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November 13, 2013

**By Certified Mail and E-mail To:**  
**bmenke@planning.lacounty.gov**

**Brianna Menke**  
**LA County Department of Regional Planning**  
320 W. Temple St Room 1354  
Los Angeles, CA 90012

RE: Comments Regarding the 2013 Draft HMA Ordinance and Draft Hillside Design Guidelines

Dear Ms. Menke:

We are attorneys that represent multiple landowners that own large acreage parcels in the Santa Monica Mountains, which land is zoned for agricultural use, with the anticipation of using their property for agricultural purposes. The properties were purchased long before any proposed revisions in 2012 or 2013 of the Hillside Management Area Ordinance (hereinafter "HMA").

Please distribute this letter regarding our comments about the 2013 Draft of the HMA to whomever is responsible for the drafting and approving same.

The existing HMA adequately provides for development and standards for use of agricultural property. There is no good reason to revise it. It has worked fine for an extensive number of years.

The newly proposed revisions to HMA do not appear to try to improve the existing HMA, but rather appear to have been drafted to prevent development of any hillside falling within the 25% slope (that is, 4:1 slope) definition, and will have the result of preventing the use of agricultural hillside property for farming purposes even where it has been so zoned for decades. In fact, the stated purpose of the Draft HMA demonstrates that hillside property will not only be unavailable for agricultural purposes, but unavailable for virtually any purpose. The proposed 2013 Draft of the HMA in relevant part at Section 22.56.215 states:

A. Purpose.

1. This Section is established to ensure that development preserves the physical integrity and scenic value of Hillside Management Areas ("HMA"s),

provides open space, and enhances community character. These goals are to be accomplished by:

**a. Avoiding development** in HMAs to the extent feasible;

Though the term “development” would not generally include “farming”, the new proposed revisions now includes “removal of **any vegetation**” as development. The proposed revision of the HMA defines “Development” as follows:

“Development” means:

- a. Construction or expansion of any structure;
- b. Construction or expansion of any street or highway;
- c. Construction or expansion of any infrastructure, such as pipes, drainage facilities, telephone lines, and electrical power transmission and distribution lines;
- d. Grading, such as cut, fill, or combination thereof, including off-site grading;
- e. **Removal of any vegetation, including fuel modification;**
- f. Subdivisions; or
- g. Lot line adjustments. (Emphasis added)

Though most of the items listed appear to relate to building a structure or some type of actual construction, buried in such definition is “removal of any vegetation” or even simple grading. Thus, if someone wished to use their hillside property that was zoned for agriculture use for farming purposes, which would require removal of vegetation, that would now be considered “development” under the new proposed revisions to the HMA. Notably, simple grading or removal of vegetation for farming purposes has absolutely no relationship to the slope of the hillside as it is the same whether on flat ground or on a hillside. Even removal of dangerous brush under order of the fire department would be considered development.

The new proposed HMA now requires a discretionary Conditional Use Permit (“CUP”) for any development (any exceptions are generally not material), which would include removing vegetation or simple grading, where it would not have been required before. Rather, it is quite obvious that such proposed revisions are solely for purpose of preventing the use of hillside property for agricultural proposes, so such property can be “open space”.

In fact, the arbitrary, capricious and subjective means to obtain a discretionary Conditional Use Permit, insures no development of the hillside for agricultural purposes will ever be allowed. The concepts of Zoning and Land Use now take a back seat to the Hillside Management no development policy.

In fact, even if one applied for a CUP, the new proposed revision provides that at least 70%

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of the gross area shall be open space. So if someone wished to use their property for agricultural purposes and had 30 acres, then if the discretionary CUP was approved (which it most assuredly would not be), one could only farm 9 acres, such that it would deny an owner an economically viable use of his land. This amounts to drafting an ordinance for purposes of taking the property of the hillside owners that have property zoned for agricultural use. Even if the passage of such zoning was proper, which is disputed, a regulation that goes too far will be considered as a taking. This has been recognized by the United States Supreme Court in multiple cases. See: Goldblatt v. Hempstead (1962) 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130, citing Penna. Coal Co. v. Mahon (the form of regulation can be so onerous as to constitute a taking).

In fact, Government Code Section 65912 states that the city or county is not authorized to adopt, amend or repeal an open space zoning ordinance in a manner that will take or damage private property for public use without the payment of just compensation. Government Code Section 65912 states:

**§ 65912. Legislative finding and declaration**

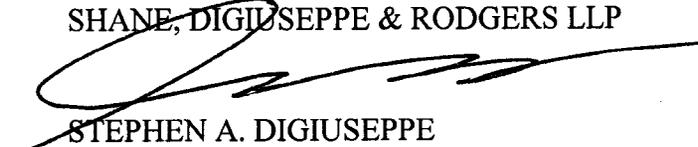
“The Legislature hereby finds and declares that this article is not intended, and shall not be construed, as authorizing the city or the county to exercise its power to adopt, amend or repeal an open-space zoning ordinance in a manner which will take or damage private property for public use without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or of the United States.”

Thus, the County is not authorized to pass such open space requirements for agriculture zoned property (or any property) without the payment of just compensation. Such proposed HMA is an open space zoning ordinance that prevents one from an economically viable use of agriculturally zoned property and will require the payment of just compensation to an extensive number of landowners.

Accordingly, neither the proposed Draft HMA nor the Hillside Design Guidelines should be approved.

Very truly yours,

SHANE, DIGIUSEPPE & RODGERS LLP



STEPHEN A. DIGIUSEPPE

SAD:sad

(cc: continued on following page)

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cc:

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