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September 1, 2020

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Re: Building Industry Association Comment Letter – Ventura County General Plan Update

Dear Chairwoman Long,

The Los Angeles/Ventura Chapter of the Building Industry Association of Southern California, Inc. (BIA-LAV), is a non-profit trade association focused on building housing for all. On behalf of our membership, we are submitting this comment letter based on the County's Draft General Plan Update. As we expressed to the Planning Commission, we are asking that the County honor the commitment it has made to host several comment opportunities. This would allow staff more time to review and address our outstanding concerns listed in this letter and past correspondence.

The opportunity for public input is critical in developing a document as impactful as the General Plan. Last year, the County Planning Director communicated there would be five opportunities in 2020 for public input. Only one has been scheduled. This is an insufficient effort to gather feedback on the over 300 new proposed policies and programs in the Draft General Plan. Adopting equitable and diversified feedback from all County partners including, community, non-profit and business organizations is crucial to meeting the County's goals. It is our hope that the County takes action on this request in order to mitigate for this lack of engagement.

Comments & Concerns

Below we have shared comments and concerns on various points found within the Plan that affect housing production in the County. These comments are reiterated from the Building Industry Legal Defense



Foundation (BILD), a non-profit mutual benefit corporation and a wholly controlled affiliate of the Building Industry Association of Southern California. Their [letter](#) was sent to County staff on February 27, 2020:

1. Policy COS-1.1 and Draft EIR Mitigation Measure BIO-1 require projects to avoid, minimize and then mitigate impacts to sensitive biological resources, in that order, “when feasible”. This policy fails to provide any meaningful standard for determining when it is “feasible” to avoid a resource, and thus gives County staff unbounded discretion to require modifications to projects. These decisions by County staff may conflict with decisions by state and federal natural resource regulators under existing programs that already impose similar standards. For instance, the “404(b)(1) Guidelines” for implementation of Clean Water Act Section 404, at 40 CFR Part 230, require avoidance and minimization of impacts to waters of the United States (including wetland waters) to the extent practicable, and require mitigation for unavoidable impacts. See 40 CFR 230.91(c). “Practicable” means “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” 40 CFR 230.3(q). The Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures) recently adopted by the State Water Resources Control Board include an analogous requirement and an identical definition of “practicable.”

To avoid unnecessary duplication and potential conflict with decisions by the U.S. Army Corps of Engineers (USACE) and Regional Water Quality Control Boards (RWQCB) under these programs, and with decisions of other agencies under similar programs, Policy COS-1.1 should provide that the County will defer to permitting decisions by state and federal agencies exercising jurisdiction over sensitive resources, including the USACE, RWQCB, U.S. Fish and Wildlife Service (USFWS), and California Department of Fish and Wildlife (CDFW), to determine what avoidance, minimization and mitigation of impacts to sensitive biological resources are feasible.

2. Policy COS-1.6 requires discretionary development on hillsides and slopes greater than 20 percent to minimize grading and vegetation removal in order to avoid significant impacts to sensitive biological resources to the extent feasible. Again, the policy fails to provide any guidance regarding the extent to which avoidance will be considered “feasible.” At minimum, the County should adopt a definition of feasibility for purposes of biological resource protection that incorporates the concepts of technical and logistical feasibility, cost, and consistency with the project purposes defined by the project proponent, analogous to the concept of “practicability” used in the 404(b)(1) Guidelines and state Procedures.

The definition should state that avoidance is not feasible if it would require engineering or construction techniques that are not commonly used in the industry; if it would impose unreasonable costs on the project; if it would deny the property owner a reasonable



opportunity to develop the property consistent with otherwise applicable zoning and land use designations; or if it would create or substantially increase the severity of other significant environmental impacts.

3. Policy COS-1.7 requires the use of “natural or nature-based” flood control infrastructure, such as wetland restoration, “when feasible”. The policy should clarify that, for flood control infrastructure located within areas subject to the jurisdiction of the USACE, RWQCB or CDFW, the County will defer to decisions of those agencies permitting the installation or modification of flood control infrastructure. Otherwise, the County will apply the definition of “feasible” recommended in the comment on COS-1.6, above.
4. Policy COS-1.8 requires new or modified road crossings of aquatic features and riparian habitats to use bridge columns located outside riparian habitat, “when feasible.” Neither the General Plan nor the Draft EIR provides evidence that bridge columns located in riparian habitat necessarily have adverse effects on sensitive biological resources. In some cases, the lateral extent of riparian habitat may be many hundreds of feet wide, yet much of this area may lack substantial vegetation or other habitat values. Further, construction techniques exist that are capable of minimizing the temporary and permanent impacts of bridge column installation, such as vertical pile installation.

The policy should clarify that, for bridge columns located within areas subject to the jurisdiction of the USACE, RWQCB or CDFW, the County will defer to decisions of those agencies permitting the installation, maintenance, repair or replacement of bridge columns or road crossings. Further, the policy should state that the requirement to locate bridge columns outside riparian habitat when feasible applies only where the proposed columns would significantly adversely affect riparian habitat values. Finally, the policy should clarify that removal of existing bridge columns located within riparian habitat is not required when modifying an existing road crossing and should incorporate the definition of feasibility recommended above.

5. Policy COS-1.9 requires the County to consult with “resource management agencies” including the California Native Plant Society (CNPS) and the National Audubon Society (NAS) during review of discretionary development applications. CNPS and NAS are not resource management agencies and have no legal authority to “consult” on County planning and land use decisions. These organizations should be allowed to comment on proposed development projects like other members of the public.
6. Policy COS-1.11 prohibits development within 100 feet of a wetland, with certain exceptions, and prohibits development that would have a significant impact on a wetland habitat unless mitigation measures are approved that would reduce the impact to a less than significant



level. The policy should clarify that the prohibition does not apply to discharges of dredged or fill material to wetlands that are approved by the USACE and/or RWQCB, the agencies with legal jurisdiction over such activities; and that mitigation approved by those agencies for impacts to wetlands will be deemed to reduce permitted impacts to a less than significant level.

7. Draft EIR Mitigation Measure BIO-1 (Implementation Program COS-X) requires avoidance of sensitive habitats, wetlands, other waters, wildlife corridors, etc., “if feasible,” through “no-disturbance buffers” around such sites. The measure should clarify that feasibility of avoidance is determined as described in the recommendations above, including deferring to permitting decisions of the USACE, RWQCB, CDFW and USFWS, and adoption of a definition of feasibility. Further, the measure should more clearly define what is meant by “wildlife corridors,” focusing on areas demonstrated to be used for wildlife passage, and should clarify that the measure does not require avoidance of all areas designated as part of a wildlife movement corridor overlay zone under the County’s wildlife movement corridor ordinance, which covers tens of thousands of acres within the County.
8. Implementation Program B of the General Plan Update (p. 6-18) requires an update to the County’s Initial Study Assessment Guidelines to require that wetland mitigation be “‘in kind’ (i.e., same type and acreage” and to provide that “[o]n-site restoration and/or replacement shall be preferred wherever possible.” In recognition of the fact that compensatory mitigation sites for certain types of wetland habitats may be extremely difficult or impossible to find, this language should provide flexibility to provide mitigation using wetland types that differ from the specific type impacted, provided the mitigation site provides wetland habitat values equal or greater to the impacted wetland.

In addition, the preference for on-site mitigation stated in this text is inconsistent with Mitigation Measure BIO-1, which allows mitigation for wetland impacts “within or outside of the project site,” or through purchase of credits from a mitigation bank or an in lieu fee program, and conflicts with the USACE’s compensatory mitigation regulations, which establish a preference for mitigation banks and in lieu fee programs over permittee-responsible mitigation. The preference for on-site mitigation should be deleted.

9. Implementation Program F of the General Plan Update (p. 6-20) calls for the County to consider increasing the standard wetland setback to 200 feet. This proposal is inconsistent with Policy COS-1.11 and should be deleted.
10. Policy COS -7.3 increases setbacks to sensitive uses from discretionary oil wells from 600 to 1500 feet for residences and 2,500 feet for schools. The Mineral Resources section discusses this policy’s impact on mineral resource production and concludes that impacts from the new



policy are significant and unavoidable as it would hamper and preclude some oil field expansion and access to petroleum resources. This conclusion is after imposition of a mitigation measure that expands the types of uses required to have the minimum setbacks but reduces the school setback to 1,500 feet. Minimum setbacks should not be categorical but should allow for exemptions for smaller setbacks if a health risk analysis demonstrates that impacts are less than significant.

11. Policy COS -7.7 would require the use of pipelines to convey oil and produced water offsite as opposed to trucks, whereas the current zoning code requires use of pipelines except when impractical or infeasible. The DEIR concludes that it may be technologically or economically infeasible for more remote operations (more than two miles from a major oil transmission line) to meet this requirement. The DEIR notes that “most” oil wells in the County are clustered within two miles of “major oil transmission pipelines.” While the DEIR concludes that loss of oil production would likely be primarily at a small scale and associated with oil operators outside of a two-mile radius of a major oil or gas transmission line, smaller producers within two miles may have difficulty meeting the requirement with more efficiency gained from using trucks. The DEIR concludes that the impact of the policy would be potentially significant but reduced to less than significant by allowing an oil operator to use truck if it can demonstrate that the conveying oil and produced water via pipeline is infeasible. This mitigation fails to provide a meaningful standard with respect to demonstrating infeasibility.
12. COS Implementation Program M requires the County to evaluate the feasibility of establishing a local tax on new oil and gas operations. No discussion is provided as to why such a tax would be desirable, what it could be used for or what alternatives to a tax have been considered. COS Implementation Program U requires amendments to the county’s zoning ordinances to require “solar canopies” in parking lots of non-residential projects with floor area greater than 50,000 square feet. This Program does not appear to consider whether solar canopies in parking lots are the most efficient way to impose a solar requirement on new development. It directs a change in law without any consideration of the potential impacts of doing so.
13. There are a number of agricultural policies that require the County to encourage or minimize specified impacts “when feasible” but provide no meaningful standards to determine feasibility. For example, Policy AG-5.2 requires the County to support the transition to electric, renewable or lower emission agricultural equipment “when feasible”. It is unclear how feasibility will be determined such as whether market availability of equipment or some other standard is proposed.



Similarly, proposed new policy AG-5.5 encourages using farmland to sequester carbon through various methods “such as reduced tilling, covercropping, composting, biochar, and other activities that both reduce greenhouse gas (GHG) emissions and increase carbon sequestration and storage, when feasible.” Here the policy provides examples but again, provides no meaningful standard to determine feasibility and provides decision makers with unbridled discretion to impose conditions on agricultural operations.

14. The Agriculture Element says “Goals, policies, and implementation programs related to farmworker and farm family housing are included in Chapter 3, Housing Element.” (2040 General Plan Update, pg. 8-2.) However, the Housing Element sections says it will be updated following the receipt of the County’s RHNA numbers and only provides information regarding the process that will be followed to conduct this subsequent update. The County should at least make a reasoned effort to explain how farmworker housing fits into the overall County housing framework and how it relates to the County’s RHNA numbers.
15. Draft EIR Mitigation Measure AG-1, including New Policy AG-X and Implementation Program AG-X, require discretionary development to avoid loss of Important Farmland to the extent feasible, and require permanent preservation of “offsite” farmland through conservation easements to mitigate direct or indirect loss of Important Farmland. The measure should clarify that “offsite” means any qualifying farmland not located within the lost farmland, including farmland that is contiguous with, adjacent to, or part of the same legal parcel as the lost farmland. In addition, the measure should provide that the requirement does not apply to discretionary projects involving agriculture-dependent or agriculture-related uses sited on Important Farmland, such as farm stands, wineries, breweries, and agriculture-tourism facilities, including parking for such uses.
16. The 2040 General Plan Update generally maintains the same use restrictions on agricultural and open space land. It also emphasizes a tightening when it comes to making changes to develop uses on such lands. For example, under the discussion in the 2040 General Plan Update of agricultural land policies, it states a County policy direction to “Establish policies and regulations which restrict agricultural land to farming and related uses rather than other development purposes.” (2040 General Plan Update, pg. 2-28 and 2-32.)

However, there may be desirable complimentary uses to agriculture that could be prohibited by this policy. For example, it is unclear whether a wine tasting room in connection with a vineyard would be considered a farming related use. Care should be taken to assess the overall implications of restrictive land use policies on potentially desired land uses in agricultural areas.



17. Policy LU-6.1 requires non-agricultural land uses adjacent to agricultural uses to “incorporate adequate buffers (e.g. fences, setbacks) to limit conflicts with adjoining agricultural operations.” This policy provides an open-ended standard that does not really provide any meaningful guidance to decision makers. For example, the County would have unbridled discretion to determine setbacks leaving development proponents with no meaningful way to determine project parameters.
18. Policy “LU-8.5 Farmworker Housing” is a new policy supporting development of farmworker housing: “The County shall support the development of safe and quality farmworker housing that facilitates a reliable labor force and promotes efficient agricultural operations. Housing units shall include a variety of housing types, including group quarters and larger dwelling units that can accommodate a family. (RDR) [Source: New Policy].” Existing policy concerning uses appropriate for the agriculture land use designation include uses “accessory to agriculture” but that policy does not specifically call out farmworker housing. It is unclear whether farmworker housing would be allowed on agricultural land. Future development of farmworker housing on agricultural land should be made explicit.
19. Policy LU-11.3 requires new commercial and industrial developments to be designed, among other things, to “reduce vehicle miles traveled (VMT)”. (General Plan DEIR, pg. 4.8-11.) However, it is unclear how project design would affect VMT since VMT may be more a function of project location than design. The County should clarify the types of design measures it expects projects to potentially implement to reduce VMT. If the County’s intent is to simply discourage commercial and industrial development in certain parts of the County and to promote it in others, it should just say so.
20. Policy COS-4.3 that is referenced in Land Use Element requires all structures and sites designated or being considered for designation as County Historical landmarks to be preserved as a condition of discretionary development unless the structure is unsafe or deteriorated beyond repair. This absolute mandate that provides a “one-size fits all” approach to potentially historic structures and sites does not recognize that there may be unique circumstances in which such an approach is unwarranted.

Under this proposed policy, preservation of structures or sites is mandated if they are “being considered for designation” whether they eventually become designated or not. Such a policy is so open ended it is impossible to assess its potential impacts. CEQA recognizes that an historical resource listed in a local register is presumed to be historically or culturally significant unless a preponderance of evidence demonstrates it is not historically or culturally significant. (CEQA Guidelines, Section 15064.5(a)(2).) By providing an absolute preservation standard, Policy COS-4.3 conflicts with the aforementioned CEQA Guidelines section that allows evidence to be presented and evaluated on the question of whether a resource is



historic. There may be circumstances in which removal or alteration of an historical or cultural resource may be desirable or warranted. For example, CEQA also allows for a statement of overriding considerations even if an impact is determined to be significant after all feasible mitigation is applied.

21. This section discusses RHNA and the County's inventory of building sites that it claims are sufficient to meet future housings needs, including affordable housing needs. It does not disclose that the County is on the state list of agencies that have not made sufficient progress toward their Above Moderate income RHNA and/or have not submitted the latest Housing Element Annual Progress Report (2018), and are therefore subject to the streamlined ministerial approval process (SB 35 (Chapter 366, Statutes of 2017) streamlining) for proposed developments with at least 10% affordability.
22. Policies in the Circulation, Transportation and Mobility Element appear to require both Vehicle Miles Traveled ("VMT") and Level of Service ("LOS") analysis for discretionary projects. Policy CTM-1.1 requires VMT analysis and Policy CTM-1.4 requires LOS analysis. Policy CTM-1.4 states that the LOS analysis is to evaluate the effects of a project on the roadway system. However, it is unclear why both VMT and LOS would be required in light of SB 743. CEQA Guidelines Section 15064.3, which implements SB 743, provides that vehicle miles traveled is the most appropriate measure of transportation impacts and that "a project's effect on automobile delay shall not constitute a significant impact."

Pursuant to CEQA Guidelines Section 15064.3, this section, is effective statewide beginning July 1, 2020, with the exception that a lead agency may elect to be governed by the CEQA Guidelines sooner. In light of the direct guidance that has determined that automobile delay will no longer be considered a significant impact, it is unclear why the County would still require LOS evaluation or have any project standards tied to LOS analysis.

23. Policy COS-10-4 Greenhouse Gas Reductions in Existing and New Development provides that the County "shall reduce GHG emissions in both existing and new development through a combination of measures included in the GHG Strategy". These strategies include "new and modified regulations." Without identifying what these potential new and modified regulations would entail, it is unclear how they would affect exiting business operations, future development and/or the physical environment. While this policy may assume such new regulations would reduce greenhouse gases, issues such as whether the regulations would have secondary impacts leading to significant environmental effects is not known.

Additionally, the DEIR would eliminate Implementation Program COS-EE, which provides for streamlined GHG analysis for projects consistent with the General Plan; this seems



undesirable since the purpose of program EIRs is in part to streamline future environmental review.

We are asking that the County provide more time for public input by scheduling additional time for staff to review these comments. The policies in this Plan will have a significant bearing on housing creation and production for years to come and should be reviewed with that scope and attention in mind. This remains critical because the County and the State are still experiencing a severe housing crisis, which has now been exacerbated by COVID-19. The pandemic should not be the reason this review process is abbreviated. In fact, the County not only needs to accommodate feedback that existed pre-COVID, but also provide more opportunity for how COVID-19 stands to affect this Plan.

For the reasons expressed above, it is vital for the County to pivot their actions and adjust course to more actively respond to the crises at hand. Should you have any questions, please contact Diana Coronado at dcoronado@bialav.org.

Sincerely,

Diana Victoria Coronado
Vice President
BIA-Los Angeles/Ventura

Sent via e-mail

CC:

Michael Powers, County Executive Officer and Clerk of the Board of Supervisors
Susan Curtis, General Plan Update Manager