



Los Angeles County Department of Regional Planning

Planning for the Challenges Ahead



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October 26, 2017

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FROM: Patricia L. Hachiya, AICP, Supervising Regional Planner
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SUBJECT: **PROJECT NO. 2017-003723-(All Districts)**
PLAN NO. RPPL2017006228
AMENDMENT TO TITLE 22 FOR SIGNIFICANT ECOLOGICAL AREAS
NOVEMBER 8, 2017 – AGENDA ITEM NO. 6

BACKGROUND

This project is a component of the Los Angeles County (County) Significant Ecological Areas (SEA) Program, and is an amendment to Title 22 (Zoning Ordinance) of the County Code that regulates development within an SEA. The SEA ordinance amendment was first considered by your Regional Planning Commission (Commission) on April 23, 2014, and after several public hearings, was taken off calendar on October 8, 2014. Commission public hearings resumed on a revised SEA ordinance on May 17, 2017.

SUMMARY OF RECENT PUBLIC HEARINGS

During your May 17, 2017 public hearing, staff provided an overview of the SEA program. During your July 12, 2017 public hearing, staff presented the latest draft of the SEA Ordinance (i.e. Draft Nine). One speaker testified during the July 12, 2017 hearing, requesting that additional language be added to the SEA ordinance.

During the July 12, 2017 hearing, there was extensive Commission discussion regarding the draft SEA ordinance. This discussion included requests for further clarification on the definitions, exemptions, the procedure, the difference between a biological constraints analysis and biota report, the open preservation requirements including determination and process for in lieu fees, and its relationship with the pending Accessory Dwelling

Units (ADU) ordinance. More information was also requested by your Commission regarding the number of permits processed, the draft implementation guide, and the overall intent and purpose of the SEA ordinance. Your Commission also directed staff to conduct additional outreach given that there was only one testifier in attendance. Specific questions were raised during the July 12, 2017 hearing, which are answered in further detail below.

The Commission continued the matter to November 8, 2017 and asked staff to return with the requested information as well as a SEA Implementation Guide.

ADDITIONAL INFORMATION

The following is additional information in response to questions and comments raised during your July 12, 2017 Commission hearing:

1. SEA Ordinance Applicability for Land Division Projects

During the July 12, 2017 hearing, your Commission asked about land division projects, and whether revised environmental regulations can apply to these approved tentative maps.

As your Commission may be aware, land divisions are regulated by the state Subdivision Map Act as well as Title 21 (Subdivision Ordinance) of the County Code. A tentative map for a land division is approved through the public hearing process, and a final map must be recorded to finalize the land division and authorize construction and infrastructure improvements. More likely than not, the time period between tentative map approval and final map recordation may last for years.

The Subdivision Map Act sets specific timeframes for how long tentative maps may be considered valid under various circumstances. If a tentative map is filed and approved as “vesting,” the Subdivision Map Act explicitly allows the land division to be subject only to those regulations applicable at the time the tentative map application is deemed complete, throughout the life of that project.

Therefore, in response to the question posed by your Commission:

Even as we update our plans and policies, we allow approved land division maps, even those 20, 30 years old, to adhere to old plans and policies. How do other jurisdictions throughout the state address approved land division maps, particularly when they update plans and policies regarding resource protection?

All jurisdictions throughout the state are required to comply with the Subdivision Map Act as it applies to approved land divisions. If the approved subdivision tentative map has not expired, then the Subdivision Map Act provides for legal time extensions of maps, which for various reasons could cumulatively allow a map to remain valid for more than 20 years. The Subdivision Map Act is also explicit that a vesting map has a “vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved” [Gov. Code Section 66498.1(a)]. This means that if a future jurisdiction has updated plans and policies regarding resource protection, any approved vesting tentative maps approved prior to the change in that jurisdiction cannot be required to comply with those updated plans and policies. Rather, pursuant to state law, those approved vesting maps can only be required to comply with those regulations in effect at the time the application was deemed complete.

Therefore, other jurisdictions throughout the state are consistent with the County’s processing of approved land division maps, and particularly vesting tentative maps, as it relates to applicability of updated resource protection plans and policies.

The Commission also asked:

Are there options to handle final and tentative maps differently?

Unfortunately, there are no options to handle the final and tentative maps differently. Due to the reasons cited in the Government Code, any approved final or tentative map confers a right to proceed with development as long as the map has not expired and the proposed development is in substantial compliance with an approved map. (Section 66498.9(a), (b), and (c))

2. SEA Permit Activity (2007-2017)

During the July 12, 2017 hearing, your Commission considered the likelihood that the number of projects requiring SEA review will increase given the SEA boundaries expanded by the County’s General Plan and Antelope Valley Area Plan updates. Your Commission discussed the potential increase in workload for the County biologists, and requested additional information on how many applications have previously been filed within SEAs.

As part of the proposed SEA review process, County biologists will be much more involved in counseling and reviewing biological information at the pre-application filing stage. Although additional demands are likely for the biologists, it is important to

understand that the number of projects in SEAs have historically been few in comparison to the total numbers of applications filed in the department, and will likely remain as such.

Below is data collected for applications filed within an SEA during a 10-year period (2007-2017):



* Not subject to SEA review, but located within an SEA

Please note:

- SEA Conditional Use Permits (CUPs) were those filed and reviewed by the SEA Technical Advisory Committee (SEATAC), including discussion items as well as consent;
- Ministerial Site Plan Reviews were for single-family residential projects, which are currently exempt from the SEA ordinance. No SEATAC review was necessary.

Based on the information above, the average number of projects filed within SEAs equals:

- Per year: 9, itemized as follows:
 - 6.3 projects required SEA review (under the present zoning requirements).
 - 2.7 projects were exempt.

With the proposed SEA Ordinance amendment, the number of projects requiring SEA review could increase as the single-family residence exemption no longer applies outside the Antelope Valley. This is estimated to mean possibly three more projects per year, and yet is highly dependent on the design of such projects and whether they can avoid or minimize disturbance of onsite SEA resources.

This change in possible number of projects also does not account for differences in the type of SEA review. Currently, the SEA ordinance requires a discretionary Conditional Use Permit (CUP) and SEATAC review for all development subject to the ordinance. As proposed through this SEA Ordinance amendment, the appropriate SEA review would depend on impact to biological resources. Projects requiring the discretionary CUP and SEATAC review may decrease overall as more projects may qualify for ministerial SEA review under the new ordinance.

3. Projects Subject to SEA Review

During the July 12, 2017 hearing, your Commission asked for clarification about the procedures, including under which circumstances projects are subject to SEA review. These included questions of whether demolition activity should be required to undergo SEA review, whether a size threshold is appropriate for uses beyond single-family homes, and whether or how accessory equestrian facilities are regulated compared with commercial equestrian facilities. Your Commission also requested a flowchart that graphically depicts the SEA review process, which is further described under No. 4 below.

The intent and purpose of the SEA ordinance is to encourage projects to avoid or minimize impacts to SEA resources through design. While our Title 22 of the County Code typically regulates by land use (i.e. assigning level of permitting and development standards based on a proposed use in a particular zone), this is not effective for avoiding or minimizing impacts to biological resources. When regulating by use, it is difficult to assign a clear and efficient process because the impact to resources is highly dependent on project design.

The latest draft of the SEA ordinance that was considered by your Commission, relied on the existing model of regulating by land use and assuming the worst case scenario, used the most destructive example of a type of use, and proposed design standards accordingly. This model placed a high burden on what could be low levels of resource disturbance, and did not provide an incentive to design in less impactful ways. It also placed emphasis on following a procedure rather than achieving the positive outcome of avoiding or minimizing impacts.

Based on your Commission's comments, staff has since looked closely at the type of development activity expected to impact biological resources, and how staff can work with applicants in designing projects to protect these resources. The County biologists and planners held a series of brainstorming sessions to explore these possibilities. The outcome of those sessions is an alternative approach we propose for your consideration.

Alternative Approach

It became clear that the best way to accurately and efficiently assign the appropriate review process was to assess potential SEA resource impacts early through a basic biological inventory. This inventory would occur before an application is filed, and would entail mapping of vegetation communities, water resources, presence of sensitive species and their habitat, and mature native trees within the SEA portion of the property. Based on the extent of a project's removal of vegetation and impact to SEA resources, the project would be subject to discretionary review.

As part of this approach, we expect impact thresholds to be further developed. While the staff biologists continue to work on developing these thresholds for your future consideration, attached is a summary of the initial concept that determines permit review based on vegetation removal thresholds (please see Attachment 1).

The benefits of this early biological inventory are significant for applicants. While this requires some investment in time and resources early in the process, this basic inventory allows applicants to understand the biological constraints of the property, which in turn would help guide where development should occur and how development should be designed. This information improves the quality of counseling the County Department of Regional Planning (Department) can provide to applicants, and allows for a clear streamlined review that focuses on addressing actual project impacts to any SEA resources.

This alternative approach is also reflected in the process flowchart, further described under No. 4 below.

4. Implementation Guide and SEA Review Process Flowchart

During the July 12, 2017 hearing, your Commission requested a draft of the SEA Implementation Guide, which is proposed to include a tree species list and additional resources for applicants. Your Commission also requested a flowchart that graphically depicts the SEA review process, which is intended to be included in the Implementation Guide.

Substantial progress has been made on a draft SEA Implementation Guide, but a complete draft is not yet available for public review. A table of contents has been attached to this staff report for your review and consideration (please see Attachment 2).

Also attached is a SEA Review Process flowchart that reflects staff's proposed alternative approach (please see Attachment 3). This flowchart outlines the steps, including the early

biological inventory, review by the County Biologist, and determination of the appropriate SEA review.

5. Additional Outreach

During the July 12, 2017 meeting, your Commission requested that staff conduct additional outreach to ensure that stakeholders are aware of the proposed amendments. Your Commission also directed staff to work with other Department staff working on the ADU ordinance and the Santa Monica Mountains North Area Plan (SMMNAP) Update effort.

6. Other

During the July 12, 2017 meeting, your Commission requested further clarification and information specific to the draft SEA ordinance before you. Staff respectfully requests that further clarification and responses to your Commission's questions regarding details of the ordinance, be provided with the next draft SEA Ordinance.

STAFF RECOMMENDATION

The intent and purpose of the SEA Ordinance Update is to avoid or minimize impacts to biological resources within SEAs. As such, staff has carefully considered your Commission's comments and recommends an alternative approach that allows impacts to biological resources to dictate the process. Through an early biological inventory, applicants and County staff will have a greater understanding of existing resources in designing projects with least impacts. This also allows for a streamlined review where such impact (e.g. vegetation removal) is avoided or minimized.

Furthermore, based on further outreach related to efforts in the Santa Monica Mountains, staff recommends that the SEA Ordinance update proceed in other areas of the County, while allowing the resource protection policies and regulations specific to the Santa Monica Mountains SEA be separately developed through the SMMNAP effort. This avoids confusion and possible duplication of efforts, and allows context-specific guidelines be developed appropriate for the Santa Monica Mountains.

Based on your Commission's concurrence of these approaches, staff recommends that your Commission takes this matter off calendar to allow time for changes to the ordinance, completion of the Implementation Guide, and further outreach.

SUGGESTED MOTION:

I MOVE THAT THE REGIONAL PLANNING COMMISSION CONTINUE THIS MATTER OFF CALENDAR IN ORDER TO ALLOW STAFF TO:

- 1) REVISE THE SEA ORDINANCE AMENDMENT TO**
- INCORPORATE AN EARLY BIOLOGICAL REVIEW TO STREAMLINE THE PROCESS AND HELP DESIGN PROJECTS THAT AVOID OR MINIMIZE IMPACTS; AND**
 - ALLOW THE SANTA MONICA MOUNTAINS NORTH AREA PLAN EFFORT TO DEVELOP SPECIFIC POLICIES AND STANDARDS FOR THE SANTA MONICA MOUNTAINS SEA; AND**
- 2) ALLOW FOR FURTHER OUTREACH.**

MC:PH:AB

Attachments:

- 1: Thresholds for Discretionary Review
- 2: Table of Contents for the SEA Implementation Guide
- 3: SEA Review Process Flowchart

ATTACHMENT 1

Thresholds for Discretionary Review

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Table: Thresholds for Discretionary Review

SEA Resource Category	Sources of Ranking Category ¹	Vegetation Removal Thresholds <i>Removal above thresholds requires discretionary SEA Review</i>
1	<ul style="list-style-type: none"> California Department of Fish & Wildlife (CDFW) Vegetation type G/S 1 California Native Plant Society (CNPS) Rare Plant Ranks 3, 2A & B, 1A & B State/federal agencies- Species listed as Threatened, Endangered, or Rare 	No amount may be disturbed.
2	<ul style="list-style-type: none"> CDFW Vegetation type G/S 2 	Up to 500 sq ft, where at least 2 times as much can be preserved on site.
3	<ul style="list-style-type: none"> CDFW Vegetation type G/S 3 	Up to 500 sq ft, where an equal amount can be preserved on site. Over 500 sq ft, where at least 2 times as much can be preserved on site.
4	<ul style="list-style-type: none"> CDFW Vegetation type G/S 4-5 	Up to 500sq ft without preservation. Over 500 sq ft, where an equal amount can be preserved on site.
	<ul style="list-style-type: none"> CNPS Rare Plant Rank 4 	Up to 10 individuals of woody species (e.g., shrubs), or 500 square feet of occupied habitat for herbaceous species
5	<ul style="list-style-type: none"> Previously disturbed areas 	Any amount may be disturbed. ²

In the Table, the SEA Resources have been ranked into five categories based on their rarity globally, statewide, and regionally (1 requires most protection, 5 requires least). The vegetation removal thresholds were developed from existing standards, requirements, and thresholds already in use in County regulations or adopted by resource agencies and authorities. The 500 square feet vegetation removal/preservation threshold was chosen for determining when removal would not have a significant impact. This number is consistent with current permitting requirement in the Coastal Zone.

¹ The SEA Resource categories were developed by County biologists using existing standards, requirements, and thresholds already in use in County regulations or adopted by federal and state resource agencies and authorities.

² This category represents areas that do not fit into a CDFW vegetation community rank, but may still have other SEA resources, such as trees or water resources. Other SEA development standards will apply.

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ATTACHMENT 2

Table of Contents for the SEA Implementation Guide

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SEA IMPLEMENTATION GUIDE

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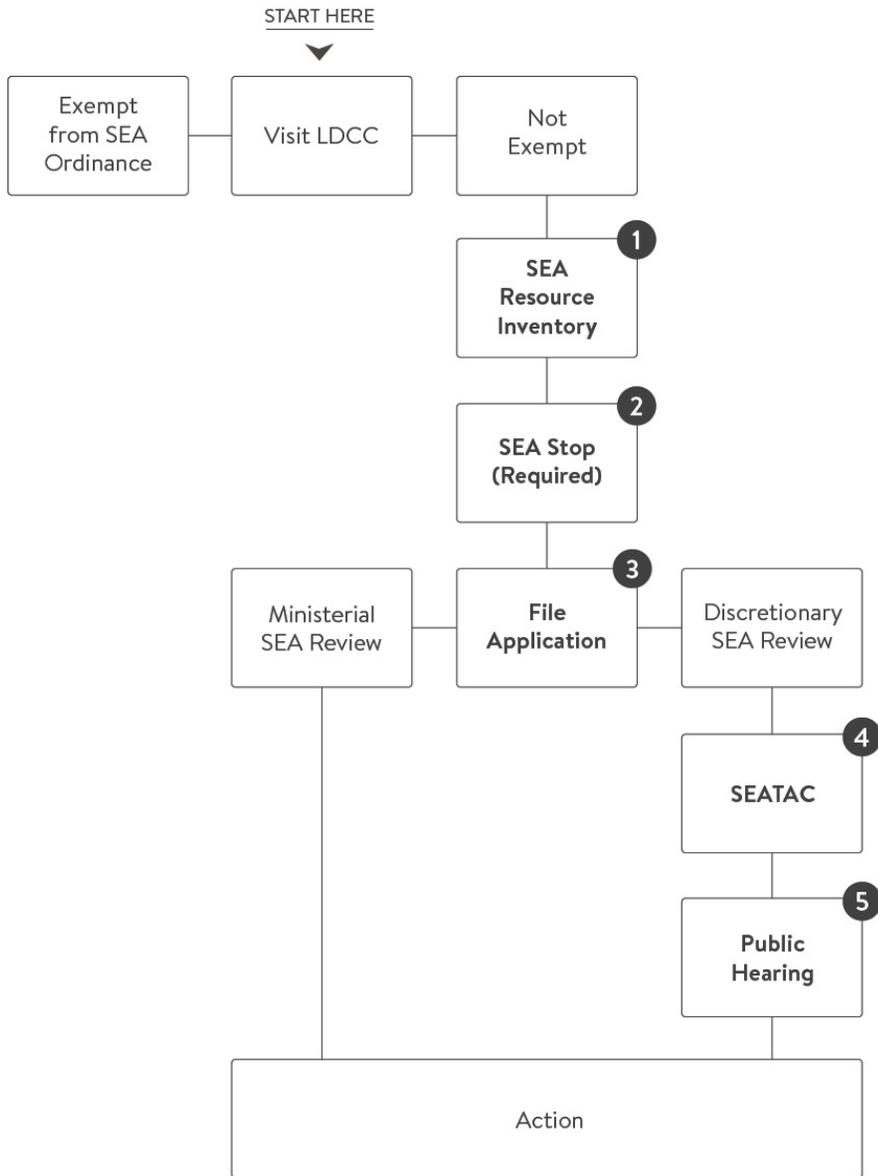
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ATTACHMENT 3

SEA Review Process Flowchart

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SEA REVIEW PROCESS

STEP 1: General Counseling / Information Gathering

Prepare SEA Resources Inventory (including Biological Constraints Map and Conceptual Design of Project)

STEP 2: Project Specific Counseling - SEA Stop

Review SEA Resources Inventory and Development Standards

STEP 3: File Project Application / Staff Review

Internal Review / Development Standards / CEQA Review (if needed)

STEP 4: SEATAC Review

Dependent on project impacts and need for mitigation

STEP 5: Public Hearing

Hearing Officer or Regional Planning Commission