WILDLIFE CORRIDOR CONSERVATION AUTHORITY
570 WEST AVENUE 26, SUITE 100, LOS ANGELES, CALIFORNIA 90065
TELEPHONE: (310) 589-3230
FAX: (310) 589-2408

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July 12, 2012

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

Comments on Draft Significant Ecological Areas Ordinance
June 2012 Revision

Dear Ms. Howard:

The Wildlife Corridor Conservation Authority (WCCA) provides the following comments on the Draft Significant Ecological Areas (SEAs) Ordinance (June 2012). 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. As you know, WCCA has been following closely the changes to the proposed General Plan, SEA boundaries, and SEA regulations[1].

This draft appears to contain less detail than the previous version, which was thorough and comprehensive. Many of the specific sections that WCCA previously commented on have since been deleted. While recognizing that the County of Los Angeles is currently redrafting many sections of the Ordinance, WCCA hopes that the absence of the detailed standards present in the November draft does not represent a backsliding in proposed levels of protection. WCCA looks forward to reviewing forthcoming specific Ordinance language, including definitions, development standards, and required findings.

Given the lack of detail in this draft, WCCA's comments instead bear relation to how the proposed Ordinance fits in the context of the County's existing environmental planning regime. To be effective, the Ordinance must offer enhanced protections over the existing California Environmental Quality Act (CEQA) process. The Ordinance will set policy for the County that biological resources in these areas matter and that it is in the public interest to use the County's land use authority to protect these resources for future generations. Therefore, the thresholds set by

[1]WCCA prepared comments on the Los Angeles County General Plan, SEA boundaries, and/or SEA regulations in comment letters dated February 10, 2012; July 20, 2011; December 17, 2008; September 27, 2007; July 7, 2004; December 20, 2002; May 2, 2001; and April 30, 2001.

the Ordinance's various provisions should in all cases be more deferential to biological resource protection than CEQA guidelines. It follows that any mitigation for potential impacts to biological resources in these areas would be held to a higher standard to properly account for the significance of those resources and, secondarily, to discourage unnecessary impacts in the first place. The SEA Ordinance should shift the burden of proof such that projects must demonstrate compatibility with biological resources (primarily through design) rather than just avoiding the most severe impacts or mitigating for the impacts. Furthermore, through its discretionary permitting process, the County should prioritize the protection of biological resources over other competing objectives in these areas.

WCCA would also like to call attention to the importance of preservation instruments for long-term sustainability of SEAs. The previous draft did include provisions requiring open space dedications to be adequately protected. WCCA hopes to see this language reappear in the next draft, with the previously requested change to list conservation easements as the preferred mechanism. Additionally, the previous draft provided for the transfer of ownership of open space lands to public agencies, which is a critical long-term preservation strategy. WCCA also hopes to see this language reappear.

While the November 2011 version of the draft Ordinance did provide for dedication of open space to a land management entity, neither the November 2011 version nor the current June 2012 version provides the funding necessary for an agency to take on additional management burdens, nor does it specify when the dedication would occur. A funding mechanism should be provided for management of dedications (including for conservation easements) over a certain size, for example 40 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. There should also be a provision for management/maintenance funding in some cases for dedications of less than 40 acres, possibly subject to the Director's determination (for example, if the open space area supports a key population of an endangered species, or is subject to dumping or off-road vehicle entry). The SEA Ordinance should identify the specific, pre-permit issuance timing of the open space dedication and funding, such as prior to the issuance of a grading or other permit, map recordation, vegetation removal, or issuance of a certificate of occupancy.

The following specific comments are generally arranged in sequence to correspond to the June draft.

Purpose

In its February 10, 2012 comment letter, WCCA proposed a revision to the purpose statement. As written, the purpose of the SEA program is "to ensure that development activities in these areas do not unduly compromise the underlying ecological systems of the County in such a manner that would *threaten the future existence* of these systems" (emphasis added). WCCA believes that this is unnecessarily dire: the objective of the program should be to preserve ecosystem health, not just avert fatal impacts. WCCA recommends the following revision as a statement of overarching program goals: "to ensure that development activities in these areas respect their ecological context and do not unduly compromise the health and vitality of the County's diverse ecosystems."

Definitions

WCCA recommends a small change to the definition of Significant Ecological Area. We are concerned that as currently written, an area can only be considered a SEA if it supports a rare, threatened, or endangered species. For example, there may be a creek with well-developed riparian vegetation, or a unique plant community, or a "choke point" in a wildlife corridor, that could be excluded from the SEA designation because a rare species was not found on the area, even though it meets other SEA criteria. Proposed text is underlined.

> 1. Significant Ecological Area. A Significant Ecological Area is an ecologically important land or water system that supports valuable habitat for plants and animals integral to the preservation of rare, threatened or endangered species and<u>/or</u> the conservation of biological diversity in the County. Significant Ecological Areas are delineated on the Significant Ecological Areas and Coastal Resource Areas policy map of the County General Plan.

The November draft's definitions of Development Activities and Vegetation Clearance were comprehensive. WCCA requests that future definitions be at least as inclusive of potentially degrading activities. WCCA is comfortable with the new Minor Modifications category, which encompasses those activities that do not increase previous impacts to biological resources, bearing in mind that all potential impacts are considered, including an increase in project footprint, fuel modification, lighting, and/or noise resulting from the addition or change in use. The definition of Established Agricultural Uses should also address grazing. WCCA appreciates the emphasis on *legally permitted* farming uses in this revision.

Applicability

WCCA concurs with the majority of these exemptions, with the following caveats. The single-family residence exemption requires clarification to close potential loopholes relating to size and number of new houses. The November draft included language intended to reduce the possibility of piecemeal development by requiring a permit when three or more residences were "built by the same person or entity." This language parallels accepted guidelines from CEQA and should continue to be used in this context.

WCCA emphasizes again that the single-family residence exemption should also have a cap on size, whether determined by house size, total structure footprint, or fuel modification footprint, to limit cumulative impacts in SEAs from single-family home development.

WCCA is concerned about the exemption for parcels with expired conditional use permits (CUPs). Without some kind of time limit, it is conceivable that resurrecting a previous use could impact otherwise recovering resources. Property owners are responsible for keeping their permits up to date for any given land use. An expired permit should not convey any rights to present or future property owners. Removing this exemption would provide that all permit applicants go through the same equitable process and that permit conditions are consistent with best practices as of the date of issuance.

WCCA also has reservations about the proposed exemption for surface mining. Any large-scale earth movement within a SEA will inherently disturb biological resources, both from direct impacts such as habitat loss and indirect impacts from noise and activity. If mining projects are to be regulated under a different ordinance, then the SEA standards, guidelines, and mandatory findings must still apply to all discretionary actions for these projects within a SEA, including Surface Mining Permits. Alternately, an additional SEA CUP could be required to specifically protect biological resources.

The exemption for Established Agricultural Uses should again require that existing uses be legally permitted (or otherwise previously allowed) to qualify. Grazing will also need to be addressed in this section.

Consistent with previous comments, WCCA requests that "for fire prevention" be deleted from the native habitat restoration exemption, as it is an inappropriate limitation on the applicability of that exemption to resource agency activities.

Additionally, WCCA seeks an exemption for standard open space management and recreation uses. Open space park agencies primarily target their land acquisitions within open space areas precisely because those areas support sensitive plant communities and other sensitive environmental resources. Based on these shared preservation objectives,

park agency lands often have uses and facilities within SEAs, and it is critical that the proposed Ordinance does not unduly burden open space park agencies in achieving their missions of protecting open space and providing interpretation and access for the public. The following specific exemptions should be added to the Ordinance to allow for open space park facilities and activities. We are happy to discuss these further with you.

- Passive recreational and open space park support facilities and infrastructure (e.g., trails, facilities, and existing structures necessary for open space management activities and temporary events; nature centers and camps; offices and ranger stations in existing structures; park staff residences in mobile homes and existing structures; overnight camping facilities; native plant nurseries; restrooms; parking; fencing; signage; etc.).

- Passive recreational and open space park uses (e.g., construction or demolition of trails, scientific studies, interpretation activities, camping, and other temporary park events hosted by park agencies [camps, trail maintenance days for volunteers, nature education activities, festivals, weddings, etc.]).

Development Standards For Permit Exempt Uses in SEAs

This draft's framework of setting standards for all development activities in SEAs, whether exempt from a CUP or not, is a positive evolution for the Ordinance. This addresses one of WCCA's primary concerns with the previous draft, which was that exempt activities were cumulatively degrading to biological resources. To the maximum extent possible within the regulatory process, WCCA supports providing property owners with guidance on what they should do, in addition to what is prohibited. To the extent that these standards can be instructive and informative of the purpose of each regulation, the Ordinance can serve as an educational tool for rural land owners. WCCA strongly supports the creation of a design manual for developments in SEAs to achieve this aim. The November draft Ordinance included many specific design strategies appropriate for such a document.

Landscaping: WCCA promotes the use of native species and would support a standard requiring their use. A standard that restricts ornamental landscaping to within a certain radius of a residence or predefined area would also be acceptable. The SEA Ordinance must prohibit the use of known invasive species on an accepted list, such as that of the California Invasive Plant Council.

Fencing: Reasonable restrictions on fencing to facilitate wildlife movement are appropriate. Potential standards could address height, spacing of horizontal or vertical gaps, or locations. A standard could allow exclusionary fencing (i.e., impermeable to wildlife) around specific areas (e.g., residence, agriculture) while requiring that property line fences be permeable.

Lighting: The recently adopted County dark skies ordinance should be used as a model for requiring that lighting be directed and shielded away from natural areas.

Removal of vegetation/fuel modification: This standard should be specific to *native* vegetation and prohibit clearance beyond that required by the fire department. This should include that structures must be set back at least 200 feet from dedicated natural open space within the site or on adjacent parcels, wherever possible.

Drainage: The intention should be to maintain natural hillsides and watercourses to the maximum extent feasible. As such, the Ordinance should discourage hardscape infrastructure, such as concrete drains, and encourage natural topography and bioengineered drainage infrastructure. Site design should take into account the desire to minimize the need for engineered hillsides.

Water resources: Waters of the U.S. are protected by Sections 401 and 404 of the Clean Water Act against fill and water quality impacts. Equivalent standards should be applied to all waters of the County, including those with no U.S. Army Corps of Engineers jurisdiction. Specifically, impacts to streambeds (intermittent or perennial), washes and fans, ponds, and vernal pools should be avoided if at all possible and fully mitigated if not. Impacts that may increase sedimentation of water resources should also be avoided and/or mitigated.

Any other specific mapped resources should also be protected. Wildlife corridors are an area of particular concern for resource agencies, due to their critical and irreplaceable ecological function. Habitat linkages exist at the landscape level and are therefore too broad to avoid at the scale of most projects. However, specific corridor features, such as riparian corridors, road crossings, and other topographic and/or infrastructure constraints can and should be accounted for in site design. In the absence of a comprehensive map of these attributes, all under and overcrossings of public roadways and other linear infrastructure in SEAs should be assumed to facilitate wildlife movement.

Lastly, the draft refers to inspections of property by staff biologists in the context of these exempted uses. While WCCA agrees that the evaluation of resources is critical for informed decision-making, it is not clear how the County could require inspections in these cases when by definition permits are not required for exempted uses. Similarly, without the issuance of a CUP by which conditions are imposed, these development standards are purely guidelines with no enforcement mechanism.

SEA Conditional Use Permit

This draft proposes to divide CUP applications into two tiers based on the complexity and intensity of the proposed project. While WCCA has no fundamental objection to this approach, there are many nuances to consider in the drafting of such a split process. Under any dual-track system, the determination of which track a specific project would follow requires a discretionary decision. The draft Ordinance contemplates establishing a "burden of proof," but the obvious question is then "to whom?" How will professional disagreements about a project's potential impacts be adjudicated? Are the decisions by County staff appealable to elected or appointed officials? WCCA would be concerned about vesting Hearing Officers with discretionary authority in a ministerial CUP process without the benefit of the Significant Ecological Area Technical Advisory Committee's (SEATAC) expertise or accountability to a higher authority.

WCCA objects to the draft's threshold of impacting "irreplaceable" resources. This is a standard contained nowhere else in environmental law, with no accepted legal definition. The standard cuts to the heart of WCCA's earlier comment on the purpose of the SEA program. If the aim is to preserve the vitality and diversity of the County's biological resources as a complete and complex ecosystem and not just to avert the loss of the rarest constituent elements, the County would do well to use threshold language that better reflects a comprehensive ecological perspective. In practice, this means that projects consider impacts on all biological resources before they are degraded to the point of rarity. Even if resources are "replaceable," there is a significant impact if they are not in fact then replaced in a manner with equivalent or better ecological function.

The proposed sequence of steps for an applicant is not clear. When will the checklist be utilized for classification in relation to the initial project appraisal? When would the first biological evaluation be conducted? In what event would a supplemental evaluation be required? WCCA will withhold comment until this process is better defined, while noting the initial project appraisal does not include an actual evaluation of biological resources conducted to inform how a case will be reviewed. There are also inconsistencies in how the Director would prepare a report for the Hearing Officer with SEATAC's determination if the type one permit bypasses SEATAC. How will the Director make a determination in lieu of seeking SEATAC's recommendation?

Thank you for your continued efforts to draft a strong, consensus-based SEA Ordinance. WCCA looks forward to future collaboration and reviewing the next iteration of the Ordinance. Should you have any questions or clarifications, please contact Judi Tamasi at (310) 589-3230, ext. 121.

Sincerely,

Glenn Parker
Chairperson