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Ms. Connie Chung
County of Los Angeles
Department of Regional Planning
General Plan Development Section
320 West Temple Street
Los Angeles, California 90012

**Comments on Draft General Plan, Significant Ecological Areas
Ordinance, Hillside Management Area Ordinance, and Related Documents**

Dear Ms. Chung:

The Conservancy has been following closely changes to the proposed General Plan, Significant Ecological Area (SEA) Ordinance, SEA boundaries, and Hillside Management Area (HMA) Ordinance. We highly emphasize that projects should demonstrate compatibility with biological resources, primarily through their design, rather than via impact mitigation. The Santa Monica Mountains Conservancy (Conservancy) offers the following comments and recommendations on the draft General Plan (March 2014), SEA Ordinance (Draft 5-March 25, 2014), HMA Ordinance (March 24, 2014), and related documents.

General Plan - Conservation and Natural Resources Element

The Conservancy supports the County's need for an open space master plan, developed in coordination and collaboration with local, state, and federal agencies, and other stakeholders as an effective strategy for open space acquisition and planning. The County should incorporate this master plan as part of its policies for open space resources in the General Plan to ensure that this important strategy will be implemented.

General Plan - Existing County Parkland

Table 10.1 in Chapter 10 of the General Plan shows that there are no County parklands in the Santa Monica Mountains. In fact, County-owned parklands within the Topanga watershed, the Dry Creek Canyon tributary of the Los Angeles River, and Encinal Canyon. This table should be revised to accurately account for these and any other County-owned parklands in the Santa Monica Mountains.

SEA Ordinance - Connectivity & Constriction Map

The Conservancy supports the County's efforts to recognize, map, and protect through the SEA Ordinance habitat linkages and wildlife movement areas. We support the use of the SEA Connectivity & Constriction Map.

SEA Ordinance - Permit Process for Single-Family Residences

According to the draft SEA Ordinance and 2013 Preliminary Draft Significant Ecological Area Program Guide (Program Guide, p. 4), a single-family home is a permitted use in SEAs and require a site plan review. The applicant is not required to prepare a SEA Site Impacts Report, there is no Significant Ecological Area Technical Advisory Committee (SEATAC) review, and there is no Planning Commission hearing. The County biologist(s) would review the project. Because single-family homes could result in notable impacts to SEAs, the Conservancy suggests critical changes to strengthen the project review process.

It is critical that the maximum development footprint of the residence be agreed upon by the applicant and County staff prior to completion of the house design. This is necessary both to assure adequate onsite open space that can be protected to meet mitigation requirements, and to save the applicant re-design costs. This extra step must be clearly identified in Section 22.52.2920 Permitted Uses-Review Procedures, perhaps as a pre-application meeting with the County biologist and planner prior to the submittal of the application for Ministerial Site Plan Review.

According to the SEA Ordinance (Section 22.52.2915.A.) and Program Guide (p. 4), it is our understanding that permitted uses, such as a single-family home, are required to follow development standards. The development standards in the SEA Ordinance (Section 22.52.2925.H.) include Habitat Preservation Areas calculated in accordance with the SEA Habitat Preservation ratios in the Appendix. The SEA Ordinance (Section 22.52.2925.H.3.) specifies that a covenant and agreement shall be recorded in the office of the County Registrar-Recorder/County Clerk, agreeing to set aside the Habitat Preservation Areas as Natural Open Space in perpetuity. The covenant and agreement language must explicitly prohibit any fencing that impedes wildlife movement, lighting, animal keeping, storage of materials, structures, grading, solar panels, planting of non-native vegetation, and granting of easements to adjoining properties.

This required recordation of a covenant and agreement is a crucial component of the SEA Ordinance. It is critical that this requirement of the existing draft text not be weakened in any way or form. In fact, it should be made absolutely clear for single-family homes that the

development standards must be followed, including the requirement to protect the Habitat Preservation Areas through recordation of a covenant and agreement. Under the current SEA Ordinance, it is unclear who would verify, and what the process is to verify, whether the development standards are being met for single-family homes. In Section 22.52.2920.B., Staff Biologist Site Review, the following underlined text should be added:

3. During the Staff Biologist review, the Staff Biologist shall prepare a written memorandum to the file addressing each development standard in Section 22.52.2925 and whether the project meets those standards, if applicable. If an applicable development standard is not met, then the applicant shall be required to file a SEA conditional use permit.

However, we note that the process is further complicated because if no biological report is required for single-family homes in SEAs, how would a determination be made that the SEA Habitat Preservation Areas Ratio Requirements (in the Appendix) are met? As currently written, it appears that the County biologist would need to conduct the mapping and calculations of impact areas and mitigation areas, as well as make the determination as to whether the ratio requirements have been met. Although it appears that the intent of the SEA Ordinance is to focus County resources on projects with greater impacts, as currently written, reviews of single-family homes will require sufficient additional permit application fees for the County biologist to adequately implement the ordinance.

An applicant-supplied plot plan with the vegetation communities overlain would be a valuable resource for the County biologist to conduct his/her review. Ideally this would be available for the pre-application meeting (as suggested above), but at the very least included in the information required for SEA site plan review (Section 22.52.2920.A.). This would also help in the design of a project, including shifting project location and reducing structure size, in order to avoid impacts to SEAs and to reduce mitigation requirements (and mitigation costs for the applicant). Requiring anything less than a vegetation communities map with the proposed development footprint prior to a staff site visit would be a waste of County staff and applicant time.

We note that there may be some other flaws in the review process of single-family homes. A single-family home with 200-feet of brush clearance could result in 2.8 acres of brush clearance area if the entire surrounding area is vegetated. If the lot is small, such as ½ acre, then the brush clearance would cover the entire lot and beyond. Unless a lot that includes and abuts natural vegetation is at least 275 feet deep, the entire lot would have to be cleared to meet fire department fuel modification requirements. That assumes a 25-foot front yard setback and a 50-foot-deep house protected by a 200-foot-wide clearance zone. There would be no room on

the subject lot to set aside any Habitat Preservation Areas as required by the development standards (Section 22.52.2925.H.) and Appendix specifying the ratios of Habitat Preservation Area to be provided to acres of SEA habitat to be developed. This development standard would not work for lots less than 275-feet-deep.

The SEA Ordinance *must* specify how the impacts to the SEA habitat would be mitigated in that case. The only obvious solution is that the applicant pay an in-lieu fee to the County to allow the County to fund open space protection in the subject SEA. Such an in-lieu fee should only be allowed on lots where there is no mathematical way to site a house without brush clearance affecting every square foot of the property. The in-lieu fee must be large enough to pay for the approximate per square-foot cost of parcels in the immediate vicinity. The amount of square feet protected either by the required covenant and restriction or in-lieu fees must be commensurate with the requirements in the development standards.

SEA Ordinance - Development Standards

We appreciate the text limiting brush clearance to areas outside of dedicated open space areas (Section 22.52.2925.E.2.). We recommend the following underlined text be added to clarify an important point: developments should be designed to also protect *proposed* open space areas.

New structures and infrastructure requiring areas of brush clearance shall not be located in such a way that any portion of the required areas includes existing or proposed dedicated open space areas on the lot or parcel of land or on adjoining or adjacent lots or parcels of land. In addition, such structures or infrastructure shall not be located in a way that any portion of the required areas of brush clearance will include undisturbed natural areas on adjoining or adjacent lots or parcels of land.

SEA Ordinance - Fatal Flaws Regarding Threshold Between Type A and Type B SEA CUPS

The provisions for SEATAC review, Planning Commission review, and the requirement for possible additional open space are key tools in the SEA development review process. These are required for Type B SEA Conditional Use Permit (CUP) projects. (According to the SEA Ordinance, the Habitat Preservation Areas used to mitigate for SEA impacts can be used to satisfy the requirements for Natural Open Space.) We understand that the County is trying to focus its resources on more intense projects. However, as the SEA Ordinance is currently written, some projects might slip through and be considered Type A SEA CUP projects, when in fact the potential impacts to SEA resources warrant the extra scrutiny under the Type B SEA CUP process. (It is our understanding that in any case, Habitat Preservation Areas are required

for all Permitted Uses, Type A SEA CUP projects, and Type B SEA CUP projects, per Section 22.52.2925.H.)

However, the thresholds for Type B SEA CUPs are too high (Section 22.52.2935.D.). For example, it appears that a substantial project with many acres of permanent impact to sensitive SEA habitat such as coastal sage scrub or oak and walnut woodlands (but which do not support habitat of a sensitive species, and which do not reduce the Connectivity Area or Constriction Area below the minimum widths), could qualify for a Type A SEA CUP. Although Habitat Preservation Areas would be preserved through a covenant, there would be no SEATAC review or Planning Commission hearing.

We also note that land divisions that could significantly increase development density and result in substantially increased impacts to SEA habitat and resources could also slip through as a Type A SEA CUP. Once the homes are proposed on the newly created lots, those single-family homes would go through an even less rigorous review (Permitted Uses; Sections 22.52.2915 and 22.52.2920).

To remedy these flaws, we recommend that additional thresholds be added to Section 22.52.2935.D. (add underlined text):

...the Director shall determine that a Type B SEA CUP is required if:...

f. The development would result in 15 acres of more impact to SEA habitat, including fuel modification; or

g. The land division would result in the creation of two more new parcels.

SEA Ordinance - Open Space Recordation

With respect to open space protection, the Conservancy recommends that the process of recording a covenant and agreement for Habitat Preservation Areas in the Development Standards be solidified and clarified. The following underlined text must be added to Section 22.52.2925.H., Habitat Preservation Areas, as there is no other way to permanently and definitively memorialize the boundaries of the covenant.

3. Prior to the approval of the Site Plan Review, a covenant and agreement shall be recorded in the office of the County Registrar-Recorder/County Clerk, agreeing to set aside the Habitat Preservation Areas as Natural Open Space in perpetuity. The applicant shall provide an engineer-stamped recordable metes

and bounds legal description and plot map of the Natural Open Space, which shall be recorded with the covenant and agreement. The covenant and agreement language must explicitly prohibit any fencing that impedes wildlife movement, lighting, animal keeping, storage of materials, structures, grading, solar panels, planting of non-native vegetation, and granting of easements to adjoining properties. Habitat Preservation Areas shall also be depicted on the SEA Development Map.

Similarly in Section 22.52.2945., Uses Subject to Permits – Conditions of Approval or Issuance, any recordation of a covenant and agreement for Natural Open Space should include an engineer-stamped legal description and plot map showing the open space. The following underlined text should be added to the end of the following two sections: A. SEA CUP. 2. Open Space. c. Open Space Recordation. I. for land divisions, and ii. for other projects: “The applicant shall provide an engineer-stamped metes and bounds legal description and plot map of the Natural Open Space, which shall be recorded with the covenant and agreement. The covenant and agreement language must explicitly prohibit any fencing that impedes wildlife movement, lighting, animal keeping, storage of materials, structures, grading, solar panels, planting of non-native vegetation, and granting of easements to adjoining properties.”

SEA Ordinance - SEA Findings

The County should consider adding the SEA CUP compatibility criteria from the Program Guide (p. 17, SEA Site Impacts Report, 3.F. i.-v.) to the findings in the SEA:

- I. 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;
- ii. That the requested development is designed to maintain water bodies, watercourses, and their tributaries in a natural state;
- iii. That the requested development is designed so that wildlife movement corridors (migratory paths) are left in an undisturbed and natural state;
- iv. That the requested development retains sufficient natural vegetative cover and/or open spaces to buffer critical resources, habitat areas, or migratory paths;
- and
- v. That the roads and utilities serving the proposed development are located and designed so as not to conflict with critical resources, habitat areas, or migratory paths.

HMA Ordinance - Conditional Use Permit (CUP) Requirements

Per Section 22.56.215.D., a CUP shall be required for any development located wholly or partially in an HMA, except for: “1. Development on a single lot or parcel of land, provided that grading in connection with the development does not exceed 15,000 cubic yards of cut plus total fill material...”

The various drafts of the HMA Ordinance have included different thresholds and different types of development for this exception. The current draft should reincorporate this provision for single-family homes, and identify appropriate thresholds for single-family homes and for other types of development, such as 5,000 cubic yards. A high overarching threshold would miss many smaller development projects, which will undoubtedly result in significant adverse cumulative biological and visual effects over time.

HMA Ordinance - Open Space Ownership and Management

With respect to open space protection, the Conservancy recommends that the process of recording a covenant and agreement for required open space be solidified and clarified. The following underlined text must be added to Section 22.56.215.F.4., Open Space Recordation. There is no other way to permanently and definitively memorialize the boundaries of the open space.

a. If the development is a land division, required open space areas shall be shown on the tentative map and the final map or parcel map waiver, and shall be subsequently recorded on the final map or parcel map waiver as a fee lot or as an Open Space – Restricted Use Area in the office of the County Registrar-Recorder/County Clerk. The applicant shall provide an engineer-stamped metes and bounds legal description and plot map of the Open Space, which shall also be recorded.

The above underlined text should also be added to subsection b., which refers to development that is not a land division.

HMA Ordinance - Infeasibility of a Dedication of Conservation Easement

It is important to clarify and strengthen the process of conservation easements and land dedications. The HMA Ordinance includes another scenario for open space ownership and management for land divisions, as stated in Section 22.56.215.F.5.c.: “A conservation easement that requires the open space to remain in perpetuity and extinguishes all future development rights...” This provision, at the minimum, must require conservation easements to be recorded in an Irrevocable Offer to Dedicate, where the offer shall be irrevocable for a period of 21 years from the date of recording. In addition, the applicant shall provide a current title report

with hyperlinks to the County for its file and the use of potential easement holders. It must be incumbent on the landowner (and all future owners) to not affect the title in any way that will degrade the easement. The applicant shall also provide a recordable engineer-stamped metes and bounds, and plotted legal descriptions of both the easement and the servient estate. The Offer to Dedicate defines a time period for which the applicant can make appropriate efforts to find a public agency willing to accept the offer. The applicant shall not declare that dedication of a conservation easement is not feasible before the expiration of the offer.

More importantly, the Conservancy opposes the ownership and management of open space lots by a homeowners' association (HOA) – particularly if it is not a conservation easement. We have seen cases where, after a development is built and a HOA becomes involved in the management of the open space, it becomes evident that the HOA goals are contrary to the primary mandate of protecting the biological resources in perpetuity. There is also precedence of HOA s allowing open space lots to go to tax default. Conservation easements however, do survive through a tax default sale by the County.

The infeasibility of a dedication of a conservation easement, as stated in Section 22.56.215.F.5.d, must be better defined to ensure that all applicants have demonstrated satisfactory effort in finding a willing non-profit organization or public entity to accept a conservation easement. This section refers to land divisions where open space lots would be provided. We recommend adding the following underlined text to this section to provide this clarification:

...ownership and management of the open space lots. This may be established through one or more of the following...

d. A maintenance agreement with a Home Owners' Association or Property Owner's Association where demonstrated that dedication to the entities above or a conservation easement is infeasible, only when it is demonstrated that there are no conservation-oriented non-profit organizations and government entities, such as a county, city, state, federal, or joint powers authority willing to accept the dedication of conservation easement or dedication of open space lots.

The applicant must have substantial evidence to demonstrate that the dedication of a conservation easement is not feasible. Letters must be obtained from each contacted public agency stating reasons why that particular agency cannot accept the conservation easement or land. Efforts should be made to ensure that all public agencies capable of accepting conservation easements are contacted, including the Mountains Recreation and Conservation Authority (MRCA).

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The MRCA is among one of the many public agencies in the County that is dedicated to the preservation and management of open space, parklands, watershed lands, trails, and wildlife habitat. The MRCA has the flexibility to accept any conservation easement throughout Los Angeles County. Furthermore, there are other joint powers entities that are also willing to accept conservation easements in order to help implement the intent of the HMA Ordinance.

We appreciate your consideration of these comments. If you have any questions, please contact Paul Edelman, Deputy Director for Natural Resources and Planning, by phone at (310) 589-3200, ext. 128, or by email at edelman@smmc.ca.gov.

Sincerely,

IRMA MUÑOZ
Chairperson