



June 2, 2021

*Sent via email*

Los Angeles City Council  
via Los Angeles City Clerk  
City of Los Angeles  
200 North Spring Street, Room 360  
Los Angeles, California 90012  
[cityclerk@lacity.org](mailto:cityclerk@lacity.org)

**Re: March 30, 2021 Memorandum on “Review Process for Projects Not Visible from Mulholland Drive”**

Dear Los Angeles City Council,

We want to thank you for the investment you have made in protecting wildlife connectivity and native biodiversity in the FY 2021-22 budget. We appreciate the actions of you and City Planning in prioritizing these issues, and in developing a draft wildlife connectivity ordinance.

However, we are writing because we are concerned that the March 30, 2021 Department of City Planning Memorandum entitled “Review Process for Projects Not Visible from Mulholland Drive” (the “Memorandum”) eliminates an important existing planning tool to ensure the protection of wildlife habitat in the eastern Santa Monica mountains. We believe that the Memorandum is (1) inconsistent with the City’s obligations under the California Environmental Quality Act (“CEQA”); (2) inconsistent with the City’s obligations under the California Endangered Species Act (“CESA”); and (3) inconsistent with the 2019 Green New Deal Sustainability Plan. While we understand the Memorandum views a connectivity ordinance as taking the place of the existing review process, a connectivity ordinance has not been finalized or adopted at this time. In addition, the existing review process and a connectivity ordinance should be considered as complementary as opposed to interchangeable.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center and its members have worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Los Angeles.

## ***The Memorandum is Inconsistent with the California Environmental Quality Act***

CEQA is California’s landmark environmental law, and was enacted to “take all action necessary to protect . . . [and] enhance the environmental quality of the state” and should be “interpreted . . . to afford the fullest possible protection to the environment within the reasonable scope of the statutory language...” (Pub. Res. Code § 21001(a); Cal. Code Regs. 14 § 15003(f).) One of the goals of CEQA is to require “assessment of environmental consequences where government has the power through its regulatory powers to eliminate or mitigate one or more adverse environmental consequences” of proposed projects. (*Friends of Westwood v. City of L.A.* (1987) 191 Cal.App.3d 259, 266-267.)

CEQA applies to any “project” that meets two elements. First, the “project” is a discretionary activity directly undertaken by a public agency or supported in whole or in part by the public agency. (Pub. Res. Code § 21080(a); 14 Cal. Code Regs § 15002(d).) Second, it is an activity that may cause a direct or reasonably foreseeable indirect physical change to the environment. (Pub. Res. Code § 21065; 14 Cal. Code Regs § 15378.)

The definition of “project” also extends to any public agency action that will not have an *immediate* effect on the environment, but still has the *potential* to result in a reasonably foreseeable indirect physical change in the environment. (Pub. Res. Code § 21065; 14 Cal Code Regs §15378(a); *Union of Med. Marijuana Patients, Inc. v City of San Diego* (2019) 7 Cal.5th 1171, 1187; *Muzzy Ranch Co. v Solano County Airport Land Use Comm’n* (2007) 41 Cal.4th 372, 381-382.) Public Resources Code section 21080(a) also provides that a project includes activities like a zoning ordinance.

The Memorandum meets each of these elements, as set forth below.

**First, the Memorandum is a discretionary activity of a public agency.** Under CEQA, a “discretionary” decision is one in “which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, [or] regulations.” (14 Cal. Code Regs. § 15357.) Courts apply a “functional” test to determine whether an action is discretionary, focusing on whether “the agency has the authority to shape or condition the project in ways that are responsive to environmental concerns.” (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 302.)

Here, the Memorandum expressly refers to the Director’s “decision-making authority” in signing the Memorandum. (Memorandum at 6.) The Memorandum also states it was executed “under the authority granted to the Director of Planning . . .” (Memorandum at 6, underlining in original.) Under the plain wording of the Memorandum, the Memorandum would not qualify as a “ministerial” action of the Planning Department. And even if the Memorandum somehow qualified as “hybrid” between a ministerial and discretionary decision, CEQA would still apply. (See *Friends of Westwood*, 191 Cal.App.3d 259, 271 (CEQA extends “to hybrid projects of a mixed ministerial-discretionary character; doubt whether a project is ministerial or discretionary should be resolved in favor of the latter characterization.”))

**Second, the Memorandum may result in a reasonably foreseeable indirect change to the environment.** While the Memorandum in and of itself may not have an immediate effect on the environment, the Memorandum will have the effect of exempting a significant amount of the City's remaining open space and wildlife habitat from existing regulations and guidelines. The Mountains Recreation and Conservation Authority ("MRCA"), an expert state agency, concluded in their April 14, 2021 letter to the City that the Memorandum "will result in the degradation of the scenic qualities, ecological capacity, and watershed health of the eastern Santa Monica Mountains." (Attachment 1.) The Santa Monica Mountains Conservancy ("SMMC") further explained in their letter of April 19, 2021 (Attachment 2) that "[t]he Design Review process has been vital to both identifying and securing protections for wildlife movement through the Eastern Santa Monica Mountains in the City-designated Wildlife Habitat Linkage Zone." The enclosed map (Attachment 3) of the "inner" and "outer" corridor graphically depicts that the amount of lands subject to the Design Review Process in the "inner" and "outer" corridor, and indicates that the Memorandum would exempt a significant amount of lands in the "outer" corridor from this process and its attendant protections and review procedures.

CEQA requires preparation of an environmental impact report or "EIR" whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (*Quail Botanical Gardens Found., Inc. v City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" St. v City of Hayward* (1980) 106 Cal.App.3d 988, 1002.) An agency may avoid preparing an EIR only if there is *no substantial evidence* in the record that the agency action may have a significant effect on the environment. *Parker Shattuck Neighbors v Berkeley City Council* (2013) 222 Cal.4th 768, 785.<sup>1</sup> Here, the MRCA and SMMC's analyses qualifies as "substantial evidence" that the Memorandum may cause a significant effect on the environment. (See Pub. Res. Code §§ 21080(e) and 21082.2 [substantial evidence may include facts, reasonable assumptions predicated on facts, and expert opinions supported by facts].) As such, there is substantial evidence in the record that the Memorandum may result in a significant impact on the environment, and CEQA applies.

Based on the above, the Department's issuance of the Memorandum without preparing an EIR or appropriate CEQA documentation is inconsistent with its obligations under CEQA. The Memorandum therefore must be rescinded.

***The Memorandum is Inconsistent with the City's Obligations under the California Endangered Species Act***

The City has an obligation to protect species that are listed or provisionally listed under the California Endangered Species Act ("CESA"), including Southern California mountain lions. The mountain lions of the Santa Monica and San Gabriel mountains are provisionally listed under the CESA and are presently at risk of extinction, primarily due to loss of habitat connectivity and open space caused by poorly sited development and lack of wildlife crossings (Gustafson et al. 2018; Benson et al. 2016; Benson et al. 2019). Under CESA, the City may not

---

<sup>1</sup> And even then, a negative declaration must be prepared. (Pub. Res. Code § 21080(c)(1); 14 Cal. Code Regs. §§ 15063(b)(2), 15064(f)(3).)

approve projects that could jeopardize the continued existence of these populations or result in destruction of essential habitat (Cal. Fish & Game Code § 2053(a) and the City must require that appropriate mitigation measures be implemented for projects that could destroy mountain lion habitat or impair connectivity (Cal. Fish & Game Code § 2054).

In issuing the Memorandum, the City has eliminated one of the only land use planning tools available to ensure contiguous wildlife habitat in the eastern Santa Monica mountains, which is important to the survival of the Santa Monica mountain lions. Instead of eliminating design reviews that result in some level of mitigation for projects that harm mountain lions and their habitat, the City should be building upon existing mitigation structures to comply with state law and protect local wildlife. Again, while a wildlife connectivity ordinance is an important step towards these goals, an ordinance has not yet been adopted and is not interchangeable with the existing design review process.

***The Memorandum Undermines the 2019 Green New Deal Sustainability Plan***

In 2019's LA's Green New Deal Sustainability Plan, the 2021 Milestones and Initiatives are to "Set biodiversity targets and pilot LA's first wildlife corridor." The Green New Deal also includes "Achieve and maintain 'no-net loss' of native biodiversity by 2035." The Memorandum will result in the continued loss of native biodiversity in one of the most important habitat areas remaining in the City. We urge the City to uphold the goals in the Sustainability Plan and direct City Planning to rescind the Memorandum.

***Conclusion***

We again thank you and City Planning for advancing the wildlife connectivity ordinance. However, we remain concerned the Memorandum will result in the reduction of protections for the City's remaining open space and wildlife habitat. We also understand that other community organizations and state agencies have voiced strong opposition to this unfortunate decision, and we share many of the concerns voiced in their letters.<sup>2</sup> Please do not hesitate to reach out to us using the email addresses below if you would like to discuss these issues with us.

Sincerely,



J.P. Rose  
Senior Attorney  
Center for Biological Diversity  
660 S. Figueroa Street, Suite 1000  
Los Angeles, California 90017  
[jrose@biologicaldiversity.org](mailto:jrose@biologicaldiversity.org)



Elizabeth Reid-Wainscoat  
Urban Wildlands Campaigner  
Center for Biological Diversity  
660 S. Figueroa Street, Suite 1000  
Los Angeles, California 90017  
[ereidwainscoat@biologicaldiversity.org](mailto:ereidwainscoat@biologicaldiversity.org)

---

<sup>2</sup> MRCA, Federation of Hillside and Canyon Associations, and Bel Air Skycrest Property Owners' Association submitted "appeals" of the decision which we understand the City rejected, claiming the decision is not appealable. As such, we have not styled this letter as an "appeal".

cc:

Vincent Bertoni, [vince.bertoni@lacity.org](mailto:vince.bertoni@lacity.org)

Joe Buscaino, [councilmember.buscaino@lacity.org](mailto:councilmember.buscaino@lacity.org)

Bob Blumenfield, [councilmember.blumenfield@lacity.org](mailto:councilmember.blumenfield@lacity.org)

Mike Bonin, [councilmember.bonin@lacity.org](mailto:councilmember.bonin@lacity.org)

Gil Cedillo, [gilbert.cedillo@lacity.org](mailto:gilbert.cedillo@lacity.org)

Marqueece Harris-Dawson, [councilmember.harris-dawson@lacity.org](mailto:councilmember.harris-dawson@lacity.org)

Paul Krekorian, [councilmember.krekorian@lacity.org](mailto:councilmember.krekorian@lacity.org)

Paul Koretz, [paul.koretz@lacity.org](mailto:paul.koretz@lacity.org)

John Lee, [councilmember.lee@lacity.org](mailto:councilmember.lee@lacity.org)

Nury Martinez, [councilmember.martinez@lacity.org](mailto:councilmember.martinez@lacity.org)

Mitch O'Farrell, [councilmember.ofarrell@lacity.org](mailto:councilmember.ofarrell@lacity.org)

Mark Ridley-Thomas, [councilmember.ridley-thomas@lacity.org](mailto:councilmember.ridley-thomas@lacity.org)

Kevin de León, [councilmember.kevindeleon@lacity.org](mailto:councilmember.kevindeleon@lacity.org)

Curren D. Price, Jr., [councilmember.price@lacity.org](mailto:councilmember.price@lacity.org)

Monica Rodriguez, [councilmember.rodriguez@lacity.org](mailto:councilmember.rodriguez@lacity.org)

Nithya Raman, [nithya.raman@lacity.org](mailto:nithya.raman@lacity.org)

Herb Wesson, [councilmember.wesson@lacity.org](mailto:councilmember.wesson@lacity.org)

## References

- Benson, J. F., Mahoney, P. J., Sikich, J. A., Serieys, L. E. K., Pollinger, J. P., Ernest, H. B., & Riley, S. P. D. (2016). Interactions between demography, genetics, and landscape connectivity increase extinction probability for a small population of large carnivores in a major metropolitan area. *Proceedings of the Royal Society B: Biological Sciences*, 283(1837), 20160957.
- Benson, J. F., Mahoney, P. J., Vickers, T. W., Sikich, J. A., Beier, P., Riley, S. P. D., ... Boyce, W. M. (2019). Extinction vortex dynamics of top predators isolated by urbanization. *Ecological Applications*, 29(3), e01868.
- Gustafson, K. D., Gagne, R. B., Vickers, T. W., Riley, S. P. D., Wilmers, C. C., Bleich, V. C., ... Ernest, H. B. (2018). Genetic source–sink dynamics among naturally structured and anthropogenically fragmented puma populations. *Conservation Genetics*, 20(2), 215–227.