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January 31, 2013

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

Draft Hillside Management Area Ordinance
(December 6, 2012 Version)

Dear Ms. Menke:

The Wildlife Corridor Conservation Authority (WCCA) provides the following comments on the Draft Hillside Management Area (HMA) Ordinance (December 6, 2012 version). WCCA was created to provide for the proper planning, conservation, environmental protection and maintenance of the habitat and wildlife corridor between the Whittier-Puente Hills, Chino Hills, and the Cleveland National Forest in the Santa Ana Mountains.

WCCA has been following closely the changes to the proposed General Plan, Significant Ecological Area (SEA) boundaries, SEA regulations, and HMA Ordinance. WCCA has provided numerous comment letters to Los Angeles County (County) on these topics over the years. In a February 10, 2012 letter, WCCA provided comments on the Preliminary Draft Significant Ecological Area and Hillside Management Area Ordinance (November 10, 2011 version).

The County is in a unique and timely position to develop a HMA Ordinance with enduring public benefits, including the protection of scenic views, native habitat, and watershed integrity. In fact, according to one of the proposed purposes in the HMA Ordinance, the Ordinance appears to strive for meaningful goals:

> 22.56.215.A.1. Protect scenic hillside views, consisting of slopes, hilltop summits, and ridgelines, and conserve natural hillside character and significant geological features through sensitive hillside site design and provision of open space;...

Unfortunately, the County has taken several sizable steps backwards in the proposed December 2012 version of the HMA Ordinance, compared with the November 2011 version. *WCCA strongly recommends a major rewrite of the current version of the HMA, including adding back in*

several provisions that were deleted from the November 2011 version.

Applicability of the Ordinance Has Been Reduced

It appears that the Applicability section (22.56.215.B.) in the December 2012 version of the HMA Ordinance now covers far fewer types of projects, and therefore provides significantly less protection for the County's hillsides, compared with the November 2011 version. The November 2011 version (22.56.216.C.) lists a couple of cases where the Ordinance would not apply (such as for projects with permits issued prior to the Ordinance). The November 2011 version also lists exceptions to the requirement for conditional use permits (CUPs) for parcels within Hillside Management Areas (for example, single-family homes with less than 5,000 cubic yards of earthwork). The November 2011 version defines development within Hillside Management Area (22.56.216.B.1. and 2.). It takes a more inclusive approach, while specifically identifying exceptions to the Ordinance.

The December 2012 version, on the other hand, provides a limited list of projects for which the Ordinance would apply (22.56.215.B.): land division projects, development of two or more lots, relocation of property lines to create three or more contiguous lots, and private infrastructure projects unrelated to a development project. With this approach the Ordinance would not apply to many of the projects which would apply under the November 2011 version. Also, under the December 2012 version, conditional use permits would not be required for certain projects in HMAs (as they would under the November 2011 version). For example, in the November 2011 version, a CUP would be required for single-family homes that hit a grading threshold (5,000 cubic yards) or floor area threshold (4,000 square feet), and for grading projects over 5,000 cubic yards of earthwork.

There is no public policy justification offered as to why the draft Ordinance was gutted to remove 90 percent of projects it was intended to address. If the County intends to provide meaningful protection to hillsides, the Ordinance needs to apply to projects that reasonably could adversely impact the hillsides. A massive single-family home with amenities can result in more adverse impacts than a tiny two-lot subdivision. Not including any single-family homes for a CUP requirement in the Ordinance certainly does not accomplish the purposes of the Ordinance. WCCA recommends that the County choose a more inclusive application of the Ordinance, similar to the November 2011 version.

Please note that in WCCA's comments on the SEA Ordinance (February 10, 2012), WCCA recommended that the threshold for a SEA CUP be decreased to those single-family homes involving more than 1,000 cubic yards of earthwork, as well as to those single-family homes involving more than 5,000 square feet of surface area grading. Similar thresholds should be applied to the HMA Ordinance.

Weakened Protections for Open Space

In several sections of the December 2012 version of the HMA, the protections for permanent open space have been substantially watered down, compared with the November 2011 version. WCCA recommends the County generally utilize the provisions in the November 2011 version (with some recommended modifications), which afford greater protection to open space.

The Ownership and Management section explains to which type of entity the open space would be dedicated. Under the December 2012 version (22.56.215.D.1.f.), this dedication provision is now limited only to land division projects. (The November 2011 version [22.56.216.F.1.e.] does not limit the open space dedication requirement to only land divisions.) The approach in the December 2012 version leaves open a wide array of projects that could have significant negative impacts on environmentally-sensitive hillside resources (one example is a multi-home residential development), without the necessary legal protections to assure permanent protection of the open space. WCCA recommends the November 2011 language in this case (with the following recommendation modifications).

The following underlined language (included the November 2011 version, Section 22.56.216.F.1.e.) was deleted in the December 2012 version. Even though the language was added to section f., WCCA recommends reinserting the underlined language to avoid any misunderstandings.

> 22.56.215.D.1.f. Ownership and Management...i. Dedication to a government entity such as a county, city, state, federal or joint powers authority, <u>which will hold and manage the land or easement under a mandate to protect the natural resources in perpetuity</u>;...

In addition, to make sure that the open space is appropriately managed if a non-profit organization accepts the dedication, we recommend the following underlined language be added:

> 22.56.215.D.1.f. Ownership and Management...ii. 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, <u>and which has the proven capabilities and relevant experience to manage the land</u>;...

The following text regarding Home Owners' Associations was added to the December 2012 version. We strongly recommend deletion of this new text (shown in strike-out): "22.56.215.D.1.f. Ownership and Management. ~~iii. Dedication to a Home Owners'~~

~~Association.~~" We have seen cases where a development is approved with an understanding that the open space would be protected in perpetuity, but when the Home Owners' Association (HOA) gets involved years later they have questioned the need for the original open space management provisions. Often HOAs have goals and missions that conflict with the primary goal to protect the open space in perpetuity.

As we stated in WCCA's February 10, 2012 letter, the following improvements in the open space (Section 22.56.215.D.1.b.i.) should be deleted: "~~(a) Parks, playgrounds and other recreational facilities:~~" These are typically built environments and would be more appropriately as counted within the developed portion of the project. In addition, community gardens have been added as allowed within the open space in the December 2012 version. We recommend the deletion of the following text in strike-out: 22.56.215.D.1.b.i.~~(b). Community gardens, as defined in Section 22.08.030~~. Non-native landscaped areas, including irrigation, as in community gardens, have no habitat value to a majority of native wildlife within open space hillside areas. Native habitat restoration is appropriate within the open space. Native plants, trails, and manufactured slopes are appropriate uses of open space dedications.

WCCA reiterates from its February 10, 2012 letter the importance of recording conservation easements over open space areas. We have seen a case in the County where open space was identified on a map, but years later, under different elected officials/ leadership of the jurisdiction, there was an effort to remove that notation. It is important to learn from the past, and to avoid any loopholes or confusion, which would not protect the land in perpetuity. Otherwise, this is misleading and a disservice to the public if the so-called protected open space, is not actually protected. There is no substitute for third party enforcement, i.e., by the public open space agency that accepts the conservation easement. Conservation easements also provide a mechanism to clearly identify permitted uses and non-permitted uses within the open space. The existing language in the December 2012 version is too limited and too open-ended. (It states that for land divisions, the recorded open space shall be shown on the tentative map and the final map and shall be subsequently recorded on the final map and/or as an easement.) We recommend that the language from the November 2011 version be added back into this current version, with our February 10, 2012 recommendations incorporated (see below). This would address important timing issues and would emphasize the use of voluntary conservation easements, over other instruments.

REINSERT THIS TEXT FROM NOVEMBER 2011 VERSION, WITH THE FOLLOWING EDITS (add underlined text; delete strike-out text):

> 22.56.216.F.1.d. Dedication of Open Space. A dedication of open space shall be recorded at the time of final map recordation, or prior to the effective date of the permit, that requires the open space to remain as permanent

open space in perpetuity and extinguishes all future development rights. All dedicated open space shall be recorded as Open Space-Restricted Use Area in the preservation instrument and on all maps. Dedication of open space shall be established through one of the following preservation instruments:

i. Recordation of a voluntary conservation easement;
ii. Recordation of an open space deed restriction ~~on a final map~~;
iii. ~~ii.~~ Recordation of an open space covenant; or
iv. ~~iii.~~ Any other preservation instrument the Director deems appropriate.

Need for Funding for Open Space Monitoring

WCCA recommends that the HMA Ordinance include a provision for funding for monitoring, and in some cases maintenance and/or management of the open space. It does not make sense for public agency or non-profit entity to take on that expense, in essence subsidizing the development.

A funding mechanism should be provided for management of dedications (including for conservation easements) over a certain size, for example 20 acres, subject to waiver by the Director for special circumstances. Depending on the specific resources in the open space to be protected, the funding could be minimal, for example, to fund periodic biologist or ranger site visits, or more involved, such as plant and wildlife annual monitoring and management. The HMA Ordinance should identify the specific, pre-permit issuance timing of the establishment of the open space funding (e.g., by placing the funding in an escrow account) – such as – prior to the issuance of a grading or other permit, map recordation, vegetation removal, or issuance of a certificate of occupancy.

Reduction in Open Space

WCCA is concerned that the current version of the HMA Ordinance would protect less open space resources within valuable hillside areas, compared with the November 2011 version. For example, the November 2011 version of the Ordinance (22.56.216.F.1.a.) stated:

> At least 70 percent of the gross area of the *lot(s)* within a Non-Urban or Rural Land use designation shall be permanent dedicated open space. At least 25 percent of the net area of the *lot(s)* within any other land use designation shall be permanently dedicate open space. (Italics added.)

The December 2012 version of the HMA (22.56.215.D.1.a.) states:

> At least 70 percent of the gross area of the *project site* within a Non-Urban, Rural, or Open Space land use designation shall be open space. At least 25 percent of the net area of the *project site* within any other land use designation shall be open space. (Italics added.)

"Project site" is not clearly defined. Changing the word "lot" to "project site" could eviscerate the protections that would have been provided in the November 2011 version. The percentage of open space to be retained should be based more on lot size, minus easements. It is evident that this requirement may not be possible on small lots, for example, where the development encompasses the majority of the lot. Perhaps the Ordinance could allow the Director to make exceptions for small lots.

WCCA recommends retaining the November 2011 language for this section. This allows for meaningful analysis of the whole lot and meaningful protection of open space in light of the proposed development.

Need to Retain Findings

The proposed findings for CUPs are appropriate in the December 2012 version. For example, the finding in Section 22.56.215.E.1. states:

> The proposed development protects scenic hillside views, consisting of slopes, hilltop summits, and ridgelines, and conserves natural hillside character and significant geological features through sensitive hillside site design and provision of open space;...

However, it is unclear why the six findings for a CUP in the November 2011 version (22.56.216.G.) have been deleted. WCCA recommends reincorporating those findings into the Ordinance, including the following text:

3. The proposed development activity is compatible with the natural, biotic, cultural, scenic, and open space resources of the area; and

4. The proposed development activity is designed to protect hillsides and retain large contiguous blocks of natural habitat or open space as specific in this Section; and...

WCCA also recommends reincorporating Finding 6 from the November 2011 version (22.56.216.G.), with the following additional underlined text:

6. Where a conflict exists between a provision in this Section and such other ordinance, statute, regulation, or requirement, the provision that would be most protective of hillside resources, biological resources, and/or Significant Ecological Areas applies to the extent permitted by law.

We appreciate your consideration of these comments. We look forward to continued collaboration with the County as this General Plan and HMA Ordinance process moves forward. Please continue to maintain our agency on your email/mailing lists for the General Plan, SEA Ordinance, HMA Ordinance, and related documents. If you have any questions, please contact Judi Tamasi of our staff by phone at (310) 589-3230, ext. 121, or by email at judi.tamasi@mrca.ca.gov.

Sincerely,

Glenn Parker
Chairperson