



Southern California
Los Angeles and Ventura
Counties Chapter

April 1, 2013

Ms. Emma Howard
Regional Planner, Community Studies North
LA County Department of Regional Planning
Via Email: ehoward@planning.lacounty.gov
320 West Temple Street
Los Angeles, CA 90012

Re: Comment to Draft Significant Ecological Areas Ordinance dated December 20, 2012

Dear Ms. Howard,

On behalf of the Building Industry Association of Southern California – Los Angeles & Ventura Counties Chapter and its members, we are submitting comments on the 3rd draft of the Significant Ecological Area (SEA) Ordinance that was released on December 31, 2012. (“Draft Ordinance”).

The BIA serves as the collective voice of the homebuilding industry. In this instance, the facts, opinions and information contained herein is the result of a coordinated effort of an esteemed group of industry leaders who have genuine concern for the future of homebuilding in Los Angeles County. This group of industry leaders are the “best of the best” when it comes to thoughtful and responsible use of the County’s land resources to create thriving and sustainable communities.

As we have expressed in prior letters and meetings, we remain deeply concerned about the overreach of this proposal. The Draft Ordinance creates a fundamental shift in the regulation of land development in Los Angeles County. Under current practices, proposed projects are investigated, analyzed and designed to achieve a balance under CEQA and the existing ordinance by identifying and mitigating environmental impacts. Even the Conservation and Natural Resources Element of the County's draft General Plan (2012) acknowledges that “[t]he General Plan goals and policies are intended to ensure that privately-held lands within the SEAs retain the right of reasonable use, while avoiding activities and developments that are incompatible with the long-term survival of the SEAs.” Yet, the Draft Ordinance, in combination with the associated SEA expansion,

establish purported thresholds, benchmarks and requirements that make development all but impossible in the large areas designated as SEA.

The substantial hurdles to development on the **additional 519,730 acres** that would be governed by the ordinance are inappropriately burdensome, especially given the limited amount of research and flawed science that was relied upon to expand the boundaries. Generalized studies, many conducted with limited budgets and over a dozen years ago, have led to a 4x expansion of the land designated as being in an SEA. Under the proposals, there is no clear pathway to modify these boundaries, even if more accurate and detailed studies are undertaken. Indeed, our members have submitted numerous studies for consideration by the Department of Regional Planning (DRP) that have not been acknowledged by or incorporated into the proposals or maps. The limited summary reviews, lacking a thoughtful survey of land, utilized by DRP to expand SEA boundaries are now being treated as if they were full-fledged, on-site reviews that identified species and the habitat range of each species. In reality, the studies were summary reviews and windshield surveys, typically based on aerial maps and without any site visits. Other disjointed information not prepared specifically to analyze habitat values has been cited, yet these lack the necessary analysis to make any type of land use determination. The scope of these studies pales in comparison to the widespread consequences and resultant downzoning that they are being used to perpetuate.

The Draft Ordinance also dramatically expands the scope of issues and topics addressed by the SEA Program, without regard to other regulatory programs that may exist. As a result, many elements of the proposal are fundamentally duplicative of and in some cases conflict with the regulations of natural resource agencies. This will create redundancy and complications for individual projects. Since the inception of the County's SEA Program, state and federal agencies have passed new regulations to protect threatened and endangered species; these rules have widely expanded the amount of land designated as critical habitat. The County proposal goes far beyond this already wide scope and further constrains future development. It uses other land development constraints, such as floodplains, fire zones, or hillsides as the basis for SEA expansion, adding unnecessary regulation to lands where development is already heavily constrained. In reliance on a recommendation of an "expert panel of biologists" that had no outside peer review, DRP recommended this type of expansion, despite contrary direction from the Board of Supervisors and explicit comments from BIA and others that these constraints are inappropriate reasons.

The Draft Ordinance duplicates other regulatory processes in other ways. It is unnecessary for the County to duplicate these regulatory processes, especially as they are ultimately reviewed through the County's land use and CEQA approvals. It is certainly inappropriate for an advisory body such as SEATAC to duplicate, let alone override or contradict such a regulatory process. For example, the Draft Ordinance proposes to regulate watercourses and pollutant loading, without coordination or recognition of Clean

Water Act regulations that development projects must follow. It prohibits the use of over 600 plant species, five (5) times more than California Invasive Plant Council's list of invasive plants. The ordinance's sweeping scope applies a one-size-fits-all approach where every inch of land is considered equally sensitive, equally irreplaceable and subject to extensive conservation, unlike state and federal critical habitat programs that clearly delineate and prioritize resources, freeing up unencumbered land for development.

Moreover, even with the broad expansion of the areas covered by the SEA Program and the intensification of the regulations governing development and activities within the SEAs, the Draft Ordinance contains no provisions by which a property owner can contest his or her property's inclusion in the SEA, even in the case of a clear mistake on the part of the County.

These regulatory excesses place the burden on a landowner to disprove the lengthy and unfounded assumptions underlying the SEA expansion and ordinance, and set the bar for changing those assumptions at an unattainable level. It is unreasonable and unfair to establish a process that forces landowners to prove a negative. The existing biological functions must be considered on a site-specific basis, accounting for the specific ecology of the target species, in order to effectively conserve biological diversity and promote long-term persistence of target resources. The County should evaluate the site-specific project impacts disclosed within the CEQA process and adhere to the results of those studies.

Because of its fundamentally flawed approach, the proposed ordinance is burdensome and costly. The attached Exhibit identifies the issues and problems in each section of the ordinance.

The County must fundamentally revisit its approach to the SEA Program. As directed by the draft General Plan, the Program must respect private property rights. It must also respect and integrate other regulatory and CEQA processes and have mechanisms for balancing impacts, implementing mitigations, rather than only providing ways to deny projects. We ask that the County establish processes with sufficient flexibility to accommodate the diversity of the 2,638 square miles of unincorporated County land.

Finally, we must again express our concern about the lack of effective notice to property owners who will be affected by the SEA expansion and the harsh effects of the Draft Ordinance. Beyond affecting future development, the ordinance will affect farmers, businesses, and other individual land owners, most of whom are unaware of how this proposal will affect their property. Combined with other planning initiatives such as the General Plan, Area Plans, and the Hillside Management Area Ordinance, the impact on these landowners could be devastating.

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The County should integrate its planning efforts so that the cumulative consequences of all these policies can be understood, and their impacts analyzed under CEQA. Taken together, these planning efforts effectively provide a clear path for project denial that is very difficult if not impossible to overcome; they do not, however, provide any clarity on the path for project approval. Collectively, they appear to create a de facto building moratorium around the current urban boundary.

The County must provide for future housing and economic development. We ask for additional study and request flexibility in the proposed plans and ordinances to allow the opportunity for thriving and sustainable communities to be reasonably developed within the County. We ask that the County reconsider its current path and work to modernize the SEA program and find the appropriate balance between conservation and economic growth.

Sincerely,



Holly Schroeder
Chief Executive Officer
Building Industry Association of Southern California –
Los Angeles/Ventura Counties Chapter

Cc: Mr. Richard Bruckner, Los Angeles County Director of Regional Planning and Development

Att: Exhibits (2)

Exhibit A

Building Industry Association of Southern California Los Angeles / Ventura Counties Chapter

COMMENTS ON DRAFT L.A. COUNTY SEA ORDINANCE dated DECEMBER 20, 2012
(the May 2102 Draft General Plan was also utilized in preparing these comments and pages have been noted within the specific comments)

1.0 Section 22.08.190 – Definition of Significant Ecological Area

The proposed definition of "Significant Ecological Area" is written very broadly and, as a result, could be misinterpreted to include areas in addition to those mapped on the County's "Significant Ecological Areas and Coastal Resource Areas Policy Map of the General Plan" (SEA Map). The definition should instead clearly state that Significant Ecological Areas (SEAs) are the areas that are mapped on the County's SEA Map. The next sentence can then explain that the areas are mapped as SEAs are mapped as such *because* they contain an ecologically important land or water system etc. As written, however, the definition could be read to mean that SEAs include both mapped areas and unmapped areas that contain an ecologically important land or water system etc.

One cannot assume that all land within an SEA map supports valuable habitat for plants and animals and is integral to the conservation of biological diversity in the County. While the County asserts this to be true, the thin science does not support this assumption. SEA is simply mapped land that is *believed* to support the valuable habitat for plants and animals and is integral to the preservation of rare, threatened or endangered species and to the conservation of biological diversity in the County. If site and species-specific investigation proves certainly land does not support, or is not significant to the support, of biologic resources, it should be appropriate for development. The definition of SEA should reverse the burden of proof in favor of the landowner unless something otherwise is proven in the SEA process.

2.0 Section 1, SEATAC

First Issue: BIA/LAV remains concerned about the composition, selection, administration of the SEATAC committee, and the BIA's previous comments have not been addressed in the 3rd draft of the Ordinance. For example, the SEATAC committee is not made up of a diverse expert panel including members of the development community.

Problems: As a result, the SEATAC committee does not have a broad perspective of all the problems encountered with land design, conservation and mitigation, and SEATAC decisions can be biased, not well informed, and/or evaluated by SEATAC with limited credit given to the overall project contributions.

Second Issue: Furthermore, the draft SEATAC Ethical Guidelines are limited on guidelines, loosely established and should be more thoroughly and thoughtfully redrafted by County Ethics Commission to prevent conflicts of interest.

Problems: BIA/LAV continues to see problems when SEATAC members have not recused themselves when involved in some manner with an individual or organization that has a vested interest in the outcome of the case (*e.g.*, the SEATAC member is employed by, represents or is closely associated with a conservation authority or group which opposes the project; or by a firm or group which wants to oppose additional development in the area of the site under review.).

3.0 Section 22.52.2600 – Purpose

First Issue: The stated purposes of proposed Part 25 will provide the framework within which its requirements will be interpreted. The purposes of current section 22.56.215 with respect to development within SEAs include balancing the right to develop against the need to protect against incompatible development, which is defined as development that would result in environmental degradation, and providing a process by which potential conflicts between conservation of ecologically sensitive areas and development within those areas can be reconciled equitably. That objective of balancing competing interests has been carried forward in the County's draft General Plan's description of the SEA Program as "a method of balancing private property rights against impacts to irreplaceable biological resources." (*See* draft General Plan, Chapter 6, Conservation and Natural Resources Element, p. 127.)

By contrast, the purposes of proposed Part 25 merely list identifying impacts, preventing impacts and utilizing sensitive design.

Problems: There is no attempt to *integrate* these concepts to achieve a balance between development and the environmental resources that the County has established the SEAs to protect. Further, despite the statement that the purpose is not to preclude development, the burden is placed on the developer to prove that its development activity will prevent impacts to biological resources; this shift in the purpose statement reveals that the ordinance is a *de facto* development restriction. Proposed language for Section 22.52.2600 (purposes) is attached (Exhibit B) that we believe better reflects the County's draft General Plan objectives for the SEA Program.

Second Issue: Proposed Section 22.52.2600, Part 25 Subsection C, Purpose, refers to "populations of significance as described within the SEA Description". The SEA Description provides a broad portrayal of the types of plant and animal resources that are believed to exist within each SEA, but does not provide thresholds of significance by resource type or population size.

Problem: As a result, it is not possible to determine the meaning of the "populations of significance" with any specificity. Clear thresholds of significance should be established and reviewed by third parties before adoption.

4.0 Section 22.52.2610, Definitions

Issue: Section 22.52.2610, Subsection E. The reference to "indigenous" vegetation should be replaced with a specific, defined term. As it stands, this term could include non-native and

invasive vegetation that has become established as part of the landscape but has little recognized ecological value.

Problems: For example, referring to page 184 of the SEA Description, non-native grassland (“NNG”) is included on an equal footing with native habitats such as Coastal Sage Scrub and Oak Riparian Forest. This makes it seem as if significant ecological value is being attributed to NNG, when in fact it has low habitat value and includes nuisance species. The NNG description lists “yellow-star thistle fields”, a highly invasive species, among the plants that characterize the NNG category.

5.0 Section 22.52.2620 Applicability

First Issue: Proposed Section 22.52.2620 does *not* provide an exception for an application for a project-specific SEA Conditional Use Permit (CUP) filed pursuant to a valid program SEA CUP granted in accordance with existing Section 22.56.215. (See Draft Ordinance, pages 5-7.)

Problems: Program SEA CUPs have been granted in accordance with existing Section 22.56.215; at the time these Program SEA CUPs were granted, the County contemplated that subsequent application for project-specific SEA CUPs would be filed with the County and processed in accordance with existing Section 22.56.215. Accordingly, project applicants designed subsequent projects in reliance on and consistent with that existing programmatic framework. To subject those projects to revised procedural and substantive provisions, which include newly designated SEA lands, would impose an undue and unnecessary burden on such previously approved projects.

Second Issue: Proposed Section 22.52.2620 does *not* provide an exception for certain existing ongoing uses within a SEA. (See Draft Ordinance, pages 5-7.)

Problems: Existing agricultural operations, managed grazing lands, and oil and gas operations have been conducted in parts of the County since the mid-20th century, pre-dating the County's SEA program. These historic uses were not, and presently are not, required to obtain SEA CUP permits under the existing ordinance and to require the operators of such activities to obtain SEA CUP permits now would be unduly burdensome. Moreover, in light of their historic uses, much of the subject areas do not contain ecologically important land or water systems that support valuable habitat for special-status species and to the conservation of biological diversity in the County, nor are the natural ecological features or systems functionally integral to the SEA or support important plant or animal populations. As previously discussed in comment letters to the Department of Regional Planning, there should be a provision providing a general exemption for “grandfathered” activities that now or heretofore have been conducted on a property, such that grandfathered activities do not require an SEA CUP. Examples of such grandfathered uses include oil and gas operations, utility and drainage maintenance, grazing uses, and the use, maintenance, repair and replacement of existing barbed wire fencing.

Third Issue: Proposed Section 22.52.2620 does *not* provide an exception for mitigation activities conducted within a SEA. (See Draft Ordinance, pages 5-7.)

Problems: Mitigation activities are not exempted from the provisions even though such activities are consistent with, and in furtherance of, the purpose of the SEA Ordinance to maintain and potentially enhance biotic resources within SEAs. To impose a requirement to obtain a SEA CUP for such activities would be both unnecessary and unduly burdensome.

Fourth Issue: Proposed Section 22.52.2620 does *not* provide an exception for ground disturbance activities conducted pursuant to a previously issued Master CUP on newly-designated SEA lands. (See Draft Ordinance, pages 5-7.)

Problems: Master CUPs for activities on lands previously not designated within a SEA were granted in contemplation by the County and applicant that no further discretionary CUPs were necessary. Accordingly, project applicants designed the approved use or project in reliance on and consistent with the Master CUP. To subject those activities that are consistent and in compliance with the Master CUP to newly adopted requirements would impose an undue and unnecessary burden on these previously approved projects.

Fifth Issue: Proposed Section 22.52.2620, Subsection C, refers to “complete applications” not being subject to the updated ordinance.

Problem: Active projects that have been in the review process, under-going, Site Plan Review, SEATAC review, etc., should also be exempt from the proposed ordinance as applicants are actively processing under the current guidelines but may not have yet met the criteria for a “complete application”. Furthermore, as has previously been stated, written assurances that these applications are exempt should be provided to all such applicants.

6.0 Section 22.52.2640 Development Standards

As written, the Development Standards are too specific and unjustified by science. Development Standards should be removed from the Ordinance and incorporated into a separate document that provides suggested criteria and Design Guidelines to accompany the Ordinance. As part creating the Development Standards and Design Guidelines, the following should be addressed. **We hope the Department of Regional Planning will consider all these Issues and Problems when developing the Development Standards and Design Guidelines. These are not presented in order of importance:**

First Issue: Proposed Section 22.52.2640 establishes mandatory specific development standards to be applied to ground disturbances, uses, or projects within SEAs. (See Draft Ordinance, pages 7-12.)

Problems: These detailed, inflexible mandatory standards do not take into account the site-specific characteristics of the resources, or lack of significant resources, or the project-specific effects on those resources however insignificant. Mandatory and inflexible standards are imposed even in cases of insignificant intrusion in the SEA because the land happens to be included within an area in the SEA Map. Additionally, there is no scientific substantiation for the

Exhibit A continued

setbacks set forth in the mandatory standards. There are also specific setbacks and other metrics used in the mandatory development standards that are not tied to existing conditions or project design features; and, therefore, are not substantiated. Consequently, the ordinance treats all project effects indiscriminately and requires the same setbacks for all projects without any basis for doing so, rendering the setbacks arbitrary and capricious. In addition, these standards constitute the County's attempt to assert its jurisdiction over areas already within the jurisdiction of other bodies, such as the Regional Water Quality Control Board and are, as a result, unnecessary and burdensome. To the extent that certain development standards are needed in addition to the regulations already in place protecting the identified resources, these standards should be removed from the Draft Ordinance and incorporated into a separate document that provides suggested criteria and Design Guidelines to accompany the Ordinance with its final adoption. Finally there are no thresholds established which would allow for less than significant intrusion into to SEA mapped areas on lands which are not unique or critical to the SEA's long term survival.

Second Issue: Subsection K. 3, Water Resources, contains multiple problems, which, at the very least, need to be addressed. For example, proposed Section 22.52.2640, Subsection K. 3, requires the identification of "water resources" on the lot or parcel of land and on any adjoining lots or parcels of land in order to "adequately setback" all such water resources from any ground disturbance or use. Once identified, the applicant must demonstrate to the satisfaction of the Department of Regional Planning that runoff created by the ground disturbance, use, or project "will not materially affect" said water resources, either by "increasing or diminishing the supply of natural water courses or by adding pollutants." At the same time, the proposed ordinance establishes mandatory setbacks of all water resources from any ground disturbance or use, and the setbacks range from 75-300 feet, depending on the type and size of the resource. (See Draft Ordinance, pages 11-12.)

Problems:

1. There is no definition of the term "water resources." At times, the proposed ordinance refers to such water resources as "all natural watercourses," but includes "artificial drains or conduits for the drainage of stormwater" in the narrative description. At other times, the proposed ordinance identifies three types of so-called watercourses, namely, "vernal pools;" "marshes, seeps, and springs;" and "riparian resources."
2. In addition, significant ambiguity and confusion is created in the standards employed. The proposed ordinance requires that the applicant demonstrate to the satisfaction of the Department of Regional Planning that *runoff* created by the ground disturbance, use, or project, "will not materially affect water resources, either by increasing or diminishing the supply of presumably surface water to the "natural" watercourses or by adding pollutants. If this standard is met, then there should be no mandatory setback requirements. However, the proposed ordinance goes on to then require mandatory setbacks for certain water-related resources (vernal pools, marshes, seeps, and springs) – whether or not the applicant previously satisfied the Department's runoff requirement. In short, if the applicant has satisfied the Department's runoff requirement, there will be no "material affect" on said water resources; and, therefore, no setback requirement.

Exhibit A continued

3. The criteria for setback from “the edge of saturated soil” should be changed using accepted wetland definitions and methods such as the U.S. Army Corps of Engineers (Corps) *Arid West Supplement Version 2.0*.

4. The Term “Wet Year” should be defined in accordance with accepted standards such as the U.S. Army Corps of Engineers “Wets” Tables and associated methodology. Otherwise it adds additional duplicative layers of both definitions and methodologies to well-defined state (CDFW and RWQCB) and federal (Corps) regulations that already provide ample protection for aquatic resources.

5. Further, the "materially affect" standard is vague and ambiguous. First, it is not clear from the proposed ordinance whether the "materially affect" standard is triggered by increasing or diminishing the supply of *surface water* to the natural watercourses. Second, it is not clear how the "materially affect" standard would be met in terms of the "adding pollutants" criterion. To measure whether the ground disturbance activities will "materially affect" said water resources, the applicant will need to know the pre-project, existing baseline "pollutants" in the flow within the natural watercourse. Complicating the problem, the term "pollutants" is not defined. Additionally, does *any* addition to existing "pollutants" result in a "materially affect" finding by the Department? Pollutants standards should not exceed the standards set forth by the Los Angeles Regional Water Quality Control Board who should be the agency setting policy and addressing pollutants.

6. Moreover, mandatory setback requirements are imposed *irrespective* of site conditions or "material affects" on said water resources. At this point in the ordinance process, a biologist visit has been conducted and the applicant has prepared a map identifying said water resources. Additionally, the applicant presumably has demonstrated to the satisfaction of the Department of Regional Planning that runoff created by the ground disturbance activities will not materially affect said water resources. Nonetheless, the proposed ordinance would still require mandatory setbacks – even though the project documentation does not show that the ground disturbance activities will "materially affect" said water resources. For the reasons stated above, the mandatory setbacks are arbitrary and capricious. At this point in the ordinance process, the Department should be informed by the biologist visit and the mapping of said water resources. The Department also should be informed by the proposed ground disturbance activities in relation to said water resources. However, this project information should not be used to develop appropriate site-specific setbacks, if needed.

7. Lastly, since compliance with the requirements of the Clean Water Act is mandatory, no setbacks are required to achieve the goals inherent in these requirements of controlling runoff and avoiding pollution of water resources. There is no need for the County to add another layer of regulation through this SEA Ordinance on top of the regulations already imposed by the Regional Water Quality Control Board and the County's Department of Public Works.

Third Issue: Subsection K.1 requires the applicant to map water resources on adjoining parcels of land.

Exhibit A continued

Problem: Applicants should not be required to map and evaluate watercourses or resources on adjoining properties beyond publically available information.

Fourth Issue: Proposed Section 22.52-2640, Subsection H and I. There is no allowance for temporary encroachments into Corridors or Linkages.

Problems: Temporary access may be required given certain site conditions or requirements and should be permitted with appropriate mitigation measures.

Fifth Issue: Proposed Section 22.52.2640, Section A, prohibits use of plants from SEA Invasive Species Lists

Problems: The SEA Invasives Species List is far more extensive than the state's CAL IPC list. The State utilizes a rigorous research approach to identifying invasive species, and considerable analysis and evaluation of both wildlife and plants are submitted and reviewed by experts to determine what species is on the list. What sources and experts were engaged to expand the invasive species list by the County to warrant the list expansion? The County is now proposing to regulate Invasive Species, which are already regulated by the State of California. This is yet another example where the County is attempting to impose policy in an area that is already regulated by another agency and is doing so in contradiction to the science, evaluation and study that has already been completed by the State.

Sixth Issue: Proposed Section 22.52.2640, Subsection C Fencing. This section aims to protect wildlife and the proposals do not appear to meet the prescribed standards of the proposed Draft Ordinance.

Problems: The elimination of the use of barbed wire appears extreme and arbitrary. Barbed wire currently serves as resource management for grazing livestock, etc. The proposed material changes will be infeasible not only for the private sector, but also for any conservation entity that will potentially maintain the open space. Permeable Fencing currently exists along hundreds of miles river corridor trails and no evidence is provided that indicates that this fencing is not working effectively or is endangering animals. Wildlife currently cross and pass through these areas freely and the restrictive design details provided in this Draft Ordinance will not work.

Seventh Issue: Proposed Section 22.52.2640, Subsection D Construction. Since compliance with the Migratory Bird Treaty Act and Fish and Game Code sections 3503 and 3513 are already required by law, there is no need to repeat these requirements in the Draft Ordinance. Including these requirements in the Draft Ordinance simply creates paper work, and, and potential ambiguity therefore, more delay and more expense.

Problem: Planning and SEATAC are expanding their roles beyond the scope that is intended by the County. This is another example of redundant reviews by the County when other agencies and laws govern the issue.

Exhibit A continued

Eighth Issue: Proposed 22.52.2640, Subsection E Fuel Modification. Planning and SEATAC should not expand into determining structure locations as this is part of the overall approval process.

Problems: Fuel Modification is reviewed and monitored by the Fire Department. Every development site has unique circumstances and should be appropriately planned by the Applicant's professional, licensed team of consultants and reviewed by the Planner, Fire Department and other appropriate governing agencies. SEATAC should not expand its role into determining structure locations as this is part of the overall approval process.

Ninth Issue: Proposed Section 22.52.2640, Subsection G Trees. As discussed under Subsection A, Landscaping, the list of "allowable" plant species has been reduced and severely limits tree planting choices. Tree Setbacks also appear to be arbitrary.

Problems: Again, Invasive Species List should continue to be determined by the State, which has an extensive research and study program in place to determine what is invasive, sensitive and endangered. How is the County evaluating the entire eco-system for determining the new list? Under this new list, several trees including Willows are now protected. What is the definition of a mature tree? Where is the science for setback requirements?

Tenth Issue: Proposed Section 22.52.2640, Subsection H Habitat Linkages are considered and established during the master planning of a development. There should be provisions to allow design and development with appropriate mitigation to create Habit Linkages.

Problems: The Habit and Linkage Maps are not available. The 1,000 ft. metric is arbitrary as several habitat linkages currently exist that are substantially smaller and are used by wildlife. When expanded by 1,000 feet and also incorporate the Fuel Modification Zone the metric becomes overly burdensome.

Eleventh Issue: Proposed Section 22.52.2640, Subsection I. The same issues and problems related to Habitat Linkages exists with Wildlife Corridors. A 200 ft. metric is arbitrary especially when including required Fuel Modification Zone.

Twelfth Issue: Proposed Section 22.52-2640, Subsection H., I. and J. Neither the "SEA Design Manual" nor the detailed "SEA Habitat Linkages and Wildlife Corridors Map" has been published. It is crucial to the effective operation of the ordinance to establish feasible standards within the Design Manual and Maps that can be applied according to the varying requirements of different sites and species. All Maps and documents (Design Manual) referenced in the draft ordinance should be reviewed and approved by the decision making body (RPC/BOS)

Problems: The "Wildlife Movement" section at page 185 of the SEA Description emphasizes movement of large carnivores and mule deer, while the "Vegetation" section on page 181 broadly discusses the "exchange of genetic material" for plants and animals with no other detail. Different species have distinct habitat requirements, and conditions necessary to achieve functional exchange vary widely based on species type, available habitat, and other site-specific conditions such as topography, water availability, current presence or absence, frequency of use,

etc. A realistic view of these processes needs to be included in the design standards, with flexibility to tailor corridor size and habitat design to site- and species-specific conditions.

7.0 Section 22.52.2650 Permitted Uses – Subsection B.1, Biologist Site Visit

Issue: Proposed Section 22.52.2650 B.1., identifies a required "biologist site visit" as part of the County's Site Plan Review process. The issue centers on the proposed requirement that the biologist site visit be conducted by a "Department of Regional Planning staff biologist."

Problems: It is neither reasonable nor feasible for a "Department of Regional Planning staff biologist" to conduct the site visit required by Section 22.52.2650 B.1. First, the site visit requires an assessment of both the "location of biological resources and physical conditions prior to approval of the Site Plan Review application." Second, the site visit must include an "appraisal of habitat types, observed where likely to occur species identified in the SEA's description in the General Plan, location of tree species, and identification of water resources," which presumably includes natural watercourses, artificial drains or conduits for the drainage of storm water, vernal pools, marshes/seeps/springs, and riparian resources. In short, a County staff biologist cannot reasonably perform the site visit assessment work required by the proposed ordinance, particularly for larger sites. It simply requires too much site work for the existing County staff biologist(s). In addition, because the work cannot reasonably or feasibly be performed "in house," the site visit requirement will result in unreasonable delays to approval of the Site Plan Review application. These delays will unduly burden project applicants.

8.0 Section 22.52.2660 Uses Subject to SEA Conditional Use Permit

Issue: Subsection C requires a SEA CUP for any disturbance that "...may encroach upon an observed species of special status identified in the SEA's description".

Problems: Lacking a definitive threshold for the term "may encroach upon" the only activities that could be conducted without a CUP would appear to be those that do not disturb the surface or those that can definitively prove they will have no effect on any of the 90 or so species of special status identified within the SEA Description. It is hard to imagine how an applicant could "prove the negative" to meet this standard. As a result, it seems plain that all activities will require an SEA CUP, except for the few exempt uses allowed under the draft ordinance.

7.0 Section 22.52.2670 SEA Conditional Use Permit Review - Subsection A, Initial Project Appraisal

Issue: Proposed Section 22.52.2670, Subsection A, requires completion of an "initial project appraisal" for all projects before a complete SEA CUP application may be submitted to the Department of Regional Planning. The initial project appraisal process includes the submittal of specified information and a preliminary review meeting with a Department of Regional Planning staff biologist and a Department of Regional Planning staff planner "to discuss conceptual

information regarding the prospective ground disturbance, use or project.” (See Draft Ordinance, pages 15-16.)

Problems: For Type B projects, which will undergo substantial review by SEATAC, Section 22.52.2670 imposes an unnecessary duplicative layer of review. Additionally, Section 22.52.2670 imposes no time limits on review by the staff biologist and planner and, as a result, the initial project appraisal could potentially conflict with the Permit Streamlining Act.

8.0 Section 22.52.2670 SEA Conditional Use Permit Review - Subsection C

Issue: The criterion, “... adverse effects to species listed in the SEA’s description in the general plan” needs to be revisited as it leaves broad range for interpretation regarding what constitutes “adverse effects”. Appendix G to CEQA includes checklist questions that many lead agencies use as thresholds for “substantial effects” that have measurable impacts, including, for example, the loss of breeding populations and similar effects.

Problem: Under the draft ordinance, loss of a small amount of foraging habitat for an occasional winter visitor could be determined to be an “adverse effect”. Because there is no biological justification for such an extreme interpretation, the criterion must be revised so that it cannot be used to reach such an inappropriate conclusion.

9.0 Section 22.52.2670 SEA Conditional Use Permit Review – Subsection E Conditions of Approval, Subdivision 3, Open Space Requirement for Type B SEA CUP

Issue: Proposed Section 22.52.2670, Subsection E.3., states that the provision of open space "shall be made a condition of approval for a Type B SEA CUP if the project site is one gross acre or greater in size." The Subsection further states that "open space shall be provided at a minimum ratio of twice the area that is being proposed to be newly developed or disturbed." (See Draft Ordinance, page 21.)

Problems: A Type B SEA CUP is required for all "subdivisions," as defined in Section 21.08.170. (See Section 22.52.2670 Subsections C.1.a. and C.2.a.) As such, for those ground disturbance activities conducted in connection with development of a "subdivision," in addition to undergoing the County's SEA process, the activities also will be subject to the County's subdivision map process. As part of that discretionary approval process, the County is vested with the discretion to, and typically does, require the subdivider to dedicate certain lands as open space. Therefore, the SEA CUP requirement that open space be provided at the specified "minimum ratio" imposes a substantial additional burden on those applicants already required to provide open space as part of the existing subdivision map process and the hillside management requirements. In addition, the "minimum" is also set too high, and does not take into account the severity of the intrusion into the SEA. Even projects with minor impacts and minor intrusion in the SEA will be saddled with very large open space requirements.

Exhibit A continued

Additionally, there is no nexus between the required dedication of at least 2 acres of open space for every acre of development (Section 22.52.2670, Subsection E) and the ordinance's purpose to "prevent impacts to biological resources which would compromise the conservation of the County's biological diversity". Transferring title to property does not conserve or promote biological diversity, and there is no demonstrated biological rationale supporting a specific ratio. Some sites may have little or no acreage with high quality wildlife habitat, so setting aside degraded acreage will not advance the stated purpose. Preserving, enhancing or restoring high-quality habitat may maintain and enhance biological diversity using less land area. The existing biological functions, and the ability to improve such functions, must be considered on a site-specific basis taking into account the specific ecology of the target species in order to effectively conserve biological diversity and promote long-term persistence of target resources.

Issue: Proposed Section 22.52.2670, Subsection E.4.a., requires the landowner to forfeit twice the area that is being proposed for development, and prohibits any improvements to the forfeited acreage; as such, the owner is denied the right to place facilities compatible with open space (e.g. fuel modification, water quality basins, restored slopes, or subsurface facilities) within areas on his property to be designated as open space.

Problems: The proposed Ordinance forces the property owner to forfeit even the right to use his own acreage, or offer it for others to use, for habitat restoration or mitigation purposes. These activities are to be conducted exclusively by government agencies or non-profit land conservation organizations (Section 22.52.2650, Subsection A.5.). Absent a demonstration that these provisions are necessary to achieve the purposes of the ordinance with respect to site-specific conditions, these requirements constitute an improper limitation on the property owner's rights, and may be construed as an impermissible regulatory taking. The land forfeiture does not require any showing by the County or SEATAC to prove that any land proposed for development actually supports the valuable habitat for plants and animals and is integral to the preservation of rare, threatened or endangered species and to the conservation of biological diversity in the County.

Issue: Proposed Section 22.52.2670, Subsection E.6.a., requiring ownership transfer and management of open space and the "mandate to protect it in perpetuity," creates an expectation, if not an obligation, on the part of the property owner to provide funding for the restoration, long-term management and protection of the transferred property.

Problems: The Type B CUP requires the transfer of at least 2/3rds of a property, and requires the owner to forfeit the right to conduct habitat mitigation or restoration on the transferred property. Since conservancies will not ordinarily accept property without an endowment, these requirements will inevitably result in a huge financial obligation for the owner. This stacking of what are essentially penalties is extreme, unjustified, and will likely render many projects economically infeasible. Taken as a whole, these requirements amplify the concern that the proposed Draft Ordinance may be effect an impermissible regulatory taking.

**10.0 Section 22.52.2670 SEA Conditional Use Permit Review – Subsection E
Conditions of Approval, Subdivision 7, Other Conditions of Approval**

Issue: Proposed Section 22.52.2670, Subsection E.7., states that “an SEA CUP shall apply to the entire project site, including portions of the project site that are not located within an SEA. An SEA CUP may specify that certain conditions only apply to those portions of a project site within an SEA.” (See Draft Ordinance, page 24.). There is no demonstration that requiring an SEA CUP on land outside of the SEA is necessary to achieve the purposes of the ordinance.

Problems: Application of the SEA CUP to the entire project site in all circumstances is unnecessarily and insupportably overbroad. For example, if a project is designed to be located entirely outside of a SEA, but the Fuel Modification Zone falls within the SEA, the conditions imposed upon the Fuel Modification Zone potentially would apply to the entire project absent a specific statement limiting application of the condition to the SEA.

11.0 Section 22.52.2670 SEA Condition Use Permit Review – Subsection C

Issue: Subsection C.2.c. The term “adverse impacts to a water source” is ill-defined with no definition as to type and magnitude of impacts that will be deemed “adverse”.

Problems: Will a one-percent “alteration of hydrology” alteration be deemed sufficient to make a determination of “adverse impacts”? Can alterations ever be beneficial rather than adverse? What defines “construction activities” within a “setback area”? Vague standards such as these will cause uncertainty and conflict in the application and administration of the ordinance.

Issue: Subsection C.c. identifies potential of creation of “adverse impacts to a water source...” with no definition as to type, magnitude of impacts that will be deemed “adverse”.

Problems: As indicated above, will a one-percent “alteration of hydrology” alteration be deemed sufficient to make a determination of “adverse impacts”? Can alterations ever be beneficial rather than adverse? What defines “construction activities” within a “setback area”? Vague standards such as these will cause uncertainty and conflict in the application and administration of the ordinance.

**12.0 Section 22.52.2670 SEA Condition Use Permit Review – Subsection H,
Findings, Subdivision 2**

Issue: Upon approving a proposed development activity governed by proposed Part 25, the Reviewing Authority must make findings that the proposed development activity meets the objectives of Part 25 to the satisfaction of the Reviewing Authority. Like its disjointed purposes, the proposed Ordinance simply lists findings that are not integrated with one another, and in addition, includes findings in subparagraphs 2 and 3 that requirements have been met that are not included as requirements in the Ordinance.

Problems: Even if made by the Reviewing Agency, the findings will not provide evidence that the proposed development activity meets the purposes of the SEA Program as expressed in the draft General Plan. Proposed language for Section 22.52.2670 (H) is attached that we believe better reflects the County's draft General Plan objectives for the SEA Program.

13.0 Draft SEA Design Manual - Trees and Invasive Species List

Issue: As previously stated, the list of species proposed in the draft Design Manual-Trees and Invasive Species, has expanded and is (5) five times greater than that of the State's (created by the Invasive Species Council of California-ISCC as directed by the California Invasive Species Advisory Committee-CISAC) Invasive Species List, limiting the plant selection by 600 species. ISCC/CISAC created the list of invasive species by evaluating species that have a reasonable likelihood of entering or have entered California for which an exclusion, detection, eradication, control or management action by the State might be taken" (CISAC Charter, Article IIIB). The CISAC worked with the U.C. Davis Information Center for the Environment to develop an online tool for creating and maintaining a "living" list of invasive species in California. The list draws from numerous sources, engages a variety of experts and supports continuous updating.

Problems: The County is proposing to regulate Invasive Species, which are already regulated by the State of California. What sources and experts were engaged to expand the invasive species list by the County to warrant the list expansion?

Exhibit B

Proposed Language for Section 22.52.2600

Proposed Part 25 of the Los Angeles County Code is intended to replace the regulations contained in current Section 22.56.215 of that code governing public and private development in "Significant Ecological Areas" ("SEAs"). The stated purposes of proposed Part 25 will provide the framework within which its requirements will be interpreted. The Reviewing Authority must make findings upon approving a proposed development activity governed by proposed Part 25 that the proposed development activity meets the objectives of Part 25 to the satisfaction of the Reviewing Authority.

The purposes of current section 22.56.215 with respect to development within SEAs include balancing the right to develop against the need to protect against incompatible development, which is defined as development that would result in environmental degradation, and providing a process by which potential conflicts between conservation of ecologically sensitive areas and development within those areas can be reconciled equitably. That objective of balancing competing interests has been carried forward in the County's draft General Plan's description of the SEA Program as "a method of balancing private property rights against impacts to irreplaceable biological resources."

By contrast, the purposes of proposed Part 25 merely list identifying impacts, preventing impacts and utilizing sensitive design; there is no attempt to *integrate* these concepts to achieve a balance between development and the environmental resources that the County has established the SEAs to protect.

We believe that our proposed language for proposed Sections 22.52.2600 (purposes) and 22.52.2670 (H) (findings), which is attached, better reflects the County's draft General Plan objective for the SEA Program.

Exhibit B Continued

Proposed Language for Section 22.52.2600

22.52.2600 Purpose.

This Part 25 is established to regulate development within the County's Significant Ecological Areas ("SEAs"), as defined by Section 22.08.190. These regulations are intended to create a process of review for proposed developments to which these regulations apply (as provided in Section 22.52.2620 *et seq.*, below) that meets the following three objectives:

A. Identify and disclose the biological resources present on the portions of the proposed development site that are located within the SEA, and the potential impacts to such resources from a proposed development; B. Apply environmentally sensitive site design practices and development standards to the portions of the proposed development site that are located within the SEA to protect the identified biological resources from incompatible development. "Incompatible development" means development that may result in or that has the potential to result in environmental degradation such that species populations of significance (as described within that SEA's Description within the General Plan) become unsustainable, or development that may or has the potential to result in the loss of SEA viability; and

C. Establish a process whereby potential conflicts between conservation of the resources in SEAs (as identified in the County's General Plan) and development may equitably be resolved.

The purpose of this Part 25 is not to preclude development within SEAs, but to ensure, to the extent feasible, that such development is not incompatible with SEAs. For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable amount of time, taking into account economic, environmental, planning, legal and technological considerations.

22.52.2670 SEA Conditional Use Permit Review. ...

H. Findings. The Reviewing Authority (Hearing Officer or Regional Planning Commission) shall not approve an SEA CUP application unless the Reviewing Authority finds that the application substantiates all of the following findings, in addition to those required by Section 22.56.090:

1. To the extent feasible, the proposed development minimizes potential impacts to identified biological resources present on the portions of the proposed development site that are located within the SEA from incompatible development through the application of environmentally sensitive site design practices and development standards;

2. The proposed development does not have the potential to result in the loss of SEA viability; and

3. Potential conflicts between conservation of the resources in SEAs (as identified in the County's General Plan) and the proposed development have been equitably resolved.