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February 3, 2014

Emma Howard
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LA County Department of Regional Planning
320 W Temple Street Room 1354
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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