

Building Industry Association Los Angeles / Ventura Chapter
Concerns Regarding the Hillside Management Area Ordinance
December 9, 2014

Regional Housing Needs Assessment Goals

Staff has not analyzed how the Hillside Management Areas ordinance will affect existing projects, if those projects were forced to implement the new rules. The new rules will substantially reduce the development yield for every approved project. How will this affect the county's ability to meet RHNA goals and provide for a variety of housing types?

The Grandfathering Provisions will Kill many projects and force developers back to square one.

The grandfathering provisions (aka zoning consistency program) will be problematic and have unintended consequences, causing projects to stagnate in the planning process. Project changes not deemed to be minor and in substantial compliance by the Director, will effectively eviscerate the existing project entitlements.

Property owners with pending applications may be forced to redesign their projects, and they have very little latitude to make changes without triggering the need to comply with the new regulations. The exhaustive list of new requirements will force an applicant to start from scratch. Valuable entitlements and years of work product would become useless forcing project applicants to, once again, endure a lengthy and expensive approval process.

Applicants with property in an adopted Areawide Plan may have their properties in escrow for sale for which the property values have been established based on the designated densities as shown on the adopted Areawide Plan. The property owners should be able to rely on the adopted Areawide Plan, which includes densities that have been studied and scrutinized under the adopted Areawide Plan's EIR. The Hillside Management Area ordinance limits development, such that, density allowances in the Areawide plans are not achievable in Hillside Management Areas.

Approved projects and pending applications should be completely exempt from the new Hillside Management Areas ordinance and the Significant Ecological Areas ordinance. Even minor changes, if not determined by the Director to be in substantial conformance with the original application, will cause a project applicants to be subject to new requirements greatly altering their projects. Property owners with approved projects and pending applications need more certainty to their future with solid grandfathering provisions that protects their investment in the entitlement process.

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Staff and the Director's control over the process.

Staff and the Director have far too much latitude and control in determining whether a project applicant has substantially complied with the design measures. There is no easy process to follow in the event a project applicant and staff can't agree.

Each of the design measure categories (Site Planning, Grading and Facilities, Road Circulation, Building Design and Landscaping) has requirements to incorporate techniques "not mentioned in the section that through innovation or in consideration of specific constraints or other specific project factors promote the overall design Objective."

Compliance with the design measures is far too subjective, and it appears a project applicant must comply with all design measures, if not, who decides which design measures can be ignored?

Technical and More Specific Comments

HMA Ordinance:

1. The "Hillside Constraints" definition is far too broad. With the emphasis on avoidance as the primary way to address Hillside Constraints, far too much project area will be off limits to development. A better way to address this concern is by determining significant topographical features, such as major and minor ridgelines, which should be conserved or sacrificed, if not significant. Some hazards in Hillside Constraint Areas may require remedial work to stabilize slopes, rock features, etc.
2. The Hillside Design Guidelines have been moved to the appendix of the code which now makes it harder for the County to make changes to it without public scrutiny, and it's open to negotiation with County staff to achieve compliance. The trade off is that it's open to negotiation with County Staff, however there is no certainty on how the guidelines will be administered. There is no process to resolve impasses with staff.
3. Manufactured Slopes have been eliminated from the list of items that qualify for "Improved Open Space". They should be included in Improved Open Space.
4. Rural Land Use Designation definition now includes rural commercial and industrial development
5. Staff reduced the permit requirement from 20,000 cy cut plus fill to 15,000 cy (on page 18).
6. Rural land use open space requirement is still 70% of the gross project area. This level of open space requirement without any nexus to project impacts is far too burdensome and may constitute a taking of property.
7. Requirement remains that at least 51% of required natural open space shall be contiguous. This could be difficult to achieve for some projects. Open space is

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often used to buffer communities and other land uses. There needs to be more flexibility on the location and amount of open space that must be contiguous to provide project applicants the opportunity to place open spaces in areas that are best for the larger surrounding community.

Hillside Design Guidelines Appendix:

1. Determination of compliance is solely left to the discretion of County Staff. No guidelines have been included to provide staff with a clear methodology to administer the decision framework and define thresholds of compliance. A project applicant will have no certainty in the process, and planners have the latitude to tinker with a project until they're happy.
2. Site Planning item 1.15 - Adding scenic vistas and access trails for prominent hilltop locations, will come out of your natural open space requirement. Such items should be part of the natural open space.
3. Site Planning item 1.1 – The 50% and 500 feet requirements are hard fast rules that should be eliminated. Various forms of infrastructure may come from alternative locations. Large projects could not comply with this arbitrary rule.
4. Site Planning item 1.2 – Locating 50% of the development footprint on the flattest portions of the site may not always be achievable. It would be better to identify the significant topographical resources and ridgelines to be preserved and work around those features rather than introduce an arbitrary rule.
5. Site Planning item 1.4 – The arbitrary restriction on the size of the blocks does not seem prudent or achievable in hillside areas. This may result in more streets, and more impervious surface. Isn't the intent to comply with the Healthy Design Guidelines? This should be left out of the Hillside Management Area ordinance because the issued covered elsewhere in the County Code.
6. Site Planning item 1.5 – Should be 20,000 SF or less, however there should be an allowance for a small number of larger lots where significant slopes or unusual constraints exist.
7. Site Planning item 1.7 – There should be no minimum or maximum amount of elevation difference between lots. The elevation differentiation should be a product of following the natural topography.
8. Site Planning item 1.11 – This suggestion can construed as to increase the amount of open space dedication. There is dispute over the required open space and the legality of the proposed rules with no nexus to project impacts.
9. Site Planning item 1.13 – Disturbed open space includes slopes, so the 25% threshold for recreation in disturbed open space seems high and may not be achievable.
10. Grading and Facilities item 2.1 – A limitation of 25' of elevation change from natural grade on any large project will not be achievable. The number is arbitrary

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- and far to low. The limitation does not provide for exclusions or exceptions which may be needed to stabilize landslides, for alluvial removals or other constraints requiring stabilization, or construction of required debris basins.
11. Road Circulation Item 3.3 – The parameters are completely arbitrary and may not be achievable.
 12. Road Circulation Item 3.6 – Cul-de-sacs usage is an integral part of any development with topography, and they should not be avoided.
 13. Road Circulation item 3.8 – 50% single-loaded roads is far too burdensome and expensive.
 14. Landscaping Item 5.1 – The 50% arbitrary threshold for retain or incorporating existing trees and woodlands is far too high of a threshold.
 15. Landscaping Section 5.2 – The County has other regulations dealing with oak trees. Offering only avoidance as a means to deal with oak trees is not consistent with other regulations.

Fiscal Impact Analysis Prepared for the General Plan

The fiscal impact analysis does not analyze the economic loss of housing units caused by restrictive hillside management standards, which severely constrain the developable area and development yield.

The fiscal impact analysis fails to analyze the massive devaluation of real estate and related tax base. SEA areas and hillside areas with grades of 25% or more will be not be developable and won't have any value. Additionally, the massive open space requirements, hillside constraints and SEA habitat will dramatically reduce the developable value of any land in a hillside management area and/or SEA area. Affected property owners will likely appeal the assessed value of their land.

The fiscal impact analysis fails to analyze the impact to the funding of planned capital improvement projects by future development consistent with the adopted areawide plans, such as Major Bridge and Thoroughfare Districts, water and sewer improvements under construction or "shovel ready" that are subject to Reimbursement Agreements based on future build-out consistent with the densities that have been designated in the adopted areawide plans.

Staff has not addressed BIA's concerns on the fiscal impacts of the Hillside Management Area ordinance.

Letter from Pacific Legal Foundation Dated November 15, 2013

Staff and County Council have not given the Building Industry Association any evidence or argument to refute the issues raised by the Pacific Legal Foundation.

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Massive open space requirements may violate the Takings Clause under Nollan and Dolan. The ordinance contains no connection between the open space requirements (forced dedication) and the impacts of the proposed project.