



Southern California
Los Angeles and Ventura
Counties Chapter

March 7, 2013

Mr. Mitch Glaser
Supervising Regional Planner Countywide Studies
County of Los Angeles Department of Regional Planning
320 W. Temple Street
Los Angeles, CA 90012

Via Email: mglaser@planning.lacounty.gov

Re: Draft Hillside Management Area Ordinance (HMA)

Dear Mitch,

The Building Industry Association of Southern California, Inc., Los Angeles and Ventura Counties Chapter (BIA) is a regional trade association that represents approximately 1,000 member companies involved in building new homes in Southern California. On behalf of our membership, we are providing these comments on the December 6, 2012 Draft Hillside Management Area Ordinance (“draft ordinance”).

I want to begin by thanking you and your team for coming out to speak with BIA regarding the draft ordinance on February 5. Prior to our meeting, we had submitted a list of several questions which we had requested additional clarification. Some of those questions were answered in our discussion; however, the majority of them were not. I recognize that the County has made an attempt to address both our concerns and questions, however the BIA remains opposed to the draft ordinance as it is still difficult to understand the full purpose of the draft ordinance. With the information we have, we are providing initial comments on the document. We’d like to ask you to please answer/provide more detail in response to list of questions set forth below and attached. We will then begin to complete our review of the draft ordinance and submit final comments.

We recognize that the update to the Hillside Management Area Ordinance is an enormous undertaking. Significant amounts of unincorporated land in Los Angeles County would be regulated by the proposed draft ordinance and these areas have already been planned to be developed pursuant to the counties vision under the recently adopted OVOV area plan for example. The BIA remains committed to responsible development in hillsides that protects and encourages responsible development that is both environmentally responsible and geotechnically safe for the residents of the county and the development community. This proposed ordinance impedes these intentions and inhibits the safe and responsible development.

Below please find our revision of the purpose and findings subsections of the County’s draft proposed HMA ordinance. You will note that this area of the draft Ordinance is of great concern.

Purpose and Findings:

We have attached our suggested revisions of the purpose and findings subsections of the draft ordinance. These portions of the draft ordinance are of great concern, since they guide not only the interpretation and the implementation of the draft ordinance's provisions, but also the approval of projects as having complied with the draft ordinance's requirements.

Both current section 22.56.215 of the Los Angeles County Code, and draft ordinance intended to replace it regulate public and private development in hillside areas, referred to as "Hillside Management Areas" ("HMAs"). An important factor to keep in mind is that current section 22.56.215 also controls development within Significant Ecological Areas ("SEAs"); consequently, certain portions of the purposes, requirements and findings in current section 22.56.215 are appropriate for guiding development within SEAs but are not appropriate for guiding development within HMAs.

The stated purposes of current section 22.56.215 with respect to development within HMAs include balancing the right to develop against the need to protect against incompatible development that would result in environmental degradation and/or destruction of life and/or property. The draft ordinance appears to represent a dramatic shift in purpose, from protection against incompatible development as defined in current section 22.56.215 (development that would result in environmental degradation and/or destruction of life and/or property) to protection of aesthetic views and scenic resources through specific site design and open space requirements, and vague and undefined restrictions on "excessive grading and landform alteration." While the proposed ordinance states that its purpose "is not to preclude development within HMAs" it does precisely that by creating restrictions which prevent compatible hillside development.

These purposes of protecting aesthetic views and features and restricting grading and landform alteration will provide the framework within which the requirements of the draft ordinance will be interpreted. As such, the draft ordinance will not guide compatible and sustainable hillside development, but will instead serve as a de facto moratorium on development within HMAs.

We understand that the intended purposes behind the draft ordinance are more in line with current section 22.56.215, with the added purpose of making explicit policies and requirements that the Department of Regional Planning has been implementing under current section 22.56.215.

During our February 5, 2013 meeting, we were asked to propose language for the draft ordinance. Our proposed language for purposes and findings follows. We believe our proposed language reflects both the intent behind the proposed draft ordinance, as stated by representatives of the Department of Regional Planning, and as stated in the Goals and Policies of the Conservation and Natural Resources Element of the 2012 County of Los Angeles Draft General Plan.

We also include revisions to the required findings in subsection E, which reflect the revisions in the purposes language in subsection A of proposed section 22.56.215 from the

proposed draft ordinance.

First let us begin by identifying and highlighting just a few examples of the changes from the existing ordinance, which is already an onerous process.

1. The proposed draft definition of Hillside Management Area eliminates the definitions of “urban” versus “non-urban” hillsides. Now Hillside Management Areas are “any portion of a lot or parcel of land” with natural slope of 25% or greater
2. The two new objectives of the proposed draft ordinance are also the two required findings that must be made by the Hearing Officer or Planning Commission for approval of Hillside Management CUPs. The two new findings replace the four previous findings, and would appear to be more difficult for conventional residential hillside developments to satisfy
3. The existing Hillside Management regulations appear to apply to any residential development proposed in areas of 25% slope or greater, although a CUP would not be required for Urban Hillside projects which propose the mid-point density or less or Nonurban Hillside projects proposing the low-density threshold or less
4. Applicability of the proposed draft ordinance is not limited to residential development as it was in the past
5. The proposed draft ordinance states that conditions of a permit granted under the new requirements would apply to the entire project site, and not just the hillside portions of the site
6. The proposed draft ordinance requires open space to be natural and undisturbed for two-thirds of the project. The remaining one-third can be improved as parks and recreation facilities, community gardens, manufactured slopes and swales, fuel modification areas. This contrasts with the existing ordinance, which has no restriction on how much “improved” open space can meet the 70/25% requirement. Also, in addition to allowing all “improved” open space to count towards the requirement the existing ordinance, but also allows areas of private yards that are outside the required setbacks, and landscape areas adjacent to roadways within the definition of open space
7. All required open space will require a perpetual owner such as a government entity, conservation organization, or homeowners’ association. Not only is this requirement unnecessary to meet the stated purposes of the ordinance, it also creates an expectation, if not an obligation, that the property owner will fund an endowment for long term maintenance. Receiving entities typically will not accept open space without such an endowment.

8. The proposed ordinance suggests that certain areas will be required to be open space, and placed in Restricted Use Areas mapped on the project site plan and/or final map
9. Buffer (50 feet minimum) from natural watercourses edge of banks
10. There are additional regulations for the natural open space to be contiguous to both existing and proposed natural open space.

Again, this draft ordinance is a dramatic departure from what is already an extremely complex process, and also a discretionary process. Every category is completely hindering the ability to develop in a responsible manner.

Below are some comments on the proposed draft ordinance. As indicated above, we would like an opportunity to continue to comment on the ordinance after all our questions are answered.

1. Eliminate the Grading section (3.0 Grading – page 10) from the ordinance
2. Request exemption for mitigation/restoration activities (i.e. Oak Tree mitigation should be able to occur on slopes greater than 25% without a CUP)
3. Request exemption for certain infrastructure items (i.e Water Tanks, etc..)
4. Define a set of projects touching slopes 25% or greater for which a CUP is not required

Finally, we additional questions and concerns as follows:

1. Grandfathering
Staff has indicated that projects that have submitted applications and fees paid will not be subject to the new ordinance requirements. The draft ordinance covers this under Section A.2.b. Our experience is that planning staff re-evaluates projects for compliance with the new unapproved ordinance. We would like to know what assurances or documentation Regional Planning will provide to assure that projects already in the pipeline, with applications submitted and fees paid, will in fact not be subject to the new ordinance. Developers have invested years of effort and substantial funds to design hillside sensitive projects consistent with the existing policies and any additional redesign and planning delays will only continue to delay their projects and add unnecessary financial burdens to development.
2. Separation of Ordinance and Design Manual
This new draft ordinance includes specific details that are currently within the Hillside Management guidelines in Title 22. Ordinances should continue to provide the policy and goals whereas the manuals and guidelines should provide more specific technical detail, examples, and depictions of what ordinance implementation requires. We ask that Regional Planning continue to separate the Ordinance and

Manual providing specific details and requirements within the Manual. The Manual should note that all criteria within the Manual are design suggestions that should be implemented when and where feasible and not absolute project requirements as currently suggested in the draft Ordinance. The BIA would like to work closely with Regional Planning staff to help with the Manual and Ordinance to ensure next draft ordinance release includes all materials necessary for a complete analysis of the proposed HMA Ordinance.

3. Public Works Cooperation

Many of the regulations in the draft ordinance will require implementation in coordination with the Department of Public Works (e.g., grading criteria, lot widths, slope restrictions, etc.) Accordingly, the Department of Public Works should be included in the working group that is preparing the draft ordinance. Our technical consultants are concerned that the current requirements of this draft ordinance cannot be implemented. Consultation with the County engineering experts is essential for preparation of a robust and feasible ordinance that meets the goals of the Department of Regional Planning. During your visit, we asked for an example of an existing hillside project that would meet your criteria. No examples could be given. As previously stated, as written, vertical and horizontal cuts will not work.

The proposed criteria is excessively restrictive and does not achieve the desired goals that Regional Planning is proposing for example: Sec. D.4.d. requiring ‘streets to be located along the edge of development acting as a buffer’ may not be appropriate in all circumstances., and completely contradicts Sec. D.2.a. Again, we need to look at projects as a whole, design to protect the environment but not significantly increase project costs or add unnecessary roads, increase grading, etc. to meet the ordinance criteria.

It is important that Public Works not only weigh in on the feasibility of these issues, but also be included in the County’s HMA Working Group. Public Works should also aid in the development of the Design Manual where all the technical aspects of the ordinance (such as grading criteria) should remain.

4. Definitions

Staff has acknowledged that definitions need to be included and developed further. For example: Excessive grading and landform alteration – no criteria for 25% slopes. We look forward to working with staff to aid with this process.

5. Applicability of Ordinance

The new ordinance should apply to all parties; public and private sector, utilities, etc. The County Public Works department should review the ordinance and be bound by the restrictions for public works projects including roads, bridges, water facilities, electrical facilities, communication facilities, etc.

6. Expansion of the CUP Requirement

The draft ordinance requires a CUP for any project which proposes to touch a natural slope of 25% or greater regardless of density. This new standard expands the reach of the CUP process for both Urban and Nonurban Hillside projects. The current ordinance does not require a CUP for a Nonurban Hillside project proposed at the low-density threshold or less. Elimination of the slope density calculation increases the number of Nonurban Hillside projects which will require a CUP. Additionally, Urban Hillside projects proposed at the mid-point density or less of an adopted areawide, community or specific plan do not require a CUP. Again, under the draft ordinance, any Urban Hillside project which touches a slope greater than 25% requires a CUP. The only way to avoid a CUP for any project containing natural slopes of 25% or greater is to cluster the development on those areas with less than 25% slope which may not be technically or economically feasible. Clustered development does not necessarily avoid potential environmental impacts and in some cases could actually create greater impacts by causing a less efficient design and utilization of landforms. Many communities also oppose clustered development so it should not necessarily be encouraged. Lower density hillside projects should not be burdened with the CUP process as is proposed under the draft ordinance.

7. OVOV Conflicts

The new proposed draft ordinance and its restrictive grading restrictions will severely limit the developable yield of properties in various uses categories within OVOV, thereby minimizing the allowable development in the Santa Clarita Area Plan-One Valley, One Vision (OVOV), which was just approved. The intent of OVOV was to develop those areas as designated urban to be intelligently designed to the fullest extent while limiting those areas designated non-urban with significantly lower allowable densities.

8. Open Space Requirement (“non-urban” land designation)

The proposed ordinance requires forfeiture of “at least 70 percent of the gross area of the project site”. The required forfeiture of non-hillside acreage exceeds the stated purposes of the ordinance.

9. Additional Open Space Concerns

Because the priority of open space is to protect land form and topography, such land features may or may not be contiguous. Open space should be contiguous and/or open space linkages should be provided when feasible and evaluated on a project by project basis. There should be no absolute requirement for contiguous open space.

The requirement that “Required open space shall remain undisturbed in a natural condition” incorrectly assumes that the property dedicated for open space is undisturbed and “natural”. It makes no allowance for properties that may have substantial degradation or impairment. The landowner should not be denied the right to enhance and restore open space to improve appearance and/or biological function. This enhancement and restoration may include grading. Such restored or enhanced

acreage should not be counted as “improvements” with respect to the requirement that “In no event shall the improvements exceed one third of the required open space”.

Requiring open space lots for projects greater than 40 acres is not practical for smaller projects because maintenance and ownership of the open area will be an issue. Open space maintenance organizations usually will not take small isolated open space parcels and HOA’s costs for the ownership may be impractical due to costs issues. . This 40-acre number should be increased.

The allowed uses within all open space should explicitly include facilities such as detention basins, water quality features, subsurface facilities and any other uses that are not inconsistent with open space purposes.

10. Site Design Standards

The site design standards should be removed from the draft ordinance and need to be more flexible and less prescriptive. Site design guidelines need to be a) discussed in detail with the development community regarding best practices achievable on the ground, b) included as part of the Guidance Manual and not a part of the Ordinance, and c) presented as a menu of options to be applied as feasible to a particular project site, not a list of mandates to be inflexibly applied.

11. Conservation Subdivision/Resource Sensitive Design (Clustering)

Clustering is desirable to minimize the developable footprint of a project, however this may require cut and fill beyond the limitations provided in the draft ordinance. A more flexible use of guidelines will help to concentrate development on less substantial land forms while preserving more substantial land forms. Clear, hard, fast rules on cut and fill for steeper slopes will not yield the most thoughtful land plan. An emphasis should be placed on preserving the more substantial landforms of an overall property and allowing the property owner to sacrifice less substantial land forms.

12. Information on Proposed Structures

The Ordinance requires exterior elevations and architectural features of structures to be submitted with CUP application. Larger projects and master-planned communities do not typically generate such architectural details at the initial project approval stage. Such materials should not be required for buildings below a certain size and height, for example such materials should not be required for single-family subdivision or for multi-family projects below a certain building height. There should be a mechanism for these details to be submitted and approved separately, after initial grading plans are approved.

Our group is extremely concerned about the dramatic changes proposed in the draft ordinance, which represents a dramatic departure from the existing policies and practices. We can certainly appreciate the County’s attempt to provide more “certainty;” however, the various proposals outlined in the draft ordinance are not accomplishing that objective.

Mitch Glaser
March 7, 2013
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Please feel free to contact us regarding any of the concerns outlined above. Our desire is to work with Regional Planning to develop a straightforward Ordinance for all users both today and in the future.

Sincerely,



Holly Schroeder
Chief Executive Officer

cc: Richard Bruckner, Los Angeles County Director of Planning and Development
Mitch Glaser, Los Angeles County Director of Planning and Development

Attachments: Questions
Redline

Draft Hillside Management Area Ordinance

Questions for County

February 5, 2013

1. What is the definition of a "natural drainage course?" This is much too vague.
2. How are the SEA boundaries defined and can they be moved with updated biota and other reports?
3. Why is the definition of hillside management being changed to eliminate "urban" versus "nonurban" hillsides?
4. Why is the ordinance being expanded to any kind of development in hillside areas? (Old one was restricted to Residential)
5. Why are the open space requirements being changed to eliminate the use of parkway, golf courses, and private yards outside of the required setbacks?
6. Why is 2/3 of project open space required to be natural & undisturbed?
7. Why is required open space being limited to "undisturbed in a natural condition"?
8. Why differentiate "Priority Open Space"? What does a 50 foot buffer from the edge of a natural watercourse have to do with hillside management?
9. Why are you proposing extremely restrictive Site Design Criteria?
10. What does the County intend to protect by adding the protection of slopes (as opposed to hilltop summits and ridgelines) and the conservation of natural hillside character (as opposed to significant geological features) to the purposes of the new ordinance – particularly given the draft ordinance claims that it does not intend to preclude development. As written, any development activities would interfere with the protection of slopes and natural hillside character and would not maintain or enhance scenic and environmental resources in hillside areas
11. What density does the County envision for hillside areas, given the open space requirements and the elimination of the density triggers for the application of the CUP requirement.
12. Given the severe restriction on 10' horizontal and vertical cuts, how can a developer resolve typical geologic conditions such as natural landslides remediation, alluvial removals, and make the cuts and fills necessary to create a stable and compacted building pad?
13. Why is there an arbitrary 65' minimum lot wide on slopes over 25%?
14. Does Public Works have to comply with this ordinance? Has Public Works provided input? How about public utilities (Edison, Gas, Etc.)?
15. Explain why streets should buffer open space areas?
16. Isn't open space in hillside areas generally governed by physical features and natural resources. Why must it all be contiguous?
17. Why is there not a focus preserving land form rather than imposing very restrictive "hard line" "black and white" rules?

Attachment to Letter Dated March 7, 2013

22.56.215 Hillside Management Areas – Additional Regulations.

A. Purpose. This Section is established to regulate development in Hillside Management Areas ("HMA"s) with the following two objectives:

1. ~~Protect HMAs from incompatible development through sensitive site design and provision of open space. "Incompatible development" is development that may result in or that has the potential to result in the destruction of life or property, or that degrades scenic hillside views, consisting of slopes of scenic hilltop summits, and ridgelines (as identified in the County's General Plan), or and conserve natural hillside character and significant geological features through sensitive hillside site design and provision of open space; and~~

2. ~~Avoid excessive~~Minimize grading and landform alteration, to the extent feasible, to protect hillside resources from incompatible development and land uses~~views of scenic ridgelines (as identified in the County's General Plan.~~

~~The purpose is not to preclude development within HMAs but to ensure, to the extent possible~~feasible, that such development activities maintain and enhance scenic and environmental resources inis not incompatible with HMAs. 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, and technological factors.¹

....

E. Findings. The reviewing authority (Hearing Officer or Regional Planning Commission) shall not approve a complete Conditional Use Permit 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. ~~The proposed development protects scenic hillside views, consisting of slopes, hilltop summits, and ridgelines, and conserves natural hillside character and significant geological features~~HMAs from incompatible development through sensitive hillside site design and provision of open space; and

2. ~~The proposed development avoids excessive~~minimizes grading and landform alteration, to the extent feasible, to protect views of scenic ridgelines (as identified in the County's General Plan)~~hillside resources from incompatible development.~~