

# ENDANGERED HABITATS LEAGUE

DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE



February 3, 2014

*VIA ELECTRONIC MAIL ONLY*

Emma Howard  
Regional Planning Department  
County of Los Angeles  
320 W. Temple Street, Room 1354  
Los Angeles, CA 90012  
<[ehoward@planning.lacounty.gov](mailto:ehoward@planning.lacounty.gov)>

**RE: Significant Ecological Areas Ordinance Update (Draft 4)**

Dear Ms. Howard:

The Endangered Habitats League (EHL) is a Southern California regional conservation non-profit dedicated to the preservation and restoration of our region's unique ecosystems and to the accommodation of growth through sustainable planning. EHL has decades of experience helping Southern California counties and cities design and implement development standards that maximize the protection of sensitive biological resources. Based on that experience, we respectfully submit the following suggestions aimed at improving the draft Ordinance setting development standards for areas designated as Significant Ecological Areas (SEAs). Please note that these comments pertain broadly County-wide and are not targeted at any particular location.

The purpose of the SEA Ordinance is to ensure that any approved development is *compatible* with maintaining the biological functions and values of the mapped SEAs over the long term. While the draft Ordinance sets numerical ratios for on-site preservation of resources, it 1) fails to provide sufficient guidance for site design and 2) fails to follow a standard sequence of resource avoidance, minimization and finally compensation.

Under the proposed Development Standards, the table of ratios allows certain fractions of specified habitat types to be developed and requires a corresponding fraction of the property to be set aside, sometimes in a contiguous manner, as Habitat Preservation Areas<sup>1</sup>. However, there is no requirement that what is either lost or set aside be in the "right" location. Such an outcome—which is essential to the preservation of SEA

---

<sup>1</sup> When determining the land base for application of the ratios, it would make sense to consider the unique and exceptional circumstance of the Tejon Ranch Land-Use and Conservation Agreement, which protects land that is contiguous though on the other side of a jurisdictional boundary.

biological functions and values—requires the application of the basic principles of conservation biology through a site design process as described below.

For site design, the Ordinance should put in place a process to determine where land can be lost to development as individual projects are considered. After site-specific surveys and after determining the context of the site within the rest of the SEA and region, a “biological constraints analysis” should guide site design. Constrained areas will include sensitive habitats and species locations as well as lands with the highest ecological integrity—those that are largest, more contiguous, and less fragmented—and those that serve connectivity functions. An exception is that in the case of narrow endemic species, such locations may need protection wherever they occur. Site design simultaneously identifies *least* sensitive locations for development<sup>2</sup>.

The premise is that if lands of lower value—due to fragmentation, edge effects, and prior disturbance—are lost but higher value, more contiguous blocks of land are protected, the biological values and ecological processes of the SEAs can be retained even if some development occurs. These are fundamental and accepted principles of preserve design. A corresponding protocol for site design should be added to the Ordinance (examples will be provided later in this letter).

Regarding avoidance of resources, the Ordinance errs in jumping to compensation for habitat loss absent prior consideration of avoidance and minimization. As written, the draft ordinance would allow loss of *predetermined* percentages of habitat (per the ratios) even where it is feasible to *reduce* such loss and still achieve planning objectives. Accordingly, the Development Standards represented by the ratios must be explicitly recognized as a maximum permissible loss rather than the norm. When it is *infeasible* to completely avoid constrained resource—for reasons of economics or planning—the steps of impact minimization and compensation come into play.

Typical means to achieve avoidance are consolidation of development, clustering on smaller lots, density transfers, purchases and bonuses, etc. Such maximum feasible avoidance is inherent in the CEQA process and certainly inherent to the County’s “police power” goal of furthering community health and welfare by protecting SEA resources. If underlying land use designations are appropriate for SEAs, achieving more than the minimum conservation under the ratios should often be achievable, and such protection should be required *by the ordinance* irrespective of mitigation ratios.

The *only* way to avert conflicts between land use and SEA protection is to ensure that General Plan land use designations and densities within SEAs reflect SEA biological constraints and support successful Ordinance compliance. The General Plan Update underway thus represents a crucial and imperative opportunity to achieve compatible land use. Similarly, applicants considering GPAs should understand in advance that any

---

<sup>2</sup> In the rare case where a landowner has committed to dedicate lands of high resource value adjacent to SEAs but not in them solely by virtue of jurisdictional boundaries, site design, impact evaluation, and compensation opportunities should consider those lands as a biological unit.

proposed amendment must not pose irreconcilable conflicts with the SEA Development Standards<sup>3</sup>.

Also, the “catastrophic findings” for SEA viability contained in Draft 4<sup>4</sup> are so extreme that loss of essential biological functions and values would occur far before these findings were made. Regarding the standards for connectivity, absent consideration of topography, vegetative cover, target species, etc., there is no way to know if the proposed widths of 1000 feet and 200 feet are adequate.

The lack of any provisions in the draft ordinance requiring feasible avoidance and minimization of impacts to biologically significant resources in SEAs also cannot be squared with the County’s new General Plan update. Policy C/NR 3.9 provides:

“Consider the following *in the design of a project* that is located within an SEA, *to the greatest extent feasible*:

- Preservation of biologically valuable habitats, species, wildlife corridors and linkages;
- Protection of sensitive resources on the site within open space;
- Protection of water sources from hydromodification to maintain the ecological function of riparian habitats; and
- Placement of the development in the least biologically sensitive areas on the site.
- Watershed sensitivity by capturing, treating, retaining, and/or infiltrating storm water flows on site.” (Emphases added.)

This Policy unambiguously requires efforts to protect and preserve SEA resources through project design “to the greatest extent feasible.” Defaulting to an arbitrary set of ratios, as does the draft ordinance, even when further avoidance and minimization is feasible, fails to implement the heart of this policy.

The draft Ordinance also proposes to *exempt* specific plans, creating an enormous loophole that would render its protections moot for the majority of large development projects. We do not understand how SEAs can be protected with this exemption in place.

---

<sup>3</sup> When determining the compatibility of a proposed GPA with an affected SEA, it would make sense to consider the unique and exceptional circumstance of the Tejon Ranch Land-Use and Conservation Agreement, which in effect clusters development on a larger scale, albeit with some of the resulting ecological benefit occurring on the other side of a jurisdictional boundary.

<sup>4</sup> “Bisection of the SEA; b. Closing of a connectivity or constriction area depicted on the SEA Connectivity and Constriction Areas Map; c. Removal of the entirety of a habitat characteristic of the SEA and described in the SEA’s description provided in the General Plan; d. Removal of habitat that is the only known location of a SEA species described in the SEA’s description provided in the General Plan; or e. Removal of habitat that is the only known location of a new or rediscovered species.”

The concepts outlined above have been implemented by other jurisdictions. Examples are San Diego County's Resource Protection Ordinance (RPO)<sup>5</sup> and Biological Mitigation Ordinance (BMO)<sup>6</sup>, which supplements the former in areas covered by the Multiple Species Conservation Program, or MSCP. These ordinances have been in place for decades (though RPO is not up to date in its categorization of sensitive resources). These successful ordinances—and the findings they require—emphasize avoidance and minimization of impacts over mitigation, and thus constitute a real-world demonstration that the mandate contained in C/NR 3.9 can be successfully implemented. Consistent application is achieved through the detailed findings San Diego County has made on each project since 1996 to ensure BMO and MSCP conformance<sup>7</sup>. In addition, San Diego County's Guidelines for Determining Significance for Biological Resources<sup>8</sup> provides detailed guidance for *site design* and the setting aside of proper on-site open space, and links the entire process back to CEQA compliance. A remarkable “clustering” program called the Conservation Subdivision Program (CSP)<sup>9</sup>, also implemented through ordinance, facilitates all these goals. We would be happy to discuss with you how ordinances have performed and also to refer you to San Diego County planning staff who are expert in their application.

As touched upon above, the approach contained in these ordinances dovetails with the California Environmental Quality Act's independent mandate to adopt feasible project design that avoid or substantially lessen significant environmental impacts (such as destruction of SEA resources). CEQA outright prohibits the City from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can “avoid or substantially lessen” those effects. (Pub. Resources Code § 21002.) Unlike the draft SEA ordinance's metric-based approach, the process employed by the San Diego County resource protection ordinances can be used to make the findings CEQA independently requires that significant impacts to biological resources have been avoided or minimized to the maximum extent feasible. The result is a unified approval process that provides project streamlining for applicants.

Thank you for your consideration of EHL's views on this critically important effort. We view this as the beginning of a dialogue and invite further discussion of the concepts outlined in this letter.

---

<sup>5</sup> For RPO, see Sensitive Habitat Lands sections of <[http://www.sdcounty.ca.gov/pds/docs/res\\_prot\\_ord.pdf](http://www.sdcounty.ca.gov/pds/docs/res_prot_ord.pdf)>.

<sup>6</sup> For BMO, see <<http://www.sdcounty.ca.gov/pds/mscp/bmo.html>>.

<sup>7</sup> For Findings of Conformance, see <[http://www.sdcounty.ca.gov/pds/regulatory/docs/MSCP\\_Findings.pdf](http://www.sdcounty.ca.gov/pds/regulatory/docs/MSCP_Findings.pdf)>.

<sup>8</sup> For Biological Guidelines see section on Standard Mitigation Measures and Project Design Considerations at <[http://www.sdcounty.ca.gov/pds/docs/Biological\\_Guidelines.pdf](http://www.sdcounty.ca.gov/pds/docs/Biological_Guidelines.pdf)>.

<sup>9</sup> For CSP, see <<http://www.sdcounty.ca.gov/pds/advance/conservationsubdivision.html>>.

Very truly yours,



Dan Silver, MD  
Executive Director

cc: Richard Bruckner, Director