, the DEIR confounds gross acres with ecological functions, and fails to disclose or mitigate the severe fragmentation and edge effects which reduce function. The bottom line is that the DEIR cannot credibly defend too little land protected in too harmful a configuration.

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The far-fetched arguments advanced by the applicant’s consultant are certainly novel. In the draft HLP and elsewhere, the chopping up of one of the few remaining large blocks of habitat left in the North County MSCP is justified on the grounds that in this highly depleted landscape, there is other “reserve” open space is of similar size. Surely the applicant, its consultant team, and the County do not believe that reserve outcomes in already depleted locations should be the template for outcomes in non-depleted locations.

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⁴ “Landscape Connectivity Issue Review Newland Sierra June 2017 DEIR,” Megan K. Jennings, Ph.D., August 1, 2017.

As detailed elsewhere,⁵ the project is not consistent with the explicit objectives of the North County MSCP Planning Agreement. For good reason, the wildlife agencies have *not* approved the project as a “hard line” for this program.

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Connectivity

According to analyses by the U.S. Fish and Wildlife Service, Calif. Dept. of Fish and Wildlife, and Jennings,⁶ the project design and the widening of Deer Springs Road would severely compromise if not obstruct north-south and east-west connectivity. As noted by Jennings, the canyon leading to the key I-15 culvert south of Deer Springs would be developed and completely obstructed. With widening of Deer Springs Road, wildlife from the north would not be able to otherwise access this culvert and hence lands east of I-15. She also shows that the only culverts under I-15 to the north that are topographically amenable to wildlife movement across the property are directly opposite from the Lawrence Welk development abutting the freeway on its eastern side. These culverts are far from the North County MSCP core areas directly west of Deer Springs, and the resort development itself comprises a barrier to movement. These impacts of development and roadways to connectivity have not been disclosed in the DEIR, and no adequate mitigation is offered.

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As a result of the project, the Merriam and San Marcos Mountains core areas would become isolated from core areas across the freeway. Both wildlife agencies have recommended major project redesign. In addition, while the I-15 interchange would be improved, this is being segmented as a separate Caltrans project and no designs are available to assess associated impacts to wildlife movement.

California gnatcatcher

The project proposes to lose most of the occupied gnatcatcher habitat (56 of 80 acres). This habitat is essential stepping stone habitat for population connectivity *along I-15*. The proposed off-site mitigation in Ramona, distant from the I-15 corridor, does nothing to mitigate for the impact. The DEIR’s claims to the contrary are unsubstantiated. The Ramona property is physically distant and biologically distinct from the Merriam Mountains site, and beyond the eastern elevational range of the gnatcatcher. While *after* North County MSCP adoption habitat could be treated more fungibly for purposes of off site mitigation, this is not the case *pre-plan*. At this time—*pre-plan*—we have no rough step metrics within geographically defined plan units to assess the amount, rate, and location of acceptable coastal sage scrub loss and preservation over time. And even after plan adoption, the first obligation is to preserve a viable preserve segment on site. Off site mitigation can never compensate for this failure.

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Resource Protection Ordinance

⁵ Ibid

⁶ Ibid

As noted above, not only is the false assertion of 1209 acres of functional, interconnected preserve used to claim North County MSCP consistency but it is also—and outrageously—proposed to justify an unprecedented *exemption* from Resource Protection Ordinance (RPO) compliance for wetlands. While compliance with RPO for sensitive habitat lands and steep slopes is asserted, this also rests of false and unsupported statements.

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Supposedly, the project’s much-reduced open space, Resource Protection Plan (RPP), and promised Resource Management Plan (RMP) comprise grounds to allow the loss of over 2 acres of otherwise protected RPO wetlands, as well as additional wetlands buffer. The statement that the project is “functionally equivalent and biologically superior to RPO” is doublespeak. Non-compliance with RPO means less wetlands protection, period. Furthermore, project after project in the County has successfully complied with RPO *and* incorporated a comprehensive resource management plan. To say that the latter obligates an exemption from the former would set an entirely new precedent for more groundless exemptions. Another rationale offered for the exemption is to achieve “project purposes” of concentrating development in the south, preserving habitat in the north, and improving roads. The first two “purposes” hardly require destroying RPO wetlands. The last “purpose” is not, in fact, a project objective, and RPO itself allows encroachment into wetlands for roadways, when there is no other option and prescribed mitigation occurs.

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For steep slopes, the DEIR admits that allowed encroachments are exceeded, yet calls into pay the RPO provision that allows such encroachment “to avoid impacts to significant environmental resources that cannot be avoided by other means, provided no less environmentally damaging alternative exists.” Because the alternatives analysis—as noted below—has not demonstrated that a reduced footprint is infeasible, this reasoning fails.

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Sensitive habitat lands under RPO include both occupied gnatcatcher habitat and wildlife corridors. If loss of occupied habitat is to occur under RPO, it must invoke all feasible protective measures and provide mitigation of “equal or greater benefit to the affected species.” To the contrary, the feasible protective measure of avoidance has not been achieved. And when the proposed mitigation site is unoccupied by gnatcatchers and contains only habitat outside the known range and elevational tolerance of the species, no argument can be entertained that “equal or greater benefit” has occurred. Similarly, RPO’s prohibition on loss of functioning wildlife corridors is not overcome by a site design that, as discussed below, blocks connectivity and has not feasibly reduced impacts.

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Habitat Loss Permit

As an interim project pending North County MSCP adoption, the proposed Habitat Loss Permit findings reflect all the DEIR’s false assertions concerning “preserve” size and function, connectivity, and coastal sage scrub functions and values. These proposed findings are not supported. While the standard of practice in HLPs is that loss

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of gnatcatcher-occupied coastal sage scrub is mitigated in-kind with occupied habitat in the same vicinity, the draft HLP provides nothing of the kind.

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Please see expert letters for additional comments as to unmitigated impacts and inadequate analysis.

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Alternatives

The Existing General Plan Alternative does not comport with the Conservation Subdivision Program, which sets *minimum* open space set-asides for subdivisions in Rural categories. As demonstrated in other comments, the DEIR under-reports the amount of open space that must be achieved through effective consolidation and lot sizes. Furthermore, it does not account for the Conservation Subdivision Program's requirement to site development in the least sensitive portion of the site, the identification of which would include avoiding or minimizing gnatcatcher impacts.

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EHL recommends a serious examination of CDFW alternatives A, B, and C—an examination not found in the project-serving DEIR. These reduced-footprint alternatives are given short shrift, with no effort made for community-focused redesign or for mitigation of fire hazard. While CEQA demands alternatives that reduce impacts, the alternatives as described often do the opposite. The DEIR's alternatives exercise is one of bad faith.

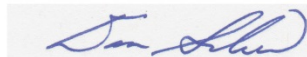
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Conclusion

This project is a test of whether the General Plan is worth the paper it is written on. The achievement of hundreds of stakeholders working with government over more than 10 years in creating a balanced plan that meets all legitimate housing needs in a "smart growth" manner should not simply go out the window. If this is not enough, the loss of 2/3rds of the site leaves insufficient habitat and connectivity for the North County MSCP. This proposed general plan amendment should be firmly rejected.

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Yours truly,



Dan Silver
Executive Director

cc: US Fish and Wildlife Service
Calif. Dept. of Fish and Wildlife
Interested parties

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