

APPENDIX 8-4
Response to CAP Litigation

**Response to Letters from Latham & Watkins LLP and Chatten-Brown &
Carstens LLP on behalf of the Golden Door Properties, LLC and the Sierra Club
dated September 17, 2018 and September 18, 2018**

1. Introduction

The comment letters submitted by Latham & Watkins LLP on behalf of Golden Door Properties, LLC (“Golden Door”), dated September 17, 2018, and Chatten-Brown & Carstens LLP on behalf of the Sierra Club, dated September 18, 2018, are late letters 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 September 17 and September 18, 2018 letters from Latham & Watkins and Sierra Club. (See, CEQA Guidelines, §15088(a)).

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

2. The Court’s Order in the Actions Challenging the 2018 Climate Action Plan Does Not Prohibit the County from Considering the Project

The letters state that the County should suspend processing the Newland Sierra project (“Project”) and all General Plan Amendment (“GPA”) projects that rely on “out-of-County carbon offsets” because the Court in the actions challenging the 2018 Climate Action Plan (“CAP”) issued an order prohibiting the County from approving projects that use CAP Mitigation Measure M-GHG-1. The County does not concur with these comments for the reasons that follow.

A. The Newland Sierra Project’s EIR does not use, rely, depend on, or tier from CAP Mitigation Measure M-GHG-1

Golden Door states that the Newland Sierra EIR’s “current GHG mitigation measures (which specifically reference, include, and rely on ‘M-GHG-1’) ... constitute ‘use’ of or ‘reliance’ on the County’s new offset provision, M-GHG-1, and would therefore be in violation of the attached injunction from the Court.” (Golden Door letter, pp. 1-2.) However, as shown throughout these proceedings, the Newland Sierra EIR does not use, rely on, or tier from the CAP or its certified Supplemental EIR (including M-GHG-1 therein).

First, the Newland Sierra Draft EIR, including the commitment of the project applicant to achieve no net increase in GHG conditions over baseline conditions, predates the County's public release of the Draft CAP and associated Supplement to the GPU Program EIR ("CAP Supplemental EIR"). Specifically, the Notice of Preparation of the Project's EIR was publicly released in February 2015; and the Notice of Preparation of the CAP Supplemental EIR was not released until October 2016. Further, the Newland Sierra Draft EIR was publicly released in June 2017; and, thereafter, the County publicly released the draft CAP and associated EIR in August 2017. As such, Section 2.7, Greenhouse Gas Emissions, of the Draft EIR contained the following singular reference to the CAP when discussing the regulatory backdrop for the environmental analysis:

The County of San Diego (County) is in the process of development a Climate Action Plan (CAP) that will serve as a comprehensive strategy guide to reduce GHG emissions in the unincorporated communities of San Diego County. The Climate Action Plan will outline specific reduction methods residents and businesses can implement to reduce GHG emissions and aid the County meeting state-mandated GHG reduction targets. The County Climate Action Plan is anticipated to be completed by winter 2018.

(Newland Sierra Draft EIR, p. 2-7-26.) The CAP was not at all discussed in the Draft EIR's impact analysis because it did not exist.

Second, while Section 2.7, Greenhouse Gas Emissions, of the Newland Sierra Final EIR contains additional information on the CAP (because it was adopted following circulation of the project's Draft EIR), it explains that the Project "is not eligible for CEQA streamlining under the CAP" and that it provides other grounds (selected in accordance with CEQA Guidelines Section 15064.4 and Appendix G, and previously set forth in the Draft EIR) for determining the significance of the project's GHG emissions. (Newland Final EIR, p. 2.7-44.)

Nonetheless, Section 2.7 notes that the Project would implement all applicable CAP reduction measures, and achieve net zero GHG emissions through use of on-site and off-site reduction strategies (including carbon offsets). (*Ibid.*) As such, the Project would be "consistent" with the CAP. As explained below, however, consistency is not synonymous with reliance on a plan. Conflation of these two concepts — consistency and reliance — is misguided and not supported by the evidence in the record.

Third, if the Newland Sierra EIR had failed to assess the project's "consistency" with the CAP, Golden Door and the Sierra Club would have asserted that the CAP was an applicable plan that was required to be considered for consistency in the Newland Sierra EIR (citing CEQA Guidelines §15125(d)). However, now that the CAP has been adopted, and the Newland Sierra Final EIR considered the previously-developed mitigation framework of the Newland Sierra project for "consistency" with the CAP, Golden Door argues that the Project must be exclusively beholden to the CAP, with no other CEQA compliance pathway opportunities available to project applicants. The argument is contrary to CEQA and without merit.

Fourth, the Newland Sierra Final EIR contains Topical Response GHG-3: County's 2018 Climate Action Plan and that topical response makes clear that the Newland Sierra EIR expressly did not use, rely on, or tier from the CAP because of the long-standing CAP litigation. For that reason, the

Newland Sierra EIR provided a separate, stand-alone basis for its finding that the project's GHG emissions would not significantly impact the environment with implementation of its own mitigation measures:

It is important to note that the CEQA analysis prepared for the project's Draft EIR did not use, rely on, or tier from the CAP to streamline the project's environmental analysis. Rather, the Draft EIR rendered significance determinations (using the criteria contained in CEQA Guidelines Appendix G, and informed by CEQA Guidelines Section 15064.4 and 15126.4) that are independent of the CAP. *As such, in the event that the CAP does not withstand judicial scrutiny, the project's EIR would continue to provide a separate, stand-alone basis for the finding that the project's GHG emissions would not significantly impact the environment, with implementation of its own EIR Mitigation Measures M- GHG-1 through M-GHG-3.*

On this point, the County notes that the commitment of the project to achieve carbon neutrality, and the Draft EIR's corresponding basis to determine that impacts would be less than significant with mitigation, is supported by CEQA, State guidance, and case law. For example, the overall approach presented in the project's EIR (i.e., attainment of net zero GHG emissions through utilization of a portfolio of on- and off-site reduction strategies) accords to the approach developed by the State of California (and specifically the California Department of Fish and Wildlife and California Air Resources Board) for the Newhall Ranch Project, as well as the approach described for project-level CEQA analysis by the California Air Resources Board in its adopted *California's 2017 Climate Change Scoping Plan*.

(Newland Sierra Final EIR, Topical Responses, p. 94; italics added and in original.)

In other words, the Newland Sierra EIR *considers* the CAP, because it is prudent to do so under relevant provisions of CEQA (see, e.g., CEQA Guidelines Section 15125(d)). However, *consideration* of a plan does *not* equate to *reliance* on a plan.

- i. The County's CAP Mitigation Measure M-GHG-1 requires in-process and future GPAs to conduct a General Plan "consistency" evaluation

As stated, Golden Door and the Sierra Club incorrectly conflate consideration of in-process and future GPA projects for CAP consistency with using, relying on, or tiering from the CAP. As stated above, GPA project consideration of the CAP for consistency is not synonymous with using or relying on the CAP.

More specifically, GPA projects are required by CEQA to consider whether they conflict with applicable adopted plans. (See, e.g., CEQA Guidelines §§15064.4(b)(3), 15125(d); CEQA Guidelines Appendix G, Section VII(b).) For in-process and future GPA projects, this means those project EIRs must demonstrate consistency with the CAP." The Newland Sierra Final EIR

evaluated the Project's consistency with the CAP as a net zero GPA project (Option 2). The Project's Final EIR and record demonstrate the Project's consistency with the County's CAP.

Consistency with the CAP, however, is different than using, relying on, or tiering from the CAP. Here, the Project (and other GPA projects) conducted project-level GHG analysis based on separate CEQA compliance pathways to determine the significance of the project's GHG emissions, and proposed its own mitigation requirements. GPA projects with net zero GHG emissions like Newland Sierra do not interfere with the County's ability to meet its share of statewide GHG emissions reductions. The Project's Final EIR conducts the required consistency analysis and finds that the Project is consistent with the County's adopted CAP. It does not use, rely on, or tier from the CAP.

Golden Door selectively quotes from County Counsel's opposition briefs in the CAP litigation (which is discussed further below); however, taken as a whole, the briefing is consistent with the County's long-standing position as reflected in the EIRs and records of pending GPA projects. That position is that if the Court were to not allow the County to consider GPA projects that do not use, rely on, or tier from the CAP, the Court's order would exceed the relief sought in the CAP litigation and force the County to take several costly affirmative acts. (See, e.g., the County's Sur-Reply, filed Sept. 13, 2018, p. 5.) Fortunately, the Court's order does no such thing.

- ii. Even if Golden Door were to prevail in the CAP litigation, the GPA projects, including Newland Sierra, would not be affected

The Court's stay/injunction should be interpreted by reference to the potential relief that may be afforded to Golden Door and the Sierra Club if they prevail in the CAP litigation. Any relief afforded by the Court would need to directly relate to the project before it, namely, the CAP. Therefore, should the Court find that the CAP and its EIR do not withstand judicial scrutiny, it may direct that the County set aside all or portions of its CAP and EIR. Such an occurrence would return the County to the same position that existed pre-February 2018; namely, no CAP would be in place that would need be considered as part of the CEQA process, and projects requiring discretionary approvals would be required under CEQA to evaluate and mitigate environmental impacts without reference to a CAP.

This is the same factual setting in which the Newland Sierra EIR was prepared; it was prepared at a time when no CAP was in place. As such, and as explained throughout the EIR, the significance of the project's GHG emissions was evaluated not by use of or reliance on the CAP or its mitigation. To the contrary, non-CAP CEQA compliance pathways were used and relied upon, consistent with the guidance from the California Air Resources Board, State law, the 2015 California Supreme Court's decision in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife*, 62 Cal.4th 204 (2015) (*Newhall Ranch*), and other scientific experts.

- iii. The approach taken in the Newland Sierra EIR must be understood in historical context

Historical context also is critical to understand the approach taken by the County and applicants seeking project-specific GPAs. As made clear in the Court's order, the County's CAP has been the subject of controversy and litigation since the first CAP was adopted in 2012. And, that

controversy has not slowed with the County's adoption of the second CAP in 2018. To the contrary, two additional lawsuits specific to the 2018 CAP have been filed, in conjunction with the continuing pendency of the 2012 lawsuit. As such, and because the County neither places nor is required to place a moratorium on its evaluation of private applicant-sponsored projects while it prepares its own plans, many EIRs prepared by the County for specific projects have presented CEQA analytical pathways that are independent of and untethered to the CAP, in order to avoid adverse implications associated with the CAP's continuing uncertainty due to litigation.

Despite the County's decision to conduct a stand-alone environmental review for the Newland Sierra project independently of the then-forthcoming CAP, Golden Door now represents to the Board that, prior to the County's adoption of M-GHG-1 in conjunction with the February 2018 approvals for the CAP, "the County provided no authority or authorization for projects to use 'out of county' or 'off-shore offsets.'" This is misleading.

The authority to utilize carbon offsets, as explained repeatedly throughout the Newland Sierra EIR, stems from CEQA Guidelines Section 15126.4(c)(3)-(4), and has been recognized and affirmed by the California Air Resources Board, the California Department of Fish and Wildlife, and multiple air districts.

Further, contrary to Golden Door's representations, there is precedent in the County for use of carbon offsets. More specifically, when approving the Soitec Solar Development Project in February 2015 and the Lake Jennings Marketplace Project in January 2018, the County required, as a condition of approval, use of voluntary carbon offsets from a qualified GHG emission broker to offset total projected construction and operational GHG emissions.¹ The approach taken by the Soitec Solar Development Project, a certified AB 900 project,² and the Lake Jennings Marketplace Project is analogous to the approach set forth in the Newland Sierra EIR. The Board of Supervisors also approved the Sweetwater Vistas, Sweetwater Place, and Park Circle Projects with the use of carbon offsets in late 2017, prior to adoption of the CAP.

B. The CAP Proceedings Do Not Support the Claim that Hearing the Project Violates the Court's Ruling

- i. Golden Door's briefing shows the Court's ruling has no effect on the Newland Sierra project

¹ See https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/3.1.3_GreenhouseGasEmissions.pdf and [https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/LakeJenningsMarketplace/FinalEIR/2.3_Greenhouse%20Gas%20Emissions%20\(Aug%202017\).pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/LakeJenningsMarketplace/FinalEIR/2.3_Greenhouse%20Gas%20Emissions%20(Aug%202017).pdf).

² AB 900 projects are referred to as "environmental leadership" projects, and — when designated by the California Governor and CARB — are afforded meaningful CEQA streamlining benefits set forth in the Public Resources Code. AB 900 projects routinely use off-site carbon offsets to achieve the GHG neutrality eligibility requirement.

Prior to the Court’s ruling, Golden Door’s counsel made several notable concessions concerning the requested relief in the CAP litigation. These concessions show that the County would not violate the Court’s ruling by moving forward with the pending GPA projects.

For example, Golden Door states:

The proposed stay is narrowly defined. ... Any applicant may proceed with their proposed General Plan amendment, but would only be precluded from relying on the CAP’s offset program provided under MM GHG-1. The County is free to consider any such project that does not require reliance on this offset program.

(Golden Door Application for Stay, p. 20.)

Further, Golden Door makes clear:

[T]he County may continue to process and consider General Plan amendments under the proposed stay, so long as they do not rely on the program included in M-GHG-1 to mitigate a project’s GHG impacts.

(Golden Door Reply to Application for Stay, p. 9.) Additionally, Golden Door concedes:

The requested relief does not require the County to stop processing these projects, nor does it dictate the County’s decision on any of these projects. If it is true, as the County repeatedly argues, that none of the projects in process actually rely on the 2018 CAP approvals, the projects may nonetheless proceed even if a stay is granted.

(Golden Door Reply to Application for Stay, p. 11.)

The above concessions are in conflict with the statements made in Golden Door’s September 17, 2018 letter. Golden Door’s counsel also participated in the Court’s CAP hearing on the stay/injunction and never took the position that the County would “violate” the Court’s then tentative ruling, as now indicated in the Golden Door letter.

- ii. Comparing the Sierra Club’s [Revised Proposed] Order to the Court’s signed Order demonstrates the Court’s ruling does not apply to the pending GPA projects

Prior to the Court’s final ruling, the Sierra Club submitted a revised proposed order containing the following operative language:

During its review of greenhouse gas (“GHG”) impacts of development proposals on unincorporated County lands under the California Environmental Quality Act (“CEQA”), the County is stayed and/or enjoined from relying upon Mitigation Measure M-GHG-1, as contained within the County of San Diego Supplement to the 2011 General Plan Update Program

Environmental Impact Report, dated January 2018, *or any other out-of-County carbon credits used to offset a Project's GHG impacts.*

The Court's final ruling *rejected* the Sierra Club's text in bold italics, above. Specifically, the Court's Order granting the stay/injunction contains the following operative language:

During its review of greenhouse gas ("GHG") impacts of development proposals on unincorporated County lands under the California Environmental Quality Act ("CEQA"), the County is stayed and/or enjoined during the pendency of this matter *from relying upon Mitigation Measure M-GHG-1, as contained within the County of San Diego Supplement to the 2011 General Plan Update Program Environmental Impact Report, dated January 2018. ...*

(Order Granting Stay and Preliminary Injunction, p. 2, italics added.)

As evidenced by the above comparison, the Court was unwilling to extend its stay/injunction to include projects that do not rely on the CAP mitigation (M-GHG-1), but do use out-of-County carbon offsets.

- iii. The Reporter's Transcript illustrates Golden Door's acceptance of the scope of the stay/injunction without asserting the County would violate the Court's ruling if it went forward with individual projects

Before signing the Order Granting Stay and Preliminary Injunction, the Court held a hearing, counsel arguments were memorialized in the September 14, 2018 Reporter's Transcript, and Golden Door's counsel (Chris Garrett) conceded Golden Door was comfortable with the "scope" of the Court's stay/injunction, without asserting the County would violate the Court's ruling if it went forward with regard to individual projects:

Mr. Garrett: ... *And we're comfortable, Your Honor, with the Court's language in the ... tentative, and ... we would accept that scope.* However, the county may have something different to say.

And then the third point is that, I believe the county has different ideas and procedures for how they might seek exceptions and clarifications to the Court's ruling that, you know, can't be done today. ... I think what they may say is that they would like to get things *clarified with respect to individual projects.* And what I'm worried about is that in the course of the hearing today that might be invited error by the Court's part. That *I know the Court has been very eager to be sure, and we agree that, to the extent to which the Court is going to be making decisions about individual projects, rather than the matter in the project that's before the Court, that has to be done based on a record as to those projects, you know, with the opportunity for counsel for real parties, whoever, to participate if they want to.*

(RT, p. 6, italics added.)

In short, Golden Door concedes that the project before the Court (i.e., the County's CAP) is not the individual GPA projects. Instead, those other separate projects will have to be considered based on their own record and with opportunities for those project applicants and their counsel to participate in proceedings, separate and apart from the CAP litigation, *if* such projects are approved.

Consistent with the above, Golden Door's counsel expressed his "biggest concern:"

Mr. Garrett: ...[M]y biggest concern ... is that the county will try to make it so complicated that the Court will back off of the tentative, and then secondly, that the Court may be invited to start enmeshing itself in the details of particular projects which ... I think could be done in a *separate proceeding with a record with other parties* if that's what the county wants to do after the injunction and stay is issued.

(RT, p. 7, italics added.)

As noted, Golden Door's counsel did not assert that if the County goes forward with hearings for individual GPA projects and approves such projects, it will violate the terms and conditions of the Court's ruling. To the contrary, Golden Door's counsel advocated issuance of the stay/injunction, followed by *separate* proceedings based on project-specific records *and participation* of GPA project applicants and their counsel.

In response to Golden Door's counsel's arguments, the Court also made clear it would *not* stay and/or enjoin the County from proceeding with other separate GPA projects, absent the project applicants *because their due process rights would be affected*. The Reporter's Transcript states:

Mr. Garrett: ...What I'm concerned about is that the county is inviting the Court to make ... a due process error by inviting the Court to examine the records of particular proceedings, which I don't think is necessary.

The Court: *In the absence of project applicant* [?]

Mr. Garrett: That's correct. And so what I'm saying ...

The Court: *I would not do that.*

Mr. Garrett: Right. Okay, well then great. ...

The Court: *I would not do that because that would affect the due process rights of that project applicant, and absent an intervention by that project applicant I don't think it would be right for me to be making decisions about that project applicant's project, do you?*

Mr. Garrett: *No, I don't at all.* ...

The Court: That's where I thought you were going. I just wanted to make sure that I was [comprehending] accurately what you were saying.

Mr. Garrett: That's right.

The Court: Okay.

(RT, pp. 11-12, italics added.)

As shown by the Court's comments, above, the Court was concerned about issuing a stay and/or injunction that would adversely affect the due process rights of non-parties to the CAP litigation. Indeed, the Court made clear it "*would not do that.*"

As a result, the County does not concur that the Board will "violate" the Court's ruling by considering and potentially approving or conditionally approving the Newland Sierra project, or any other GPA project that does not use, rely or depend on, or tier from the CAP or its mitigation (M-GHG-1).

- iv. The Court's September 14, 2018 Minute Order does not enjoin the County from moving forward with the pending GPA Projects (including the hearing on the Newland Sierra EIR and project)

In the Latham & Watkins letter, Golden Door's counsel selectively quotes from page 7 of the Court's ruling. The full context of the Court's ruling makes clear it does not enjoin the County from moving forward with the pending GPA projects, including the Newland Sierra hearing currently scheduled for September 26, 2018. In context, the Court's ruling provides:

The County is prohibited from using its new offset proposal for approvals of pending General Plan amendments until the court's final judgment in these proceedings or further order of the Court of Appeal.

A stay is granted to ensure that the carbon offset program in M-GHG-1 is consistent with the County's General Plan that requires GHG reductions to occur within the County. ... A stay does not enjoin the County from considering projects; only use of the CAP offset program provided in M-GHG-1 is stayed. The stay does not preclude projects currently in process, if the projects do not utilize the offset program provided in M-GHG-1.

(Court Minute Order, p. 7, italics added.)

The Newland Sierra record demonstrates the County is not using, relying or depending on, or tiering from the County's CAP or its mitigation. Thus, on its face, the Court's Minute Order is not implicated or violated because the order only prohibits the County from "using" its CAP offset program for approving pending GPA projects. If such projects do not use, rely or depend on, or tier from the County's CAP or its mitigation, there can be no violation of the Court's ruling.

Other portions of the Court's Minute Order are pertinent and not cited by Golden Door. For example, the Court's ruling confirms:

The stay/injunctive relief does not prohibit all projects, only those reliant on the use of the program set forth in M-GHG-1. The stay/injunctive relief

does not enjoin the use of the CAP in its entirety for all potential development. While the stay or injunctive is in place, *the County may consider any project that does not depend on the use of the M-GHG-1 program.*

(*Id.* at p. 8, italics added.)

Based on the above ruling, the County may consider any GPA project so long as those projects do not use, rely or depend on, or tier from the mitigation contained in the County's CAP. Further, the best evidence is found *not* in the pleadings and documents comprising the CAP litigation, but rather the EIRs and administrative records of each of the GPA projects. Those project-level EIRs and records constitute the best evidence that such projects do *not* use, rely or depend on, or tier from the CAP or its mitigation.

Further, the Court Minute Order clarified:

A stay and/or preliminary injunction *does not preclude the project proponents from pursuing their projects.* Also, the projects *may proceed, if the projects do not rely on the M-GHG-1 offset program.*

(*Ibid.*, italics added.)

This portion of the Court's ruling makes clear that the GPA projects "may proceed, if the projects do not rely on the [CAP] M-GHG-1 offset program." (*Ibid.*)

- v. The Court's final "Order Granting Stay and Preliminary Injunction" is not an impediment to moving forward on the pending GPA projects

On September 14, 2018, after the Court's Minute Order was issued, the Court prepared and signed its own "Order Granting Stay and Preliminary Injunction." The Court made clear that its signed order "was consistent" with its Minute Order. (Court Minute Order, p. 8.) In the final "Order Granting Stay and Preliminary Injunction," the Court stated:

1. During its review of greenhouse gas ("GHG") impacts of development proposals on unincorporated County lands under the California Environmental Quality Act ("CEQA"), the County is stayed and/or enjoined during the pendency of this matter *from relying upon Mitigation Measure M-GHG-1, as contained within the County of San Diego Supplement to the 2011 General Plan Update Program Environmental Impact Report, dated January 2018.* This stay and injunction remains in effect pending a decision on the merits of the case.

(Order Granting Stay and Preliminary Injunction, p. 2, italics added.)

Again, the Court made clear that the County is stayed and/or enjoined from "relying upon" M-GHG-1, as contained in the CAP Supplemental EIR.

The County has reviewed the EIRs and administrative records with regard to the pending GPA

projects cited by Golden Door and the Sierra Club. Based on the information in those records, the County finds that these projects do not rely on M-GHG-1, as contained in the CAP Supplemental EIR.

In sum, there is no “violation” of the Court’s ruling or order, and no reason exists to “remove” all GPA projects from the Board’s agendas.

3. Interpretation of the County’s General Plan

Though not addressed in these specific Golden Door and Sierra Club letters, in the CAP litigation, Golden Door and the Sierra Club contend that the use of carbon offsets from outside of the County is inconsistent with the County’s General Plan Update (“GPU”) Program EIR Mitigation Measure (“MM”) CC-1.2, which they say geographically limits reductions in GHG emissions to offset projects *within* the County only. As such, they contend the use of offsets in CAP Supplemental EIR Mitigation Measure M-GHG-1 is inconsistent with MM CC-1.2.

As explained below, the County does not agree with this interpretation of its General Plan language. As explained below, the County finds there is no geographic limitation on where carbon offsets may occur, whether within the County or outside the County, in its General Plan goals or policies, or in MM CC-1.2.

County General Plan Goal COS-20, titled, “**Governance and Administration**,” states:

Reduction of community-wide (i.e., unincorporated County) and County Operations greenhouse gas emissions contributing to climate change that meet or exceed requirements of the Global Warming Solutions Act of 2006, as amended by Senate Bill 32 (as amended, Pavley. California Global Warming Solutions Act of 2006: emissions limit).

(County General Plan, Conservation and Open Space Element, p. 5-38.)

County Policy COS-20.1, titled, “**Climate Change Action Plan**,” states:

Prepare, maintain, and implement a Climate Action Plan for the reduction of community-wide (i.e., unincorporated County) and County Operations greenhouse gas emissions consistent with the California Environmental Quality Act (CEQA) Guidelines Section 15183.5.

(County General Plan, Conservation and Open Space Element, p. 5-39.)

GPU Program EIR MM CC-1.2 implements General Plan Goal COS-20 and General Plan Policy COS-20.1, as shown:

Prepare a Climate Action Plan for the reduction of community-wide (i.e., unincorporated County) and County Operations greenhouse gas emissions consistent with State legislative targets, *as described in General Plan Goal COS-20*, and *consistent with CEQA Guidelines Section 15183.5* or as amended, *as referenced in General Plan Policy COS-20.1*. ...

(Errata No. 1, Board of Supervisors Hearing, Feb. 14, 2018, Item No. 1, Attachment F-1, Ex. A; italics added.)

In interpreting GPU Program EIR MM CC-1.2, Golden Door and the Sierra Club contend all GHG reductions must occur within the unincorporated County. Such an interpretation is inconsistent with the plain meaning of MM CC-1.2.

MM CC-1.2 requires preparation of a CAP that reduces GHG emissions from community-wide and County operations. Neither MM CC-1.2, Goal COS-20, nor Policy COS-20.1 place a geographic limit on where GHG reductions must occur. Said differently, community-wide and County operational GHG emissions must be reduced, and that reduction is not geographically limited by any term or phrase in MM CC-1.2, Goal COS-20, or Policy COS-20.1. Indeed, the County submits that such reductions can and should occur through all available means, including carbon offsets within the County, offsets in the region, offsets in California, offsets in the U.S., and offsets internationally. If the County intended General Plan Goal COS-20 to be interpreted as suggested by Golden Door and the Sierra Club, the Goal would have stated that the County is to prepare a CAP to reduce community-wide and County operational GHG emissions *only through reduction strategies undertaken within the unincorporated County boundary*. General Plan Goal COS-20, Policy COS-20.1, and MM CC-1.2 say no such thing.

The County's interpretation of its own General Plan and associated mitigation as not imposing geographical restrictions on GHG reduction strategies is consistent with the global nature of GHG emissions and the science that GHG emissions do not remain within any particular air basin, but rather are distributed throughout the earth's atmosphere. The interpretation set forth by Golden Door and the Sierra Club is contrary to this science and the regulatory guidance found in CEQA (CEQA Guidelines, §15126.4), the California Air Resources Board's Scoping Plan, the statewide Cap-and-Trade program, case law, and other statewide laws and regulations. Indeed, at the time the County adopted its CAP and related mitigation, the California Supreme Court had already addressed the global nature of GHG emissions in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, and the County was aware of that decision well before adopting the CAP and related mitigation. The California Supreme Court — agreeing with scientific experts — recognized “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.” (*Center for Biological Diversity*, 62 Cal.4th at pp. 220-221.) Importantly, in interpreting its own General Plan, the County is guided by basic principles of plain meaning, context, and avoiding absurd results. For example, when considering the CAP and its associated mitigation, the County was aware of Goal COS-20 and Policy COS-20.1. The County CAP mitigation (M-GHG-1) includes a geographic priority for reducing GHG emissions, with a focus on on-site reductions through project design features and mitigation, and offsets within the County, California, the U.S., and internationally. (See Newland Sierra EIR Appendix JJ-21, which contains excerpts from the County Supplement to the 2011 GPU Program EIR (Jan. 2018); refer specifically to Master Response 12, p. 8-52, therein.) As such, when adopting its CAP (at which time it also amended Goal COS-20), the County noted:

The County performed a search of these registries for the location of projects that are listed to sell carbon credits. At the time of this writing [Jan.

2018], there is one project out of approximately 650 projects listed on CARB-approved registries located within San Diego County. The project is a reforestation project located in Cuyamaca State Park and the credits are not listed because the trees have not reached maturity. *Therefore, there is very little opportunity currently to purchase carbon offset credits within San Diego's unincorporated area and the County will allow the use of offset credits from outside of the boundaries of unincorporated area as directed under CAP Mitigation Measure M-GHG-1.*

(See Newland Sierra EIR Appendix JJ-21, which contains excerpts from the County Supplement to the 2011 GPU Program EIR (Jan. 2018); refer specifically to Master Response 12, p. 8-53, therein.)

It would be an absurd result for the County to place a geographic limitation on where GHG mitigation must occur, while at the same time recognizing the extremely limited “opportunity” to purchase carbon offsets within the unincorporated County area. The result also would be absurd because the effect of such a limitation would be to prevent some projects from fully mitigating GHG emissions where feasible mitigation (offsets) is otherwise available. This would effectively force projects to cause significant GHG impacts, and to take significant unavoidable GHG impact findings with overriding considerations (authorized by CEQA), which has the anti-environmental effect of exacerbating GHG emission increases (not avoiding or minimizing them).³

In short, the County finds that reductions that occur elsewhere are just as effective at addressing GHG emissions, and no evidence exists that the County intended to eliminate this effective reduction opportunity with its General Plan goals or policies, or by MM CC-1.2. Thus, the General Plan does not prohibit, nor was it intended to prohibit out-of-County offsets as a tool in reducing global GHG emissions.

Please also refer to Response to Comment O-1-142, Appendix DD, and Appendix JJ-21 (in particular GPU Program EIR Supplement, EIR Master Response 12 – Mitigation Hierarchy and Use of Carbon Offset Credits therein).

Even if General Plan Goal COS-20, Policy COS-20.1, and MM CC-1.2 continue to be misinterpreted as requiring offsets within the County (an erroneous interpretation), the Newland Sierra Final EIR mitigation (MM-GHG-1 and MM-GHG-2) impose a geographic priority system with respect to the purchase of carbon offsets, with the highest level of priority given to local offsets. This mandated priority system is compatible with the erroneous interpretation of General Plan Goal COS-20 (and other implementing mitigation) offered by Golden Door and the Sierra Club, because a given project need not be in “perfect conformity” with a general plan goal or policy. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 637.)

³ Surprisingly, the local Sierra Club Chapter appears to be arguing against implementing carbon offsets (regardless of the location or source) from reputable CARB-approved registries; offsets that benefit the environment in response to the global nature of GHG emissions.

Relatedly, General Plan Goal COS-20 must also be read in the context of the policies that guide its implementation. As background, the relationship between Goals, Policies, and Implementation Measures is described in the County General Plan on pages I-5 and I-6:

- (a) Goals describe *ideal future conditions* for a particular *topic*, such as town centers, rural character, protection of environmental resources, traffic congestion, or sustainability. Goals tend to be *very general and broad*.
- (b) *Policies provide guidance* to assist the County as it makes decisions relating to each goal and indicates a commitment by the County to a particular course of action. The policy is carried out by implementation measures. While every effort has been made to provide clear and unambiguous policies, the need for interpretation will inevitably arise. The authority of interpretation lies with the County and will be enacted through its implementation measures and decisions. Therefore, the Implementation Plan should be reviewed for a complete understanding of each policy.
- (c) Implementation Measures, adopted by the County in a separate Implementation Plan, identify all the specific steps to be taken by the County to implement the policies. They may include revisions of current codes and ordinances, adoption of plans and capital improvement programs, financing actions, and other measures that will be assigned to different County departments after the General Plan is adopted.

For Goal COS-20, the General Plan does not set forth policies envisioning direct application to individual projects, but rather policies envisioning changes to County operations and the creation of applicable plans.

Policy COS-20.1 directs the County to implement a Climate Action Plan. The policy is not applicable to individual projects (like the pending GPA projects, including Newland Sierra). And, CEQA Guidelines Section 15064.4 does not require that the County use a climate action plan to evaluate the environmental significance of a project, and for the reasons set forth in Topical Response GHG-3, the Newland Sierra project does not use, rely on, or tier from the County's 2018 Climate Action Plan (or its mitigation).

In the context of global climate change, this structure provides the necessary flexibility to address the multi-faceted and inter-related tools to reduce overall GHG emissions.