

## CHAPTER 8. NATURAL OPEN SPACE

The SEA Ordinance requires preservation of natural open space to offset impacts to SEA Resources by proposed development. Additionally, the SEA Ordinance requires new development to be set back an adequate distance from existing protected natural open space areas to ensure that required defensible space where vegetation must be thinned or cleared for fire protection will not extend onto the adjacent protected natural open space.

Many wildlife species, particularly carnivores and other wide-ranging species require large areas of suitable habitat for genetically and demographically viable populations. In addition, large contiguous blocks of habitat are more likely to encompass diverse habitat types and are more easily buffered from potential impacts from surrounding developed lands. Most SEAs contain large blocks of habitat generally conforming to a significant topographical feature such as a watershed, major river, butte, etc. These habitat blocks are referred to as "core habitats." Protecting natural open space (i.e., undeveloped land) within and adjacent to or near these large patches will maintain valuable protected core habitats, which, in turn, can protect larger wildlife populations and potentially generate a greater diversity of species and communities.

### CONFIGURATION AND USE

To meet the requirements of the SEA Ordinance, preserved open space must be maintained in its natural undeveloped condition. To the greatest extent possible, natural open space should be configured into one contiguous area and be clustered with other natural open space areas on adjacent parcels. Conservation easements should not be drawn to conflict with other existing easements, as the objective is for habitat and biological protection.

No removal of trees or vegetation or other disturbance to natural features is allowed in these areas, unless the activity is approved by the Director prior to the disturbance (for instance, if it is written in as an acceptable use in the deed restriction, covenant, or conservation easement approved by the Department). The following are uses that may be deemed acceptable in preserved natural open space:

1. disease control and/or control of invasive species;
2. habitat restoration;
3. paths or trails constructed and maintained to minimize environmental impact to the area (for instance, to restrict recreational use into a single path);
4. wildlife permeable fences constructed and maintained to minimize environmental impact to the area (for instance, to keep trail users from crossing into sensitive habitat areas);
5. fire protection, when determined by the County Biologist to be compatible with the SEA Resources being preserved; or
6. activities intended to maintain a specific habitat condition, which may include animal grazing, when recommended by the County Biologist. Such activities must be detailed in a management plan to be reviewed by the County Biologist and approved by the Department.

Driveways, streets, roads, or highways are prohibited from crossing through natural open space areas. If the Hearing Officer or Commission determines that a driveway, street, road, or highway must transverse natural open space in order to ensure adequate circulation or access, it may not be counted as a portion of the total required natural open space to be preserved (i.e. the area occupied by the road must be subtracted from the total area of open space). Additionally, any such driveway, street, road, or highway must be

designed to include any and all necessary wildlife crossings and/or other features necessary to avoid biological impacts.

Natural open space preservation as mitigation must be satisfied prior to the issuance of a grading permit. The applicable preservation mechanism must be recorded with the Registrar-Recorder/County Clerk before issuance of a grading permit. In order to meet this requirement, the natural open space preservation for subdivision projects will be recorded separately from the final map.

## REQUIREMENTS FOR MINISTERIAL SEA REVIEW

Development approved through a Ministerial SEA Review that has impacts to SEA Resource Categories 2, 3 or 4 are required to preserve the corresponding amount and type of SEA Resources within the project site parcel(s), as shown in TABLE 4 below. Development undergoing Ministerial SEA Review should have been vetted during SEA Counseling to ensure the project site parcel(s) contain appropriate preservation area(s) outside of the development footprint. Natural open space areas to be preserved cannot be located within any mandated fuel modification or brush clearance zones, or include any portion of a driveway, street, road, or highway.

On-site natural open space will need to be depicted on the approved site plan. A draft of the deed restriction or covenant should be submitted with the application materials for Department review prior to recordation. The natural open space covenant or deed restriction must then be recorded with the County Recorder's Office and a copy of the recorded document must be submitted to the Department prior to receiving the stamped site plan, along with a digital delineation of the boundary of the natural open space area (i.e. the boundary of recorded natural open space should be submitted in a GIS useable format such as .shp, .gdb, .kml/.kmz, .dwg, etc.)

**TABLE 4. ONSITE PRESERVATION RATIOS FOR MINISTERIAL SEA REVIEW**

SEA RESOURCE CATEGORY:	DISTURBANCE ALLOWED:	PRESERVATION RATIO:
1	none	N/A (need SEA CUP)
2	≤ 500 sq ft	2:1
3	≤ 500 sq ft	1:1
	> 500 sq ft	2:1
4	≤ 5,000 sq ft	none
	> 5,000 sq ft	1:1
5	any amount	none

### ALLOWABLE MECHANISMS

On-site preservation of natural open space, as required per (Section 22.102.090.A), must be provided through a permanent deed restriction or land use covenant between the County and the property owner. Both mechanisms are recorded with the County Recorder's Office and should include a map exhibit of the natural open space area. Any area recorded as natural open space for this purpose must be left in its natural state.

### EVALUATING THE ACCEPTABILITY OF ON-SITE PRESERVATION

There may be fewer opportunities to configure natural open space for projects undergoing Ministerial SEA Review. In many cases, the BCM will have already identified all the areas that can be preserved on-site with no excess of natural open space available for preservation. In cases where there is an excess of area available for preservation, the preserved area should be configured to minimize fragmentation and maintain

the largest possible area-to-edge ratio (i.e., by using the shortest possible perimeter length).<sup>29</sup> Any existing adjacent preserved open space areas should also be considered, and new open space should be configured to compliment and buffer existing off-site open space by connecting to it via the widest possible path.

## REQUIREMENTS FOR SEA CUP

Developments applying for a SEA CUP are required to provide preserved natural open space as mitigation. For SEA CUPs, the amount of natural open space to be required is considered mitigation and is not tied to the ratios in the Development Standards, nor is it required to be preserved on-site. Any and all mitigation must require like-for-like components for compensation. Soils, slope, topography, aspect, range, growing conditions, and habitat type must all match between development and mitigation sites and all must be within the same SEA.

The natural open space preservation requirement for SEA CUPs is dependent on the amount of proposed development, degree of impact, type and quality (e.g. intactness) of SEA Resources being disturbed, location, and setting of those SEA Resources, and the project's ability to address the SEA Findings. The preservation ratios listed in **TABLE 5** below will be utilized as a general guideline.

### ON-SITE PRESERVATION FOR SEA CUP

To evaluate the appropriate location and mechanism for preserved natural open space, Staff will first need to determine whether an adequate amount of suitable habitat is present on-site. Projects that do not have an adequate amount of suitable habitat available to protect on-site will need to provide any necessary natural open space preservation off-site, through one of the mechanisms discussed in the "Allowable Mechanisms" section below.

If it is determined that a suitable area of quality natural habitat occurs on the project site parcel(s), the area should be described in the Biota Report, depicted on site plans, and, if found to meet the mitigation needs of the development, recorded as permanent natural open space through one of the allowed mechanisms discussed below. Any area recorded as natural open space for this purpose must be maintained in its natural undeveloped state, with no removal of vegetation or disturbance of natural features.

When determining the suitability of habitat for on-site preservation, the following attributes should be considered:

- ❖ is it outside of all mandated fuel-modification and brush clearance zones?
- ❖ does it encompass any hydrological features?
- ❖ does it contain sensitive SEA Resources (e.g. Categories 1-3)?
- ❖ does it include any habitat restoration areas required as project mitigation?
- ❖ does it include sufficient low to moderate value habitat to buffer higher value habitats and elements from indirect impacts from developed areas?
- ❖ what is the extent of on and off-site habitat connectivity?

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<sup>29</sup> Area-to-edge ratio refers to the compactness of an area. A circle has the maximum area-to-edge ratio of any shape since it has the minimum possible perimeter length. Long, narrow shapes, or shapes with convoluted boundaries have low area-to-edge ratios. Shapes with high area-to-edge ratios are preferable in biological conservation because elements within the interior of the area have a greater likelihood of being far from the edge and are therefore less vulnerable to indirect impacts from development (invasive species, runoff, domestic animals, etc.).

- ❖ is it part of a wildlife corridor, does it function as a buffer, or is it integral to a watershed?

Natural open space should be planned in such a way as to create the maximum amount of habitat connectivity between on-site and off-site areas and to encompass the maximum amount of diversity in type, function and structure of habitats. Whenever possible, natural movement pathways should be protected.

Although large blocks of habitat are generally better than smaller ones, there are cases when smaller patches or ribbons of habitat are vital to preserving wildlife movement or the long-term viability of SEA Resources. For instance, small patches of habitat may be useful as stepping-stones through a developed landscape, or a constrained movement pathway may provide the last tenuous connection between two larger patches of habitat. The loss of such connections may mean cutting off wildlife movement through that landscape. In such cases, it may be preferable to preserve the small patches or ribbon of natural habitat.

“Added value” can be given to proposed natural open space areas if they also contain unique or valuable habitat linkage resources, additional special-status species, surface waters, or sensitive habitats, etc. Proposed open-space with such added-value characteristics may be allowed to be smaller than the area that would typically be required and still be determined to be consistent with the SEA Program goals, subject to the discretion of the Department and a determination of consistency with the SEA Findings by SEATAC.

**TABLE 5. RECOMMENDED\* PRESERVATION RATIOS FOR SEA CUP**

SEA RESOURCE:	PRESERVATION RATIO:
<b>CATEGORY 1</b> <ul style="list-style-type: none"> <li>- State or federally listed species and their habitats</li> <li>- CA Rare Plant Ranks 1,2,3</li> <li>- Natural Communities Ranked G1/S1</li> <li>- Water Resources (e.g. wetlands, streams, ponds, lakes, vernal pools, marshes, etc.)</li> </ul> <b>BEACH &amp; DUNE</b>	5:1
<b>CATEGORY 2</b> <ul style="list-style-type: none"> <li>- Natural Communities Ranked G2/S2</li> <li>- Species of Special Concern and their habitats</li> </ul>	4:1
<b>CATEGORY 3</b> <ul style="list-style-type: none"> <li>- Natural Communities Ranked G3/S3</li> <li>- Oak Woodland</li> <li>- Sensitive Local Native Resources</li> </ul> <b>ROCK OUTCROPS/ROCKLANDS</b>	3:1
<b>CATEGORY 4</b> <ul style="list-style-type: none"> <li>- Natural Communities Ranked G4/S4/G5/S5</li> <li>- CA Rare Plant Rank 4</li> </ul> <b>NON-NATIVE GRASSLANDS</b>	2:1
<b>CATEGORY 5 - Wildlife linkage or corridor or Open space buffer</b>	1:1

\* Ratios are provided as a starting point. With a discretionary CUP, these ratios can be changed based on site specific factors and SEATAC recommendations, to the satisfaction of the Hearing Officer or Commission.

## OFF-SITE PRESERVATION FOR SEA CUP

Developments that do not have suitable habitat available for natural open space preservation on-site will be required to provide an equivalent amount of natural open space preservation off-site. This can be accomplished through one of the mechanisms discussed below. All off-site natural open space preservation will be reviewed by Department Staff in order to verify that it meets the project's mitigation requirements.

The following information should be submitted for review:

- ❖ a map of the proposed off-site area (similar to a BCM);
- ❖ a description of the biological resources of the proposed off-site area (similar to a BCA);
- ❖ a description of the mechanism to be used for preservation; and
- ❖ a management plan for the proposed preserved area, including a Habitat Mitigation and Monitoring Program (HMMP) if habitat restoration is required, which identifies responsible parties, funding mechanism, restoration methods, performance standards, and reporting requirements for restoration projects.

Off-site preservation shall be sited within or contiguous with the same affected SEA, and preferably within the same watershed. An area immediately adjacent to the SEA may be considered if the applicant can demonstrate that the area supports the same resource values and is connected with other natural open space. Preserved areas should be configured to:

- ❖ have sufficient self-buffering capacity,
- ❖ be situated adjacent to other natural open space areas, and
- ❖ support resources similar to those disturbed by the project and in the proper ratios.

"Added value" can be given to proposed open-space lands if they also contain unique or valuable habitat linkage resources, additional special-status species, surface waters, or sensitive habitats, etc. Proposed open-space lands with such added-value characteristics may be smaller than the area required by standard preservation ratios and still determined to be consistent with the SEA Program goals, subject to discretion of the Planning Department and a determination of consistency with the SEA Findings by SEATAC.

## ALLOWABLE MECHANISMS

Following are the acceptable mechanisms for preserving natural open space to meet SEA CUP requirements. The mechanisms are ranked in order of preference by the County. The applicant will have to demonstrate that higher ranked mechanisms are infeasible or of less benefit in order to use an option lower down on the list. For instance, in-lieu fees are of lowest preference, so the applicant will need to show that the six previous mechanisms are infeasible or of substantially lower biological value than the in-lieu fee proposed for the project.

## DEDICATION TO ACCREDITED LAND TRUST OR GOVERNMENT ENTITY

Land to be protected as natural open space may be transferred to an accredited land trust or government entity that has the capacity to protect and manage the land as natural open space. The acquisition of the land (fee title or fee simple) allows the conservation owner to manage the property to preserve and protect its conservation values. The land can be acquired by purchase, donation or a combination of the two.

Any land being transferred to a non-profit organization or government entity for the purpose of mitigation for a SEA CUP must first record an open space restriction or easement over the entirety of the natural open space area prior to transfer of ownership in order to ensure the preservation of the natural open space in perpetuity.

## CONSERVATION OR MITIGATION BANK

Conservation and mitigation banks provide a streamlined and predictable off-site compensatory mitigation program that can be of benefit to public and private developers, while incentivizing the protection and management of the most critically important areas within SEA boundaries. These “banks” are lands that are permanently protected and managed specifically for their natural resource values. In exchange for permanently protecting, managing, and monitoring lands that hold important resources (e.g. wetlands, endangered or threatened species, and supporting habitats), the bank sponsor (owner) is allowed to sell or transfer a specified number of habitat or species credits to project developers to offset the adverse impacts of their projects.

Conservation and mitigation banks are regulated and approved by certain state and federal agencies that are tasked with protection of natural resources (such as CDFW, USFWS, Army Corps of Engineers, Natural Resources and Conservation Service, National Marine Fisheries Service, US Environmental Protection Agency, etc.). Mitigation banks are generally formed to protect, restore, create, and enhance wetland habitat, and credits are sold for mitigation of unavoidable wetland losses. Conservation banks are targeted more toward protecting threatened and endangered species and habitat, with credits established for the specific sensitive species and habitat types that occur on the site. Although a bank may be established to protect a specific species or water resource, adjacent areas of supporting habitat are generally also included in the mitigation bank.

Currently there is only one conservation bank in LA County; however, the formation of new conservation or mitigation banks, especially within SEAs, is encouraged. For a proposed development within a SEA to utilize a conservation or mitigation bank for their development, the bank must be within the same SEA.

To learn more about mitigation banks, visit the CDFW website on Conservation and Mitigation Banking: [www.wildlife.ca.gov/Conservation/Planning/Banking](http://www.wildlife.ca.gov/Conservation/Planning/Banking). For CDFW approved mitigation banks see: [www.wildlife.ca.gov/conservation/planning/banking/approved-banks#r4](http://www.wildlife.ca.gov/conservation/planning/banking/approved-banks#r4).

## CONSERVATION EASEMENT

A Conservation Easement is a legal agreement between a landowner and an accredited land trust or government agency in which the land owner places certain restrictions on their property in order to permanently limit the uses of the land in order to protect its conservation values. The land trust or government agency<sup>30</sup> that accepts the easement is responsible for monitoring the easement to ensure

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<sup>30</sup> California Civil Code 815.3 defines qualified entities as: a) A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use. b) The state or any city, county, city and county, district, or other state or local governmental entity, if otherwise authorized to acquire and hold title to real property and if the conservation easement is voluntarily conveyed. No local governmental entity may condition the issuance of an entitlement for use on the applicant's granting of a conservation

compliance with the terms of the easement and to enforce the terms if violation occurs. Land trusts may be accredited through the Land Trust Accreditation Commission, an independent program of the Land Trust Alliance, or an equivalent program.

Conservation Easements are one of the most frequently used tools for conserving private land. They are used to permanently limit uses (on all or a portion of the property) that would compromise the conservation values of the property, while allowing the landowner to retain certain reserved rights.

As with a deed restriction or covenant, a Conservation Easement is attached to the property's deed and recorded with the County. It is granted in perpetuity, meaning that all future owners of the land must respect the uses set forth in the document. Natural open space preservation required per the SEA Ordinance may be provided through a Conservation Easement, either on-site or off-site (but still within the same SEA).

#### PERMANENT ON-SITE DEED RESTRICTION

A deed restriction is a land use restriction that is added to the title of a property. It restricts the use of the property, and for the purposes of the SEA Ordinance, it can be used to ensure that an area of land is preserved as natural open space in perpetuity. Properly worded and recorded deed restrictions apply to all future owners of the property and cannot be easily changed or removed. To meet the SEA Ordinance natural open space requirements, the property owner may place a permanent open space deed restriction on the approved area of their property. The project cannot be approved until the restriction is filed with the Registrar-Recorder/County Clerk.

#### COVENANT BETWEEN COUNTY AND PROPERTY OWNER

A covenant or "Covenants and Agreements" is a formal agreement or contract between the County and the property owner, in which the property owner gives the County certain promises and assurances, such as for the purpose of providing and recording an open space restriction over an area of land. The covenant obligates the owner to maintaining the specified area as natural open space, for a specified period of time. In order to meet the natural open space preservation requirements of the SEA Ordinance, the covenant must be permanent and properly worded to ensure the land is preserved in its natural, undeveloped condition. As with a deed restriction, the covenant runs with the land and is binding on all current and future owners of the property. If this mechanism is selected, the open space covenant must be filed at the County Recorder's Office prior to final permit approval.

#### CONSERVATION IN-LIEU FEE

Conservation in-lieu fees are another approach to fulfilling mitigation requirements and can be a source of funding for a natural resource management entity to purchase conservation land or Conservation Easements. This is a fee that is provided by a project developer to a mitigation sponsor, such as a natural resource management entity, in lieu of providing required compensatory mitigation. The in-lieu fee is then intended to be used to acquire the required mitigation land or Conservation Easement. In-lieu fees may be

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easement pursuant to this chapter. c) A federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

pooled with other in-lieu fees to create one or more sites to compensate for the resource functions lost as a result of development.

In order to meet the natural open space requirements of the SEA Ordinance, in-lieu fees must be used for the purpose of preserving specific SEA Resources (as determined by those impacted by the proposed development) within the same SEA. A nexus study must be prepared, and provisions should be made to ensure that the fee is regularly updated in response to changes in real estate values. The in-lieu fee should include costs associated with providing the required mitigation, including the cost of the land or Conservation Easement, cost of identifying and negotiating for the land or easement, surveys, appraisals, title research, legal review, preparation of documents, etc.