

Newland Sierra Project

Responses to Testimony and Correspondence

June 28, 2018, Planning Commission Hearing

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Responses to Testimony and Correspondence to the Planning Commission

Planning Commission Hearing of June 28, 2018

Various testimony and correspondence was given to the Planning Commission covering the following issues related to the Newland Sierra Project:

- Air Quality and Blasting Impacts
- Biological Resource Impacts
- Traffic Impacts, including impacts to the Deer Springs Road and the I-15 Freeway
- Fire and Evacuation
- Consistency with the General Plan and Community Character
- Noise associated with construction and blasting
- Water Supply
- Climate Change and Greenhouse Gas Emissions
- Police and Fire Services

The Final EIR contains detailed responses to comments on these issues as well as the following Topical Responses:

- **Topical Response AQ-1: Blasting Impacts**
- **Topical Response AQ-2: Blasting Schedule**
- **Topical Response AQ-3: Construction Period**
- **Topical Response BIO-1: North County MSCP**
- **Topical Response BIO-2: Wildlife Corridors**
- **Topical Response HAZ-1: Evacuation**
- **Topical Response LU-1: General Plan Consistency**
- **Topical Response LU-2: Specific Plan and General Plan Consistency**
- **Topical Response NOI-1: Construction and Blasting Noise**
- **Topical Response TR-1: I-15/SR-78 LOS**
- **Topical Response TR-2: Interchange Phasing**
- **Topical Response TR-3: Project Traffic Impacts and Mitigation**
- **Topical Response TR-4: Deer Springs Road Improvements**
- **Topical Response UTL-1: Water Shortage/Drought**
- **Topical Response UTL-2: Reduction in Water Consumption for Existing Residents**
- **Topical Response GHG-1: Use of Carbon Offsets**
- **Topical Response GHG-2: Additionality of Carbon Offsets**
- **Topical Response GHG-3: County's 2018 Climate Action Plan (CAP)**
- **Topical Response GHG-4: 30-year Project Life**
- **Topical Response PUB-1: Police and Fire Services**

These Topical Responses are available on the County's website for the Newland Sierra Project and can be viewed through the following link:

<https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/NS/NSFEIR/NSapp/Topical%20Responses.pdf>

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Responses to comment letters from public agencies, organizations, and individuals can be viewed through the following link:

<https://www.sandiegocounty.gov/content/sdc/pds/ceqa/SP-15-001/NSDEIR.html>

In addition to these issues raised above, two issues were raised that warrant a more detailed response:

- Religious Freedom Restoration Act (RFRA) and Religious Land Use and Institutionalized Person Act (RLUIPA), beginning on page 3 below
- Claims of the historical resource significance of the Golden Door Spa Resort property, beginning on page 6 below

These two separate issues are responded to in more detail below.

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Response to Religious Freedom Restoration Act (RFRA) and Religious Land Use and Institutionalized Person Act (RLUIPA) Issues raised by the Hidden Valley Zen Center and other Commenters

The County has received comments from the members of the Hidden Valley Zen Center and other commenters, including as testimony at the June 28, 2018, Planning Commission hearing for the Newland Sierra project, suggesting that the Religious Freedom Restoration Act and Religious Land Use and Institutionalized Person Act may be violated as a result of increased noise from the Newland Sierra project at the Hidden Valley Zen Center, even where the noise impacts were shown to be less than significant. The County has considered compliance with these federal statutes and determined that neither is applicable to the County's consideration of the Newland Sierra project.

1. The Religious Freedom Restoration Act (RFRA) of 1993 was struck down by the Supreme Court as unconstitutional as it applies to state and local governments.

The Religious Freedom Restoration Act (RFRA) of 1993 required religious accommodation in virtually all spheres of life. Its broadly worded mandate stated that the "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless the burden is in "furtherance of a compelling government interest" and the least restrictive means to further that interest. The U.S. Supreme Court held RFRA unconstitutional as it applies to state and local governments in 1997, finding that Congress had overstepped its enforcement power under the Fourteenth Amendment. (*City of Boerne v. Flores* (1997) 521 U.S. 507, 536.)

2. The Religious Land Use and Institutionalized Person Act (RLUIPA) applies in the instance when the burden is imposed by a land use regulation that limits or restricts the claimant's use or development of its land.

The Religious Land Use and Institutionalized Person Act (RLUIPA) was subsequently enacted in 2000 to address the unconstitutionality problems of the RFRA by substantially limiting its scope and breadth. The substantial burden provision of RLUIPA states: "(1) no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly or institution (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." (42 U.S.C. §2000cc.)

RLUIPA defines a "land use regulation" as:

[A] zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest. (42 U.S.C. § 2000cc-5(5).)

Thus, unlike RFRA, RLUIPA applies in the instance when the burden is imposed by a land use regulation that limits or restricts the claimant's use or development of its land. (*San Jose Christian*

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College v. City of Morgan Hill (9th Cir. 2004) 360 F.3d 1024, 1036 [“[A] government agency implements a “land use regulation” only when it acts pursuant to a “zoning or landmarking law” that limits the manner in which a claimant may develop or use property in which the claimant has an interest.[citation]”] While the government may take into account the particular details of a religious organization’s use of land, such as when deciding to permit or deny an application for that religious use, RLUIPA prevents discrimination through land use regulations. (*Guru Nanak Sikh Soc’y v. County of Sutter* (9th Cir. 2006) 456 F.3d 978, 986.)

3. RLUIPA does not apply in the case of the Newland Sierra project.

RLUIPA does not apply where the government is considering a land use regulation that *will not apply* to the claimant’s land, which is the case with the Newland Sierra project. In considering the Newland Sierra Project, the County is not approving or implementing any land use regulation that limits or restricts the Zen Center’s use or development of its land. For example, the County is not proposing to change any land use designation or zoning designation on the Zen Center’s property or to impose any new zoning or other land use control applicable to the Zen Center property. Therefore, the County is not imposing or implementing a “land use regulation” as defined under RLUIPA.

As it concerns the project’s proposed improvements to Sarver Lane, either previously dedicated right-of-way or Irrevocable Offers of Dedication (IODs) exist, including an IOD for expanding Sarver Lane granted in 1980 by the then owner of the Zen Center property, for widening and improving Sarver Lane such that additional right-of-way will not be required from the Zen Center. The County’s decision regarding any roadway improvements proposed by the project is thus also not based on any zoning or landmarking law restricting the development or use of the Zen Center. (*See Prater v. City of Burnside* (6th Cir. 2002) 289 F.3d 417, 434 [city’s decision to develop a road, which a church requested be closed, was not a land use regulation].) Accordingly, the substantial burden provision of RLUIPA is inapplicable.

4. RLUIPA’s substantial burden provision, equal terms provision, nondiscrimination provision, and exclusion provision are also not implicated by the Newland Sierra project.

Several commenters cited *Comanche Nation v. United States* (W.D. Okla. 2008) 2008 WL 4426621 to contend the “substantial burden” provision of RLUIPA is implicated by any impact on religious uses from off-site development. But *Comanche Nation* involved the wide-reaching RFRA; the substantial burden language of RLUIPA is far more limited in scope consistent with Congressional power. Absent a land use regulation that limits or restricts the Zen Center’s land or its development, RLUIPA’s substantial burden provision is not implicated.

In addition to the substantial burden provision, RLUIPA contains an equal terms provision, nondiscrimination provision, and exclusion provision—none of which are implicated by the Newland Sierra project. The equal terms provision states, “[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” (42 U.S.C. § 2000cc (b)(1).) A violation of this “equal terms” provision requires: (1) there must be an imposition or implementation of a land-use regulation, (2) by a government, (3) on a religious assembly or

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institution, (4) that is “on less than equal terms with a nonreligious assembly or institution.” (*Centro Familiar Cristiano Buenas Nuevas v. City of Yuma* (9th Cir. 2011) 651 F.3d 1163, 1170-71.) The equal terms provision is violated “only when a church is treated on a less than equal basis with a secular comparator, similarly situated with respect to an accepted zoning criteria.” (*Id.* at 1173, *see also, River of Life Kingdom Ministries v. Vill. of Hazel Crest* (7th Cir. 2010) 611 F.3d 367, 371 [“If a church and a community center, though different in many respects, do not differ with respect to any accepted zoning criterion, then an ordinance that allows one and forbids the other denies equality and violates the equal-terms provision.”])

As with the substantial burden provision of RLUIPA, the equal terms provision is inapplicable as no “land use regulation” is being imposed on or implemented at the Zen Center property. Further, the Zen Center is being treated equally to all other surrounding land uses—secular and religious alike.

The nondiscrimination provision of RLUIPA states, “no government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” (42 U.S.C. § 2000cc (b)(2).) Discriminatory intent is required to prove this provision has been violated. The intent of the Newland Sierra project entitlements are to implement a new mixed-use community near existing and planned infrastructure, services, and jobs within the North County Interstate 15 corridor—not to discriminate against the Zen Center. Further, as above, no land use regulation is being imposed on the Zen Center property.

Lastly, a local land use jurisdiction may not impose or implement a land use regulation that totally exclude religious assemblies or unreasonably limits religious assemblies, institutions, or structures under RLUIPA’s exclusion provision. (42 U.S.C. § 2000cc (b)(3).) No action is proposed that would totally exclude or unreasonably limit any religious assemblies, institutions, or structures. RLUIPA is also not implicated as, again, no land use regulation is proposed on the Zen Center property.

In sum, while RLUIPA contains several provisions to prevent or reduce infringement on the free exercise of religion through land use regulations, none apply to the County’s consideration of the Newland Sierra project.

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Response to Claims that the Golden Door Spa Resort is a Historical Resource

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated June 26, 2018 is a late letter in response to the Newland Sierra Draft EIR or letters to other agencies 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 26, 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. Section 5 of Latham’s June 26, 2018 letter Incorrectly Contends the Project will result in Significant Adverse Historic Impacts to the Golden Door.

Latham asserts the Golden Door property qualifies for historic designation under California law, and that the Newland Sierra Project would have a significant adverse effect on the Golden Door in Section 5 of its June 26, 2018 letter.¹ For the reasons discussed below, the County does not concur with the Latham’s assertion the Golden Door is a historical resource; or that the Newland Sierra Project would result in adverse historical impacts where the Final EIR is clear the Newland Sierra Project will not demolish, damage, or otherwise materially alter the Golden Door’s property.

a. CEQA’s provisions governing the analysis of historical resources

Public Resources Code section 21084.1 and CEQA Guidelines section 15064.5 (a) – (b) establish CEQA requirements concerning historical resources. As set forth therein, “[a] project that may

¹ Section 5 includes introductory comments by Latham and an attached letter from Marie Burke Lia re: Historic Property Located Near Newland Sierra Project Site. For purposes of this response, both the introductory comments and the attached Burke Lia letter are referred to as “Latham’s letter.”

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cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” (Pub. Resource Code, § 21084.1.) A historical resource is defined as “a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources.” (*Id.*) A resource designated as historically significant in a local register of historical resources, or identified as significant in an historical resource survey meeting the requirements of section 5024.1(g) of the Public Resources Code is also presumed historically significant unless the presumption is overcome based on a preponderance of the evidence. (Pub. Resources Code, § 21084.1, Guidelines, § 15064.5(a)(2).) A lead agency has the discretion to find resources significant in the “cultural annals of California” a historical resource, which usually means it meets the criteria for listing in the California Register of Historical Resources. (Guidelines § 15064.5(a)(3).

A substantial adverse change in the significance of a historical resource is a significant effect on the environment under CEQA. (Pub. Resources Code, § 21084.1, CEQA Guidelines, § 15064.5 (b).) However, a “substantial adverse change” is limited to mean the *demolition, destruction, relocation, or alteration* of the resource or its immediate surroundings resulting in the significance of a resource being materially impaired. (CEQA Guidelines, § 15064.5(b)(1) and (2).) These rules focus on direct physical changes to historical resources that materially impair those resources’ historical significance.

Accordingly, courts have confirmed that, CEQA defines a significant impact on a historical resource as a change to the *physical* condition of the resource. Construction of a project in the vicinity of historic or potentially historic structures *that does not damage or materially alter* them is *not* a substantial adverse change in the significance of a historical resource. (*Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1045; *Eureka Citizens for Responsible Gov’t v. City of Eureka* (2007) 147 Cal.App.4th 357, 375.)

The court in *Eureka Citizens for Responsible Gov’t, supra*, 147 Cal.App.4th 357, 374-375 cemented this point in considering whether a project would have an impact on a historic district. In *Eureka*, the project proposed would not physically damage or impair any of the structures in a historic district, but the appellants nevertheless argued a significant impact to a historic district would result from “neighborhood intrusion,” or visual impacts, from the proposed project’s size, color, and lack of setbacks. The court rejected the appellant’s claim that a significant impact to historical resources could occur without physical damage to such resources.

While a resources study in *Eureka* discussed the presence of about 53 historically significant structures in the 30 block general neighborhood of the project which were identified in a local historic register, the study posited no demolition, *physical* damage or impairment to any of them. (*Id.*) The court therefore held that no significant impact to historical resources was shown as the CEQA guidelines define a “substantial adverse change” in the significance of an historical resource

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as only including the “*physical demolition, destruction, relocation, or alteration*” of a resource. (*Id.*)

Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist., *supra*, 215 Cal.App.4th at page 1042-1045, considered whether a substantial change to a historical resource would occur where the site at issue was not listed on the State of California's Office of Historic Preservation (SHPO) list for San Diego County, as required by Guidelines Section 15064.5; there were no historic structures occurring on-site; and where no buildings alleged to be historic would be demolished or altered as part of the project. (*Id.* at 1042-1043.) The court noted there was no substantial evidence the area was listed as historical or eligible for such listing. Further, while lighting structures would be seen, there was no evidence the project would demolish or materially alter the alleged historical resource. Therefore, no potentially significant adverse effect was shown.

b. The Golden Door is not a Historical Resource

The County has considered Latham's assertion that the Golden Door's buildings, landscaping, and/or entire site qualify as a historical resource. The County does not concur for the following reasons.

The Golden Door is not listed in the California Register of Historical Resources or any local register of historical resources. (Guidelines § 15064.5.) Latham provides no evidence that any of the Golden Door's buildings, landscaping, and/or entire property are listed historical resources. (Guidelines § 15064.5.)

Further, the Golden Door does not qualify for historic designation under the criteria for listing on the California Register of Historical Resources. A resource is eligible for listing in the CRHR if the State Historical Resources Commission determines that it is a significant resource and that it meets any of the following National Register of Historic Places (NRHP) criteria (Pub. Resources Code, §5024.1(c)):

- Associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.
- Associated with the lives of persons important to local, California, or national history;
- Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- Has yielded, or may be likely to yield, information important in prehistory or history. (Final EIR Section 2.5.2, 14 California Code of Regulations § 4852 (b)(1)-(4).)

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A resource's integrity must also be retained. (14 California Code of Regulations § 4852 (c).)

Resources less than 50 years old are generally not considered for listing in the California Register of Historical Resources. (Final EIR p. 2.5-23, *citing*, 14 California Code of Regulations § 4852) This is because, in order to understand the historic importance of a resource, sufficient time must have passed to obtain a scholarly perspective on the events or individuals associated with the resource. (*Id.*)

The Golden Door's structures, landscaping, and/or site do not qualify for historical resource designation on the California Register of Historical Resources. First, while the original Golden Door may have been founded in 1958, the property was razed in the early 1970s for highway expansion.² The current Golden Door complex was built in 1975 a mile west of the original, as detailed in Attachment D to the Latham letter.³ The current structures and improvements at the Golden Door are less than 50 years old, and therefore generally not considered a historical resource. (14 California Code of Regulations § 4852.)

Second, as acknowledged by Latham's letter, it undertook significant renovations to the buildings and property in 2012, including "makeovers for the 40 guest rooms and the lobby."⁴ Development at the site was also expanded at this time to include a greenhouse, new orchards and gardens.⁵ Such improvements are certainly new, and call into question retention of the integrity of the 1975 structures, landscaping, and overall property.

The letter asserts a similar design by architect Robert Mosher was recently designated as a local historical resource by the City of San Diego—3250 McCall Street. But again, the structure was more than 50 years old when designated, having been built in 1951.⁶ Further, evidence was presented that the house retained its integrity of form, material, and landscaping. To the contrary, the Golden Door's structures, landscaping, etc. at its current location are not more than 50 years old, and have been subject to substantial renovations.

Third, concerning the Golden Door's structures/ buildings, the County does not concur that the "modern spa movement" is a significant event in terms of California's history and heritage.

² Lim, Sunamita, *Spa Living: Ideas, Tips, and Recipes for Revitalizing Body-Mind-Spirit*, 2007, at page 139, fn. 2. Available at:

<https://books.google.com/books?id=Do2ZVDiIaUcC&pg=PA139&lpg=PA139&dq=golden+door+complex+1975&source=bl&ots=LnhSkJi2gO&sig=bAHH2SBAccM6eJXSLhL-1eqOQmg&hl=en&sa=X&ved=2ahUKewjS8dvJoKLdAhURbK0KHSQTB6UQ6AEwB3oECAMQAQ#v=onepage&q=golden%20door%20complex%201975&f=false>

³ June 26, 2018 Latham & Watkins Letter Issue, 5, Attachment D. "Golden Door getting a rejuvenation of its own," L.A. Times, September 5, 2014. Available at: <http://www.latimes.com/travel/fashion/la-ig-0907-golden-door-20140907-story.html>.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ June 26, 2018 Latham & Watkins Letter Issue, 5, Attachment E. Staff Recommendation re: Herbert Kunsel/Robert Mosher House, Historical Resources Board (July 17, 2003). Available at: http://docs.sandiego.gov/reportstocouncil_attach/2004/04-026%20Atch%202.pdf

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Similarly and for this reason, the County does not concur the Golden Door facility is associated with the lives of persons important to California's history. The comments contend the architecture is distinctive; however, the County does not concur these are distinctive characteristics of a type, period, region, or method of construction. The site further has not yielded, and is unlikely to yield, information important in prehistory or history.

Fourth, concerning the landscaping, the County does not find these facilities qualify as historic. Latham's letter admits that such design was accomplished in 1975. At less than 50 years old, the landscaping does not qualify as historic. (14 California Code of Regulations § 4852.) And as with the buildings above, Latham has provided no evidence the integrity of landscaping onsite has been retained through expansions and renovations. To the contrary, the article attached to Latham's letter as Attachment 7 suggests that modifications were made to the landscaping shortly after completion—noting that "fine points" of Japanese landscaping were "not always appreciated by the visitors to the Golden Door" and were therefore altered to make the garden "palatable to Americans."

Latham's letter compares the landscaping to two other Japanese gardens that received historic designations and suggests the Golden Door's garden is similar. However both of the gardens referenced were more than 50 years old. Kotani-en was commissioned in 1918 and constructed from 1918-1924.⁷ By the time it received historic designation in 1976, it was over 52 years old. Storrier Stearns Gardens in Pasadena was built in the 1930s, over 70 years old when designated in 2005.⁸

Fifth, the Latham letter further provides no support for designating the entire site, some 600 acres, as "historically significant." The buildings and landscaping are limited to a small portion of the property. The comments also admit the site only recently in 2012 expanded from 377 acres to 600 acres. Lastly, the letter asserts the site contains characteristics of a rural historic landscape, but fails to show the site (or even a portion thereof) has been historically used by people or shaped or modified by human activity in a historically significant manner, as required.

For each of these reasons, the County does not concur that the Golden Door, its structures, landscaping, or entire site, constitutes a "historical resource" as designated under CEQA.

c. The Project would not Damage or Materially Alter the Golden Door

The County further disagrees that the Newland Sierra Project would result in a significant adverse effect to the Golden Door. The letter provides no factual support for its contrary contention.

⁷ Office of Historic Preservation, Kotani-En Historical Landmark, <http://ohp.parks.ca.gov/ListedResources/Detail/903>

⁸ National Register of Historic Places, Storrier--Stearns Japanese Garden, <https://npgallery.nps.gov/NRHP/AssetDetail?assetID=dd8f5e69-8dbb-470b-8a66-532bdc1492f3>

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The County, with assistance from archaeologists, the applicant, and the consulting tribes, analyzed impacts to cultural resources and developed the measures necessary to preserve and mitigate potential impacts on cultural resources. (See Final EIR Section 2.5, Cultural Resources; and Appendix I, Cultural Resources Report.) This effort included evaluating resources in the On-Site and Off-Site Area of Potential Effect (APE), and analyzing multiple road construction designs to minimize impacts to resources. Outside of the APE, the Project would have no potential to damage or materially alter buildings, landscaping, or other facilities.

The Golden Door was not identified as included in the APE, would not be damaged or materially altered by construction of the Newland Sierra Project. (See Final EIR Section 2.5, Newland Sierra Project Preliminary Grading Plan.⁹) Project on- and off-site construction would have no potential to damage or materially alter the Golden Door's alleged historical buildings, landscaping, or facilities. Further, no buildings, landscaping, or facilities associated with the Golden Door would be demolished, destroyed, altered, relocated, or otherwise materially altered as part of the Project. The Project would therefore have no historical impact on the Golden Door, even if it were a designated as a historical resource. (*Taxpayers for Accountable School Bond Spending, supra*, 215 Cal.App.4th at p. 1045; *Eureka Citizens for Responsible Gov't, supra*, 147 Cal.App.4th at p. 375.)

3. The Project does not Conflict with the Resource Protection Ordinance regarding historical resources.

The RPO requires that cultural resources be evaluated as part of the County's discretionary environmental review process for certain permit types. If cultural resources are found to be significant pursuant to the RPO, they must be preserved. (Final EIR p. 2.5-31.)

As detailed in the EIR, pursuant to the RPO, significant prehistoric or historic sites are sites that provide information regarding important scientific research questions about prehistoric or historic activities that have scientific, religious, or other ethnic value of local, regional, state, or federal importance. Such locations include the following (County of San Diego 2007a):

- Any prehistoric or historic district, site, interrelated collection of features or artifacts, building, structure, or object either:
 - a. Formally determined eligible or listed in the NRHP by the Keeper of the National Register; or
 - b. To which the Historic Resource (H designator) Special Area Regulations have been applied; or

⁹ Preliminary Grading Plan is available at, <https://www.sandiegocounty.gov/content/sdc/pds/ceqa/SP-15-001/NSDEIR.html>.

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- One-of-a-kind, locally unique, or regionally unique cultural resources which contain a significant volume and range of data and materials; and
- Any location of past or current sacred religious or ceremonial observances which is either:
 - a. Protected under Public Law 95-341, the American Indian Religious Freedom Act or PRC 5097.9, such as burial(s), pictographs, petroglyphs, solstice observatory sites, sacred shrines, religious ground figures, or
 - b. Other formally designated and recognized sites which are of ritual, ceremonial, or sacred value to any prehistoric or historic ethnic group.

Latham's letter contends the project is also inconsistent with the County's Resource Protection Ordinance, which provides for the protection and prevention of degradation of historic sites. But, for the reasons detailed above, the Golden Door site is not a historical resource. Further, the Newland Sierra Project will not physically damage, and will thus *fully preserve* the Golden Door, including its buildings and landscaping. Therefore, the Newland Sierra Project is consistent with the RPO.

4. The Project does not Conflict with the General Plan's protections for historical built environments.

The letter contends the project conflicts with the County General Plan's stated goal of protecting historical built environments and protecting rural settings. (See COS-8 "Protection and Conservation of the Historical Built Environment"; LU-2 "Maintenance of the County's Rural Character;" LU-5.3 "Rural Land Preservation.")

Goal CO-8 in the General Plan promotes the "Protection and Conservation of the Historical Built Environment Protection, conservation, use, and enjoyment of the County's important historic resources." As detailed above, the County does not concur the Golden Door is an important historic resource, in part or in total. Nevertheless, the Project would "protect and conserve" the Golden Door by causing no physical impact to the property or the building located on the property.

Consistency with all relevant General Plan Land Use policies was evaluated in detail in the EIR at Appendix DD, Land Use Consistency Analysis. The County refers the commenter to that appendix for further evaluation of land use consistency.

5. The EIR evaluated Aesthetic Impacts to the Golden Door.

The Latham letter contends the Newlands Sierra Project would result in impacts to scenic views and aesthetics at the Golden Door's property. The EIR evaluated the aesthetic impact of the project

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in Section 2.1, Aesthetics, which included evaluating impacts to the visual character and to views from the Golden Door.

As detailed in the EIR, “Development in the nearest planning area, the Valley planning area, would be located approximately 0.54 mile north of the resort, however, views to proposed development *would largely be obscured by resort perimeter landscaping and rising terrain located north of Deer Springs Road.*” (Final EIR p. 2.1-6.[italics added]) The letter’s claim that “[t]he EIR acknowledges hillsides facing the Golden Door and impact the views from the landscape areas within the Golden Door,” citing page 2.1-6, misrepresents this determination in the EIR.

The letter also contends that page 2.1-31 of the EIR indicates project construction will include, “the removal or destruction, of oak root systems that are part of the oak canopy that now exists in and around the Golden Door’s landscape, and provide a crucial part of the rural setting.” No support is provided for this claim in either the letter from Latham or at page 2.1-31 of the EIR. As shown on the right of way exhibits, no additional right of way is sought from the Golden Door on the south side of Deer Springs Road to construct roadway improvements.

The EIR acknowledges the grading for Deer Springs Road would entail the alteration of existing terrain; these project effects including to the Golden Door along Deer Springs Road are illustrated in visual simulations prepared for Key Observation Point/Key View 5 (EIR Appendix E, Visual Resources Technical Report, Figures 19a and 19b, Figures 20–22; see also, Appendix A to EIR Appendix E, Figures 13 through 16; EIR pp. 2.1-38, 2.1-40, 2.1-44). The EIR also evaluates views afforded to motorists traveling on Deer Springs Road (EIR pp. 2.1-31 and 2.1-32, Appendix A to EIR Appendix E, Figures 13–16). The County directs the commenter to Figures 2.1-8a, 2.1-8b, 2.1-9a, and 2.1-9b, which depict existing and proposed conditions for Deer Springs Road under Option A (two-lane Deer Springs Road) and Option B (four-lane Deer Springs Road). The local terrain that would be altered for Deer Springs Road widening is not referred to as particularly “important” in the San Diego County General Plan or other local planning documents, and *does not include the Golden Door’s property* (see EIR pages 2.1-17 through 2.1-25 [Deer Springs Road is not a scenic highway and lacks identified important attributes] and page 2.1-32).

As analyzed in the EIR Section 2.1.3.2,

[A]t Key View 5 a substantial cut into the south-facing slope located in the foreground and north of the westbound travel lane would be required to expand Deer Springs Road to two- or four-lanes (see EIR Figures 2.1-8a and 2.1-8b). As depicted in the visual simulations, the south-facing slope would be steep Dependent on seasonal rainfall, partial vegetative coverage is expected as illustrated in the Key View 5 and Key View 6 visual simulations.

When compared to existing conditions at Key View 5, the proposed landscape would appear orderly and less chaotic due to the underground installation of

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existing overhead utilities yet the density of plantings on the slope and regular occurrence of rocks would bear little resemblance to the existing visual pattern of dense chaparral and occasional boulder covered terrain.

Elsewhere along the Deer Springs Road corridor (such as at Key View 6; see EIR Figures 2.1-9a and 2.1-9b), proposed project roadway widening and planned improvements would have beneficial effects to the quality of existing views. As proposed, the project would soften the transition from Deer Springs Road and adjacent, unimproved parcels to the north through the installation of the landscape parkway and low vegetated slope, resulting in an increasingly coherent and harmonious visual pattern. The underground installation of existing overhead utilities along the corridor would similarly enhance the quality of views and support an improved visual condition.

Further, Section 2.1.3.1 analyzes impacts to scenic vistas. Impacts along Deer Springs Road are analyzed on pages 2.1-31 through 2.1-32 of the EIR. As described on page 2.1-32:

Despite the visibility of project components from segments of the roadway, the majority of views from Deer Springs Road lack particularly panoramic characteristics (i.e., long composition, seemingly limitless boundaries, clear and unstructured viewing conditions to background elements) due to rising, mountainous terrain and trees and overhead electrical infrastructure installed within the roadway right-of-way. In addition to chaparral and boulder covered terrain, the presence of rugged ridgelines surrounding the Twin Oaks Valley in the middle ground viewing distance creates co-dominant, competing visual features in the landscape that attract the attention of receptors in the area. Thus, this segment of Deer Springs Road is not considered to offer panoramic or valued focal vistas to motorists. The EIR determines that these specific impacts to Deer Springs Road would be less than significant. The County will include the comment as part of the Final EIR for review and consideration by the decision-makers prior to a final decision on the project.

The Draft EIR, Section 2.1, Aesthetics, evaluated project and cumulative impacts on the visual character or quality of the area. Such impacts were determined to be significant and unavoidable; and visual simulations were included in the Draft EIR, Figures 2.1-4a through 2.1-13, to present a “before and after” depiction of the project as experienced by viewers in the project vicinity. These figures allow the public and the decision makers to better conceptualize the anticipated visual changes following construction and implementation of the project. Please refer to Figures 2.1-4a through 2.1-13 for further visual information.

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6. Conclusion

In sum, the County does not concur that the Golden Door is a historical resource but, in any event, the Newland Sierra Project will not physically impact the Golden Door facility, structures, or landscaping. The County finds the EIR adequately evaluated potential impacts to historical resources and aesthetics/visual resources and no further analysis or mitigation is required.