

Newland Sierra Project

Responses to Late Comment Letters

SEPTEMBER 2018

Responses to Late Comment Letters

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LL-1
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: September 25, 2017

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated September 25, 2017, is a late letter that does not require a written response from 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 September 25, 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.

2. The Comment Letter Addresses the County's Climate Action Plan, not the Newland Sierra Project

The comment letter begins by expressing appreciation for the opportunity to participate in the County's Climate Action Plan ("CAP") process. The comment states the commenter is particularly concerned about GHG emissions from the Newland Sierra project, which it believes would cause "significant GHG emissions in contrast to the County's stated goal in the CAP."

The comment does not address the adequacy of the environmental analysis prepared for the Newland Sierra project, but instead addresses the County's compliance with its mitigation obligations pursuant to the certified EIR adopted for its General Plan (and specifically measure CC-1.2, which requires the County to prepare a CAP). As such, the comment appears to be

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conflating two separate projects and processes. The County is aware that Golden Door, through its counsel Latham & Watkins, has raised numerous issues and questions with 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

The County provided a full response to this comment letter in the Revised Final Supplemental EIR (SEIR) prepared for the CAP at Response to Comment Letter O-14, which is available at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/RTCs/O14%20Golden%20Door.pdf>. The commenter is referred to those responses, which also are appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**.

The County Board of Supervisors adopted the CAP on February 14, 2018. For more information on the County's Final CAP as adopted, please see **Topical Response GHG-3 [County's 2018 CAP]**. On March 15, 2018, the Golden Door filed suit against the County challenging its approval of the CAP, *Golden Door Properties, LLC v. County of San Diego*, San Diego Superior Court Case No. 37-2018-00013324. Lawsuits were also filed by Sierra Club, joined by other environmental groups, on March 19, 2018 (*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). Litigation in these cases is ongoing.

Concerning comments directed to the Newland Sierra project within the comments on the CAP, the County acknowledges that the comment letter expresses general opposition to the project. However, the County does not concur the project will result in significant GHG emissions or be inconsistent with the CAP for purposes of CEQA. As discussed in the Newland Sierra Draft EIR, Section 2.7, Greenhouse Gas Emissions, the project – following its utilization of on-site, emissions-reducing design features and mitigation measures – would 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 interfere with implementation of the General Plan, CAP, or any GHG reduction goals for 2030 or 2050.

3. Nothing Requires the County to Halt Processing Projects

The comment letter next states the commenter's opinion that the County should cease processing and approving projects until the CAP is completed, and should, in particular, "refrain from processing the Newland Project prior to the adoption of the CAP, as doing so may result in impermissible tiering" off of the CAP prior to its approval. The comment also states that the

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Newland Sierra project's EIR includes a "true up provision" that does not require additional public review and which renders the project's offset mitigation measure illusory. The comment notes the CAP does not provide a "true up" provision, and states the project should not be allowed to "bypass more stringent offset requirements in the CAP" simply by being approved prior to adoption of the CAP.

The County does not concur with these comments for the reasons set forth below.

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), Superior Court of California, County of San Diego, 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 included in **Appendix JJ-21** to the Final EIR. 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.

Second, as discussed above, the CAP has been completed and adopted by the County. Therefore, the comments have become moot.

Third, the County notes that the filing of petitions by Golden Door, Sierra Club, 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; Guidelines, §15112.) Under CEQA, an EIR is presumed adequate and the County's decision to certify the EIR is presumed correct; the plaintiffs have the burden of proving otherwise. (*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.)

Fourth, 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 Newland Sierra Project 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:

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https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/CAP_FinalSEIR/8-LettersOfCommentAndResponses-Final-Clean.pdf, and is appended to the Newland Sierra project's Final EIR in Appendix JJ-21. The County also notes that the filing of petitions by Golden Door, Sierra Club, 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; Guidelines, §15112.) Under CEQA, an EIR is presumed adequate and the County's decision to certify the EIR is presumed correct; the plaintiffs have the burden of proving otherwise. (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.). As discussed therein, because the Newland Sierra 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 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 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 Goal COS-20, 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, the CAP does account for some level of development on the project as the CAP is based on the existing land use designations in the County's General Plan (2011). 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** to the Newland Sierra Project's Final EIR. As detailed

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therein, estimated emissions under the General Plan Alternative would total 42,146 MT CO₂e per year. If unmitigated, the project would generate 43,498 MT CO₂e 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.¹ In sum, the project's mitigation measures reducing emissions 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.

Fifth, 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 SEIR 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.

Sixth, as to the comment stating that the Newland Sierra Draft EIR includes a "true up" provision that renders M-GHG-2 illusory, the County does not concur and notes the inclusion of a "true up" process in GHG reduction plans is not without precedent in San Diego County. Projects such as the Carlsbad Seawater Desalination Project (State Clearinghouse No. 2004041081), the EIR for

¹ 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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which was certified in June 2006, included an annual “true up” process as part of its Energy Minimization and Greenhouse Gas Reduction Plan.²

Nonetheless, in response to comments received on the Draft EIR, the pertinent component of M-GHG-2 has been revised. Please see **Response to Comment No. O-1-138** for the subject revisions, which the County believes serve to improve the transparency of the “true up” process.

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. GHG Emissions Reductions Are Already Prioritized within the County

The comment states that the County’s CAP should prioritize GHG reductions within the County before allowing for the purchase of offsets from outside the County. The County notes that the comment does not address the adequacy of the environmental analysis prepared for the Newland Sierra project, but instead addresses the County’s CAP. 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; 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>. Additionally, the Master Response 12 and Responses to Comment Letter O14 are appended to the Newland Sierra project’s Final EIR in **Appendix JJ-21**.

While the comment does not raise an environmental issue with this project (Newland Sierra), nevertheless the commenter is referred to EIR Section 2.7, Greenhouse Gas Emissions, which recommends mitigation measures which, 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. The necessary GHG reductions for the Newland Sierra project would be achieved through a combination of on- and off-site reduction strategies.

² Carlsbad Seawater Desalination Project, Energy Minimization and Greenhouse Gas Reduction Plan (2008), pages 21 to 22. Available online at <<http://www.sdcwa.org/sites/default/files/files/environmental-docs/city-of-carlsbad/2-energy-minimization-greenhouse-gas-reduction-plan-Dec2008.pdf>>. The County notes that the commenter is certainly aware of the precedent of the “true up” provision from the Carlsbad Seawater Desalination Project, as the commenter was counsel for the applicant on the project. See “New ‘Problem’: Too Much Water,” Steven Greenhut, November 25, 2015. Available online at <<http://www.sandiegouniontribune.com/news/politics/sdut-new-problem-too-much-water-2015nov25-story.html>>.

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As discussed in the EIR, M-GHG-1 and M-GHG 2 shall be subject to a geographic priority system that prioritizes emissions reductions in San Diego County – 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**. While the mitigation has been revised, it is noted that 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 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, when discussing how

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local governments can support climate action through CEQA, on page 102 of *California's 2017 Climate Change Scoping Plan* (November 2017)³, 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 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 the 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. 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.

5. Adequate Assurances are Provided that Offsets will Achieve Stated GHG Emissions Reductions

The comment states that the County must provide assurances that the offsets will achieve their projected GHG emissions reductions where the offsets will be implemented out-of-County, in

³ CARB 2017 Climate Change Scoping Plan (November 2017):
https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf

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other jurisdictions. The comment states the CAP should provide mitigation assurances through 2050, and should consider whether and how to ensure mitigation for General Plan amendments continue “beyond the 30-year out year.” If the County is proposing to allow offset projects to expire before the end of the County’s planning period (i.e., 2050), the comment states potential increases should be counted in the CAP’s calculations.

The County notes that the comment does not address the adequacy of the environmental analysis prepared for the Newland Sierra project, but instead addresses the County’s CAP. The County addressed the issues raised in the comment 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 specifically within Responses to Comments O14-12 through O14-16. 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, 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>. Additionally, County CAP Master Responses 12 and 13, and Responses to Comment Letter O14 are appended to the Newland Sierra Project’s Final EIR in **Appendix JJ-21**. The County refers the commenter to those responses, and particularly Response to Comment O14-13, which explains how the County will ensure that carbon offsets achieve the requisite environmental integrity.

While the comment does not address the proposed Newland Sierra project or its EIR, the County nevertheless provides the following response.

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’s Final EIR), the Climate Action

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Reserve, the American Carbon Registry and the Verra (previously “Verified Carbon Standard”)⁴ 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.

Fifth, as demonstrated by projects certified under AB 900, both CARB and the Governor of California have repeatedly approved of 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)⁵. Those geographic priorities have been drafted consistent with the policy 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.

Lastly, concerning the sufficiency of Mitigation Measure M-GHG-2’s 30-year mitigation period, please refer to **Topical Response GHG-4 [30-Year Project Life]**, and **Response to Comment O-1.4-68**.

6. GHG Inventory and Reduction Strategies are Adequate

A. GHG Inventories

The comment states the CAP included, in its business-as-usual projections, growth from GPAs adopted since the 2011 General Plan Update, but did not include proposed GPAs. The comment states there is not enough information to support the conclusion future GPAs will not interfere with

⁴ 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.

⁵ 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.

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.

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the County's CAP reduction targets through the implementation of CAP mitigation measure GHG-1.

Again, the County notes that the comment does not address the adequacy of the environmental analysis prepared for the Newland Sierra project, but instead addresses the County's CAP. The issues raised in the comment were addressed by the County in the CAP's Revised Final SEIR, at Responses to Comments O14-17 through O14-18. (See, Response to Comment Letter O14 at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/RTCs/O14%20Golden%20Door.pdf>, a copy of which also is included in **Appendix JJ-21** to the Newland Sierra Project Final EIR.) The County refers the commenter to those responses, which provide in sum:

Under CAP Mitigation Measure M-GHG-1, [t]he County shall require in-process and future GPAs to reduce their emissions to ensure that CAP emission forecasts are not substantially altered such that attainment of GHG reduction targets could not be achieved. These projects would need to either achieve no net increase in GHG emissions from additional density above the 2011 GPU or reduce all project GHG emissions to zero to achieve no net increase over baseline conditions (i.e., carbon neutrality). The GPA would ensure that CAP emission forecasts, and therefore achievement of reduction targets, are not substantially altered under either scenario. It appears the comment suggests that the CAP should evaluate on a project-specific basis the impacts of GPAs. The CAP is a county-wide, programmatic assessment of the actions and strategies the County would implement to reduce GHG emissions to meet reduction targets. A project-by-project evaluation of emissions for existing and proposed GPAs is not appropriate within the CAP. Moreover... [t]he mitigation measure is clear that GPAs achieve no net increase in GHG emissions over the 2011 GPU or no net increase over the baseline. (CAP Response to Comment O14-18.)

As the comment does not address the proposed Newland Sierra project, the County notes the comment does not raise an environmental issue concerning this project or its EIR within the meaning of CEQA. Further, the County does not concur with the comment. First, as detailed above, the County acknowledges that the CAP is based on the existing land use designations in the County's General Plan (2011) and, thus, the proposed project (Newland Sierra) and other future General Plan amendments were not included in the CAP's emissions inventories. However, the CAP does account for some level of development on the project, and the Newland Sierra project is included in the cumulative analysis of the CAP's SEIR.⁶

⁶ 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

Second, 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 SEIR 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 to the Newland Sierra project; 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. Note however, as discussed above, the CEQA analysis prepared for the Newland Sierra project was not linked to the County's separate CAP development processes because the draft version of the CAP was published after release of the Newland Sierra Draft EIR.

B. Transportation Reductions and Land Use

The comment states that the County should ensure that future projects are located in infill locations close to existing transit. The comment states that, by not developing housing in remote areas, the County will avoid GHG emissions from transportation and energy use associated with the conveyance of water and solid waste services. The comment recommends that a requirement be included in the CAP which requires General Plan amendment projects be consistent with the land use patterns used by SANDAG in its Regional Transportation Plan and Sustainable Communities Strategy.

The County notes that the majority of the comment does not address the adequacy of the environmental analysis prepared for the Newland Sierra project, but instead addresses the County's CAP. The County addressed the issues raised in the comment in the CAP's Revised Final SEIR, at Master Response 2 - CAP and SB 375, and Responses to Comments O14-19 through O14-22. (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); Response to

demonstrated therein, the Sierra project was considered by the County as a reasonably foreseeable cumulative project in its environmental analysis for the 2018 CAP.

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Comment Letter O14 at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/RTCs/O14%20Golden%20Door.pdf>) The County refers the commenter to those responses, copies of which are included in **Appendix JJ-21** to the Newland Sierra Project Final EIR.

As discussed above, the CAP has been approved by the County since this letter was submitted. Therefore, comments proposing changes to the CAP and requesting that the County not approve the Newland Sierra project *prior to* adoption of the CAP are therefore moot points.

The County also does not concur with the comment. 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). 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 interfere with implementation of the CAP.

Concerning the project increasing the zoned density of the site, the County notes that while the existing General Plan land use designations would allow approximately 99 single-family residential dwelling units, it also would allow 2,008,116 square feet of office professional and commercial space with associated roadways. (Draft EIR page 1-34, Table 1-11; Draft EIR, Section 4.5.) Therefore, the General Plan already anticipates the so-called urbanization of this project.

In the same vein, the General Plan land use designations would generate only six percent (6%) fewer average daily trips when compared to the Newland Sierra project; but would actually generate 895 (56%) more trips in the AM peak period and 441 (21%) more trips in the PM peak period. (Draft EIR, Section 4.5, page. 4-22; Appendix II, Newland Sierra Project Alternatives Traffic analysis, page 3.) Compared to the project, development under the General Plan land use designations would actually result in greater impacts to traffic compared to the project. (*Ibid.*)

Nevertheless, the Draft EIR considered potential impacts from increasing housing, population, and traffic at the project. The commenter is referred to, among others, Section 1, Project Description, Section 2.12, Population and Housing, Section 2.13, Transportation and Traffic, and Section 4, Project Alternatives.

Regarding the comment that the project is located in a remote area far from transit, the County does not concur. As discussed in the Draft EIR:

[T]he project is located at the Deer Springs Road interchange with direct access to I-15, providing regional access to existing job centers in San Marcos, Vista, Rancho Bernardo, Escondido, and Poway. The Site is also located near Cal State San

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Marcos and Palomar College, and three Sprinter stations are within 6 miles of the project Site: the San Marcos Civic Center Sprinter Station, the Buena Creek Station, and the Palomar College Station, as shown in Figure 1-34, Proximity to Major Employment Centers. (Draft EIR p. 1-24.)

While the County acknowledges there are no public transit services which stop at or within the immediate vicinity of the project, service could potentially be provided in the future by the North County Transit District (NCTD). The Riverside Transit Agency (RTA) also currently operates a Commuter Link Express Route (Route 217) along the I-15 corridor with morning and evening service between Hemet, Murrieta, Temecula, and the Escondido Transit Center. Furthermore, the project incorporates a substantial TDM program which notably includes: shuttle services throughout the Project and to the Escondido Transit Center, a park-and-ride lot, subsidized transit passes for the project's residents, mobility hubs as a means of resident outreach and education, and continued coordination with SANDAG and NCTD for the siting of future transit infrastructure. (See, TDM Program (PDF-1 through PDF-20).)

Lastly, with respect to the request that the CAP require General Plan amendment projects to be consistent with the land use patterns used by SANDAG in its RTP/SCS, the CAP has been approved without this requirement. Government Code Section 65080(b)(2)(K) expressly declares that an SCS does not regulate the use of land; does not supersede the exercise of the County's land use authority; and does not require the County's land use policies and regulations (including those set forth in its General Plan) to be consistent with the SCS. Further, the CAP itself proposes no land use changes, but aims to reduce GHG emissions from existing and planned land uses.

Concerning the Newland Sierra project, the Draft EIR, Section 2.7.3.2 and Table 2.7-15 also evaluate the project's consistency with SANDAG's RTP/SCS, and determine the project would be consistent with the RTP/SCS.

C. Open Space Conservation Land

The comment cites the CAP's statement that the acquisition of land by the County under the MSCP would reduce GHG emissions through the preservation of land which can otherwise be developed. The comment asks how the County will calculate reductions from this measure, "but allow GPAs such as the Newland Project to move forward?" The comment also notes the North County MSCP is in draft form and states it is improper for the CAP to take credit for a program that has not been approved. The comment maintains that the project would "avoid the CAP's goal of preserving open space and agricultural lands' by developing on a parcel currently zoned for a much lower level of density...than the project currently proposes."

The County notes that the majority of the comment does not address the adequacy of the environmental analysis prepared for the Newland Sierra project, but instead addresses the County's CAP. The County addressed the issues raised in the comment CAP's Revised Final SEIR, at

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Master Response 11 - Carbon Sequestration, and Response to Comment O14-23. (See, Chapter 8.0 of the Revised Final SEIR, 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 at <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/RTCs/O14%20Golden%20Door.pdf>.) The County refers the commenter to those responses, copies of which are included in **Appendix JJ-21** to the Newland Sierra Project Final EIR.

Concerning the Newland Sierra project, it would preserve approximately 1,209 acres of on-site open space and additional 212 acres of off-site open space, for a total preserve acreage of 1,421 acres (72 percent of the project acreage.) (Draft EIR page 1-3). The Draft EIR calculated GHG emissions associated with vegetation removal consistent with the CalEEMod User's Guide. The Draft EIR states:

CalEEMod was used to estimate emissions from vegetation removal and tree plantings. For purposes of this analysis, the one-time sequestration loss on the project site was calculated and included in the construction emissions estimates, and no credit was taken for the anticipated increase in sequestration capacity following project implementation as a result of tree plantings. However, the estimated increase in sequestration capacity (approximately 3,297 MT CO₂E) due to new tree plantings is provided for disclosure. This "pool" of sequestration savings (3,297 MT CO₂E), even though no credit is taken, nonetheless represents GHG reductions above and beyond those required by the EIR's mitigation measures. (Draft EIR page 2.7-36.)

See also **Response to Comment O-1.4-22**. The Draft EIR did not take credit for emissions reductions through the preservation of land. As to agriculture, Section 2.2.3.1 of the Draft EIR states, "The project does not contain any Williamson Act contract lands, County agricultural preserves, lands designated Prime Farmland, or Farmland of Statewide Importance, nor any active irrigated croplands or other crop production. As such, none of these agricultural resources would be directly impacted by the project." Thus the project would adequately protect open space, and impacts to agriculture would be less than significant.

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7. Conclusion

In sum, these late comments relate to the County's CAP, which has been approved and is not the project at issue in this EIR. Where comments included in this letter on the CAP may reference the Newland Sierra project or its EIR, the comments relate to subject areas that received extensive analysis in the Draft EIR, as detailed above. As the comment letter does not raise any specific issue regarding the Newland Sierra EIR or its analyses, no more specific responses can be provided.

LL-2
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: November 21, 2017

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated November 21, 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 November 21, 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.

2. There are no data gaps, errors, or omissions in the EIR

The letter alleges data gaps, errors, and omissions in the EIR analysis and documentation, but provides no evidence that such data gaps, errors, or omissions exist in the EIR. The letter then claims that these unspecified data gaps, errors, and omissions required Golden Door Properties, LLC (“Golden Door”), to sue the County. On July 14, 2017, Andrew Yancey of Latham & Watkins, LP, on behalf of his client the Golden Door, requested “unlocked Excel spreadsheets supporting all emissions calculations in Appendices G and K (to the Draft EIR) and electronic input and output files for all CalEEMod, AERMOD, and HARP runs.” (refer to **Appendix JJ-3** to the Final EIR). On October 3, 2017, Dudek provided the requested files along with a memorandum of instructions on how to use the files to generate the analysis contained in the Draft EIR.

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3. The EIR correctly analyzed cumulative impacts.

The letter lists four projects (the Williams Riviera Project, the Safari Highlands Ranch Project, the Pala Casino Resort Expansion, and the San Marcos Highlands Project) and provides a list of projects in the City of Escondido it states the EIR did not include on the Cumulative Projects List (Table 1-10 in the EIR). The letter states that some of these projects are quite large and would have the potential to add significant traffic to area roadways, including the I-15 freeway.

The letter is incorrect in stating that the EIR did not include the Williams Riviera Project, the Pala Casino Resort Expansion, and the San Marcos Highlands Project. These three projects are listed in Table 1-10 as project numbers 22, 103, and 109.

As to the Safari Highlands Ranch Project on the eastern edge of the City of Escondido just north of the San Diego Zoo Safari Park, at the time of the release of the Newland Sierra Project Notice of Preparation (NOP) on February 12, 2015, the Safari Highlands Ranch Project was not an official project¹. The Safari Highlands Ranch Project is a proposed 550-unit residential subdivision approximately 10 miles to the southeast of the Newland Sierra Project in an unincorporated area of the County that is proposed for annexation into the City of Escondido. Accordingly, the project is being processed through the City of Escondido with Escondido serving as the Lead Agency under CEQA.

As it pertains to the various projects within the City of Escondido, to the extent that those projects are consistent with the City's 2012 General Plan Update, the environmental effects of those projects are already analyzed at the General Plan level in the City's Final EIR for the City's General Plan Update, Downtown Specific Plan Update, and Climate Action Plan ². As the Escondido projects are also surrounded by or bordered by existing urban and suburban development, the impacts associated with those projects are also largely confined to the boundaries of the City of Escondido and the cumulative impacts to natural elements of the environment such as agricultural resources, biological resources, and cultural resources would be expected to be minimal. Consequently, with the exception of traffic impacts which occur to the I-15 and SR 78 freeways, the impacts associated with these Escondido projects would be generally confined to the immediate area around these projects and are not cumulatively considerable in the Newland Sierra Project EIR.

¹ The NOP for the Safari Highlands Ranch Project was released on September 11, 2015:
<https://www.escondido.org/Data/Sites/1/media/PDFs/Planning/SafariRanch/NOPforSHR.pdf>.

² According to the City of Escondido, a few projects in the City are proposing General Plan Amendments, however none of these projects are proposing an increase in intensity compared to what is allowed by the City's updated 2012 General Plan.

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In total, the Newland Sierra EIR analyzed the cumulative effects of 199 projects (refer to Table 1-10 in Chapter 1 of the EIR), including several which are no longer active projects. As stated in Section 1.7 (page 1-33) of the EIR:

“[t]he cumulative projects are shown in Figure 1-46, Cumulative Projects Map, and listed in Table 1-10. All projects are generally located in northern San Diego County, encompassing the North County Metropolitan Plan area, Bonsall Community Plan area, Fallbrook Community Plan area, Pala-Pauma Community Plan area, Valley Center Community Plan area, and the City of San Marcos. For each environmental issue area discussed in Chapters 2 and 3 of this EIR, a more specific cumulative study area is defined, as applicable, to each issue.”

Thus, the EIR correctly focused on cumulative projects within the North County inland subregion and projects that would be expected to have some level of interaction with the proposed project (e.g., projects in San Marcos). The responses below address how cumulative impacts were addressed in each subject area of the EIR.

4. The EIR’s cumulative projects traffic analysis is conservative.

As stated above, the Williams Riviera Project, the Pala Casino Resort Expansion, and the San Marcos Highlands Project were all included in the cumulative traffic analysis for the project.

As to the Safari Highlands Ranch Project, the bulk of the traffic from this project would impact local streets within the City of Escondido, such as San Pasqual Valley Road, San Pasqual Road, Cloverdale Road, and Via Rancho Parkway, roadways to which the Sierra project would add very little traffic, given the 10 mile distance the project is located from these roadways. This road network would not be significantly impacted by the Newland Sierra Project. The Safari Highlands Ranch Project would impact portions of the I-15 and SR 78 freeway mainlines. In the case of the impacts to I-15 freeway, the Newland Sierra Project has already identified these impacts as significant and unavoidable and Caltrans is on record stating that there is no mitigation project for impacts to the freeway mainline:

“With respect to capacity enhancing improvements to Interstate 15 (I-15) between State Route 78 and the Riverside County boundary, Caltrans recognizes that no mitigation program, which the EIR could rely upon, is currently in place to implement such improvements.”

(Appendix JJ-14 to Newland Sierra Project Final EIR)

With respect to the SR 78 freeway, SANDAG and Caltrans are implementing capacity enhancing improvements in the form of high-occupancy vehicle (HOV) lanes along SR 78 west of I-15, however, because these improvements are under the jurisdiction and control of Caltrans and the

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timing of these improvements cannot be assured to occur prior to the project's impacts occurring, direct and cumulative impacts are considered significant and unavoidable (refer to Section 2.13.1.6 of the EIR).

As to the various projects within the City of Escondido and other potential projects in neighboring jurisdictions like San Marcos or the broader North County inland area (e.g., the Rancho Lomas Verdes Specific Plan Project in the City of Vista), it is important to understand how cumulative traffic analyses are conducted in the County. In the case of the Newland Sierra Project, the cumulative traffic impact analysis was based on a SANDAG Series 12 Forecast which included a certain amount of subregional forecasted growth in traffic (i.e., background traffic from other unspecified "cumulative projects" within the broader subregion based on adopted General Plans) and which was then manually adjusted to account for the traffic generated by 192 separate cumulative projects (refer to Table 9-1 of Appendix R1a to the Final EIR). As stated in Appendix R1a:

"Based on a research of potential projects in the Project area and discussions with the County, a twostep process was utilized to estimate the total cumulative projects volumes. The first step was to utilize the SANDAG Series 12 Year 2020 model which incorporates the cumulative projects within the County of San Diego. The model did not include a comprehensive listing of cumulative projects within the adjacent Cities of Vista, San Marcos and Escondido, and therefore, the next step was to estimate the total cumulative traffic that would be generated by city projects and manually add that traffic to the volumes obtained from the 2020 model. A total of 192 projects are included."

(Appendix R1a, Chapter 9.0, "Cumulative Projects", page 82)

Various projects in San Marcos were manually added to the cumulative projects traffic volumes produced by the SANDAG Series 12 2020 model, which overstates the impacts from these projects, and, thereby the traffic volume from cumulative projects.

Finally, the EIR already concluded that the project would contribute to significant cumulative impacts on I-15 and SR 78 and increases in cumulative traffic volumes along these freeways would not change the conclusion in the EIR related to these two freeway facilities.

5. The SANDAG model was adjusted to incorporate the land uses proposed by the Lilac Hills Ranch Project.

The letter states that it is difficult to understand how the addition of the Lilac Hills Ranch Project impacts the baseline SANDAG model, that there is a temporal component to determining when cumulative impacts will occur, and the scope of a project used to amend a baseline model could determine the difference between a significant and insignificant impact. The SANDAG Series 12 2020 model used to forecast cumulative traffic volumes for the Newland Sierra Project

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incorporated the land uses from 171 separate cumulative projects listed in Table 6.1 of the Lilac Hills Ranch Traffic Impact Study³. In other words, the land uses for these various Traffic Analysis Zones (TAZs) were specifically modified to incorporate the land uses proposed by these 171 projects. Then the Lilac Hills Ranch Project and 20 San Marcos projects were separately added to the cumulative traffic volumes produced by the SANDAG Series 12 model. As stated in Section 6.1 of the Lilac Hills Ranch Traffic Study one of the 171 cumulative projects included in the SANDAG Year 2020 Model was the Newland Sierra Project. The Sierra project traffic could have been removed from the cumulative traffic volumes for the Newland Sierra EIR. But to be conservative, this traffic was not removed. Therefore, cumulative traffic is overstated in the Newland Sierra EIR. The cumulative analysis is also conservative in that the manual addition of the San Marcos projects overstates the volumes from these projects because the trip association/interaction between the residential and non-residential uses in these projects which the SANDAG model captures is lost. Therefore, the cumulative traffic volumes used for the Newland Sierra Project EIR's analysis is considered conservative. Finally, as to the temporal nature of impacts, the SANDAG Series 12 2020 traffic model was run assuming full buildout of the Lilac Hills Ranch Project along with the other 191 projects included in the analysis. Therefore, from this standpoint as well, the cumulative analysis should be considered conservative.

6. The EIR found cumulative impacts related to aesthetics, air quality, and population and housing significant and unavoidable.

The addition of new cumulative projects (e.g., Safari Highlands Ranch Project, Rancho Lomas Verdes Project in Vista, projects in downtown Escondido) would not change these significance determinations in the EIR.

As to air quality specifically, which is an environmental resource area highlighted in the comment letter, Section 2.3, Air Quality, of the EIR considered whether the project would “[r]esult in a cumulatively considerable net increase of any criteria pollutant for which the project region is in nonattainment under an applicable federal or state ambient air quality standard.” (Final EIR, p. 2.3-19; see also pp. 2.3-60 to 2.3-65.) Assessment of the project's impacts under this Appendix G criterion was further informed by the County's *Guidelines for Determining Significance – Air Quality (Air Quality Guidelines)*. (Id. at p. 2.3-20.) The County's *Air Quality Guidelines* provide, in part, that a project with a significant direct impact associated with PM₁₀, PM_{2.5}, NO_x and/or VOCs also results in a significant cumulative impact.⁴ (Id. at pp. 2.3-20, 2.3-60.)

³ Refer to the Lilac Hills Ranch Traffic Impact Study:

https://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/Recirculation/GPA_12001-REIR-AppendixE-TrafficImpactStatement_061214.pdf.

⁴ These four criteria pollutants are the focus of the County's *Air Quality Guidelines* for cumulative impact analysis because the San Diego Air Basin (SDAB) is a designated federal nonattainment area for ozone (NO_x and VOC are recognized ozone precursors), and a designated state nonattainment area for ozone, PM₁₀ and PM_{2.5}. (Final EIR, pp. 2.3-62, 2.3-67.)

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As provided in EIR Section 2.3, the proposed project's NO_x, PM₁₀ and PM_{2.5} emissions resulting from construction activities would be cumulatively considerable, because the project's direct emissions exceeded the quantitative thresholds set forth in the County's *Air Quality Guidelines* following application of all feasible design features and mitigation measures. (Id. at p. 2.3-63.) Similarly, operational emissions of VOCs, PM₁₀ and PM_{2.5} would be cumulatively considerable, because the project's direct emissions exceeded the quantitative thresholds set forth in the County's *Air Quality Guidelines* following application of all feasible design features and mitigation measures. (Id. at p. 2.3-65.)⁵

Of relevance to this response, it is not industry standard practice – when assessing cumulative air quality impacts – to undertake modeling that presents the quantitative emission estimates associated with specific cumulative projects, such as those identified by Latham & Watkins. In this way, air quality models (here, CalEEMod) are methodologically distinct from traffic models, which sometimes do account for the quantitative implications of cumulative projects. However, this is not a deficiency in the modeling framework used to assess cumulative air quality impacts, as CEQA Guidelines section 15130 does not require a quantitative assessment but rather an assessment that is “guided by the standards of practicality and reasonableness.” Standards of practicality and reasonableness preclude the formulation of emissions estimates based on cumulative project data as the model designed for uniform, statewide application in the CEQA context (CalEEMod) is constructed to populate data associated with a singular project. Relatedly, the cumulative significance of a project is not under-reported due to the absence of such data. This is because, in the case of SDAB, a project is presumed to result in a cumulatively significant impact if it exceeds any of the direct emission thresholds for a pollutant for which the SDAB is designated nonattainment, thereby requiring adoption of all feasible mitigation measures and alternatives.

7. The Newland Sierra Project would not result in significant cumulative impacts to agricultural resources.

As stated in the EIR:

“[T]he project Site is not considered to be comprised of important agricultural resources and would mitigate for any potential direct off-site impacts to agricultural resources. According to the County's Guidelines for Determining Significance, ‘[a] project that is determined not to be an important agricultural resource, that would not have significant indirect impacts to agricultural resources, and that would not conflict with agricultural zoning or a Williamson Act contract would not have the potential to contribute to a cumulative impact’ (County of San Diego 2007). ... Therefore, the project would **not result in a cumulatively considerable impact** on agricultural resources.”

⁵ The EIR also conservatively identified significant cumulative impacts associated with CO, even though the San Diego Air Basin is not a designated nonattainment area for carbon monoxide. (Final EIR, pp. 2.3-63, 2.3-65.)

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(Newland Sierra Final EIR, Section 2.2.4, Agricultural Resources, Cumulative Impact Analysis, page 2.2-17)

Therefore, whether other cumulative projects would result in significant impacts to agricultural resources does not affect the significance determination in the EIR related to cumulative impacts to agricultural resources for the Newland Sierra Project.

8. The EIR's analysis of cumulative impacts to biological resources is based on a "biological cumulative impact study area".

As stated in the EIR:

"The (biological cumulative impact) study area is bound on the south and southwest by urban lands, on the west by the San Marcos Mountains, on the north by Gopher Canyon, and on the east by Moosa Canyon. Of the 199 reasonably foreseeable projects provided by the County, 87 projects are located within the 66,681-acre biological study area. Potential impacts to biological resources were examined for these 87 cumulative projects and are summarized in Table 2.4-28."

(EIR Section 2.4.13, Cumulative Impact Analysis, page 2.4-94)

The Safari Highlands Ranch Projects falls outside of this biological cumulative impact study area due to its geographic location and is, therefore, not included in the EIR's analysis of cumulative impacts to biological resources.

As to the Rancho Lomas Verdes Specific Plan Project, the development footprint would be primarily limited to the areas of the site that have been used for intensive agriculture and the site's natural areas (areas not used for agriculture) would remain undeveloped ⁶. Therefore, with the application of appropriate mitigation measures and absent any site specific evidence to the contrary, it is reasonable to assume that this project would not result in significant biological resource impacts.

9. The project's cultural resource impacts are not cumulatively considerable.

The EIR acknowledges potential cultural resource impacts from cumulative projects, identifies the project's impacts, and identifies mitigation to reduce the project's impacts to less than significant. Refer to EIR Section 2.5.4 Cumulative Impact Analysis, pages 2.5-44 and 2.5-45.

⁶ Refer to the Notice of Preparation of a Draft Environmental Impact Report for the Rancho Lomas Verdes Specific Plan: <http://www.cityofvista.com/home/showdocument?id=13837>.

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As to the Safari Highlands Ranch Project, the EIR for this project ⁷ has identified potential significant impacts to two (2) archeological resource sites defined as historical resources by CEQA and, although no human remains have been identified on the project site, the project's EIR includes seven (7) mitigation measures (MM CUL-1 through MM CUL-7) to mitigate the impacts to archeological resources and potential impacts to human remains to less than significant. Impacts to historic structures and paleontological resources were found to be less than significant.

As to the Rancho Lomas Verdes Specific Plan Project, although no environmental document has yet been prepared for this project, as stated above, the development footprint would be primarily limited to the areas of the site that have been used for intensive agriculture and the site's natural areas (areas not used for agriculture) would remain undeveloped. The project would also be subject to Assembly Bill 52 requiring consultation with the Native American Tribes. Therefore, with the application of mitigation measures and absent any site specific evidence to the contrary, it is reasonable to assume that this project would not result in significant cultural resource impacts.

10. The project's geological impacts are not cumulatively considerable.

As stated in the EIR:

“Geotechnical conditions are localized and generally unique to each site. Approved projects and those under review are subject to soils and stability analyses and cannot be constructed unless each project is determined to be geotechnically feasible. The project is not located adjacent to other cumulatively considerable projects related to geotechnical conditions; therefore, cumulative impacts related to localized site stability would not occur. With regard to seismicity, the project and any future development would expose additional property and people to earthquake hazards. However, this impact can be mitigated by compliance with CBC seismic requirements on a project-by-project basis. Development throughout northeastern San Diego County would not impact the plate tectonic conditions of the area. Therefore, the project would not result in a cumulatively considerable impact to geology, soils, or seismicity.”

(EIR Section 2.6.4, Geology, Soils, and Seismicity, Cumulative Impact Analysis, pages 2.6-19 and 2.6-20)

As to the Safari Highlands Ranch Project, that project's EIR found impacts to geology and soils to be less than significant and the project does require any mitigation for its impacts⁸.

⁷ Refer to Section 2.4, Cultural Resources, of the Safari Highlands Ranch and Citywide SOI Update EIR: <https://www.escondido.org/Data/Sites/1/media/PDFs/Planning/SafariRanch/eir/101317/EIR/204CulturalResources.pdf>.

⁸ Refer to Section 2.5, Geology and Soils, of the Safari Highlands Ranch and Citywide SOI Update EIR: <https://www.escondido.org/Data/Sites/1/media/PDFs/Planning/SafariRanch/eir/101317/EIR/205GeologyandSoils.pdf>.

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As to the Rancho Lomas Verde Project, the site is already substantially disturbed by agricultural uses. The project will be required to comply with the same standards (e.g., CBC seismic requirements) applicable to the Newland Sierra Project, the Safari Highlands Ranch Project, and, broadly, all projects (e.g., any planned or approved projects in the City of Escondido) requiring grading of roads, slopes, and building pads and construction of buildings, roads, utilities, and stormwater infrastructure. Cumulative impacts would be less than significant.

11. The Newland Sierra Project would result in no net increase in greenhouse gas (GHG) emissions.

It is well recognized that “GHG impacts are exclusively cumulative impacts; there are no non-cumulative GHG emission impacts from a climate change perspective.” (CAPCOA, *CEQA & Climate Change* (2008), p. 35.)⁹ As such, the analysis provided in Section 2.7, Greenhouse Gas Emissions, of the EIR is uniquely oriented to an evaluation of the cumulative significance of the project’s GHG emissions:

“Due to the global nature of the assessment of GHG emissions and the effects of global climate change, impacts can currently only be analyzed from a cumulative impact context; therefore, this EIR’s analysis includes the assessment of both project and cumulative impacts.”

(Final EIR, p. 2.7-48.)

As to the project’s significance determination after implementation of its design features and mitigation measures, the EIR finds that:

“[w]ith implementation of mitigation measures M-GHG-1 through M-GHG-3, 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. Accordingly, the project would not interfere with implementation of any of the above-described GHG reduction goals for 2030 or 2050. Further, the project emissions estimates presented in Table 2.7-8 through Table 2.7-14 are a conservative representation of project emissions due to the reasonably foreseeable and anticipated technological and regulatory advancements that will continue to advance the state’s GHG policies. Therefore, the project

⁹ See also California Natural Resources Agency, *Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97* (2009), p. 4 [“The incremental contributions of GHGs from innumerable direct and indirect sources result in elevated atmospheric GHG levels.”]; *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204, 256-257 [“First, because of the global scale of climate change, any one project’s contribution is unlikely to be significant by itself. The challenge for CEQA purposes is to determine whether the impact of the project’s emissions of greenhouse gases is *cumulatively* considerable ...”] (*italics in original*).

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would not conflict with any local or state plans, policies, or regulations adopted for the purpose of reducing GHG emissions and impacts would be **less than significant**.”

(Final EIR, p. 2.7-55 (**bold in original**).)

As such, the mitigated project would not result in a cumulatively considerable contribution of GHG emissions that would significantly impact global climate change. In response to these comments, it is important to note that CEQA requires evaluation of an individual project’s incremental contribution to the cumulative condition. And, as provided in CEQA Guidelines section 15130(a)(3): “A project’s contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.” Here, the Newland Sierra project has proposed to mitigate its fair share by reducing, to net zero, each metric ton of carbon dioxide equivalents that it directly and indirectly emits into the atmosphere.

As to the cumulative projects highlighted by Latham & Watkins in its comment letter, the Safari Highlands Ranch Project and other projects in the City of Escondido would be required to comply with the City of Escondido’s Climate Action Plan, and the Rancho Lomas Verdes Project would be required to comply with the City of Vista’s Climate Action Plan. As provided in Section 2.6, Greenhouse Gas Emissions, of the Safari Highlands Ranch Draft EIR:

“Mitigation measure MM GHG-1 would ensure that the proposed project achieves energy efficiency and associated GHG emissions reduction objectives to be determined consistent with the Escondido Climate Action Plan. With implementation of this mitigation measure, resulting impacts would be **less than significant**.”

With implementation of mitigation measure MM GHG-2, the project would offset 7,442 MT CO₂e per year over the project’s lifetime, for a total of 223,250 MT CO₂e. 2 The project’s GHG emission would be reduced to a level below the efficiency metric of 2.89 MT/SP/year, which would be consistent with the GHG emission statewide reduction goals for 2030 and 2050. Therefore, after mitigation impacts would be **less than significant**.”

(City of Escondido, *Safari Highlands Ranch and Citywide SOI Update Draft EIR* (October 2017) (SCH No. 2015091039), p. 2.6-27, available at <https://www.escondido.org/Data/Sites/1/media/PDFs/Planning/SafariRanch/eir/101317/EIR/206GreenhouseGasEmissions.pdf>.)

While the Draft EIR for the Rancho Lomas Verdes Project is not yet publicly available as of the date of this writing, that project’s notice of preparation discloses that it will consider the project’s consistency with the City of Vista’s adopted Climate Action Plan, as required by CEQA. Compliance with these other cities’ Climate Action Plans would ensure that the referenced

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cumulative projects result in less-than-significant cumulative impacts relative to GHG emissions, both with respect to each city's GHG reduction objectives and statewide reduction goals.

12. The project would not result in significant cumulative impacts related to Hazards and Hazardous Materials

As stated in the EIR:

“Wildfire Hazards

“As discussed above, the project Site is susceptible to wildland fires. The potential for wildland fires resulting in the loss of life or property is generally unique to each site. All cumulative projects are subject to the fire codes and regulations and, with some projects, the preparation of FPPs to determine the potential risk for wildland fires. Larger cumulative projects similar to the proposed project, such as Lilac Hills Ranch and Campus Park West, are required to include such features as FMZs, fire access roads, and fire hydrants to reduce the risk of potential wildland fires. Any project in a given area cannot be approved unless the project is determined to meet the fire codes and regulations for the fire authority having jurisdiction over the cumulative projects.

“However, the proposed project, along with cumulative projects, would result in an increased population in wildland interface and urbanized areas, thereby potentially increasing the risk of wildland fires through factors such as human carelessness, arson, and vehicle fires. However, the best available technologies for fire protection have been included in project design, and its FPP further demonstrates that the fire spread rate would be sufficiently reduced for adequate response by the fire authority having jurisdiction. Through the proposed project's and cumulative projects' compliance with the numerous fire-related regulations, and incorporation of fire protection features, the potential cumulative impacts from wildland fires would be **less than significant.**”

(EIR Section 2.8, Hazards and Hazardous Materials, Cumulative Impacts, pages 2.8-32 and 2.8-33)

Therefore, as all potential cumulative projects would need to comply with all applicable fire and building codes and regulations, including the Safari Highlands Ranch Project, the Rancho Lomas Verdes Project, and projects in the City of Escondido, no change to the significance determination for cumulative impacts in the Newland Sierra EIR would result.

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13. Cumulative projects would result in a less than significant impact to mineral resources.

As stated in the EIR:

“As growth in the region continues, mining and extraction activities are likely to be directly and indirectly impacted by new development. Mineral resources, particularly sand, gravel, and rock, are a regional resource (see Figure 2.9-2, County-Wide Quarries, Mines, and Gem Deposits). The proposed project, in combination with the cumulative projects, could potentially impact mineral resources within the MRZ-2 zone. Only a small portion of planned development is proposed within the MRZ-2 zone located in the northern portion of the development, and potential future extraction from the Quarry parcel would not be precluded.

“On a region-wide cumulative scale, the eastern portion of San Diego County would not be economically feasible for mining activities due to haul distances and lack of infrastructure. Because the majority of resources would be available for extraction, a significant cumulative impact would not occur. As such, cumulative projects would result in a less-than-significant impact, and the proposed project would **not result in a cumulatively considerable impact** on mineral resources.”

(EIR Section 2.9.4, Mineral Resources, Cumulative Impact Analysis, page 2.9-10)

14. The geographic scope for the analysis of cumulative noise impacts is limited to locations within proximity to noise-generating operational components and construction equipment.

As stated in the EIR:

“Noise levels tend to diminish quickly with distance from a source; therefore, the geographic scope for the analysis of cumulative impacts related to noise was limited to locations within proximity to noise-generating operational components and construction equipment. This study area is similar to the off-site model receiver locations shown in Figure 2.10-4. As listed in Table 1-10, Cumulative Projects, and shown in Figure 1-46, of Chapter 1, Project Description, cumulative projects in this area include the Casa de Amparo, Dougherty Pet Resort, Crossroads Church, North County Metro (NC22), Matheson, and Rimsa TPM. Most of the cumulative projects located in the area consist of existing or planning NSLUs, and, given their size, are not likely to substantially contribute to cumulative traffic noise. However, cumulative projects outside of this immediate area could contribute traffic along Deer Springs Road and other off-site roadways, such that a cumulative increase in ambient noise would occur.”

(EIR Section 2.10.4 Noise, Cumulative Impact Analysis, page 2.10-26)

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As addressed above, the Safari Highlands Ranch Project, the Rancho Lomas Verdes Project, and projects in the City of Escondido are not expected to contribute significant amount of traffic to the same road network impacted by the Newland Sierra Project. Also addressed above, the cumulative analysis for traffic impacts from the Newland Sierra Project is considered conservative. Therefore, cumulative considerable noise impacts from these projects are not expected to have any effect on the analysis of cumulative noise impacts related to the Newland Sierra Project.

Finally, the Newland Sierra Project has already identified a potentially significant cumulative impact to sensitive receivers along Deer Springs Road and this impact was determined to be **significant and unavoidable** (refer to EIR Section 2.10.4.7, Noise, Cumulative Impacts, pages 2.10-37 and 2.10-38). Additional cumulative projects would not affect this significance determination.

15. The Newland Sierra Project's impacts to paleontological resources are not cumulatively considerable.

All projects involving significant grading or excavation activities are required to obtain a grading permit which, with rare exception¹⁰, requires a paleontological monitor to be present during these grading or excavation activities. In the case of the proposed project, the discovery of any fossils greater than 12 inches in any dimension requires suspension of grading activities until the appropriate resource recovery protocols are determined and implemented. This is a standard form of mitigation that all projects involving significant grading and excavation activities and subject to CEQA must adhere to. Therefore, no projects, including but not limited to the Safari Highlands Ranch Project, the Rancho Lomas Verdes Project, and projects in the City of Escondido, should result in significant and unavoidable impacts or cumulative considerable impacts to paleontological resources once this standard mitigation is applied.

16. The Safari Highlands Ranch Project, the Rancho Lomas Verdes Project, and projects in the City of Escondido are in different sewer and water districts.

The Safari Highlands Ranch Project and most of the projects in the City of Escondido would be served by the City of Escondido for water and wastewater services. Some projects in the City of Escondido and to the west of the City would be served by the Rincon del Diablo Municipal Water District. The Rancho Lomas Verdes Project would be served by the Vista Irrigation District for water service and the City of Vista for wastewater service. The Newland Sierra Project would be served by Vallecitos Water District for water and sewer services. Detailed responses have been

¹⁰ An exception to this requirement might be for a project obtaining a grading permit for a site that was previously graded and the proposed grading would only impact existing fill areas such as manufactured slopes or pads (in other words, the grading would not extend into previously ungraded soils or rock). Other exceptions are for minor grading permits not subject to CEQA (e.g., a homeowner building a retaining wall).

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prepared addressing water supply availability and reliability (refer to **Responses to Comments O-1-279 through O-1-352**).

17. Environmental Effects Found Not to be Significant

The Newland Sierra Project would not result in a cumulative considerable impact related to Energy, Hydrology and Water Supply, Land Use and Planning, Parks and Recreation, or Public Services and no evidence has been presented that additional cumulative projects (such as Safari Highlands Ranch, Rancho Lomas Verdes, projects in the City of Escondido, etc.) not included in Table 1-10 of the EIR would alter this significance determination.

18. Conclusion as to cumulative impacts.

In conclusion, the Newland Sierra Project EIR has sufficiently addressed the potential cumulative effects of the project in conjunction with present and probable future projects. Despite the fact that the Safari Highlands Ranch Project, the Rancho Lomas Verdes Project, or projects in the City of Escondido were not included in the EIR's cumulative projects list (EIR Table 1-10), as addressed herein, no change to the cumulative impact significance determinations for the various Newland Sierra Project EIR subject areas (aesthetics, agricultural resources, etc.) would result were these projects to be included in Table 1-10.

19. Implications of *Cleveland National Forest Foundation v. San Diego Association of Governments* (Case No. D063288) decision.

Citing the Fourth District Court of Appeal's *Cleveland National Forest Foundation v. San Diego Association of Governments* (CNFF v. SANDAG) decision, Latham & Watkins states that the Newland Sierra project's EIR failed to evaluate the project's compliance with SANDAG's mitigation measure requiring agencies in the San Diego region to "require the use of best available control technology [BACT] to reduce greenhouse gas emissions during the construction and operation of projects." In response, the subject mitigation measure, which was adopted by SANDAG in connection with its 2050 RTP/SCS EIR,¹¹ has been superseded by the mitigation framework more recently adopted by SANDAG in connection with its EIR for San Diego Forward: The Regional Plan.¹² SANDAG's current framework does *not* impose the same BACT requirement. Nonetheless, the project is not inconsistent with the BACT concepts identified in the subject mitigation measures. Specifically, SANDAG's prior mitigation called for use of fuel efficient fleets and alternative fueled vehicles, energy efficiency lighting systems, cool pavements

¹¹ The mitigation measure (GHG-C) referenced by Latham & Watkins is available at <https://www.sandag.org/uploads/2050RTP/F2050RTPEIR48.pdf>; specifically, please see page 4.8-38 in Section 4.8, Greenhouse Gas Emissions, of SANDAG's Final EIR for the 2050 RTP/SCS (October 2011)(SCH No. 2010041061).

¹² See Section 4.8, Greenhouse Gas Emissions, of SANDAG's Final EIR for San Diego Forward: The Regional Plan (October 2015)(SCH No. 2010041061), which is available at http://www.sdforward.com/pdfs/EIR_final/Section%204.8%20Greenhouse%20Gas%20Emissions.pdf.

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and shade trees, as well as the recycling of construction debris.¹³ The project is subject to regulatory compliance measures and includes design features and mitigation measures that are compatible with and in furtherance of each of these BACT concepts, as discussed in Section 2.7, Greenhouse Gas Emissions, of the project's EIR. Additionally, consistent with SANDAG's prior mitigation, through application of CalEEMod, the Newland Sierra project's EIR also "[u]se[d] an adopted emissions calculator to estimate construction-related emissions."

Latham & Watkins also states that the project's EIR failed to consider a transit-oriented development alternative. However, Chapter 4, Project Alternatives, of the EIR addressed the feasibility of alternative locations for the project, and specifically evaluated an alternative site (NC 2-1) identified by Latham & Watkins' client (Golden Door) as being located "in closer proximity to ... transit infrastructure." (Final EIR, pp. 4-6 to 4-8.) As explained therein, alternative locations (including NC 2-1) were determined to be infeasible to undesirable for various reasons, such as their smaller size and scale, developed status/development potential, and/or multiple landowners. Please refer to EIR Section 4.3.1.1, Alternative Site Location Alternatives, for additional relevant information.

Finally, Latham & Watkins states that the project's EIR failed to analyze whether the project will be consistent with smart growth policies advanced by the County and SANDAG. However, the project's consistency with land use and smart growth policies set forth by the County and SANDAG is considered throughout the EIR. For example, project consistency with SANDAG's RTP/SCS is addressed in Table 2.7-15 of Section 2.7, Greenhouse Gas Emissions. (Final EIR, pp. 2.7-70 to 2.7-73.) Additionally, project consistency with County General Plan policies of relevance to GHG emissions analysis is evaluated in Table 2.7-17 of EIR Section 2.7. (Final EIR, pp. 2.7-74 to 2.7-79.) Appendix DD of the EIR contains a full consistency analysis relative to the County's General Plan and SANDAG's RTP/SCS. As provided therein, the project would be consistent with applicable policies of both agencies.

¹³ Certain elements of mitigation measure GHG-C are not appropriate for project-specific application. For example, one BACT concept identified by SANDAG calls for the streamlining of permitting processes for infill, redevelopment and energy-efficient projects. The Newland Sierra project has not been processed using streamlined permitting procedures; as such, this concept is not applicable.

LL-3 Endangered Habitats League Dated: November 30, 2017

1. Introduction

The comment letter submitted by Endangered Habitats League (EHL), dated November 30, 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 Environmental Impact Report (EIR). To provide additional time, the County instead afforded 60 days for public review and comment. The Draft EIR public comment period 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 November 30, 2017, letter submitted by EHL. (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 Large Part, Addresses the County's Climate Action Plan, Not the Newland Sierra Project

EHL begins by stating that it wishes to supplement its comments on the County's draft Climate Action Plan (CAP) due to the availability of the October 2017 draft of the California Air Resources Board's (CARB) 2017 Climate Change Scoping Plan (2017 Scoping Plan). According to the letter, the new information from CARB "also affects" the Newland Sierra project and its Draft EIR; thus, EHL asks that the letter be submitted into the administrative record for the Newland Sierra project.

The County notes that, subsequent to this letter and CARB's publication of the October 2017 draft document, CARB released and adopted the final 2017 Scoping Plan (dated November 2017) on December 14, 2017, which is available at: https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf. The adopted, final document supersedes the one referenced in the late comment letter.

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Additionally, to the extent the comment letter addresses the County's CAP, EHL is referred to the County's website for the 2018 CAP and associated responses: https://www.sandiegocounty.gov/content/sdc/pds/ceqa/Climate_Action_Plan_Public_Review.html#FinalBOSDocs. The County provided a full response to this comment letter within the Revised Final Supplemental EIR (SEIR) prepared for the CAP at Response to Comment Letter X22, which is available at: <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/X22.pdf>. Those responses are also appended to the Sierra project's Final EIR in **Appendix JJ-21**.¹

3. The Newland Sierra Project Is Consistent with CARB's Scoping Plan as Incorporation of Mitigation Measures Will Ensure No Net Increase in GHG Emissions

Concerning comments directed to the Newland Sierra project within the comment letter, the County acknowledges that EHL expresses opposition to the project. However, the County does not concur with assertions that the EIR for the project is deficient, or that the project is inconsistent with CARB's 2017 Scoping Plan.

The Draft EIR for the project considered consistency with Senate Bill (SB) 32 (which established the statewide reduction target that is the focus of CARB's 2017 Scoping Plan), and determined impacts would be potentially significant. (Draft EIR, pp. 2.7-44 through 2.7-45.) However, the project – following utilization of on-site, emissions-reducing design features – would 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). Because the project achieves carbon neutrality, thereby resulting in no net increase in GHG emissions relative to existing environmental conditions, the mitigated project would not interfere with implementation of CARB's 2017 Scoping Plan.

Of note, the utilization of carbon offsets to mitigate GHG emissions is expressly authorized by CEQA Guidelines section 15126.4(c)(3) – (c)(4), and is discussed as a recognized emissions-reducing strategy in the 2017 Scoping Plan. Further, the geographic priorities included in Mitigation Measures M-GHG-1 and M-GHG-2 have been drafted to be consistent with the policy recommendations included in CARB's 2017 Scoping Plan. Please also refer to **Appendix JJ-2** (Newland Sierra AQ/GHG CARB Scoping Plan Consistency Analysis) of the Final EIR, which

¹ The County Board of Supervisors adopted the CAP on February 14, 2018. For more information on the County's Final CAP as adopted, please see **Topical Response GHG-3 - County's 2018 Climate Action Plan (CAP)**. On March 19, 2018, the Sierra Club, joined by other environmental groups including EHL, filed suit against the County challenging its approval of the CAP. (*Sierra Club et al., v. County of San Diego*, San Diego Superior Court Case No. 37-2018-00014081-CU-TT-CTL.) Additional lawsuits were also filed by the Golden Door Properties, LLC on March 15, 2018 and Sierra Club on March 19, 2018. (*Golden Door Properties, LLC v. County of San Diego*, San Diego Superior Court Case No. 37-2018-00013324, and *Sierra Club v. County of San Diego*, San Diego Superior Court Case No. 37-2012-00101054-CU-TT-CTL.) Litigation in these cases is ongoing.

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addresses project implementation of recommended reduction strategies identified by CARB in Appendix B of its 2017 Scoping Plan.

EHL summarizes policies and language included in the October 2017 draft of the 2017 Scoping Plan related to the topic of vehicle miles traveled (VMT). The comment states that CARB's October 2017 draft clearly identifies VMT reductions as "separate and distinct" elements of a plan for mitigating project GHG emission impacts. The comment also asserts that, because the 2017 Scoping Plan includes language related to VMT, the County must not utilize carbon offset credits to reduce cumulative GHG emissions from General Plan Amendments (GPAs). The County disagrees with these contentions.

To the extent the comment addresses the County's CAP, the comments have been addressed by the County in the CAP's Revised Final SEIR, Master Response 2 – CAP and SB 375; Master Response 5 – Community Plan Updates; Master Response 6 – Transportation GHG Reduction Measures; and, Responses to Comments X22-4 through X22-6. Chapter 8.0 of the Revised Final SEIR (which contains the master responses) is available at: <https://www.sandiegocounty.gov/content/sdc/pds/advance/climateactionplan/capfinalseir.html>, and Responses to Comment Letter X22 is available at the web address previously provided. Additionally, Master Responses 2, 5 and 6, and Responses to Comment Letter X22 are appended to the Sierra project's Final EIR in **Appendix JJ-21**.

The County refers EHL to these responses, and particularly Responses to Comments X22-4 through X22-6. Response X22-4 describes the County's commitment to achieving VMT reductions, which may be accomplished through establishing mixed use villages, increasing density, enhancing roadways for multi-modal use, implementing transportation demand management and parking strategies, etc. Additionally, Response X22-6 explains the County's disagreement with EHL's position that GPAs that rely on offsets instead of VMT reductions would "inherently produce GHG emissions over and above those considered in the General Plan and mitigated in the CAP." Such a position elevates the form of GHG reductions (i.e., by VMT reductions instead of by the purchase of carbon offsets) over their function (GHG emission reductions). Purchase of carbon offsets and VMT reductions are simply two means to the same ultimate end objective of reducing GHG emissions. As explained in Response to Comment X22-6, the CAP mitigation program which requires the purchase of offsets ensures "no new net GHG emissions above what was considered by the 2011 GPU and would include all GHG emissions associated with project-related VMT." Thus, GHG emissions would *not* be higher through reliance on offsets instead of VMT reductions.

Further, the County's approach is consistent with CARB's 2017 Scoping Plan. When discussing how local governments can support climate action through CEQA, page 102 of the final 2017 Scoping Plan (November 2017) recommends that "lead agencies prioritize on-site design features that reduce emissions, especially from VMT, and direct investments in GHG reductions within the

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project's region that contribute potential air quality, health, and economic co-benefits locally." On that same page, however, 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.

Now that the County's CAP has been adopted, the project is required to comply with the CAP's guidelines for GPAs.² As discussed 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, because the Newland Sierra 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). (Chapter 8.0 of the Revised Final SEIR is available online (see web address above), and is appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**.) 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 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 Newland Sierra project would comply with the relevant measures in the CAP checklist and attain net zero emissions consistent with the CAP. Final EIR **Topical Response GHG-3**, at Table 1, Climate Action Plan Consistency Checklist, demonstrates the project's compliance with relevant measures in the CAP Checklist. The project's commitment to achieving carbon neutrality also 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 supplemented in the Final EIR to include the General Plan amendments adopted as part of the CAP. As shown therein, the project would be consistent with these amendments to the General Plan, in addition to achieving no net increase in GHG emissions.

Indeed, by mitigating to net zero, the project would actually achieve further reductions below CAP projections. This is because, while the proposed project is not included in the CAP's emissions

² Note that the project has been processed separate from the County's CAP. This is because the draft version of the CAP was not published until *after* release of the project (Newland Sierra) Draft EIR. The project's Draft EIR thus uses thresholds from Appendix G of the CEQA Guidelines, rather than those contained in the 2018 CAP's implementing documents; and adopts mitigation to reduce impacts pursuant to those thresholds.

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inventories, the CAP accounts for some level of development on the project Site, as the CAP is based on the existing land use designations in the County's General Plan (2011). 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 CO₂e per year. If unmitigated, the Newland Sierra project would generate 43,498 MT CO₂e per year, an increase of around 3.2% when compared to the estimated emissions for the Site under the General Plan. However, the project as mitigated would reduce emissions to net zero levels. 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.³

In sum, whether reduced through VMT or through on-site measures together with purchase of carbon offsets, the Newland Sierra project will not result in an increase in GHG emissions and will not impact the state's ability to reach its GHG reduction targets.

4. The Newland Sierra Project's EIR Adequately Evaluated Project VMT

The comment states that the project's Draft EIR does not describe how the Newland Sierra development will affect San Diego County's overall VMT.

First, contrary to the comment's assertion, the Draft EIR *does* describe how the development will affect San Diego County/ regional overall VMT. Page 2.7-44 of the Draft EIR states that "the overall VMT in the region and at the project level with implementation of the project would be within 4.5 percent of SANDAG-forecasted VMT for the region."

The calculation determining the operational VMT attributable to the proposed project compared to the SANDAG-forecasted VMT for the region is derived from information contained within Table 2.7-16 of the Draft EIR. (See also Appendix K, Greenhouse Gas Emissions Technical Report, Table 24.) Table 2.7-16, in turn, presents VMT information that was provided by SANDAG, which is incorporated in the Draft EIR at Appendix R4 – Transportation Modeling for the Newland Sierra Development. SANDAG calculated the region-wide VMT and project (Select Zone) VMT for the "with" and "without" project scenarios. The "with" project scenario VMT was calculated at 294,804 VMT, and the "No Project" scenario VMT was calculated at 251,116 VMT,

³ Further, the Newland Sierra project is also included in the cumulative analysis of the CAP's Supplemental EIR (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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as presented in Table 2.7-16. The “with” project VMT was then reduced by 11.1 percent based on the results of Appendix R3 – Newland Sierra TDM Program VMT Reduction Evaluation, for a total of 262,376 VMT. This total is 4.5 percent greater than the No Project VMT total of 251,116.

Accordingly, the Draft EIR discussed that the project would generally be consistent with SANDAG’s Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) as it would generally be consistent with planned uses and overall County/regional VMT (just a 4.5 percent difference); would provide a balanced mix of uses to allow the project to reduce VMT by offering resident-serving land uses internally; and would combine with an integrated pathway and trail plan and a dense system of internal streets and roads that would promote a pedestrian use and facilitate non-vehicular travel. (Draft EIR, p. 2.7-44.)

Second, the County does not agree the EIR provides only a cursory analysis of the project’s VMT. Please refer to Draft EIR Section 2.13.10, VMT Analysis, Appendices R-2 through R-4, and Appendix K (Appendix D). Please also refer to **Appendix JJ-9** (Fehr & Peers’ Addendum to Newland Sierra VMT Analysis in Response to SB 743) of the Final EIR.

Third, while EHL is correct the project incorporates project design features (PDFs) to reduce VMT, the implementation of the Transportation Demand Management (TDM) Program would be secured through Mitigation Measure M-GHG-3. The project includes 32 on-site PDFs (see Draft EIR, Table 2.7-7) to reduce GHG emissions, including the TDM Program — PDF-1 through PDF-20 — which is proposed to reduce the VMT by project residents, employees and visitors by 11.1%. (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.) M-GHG-3 would ensure implementation of the TDM Program.

5. The EIR’s Discussion of Consistency with CARB Policies is Adequate

The comment states that the CAP’s Draft SEIR does not provide information related to how the CAP’s GHG emissions metrics compare to the 2017 Scoping Plan’s GHG emissions metric, and questions whether the CAP’s population assumptions are consistent with the metrics used by CARB. The comment asks the County to analyze whether exceedances of VMT metrics may be cured by the purchase of offsets without separate VMT mitigation. With respect to the Newland Sierra Project, the comment contends that because SANDAGs RTP/SCS was based on General Plan land uses, emissions and VMTs from the project were not considered and additional analysis is required.

The County notes that the majority of the comment addresses the County’s CAP. The County addressed the issues raised in the comment in the CAP’s Revised Final SEIR, at Master Response 2 - CAP and SB 375, and Responses to Comments X22-9 through X22-12. The County refers EHL to those responses, copies of which are included in **Appendix JJ-21** of this Final EIR.

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As concerns the Newland Sierra project, first, the County notes that the VMT reductions cited in the comment letter (see page 3) are listed in the 2017 Scoping Plan as “Recommended Local Plan-Level Greenhouse Gas Emissions Reduction Goals.” (2017 Scoping Plan, pp. 99-101 (emphasis added)). It does not appear under the heading titled “Project-Level Greenhouse Gas Emissions Reduction Actions and Thresholds.” (Id. at pp. 101-102 (emphasis added)). Accordingly, the 2017 Scoping Plan does not state that the referenced 7% and 15% VMT reduction targets for 2030 and 2050, respectively, are applicable to individual projects, such as the Newland Sierra project. Rather, those are plan-level considerations for local jurisdictions.

Second, the Draft EIR contains detailed analysis demonstrating that project implementation would not conflict with the RTP/SCS. (See **Responses to Comment Nos. O-1-147 to O-1-156.**) The Draft EIR reasoned that the resulting VMT in the region with the project would be similar (within 4.5 percent of the SANDAG-forecasted VMT) to the expected VMT if the project Site was developed with the underlying land uses anticipated by the County’s General Plan and SANDAG modeling (Draft EIR Table 2.7-16 as informed by Appendix R including Appendix R1a, Traffic Impact Analysis prepared by LLG and Appendix R3, Newland Sierra TDM Program - VMT Reduction Evaluation prepared by Fehr & Peers contained therein). The Draft EIR also reasoned that the project and its TDM Program (which attains an approximate 11 percent reduction in VMT) would be consistent with the RTP/SCS policies and objectives. Section 2.7.3.2 and Table 2.7-15 of the Newland Sierra EIR also evaluate the project’s consistency with SANDAG’s RTP/SCS, and determine the project would be consistent with the RTP/SCS. Accordingly, the Draft EIR concluded that the project would have a less-than-significant impact with respect to the RTP/SCS. (Draft EIR, pp. 2.7-42 through 2.7-44.) Neither CEQA nor the RTP/SCS require that the quantitative analysis requested by EHL be prepared to evaluate project consistency (see, e.g., CEQA Guidelines section 15064.4(a)).

Third, SANDAG did not object to the determination that the project would be consistent with the RTP/SCS (see Comment Letter A-8).

Fourth, the County notes that, while SANDAG is responsible for the preparation of regional planning reports and projects, land use authority to implement regional planning is vested in the County and the 18 incorporated cities. If this project is approved by the County, SANDAG will include the project in the next RTP/SCS update (as required by Government Code section 65080(b)(2)(B)) and will address progress towards meeting its GHG reduction targets at that time quantitatively and qualitatively, as appropriate. If VMT growth occurs at an undesired rate from a regional perspective (*i.e.*, at a rate that is not consistent with SANDAG’s estimates and reduction targets), SANDAG would be required to address that consequence as part of its air quality conformity analysis for its RTP, and via compliance with regional GHG reduction targets set for the SCS. Subsequent actions or mitigation developed by SANDAG for the RTP/SCS that would be applicable in unincorporated San Diego County would apply to the project’s future residents, workers, and visitors.

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This is not to say that the County does not consider the VMT implications of projects under its jurisdiction. To the contrary, the County's General Plan contains multiple provisions that recognize and advance sustainability principles that consider the relationship between land use location and VMT, and this project's Draft EIR considered the environmental implications of project-generated VMT under the emerging, and not yet adopted framework for implementation of SB 743 (see Draft EIR Section 2.13.10, VMT Analysis; see also **Appendix JJ-9** of the Final EIR).

Lastly, as to concerns whether the project will impact SANDAG's ability to meet its CARB-adopted regional GHG reduction targets, the proposed project would offset 100% of its GHG emissions for the life of the project.⁴ Specifically, with Mitigation Measure M-GHG-1 and M-GHG-2, and implementation of its 32 PDFs, the project would not result in any net additional GHG emissions. CARB has already determined that implementation of mitigation requirements that are comparable to those established in Mitigation Measure M-GHG-2 would enable another project to not result in any net additional GHG emissions. (See CDFW, Final Additional Environmental Analysis for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan (SCH No. 2000011025) (June 2017); CARB, California's 2017 Climate Change Scoping Plan (November 2017); and, Letter from CARB to CDFW re: "[CARB] Review of the [GHG] Analysis in the Final Additional Environmental Analysis for the Newhall Ranch [RMDP/SCP]" (June 7, 2017).) With this mitigation, the project would result in a greater *reduction* in GHG emissions compared to the analysis performed by SANDAG as part of its regional planning.

6. The Project Will Not Significantly Impact SANDAG's Regional GHG Reduction Targets.

The comment letter next provides information concerning CARB's proposed (October 2017) GHG emission reduction targets for Metropolitan Planning Organizations (MPOs) such as SANDAG. The comment states the CAP should analyze how the CAP helps or hinders meeting SANDAG's targets and analyze impacts to regional VMT. The comment contends that the Newland Sierra project would increase VMT to such an extent that the San Diego County region would fall short of SANDAG's updated total VMT and per capita VMT reduction goals of the 2015 RTP/SCS and likely the upcoming 2020 RTP/SCS.

⁴ 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), Comment Letter L4 (SANDAG), Master Response 2 – CAP and SB 375, and Section 2.7.5.2. As illustrated therein, SANDAG's comment letter on the County's CAP did not identify any conflict between the County's proposal and its SCS. Additionally, the County's environmental analysis for the CAP considered the implications of future General Plan Amendments on SANDAG's SCS, and concluded that such impacts would be less than cumulatively considerable because individual projects would be required to reduce their GHG emissions to a no net increase level.

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The County initially notes that, subsequent to this letter, CARB adopted its updated SB 375 Regional GHG Reduction Targets on March 22, 2018. (See CARB Resolution 18-12, available at <https://www.arb.ca.gov/cc/sb375/finalres18-12.pdf>.) For SANDAG, the adopted 2035 target is a 19% reduction in per capita passenger vehicle GHG emissions relative to 2005 (which constitutes a 1% increase in the reduction target adopted for SANDAG, as CARB's initial round of SB 375 targets set an 18% reduction for SANDAG in 2035). (See Attachment A to Resolution 18-12, SB 375 Regional Greenhouse Gas Emissions Reduction Targets, available at <https://www.arb.ca.gov/cc/sb375/finaltargets2018.pdf>.)

Concerning the CAP, the County acknowledges the comment and notes the comment does not address the Newland Sierra project or its Draft EIR. The County specifically responded to these issues in the CAP's Revised Final SEIR, Master Response 2 - CAP and SB 375; Master Response 6 - Transportation GHG Reduction Measures; and Responses to Comments X22-14 through X22-17. (Chapter 8.0 of the Revised Final SEIR and Response to Comment Letter X22 are available online (see web addresses above). These responses also are appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**.)

Concerning the project, in addition to the responsive information provided above, the County refers EHL to Draft EIR pages 2.7-42 through 2.7-44, and Table 2.7-15 concerning project consistency with the RTP/SCS. The Draft EIR determined the project would be consistent with the RTP/SCS, and therefore impacts would be less than significant. 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 EIR modeled and evaluated GHG emissions, including those resulting from project-related VMT emissions.

Mitigation Measure M-GHG-3 calls for implementation of PDFs 1-20, which constitute the Newland Sierra TDM Program. The TDM Program serves to reduce the VMT by project residents, employees and visitors by 11.1%. (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.) Mitigation Measures M-GHG-1 and M-GHG-2 would reduce the project's GHG emissions to net zero, which would include those emissions associated with project-related VMT. 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.

For additional information concerning Newland Sierra project's consistency with SANDAG's RTP/SCS and SB 375, please see **Responses to Comments O-1-149 through O-1-156**.

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7. Locational Attributes of Carbon Offsets, and Environmental Justice

The County concurs with EHL that CARB recommends “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.” (2017 Scoping Plan (November 2017), p. 102.) However, CARB specifically recognizes on the very same page of the Scoping Plan 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.” (Id.)

The Newland Sierra project complies with this guidance, achieving an 18 percent emission reduction through the implementation of on-site, emissions-reducing strategies (see Draft EIR Tables 2.7-6 and 2.7-8) before pivoting to the adoption of Mitigation Measures M-GHG-1 and M-GHG-2, which require the purchase and retirement of carbon offsets to reduce project GHG emissions to net zero. Please also refer to **Appendix JJ-2** (Newland Sierra AQ/GHG CARB Scoping Plan Consistency Analysis) of the Final EIR, which addresses project implementation of recommended reduction strategies identified by CARB in Appendix B of its 2017 Scoping Plan.

The County does not concur with EHL’s characterization of the project’s EIR as allowing “100% ‘offshore offsets.’” Instead, the locational attributes of eligible offsets will be evaluated at the time the necessary reductions are required to be secured. The carbon offset mitigation measures include geographic priority provisions that are accompanied by a process that requires a sufficient evidentiary showing prior to use of “offshore offsets” (which, for purposes of this response, is verbiage that is assumed to refer to internationally-based offsets). For additional information about the geographic priorities, please refer to **Response to Comment O-1.4-70** and Mitigation Measures M-GHG-1 and M-GHG-2.

Addressing the contention that the EIR must “account for environmental justice” and consider that the project “cannot provide the necessary co-benefits” that EHL contends would result from VMT reductions, the County does not concur that a separate environmental justice analysis is required by CEQA. To the contrary, CEQA directs that evaluation must focus on adverse significant effects on the physical environment, not social or economic impacts. (CEQA Guidelines, §15382.) The EIR appropriately evaluates effects on the environment that may be relevant to environmental justice issues, including examining land use/planning (including evaluating consistency with CARB’s scoping plan), transportation, air quality, and other issues as required by CEQA; but no separate environmental justice analysis is required.

Lastly, concerning the CAP, the County acknowledges the comment and notes the comment does not address the Newland Sierra project or its Draft EIR. The County specifically responded to these issues in the CAP’s Revised Final SEIR, Master Response 3 - Local Direct Investment Program; Master Response 12 - Mitigation Hierarchy and Use of Carbon Offset Credits; and Responses to Comment X22-19 through X22-21. (Chapter 8.0 of the Revised Final SEIR and

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Response to Comment Letter X22 are available online (see web addresses above). These responses also are appended to the Newland Sierra project's Final EIR in **Appendix JJ-21.**)

8. Conclusion

In sum, as neither the County's General Plan nor the CEQA Guidelines impose a mandate that all GHG reductions be achieved within the County's boundaries, it is within the discretion of the County, acting as the lead agency for the proposed project, to select the portfolio of mitigation measures it finds are appropriate and supported by substantial evidence. While the County acknowledges CARB's support for the prioritization of on-site reduction strategies and the importance of VMT reduction efforts, where further VMT reductions, on-site project design methods, or regional investments are infeasible or ineffective, it may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits. Section 2.7, Greenhouse Gas Emissions, of the project's EIR recommends mitigation measures that, in combination with identified project design features, including the project's TDM Program, would reduce the project's GHG emissions to net zero, supporting a determination that project impacts would be less than significant. The necessary GHG reductions would be achieved through a combination of on- and off-site reduction strategies, an approach which is not in conflict with the County's General Plan, CEQA's requirements, SANDAG's RTP/SCS, or CARB's recommendations on the subject.

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**.

LL-5
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: December 19, 2017

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated December 19, 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 19, 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.

2. The Newland Sierra Project Draft EIR addressed the issues identified in the May 7, 2015, Scoping Letter for the project.

The letter refers to the May 7, 2015, Scoping Letter and five “Major Project Issues” identified in that letter and claims that the DEIR does not demonstrate that the issues identified in the Scoping Letter have been adequately addressed. The County does not agree with this claim. The Scoping Letter and the Project Issues Checklist identify known and potential issues that the project must address as part of the preparation of the project’s environmental and engineering documents (i.e., environmental and engineering technical studies, Draft EIR, tentative map, preliminary grading plan). Between May 7, 2015, and June 15, 2017 (the release date of the Draft EIR for public review), the County, the applicant, and the project’s CEQA and engineering consultants worked to prepare the necessary documentation to address these known and potential issues. The Draft

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EIR, including its 35 separate “Technical Appendices”, and the 12 “Additional Items” included with the Public Review Draft of the EIR, serve as substantial evidence that these issues were addressed. As a matter of standing practice and consistent with CEQA, the County would not have allowed the release of the Public Review Draft EIR were these issues, in the County’s judgment, not adequately addressed. The Draft EIR is not required, however, to provide a detailed explanation of how each issue, including the known and potential issues included with the Project Issues Checklist, has been addressed. Instead, the County, in its role as a public agency, uses its authority and discretion to ensure that the project’s environmental and engineering documentation adequately address the issues identified in the Scoping Letter consistent with CEQA. In totality, the environmental and engineering documentation for the project released with the Public Review Draft EIR substantiate this determination by the County.

3. The Newland Sierra Project Draft EIR addresses the five “Major Project Issues” identified in the Scoping Letter.

The Scoping Letter identified five Major Project Issues and those five issues have been addressed in the Draft EIR, and additional evidence for how these issues have been addressed is provided in the Responses to Comment on the Draft EIR as follows:

Major Project Issue #1 — Consistency with the San Diego County General Plan: Refer to:

- Section 3.3 (Land Use and Planning) of the EIR
- Appendix DD to the EIR
- **Responses to Comments O-1-377 through O-1-496**
- **Topical Response LU-1 [General Plan Consistency]**
- **Topical Response LU-2 [Specific Plan and General Plan Consistency]**

Major Project Issue #2 — MSCP Draft North County Plan and Natural Communities Conservation Program Consistency: Refer to:

- Section 2.4 (Biological Resources) of the EIR,
- Appendix H (Biological Resources Technical Report) to the EIR
- **Responses to Comment Letters A-1, A-2, O-1.5, O-1.6, O-2.1, O-2.2, O-7, and O-16 Responses to Comments O-1-77 through O-1-119**
- **Topical Response BIO-1 [North County MSCP]**
- **Topical Response BIO-2 [Wildlife Corridors]**
- **Topical Responses BIO-3 [Resource Protection Ordinance]**

Major Project Issue #3 — Deer Springs Road: Refer to:

- **Responses to Comments O-1-244 through O-1-252**
- **Response to Comment Letters O-1.12 and O-1.16**

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- **Topical Response TR-3 [Project Traffic Impacts and Mitigation]**
- **Topical Response TR-4 [Deer Springs Road Improvements]**

Major Project Issue #4 — Offsite Improvements: The project has secured the necessary rights to improve Sarver Lane and Camino Mayor to provide access to the project. Refer to:

- **Responses to Comments O-1-257 through O-1-261**
- **Response to Comment Letter O-1.11**
- **Response to Comment Letter I-405**

Major Project Issue #5—Resource Protection Ordinance: Refer to:

- Section 2.4 (Biological Resources) of the EIR,
- Appendix H-2 (Resource Protection Plan) to the EIR
- **Responses to Comments A-3-12 through A-3-15**
- **Response to Comment O-1-452**
- **Responses to Comments O-2.1-20 through O-2.1-23**
- **Topical Responses BIO-3 [Resource Protection Ordinance]**

As it pertains to the need for a Comprehensive Resource Management and Protection Program, that is the same thing as a Resource Management Plan and is addressed in Mitigation Measure M-BIO-8D and is a Condition of Approval for the project to prepare and obtain County approval prior to any impacts to biological resources and prior to recordation of the first Final Map.

LL-6
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: December 21, 2017

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated December 21, 2017, is a late letter that does not require a written response from 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 21, 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.

2. The Newland Sierra Fire Protection Plan analyzed a Santa Ana wind-driven wildlife event.

The letter provided by the commenter focuses on a perceived lack of Santa Ana wind-driven wildfire event analysis within the Newland Sierra's Fire Protection Plan (FPP). The comment is inaccurate as the FPP did conduct fire behavior analysis using Santa Ana weather and wind conditions, which focuses on wind, humidity, and fuel moistures. The fire behavior modeling conducted in support of the project's FPP utilized FlamMap which is a perfectly suited model for its intended purpose. The modeling included an evaluation of wildfire conditions during a Santa Ana wind-driven wildfire event, as discussed in Section 2.2.2 (page 29) of the FPP and in Section 2.8.1 of the Draft EIR (page 2.8-3). The FPP utilized the 'Peak' wind and weather input variables derived from the guidelines and standards established by the County of San Diego, Department of

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Planning and Land Use¹ to model wildfire conditions during a Santa Ana wind-driven wildfire event. The County's guidelines and standards identify fire behavior model weather inputs to be used for development projects proposed in the County. The 'Peak' wind and weather variables identified in these guidelines and standards, and used in the FPP, represent low fuel moisture levels and high wind speeds expected during Santa Ana weather conditions and are the result of an extensive analysis of weather data recorded at remote automated weather stations (RAWS) located throughout the County. The 'Peak' weather variables also include wind speeds representing the highest recorded during the 2003 Cedar Fire, which burned during Santa Ana weather conditions.

The FPP's use of weather and wind variables consistent with Santa Ana weather conditions is confirmed by the comment letters referenced Reax Engineering report (Comment Letter Attachment A, Fire risk impacts of Proposed Newland Sierra Project on The Golden Door and Surrounding Area, Reax Engineering, December 19, 2017). The fire behavior modeling for Santa Ana conditions conducted for the Reax report "was conducted using the same basic assumptions as in Newland Sierra's Fire Protection Plan, i.e., 20-ft winds of 40 mph occurring concurrently with low dead and live fuel moistures (page 6)." The use of the same wind and weather variables in the Reax report to model Santa Ana conditions further confirms the applicability of the variables used in the FPP to model the same. Therefore, the County disagrees that there is a need to conduct additional modeling using Santa Ana conditions, as it has already been completed.

3. The FlamMap analysis presents worst-case fire behavior characteristics for all areas of the project Site.

The comment states that the FlamMap software does not simulate fire spread and that the FPP's fire behavior analysis using FlamMap only shows the change in fire behavior resulting from fuel treatments. The FlamMap analysis assumes that a fire will occur and presents worst-case fire behavior characteristics for all areas of the project Site. This analysis was conducted to characterize the project site's fuel hazard, evaluate the spatial variability of potential fire behavior across the project site, and to evaluate the effectiveness of proposed fuel modification (treatment) in mitigating wildland fire risk to the proposed project.

4. The Newland Sierra Project will not increase fire risk to the Golden Door property or other project neighbors.

Further, the comment letter indicates that the Golden Door has recently (following recent wildfires) undertaken updates to its emergency planning and asserts that the project will increase fire risks to the Golden Door and other project neighbors. This assertion is not supported by evidence, including the analysis provided in the referenced Reax Engineering report. In fact, the fire risk on site currently is arguably higher than it would be following the project's build out. For

¹ County of San Diego 2010. County of San Diego Report Format and Content Requirements – Wildland Fire and Fire Protection (August 31, 2010). On-line at: <http://www.sandiegocounty.gov/dplu/docs/Fire-Guidelines.pdf>

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example, currently, the fuel bed on the project Site extends continuously from north to south with old, even aged fuels with no fire history. This unbroken fuel bed is adjacent to the I-15 freeway, which is a known ignition source, with this stretch of the I-15 subject to occasional fire ignitions. Additionally, there has been an issue on the Newland project Site with trespassers. Despite the project owner taking significant efforts to preclude illegal property use, trespassers on the site continue to include illegal target shooters, and people who light campfires, drive off-road vehicles, smoke cigarettes, and conduct other unwanted or illegal activities. These activities on the site with continuous, unmaintained fuels represents a threat of fire ignition and spread, particularly under Santa Ana wind conditions. It is prudent for the Golden Door to update its emergency plans, particularly based on the current, pre-development, unmaintained condition.

With the project, the fuel bed would be interrupted by a large fuel break represented by the project's converted landscapes. This fuel break (the project) would enable firefighters several operational advantages over the existing condition by allowing firefighters to drive into the property for safe offensive and defensive positions, would enable anchor points for fire lines, and would augment the ability of air support to apply fire retardant strategically tying into the project's fuel modification zones. These actions would modify a fire's behavior, slow the spread of a wildfire, and heighten control efforts. Additionally, the project's open space areas would be managed by a preserve management entity to control trespass and other illegal activities in the preserve and separated from the project's development areas with two hundred and fifty feet (250') of Fuel Modification Zones. And a neighborhood of new residents is one of the most effective ways to catch illegal activity like trespass, off-roading, and campfires as anyone engaging in these activities would much more likely be spotted and reported to the Sheriff's Department whereas today these activities can occur on the 1,985-acre project site, which is over 3 square miles in size, undeveloped, and vacant, without being detected as quickly or at all.

5. The Reax Engineering Report (Attachment A) contains inaccurate, unsupported statements about increased ignition risk as a result of the project and inaccurate modeling results.

The comment letter's Attachment A, the Reax Engineering Report, provides an independent analysis of fire spread using a customized fire behavior model. The report appears to provide accurate information regarding general fire behavior, Santa Ana event description, fire history, and fire brand (ember) production and potential cast distances. However, the report includes references to increased ignition risk on the site with the project, inaccurate modeling results, and concludes that the project will result in increased probability of fire occurrences and essentially provides no mitigations. These are all inaccurate, unsupported statements that are remiss by not considering the site's current condition and potential risk. The County disagrees with the comment's assertion that the project greatly increases the probability of ignition occurring within its footprint and finds that the previously referenced studies used to support the assertion do not introduce any substantial evidence supporting the statement.

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While it is true that humans are the cause of most fires in California, there is no data available that links increases in wildfires with the development of ignition resistant communities. This type of development with an unbroken landscape (as opposed to low density wildland urban intermix projects) has been found to perform well against wildfires (Syphard, et. al, 2015: Fires at the Wildland Urban Interface: Lessons from Southern California; Institute for Business and Home Safety: Mega Fires 2008). One study (Mann ML, et al. 2016: Human-started wildfires expand the fire niche across the United States) indicates that there can be initial increase in the “likelihood” of fires, but that it decreases over time as the built environment is constructed and increased suppression resources and efforts reduce it. Additionally, the project includes managed landscapes and wide fuel modification zones that will provide protection for the Newland Sierra project, but also act as a buffer between on-site fires and the natural vegetation areas. In fact, FMZs were originally established to prevent structure fires from spreading into the wildland areas. Therefore, the dual role of FMZs at Newland Sierra is designed to minimize the likelihood that on-site fires can move offsite. If an on-site fire were to result in a spot fire downwind (south and west) of the project site, there is a lack of continuous fuels to sustain wildfire spread and uncontrollable growth through the developed and semi-developed landscapes in the area. Wildfire could occur in the unmaintained portions of this area, but in contrast with the comment’s assertion, the park and large irrigated, maintained areas associated with the San Marcos landscapes southwest of the project would provide a fuel break and reduce fire behavior to controllable levels.

Fires that start on site would not have the readily ignitable fuels to sustain or spread within the site’s landscapes. Further, structure fires would be effectively contained or suppressed by provided automatic interior fire sprinklers to be fitted in every structure. Combined with the fast response from the nearby DSFPD station 2, it would be difficult for an on-site fire to spread to off-site areas before responding firefighters could begin their firefighting tactics. Further, because the project is within DSFPD and there are existing mutual and auto aid agreements in place, the entire wildland firefighting weight of CAL FIRE, including specialized apparatus, trained wildland firefighters, and aerial attack would all be available within a short timeframe should a fire ignite.

It is important to note that the project would also contribute approximately \$4.5 million in fire fees to DSFPD, approximately \$2 million more than the project’s required mitigation fees and, at buildout, the project would generate approximately \$1.4 million in annual revenues to DSFPD to support fire and emergency response services. These contributions and revenues to the DSFPD will significantly enhance the District’s fire response and suppression capabilities in the event of a wildfire.

The fire spread modeling conducted in the Reax Engineering report appears to overstate ember cast and results. It concludes that wildfire would be burning within areas of San Marcos that are clearly irrigated and maintained turf, dirt lots, and landscapes. This is misleading, at best, as these types of landscapes would not represent receptive fuel beds to burning embers. Burning ember decay rates would exceed the ability of the embers to ignited hydrated and maintained landscapes.

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6. The news article (Attachments B and C) are opinion-based and lack supporting data.

Attachments B and C to the comment letter provide a news article that provides a story on several projects that are being planned in the very high fire hazard severity zones of north San Diego County. The article provides several opinions with no substantiation or supporting data. The article is noted and will be made part of the public record.

LL-7
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: January 8, 2018

1. Introduction

The comment letter submitted in the form of an email by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated January 8, 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 8, 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 email letter does not raise new issues requiring additional analysis or recirculation of the Newland Sierra Project EIR.

The email letter states that the Rancho Lomas Verdes Project in the City of Vista was not included in the Cumulative Projects List (Table 1-10 of the EIR) for the Newland Sierra Project EIR, raises concerns about the cumulative effects of smaller projects on traffic, and raises concerns pertaining to the SR 76 corridor, I-15 corridor, and Gopher Canyon Road. The County refers the commenter to the **Response to Late Comment Letter LL-2** which addresses the potential cumulative effects broadly related to other projects as well as specifically related to this project in Vista.

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3. The Rancho Lomas Verdes Project is predominantly in a Moderate Fire Severity Zone and outside of the Draft North County MSCP Pre-Approved Mitigation Area (PAMA).

The email letter raises concerns about wildlife risk and the Draft NC MSCP Plan. The conceptual site plan¹ for this proposed project shows that the development would be limited to those areas of the site that have been subjected to intensive agricultural uses and largely bare ground or active agricultural fields (i.e., lacking biological resources). These areas are outside of PAMA and mapped as a Moderate Fire Severity Zone. The County also refers the commenter to the **Response to Late Comment Letter LL-2** which addresses the potential cumulative effects broadly related to other projects as well as specifically related to this project in Vista.

¹ Refer to the Notice of Preparation of a Draft Environmental Impact Report for the Rancho Lomas Verdes Specific Plan: <http://www.cityofvista.com/home/showdocument?id=13837>.

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. 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.

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_{2e} per year. If unmitigated, the project would generate 43,498 MT CO_{2e} 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.¹ In sum, the project's mitigation measures reducing emissions

¹ 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, 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/. 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.²

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

² 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; 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 system³. 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; 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**.)

³ 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")⁴ 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)⁵. Those geographic priorities have been drafted consistent with the policy

⁴ 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.

⁵ 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.

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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, 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

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.

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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, 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.

LL-9
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: March 5, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated March 5, 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 March 5, 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 Project Is Consistent With The General Plan, Including Its Newly Amended Provisions

The comments state that the County should suspend processing the Newland Sierra project because it “flatly conflict[s]” with the County’s General Plan Conservation and Open Space Element. The comments also state that no analysis of the project’s consistency with the General Plan Conservation and Open Space Element has been provided to the public. The County does not concur with these comments for the reasons that follow.

First, contrary to the commenter’s assertion, the Draft EIR did incorporate a General Plan consistency analysis. Please see **Section 3.3**, Land Use and Planning, of the Draft EIR, and **Appendix DD** thereto. The General Plan Conservation and Open Space Element is specifically addressed in **Appendix DD** on pages DD-13 through DD-64. Of relevance to the responses to this

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late letter, **Appendix DD** explains why the project is consistent with Goal COS-20 as adopted in 2011:

“The proposed project would reduce GHG emissions contributing to climate change by exceeding requirements of the Global Warming Solutions Act of 2006 (AB 32). The project has committed to offset all of its greenhouse gas emissions to achieve and maintain carbon neutrality (i.e. net zero emissions) for the life of the project. This initiative would make the project the first large-scale planned community in San Diego County to achieve a 100 percent reduction in the project’s construction and operational GHG emissions through the life of the project.”

Second, subsequent to circulation of the project’s Draft EIR and in February 2018, the County adopted several amendments to its General Plan in conjunction with its adoption of the 2018 Climate Action Plan (CAP). Therefore, Table DD-1 within **Appendix DD** has been supplemented in the Final EIR to address the General Plan amendments adopted as part of the CAP (i.e., amendments to Goal COS-20 and Policy COS-20.1).¹ As shown, the project would continue to be consistent with the General Plan, as recently amended.

Third, California courts have held that, in order to establish consistency with the General Plan, projects must demonstrate harmony with its policies, not precise satisfaction of every policy.

“‘[N]o project could completely satisfy every policy stated in the [general plan], and ... state law does not impose such a requirement. [Citations.] A general plan must try to accommodate a wide range of competing interests—including those of developers, neighboring homeowners, prospective homebuyers, environmentalists, current and prospective business owners, jobseekers, taxpayers, and providers and recipients of all types of city-provided services—and to present a clear and comprehensive set of principles to guide development decisions. Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be “in harmony” with the policies stated in the plan. [Citation.]”

(*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 517-518.)

¹ The CAP General Plan Amendment can be located here: <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/PostBOSDocs/General%20Plan%20Amendment%20PDS2016-GPA-16-007.pdf>

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Hence, even if the County were to accept the commenter's premise that the project did not satisfy certain General Plan policies (a premise the County does not accept), the project may still be found consistent with the General Plan overall.

Fourth, the County is given "great deference" in interpreting and evaluating consistency with its own general plan. "Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes." (*Save Our Peninsula Comm. v. County of Monterey* (2001) 87 Cal.App.4th 99, 142.) For reasons discussed below in Section 3 of these responses, the County's interpretation of its General Plan is reasoned and supported.

Fifth and lastly, nothing requires the County to halt processing a project prior to such time as its decision-makers exercise their discretion to determine whether a project is consistent with the General Plan. The commenter cites no legal authority in support of its demand.

For each of these reasons, the County does not concur that the project conflicts with the County's General Plan and has determined not to cease processing the Newland Sierra project.

3. The General Plan Does Not Require GHG Emissions From The Project To Exclusively Be Reduced Through In-County Offsets

The comments state that the General Plan requires all of the project's GHG emissions to be reduced within the geographic boundaries of San Diego County, opining that the project "'contravenes the General Plan EIR's mitigation measures CC-1.2 and CC-1.8 and General Plan Goal COS-20 because its offsets may come from outside the County.'" The commenter contends that the General Plan's alleged requirements for in-County reductions are distinct from CEQA's mitigation requirements (see CEQA Guidelines, §15126.4(c)), which it acknowledges, in footnote 1 of its letter, may be met by the purchase of off-site mitigation credits.² However, as discussed below, the commenter misinterprets the language of the General Plan EIR's mitigation measures and General Plan Goal COS-20. Neither the mitigation measures nor policy goal exclusively require reduction of GHG emissions through locally deployed methods or offsets.

Initially, the County acknowledges the commenter has previously raised this issue in comment letters submitted on the project, the CAP, as well as in the lawsuit filed by the Golden Door Properties, LLC titled, *Golden Door Properties, LLC v. County of San Diego* on March 15, 2018.³

² The commenter also acknowledges, in footnote 3 of its letter, that the California Air Resources Board (CARB) has "approved of other land use projects which have utilized emissions from outside the local County or jurisdiction."

³ The County notes that the filing of petitions by Golden Door, Sierra Club, and other groups does not automatically stay operation of the CAP. (*Kriebel v. City Council* (1980) 112 Cal.App.3d 693, 702, Pub. Res. Code § 21167.3, Guidelines § 15112.) Under CEQA, an EIR is presumed adequate and the County's decision to certify the

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The County refers the commenter to: (i) **Response to Comment O-1-142** in the project's Final EIR, which responds to this issue where it was raised in the commenter's August 14, 2017 letter; and (ii) the responses provided to the late comment letter dated September 25, 2017 (refer to **Responses to Late Comment Letter LL-1**). Relevant information is also excerpted below.

The County does not concur with the comment's interpretation of General Plan Goal COS-20 as exclusively requiring local reduction of GHG emissions. As originally adopted in 2011, Goal COS-20 stated, "Reduction of local GHG emissions contributing to climate change that meet or exceed requirements of the *Global Warming Solutions Act of 2006*" (emphasis in original). As part of its development of the 2018 CAP, the County modified the verbiage of Goal COS-20, replacing the term "local" with "community-wide (i.e., unincorporated County) and County Operations." The intent of the County's policy (as originally adopted and amended) is to reduce locally generated GHG emissions, *not* to limit the manner in which emissions reductions may occur from private development projects. Indeed, the commenter's interpretation of Goal COS-20 only would be supported if the subject goal read *local* reduction of *local* GHG emissions; but, the goal does not provide as much. Additionally, the County's CAP provides 26 GHG Reduction Measures to reduce emissions "community-wide" and from "County Operations" in compliance with Goal COS-20 and Policy COS-20.1.

Particularly in the scientific realm of global climate change, the commenter's interpretation of the goal as exclusively requiring in-County reductions is overly broad and unsupported. Scientifically speaking, GHG emissions impacts can be effectively mitigated via the purchase of carbon offsets that represent reductions achieved at off-site locations. The global nature of the impact has been recognized by the California Supreme Court in its 2015 decision in the *Center for Biological Diversity v. California Department of Fish and Wildlife* (62 Cal. 4th 204 (2015)) matter:

"[T]he 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. For many air pollutants, the significance of their environmental impact may depend greatly on *where* they are emitted; for greenhouse gases, it does not."

Contrary to the commenter's misinterpretation, the County's intent was *not* to establish a policy framework that is unsupported by science, inconsistent with the recognized global attributes of the environmental problem, or different from the GHG emissions mitigation framework established under CEQA⁴ and recognized by CARB and other subject matter experts in the field. Instead, the

EIR is presumed correct; plaintiffs have the burden to prove otherwise. (*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.)

⁴ As recognized by the commenter, 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. As background, on page 50 of the *Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA*

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County's intent was to focus on reducing locally-generated emissions through whatever means are recognized as effective and feasible, which include the utilization of off-site reduction projects.⁵

As a point of reference, turning to carbon offset projects located beyond the borders of the United States is consistent with the spirit of the Kyoto Protocol, an international agreement linked to the United Nations Framework Convention on Climate Change. For example, under Article 10(c), parties to the Kyoto Protocol shall:

“Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries ...”

(See also Kyoto Protocol, Article 11(2)(b).)

Additionally, General Plan EIR mitigation measure CC-1.2 required preparation of a CAP, and mitigation measure CC-1.8 required the County to revise its CEQA guidelines for determining the significance of GHG emissions based on the CAP. These measures do not require individual projects undergoing CEQA review to limit their mitigation reduction opportunities to San Diego County.⁶

Here, although the General Plan does not require GHG reductions to be exclusively located within the County, the proposed project includes 32 PDFs that would be implemented within the proposed community to reduce GHG emissions:

- A Transportation Demand Management (TDM) Program to reduce vehicle miles travelled (PDF-1 through PDF-20);

Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97 (December 2009), the California Natural Resources Agency expressly rejected invitations to establish any sort of mitigation hierarchy in CEQA Guidelines Section 15126.4(c):

“Several comments, for example, suggested that the Guidelines provide a specific ‘hierarchy’ of mitigation requiring lead agencies to mitigate GHG emissions on-site where possible, and to allow consideration and use of off-site mitigation only if on-site mitigation is impossible or insufficient. OPR and the Resources Agency recognize that there may be circumstances in which requiring on-site mitigation may result in various co-benefits for the project and local community, and that monitoring the implementation of such measures may be easier. However, CEQA leaves the determination of the precise method of mitigation to the discretion of lead agencies.”

⁵ For additional information on the project's utilization of carbon offsets, please see **Topical Response GHG-1: Use of Carbon Offsets** of the project's Final EIR.

⁶ In connection with development of the 2018 CAP, mitigation measure CC-1.2 was revised to remove the specific emissions reductions and was replaced with reference to updated Goal COS-20, which includes the emissions reduction targets included in SB 32.

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- Solar photovoltaic panels on all residences (PDF-22);
- Electric vehicle chargers in all single-family and multi-family residential garages (PDF-23);
- Water efficient landscaping and irrigation equipment to reduce water usage (PDF-24 and PDF-25);
- Pre-plumbing for the use of greywater systems (PDF-26);
- Energy-efficient appliances (PDF-31); and,
- Other features to reduce energy usage, reduce water consumption, and limit GHG emissions.

EIR Table 2.7-6 shows that the annual GHG emissions before implementation of the PDFs and mitigation would be approximately 52,986 MT CO₂E per year. After accounting for implementation of the quantified PDFs (EIR Table 2.7-7), project emissions would be approximately 43,498 MT CO₂E per year, as shown in EIR Table 2.7-8. Thus, the combined reductions from implementation of the quantified PDFs would reduce emissions within San Diego County by approximately 17.9 percent annually.⁷

Further, although the General Plan does not require GHG reductions to be exclusively located within the County, it is noted that the project's remaining GHG reductions achieved via implementation of M-GHG-1 and M-GHG-2 would be subject to a geographic priority system that prioritizes emissions reductions in San Diego County, consistent with Mitigation Measure GHG-1 from the Supplemental EIR (SEIR) prepared for the County's Final CAP, as adopted in February 2018 and as identified in **Response to Comment O-1-137** of the Final EIR. This geographic priority system recognizes that the locational attributes of available carbon offsets should be determined on a "real time," as-needed basis because the market conditions for carbon offsets are constantly changing.⁸

Also of note is **Appendix JJ-2** (Newland Sierra AQ/GHG CARB Scoping Plan Consistency Analysis) to the project's Final EIR, which contains an assessment of the project's implementation of applicable mitigation concepts for land use development projects identified by CARB in

⁷ As provided in the Draft EIR, not all PDFs were assigned a quantifiable emissions reduction; this approach is considered conservative and serves to result in the overestimation of project emissions.

⁸ The commenter states that GHG emission reductions in the County would result in important co-benefits for County residents. The County concurs, hence geographic priorities are included in the project's mitigation measures M-GHG-1 and M-GHG-2 that would focus first on local reduction features. However, the County also recognizes that it may not be feasible to secure all offsets needed within the County's boundaries due to market availability constraints and other factors.

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Appendix B of its *2017 Climate Change Scoping Plan*. As illustrated therein, the project implements a wide range of strategies that will reduce GHG emissions both on the Project site and within the County of San Diego.

4. The Project Does Not Tier From The CAP

The comments state that General Plan Amendment (GPA) projects, such as the Newland Sierra project, do not tier from the CAP. The County concurs that the Newland Sierra project does not tier from the CAP. The CEQA analysis prepared for the project was not linked to the County's separate CAP development process, in part, because the draft version of the CAP was not published until *after* release of the project's Draft EIR. The Draft EIR for the Newland Sierra Project uses thresholds from Appendix G of the CEQA Guidelines, rather than those contained in the 2018 CAP's implementing documents. As such, the project is not tiering from the CAP or otherwise reliant on that document, but instead has been processed separately from the County's CAP.

Additionally, because the Newland Sierra 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 relevant 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 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 **Topical Response GHG-3** of the Final EIR, 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. The project's commitment to the achievement of carbon neutrality is consistent with Option 2 (Net Zero) of CAP SEIR Mitigation Measure M-GHG-1.

5. The Comment Letter, In Part, Addresses The County's CAP, Not Issues Specifically Associated With This Project

First, the County notes that the comment concerning the County's "new program for General Plan Amendment projects" does not address the adequacy of the environmental analysis prepared for the Newland Sierra project, but instead addresses the County's CAP. As such, the comment

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appears to be conflating two separate projects and processes. The County is aware that Latham & Watkins has raised numerous issues and questions regarding the CAP, and has filed a lawsuit challenging the adequacy of 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.

Second, the County does not concur with the comment that it adopted a “new program” that would allow projects requiring GPAs to rely “almost exclusively” on carbon offset credit purchases from anywhere in the world. The commenter is referring to the *Guidelines for Determining Significance: Climate Change*, which were adopted in conjunction with the 2018 CAP. Relative to projects requiring GPAs, the Guidelines were 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, the Guidelines require GPA projects to achieve “no net increase in GHG emissions from additional density above the 2011 GPU [General Plan Update]” or “no net increase over baseline conditions (carbon neutrality).” The County's SEIR for the 2018 CAP determined that implementation of this approach—which is required by M-GHG-1 in that SEIR—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. CAP Mitigation Measure M-GHG-1 allows GHG emissions resulting from GPAs to be offset through the purchase of carbon offset credits after all feasible on-site reductions are provided.

Concerning the location of the purchase of offset credits, 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. 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). Additionally, Master Response 12 and Responses to Comment Letter O14 (Latham & Watkins comment letter on CAP) are appended to the Newland Sierra project's Final EIR in **Appendix JJ-21**.

Third, as discussed above, the County disagrees with the commenter's assertion the language of General Plan Goal COS-20 and Policy COS-20.1 requires the reduction of all “community-wide” and County emissions to occur within the County (i.e., locally). The County's interpretation of its own General Plan is consistent within the global context of climate change. As noted by the County in the CAP's Revised Final SEIR, Response to Comment O22-8:

“The use of carbon offset credits from outside the County in compliance with the mitigation hierarchy outlined in the Draft SEIR for cumulative GPA projects, is consistent with the intent of 2011 GPU Policy COS-20 and 2011 GPU PEIR

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Mitigation Measure CC-1.2 to address *global* warming as required by the State in legislation including AB 32 and SB 32 (Global Warming Solutions Act). In fact, both COS-20 and the 2011 GPU PEIR mitigation specifically refer to AB 32, the Global Warming Solutions Act, and global warming in general (2011 GPU EIR pages S-20, 2.17-1 et seq., and 7-80; 2011 GPU pages 5-31-33, 38). It is important to note that GHG emissions are a global, cumulative impact.”

The Response to Comment Letter O22 is available online at: <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/RTCs/O22%20Sierra%20Club-main%20letter.pdf>, and is appended to the Newland Sierra project’s Final EIR in **Appendix JJ-21**.

6. Conclusion

As neither the County’s General Plan nor the CEQA Guidelines impose a mandate that all GHG reductions be achieved within the County’s boundaries, it is within the discretion of the County, acting as the lead agency for the proposed project, to select the portfolio of mitigation measures it finds are appropriate and supported by substantial evidence. While the County acknowledges CARB’s support for the prioritization of on-site reduction strategies, where further on-site project design or regional investments are infeasible or ineffective, CARB recognizes it may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits.⁹ Here, **Section 2.7**, Greenhouse Gas Emissions, of the Draft EIR recommended mitigation measures that, in combination with identified project design features, would reduce the project’s GHG emissions to net zero, supporting a determination that project impacts would be less than significant. As discussed in the Draft EIR, the necessary GHG reductions would be achieved through a combination of on- and off-site reduction strategies, an approach which is not in conflict with the County’s General Plan, CEQA’s requirements or CARB’s recommendations on the subject.

⁹ See page 102 and Appendix B of CARB’s *California’s 2017 Climate Change Scoping Plan* (November 2017).

LL-10
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: March 29, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated March 29, 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 Environmental Impact Report (EIR). To provide additional time, the County instead afforded 60 days for public review and comment. The Draft EIR public comment period 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 has no 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 March 29, 2018, letter from Latham & Watkins (including the attached report/comments from Camille Sears, dated February 28, 2018). (See CEQA Guidelines, §15088(a)).

Further, the Latham & Watkins comment letter endeavors to excuse the lateness of the comment letter, stating the County did not provide electronic technical files necessary to prepare comments during the public comment period for the Draft EIR. In response, the County notes that the subject files were provided to Latham & Watkins in October 2017, approximately *five* months before submittal of this comment letter. Additionally, the Latham & Watkins comment letter was submitted to the County on or about the date of the letter — March 29, 2018. However, the report attached to this letter prepared by Camille Sears is dated February 28, 2018 — approximately one month earlier than the Latham & Watkins submittal letter. Based on this information, the County does not concur that Latham & Watkins or Golden Door provided Ms. Sears' report "at the earliest time possible," as stated on page 2 of the Latham & Watkins comment letter.

Additionally, based on Dudek's expert assessment, it is not clear that the subject files revealed any information or analysis related to Camille Sears' comments that was not already made available in the Draft EIR. By way of example, several of the comments repeat comments previously offered

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by Dr. Fox and submitted by Latham & Watkins for the County's consideration in its comment letter on the Draft EIR; in those instances, responses to Dr. Fox's comments are cross-referenced (see references to individual **Responses to Comment Letter O-1.4** herein).

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. Because the letter attaches technical analysis prepared by an air quality consultant, Camille Sears (hereafter, "Ms. Sears"), the County consulted with the project's air quality consultant (Dudek) in preparing these responses. In providing these responses, the County notes that, pursuant to CEQA Guidelines section 15151, "[d]isagreement among experts does not make an EIR inadequate." Furthermore, an agency is not required to consider different methods or methodologies suggested by other agencies, experts, or other comments where the evidence relied on in the EIR is sufficient to support the conclusion reached. (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 642-643.)

2. Construction Fugitive Dust Emissions

Ms. Sears notes the absence of an ambient air quality analysis (AAQA), conducted using air quality dispersion modeling, for PM₁₀ and PM_{2.5} emissions resulting from project construction. Please see **Response to Comment O-1.4-87**. In summary, the prior response explains that the County's guidance does not require any additional modeling because the exceedance of the screening-level thresholds for the nonattainment pollutants is evidence of a significant impact related to the potential to violate an air quality standard or contribute substantially to an existing or projected air quality violation due to the existing nonattainment status of the SDAB (County of San Diego 2007, p. 21).

Ms. Sears then states that the Draft EIR did not provide a detailed construction schedule by location within the project site. Please see **Responses to Comments O-1.4-13** and **O-1.4-19**. As discussed therein, the County has determined, based on information from Dudek's air quality experts, that the construction schedule information provided in Appendix A (Air Quality Technical Report) of the Draft EIR is sufficient for purposes of evaluating the project's impacts under CEQA.

Ms. Sears further opines that "CalEEMod ... is not reliable for calculating fugitive dust emissions from NSP's construction activities," suggesting that CalEEMod includes incorrect calculation methods and emissions factors and lacks tools to analyze specific emissions sources. However:

"[CalEEMod] is a statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and greenhouse gas (GHG) emissions associated with both construction and operations from a variety of land use projects. ... The model was developed for the California Air Pollution Control Officers Association (CAPCOA) in collaboration with California

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Air Districts. Default data (e.g., emission factors, trip lengths, meteorology, source inventory) have been provided by the various California Air Districts to account for local requirements and conditions. ... The model can be used for a variety of situations where an air quality analysis is necessary or desirable such as preparing California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) documents, conducting pre-project planning, and, verifying compliance with local air quality rules and regulations, etc.”¹

CalEEMod has been in use for approximately eight years, following its development by multiple California air districts and air pollution control experts. The model has been subject to several updates to expand the sources it evaluates, and to improve its usefulness and precision. The model has been accepted and recommended by the San Diego Air Pollution Control District (SDAPCD)² the County of San Diego, and numerous other lead agencies for CEQA purposes. The use of CalEEMod and its acceptance as the industry-standard emission estimation model is addressed further in **Response to Comment O-1.4-19**. Thus, while many of Ms. Sears’ comments set forth alternative methods to calculate the project’s construction-related fugitive dust emissions, CEQA does not require that every alternative methodology be studied and pursued, provided the one used is supported by substantial evidence. Here, CalEEMod is the established modeling platform for CEQA analysis for land use development projects, and it is supported by substantial evidence and the expertise provided by Dudek’s air quality specialists.

As evidence suggesting that the Draft EIR preparers agree that CalEEMod is inadequate, Ms. Sears notes that “off-model” calculations were prepared for rock crushing and blasting. However, these are not common activities for many construction projects; thus, they are reasonably not expected to be included in CalEEMod. In any case, such an “off-model” assessment of these sources does not suggest that CalEEMod is inadequate or needs to be corrected.

Ms. Sears also states that CalEEMod does not include emission calculations for scrapers (which are a type of heavy-duty construction equipment). However, Appendix A of the CalEEMod User’s Guide includes a table showing the assumed acres of land disturbance per 8-hour workday for crawler tractors, graders, rubber-tired dozers, and *scrapers* (CAPCOA 2016, p. 8). Similarly, while Ms. Sears states that the Draft EIR failed to quantify PM₁₀ and PM_{2.5} emissions that will be associated with off-site road widening and construction, those emissions were indeed evaluated in the Air Quality Technical Report. Please see **Responses to Comments O-1.4-34, O-1.4-35, and O-1.4-36** for responsive information.

¹ See CalEEMod website, available at: <http://www.caleemod.com/>.

² SDAPCD recommends use of CalEEMod for estimating emissions from proposed land use development projects (see the “What is CalEEMod” link at <https://www.sdapcd.org/content/sdc/apcd/en/air-quality-planning/ceqa.html>).

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Additionally, while Ms. Sears opines that the wind speed used to calculate the PM emissions from drops and transfers during the rock crushing operations was too low, the project's air quality analysis used a wind speed of 2.98 miles per hour, based on an annual average of three years of Escondido meteorological data. This analysis is considered more than adequate. However, Ms. Sears suggests that the calculation should have used a daytime average of 11.6 miles per hour, using the same meteorological data. To assess the effect on maximum daily construction emissions, the rock crushing emission were recalculated using the higher wind speed suggested by the comment. Overall, unmitigated construction emissions would increase from 780.23 pounds per day (lb/day) to 851.33 lb/day for PM₁₀, and from 101.27 lb/day to 112.03 lb/day for PM_{2.5}. Thus, the maximum estimated construction emissions would increase approximately 10%. Based on the relatively small change in overall construction emissions, which already exceeded the significance thresholds,³ no change in the significance conclusions for the project construction emissions would occur.

Ms. Sears also quotes a statement regarding emissions associated with wind erosion from a CalEEMod-related technical paper (SCAQMD et al. 2011, p. 4, erroneously cited as the CalEEMod User's Guide), specifically:

Wind-blown fugitive dust is not calculated in CalEEMod because of the number of input parameters required such as soil type, moisture content, wind speed, etc. This limitation could result in underestimated fugitive dust emissions if high wind and loose soil are substantial characteristics for a given land use/construction scenario.

The CalEEMod User's Guide itself states:

Fugitive dust from wind blown sources such as storage piles and inactive disturbed areas, as well as fugitive dust from off-road vehicle travel, are not quantified in CalEEMod, which is consistent with approaches taken in other comprehensive models. (CAPCOA 2016, p. 2)

After reviewing the U.S. Environmental Protection Agency's *Compilation of Air Pollutant Emission Factors* (AP-42) Section 13.2.5 (Industrial Wind Erosion) (EPA 2006c), contrary to Ms. Sears' conclusion, it is unclear that the emission estimation technique in this AP-42 section should be applied to wind erosion from exposed soils during construction. This particular AP-42 section focuses primarily on wind erosion of storage piles. The background document for the November 2006 update of the relevant sections of AP-42 Section 13.2 (Fugitive Dust Sources) states:

³ The significance thresholds are 100 lb/day and 55 lb/day for PM₁₀ and PM_{2.5}, respectively.

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Industrial wind erosion is associated with crushed aggregate materials, such as coal or metallic ore piles. Examples would include open storage piles at mining operations.

For the dust component of particulate emissions from open area wind erosion (*not currently addressed in AP-42*), a $PM_{2.5}/PM_{10}$ ratio of 0.15 is recommended. Open area wind erosion is associated with exposed soils that have been disturbed, removing the protection afforded by natural crusting. [emphasis added] (Midwest Research Institute 2006)

Based on this evaluation, it would not be appropriate to evaluate wind erosion emissions using the methods in AP-42 Section 13.2.5. Moreover, in light of the project detail that would be required to estimate wind erosion emissions, even using the inappropriate methods in AP-42 Section 13.2.5, such a calculation would not have been feasible. The need to estimate wind erosion emissions was also addressed in **Response to Comment O-1.4-75**. It also is noted that several mitigation measures would be implemented to minimize wind erosion emissions, as discussed in the referenced response.

Finally, Ms. Sears also appears to have overstated the fugitive dust emissions impacts for the following reasons:

- Ms. Sears appears to have picked an arbitrary, and low, threshold friction velocity from AP-42 Section 13.2.5, which would tend to increase the particulate emission factor.
- The particle size multipliers, k , for PM_{10} (0.5) and $PM_{2.5}$ (0.075) do not appear to have been applied to the total particulate emission factor. It is also unclear how the *total* particulate emission factor was adjusted to *maximum* particulate emission factor. (Note that Ms. Sears' estimate of total particulate emissions could not be reproduced due to insufficient information provided in the comment letter.)
- Ms. Sears applied the emission factor to the entire Phase 1 construction area (Hillside, Knoll, Mesa, Terraces, and Valley residential area developments), which was reported as 1,109,040 square meters (approximately 274 acres).⁴ It would be unlikely that wind erosion and the resultant particulate emissions would occur at an equal level over so large an area.
- Ms. Sears did not take into account fugitive dust mitigation, including but not limited to watering or utilizing an SDAPCD-approved dust control on the grading areas at least four times daily to minimize fugitive dust, constructing paved roads and building pads as soon

⁴ It is unknown how this acreage value was generated. Ms. Sears did not provide a source of this value. The construction emissions estimate was based on grading 565 acres.

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as possible, and suspending all soil disturbance and travel on unpaved surfaces if winds exceed 25 miles per hour.

In closing, the project's fugitive dust emissions were calculated pursuant to accepted CalEEMod protocols and methodologies, providing a reasonably accurate estimation of project-related PM emissions. Further, Ms. Sears' comments would not alter the conclusions of the construction-related PM analysis, as Section 2.3 (Air Quality) of the Draft EIR concluded that PM emissions would be significant and unavoidable during the construction period.

3. Air Dispersion Modeling Analysis

As discussed above, and in **Response to Comment O-1.4-87**, the County guidance does not require dispersion modeling because exceedance of the screening-level thresholds for the nonattainment pollutants is evidence of a significant impact relating to the potential to violate an air quality standard or contribute substantially to an existing or projected air quality violation due to the existing nonattainment status of the SDAB (County of San Diego 2007, p 21). As such, the modeling completed by Ms. Sears does not result in the identification of a new significant environmental impact, as the Draft EIR previously disclosed the project's potential to violate an air quality standard or result in an air quality violation within SDAB. Nonetheless, the following information is provided in response to Ms. Sears' dispersion modeling.

First, contrary to the approach taken by Ms. Sears, AP-42 Section 13.2.5 states, "Calculated emissions represent *intermittent* events and should not be input directly into dispersion models that assume steady-state emission rates" (EPA 2006c). Second, please note that application of the emission calculation methods in Section 13.2.5 are not believed to be appropriate for open surfaces disturbed during construction as discussed above. Third, Ms. Sears references recent guidance from the South Coast Air Quality Management District (SCAQMD) about air quality dispersion modeling using AERMOD in areas where the terrain is both above and below the elevation of the emission sources. In response, the SCAQMD is not the governing air district for the project; the site is located in the SDAPCD, which has not published similar guidance. Additionally, the SCAQMD guidance was posted on its website after the release of the Draft EIR for public review. And, this comment appears to apply to the construction ambient air quality analysis suggested by Ms. Sears; as discussed above, dispersion modeling is not required.

4. Health Risk Assessment

Ms. Sears states that the Draft EIR incorrectly modeled DPM emissions associated with project construction, covering only a small portion of the project and assessing only a fraction of the total construction DPM emissions. In response, as stated in the project's Air Quality Technical Report, the construction-related health risk assessment focused on modeling a selected area of proximate receptors:

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The nearest sensitive receptors to the project Site are residences located approximately 100 feet (30 meters) from the southern section of the project Site. In addition to off-site receptors, onsite receptors that may occur following the completion of residential units in Phase 1 were analyzed. To analyze impacts to on-site receptors, a receptor grid was placed surrounding the 10-acre construction activity area as described in Section 3.1.4 to determine the maximally exposed individual. The maximum concentration, and thus, maximum impact, would occur approximately 33 feet (10 meters) from the construction volume sources.

Further, the technical report states, “emission sources during construction would not remain in one location for an extended period of time, as equipment and trucks would continually move farther away from receptors as construction is completed in any one specific area.” Accordingly, the preferred modeling approach recognizes the potential impacts to receptors located near the source of DPM emissions over several years (7 years for on-site receptors and 10 years for off-site receptors).

In preparing her health risk analysis, for the fraction-at-home (FAH) factor, Ms. Sears used a factor of 1 (i.e., the resident is home 100% of the time) for children from the third trimester through age 16. While this factor is recommended by OEHHA where a school is located near the source and the estimated cancer risk exceeds 1 in 1 million, that would not be the case for construction activity, where residents may inhabit homes before the school is constructed. Also, OEHHA’s recommendations for FAH are 0.85 for third trimester and birth to age 2, 0.72 for ages 2 to 16, and 0.73 for ages 16 to 70 years. As such, Ms. Sears assumed more time at home and resultant higher exposures during childhood than OEHHA recommends.

Of note, the majority of the construction DPM emissions that could occur near receptors would generally be proportional to the area in which they would occur (i.e., 10 acres). Thus, what Ms. Sears refers to as “only a fraction of the total construction DPM emissions” are, in fact, the proportional emissions over the 10-acre modeled area compared to the project area and annual average construction DPM emissions. The methodology and rationale for this approach is discussed in detail in Section 3.1.4 of the Air Quality Technical Report. Additional discussion regarding the DPM emission rate used in the construction health risk assessment is found in **Response to Comment O-1.4-106**.

The County believes this approach is reasonable given the uncertainty about where the DPM emission sources (e.g., off-road equipment and vehicles, delivery trucks) could occur over several hundred acres and 10 years of construction. By pinpointing the construction area relative to the proximate off-site receptors, it was expected that this approach would provide a reasonable and conservative estimate of the construction-related health impacts.

For the operational health risk assessment, Ms. Sears evaluated only a 9-year exposure to on- and off-site receptors. It is unclear why this approach was used, although she indicates that this period

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“is the most sensitive 9-year period of life, and OEHHA has developed age sensitivity factors and age specific breathing rates for children which greatly increase the excess cancer risk compared to the same exposure for adults.” Typically, OEHHA recommends use of a 30-year exposure as the default period for reporting purposes, with the option of reporting 9- and 70-year exposure period results. The Draft EIR reported the cancer risks using all three periods, except that a 9-year exposure was only used for the proposed school. The 30-year period does include the higher age sensitivity factors and age specific breathing rates for children for the first 9 years of life, as well as those through age 16.

The Draft EIR reported that significant cancer risk (maximum cancer risk of 26.4 in 1 million) would occur to residents located in the north-east corner of the Town Center residential area. Mitigation Measures M-HR-1, M-HR-2, M-HR-3, M-HR-4, and M-HR-5 would be implemented as a result of this significant impact. Cancer risk at the proposed school, based on a 9-year exposure period, was found to be less than 10 in 1 million. Mitigation would reduce the maximum cancer risks at the residential point of maximum impact to 9.1 in 1 million, which is below the threshold of significance. Ms. Sears did not acknowledge implementation of these mitigation measures to effectively minimize and mitigate the identified significant impact.

5. Crystalline Silica

Ms. Sears states that the Draft EIR only “obliquely addresses crystalline silica emissions” and “fails to identify the crystalline silica content of the Newland Sierra site soils and subsequent fugitive dust emissions.” In addition, Ms. Sears recommends that the silica content be applied to annual-average modeled PM₁₀ emissions caused by construction activities (please see **Response to Comment O-1.4-87** for information regarding why it is not necessary to undertake air quality dispersion modeling of construction emissions).

The crystalline silica analysis (Appendix F of the Air Quality Technical Report) focuses on dust emissions generated during blasting of the rock underlying the project Site. The analysis provides justification as to why fugitive dust generated during other construction activities would not be respirable and not a significant source of crystalline silica exposures. Collecting samples of this rock would require extensive excavations of the overburden and sampling of numerous locations to generate an average silica content. In contrast, Ms. Sears suggests sampling of the site soils, which would not generate applicable information for a more refined silica analysis.

The crystalline silica analysis further notes:

Air dispersion modeling for blasting was not undertaken because the Gaussian dispersion models (i.e., AERMOD) assume steady state conditions which are not appropriate for an event like blasting. Other models that could be used to evaluate a “puff” type source require input that is not feasible to obtain for this project.

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For these reasons, the County considers that such an investigation as recommended by Ms. Sears would not be feasible. The County also considers the evaluation of crystalline silica impacts in the Draft EIR to be appropriate, adequate, and based on expert analysis.

6. Conclusion

Ms. Sears' comments on the analysis completed by Dudek to assess the air quality impacts of the proposed project are of a highly technical nature. The County recognizes that different consultants can utilize different approaches in evaluating a technical issue. The County also acknowledges that CEQA analysis for air quality, by its very nature, requires estimation and forecasting (because the emissions inventory data is prepared to anticipate the emissions profile of sources in the future). In this case, the County finds that Dudek used the standard, industry-accepted model—the California Emissions Estimator Model—as supplemented by available project-specific inputs to evaluate the project's air quality impacts under CEQA. CalEEMod has been recognized by multiple expert agencies as supported by substantial evidence, and is appropriate for use in CEQA. Thus, the County finds that the Draft EIR's analysis is supported by substantial evidence and elects to rely on the air quality analysis, as presented by Dudek's air quality experts.

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LL-11
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: March 30, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated March 30, 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 March 30, 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's summary of the Court of Appeal's recent decision in *Golden Door Properties, LLC v. Vallecitos Water District* (March 26, 2018) is at odds with the record.

The comment letter refers to the Court of Appeal's recent decision in *Golden Door Properties, LLC v. Vallecitos Water District*, filed March 26, 2018, a copy of which is contained in the Newland Sierra Final EIR, **Appendix JJ-19**. The letter also summarizes the Court of Appeal decision, which summary is at odds with the record and outcome of that litigation. For that reason, the County provides the following summary of the litigation and the ultimate Court of Appeal decision rejecting Golden Door's appeal in favor of the County of San Diego (County), the Vallecitos Water District (District or VWD), and Newland Sierra, LLC (project applicant).

In that case, Golden Door brought a lawsuit against the District, the County, and the project applicant. The suit challenged two documents known as a Water Supply Assessment (WSA) and

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a Water Verification, in which the District concluded there is sufficient water supply for the project and other development in its service area. Before the County analyzed the District's combined WSA and Water Verification and incorporated them into its Newland Sierra project EIR, Golden Door filed suit, requesting the trial court to declare the documents invalid. In response, the District rescinded its Water Verification and reissued the WSA only. Golden Door then amended its complaint in the suit to challenge the rescinded Water Verification, and to assert similar challenges to the WSA. The District, the County, and the project applicant successfully dismissed the suit in the trial court, but Golden Door filed an appeal, contending the trial court erred on numerous grounds.

On March 26, 2018, the Fourth Appellate District, Division One (San Diego), issued its 30-page written opinion rejecting all of Golden Door's contentions (*Golden Door Properties, LLC v. Vallecitos Water District, et al.*, Case No. D072280). The Court of Appeal held that Golden Door's challenges to the WSA were barred because governing law precludes claims against a water supplier for an alleged inadequate WSA while the underlying development project is still undergoing environmental review under CEQA. The Court of Appeal relied on another court case (*California Water Impact Network* decision), which was decided 10 years ago, to reject all of Golden Door's contentions challenging the WSA. The Court made clear the prior *California Water Impact Network* decision was "very similar" to the facts presented on the Newland Sierra project.

Further, Golden Door's challenges to the rescinded Water Verification were summarily dismissed. The Court of Appeal specifically found "unhelpful" Golden Door's focus on the fact that water supply and demand issues are matters of strong public interest because the "specific question" before the Court concerned the adequacy of a Water Verification that the District had rescinded. The Court of Appeal made clear:

- (a) "There is no public interest in issuing an advisory opinion" on a Water Verification not yet issued.
- (b) "There is no public interest in permitting premature judicial intervention."

The Court of Appeal stated that Golden Door may challenge the WSA in the County's ongoing CEQA proceedings and in CEQA litigation. The Court also stated Golden Door may challenge any later-approved Water Verification provided it follows applicable statutory procedures.

The County also addressed the Golden Door litigation and related appeal in the Final EIR's responses to comments. Please refer to **Response to Comment O-1-279**. In summary, the County does not concur with Golden Door's characterization of the Golden Door litigation or the outcome. In the County's view, the comment letter selectively quotes from the Court of Appeal decision without acknowledging the Court affirmed the trial court's rulings and rejected Golden Door's

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arguments on appeal. Golden Door’s ability to appeal further to the California Supreme Court has lapsed. Thus, the Court of Appeal decision is final; in favor of the County, the District, and the project applicant; and against Golden Door.

3. Water Demand and Supply Determinations

Nonetheless, the County notes that the District and the San Diego County Water Authority have confirmed there is more than sufficient water for the County to grow and develop pursuant to the County Board of Supervisors’ direction (after the Board’s own independent review). Please refer to the following Water Authority website links addressing water supplies, enhancing water supply reliability, future planning, and water shortage and drought response.¹ Please also see the following District website links addressing water supplies, reliability, and the District’s use of desalinated water from the Carlsbad plant.²

The Newland Sierra Draft EIR also made clear that the County itself makes the ultimate water supply determination, not the water suppliers, and that the County’s determination is based on its independent review of the *entire* record, not just the WSA (see EIR, Section 2.14, page 2.14-2):

The County of San Diego (County) must determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to the demand associated with the existing and other planned future land use uses within the Vallecitos Water District potable water service area.

Based on the data presented in both the Draft and Final EIR and record, the County conducted its own independent review and evaluation. Based on that record, the County determined that the water supplies needed to serve the demand of the Newland Sierra project, in conjunction with the demand of other planned and future cumulative development within the District’s service area are adequate and reliable. (See e.g., Final EIR, Section 2.14, Utilities and Services Systems (Water Supply and Service).)³

As further evidence that sufficient supply exists to serve the project and that of existing and future users within the District, an analysis of the actual per capita water usage in the District covering the past five years (2012 through 2017) was conducted and is attached to the **Responses to Late Comment Letters** herein (refer to **LL-11 Attachment 1** prepared by GSI Water Solutions and entitled “Comparison of VWD 2015 UWMP Water Demand Projections with Historic Water

¹ Please see <https://www.sdcwa.org/water-supplies>; <https://www.sdcwa.org/enhancing-water-supply-reliability>; <https://www.sdcwa.org/future-planning>; <https://www.sdcwa.org/water-shortage-and-drought-response>.

² Please see <http://www.vwd.org/departments/conservation-and-outreach>, <http://www.vwd.org/home/showdocument?id=516>, <http://www.vwd.org/home/showdocument?id=5668>,

³ Please see the County’s website for the referenced EIR section https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/NS/NSFEIR/2.14_Uilities%20and%20Service%20Systems_FEIR.pdf.

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Demand Rates,” August 2018). The analysis compares actual per capita usage for this five year period with the demand projections contained in the 2015 UWMP. The analysis shows that although demand reductions would be required under the 2015 UWMP analysis, no such reductions would be required if the 2015 UWMP had used current and recent per-capita water usage rates to estimate future demands for normal, single-dry, and multiple-dry years during the forecast period of 2020 through 2035.

4. The claim of a 36% cutback for existing Vallecitos Water District customers has been rebutted by the District.

The comments repeat claims that the District will need to implement a 36% cutback in supplies for all existing water customers in order to accommodate the water demand associated with the Newland Sierra project. The County does not concur with the comment, and previously responded to this same comment in the Final EIR (see, e.g., **Responses O-1-291** and **O-1-298**).

Further, in response to previous claims that “drastic mandatory rationing” must be imposed on District customers by as much as 36% so the County can approve the Newland Sierra project, the District itself specifically rebutted such claims in August 2017, as reported in the Newland Sierra Final EIR, **Response O-1-279**:

“Recently, the Twin Oaks Valley Property Owner’s Association published a newspaper ad noting “36% cuts to residents’ water supply” in relation to a proposed Newland Sierra housing project. *This statement is false.* The Vallecitos Water District is not in a drought emergency and therefore is not imposing any mandatory water-use cuts (reductions). *In addition, the District would never impose water-use reductions to any customers to allow for any proposed development, including the Newland Sierra project.*

To continue to provide reliable water service to our customers, Vallecitos is guided by its Master Plan, which analyzes existing and future land uses, as well as current water demands and trends, to evaluate the existing and future water needs for District customers well into the future. Even with the 1,624 acre-feet [asterisk omitted] of annual water demand projected for the proposed Newland Sierra development, *the District has already anticipated greater water use* (1,825 acre-feet per year) identified for this property during the 2017 Master Plan process without the development. *In other words, even if this development moves forward, the District will have sufficient water supplies for all new and existing customers.*

During the recent drought, the cutbacks to our customers were not due to a supply shortage, as Vallecitos had sufficient water supplies. The cutbacks were mandated by an Executive Order from Governor Brown. Even during the depth of the drought, Vallecitos’ water provider — the San Diego County Water Authority

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(SDCWA) — projected 85,196 acre-feet of water in storage after assuming an additional three consecutive years of drought. Since the drought has ended, SDCWA now has 171,000 acre-feet of water in storage, and no restrictions on deliveries to the Vallecitos Water District, or any agency. This is in addition to the drought-resilient water available from the Pacific Ocean from the District’s direct connection to the Claude “Bud” Lewis — Carlsbad Desalination Plant.

Regardless of development in our community, we encourage all residents to continue to make water conservation a permanent way of life.”⁴ (Italics added.)

In addition, at the November 16, 2016, public meeting in which the District Board of Directors considered and approved the project’s WSA, Director Hernandez specifically rejected this so-called “mandatory rationing” requirement (see District Board of Directors’ meeting transcript, Nov. 16, 2016, page 31, italics added):

“And I, too, wanted to make it perfectly clear — we’ve mentioned this a number of times. I know there are some out there that still come up and tell us that they’re concerned about that the existing rate payers are going to pay for some portion of the new water. That’s absolutely false. That’s absolutely wrong. Every new home that is going to be built is going to pay its own way. There is [no] burden on any of the existing rate payers, whether it’s one home or 600 homes. It makes no difference. The developers have to pay for all of the new development and the capacity that is required.”

Nonetheless, the comments repeat the incorrect assumption of a 36% cutback in the District’s existing supplies to account for the Newland Sierra project, and then assert that the Newland Sierra EIR should have addressed amendments to the 2015 Urban Water Management Plan (UWMP) and changes in District ordinances “to adopt or implement those cutbacks.” In response, the County concurs with the District, and finds no credible evidence that the District is cutting existing customer supplies, or proposes to cut existing customer supplies, to accommodate the Newland Sierra proposed project. Additionally, the County finds that the District is not imposing any mandatory water cuts or “rationing” to serve the proposed project (or any other development) within its service area (see also Final EIR, **Response O-1-291**). Thus, the County finds there is no need for the Newland Sierra EIR to evaluate any amendments to the adopted 2015 UWMP, or to evaluate any existing, proposed, or new District ordinances in relation to a cutback that has not occurred.

⁴ The District’s “Correction of Misinformation” is incorporated by reference and available for public review upon request to the County. It is also available for review at the District’s website: <http://www.vwd.org/Home/Components/News/News/2358/18>.

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The comments also request that the County “direct the District to modify, correct, or supplement the WSA to provide an honest and complete analysis of water supply in the District under section 10910 and 10911 of the Water Code.” The County does not agree with the comments.

First, the County has independently considered the WSA, and finds that the WSA is an advisory report that provides useful information from the District — the retail water supplier for the proposed project. The County further finds that the WSA provides useful information about the District’s water supplies and demands; and it provides helpful water data with regard to the District’s ability to serve the Newland Sierra project, along with other cumulative development in the District’s service area.

For example, WSA Tables 7.1 through 7.3 show the available water supply and demand based on the District’s 2015 UWMP, along with the conservation required to balance projected water supply and demand during normal, single-dry, and multiple-dry years from 2020 through 2035 in Sections 8 and 9 of the 2015 UWMP. For further responsive information, please see Final EIR, **Response O-1-298**, above.

In summary, the 2015 UWMP makes clear that if projected water supply shortfalls occur as projected, “additional conservation measures will be necessary to balance supply against the demands in the VWD’s service area” and that “Sections 8 and 9 further describe the demand reduction actions and conservation measures that VWD plans on implementing to balance supplies and demands,” including “working closely with the San Diego County Water Authority for future water supply planning” (Draft EIR, Appendix V-1 [2015 UWMP], page 7-5; see also pages 7-3 through 7-4). As such, the 2015 UWMP factored in required conservation.

The Draft EIR for the Newland Sierra project also specified the water conservation-related project design features (Draft EIR, pages 2.14-42 through 2.14-43), as follows:

“As a result of the water conservation regulatory laws and regulations and technological advances in the water fixture industry, homes constructed today are using dramatically less water than homes built a few years ago. For example, according to a report by the California Homebuilding Foundation, a new three-bedroom single-family home in California with four occupants uses 38 percent less indoor water than a similar-sized home built in 2005, and more than 50 percent less water than a non-retrofitted home built in 1980 (California Homebuilding Foundation 2010). This is primarily due to mandated restrictions in residential toilets (flushing volumes), shower and faucet rates, clothes washer volumes, leak reductions, and other devices (e.g., baths and dishwashers) (Water Research Foundation 2016).

Against this backdrop, and recognizing California’s water challenges and drought conditions, the project applicant has proposed water conservation design features

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to make the project a water-efficient community.

Indoor water conservation features include high-efficiency clothes washers and dishwashers, water-efficient toilets, faucets, and showerheads.

Outdoor water conservation features would include low-water-use landscaping in residential and non-residential landscapes, prohibitions of turf grass in residential front yards and within the street rights-of-way, and prohibitions on outdoor water use in dedicated open space (1,209 acres) and non-irrigated fuel modification areas (272.2 acres). The project also requires all single family homes to be plumbed for grey water systems, if feasible, to capture domestic water for reuse as outdoor landscaping irrigation.”⁵

Further, the Newland Sierra EIR includes GSI’s technical memorandum, titled “Water Conservation Demand Study for the Newland Sierra Specific Plan and EIR,” updated February 28, 2018 (EIR, Appendix T). The purpose of the GSI study is to calculate and substantiate the reductions in water usage (compared with the current water demand forecasts) that can be achieved for the project by implementing current indoor and outdoor water conservation measures required by state and local laws and regulations that became effective in 2015 and 2016. The “current” water conservation regulatory measures became effective in 2015 and 2016, and reduce indoor and outdoor water uses significantly compared with prior building and irrigation standards.

By comparing the Newland Sierra water demand estimates under these newest state and local water conservation standards with demand estimates that are based on pre-2015 conservation requirements, GSI has calculated the amount of savings that can be achieved by implementing the most current set of water conservation standards across the Newland Sierra proposed community.

As shown in GSI Tables ES-1 and ES-2, the total water demand in Newland Sierra under current (2015/2016) conservation measures is calculated to be 776,980 gallons per day (gpd) on an average daily basis (Table ES-1) and 870 acre-feet per year (afy) on an annual basis (Table ES-2).

⁵ The project’s proposed grey water systems could reduce sewage flow by 70 percent and could include installation of in-ground collection tanks as a certified grey water treatment system. However, as is the case with the project’s WSA demand calculations, the project’s Water Conservation Demand Study calculations of irrigation water demands assume that potable water supplies will be necessary for all residential landscape irrigation. If, at a future time, the County has permitting mechanisms in place to allow activation of the plumbed grey water systems, then irrigation water demands could be lower than assumed in the demand calculations presented in both the project’s SB 610 WSA and the project’s Water Conservation Demand Study prepared by GSI (EIR, Appendices S and T).

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This water demand is 673,180 gpd (or 754 afy) *lower* than a demand estimate based on pre-2015 conservation measures that is presented in Table 3.2 of the WSA (HDR, Nov. 2016), and 852,220 gpd (or 955 afy) lower than a pre-2015 demand estimate associated with the County's General Plan.

The decreases in water demand arising from current (2015/2016) water conservation requirements amount to 46% and 52% reductions, respectively, from the WSA and General Plan water demand estimates that are based on older water conservation standards (see also Final EIR, **Response O-1-305**).

5. Recent State legislation has strengthened indoor and outdoor water use efficiency requirements.

As explained below, the County also independently reviewed the District's 2015 UWMP in relation to two state legislative efforts that have established heightened water efficiency standards to help the state prepare better for droughts and climate change.

The first effort initiated in 2009 by Governor Arnold Schwarzenegger (SB 7, Water Conservation), and effective February 2010, requires the state to achieve an interim urban per capita (e.g., per person) water use target of 10% by December 31, 2015, and 20% reduction by December 31, 2020. (See Part 2.55 of the Water Code, commencing at Water Code section 10608.) These water conservation targets are calculated on a gallons-per-capita-per-day (gpcpd) basis, and the 2015 UWMP reflects VWD's compliance with such requirements.

Specifically, the 2015 UWMP shows VWD's calculated 2015 interim water usage target at approximately 179 gpcpd, and its 2020 target at approximately 159 gpcpd. (See 2015 UWMP, Table 5-1, p. 5-9.) Further, VWD shows that its *actual* per capita daily water use for 2015 was 117 gpcpd, which already is below the required 2020 target. (See 2015 UWMP, Table 5-2, p. 5-10.) This means that VWD is already compliant with the state's water efficiency standards well before the required target date of December 2020.

As further background, the District achieved this water savings due to the drought-driven water use restrictions imposed under Governor Edmund G. Brown, Jr.'s executive order in 2015. According to the 2015 UWMP, VWD achieved a cumulative water savings from June 2015 through March 2016 of 25.2% from its 2013 baseline established under the drought restrictions. (See 2015 UWMP, p. 5-9.) Nonetheless, the District plans to use its water demand management measures contained in Section 9 of the 2015 UWMP to maintain its emphasis on conservation to "ensure that the demands do not increase again to previous levels when drought alert levels are decreased" (as in 2017) and "water awareness wanes." (See 2015 UWMP, p. 5-10).

As explained further below, however, the County finds that other recently enacted laws will help to ensure even greater water efficiencies over time, which is another basis for the County's

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independent determination that sufficient supplies exist to meet demands for this project and other cumulative development in the District's service area.

In May 2018, Governor Edmund G. Brown, Jr. signed Senate Bill 606 (SB 606, Sen. Robert Hertzberg) and Assembly Bill 1668 (AB 1668, Assemblymember Laura Friedman), which establish even greater water efficiency standards than imposed in 2009/2010. SB 606 and AB 1668 establish long-term standards for the efficient use of water and a framework for the implementation and oversight of the new standards, which must be in place by 2022. The new legislation strengthens the state's water resiliency in the face of future droughts and climate change with provisions that include:

- Establishing an *indoor*, per person water use standard of 55 gallons per day until 2025, 52.5 gallons from 2025 to 2030, and 50 gallons beginning in 2030.
- Creating incentives for water suppliers to recycle water.
- Requiring both urban and agricultural water suppliers to set annual water budgets and prepare for drought (<https://www.gov.ca.gov/2018/05/31/governor-brown-signs-legislation-establishing-statewide-water-efficiency-goals/>).

According to the Office of the Governor, this new legislation builds on Governor Brown's ongoing efforts to make water conservation a way of life in California ([https://water.ca.gov/LegacyFiles/wateruseefficiency/conservation/docs/20170407 EO B-37-16 Final Report.pdf](https://water.ca.gov/LegacyFiles/wateruseefficiency/conservation/docs/20170407_EO_B-37-16_Final_Report.pdf)).⁶

For context, the average American's water use declined to 82 gallons per day in 2015, which was an approximately 7% decline compared with usage 5 years earlier, according to a 2018 study by the U.S. Geological Survey (USGS). This decrease continued a trend that had been previously observed from 2005 to 2010, according to that same study.⁷ According to the *Sacramento Bee*, Californians used an average of 90 gallons per day in 2017, down from 109 gallons in 2013 (<https://waterwelljournal.com/water-efficiency-standards-established-in-california/>).

The County finds it is reasonably foreseeable that implementation of this new legislation will result in even greater water efficiency than VWD achieved in 2015 (i.e., an *actual* per capita daily water usage rate of 117 gpcpd). Further, the County finds that achieving a 117 gpcpd usage rate (or lower due to the recent legislation) means that the average daily per capita water usage rates

⁶ The report titled, "Making Water Conservation a California Way of Life" (Final Report, April 2017), builds on Executive Order B-37-16 that instructed state agencies to adopt permanent changes to use water, and provides recommendations for how to implement long-term improvements to water supply management that support water conservation.

⁷ See USGS 2018 report summary at <https://www.usgs.gov/news/water-use-across-united-states-declines-levels-not-seen-1970>. The USGS 2018 report discusses how for the nation as a whole, the per capita use for public water supply purposes went from 88 gallons per day in 2010 to 82 gallons per day in 2015. That is a 6.8% decrease (7% rounded).

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(expressed in units of gallons per capita per day [gpcpd]) will be lower than the rates assumed in the 2015 UWMP (the 2015 interim water usage target at approximately 179 gpcpd, and the 2020 target at approximately 159 gpcpd), producing even lower water demands than contemplated in the 2015 UWMP; and, therefore, no need exists for any district-wide 36% water demand reduction that Golden Door claims will be necessary in the future.

LL-12
Latham & Watkins LLP – Jennings
on behalf of the Golden Door Properties, LLC
Dated: April 11, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 11, 2018, is a late letter that does not require a written response from County.

Under CEQA Guidelines section 15105, the County was legally required to provide a 45-day public review period on the Draft Environmental Impact Report (EIR). To provide additional time, the County instead afforded 60 days for public review and comment. The Draft EIR public comment period 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 April 11, 2018, submitted by EHL. (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 does not raise new issues related to the Newland Sierra Project.

The late letter submits a second review prepared by Megan K. Jennings, PhD. titled “Effects of Wildfire on Wildlife and Connectivity”. The issues raised in this review were also presented in **Comment Letter O-1.5**, “Landscape Connectivity Issue Review Newland Sierra June 2017 DEIR” (August 1, 2017).

The County refers the reader to the **Responses to the Comment Letter O-1.5**, specifically **Responses to Comments O-1.5-9, O-1.5-14, O-1.5-27, and O-1.5-31**. The project will have minimal effect on fires occurring within the preserved habitat areas. The 250-foot wide fuel modification zones specified for this project provide the dual role of protecting the project’s structures and people from direct flame impingement from natural areas, while also performing an important role of minimizing the likelihood that a structure or other project-related fire escapes

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into the preserve areas. The primary fire threat at Newland Sierra Project Site is the I-15 corridor, which historically includes vehicle-related ignitions. The North County and Deer Springs Fire Protection Districts (along with other fire districts and agencies that provide service along the I-15 corridor) have successfully contained fires started along the I-15 corridor and put them out before they could escape into either undeveloped land or communities to the west of I-15. This will continue as DSFPD enhances their suppression resources and, with Fire Station #12 being just south of the I-15/Deer Springs Road interchange, can quickly respond to fires adjacent to I-15 and fires that may ignite within the project's proposed preserve areas. The project would also not be expected to result in a decrease in the frequency of fire events (refer to **Response to Late Comment Letter LL-22**). Changes in the fire regime would not be expected based on these factors.

LL-13
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: April 12, 2018

1. Introduction

The letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 12, 2018, is a late letter that references the Newland Sierra Draft EIR and the related Newland Sierra project, but the focus of the letter is on the County's response to Golden Door's August 8, 2017, Public Records Act (PRA) request for records relating to the Draft North County Multiple Species Conservation Program (MSCP) Subarea Plan ("Draft North County Plan"). The April 12, 2018, letter does not require a written response from the County for the reasons explained below.

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 April 12, 2018, letter from Latham & Watkins. (See, CEQA Guidelines, §15088(a)).

Nonetheless, for information purposes, the County has elected to respond to such letters, but without waiving its position that written responses to late comment letters are not required by law.

2. The County has responded to Golden Door's PRA request.

The April 12, 2018 letter states that the County's response to Golden Door's PRA request "appears incomplete" and that some documents "appear to have been improperly withheld or redacted." Golden Door requested a response within ten days of April 12, 2018. The requested documents include (a) the "preliminary conservation analysis," referenced in the County's June 5, 2017 letter from County Planning & Development Services Director, Mark Wardlaw; (b) documents relating to "County Biologists," as referenced in Director Wardlaw's June 5, 2017, letter; (c) the project applicant's request to be included as a "hardline" project in the draft NC MSCP; and (d) biological

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surveys. The letter also commented on documents “improperly withheld” and/or “redacted” by the County.

The County has responded to Golden Door’s PRA request, and the record relating to that response is incorporated by reference and available for public review and inspection upon request to the County’s Planning & Development Services.

3. The Newland Sierra Project EIR does not rely on the project being a “hardline” project in the Draft North County Plan.

The letter states that analysis contained in the Draft EIR relies on the project being included as “hardline” project in the Draft North County Plan and that the lack of analysis and evidence to support this inclusion is evidence of a political concession rather than a good faith, substantive planning effort based on biological principles and evidence or an objective good faith environmental review. The letter then restates information contained in the County’s June 5, 2017, letter and concludes that if such evidentiary support actually exists, the County must provide it to the public and recirculate the Draft EIR.

The County does not agree with these claims. Refer to **Responses to Late Comment Letters LL-4 and LL-22**. As addressed in more detail in those responses, the Newland Sierra Project Draft EIR does not rely on the project being included as a hardline area in the Draft County Plan. Instead, consistent with 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,” the Draft EIR discloses the project’s inclusion as a hardline area in the Draft North County Plan and conducts an analysis of the project’s consistency with the Planning Agreement conservation objectives and preserve design principles which govern the planning framework for the North County Plan.

The project’s inclusion as a proposed hardline project in the Draft North County Plan reflects the County’s view that the project’s proposed development footprint and open space preserve area, including the project’s proposed offsite mitigation site of 212 acres in a Biological Resource and Core Area of the Draft North County Plan, should be considered when analyzing the conservation aspects of the draft plan. Indeed, the main purpose of identifying the projects and including them as proposed hardlines is so they can be properly incorporated in the conservation analysis of the draft plan.

Inclusion of a project as a proposed hardline is not unprecedented. Please see **Appendix JJ-1**, “Hardline Projects in MSCP and MHCP Subarea Plans,” to the Final EIR. **Appendix JJ-1** identifies 65 projects in San Diego County alone that were previously included as hardline projects

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or hardline areas in Draft MSCP and MHCP Subarea Plans, including 11 project sites included as hardline areas in Appendix E to the 2009 Draft North County Plan¹.

In conclusion, as stated, the April 12, 2018, letter focuses primarily on a dispute between the County and Golden Door over responses to Golden Door's PRA request. It does not raise environmental issues concerning the adequacy of the Newland Sierra Draft EIR; and, thus, no further substantive responses are needed or required. Nonetheless, the letter and this response will be made available to the decision makers prior to a final decision with respect to the Newland Sierra project and Final EIR.

¹ 2009 Draft North County Plan, Appendix E:

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

LL-14
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: April 17, 2018

1. Introduction

The comment letters submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 17, 2018, May 8, 2017, and May 10, 2017, are either late letters in response to the Newland Sierra Draft EIR or letters to other agencies that do 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 April 17, 2018, letter from Latham & Watkins. (See, CEQA Guidelines, §15088(a)).

Nonetheless, for information purposes, the County has elected to respond to these letters, but without waiving its position that written responses to late comment letters are not required by law.

2. The letters misinterpret Housing Element Policy H-1.9.

The County received letters from Golden Door Properties, LLC (through its counsel Latham & Watkins, LLP) — one dated April 17, 2018 to the Board of Supervisors, another dated May 8, 2018 to the California Department of Housing and Community Development, and a third dated May 10, 2018 to the County's Office of County Counsel. Each letter cites current County General Plan Housing Element Policy H-1.9, which provides as follows:

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H-1.9 Affordable Housing through General Plan Amendments. Require developers to provide an affordable housing component when requesting a General Plan amendment for a large-scale residential project *when this is legally permissible*. (Italics added.)

In summary, each letter states (a) it is “legally permissible” for the County to require developers requesting a General Plan amendment on a large-scale residential project to provide an “affordable housing component,” (b) the Newland Sierra project includes 2,135 units and none are affordable housing, (c) the project’s market analyses is outdated and inaccurate, and (d) the project is therefore inconsistent with the County’s General Plan affordable housing policy and cannot be approved, unless and until the County adopts an inclusionary housing ordinance to implement its General Plan requirements, or imposes a condition requiring an affordable housing component for the project.

Golden Door requests that County Counsel immediately prepare an affordable housing ordinance and that delays in preparing such an ordinance are unreasonable, an abuse of discretion, and in violation of Government Code 65860. Golden Door also suggests that devising and adopting such an ordinance is not “difficult or complicated” and that the County could simply impose the same affordable housing ordinance as adopted by the City of San Diego or the City of San Jose in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 (“*City of San Jose*”).

For the reasons discussed below, the County does not concur with Golden Door’s affordable housing claims or its interpretation of General Plan Housing Element Policy H-1.9.

3. The County’s General Plan is the guiding document behind Policy H-1.9.

In August 2011, the County Board of Supervisors certified the Final Program EIR and adopted its General Plan. The General Plan represents a framework for the future growth and development of the unincorporated areas of the County. The unincorporated County is divided into 24 community planning areas with unique topography, natural resources, community character, and a diverse mix of physical, demographic, socioeconomic, and other constraints and opportunities.

The General Plan includes Housing Element Policy H-1.9, with language requiring developers to provide an affordable housing component when requesting a General Plan Amendment for a large-scale residential project “when this is legally permissible.” This policy was first introduced into the draft General Plan Goals and Policies framework in the 2008 Public Review Draft of the General Plan. The language “when ... legally permissible” was *added* to Policy H-1.9 in response to feedback on the 2008 Public Review Draft of the General Plan in recognition that the County, at that time and to date, had not established the legal grounds for imposing an affordable housing requirement on General Plan Amendment projects because the County had not adopted an affordable housing program or ordinance by which it could impose such requirements on large-scale General Plan Amendment projects. Therefore, in light of these facts, the policy was drafted

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and revised to add the language “when this is legally permissible” and was incorporated into the County’s 2011 Public Review Draft of the General Plan.¹ Based on this, the County has determined it will be legally permitted to require an affordable housing component when it has completed its General Plan implementation program, as set forth in its General Plan annual progress reports and explained in more detail below.

Further, while the County could impose an ad hoc fee, it would need to complete studies documenting the basis for imposing such a fee and those studies are not completed; therefore, it may be construed as arbitrary to impose an ad hoc fee without underlying support with appropriate studies. Instead, the County’s implementation program calls for the development of criteria and that criteria, when completed, may well include the completion of studies justifying an ad hoc fee. But until that criteria is developed, vetted, and approved, the County is not inclined to impose a fee without a sound basis in the record for doing so. This rationale applies with equal force to the ad hoc imposition of an affordable housing requirement. Without the appropriate studies, any such requirement could be challenged as arbitrary; and, in any event, the County has developed an implementation plan calling for criteria that will lead to a final affordable housing program within the time frame outlined by the County in the annual implementation plans.

4. State Housing Element Law governs the County’s requirements to plan for affordable housing.

By way of background, the State of California identifies the provision of decent and affordable housing for every Californian as a statewide goal. The County’s General Plan Housing Element strives to meet that goal through the provision of appropriately designated land, which provides opportunities for developing a variety of housing types; and through policies and programs designed to assist the development of housing for all income levels and those with special needs. (See General Plan, Chap. 6, Housing Element, p. 6-2; and 2017 General Plan Annual Progress Report, p. 11.)

Government Code section 65588(e)(2)(B) requires that a local government in the San Diego Association of Governments (SANDAG) region that did not adopt a fourth planning period housing element by January 1, 2009, must revise its housing element every four years unless the local government meets certain specified conditions. (*Id.*, p. 3.) The County did not meet the section 65588(e)(2)(B) requirements, and, therefore, is subject to the four revision requirements until at least two consecutive revisions are adopted by the applicable completion deadlines. The County adopted the General Plan update in 2011 (including an update to the Housing Element),

¹ Please see and compare the 2008 Draft General Plan (with no qualifying language) and the 2011 adopted General Plan (with the qualifying language). (Please see Draft General Plan, Nov. 2008, page 6-13 [<https://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/GP/HousingElement.pdf>], and 2011 General Plan, adopted August 3, 2011, also page 6-13 [https://www.sandiegocounty.gov/pds/gpupdate/docs/draftgp/draftgeneralplan_111408.pdf].)

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and a compliant Housing Element in March 2017, and met the first four-year update requirement. (*Ibid.*) The California Department of Housing and Community Development also issued a letter in June 2017, finding the County's adopted Housing Element in "full compliance with state housing element law." (Article 10.6 of the Government Code.)²

5. County General Plan Implementation Plan and Annual Progress Reports

The General Plan goals and policies are carried out through an Implementation Plan, which consists of implementation measures and programs. (See County General Plan Housing Element Background Report (April 2017), p. 107.) The County's Board of Supervisors approved an Implementation Plan, along with the August 2011 adoption of the General Plan. The Implementation Plan includes County activities, processes, reports, assessments, and plans necessary to achieve the General Plan goals and policies. (See 2017 General Plan Annual Progress Report, p. 14.) Each policy in the General Plan includes one or more implementation programs or measures to assure there is a mechanism for its implementation. (*Ibid.*)

In 2012, the County's annual progress report identified the "objective" and "timeframe" for implementing Policy H-1.9. Specifically, the County's *objective* was to "[d]evelop criteria for privately-initiated amendments to the General Plan for large-scale developments to include an affordable housing component." (See 2012 General Plan Annual Progress Report, Housing Element Implementation (March 2013), p. A-4, italics added.) This objective (i.e., develop criteria) was to be implemented in "0-3 years," however, the County reported that the status of the program had not yet started. (*Ibid.*)

In 2013, the County adjusted the timeframe for implementing affordable housing "criteria" to be used for privately-initiated amendments to the General Plan for a large-scale residential development project to "2-7 years." (See 2013 General Plan Annual Progress Report, Housing Element Implementation (March 2014), p. A-4.) The County also included the program in the Planning & Development Services "Advance Planning pending work program for accomplishment when staff and resources become available." (*Ibid.*)³

² For the Department of Housing and Community Development's June 15, 2017, letter, please see **Attachment A** to the Latham & Watkins letter to the Department, dated May 8, 2018.

³ Contrary to Golden Door's claims, the County did not "delay" implementing its program. (See Latham & Watkins May 10, 2018 letter, p. 2.) Instead, in 2012, the County program had not yet started. However, by 2013, the County incorporated the program into the Planning & Development Service's pending work program (subject to available staff and resources). Accordingly, the County's timeframe was adjusted to 2-7 years (or by 2020).

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In 2014, 2015, and 2016, the County's General Plan Annual Progress Reports reflect the *same objective* for Policy H-1.9, namely to develop criteria as part of Planning & Development Service's pending work program within a 2-7 year timeframe.⁴

In 2017, the County's General Plan Annual Progress Report reflected the same objective and timeframe for Policy H-1.9, but added it was a "High Priority" work program (subject to staff and resources availability).⁵ In this regard, Golden Door speculates that the County's 2017 Progress Report reflects a County determination that "it did not need an implementing ordinance to enforce the requirements of General Plan Housing Element Policy H-1.9, or that there was no reason for why an implementing ordinance should be further delayed." The County does not concur with these comments, nor does the plain language of the County's 2017 Progress Report support Golden Door's assertions.⁶ For these reasons, there has been no "unreasonable delay," and no abuse of discretion by the County. In addition, this is consistent with the letter issued by the California Department of Housing and Community Development in June 2017, finding the County's adopted Housing Element is in full compliance with state housing element law.

6. April 2018 Board Presentation on Housing Affordability

On April 18, 2018, the County Board of Supervisors received a presentation on housing affordability in the unincorporated County to specifically address the region's housing crisis. At that time, the Board acknowledged the need for a "multi-faceted approach and a variety of solutions." Specifically, the Board presentation noted that:

"Promoting housing affordability through production incentives and regulatory policy review is one way this Board can encourage the production of much needed housing at all income levels, and shore up the regional housing supply by removing unnecessary impediments and/or bolstering the production process.

The analysis should include modifying or streamlining permitting processes, reducing production regulations, modifying zoning and use regulations, modifying parking requirements, exploring density bonuses, inclusionary housing, accessory dwelling units, pre-fabricated homes, and other options that would help boost discretionary and ministerial housing production.

⁴ Please refer to the County's 2014 General Plan Annual Progress Report (March 2015), p. 1-4; the 2015 General Plan Annual Progress Report (March 2016), p. 1-4; and the 2016 General Plan Annual Progress Report (March 2017), Attachment 1 p. 5.

⁵ Please see the 2017 County's General Plan Annual Progress Report (March 2018), Appendix 3, No. 3.1.1.E.

⁶ Please see footnote 5, above.

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Today's action will direct the Chief Administrative Officer to investigate options that would further promote the expedient building of homes in the unincorporated region and the closing of the housing gap through incentive programs and/or reductions in regulations in San Diego County, and to return within 180 days with recommendations.”⁷

As noted above, the April 2018 Board presentation called for the analysis to include exploring, among other topics, “inclusionary housing.” In the “background” portion of the presentation, County staff highlighted the following facts:

- The shortage of affordable available homes and resultant rises in median home prices in rent has led to a number of negative impacts to the region, including a “negative net migration;”
- For example, a significant number of people have moved to adjacent Riverside County, commuting daily from Temecula and Murrieta to jobs in San Diego;
- In 2016 alone, San Diego lost 8,300 people; in the entire five-year period beginning in 2010, the census estimates that the County only lost a total of 7,177 people;
- This “negative net migration” impacts traffic adding 50,000 commuters into the County over the last decade, impacting County highways, freeways, and communities; and
- The disparity of nearby, affordable, available homes is detracting employers from locating in the County, hampering economic growth.

Based on the April 2018 presentation, the Board directed its Chief Administrative Officer “to investigate options that would promote the expedient building of homes in the unincorporated region and the closing of the housing gap through incentive programs and/or reductions in regulations in San Diego County, and return in 180 days with recommendations” (or by October 14, 2018).

⁷ The County incorporates by reference the County of San Diego, Board of Supervisors, Agenda Item No. 05, dated April 18, 2018, to the Board of Supervisors, the subject of which is “Housing Affordability: Addressing the Region’s Housing Crisis (Districts: All)” — along with the “Housing Affordability” Slide Presentation. This agenda item and presentation are available upon request for public review and inspection at the County’s Department of Planning & Development Services.

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7. August 2018 Planning Commission Housing Affordability Strategy

On August 3, 2018, County staff provided an informational presentation to the Planning Commission on housing affordability in the unincorporated County. At that time, staff presented a detailed slide presentation to the Planning Commission addressing housing affordability and a related strategic framework.⁸ This framework included a five-prong strategy: (i) streamlining and process; (ii) regulatory relief; (iii) participation and incentives; (iv) Community Plan updates; and (v) Land Development Code update. The County also evaluated what other jurisdictions are doing to address housing affordability, including inclusionary housing programs that may involve onsite, offsite, in-lieu, and land dedication affordable housing programs.

In short, both the Planning Commission and Board are receiving pertinent data to address housing affordability. Further, the Board has directed its Chief Administrative Officer to investigate options and return by October 14, 2018 with recommendations. The recommendations may include the development of affordable housing criteria, as contemplated in the County's Implementation Plans and annual progress reports.

8. Additional Golden Door Claims

Golden Door states that "if the County contends that it requires an implementing ordinance," it "should start immediately in devising and adopting that ordinance." (See Latham & Watkins May 10, 2018 letter, p. 3.) This statement oversimplifies the process required to implement Housing Element Policy H-1.9, and ignores the timeframes for this process established by the County in 2013.

The County's "objective" has been consistently reported. Starting in the 2012-2013 timeframe, the stated objective has been to "develop criteria" for implementing Housing Element Policy H-1.9 within two to seven years. The development of such criteria is a critical threshold step for the County to decide whether to ultimately devise and adopt an affordable housing ordinance. As stated, San Diego County is a relatively large county compared to other counties in the United States, and the incorporated areas exhibit a diverse mix of physical, demographic, economic, and other conditions. Moreover, the criteria to be developed must account for the size, scale, and uniqueness of the County's multiple planning areas. Further, the criteria should evaluate factors impacting housing affordability, such as availability of land, land costs, development opposition, permit process and state regulatory requirements, costs of housing, and labor and construction costs. Negative affordability housing effects also should be evaluated, including overcrowding, homeownership rates, commute times, and loss of jobs. Additionally, an inclusionary housing analysis (and an economic feasibility study) prepared by affordable housing

⁸ The County incorporates by reference the slide presentation titled, "County of San Diego Housing Affordability" to the Planning Commission (August 3, 2018), a copy of which is available for public review and inspection at the County's Department of Planning & Development Services.

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experts retained by the County would like be needed in association with the possible adoption of a countywide inclusionary housing ordinance and/or affordable housing program.

Additionally, the criteria must account for the varying inclusionary housing program characteristics, such as

- (a) whether affordable housing will be mandatory or voluntary;
- (b) whether to create threshold project size requirements below which projects would not be subject to affordable housing requirements (i.e., which will assist in defining the scope of the term “a large-scale residential project”);
- (c) identifying the appropriate income and affordability standards and the length of owner-covenant provisions (which will assist in defining the term “affordable housing component”); and
- (d) whether to create affordable housing subareas or submarkets within the County’s unincorporated areas given the diversity of the unincorporated areas, including the preparation of financial feasibility analyses for multiple subareas or submarkets;
- (e) developing residential prototypes for single-family homes, condominium, and apartment projects, and undertaking market surveys of representative projects to estimate the achievable market rate sales prices and rents for the prototype units in each of the identified subareas or submarkets; and
- (f) describing the range of options offered to developers to fulfill affordable housing requirements (e.g., constructing a defined percentage of income-restricted units within new market-rate residential projects; constructing affordable housing in an off-site location; paying fees in lieu of constructing affordable housing units; dedicating land appropriate for development of affordable housing, considering of submarkets within the County due to its size and diverse mix of physical, demographic and economic conditions, deciding upon exemptions and appropriate exceptions, etc.).

In the County’s view, development of all the above criteria is an essential predicate to devising or adopting an affordable housing program tailored to San Diego County. For similar reasons, the County does not concur with Golden Door’s claim that developing the criteria and ultimately adopting an affordable housing ordinance “should not be difficult or complicated” or that it can simply “cut and paste” the City of San Jose’s or the City of San Diego’s affordable housing programs. The County finds that such an approach, if used, would itself be arbitrary and capricious

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because it would not account for the unique aspects of the County's multiple planning areas and diverse mix of physical, demographic, economic, and other conditions.

9. Additional Golden Door Claims Concerning General Plan Policy H-1.9

Golden Door states the Newland Sierra project does not propose housing that would be characterized as "affordable" by the California Department of Housing and Community Development, the U.S. Department of Housing and Urban Development, or the San Diego Housing Federation (<https://www.housingsandiego.org/find-housing-faq>). (See, for example, Latham & Watkins April 17, 2017 letter, p. 1 and May 8, 2018 letter, pp. 1-2 and Attachment A.) Further, Golden Door states that the lack of "affordable housing" is inconsistent with County General Plan Housing Element Policy H-1.9, which requires "developers to provide an affordable housing component when requesting a General Plan amendment for a large-scale residential project when this is legally permissible." Golden Door concludes that the Newland Sierra project must seek to amend the General Plan to comply with Policy H-1.9 or risk being inconsistent with the General Plan. The County does not concur these comments.

The County has determined that the Newland Sierra project is consistent with General Plan Housing Element goals and policies, but that, in that absence of an ordinance or program, Policy H-1.9 does not apply to the project. The County has not developed its affordable housing criteria, nor vetted or adopted an affordable housing ordinance; and thus, the County does not have a legally permissible mechanism in place to require affordable housing or in-lieu fees. The County also is not willing to impose an ad hoc affordable housing requirement, in-lieu fee, or condition on the Newland Sierra project because:

- (a) it is not County practice to require ad hoc affordable housing requirements;
- (b) the County has no reason to treat the Newland Sierra project differently than other General Plan Amendment projects by imposing such a requirement;
- (c) the County has not studied the relationship between new housing development and affordable housing or in-lieu fees;
- (d) the County does not desire to invite possible, future litigation in the event it adopts ad hoc affordable housing requirements or conditions, particularly without putting in place affordable housing objectives, criteria, study, and further deliberation and public/community input;
- (e) the County has not yet finished developing the "criteria" to implement an affordable housing component within the timeframes contemplated in the County's General Plan Implementation, which is annually monitored in the County's published General Plan progress reports; and

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- (f) the County currently relies on the General Plan requirements for new development to provide a broad range of housing for a mix of all income levels; and this approach has been effective, and continues to be effective, until such time as the County decides it has a legally permissible mechanism in place, and further decides whether to impose a uniform affordable housing program by ordinance or otherwise.

10. The Newland Sierra Project aids the County in implementing its Regional Housing Needs Assessment (RHNA) requirements

The state Housing and Community Development Department requires the County to demonstrate sufficient planning and zoning capacity for a range of housing from low density single family housing to multifamily housing at 20 dwelling units per acre or higher. For the current Housing Element Cycle (Planning Period January 2013 through December 2020), the County is required to demonstrate sufficient capacity for 22,412 dwelling units of new housing capacity, including 2,085 dwelling units at a density range of 20 dwelling units per acre or higher, 1,585 dwelling units at a density ranging between 15 and 20 dwelling units per acre, 5,864 dwelling units ranging between 10.9 and 15 dwelling units per acre, and 12,878 dwelling at densities lower than 10.9 dwelling units per acre. The Newland Sierra Project would result in 294 dwelling units at a density of 20 dwelling units per acre or higher, 221 dwelling units ranging between 15 and 20 dwelling units per acre, 286 dwelling units ranging between 10.9 and 15 dwelling units per acre, and 1,334 dwelling units at 10.9 dwelling units per acre or lower. Thus, the project would result in a significant contribution toward implementing the County's RHNA's allocation for the current Housing Element Cycle, in particular by providing a range of housing at densities the state assigns based on the housing needs of very low, low, and moderate income households. The Table below demonstrates how the project would provide a range of housing densities consistent with the County's RHNA allocation.

COUNTY AND NEWLAND SIERRA RHNA NUMBERS

	VERY LOW (20+ DU/AC)	LOW (15 TO 20 DU/AC)	MODERATE (10.9 TO 15 DU/AC)	ABOVE MOD. (<10.9 DU/AC)
County	2,085 (9.3%)	1,585 (7.1%)	5,864 (26.2%)	12,878 (57.4%)
Newland Sierra	294 (13.8%)	221 (10.4%)	286 (13.4%)	1,334 (62.5%)

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11. The Newland Sierra Project is consistent with the County's Housing Element goals and policies.

The County General Plan Housing Element, including through its Housing Element Goals and Policies, focuses on planning for a sufficient range of housing to meet its RHNA allocation; on improving the affordability of housing in the unincorporated area by reducing governmental constraints and costs; by preserving the existing supply of naturally affordable housing, rent-restricted affordable housing, farm worker housing, and special needs housing in the County; and by furthering the housing assistance programs of the County's Department of Housing and Community Development. The goal and policy framework of the County's Housing Element is structured around these broad objectives such that these objectives provide context to how the County defines affordable housing and applies its Housing Element Goals and Policies.

The Newland Sierra Project would assist the County in implementing its Housing Element Goals and Policies by providing a range of housing types and sizes with projected prices that are anticipated to be sold at market rates affordable to lower and moderate income families, defined as households earning between 80 and 120% of the Area Median Income (AMI). Housing that is affordable to households within this income range (80 to 120% of AMI) is commonly known as "workforce housing", a housing need that is not being met in most parts of the San Diego region, including in the unincorporated area. Many jurisdictions, including the City of San Diego, around the state are recognizing housing that is sold to families earning up to 150% of AMI, as "naturally affordable". For example, the City of San Diego exempts projects or portions of projects from its inclusionary housing ordinance that meet this housing need.

Using these income ranges (80 to 120% of AMI and 80 to 150% of AMI), MarketPointe Realty Advisors prepared an updated Housing Attainability Analysis (refer to Appendix JJ-26 to the Final EIR) that evaluated the project's housing types, sizes, and projected pricing under three different income and family size scenarios. This updated analysis produced the following results:

- When the San Diego Region's AMI of \$81,800 for all family households is applied, depending on whether FHA or conventional lending requirements are applied, the project would provide between 780 and 800 units of workforce housing (37 to 38% of the total units in the project) and between 1,199 and 1,329 units (56 to 62% of the total units in the project) affordable to incomes up to 150% of AMI.
- Based on the San Diego Region's AMI for a four-person household of \$97,300, depending on whether FHA or conventional lending requirements are applied, the project would provide between 1,108 and 1,166 units of workforce housing (51 to 55% of the total units in the project) and between 1,794 and 1,884 units (84 to 88% of the total units in the project) affordable to incomes up to 150% of AMI.

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- Again using the San Diego Region’s AMI of \$81,800 and adjusting family sizes based on projected home sizes (i.e., number of bedrooms), depending on whether FHA or conventional lending requirements are applied, the project would provide between 1,189 and 1,930 units of workforce housing (56 to 90% of the total units in the project) and between 1,872 and 2,085 units (88 to 98% of the total units in the project) affordable to incomes up to 150% of AMI.

Thus, the updated MarketPointe Realty Advisors analysis demonstrates that a substantial amount of the units proposed in the Newland Sierra Project would constitute workforce housing or “naturally affordable” housing. The County considers the project’s housing mix as consistent with the County’s Housing Element goals and policies. Accordingly, the project will aid the County in implementing its Housing Element and as well as in achieving its RHNA allocation requirements. Therefore, notwithstanding the lack of applicability of Policy H-1.9 to the project (as addressed above), the Newland Sierra Project is consistent with the spirit and intent of Policy H-1.9.

12. The Court Case Cited by Golden Door does not Require the County to Immediately Adopt an Affordable Housing Ordinance

Golden Door primarily relies on the *City of San Jose* decision to support its claims. The County disagrees that the case supports Golden Door’s claims. While *City of San Jose* found that no nexus requirement is needed for affordable housing ordinances because it is reviewed with the same discretion as any other land use regulation, that decision neither requires jurisdictions to adopt inclusionary housing ordinances, nor does it address ad hoc fees that deviate from a jurisdiction’s normal practice and are unsupported by fee studies and a clear nexus.

LL-15
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: April 17, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 17, 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 April 17, 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 analysis of maximum allowable commercial and office development allowed under the existing General Plan is correct.

The letter is a submittal of a revised analysis prepared by DELANE Engineering of DELANE Engineering's opinion of the amount of commercial and office development that could be built within the Village Area of the project Site. The letter notes that the previous analysis included the AM/PM gas station at Mesa Rock Road as land that is part of the project Site (which it is not) and notes that the updated analysis finds that, in the opinion of DELANE Engineering, due to regulatory and environmental constraints, the maximum allowable amount of office professional and general commercial uses that could be built on the site are 618,000 square feet and 77,000 square feet, respectively, or a total of 695,000 square feet of office and commercial building square footage combined.

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The County acknowledges the updated analysis but maintains that the analysis contained in the Draft EIR of the maximum allowable commercial and office development that could occur within the Village Area of the project Site is correct. The County, therefore, disagrees with the analysis prepared by DELANE Engineering and refers the commenter to **Response to Comment Letter O-1.9** and **Responses to Comments O-1-273, and O-1-385 through O-1-394**. The updated DELANE Engineering analysis maintains the incorrect assumption that no impacts to steep slopes within the General Commercial and Office Professional zones of the project's Village Area would be allowed under the Existing General Plan Alternative. The County's Resource Protection Ordinance allows additional encroachment into Steep Slope Lands to avoid impacts to other significant environmental resources.

LL-16
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: April 25, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 25, 2018, is a late letter that does not require a written response from County.

Under CEQA Guidelines section 15105, the County was legally required to provide a 45-day public review period on the Draft Environmental Impact Report (EIR). To provide additional time, the County instead afforded 60 days for public review and comment. The Draft EIR public comment period 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 April 25, 2018, submitted by EHL. (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 EIR's analysis of the Existing General Plan Alternative commercial and office development intensity is correct.

The letter states that the project applicant and its primary environmental consultant Dudek have set forth to the public an inaccurate and misleading project comparison (between the proposed project and the Existing General Plan Alternative land uses and environmental impacts) and, in reference to the California Code of Regulations Section 15088.5 addressing recirculation of an EIR, makes several claims behind the commenter's position that the Draft EIR should be recirculated. The letter is reiterating comments and claims made by the commenter in response to the Draft EIR, including in **Comment Letters O-1 and O-1.9** and **Late Comment Letter LL-15**. In light of that, the County refers the commenter to the responses prepared to those letters.

To the four claims made in the letter, the County offers the following responses:

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Claim 1: *Dudek and the project applicant's claim that two million square feet of commercial and office development could be built under the Existing General Plan land uses violates CEQA Guidelines Section 15125.*

The County does not agree with this claim. CEQA Guidelines Section 15125 addresses the requirement to properly describe the “physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation is published”, that “[t]his environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant” and, in the case where the project is proposing a change or amendment to an existing plan, the project should be compared as well to “the potential future conditions discussed in the [existing General P]lan.” The Newland Sierra Project EIR has satisfied these requirements.

Claim 2: *The Draft EIR uses an erroneous and misleading baseline to analyze the project's environmental impacts.*

The letter then refers to two court cases (*Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal. 4th 310, 322 and *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 658) addressing how baseline conditions need to be established for an environmental analysis under CEQA and refers to several Enclosures included with the letter as supporting this claim, including Enclosure 1 (public communication material prepared by the project applicant), Enclosure 2 (a Cushman & Wakefield Demand Study, dated July 31, 2017, and submitted with the commenter's letter on the Draft EIR-refer to Comment Letter O-1.8), Enclosure 3 (Late Comment Letter LL-15 and the revised technical analysis prepared by DELANE Engineering attached LL-15), and Enclosure 4 (a technical memorandum prepared by the commenter entitled “SANDAG Growth Forecast Data on Newland Sierra Project Site Commercial Area”). The letter also states that Chapter 2.14 (Utilities and Service Systems) uses full buildout of the General Plan as a baseline for assessing the water demand of the project.

The County does not agree with this claim. The Newland Sierra Project Draft EIR did not use the existing General Plan land uses as a baseline for analyzing environmental impacts, it used the existing conditions of the project Site (as undeveloped land) and the existing conditions in the vicinity of the project Site to analyze the project's environmental impacts. The mitigation measures for the project's impacts are also based on the existing conditions (on and offsite) as the baseline. Neither the EIR analysis of the project's impacts nor the project's mitigation measures bear any relation to how the project's impacts compare to the impacts that would occur under the Existing General Plan land uses (i.e., the Existing General Plan Alternative). As it relates to the four Enclosures referenced and discussed in support of the commenter's claim, responses to those Enclosures are provided separately below. Finally, specific to the comment that the project uses buildout of the General Plan as a baseline for assessing water demand for the project, the County does not agree and refers the commenter to EIR Chapter 2.14 (Utilities and Service Systems), **Responses to Comments O-1-303, O-1-338, and O-1-339.** As addressed in **Response to Comment O-1-303:**

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The Draft EIR discloses the “baseline” of the project Site. According to the Draft EIR, page 2.14-36, the “proposed project would increase overall water demand compared to existing undeveloped conditions.” Thus, the Draft EIR acknowledges that the site is currently undeveloped, with no notable water usage, and that the project, if approved, would increase overall water demand compared to the project’s existing physical condition. The Draft EIR also analyzes the project’s forecasted water demand based on four different methodologies (see Draft EIR, pages 2.14-45 through 2.14-48). All four water demand methodologies show an overall increase from the existing property’s water use condition, which is essentially zero. Thus, the County, its decision-makers, and the public are fully informed of a projected increase in water demand at the project area from zero to a range of 1,825 afy, 1,624 afy, 1,196 afy, and 870.3 afy, depending on the methodology identified in the Draft EIR (see Draft EIR, Tables 2.14-1 through 2.14-5).

Claim 3: *The project applicant’s claim that “two million square feet of office and big box retail” is not supported by any substantial evidence.*

The letter then refers to CEQA Guidelines Section 15384 and states that the applicant’s claim the site can support two million square feet of office and big box retail constitutes “argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or inaccurate.” The letter states that the project applicant’s claim is spurious and based on an overly simplistic and fundamentally misleading calculation of the total acreage zoned for General Commercial and Office Professional on the project Site, refers to Enclosures 2 and 3 to the letter, and concludes that the two million square feet of office and commercial is neither physically possible nor economically feasible.

The County does not agree with this claim and notes that this issue was responded to extensively in **Response to Comment Letter O-1.9, Responses to Comments O-1-385 through O-1-389, Responses to Comments O-1-514 through O-1-520, and Response to Late Comment Letter LL-15**. The County also notes that Enclosure 2, the Cushman & Wakefield Demand Study for the project Site, provides a range of commercial and office development that is consistent with the analysis contained in the EIR, stating specifically:

Under the current zoning of C30, the maximum FAR (Floor Area Ratio) is .80 of the site area for Village areas and .45 for semi-rural areas. Based on the estimated site area at 53.6 acres, at a maximum, this translates to a total building area from 1,050,667 to **2,008,116 square feet**, [and] [u]nder the current zoning of C34, the maximum FAR is .70 of the site area for Village areas and .45 FAR for semi-rural areas. The estimated site area is 4.6 acres. At a maximum, this translates to a total building area from 90,169 to 140,263 square feet. (*emphasis added*)

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Claim 4: *The purported “two million square feet...” is not consistently applied in the Draft EIR and the Traffic Impact Analysis (Appendix R1 to the EIR) concedes that “two million square feet...” is unlikely.*

The letter claims that the analysis of traffic generation under the Existing General Plan as presented in the Traffic Impact Analysis (**Appendix R1**) shows far fewer trips than 2 million square feet of office and commercial development and refers to Enclosure 5, an analysis prepared by STC Traffic entitled “Newland Sierra Office Trip Generation”. The County does not agree with this claim. The analysis of trip generation under the Existing General Plan Alternative in the Traffic Impact Analysis is based on gross acreages of office and commercial development. The SANDAG (*Not So*) *Brief Guide of Vehicular Traffic Generation Rates for the San Diego Region* (April 2002) includes two different trip generation rates for each type of office and commercial development in the Guide, one rate based on gross acreages of development and a second rate based on building square footage. The Traffic Impact Analysis used the rate based on gross acreage of office and commercial development allowed under the Existing General Plan and zoning.

As it relates to the five Enclosures included with this letter, the County offers the following responses:

Enclosure 1 (public communication material prepared by the project applicant): As this is material is not part of the EIR and, instead, reflects the project applicant’s communication with the general public about the project, the County has no comment or position on this material.

Enclosure 2 (Cushman & Wakefield Demand Study, dated July 31, 2017—Comment Letter O-1.8): Refer to **Response to Comment Letter O-1.8**.

Enclosure 3 (Late Comment Letter LL-15): Refer to **Response to Late Comment Letter LL-15**

Enclosure 4 (a technical memorandum prepared by the commenter entitled “SANDAG Growth Forecast Data on Newland Sierra Project Site Commercial Area”): Enclosure 4 is a technical memorandum prepared by the Clifton Williams, Land Use Analyst, for the commenter’s legal counsel Latham & Watkins LLP that appears to present various information about SANDAG’s Series 13 Growth Forecast for the project Site. The technical memorandum claims that SANDAG’s Series 12 2050 Growth Forecast contradicts the project applicant’s claim of two million square feet of commercial and office development and offers an alternative calculation for the maximum allowable commercial and office building square footage for the project Site based on results and calculations contained in the memorandum based on the Series 12 forecast.

There are several issues with this analysis that make the results not applicable to the analysis contained in the Newland Sierra Project EIR. First, the technical memorandum is based on results from a SANDAG Series 13 Growth Forecast, but incorrectly refers to the forecast as Series 12 throughout. The analysis contained in the Draft EIR was conducted using Series 12 (as Series 13

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was not yet available) and there is an important difference between the structures of the two models. Series 12 is based on land use inputs (acres of commercial or office development and dwelling units of residential development) that translate into traffic generation for individual Traffic Analysis Zones (TAZs) whereas Series 13 is based on socio-economic data (e.g., employment capacity for non-residential uses). Second, the Series 13 results presented in the technical memorandum are a forecast which changes with different points in time (e.g., 2030 versus 2040 versus 2050), but they are not a buildout condition, however the EIR is required to analyze the impacts of the buildout condition (under the proposed project, under the Existing General Plan Alternative, and other project alternatives). Therefore, a SANDAG forecast is not an appropriate tool for constructing a buildout condition. Third, the technical memorandum relies on City of San Diego employee per square foot (employment density) generation rates to back into the calculation of commercial and office square footage for the project Site. Employment densities are different for different parts of the County and SANDAG employment generation rates do not match the City of San Diego's. Fourth, SANDAG does not have land use authority over the project Site and is not charged with approving and regulating the implementation of either the County's General Plan or General Plan Amendments in the County of San Diego. Therefore, while the County is withholding an opinion on the validity of the results presented in Enclosure 4, for the reasons cited herein, the results are not applicable to the analysis contained in the Newland Sierra Project EIR.

Enclosure 5 (Newland Sierra Office Trip Generation Assessment prepared by STC Traffic): The analysis prepared by STC uses the trip generation results from Table 11-1 of the Traffic Impact Analysis (Appendix R1 to the EIR) and, using SANDAG's trip generation rates based on building square footage, concludes that "the traffic associated with the General Plan analysis...does not support the 2 million square feet statement." The County does not agree with the results presented in this Enclosure. The analysis is misapplying per square foot trip generation rates to back into building square footages using the trip generation results, which are based on gross acreage rates, presented in Table 11-1. The SANDAG (*Not So*) *Brief Guide of Vehicular Traffic Generation Rates for the SAN Diego Region* (April 2002) provides a range of rates based on building square footage and gross site acreages, but leaves the decision on what rates to use and what approach to take to calculating trip generation up to the discretion of the local agency with land use authority. Per square footage rates are typically more appropriately applied when a specific project proposal or building and site plan proposal is being considered in a specific location and potentially in association with other existing or proposed uses (e.g., a 200,000 square foot medical office building in an urban setting with a user or users identified) whereas rates based on gross acreage are typically more appropriately applied at the plan level (where a specific building or site plan is not proposed). This is the case with the Existing General Plan Alternative and, hence, why the gross acreage rates were used. Therefore, the County does not agree with the results presented in Enclosure 5.

LL-17
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: May 8, 2018

1. Introduction

The comment letters submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 17, 2018, May 8, 2017, and May 10, 2017, are either late letters in response to the Newland Sierra Draft EIR or letters to other agencies that do 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 8, 2018, letter from Latham & Watkins. (See, CEQA Guidelines, §15088(a)).

Nonetheless, for information purposes, the County has elected to respond to these letters, but without waiving its position that written responses to late comment letters are not required by law. As it pertains to the May 8, 2018, letter, refer to **Response to Late Comment Letter LL-14**.

LL-18
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: May 10, 2018

1. Introduction

The comment letters submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated April 17, 2018, May 8, 2017, and May 10, 2017, are either late letters in response to the Newland Sierra Draft EIR or letters to other agencies that do 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 10, 2018, letter from Latham & Watkins. (See, CEQA Guidelines, §15088(a)).

Nonetheless, for information purposes, the County has elected to respond to these letters, but without waiving its position that written responses to late comment letters are not required by law. As it pertains to the May 10, 2018 letter, refer to **Response to Late Comment Letter LL-14**.

LL-19
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: May 14, 2018

1. Introduction

The letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated May 14, 2018, is a late letter in response to the Newland Sierra Draft EIR 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 14, 2018, letter from Latham & Watkins. (See, CEQA Guidelines, §15088(a)).

Nonetheless, for information purposes, the County has elected to respond to such letters, but without waiving its position that written responses to late comment letters are not required by law.

2. Summary of Letter/Comments

The May 14, 2018 letter states that the County has used “unauthorized/unapproved consultants” for the Newland Sierra project EIR in violation of the *County of San Diego CEQA Guidelines* (County CEQA Guidelines). In particular, the letter references the following five technical studies and the consultants that prepared them, and states that no Memoranda of Understanding (MOU) were disclosed by the County in response to Golden Door’s October 10, 2017, Public Records Act request:

- (1) EIR Appendix GG, Newland Sierra Agricultural Alternative Report, prepared by Ecology Artisans;

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- (2) EIR Appendix J-4, Groundwater Resources, Newland Sierra, San Diego County, California, prepared by Leighton & Associates;
- (3) EIR Appendix HH, Newland Sierra Parkway Feasibility Study, Evaluation of Alternatives to Widening of Deer Springs Road, prepared by Fuscoe Engineering
- (4) EIR Appendix R-2, Newland Sierra VMT Analysis to Respond to SB 743, prepared by Fehr & Peers; and
- (5) EIR Appendix R-3, Newland Sierra TDM Program – VMT Reduction Evaluation, prepared by Fehr & Peers.

The letter identifies two options available to the County to allegedly correct the “problem” and both options call for the “halt” in “processing of the Newland project.” The letter requested a response by May 23, 2018, and suggested that “[j]udicial intervention is warranted presently[.]” (Letter, p. 4.) The County does not concur with these comments.

3. Relevant Background

As background, the County’s Board of Supervisors adopted the County CEQA Guidelines, as amended, on October 21, 2009. The County CEQA Guidelines “provide objectives, criteria, and procedures for the orderly evaluation” of projects and documents prepared pursuant to CEQA and the State CEQA Guidelines. (County CEQA Guidelines, Section 1, p. 1.)

The County CEQA Guidelines state that the Department of Planning and Development Services will maintain a CEQA Consultant List for privately initiated projects and that technical studies and EIRs must be prepared by consultants on the list unless the County exercises its discretion to use consultants selected by the applicant. (County CEQA Guidelines, Section 17, pp. 8-9 and Attachment A, p. A-1.) Per the County CEQA Guidelines, project applicants select and contract directly with the consultants to prepare such documents. The applicant, consultant, and County execute a MOU or similar agreement that “defines the roles, limitations, and requirements of the parties involved.” (County CEQA Guidelines, Attachment A, p. A-1.)

The County’s CEQA Consultant List identifies 13 subject areas for which consultants listed are typically required to author technical reports for privately-initiated projects. Based on County staff’s data, consultants on the County’s CEQA Consultant List prepared 11 of 13 subject area CEQA documents (including the Draft EIR itself) pursuant to executed MOUs for the Newland Sierra project. (The remaining two CEQA subject areas are not applicable because no technical reports were prepared for those subject matter areas.)

The County CEQA Guidelines also identify “subject areas not listed.” (County CEQA Guidelines, Attachment A, Section 1(A), p. A-2.) These subject areas have two categories: (i) technical reports

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where no list is maintained because the reports are prepared by licensed, registered, or certified professionals; and (ii) technical reports in other subject areas that are required in certain circumstances. Each type of technical report is discussed below.

First, the County CEQA Guidelines identify examples of subject areas where no list is maintained by the County (e.g., geologic hazards, hazardous materials and existing contamination, hydrology, and stormwater management planning). No list is maintained by the County for preparation of such reports because they must be completed by registered engineers or other certified professionals. Those individuals are qualified to prepare such reports due to their licensing, registrations, or certifications. For those consultants, no MOU is required.

Second, the County's CEQA Guidelines state that "[u]nder certain circumstances, a need may arise for technical studies to be prepared in other subject areas" beyond those listed in the County's Consultant List. (County's CEQA Guidelines, Attachment A, Section 1(A), p. A-2.) For those consultants, the applicant recommends a consultant subject to the discretion of the Director of Planning and Development Services, and the parties execute an MOU in a form approved by County Counsel, and shown as an example in Attachment B to the County's CEQA Guidelines.

Based on County staff's data, certain technical studies for the Newland Sierra project were prepared for topics falling into both of the above categories. No MOUs were executed for the first category of technical studies because, as stated, such studies were prepared by specified licensed individuals, such as registered engineers or certified professionals.

Other technical reports were prepared on subject areas not listed on the County's CEQA Consultants List. For example, the applicant did not prepare, nor select the consultant that prepared, the Newland Sierra project's Water Supply Assessment (WSA). Instead, the Vallecitos Water District's outside engineer prepared the WSA and the WSA is required by law (Water Code section 10910). For these reasons, no MOU is required under the County's CEQA Guidelines for the WSA. For other technical reports prepared on subject areas not listed on the County's CEQA Consultants List, the County determined that an MOU needed to be executed. For that reason, the County required 7 consultants to execute MOUs, each of which obligated the consultant to affirm and ratify that the technical studies were prepared in accordance with the requirements set forth in the MOUs. Requiring each such consultant to affirm and ratify that their studies were prepared in accordance with the requirements set forth in the MOUs represents a reasonable means of achieving the underlying purposes of the County's CEQA Guidelines. Further, County staff independently reviewed and evaluated each such study, and found each study to provide sufficient, objective information useful to the public and the decision makers.

4. Further County Response

Apart from this response, the County separately responded to the May 14, 2018 letter. Specifically, on May 30, 2018, the County's Office of County Counsel (Inga B. Lintvedt, Senior Deputy)

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provided a thorough written response to Golden Door's May 14, 2018 letter. The County incorporates by reference its letter dated May 30, 2018, along with the two attachments to that letter response (i.e., Attachments A and B). The letter and attachments are available for public review and inspection upon request to the County. The County's letter disagrees with the contentions made by Golden Door, and responds specifically to the five allegedly improper technical reports.

5. Ensuing Litigation

On June 19, 2018, Golden Door filed a lawsuit against the County captioned, "Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief," in San Diego Superior Court, Case No. 37-2018-00030460-CU-TT-CTL, assigned to the Hon. Joel R. Wohlfeil. The petition alleges four claims. The first two claims contend that the County "improperly" used consultants that either (a) were not on the County's list of approved consultants, and/or (b) did not properly sign a MOU with the County. The last two claims contend the County's document retention policies violate CEQA and the California Public Records Act (PRA), including a claim that the County failed to respond to Golden Door's October 10, 2017 PRA request referenced in footnote 6 of the May 14, 2018 letter.

The exhibits to the petition include County Counsel's letter response, dated May 30, 2018 (Exhibit W). Such exhibits also include Golden Door's October 10, 2017 PRA request letter (Exhibit P); and County letters and e-mail exchanges between Latham & Watkins and the County concerning the PRA requests (e.g., Exhibits Q, R, S, U, V, and X).

In this litigation, the County contends that the claims lack merit. The County also is in the process of defending against all claims raised in the litigation, including the County's demurrer to the complaint in the lawsuit and its opposition to Golden Door's request for injunctive relief.¹ At this time, however, the litigation is ongoing and no further response is required or can be provided.

6. Batching Comments

The May 14, 2018 letter makes reference to "controversy" surrounding the County's "plan to 'bundle' or 'batch' several General Plan Amendment applications ... to avoid new potential Supervisors and/or potential voter initiatives that may be chosen by the voters this fall," citing a newspaper article. The letter also contends that batching is "unprecedented" and causing the County to "rush" to approve projects resulting in "short-circuiting" County planning practices (e.g., community sponsor group involvement) and other practices (e.g., use of "unauthorized" consultants). The County does not concur with these comments.

¹ The County incorporates by reference its demurrer and supporting legal memorandum, along with its written opposition to Golden Door's injunctive relief request. Such documents are part of the court files in Case No. 37-2018-00030460-CU-TT-CTL. Such documents are available for public review and inspection upon request to the County.

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First, the letter does not indicate that “batching” is violating any law or regulation. To the contrary, Government Code section 65358 provides that more than one change may be made at a time to the General Plan and the change or changes may be considered as a single amendment to such plan. (See Gov. Code, §65358(b); *Karlson v. Camarillo* (1980) 100 Cal.App.3d 789, 808; 68 Ops. Cal.Atty.Gen. 258 (1983).)

Second, the County addressed its General Plan Amendment batching processes and procedures, noting it has been used in prior years (e.g., 2009, 2010); and, thus, it is not “unprecedented.” Please refer to County Memorandum to Supervisors from Sarah E. Aghassi, Deputy Chief Administrative Officer, dated May 15, 2018 (Aghassi memorandum).²

Third, the County has not “rushed” through its customary processes and procedures to accommodate “batching,” as shown in the Aghassi memorandum. Those processes and procedures include adequate notifications, input from advisory sponsor groups, public input, project analyses, and public hearings. The County’s processes and procedures are consistent with Government Code section 65358 and its legislative history.

² This memorandum is incorporated by reference and available for public review and inspection upon request to the County.

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 Report ³:

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

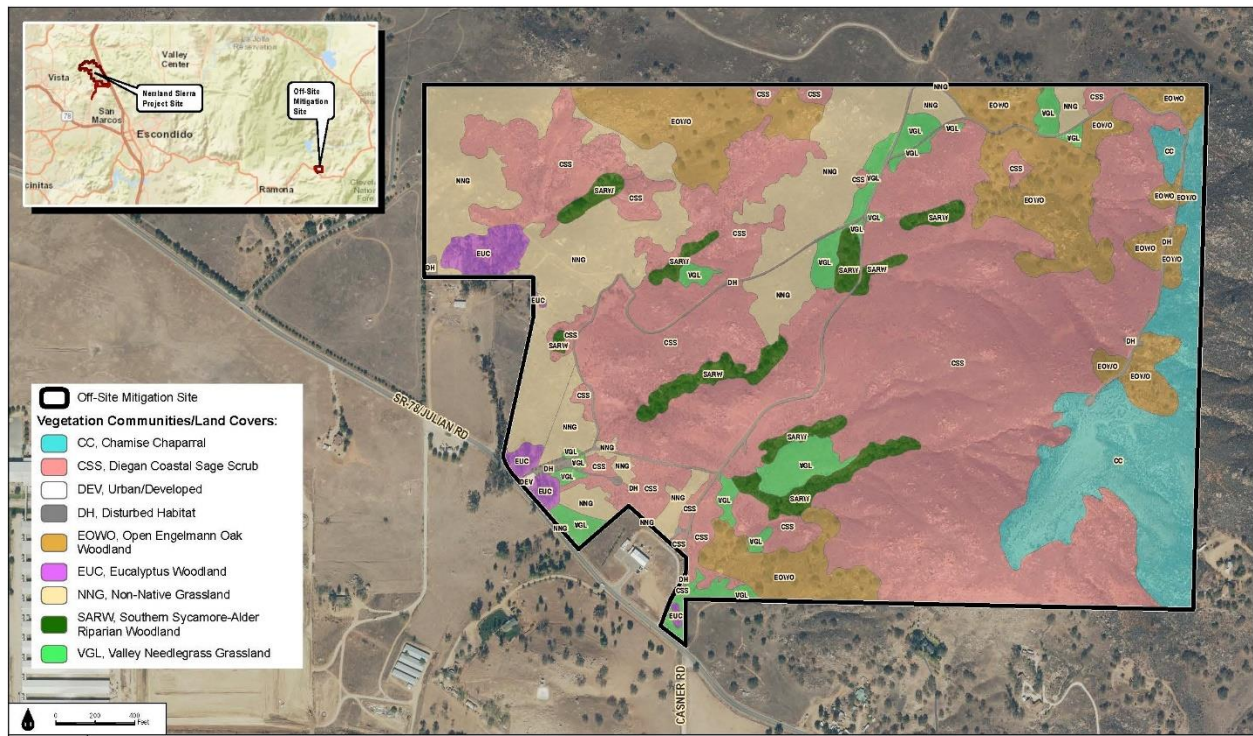
- Newland engages in additional meetings and correspondence with the Wildlife Agencies and the County on offsite mitigation sites.
- After over 2 years of negotiations, and despite beginning with the Merriam Mountains Project footprint as the baseline (which the Wildlife Agencies had previously agreed 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.

LL-21
Kathy VanNess
on behalf of the Golden Door Properties, LLC
Dated: May 22, 2018

1. Introduction

The comment letter submitted by Kathy VanNess on behalf of the Golden Door Properties, LLC, and an undated report by Phyllis Fox attached to the letter, which was received by the County on May 22, 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 Environmental Impact Report (EIR). To provide additional time, the County instead afforded 60 days for public review and comment. The Draft EIR public comment period 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 has no 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 subject letter from Ms. VanNess (and the undated letter report from Phyllis Fox attached thereto). (See CEQA Guidelines, §15088(a)).

The County notes that Dr. Fox previously provided timely comments on the project's Draft EIR, which were considered and responded to in the project's Final EIR (see **Response to Comment O-1.4-1** through **Response to Comment O-1.4-114**). Based on its review of Dr. Fox's late letter report, the County finds that the late comments could have and should have been raised in conjunction with Dr. Fox's review of the Draft EIR, as the comments are not based on any new information that became available following close of the Draft EIR public review period.

In footnote 7 of her late letter report, Dr. Fox endeavors to excuse the lateness of her comments by stating that – at the time she prepared her timely comments – she did not know the County would use CEQA's feasibility standard as the trigger to apply its geographic priority criteria when evaluating project-specific application of GHG reduction strategies, including off-site strategies (such as carbon offsets). However, feasibility is an established component of CEQA's mitigation framework; as provided in CEQA Guidelines section 15126.4(a)(1):

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“An EIR shall describe feasible measures which could minimize significant adverse impacts ...”

As such, the relevance of feasibility is not new information that post-dates circulation of the project’s Draft EIR.

The County also notes that many of Dr. Fox’s comments do not pertain to the geographic priority criteria or determinations of feasibility. For example, Ms. VanNess’ and Dr. Fox’s comments, in part, address the County’s Climate Action Plan (CAP), not the environmental analysis prepared for the Newland Sierra project. Comments specific to the CAP are not relevant to the project at hand. While the County recognizes that Golden Door has filed a lawsuit challenging the sufficiency of the CAP, that lawsuit does not prevent the County from processing the environmental analysis for the Newland Sierra project, which does not tier from the CAP.¹

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. Carbon Offsets Are A Recognized Form Of CEQA Mitigation

The use of carbon offsets to mitigate GHG emissions impacts is a recognized form of CEQA mitigation, as discussed at length in **Topical Response GHG-1: Use of Carbon Offsets** of the Final EIR. Specifically, CEQA Guidelines section 15126.4(c) explicitly recognizes that “[m]easures to mitigate the significant effects of [GHG] emissions may include, among others: ... (3) [o]ff-site measures, including offsets that are not otherwise required ... [and] (4) [m]easures that sequester greenhouse gases.” Additionally, the California Air Resources Board (CARB) – in *California’s 2017 Climate Change Scoping Plan* (November 2017) – has recognized that “it may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits” when evaluating the significance of GHG emissions under CEQA at the project level. With that introductory background, the following discussion responds to aspects of the late letter report that are critical of the project’s mitigation framework in this respect.

First, Dr. Fox states that the project’s mitigation framework does not secure a sufficient quantity of reductions from on-site strategies. This issue was previously raised by Dr. Fox and addressed in **Response to Comment O-1.4-70** of the Final EIR; please refer to that response for relevant information, including discussion of the fact that CEQA itself does not impose a mandatory locational hierarchy in the context of GHG mitigation. (Please also refer to **Response to Comment O-1-137** in the Final EIR for additional relevant information.) In any case, the County has

¹ For more information on the County’s CAP, please see **Topical Response GHG-3: County’s 2018 Climate Action Plan (CAP)** of the Final EIR. Additionally, for discussion of why the pending CAP-related litigation does not preclude consideration of this project by the Board of Supervisors, please see the responses to the late comment letter (dated January 16, 2018) submitted by Chatten-Brown & Carstens on behalf of Sierra Club.

determined that the project proposes to utilize an encompassing suite of feasible on-site strategies to reduce its GHG emissions. The project's strategies address the various emissions-generating activities associated with the project and have demonstrated effectiveness in the context of analogous land use development. Finally, the County notes that Dr. Fox focuses on the quantified elements of the project's emissions-reducing strategies, repeatedly highlighting the 18% vs. 82% split between on- and off-site reductions. However, as explained in the Draft EIR, it is important to recognize that not all project strategies have been quantified, which serves to over-estimate project emissions and under-report the benefit of the project's on-site reduction strategies.²

As to Dr. Fox's related concern that all carbon offsets purchased by the project could be affiliated with internationally-based reductions, scientifically speaking, GHG emissions impacts can be effectively mitigated via the purchase of carbon offsets that represent reductions achieved at any off-site location. The global nature of the impact has been recognized by the California Supreme Court in its 2015 decision in the *Center for Biological Diversity v. California Department of Fish and Wildlife* (62 Cal. 4th 204 (2015)) matter:

“[T]he 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. For many air pollutants, the significance of their environmental impact may depend greatly on *where* they are emitted; for greenhouse gases, it does not.”

Mitigation Measures M-GHG-1 and M-GHG-2 are designed to provide for a “real time” assessment of carbon offset availability; the measures require that the “project applicant or its designee shall submit proof to the County that offsets are unavailable in a higher priority category before seeking offsets from the next lower priority category.” Therefore, international offsets only can be utilized in the event that offsets from the other geographies (in-County, in-State, and in-United States) are not available.

Second, Dr. Fox states that the project's mitigation framework does not ensure that annual reductions will be achieved through the purchase of carbon offsets. However, as provided in **Response to Comment O-1.4-69** of the Final EIR, the *total* quantity of GHG offsets required for the project has been identified as 1,304,940 MT CO₂E (see also Table 2.7-8 of the Final EIR, as well as Mitigation Measure M-GHG-2). In order to ensure that the necessary total quantity of reductions is realized, and to effectuate implementation of the mitigation in the event of project

² By way of example, Section 2.7, Greenhouse Gas Emissions, of the EIR did not take credit for the anticipated carbon sequestration associated with the project's landscaping and vegetation plans, which was estimated to result in 3,297 MT CO₂E of emissions savings. Similarly, no emissions reduction credit was assigned to the project's installation of electric vehicle charging infrastructure (PDF-23) or use of landscaping practices to minimize water consumption (PDF-24 thru PDF-26).

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approval, Tables 2.7-9 through 2.7-15 of the Draft EIR identified emissions metrics specific to the project's proposed land uses that allow for effective measure implementation. Each carbon offset purchased will equate to a one MT CO₂E reduction (see Mitigation Measures M-GHG-1 and M-GHG-2), allowing for a compliance demonstration that the total quantity of offsets required has been achieved.

Third, Dr. Fox objects to the inclusion of a “true up” provision in the GHG mitigation framework. This issue was previously raised by Golden Door and Dr. Fox, and addressed in **Response to Comment O-1-138** and **Response to Comment O-1.4-72** of the Final EIR; please refer to those responses for relevant information, including refinements made to the subject mitigation framework in the Final EIR. As refined, exercise of the “true up” provision would trigger a public process and require consideration by the Board of Supervisors.

Fourth, Dr. Fox opines that the concurrence of CARB is required with respect to the project's use of carbon offsets mitigation. This issue was previously raised by Golden Door and addressed in **Response to Comment O-1-136** of the Final EIR; please refer to that response for relevant information explaining why CARB concurrence is not required. As provided above, CARB has expressly recognized the use of carbon offsets as a form of CEQA mitigation in *California's 2017 Climate Change Scoping Plan* (November 2017).

Fifth, Dr. Fox states that the offsets mitigation must require reporting. This issue was previously raised by Dr. Fox and addressed in **Response to Comment O-1.4-71** of the Final EIR; please refer to that response for relevant information regarding how the County will monitor the project's realization of the necessary emission reductions. In the case of the GHG emissions associated with construction and vegetation removal, Mitigation Measure M-GHG-1 requires that all emissions be offset prior to issuance of the first grading permit. With respect to operational emissions, Mitigation Measure M-GHG-2 requires that emissions be offset incrementally, in a quantity that corresponds to the quantity of development associated with each implementing Site Plan (“D” Designator).

3. GHG Emission Reductions Resulting From The Project's Transportation Demand Management Program Are Substantiated

Dr. Fox is critical of the emissions reductions assigned to the project's TDM Program. This issue was previously raised by Golden Door and Dr. Fox and addressed, for example, in **Response to Comment O-1-51**, **Response to Comment O-1-176** through **Response to Comment O-1-184** and **Response to Comment O-1.4-47** through **Response to Comment O-1.4-51** of the Final EIR. Please refer to those responses for relevant information demonstrating that the quantification of TDM Program benefits is supported by substantial evidence. As discussed therein, the VMT-based and corresponding emissions reduction benefits assigned to the TDM Program were developed following a vetting of the strategies by a transportation planning expert (Fehr & Peers) that is

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recognized – statewide – as having unique expertise on the subject of TDM. Fehr & Peers referenced published guidance on the subject, and relied on its professional experience and qualifications in quantifying the estimated reductions.³

For information presented in the Final EIR regarding the quantified reductions associated with:

- ✓ PDF-1, please see **Response to Comment O-1-177**.
- ✓ PDF-2 and PDF-3, please see **Response to Comment O-1-178**.
- ✓ PDF-4 through PDF-8, please see **Response to Comment O-1-179**.
- ✓ PDF-9, please see **Response to Comment O-1-180**.
- ✓ PDF-10 through PDF-13, and PDF-20, please see **Response to Comment O-1-181**.
- ✓ PDF-14, please see **Response to Comment O-1-182**.
- ✓ PDF-15 through PDF-19, please see **Response to Comment O-1-183**.

Additional information regarding the implementation parameters of the subject TDM strategies also is available in Table 2 of Fehr & Peers’ project-specific memorandum, a copy of which is available in Appendix D of EIR Appendix K.

4. Requiring Implementation Of The Project’s Design Features Via Mitigation Is Not A Violation Of CEQA

Mitigation Measure M-GHG-3 requires implementation of the 32 PDFs identified in EIR Table 2.7-7. The project’s Mitigation Monitoring and Reporting Program (MMRP) identifies how the County will oversee each PDF, identifying when compliance with each PDF must be demonstrated, and who is responsible for implementing and/or overseeing each PDF. The criteria set forth in the MMRP ensure that the PDFs set forth in the environmental analysis will be effectively implemented on a timely basis.

5. Additional Recommended Reduction Strategies

Dr. Fox states that the County should require the proposed project to implement a number of other recommended reduction strategies, each of which is addressed below in turn. In addition, the County notes that the selection of feasible reduction strategies is a project-specific exercise, and not a rigid or formulaic undertaking. There is no “one-size-fits-all” approach for the mitigation of GHG emissions, as individual strategies are subject to varying effectiveness and feasibility based on multiple factors, including (but not limited to) project location, land uses, and scale. In this case, the County has determined that the Newland Sierra project proposes to utilize a comprehensive suite of on-site reduction strategies before pivoting to the use of off-site carbon

³ The County notes that Fehr & Peers prepared the TDM quantification evaluation for the Newhall Ranch project, which is repeatedly referred to by Dr. Fox as a benchmark of sorts for this proposed project.

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offsets.⁴ Relatedly, the County finds that the recommendations evaluated by Dr. Fox below are not suited to the project based on its location, land uses, and/or scale; do not have demonstrated effectiveness with respect to achieving measurable reductions in GHG emissions; are contrary to County policy with respect to the regulation of the preferences, habits and choices of individual County residents; and/or already are met by strategies identified in the project's EIR that are roughly equivalent and targeted to the same emissions-generating activity.

Recommendation	Assessment
Require bus stops, express lanes, and bus stop shelters for existing/planned transit service.	As provided on page 2.13-26 of the Draft EIR, "[t]here are no public transit services which [presently] stop at or [are] within the immediate vicinity of the project Site." However, PDF-13 and PDF-19 require that the project "[c]oordinate with NCTD and SANDAG about future siting of transit stops/stations at the adjacent park-and-ride lots."
Energy use should be reported compared to targets set on per-capita energy use.	The recommendation does not reduce emissions, but rather is oriented towards the disclosure of information in a specific metric (i.e., energy consumption per capita).
Use of traffic calming measures including all internal sidewalks a minimum 5 feet wide, all sidewalks with vertical curbs, roadways routed to avoid "skewed intersections."	Please see Figures 14 through 30 of the Newland Sierra Specific Plan, which illustrate that the project would implement traffic calming measures in appropriate locations.
Internal and adjacent intersections should use the following traffic-calming features: marked crosswalks, count-down signal times, curb extensions, speed tables, raised crosswalks, raised intersections, median islands, tight corner radii, roundabouts or mini-circles.	The project would also implement some of the identified traffic calming features (e.g., roundabouts, raised medians, and market crosswalks) in appropriate locations. Relatedly, while the project's mitigation framework does not expressly rely on traffic signal synchronization, unless the intersection improvements are isolated and substantially far from the next signalized intersection, the County, the City of San Marcos, and Caltrans will all require this as part of their standard permit approval processes for intersection improvements (e.g., installation of fiberoptic interconnects or equivalent traffic signal control for traffic signal synchronization between intersections). ⁵
Applicant shall participate in funding of off-site traffic improvements to reduce idling by increasing traffic flow through synchronized traffic signals.	
Internal and adjacent streets should use the following traffic-calming features: planter strips with trees, chicanes/chokers (variation in road width to discourage high-speed travel).	
Provide preferential parking for park and ride to incentivize carpooling, vanpooling, commuter bus, and electric vehicles.	The County's Parking Design Manual (February 2013), and specifically Table 5 therein, requires designated parking spaces for electric vehicles and carpool/vanpool vehicles. The project is required to comply with these

⁴ Please also refer to **Appendix JJ-2** of the Final EIR, which illustrates that the project would implement applicable recommendations from CARB that pertain to project-specific emission reduction opportunities. CARB's list of recommendations – which is taken from Appendix B of *California's 2017 Climate Change Scoping Plan* – constitutes the most current list of potentially feasible reduction opportunities for reference in the CEQA context.

⁵ Dr. Fox mistakenly states that the project's EIR incorporates a quantified emissions reduction attributable to traffic signal synchronization. No such reduction is contained in Section 2.7, Greenhouse Gas Emissions, of the EIR.

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	standards. Additionally, as stated in Section 2.7, Greenhouse Gas Emissions, of the EIR, specifically Section 2.7.3.1 and Table 2.7-27, “Should installation of EV charging stations at the park-and-ride facilities be deemed acceptable by Caltrans (the owner of the existing park-and-ride), the applicant would fully fund these improvements”.
Require “cool parking” by, for example, providing tree cover to reduce heat-island effect.	As provided in Figure 49, Sustainable Design, of the Newland Sierra Specific Plan, the project shall provide passive cooling through tree plants that provide shading. Additionally, as stated in Section 2.7, Greenhouse Gas Emissions, of the EIR, specifically Section 2.7.3.1, “The project would also include approximately 4,492 tree plantings throughout the project site, including shade street trees and landscaping trees, and the preservation of oaks throughout the site”. It is worth noting that this is a project feature that will also reduce GHG emissions; however, the project does not take any credit for this reduction.
Provide storage space in garages for bicycles and bicycle trailers.	The project’s residential units will be equipped with garages that can be used to store bicycles and bicycle trailers. The project also includes a community-sponsored electric bike share program with kiosks throughout the project for residents and guests to use to move around the project by bicycle in lieu of driving.
Provide preferential parking for EV/CNG vehicles.	<p>The County’s Parking Design Manual (February 2013), and specifically Table 5 therein, requires designated parking spaces for clean air vehicles, such as EV/CNG vehicles. The project is required to comply with these standards.</p> <p>Additionally, as stated in Section 2.7, Greenhouse Gas Emissions, of the EIR, specifically Section 2.7.3.1, “...electric vehicle (EV) charging equipment would be provided in the garages of all residential units, and EV charging stations would be installed in 3 percent of the Town Center’s commercial core parking spaces. The applicant would also encourage the installation of EV charging stations in 3 percent of the park-and-ride parking spaces. Should installation of EV charging stations at the park-and-ride facilities be deemed acceptable by Caltrans (the owner of the existing park-and-ride facility), the applicant would fully fund these improvements”.</p>
Provide residential buildings with a “utility” room or space for recharging batteries – e.g., for use in a car, electric lawnmower, other electric landscaping equipment, and batteries for small items.	As provided by PDF-23, “[a]ll private residential garages shall include an electric vehicle charger.” Residential garages also are expected to be equipped with interior electric outlets, which will allow for additional recharging opportunities for the smaller appliance/equipment types referenced.
Provide a complimentary electric lawnmower to each buyer with a yard.	As provided in PDF-25, “[t]urf grass shall be prohibited in residential front yards” and “in rear or side yards of single-family homes shall be warm-season turf or shall

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	<p>have a plant species factor of 0.6 or lower.” Given the limited quantity of turf, the provision of a complimentary lawnmower would not be expected to result in measurable emission reductions. It also is noted that the San Diego Air Pollution Control District hosts an annual “Mowing Down Pollution” lawnmower trade-in event, whereby County residents trade in gas-powered mowers for zero emission electric-powered units. Finally, as addressed below, the County notes that cordless electric equipment is becoming the preferred consumer choice for a broad range of equipment types, particularly landscaping equipment.</p>
Use only drought-resistant native trees, trees with low emissions and high carbon sequestration potential.	<p>As provided in Section 1.0, Project Description, of the EIR, and in accordance with the County of San Diego's Landscape Ordinance and Water Efficient Landscape Design Manual which implements the state Model Water Efficient Landscape Ordinance requirements updated in 2015, the project would vegetate the Site with drought-tolerant species as “[w]ater conservation is a primary focus of the landscape design.”</p>
Use water-efficient irrigation systems, i.e., smart sprinkler meters, and landscaping techniques/design.	<p>As provided in Section 1.0, Project Description, of the EIR, and in accordance with the County of San Diego's Landscape Ordinance and Water Efficient Landscape Design Manual which implements the state Model Water Efficient Landscape Ordinance requirements updated in 2015, the project's landscaped areas would need to meet identified evapotranspiration adjustment factors and irrigation systems would need to meet identified average irrigation efficiency ratings. The County's Landscape Ordinance also requires the use of smart irrigation controllers, drip irrigation, and other landscaping techniques that minimize excess irrigation. Additionally, as discussed above, the use of turf grass would be regulated. Finally, as a landscape component, the project incorporates vegetated bioswales to detain and treat stormwater runoff, thereby using stormwater runoff to offset some of its irrigation requirements in its parkways.</p>
Dedicate space in a centralized, accessible location for a weekly farmers' market.	<p>The Town Center area (see Figure 13 of the Newland Sierra Specific Plan) could accommodate a farmers' market. Additionally, the project incorporates approximately 20 acres of community gardens and vineyards.</p>
Orient building to maximize shade in the summer and maximize solar access to walls and windows in the winter.	<p>Building orientation will be assessed on a lot-by-lot basis through the County's Site Plan approval process.</p>
For non-roof surfaces, provide shade and/or use light-colored/high-albedo materials and/or open grid pavement for at least 30% of the site's nonroof impervious surfaces, including parking lots, walkways, plazas, etc., or place a minimum of 50% of parking spaces underground or covered by structured parking or	<p>As provided in PDF-30, and consistent with the Residential Voluntary Measures (Section A4.106.7) of the California Green Building Code (CALGreen), “[o]utdoor pavement, such as walkways and patios, will use paving materials with three-year SRI of 0.28 or</p>

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use an open-grid pavement system for a minimum of 50% of the parking lot area.	initial SRI of 0.33.” (SRI refers to “solar reflectance index.”)
Require organic waste collection.	As provided in the Newland Sierra Specific Plan, “[a]n area within the maintenance yard of the Sierra Farms Park shall be designated for collection of common area landscape trimmings.”
Require the installation and use of low-water use faucets, toilets, shower heads, and appliances that exceed CALGreen residential voluntary measures.	The project would comply with the mandatory standards for plumbing fixtures and appliances set forth in CALGreen (see Appendix T of the EIR). Such standards are well-vetted, extensively analyzed and documented, and widely accepted as furthering statewide water conservation and efficiency objectives. It is further noted that the recommendation is undefined and not measurable by way of its parameters.
Implement CALGreen Tier 2 standards or better.	The project would comply with the mandatory standards set forth in CALGreen and implement additional efficiencies exceeding the mandatory code requirements identified in Table 2.7-7 of the EIR.
Require electrical landscaping equipment and exterior electrical outlets to allow sufficient powering.	As a policy matter, the County finds that the purchase of electric landscaping equipment is consumer driven and beyond the scope of requirements or measures reasonably imposed on a development project. Nonetheless, please see above for discussion of SDAPCD’s landscaping equipment trade-in program, and inclusion of electrical outlets in residential garages for charging/powering opportunities. Additionally, all private yards, common areas, and public areas will have reasonable access to electric outlets for the use of electric landscaping equipment. (Exterior electric outlets are a matter of standard building practice and design at this time.) The County also notes that cordless electric equipment is becoming the preferred consumer choice for a broad range of equipment types, particularly landscaping equipment.
Require electrified housing.	PDF-31 requires the project’s builders to “offer residents their choice of energy-efficient appliances” and requires appliances “installed by builders [to] be Energy Star rated or equivalent.” Additionally, the County employs an energy and technology neutral policy, and prefers for statewide building standards and market forces to drive the selection of energy sources in the residential setting.
Install off-site electric vehicle charging stations and complete off-site building retrofits.	The County does not have a plan or program in place that the project can use to facilitate the installation of off-site electric vehicle charging equipment or complete off-site retrofits at existing buildings. At present, and given the uncertainties regarding securing access to such off-site areas, the project appropriately focuses on installing on-site infrastructure. The County also notes that SDG&E is implementing a comprehensive electrification program in the San Diego region, which includes the installation of charging infrastructure in

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	targeted areas ⁶ and the County's CAP includes measures to work with the SDG&E to install Level 2 EV charging stations in the unincorporated area. Finally, as part of the project's improvements to the interchange, subject to Caltrans concurrence, the project would make multi-modal improvements to the off-site Park-and-Ride, including the installation of EV charging stations.
Require net zero efficiency for residential buildings.	The County finds that the building-related PDFs for the project's residences provide a comparable level of emissions reductions by maximizing on-site renewable energy generation opportunities, requiring energy efficient appliances, and prohibiting wood-burning hearths.
Provide funding for zero emission buses for local school and general transit.	As discussed above, the project area presently is not served by general transit. Additionally, the local school districts presently do not have a plan or program for the utilization of zero emission school buses that the project could participate in via funding. Also, the project includes a community-sponsored shuttle service with possible daily stops at the Twin Oaks Elementary school site down the street from the project Site. In a letter from San Marcos Unified School District to the County dated June 27, 2018, the School District stated "[t]he District is pleased to hear that the proposed project includes a 'community sponsored shuttle service along Twin Oaks Valley Road and an optional stop at Twin Oaks Elementary.' The District will be pleased to work with the developer regarding the implementation of this initiative and looks forward to hearing about more details in the future."
Require electric heating for swimming pools.	The proposed measure is consumer driven and beyond the scope of requirements or measures reasonably imposed on a development project. Further, swimming pools are rarely provided as a standard or even optional feature with the sale of new homes by a builder. Instead, as swimming pools are a sizable expense, those individual homeowners choosing to build a swimming pool typically apply for permits well after they've purchased their homes in which case they would be subject to applicable County and/or state requirements at the time of permit application.
Provide purchase subsidies for electric vehicles.	The State of California funds and implements the Clean Vehicle Rebate Project, which provides purchase rebates that – since 2010 – have put over 200,000 clean vehicles on California roads. ⁷

⁶ For additional information on this program, please see, for example: <https://www.sdge.com/residential/electric-vehicles/power-your-drive>.

⁷ For more information on California's Clean Vehicle Rebate Project, please see <https://cleanvehiclerebate.org/eng>.

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Deploy various strategies to reduce emissions from construction-related equipment.	Section 2.3, Air Quality, of the EIR requires a suite of mitigation measures that will serve to reduce the generation of criteria air pollutants, toxic air contaminants, <i>and</i> GHG emissions from construction equipment.
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Dr. Fox also is critical of the project’s provision of on-site solar panels, stating that the EIR “does not require the use of solar panels ... but only the installation of panels.” In response, and as required by the project’s MMRP, the subject buildings would be designed and constructed with an integrated solar panel system that would be operational upon occupancy. Dr. Fox offers similar criticisms of the project’s electric vehicle charging equipment, again stating that the EIR “fails to require use of this EV charging stations.” In response, it is first noted that no quantitative emissions reduction was assigned to installation of the charging equipment; as such, the project’s mitigation framework is designed to achieve net zero GHG emissions under the conservative assumption that no EV use results from the on-site installation of the charging equipment. Second, neither the County nor the applicant is in a position to regulate the driving habits of the County’s residents. However, it is recognized that providing ready access to charging infrastructure abates the concerns of drivers relating to electric vehicle range and charging opportunities.

Dr. Fox further states that the EIR has not demonstrated that it is feasible to meet 100% of the electrical demands of the project’s residences through on-site solar. However, compliance with this PDF is required by Mitigation Measure M-GHG-3; as such, the County will not issue building permits unless compliance with the requirement is demonstrated. At this point in the planning process, design-level details are not available on a residence-by-residence basis; however, such detail will be considered when designing on-site solar systems sufficient to meet 100% of the electricity demand.

6. The Project Is Unlike The Newhall Project And Southern California Consolidation Project

As discussed in **Response to Comment O-1-135** of the Final EIR, the size and scale of the Newhall project – which is considerably larger than the Sierra project – made feasible a suite of GHG emission reduction strategies that cannot be feasibly or effectively implemented by smaller projects. As a point of comparison, the Sierra project proposes 2,135 residential units, whereas the Newhall project includes more than 21,000 residential units and more than 9 million square feet of non-residential development. As such, the Newhall project is nearly 10 times the size of the Sierra project, when looking at the number of residences. This allows the Newhall project to absorb certain costs, including administrative costs for implementation of its reduction strategies, and spread those costs across a larger number of units over a much greater period of time. In short, the Newhall Ranch project can take advantage of economies of scale and time that are simply not available to the Newland Sierra Project. Additionally, the Newhall project can achieve a “critical mass” necessary to deploy TDM strategies that are not viable for smaller-scale projects like

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Newland Sierra. For example, the Newhall project's more than 9 million square feet of non-residential development allows for the utilization of additional TDM strategies targeted to employee commuters; and the number of residential units makes the provision of a site-specific school busing program have an increased likelihood of success.

As for CARB's Southern California Consolidation Project, the nature of that project is distinguishable from the Newland Sierra project, a proposed planned community. CARB's project is an 18-acre facility that would support vehicle testing, chemistry laboratory functions, and shared testing needs. As such, the CARB project includes a singular land use which would solely support employees travelling to and from the site, as well as on-site research and testing operations. Therefore, much like a stationary source, the emission sources associated with that project would be under the singular control and authority of CARB on an operational basis. Conversely, the proposed project supports a variety of land uses, including individual residents and business owners, who would have individual control and authority over their emissions-generating habits and activities.⁸

⁸ For more information on CARB's project, please see its CEQA Findings for the subject project, which are available at <https://www.arb.ca.gov/html/socalfacility/sccp-findings-and-soc-final-06-2017.pdf>.

LL-22
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: May 31, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated May 31, 2018, is a late letter that does not require a written response from 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 31, 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.

The comment letter states that there are many procedural and substantive deficiencies in the draft EIR and project application materials. The comment letter outlines ten issues which are each responded to as follows.

2. The project's impacts to RPO wetlands would be mitigated to less than significant.

The draft EIR acknowledges that impacts to Resource Protection Ordinance (RPO) wetlands would be significant per the County significance criteria 4.2(e) (**Impact P-1**). The requested amendment to the RPO for the Project Site, while exempting the proposed Project from RPO, is based on the findings that the proposed Resource Management Plans (Appendices L and M to Appendix H, Biological Resources Report) and Resource Protection Plan would be functionally equivalent to the RPO. The requested exemption would be consistent with the County's practices for granting an exemption subject to the finding of functional equivalency.

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Please also refer to **Topical Response BIO-3 [Resource Protection Ordinance]**. The project development areas have been planned to minimize impacts to the Environmentally Sensitive Lands, both on and off-site. The project's grading footprint onsite would be limited to approximately 540 acres of the 1,985-acre Site (27% of the Site). The project would create a 1,209-acre open space preserve and set aside an additional approximately 235 acres of native habitat that would not be graded or irrigated but selectively thinned for fuel management purposes. The project's neighborhoods have been designed to minimize impacts to the Site's natural topography and preserve prominent ridgelines and rock outcroppings.

The project's proposed impacts to existing floodway and floodplain fringe areas comply with the above criteria outlined in the Resource Protection Ordinance and are related to the improvements to Sarver Lane and Deer Springs Road. The project's proposed improvements to these two road facilities would eliminate the existing flooding/overtopping condition that can occur during severe rainfall events and implement stormwater quality treatment and detention facilities where none exist today (improving the water quality of runoff from the roads compared to the existing condition). The County also refers the reader to **Response to Comments O-2.1-20 through O-2.1-26**.

3. The project's impacts to biological analysis is complete and complies with CEQA.

The letter states that the project does not resolve impacts to the natural fire regime because there is no discussion on the project's impact on natural fire regimes and refers to **Impact BI-C-1** which deals, in part, with too frequent or too infrequent fire events having negative biological impacts. The comment letter the EIR does not addresses this impact. The County does not agree.

The EIR identifies the impact and identifies mitigation measures M-BIO-8A through M-BIO-8E. Impact BI-C-1 addresses the project's indirect impacts to altering the natural fire regime which can lead to indirect cumulative impacts to the project's proposed preserve area. As addressed in **Response to Late Letter LL-12**, with implementation of the project's mitigation measures, the project will have a minimal effect on increasing the frequency of fires occurring within the project's proposed preserve areas. As it relates to the project potentially resulting in a decrease in the frequency of fire events, as the project is not a fire district or agency or functioning in any such capacity, the project itself would not be expected to decrease the frequency of fires (either onsite or offsite). In the interest of public safety, fire districts and agencies suppress wildland fires and the County acknowledges that this vital governmental function can, in some cases, have the longer-term unintended effect of creating overly mature/senescent habitats. The County also notes that the habitat on the project Site has not experienced a fire for such an extended period of time that a significant amount of the chaparral habitat on the project Site today could be described as very mature/senescent. Therefore, even if the project were to have the potential to decrease the frequency of fires in the project's proposed preserve areas, which the commenter has not provided

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any evidence to support this suggestion, given the existing condition of the habitat on the project Site, this would not result in a material change to the existing condition.

4. The project's proposed interchange improvements would be confined to the location of the existing interchange and connecting County roads and would not be expected to result in any new significant biological impacts.

The County refers the reader to **Response to Comments O-1-19** and **O-1.5-21**.

5. The project's impacts to wetlands are addressed in the EIR.

Deer Springs Road Option A and Option B will both result in the same amount of impacts to RPO wetlands. Option B increases the width of Deer Springs Road on the northern edge of the road which will cause an increase in upland habitat impacts. All RPO wetlands are on the southern side of the road alignment, which is identical for both options. Additionally, the Preliminary Grading Plan has been revised to reduce impacts to RPO wetlands along the side side of the road. Refer to **Topical Response BIO-3 [Resource Protection Ordinance]**.

Further, the project would mitigate its impacts to wetlands to less than significant. The project's request for an exemption from the Resource Protection Ordinance is narrowly confined to the project's impacts to RPO wetlands, there is existing precedent in the County for granting an exemption from the County's RPO when a project would implement a Resource Management Plan as the functional equivalent to RPO, and the requested exemption does not make the project inconsistent with the General Plan. For further responsive information, please see **Responses to Comments O-1-115** and **O-1-452** and **Topical Response BIO-3 [Resource Protection Ordinance]**.

6. The County's South County MSCP Subarea Plan Biological Mitigation Ordinance (BMO) does not apply to the project.

The Draft North County Plan will have a BMO as an implementing ordinance, but no such ordinance is applicable today to the project Site. Instead, the EIR has analyzed the project's consistency with Planning Agreement in the absence of adopted North County Plan. See point #11 below.

7. The project's impacts to the California gnatcatcher is limited to a single pair near the Town Center area of the project Site.

The County refers the reader to **Response to Comment I-348-1**.

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8. The Project analyzes impacts to oak root zones.

Impacts to oak root zones are analyzed in Draft EIR Section 2.4, Table 2.4-27. Those impacts are also disclosed in the associated figures in the Draft EIR.

9. The project has addressed its impacts to wildlife crossings.

The County refers the reader to **Topical Response BIO-2 [Wildlife Corridors]**, Draft EIR Section 2.4.12.4, as well as **Response to Comment Letter O-1.5**.

10. All of the project alternatives constitute non-MSCP hardline alternatives.

The letter states that the project EIR impermissibly fails to evaluate a “non-MSCP hardline” alternative; that the Draft EIR improperly assumes the project will be included in the “hardline” areas for the Draft North County Multiple Species Conservation Program (MSCP) Subarea Plan; and that by not evaluating a non-MSCP hardline alternative, the County is conceding that the project is going to be included in the North County Plan hardline area. Thus, according to the letter, the EIR and/or the project violate CEQA’s rule against piecemealing project approvals, and also violate General Plan Policies COS-1.4 and COS-1.10. The County does not agree with these assertions.

All of the project alternatives constitute non-MSCP hardline alternatives. The EIR includes 9 project alternatives, all of which are non-MSCP hardline alternatives to the project because none of them are included in the Draft North County MSCP Subarea Plan (“Draft North County Plan”) as proposed hardline areas. Further, neither the project nor any of the project alternatives specifically rely on the adoption of the North County Plan for the determination of impacts or required mitigation. Therefore, the EIR does not fail to include project alternatives that are non-MSCP hardline alternatives. To the contrary, *all* of the project alternatives analyzed in the EIR constitute non-MSCP hardline alternatives because none of them are included in the Draft North County Plan as hardline areas and none of them rely on adoption of the North County Plan.

The EIR addresses the Draft North County Plan as a potential future plan but does not reply upon it. Chapter 1, Project Description, of the EIR, page 1-21, properly discloses that the project site has been included as a proposed hardline area in the Draft North County Plan, stating:

“The proposed project has been identified as a proposed hardline area in the draft North County Plan (see Figure 2.4-4, Regional Context), which means that the proposed development areas and proposed biological open space areas have been incorporated into the overall conservation strategy of the County’s draft North County Plan.”

The Draft North County Plan includes the project’s proposed development and preserve areas in its conservation framework. Such inclusion is appropriate and justified because the project is being processed in the County for approval, is going through the County’s CEQA compliance review,

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and the EIR has concluded the project will have less than significant direct and cumulative impacts on biological resources. The project does not jeopardize the viability or impede the completion and implementation of the Draft North County Plan. To the contrary, including the project site as a hardline area creates more certainty around the conservation outcome of the Draft North County Plan. Conversely, failure to include the project site as a hardline area could result in an inaccurate or incomplete conservation analysis, which, in turn, could harm the quality and accuracy of the conservation analysis, thereby weakening the overall quality and durability of the Draft North County Plan.

As to the project's relationship to the Draft North County Plan, the EIR does not assume or rely upon the project's inclusion as a hardline area in the Draft North County Plan or implementation of the Draft Plan for determining impacts and mitigation. Of the project's 13 biological mitigation measures (M-BIO-1 through M-BIO-13), only one (M-BIO-1.p), Construction Monitoring) contains a reference to the MSCP, as follows (*emphasis added*):

M-BIO-1 CONSTRUCTION MONITORING: To prevent inadvertent disturbance to areas outside the limits of grading, all grading shall be monitored by a biologist. A "Project Biologist" approved by the County of San Diego (County) shall be contracted to perform biological monitoring during all grading, clearing, grubbing, trenching, and construction activities.

The following shall be completed:

1. The Project Biologist shall perform the monitoring duties before, during, and after construction pursuant to the most current version of the County of San Diego Report Format and Content Requirements, Biological Resources. The contract provided to the County shall include an agreement that this will be completed, and a Memorandum of Understanding (MOU) between the biological consulting company and the County shall be executed. The contract shall include a cost estimate for the monitoring work and reporting. In addition to performing monitoring duties pursuant to the most current version of the County of San Diego Report Format and Content Requirements, Biological Resources, the Project Biologist shall perform the following duties:
 - p. Make monthly updates available to the Wildlife Agencies and County based on the daily monitoring notes described above, *until such time as the North County MSCP Plan is adopted, after which the MSCP plan provisions will replace this measure.*

Rather than rely on the adoption of the MSCP, this mitigation measure identifies the required mitigation the project must implement unless and until the North County Plan is adopted. Under

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standard MSCP reporting requirements, once the North County Plan is approved, the project would then make monthly updates to the County and the County provides annual reporting to the Wildlife Agencies. All of the monitoring requirements outlined in this mitigation measure would remain unchanged whether the North County Plan is adopted or not.

11. The EIR addresses the application of the Planning Agreement to the project in the absence of an approved North County Plan.

Contrary to statements made in the letter, the EIR does not assume or rely on approval of the Draft North County Plan. Instead, the EIR assumes that the Planning Agreement will apply to the project in the event the Draft North County Plan is not finalized. Specifically, in the Biological Resources Chapter, Section 2.4.3, Regional Context, page 2.4-5, the EIR states clearly that the Planning Agreement between the County and the Wildlife Agencies applies to the project, as follows (*emphasis added*):

The draft North County Plan of the MSCP is a comprehensive habitat conservation planning program and development take permit that attempts to preserve native habitat for a multitude of sensitive species and guides development for which the County, USFWS, and CDFW entered into a Planning Agreement (County of San Diego 2008a and 2014). The proposed project is a proposed hardline area in the draft North County Plan; *however, until the North County Plan is approved, the Planning Agreement between the County and the Agencies (County of San Diego 2008a and 2014) remains in place and applies to the project.*

The EIR contains other references to the Draft North County Plan in Chapter 2.4 of the EIR, and this was done to provide factual background information or to evaluate whether the project would impede preparation and implementation of the Draft North County Plan. For example, when describing the project's proposed 212-acre off-site mitigation parcel in Ramona, page 2.4-77 of the EIR provides factual background information relating to the mitigation parcel as follows:

The off-site open space located in Ramona *within the draft North County MSCP area* provides a 211.8-acre block of continuous habitat situated between segments of the Cleveland National Forest and San Diego County Parks land. (*Emphasis added.*)

Rather than relying on the Draft North County Plan, the EIR follows the County's Guidelines for the Determination of Significance which specifically address "lands outside of the Multiple Species Conservation Plan" and whether a project would preclude or prevent the preparation of the subregional NCCP (i.e., the Draft North County Plan). (EIR, Section 2.4.15.5, Local Policies, Ordinances and Adopted Plans, Guidelines for Determination of Significance, pp. 2.4-82 *et seq.*) Consistent with the County's Guidelines, the EIR addresses this specific issue and concludes impacts would be less than significant because "[t]he proposed project would not preclude or prevent the preparation of the subregional NCCP because the project has been planned in

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accordance with the planning principles of the draft North County Plan, the proposed project has been developed consistent with the Preliminary Conservation Objectives in the Planning Agreement for the North County Plan, (and) the proposed project was designed to be consistent with (the Planning Agreement preserve design) principles (for evaluating Interim Projects).” (EIR Section 2.4.15.5, page 2.4-82) Ultimately, the EIR determines that, because the project will not impede preparation or implementation of the subregional NCCP (i.e., the North County Plan), its impacts on such regional planning would be less than significant. (EIR Section 2.4.15.5, page 2.4-82)

Beginning on page 2.4-83, the EIR analyzes the project’s consistency with the eight (8) Interim Project Preserve Design Principles that apply to the project because the North County Plan is in preparation. Therefore, the EIR analyzes the project’s consistency with these principles and does so in a way that shows the project will not preclude or prevent the preparation and ultimate adoption of the Draft North County Plan. This, however, does not mean that the project is relying on the adoption of the North County Plan for the determination of impacts or mitigation.

12. The EIR identifies four possible permitting pathways for the project to receive take authorization.

Although take authorization is not a CEQA issue, the EIR does provide information relevant to the topic. Note, however, that the EIR, when discussing take authorization, does not assume the project will be included as a hardline area in the Draft North County Plan; nor does it rely on the potential future adoption of this Plan. Instead, the EIR identifies multiple pathways for the project to receive take authorization. Compliance with the North County Plan, whether as a hardline project in the Plan or not, is just one of them. The EIR also identifies the County’s Habitat Loss Permit (HLP) process (Federal ESA 4(d) Rule), the Section 7 process (Federal ESA Section 7) administered by the Army Corps of Engineers, or the Section 10(a) process (Federal ESA Section 10) as three other ways the project can obtain take authorization for impacts to federally threatened and endangered species (in the case of the project, the California gnatcatcher).

13. Identifying the North County Plan as a possible permitting mechanism for the project does not constitute piecemealing.

The letter asserts that the project’s reliance on the Draft North County Plan constitutes piecemealing of the project’s approvals. This is incorrect. As stated above, the County has made it clear that including the project’s open space design in the Draft North County Plan does not, in any manner, indicate support for the project or give the project an approval advantage. Planning Director Mark Wardlaw, in his letter to Chris Garrett dated June 5, 2017, was emphatic on this point:

The Project’s inclusion in the Draft Plan reflects the County’s view that the Project’s proposed development footprint and open space preserve area should be

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considered within the conservation analysis for the Draft [North County MSCP] Plan but does not give the project any preferential treatment or eliminate any mitigation requirements.

(Wardlaw letter, June 5, 2017, p. 4.)

Director Wardlaw also explained that the County, in order to prepare the Draft North County Plan, needed to conduct a “conservation analysis” which took into account “potential projects that are currently expected to occur within the planning area of the Draft Plan.” (Wardlaw letter, p. 4.) This necessarily required that the conservation analysis take into account the proposed Newland Sierra project. Had it not done so, the conservation analysis would have been in error, largely meaningless, and of no value to the larger planning effort. Again, as stated in Director Wardlaw’s letter, “[t]he main purpose of identifying projects and including them as proposed hardlines is so they can be properly incorporated into the conservation analysis of the Draft Plan.” (Wardlaw letter, p. 4.)

Nevertheless, it is equally clear that the project does not rely on the ultimate adoption of the Draft North County Plan; nor does the EIR’s impact analyses assume such adoption. Thus, no piecemealing has occurred. Further, even if the project were to require adoption of the Draft North County Plan prior to receiving take authorization, reliance upon the adoption of a future plan (or permit) does not constitute piecemealing under CEQA. To the contrary, this condition exists for most projects which must get subsequent 404, 401, and 1602 permits from the resource agencies (Army Corps of Engineers, the Regional Water Quality Control Board, and the California Department of Fish & Wildlife) after local approval of the project (e.g., by the County). In fact, the resource agencies will generally not finalize a permit application without a certified EIR by the lead agency. Therefore, the assertion that the project is attempting to piecemeal its approvals is unsubstantiated.

14. Wildlife Agency concurrence is not required for the inclusion of properties or project sites as hardline areas in Draft HCP/Subregional NCCP Plans.

The County is the applicant for the Draft North County Plan (i.e., the Habitat Conservation Plan under Section 10 of the Federal ESA and the Subregional NCCP under Section 2800 of the California NCCP Act). The federal and state agencies do not have land use authority to dictate specific development and preserve areas; that is the County’s purview. Thus, the official concurrence of the Wildlife Agencies for the inclusion of a project site or property as a hardline area in a Draft HCP/subregional NCCP Plan is not required.

The specific process steps pertaining to the preparation of a Draft HCP/NCCP Plan clarify why this is the case. The process includes: (1) the preparation of a Draft HCP/Subregional NCCP Plan, an associated Implementing Agreement (IA), and a CEQA/NEPA document (with the County as the lead agency for CEQA and USFWS for NEPA); (2) public review of the Draft Plan and

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CEQA/NEPA document; (3) finalization of the HCP/NCCP Plan, IA and CEQA/NEPA document; and (4) submission of these documents to the County Planning Commission and Board of Supervisors for approval. The HCP/NCCP Plan can include hardline areas, reflect properties or projects subject to a hardline agreement, or not. Following approval of the HCP/NCCP Plan and IA, and certification of the CEQA/NEPA document by the County, these documents are then submitted to the Wildlife Agencies. The U.S. Fish & Wildlife Service (USFWS) issues a Biological Opinion on the Plan with findings and conditions. The California Department of Fish & Wildlife (CDFW) issues its findings and the take permit under the NCCP Act (Section 2835) and California ESA (Section 2081).

In summary, the County is the applicant and has the sole authority to propose specific hardline areas. The Wildlife Agencies can either approve the HCP/Subregional NCCP, approve it with conditions, or deny it altogether, but they do not have the authority to tell the County what lands to place within the proposed hardline areas. Again, that is a land use decision wholly within the County's province. Thus, the inclusion of a specific project site or property as a hardline area in the Draft Plan is a County decision and does not require Wildlife Agency concurrence prior to that Draft Plan being released to the public for review or even prior to the Plan going before the Board of Supervisors for approval. As another example, the projects included as hardline areas in the Draft City of Chula Vista MSCP Subarea Plan did not have Wildlife Agency concurrence prior to that Draft HCP/Subregional NCCP Plan being released for public review. The same approach is being taken today with the City of Santee's Draft MSCP Subarea Plan.

15. General Plan Conservation Element Policies COS-1.4 and COS-1.10 apply to the County, not the Newland Sierra project or the project applicant, and the County's ongoing conservation planning efforts are consistent with these policies.

As to County General Plan Policies COS-1.4 and COS-1.10, neither of those policies apply specifically to the project or the project applicant. Instead, those policies require the County to “collaborate with other jurisdictions and trustee agencies to achieve well-defined common resource preservation and management goals” and to “ensure an open, transparent, and inclusive decision-making process by involving the public through the course of planning and implementation of habitat conservation plans and resource management plans.” Contrary to the assertions made in Golden Door's letter, including the Newland Sierra Project Site as a hardline area in the Draft North County Plan does not violate either of these policies. As explained above, the County has land use authority over the inclusion of project sites and properties as hardline areas in the Draft North County Plan. Further, the County has been “collaborating with other jurisdictions and trustee agencies to achieve well-defined common resource preservation and management goals”; however, “collaboration” neither requires nor equates to capitulation or complete concurrence. For a more detailed response on how the County has a 25-year-long track record of collaboration with the Wildlife Agencies and other trustee agencies (i.e., complying with General Plan Policy COS-1.4), please see the **Response to the Late Comment Letter LL-20**.

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Consistent with Policy COS-1.10, the County has also “ensured an open, transparent, and inclusive decision-making process by involving the public through the course of planning and implementation of habitat conservation plans.” In accordance with Section 6.4.1 of the Planning Agreement and specifically related to the Draft North County Plan, the County has formed a Steering Committee of interested stakeholders including representatives from the Wildlife Agencies, environmental organizations, the building industry, and landowner interests to obtain valuable input and feedback on the preparation of the Draft North County Plan. Nine (9) separate Steering Committee meetings open to the public were held in 2017 to further the preparation of the Draft Plan, which is now being drafted. The County also maintains various documents pertaining to the Draft North County Plan available on the County’s public website¹ and updates this information as appropriate.

¹ The County maintains a public webpage with information on the Draft North County Plan and links to documents and information on the Draft Plan: <https://www.sandiegocounty.gov/content/sdc/pds/mscp/nc.html>.

LL-23
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: June 13, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated June 13, 2018, is a late letter that does not require a written response from 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 13, 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 Comment Letter does not raise any new issues, but repeats claims and issues identified in previous letters, including late letters submitted by the commenter.

The comment letter states that there are critical inconsistencies with the Draft North County MSCP Subarea Plan (“Draft North County Plan”) and is a follow-up to letters submitted by the commenter on May 21, 2018, and May 31, 2018. The comment letter reiterates the incorrect claim that the Newland Sierra Draft EIR relies on the project being a hardline project in the Draft North County Plan and states that the EIR must evaluate a non-MSCP hardline alternative. The commenter is referred to **Responses to Late Comment Letters LL-20 and LL-22**. The Newland Sierra Project EIR does not rely on the project site being a hardline area in the Draft North County Plan nor does the EIR rely on the Draft North County Plan to evaluate biological impacts. All of the project

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alternatives analyzed in the Draft EIR are non-MSCP hardline alternatives as none of the alternatives are proposed as hardline projects or hardline areas in the Draft North County Plan.

The letter attaches another review prepared by Dr. Megan Jennings dated June 12, 2018, and entitled “Draft North County Multiples Species Conservation Plan Issues Relating to the Proposed Newland Sierra Project”. The review prepared by Dr. Jennings identifies issues related to preserve connectivity and design and vegetation conservation. The County does not agree with the analysis and conclusions in the review and offers the following responses:

3. The Newland Sierra project proposed hardline has been reviewed by the Wildlife Agencies.

Refer to **Topical Response BIO-1 [North County MSCP]**.

4. The Newland Sierra Project is Consistent with the Connectivity and Conservation Goals of the North County Plan.

Refer to **Response to Comment Letter O-1.5** and **Topical Response BIO-2 [Wildlife Corridors]**

5. The Newland Sierra Project is consistent with the San Marcos—Merriam Mountain Core Area Conservation Goals.

The Newland Sierra Project preserve design improves upon the “All-South” preserve design of the former Merriam Mountains Project hardline which the Wildlife Agencies approved. The Newland Sierra Project preserves the primary east to west wildlife corridor across the northern portion of the project Site with 4,300-foot-wide (0.8-mile-wide), 870-acre unbroken block of preservation (Block 1) and improves upon the Merriam Mountains Project preserve design by eliminating the fire access road proposed by that project (that would have bifurcated this preserve area). The Newland Sierra Project also creates a larger preserve area on the project Site, including by preserving 154 acres (Block 2) along the eastern boundary of the project Site which supports a California gnatcatcher ladder and by preserving 185 acres (Block 3) in the southern portion of the project Site, two areas that were partially or fully impacted by Merriam Mountains Project. Refer also to **Responses to Comments O-2.2-16, O-1-90, and O-16-24, and Topical Response BIO-2 [Wildlife Corridors]**.

6. The Newland Sierra Project would conserve large blocks of Chaparral onsite.

The Jennings review states that the project would result in the loss and degradation of 1,760 acres of Chaparral. The County does not agree as this is a gross overstatement of the project’s impacts to Chaparral habitat. The project’s total onsite and offsite impacts to Chaparral habitat are approximately 673 acres (refer to Tables 2.4-18 through 2.4-20 in Section 2.4 of the Final EIR). Refer also to **Response to Comment O-16-24**.

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7. The Newland Sierra Project minimizes impacts to RPO resources, including steep slopes, sensitive habitat lands, and wetlands.

The project's onsite impacts to RPO wetlands (0.22 acre of permanent loss and an additional 1.91 acres of indirect impacts), specifically in the southwestern portion of the project Site where development was concentrated to avoid habitat and RPO wetland impacts in the more biologically important northern portion of the project Site, require the project's exemption to the County's Resource Protection Ordinance (RPO). The project's offsite road improvements would also impact RPO wetlands, however offsite improvements have been designed to minimize these impacts. The project also identifies mitigation measure **M-BIO-12** to mitigate its impacts to wetlands and waters to less than significant. Finally, as part of its improvements to Deer Springs Road, the project would create a naturalized/earthen drainage channel vegetated with native wetland and riparian habitat approximately 3 acres in size and 70 to 80 feet wide which would effectively restore in form and function Stephenson's Creek. Today, Stephenson's Creek is effectively an earthen roadside drainage ditch 10 to 15 feet in width along Deer Springs Road that is primarily vegetated with ruderal/non-native/invasive weeds and Eucalyptus trees and possessing limited to no biological value. Thus, the new drainage channel will serve as a significant biological enhancement compared to the existing condition. Refer to **Topical Response BIO-3 [Resource Protection Ordinance]**.

LL-24
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: June 14, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated June 14, 2018, is a late letter that does not require a written response from 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 14, 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 does not raise any new issues.

The letter includes an Enclosure entitled “Newland Sierra—San Diego County Acoustic and Vibration Review” prepared by the Papadimos Group out of San Francisco and focuses on a perceived lack of rigor in the Newland Sierra project’s EIR Section 2.10 (Noise). The County does not concur and responds to the various claims in the letter in more detail below.

Claim 1: “The study is missing an assessment of noise and vibration at the Golden Door property, where quiet ambient conditions are required for operation. Some construction activities identified in the study would likely be disturbing and clearly audible above ambient conditions, even if the San Diego County noise limits are met. The Newland technical analysis should, but does not, address these conditions.”

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Response: The County does not concur with this comment. The Golden Door property's operational noise impacts (which would be limited to traffic noise, because of the distance from the project site to the Golden Door property) is assessed in Tables 2.10-12 and 2.10-19. Noise from on-site and off-site construction is addressed in pages 2.10-16 through 2.10-21. Although not cited specifically—the Golden Door property is one among several noise and vibration-sensitive properties potentially impacted but is not the nearest to project work—the property is represented, and potential impacts are included and assessed.

Claim 2: “The Newland technical analysis is generally missing an assessment of noise and vibration impacts to the Golden Door facility, located south-west of the project along Deer Springs Road.”

Response: This is a re-statement of the prior summary comment. No further response is required.

Claim 3: “This assessment should be included given the Golden Door's proximity to Deer Springs Road and the project site. This receiver (the Golden Door property) should be assessed using the standards for residential uses and NSLUs since it includes sleeping facilities, and meets the following definition from San Diego County Guidelines for Determining Significance (dated January 2009)...This type of facility relies on quiet ambient conditions with minimal intruding noise common in a rural area to operate successfully. Existing ambient conditions should be maintained to avoid significant impacts and such an assessment is required for CEQA items XI.c and XI.d discussed below.”

Response: The County agrees. Impacts from project-related noise at the Golden Door were analyzed and assessed. Measurement receiver M3, conducted just east of the Golden Door structures nearest to Deer Springs Road, and modeled receiver O8, represent the property.

Claim 4: “The noise study by DUDEK is incomplete as it has not properly documented existing ambient noise levels in the project vicinity. Only daytime short-term noise measurements (20 mins long) were taken (primarily next to existing roadways). This insufficient to establish ambient noise conditions (CEQA Items XI.c & d) or to address regulatory requirements (CEQA Item XI.a).”

Response: The County does not concur with this statement. The characterization of typical ambient noise levels using daytime short-term noise measurements, as conducted by Dudek, is consistent with the County's *CEQA Guidelines for Determining Significance, Noise* (January 2009) and the County's *CEQA Report Format and Content Requirements, Noise* (January 2009).

Claim 5: “Noise standards in the San Diego County General Plan are in terms of CNEL, which is the average noise level over 24-hours. Accordingly, CNEL inherently requires noise measurements over 24-hour period, at a minimum. Measurements were only taken during mid-day and do not allow for establishing the full range of noise exposure, particularly for congested segments such as Deer Springs Road (currently Traffic Level of Service F).”

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The County does not concur with this statement. See the **Response to Claim 6** below.

Claim 6: “Statistical noise metrics (such as L_{90} and L_{99}) (typically required to properly establish existing ambient conditions) are missing from the noise study. We anticipate ambient noise levels are very low away from the road on the Golden Door property and a survey of these conditions should be considered to properly evaluate the impact of construction related noise as discussed in the sections below.”

Response: The County does not concur with this statement. The primary noise metric used to assess project impacts is the L_{eq} (utilized both as a noise standard itself as well as the basis upon which the 24-hour CNEL is formulated). L_{eq} , L_{max} and L_{min} noise data were collected and provided for all noise measurement locations (see Appendix B of the project’s Noise Report). Additionally, the measurement locations were selected to be representative of locations likely to be impacted by project-related traffic and other project components; thus it is logical that locations nearest to such sources were chosen, rather than locations farther away. Using locations further away from the noise source would result in significantly reduced noise impacts and result in an inaccurate assessment of significant impacts.

Claim 7: “The Newland technical analysis does not use proper instrumentation. Measured daytime levels were as low as 39 dBA, which is near the noise floor (lowest measurable level) of the sound level meter used in the Newland technical analysis (SoftdB Piccolo). This type of instrument may not be adequate in conducting 24-hour noise surveys since nighttime and early morning ambient noise levels are expected to be at or below this level.”

Response: The County does not concur with this statement. The low noise level stated (39 dBA) is within the dynamic range of the instrument, and whether the instrument may or may not capture lower levels during 24-hour noise surveys is not relevant, because 24-hour noise surveys were not conducted for this project. Refer to the **Response to Claim 6** above.

Claim 8: “Reported existing conditions on Deer Springs Road should be further evaluated and compared to the noise study performed for the San Diego County General Plan Update (FEIR Dated August 2011, Section 2.11), which reports existing noise levels close to 10 dB lower (64 dBA CNEL) than the DUDEK study at a similar distance from the road (100 feet). It is difficult to evaluate the credibility or merits of the Newland technical analysis without analysis as to why existing noise levels are different in the General Plan Update analysis.”

Response: The County does not concur with this statement. As shown in Table 2.10-12, the modeled existing noise level at a distance of 100 feet from the roadway centerline is shown to be 68 dBA CNEL. This would be a difference of approximately 4 dB, not 10 dB. The traffic volumes utilized were based upon those provided in the project’s traffic study. The County’s noise analysis for their General Plan Update is based on buildout conditions of the General Plan.

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Claim 9: “The Newland noise study has not clearly documented the basis of modeling for future conditions without the project. This is key in assessing noise under CEQA Items a, b and c as described in the sections below. The study has not included adequate documentation of modeled future conditions with the proposed road changes along Deer Springs Road (Options A and B) including adding new lanes (e.x. 6 lane vs 4 lane vs 2 lane with shared turning lane), grading and realignment that all affect traffic noise exposure. Without this information, the accuracy of the modeled future conditions cannot be verified.”

Response: The County does not concur with this statement. The traffic noise model files are provided in Appendix B for the Noise Report.

Claim 10: “The study is missing assessment of project generated traffic noise against the following noise limits in the San Diego County General Plan (Table N-2, Items 1 & 3). A proper noise survey with minimum 24-hour measurements is required to address these limits as described in the section above.

Response: The County does not concur. Refer to **Response to Claim 6** above.

Claim 11: “The Newland study has only partially assessed project noise against the following significance criteria (*San Diego County Guidelines for Determining Significance*). The Newland study has not properly documented existing conditions (see Noise Study section above). Further, the basis of the traffic noise modeling may be flawed and require revisiting as described below.”

Response: The County does not concur. The project has properly analyzed the project’s noise impacts consistent with the County’s CEQA Guidelines.

Claim 12: “Future traffic noise on Deer Springs Road without the project may be overpredicted, considering that this road and nearby intersections are currently operating at Level of Service LOS F as described in the Traffic Impact Analysis (Appendix R1a), which would limit traffic noise due to reduced speed during congestion. Traffic noise should be assessed under free traffic flow conditions (typically at LOS C), as this would result in worst-case noise exposure.”

Response: The County does not concur with this comment. Future traffic volumes with and without the project were forecasted based on SANDAG modeling and by accounting for 192 separate cumulative projects (refer to Appendix R1 to the Final EIR).

Claim 13: “The predicted noise levels appear to be based on the expansion of Deer Springs Road according to the San Diego County General Plan, but this may not be an accurate representation of future conditions....”

Response: The predicted future year noise levels for both Option A and Option B are based on the ultimate roadway designations for each of those options. This is a standard approach to modeling future year noise levels, particularly in the County of San Diego.

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Claim 14: “The (Deer Springs Road)way expansion may not be an active project or may not occur at all (could be accepted at LOS F)...” and cites language in the General Plan Mobility Element explaining General Plan Mobility Element Policy M-2.1 stating that “Regional connectivity issues would apply when congestion on State freeways and highways causes regional travelers to use County roads, resulting in congestion on the County road network. ***Rather than widening County roads to accommodate this traffic, the deficiencies in the regional road network should be addressed.***” (emphasis added)

Response: The County offers two points in response:

- (1) The project is required to widen Deer Springs Road to four lanes as mitigation for project impacts. If the project is approved, the road will be widened.
- (2) As it relates to regional connectivity issues and the regional network, Deer Springs is part of the Regional Arterial System (RAS) (i.e., the “regional network”). Therefore, improvements to Deer Springs Road would be the exact type of improvements this policy is saying should occur (in lieu of widening local County non-RAS roads).

Claim 15: “Future traffic on [Deer Springs] road (without the project), if expanded, may not increase, because traffic flow may be limited by the service level of the I-15 interchange area, as the Deer Springs Road segment and turning lanes were accepted at LOS E/F per the Mobility Element of the current general plan.

Response: The County does not agree with this comment. Future traffic volumes on the road are forecasted to increase whether the project is approved or not and whether the road is widened or not.

Claim 16: “...Caltrans reportedly has no projects in this area, including the I-15 interchange, and has stated that the traffic impact study is “insufficient and misleading” (see letter from Roy Abboud dated August 10, 2017). Since the Newland study appears to be the basis for future traffic noise analysis, it needs to be revised to address any changes in the traffic analysis.”

Response: The County does not concur with this statement. As it pertains to Caltrans statements about the project and its traffic impact analysis, refer to the second letter from Caltrans on the project’s Draft EIR dated January 11, 2018 (**Appendix JJ-16** to the Final EIR) addressing the **Response to Comment Letter A-2**¹ requesting that an Intersection Control Evaluation be submitted and approved by Caltrans related to the interchange improvements and stating that:

¹ The second letter from Caltrans indicating their comments on the Draft EIR had been addressed is in response to then draft responses to their letter submitted by the County to Caltrans for their review and concurrence (which the commenter subsequently received from Caltrans through a PRA request). The Response to Comment Letter A-2 can be found in the Final EIR:

<https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/NS/NSFEIR/NSresponses/A-2%20California%20Department%20of%20Transportation.pdf>

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“Caltrans is satisfied that the other previous comments from our August 10, 2017 letter have been adequately addressed.”

Claim 17: “Section 3.3 of the report provides only a generic assessment of noise and vibration from general construction activities such as grading, earthmoving, batch processing and others. Assessment is only included for residential receivers near the proposed project entrance (I-15 interchange) and is missing assessment for other NSLUs such as residences and the Golden Door property along Deer Springs Road. Assessment of construction of Deer Springs Road is also missing.

Response: The County does not concur with this statement. The impacts assessment addressed potential noise impacts for receivers in the vicinity of the proposed project, of which the Golden Door property is one. Project Design Features PDF 33s through 38 (page 2.10-16) would reduce these levels to less than significant.

Claim 18: “The study concludes the following are potentially significant impacts but proposes no mitigation (discussed below):

- On-site construction of Town Center neighborhood
- Construction on Mesa Rock Road at proposed project entrance

The study has incorrectly determined the following impacts to be less than significant due to ‘project design features’ such as properly maintained construction equipment, generic setbacks from sensitive receivers, and others, but provides no quantitative evidence to support this claim (mitigation discussed below).

- Construction staging areas
- Equipment repair
- Portable Rock-Crushing/Processing Facility”

Response: The County does not concur with this statement. See the **Response to Claim 17** above.

Claim 19: “Construction traffic on Deer Springs Road is improperly assessed by comparing the anticipated number of vehicles on the road to what appears to be the peak hour and average daily traffic volume (ADT). Construction traffic is typically comprised of large trucks and other heavy vehicles, which generate higher noise levels than typical automobiles. According to observations made during the Newland noise study, traffic on Deer Springs Road is primarily automobiles, with trucks accounting for less than 5% total volume. Construction traffic would therefore be out of character for this existing rural area and should instead be assessed based on noise increase over ambient conditions and the county’s limits at sensitive receivers.”

Response: The County does not concur with this statement. As stated on page 2.10-20, the maximum anticipated number of construction-related trips would be approximately 800 employee commute trips and up to 40 daily vendor trips. Compared to the existing ADTs on I-15 of 125,000 and Deer Springs Road and 19,400, the incremental increase would be negligible. Further, the majority of construction trips generated by the project on Deer Springs Road would be from construction workers that typically drive automobiles or light-duty trucks.

Claim 20: “Some other construction activities may include blasting, pile driving, rock crushing, cement batch plant, and possibly others. The Newland study confirms such activities will likely be used for this project. The Newland study does not include a technical assessment of blasting noise but identifies it as a potentially significant impact requiring further analysis (mitigation discussed below). The Newland study has not properly analyzed noise from pile driving, claiming the county’s impulsive noise limits do not apply since the pile driver would not generate noise for more than 20% of the hour, which is below the county’s threshold of 25% of the measurement time claimed 20% use time is based on a generic “use factor” used by noise prediction software issued by the Federal Highway Administration (FHWA). The Newland study does not even attempt to make an estimate of actual usage time. A project specific analysis should therefore be provided based on the actual and detailed project construction schedule and plan as discussed in the mitigation section below.”

Response: The County does not concur with this statement. As stated on page 2.10-22, it is acknowledged that the maximum noise levels from a pile driver could exceed the County’s maximum noise level threshold within 1,000 feet of active pile driving, the proposed project would implement PDF 38, which would limit pile driving to generate maximum noise levels 20 percent of an hour. With the implementation of PDF 38, maximum noise levels would not exceed the County’s impulsive threshold for 25 percent or more of an hour. Based on duration and distance, impulsive noise levels are anticipated to be below the County’s 82 dBA threshold. Thus, impacts would be less than significant.

Claim 21: “The study only provides generic assessment of construction vibration but confirms various activities including grading, blasting, and others are potentially significant. Specific assessment including all sensitive receivers near the project site and along Deer Springs Road should be carried out. Such assessment currently does not exist.”

Response: The County does not concur with this statement. Assessment of vibration during construction is provided on pages 2.10-22 and 2.10-23. Because construction-related vibration was determined to be a potentially significant impact, mitigation was provided. Mitigation Measure M-N-8 would require preparation of a vibration monitoring plan that would require data be sent to the County noise control officer. The officer would then take the steps necessary to ensure that future vibration levels do not exceed applicable limits, including suspending further

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construction activities that would result in excessive vibration levels until either alternative equipment or alternative construction procedures have been identified that would reduce vibration levels below County standards. With implementation of M-N-8, vibration impacts during construction would be less than significant.

Claim 22: “Increases in traffic noise above existing conditions in the project vicinity would need to be reassessed once a proper noise study has been completed as discussed in the section above.”

Response: The County does not concur with this statement. As previously stated and established, noise from project-related traffic has been properly addressed.

Claim 23: “The study is missing an assessment of construction noise and vibration in comparison to local ambient conditions, and this would require a proper study as discussed above. Assessment should include the full range of planned construction processes such as blasting, batch processing, grading etc. as well as construction related traffic that may be out of character for this rural area. This assessment should be used to author specifications that are included in bidding (sic) and contract documents to accurately reflect project delivery methods that would affect construction costs. Ambient noise levels on the Golden Door property are likely very low (40 dBA or less), particularly away from the road, and we anticipate construction activities such as blasting, pile driving and construction on Deer Springs Road would be clearly audible as estimated in Table 1 below². This type of facility requires a quiet environment, and such a large increase in noise levels would be disruptive and alternatives to loud construction methods (such as pile driving) may need to be required if there is no other feasible mitigation. This is particularly important for this large-scale development where construction reportedly could span close to 10 years.”

Response: The County does not concur with this statement. As previously stated and established, noise from project-related construction has been properly addressed. The commenter states, without apparent basis, that ambient noise levels on the Golden Door property are 40 dBA or less, “particularly away from the road”. This claim may or may not be valid, very far from the roadway (Deer Springs Road), but the nearest project-related construction would take place on or adjacent to the roadway. The ambient noise measurement (M3) conducted east of the Golden Door property at a distance of approximately 25 feet from the edge of Deer Springs Road was approximately 69 dBA L_{eq} , substantially higher than 40 dBA. Because construction noise, like roadway noise, diminishes with distance, construction noise would also be lower far from the road. Furthermore, the levels shown in Table 1 for activities taking place on the project site do not account for topographical shielding effects, which generally would result in substantially lower noise levels. Finally, blasting along Deer Springs Road would be confined to an area near the Town Center and, due to the fact that blasting would occur along Deer Springs Road and close to the Deer Springs Mobile Home Estates community, blasting levels would be restricted. Further, blasting events would be limited to one per day and the blast event itself sounds like a dull thud, not a large

² Refer to Table 1 in LL-24.

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explosion. Refer to **Topical Response AQ-1 [Blasting Impacts]** and **Topical Response AQ-2 [Blasting Schedule]**.

Claim 24: “The study states mitigation for traffic noise is infeasible due to adverse community response but provides no assessment of potential benefits for this project, which is required by CEQA in order for the public to make informed decisions. Noise barriers are a common and effective mitigation for traffic noise and would likely benefit NSLUs (such as the Golden Door) along project impacted roadways such as Deer Springs Rd. There are a limited number of driveways on Deer Springs Road and periodic breaks in a noise barrier for driveways would not render these barriers ineffective. Any NSLUs that would receive limited or no benefit from installing noise barriers should be clearly identified in the study and mitigation and/or alternatives proposed. The remaining traffic noise mitigation such as reduced speed limits and other traffic calming measures may not be undesirable since they may also be considered for traffic congestion relief on already overcrowded roadways such as Deer Springs Road.”

Response: The County does not concur with this statement. The discussion of potential mitigation for noise-sensitive land uses along Deer Springs Road (all three of which are single-family residences on the north side of Deer Springs Road) determined to experience cumulatively considerable noise impacts under Deer Springs Road Option B with the proposed project is on pages 2.10-37 and 2.10-38. It is noted moreover that the Golden Door Property was assessed (in Tables 2.10-12 and 2.10-19) and found to not be significantly impacted by project-related traffic. Noise mitigation is therefore not required for this location.

Claim 25: “Except for impulsive types of activities (discussed below), the Newland study only recommends deferred analysis (for vibration) or cites “project design features” that would likely not mitigate construction noise since they are generally considered industry standard practice (such as properly maintained construction equipment with working mufflers). The Newland study also states these project design features have already been considered in the assessment and therefore cannot be proposed as mitigation. A proper study needs to first predict anticipated noise and vibration exposure during various construction phases, identify impacted areas and develop specific mitigation measures quantitatively shown to reduce impacts below threshold of significance. For some high-noise and vibration activities (such as pile driving, jackhammer, etc.), the only feasible mitigation may be use of alternative construction methods, and this should be confirmed with mock-up testing of such activities prior to EIR approval. The Newland study fails to employ the proper methodology. In addition, use of noise barriers to mitigate construction noise should be based on a project specific study used to evaluate feasibility and identify specific locations, heights and extents for such mitigation measures. This is essential since noise attenuation provided by a barrier varies greatly depending on barrier height and location of source, receiver and barrier and topographical parameters. A construction noise and vibration monitoring plan should be included as a mitigation measure to ensure regulatory noise limits continue to be met throughout construction and to provide a quantifiable record in the event of complaints. This

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measure should also establish protocols for mitigation if regulatory noise or vibration limits are exceeded such time restrictions, use of sound barriers and possibly others. The plan should include procedures to be followed when noise and vibration limits are exceeded. This is also recommended by Caltrans guidelines for construction vibration (*Transportation and Construction Vibration Guidance Manual*, September 2013).”

Response: The County does not concur with this statement. Assessment of noise during construction is provided on pages 2.10-15 through 2.10-23, and vibration during construction is addressed on pages 2.10-22 and 2.10-23. Project design features 33 through 38 would ensure that construction noise is less than significant by maintaining minimum distances between noise-sensitive land uses and noisy activities, the use of sound blankets or temporary sound barriers and other measures. Because construction-related vibration was determined to be a potentially significant impact, mitigation was provided. Mitigation Measure M-N-8 would require preparation of a vibration monitoring plan that would require data be sent to the County noise control officer. The officer would then take the steps necessary to ensure that future vibration levels do not exceed applicable limits, including suspending further construction activities that would result in excessive vibration levels until either alternative equipment or alternative construction procedures have been identified that would reduce vibration levels below County standards. With implementation of M-N-8, vibration impacts during construction would be less than significant.

Claim 26: “The Newland study states that blasting will be used on this project and would be the primary source of construction vibration but only proposes deferred analysis for mitigation. This is not consistent with CEQA, which requires such studies be part of the EIR process and used to develop mitigation measures for identified significant impacts. A project specific blasting study should be included in the EIR that identifies and includes all sensitive receivers in the project vicinity that may be impacted, including the Golden Door property. Given the proximity to existing residential uses, a pilot study of limited blasting should be undertaken to develop appropriate mitigation or determine if such activities should even be allowed, as it is conceivable that alternative construction methods may be warranted to control noise and vibration levels. The Newland study only requires blasting vibration to meet the county’s limit of 1 in/sec PPV *San Diego County Guidelines for Determining Significance, Noise, Section 4.2.C*). However, this criteria may not be stringent enough given the sensitive nature of the surrounding uses. Blasting noise and vibration should be assessed against the existing local ambient conditions since blasting noise would be out of character in this rural area. In the absence of a specific study used to establish appropriate limits above the existing ambient, we recommend limits of 50 dB (linear) for airborne noise and 0.02 in/sec PPV for vibration levels, based on the *Transportation and Construction Vibration Guidance Manual*, issued by Caltrans September 2013. Blasting noise and vibration monitoring should be included as discussed above for general construction activities. Where blasting would exceed noise and vibration levels discussed above, alternative demolition methods

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should be used. This could include manual methods (such as saw-cutting, expansive demolition (expansive mortar), electrical rock disintegration, and possibly others.”

Response: The County does not concur with this statement. The mitigation for blasting (as detailed on page 2.1-33, M-N-5) does not constitute deferred mitigation. M-N-5 specifies preparation of a blast drilling and monitoring plan prior to approval of the grading permit for any portion of the proposed project, at such time as the details needed to prepare such a plan are known. Potential blasting locations have been identified in EIR Figure 2.10-11. Refer to **Topical Response AQ-2 [Blasting Schedule]**.

Claim 27: “This project proposes a large mixed-use development in a primarily rural area, and over time the project may encourage further development in this area. Future development should be assessed against the current ambient conditions to avoid incrementally allowing higher and higher noise and levels at nearby NSLUs. This mitigation measure should be considered for the proposed Specific Plan for the development area.”

Response: The County does not concur with this statement and notes that the claim does not present any supporting evidence.

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.

LL-26
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: June 22, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated June 22, 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 22, 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 is challenging the role of James Whalen of J. Whalen Associates.

Mr. Whalen is a consultant for the project applicant that is working for the project applicant on endangered species and wetland permitting matters that are outside the regulatory authority of the County. The County has no comment or opinion on the claims made in this comment letter as they do not relate the environmental analysis contained the Newland Sierra Project EIR.

3. The letter is reiterating and expanding upon issues raised in previous late letters.

The County refers the commenter to **Responses to Late Comment Letters LL-4, LL-20, and LL-22 through LL-25.**

LL-11 ATTACHMENT 1:

GSI Water Solutions

**“Comparison of VWD 2015 UWMP Water Demand Projections
with Historic Water Demand Rates”**

August 29, 2018



Technical Memorandum

To: County of San Diego Planning & Development Services
Rita Brandin – Newland Sierra, LLC

From: John Porcello – GSI Water Solutions, Inc.

Date: August 29, 2018

Re: Comparison of VWD 2015 UWMP Water Demand Projections with Historic Water Demand Rates
(San Diego County, California)

Summary Conclusions

GSI Water Solutions, Inc., has prepared this technical memorandum to compare Vallecitos Water District's 2015 Urban Water Management Plan (UWMP) future projections of water demand volumes and usage rates with recent water demands. The comparison converts the annual future district-wide demands to per-capita (i.e., per person) usage rates. The purpose of this comparison is to evaluate how the 2015 UWMP projected demands would be expected to change if water demand usage rates similar to those seen in recent years (other than the drought years of 2015 and 2016) were to be used to calculate future water demands.

As discussed below, in normal, single-dry, and multiple-dry water years, the 2015 UWMP estimates that annual demand reductions would be needed in the range of approximately 24 percent to 35 percent. However, if per-capita water usage rates similar to those seen in recent non-drought years (2012-2014 and 2017) and drought years (2015-2016) were used, the projected district-wide demands for such water supply would produce lower water demands and no need for annual demand reductions.

This conclusion arises in part because (1) the recent non-drought years (2012-2014 and 2017) produce lower water demands than projected in the 2015 UWMP, and (2) the drought year (2015-2016) per-capita usage, which is representative of recent conditions most similar to that contemplated by single-dry and multiple-year conditions, shows declines in per-capita water usage due to drought-driven water use restrictions that were enacted in California in 2015.

In summary, as detailed below, the analysis shows that although demand reductions would be required under the 2015 UWMP analysis, no such reductions would be required if the 2015 UWMP had used current and recent per-capita water usage rates to estimate future demands for normal, single-dry, and multiple-dry years during the forecast period of 2020 through 2035.

Analysis

The 2015 Urban Water Management Plan (UWMP) for Vallecitos Water District (VWD, 2016) estimates that on an annual basis, future district-wide demands for potable and recycled water supply will total to 32,666 acre-feet (AF) in the year 2020 (which is equivalent to 10,644 million gallons [MG]) and will rise to 37,841 AF (12,330 MG) in the year 2035. These projections are for years of normal demands and normal water supply availability, as discussed in VWD's 2015 UWMP (VWD, 2016). Each demand estimate is based on population projections for VWD's service area that range from 105,889 residents in 2020 to 118,690 residents in 2035.

Accordingly, the normal-year annual demands of 32,666 to 37,841 AF (10,644 to 12,330 MG) equate to per-capita usage rates that range between 266 and 285 gallons per person per day (gpcpd). The 2015 UWMP also provides 20-year projections of water supplies and demands under a single-dry-year scenario and a multiple-dry-year scenario.

The 2015 UWMP's projected demands are noticeably higher than current and recent rates of district-wide water usage, which have ranged from as high as 5,645 MG (17,323 AF) in 2013 to as low as 4,349 MG (13,347 AF) in 2015. Water use records provided to Newland Sierra, LLC by VWD indicate that during the past 6 calendar years (2012 through 2017), average daily per-capita water usage rates (expressed in units of gallons per capita per day [gpcpd] and including agricultural irrigation uses) ranged between approximately 165 and 169 gpcpd during calendar years 2012 through 2014, then declined to 127 gpcpd in 2015 and remained well below the pre-2015 rate during calendar years 2016 (131 gpcpd) and 2017 (137 gpcpd). These rates included usage for agricultural irrigation, which used 325 MG, or 7.5 percent, of the 4,349 MG total water volume that VWD provided to its customers during calendar year 2015. (See Table 4-1 of the 2015 UWMP.) Excluding agricultural irrigation uses, per-capita use rates for urban customers were even lower, ranging between 155 and 164 gpcpd from 2012 through 2014 (average 159 gpcpd) and declining to 117 gpcpd in 2015 and 123 gpcpd in 2016.

The substantial decrease in per-capita use during 2015 occurred because of drought-driven water use restrictions that were enacted under a governor's executive order. Following the lifting of the executive order, VWD's records indicate that district-wide per-capita usage rate for calendar year 2017 was 137 gpcpd when including agricultural irrigation, which was between 28 and 32 gpcpd lower than the per-capita rates during the three years that preceded the governor's executive order.

Tables 1a and 1b show how the projected demands reported in the UWMP for **normal years** would be expected to change if per-capita usage rates similar to those seen in recent non-drought years (2012 through 2014 and 2017) were to be used in demand projection calculations. Table 1a provides the demand and supply volumes for each year in units of acre-feet (AF), while Table 1b uses units of millions of gallons (MG) each year. The analyses in Tables 1a and 1b show that although demand reductions would be required inside VWD's service area under the 2015 UWMP analysis, no such reductions would be required if the 2012-2014 daily average per-capita

usage rate (167 gpcpd, which includes agricultural irrigation) were to be used – a rate that is 99 to 118 gpcpd lower than the rates assumed in the 2015 UWMP analysis. Similarly, Tables 1a and 1b show that achieving the 2017 per-capita usage rate in the future (137 gpcpd, which includes agricultural irrigation and is 129 to 148 gpcpd lower than the rates assumed in the 2015 UWMP analysis) would produce even lower water demands and no need for demand reductions.

Table 1a
Acre-Feet (AF) of Projected Water Supply and Demand During a Normal Year,
Comparing Per-Capita Usage Rates from VWD's 2015 UWMP Against
Recent Per-Capita Usage Rates Inside VWD's Service Area
During Non-Drought Years 2012, 2013, 2014, and 2017

Description	2020	2025	2030	2035
VWD Population Projections (from 2015 UWMP)	105,889	115,368	117,002	118,690
VWD-Reported Analysis (From VWD's 2015 UWMP)				
Annual Demand Totals ¹ (AF)	32,666	34,333	35,505	37,841
Equivalent Daily Per-Capita Usage Rate (gpcpd)	275	266	271	285
Annual Supply Totals ² (AF)	21,219	24,586	26,989	28,229
Annual Demand Reduction Required (AF)	11,447	9,747	8,516	9,612
Required Percent Reduction in Annual Demand	35.0%	28.4%	24.0%	25.4%
Analysis Using Average of 2012-2014 Actual Average Daily Per-Capita Usage Rates				
2012-2014 Avg. Daily Per-Capita Usage Rate (gpcpd)	167	167	167	167
Resulting Annual Demand Totals (AF)	19,847	21,624	21,930	22,246
Annual Supply Totals ² (AF)	21,219	24,586	26,989	28,229
Annual Demand Reduction Required (AF)	0	0	0	0
Required Percent Reduction in Annual Demand	0%	0%	0%	0%
Analysis Using 2017 Actual Average Daily Per-Capita Usage Rates				
2017 Avg. Daily Per-Capita Usage Rate (gpcpd)	137	137	137	137
Resulting Annual Demand Totals (AF)	16,282	17,740	17,991	18,250
Annual Supply Totals ² (AF)	21,219	24,586	26,989	28,229
Annual Demand Reduction Required (AF)	0	0	0	0
Required Percent Reduction in Annual Demand	0%	0%	0%	0%

1. Demand is presented in Table 4-3 of VWD's 2015 UWMP and consists of recycled water demand (471 MG in 2020 and 2025, and 771 MG in 2030 and 2035) plus potable and raw water demand (including agricultural irrigation).

2. Supply includes future recycled water and potable water supply from storage available. These numbers differ from the San Diego County Water Authority's 2015 UWMP assessment of supply totals available to VWD, as they include 3,500 AF (1,140 MG) per year of desalinated water supply provided by the Water Authority and they do not include the Water Authority's assumptions for passive and active water conservation.

Source: Vallecitos Water District 2015 UWMP (VWD, 2016).

Table 1b
Million Gallons (MG) of Projected Water Supply and Demand During a Normal Year,
Comparing Per-Capita Usage Rates from VWD's 2015 UWMP Against
Recent Per-Capita Usage Rates Inside VWD's Service Area
During Non-Drought Years 2012, 2013, 2014, and 2017

Description	2020	2025	2030	2035
VWD Population Projections (from 2015 UWMP)	105,889	115,368	117,002	118,690
VWD-Reported Analysis (From VWD's 2015 UWMP)				
Annual Demand Totals ¹ (MG)	10,644	11,187	11,569	12,330
Equivalent Daily Per-Capita Usage Rate (gpcpd)	275	266	271	285
Annual Supply Totals ² (MG)	6,914	8,011	8,794	9,198
Annual Demand Reduction Required (MG)	3,730	3,176	2,775	3,132
Required Percent Reduction in Annual Demand	35.0%	28.4%	24.0%	25.4%
Analysis Using Average of 2012-2014 Actual Average Daily Per-Capita Usage Rates				
2012-2014 Avg. Daily Per-Capita Usage Rate (gpcpd)	167	167	167	167
Resulting Annual Demand Totals (MG)	6,467	7,046	7,146	7,249
Annual Supply Totals ² (MG)	6,914	8,011	8,794	9,198
Annual Demand Reduction Required (MG)	0	0	0	0
Required Percent Reduction in Annual Demand	0%	0%	0%	0%
Analysis Using 2017 Actual Average Daily Per-Capita Usage Rates				
2017 Avg. Daily Per-Capita Usage Rate (gpcpd)	137	137	137	137
Resulting Annual Demand Totals (MG)	5,305	5,780	5,862	5,947
Annual Supply Totals ² (MG)	6,914	8,011	8,794	9,198
Annual Demand Reduction Required (MG)	0	0	0	0
Required Percent Reduction in Annual Demand	0%	0%	0%	0%

1. Demand is presented in Table 4-3 of VWD's 2015 UWMP and consists of recycled water demand (471 MG in 2020 and 2025, and 771 MG in 2030 and 2035) plus potable and raw water demand (including agricultural irrigation).

2. Supply includes future recycled water and potable water supply from storage available. These numbers differ from the San Diego County Water Authority's 2015 UWMP assessment of supply totals available to VWD, as they include 3,500 AF (1,140 MG) per year of desalinated water supply provided by the Water Authority and they do not include the Water Authority's assumptions for passive and active water conservation.

Source: Vallecitos Water District 2015 UWMP (VWD, 2016).

Tables 2a and 2b show similar calculations for the **single-dry-year scenario**, using drought years 2015 and 2016 to select per-capita usage rates that are representative of recent conditions most similar to that contemplated by the single-dry-year scenario. As with the normal-year scenario, the single-dry-year scenario produces no need for annual demand reductions when recent daily per-capita usage rates are applied to VWD's population estimates for the 20-year planning horizon.

Table 2a
Acre-Feet (AF) of Projected Water Supply and Demand During a Single Dry Year,
Comparing Per-Capita Usage Rates from VWD's 2015 UWMP Against
Recent Per-Capita Usage Rates Inside VWD's Service Area
During Drought Years 2015 and 2016

Description	2020	2025	2030	2035
VWD Population Projections (from 2015 UWMP)	105,889	115,368	117,002	118,690
VWD-Reported Analysis (From VWD's 2015 UWMP)				
Annual Demand Totals ¹ (AF)	34,984	36,782	38,049	40,588
Equivalent Daily Per-Capita Usage Rate (gpcpd)	295	285	290	305
Annual Supply Totals ² (AF)	22,594	26,206	28,723	30,073
Annual Demand Reduction Required (AF)	12,390	10,576	9,326	10,515
Required Percent Reduction in Annual Demand	35.4%	28.8%	24.5%	25.9%
Analysis Using Average of 2015-2016 Actual Daily Per-Capita Usage Rates				
2015-2016 Avg. Daily Per-Capita Usage Rate (gpcpd)	129	129	129	129
Resulting Annual Demand Totals (AF)	15,268	16,635	16,870	17,114
Annual Supply Totals ² (AF)	22,594	26,206	28,723	30,073
Annual Demand Reduction Required (AF)	0	0	0	0
Required Percent Reduction in Annual Demand	0%	0%	0%	0%

1. Demand is presented in Table 4-3 of VWD's 2015 UWMP and consists of recycled water demand (471 MG in 2020 and 2025, and 771 MG in 2030 and 2035) plus potable and raw water demand (including agricultural irrigation).

2. Supply includes future recycled water and potable water supply from storage available. These numbers differ from the San Diego County Water Authority's 2015 UWMP assessment of supply totals available to VWD, as they include 3,500 AF (1,140 MG) per year of desalinated water supply provided by the Water Authority and they do not include the Water Authority's assumptions for passive and active water conservation.

Source: Vallecitos Water District 2015 UWMP (VWD, 2016).

Table 2b
Million Gallons (MG) of Projected Water Supply and Demand During a Single Dry Year,
Comparing Per-Capita Usage Rates from VWD's 2015 UWMP Against
Recent Per-Capita Usage Rates Inside VWD's Service Area
During Drought Years 2015 and 2016

Description	2020	2025	2030	2035
VWD Population Projections (from 2015 UWMP)	105,889	115,368	117,002	118,690
VWD-Reported Analysis (From VWD's 2015 UWMP)				
Annual Demand Totals ¹ (MG)	11,399	11,985	12,398	13,225
Equivalent Daily Per-Capita Usage Rate (gpcpd)	295	285	290	305
Annual Supply Totals ² (MG)	7,362	8,539	9,359	9,799
Annual Demand Reduction Required (MG)	4,037	3,446	3,039	3,426
Required Percent Reduction in Annual Demand	35.4%	28.8%	24.5%	25.9%
Analysis Using Average of 2015-2016 Actual Daily Per-Capita Usage Rates				
2015-2016 Avg. Daily Per-Capita Usage Rate (gpcpd)	129	129	129	129
Resulting Annual Demand Totals (MG)	4,975	5,420	5,497	5,576
Annual Supply Totals ² (MG)	7,362	8,539	9,359	9,799
Annual Demand Reduction Required (MG)	0	0	0	0
Required Percent Reduction in Annual Demand	0%	0%	0%	0%

1. Demand is presented in Table 4-3 of VWD's 2015 UWMP and consists of recycled water demand (471 MG in 2020 and 2025, and 771 MG in 2030 and 2035) plus potable and raw water demand (including agricultural irrigation).

2. Supply includes future recycled water and potable water supply from storage available. These numbers differ from the San Diego County Water Authority's 2015 UWMP assessment of supply totals available to VWD, as they include 3,500 AF (1,140 MG) per year of desalinated water supply provided by the Water Authority and they do not include the Water Authority's assumptions for passive and active water conservation.

Source: Vallecitos Water District 2015 UWMP (VWD, 2016).

Tables 3a and 3b show similar calculations for the **multiple-dry-year scenario**, using drought years 2015 and 2016 to select per-capita usage rates that are representative of recent conditions most similar to that contemplated by the multiple-dry-year scenario. As with the normal-year and dry-year scenarios, the multiple-dry-year scenario produces no need for annual demand reductions when the 2015-2016 daily per-capita usage rates are applied to VWD's population estimates for the 20-year planning horizon.

Reference

VWD. 2016. *2015 Urban Water Management Plan*. Prepared by Vallecitos Water District (VWD).

Table 3a
Acre-Feet (AF) of Projected Water Supply and Demand During a Multiple-Dry-Year Period,
Comparing Per-Capita Usage Rates from VWD's 2015 UWMP Against
Recent Per-Capita Usage Rates Inside VWD's Service Area
During Drought Years 2015 and 2016

Year	Description	2020	2025	2030	2035
	VWD Population Projections (from 2015 UWMP)	105,889	115,368	117,002	118,690
First Year	VWD-Reported Analysis (From VWD's 2015 UWMP)				
	Annual Demand Totals ¹ (AF)	34,953	36,736	37,991	40,489
	Equivalent Daily Per-Capita Usage Rate (gpcpd)	295	284	290	305
	Annual Supply Totals ² (AF)	22,585	26,188	28,692	30,018
	Annual Demand Reduction Required (AF)	12,368	10,548	9,299	10,471
	Required Percent Reduction in Annual Demand	35.4%	28.7%	24.5%	25.9%
	Analysis Using Average of 2015-2016 Actual Daily Per-Capita Usage Rates				
	2015-2016 Avg. Daily Per-Capita Usage Rate (gpcpd)	129	129	129	129
	Annual Resulting Demand Totals (AF)	15,268	16,635	16,870	17,114
	Annual Supply Totals ² (AF)	22,585	26,188	28,692	30,018
	Annual Demand Reduction Required (AF)	0	0	0	0
	Required Percent Reduction in Annual Demand	0%	0%	0%	0%
Second Year	VWD-Reported Analysis (From VWD's 2015 UWMP)				
	Annual Demand Totals ¹ (AF)	35,671	37,491	38,771	41,321
	Equivalent Daily Per-Capita Usage Rate (gpcpd)	301	290	296	311
	Annual Supply Totals ² (AF)	22,999	26,673	29,211	30,561
	Annual Demand Reduction Required (AF)	12,672	10,818	9,560	10,760
	Required Percent Reduction in Annual Demand	35.5%	28.9%	24.7%	26.0%
	Analysis Using Average of 2015-2016 Actual Daily Per-Capita Usage Rates				
	2015-2016 Avg. Daily Per-Capita Usage Rate (gpcpd)	129	129	129	129
	Resulting Annual Demand Totals (AF)	15,268	16,635	16,870	17,114
	Annual Supply Totals ² (AF)	22,999	26,673	29,211	30,561
	Annual Demand Reduction Required (AF)	0	0	0	0
	Required Percent Reduction in Annual Demand	0%	0%	0%	0%
Third Year	VWD-Reported Analysis (From VWD's 2015 UWMP)				
	Annual Demand Totals ¹ (AF)	36,684	38,556	39,872	42,496
	Equivalent Daily Per-Capita Usage Rate (gpcpd)	309	298	304	320
	Annual Supply Totals ² (AF)	23,604	27,382	29,963	31,353
	Annual Demand Reduction Required (AF)	13,080	11,174	9,909	11,143
	Required Percent Reduction in Annual Demand	35.7%	29.0%	24.9%	26.2%
	Analysis Using Average of 2015-2016 Actual Daily Per-Capita Usage Rates				
	2015-2016 Avg. Daily Per-Capita Usage Rate (gpcpd)	129	129	129	129
	Resulting Annual Demand Totals (AF)	15,268	16,635	16,870	17,114
	Annual Supply Totals ² (AF)	23,604	27,382	29,963	31,353
	Annual Demand Reduction Required (AF)	0	0	0	0
	Required Percent Reduction in Annual Demand	0%	0%	0%	0%

Table 3a
Acre-Feet (AF) of Projected Water Supply and Demand During a Multiple-Dry-Year Period,
Comparing Per-Capita Usage Rates from VWD's 2015 UWMP Against
Recent Per-Capita Usage Rates Inside VWD's Service Area
During Drought Years 2015 and 2016

Year	Description	2020	2025	2030	2035
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1. Demand is presented in Table 4-3 of VWD's 2015 UWMP and consists of recycled water demand (471 MG in 2020 and 2025, and 771 MG in 2030 and 2035) plus potable and raw water demand (including agricultural irrigation).

2. Supply includes future recycled water and potable water supply from storage available. These numbers differ from the San Diego County Water Authority's 2015 UWMP assessment of supply totals available to VWD, as they include 3,500 AF (1,140 MG) per year of desalinated water supply provided by the Water Authority and they do not include the Water Authority's assumptions for passive and active water conservation.

Source: Vallecitos Water District 2015 UWMP (VWD, 2016).

Table 3b
Million Gallons (MG) of Projected Water Supply and Demand During a Multiple-Dry-Year Period,
Comparing Per-Capita Usage Rates from VWD's 2015 UWMP Against
Recent Per-Capita Usage Rates Inside VWD's Service Area
During Drought Years 2015 and 2016

Year	Description	2020	2025	2030	2035
	VWD Population Projections (from 2015 UWMP)	105,889	115,368	117,002	118,690
First Year	VWD-Reported Analysis (From VWD's 2015 UWMP)				
	Annual Demand Totals ¹ (MG)	11,389	11,970	12,379	13,193
	Equivalent Daily Per-Capita Usage Rate (gpcpd)	295	284	290	305
	Annual Supply Totals ² (MG)	7,359	8,533	9,349	9,781
	Annual Demand Reduction Required (MG)	4,030	3,437	3,030	3,412
	Required Percent Reduction in Annual Demand	35.4%	28.7%	24.5%	25.9%
	Analysis Using Average of 2015-2016 Actual Daily Per-Capita Usage Rates				
	2015-2016 Avg. Daily Per-Capita Usage Rate (gpcpd)	129	129	129	129
	Annual Resulting Demand Totals (MG)	4,975	5,420	5,497	5,576
	Annual Supply Totals ² (MG)	7,359	8,533	9,349	9,781
	Annual Demand Reduction Required (MG)	0	0	0	0
	Required Percent Reduction in Annual Demand	0%	0%	0%	0%
Second Year	VWD-Reported Analysis (From VWD's 2015 UWMP)				
	Annual Demand Totals ¹ (MG)	11,623	12,216	12,633	13,464
	Equivalent Daily Per-Capita Usage Rate (gpcpd)	301	290	296	311
	Annual Supply Totals ² (MG)	7,494	8,691	9,518	9,958
	Annual Demand Reduction Required (MG)	4,129	3,525	3,115	3,506
	Required Percent Reduction in Annual Demand	35.5%	28.9%	24.7%	26.0%
	Analysis Using Average of 2015-2016 Actual Daily Per-Capita Usage Rates				
	2015-2016 Avg. Daily Per-Capita Usage Rate (gpcpd)	129	129	129	129
	Resulting Annual Demand Totals (MG)	4,975	5,420	5,497	5,576
	Annual Supply Totals ² (MG)	7,494	8,691	9,518	9,958
	Annual Demand Reduction Required (MG)	0	0	0	0
	Required Percent Reduction in Annual Demand	0%	0%	0%	0%
Third Year	VWD-Reported Analysis (From VWD's 2015 UWMP)				
	Annual Demand Totals ¹ (MG)	11,953	12,563	12,992	13,847
	Equivalent Daily Per-Capita Usage Rate (gpcpd)	309	298	304	320
	Annual Supply Totals ² (MG)	7,691	8,922	9,763	10,216
	Annual Demand Reduction Required (MG)	4,262	3,641	3,229	3,631
	Required Percent Reduction in Annual Demand	35.7%	29.0%	24.9%	26.2%
	Analysis Using Average of 2015-2016 Actual Daily Per-Capita Usage Rates				
	2015-2016 Avg. Daily Per-Capita Usage Rate (gpcpd)	129	129	129	129
	Resulting Annual Demand Totals (MG)	4,975	5,420	5,497	5,576
	Annual Supply Totals ² (MG)	7,691	8,922	9,763	10,216
	Annual Demand Reduction Required (MG)	0	0	0	0
	Required Percent Reduction in Annual Demand	0%	0%	0%	0%

Table 3b
Million Gallons (MG) of Projected Water Supply and Demand During a Multiple-Dry-Year Period,
Comparing Per-Capita Usage Rates from VWD's 2015 UWMP Against
Recent Per-Capita Usage Rates Inside VWD's Service Area
During Drought Years 2015 and 2016

Year	Description	2020	2025	2030	2035
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1. Demand is presented in Table 4-3 of VWD's 2015 UWMP and consists of recycled water demand (471 MG in 2020 and 2025, and 771 MG in 2030 and 2035) plus potable and raw water demand (including agricultural irrigation).

2. Supply includes future recycled water and potable water supply from storage available. These numbers differ from the San Diego County Water Authority's 2015 UWMP assessment of supply totals available to VWD, as they include 3,500 AF (1,140 MG) per year of desalinated water supply provided by the Water Authority and they do not include the Water Authority's assumptions for passive and active water conservation.

Source: Vallecitos Water District 2015 UWMP (VWD, 2016).