



Building Industry Legal Defense Foundation

August 1, 2012

CHAIR

Amy L. Glad
Pardee Homes

Ms. Emma Howard
County of Los Angeles
Regional Planning Department
Room 1354
320 West Temple Street
Los Angeles, CA 90012

VICE CHAIR

Kenneth P. Corhan
Lewis Operating Corp.

SECRETARY/TREASURER

D. Barton Doyle
Attorney at Law

*Submitted via U.S. Mail and
electronically at
ehoward@planning.lacounty.gov*

DIRECTORS

Kenneth B. Bley
Cox, Castle & Nicholson LLP

Richard Broming
Rancho Mission Viejo

Mary Lynn Coffee
Nossaman LLP

William Devine
Allen Matkins, et al. LLP

Michael Freeman
KB Home

W. Wes Keusder
Keusder Homes

Steven LaMar
LegiSight, LLC

Joseph M. Manisco
*Ross Wersching & Manisco
LLP*

David C. Smith
DMB Associates, Inc.

John Young
Young Homes

Steven D. Zimmer
Attorney at Law

DIRECTORS EMERITUS

Leonard Frank
Les Thomas

EX OFFICIO DIRECTORS

Larry Gottlieb
George Lefcoe
Robert Nastase
Donald Steffenson
Gordon Tippell
Mel Wynn

GENERAL COUNSEL

Andrew R. Henderson, Esq.

**RE: Comments of Building Industry Legal Defense Foundation (BILD)
Concerning the June 2012 Draft Significant Ecological Area (SEA)
Ordinance.**

Dear Ms. Howard:

Thank you for this opportunity to respond to the June 2012 Draft Significant Ecological Areas Ordinance (the "2012 Draft"). The comments here are those of Building Industry Legal Defense Foundation ("BILD"), which represents the homebuilding and community development industries within a six-county Southern California region that includes Los Angeles County. Our comments express our concerns specifically about (i) the process by which Los Angeles County (the "County") might amend its Significant Ecological Areas (SEAs) ordinance, and most especially (ii) the substantive contents of the 2012 Draft, particularly in light of proposed mapping that depicts a tremendous expansion of areas of the County which might be designated as SEAs.

BILD is a separate non-profit mutual benefit corporation and affiliate of Building Industry Association of Southern California, Inc. ("BIASC"). BILD's constituents are BIASC (its sole corporate member) and BIASC's nearly 1,000 member companies involved in homebuilding and community development. BILD's purposes are to monitor legal and regulatory conditions for the construction industry in Southern California and intervene as appropriate. BILD focuses on litigation and regulatory matters with a regional or statewide significance to its mission. Separate from this comment letter, BIASC and others are commenting concerning many technical and policy issues raised by the proposed permit conditions.

Briefly concerning the process that is currently underway to consider amending the current SEA ordinance, BILD is concerned that the process will need to be effectively restarted. Because the 2012 Draft is plainly incomplete, it should not be characterized as a formal draft ordinance. For example, many of the key terms used in the 2012 Draft are defined simply as "[d]efinition forthcoming" (i.e., pending). The provisions themselves also need major revision. Therefore, BILD presumes that the County has not yet

commenced the legally-required process of noticing the preparation of an environmental impact report concerning proposed changes to the existing SEAs ordinance, as required by Public Resources Code section 21080.4 and section 15082 of the CEQA Guidelines.

Turning toward the substance of the 2012 Draft, BILD is extremely concerned about the fact that tremendously-expanded SEA maps were already included in the Draft Los Angeles County General Plan Update 2035, while the policy implications of such expanded land areas remain -- at best -- in need of formulation and reformulation.

Concurrent with these comments, BIASC's Los Angeles/Ventura Chapter is providing separate comments that aim to correct many of the problematic aspects of 2012 Draft's provisions from a policy and practical standpoint. BILD will not attempt to duplicate those helpful comments here. Instead, BILD wishes to alert the County to the fact that the 2012 Draft, as proposed, will likely lead to serious administrative and ultimately *legal problems* for the County, as well as an incalculable waste of citizens' and taxpayers' resources.

Importantly, the SEA mapping currently on the books is relatively limited in comparison to the tremendously-expanded mapping that was proposed in the Draft Los Angeles County General Plan Update 2035. Moreover, the 2012 Draft would add to this expanded mapped area "transition areas" and "buffer zones" even beyond those. The sum total of the expanded maps, transition areas and buffer zones would add new procedural and substantive hurdles to the development and reasonable use of many hundreds of square miles of land, even though much of that land is plainly suitable for reasonable development without significant ecological impact.

Given this, the likely consequences of this proposed massive expansion of procedural and substantive limitations are two-fold. First, the 2012 Draft would combine with the proposed expanded maps to create a large, continuous stream of property owners' applications for conditional use permits, exceptions, variances, factual rulings and the like. BILD believes that the County foreseeably will never be able to afford or even hope to manage a level of planning staff that would be required to field such a huge flow of property owner applications. The likely upshot of such a scenario would be (i) many, many years of delay in processing countless meritorious landowner applications, and/or (ii) the County's summary, uncritical denial of reasonable uses of countless reasonably developable properties. At a minimum, such a scenario would likely engender so-called *temporary* takings claims -- dependent upon the extent of the delays that seem inevitable.

Ms. Emma Howard
August 1, 2012
Page 3 of 3

Second, and even more problematically than the likely delays associated with the impossibility of administering implementation of the 2012 Draft, decades of history with the County's current SEA ordinance reveals that the County has been unwilling to approve reasonable uses of any areas designated as SEAs under the current ordinance and mapping. Because "the past is prologue," BILD can anticipate that the County will be similarly negative when asked to approve development within areas newly designated as SEAs (as reflected in the proposed expanded mapping or the additional transition areas and buffer zones). Therefore, the County would need to anticipate fielding, over time, a huge number of "regulatory takings" claims from property owners (large and small) whose land cannot be put to reasonable use because of the County's expanded SEA ordinance and delineations.

The best way for the County to avoid these consequences is to both (i) revisit and substantially reshape the 2012 Draft, and (ii) substantially contract the expanded SEAs in the proposed maps, all prior to noticing the preparation of the environmental impact report. Again, BILD will not repeat here the policy suggestions that BIASC is separately providing. In general, however, the 2012 Draft and associated maps should be reshaped to permit, with a minimal need for any responsive County administration, reasonable "by right" development in areas where responsible development can reasonably occur without meaningful detriment to the ecological functioning of designated, preserved open spaces.

Thank you for considering these comments. We look forward to observing the process by which the County revises and improves the 2012 Draft.

Sincerely,



Andrew R. Henderson
General Counsel
Building Industry Legal Defense Foundation