Newland Sierra is Inconsistent with General Plan Affordable Housing Policy

- General Plan Policy H-1.9 States:

  "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."

- The Newland Sierra Project includes 2,135 housing units and ZERO units of affordable housing.

- It is legally permissible to require Affordable Housing.

- The Newland Sierra Project is therefore inconsistent with the General Plan Affordable Housing Policy and cannot be approved.

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April 17, 2018

VIA HAND DELIVERY

San Diego County Board of Supervisors
County Board of Supervisors
1600 Pacific Highway, Room 402
San Diego, CA 92101
Attn: Clerk of the Board of Operations

Re: Housing Affordability within San Diego County; Agenda Item 5

Dear Supervisors Cox, Jacob, Gaspar, Roberts, and Horn:

As you know, we represent the Golden Door Properties LLC (the "Golden Door"), which owns and operates an award-winning spa and resort that opened in 1958, along with sustainable agricultural operations. Adjacent to the Golden Door, the Newland Real Estate Group, LLC ("Newland") has proposed a revised Merriam Mountains project, known as the "Sierra" project (the "Newland Sierra Project" or "Project") on property located near Deer Springs Road. Newland's proposal includes 2,135 residential units but fails to include a necessary affordable housing component.

We understand the Board is considering requesting the Chief Administrative Officer to investigate options to promote construction of homes in the unincorporated region and to close the housing gap. The Golden Door has employees of all income levels who need access to more affordable housing within North County. However, the proposed Newland Sierra Project is not located on a site that the County has identified for new housing construction in the North County metro area (see, e.g., Smart Growth Opportunity Areas, Figure H-2, General Plan Housing Element), it does not provide any affordable housing, and its market analyses are outdated and are inaccurate. Newland Sierra defines "affordable" as "assuming 4.0 percent interest rate, 10 percent down payment and a 35 percent of household income for housing." However, interest rates today are higher (4.625%) and rising, and federal standards define "affordable" as costing "no more than 30% of the monthly household income for rent *and* utilities."[1] And Newland

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[1] See Enclosure 1; see also U.S. Dept. of Housing and Urban Development, *Affordable Housing*, https://www.hud.gov/program_offices/comm_planning/affordablehousing/ (last visited Apr. 17, 2018); San Diego Housing Federation, *Frequently Asked Questions*, https://www.housingsandiego.org/find-housing-faq (last visited Apr. 17, 2018).

Sierra has refused to commit to legally commit to providing affordable housing, incorrectly claiming on its website that the County has no such requirements.[2]

Accordingly, if the County were to approve the Newland Sierra Project, it would violate the County's General Plan because the Project lacks the required affordable housing which is expressly specified as necessary in the County's General Plan. (See General Plan Policy H-1.9; see also Government Code § 65300.5, *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 635-636 [project must comply with specific and mandatory general plan policies].)

Existing County Policies Require an Affordable Housing Component for General Plan Amendment Projects. The County's General Plan already contains a policy requiring that **"developers [ ] provide an affordable housing component when requesting a General Plan amendment for large-scale residential project[s] when this is legally permissible.** (General Plan, Policy H-1.9)(emphasis supplied). Current California law does make a mandatory "affordable housing component" legally permissible. Thus, the Board of Supervisors has the existing legal authority under California law to require an affordable housing component in every project that requires a General Plan amendment, as specified in Policy H-1.0. Thus, the Chief Administrative Officer and County Counsel, and the Board of Supervisors, have a mandatory duty under the County's adopted General Plan to require affordable housing conditions that are "legally permissible" under California law in order to implement the County's existing affordable housing policy embodied in Policy H-1.0

As it stands now, the County Board of Supervisors is required to impose a condition requiring an affordable housing component for projects seeking a General Plan amendment. The pending Newland Sierra project does not contain such an affordable housing component, and therefore is inconsistent with the existing General Plan. The courts have explained what "legally permissible" means within the context of affordable housing:

> [I]t is well established that ***price controls are a constitutionally permissible form of regulation with regard to real property*** as well as to other types of property or services. . . . Accordingly, just as it would be permissible for a municipality to attempt to increase the amount of affordable housing in the community and to promote economically diverse developments by ***requiring all new residential developments to include a specified percentage of studio, one-bedroom, or small-square-footage units, there is no reason why a municipality may not alternatively attempt to achieve those same objectives by requiring new developments to set aside a percentage of its proposed units for sale at a price that is affordable to moderate- or low-income households***.

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[2] See Enclosure 2; see also Newland Sierra *FAQ*, *Types of Housing*, https://www.newlandsierra.com/faq/ (last visited Apr. 17, 2018).

(*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 [emphasis added] ("*CBIA*").) Therefore, the County may impose price control requirements on proposed new developments or require new residential developments to include a specified percentage of affordable units. The pending Newland Sierra project does not include either, despite the County's General Plan policy requiring "legally permissible" action to ensure that General Plan amendment projects include an affordable housing component.

The County May Immediately Impose an Affordable Housing Requirement on Newland Sierra. Implementing a requirement for a percentage of affordable homes within a new development is something the County can immediately implement and is required to implement under the express provisions of the General Plan. The General Plan policy is already in place that imposes a requirement on the pending Newland Sierra Project. Here, there is a clear nexus between the imposition of affordable housing requirements on development and the effects on the region. (See e.g. *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643 [government may impose permitting condition without running afoul of the Takings Clause if it demonstrates an essential nexus and reasonable relationship between the permitting condition and a deleterious public impact of the development].)

In any event, the California Supreme Court has ruled that no "nexus" requirement applies to a condition requiring an affordable housing component for a residential development project. (*CBIA*, *supra*, 61 Cal.4th at 474-75, 479 [rough proportionality/nexus requirements do not apply to restrict developer's use of property].) The Supreme Court relied upon *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854 to reach this conclusion. (*Id*. at 475-76.) *Ehlrich* involved the imposition of conditions on a case-by-case basis, rather than through a broader inclusionary housing ordinance, enabling a greater amount of discretion for the deployment of the city's police power. (*Ehlrich*, *supra*, 12 Cal.4th at 869.) As such, the County may rely on its existing General Plan and implement appropriate inclusionary zoning requirements as a project condition on Newland Sierra prior to project approval. (*CBIA*, 61 Cal.4th at 477 ["Moreover, as we have explained above, the validity of the ordinance's requirement that at least 15 percent of a development's for-sale units be affordable to moderate- or low-income households does not depend on an assessment of the impact that the development itself will have on the municipality's affordable housing situation.].)

Though the law on this issue is firmly established, i.e., the County certainly does have the authority today to impose an affordable housing condition on the Newland Sierra project, if County Counsel somehow disagrees with this legal conclusion and believes that further steps are needed to make an affordable housing component "legally permissible," then County Counsel should be directed to prepare any appropriate documents needed to implement this mandatory portion of the adopted General Plan, and any processing of the current General Plan amendment project of Newland Sierra project, should be suspended until the County adopts an ordinance to implement its own General Plan requirements. The County could simply impose the same requirement for affordable housing as upheld by the California Supreme Court in the City of San Jose case, using the wording of any ordinance or conditions adopted by the City of San Jose. Along with any other General Plan change or zoning ordinance amendment that is included in the Newland project approvals, County staff and the County Counsel can simply include project

conditions and/or an ordinance adopting affording housing requirements approved in the San Jose case, at the same time as the Board considers any other project approvals.

We ask that the County Chief Administrative Officer and County Counsel be directed to immediately propose project conditions or any other legal documents required to implement General Policy H-1.9 for the Newland project, and no further processing of the Newland project should occur until these actions are taken to implement General Plan Policy H-1.9. If County Counsel concludes that General Plan Policy H-1.9 is unenforceable, and the County lacks the legal authority to impose conditions requiring affordable housing components under the terms of that Policy, the Board should request County Counsel to describe the reasons for this conclusion.

Failure to pay attention the mandatory requirements of General Plan Policy H-1.9 will only result in needless delays and disruptions in any decisions the Board may make with respect to new developments covered by this Policy, such as Newland.

We thank you for your time and attention to our comments, and ask that they be incorporated both into the administrative record for the Newland Sierra Project and this Agenda Item 5. Please do not hesitate to contact me should you have any questions.

Best regards,

Christopher Garrett

Christopher W. Garrett
of LATHAM & WATKINS LLP

cc: Kathy Van Ness, Golden Door
Darin Neufeld, County Planning and Development Services
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