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January 13, 2014

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

Dear Ms. Menke, Mr. Ridley-Thomas, Ms. Molina, Mr. Knabe, Mr. Zaroslavsky and Mr.
Antonovich:

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").

Brianna Menke
Mark Ridley-Thomas
Gloria Molina
Don Knabe
Zev Zaroslavsky
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By letter dated November 13, 2013, we made comments to Mr. Menke about the proposed 2013 Draft HMA Ordinance and Draft Hillside Design Guidelines and provided a copy to Mr. Ridley-Thomas, Ms. Molina, Mr. Knabe, Mr. Zaroslavsky and Mr. Antonovich. A copy is enclosed again for your reference.

We received a call from Ben Saltzman of Mr. Zaroslavsky's office who wanted to discuss our comments. He was of the general impression, that many of the comments that we were making, were already part of the existing Ordinance, such as there always is a requirement for a conditional use permit if there is hillside property and that the 70% open space requirement applied to all hillside property. We advised him that is not the case.

We have prepared a three column review of the existing ordinance, the new proposed Ordinance, and our comments. It is enclosed for your review, so you can see the new proposed ordinance is dramatically different that the existing ordinance as it related to agricultural use of hillside property.

As previously stated, 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.

As we set forth in our prior letter, under the new proposed ordinance, 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.

Again, if in fact you one applied for a CUP, the new proposed revised ordinance provides that at least 70% of the gross area shall be open space, even for agriculturally zoned property, where the prior ordinance did not so require any such 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. Again, 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).

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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
Enclosures

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November 13, 2013

By Certified Mail and E-mail To:
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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 purposes, 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

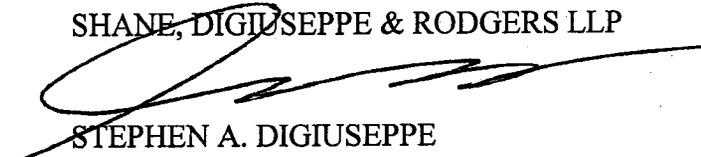
“The Legislature hereby finds and declares that this article is not intended, and shall not be construed, as authorizing the city or the county to exercise its power to adopt, amend or repeal an open-space zoning ordinance in a manner which will take or damage private property for public use without 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)

Brianna Menke

LA County Department of Regional Planning

November 13, 2013

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2013 Draft Hillside Management Area Ordinance -- Released October 17, 2013

An ordinance amending Title 22 – Planning and Zoning – of the Los Angeles County Code related to the update of additional regulations for Hillside Management Areas.

SECTION 1. Section 22.08.080 is hereby amended to read as follows:

...
— Hillside Management Area, Nonurban. "Nonurban Hillside Management Area" means those areas and any portion of a lot or parcel of land which contains terrain having with a natural slope of 25 percent or more greater included within the nonurban classification of the general development policy map of the General Plan.

— Hillside Management Area, Urban. "Urban hillside management area" means those areas having a natural slope of 25 percent or more included within the urban classification of the general development policy map of the General Plan.

...
SECTION 2. Section 22.56.215 is hereby repealed in its entirety.

SECTION 3. Section 22.56.215 is hereby added to read as follows:

22.56.215 Hillside Management Areas -- Additional Regulations.

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**

CURRENT VERSION

DEFINITIONS

22.08.080 H.

Hillside Management Area, Nonurban. "Nonurban hillside management area" means those areas having a natural slope of 25 percent or more included within the nonurban classification of the general development policy map of the General Plan.

— Hillside Management Area, Urban. "Urban hillside management area" means those areas having a natural slope of 25 percent or more included within the urban classification of the general development policy map of the General Plan.

22.56.215 Hillside Management and Significant Ecological Areas — Additional Regulations.

A.

1. Permit Required. Except as specified in subsection C, prior to the issuance of any building or grading permits, the relocation of two or more property lines between three or more contiguous parcels in a coordinated effort as determined by the Director of Planning regardless of the ownership of the

COMMENTS RE CHANGES

MAJOR CHANGE IN THE DEFINITION. Under the old definition, only areas which have a slope of 25% or more are included in the definition. The new definition provides that if any area of a property has a slope of 25% or more, all the property in the lot is included, including property that does not have a slope of 25% or more. so if one has a 50 acre parcel and 1 acre has a slope of more than 25 %. the entire parcel will be governed now by such onerous requirements, which are admittedly to prevent development of any part of the parcel.

Though the existing Section 22.56.215 and the proposed new 22.56.215 bear the same number, they can not be compared item by item as they are materially different. Under the existing Section 22.56.215, a conditional use permit is only needed if the property is in a significant ecological area or to be used for residential use and construction. It would not apply to agricultural use, such as grading for planting crops.

extent feasible;

b. Locating development in the portions of HMAs with the fewest constraints; and

c. Using sensitive design techniques.

2. This Section does not determine maximum allowable density or intensity for a proposed development. Maximum allowable density or intensity for a proposed development shall be determined by the adopted Area, Community, Neighborhood, or Specific Plan. Where there is no adopted Area, Community, Neighborhood, or Specific Plan, the maximum density or intensity for a proposed development shall be determined by the Land Use Element of the General Plan.

B. Definitions. For purposes of this Section the following definitions apply:

1. "Constraints" means features of the built or natural environment containing hazards or environmental resources, including those listed in the Hazard, Environmental and Resource Constraints Model of the General Plan (Appendix C).

2. "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.

3. "Hillside Design Guidelines" means the most recent version of the document maintained by the Department of Regional Planning that provides guidance on best practices and recommended approaches for development in HMAs;

4. "Improved Open Space" means:

a. Parks, playgrounds, golf courses, and other recreational facilities;

b. Riding, hiking, and cycling trails;

involved parcels and regardless of whether the relocations are applied for concurrently or through multiple or successive applications, approval of a minor land division or subdivision, or the commencement of any construction or enlargement of any building or structure on a lot or parcel which is in or partly in an area designated in the County General Plan and related maps as a significant ecological area or within a hillside management area as specified herein, a conditional use permit shall be applied for and approved as provided by this section.

2. A conditional use permit is required in hillside management areas when:

a. The property contains any area with a natural slope of 25 percent or more in an urban hillside management area proposed to be developed with residential uses at a density exceeding the midpoint of the range of densities established by an adopted areawide, community or specific plan covering the areas in which the proposed development is located. Where there is no adopted areawide, community or specific plan, the applicable density range shall be established by the land use element of the General Plan.

b. The property contains any area with a natural slope of 25 percent or more in a nonurban hillside management area proposed to be developed, with residential uses at a density exceeding the low-density threshold established for such property pursuant to subsection E.

B. Intent and Purpose of Regulations.

1. A conditional use permit is required in order to protect resources contained in significant ecological areas and in hillside management areas as specified in the county General Plan from incompatible development, which may result in or have the potential for environmental degradation and/or destruction of life and property. In extending protection to these environmentally sensitive areas, it is intended further to provide a process whereby the reconciliation of potential conflict within these areas may equitably occur. It is not the purpose to preclude

Under the existing provisions, a conditional use permit is only required if the area is proposed to be developed with residential uses at a density exceeding the midpoint range etc of the adopted plan. It would not apply to agricultural uses. Under the new proposed regulations, any property for any use that has any part of the property that has a slope greater than 25%, would now require a conditional use permit, which is discretionary, and which can be used to effectively prevent any development of the property, which is the stated goal of the revisions, which is a taking. .

- c. Community gardens, if allowed by the zone;
- d. Manufactured slopes;
- e. Vegetated swales;
- f. Water quality basins and debris basins, provided that such basins are not concrete; or
- g. Any open space that is subject to fuel modification.

5. "Natural Open Space" means any open space that will remain in an undisturbed natural state or any area that will be restored to a natural state to the satisfaction of a Department of Regional Planning staff biologist.

6. "Rural Land Use Designation" means any designation in the General Plan or in any adopted Area, Community, Neighborhood, or Specific Plan that allows residential development at a maximum density that does not exceed one dwelling unit per acre.

7. "Rural Transition Site" means a development site where at least 51 percent of the site perimeter adjoins land within a Rural Land Use Designation.

8. "Sensitive Design Techniques" means any site planning, engineering, landscaping, and/or architectural design technique(s) that, individually or combined, minimize horizontal and vertical cut or fill hillside disturbance; minimize the total volume of grading; minimize impact to scenic hillside views; and enhance community character. Such techniques may be found in the Hillside Design Guidelines.

C. Applicability.

1. Applicability of zone and supplemental district regulations. All provisions of the zone and any supplemental district shall apply except where a provision in this Section is more restrictive than a provision regulating the same manner in such zone or supplemental district.

2. Pending Applications. The following provisions shall apply to complete applications filed prior to the effective date of the ordinance updating this Section:

- a. The applicant can choose whether the application will be reviewed for compliance with this updated Section or with Section 22.56.215 as it existed prior to the effective date of the

development within these areas but to ensure, to the extent possible, that such development maintains and where possible enhances the remaining biotic resources of the significant ecological areas, and the natural topography, resources and amenities of the hillside management areas, while allowing for limited controlled development therein.

C. Exemptions from Permit. Permit exemptions include:

1. Accessory buildings and structures as defined in this title;
2. Additions or modifications to existing residences; provided, however, that such additions or modifications do not increase the number of families that can be housed in said residences;
3. Individual single-family residences where not more than one such residence is proposed to be built by the same person on contiguous lots or parcels of land. This exemption shall not apply to the relocation of two or more property lines between three or more contiguous parcels as described in subsection A.1. of this section;
4. In hillside management areas only (these provisions shall not apply where the subject property is also within a significant ecological area):
 - a. Issuance of building permits pursuant to a final map where project grading has commenced in accordance with an approved grading permit,
 - b. Development proposals which are so designed that all areas within the project which have a natural slope of 25 percent or greater remain in a completely natural state. The director shall make this determination using the proposed development plan, slope maps and any other material he deems necessary;
5. Final maps and development approvals (permits) related thereto which are in

The existing regulation provides such rules requiring a conditional use permit (where residential housing or a sensitive area is involved) is not to preclude development, but to preserve the ecological areas. The new proposed regulations state they are to restrict any development in any part of the property, which includes areas that are not a slope of 25% or greater and are not ecological areas. It permits unfetter subjective control over the entire property, where only a small part of the property may have a 25% or more slope or little or no ecological areas. Thus, under the proposed new regulations, the Department can prevent any farming in an area, where such existing regulations generally would not apply.

For farming, accessory buildings and structures would not require a conditional use permit. Under the new proposed regulations, they would, again preventing development.

ordinance updating this Section. In either case, approval of the application is not guaranteed.

b. If an application is reviewed for compliance with Section 22.56.215 as it existed prior to the effective date of the ordinance updating this Section, the applicant may modify the application prior to consideration by the Reviewing Authority. The modification may necessitate the submittal of revised, updated, or additional materials and reports, such as site plans, elevations, oak tree reports, etc. The modification will be reviewed for compliance with Section 22.56.215 as it existed prior to the effective date of the ordinance updating this Section if it does not change the housing type (e.g. from single-family to two-family or multi-family) nor increase:

i. The residential density;

ii. The floor area or lot coverage of non-residential space;

iii. The amount of grading; or

iv. The area of ground disturbance.

c. A modification to an application that is already approved but not used can be reviewed for compliance with Section 22.56.215 as it existed prior to the effective date of the ordinance updating this Section. The modification will be

reviewed for compliance with Section 22.56.215 as it existed prior to the effective date of the ordinance updating this Section if it qualifies to be reviewed as a Revised Exhibit "A" or an Amended Site Plan.

Otherwise, a modification shall be considered a new application and shall be reviewed for compliance with this Section.

d. If an approval is used and has a grant term, the approved use may be maintained until the end of the grant term. At the end of the grant term, the use shall be subject to the provisions of this Section. During the grant term, a modification to the approved use will be reviewed for compliance with Section 22.56.215 as it existed prior to the effective date of the ordinance updating this Section if it qualifies to be reviewed as a Revised Exhibit "A" or an Amended Site Plan. Otherwise, a modification to the approved use shall be subject to the provisions of this Section.

e. If an approval is used and does not have

substantial conformance with a tentative map approved or extended by the county of Los Angeles since December 31, 1978, except as California state law may otherwise specify;

6. Complete applications for development proposals which were filed for approval prior to February 5, 1981, except at the specific request of the applicant. This exemption shall also apply to the refiling of applications which were denied solely by reason of Sections 65950 through 65967 of the Government Code and were originally filed prior to February 5, 1981. Any development proposals within this exemption still must be consistent with the county of Los Angeles' adopted General Plan;

7. Property located in both a significant ecological area and a sensitive environmental resource area; provided, however, that this exception applies only to the significant ecological area regulations and does not apply to the provisions related to hillside management.

D. Additional Contents of Application. In addition to the material specified in Section 22.56.030, an application for a conditional use permit for hillside management or significant ecological areas shall contain the following information:

1. In all applications:

a. Panoramic or composite photographs from all major corners of the subject property and from major elevated points within the property;

b. Maps showing the existing topography of the subject property. Commercially available maps may be deemed acceptable:

i. One copy of such map shall identify the locations of all drainage patterns, watercourses and any other physical features which are customarily found on topographical maps prepared by the United States Geological Survey,

ii. A second copy shall delineate all property having a natural slope of 25 to 49.99 percent, and a natural slope of 50 percent or more;

c. A grading plan to a scale satisfactory to the director indicating all proposed grading, including the natural and finished elevations of all slopes to be graded;

d. The following, if the construction of

The Open Space requirements of the existing regulations for nonurban hillside management area of not less than 70% only applies to RESIDENTIAL DEVELOPMENT. Accordingly, it would not apply to agricultural uses.

a grant term, the approved use may be maintained in perpetuity unless a time limit is specified by Section 22.56.1540. In addition, all applicable provisions in Part 10 of Chapter 22.56 shall apply to the approved use. A modification to the approved use will be reviewed for compliance with Section 22.56.215 as it existed prior to the effective date of the ordinance updating this Section if it qualifies to be reviewed as a Revised Exhibit "A" or an Amended Site Plan. Otherwise, a modification to the approved use shall be subject to Part 10 of Chapter 22.56 and the provisions of this Section.

D. Permit Required.

1. For purposes of this subsection, the definition of HMA in Section 22.08.080 shall not apply to:
 - a. Any area which contains terrain with a natural slope of 25 percent or greater that is one half acre or less in size if located in a Rural Land Use Designation, or is one quarter acre or less in size if not located in a Rural Land Use Designation, and not contiguous with any other terrain with a natural slope of 25 percent or greater; and
 - b. Any area which contains terrain with a natural slope of 25 percent or greater that is 120 feet or less in width, as measured from the base of the hillside, and not contiguous with any other terrain with a natural slope of 25 percent or greater.
2. **A Conditional Use Permit shall be required for any development located wholly or partially in an HMA, except for:**
 - a. Development on a single lot or parcel of land, provided that grading does not exceed 20,000 cubic yards of total cut plus total fill material. This exception shall not apply when two or more lots or parcels of land are developed in a coordinated effort, regardless of the ownership of the involved lots or parcels of land and regardless of whether the developments are applied for concurrently or through multiple successive applications;
 - b. Lot line adjustment of one property line between two lots or parcels of land. This exception shall not apply to the adjustment of two or more property lines between three

dwelling or other structures are part of the proposed project:

- I. Exterior elevation drawings, to a scale satisfactory to the director, indicating proposed building heights and major architectural features, and

- ii. Plans for decorative landscaping, showing the location of proposed groundcover areas, shrub mass, and existing and proposed tree locations for common or open space areas not left in a natural state. Such plan shall also include botanical and common names of all planting materials;

2. In hillside management areas, the following additional information:

- a. Geology and soil reports indicating active or potentially active faults at and near the proposed site and the stability of the area within the various slope categories used in this section,
- b. For proposed residential uses in areas identified as nonurban hillside management areas in the General Plan, the number of acres within the following slope categories, as determined by a licensed civil engineer, licensed land surveyor or a registered geologist:

- I. Zero to 24.99 percent natural slope,
- ii. 25 to 49.99 percent natural slope,
- iii. 50 percent or greater natural slope;

3. In significant ecological areas, the following additional information:

- a. Identification and location of the resources constituting the basis for classification of such area as a significant ecological area where not provided by the environmental assessment or the initial study for an environmental document;
- b. Proposed natural open areas, buffer areas, or other methods to be used to protect resource areas from the proposed use; Such other information as the planning director determines to be necessary for adequate evaluation. The planning director may waive one or more of the above items where he deems such item(s) to be unnecessary to process the application.

E. Calculation of Thresholds in Nonurban Hillside Management Areas. Density thresholds for residential uses in nonurban hillside management areas shall be calculated using the analysis of slope categories required by subsection D2b, as follows:

Under the new proposed Regulations, a conditional use permit is required for any development located wholly or partially in an HMA. The exceptions are limited and would not except property for agricultural uses. The requirements for a conditional use permit are subjective and onerous, which gives the Department arbitrary and absolute control over one's property.

or more contiguous lots or parcels of land in a coordinated effort, regardless of the ownership of the involved lots or parcels of land and regardless of whether the adjustments are applied for concurrently or through multiple successive applications;

c. **Development designed such that all HMAs on the development site remain in a natural state or are restored to a natural state to the satisfaction of a Department of Regional Planning staff biologist and are designated as Restricted Use Areas on a recorded final map or on a recorded covenant if a final map is not required.**

d. Development to be undertaken by the County, provided that such development complies with the following procedure: The lead County department shall prepare a written report that documents substantial compliance with the Hillside Design Guidelines. This report shall be included as part of the development's publicly available documents and included as part of any subsequent project reports to the Board of Supervisors and its attendant commissions. A report shall not be required for maintenance activities or any activities listed in subsection I, below.

e. Development to be undertaken by a public utility regulated by the California Public Utilities Commission, including maintenance of utility equipment.

f. Development related to any adopted Specific Plan, provided that such development complies with the provisions of that Specific Plan.

g. Development related to drilling for and production of oil and gas within the Baldwin Hills Community Standards District (CSD), provided that such development complies with the provisions of that CSD.

h. Any activity being undertaken as an on-site or off-site mitigation measure for another development, such as restoration of natural habitat or planting of oak trees.

I. Any of the following activities required, requested, authorized, or performed by a governmental agency:

- i. Removal or thinning of vegetation for fire safety or in response to an emergency; and
- ii. Hazard management activities in

1. **Low-density Threshold.** The low-density threshold for a proposed development shall be determined by:

a. Multiplying the number of acres to the nearest tenth acre in the following slope categories by the density threshold indicated as follows:

I. One dwelling unit per five acres of land within the zero to 24.99 percent natural slope category;

ii. One dwelling unit per 10 acres of land within the 25 to 49.99 percent natural slope category; and

iii. Zero dwelling units for any acreage within the 50 percent and above natural slope category.

b. The resulting total number of dwelling units to the nearest tenth acre obtained by adding the above categories is then divided by the total acreage of the project to the nearest tenth acre, and rounded down to obtain the low-density threshold applicable to such project.

2. **Determination if Conditional Use Permit Required.** If the density per acre of the proposed development exceeds the low-density threshold of such development obtained in subsection E1 above, a conditional use permit is required.

3. **Maximum Density Permitted.** The maximum density for a proposed development shall be that permitted by the adopted areawide, community, or specific plan for the area in which the proposed development is located. Where there is no adopted areawide, community, or specific plan, the maximum density shall be that established by the land use element of the General Plan.

F. **Burden of Proof.** The application for a conditional use permit-hillside management and significant ecological areas shall substantiate to the hearing officer the following facts:

1. **Hillside Management Areas.**

- a. That the proposed project is located and designed so as to protect the safety of current and future community residents, and will not create significant threats to life and/or property due to the presence of geologic, seismic, slope instability, fire, flood, mud flow, or erosion hazard, and
- b. That the proposed project is compatible with the natural, biotic, cultural, scenic and

Under the new proposed regulations, the development site is to remain in its natural state, even if it is not a designated sensitive ecological area. In other words, you are not permitted to use your property for agricultural purposes.

response to an emergency or other public safety concerns.

E. Application Materials. If a Conditional Use Permit is required by this Section, the applicant shall submit the following:

1. All materials and information required by Section 22.56.030 and a Burden of Proof statement that substantiates the findings required by subsection H;

2. Site Photographs. Six panoramic or composite color photographs taken from each corner of the development site and from the highest elevated points within the development site, taken no more than 90 days prior to application submission, along with a photograph key. Additional photographs may be required at the time of application submission if the Director determines such materials are necessary for adequate evaluation;

3. Proposed Development Exhibits. The following three exhibits, each of the same size and scale, showing the natural topography of the site in accordance with the most recent version of the Hillside Design Guidelines:

a. A slope map that includes the following:

i. A site plan depicting the land use designation(s), proposed lot configuration, proposed streets, proposed grading design, and the following slope categories (by color) as determined by a licensed civil engineer, licensed land surveyor, or a registered geologist: Zero to 24.99 percent natural slope (green); 25 to 49.99 percent natural slope (yellow); and 50 percent or greater natural slope (red);

ii. A table listing the number of acres, land use designation(s), proposed non-residential square footage, and proposed residential density within each slope category;

b. An open space exhibit that includes the following:

I. A site plan depicting proposed lot configuration, proposed streets, proposed grading design, and proposed open space areas. The site plan shall number and label each proposed open space area and shall indicate whether it is natural open space or improved open space and whether it is contained within an open space lot or within a Restricted Use Area. The site plan shall also describe the type of improved open space within each improved open

open space resources of the area, and

c. That the proposed project is conveniently served by (or provides) neighborhood shopping and commercial facilities, can be provided with essential public services without imposing undue costs on the total community, and is consistent with the objectives and policies of the General Plan, and

d. That the proposed development demonstrates creative and imaginative design, resulting in a visual quality that will complement community character and benefit current and future community residents;

2. Significant Ecological Areas.

a. That the requested development is designed to be highly compatible with the biotic resources present, including the setting aside of appropriate and sufficient undisturbed areas, and

b. That the requested development is designed to maintain water bodies, watercourses, and their tributaries in a natural state, and

c. That the requested development is designed so that wildlife movement corridors (migratory paths) are left in an undisturbed and natural state, and

d. That the requested development retains sufficient natural vegetative cover and/or open spaces to buffer critical resource areas from said requested development, and

e. That where necessary, fences or walls are provided to buffer important habitat areas from development, and

f. That roads and utilities serving the proposed development are located and designed so as not to conflict with critical resources, habitat areas or migratory paths.

G. Hearings. In all cases where formal filing for a conditional use permit-hillside management and significant ecological areas is submitted, a public hearing shall be held pursuant to current procedures. In all cases, however, where a conditional use permit-hillside management and significant ecological areas is filed and processed as a single application with a land division case, such public hearings shall be held concurrently.

H. Director's Report.

1. In all cases where a public hearing is

space area;

ii. A table listing the acreage and percentage of natural open space areas and improved open space areas on each proposed lot, the total acreage and percentage of natural open space areas, and the total acreage and percentage of improved open space areas; and

c. A map showing constraints as defined in subsection B.1.

4. Information on Proposed Structures. If a new structure is proposed, exterior elevation cross sections, at a scale satisfactory to the Director, indicating proposed building and retaining wall heights as well as proposed retaining wall construction materials; and

5. Existing Landscape Plan. A landscape plan showing the location and species of existing groundcover, shrubs, and trees.

6. Additional Materials. The Director may request additional materials at the time of application submission or during the time in which the application is being reviewed by the Department of Regional Planning if the Director determines such materials are necessary for adequate evaluation. These materials may include the exhibits listed in the Hillside Design Guidelines, such as a site profile exhibit, a block elevation exhibit, a proposed landscape plan, a fuel modification plan, a viewshed analysis, and a line of sight exhibit.

F. Open Space Conditions. Every Conditional Use Permit required by this Section shall be subject to the following conditions:

1. Open Space Requirement – Rural Land Use Designation. **If the development is in a Rural Land Use Designation, at least 70 percent of the gross area of the development site shall be open space.**

Areas with constraints shall be prioritized for inclusion into the required open space areas. Up to 33 percent of the required open space may be improved open space and the remainder shall be natural open space. The Reviewing Authority may allow additional manufactured slopes if the applicant can demonstrate, to the satisfaction of the Reviewing Authority, that it is geologically necessary or aesthetically superior to do so.

2. Open Space Requirement – Other Land

required, the director shall prepare a report to the hearing officer containing, but not limited to, the following:

a. Detailed review of the applicant's development proposal, including:

i. Appraisal of measures proposed to avoid or mitigate identified natural hazards, and

ii. Appraisal of measures taken to protect scenic, biotic and other resources, and

iii. Recommended changes in the proposed development necessary or desirable to achieve compliance with the findings required by subsection I of this section and the provisions of the General Plan, and

iv. Recommended conditions to be imposed to insure that the proposed development will be in accord with the findings required by subsection I and the provisions of the General Plan;

b. In cases where the proposed development would impact a significant ecological area and where such information is not included in the environmental document, identification and location of the resources constituting the basis for classification of such area as a significant ecological area.

2. The director, in developing such a report and recommendation, will consult with appropriate agencies and will compile the recommendations and comments of such agencies, including any recommendation of SEATAC. Developments which are located in the Malibu Coastal Zone which are in both a significant ecological area and a sensitive environmental resource area shall be evaluated by the ERB pursuant to the provisions of Part 6 of Chapter 22.44 in lieu of SEATAC to assure the protection of the resources contained in these areas.

I. Findings and Decision. The hearing officer shall not approve an application for a conditional use permit-hillside management and significant ecological areas unless it finds that the proposal is consistent with the General Plan and:

1. In hillside management areas:
a. That the burden of proof set forth in subsection F of this section has been met by the applicant, and
b. That the approval of proposed dwelling

Under the new proposed regulations, 70% of the property shall be designated open space. Under the existing regulations, this only applies for residential development. Now it would apply to any development, including preventing a party from using all of their property for agricultural use, which amounts to an outright taking.

Use Designations.

a. If the development is not in a Rural Land Use Designation, at

least 25 percent of the net area of the development site shall be open space. If the development is in a Residential Planned Development Zone, at least 30 percent of the net area of the development site shall be open space in accordance with Section 22.60.460.B.4. Areas with constraints shall be prioritized for inclusion into the required open space areas.

b. If the development is located on a Rural Transition Site, up to 50 percent of the required open space may be improved open space and the remainder shall be natural open space. If the development is not located on a Rural Transition Site, the Reviewing Authority may allow up to 100 percent of the required open space to be improved open space. In determining the amount of improved open space, the Reviewing Authority shall consider the characteristics of the development site.

3. Open Space Use and Configuration.

a. Required open space areas, with the exception of community gardens if allowed by the zone, shall not be used for residential, commercial, industrial, or agricultural activities.

b. At least 51 percent of required natural open space shall be configured into one contiguous area. A street may be placed within the contiguous natural open space area if the applicant can demonstrate, to the satisfaction of the Reviewing Authority, that such street is necessary to ensure adequate circulation or access. However, such a street shall not be counted as a portion of the total required open space. The contiguous natural open space area shall also be contiguous with dedicated natural open space area(s) on adjoining lots or parcels of land, if possible.

If the development is located on a Rural Transition Site, the contiguous natural space area shall also be contiguous with the portions of the site perimeter that adjoin land within a Rural Land Use Designation, if possible.

c. The following shall only apply if the

units exceeding the number permitted by the low-density threshold for the proposed development in nonurban hillsides or the midpoint of the permitted density range in urban hillsides is based on the ability to mitigate problems of public safety, design and/or environmental considerations, as provided in this section and the General Plan;

2. In significant ecological areas, that the burden of proof set forth in subsection F has been met by the applicant.

J. Conditions. Every conditional use permit-hillside management and significant ecological areas shall be subject to the following conditions. All of the following conditions shall be deemed to be conditions of every conditional use permit-hillside management and significant ecological areas, whether such conditions are set forth in the permit or not. The hearing officer, in granting the conditional use permit-hillside management and significant ecological areas, may impose additional conditions, but may not change or modify any of the following conditions except as otherwise provided herein and/or pursuant to the provisions of Part 2 of Chapter 22.56

1. Hillside Management Areas.

a. Open Space. Open space shall comprise not less than 25 percent of the net area of a residential development in an urban hillside management area, and not less than 70 percent of the net area of a residential development in a nonurban hillside management area. Subject to the approval of the hearing officer, such open space may include one or more of the following:

- i. Undisturbed natural areas,
- ii. Open space for passive recreation,
- iii. Private yards, provided that certain construction rights are dedicated,
- iv. Parks and open recreational areas,
- v. Riding, hiking and bicycle trails,
- vi. Landscaped areas adjacent to streets and highways,
- vii. Greenbelts,
- viii. Areas graded for rounding of slopes to contour appearance,
- ix. Such other areas as the hearing officer deems appropriate;

b. Landscaping. Where appropriate, a plan for landscaping common or open space

Under the old regulations, open space requirement of 70% of the property only applies to RESIDENTIAL DEVELOPMENTS. The new proposed regulations would apply to any development in an HMA, including property solely for agricultural use, which amounts to an outright taking.

development is a subdivision:

I. The following types of improved open space shall be

configured into open space lots:

(a). Parks, playgrounds, golf courses, and other recreational facilities;

(b). Riding, hiking, and cycling trails; and

©. Community gardens, if allowed by the zone.

ii. Natural open space shall be configured into open space lots if the subdivision is a density-controlled development, as defined by Section 22.08.040, or if the subdivision is in a Rural Land Use Designation, consists of 20 or more dwelling units, and has residential lots of 15,000 or fewer square feet.

4. Open Space Recordation.

a. If the development is a subdivision, required open space

areas shall be shown on the tentative map and the final map and shall be subsequently recorded on the final map as a fee lot or as an Open Space – Restricted Use Area; or

b. If the development is not a subdivision, required open space

areas shall be shown on the site plan or lot line adjustment exhibit. All required open space shall be labeled as Open Space – Restricted Use Area on a recorded covenant.

5. Open Space Ownership and

Management. If the development is a subdivision and open space lots are required by subsection F.3.c, prior to tentative map approval, a condition shall be established regarding ownership and management of the open space lots. The condition may require:

a. Dedication to a government entity, such as a county, city, state, federal, or joint powers authority;

b. Dedication to a non-profit land conservation organization that meets the Statement of Qualifications of Non-Profits Requesting to Hold Mitigation Land according to Government Code Section 65965;

c. A conservation easement that requires the open space to remain in perpetuity and extinguishes all future development rights; or

d. A maintenance agreement with a Home Owners' Association if the applicant can demonstrate, to the satisfaction of the

areas not to be left in a natural state shall be submitted to and approved by the hearing officer. Where a landscaping plan has not been submitted to the hearing officer as part of this application, said plan shall be submitted to and approved by the director prior to the issuance of any grading or building permit. Appeal of the director's decision shall be as provided in Section 22.56.1750

c. Utilities. The applicant shall submit to the hearing officer, and it shall be made a condition of approval, satisfactory evidence that the applicant has made arrangements with the serving utilities to install underground all new facilities necessary to furnish service in the development. This requirement may be waived where it would cause undue hardship or constitute an unreasonable requirement;

d. Residential Density. The hearing officer shall, as a condition of approval, designate the maximum number of dwelling units permitted in a residential development as follows:

i. In urban hillside management areas, a number between the midpoint and the maximum number of dwelling units permitted by the range of densities established by an adopted areawide, community or specific plan covering the areas in which the proposed development is located. Where there is no adopted areawide, community or specific plan, the applicable density range should be established by the land use policy map of the General Plan, but not to exceed the number permitted by this Title 22

ii. In nonurban hillside management areas, a number between the low-density threshold and the maximum number of dwelling units established for such property pursuant to subsection E of this section, but not to exceed the number permitted by this title 22

e. Architectural Features. Where not submitted to the hearing officer as part of this application, exterior elevation drawings indicating building heights and major architectural features shall be submitted to and approved by the director prior to the issuance of any building permit. Appeal of the director's decision shall be as provided in Section 22.56.1750

2. Significant Ecological Areas. The

Reviewing Authority, that dedication to the entities above or a conservation easement is not feasible.

G. Other Conditions.

1. The Reviewing Authority may impose conditions pertaining to sensitive design techniques in addition to conditions imposed pursuant to Section 22.56.100 and subsection F.

2. Each condition shall specify whether it applies to the entire development, to the portion of the development within HMA(s), or to an individual lot or parcel of land.

3. If the development is a subdivision, the conditions may specify that subsequent applications to modify the Conditional Use Permit need only relate to the lots or parcels of land affected by such modification instead of the entire development site.

H. Findings. The Reviewing Authority shall not approve a Conditional Use Permit application unless it finds that the applicant has substantiated all of the following findings in addition to those required by Section 22.56.090:

1. That the proposed development preserves the physical integrity of HMAs to the best extent feasible, resulting in the least amount of impact to hillside resources, by:

- a. Avoiding development in HMAs to the extent feasible;
- b. Locating development in the portions of HMAs with the fewest constraints; and
- c. Using sensitive design techniques.

2. That the proposed development preserves the scenic value of HMAs to the best extent feasible, resulting in the least amount of impact to on-site and off-site scenic views of slopes and ridgelines as well as views of other unique, sitespecific aesthetic features of the hillside, by:

- a. Avoiding development in HMAs to the extent feasible;
- b. Locating development in the portions of HMAs with the fewest constraints; and
- c. Using sensitive design techniques.

3. That the proposed development provides open space and enhances community character through substantial compliance with the Hillside Design Guidelines.

hearing officer shall, as a condition of approval, require that the proposed development plan incorporates those measures necessary to protect identified resources and meet the burden of proof described in subsection F of this section.