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Ref: 82536-0001

June 16, 2023

**VIA E-MAIL (clerk.plumcommittee@lacity.org)**

Hon. Chair Marqueece Harris-Dawson and

Members of the Planning and Land Use Management Committee  
Attention: Candy Rosales, Legislative Assistant  
200 North Spring Street, Room 272  
Los Angeles, CA 90012

Re: Wildlife Corridor / Santa Monica Mountains / Zone Change (ZC)  
PLUM Hearing Date: June 20, 2023  
Agenda Item: 19; Council File 14-0518

Hon. Chair Harris-Dawson and Hon. Members of the PLUM Committee:

This office represents *Neighbors for Hillside Safety*, an unincorporated association of homeowners, residents, and stakeholders, who live and work within the proposed Wildlife Ordinance District being considered as part of the City's Wildlife Pilot Study (the "Ordinance")<sup>1</sup>. We submit this letter to reiterate our clients' concerns and objections with this Ordinance, and to again express their frustration over the City's decision to "fast track" a sweeping new zone change that impacts tens-of-thousands of homes (i) without any environmental analysis, and (ii) without legally-adequate notice.

First, with respect to the environmental analysis, it should be shocking to everyone that the Department of City Planning ("Department") is asserting that this proposal - which seeks to rezone over 23,000 acres of the City - is exempt from review under the California Environmental Quality Act ("CEQA"). For some context, the entire City of Los Angeles is slightly larger than 300,000 acres, meaning, **this Ordinance will be rezoning almost 8 percent of the entire City, with a categorical exemption.** Accordingly, the Ordinance is being pushed forward without any analysis or consideration of its impacts on public services, utilities, housing, recreation, or any of the other environmental factors that would have otherwise been considered under CEQA.<sup>2</sup> Even more concerning is the fact that the exemptions being applied are totally inapplicable to this Ordinance. Both exemptions identified by the Department are intended to apply to actions taken by "regulatory agencies" to implement existing laws. Neither the Class 7 or Class 8 exemptions purport to say what the Department seems to want it to say, i.e., that any new law may be considered exempt as

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<sup>1</sup> We also represent 9922 LLC, a resident and homeowner within the proposed district, and Ardie Tavangarian, who similarly owns property in the district and is an architect with over 40 years of homebuilding experience.

<sup>2</sup> For context, the Hollywood Community Plan - which was adopted with an Environmental Impact Report - covered an area that is 7,000 acres *less* than this proposed district.

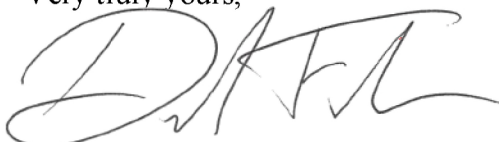
long as the law is intended to be good for the environment. These exemptions have absolutely no application to new laws adopted by a local legislative body, regardless of the law's motive.

Moreover, complying with CEQA can also help address another serious problem with this Ordinance – inadequate notice and a lack of due process. For this massive zone change, only one single mailer has been sent to affected residents, homeowners, and community members. Moreover, that single mailer was sent more than a year ago. The community was not provided notice of City Planning Commission's hearing (as required by LAMC 12.32(C)(4)), was not been provided notice of this coming City Council hearing, and has not been notified of recent changes proposed to the Ordinance just last week. The community has a right to be informed as to the impact of this Ordinance on their homes, development rights, and the environment, and this is precisely the purpose of the CEQA process the Department is attempting to circumvent.

Additionally, with respect to the one mailer that was sent, the substance of that mailer was so vague that no reasonable person could understand what the City was *actually* proposing. Of the four (4) pages included in the City's flyer, only one single line acknowledged that the ordinance would impact development standards, **and not once does it state that it will impact allowable floor area, basements, or otherwise create new restriction on existing single-family homes.** Homeowners are entitled to clear notice that their homes may become legally non-conforming, and that the amount of floor area permitted on their land will be cut in half.<sup>3</sup> The notice was designed as a marketing piece and not an informational notice, which made it impossible for a reader to decipher the significance and applicability of the Ordinance based on the flyer itself. The reality is, the City has been using wildlife as a mascot for a stricter hillside regulation Ordinance, doing so by making it seem as if the Ordinance regulates wildlife, when it does not. This is both misleading to the public, and a clear due process violation.

Given these improprieties, we once again urge the City to change course and comply with CEQA. This will help inform the public while also allowing affected community members a substantive opportunity to comment. Nobody opposes protecting wildlife. The community is simply asking the City to treat this proposal like every other community plan, so the public can understand the burdens and benefits of this Ordinance before it is adopted. As you know, many people's life savings are invested in their homes. The financial impact of this Ordinance on many of these homeowners will be astronomical, and most have no idea this is happening. The very least the City can do for these impacted residents is to provide adequate notice, including a clear explanation of the Ordinance, and some assurance that the City is performing a thorough analysis.<sup>4</sup>

Very truly yours,



BENJAMIN M. REZNIK and  
DANIEL F. FREEDMAN of  
Jeffer Mangels Butler & Mitchell LLP

<sup>3</sup> For instance, a typical 17,500 sq ft sloped lot can currently build approximately 4,250 sq ft. After this Ordinance that number will be reduced to approximately 2,000 sq ft if not less, making these small lots nearly unbuildable.

<sup>4</sup> For reference, attached are copies of our prior correspondence concerning this Ordinance.



CC: Hydee Feldstein Soto, City Attorney, Office of the City Attorney  
Vince Bertoni, Director, Department of City Planning  
Kevin Keller, Deputy Mayor, Office of the Mayor  
Terry Kaufmann-Macias, Deputy City Attorney, Office of the City Attorney  
Paola Bassignana, Dir. of Planning and Econ. Development, Councilmember Rodriguez  
Albizael Del Valle, Deputy District Director, Councilmember Harris-Dawson  
Hannah Lee, Chief of Staff, Councilmember Lee  
Kristen Torres Pawling, Deputy Chief of Staff, Councilmember Yaroslavsky  
Hakeem Parke-Davis, Deputy for Planning, Councilmember Hutt.  
Mashael Majid, Planning and Comm. Development Director, Councilmember Raman

# COPIES OF PRIOR CORRESPONDENCE

Nov 28, 2022



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November 28, 2022

**VIA EMAIL**

President Millman, and Honorable Members of the City  
Planning Commission  
City of Los Angeles, Department of City Planning  
200 N Spring Street  
Los Angeles, CA 90012  
E-Mail: [CPC@lacity.org](mailto:CPC@lacity.org)

Re: **Expert Report Regarding Biology and Scientific Methodology of the  
Proposed Wildlife Pilot Study Zone Change Ordinance**  
Case No(s). CPC-2022-3413-CA and CPC-2022-3712-ZC  
Env. Case No. ENV-2022-3414-CE  
City Council File No. 14-0518

President Millman and Honorable Members of the City Planning Commission:

This office represents *Neighbors for Hillside Safety*, an unincorporated association of homeowners, residents, and stakeholders, who live and work within the proposed Wildlife Ordinance District being considered as part of the City's Wildlife Pilot Study and the associated Wildlife Ordinance District (the "Ordinance").<sup>1</sup> This follows our previous letters dated August 22, 2022 (providing comprehensive comments to the Ordinance), November 10, 2022 (focusing on CEQA and Housing Crisis Act issues), and November 14, 2022 (focusing on biological, methodological, and scientific issues).

Our November 14 letter attached a summary analysis from ECORP Consulting, Inc, who conducted a detailed analysis of the Ordinance and the cited source materials. Following up on this summary, ECORP Consulting, Inc.'s completed full report is attached to this letter as Exhibit 1 for your review and consideration. Significantly, this report confirms our suspicions that (i) the City did not rely on peer-reviewed science in preparing the Ordinance; (ii) the Ordinance is designed primarily to regulate development instead of actually improving habitat; and (iii) the Ordinance would likely harm more wildlife than it would help, by drawing wildlife into hazardous urbanized areas that wildlife should be encouraged to avoid.

Notably, the ECORP Report concludes that "the City proposes to micromanage the small, constrained, and fragmented habitat areas for the benefit of wildlife and wildlife movement but they provide **no**

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<sup>1</sup> We also represent 9922 LLC, a resident/homeowner in the proposed district, and Ardie Tavangarian, an architect/homeowner with 40+ years of experience building homes in the affected communities.

**scientific evidence that there would be a direct benefit to wildlife in an area dominated by human influences.** The City has not accurately mapped wildlife resources or conducted scientific studies to determine the use of proposed Wildlife Movement Pathways (WMP) by wildlife. Without scientific studies to determine the most viable WMPs in the Wildlife District that are critical to wildlife passage, the City is just speculating about areas that should be preserved based on a human perspective. The City intends to subject homeowners who plan development projects on properties where the City speculates these wildlife resource might occur to rigorous regulations without the scientific backup that proves the Ordinance regulations will be effective."

The ECORP Report also provides some recommendations regarding source materials that the City can review, analyze, and use, in order to improve the efficacy of the proposed Ordinance. It specifically notes that the development standards proposed in the Ordinance "appear to be more of an infringement on landowners' rights to develop their properties than beneficial measures designed to protect wildlife habitat and movement. The City does not provide any scientific evidence supporting the inclusion of the development standards and regulations related to lot coverage, floor area, grading, and building height limitations in the Ordinance and how those standards and regulations would benefit wildlife habitat and wildlife movement."

Finally, the report concluded that this Ordinance may in fact be more detrimental to wildlife, than beneficial. For instance, the report explains that this Ordinance could result in an increase in "mortalities and injuries of wildlife on freeways and roads and a much higher probability of interactions between wildlife, humans, domestic pets, and livestock." Considering how populated this region is, the "result will most likely be complaints about nuisance wildlife species and the ultimate removal or killing of wildlife species from residential areas, which is counter to the City's goal..." Furthermore, if the Ordinance passes, the City will need to devote hundreds of hours of additional planning staff time to implement the regulations – hours that can be better spent implementing regulations that would actually achieve the purpose of promoting wildlife movement and preservation of wildlife habitats, which this Ordinance does not do.

We urge the City to take this report and its recommendations seriously, and to analyze the recommended scientific studies identified therein, and re-evaluate the legitimacy, feasibility, and effectiveness of the proposed Ordinance from a biological and scientific perspective.

Very truly yours,



BENJAMIN M. REZNIK of  
Jeffer Mangels Butler & Mitchell LLP

BMR:ki  
Attachment

# EXHIBIT 1





November 28, 2022  
(2022-259)

Mr. Seena Max Samimi  
Jeffer Mangels Butler & Mitchell LLP  
1900 Avenue of the Stars, 7<sup>th</sup> Floor  
Los Angeles, CA 90067

**Subject:        Biological Review of the City of Los Angeles' Proposed Revised Wildlife Ordinance**

Dear Mr. Samimi:

ECORP Consulting, Inc. (ECORP) is pleased to provide a biological review of the proposed City of Los Angeles (City) Revised Wildlife Ordinance (Ordinance). The focus of the review includes the identification of potential impacts to landowners within the area affected by the Ordinance that are associated with facilitating wildlife movement through or adjacent to their properties and the potential for the measures included in the Ordinance to facilitate wildlife movement. In addition, the review also identifies issues where the revised Ordinance may fail to meet the objectives of facilitating wildlife movement and issues where the science used to develop the Ordinance may be lacking or where it may not be substantiated by the references used to develop the Ordinance, ultimately putting wildlife in harm's way.

## **Executive Summary**

The Department of City Planning Recommendation Report dated November 17, 2022, states the City is proposing a code amendment to multiple sections of the Los Angeles Municipal Code (LAMC) to create a new "Wildlife District," or "WLD" Supplemental Use District and a zone change to apply the Wildlife District and its regulations to properties within the Wildlife District. The Wildlife District covered by the Ordinance would include properties within the Santa Monica Mountains bounded by Ventura Boulevard to the north, Sunset Boulevard to the south, the 101 Freeway to the east, and the 405 freeway to the west. The proposed Wildlife District Ordinance aims to reduce cumulative development impacts on plants, animals, and natural resources while providing co-benefits related to climate resilience and public health. The Ordinance proposes development standards for lot coverage, floor area, grading and height limitations as well as native landscaping/trees, fence, trash enclosure, window, and lighting requirements. The Ordinance includes regulations that apply to private properties within the Wildlife District, including additional discretionary review where lots contain or are adjacent to natural resources, such as waterways and open space. The Ordinance would apply to single-family development projects and includes detailed regulations and procedures for project review and includes a map identifying lots subject to natural resource provisions. According to the City's Recommendation Report, the goal of the Ordinance is to protect habitat and

wildlife connectivity in the hillsides with supporting goals for open space management, disaster safety, fire protection, and maintenance of the overall quality of life for both people and wildlife.

ECORP reviewed the City's Recommendation Report, which includes the Ordinance and the supporting documentation used to develop the Ordinance, and references used to develop the supporting documentation to gain an understanding of the intent of the Ordinance and the potential for the Ordinance to achieve its overarching goal of protecting habitat and wildlife connectivity. ECORP's review identified issues that bring into question the scientific validity of the studies conducted as the basis for the Ordinance, the potential underlying intent of the City with adopting the Ordinance, and the negative impacts to both homeowners and wildlife.

The proposed Wildlife District is an area dominated by urban development with a dense human population, highly trafficked roads and freeways, anthropogenic disturbances, and wildlife habitats that are fragmented and limited in distribution. With the Ordinance, the City proposes to micromanage the small, constrained, and fragmented habitat areas for the benefit of wildlife and wildlife movement but they provide no scientific evidence that there would be a direct benefit to wildlife in an area dominated by human influences. The City has not accurately mapped wildlife resources or conducted scientific studies to determine the use of proposed Wildlife Movement Pathways (WMP) by wildlife. Without scientific studies to determine the most viable WMPs in the Wildlife District that are critical to wildlife passage, the City is just speculating about areas that should be preserved based on a human perspective. The City intends to subject homeowners who plan development projects on properties where the City speculates these wildlife resource might occur to rigorous regulations without the scientific backup that proves the Ordinance regulations will be effective.

The Ordinance contains development standards for lot coverage, floor area, grading, and building height limitations that are primarily related to restricting development in the Wildlife District while claiming these development standards will achieve the goal of protecting habitat and wildlife connectivity. These development standards appear to be more of an infringement on landowners' rights to develop their properties than beneficial measures designed to protect wildlife habitat and movement. The City does not provide any scientific evidence supporting the inclusion of the development standards and regulations related to lot coverage, floor area, grading, and building height limitations in the Ordinance and how those standards and regulations would benefit wildlife habitat and wildlife movement.

The intent of the Ordinance is to promote wildlife movement and the preservation of wildlife habitat in the fragmented, residential areas in the Wildlife District. While the intent may be honorable, the location chosen by the City to implement this Ordinance will likely result in negative impacts to wildlife and the people who reside within the Wildlife District. The Wildlife District is heavily populated, surrounded by freeways, and crossed by busy roadways, which are all detrimental to wildlife movement. If the Ordinance is successful in promoting more wildlife immigration into the

Wildlife District from surrounding areas, there is a much higher probability of mortalities and injuries of wildlife on freeways and roads and a much higher probability of interactions between wildlife, humans, domestic pets, and livestock. If wildlife becomes more numerous in residential areas, particularly medium to large mammals such as coyotes, bobcats, and mountain lions, the incidents of mortalities of domestic pets and livestock and potentially injuries to children will undoubtedly increase. In addition, increases in the wildlife population will most likely result in not only wildlife mortalities on roads but also the need to remove nuisance wildlife that have been involved in interactions with humans, domestic pets, livestock, or children. Removal of nuisance wildlife would be counter to the goal of improving wildlife habitat and connectivity within the Wildlife District.

Some version of the Ordinance would be a valuable tool in areas where the City can preserve and restore large blocks of habitat for the sole purpose of preserving wildlife habitat and in areas where passage for the safe passage of wildlife can be facilitated. Implementation of the Ordinance in the Wildlife District will likely not achieve the desired goals and will more than likely put wildlife, humans, domestic pets, and children at risk.

A detailed review of the Ordinance and the issues related to implementing the Ordinance is included in the following sections of this report.

## **Summary of Measures Required by the Ordinance**

The Ordinance states that it will create a “WLD” Wildlife supplemental use district that establishes regulations that aim to maintain and protect existing wildlife, connectivity and ecosystems and to provide co-benefits including climate resilience, resource management, and public health. The stated purpose of the Ordinance is to maintain and enhance wildlife habitat and connectivity by providing standards and regulations applicable to development in ecologically important areas. The overall intent stated in the Ordinance is to achieve protection of natural resources, plants, animals, and open space and thereby advance sustainability, wildlife connectivity, biodiversity, watershed health, wildfire safety, and climate resilience goals for the City. The Ordinance aims to create a Wildlife Corridor in the eastern area of the Santa Monica Mountains with the goal of protecting wildlife and maintaining wildlife connectivity with the Santa Monica Mountains with the following goals and actions:

- ensure that hillside development accommodates wildlife habitat connectivity,
- require that easements and deed restrictions be applied to achieve connectivity,
- designate a zone in the Los Angeles Municipal Code (LAMC) for wildlife connectivity, and
- require a biological constraints checklist for every project in the Wildlife Corridor zone and as such a code amendment ordinance and zone change ordinance, collectively referred to as the proposed Ordinance.



In support of the Ordinance, the Santa Monica Mountains Conservancy (SMMC) prepared and adopted an Eastern Santa Monica Mountains Natural Resource Protection Plan with the goal of preventing further injuries and deaths to wildlife and protecting the remaining open spaces and wildlife linkages that exist. The Ordinance states that California Government Code Sections 65302(g) requires cities to prepare a safety element, which establishes policies for the protection of the community from any unreasonable risks associated with the effects of various issues relating to seismic and geologic hazards, flooding, and wildland and urban fires, and to implement such policies through local ordinances and regulations. The City prepared such regulations in the proposed Ordinance and states that it will achieve the co-benefits of safety and natural resource protections. In addition, the Ordinance states that municipalities are being called upon by several California legislative actions and initiatives to develop strategies to combat climate change, build in resiliency and protect biodiversity. The language in the Ordinance states the proposed Ordinance is consistent with the goals and objectives of various General Plan elements to protect the City's natural resources and biodiversity and implements those policies in the following manner:

- establishing new development standards, removes exemptions, and requires development to plan for wildlife connectivity,
- addresses lot coverage, floor area, grading and height and as well as native landscaping/trees, fence, trash enclosure, window and lighting requirements, and
- includes regulations that apply to private properties, helping to reduce environmental impacts through standards that limit land and vegetation disturbance, limit impervious development, limit injury to wildlife and wildlife movement corridors, and requiring discretionary review of projects in or proximate to wildlife resources.

The Ordinance states that development on properties within the Wildlife District are subject to the development regulations, as applicable in Subsection F of the Ordinance but development initiated by the City is exempt from all regulations contained in the Section.

We were asked to review the Ordinance and the ESA report that supports the creation of the Ordinance in order to comment on various aspects of the documents from a scientific and biological perspective. Our professional opinion and questions on relevant matters are stated below.

## **1. The Ordinance Does Not Achieve its Stated Purpose**

The Protected Areas for Wildlife and Wildlife Movement Pathways document (ESA 2021) states the areas within the Santa Monica Mountains East PAW have a variety of constraints to wildlife movement including fragmentation of habitat, impermeable ridgelines and canyons in some areas where development and associated structures (e.g., tennis courts, pools), fencing, and walls impede free movement through an area. It also states that urban lighting, noise, and window glare from residences in addition to lighting and noise associated with roadways may deter wildlife from

moving through an area. In addition, the document states the presence of residential development includes a moderate amount of human activity and traffic along windy roads following ridgelines and canyons may be a hazard for wildlife, or may deter them from moving through, particularly during times of the day when there is more traffic and noise. **Because the proposed Santa Monica Mountains East PAW has so many existing restrictions to wildlife movement, the City should not impose an Ordinance on the private landowners that requires them to implement measures to improve wildlife movement through the area.**

The ESA document also acknowledges that because large, undisturbed expanses of natural habitat areas are limited and many habitat areas remaining within the City are fragmented or isolated by dense urbanization, many traditional "wildlife corridors" do not occur within the City. It also states that, *"within the City's limits, movement between adjacent PAWs, or between fragmented areas of a single PAW, is constricted by the surrounding development of an urbanized environment."* The document also acknowledges that, *"true wildlife corridors consist of pieces of habitat connecting larger extensive core habitat patches,"* and *"the majority of wildlife movement opportunities throughout the City consist of smaller constrained movement pathways many of which contain limited marginal (i.e., low quality) habitat or even some developed areas (e.g., road crossings) connecting PAWs or fragments of PAWs."* The ESA document defines a new term called "Wildlife Movement Pathways (WMPs)" that are *"used to characterize likely pathways that are not traditional wildlife corridors, rather they are constrained urban wildlife passage opportunities."* The purpose of the WMPs is described as *"to help facilitate connectivity between PAWs within the City and to adjacent undeveloped natural areas"* and *"the focus of the WMPs identified are on medium and large mammals..."* **The City has provided no science to substantiate the idea that WMPs would be functional wildlife movement corridors when large patches of high to medium quality habitat are not available to support the wildlife the City says would use these WMPs.** A peer-reviewed scientific article on identifying habitat linkages to maintain wildlife connectivity (Barrows et al. 2011) concluded that *"Linkages for corridor dwellers must include habitat for sustaining multi-generational populations. This requires evaluating whether continuous suitable habitat exists within proposed corridors."* **The City has not provided the research that supports the idea that the Wildlife District even has appropriate habitat to protect the wildlife species intended to be protected in the Ordinance.** Without appropriate research and scientific studies on wildlife occupation and use of the Wildlife District (e.g., do wildlife in these areas attempt to move into other areas, have the wildlife in the Wildlife District habituated to not moving between areas of habitats and simply occupy the space they are able to), the Ordinance would be an unnecessary regulation that has little to no benefit on the intended species identified as needing protection.

The ESA document and the associated Ordinance developed to implement the ideas in the ESA document are focused on preserving and enhancing areas that do not fit the definition of wildlife movement corridors, particularly for medium and large mammals. Beier (1995) found that where housing occurred, cougars (i.e., mountain lions) readily moved through low density areas (about 1

dwelling/16 hectares [39.54 acres]) and found dense areas (>20 dwellings/hectare [2.47 acres]) impassable. Beier (1995) also suggested that a corridor designed for use by cougars should be >100 m (328 feet) wide if the total distance to be spanned is <800 m (0.50 mile), and >400 m (0.25 mile) wide for distances of 1 – 7 km (0.62 – 4.35 miles). In addition, he stated that some native woody vegetation should be present to provide visual cover. He also stated he observed cougars move less than or equal to 400 meters across unlit open terrain when the surrounding areas were in native woody vegetation, but they did not cross this span of open terrain with urban areas nearby on either side. The WMPs proposed in the ESA document don't even come close to meeting the corridor widths and lengths required for mountain lions to move through areas as stated by Beier. The existence of residential areas and roadways within the Wildlife District and the fact that the area is surrounded by expansive development and heavily used, multi-lane freeways isn't consistent with the corridor requirements of mountain lions and other medium and large mammals. **The City's proposed Ordinance would not result in facilitating the safe movement of mountain lions because the Ordinance would not establish wildlife movement corridors that are wide enough and long enough, are vegetated with native, woody vegetation, and are located away from residential areas and multi-lane freeways.**

The County of Ventura recently proposed a Ventura County Landscape Linkage Ordinance that is intended to improve countywide habitat connectivity between protected resource areas such as the Santa Monica Mountains National Recreation Area and the Los Padres National Forest. The County of Ventura's Ordinance includes many of the same strategies the City is proposing to enhance wildlife movement and to reduce impediments to wildlife movement. The significant difference with the County of Ventura's Ordinance is that they are considering an expansive area that includes large patches of natural habitat, agricultural lands, mining areas, and other large open areas that are conducive to wildlife movement from the Santa Monica Mountains to the Los Padres National Forest. The County of Ventura is attempting to implement their Ordinance in a way that is consistent with the Missing Linkages documents that identified a wildlife movement corridor that would connect large expanses of conserved habitat areas in the Santa Monica Mountains Recreation Area and the Los Padres National Forest. The area covered by the City's Ordinance is not consistent with the principles for establishing wildlife movement corridors that were identified in the Missing Linkages documents. Management of wildlife movement areas is best done on a landscape scale, not a drainage-by-drainage or patch-by-patch scale. **The City has provided no scientific evidence that supports the notion that wildlife movement managed on a microhabitat level in small and constrained areas of habitat actually benefits the health, genetic diversity, and population of local wildlife.**

Some of the proposed WMPs in the ESA report are complex and do not appear conducive to wildlife movement because of their complexity and proximity to anthropogenic hazards and disturbances like heavily trafficked roadways and fencing. Like humans, wildlife utilize least-cost pathways when traveling and do not often use complex routes to get from point A to point B to save energy



expenditure and to avoid potentially deadly interactions with hazards. For example, WMP 10 – Tujunga-Verdugo in the ESA report proposes a pathway connecting two natural areas via a 0.7-mile-long proposed route that crosses busy freeways, relies on (yet) undeveloped parcels, and lack of fence maintenance to be successful. Text describing the route proposed for WMP 10 is as follows: *"From its north end, this WMP follows Tujunga Wash west and crosses W. Foothill Boulevard and Interstate 210 via bridge underpasses. From the Tujunga Wash, this WMP turns south into an upland area of coastal sage scrub along the western side of Interstate 210, then crosses Wentworth Street [a heavily traveled road] to another steep hillside of coastal sage scrub that parallels the freeway and its off-ramp to Sunland Boulevard. Wildlife would then have to navigate across Sunland Boulevard [another heavily traveled road], through an undeveloped lot, and across a paved Water and Power Road to get to the undeveloped chaparral, coastal sage scrub, oak woodland, and riparian oak forest habitat within the Verdugo Mountains PAW."* It further describes the proposed WMP route: *"There is a lot of fencing (mostly chain link fencing) along the river and in the neighborhoods surrounding this WMP, but the slopes make it easy for animals to find ways under the fencing, and even where solid fencing is found, there are gaps that allow for movement of large mammals."* As described, wildlife would have to know this fairly complex route and travel it each time they wanted to go between the two blocks of undeveloped habitat, traveling across two busy roads and through neighborhoods, relying on holes in existing fencing, and undeveloped lots as they stand today (but could be developed in the future). Prior to the City adopting WMPs proposed in the ESA report, the City should conduct scientific studies that provide evidence that the WMPs are actually conducive to wildlife travel and movement and are used by wildlife. **The City's Ordinance would require landowners to implement measures to promote wildlife movement through potential routes identified from the human perspective and the City has provided no scientific evidence that wildlife use these routes or that the routes are even conducive to the safe passage of wildlife.**

#### Consistency with the South Coast Missing Linkages Planning Documents

The Missing Linkages: Restoring Connectivity to the California Landscape report (Penrod et. al 2001) does not identify a corridor from the portion of the Santa Monica Mountains within the boundaries of the Wildlife District to areas located to the west, north, or east. The linkages proposed in the Missing Linkages documents seek to connect expansive core areas of medium to highly suitable habitat areas that are largely protected through conservation easements or other conservation planning efforts undertaken by a variety of public agencies and private or non-profit conservation organizations. In fact, the area within the Ordinance-designated Wildlife District was not even mapped as a missing linkage in that document nor was it mapped as a "Patch" suitable for mountain lions. Rather, it was mapped as "<Patch" because it is smaller than what is required for a mountain lion to survive. The small patch size designation in the Wildlife District area is due to the preponderance of private land ownership and the existence of residential and developed areas. The Missing Linkages documents do not focus on connecting blocks of habitat that are primarily in private landownership or are dominated by residential areas.

The South Coast Missing Linkages Project: A Linkage Design for the Santa Monica – Sierra Madre Connection (Penrod et. al 2006) also does not evaluate a linkage that includes the portion of the Santa Monica Mountains within the Wildlife District. Direct linkages between the Wildlife District across the 405 Freeway that creates the western boundary of the Wildlife District and across Highway 101 that lies just north of the northern border of the Wildlife District and essentially creates the eastern boundary of the Wildlife District were not even evaluated in any of the Missing Linkages documents. In addition, the Missing Linkage document for the Santa Monica – Sierra Madre Connection acknowledges that Highway 101 is one of the most obvious barriers for most species between core reserves in the Santa Monica and Sierra Madre mountains. In addition, the document states Highway 101, along with other major transportation routes, poses a substantial barrier to wildlife movement. The document didn't consider any areas near the 405 Freeway, but one can assume it also creates a substantial barrier to wildlife movement along the eastern boundary of the Wildlife District. According to the Santa Monica – Sierra Madre Linkages document, the mountain lion "requires expansive roadless areas to survive." The document also states that research has shown genetic isolation of bobcats and coyotes in subpopulations separated by Highway 101. **The Wildlife District does not represent a large patch of high to moderate quality habitat, it is not protected primarily by conservation easements or other conserved lands, and it is surrounded by multi-lane freeways, including Highway 101 and the 405 Freeway, which have been shown to represent substantial barriers to wildlife movement. The City provides no scientific evidence that would justify promoting wildlife movement of large mammals in an area when the attributes of the area are not consistent with the principles of the Missing Linkages documents.**

## 2. Bringing More Wildlife to Residential Areas Causes Problems for Both Humans and Wildlife

The conflicts between wildlife and humans, domestic pets, and livestock will certainly increase if medium and large mammals are given an enhanced opportunity to reside in and travel through existing residential areas. In addition, encouraging more medium and large mammals and other mobile wildlife to immigrate into the Wildlife District defined by the Ordinance will certainly result in higher mortality rates of wildlife that attempt to cross Highway 101, the 405 Freeway, and other busy roadways surrounding the area. Figure 2 in the ESA document, which depicts reported road kills of wildlife species in the region, clearly shows that Highway 101 and the 405 Freeway are large impediments to wildlife species, and they result in large numbers of wildlife mortalities. **The City's Ordinance will encourage large mammals to cross busy highways and roads and the result will likely be more wildlife being killed by vehicles on roads with the added potential for human injuries.**

Furthermore, interactions between wildlife and humans or their domestic pets rarely ever end well for all parties involved. Beier et al. 2008, a source frequently cited in the ESA report, even states that

wildlife interactions in urbanized and developed areas result in *"increased numbers of wild predators removed for killing pets or hobby animals...Thus, although residential development may bring little or increase in the number of the depredation incidents per unit area, each incident is more likely to lead to death of predators, and eventual elimination of the population."* Later on in the document, Beier et al. 2008 further states *"it is unrealistic to think that local government will stop a homeowner from clearing fire-prone vegetation, force a landowner to remove overly bright artificial night lighting, or require a homeowner's association to kill crows and raccoons. Avoidance is the best way to manage urban impacts in a wildlife linkage. Although some lizards and small mammals occupy residential areas, most large carnivores, small mammals, and reptiles cannot occupy or even move through urban areas."* Even this document, frequently cited in the ESA report, suggests that avoidance (i.e., avoiding wildlife-human/domestic pet interactions) is the best way to support wildlife movement in urbanized areas. **The City has provided no evidence that supports the idea that attracting wildlife in and through residential properties would not result in deleterious wildlife-human/domestic pet interactions.**

It is well documented that interactions between wildlife and domesticated animals promote transmission of disease and parasites, which can decimate both wild and domesticated animals in an area. Examples of just a handful of these communicable diseases transmitted between wildlife and domestic animals include rabies, sarcoptic mange, canine distemper, Avian Influenza, and Feline Leukemia Virus. Attracting wildlife to private residences increases the potential for these interactions and actually could contribute to decreased health and fitness of wildlife occupying the area that the Ordinance is intending to protect and promote. It is also important to note that some zoonotic diseases carried and transmitted by wildlife are communicable to humans as well, potentially resulting in a human safety aspect to the proposed Ordinance that does not appear to be well studied or substantiated. **The City has provided no scientific analysis addressing the Ordinance's potential disease and parasite transmission between wildlife attracted to the Wildlife District and domestic animals and between wildlife and humans.**

The area encompassed by the proposed Wildlife District is bounded by Ventura Boulevard and Highway 101 to the north, Sunset Boulevard and highly developed urban areas to the south, Highway 101 to the east, and the 405 Freeway to the west. All of these present significant barriers to not only wildlife movement in the area, but wildlife use of potentially available habitat in and around these barriers. The Wildlife District's proximity to heavily used, multi-lane freeways poses a huge concern for wildlife mortality. The Ordinance does not address the fact that the area in which wildlife movement is promoted is surrounded by freeways where wildlife are regularly killed while trying to cross. If there are no functional crossings of the freeway, the Ordinance could result in more wildlife being killed because they are drawn into the Wildlife District and may cross the freeways more frequently than if the Ordinance isn't implemented. **If the Ordinance is successful in increasing wildlife movement throughout the Wildlife District, there is a high likelihood that the level of wildlife mortality and injury on the nearby freeways and busy roadways will significantly**

**increase because the City's Ordinance contains no measures to provide safe passage for wildlife.**

## **The Ordinance Deviates Substantially from the Recommendations Listed in the ESA Report**

The ESA report contains extensive recommendations to inform the City's policy and planning for the development of wildlife movement protected areas in the following categories:

- Setback and Buffers
- Fencing and Physical Barriers
- Vegetation, Landscaping
- Lighting
- Windows
- Noise
- Poison
- Traffic
- Education

These recommendations are reasonable and written in such a way that does not restrict or prohibit development within the proposed PAWs and WMPs. These recommendations are proposed as management practices that, in most cases, can be implemented without restricting development on a private parcel. The proposed Ordinance has clearly taken some of these recommendations and incorporated associated text into the Ordinance; however, there are several restrictive measures in the Ordinance that are not addressed in the ESA report, nor are scientifically founded in their origin. The categories included in the Development Regulations of the Ordinance that do not have any apparent scientific basis are discussed below.

- Height – the only references to height in the ESA report are related to vegetation growth and measurement of trees; there are no proposed building height restrictions in the ESA report. **The City has provided no scientific justification for restricting development to less than 45 feet and how that would be a benefit to wildlife or wildlife movement, particularly for medium and large mammals.**
- Grading – We understand there is already guidance related to grading found in the City's General Plan and some Community Plans (Appendix H of the ESA report); however, this guidance is policy-related and is not substantiated by scientifically-backed information suggesting benefit to wildlife or wildlife travel. In the ESA report, grading restriction is only mentioned in association with fuel modification and native planting recommendations. **The City appears to be restricting grading to minimize land disturbance, but they provide no scientific analysis supporting their claim that imposing grading restrictions on private landowners in residential areas will benefit wildlife movement.**

- Residential Floor Area (RFA) – The Ordinance proposes to include basements in the calculation of RFA and the City's intent is to restrict grading to minimize land disturbance associated with the construction of basements. **As stated in the comment about grading restrictions, above, the City appears to be restricting grading to minimize land disturbance, but they provide no scientific analysis supporting their claim that imposing grading restrictions on private landowners in residential areas will benefit wildlife movement.**
- Lot Coverage – The Ordinance requires that accessory structures be included in the overall calculation of Lot Coverage and proposes a cap of 100,000 square feet of Lot Coverage for properties within the Wildlife District. The City concludes this will help to limit future paving and hardscape, which will benefit stormwater management, limit erosion, and preserve natural landscapes and vegetation in the Wildlife District. The City's justification for limiting Lot coverage and including accessory structures in the calculation of Lot Coverage appears to be strictly related to limiting development. **The City provides no scientific evidence that limiting Lot Coverage to 100,000 square feet will be beneficial for wildlife movement.**
- Trash Enclosures – The Ordinance states that improperly secured or poorly designed trash enclosures can present hazards for wildlife and can lead to unwanted occurrences of human-wildlife interaction. The Ordinance requires landowners to enclose trash and recycling receptacles inside a building or within an enclosed structure and requires design standards for trash enclosures to restrict wildlife access to unsecured trash. **The irony of requiring homeowner to build trash enclosures to limit human-wildlife interactions is that the City's Ordinance is designed to encourage wildlife to move through the neighborhoods, which will lead to additional unwanted human-wildlife interactions regardless of the presence of trash enclosures.**

The proposed Ordinance does include and address some of the recommendations from the ESA report, which are discussed below.

- Fencing Regulations

The regulations prohibiting certain fencing materials (e.g., barbed wire, plastic mesh, woven wire, concertina wire, and razor wire) and design features (e.g., spikes, sharp glass, and uncapped hollow fence posts) may decrease the risk of wildlife species becoming entrapped or being injured while attempting to navigate through, around, or over fences. However, the City has provided no scientific study indicating that wildlife entrapment and injuries related to fencing materials is a problem in the Wildlife District. In addition, if the Ordinance is going to promote the movement of medium to large mammals through residential areas, the occurrences of domestic pets and livestock being taken from backyards or livestock enclosures by predators or even incidents where predators injure children in backyards will likely increase. The downside of increased wildlife-domestic pet/livestock interactions or human-wildlife interactions will undoubtedly be the removal of nuisance wildlife, which is counter to the City's desire to increase



wildlife movement and populations in the Wildlife District. **The City will have to take the responsibility associated with limiting a homeowner's ability to protect their animals and children from interactions with medium to large predators by restricting the use of some fencing materials.**

- Tree Regulations

The regulations in the Ordinance require that one native tree must be planted for every 1,000 square feet of new floor area introduced to the lot with a minimum of one native tree required. In addition, if a significant tree is removed then two new native trees must be installed to replace the removed tree. The regulations in the Ordinance also restrict impacts within the dripline of significant and protected trees and shrubs, requires the replacement of dead or fallen protected trees or shrubs at the Significant Tree replacement ratios, and requires the dead or fallen tree be retained on site in some fashion (e.g., mulch, compost, soil amendment, or left in place). Several issues will likely arise from the tree regulations, including the absence of knowledge of the typical landowner about selecting a tree species appropriate for their location, the determination of a suitable planting site, and the required care for native trees. More importantly, a few native trees planted in a residential yard does not constitute high quality habitat that would support a high diversity of wildlife species. Woodlands containing many trees plus the associated native shrub and grass understory would represent high quality habitat that would retain biodiversity in an area. **The City should be focusing their efforts on creating woodlands containing many trees in conserved areas that would support a high diversity of wildlife rather than requiring homeowners to plant isolated native trees in their yards that potentially would not survive and would not create high quality habitat retaining biodiversity.**

- Vegetation and Landscape Regulations

We agree with the restriction on the use of invasive plant species for ornamental landscaping purposes, as outlined in the Ordinance. Invasive plant species, even when planted in highly urbanized areas, have great potential to spread and degrade natural areas even miles away from the original planting. Restricting the planting of invasive plant species in the Wildlife District will have a benefit on natural areas in the region by minimizing the spread of seed materials.

The intent of the vegetation and landscape regulations, which are identified as "Wildlife Friendly Landscaping Requirements," as stated in the Ordinance is *"To maintain habitat and biodiversity, manage stormwater and sequester carbon by retaining Native and Significant Trees, and by incorporating native vegetation that supports wildlife."* The regulations require any newly planted or landscaped areas to comply with Planting Zones specifications for the purpose of increasing habitat value and resisting the spread of fire. In Planting Zone 1, which extends thirty feet in a straight perpendicular line from the edge of any structure larger than 200 square feet, a minimum of 50% of the total area of any new landscaping shall be planted with native species. In Planting Zone 2, which extends from the edge of Zone 1 to the property line, a minimum of 75%

of the total area of any new landscaping shall be planted with native species. All native plant species must be from the Preferred Plant List included with the Ordinance.

The idea of planting native plants to create habitat for native wildlife species is great when it is implemented in the right location. Requiring homeowners in residential areas to plant a substantial portion of their yards with native plants is wrought with problems. First, the presence of the native habitat would encourage wildlife to inhabit the yards, which understandably is the goal of the Ordinance, but drawing in wildlife species that can become nuisance species that may prey upon domestic pets and livestock, create structural and property damage (e.g., California ground squirrel burrow complexes established under structure foundations), and transmit parasites and communicable diseases, is a large drawback of this regulation. The areas planted with native plants could potentially support small mammals, reptiles, and amphibians that are considered prey items for medium and large sized mammals, such as raccoons, bobcat, coyote, and potentially mountain lion, and undesirable reptiles, such as rattlesnakes. The ultimate outcome from wildlife interactions with humans, domestic pets, and livestock will be the removal or killing of nuisance wildlife, which is exactly the opposite of the goals of the Ordinance. **Instead of creating small patches of native vegetation in homeowner's yards that would likely result in increased interactions between humans, domestic pets, and livestock with wildlife, the City should focus their efforts at improving wildlife habitat in areas where large patches of native vegetation can be planted or restored, particularly in conserved areas that would be able to support a higher diversity of wildlife species.**

Another major issue with requiring homeowners to plant a substantial part of their properties with native plants is that specialty native landscape contractors and potentially landscape architects who are familiar with native plants would have to be hired by the landowners at a substantial cost. Installing and successfully caring for native plants is much different than ornamental landscaping plants because the water requirements and soil conditions vary, and a specialist would likely be required to successfully install and maintain a landscape with native plants. If native plants are not grown properly, the risk for fire could increase due to dead or diseased plant matter that does not retain the natural fire-resistant properties that healthy native plants retain. A related issue is the availability of native plants as there are not very many nurseries that grow native plant species. In addition, most of the native plant nurseries grow the plants primarily for native habitat restoration projects typically required as mitigation for development projects. Increased residential demand on native plants from these specialized nurseries would reduce the plant availability for restoration projects in the region that were designed, implemented, and approved by regulatory agencies as having a substantial and scientifically backed benefit to local plant and wildlife species, including to promote biodiversity. An additional issue is the presence of a water mold (*Phytophthora* spp.) in native plants grown at some native plant nurseries in California. The Los Angeles County Public Works (LACPW) recently had an issue with *Phytophthora* spp. in some nursery grown plants that were going to be

installed at one of their project sites. The LACPW consulted with Maxmillian Regis, the Deputy Director of the County of Los Angeles Department of Agricultural Commissioner/ Weights and Measures (Pest Exclusion/Produce Quality) about *Phytophthora* spp. and he stated the County recommends against installing infected plants. He suggested only purchasing native plants from nurseries that implement Best Management Practices (BMPs) to avoid *Phytophthora* spp. infections in the plants. In southern California, there is only one native plant nursery who has implemented the required BMPs and they would not have the capacity to supply the numbers of *Phytophthora* spp. free plants needed for the native plantings required by the Ordinance. Additionally, homeowners required to comply with native species planting requirements would not be aware of this water mold and may unknowingly propagate this mold into natural areas that the Ordinance is intending to protect. Finally, requiring native species plantings may promote homeowners seeking to save money on landscaping to poach and illegally harvest native plants in protected areas or in areas that are conducive to wildlife occupation and movement. **The City has not fully considered the ramifications associated with requiring homeowners to install native plants, the limited availability of healthy native plants, the costs associated with hiring native landscape contractor/architect to plan, install, and maintain the landscaping, or the potential for impacts to native habitats if illegal poaching and harvesting of native plant species is conducted by individuals who are trying to save money and/or plant a desired species not otherwise available at native plant nurseries in the area.**

- Lighting Regulations

The regulations proposed in the Ordinance for lighting would be effective in protecting wildlife species, particularly birds who are sensitive to illumination during the breeding season and during migration. Nighttime lighting requirements would also be effective in protecting nocturnal wildlife species as well as encouraging the wildlife to occupy darker areas not likely associated with residential properties.

- Window Regulations

The regulations related to bird-safe windows would be effective in limiting bird-strikes and potential death when birds don't recognize the difference between a reflection in a window and an actual place where it is safe to fly.

### 3. No Nexus Between Floor Area Restrictions and Wildlife Protection

#### Height, Grading, Residential Floor Area, and Lot Coverage Regulations in Ordinance

The height, grading, residential floor area, and lot coverage regulations appear to be associated with minimizing the development footprint and disturbance envelope associated with hillside

development. The underlying justification stated in the Ordinance is preserving natural landform, topography, and vegetation, retaining watershed function, and reducing surface erosion, soil instability, landslides, and/or site disturbance by limiting grading on steep slopes and limiting the area associated with impermeable surfaces. In our opinion, the Ordinance is unjustified in associating these regulations with improving wildlife movement and connectivity of wildlife habitat. Limiting the development envelope to encourage wildlife to move between homes, particularly for small lots or in areas where homes are relatively close together will put wildlife in harm's way and will increase the probability of interactions between wildlife and humans, domestic pets, and livestock. In addition, requiring landscaping with native plants will most likely draw additional wildlife species into areas near homes that would not typically utilize yards landscaped with ornamental plants. If the population of small prey animals, such as small mammals, reptiles, amphibians, and birds, increases near or between homes, the number of predators will also increase, which will also raise the probability of undesirable interactions between humans and domestic pets with wildlife. The result will most likely be complaints about nuisance wildlife species and the ultimate removal or killing of wildlife species from residential areas, which is counter to the City's goal of preserving wildlife and increasing wildlife populations in the Wildlife District. **The City has provided no scientific justification that reducing building height, grading, residential floor area, and lot coverage will improve wildlife habitat and connectivity. The ultimate outcome will more than likely be the removal or killing of nuisance wildlife who have impacted humans or domestic pets while traveling through or foraging in the residential areas.**

#### 4. No Nexus Between Height and Wildlife Protection

Building height is likely more of an impact to bird species in urbanized city areas, where skyscrapers are regularly constructed, not in residential areas. **The City has provided no scientific evidence that concludes residential homes higher than 45 feet negatively impact wildlife species or wildlife movement.**

#### 5. Disproportionate Impacts on Smaller Lots

The regulations required by the Ordinance will have a disproportionate impact on smaller lots by unfairly limiting the allowed development and increasing the potential for wildlife interactions with humans, domestic pets, and potentially livestock. High density development (which is present in the Wildlife District areas) affects wildlife and wildlife movement and requiring homeowners to make adjustments to landscaping on a microhabitat level to benefit wildlife occupation or movement will not provide a significant benefit to regional wildlife or the health of wildlife populations. **The City has not fully evaluated the negative impacts of the Ordinance on homeowners with smaller lots and the corresponding lack of benefit for wildlife and wildlife movement in high density residential areas.**

## 6. Resource Maps Have Not Been Appropriately Studied and Are Not Based on a Proper Scientific Foundation

Before implementing the any sort of Ordinance designed to promote wildlife movement through developed areas, rigorous and scientifically based research and data collection in the Wildlife Districts is necessary to appropriately identify the resources, threat levels to their existence, and how existing and future residential development would specifically affect these resources. Necessary studies to fill these information gaps may require surveys and data collection over various seasons and multiple years to gain an understanding of how resources are using the Wildlife Districts and understanding what the exact threats to these resources are, instead of supposing that all development and human activity is bad for wildlife.

### Wildlife Resources Regulations

The Wildlife Resource regulations in the Ordinance apply to all lots in a Wildlife District where a Wildlife Resource has been identified on a map created, maintained, and adopted by the Department of City Planning in conjunction with the application of a Wildlife District. The Future Considerations section of the City Staff Report states that the City is to develop procedures to ensure future mapping of resources so existing datasets can be regularly updated and information can be shared between City departments to support implementation and enforcement of regulations. The City Staff Report also states that additional personnel will need to be hired to implement the Ordinance. It would be beneficial to all parties involved if the mapping is completed up front, prior to implementation of the Ordinance, to accurately apply any sort of Ordinance regulations to landowners so the requirements and processes are clear. It appears that the lack of accurate mapping of sensitive resources (e.g., stream channels, riparian areas) will give the City broad authority with few boundaries in how the Ordinance is implemented and how it will affect landowners. The Ordinance's regulation requires the submittal of a Biological Assessment and a Site Plan Review for any Project proposed within a Wildlife Resource. If the Wildlife Resources are not accurately mapped, how will landowners determine if their projects need a Biological Assessment or Site Plan Review? **The City has not fully evaluated or mapped the locations of Wildlife Resources within the Wildlife District, has not developed procedures to ensure accurate mapping of Wildlife Resources, and does not have the personnel to implement the Ordinance.**

The City recommendation report on the Ordinance also states that additional discretionary review will be performed for development of lots that contain or are located adjacent to natural resources such as waterways and open space. **The City has not clarified what the parameters are for this review, what are the expected additional restrictions that will be imposed by the proposed Ordinance, and who will be conducting this discretionary review.**

The Proposed Wildlife Resources map that was included in the revised Ordinance and City Staff Report identified Water Resources and Water Resources – Open Channels. The City appears to have



done a high-level mapping of these resources but has not done jurisdictional delineations or accurate mapping of these resources or the habitats within these resources. **The City has not provided accurate information to fully identify whether the Water Resources and Water Resources-Open Channels are suitable as wildlife movement areas, which would include evaluating the width, length, vegetation, and proximity to residential development.**

## 7. Director's Need to Modify Resource Maps Can be Avoided with Appropriate Scientific Studies

Again, rigorous and scientifically based research and data collection in the Wildlife Districts is required to appropriately identify the resources and create accurate resource maps. Giving the authority of whether or not lots may be developed or how they can be developed in the Wildlife District to people who may be swayed by personal preference, political affiliation, or other factors not directly related to the intent of the Ordinance is not only an unfair practice, but the need for such modifications can be largely avoided if the appropriate scientific work is done in advance. If resource maps are in need of modifications, a scientific and rigorous process should be developed and implemented on a pre-determined and regular basis to modify resource maps as part of a standard adaptive management process. Resource specialists should be involved in the modification of resource maps, not just the Director, the Planning Commission, or City staff. **The City has not developed a process to accurately map resources within the Wildlife District or to modify the resource maps and this process should not be left to City personnel; rather, independent resource specialists should be involved in updating resource maps.**

## 8. More Effective, and Less Impactful Measures Are Readily Available

More effective and less impactful measures of protecting wildlife in areas where residential areas meet natural areas are readily available. Protecting wildlife in and around urbanized areas can largely be achieved by prohibiting or controlling the use of rodenticide and pesticide products and implementing road modifications, such as signage and speed bumps. The City can be more successful in promoting wildlife diversity, movement, and protection by allocating City resources in larger blocks of habitat that can be purchased and/or managed for conservation purposes. Relying on homeowners to implement the City's goals of protecting wildlife is not effective, creates undue resource and energy expenditure in implementing and enforcing the requirements, and may result in unnecessary conflict between the City and the homeowners. Instead, implementing an incentive program for homeowners with suggested wildlife protection measures that can be implemented easily and inexpensively, such as wildlife-friendly lighting and windows, would be far more effective for all parties involved, including the City.

Drainages were identified in the ESA report as being potential wildlife movement areas and some were included as proposed linkages. However, it is important to note that many of the small



drainages being proposed as part of the WMPs in the ESA report already have legal protections in place protecting them from urban and residential development as jurisdictional resources to California Department of Fish and Wildlife (CDFW), U.S. Army Corps of Engineers (USACE), and/or Regional Water Quality Control Board (RWQCB) under the State and Federal Clean Water Acts. These protections have built in benefits to wildlife already utilizing these resources. We recommend adding the Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Arid West Region Supplement USACE 2008) to the list of methodology guidance documents used to perform aquatic resources delineations.

## **9. Literature Cited in ESA Report Largely Consists of Non-Scientific Non-Peer-Reviewed Articles**

It is important to note that most of the resources cited in the ESA report as influencing the proposed PAWs and WMPs are policy documents; very few scientific, peer-reviewed journal articles are cited in the ESA report, which has subsequently driven the recommendations in the Ordinance. While it is important to review policies that other entities have researched, developed, and implemented for their own study areas, it is crucial that the City perform targeted research that will support informed decisions based on scientific research for this particular area, and in this particular context. We recommend the City conduct a more rigorous review of scientific articles and studies specifically geared toward wildlife movement and crossings. We recommend that scientifically backed ideas and mitigation be incorporated into the Ordinance; it is hard to see where many of the requirements in the Ordinance have scientific backing or are substantiated by peer-reviewed scientific journal articles. The resources listed below are examples of studies that should be reviewed by the City and incorporated into the goals of an Ordinance that can be effective in promoting wildlife movement in areas that are not dominated by residential development. Note that the list is not exhaustive and we encourage the City to perform more research and scientific studies to guide the City's policy and decisions related to the Ordinance.

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- Kintsch, J. and P.C. Cramer. 2011 Permeability of Existing Structures for Terrestrial Wildlife: A Passage Assessment System. Research Report No. WA-RD 777.1. Washington State Department of Transportation, Olympia, WA.
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## 10. Recent Wildlife Interaction in the Wildlife District

As reported by KTLA, a Los Angeles news station, on November 18, 2022, a mountain lion attacked a dog on a leash while it was being walked on a residential street in the Hollywood Hills. The attack was caught on video and shows the mountain lion emerging from some vegetation adjacent to a residence, crouching when it saw the person walking the dogs, and then attacking one of the two dogs being walked. KTLA speculates the mountain lion involved in the attack was the collared mountain lion called P-22, the mountain lion that is known to live around Griffith Park. The video can be viewed at this link: [Video shows mountain lion attack leashed dog in Los Angeles \(ktla.com\)](https://www.ktla.com/video/shows-mountain-lion-attack-leashed-dog-in-los-angeles). The fact that the person walking the dogs on a residential street in the Wildlife District was not intimidating to the mountain lion and resulted in an attack that killed one of the dogs attests to the fact that the City should not be promoting an increased presence of wildlife, particularly large mammals, in any areas dominated by residential development.

## Conclusion

In summary, the intent of the Ordinance appears well-intended but upon further review, there are significant holes in the analysis, data and information gaps, and proposed restrictions on homeowners that are not scientifically backed as directly benefitting wildlife or wildlife movement. In addition, implementing an Ordinance that will promote more wildlife presence, particularly large, predatory mammals, in residential areas where humans, domestic pets, and wildlife could be negatively affected is a bad idea, as evidenced by the November 18, 2022 mountain lion attack on a dog on a residential street in the Hollywood Hills. We respectfully submit these comments and questions in our professional opinion and appreciate the consideration of them for future revision of the Ordinance and policy related to protection of wildlife and wildlife movement.

Thank you for the opportunity to submit this review of the Ordinance. If you have any questions regarding this summary letter, please contact me at [mquillman@ecorpconsulting.com](mailto:mquillman@ecorpconsulting.com).

Sincerely,

**ECORP Consulting, Inc.**



Mari Quillman  
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Kristen (Mobraaten) Wasz  
Biology Manager/Senior Biologist

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Nov 14, 2022

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November 14, 2022

**VIA EMAIL**

President Millman, and Honorable Members  
of the City Planning Commission  
Department of City Planning  
City of Los Angeles  
200 N Spring St.  
Los Angeles, CA 90012  
E-Mail: CPC@lacity.org

Re: **Comments on the Biology and Scientific Methodology of the Proposed  
Wildlife Pilot Study Zone Change Ordinance**  
Case No(s). CPC-2022-3413-CA and CPC-2022-3712-ZC  
Env. Case No. ENV-2022-3414-CE  
City Council File No. 14-0518

Dear Honorable Members of the City Planning Commission:

This office represents *Neighbors for Hillside Safety*, an unincorporated association of homeowners, residents, and stakeholders, who live and work within the proposed Wildlife Ordinance District being considered as part of the City's Wildlife Pilot Study and the associated Wildlife Ordinance District (the "Ordinance").<sup>1</sup> We submit this letter to reiterate several serious concerns and objections our client(s) have with this Ordinance as proposed, and to again express our clients' frustration over the City's decision to "fast track" a sweeping new zone change that impacts tens-of-thousands of homes without performing any environmental analysis.

This follows our previous letters dated August 22, 2022 (providing comprehensive comments to the Ordinance), and November 10, 2022 (focusing on CEQA and Housing Crisis Act issues). The focus of this letter is the flawed foundational science, methodology, and biology upon which the Ordinance is based. In this regard, this office has hired ECORP Consulting, Inc, expert environmental consultants to conduct a detailed analysis of the Ordinance and the cited source materials, and ECORP's summary report is attached hereto as Exhibit 1. The issues raised by ECORP highlight the need for CEQA review, as such an analysis would actually evaluate the real problems impacting wildlife, and provide a scientific basis upon which a measured response can be taken to address those issues. Note that while ECORP's summary findings are attached as

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<sup>1</sup> We also represent 9922 LLC, a resident and homeowner within the proposed district, and Ardie Tavangarian, who similarly owns property in the district and is an architect with over 40 years of experience building and remodeling homes in the affected communities.



Exhibit 1, ECORP is continuing to do a thorough analysis of the proposed Ordinance, and plans to provide a more detailed report later in the administrative process (prior to the City Council hearing).

In conjunction with ECORP's analysis, we would like to bring the following issues to the City Planning Commission's attention, as they specifically relate to the biological foundations and scientific methodology used in the creation of the Ordinance:

1. **The Ordinance Does Not Achieve its Stated Purpose:** The Staff Report explains that PAWs are not well connected, which is why Wildlife Movement Pathways ("WMP") are necessary. (Staff Report, Appendix 1-6.) However, a closer read reveals that the Ordinance will not actually do a good job of connecting different PAWs, but rather, the "greatest potential for regional movement within the City is within the PAWs themselves" (Staff Report, Appendix 2-109, 110, 111.) The staff report goes on to admit: "Unlike true wildlife corridors, which consist of pieces of habitat connecting larger extensive core habitat patches, the majority of wildlife movement opportunities throughout the City consist of smaller constrained movement pathways many of which contain limited marginal (i.e., low quality) habitat or even some developed areas (e.g., road crossings) connecting PAWs or fragments of PAWs. Thus, the term Wildlife Movement Pathways (WMPs) is used to characterize these likely pathways that are not traditional wildlife corridors, rather they are constrained urban wildlife passage opportunities." In other words, what the City is selling to the public as a wildlife corridor ordinance is actually (and admittedly) nothing of the sort. (Staff Report, Appendix 2-109, 110, 111, 115, 124.)
2. **Bringing More Wildlife to Residential Areas Causes Problems for Both Humans and Wildlife:** The question of whether it is wise in the first place to have a wildlife corridor placed over a densely populated urban area has not been appropriately debated and addressed. Is it a good idea to encourage bringing more wildlife to this residential area? That would lead to more mixing of humans and wildlife, which is advisable to avoid as much as possible. A wildlife corridor ordinance could potentially work and be effective in rural areas where agriculture and open space is prevalent (like in Ventura County). But in this area that is entirely surrounded by major roads and freeways, it is simply inviting more problems. In this regard, the ESA Report relies heavily on a 2008 study from Northern Arizona University.<sup>2</sup> The study states: "Unlike road barriers (which can be modified with fencing and crossing structures), urban and industrial developments create barriers to movement which cannot easily be removed, restored, or otherwise mitigated. ...**Avoidance is the best way to manage urban impacts in a wildlife linkage.** Although some lizards and small mammals occupy residential areas, **most large carnivores, small mammals, and reptiles cannot occupy or even move through urban areas.** While mapped urban areas currently accounts for less than 1% of the land cover, residential development may increase rapidly in parts of the Linkage Design." Thus, the City's own science does not support the idea of turning existing developed urban areas into wildlife

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<sup>2</sup> Paul Beier, Dan Majka, Shawn Newell, Emily Garding, Northern Arizona University January 2008, "Best Management Practices for Wildlife Corridors"; available at: <https://www.cbd.int/doc/pa/tools/Best%20management%20practices%20for%20wildlife%20corridors.pdf>


areas, since “most large carnivores, small mammals, and reptiles cannot occupy or even move through urban areas.”

3. **The Ordinance Deviates Substantially from the Recommendations Listed in the ESA Report:** The ESA Report, and the source documents referenced therein, provide the scientific and biological foundation for all of the zoning regulations that were later incorporated into the Ordinance. This ESA Report contains a detailed analysis of all of the proposed PAW and WMP zones, and scientifically justifies their designation. Importantly, the ESA Report also includes an entire section devoted to guiding the City staff in its drafting of the ordinance, entitled "Recommendations to Inform Policy and Planning." (Staff Report, Appendix 2-176 to 2-196.) Notably, the policy recommendations include only the following nine categories (several of which, like poison/traffic, are not addressed in the Ordinance at all), and to the extent that the Ordinance regulates things outside of this list (such as building height and FAR), those are not grounded in scientific reality:
  - Setback and Buffers from open spaces and natural resource areas
  - Fencing and Physical Barriers
  - Vegetation, Landscaping (and Brush Management)
  - Lighting
  - Windows
  - Noise
  - Poison
  - Traffic
  - Education
4. **No Nexus Between Floor Area Restrictions and Wildlife Protection:** There has been no explanation for how or why calculating basements as part of the floor area will help wildlife. The footprint of the building and the lot coverage is what actually matters with respect to wildlife movement and corridors. If there is additional hidden square footage in a basement that does not impact the overall footprint of the building, there is no nexus to how or why wildlife would be impacted. Lot coverage is the more relevant measurement. (*See* Staff Report, A-16.)
5. **No Nexus Between Height and Wildlife Protection:** The only explanation provided in the staff report for why height is important for wildlife movement is impacts to birds. (*See* Staff Report, A-22.) However, no scientific data was provided to support the fact that building height actually makes any difference for birds (or any other wildlife, for that matter). The regulations related to glass are sufficient to protect birds.
6. **Disproportionate Impacts on Smaller Lots:** The staff report acknowledges that the Ordinance has a disproportionate impact on smaller lots. All lots under 6,000 SF should be exempted from all aspects of the Ordinance.
7. **Resource Maps Violate Due Process:** The Ordinance acknowledges that there are "unmapped Resources" that are subject to further regulations, that there is conflicting and flawed resource data. This is a violation of due process, as there are property owners within the Wildlife District who would not have been notified that their properties are subject to these regulations until they are already in the process of developing their properties. In order to avoid a violation of due process, the City must make clear from the outset all of the "Wildlife Resources" that are

covered by the Ordinance in advance, and all of the parcels that can be effected by them. This cannot be left to a future reviewer to determine whether such resources exist on site. This has to be done now, or it violates the due process rights of all property owners whose properties contain these features, but are not identified on the relevant maps at the time the Ordinance is adopted. Also, there is no express ability to appeal a resource determination on individual parcels. An administrative appeal right must be added. (*See Staff Report, A-38-39, 43.*)

8. **Director Ability to Modify Resource Maps Violates Due Process:** The proposed revision to LAMC Section 12.03 notes that the Ridgeline Map is "adopted and maintained by the Director of Planning." However, this implies that the Director of Planning has the ability to make modifications to the maps at any time, and without any notice or opportunity to be heard. In other words, properties that are not currently subject to certain restrictions within the Ordinance because they are not close to a Ridgeline, can be made subject to those restrictions on the whim of the Director of Planning, and the effected property owners would not have notice or an opportunity to be heard regarding those changes, as the Ordinance is currently written. Any changes to the maps must be made now, and the Ordinance must have final maps that are incorporated into the terms of the Ordinance. The Director of Planning cannot have the ability to unilaterally make changes to the maps without notice and a hearing for those properties being impacted by the changes. Otherwise, the Ordinance violates the due process rights of all property owners whose properties contain these features, but are not identified on the relevant maps at the time the Ordinance is adopted. (*See Staff Report, A-38-39, 43.*)
9. **More effective, and less impactful measures are readily available:** The real problems for wildlife are car collisions and rodenticide. The City could achieve its goals of protecting wildlife and promoting biodiversity more effectively if it just 1) banned rodenticide products, and 2) implemented road modifications (such as signage to warn drivers about wildlife, and striping and/or speed bumps to keep speed down) to keep drivers alert, and to keep their driving speeds lower, so as to promote the ability to evade wildlife collisions. Such measures would likely be substantially more effective in achieving the goal of protecting wildlife, and at the same time, would be much less impactful on homeowners and the environment. (*See Staff Report, Appendix 1-10 [admission that freeway overpasses were not considered]*). Ancillary zoning restrictions will not solve the problems that are actually caused by the Freeways. (*See Staff Report, Appendix 2-19 [roadkill map].*)

Very truly yours,



BENJAMIN M. REZNIK of  
Jeffer Mangels Butler & Mitchell LLP

# EXHIBIT 1



November 14, 2022  
(2022-259)

Mr. Seena Max Samimi  
Jeffer Mangels Butler & Mitchell LLP  
1900 Avenue of the Stars, 7<sup>th</sup> Floor  
Los Angeles, CA 90067

**Subject: Brief Biological Review of the City of Los Angeles' Proposed Revised Wildlife Ordinance**

Dear Mr. Samimi:

ECORP Consulting, Inc. (ECORP) is pleased to provide a brief biological review of the proposed City of Los Angeles (City) Revised Wildlife Ordinance (Ordinance). The focus of this review includes a brief analysis of how the proposed Ordinance, as currently written, is not likely to achieve its stated purpose and that wildlife may actually be harmed or killed more frequently because they would be drawn to using areas within and around areas of dense human population. The Protected Areas for Wildlife and Wildlife Movement Pathways (ESA 2021) and The Missing Linkages: Restoring Connectivity to the California Landscape (Penrod et. al 2001) reports both document that dense human population, urban development, high-trafficked roads/freeways, anthropogenic disturbances, and fragmented and limited amounts of wildlife habitat are present in the Wildlife District.

- The City has presented no scientific evidence or data supporting the idea that implementing the Ordinance and associated WMPs in such a restrictive area with little available wildlife habitat would have any direct benefit to wildlife or are even effective at achieving the goals of the Ordinance.
- The City has not provided any scientific evidence that micromanagement of wildlife movement in small, constrained, and fragmented habitat areas benefits the population of local native wildlife.
- There is no justification that Ordinance restrictions related to reductions in building height, grading, residential floor area, and lot coverage would improve wildlife habitat and connectivity.

The Ordinance would draw wildlife to residential areas, dramatically increasing wildlife collisions with vehicles and interactions between wildlife and humans and their domestic pets. The Ordinance's intent is to provide habitat for medium and large mammal species to support occupation and movement in and around residential areas. Conflicts between wildlife and humans and their domestic pets will increase if medium and large mammals are given an enhanced opportunity to occupy and travel through existing residential areas.

- The City has provided no justification that wildlife, especially medium and large mammal species, would be protected or buffered from vehicle collisions occurring on the major freeways and busy roads within the Wildlife District. There is no analysis in the Ordinance on the safety of humans in such wildlife-vehicle collisions.
- Native vegetation planted within and around residences supports prey-sized wildlife for medium and large sized predators and undesirable reptiles, such as rattlesnakes. The ultimate outcome from wildlife interactions with humans and domestic pets will be the removal, injury, or killing of nuisance wildlife, exactly the opposite of the goals of the Ordinance. The City provides no scientific research or data that support the idea that attracting wildlife in and through residential properties would not result in deleterious wildlife-human/domestic pet interactions.
- Interactions between wildlife and domesticated animals promote transmission of disease and parasites; some zoonotic diseases are communicable to humans. The City has provided no analysis regarding impacts resulting from the Ordinance related to disease and parasite transmission between and domestic animals or humans.

The Ordinance is unjustified in associating the regulations outlined in the Ordinance with improving wildlife movement and connectivity of wildlife habitat. Limiting the development envelope to encourage wildlife to move between homes, particularly for small lots or in areas where homes are relatively close together, will put wildlife in harm's way and will increase the probability of human/wildlife and domestic pet/wildlife interactions. In addition, requiring landscaping with native plants will most likely draw additional wildlife species into areas near homes that would not typically utilize yards landscaped with ornamental plants. If the population of small prey animals increases near or between homes, the number of predators will also increase, which will also raise the probability of undesirable interactions between humans and domestic pets with wildlife. The result will most likely be complaints about nuisance wildlife species and the ultimate removal or killing of wildlife species from residential areas, which is counter to the City's goal of preserving wildlife and increasing wildlife populations in the Wildlife District. If you have any questions regarding this summary letter, please contact me at [mquillman@ecorpconsulting.com](mailto:mquillman@ecorpconsulting.com).

Sincerely,

**ECORP Consulting, Inc.**



Mari Quillman  
Program Manager



Kristen (Mobraaten) Wasz  
Biology Manager/Senior Biologist



Nov 10, 2022

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November 9, 2022

**VIA EMAIL**

President Millman, and Honorable Members  
of the City Planning Commission  
Department of City Planning  
City of Los Angeles  
200 N Spring St.  
Los Angeles, CA 90012  
E-Mail: CPC@lacity.org

Re: **Comments on Proposed Wildlife Pilot Study Zone Change Ordinance**  
Case No(s). CPC-2022-3413-CA and CPC-2022-3712-ZC  
Env. Case No. ENV-2022-3414-CE  
City Council File No. 14-0518

Dear Honorable Members of the City Planning Commission:

This office represents *Neighbors for Hillside Safety*, an unincorporated association of homeowners, residents, and stakeholders, who live and work within the proposed Wildlife Ordinance District being considered as part of the City's Wildlife Pilot Study and the associated Wildlife Ordinance District (the "Ordinance").<sup>1</sup> We submit this letter to reiterate several serious concerns and objections our client(s) have with this Ordinance as proposed, and to again express our clients' frustration over the City's decision to "fast track" a sweeping new zone change that impacts tens-of-thousands of homes without performing any environmental analysis.

While we appreciate the City's effort to address some of our clients' concerns with the prior draft of the Ordinance, such as the elimination of the fencing requirements, two of the most important issues we have raised have yet to be addressed. First, the City continues to refuse to conduct any CEQA review for a project that spans over 20,000 acres and makes significant zoning changes that have the potential to impact the environment. Instead, the City has doubled-down on its view that the Ordinance qualifies for inapplicable CEQA exemptions. Second, the Ordinance violates the Housing Crisis Act (SB 330), and in its most recent staff report, the City has openly acknowledged this violation. As such, this letter incorporates the relevant CEQA and Housing Crisis Act

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<sup>1</sup> We also represent 9922 LLC, a resident and homeowner within the proposed district, and Ardie Tavangarian, who similarly owns property in the district and is an architect with over 40 years of experience building and remodeling homes in the affected communities.

comments from our prior August 22, 2022 letter (attached hereto as Exhibit 1), and urges the City to take these issues seriously, because if they are not addressed here in the administrative phase of this Ordinance, they will need to be addressed by the Courts. Specifically, this letter addresses the following issues:

- (i) **Violation of CEQA due to Failure to Conduct Environmental Review.** The City's claim that the ordinance qualifies under several exemptions to CEQA are flawed. The City's claimed exemptions (Classes 7-8, and the "common sense" exemption) are inapplicable, and moreover, the CEQA Guidelines do indeed include an exemption for habitat restoration projects (Class 33 exemption), but that exemption is limited to projects that are 5 acres or less. Because this project spans over 20,000 acres, it obviously cannot qualify for the Class 33 exemption, and the City's attempt to pigeonhole this ordinance into other inapplicable exemptions will fail. The Ordinance also violates CEQA's project-splitting prohibition, and fails to evaluate the cumulative impacts of the Ordinance. The City must conduct an EIR to properly analyze the environmental impacts of this ordinance.
- (ii) **Violation of the Housing Crisis Act due to Reduction in Residential Capacity.** The Housing Crisis Act prohibits any reduction of density without *concurrent* changes in development standards in other areas to ensure that there is no net loss in residential capacity. The City has openly admitted that there is no "concurrent" City action to up-zone other areas of the City, and therefore, this ordinance cannot be passed until the City has done so.

We urge the City to reconsider moving forward with the Ordinance in its current form without first 1) preparing an EIR that considers the Ordinance's impacts on the environment, and 2) complying with the Housing Crisis Act by concurrently (*i.e.*, on the same timeline as this Ordinance) changing the development standards on parcels elsewhere in the City to ensure no loss of residential capacity.

Notably, although we have outlined two of our main concerns with the Ordinance here, we will be submitting a second comment letter that addresses, among other things, the issues with the science and biology of the Ordinance, which will be accompanied by a report from expert environmental consultants.

## **I. THE ORDINANCE DOES NOT COMPLY WITH CEQA**

Our August 22, 2022 letter sets forth in detail the reasons why the City's claimed exemptions – Classes 7 and 8, and the common sense exemption – are inapplicable. There, we explained that 1) CEQA must be conducted at the earliest feasible point in the planning process, 2) that other similar projects in other jurisdictions (*e.g.*, Riverside County, San Diego County, Orange County, Los Angeles County) underwent CEQA review, 3) that the Class 7-8 exemptions claimed by the City are inapplicable on their own terms, because the Ordinance does not “assure the maintenance, restoration, or enhancement” of the environment or natural resources, 4) that the Class 7-8

exemptions are inapplicable because of "unusual circumstances" such as fire hazards, topography, seismicity, and grading, and 5) that a negative declaration would be inappropriate for the Ordinance, as substantial evidence supports a fair argument that a significant environmental impact would occur.

This letter sets forth three additional reasons why the Ordinance violates CEQA: 1) the City has chosen the wrong CEQA Exemption, 2) the Ordinance violates CEQA's prohibition on project-splitting, and 3) the City has failed to analyze the cumulative impacts of similar wildlife-protection regulations throughout Southern California.

**A. The City has Attempted to use Inapplicable Categorical Exemptions, While Ignoring the One Exemption that is On Point, but for which the Ordinance Does Not Qualify**

There is a direct reason why the City's claimed categorical exemptions do not apply here: *it has chosen the wrong categorical exemption for the Ordinance*. There is another exemption – Class 33 (CEQA Guidelines § 15333, Small Habitat Restoration Projects) – that is directly on point for wildlife corridors, but due to the massive geographic size of the Ordinance, it fails to qualify under Class 33, which limits the exemption to projects less than five acres in size.

“A categorical exemption can be relied on only if a factual evaluation of the agency’s proposed activity reveals that it applies. The agency invoking the categorical exemption has the burden of demonstrating that substantial evidence supports its factual finding that the project fell within the exemption.” (*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 705, *internal marks and cites removed*; citing, *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386.) Entirely absent from the City's analysis of applicable CEQA exemptions is any discussion of the Class 33 exemption, which provides as follows:

§ 15333. Small Habitat Restoration Projects.

Class 33 consists of projects **not to exceed five acres in size to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife...**

(d) Examples of small restoration projects may include, but are not limited to:

- (1) revegetation of disturbed areas with native plant species;
- (2) wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat;
- (3) stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish;

(4) projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment.

(5) stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation... (CEQA Guidelines § 15333.)

The Class 33 categorical exemption is thus directly on point for an Ordinance that purports to “maintain, restore, enhance, or protect” “habitats” for “wildlife.” (*Id.*) The Ordinance’s plain terms and main purpose fall most directly under the purview of Class 33, in the sense that the exemption itself directly discusses protection of wildlife habitats, and addresses issues that are dealt with head-on in the Ordinance, such as the promotion of native plant species over invasive species, and restoration of wetlands, streams, and rivers. Indeed, the word “restoration” (in its various forms) appears in the staff report no less than 130 times, the word “habitat” appears at least 740 times, and the word “wildlife” over 1650 times.

The City admits, time and again, that restoration of habitat is front and center in the Ordinance:

Future development will continue to put pressure on these limited remaining natural resource areas within the City, and wildlife will be forced to survive on fewer habitat areas and resources, which will continue to threaten the biodiversity remaining within the City. One of the City’s Conservation Element objectives is to “preserve, protect, restore and enhance natural plant and wildlife diversity, habitats, corridors and linkages so as to enable the healthy propagation and survival of native species, especially those species that are endangered, sensitive, threatened or species of special concern.” The City is committed to conserving natural habitat areas and provide connectivity for wildlife.

(Staff Report, 2-7.)

Also, the City does not even deny that the Ordinance is a project that is specifically designed to “**assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife**”—*i.e.*, the activity class that is the subject of the Class 33 exemption. (CEQA Guidelines Section 15333.) In fact, the City acknowledges that the purpose of the Ordinance is just that: “The proposed Wildlife District Ordinance has a critical goal of protecting habitat and wildlife connectivity in the hillsides and is supportive of related goals for open space management...and maintaining overall quality of life for both people and wildlife. The Ordinance aims to reduce cumulative development impacts on plants, animals and natural resources for supporting wildlife connectivity while providing co-benefits related to climate resilience and public health.”

However, there is a reason that such an exemption was designed by the Resources Agency to be limited to projects of “five acres” or less. When the Resources Agency contemplated this exemption for wildlife corridors, it established a five acre limit, presumably because it cannot make similar assumptions regarding environmental impacts for larger projects. In *Davidon Homes*

*v. City of San Jose* (1997) 54 Cal.App.4th 106, the court went to great lengths to explain that significant thought and consideration went into the identification of each of the categorical exemptions that are identified in the CEQA Guidelines. (*Davidon*, 54 Cal.App.4th at 116.) The term “categorical exemption” in CEQA Guidelines “means an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.” (CEQA Guidelines § 15354.) Put differently, when the Resources Agency decided that this “class of projects” specifically relating to protection of wildlife was a class that is exempt from CEQA, it did so with the precise caveat that such projects must be limited to less than five acres. (CEQA Guidelines § 15333.) There is an implied finding within the Class 33 exemption that similar, but larger, projects are not automatically categorically exempt from CEQA, precisely because the Secretary for Resources is unable make a finding that such projects do “not have a significant effect on the environment.” (CEQA Guidelines § 15333, 15354.)

In contrast to the Class 33 exemption, the Class 7-8 exemptions lack the specificity and direct applicability to wildlife corridors. Classes 7-8 cover regulatory actions to assure the maintenance, restoration, or enhancement of a natural resource (Class 7) and/or the maintenance, restoration, enhancement, or protection of the environment (Class 8). (CEQA Guidelines §§15307, 15308.)

In interpreting a statute, courts ascertain the underlying intent of the regulations “so as to effect the purpose of the law.” (*City of Berkeley v. Cukierman* (1993) 14 Cal.App.4th 1331, 1338-39.) This includes various provisions within a comprehensive regulatory scheme. (*O’Brien v. Dudenhoeffer* (1993) 16 Cal.App.4th 327, 332 [“A statute must be construed in the context of the entire statutory scheme of which it is a part, in order to achieve harmony among its parts.”] [*internal marks removed*].) “It is a settled axiom of statutory construction that significance should be attributed to every word and phrase of a statute, and a construction making some words surplusage should be avoided. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1010, *citing Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) A statute is to be taken and considered as a whole, so that seeming inconsistencies are reconciled and that it is construed to give force and effect to all its provisions. (*Neuwald v. Brock* (1939) 12 Cal.2d 662, 668-69; Code of Civil Procedure § 1858.) In addition, “particular intent will control a general one.” (Code of Civil Procedure § 1859; *In Re Haines* (1925) 195 Cal. 605, 613.)

In light of these canons of statutory interpretation, the three relevant CEQA exemptions (Classes 7, 8, and 33) should be interpreted in a way that gives effect to each of them, and the specific provisions should control over the general ones. If Classes 7 and 8 were meant to cover projects related to wildlife protection and habitat preservation, then there would be no need for the Class 33 exemption – it would be surplusage. Put differently, the Class 33 exemption would be rendered entirely meaningless and superfluous if any habitat enhancement project over five acres could be deemed exempt under Class 7 or 8. If that was a possibility, then why did the Resources Agency adopt Class 33 at all? Under the City’s interpretation of the Class 7-8 exemptions, Class 33 exemptions would be mere surplusage. The Resources Agency would have no need to implement Class 33 if those activities were already covered by Classes 7-8. But it did. As such, Class 33, the exemption specifically drafted by the legislature to deal with habitat restoration projects, must be

given its intended meaning. If the size of the Ordinance kicks it out of the Class 33 exemption, then CEQA review must be conducted.

Another issue specified in the most recent staff report underlines the importance of CEQA review in this matter. The City lists a host of other jurisdictions that passed similar habitat restoration regulations, but fails to inform the public that most of those jurisdictions did in fact undergo CEQA review for their projects. (Staff Report, A-13.) The City instead focuses on the wildlife corridor ordinance passed in Ventura County (one of the few jurisdictions that used a CEQA Exemption to avoid environmental review), which covers mostly rural areas of the County that bear little resemblance to the densely populated urban areas that are the subject of the City's Ordinance. Also, it should be noted that after receiving comments through the administrative process, the industries that were most effected by Ventura County's ordinance (*e.g.*, agriculture, mining) were granted significant exemptions that largely allowed them to continue operations. There is no real equivalent to those exemptions here (unless the Ordinance had a blanket exemption for all residential properties), because the Ordinance mainly impacts residential areas. Also, the Ventura County ordinance is currently being challenged on appeal, so it has no precedential value relating to its CEQA exemption.

In short, Class 33 is the only applicable exemption to the Ordinance, and the Ordinance plainly does not qualify for it. The City cannot try to squeeze itself into other more broad exemptions (Classes 7-8, common sense) when it is unable to comply with the applicable Class 33 exemption – namely because the Ordinance covers over 20,000 acres of land, which is orders of magnitude greater than five.

#### **B. The Splitting of the "Pilot" Area from the Rest of the Ordinance Constitutes Improper Project Splitting in Violation of CEQA**

The City admits that this Ordinance is a test case for other areas of the City that will eventually also be subject to similar restrictions. (Staff Report, A-15, Ex. F-7.) If this area is to be used as a pilot or test area, why then, would the City attempt to avoid CEQA review that would properly evaluate all of the environmental impacts of the regulations? If anything, the fact that this area is a test only further supports our view that a thorough environmental review is needed.

"Project splitting," "piecemealing," or "segmentation," occurs when a project description does not encompass the entire project. The duty to evaluate the environmental effects of a project cannot be avoided by limiting the description of the project. *Rural Land Owners Association v. Lodi City Council* (1983) 143 Cal.App.3d 1013, 1025. Rather, CEQA requires that a project description must include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal. 3d 376, 396. An agency abuses discretion by failing to proceed in the manner required by law if its action or decision does not substantially comply with the requirements of CEQA. PRC 21168, 21168.5.

A project description that fails to account for anticipated development activities is counter to CEQA's mandate "that environmental considerations do not become submerged by chopping a



large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences." *Bozung v. Local Agency Formation Comm'n.* (1975) 13 Cal. 3d 263, 283-84. As the court in *Santiago County Water Dist. v. County of Orange*, 118 Cal.App.3d 818, 828-30 (1981), observed, piecemealed environmental review undermines CEQA's central purpose:

"Because of th[e] omission [of a key part of the project from the County's environmental review], some important ramifications of the proposed project remained hidden from view at the time the project was being discussed and approved. This frustrates one of the core goals of CEQA. 'Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.'" *Id.* (quoting *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 192-93 (1977)).

CEQA does not allow an agency to review one part of a larger project in isolation. Instead, CEQA mandates that environmental review focus on the "whole of the action," so the true effects of the project may be analyzed in a public process and environmental impacts avoided or reduced. *See* CEQA Guidelines 15060; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal App.4th 1214, 1222. A "project" is "given a broad interpretation in order to maximize protection of the environment." *McQueen v. Bd. of Dirs.* (1988) 202 Cal.App.3d 1136, 1143. "This big picture approach to the definition of a project (*i.e.*, including 'the whole of an action') prevents a public agency from avoiding CEQA requirements by dividing a project into smaller components which, when considered separately, may not have a significant environmental effect." *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271 (reversing judgment denying writ of mandate; mining project improperly segmented). Thus, the broad scope of the term "project" prevents "the fallacy of division," which entails "overlooking [a project's] cumulative impact by separately focusing on isolated parts of the whole." *McQueen, supra*, 202 Cal.App.3d at 1144.

Case law would dictate a finding of project splitting in this case. In *Tuolumne*, the court held that the development of home improvement store and realignment of an adjacent road were part of single CEQA project given the close connection between the proposed activities, which were related in time, physical location and entity undertaking them. 155 Cal.App.4th at 1223. Here, the PAWs and WMPs have already been identified in the staff report (and its appendices) for all areas of greater Los Angeles, and the same regulations will be implemented in other areas of the City, depending on how this initial "pilot" area pans out. Yet, the claimed CEQA Exemptions only deal with this "pilot" area, without taking into account the full scope of the "project" as defined by CEQA.

In *Association for a Cleaner Environment v. Yosemite Community College Dist.*, the court determined that the closure, dismantling and transfer of a shooting range constituted a single project under CEQA because they were a "group of interrelated actions" and part of a "single, coordinated endeavor." 116 Cal.App.4th at 639. Here, the Ordinance's regulations throughout the entirety of the City (and not just the pilot area) are absolutely a "single, coordinated endeavor." See also, *Nelson, supra* 190 Cal.App.4th at 272 (mining reclamation plan and mining operations were part of a single CEQA project because they were "integrally related" to one another).

An EIR must analyze all relevant parts of a project, including future expansion or later phases of the project that will foreseeably result from project approval. *Laurel Heights, supra*, 47 Cal.3d at 394-98. In *Laurel Heights*, a University planned to move research units to a building in a residential neighborhood. The laboratories were to occupy 100,000 sf of a 354,000 sf building. The University claimed it had not decided to occupy the entire building, but evidence in the record indicated that it intended to occupy the rest of the building once another lease of that space expired. The court concluded that occupancy of the entire building was a reasonably foreseeable consequence. 47 Cal.3d at 398. Similarly, the City has here claimed that the Ordinance is limited to only pilot area. However, the actual evidence in the record belies this artificial delineation between the pilot area, and the wildlife designations in the rest of the City, all of which work hand in hand.

This is not merely a technical argument. The failure to study the entirety of the project in this case can have serious ramifications, because the assumptions being made throughout the Ordinance may not be entirely accurate when zoomed out to the eventual scale of the full Ordinance. This is the exact type of scenario that the CEQA prohibition on project splitting was designed to prevent.

### **C. The Ordinance Violates CEQA Due to Failure to Analyze Cumulative Impacts**

The Staff Report acknowledges that other nearby jurisdictions throughout Southern California have implemented similar regulations relating to wildlife and habitat preservation. (Staff Report, A-13.) However, the City has not acknowledged that its failure to analyze cumulative impacts is fatal to its claim that the Class 7-8 exemptions are applicable here.

CEQA Guidelines Section 15300.2 provides: "Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place over time is significant."

In this case, there are multiple "successive projects of the same type in the same place over time," and the Staff Report specifically mentions that the Ordinance draws upon the "best practices" of other jurisdictions "in wildlife and natural resource protection." (Staff Report, A-13.) The Staff Report identifies the Counties of Los Angeles, San Diego, and Ventura, as well as the Cities of Malibu, Calabasas, Burbank, Glendale, Beverly Hills, and Pasadena as the nearby jurisdictions that have all undergone similar projects related to "wildlife and natural resource protection." However, the Staff Report is devoid of any analysis regarding why the cumulative impacts of the wildlife regulations in all of these jurisdictions (some of which have indeed undergone CEQA review, unlike the proposed Ordinance) do not trigger the cumulative impact exception to the City's

claimed CEQA Exemptions. The City must analyze the cumulative impacts of these successive wildlife regulations in order for the Ordinance to qualify for the Class 7-8 exemptions, or the common sense exemption. Its failure to do so renders the claimed exemptions inapplicable under CEQA.

## **II. THE ORDINANCE VIOLATES THE HOUSING CRISIS ACT, WHICH PROHIBITS CITIES FROM SIGNIFICANTLY REDUCING HOUSING INTENSITY THROUGH ZONE CHANGES.**

Beyond the concerns raised about CEQA, our August 22, 2022 letter also set forth in detail the reasons why the Ordinance violates the Housing Crisis Act. In short, the Ordinance seeks to significantly reduce the intensity of use for all parcels within the purposed Wildlife District. It does this by creating substantial new regulations that reduce the possible building envelope through new restrictions on height, floor area ratio, lot size, setbacks, and lot coverage, all items specifically listed in SB 330, and all of which "would lessen the intensity of housing." Govt. Code 66300(b).

The unexpected development since the submittal of our last letter is the fact that the City has now openly admitted that the Ordinance indeed violates SB 330. Page A-37 of the staff report provides as follows:

Plans that result in a net downzoning or otherwise reduce housing and population (except for specified reasons involving health and safety, affordable housing, and voter initiatives) are prohibited. This does not apply to zoning efforts that reduce intensity for certain parcels as long as density is increased on other parcels and therefore results in no net loss in zoned housing capacity or intensity. The proposed Ordinance has many objectives, which also include addressing safety of development in the hillsides with respect to wildfire, slope failure, and flood hazards. Furthermore, **while the proposed Wildlife Ordinance does not include upzones to parcels elsewhere in the city, the City is in the process of increasing zoning allowances in various locations throughout the city**, particularly in proximity to transit infrastructure, through its update to Community Plans, as well as the Regional Housing Needs Assessment/Housing Element implementation program, thereby assuring no net loss of zoned housing capacity or intensity across the city.

However, pointing to some future, unspecified, undefined, and vague upzoning of other properties close to transit infrastructure falls far short of what SB 330 actually requires. How many parcels are being upzoned? Where are those parcels located? When will this corresponding change of zoning take place? How will the City ensure that there is no net loss in residential capacity? The key language in SB 330 provides as follows:

This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use *if the city or county*

***concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.*** Govt. Code 66300(i).

The City is admitting that it is not "concurrently" changing the development standards for other parcels, but rather, openly states in its staff report that it will consider future changes of zoning around transit infrastructure. This obviously cannot be the intent of SB 330. By this logic, any local government entity could skirt the law by simply downzoning any number of parcels through a sweeping ordinance, as long as it contains a promise somewhere in a staff report (as the City has done here) to consider upzoning other unspecified parcels in other areas. The Housing Crisis Act does not allow the City to do this, and such an attempt will assuredly be overturned by the courts.

Beyond the plain legal violation, there is also a compelling a public-policy reason that the City should not allow this Ordinance to go forward without first complying with SB 330 and identifying the precise parcels that will be upzoned elsewhere. The downzoning that is proposed through this Ordinance is taking place in the most exclusive part of the City which already enjoys among the lowest densities in the City. In contrast, the proposed upzoning briefly referenced in the staff report is in higher density sections of the City (closer to transit infrastructure). In other words, if the City actually implements this Ordinance, it will be making the public policy decision that it wants the already-high-density and highly congested areas of the City to take on even more of a population and development burden, so that decisionmakers can even further reduce the density in the hills, and the underlying reason for this is to allow more room for mountain lions, coyotes, and other wildlife? Beyond the likely failure of the Ordinance in the courts, such a decision will also not survive the court of public opinion.

The Ordinance violates SB 330 and its provisions cannot be harmonized with either the spirit or the letter of the relevant provisions of the state law. For this reason alone, the Ordinance cannot be adopted until this issue is addressed, and it is expressly reconciled with SB 330.<sup>2</sup>

### **III. CONCLUSION.**

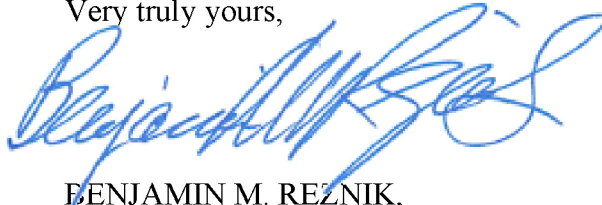
For the foregoing reasons, the City should, at a minimum, conduct the mandated CEQA analysis prior to taking any further action on the Wildlife Ordinance. The City must also address the Ordinance's conflict with SB 330's provisions that prohibit the City from reducing the intensity of a use in a zone.

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<sup>2</sup> The Ordinance also fails to explain how lot splits permitted under SB 9 and Accessory Dwelling Unit ("ADU") permitted under state law will interface with the requirements provided by the Ordinance. Homeowners should be informed upfront as to whether or not this Ordinance will impact their ability to add an ADU on their lot or subdivide their lot pursuant to SB 9.

Note that we will soon be submitting another comment letter that focuses on the scientific and biological foundations of the Ordinance, and why the regulations proposed in the Ordinance will do little, if anything, to actually obtain its stated goals.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Benjamin M. Reznik", written in a cursive style.

BENJAMIN M. REZNIK,  
DANIEL FREEDMAN,  
SEENA M. SAMIMI, of  
Jeffer Mangels Butler & Mitchell LLP

# **EXHIBIT 1**

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
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August 22, 2022

**VIA EMAIL ([ourla2040@lacity.org](mailto:ourla2040@lacity.org))**

Department of City Planning  
City of Los Angeles  
200 North Spring Street  
Los Angeles, CA 90012-2601

Re: **Comments to Wildlife Pilot Study**  
Case No(s). CPC-2022-3413-CA and CPC-2022-3712-ZC  
Env. Case No. ENV-2022-3414-CE  
City Council File No. 14-0518

To Whom It May Concern:

This office represents *Neighbors for Hillside Safety*, an unincorporated association of homeowners, residents, and stakeholders, who live and work within the proposed Wildlife Ordinance District being considered as part of the City's Wildlife Pilot Study and the associated Wildlife Ordinance District (the "Ordinance"). We also represent 9922 LLC, a resident and homeowner within the proposed district, and Ardie Tavangarian, who similarly owns property in the district and is an architect with over 40 years of experience building and remodeling homes in the affected communities. Our clients have a number of serious concerns and objections with the Ordinance as proposed, which to date, have been largely ignored throughout the City's processing of this Ordinance and the related Ridgeline ordinance. These concerns include, but are not limited to, the following:

- (i) **Failure to perform any environmental review.** As the largest threats to wildlife in the Santa Monica Mountains are vehicle strikes, rodenticides, and displacement caused by wildfires, this Ordinance is likely to harm, not help, wildlife. To date, the City has failed to disclose what, if any, environmental review has been performed in connection with this Ordinance. As no exemptions apply, the City must perform an Environmental Impact Report ("EIR") to understand both the beneficial and potentially harmful impacts this Ordinance will have on wildlife and biodiversity.
- (ii) **Reduction of Development Intensity in Violation of the Housing Crisis Act.** The Ordinance calls for a dramatic decrease in the development intensity of the "wildlife district" in direct violation of the California's Housing Crisis Act.



- (iii) **No baseline analysis of wildlife impacts.** Although this Ordinance is labeled a Wildlife Pilot Study, the City never prepared any actual "study" to determine how these regulations will impact wildlife. Such a study is required before the City moves forward with this Ordinance.
- (iv) **Denying Homeowners the Right to Exclude is a Taking.** The Ordinance restricts the type of fencing property owners can erect around the perimeter of their homes, and is specifically designed to allow wildlife to pass through private property. Property owners have the right to exclude people animals, and objects from their properties, and removal of this right constitutes an unlawful taking.
- (v) **A lack of notice to residents and property owners.** Homeowners who reside on or adjacent to buffer areas should be individually notified that large portions of their property are proposed to become "buffer areas" that may no longer be improved and/or used for single or multi-family residential uses.

For these, and many other reasons outlined below, we urge the City to reconsider moving forward with the Ordinance in its current format, or at minimum, prepare an EIR that considers the Ordinance's impacts on wildlife and homeowners alike. We also ask the City to show the science behind this Ordinance. As it stands, our clients are left to presume that the City is doing this "pilot" as an experiment, and our clients are the guinea pigs. This is neither fair, nor reasonable, and the City should not be rushing this Ordinance without having carefully considered its impacts. Finally, although we have outlined some of our main concerns with the Ordinance here, we have recently engaged expert environmental consultants who are looking further into the Ordinance and its purported justifications. Accordingly more detailed comments will be provided later in the process prior to the Planning Commission hearing.

## **I. THE ORDINANCE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

CEQA, found at Public Resources Code § 21000, *et seq.*, is based upon the principle that “the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” Pub. Res. Code § 21000(a). In CEQA, the Legislature has established procedures designed to achieve these goals—principally, an EIR. These procedures provide both for the determination and for full public disclosure of the potential adverse effects on the environment of discretionary projects that governmental agencies propose to approve, and require a description of feasible alternatives to such proposed projects and feasible mitigation measures to lessen their environmental harm. Pub. Res. Code § 21002. CEQA is not merely a procedural statute; it imposes clear and substantive responsibilities on agencies that propose to approve projects, requiring that public agencies not approve projects that harm the environment unless and until all feasible mitigation measures are employed to minimize that harm. Pub. Res. Code §§ 21002, 21002.1(b).

CEQA defines a project as “the whole of an action, which has a potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.” CEQA Guidelines § 15378(a). In this case, the “project” is the passage of the Ordinance. Adoption of a zoning ordinance is a project under CEQA. Enactment and amendment of zoning ordinances are specifically listed under examples of discretionary projects in CEQA. Public Resources Code Section 21080(a). Furthermore, recent case law makes it clear that a zoning ordinance is a project subject to CEQA if it may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103. Because the proposed Ordinance’s purpose is to cause physical changes to the environment by changing how private and public land is managed, the adoption of the Ordinance must be subjected to CEQA review.<sup>1</sup>

The CEQA Guidelines establish procedures for calculating the baseline environmental conditions, including a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time of the environmental analysis is commenced. CEQA Guidelines § 15125(a). Agencies may not undertake actions that could potentially have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. CEQA Guidelines § 15004(b)(2). The “lead agency,” the public agency that has the principal responsibility for carrying out the project, is responsible for conducting an initial study to determine, in consultation with other relevant state and local agencies, whether an environmental impact report, a negative declaration, or a mitigated negative declaration will be prepared for a project. Pub. Res. Code §§ 21067; 21080.1(a); 21083(a).

“All phases of project planning, implementation, and operation” must be considered in the Initial Study for a project. CEQA Guidelines § 15063(a)(1). After an Initial Study, an EIR must be prepared “[i]f there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” Pub. Res. Code § 21080(d). That is, an EIR must be prepared “if a lead agency is presented with **a fair argument** that the project **may have** a significant effect on the environment **...even though it may also be presented with other substantial evidence that the project will not have a significant effect.**” Guidelines § 15064(f)(1) [emphasis added].

The CEQA Guidelines charge public agencies with the responsibility of avoiding or minimizing environmental damage where feasible. As part of this responsibility, public agencies are required to balance various public objectives, including economic, environmental, and social issues. CEQA

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<sup>1</sup> Failure either to comply with the substantive requirements of CEQA or to carry out the full CEQA procedures so that complete information as to a project’s impacts is developed and publicly disclosed constitutes a prejudicial abuse of discretion that requires invalidation of the public agency action regardless of whether full compliance would have produced a different result. Pub. Res. Code § 21005.

review is integral to that process, informing decision-makers and the general public what significant environmental effects might result from a proposed project. In addition, the process identifies possible means of mitigating any significant effects and presents reasonable alternatives to the project.

**A. CEQA analysis must be prepared as early as feasible in the process.**

A basic tenet of CEQA is that environmental analysis should be prepared “as early as feasible in the planning process to enable environmental considerations to influence project program and design.” CEQA Guidelines Section 15004(a). Additionally, “environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively” CEQA Guidelines Section 15004(c). Significant or potentially-significant impacts arising from the Ordinance have not been adequately identified, analyzed or mitigated.

Here, the City has required submittal of public comments prior to providing the CEQA analysis for review, thwarting the purpose of public comment. Public review is a central component of CEQA: Courts have consistently held that CEQA afford members of the public a “privileged position” in the process and represent a vital component of decision-making. *Concerned Citizens of Costa Mesa v. 32nd Agricultural Assn.*, 42 Cal. 3d 929, 936 (1986). The CEQA process “protects not only the environment, but also informed self-government.” *Laurel Hts. Improvement Assn. v. Regents of the Univ. of Calif.*, 47 Cal. 3d 376, 392 (1988) (“*Laurel Hts. I*”). In particular, CEQA is intended to promote government accountability. *See, e.g.*, CEQA Guidelines § 15002(j).

Despite this mandate, the City essentially forces the public to comment on the Ordinance without any knowledge of the contents of any environmental document. Thus, the City's failure to provide the public with access to the Ordinance's environmental documents (if they exist) not only prevents informed self-government, but also sows confusion regarding which portion of the environmental review process—if any—the City intends to follow. The City's choice negates any value of participation, and runs contrary to one of CEQA's central purposes.

**B. Similar ordinances have undergone CEQA review and were required to prepare Environmental Impact Reports.**

There is a significant distinction between the Ordinance and other similar projects that involved wildlife movement, protection, and preservation. Specifically, other similar projects were the result of a detailed public process that was subjected to environmental review (including an EIR) in accordance with CEQA and supported by detailed scientific and technical studies. Here, no such analysis has occurred. The Ordinance and its proposed regulations should be based on relevant technical and scientific studies and subjected to environmental review and public comment in accordance with CEQA, just like the Riverside County Multiple Species Habitat Conservation

Plan,<sup>2</sup> the San Diego Multiple Species Conservation Program,<sup>3</sup> the Orange County Central and Coastal Subregion Natural Community Conservation Plan,<sup>4</sup> County of Los Angeles Significant Ecological Areas,<sup>5</sup> the 2012-2035 Regional Transportation Project/Sustainable Communities Strategy of the Southern California Association of Governments,<sup>6</sup> and other similar plans.

**C. This Ordinance does not qualify for any Categorical Exemption.**

The City has the burden to demonstrate whether or not a Categorical Exemption ("CE") applies to a given action. "A categorical exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies," and factual findings must support the determination. *Save Our Big Trees v. City of Santa Cruz*, 241 Cal.App.4th 694, 705 (2015) (internal marks and citations removed), citing, *Muzzy Ranch Co. v. Solano County Airport Land Use Commn.*, 41 Cal.4th 372, 386 (2007). Further, the question of which class of CE applies is a pure question of law. Pub. Res. Code, § 21168.5. The City has not yet specified which CE(s) it intends to apply to the Ordinance. Consequently, any specific discussion of the City's choice is impossible. Nevertheless, no categorical exemption appears to fit the Ordinance and Zone Change.

Indeed, in 2016, when the city proposed adopting an overlay zone for building limitations in hillside areas (which is much more limited in scope than the current Ordinance), it conducted a full initial study and negative declaration.<sup>7</sup> This overlay zoning district was limited to the Bel-Air community in Los Angeles, while the current Ordinance covers not only Bel-Air, but also, Beverly Crest, Hollywood Hills, Studio City, Sherman Oaks, and related communities. It would therefore have a much larger scope, impact many more parcels and people, and would have a much more significant impact on the environment.

Despite the lack of any analysis regarding the applicability of a CE, the CEs that other jurisdictions have attempted to use in the past for similar ordinances include classes 7 (protection of natural resources) and 8 (actions for protection of the environment). None apply here.

**1. The Class 7 and 8 CEs do not apply by their terms.**

The Class 7–8 categorical exemptions apply only if the project in question unequivocally "assure[s] the maintenance, restoration, or enhancement" of the environment or natural resources; projects that "diminish existing environmental protections" cannot qualify under the exemptions.

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<sup>2</sup> <https://rctlma.org/Portals/0/mshcp/volume1/index.html>; Discover the Natural Wonders of Riverside County, p. 5 ([https://www.wrc-rca.org/archivecdn/Permit\\_Docs/Discover\\_the\\_Wonders.pdf](https://www.wrc-rca.org/archivecdn/Permit_Docs/Discover_the_Wonders.pdf))

<sup>3</sup> <https://www.sandiegocounty.gov/content/sdc/pds/mscp/sc.html>.

<sup>4</sup> <https://occonservation.org/about-ncc/>

<sup>5</sup> <http://planning.lacounty.gov/site/sea/wp-content/uploads/2018/09/H-ADDENDUM.pdf>

<sup>6</sup> <http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx>

<sup>7</sup> <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=16-1472>

*Save Our Big Trees v. City of Santa Cruz*, 241 Cal.App.4th 694, 707 (2015); CEQA Guidelines § 15308 (“relaxation of standards allowing environmental degradation are not included in this exemption.”). Application of those CEs “necessarily mean[s] that the adoption of [the project] would ‘assure the maintenance, restoration, enhancement, or protection of the environment...’ [cite] The [public entity] has the burden of proof—there must be substantial evidence to support this categorical exemption finding. In the absence of evidence that the negative environmental effects of [the project] would not be significant, the exemption finding cannot be sustained.” *California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.*, 178 Cal.App.4th 1225, 1245 (2009).

The court in *Save our Big Trees* surveyed the existing case law relating to the Class 7-8 CEs, and determined that a tree ordinance that was passed by the local government did not fall under the exemptions because it could be interpreted to diminish existing environmental protections. *Save Our Big Trees*, *supra*, 241 Cal.App.4th at 705–713; *see also*, *Mountain Lion Foundation v. Fish & Game Commn.*, 16 Cal.4th 105, 125 (1997) (action that removes rather than secures protections of animal species does not fall within Class 7-8 exemption). In *Save our Big Trees*, the city argued that the court “must look at the Project ‘as a whole’ to determine whether it will strengthen or weaken existing heritage tree protections,” and determined the CE did not apply. *Save Our Big Trees*, *supra*, 241 Cal.App.4th at 708.

An ordinance that represents a mixed bag of environmental impacts—beneficial and adverse impacts—cannot qualify for a Class 7-8 CE. The Supreme Court, in *Wildlife Alive v. Chickering*, addressed this issue unequivocally, finding the Class 7 CE does not apply to an action with “the potential for a significant environmental impact, both favorable and unfavorable.” *Wildlife Alive v. Chickering*, 18 Cal.3d 190, 206 (1976) (“When the impact may be either adverse or beneficial, it is particularly appropriate to apply CEQA which is carefully conceived for the purpose of increasing the likelihood that the environmental effects will be beneficial rather than adverse. . . . we have consistently held that CEQA must be interpreted so as to afford the ‘fullest possible protection’ to the environment.”), citing *Bozung v. Local Agency Formation Commn.*, 13 Cal. 3d 263, 274 (1975).

Here, the Ordinance does not even “assure” positive impacts on ridgelines, or wildlife movement, or biodiversity, let alone the environment or natural resources in a more general sense. Rather, City legislators and staff appear to hold certain preconceived ideas relating to these general concepts, accepting any speculative benefits as a given. The Ordinance has several potentially significant adverse impacts such as increased fire hazard risks. Under *Wildlife Alive v. Chickering*, CEQA’s command to protect the environment to the fullest extent means that the potential adverse effects of the Ordinance render Class 7–8 exemptions inapplicable. The City has proceeded in a way that does not “assure the maintenance, restoration, or enhancement” of the environment or natural resources. CEQA Guidelines §§ 15307–308; *Save Our Big Trees*, *supra*, 241 Cal.App.4th at 707.

The potentially detrimental impacts to wildlife as a result of this Ordinance (resulting in a "mixed bag" of impacts) are currently the subject of additional study by expert environmental consultants that we have retained, and further comment will be provided when that analysis has been prepared.

**2. The Class 7 and 8 CEs do not apply because of unusual circumstances.**

Section 15300.2 of the CEQA Guidelines forbids the use of a CE where a “reasonable possibility” exists that the activity “will have a significant effect on the environment due to unusual circumstances.” *See also, Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal.4th 1086 (2015). “When unusual circumstances are established, the Secretary’s findings as to the typical environmental effects of projects in an exempt category no longer control. Because there has been no prior review of the effects of unusual circumstances, [an] agency must evaluate potential environmental effects under the fair argument standard, and judicial review is limited to determining whether the agency applied the standard in the manner required by law.” *Id.* at 1116.

Here, there are at least two distinct unusual circumstances that negate the applicability of the categorical exemptions: 1) the increased risks relating to fire hazards, and 2) topography, seismicity, and grading.

**Fire Risks.** The first unusual circumstance is the recent and ongoing problem of devastating fires throughout the region, described in major news reports and experienced first-hand by Angelinos. Fires have ravaged the entire region and have changed the landscape of thousands of acres, including areas proposed for governance under the Ordinance. With climate change promising to exacerbate the conditions that give rise to even more wildfire damage in the coming years, it is not only irresponsible, but dangerous, for the City to adopt the Ordinance using CEs to attempt to avoid CEQA, while apparently ignoring the potential effects of 1) the Ordinance on future fires, and 2) past fires on the Ordinance. Projects that may exacerbate existing environmental hazards or conditions require analysis of the potential impact of those hazards on future residents or visitors. *Calif. Bldg. Industry Assn. v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal.4th 369, 377 (2015).

Regarding wildfire, no evidence indicates the City considered the degree to which the Ordinance may exacerbate more severe fire conditions. Further, courts have specifically limited the use of exemptions for risky sites, particularly those prone to wildfires. *Calif. Bldg. Industry Assn. supra* (“limits on exemptions extend to projects located on sites that will expose future occupants to certain hazards and risks—including ... sites subject to wildland fire”). A CEQA analysis would allow the City to have at its disposal a scientifically based review of the areas affected by the fires, and the fire risks the Ordinance may propose. None currently exists.

The Governor's Office of Planning and Research adopted, in 2018, comprehensive updates to the CEQA Guidelines and Appendices. This update included adding new impact categories to the checklist in Appendix G of CEQA. Notably, the most significant change to Appendix G is the addition of Wildfire as an environmental impact category. The new Wildfire section includes four questions pertaining to new development in Very High Fire Hazard Severity Zones. These questions focus on whether a project would exacerbate wildfire risk, impair emergency response

or evacuation plans, or risk exposing people or structures to floods and landslides. If projects, such as the proposed Ordinance, would be located in or near state responsibility areas or lands classified as very high fire hazard severity zones, the lead agency must determine if the project would:

- (1) Substantially impair an adopted emergency response plan or an emergency evacuation plan;
- (2) Exacerbate wildfire risks due to slope, prevailing winds, and other factors, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire;
- (3) Require the installation of or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment; or,
- (4) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

The Ordinance has the potential to do ***all of these things***. And without the benefit of substantive CEQA analysis, the adoption of this untested Ordinance will place lives and structures at greater risk. There is a particularly significant risk relating to item numbers 2 and 4. The state has recognized that not only the loss of structures or human life is a potentially significant environmental effect, but also such effects as releases of pollutants from uncontrolled wildfire, and the potential effects of post-fire runoff, flooding, or landslides. The City should evaluate the potential effects of increased wildfire risk from changes in vegetation management, including modeling the potential from increased air pollutants from an uncontrolled wildfire. Post-fire impacts from flooding or landslides should also be evaluated and disclosed.

In order to adequately address the fire risks, CEQA review of the Ordinance is absolutely necessary. There is no other lesser-scale recommendation or proposal that would be able to analyze or mitigate the fire hazards that are posed by the Ordinance. Each of the questions posed in the CEQA Guidelines is there for a reason. Those questions must be posed, reviewed, analyzed, and addressed by a qualified professional so that the fire hazards are properly mitigated, as necessary. Failure to do so squarely places the blame for the Ordinance's exacerbation of any future wildfire in, around, or near the overlay zones on the City's shoulders.

**Topography, Seismicity, and Grading.** The hillside areas the Ordinance would primarily affect are marked by significant topographical, seismic, and roadway safety challenges the Ordinance would exacerbate. As things stand today, the often substandard road widths already challenge emergency access. Further, the topographic and seismic challenges of the hillside areas can require significant remedial grading to fully mitigate. The Ordinance's establishment of significant caps on grading can actually thwart the ability of developers (or even those who must stabilize already-developed lots) to actually address those conditions make a building site or surrounding area safe. Further, the required horizontal and vertical clearance from mapped ridgelines may actually require more grading than would currently be required. For example, the Ordinance appears to



provide no exemption from the separation requirements for properties that already have graded pads. Also, because several ridgelines are actually streets, or have streets on top them, the required horizontal and vertical separation would create more severe street access (and, consequently, emergency access) problems. Further, this increased need for grading can lead to more land clearance than otherwise required, more truck trips, and greater air quality, greenhouse gas, and noise impacts from each of the above factors.

Moreover, the Ordinance also imposes grading regulations that would actually make it more likely that more intensive grading would take place. This is easily identifiable in the new setback regulations. A home project with an identical footprint would create substantially more grading and development if it is required to be set back even further from the right of way. In situations where slopes rise from the level of the street, and up to the property, substantially more grading would need to be done at the rear of the property to accommodate the front yard. In situations where the street is higher than the home, and the home slopes down from street level, substantially more grading would be required toward the front of the property. Also, there would be more development associated with driveways, etc. In other words, the Ordinance makes it more likely that **more grading** would be required, not less.

Furthermore, the Ordinance requires that remedial grading be counted toward the maximum by-right grading quantity for a project. However, remedial grading is mandated by the building code for any new construction or project for which the proposed improvements exceed 50% of the replacement value of the existing main building on site. Property owners do not electively choose remedial grading, and it is extremely costly. Because the remedial grading is done precisely to combat safety and topography issues that are identified on-site, and because they are mandated by the City, and not by the project applicant, they should not be counted toward the total maximum grading permitted on the site by-right.

There is no doubt that the fire hazards, topography, seismicity, and grading issues described above present a reasonable possibility of a significant effect on the environment. No legitimate dispute exists that the Ordinance would make wildfire management, for example, more difficult. To date, however, the entire process has occurred in the absence of environmental review. This has deprived the public of any opportunity to participate meaningfully in the process and to understand the potential effects of the options presented, the various trade-offs among these options, and methods of reducing or avoiding the potential effects anticipated.

**D. A Negative Declaration is inappropriate for the Ordinance, as substantial evidence supports a fair argument that a significant impact would occur.**

Generally, CEQA presumes the necessity of an EIR, and an agency must prepare an EIR instead of an ND if substantial evidence in the record supports a “fair argument” that a significant impact may result from a project. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 75 (1974). The fair argument test is a low threshold. *Porterville Citizens for Responsible Hillside Development v. City of Porterville*, 157 Cal.App.4th 885 (2007). Further, even disagreement among experts disqualifies

a project from relying upon an ND. *Keep Our Mountains Quiet v. County of Santa Clara*, 236 Cal.App.4th 714 (2015) (“[i]f there is disagreement among expert opinion supported by facts .... the Lead Agency shall treat the effect as significant and shall prepare an EIR”); 14 Cal. Code Regs., §§15064(b),(g).

Here, substantial evidence supports a fair argument that a significant impact would occur in several environmental issue areas, including geology and soils, and wildfire risk. An MND provides the appropriate vehicle for CEQA review *only* when “*clearly* no significant effect on the environment would occur.” *Keep Our Mountains Quiet v. County of Santa Clara*, 236 Cal.App.4th 714 (2015). Where, as here, a “fair argument” exists that a significant impact would occur, the City must prepare an EIR.

It is possible that some version of the Ordinance could benefit the City while minimizing environmental impacts. However, the Ordinance as currently proposed will have severe material impacts on residents and property owners and the surrounding area, and those effects require a full CEQA analysis. Absent that analysis the City cannot attempt to rely on an ND or simply adopt the Ordinance.

## **II. THE ORDINANCE VIOLATES THE HOUSING CRISIS ACT, WHICH PROHIBITS CITIES FROM SIGNIFICANTLY REDUCING HOUSING INTENSITY THROUGH ZONE CHANGES.**

SB 330, known as the Housing Crisis Act ("SB 330"), signed by the governor on October 9, 2019, provides housing-related protections as well as laws that prohibit cities from rezoning areas in ways that would reduce housing opportunities. SB 330, among other things, (i) prevents local governments from downzoning unless they upzone an equivalent amount elsewhere within their boundaries, (ii) suspends the enactment of local downzoning and housing construction moratoriums, (iii) requires timely processing of housing permits that follow zoning rules, and (iv) ensures that the demolition of housing does not result in a net loss of units. Specifically, as it relates to this Ordinance, the law provides as follows:

(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected **city shall not enact a development policy, standard, or condition that would have any of the following effects:**

(A) **Changing** the general plan land use designation, specific plan land use designation, or **zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing** general plan land use designation, specific plan land use designation, or **zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018**, except as otherwise provided in clause (ii) of subparagraph

(B). For purposes of this subparagraph, **“less intensive use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.** Govt. Code 66300(b). [emphasis added]

As explained and summarized in the Legislative Counsel's Digest, the bill "prohibit[s] a county or city...from enacting a development policy, standard, or condition, as defined, that would have the effect of (A) changing the land use designation or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing zoning district below what was allowed under the general plan or specific plan land use designation and zoning ordinances of the county or city as in effect on January 1, 2018."

The proposed Ordinance is in direct violation of this law as it seeks to significantly reduce the intensity of the use for all parcels within the purposed Wildlife District. It does this by creating substantial new regulations that reduce the possible building envelope through new restrictions on height, floor area ratio, lot size, setbacks, and lot coverage, all items specifically listed in the bill and all of which "would lessen the intensity of housing." Govt. Code 66300(b).

Indeed, the City's own implementation memo from January 17, 2020 entitled "IMPLEMENTATION OF STATE LAW SB 330 – HOUSING CRISIS ACT," directly acknowledges that "SB 330 generally prohibits zoning actions that result in fewer housing units than are permitted as of January 1, 2018. These actions include the adoption of plans that result in a net downzoning or otherwise reduce housing and population, except for specified reasons involving health and safety." The memo goes on to specify that the very regulatory provisions contemplated in the Ordinance (such as height, floor area ratio, etc.) are not permitted:

These provisions require an analysis by City Planning that any legislative action, until 2025, would not lessen housing intensity, as described in Section 13 of SB 330 to include reductions to **height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.** These restrictions apply to any zone where housing is an allowable use, even if the intent is not to reduce housing intensity. This provision does not impact zoning efforts that reduce intensity for certain parcels, as long as density is increased on other parcels and therefore result in no net loss in zoned housing capacity or intensity. Jan. 17, 2020 Implementation Memo [emphasis added]

Regulations reducing the size of homes in a large area of the City, most of which consists of residential/housing-related land uses, obviously also reduce the density within that area.

The Ordinance does not address how and why it is compliant with SB 330, because it is not, and its provisions cannot be rectified or harmonized with either the spirit or the letter of the relevant provisions of the state law. For this reason alone, the Ordinance cannot be adopted in its current form.<sup>8</sup>

### **III. THE ORDINANCE CONSTITUTES AN UNLAWFUL TAKING OF PRIVATE PROPERTY FOR PUBLIC USE WITHOUT COMPENSATION.**

Separate and apart from the lack of CEQA review, the Ordinance contravenes principles of equal protection and due process (under both the state and federal constitutions), violates vested property rights, and constitutes a regulatory taking of the distinct investment-backed expectations of those it affects. Notably, under the Ordinance, many even modestly sized homes will become legal non-conforming, making it difficult or sometimes impossible to expand those homes or even rebuild them after a disaster.<sup>9</sup>

#### **A. The Ordinance unlawfully deprives homeowners of the right to exclude.**

The United States Supreme Court has clearly and unequivocally stated that the “right to exclude” is a fundamental element of the constitutionally-protected right to private property, and that physical intrusion, whether by government or by private parties acting under government permission, violates that right, and that individuals given a permanent and continuous right to pass over private property amounts to such physical occupation. (See *Nollan v. California Coastal Comm’n* (1987) 483 U.S. 825, 831-32.) In *Nollan*, the US Supreme Court sets forth the state of the law, and the importance of the right to exclude, as compared to other property rights:

We have repeatedly held that, as to property reserved by its owner for private use, “the right to exclude [others is] *one of the most essential sticks in the bundle of rights that are commonly characterized as property.*” “*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, 433 (1982), quoting *Kaiser Aetna v. United States*, 444 U. S. 164, 176 (1979). In *Loretto*, we observed that, where governmental action results in “[a] permanent physical occupation” of the property, by the government itself or by others, see 458 U.S. at 432-433, n. 9, “our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only

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<sup>8</sup> The Ordinance also fails to explain how lot splits permitted under SB 9 and Accessory Dwelling Unit ("ADU") permitted under state law will interface with the requirements provided by the Ordinance. Homeowners should be informed upfront as to whether or not this Ordinance will impact their ability to add an ADU on their lot or subdivided their lot pursuant to SB 9.

<sup>9</sup> It will also become even harder to obtain fire insurance for homeowners (already a problem in this general area, as very few insurers are willing to accept the risk), as the Ordinance is expected to increase fire risks while simultaneously decreasing property values.

minimal economic impact on the owner,” *id.* at 458 U. S. 434-435. [*Emphasis in original.*]

Thus, not only is the right to exclude an important property right, it is among the “most essential” property rights recognized under the law. (*Id.*) In *Kaiser Aetna*, the Supreme Court held “that the ‘right to exclude,’ so universally held to be a fundamental element of the property right, falls within this category of interests that the Government cannot take without compensation.” (444 U.S. at 180.)

Here, the proposed Ordinance restricts property owners from erecting wildlife-impermeable fences on the perimeter of private property. Indeed, one of the Ordinance’s stated goals is to allow wildlife to move and pass more freely through private properties, and the regulations related to yards (expanding them to allow for wildlife to pass through) and perimeter fencing (making them more easily permeable to wildlife) are specifically designed to allow for animals to travel through private property, as opposed to the roads, where there is a higher risk of car-related fatalities. In other words, the Ordinance restricts property owners from erecting fencing that would secure the entire property from intruders (animal or human), and in fact, is specifically designed to minimize the direct barriers to wildlife, so that they can more freely pass through private property.

There is no doubt that, under the relevant case law, if the City regulated property in such a way so as to allow for human beings to pass through private property, or if other physical objects were allowed to be placed on private property, a Court would be required to find a taking under the above binding authority. (See, *e.g.*, *Nollan*, 483 U.S. at 831-32.) There is no legal reason why wildlife should be treated any differently. If property owners want to exclude animals from entering on their property, they unequivocally have that right, just like they have the right to exclude humans and their pets. The Ordinance (and specifically, the setback and fencing regulations therein), deprive homeowners of that right to exclude wildlife. The City has no right to infringe on the rights of property owners to exclude people, animals, or objects from their properties. The fencing provisions of the Ordinance are therefore unconstitutional on their face (in all circumstances that are not subject to a specific exemption from its regulations), and constitute a compensable taking under binding case law. (*Nollan*, 483 U.S. at 831-32; *Kaiser Aetna v. United States*, 444 U. S. at 180.)

#### **B. The Ordinance violates equal protection and substantive due process.**

The California Constitution provides that, “a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.” Cal. Const. Art. 1, § 7(a). The U.S. Constitution also prohibits the denial of equal protection through the fourteenth amendment. United States Constitution, amend. XIV, § 1, and 42 USC § 1983. The City must have a rational basis for treating the property owners of the affected areas differently than other areas. The rational basis test requires that the classification be a demonstrably effective means for furthering some actual valid government interest. *E.g.*, *City of Cleburne v. Cleburne Living Center* (1985) 473 U.S. 432, 440. There is no rational basis for treating the Wildlife District differently than other similarly situated areas of the City, because there is no evidence that supports such an

argument, precisely because the appropriate analyses (that would have been conducted under CEQA under normal circumstances) were never undertaken at all. By definition, this means that the Ordinance lacks a rational basis.

**C. The tree planting requirements constitutes and exaction with no nexus or proportionality to the impacts.**

In the development context, an exaction is something the local zoning authority requires a property owner to give to the City, in order to obtain approval to develop land. The “something” can be almost anything: land; a portion of the value of the land; money (a mitigation fee); or in this context, the planting of trees.

If the City is going to create an exaction relating to tree planting, it must have a rational connection (nexus) to the burden the government seeks to avoid. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). It also must have “rough proportionality”: the amount of the exaction must roughly correspond to the burden placed on the government, resulting from the proposed development. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The Ordinance's tree planting requirements do not comply with either the nexus or the rough proportionality requirements for such an exaction. As such, those provisions of the Ordinance must be modified or removed.

**D. The Ordinance constitutes a regulatory taking of private property without fair compensation.**

Disturbingly, the Ordinance creates severe restrictions on development (and redevelopment) in the Wildlife District. Under *Penn Central Transportation Company v. City of New York* (1978) 438 US 104, even if a governmental regulation does not cause a physical invasion or deprive a landowner of all economically beneficial use, it may nonetheless go too far in placing what should be a public burden on private shoulders. *Penn Central* established an ad hoc, fact-based inquiry that addresses three factors to be used in determining whether this type of regulatory taking has occurred: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the nature of the governmental action. (*Id.* at 124.)

As to the first factor, the economic impact of these regulations will vary from property to property, but with regulations as extreme as the deprivation of the use of large portions of one's land for structures and certain designated uses, the impacts are severe. This is more akin to a “conservation easement” (which would obviously require compensation) than to an overlay zone.

As to the second factor, the investment-backed expectations of the owners in the Wildlife District were, obviously, that they would be able to use the entirety of their properties for legal purposes. In the residential context, the restriction on using large percentages of the property, along with the fencing and lighting regulations, deprives property owners of the right to enjoy their properties, as was the expectation when the properties were purchased.

As to the third factor, the government action in this case specifically calls out the proposed Wildlife District for these overreaching regulations. There is an unexplained, irrational, arbitrary and capricious designation of these overlay zones without any scientific backing or CEQA review. The City cannot point to a scientific analysis that was conducted in recent years that took into effect the recent fires, and that was based on scientific principles. As such, the government action has no scientific or legal foundation.

The three factors of the *Penn Central* test are therefore easily satisfied, and the Ordinance effectuates a regulatory taking upon those in the proposed overlay zones.

#### **IV. WITHOUT AN ACTUAL "PILOT STUDY," IT IS UNCLEAR HOW THE ORDINANCE WILL BENEFIT WILDLIFE AND/OR BIODIVERSITY.**

While the Ordinance has been labeled as a "Wildlife Pilot Study," this is not in fact what it is. The Ordinance is a bevy of development restrictions that have been cut and pasted from other jurisdictions' wildlife ordinances, without site-specific tailoring or environmental review. Meanwhile, the other ordinances the City is drew from were tailored for low-density rural areas with mixed agricultural and industrial lands, not fully developed residential communities surrounded by the busiest freeways in the world. Indeed, the original idea for the process was to do a "wildlife pilot study" first, and on the basis of that pilot study, scientifically analyze and determine what elements and regulations would be effective for wildlife and biodiversity based on that study. The City has apparently done the opposite here.

Rather than scientifically studying whether any of these proposed measures will be effective in helping wildlife and biodiversity, the City is putting the cart before the horse by imposing the intensive regulatory restrictions from the Ordinance in place first (which impacts property rights, has potentially significant environmental impacts, etc.), and only after infringing on rights of homeowners within the Wildlife District, doing a post-hoc analysis of the Wildlife District to determine whether the measures were effective before applying it to other areas in the City. The City has gotten the process totally backwards, and cannot simply impose development restrictions on certain parts of the City with no evidence or scientific analysis to back up why the restrictions are effective, and study them later.

To the extent that the City will be pushing forward with the Ordinance with the current slate of regulations proposed therein, the City must provide a real (scientific) nexus between each of the proposed regulations (height restrictions, FAR restrictions, etc.), and the actual goals of promoting biodiversity and wildlife movement. It should also account for and analyze other non-development related conditions that impact wildlife in the area, e.g. vehicle strikes, rodenticides, and inter and intra-species killings. After all, it would seem grossly negligent to encourage wildlife to cross the 405 freeway in order to access this new so-called Wildlife District without even considering the risks to wildlife and motorists of doing so. As currently proposed, there is no evidence that the Ordinance's development restrictions will do anything to promote or protect wildlife and biodiversity. An Ordinance that purports to protect wildlife, but that does nothing to address the



conditions that are most threatening to them (vehicle traffic and rodenticides), can hardly be called a Wildlife Ordinance at all.

**V. THE ORDINANCE'S RESOURCE MAPS ARE BOTH ILLUSORY AND MISLEADING.**

The draft Ordinance provides as follows:

Sec. 1. Section 12.03 of the LAMC is amended to add the following definition in alphabetical order.

**Ridgeline.** The natural crests of the mountains that bisect and surround the City as shown on the Ridgeline Map, **adopted and maintained by the Director of Planning.**

**Wildlife Resource.** Features which provide wildlife benefits, ecosystem services, and contribute to the overall quality of the natural and built environment. These features include open space (conservation areas, public property, and undeveloped land), water features (lakes, reservoirs, rivers, streams, wetlands, open channels), and riparian areas. **In addition to the Wildlife Resources identified in Map B: Draft Resource Areas, unmapped Resources shall be identified by the project or project reviewer when they exist on site.**

The fact that the Ordinance acknowledges that there are "unmapped Resources" that are subject to further regulations is a clear violation of due process, as there are property owners within the Wildlife District who would not have been notified that their properties are subject to these regulations until they are already in the process of developing their properties. In order to avoid a violation of due process, the City must make clear from the outset all of the "Wildlife Resources" and "Ridgelines" that are covered by the Ordinance in advance, and all of the parcels that can be effected by them. This cannot be left to a future "reviewer" to determine whether such resources "exist on site." This has to be done now, or it violates the due process rights of all property owners whose properties contain these features, but are not identified on the relevant maps at the time the Ordinance is adopted.

The proposed revisions to LAMC Section 12.03 also notes that the Ridgeline Map is "adopted and maintained by the Director of Planning." However, this implies that the Director of Planning has the ability to make modifications to the maps at any time, and without any notice or opportunity to be heard. In other words, properties that are not currently subject to certain restrictions within the Ordinance because they are not close to a Ridgeline, can be made subject to those restrictions on the whim of the Director of Planning, and the effected property owners would not have notice or an opportunity to be heard regarding those changes, as the Ordinance is currently written.

Any changes to the maps must be made now, and the Ordinance must have final maps that are incorporated into the terms of the Ordinance. The Director of Planning cannot have the ability to unilaterally make changes to the maps without notice and a hearing for those properties being impacted by the changes. Otherwise, the Ordinance violates the due process rights of all property owners whose properties contain these features, but are not identified on the relevant maps at the time the Ordinance is adopted.

**VI. THE ORDINANCE PRESENTS UNDUE BURDENS ON BOTH THE CITY AND HOMEOWNERS ALIKE, WHEN MORE EFFECTIVE, AND LESS IMPACTFUL MEASURES ARE READILY AVAILABLE.**

The Ordinance, as currently drafted, imposes substantial burdens on the City as well as homeowners. These involve additional time, money, and resources from the planning department and the department of building and safety, and code enforcement, to ensure that the regulations are properly implemented.

Yet, more effective and less impactful measures are available.<sup>10</sup> The real problems for wildlife are car collisions and rodenticide. The City could achieve its goals of protecting wildlife and promoting biodiversity more effectively if it just 1) banned rodenticide products, and 2) implemented road modifications (such as signage to warn drivers about wildlife, and striping and/or speed bumps to keep speed down) to keep drivers alert, and to keep their driving speeds lower, so as to promote the ability to evade wildlife collisions. Such measures would likely be substantially more effective in achieving the goal of protecting wildlife, and at the same time, would be much less impactful on homeowners.

**VII. THE CITY MUST PROVIDE INDIVIDUALIZED NOTICE TO ANY RESIDENTS OR OWNERS WITHIN THE PROPOSED "BUFFER ZONES."**

While the better practice would be to provide written notice to all impacted residents, *at minimum*, the City should provide individualized notice to any residents and homeowners whose property is proposed to be included within one of the many "buffer zones." For many homeowners, these new 50' buffers will make sizable portions of their homes unbuildable for new developments and even small additions. Even without additions, existing homes located within these buffer zones that require any new permits will be subjected to site plan review, which will require additional costs, time, and review under the California Environmental Quality Act ("CEQA"). These are severe restrictions on new development and remodels, and due process principles require that each property owner within the Wildlife District be given clear notice of the actual restrictions that are proposed to be imposed on his or her parcel. The general notices that have been provided to date are inadequate, and are insufficient to provide the requisite notice and an opportunity to participate

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<sup>10</sup> Indeed, this fact further highlights the need for CEQA review, as such an analysis would actually evaluate the real problems impacting wildlife, and provide a scientific basis upon which a measured response can be taken to address those issues.

in the process, and still today most owners and residents within the purported District have no knowledge of what is being proposed for their homes.

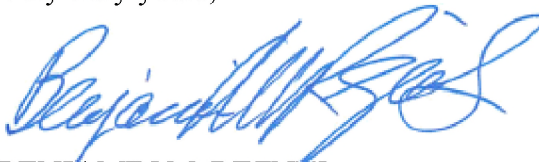
More specifically, property owners must be provided an opportunity to understand what is being proposed – not just generally by the Ordinance, but specifically, as it pertains to their individual parcels. Under these circumstances, each property owner should be provided with a written letter, directing them to a website in which their parcel can be identified, where the property owners can be provided with a list of restrictions that would specifically impact their individual properties. They should also be provided with some explanation as to how they can comment on the Ordinance. The community, residents, and owners have a right to know that this Ordinance will materially impact their ability to use their property in the future, and/or rebuild their existing home in the event of a disaster, and the City has an obligation to provide this to people with such notice and an opportunity to provide substantive input.

#### **VIII. CONCLUSION.**

For the foregoing reasons, the City should, at a minimum, conduct the mandated CEQA analysis prior to taking any further action on the Wildlife Ordinance. The City must also address the Ordinance's conflict with SB 330's provisions that prohibit the City from reducing the intensity of a use in a zone. To the extent that City decides to move forward with the Ordinance in spite of its violation of the Housing Crisis Act, and the lack of CEQA review and evidentiary support, the City should evaluate the nexus between the Ordinance's goals (related to wildlife and biodiversity), and whether each of the proposed regulations (height limits, grading restrictions, FAR restrictions, etc.) does anything to support those goals.

This office looks forward to the opportunity to engage with the City further regarding this Wildlife Ordinance to ensure that appropriate and sensible measures are taken to protect wildlife and promote biodiversity, while simultaneously protecting the rights of the homeowners who will be impacted by the Ordinance.

Very truly yours,



BENJAMIN M. REZNIK,  
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Aug 22, 2022

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August 22, 2022

**VIA EMAIL ([ourla2040@lacity.org](mailto:ourla2040@lacity.org))**

Department of City Planning  
City of Los Angeles  
200 North Spring Street  
Los Angeles, CA 90012-2601

Re: **Comments to Wildlife Pilot Study**  
Case No(s). CPC-2022-3413-CA and CPC-2022-3712-ZC  
Env. Case No. ENV-2022-3414-CE  
City Council File No. 14-0518

To Whom It May Concern:

This office represents *Neighbors for Hillside Safety*, an unincorporated association of homeowners, residents, and stakeholders, who live and work within the proposed Wildlife Ordinance District being considered as part of the City's Wildlife Pilot Study and the associated Wildlife Ordinance District (the "Ordinance"). We also represent 9922 LLC, a resident and homeowner within the proposed district, and Ardie Tavangarian, who similarly owns property in the district and is an architect with over 40 years of experience building and remodeling homes in the affected communities. Our clients have a number of serious concerns and objections with the Ordinance as proposed, which to date, have been largely ignored throughout the City's processing of this Ordinance and the related Ridgeline ordinance. These concerns include, but are not limited to, the following:

- (i) **Failure to perform any environmental review.** As the largest threats to wildlife in the Santa Monica Mountains are vehicle strikes, rodenticides, and displacement caused by wildfires, this Ordinance is likely to harm, not help, wildlife. To date, the City has failed to disclose what, if any, environmental review has been performed in connection with this Ordinance. As no exemptions apply, the City must perform an Environmental Impact Report ("EIR") to understand both the beneficial and potentially harmful impacts this Ordinance will have on wildlife and biodiversity.
- (ii) **Reduction of Development Intensity in Violation of the Housing Crisis Act.** The Ordinance calls for a dramatic decrease in the development intensity of the "wildlife district" in direct violation of the California's Housing Crisis Act.

- (iii) **No baseline analysis of wildlife impacts.** Although this Ordinance is labeled a Wildlife Pilot Study, the City never prepared any actual "study" to determine how these regulations will impact wildlife. Such a study is required before the City moves forward with this Ordinance.
- (iv) **Denying Homeowners the Right to Exclude is a Taking.** The Ordinance restricts the type of fencing property owners can erect around the perimeter of their homes, and is specifically designed to allow wildlife to pass through private property. Property owners have the right to exclude people animals, and objects from their properties, and removal of this right constitutes an unlawful taking.
- (v) **A lack of notice to residents and property owners.** Homeowners who reside on or adjacent to buffer areas should be individually notified that large portions of their property are proposed to become "buffer areas" that may no longer be improved and/or used for single or multi-family residential uses.

For these, and many other reasons outlined below, we urge the City to reconsider moving forward with the Ordinance in its current format, or at minimum, prepare an EIR that considers the Ordinance's impacts on wildlife and homeowners alike. We also ask the City to show the science behind this Ordinance. As it stands, our clients are left to presume that the City is doing this "pilot" as an experiment, and our clients are the guinea pigs. This is neither fair, nor reasonable, and the City should not be rushing this Ordinance without having carefully considered its impacts. Finally, although we have outlined some of our main concerns with the Ordinance here, we have recently engaged expert environmental consultants who are looking further into the Ordinance and its purported justifications. Accordingly more detailed comments will be provided later in the process prior to the Planning Commission hearing.

## **I. THE ORDINANCE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

CEQA, found at Public Resources Code § 21000, *et seq.*, is based upon the principle that “the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” Pub. Res. Code § 21000(a). In CEQA, the Legislature has established procedures designed to achieve these goals—principally, an EIR. These procedures provide both for the determination and for full public disclosure of the potential adverse effects on the environment of discretionary projects that governmental agencies propose to approve, and require a description of feasible alternatives to such proposed projects and feasible mitigation measures to lessen their environmental harm. Pub. Res. Code § 21002. CEQA is not merely a procedural statute; it imposes clear and substantive responsibilities on agencies that propose to approve projects, requiring that public agencies not approve projects that harm the environment unless and until all feasible mitigation measures are employed to minimize that harm. Pub. Res. Code §§ 21002, 21002.1(b).

CEQA defines a project as “the whole of an action, which has a potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.” CEQA Guidelines § 15378(a). In this case, the “project” is the passage of the Ordinance. Adoption of a zoning ordinance is a project under CEQA. Enactment and amendment of zoning ordinances are specifically listed under examples of discretionary projects in CEQA. Public Resources Code Section 21080(a). Furthermore, recent case law makes it clear that a zoning ordinance is a project subject to CEQA if it may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103. Because the proposed Ordinance’s purpose is to cause physical changes to the environment by changing how private and public land is managed, the adoption of the Ordinance must be subjected to CEQA review.<sup>1</sup>

The CEQA Guidelines establish procedures for calculating the baseline environmental conditions, including a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time of the environmental analysis is commenced. CEQA Guidelines § 15125(a). Agencies may not undertake actions that could potentially have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. CEQA Guidelines § 15004(b)(2). The “lead agency,” the public agency that has the principal responsibility for carrying out the project, is responsible for conducting an initial study to determine, in consultation with other relevant state and local agencies, whether an environmental impact report, a negative declaration, or a mitigated negative declaration will be prepared for a project. Pub. Res. Code §§ 21067; 21080.1(a); 21083(a).

“All phases of project planning, implementation, and operation” must be considered in the Initial Study for a project. CEQA Guidelines § 15063(a)(1). After an Initial Study, an EIR must be prepared “[i]f there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” Pub. Res. Code § 21080(d). That is, an EIR must be prepared “if a lead agency is presented with **a fair argument** that the project **may have** a significant effect on the environment ...**even though it may also be presented with other substantial evidence that the project will not have a significant effect.**” Guidelines § 15064(f)(1) [emphasis added].

The CEQA Guidelines charge public agencies with the responsibility of avoiding or minimizing environmental damage where feasible. As part of this responsibility, public agencies are required to balance various public objectives, including economic, environmental, and social issues. CEQA

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<sup>1</sup> Failure either to comply with the substantive requirements of CEQA or to carry out the full CEQA procedures so that complete information as to a project’s impacts is developed and publicly disclosed constitutes a prejudicial abuse of discretion that requires invalidation of the public agency action regardless of whether full compliance would have produced a different result. Pub. Res. Code § 21005.



review is integral to that process, informing decision-makers and the general public what significant environmental effects might result from a proposed project. In addition, the process identifies possible means of mitigating any significant effects and presents reasonable alternatives to the project.

**A. CEQA analysis must be prepared as early as feasible in the process.**

A basic tenet of CEQA is that environmental analysis should be prepared “as early as feasible in the planning process to enable environmental considerations to influence project program and design.” CEQA Guidelines Section 15004(a). Additionally, “environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively” CEQA Guidelines Section 15004(c). Significant or potentially-significant impacts arising from the Ordinance have not been adequately identified, analyzed or mitigated.

Here, the City has required submittal of public comments prior to providing the CEQA analysis for review, thwarting the purpose of public comment. Public review is a central component of CEQA: Courts have consistently held that CEQA afford members of the public a “privileged position” in the process and represent a vital component of decision-making. *Concerned Citizens of Costa Mesa v. 32nd Agricultural Assn.*, 42 Cal. 3d 929, 936 (1986). The CEQA process “protects not only the environment, but also informed self-government.” *Laurel Hts. Improvement Assn. v. Regents of the Univ. of Calif.*, 47 Cal. 3d 376, 392 (1988) (“*Laurel Hts. I*”). In particular, CEQA is intended to promote government accountability. *See, e.g.*, CEQA Guidelines § 15002(j).

Despite this mandate, the City essentially forces the public to comment on the Ordinance without any knowledge of the contents of any environmental document. Thus, the City's failure to provide the public with access to the Ordinance's environmental documents (if they exist) not only prevents informed self-government, but also sows confusion regarding which portion of the environmental review process—if any—the City intends to follow. The City's choice negates any value of participation, and runs contrary to one of CEQA's central purposes.

**B. Similar ordinances have undergone CEQA review and were required to prepare Environmental Impact Reports.**

There is a significant distinction between the Ordinance and other similar projects that involved wildlife movement, protection, and preservation. Specifically, other similar projects were the result of a detailed public process that was subjected to environmental review (including an EIR) in accordance with CEQA and supported by detailed scientific and technical studies. Here, no such analysis has occurred. The Ordinance and its proposed regulations should be based on relevant technical and scientific studies and subjected to environmental review and public comment in accordance with CEQA, just like the Riverside County Multiple Species Habitat Conservation

Plan,<sup>2</sup> the San Diego Multiple Species Conservation Program,<sup>3</sup> the Orange County Central and Coastal Subregion Natural Community Conservation Plan,<sup>4</sup> County of Los Angeles Significant Ecological Areas,<sup>5</sup> the 2012-2035 Regional Transportation Project/Sustainable Communities Strategy of the Southern California Association of Governments,<sup>6</sup> and other similar plans.

**C. This Ordinance does not qualify for any Categorical Exemption.**

The City has the burden to demonstrate whether or not a Categorical Exemption ("CE") applies to a given action. "A categorical exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies," and factual findings must support the determination. *Save Our Big Trees v. City of Santa Cruz*, 241 Cal.App.4th 694, 705 (2015) (internal marks and citations removed), citing, *Muzzy Ranch Co. v. Solano County Airport Land Use Commn.*, 41 Cal.4th 372, 386 (2007). Further, the question of which class of CE applies is a pure question of law. Pub. Res. Code, § 21168.5. The City has not yet specified which CE(s) it intends to apply to the Ordinance. Consequently, any specific discussion of the City's choice is impossible. Nevertheless, no categorical exemption appears to fit the Ordinance and Zone Change.

Indeed, in 2016, when the city proposed adopting an overlay zone for building limitations in hillside areas (which is much more limited in scope than the current Ordinance), it conducted a full initial study and negative declaration.<sup>7</sup> This overlay zoning district was limited to the Bel-Air community in Los Angeles, while the current Ordinance covers not only Bel-Air, but also, Beverly Crest, Hollywood Hills, Studio City, Sherman Oaks, and related communities. It would therefore have a much larger scope, impact many more parcels and people, and would have a much more significant impact on the environment.

Despite the lack of any analysis regarding the applicability of a CE, the CEs that other jurisdictions have attempted to use in the past for similar ordinances include classes 7 (protection of natural resources) and 8 (actions for protection of the environment). None apply here.

**1. The Class 7 and 8 CEs do not apply by their terms.**

The Class 7–8 categorical exemptions apply only if the project in question unequivocally "assure[s] the maintenance, restoration, or enhancement" of the environment or natural resources; projects that "diminish existing environmental protections" cannot qualify under the exemptions.

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<sup>2</sup> <https://rctlma.org/Portals/0/mshcp/volume1/index.html>; Discover the Natural Wonders of Riverside County, p. 5 ([https://www.wrc-rca.org/archivecdn/Permit\\_Docs/Discover\\_the\\_Wonders.pdf](https://www.wrc-rca.org/archivecdn/Permit_Docs/Discover_the_Wonders.pdf))

<sup>3</sup> <https://www.sandiegocounty.gov/content/sdc/pds/mscp/sc.html>.

<sup>4</sup> <https://occonservation.org/about-ncc/>

<sup>5</sup> <http://planning.lacounty.gov/site/sea/wp-content/uploads/2018/09/H-ADDENDUM.pdf>

<sup>6</sup> <http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx>

<sup>7</sup> <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=16-1472>

*Save Our Big Trees v. City of Santa Cruz*, 241 Cal.App.4th 694, 707 (2015); CEQA Guidelines § 15308 (“relaxation of standards allowing environmental degradation are not included in this exemption.”). Application of those CEs “necessarily mean[s] that the adoption of [the project] would ‘assure the maintenance, restoration, enhancement, or protection of the environment...’ [cite] The [public entity] has the burden of proof—there must be substantial evidence to support this categorical exemption finding. In the absence of evidence that the negative environmental effects of [the project] would not be significant, the exemption finding cannot be sustained.” *California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.*, 178 Cal.App.4th 1225, 1245 (2009).

The court in *Save our Big Trees* surveyed the existing case law relating to the Class 7-8 CEs, and determined that a tree ordinance that was passed by the local government did not fall under the exemptions because it could be interpreted to diminish existing environmental protections. *Save Our Big Trees*, *supra*, 241 Cal.App.4th at 705–713; *see also*, *Mountain Lion Foundation v. Fish & Game Commn.*, 16 Cal.4th 105, 125 (1997) (action that removes rather than secures protections of animal species does not fall within Class 7-8 exemption). In *Save our Big Trees*, the city argued that the court “must look at the Project ‘as a whole’ to determine whether it will strengthen or weaken existing heritage tree protections,” and determined the CE did not apply. *Save Our Big Trees*, *supra*, 241 Cal.App.4th at 708.

An ordinance that represents a mixed bag of environmental impacts—beneficial and adverse impacts—cannot qualify for a Class 7-8 CE. The Supreme Court, in *Wildlife Alive v. Chickering*, addressed this issue unequivocally, finding the Class 7 CE does not apply to an action with “the potential for a significant environmental impact, both favorable and unfavorable.” *Wildlife Alive v. Chickering*, 18 Cal.3d 190, 206 (1976) (“When the impact may be either adverse or beneficial, it is particularly appropriate to apply CEQA which is carefully conceived for the purpose of increasing the likelihood that the environmental effects will be beneficial rather than adverse. . . . we have consistently held that CEQA must be interpreted so as to afford the ‘fullest possible protection’ to the environment.”), citing *Bozung v. Local Agency Formation Commn.*, 13 Cal. 3d 263, 274 (1975).

Here, the Ordinance does not even “assure” positive impacts on ridgelines, or wildlife movement, or biodiversity, let alone the environment or natural resources in a more general sense. Rather, City legislators and staff appear to hold certain preconceived ideas relating to these general concepts, accepting any speculative benefits as a given. The Ordinance has several potentially significant adverse impacts such as increased fire hazard risks. Under *Wildlife Alive v. Chickering*, CEQA’s command to protect the environment to the fullest extent means that the potential adverse effects of the Ordinance render Class 7–8 exemptions inapplicable. The City has proceeded in a way that does not “assure the maintenance, restoration, or enhancement” of the environment or natural resources. CEQA Guidelines §§ 15307–308; *Save Our Big Trees*, *supra*, 241 Cal.App.4th at 707.

The potentially detrimental impacts to wildlife as a result of this Ordinance (resulting in a "mixed bag" of impacts) are currently the subject of additional study by expert environmental consultants that we have retained, and further comment will be provided when that analysis has been prepared.

**2. The Class 7 and 8 CEs do not apply because of unusual circumstances.**

Section 15300.2 of the CEQA Guidelines forbids the use of a CE where a “reasonable possibility” exists that the activity “will have a significant effect on the environment due to unusual circumstances.” *See also, Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal.4th 1086 (2015). “When unusual circumstances are established, the Secretary’s findings as to the typical environmental effects of projects in an exempt category no longer control. Because there has been no prior review of the effects of unusual circumstances, [an] agency must evaluate potential environmental effects under the fair argument standard, and judicial review is limited to determining whether the agency applied the standard in the manner required by law.” *Id.* at 1116.

Here, there are at least two distinct unusual circumstances that negate the applicability of the categorical exemptions: 1) the increased risks relating to fire hazards, and 2) topography, seismicity, and grading.

**Fire Risks.** The first unusual circumstance is the recent and ongoing problem of devastating fires throughout the region, described in major news reports and experienced first-hand by Angelinos. Fires have ravaged the entire region and have changed the landscape of thousands of acres, including areas proposed for governance under the Ordinance. With climate change promising to exacerbate the conditions that give rise to even more wildfire damage in the coming years, it is not only irresponsible, but dangerous, for the City to adopt the Ordinance using CEs to attempt to avoid CEQA, while apparently ignoring the potential effects of 1) the Ordinance on future fires, and 2) past fires on the Ordinance. Projects that may exacerbate existing environmental hazards or conditions require analysis of the potential impact of those hazards on future residents or visitors. *Calif. Bldg. Industry Assn. v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal.4th 369, 377 (2015).

Regarding wildfire, no evidence indicates the City considered the degree to which the Ordinance may exacerbate more severe fire conditions. Further, courts have specifically limited the use of exemptions for risky sites, particularly those prone to wildfires. *Calif. Bldg. Industry Assn. supra* (“limits on exemptions extend to projects located on sites that will expose future occupants to certain hazards and risks—including ... sites subject to wildland fire”). A CEQA analysis would allow the City to have at its disposal a scientifically based review of the areas affected by the fires, and the fire risks the Ordinance may propose. None currently exists.

The Governor's Office of Planning and Research adopted, in 2018, comprehensive updates to the CEQA Guidelines and Appendices. This update included adding new impact categories to the checklist in Appendix G of CEQA. Notably, the most significant change to Appendix G is the addition of Wildfire as an environmental impact category. The new Wildfire section includes four questions pertaining to new development in Very High Fire Hazard Severity Zones. These questions focus on whether a project would exacerbate wildfire risk, impair emergency response

or evacuation plans, or risk exposing people or structures to floods and landslides. If projects, such as the proposed Ordinance, would be located in or near state responsibility areas or lands classified as very high fire hazard severity zones, the lead agency must determine if the project would:

- (1) Substantially impair an adopted emergency response plan or an emergency evacuation plan;
- (2) Exacerbate wildfire risks due to slope, prevailing winds, and other factors, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire;
- (3) Require the installation of or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment; or,
- (4) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

The Ordinance has the potential to do ***all of these things***. And without the benefit of substantive CEQA analysis, the adoption of this untested Ordinance will place lives and structures at greater risk. There is a particularly significant risk relating to item numbers 2 and 4. The state has recognized that not only the loss of structures or human life is a potentially significant environmental effect, but also such effects as releases of pollutants from uncontrolled wildfire, and the potential effects of post-fire runoff, flooding, or landslides. The City should evaluate the potential effects of increased wildfire risk from changes in vegetation management, including modeling the potential from increased air pollutants from an uncontrolled wildfire. Post-fire impacts from flooding or landslides should also be evaluated and disclosed.

In order to adequately address the fire risks, CEQA review of the Ordinance is absolutely necessary. There is no other lesser-scale recommendation or proposal that would be able to analyze or mitigate the fire hazards that are posed by the Ordinance. Each of the questions posed in the CEQA Guidelines is there for a reason. Those questions must be posed, reviewed, analyzed, and addressed by a qualified professional so that the fire hazards are properly mitigated, as necessary. Failure to do so squarely places the blame for the Ordinance's exacerbation of any future wildfire in, around, or near the overlay zones on the City's shoulders.

**Topography, Seismicity, and Grading.** The hillside areas the Ordinance would primarily affect are marked by significant topographical, seismic, and roadway safety challenges the Ordinance would exacerbate. As things stand today, the often substandard road widths already challenge emergency access. Further, the topographic and seismic challenges of the hillside areas can require significant remedial grading to fully mitigate. The Ordinance's establishment of significant caps on grading can actually thwart the ability of developers (or even those who must stabilize already-developed lots) to actually address those conditions make a building site or surrounding area safe. Further, the required horizontal and vertical clearance from mapped ridgelines may actually require more grading than would currently be required. For example, the Ordinance appears to

provide no exemption from the separation requirements for properties that already have graded pads. Also, because several ridgelines are actually streets, or have streets on top them, the required horizontal and vertical separation would create more severe street access (and, consequently, emergency access) problems. Further, this increased need for grading can lead to more land clearance than otherwise required, more truck trips, and greater air quality, greenhouse gas, and noise impacts from each of the above factors.

Moreover, the Ordinance also imposes grading regulations that would actually make it more likely that more intensive grading would take place. This is easily identifiable in the new setback regulations. A home project with an identical footprint would create substantially more grading and development if it is required to be set back even further from the right of way. In situations where slopes rise from the level of the street, and up to the property, substantially more grading would need to be done at the rear of the property to accommodate the front yard. In situations where the street is higher than the home, and the home slopes down from street level, substantially more grading would be required toward the front of the property. Also, there would be more development associated with driveways, etc. In other words, the Ordinance makes it more likely that **more grading** would be required, not less.

Furthermore, the Ordinance requires that remedial grading be counted toward the maximum by-right grading quantity for a project. However, remedial grading is mandated by the building code for any new construction or project for which the proposed improvements exceed 50% of the replacement value of the existing main building on site. Property owners do not electively choose remedial grading, and it is extremely costly. Because the remedial grading is done precisely to combat safety and topography issues that are identified on-site, and because they are mandated by the City, and not by the project applicant, they should not be counted toward the total maximum grading permitted on the site by-right.

There is no doubt that the fire hazards, topography, seismicity, and grading issues described above present a reasonable possibility of a significant effect on the environment. No legitimate dispute exists that the Ordinance would make wildfire management, for example, more difficult. To date, however, the entire process has occurred in the absence of environmental review. This has deprived the public of any opportunity to participate meaningfully in the process and to understand the potential effects of the options presented, the various trade-offs among these options, and methods of reducing or avoiding the potential effects anticipated.

**D. A Negative Declaration is inappropriate for the Ordinance, as substantial evidence supports a fair argument that a significant impact would occur.**

Generally, CEQA presumes the necessity of an EIR, and an agency must prepare an EIR instead of an ND if substantial evidence in the record supports a “fair argument” that a significant impact may result from a project. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 75 (1974). The fair argument test is a low threshold. *Porterville Citizens for Responsible Hillside Development v. City of Porterville*, 157 Cal.App.4th 885 (2007). Further, even disagreement among experts disqualifies

a project from relying upon an ND. *Keep Our Mountains Quiet v. County of Santa Clara*, 236 Cal.App.4th 714 (2015) (“[i]f there is disagreement among expert opinion supported by facts .... the Lead Agency shall treat the effect as significant and shall prepare an EIR”); 14 Cal. Code Regs., §§15064(b),(g).

Here, substantial evidence supports a fair argument that a significant impact would occur in several environmental issue areas, including geology and soils, and wildfire risk. An MND provides the appropriate vehicle for CEQA review *only* when “*clearly* no significant effect on the environment would occur.” *Keep Our Mountains Quiet v. County of Santa Clara*, 236 Cal.App.4th 714 (2015). Where, as here, a “fair argument” exists that a significant impact would occur, the City must prepare an EIR.

It is possible that some version of the Ordinance could benefit the City while minimizing environmental impacts. However, the Ordinance as currently proposed will have severe material impacts on residents and property owners and the surrounding area, and those effects require a full CEQA analysis. Absent that analysis the City cannot attempt to rely on an ND or simply adopt the Ordinance.

## **II. THE ORDINANCE VIOLATES THE HOUSING CRISIS ACT, WHICH PROHIBITS CITIES FROM SIGNIFICANTLY REDUCING HOUSING INTENSITY THROUGH ZONE CHANGES.**

SB 330, known as the Housing Crisis Act ("SB 330"), signed by the governor on October 9, 2019, provides housing-related protections as well as laws that prohibit cities from rezoning areas in ways that would reduce housing opportunities. SB 330, among other things, (i) prevents local governments from downzoning unless they upzone an equivalent amount elsewhere within their boundaries, (ii) suspends the enactment of local downzoning and housing construction moratoriums, (iii) requires timely processing of housing permits that follow zoning rules, and (iv) ensures that the demolition of housing does not result in a net loss of units. Specifically, as it relates to this Ordinance, the law provides as follows:

(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected **city shall not enact a development policy, standard, or condition that would have any of the following effects:**

(A) **Changing** the general plan land use designation, specific plan land use designation, or **zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing** general plan land use designation, specific plan land use designation, or **zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018**, except as otherwise provided in clause (ii) of subparagraph



(B). For purposes of this subparagraph, **“less intensive use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.** Govt. Code 66300(b). [emphasis added]

As explained and summarized in the Legislative Counsel's Digest, the bill "prohibit[s] a county or city...from enacting a development policy, standard, or condition, as defined, that would have the effect of (A) changing the land use designation or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing zoning district below what was allowed under the general plan or specific plan land use designation and zoning ordinances of the county or city as in effect on January 1, 2018."

The proposed Ordinance is in direct violation of this law as it seeks to significantly reduce the intensity of the use for all parcels within the purposed Wildlife District. It does this by creating substantial new regulations that reduce the possible building envelope through new restrictions on height, floor area ratio, lot size, setbacks, and lot coverage, all items specifically listed in the bill and all of which "would lessen the intensity of housing." Govt. Code 66300(b).

Indeed, the City's own implementation memo from January 17, 2020 entitled "IMPLEMENTATION OF STATE LAW SB 330 – HOUSING CRISIS ACT," directly acknowledges that "SB 330 generally prohibits zoning actions that result in fewer housing units than are permitted as of January 1, 2018. These actions include the adoption of plans that result in a net downzoning or otherwise reduce housing and population, except for specified reasons involving health and safety." The memo goes on to specify that the very regulatory provisions contemplated in the Ordinance (such as height, floor area ratio, etc.) are not permitted:

These provisions require an analysis by City Planning that any legislative action, until 2025, would not lessen housing intensity, as described in Section 13 of SB 330 to include reductions to **height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.** These restrictions apply to any zone where housing is an allowable use, even if the intent is not to reduce housing intensity. This provision does not impact zoning efforts that reduce intensity for certain parcels, as long as density is increased on other parcels and therefore result in no net loss in zoned housing capacity or intensity. Jan. 17, 2020 Implementation Memo [emphasis added]

Regulations reducing the size of homes in a large area of the City, most of which consists of residential/housing-related land uses, obviously also reduce the density within that area.

The Ordinance does not address how and why it is compliant with SB 330, because it is not, and its provisions cannot be rectified or harmonized with either the spirit or the letter of the relevant provisions of the state law. For this reason alone, the Ordinance cannot be adopted in its current form.<sup>8</sup>

### **III. THE ORDINANCE CONSTITUTES AN UNLAWFUL TAKING OF PRIVATE PROPERTY FOR PUBLIC USE WITHOUT COMPENSATION.**

Separate and apart from the lack of CEQA review, the Ordinance contravenes principles of equal protection and due process (under both the state and federal constitutions), violates vested property rights, and constitutes a regulatory taking of the distinct investment-backed expectations of those it affects. Notably, under the Ordinance, many even modestly sized homes will become legal non-conforming, making it difficult or sometimes impossible to expand those homes or even rebuild them after a disaster.<sup>9</sup>

#### **A. The Ordinance unlawfully deprives homeowners of the right to exclude.**

The United States Supreme Court has clearly and unequivocally stated that the “right to exclude” is a fundamental element of the constitutionally-protected right to private property, and that physical intrusion, whether by government or by private parties acting under government permission, violates that right, and that individuals given a permanent and continuous right to pass over private property amounts to such physical occupation. (See *Nollan v. California Coastal Comm’n* (1987) 483 U.S. 825, 831-32.) In *Nollan*, the US Supreme Court sets forth the state of the law, and the importance of the right to exclude, as compared to other property rights:

We have repeatedly held that, as to property reserved by its owner for private use, “the right to exclude [others is] *one of the most essential sticks in the bundle of rights that are commonly characterized as property.*” “*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, 433 (1982), quoting *Kaiser Aetna v. United States*, 444 U. S. 164, 176 (1979). In *Loretto*, we observed that, where governmental action results in “[a] permanent physical occupation” of the property, by the government itself or by others, see 458 U.S. at 432-433, n. 9, “our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only

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<sup>8</sup> The Ordinance also fails to explain how lot splits permitted under SB 9 and Accessory Dwelling Unit ("ADU") permitted under state law will interface with the requirements provided by the Ordinance. Homeowners should be informed upfront as to whether or not this Ordinance will impact their ability to add an ADU on their lot or subdivided their lot pursuant to SB 9.

<sup>9</sup> It will also become even harder to obtain fire insurance for homeowners (already a problem in this general area, as very few insurers are willing to accept the risk), as the Ordinance is expected to increase fire risks while simultaneously decreasing property values.

minimal economic impact on the owner,” *id.* at 458 U. S. 434-435. [*Emphasis in original.*]

Thus, not only is the right to exclude an important property right, it is among the “most essential” property rights recognized under the law. (*Id.*) In *Kaiser Aetna*, the Supreme Court held “that the ‘right to exclude,’ so universally held to be a fundamental element of the property right, falls within this category of interests that the Government cannot take without compensation.” (444 U.S. at 180.)

Here, the proposed Ordinance restricts property owners from erecting wildlife-impermeable fences on the perimeter of private property. Indeed, one of the Ordinance’s stated goals is to allow wildlife to move and pass more freely through private properties, and the regulations related to yards (expanding them to allow for wildlife to pass through) and perimeter fencing (making them more easily permeable to wildlife) are specifically designed to allow for animals to travel through private property, as opposed to the roads, where there is a higher risk of car-related fatalities. In other words, the Ordinance restricts property owners from erecting fencing that would secure the entire property from intruders (animal or human), and in fact, is specifically designed to minimize the direct barriers to wildlife, so that they can more freely pass through private property.

There is no doubt that, under the relevant case law, if the City regulated property in such a way so as to allow for human beings to pass through private property, or if other physical objects were allowed to be placed on private property, a Court would be required to find a taking under the above binding authority. (See, *e.g.*, *Nollan*, 483 U.S. at 831-32.) There is no legal reason why wildlife should be treated any differently. If property owners want to exclude animals from entering on their property, they unequivocally have that right, just like they have the right to exclude humans and their pets. The Ordinance (and specifically, the setback and fencing regulations therein), deprive homeowners of that right to exclude wildlife. The City has no right to infringe on the rights of property owners to exclude people, animals, or objects from their properties. The fencing provisions of the Ordinance are therefore unconstitutional on their face (in all circumstances that are not subject to a specific exemption from its regulations), and constitute a compensable taking under binding case law. (*Nollan*, 483 U.S. at 831-32; *Kaiser Aetna v. United States*, 444 U. S. at 180.)

#### **B. The Ordinance violates equal protection and substantive due process.**

The California Constitution provides that, “a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.” Cal. Const. Art. 1, § 7(a). The U.S. Constitution also prohibits the denial of equal protection through the fourteenth amendment. United States Constitution, amend. XIV, § 1, and 42 USC § 1983. The City must have a rational basis for treating the property owners of the affected areas differently than other areas. The rational basis test requires that the classification be a demonstrably effective means for furthering some actual valid government interest. *E.g.*, *City of Cleburne v. Cleburne Living Center* (1985) 473 U.S. 432, 440. There is no rational basis for treating the Wildlife District differently than other similarly situated areas of the City, because there is no evidence that supports such an

argument, precisely because the appropriate analyses (that would have been conducted under CEQA under normal circumstances) were never undertaken at all. By definition, this means that the Ordinance lacks a rational basis.

**C. The tree planting requirements constitutes and exaction with no nexus or proportionality to the impacts.**

In the development context, an exaction is something the local zoning authority requires a property owner to give to the City, in order to obtain approval to develop land. The “something” can be almost anything: land; a portion of the value of the land; money (a mitigation fee); or in this context, the planting of trees.

If the City is going to create an exaction relating to tree planting, it must have a rational connection (nexus) to the burden the government seeks to avoid. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). It also must have “rough proportionality”: the amount of the exaction must roughly correspond to the burden placed on the government, resulting from the proposed development. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The Ordinance's tree planting requirements do not comply with either the nexus or the rough proportionality requirements for such an exaction. As such, those provisions of the Ordinance must be modified or removed.

**D. The Ordinance constitutes a regulatory taking of private property without fair compensation.**

Disturbingly, the Ordinance creates severe restrictions on development (and redevelopment) in the Wildlife District. Under *Penn Central Transportation Company v. City of New York* (1978) 438 US 104, even if a governmental regulation does not cause a physical invasion or deprive a landowner of all economically beneficial use, it may nonetheless go too far in placing what should be a public burden on private shoulders. *Penn Central* established an ad hoc, fact-based inquiry that addresses three factors to be used in determining whether this type of regulatory taking has occurred: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the nature of the governmental action. (*Id.* at 124.)

As to the first factor, the economic impact of these regulations will vary from property to property, but with regulations as extreme as the deprivation of the use of large portions of one's land for structures and certain designated uses, the impacts are severe. This is more akin to a “conservation easement” (which would obviously require compensation) than to an overlay zone.

As to the second factor, the investment-backed expectations of the owners in the Wildlife District were, obviously, that they would be able to use the entirety of their properties for legal purposes. In the residential context, the restriction on using large percentages of the property, along with the fencing and lighting regulations, deprives property owners of the right to enjoy their properties, as was the expectation when the properties were purchased.

As to the third factor, the government action in this case specifically calls out the proposed Wildlife District for these overreaching regulations. There is an unexplained, irrational, arbitrary and capricious designation of these overlay zones without any scientific backing or CEQA review. The City cannot point to a scientific analysis that was conducted in recent years that took into effect the recent fires, and that was based on scientific principles. As such, the government action has no scientific or legal foundation.

The three factors of the *Penn Central* test are therefore easily satisfied, and the Ordinance effectuates a regulatory taking upon those in the proposed overlay zones.

#### **IV. WITHOUT AN ACTUAL "PILOT STUDY," IT IS UNCLEAR HOW THE ORDINANCE WILL BENEFIT WILDLIFE AND/OR BIODIVERSITY.**

While the Ordinance has been labeled as a "Wildlife Pilot Study," this is not in fact what it is. The Ordinance is a bevy of development restrictions that have been cut and pasted from other jurisdictions' wildlife ordinances, without site-specific tailoring or environmental review. Meanwhile, the other ordinances the City is drew from were tailored for low-density rural areas with mixed agricultural and industrial lands, not fully developed residential communities surrounded by the busiest freeways in the world. Indeed, the original idea for the process was to do a "wildlife pilot study" first, and on the basis of that pilot study, scientifically analyze and determine what elements and regulations would be effective for wildlife and biodiversity based on that study. The City has apparently done the opposite here.

Rather than scientifically studying whether any of these proposed measures will be effective in helping wildlife and biodiversity, the City is putting the cart before the horse by imposing the intensive regulatory restrictions from the Ordinance in place first (which impacts property rights, has potentially significant environmental impacts, etc.), and only after infringing on rights of homeowners within the Wildlife District, doing a post-hoc analysis of the Wildlife District to determine whether the measures were effective before applying it to other areas in the City. The City has gotten the process totally backwards, and cannot simply impose development restrictions on certain parts of the City with no evidence or scientific analysis to back up why the restrictions are effective, and study them later.

To the extent that the City will be pushing forward with the Ordinance with the current slate of regulations proposed therein, the City must provide a real (scientific) nexus between each of the proposed regulations (height restrictions, FAR restrictions, etc.), and the actual goals of promoting biodiversity and wildlife movement. It should also account for and analyze other non-development related conditions that impact wildlife in the area, e.g. vehicle strikes, rodenticides, and inter and intra-species killings. After all, it would seem grossly negligent to encourage wildlife to cross the 405 freeway in order to access this new so-called Wildlife District without even considering the risks to wildlife and motorists of doing so. As currently proposed, there is no evidence that the Ordinance's development restrictions will do anything to promote or protect wildlife and biodiversity. An Ordinance that purports to protect wildlife, but that does nothing to address the

conditions that are most threatening to them (vehicle traffic and rodenticides), can hardly be called a Wildlife Ordinance at all.

**V. THE ORDINANCE'S RESOURCE MAPS ARE BOTH ILLUSORY AND MISLEADING.**

The draft Ordinance provides as follows:

Sec. 1. Section 12.03 of the LAMC is amended to add the following definition in alphabetical order.

**Ridgeline.** The natural crests of the mountains that bisect and surround the City as shown on the Ridgeline Map, **adopted and maintained by the Director of Planning.**

**Wildlife Resource.** Features which provide wildlife benefits, ecosystem services, and contribute to the overall quality of the natural and built environment. These features include open space (conservation areas, public property, and undeveloped land), water features (lakes, reservoirs, rivers, streams, wetlands, open channels), and riparian areas. **In addition to the Wildlife Resources identified in Map B: Draft Resource Areas, unmapped Resources shall be identified by the project or project reviewer when they exist on site.**

The fact that the Ordinance acknowledges that there are "unmapped Resources" that are subject to further regulations is a clear violation of due process, as there are property owners within the Wildlife District who would not have been notified that their properties are subject to these regulations until they are already in the process of developing their properties. In order to avoid a violation of due process, the City must make clear from the outset all of the "Wildlife Resources" and "Ridgelines" that are covered by the Ordinance in advance, and all of the parcels that can be effected by them. This cannot be left to a future "reviewer" to determine whether such resources "exist on site." This has to be done now, or it violates the due process rights of all property owners whose properties contain these features, but are not identified on the relevant maps at the time the Ordinance is adopted.

The proposed revisions to LAMC Section 12.03 also notes that the Ridgeline Map is "adopted and maintained by the Director of Planning." However, this implies that the Director of Planning has the ability to make modifications to the maps at any time, and without any notice or opportunity to be heard. In other words, properties that are not currently subject to certain restrictions within the Ordinance because they are not close to a Ridgeline, can be made subject to those restrictions on the whim of the Director of Planning, and the effected property owners would not have notice or an opportunity to be heard regarding those changes, as the Ordinance is currently written.

Any changes to the maps must be made now, and the Ordinance must have final maps that are incorporated into the terms of the Ordinance. The Director of Planning cannot have the ability to unilaterally make changes to the maps without notice and a hearing for those properties being impacted by the changes. Otherwise, the Ordinance violates the due process rights of all property owners whose properties contain these features, but are not identified on the relevant maps at the time the Ordinance is adopted.

**VI. THE ORDINANCE PRESENTS UNDUE BURDENS ON BOTH THE CITY AND HOMEOWNERS ALIKE, WHEN MORE EFFECTIVE, AND LESS IMPACTFUL MEASURES ARE READILY AVAILABLE.**

The Ordinance, as currently drafted, imposes substantial burdens on the City as well as homeowners. These involve additional time, money, and resources from the planning department and the department of building and safety, and code enforcement, to ensure that the regulations are properly implemented.

Yet, more effective and less impactful measures are available.<sup>10</sup> The real problems for wildlife are car collisions and rodenticide. The City could achieve its goals of protecting wildlife and promoting biodiversity more effectively if it just 1) banned rodenticide products, and 2) implemented road modifications (such as signage to warn drivers about wildlife, and striping and/or speed bumps to keep speed down) to keep drivers alert, and to keep their driving speeds lower, so as to promote the ability to evade wildlife collisions. Such measures would likely be substantially more effective in achieving the goal of protecting wildlife, and at the same time, would be much less impactful on homeowners.

**VII. THE CITY MUST PROVIDE INDIVIDUALIZED NOTICE TO ANY RESIDENTS OR OWNERS WITHIN THE PROPOSED "BUFFER ZONES."**

While the better practice would be to provide written notice to all impacted residents, *at minimum*, the City should provide individualized notice to any residents and homeowners whose property is proposed to be included within one of the many "buffer zones." For many homeowners, these new 50' buffers will make sizable portions of their homes unbuildable for new developments and even small additions. Even without additions, existing homes located within these buffer zones that require any new permits will be subjected to site plan review, which will require additional costs, time, and review under the California Environmental Quality Act ("CEQA"). These are severe restrictions on new development and remodels, and due process principles require that each property owner within the Wildlife District be given clear notice of the actual restrictions that are proposed to be imposed on his or her parcel. The general notices that have been provided to date are inadequate, and are insufficient to provide the requisite notice and an opportunity to participate

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<sup>10</sup> Indeed, this fact further highlights the need for CEQA review, as such an analysis would actually evaluate the real problems impacting wildlife, and provide a scientific basis upon which a measured response can be taken to address those issues.

in the process, and still today most owners and residents within the purported District have no knowledge of what is being proposed for their homes.

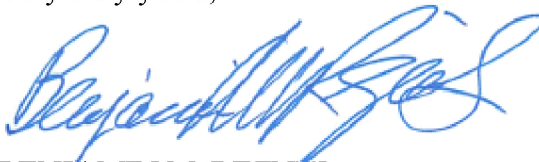
More specifically, property owners must be provided an opportunity to understand what is being proposed – not just generally by the Ordinance, but specifically, as it pertains to their individual parcels. Under these circumstances, each property owner should be provided with a written letter, directing them to a website in which their parcel can be identified, where the property owners can be provided with a list of restrictions that would specifically impact their individual properties. They should also be provided with some explanation as to how they can comment on the Ordinance. The community, residents, and owners have a right to know that this Ordinance will materially impact their ability to use their property in the future, and/or rebuild their existing home in the event of a disaster, and the City has an obligation to provide this to people with such notice and an opportunity to provide substantive input.

#### **VIII. CONCLUSION.**

For the foregoing reasons, the City should, at a minimum, conduct the mandated CEQA analysis prior to taking any further action on the Wildlife Ordinance. The City must also address the Ordinance's conflict with SB 330's provisions that prohibit the City from reducing the intensity of a use in a zone. To the extent that City decides to move forward with the Ordinance in spite of its violation of the Housing Crisis Act, and the lack of CEQA review and evidentiary support, the City should evaluate the nexus between the Ordinance's goals (related to wildlife and biodiversity), and whether each of the proposed regulations (height limits, grading restrictions, FAR restrictions, etc.) does anything to support those goals.

This office looks forward to the opportunity to engage with the City further regarding this Wildlife Ordinance to ensure that appropriate and sensible measures are taken to protect wildlife and promote biodiversity, while simultaneously protecting the rights of the homeowners who will be impacted by the Ordinance.

Very truly yours,



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