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June 23, 2014

Honorable Chair Valadez, Chair
Regional Planning Commission
Los Angeles County
300 West Temple Street Rm 1350
Los Angeles, CA 90012

Re: Proposed Significant Ecological Area Ordinance Comments

Dear Honorable Chair Valadez:

The Los Angeles-Ventura Chapter of the Building Industry Association of Southern California, Inc. (BIA) is the voice of residential building and development in Los Angeles and Ventura counties. We represent the thousands of men and women and their member companies who design, plan, build, and remodel homes, condominiums and apartments throughout our region.

As an association of industry professionals, technicians and skilled craftsmen we have deep knowledge and expertise in residential building and development. As such, we support safe, healthy, sustainable and quality rental and ownership housing, and measures that assure an adequate supply and range of housing types, sizes and costs that support a variety of lifestyle choices.

The facts, opinions and information contained herein are the result of a coordinated effort from an esteemed group of industry leaders who have genuine concern for the future of residential building and development in Los Angeles County. This group of industry leaders, part of the BIA's governmental affairs committee, 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.

The BIA government affairs committee and its builder members have monitored the development of the County's general plan update and provided comments on 4 separate drafts of the Significant Ecological Area (SEA) ordinance previously. Despite all of the BIA's efforts, we find serious flaws in the policies being developed, and that our biggest concerns are not being addressed.

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As proposed, the new general plan, coupled with the proposed SEA and the HMA Ordinances will, when operating together, severely restrict if not outright eliminate the opportunity for development of subdivisions in Los Angeles County. Underlying the proposed new general plan and proposed implementing ordinances are preservation policies that unreasonably and unnecessarily complicate CEQA procedures, adding requirements far too burdensome and duplicative, which are not supported by proper study and evaluation.

The development of housing has been severely reduced in the county due to the economic downturn experienced during the last 7 years. Yet County staff is creating policies that will severely exacerbate an already difficult situation. Staff has failed to review and analyze the impacts that these policies will have on the declining investment and permitting patterns in the region. Despite BIA requests, and requests made by other business groups, staff has failed to produce an economic impact analysis of the proposed policies. County land use policies are already stifling the diversity of housing options and these proposed policies would severely restrict, if not completely eliminate the diversity of housing options. Moreover, the community has yet to receive a CEQA analysis of the combined effects of the new general plan and the implementing ordinances. BIA respectfully requests no approvals be considered, nor provided until a full vetting of the fiscal impacts and the CEQA analysis has been completed.

Furthermore, Los Angeles County has over a dozen approved Area Plans as well as one currently in the approval process. It is counter-productive to approve the SEA ordinance when they are in direct conflict with an approved Area Plan's regulations (e.g. One Valley One Vision in the Santa Clarita Valley) and mitigation requirements. Area Plans are designed to allow the local residents the ability to shape the area in which they live; specifically protecting the sensitive areas and outlining permitted development, specific to that region's unique topography. A countywide ordinance included in the General Plan, written by County staff, is too far reaching in nature and BIA requests that preservation, mitigation and restrictions be governed by each Area Plan, which are vetted by the local community.

Update of the SEA Ordinance is Not Necessary

The BIA has yet to receive a complete explanation of the need: 1) to update the SEA Ordinance, 2) to dramatically expand the SEA areas, 3) to increase the restrictions in the SEA areas, and 4) for the duplicative and complicated requirements and procedures imposed by the County to obtain the entitlements to develop in or around SEAs. Certainly the need is not driven by encroaching development, as is clearly demonstrated by reviewing the newly-released developed sites map within the proposed expanded SEA areas. That map shows that development in the proposed SEA areas is very, very sparse, and more importantly, that most development is of an older vintage built prior to today's regulations. Comparing the developed areas map with the SEA expansion maps, there is no appreciable evidence of ***any*** significant recent development patterns that are threatening the County's proposed new SEAs that could justify the dramatic expansion of the SEA

areas. The proposed revised SEA Ordinance, coupled with the dramatic SEA expansion, is simply not necessary to protect the proposed new SEAs from purported encroaching development. The fact that there are no significant development patterns affecting existing SEAs or the proposed expansion areas clearly demonstrates that existing general plans, zoning, policies, fish and wildlife regulation, clean water regulation, state and federal laws and CEQA are sufficiently adequate to protect our most valued environmentally sensitive areas. The SEA Ordinance and the SEATAC process are duplicative, complicated and staff has failed to analyze the effectiveness of existing regulation. Additionally, the SEA development standards are not consistent with mitigation practices imposed by other resource agencies.

Despite the BIA's repeated requests, staff has failed to produce a meaningful flow chart to show how the proposed SEATAC process coordinates with the CEQA process and subdivision approval process. The proposed SEATAC process should be used as an expanded scoping process to identify critical habitat and resources to be studied in an environmental impact report. After the scoping and during the preparation of an EIR the SEATAC process should end, yet the process provides no definitive end to coordinate with the CEQA or subdivision approval process.

In the unnecessary rush to revise the SEA maps and scope of the SEAs, staff has failed to evaluate other feasible alternatives from a CEQA or legal perspective. We suggest that a Multi-Species Habitat Conservation Plan (MSHCP) is more effective. Such programs typically include mitigation programs and mitigation banking to provide pathways for projects to proceed, and provide funding mechanism to compensate for the regulatory taking of private property. MSHCPs have been implemented in San Diego and Riverside Counties, yet no consideration of such an alternative has been considered in Los Angeles County. A comprehensive MSHCP would better analyze, prioritize and delineate program goals, sensitive biological resources and linkages, than the incomplete, cobbled-together and disjointed science which the County is using to justify the dramatic expansion of the SEAs. The failure to consider a MSHCP process is a failure to analyze project alternatives as required under CEQA.

The BIA reaffirms its concerns outlined in the letter to Emma Howard dated February 3, 2014 (Exhibit 1, attached). Few of these concerns were adequately addressed despite the BIA's repeated efforts to craft a balanced, responsible and workable ordinance, and SEA CUP process.

In summary, the proposed SEA Ordinance is moving forward with no proven threat to justify the expansion of SEA territory, or consideration of feasible alternatives. The future economic impacts of the proposed implementing ordinances, when taken together with the proposed new general plan, are substantial and have not been fully studied. The CEQA analysis must be presented and alternatives proposed. The combination of the new general plan, the dramatic and unnecessary proposed expansion of the SEAs, and the policies embodied by the proposed ordinances, will create a de facto building moratorium in large areas of the county, destroying the viability of

projects the County needs, in order to meet the range of housing required for its residents. The BIA requests the SEA ordinance be put on hold until studies are completed and detailed work for these ordinances can be completed for each Area Plan; to align the regulations within the individual plans crafted by the community and approved by the Board of Supervisors.

Sincerely,

Tim Piasky
Chief Executive Officer

Exhibit 1: BIA SEA Comment Letter dated February 3, 2014

Cc: Planning Commission
Board of Supervisors
Richard Bruckner, Director, Department of Regional Planning

Exhibit 1

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Los Angeles and Ventura
Counties Chapter

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Ben Rocca, Richmond American Homes

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Rich Villaseñor, KB Home

Norm Witt, Cook Hill Properties

February 3, 2014

Emma Howard
ehoward@planning.lacounty.gov
LA County Department of Regional Planning
320 W Temple Street Room 1354
Los Angeles, CA 90012

Re: Comments Draft 4 of the Significant Ecological Area (SEA) Ordinance released on December 5, 2013

Dear Emma,

The Building Industry Association of Southern California, Inc., Los Angeles/Ventura Counties Chapter (BIA) is a regional trade association that represents more than 1,000 member companies and their respective employees involved in building new homes in Southern California. On behalf of our membership, we are submitting comments on Draft 4 of the Significant Ecological Area (SEA) Ordinance, which was released on December 5, 2013.

The BIA serves as the collective voice of the home building industry. In this instance, the facts, opinions and information contained herein are 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, part of the BIA's governmental affairs committee, 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.

The BIA acknowledges the improvement in the latest draft ordinance, particularly with respect to the definitions, and applicability. To our disappointment, however, many of the BIA's prior concerns, outlined below, have largely not been considered, and there has not been significant movement on some of the key adverse components of the SEA Ordinance. We remain deeply concerned about the overreach of the ordinance, and the lengthy, complex, burdensome and duplicative process that project applicants will endure under the procedures outlined in the SEA Ordinance and the SEA Program Guide, which are in addition to the requirements under CEQA. Furthermore, thorough review has been difficult, due to incomplete materials. For example, both the Connectivity and Constraints Area Map and the Disturbed Area Map are not available, making a comprehensive review of the ordinance impossible. The BIA governmental affairs committee would like a working group meeting with

County staff to address the SEA Ordinance, the SEA process and the SEA Program Guide.

Fundamentally there are still many vague and conceptual issues that need to be properly clarified and vetted prior to public review of final draft ordinance. For example:

- Terms are defined, but not used consistently or rigorously within the Ordinance. For example Section 2905 defines "Development" in a way that is virtually synonymous with "disturbance". On page 5, 2905.E defines "Developed Area" as "areas that have been developed" (note: small "d" developed – not a defined term). Thus, it is not clear whether a Developed Aera is one that has undergone "Development" (i.e. previously been disturbed), or something else.
- Similarly, 2905.E excludes "those (areas) that have been developed for agricultural purposes", which may or may not mean an "Agricultural Developed Area" defined in 2905.D. This occurs throughout the draft, as the provisions haphazardly use or avoid using defined terms.
- We also have circular definitions in which one of the passages defining Development (2905.C.6 on page 5) refers back to "development as defined herein".
- Also, definition 2905.S on page 7 in which Water Resources is defined in part as "the types of surface water protected by this part 28".
- In terms of overreach, the draft contains the breathtakingly broad statement that the term Development includes "Off-site activities that occur... as a result of development" (2905.C.6 on page 5). By that definition, SEA regulation might extend to include the lumber yard that provides building materials.
- Similarly, the Applicability of Use Restrictions (2910.A) removes all doubt as to whether a landowner retains any vestige of control over his property with the strikingly broad statement that "A person shall use any... land wholly or partially located within an SEA only as specifically permitted by this Part 28."
- Existing and historic uses are not necessarily grandfathered. The definitions for Habitat Preservation Area and Natural Open Space (2905 H & I) operate to ensure that acreage used for habitat restoration falls into the "Development" category, which will increase the acreage forfeitures in section 2940.
- Add in Item 2905.C.6, and offsite habitat restoration anywhere in the County becomes SEA Development.

We could go into great depth on numerous other concerns, given the complexity of these issues, we will defer that detail until we have an opportunity to meet in person. However, we would like to continue to provide a brief summary of the BIA's primary concerns.

Primary Concerns

For Development Projects, the SEA Program disjointedly overlays CEQA and other state and federal regulations, and severely restricts and removes the Supervisors' contextual land-use discretion and authority.

- Development projects are subject to CEQA, pursuant to which project impacts on species, habitats and corridors are evaluated. CEQA allows for mitigation, mitigation banking ,etc. to be implemented, thus providing a pathway for a project to proceed, despite its impacts.
- The proposed Ordinance requires in certain instances the preparation of reports that mirror the reports that must be prepared under CEQA for EIRs and, in some instances, for MNDs and NDs. Rather than requiring the unnecessary duplication of cost, effort and time, the proposed Ordinance should provide that documents prepared under CEQA be submitted for use under the Ordinance.
- State and Federal agencies establish scientific criteria for protecting threatened and endangered species and habitats. There is no need for the County to use its limited resources to enact sweeping and duplicative regulations. Why is it necessary for the staff biologist to measure the depth of a river or large lake, and how will this be done?
- The role of the staff biologist has expanded far beyond its expertise, and staff biologist duties, as outlined in the SEA ordinance, exceed the County's staff resources. This will cause unnecessary delay to projects in the SEATAC process.
- The SEATAC procedures manual (page 5) provides that "If the proposed mitigation strategy will not fully mitigate the impact, then that impact should be declared unavoidable and significant." This is inconsistent with CEQA, which allows for an impact determination of "less than significant" even when the impact is not fully mitigated.
- County staff should provide a flow chart of how the SEATAC process integrates with subdivision processing and the CEQA process. Despite the CEQA process, and the County's intimate involvement in that process, a project applicant may endure multiple rounds with SEATAC until a staff report is finally settled upon for public hearing.
- SEATAC's final "Ruling of Compatibility" is inconsistent with the CEQA process, thus insuring a duplicative, burdensome and potentially circular environmental review process. Applicants are encumbered with multiple SEATAC meetings to address endless requests for information, causing lengthy delays.
- Multiple duplicative reports are required to comply with both the SEATAC Program and to obtain CEQA clearance for a project.
- The proposed SEA Ordinance uses the County's land use authority to stop virtually all development on or near land designated as an SEA, because it presumes that preservation (not mitigation) is the only allowable and appropriate strategy to address environmental impacts. This approach is contrary to law.
- Projects will be denied at the staff level. The result is a de facto development moratorium that takes away discretion from the Board of Supervisors to make land use decisions in the County.
- The findings, as currently proposed, allow staff and SEATAC to reject a project if they are not satisfied, usurping and preempting the discretionary authority of the Board of Supervisors.

- The SEA ordinance should recognize areas already identified as suitable for conservation and development and should provide that 1) SEA boundaries align with the existing conservation plans and, 2) the existing conservation plans be recognized as suitable mitigation. Examples of this are the Desert Renewable Energy Conservation Plan and the Tejon Ranch Conservation and Land Use Agreement.

Once land is designated as being in an SEA, there is no mechanism to remove the SEA designation without a General Plan Amendment.

- The process assumes that a landowner is "guilty until proven innocent" and it is virtually impossible to be found innocent. Once land is designated as being in SEA (whether this designation is accurate or not), the landowner may not be able to develop at all.
- Once land is designated as being in an SEA, there is no swift way to avoid the SEA process even where the facts plainly warrant such avoidance. As the ordinance is currently proposed, even if and where it is relatively easily shown that there actually is no unique resource requiring protection, the landowner still must obtain a CUP and may also need to obtain a General Plan Amendment to modify the SEA boundary.

The SEATAC committee membership requires balance and fairness.

- The SEATAC process is not balanced and lacks a thoughtful membership structure. The committee is made up of disproportionately conservation-minded individuals; and – unless a fairer balance is assured – it will lack perspective from the development industry and expertise associated with diverse protection and mitigation strategies. At a minimum, to provide diversity, the SEATAC board should include seats reserved for development expert categories including biologists, engineers, land planners, developers and biologists endorsed by developers who regularly represent developers in seeking project approvals. The SEATAC Board should reflect a solutions-based diversity of perspectives. The SEATAC board must not be an "exclusive club for the benefit of its members" which is dominated by conservation-minded environmental experts. The selection process does not insure that won't happen.
- Members of SEATAC have limited requirements to disclose conflicts of interest; and there is insufficient vetting and diversity of its membership. The integrity of SEATAC must be questioned when reports prepared by qualified biologists and submitted by project applicants are rejected without explanation.

The proposed expansion of SEAs is unfounded

- The proposed five-fold expansion (from 125,000 to 645,000 acres) characterizes nearly one-third of the unincorporated land as containing "unique and special" resources. The 487,000-acre expansion – or 760 square miles – includes nearly one-third of the unincorporated County.

- The expansion is based on limited data, information and reports cobbled together, which taken together constitute insufficient grounds on which to impose the substantive and procedural burdens that are proposed.
- A cohesive and comprehensive study and survey of the all the SEA areas was not done in a consistent and uniform manner. In 1999, the Board of Supervisors authorized only $275,000 to fund studies of the SEAs. This was supplemented by aerial and map-based reviews, and ratified through a mere 1-day "review" by biologists. The panel only expanded SEA designations; nothing was removed, even though the designations presented were plainly overly-inclusive. There clearly has not been enough data compiled in a comprehensive and consistent scope of study to justify a five-fold expansion of the SEA boundary.
- The latest drafts now include "ecological transition areas" and "connectivity areas" which further expand the land subject to the SEA ordinance.

Further editing of the proposed SEA Ordinance is required to render it consistent with other requirements and ordinances, and legally enforceable.

- The proposed SEA Ordinance remains inconsistent with other requirements. For example, there is no rational basis for prohibiting barbed wire fencing in an SEA area where livestock are kept or allowed to graze. As another example, brush clearance is prohibited without compliance with this proposed Ordinance, despite Fire Department requirements.
- Certain of the proposed Ordinance's definitions are circular (e.g., "Developed Area"), and certain terms are undefined still (e.g., "Revised Exhibit A" and "Revised Site Plan").
- Documents referred to in and/or relied upon by the proposed Ordinance are still not available for public review (e.g., "SEA Connectivity and Constriction Areas Map"). Without the information contained in these documents, the full import of the proposed Ordinance cannot be reviewed and commented upon by the public.

We respectfully urge the County to revisit its entire approach to revising the SEA program. The proposed Ordinance must respect and integrate other regulatory and CEQA processes and have mechanisms for balancing impacts, implementing mitigations, rather than harshly providing avenues to deny projects or overburden them to the extent that development is essentially prohibited. We therefore ask that the County establish processes with sufficient flexibility to accommodate the diversity of the unincorporated County land. It's time to revisit the need to amend the SEA Ordinance and ask why the County is compelled to amend the ordinance. What are the goals? How can the process be made equitable, more efficient, less duplicative and less cumbersome when combined with other regulatory processes? It seems the process of amending the SEA Ordinance has grown into a larger monster of a CEQA-type process before an unbalanced decision-making body, outside of and not coordinated with the CEQA process.

The County must provide for future housing and economic development. The sweeping land-use proposals currently being contemplated by the County's staff will, taken together and if adopted, constitute a functional building prohibition in many areas of the unincorporated County. When one

adds together the proposed downzoning being considered in connection with the new general plan and the new restrictions and requirements proposed in the drafts of the SEA Ordinance and the Hillside Management Ordinance, the County is aiming toward severely restricting development outside the current urban boundary – virtually creating a prohibition on greenfield development. Greenfield development, when undertaken sensibly, provides a necessary opportunity to supply single-family, detached housing, which remains the #1 consumer-demanded form of homeownership.

The County needs to accommodate foreseeable growth in population, with the alternative to a reasonable mix that includes some Greenfield development being only the so-called "stack and pack" land planning that solely increases the density and intensity of land uses within in the urban boundary. The currently-proposed fundamental shifts in land planning will have unintended consequences, which must be studied and mitigated through a balanced and well-rounded approach to housing growth. We ask the County to reconsider its current path and work to modernize the SEA program by finding an appropriate balance between conservation and growth.

We welcome a dialog to further the discussion on this very important issue; and we hope to have an opportunity to meet with County planning staff in a working group meeting similar to the recent meeting on the Hillside Management Ordinance.

Sincerely,

Tim Piasky
Chief Executive Officer

C: Richard Bruckner, Director of Regional Planning