

# SB9 and the Hillsides

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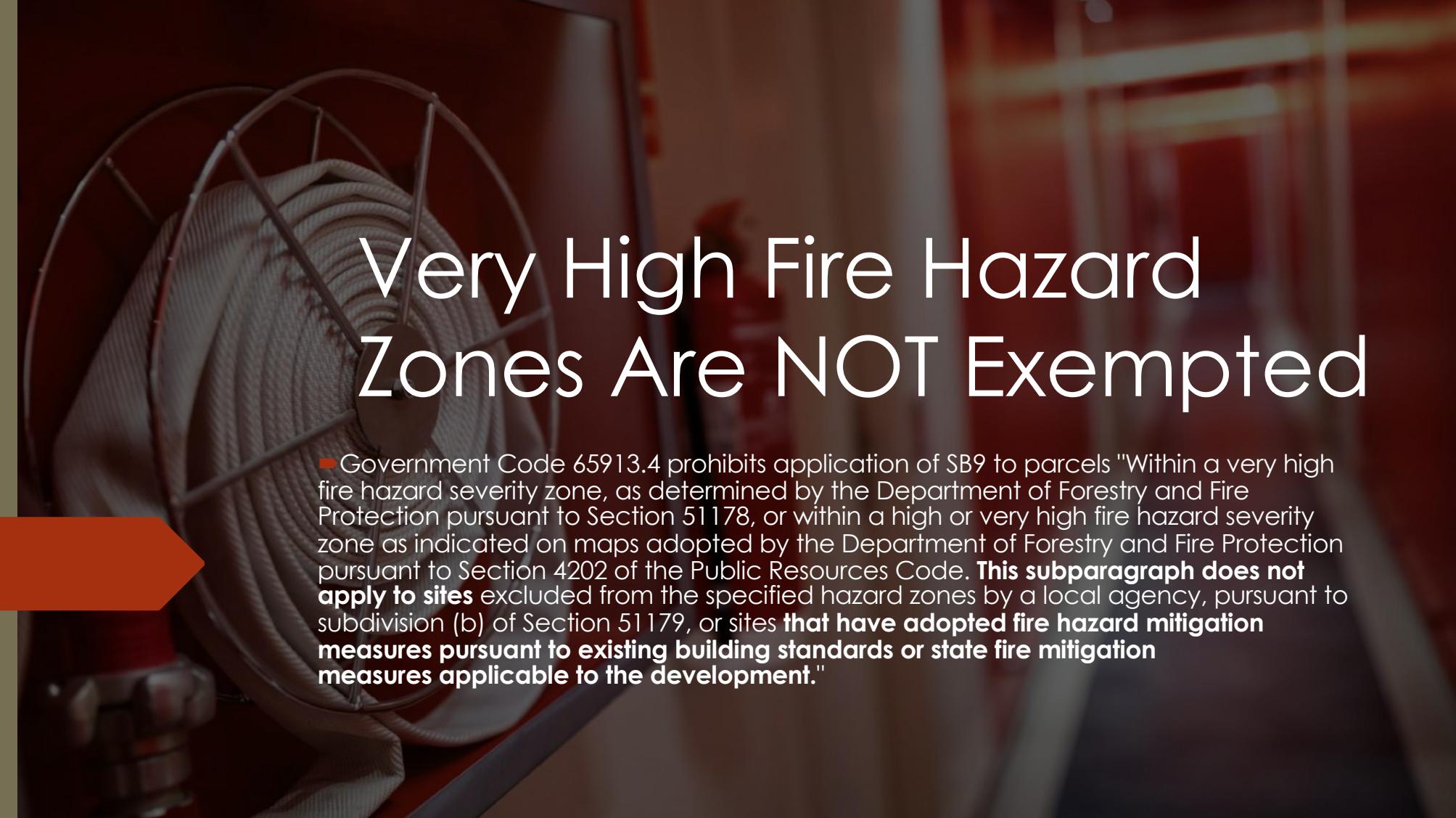


## What Does it Do?

- ▶ Allows "urban lot splits" by right.
- ▶ Allows duplexes "by right" in single family zones.
- ▶ No public hearings allowed. Period.
- ▶ Only "objective zoning standards" can be applied.

# What is an “Objective Zoning Standard?”

- “Objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve **no personal or subjective judgment by a public official** and are **uniformly verifiable** by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.”
- “These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.”



# Very High Fire Hazard Zones Are NOT Exempted

- Government Code 65913.4 prohibits application of SB9 to parcels "Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. **This subparagraph does not apply to sites** excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites **that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.**"

# Two Questions

- ▶ What are the City's "adopted fire hazard mitigation measures?"
- ▶ What are the "state fire mitigation measures applicable" to the development?
- ▶ Note: Development Only Has to be Compliant with One **or** the Other

# Key Exception

- ▶ Found at Govt Code Section 65913.4(J)
- ▶ This excludes development located on a site that is:
  - ▶ “Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).”





## What Does This Cover?

- ▶ You have to carefully parse through what this includes. It includes:
- ▶ 1. Species Identified as "Candidates" for Protection by State or Federal Agencies
- ▶ 2. Species Identified as "Sensitive" by State or Federal Agencies
- ▶ 3. Species Identified as "Special Status" by State or Federal Agencies
- ▶ 4. "Fully Protected Species" under the federal Endangered Species Act or California Endangered Species Act or Native Plant Protection Act
- ▶ 5. "Species" Protected by the federal Endangered Species Act or California Endangered Species Act or Native Plant Protection Act

## Candidate Species

► The California Department of Fish and Wildlife named the local population of **mountain lion** a candidate species for protection in April of 2020. Pursuant to California Fish and Game Code Section 2074.2 candidate species are protected under the Endangered Species Act pursuant to Section 2085.

► Any development of raw land in the Santa Monica Mountains that is adjacent or close to other areas of large open space would clearly be "habitat" for the Mountain Lion. This is because deer are the most common prey for the Mountain Lion. So, if deer use a project site (to eat, drink, etc), then it is also a habitat for the Mountain Lion.

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# Sensitive Species

- CDFW has prepared a list of "Sensitive" Natural Communities. See <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>.
- CDFW states that all natural communities on this list with ranks of 1-3 are considered "sensitive." Notably, California Black Walnut woodlands are ON this list and are designated as "sensitive." So are California-Oak Walnut woodlands. **We have LOTS of these woodlands in the hills!**

## California Sensitive Natural Communities

Wednesday, August 18, 2021

This document provides the current list of Sensitive Natural Communities. State and Global rarity ranks are indicated for Alliance and some Associations. **Natural Communities with ranks of 1-3 are considered Sensitive.** Unranked Associations considered Sensitive are marked with a Y in the rightmost column. A "?" indicates our best estimate of the rank when we know we have insufficient samples over the full expected range of the type, but existing information points to this rank. Pending additions can be found at the bottom of the full Natural Community list. For more information, or to check for updates, please see:

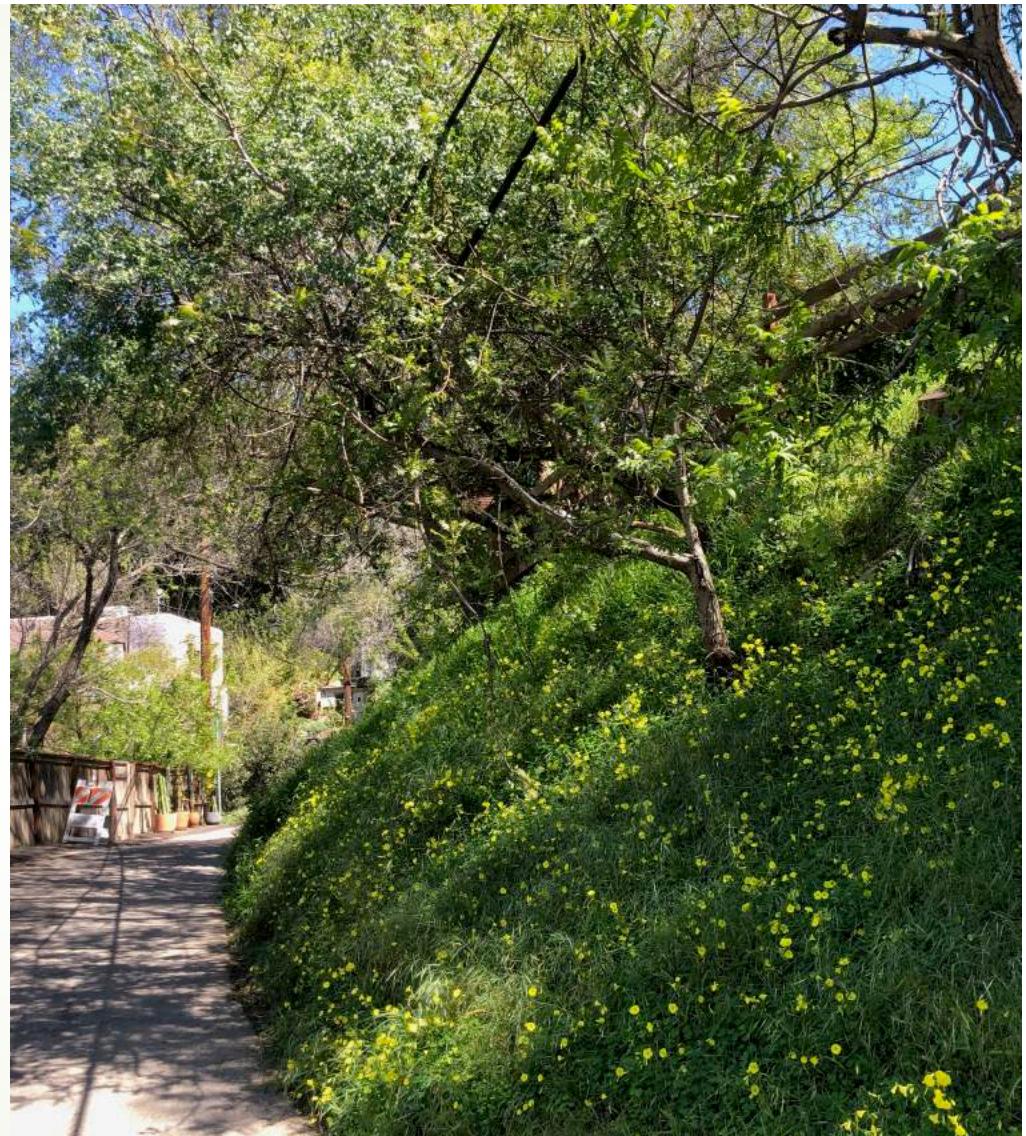
<https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities>

### California Natural Community List

CaCode	Name	Primary Life form: Tree		
		Rarity	Sensitive	Alliance
<i>Juglans californica</i>				
72.100.00	California walnut groves	G3	S3	
72.100.03	<i>Juglans californica</i> / annual herbaceous	G3	S3	Y
72.100.04	<i>Juglans californica</i> / <i>Artemisia californica</i> / <i>Leymus condensatus</i>	G3	S3	Y
72.100.05	<i>Juglans californica</i> / <i>Ceanothus spinosus</i>	G3	S3	Y
72.100.06	<i>Juglans californica</i> / <i>Heteromeles arbutifolia</i>	G3	S3	Y
72.100.07	<i>Juglans californica</i> / <i>Malosma laurina</i>	GNR		Y
72.100.08	<i>Juglans californica</i> – <i>Quercus agrifolia</i>	G3	S3	Y

## “Special Status” Species

- ▶ The list of "Special Status" species can be found at <https://www.dfg.ca.gov/wildlife/non-game/list.html>.
- ▶ The California Black Walnut is on the list of "special status species."



# Additional Thoughts

- Govt Code Section 65913.4(J) talks about a parcel providing "habitat" for such species. It doesn't say that the project will not have a significant impact on the species or that mitigation will suffice to reduce the impact.
- Rather, the threshold issue is whether the parcel provides "habitat" for that species. If it does, then SB9 does NOT apply.
- But How Will City at the Planning Counter Determine Whether a Project Provides Habitat for These Protected Species?
- Should City Require a Tree Report and Biological Resource Assessment at Application?





## Affidavit of Occupancy

- ▶ SB9 requires the City to require the applicant to "sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split."
- ▶ Of course, this could be abused, but hopefully it would prevent developers from buying up an older house - dividing the lot, building two duplexes and then moving on. They would have to LIVE in one of the housing units.



## Parking

- The City can still require one offsite parking space per housing unit. This is a significant reduction from what is currently required - two offsite parking spaces per housing unit. There is an exception if a project is "located one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code."
- Many communities are not within 0.5 miles of a "high quality transit corridor" or a "major transit stop." A high-quality transit corridor means a "corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours."
- "Major transit" stops includes subway stations
- Definition also includes "the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods."
- In sum, the City can still require one parking space per housing unit - but not two. So, street parking will get harder to find.



## Minimum Lot Size

- ▶ For an urban lot split, SB9 does not require the City to approve lot splits that would create lots of less than 1200 square feet. Most of the lots in hillside communities would meet the size requirement for a lot split.



## Tenant Issues

- If a property has been occupied by a tenant in the last three years, then it is ineligible under SB9 to build a duplex.



## Demolition Limits

► SB9 limits any demolition "of more than 25 percent of the existing exterior structural walls." However, there is an exception. The law goes on to state that more demolition may occur "if a local ordinance so allows." We need to ask the City what is allowed under the Los Angeles Municipal Code. I believe we have a 50 percent rule. This needs to be confirmed.



## ADUs and Junior ADUs

- If an applicant uses both the urban lot split and duplex provisions of SB9, then "a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on the newly created parcels."



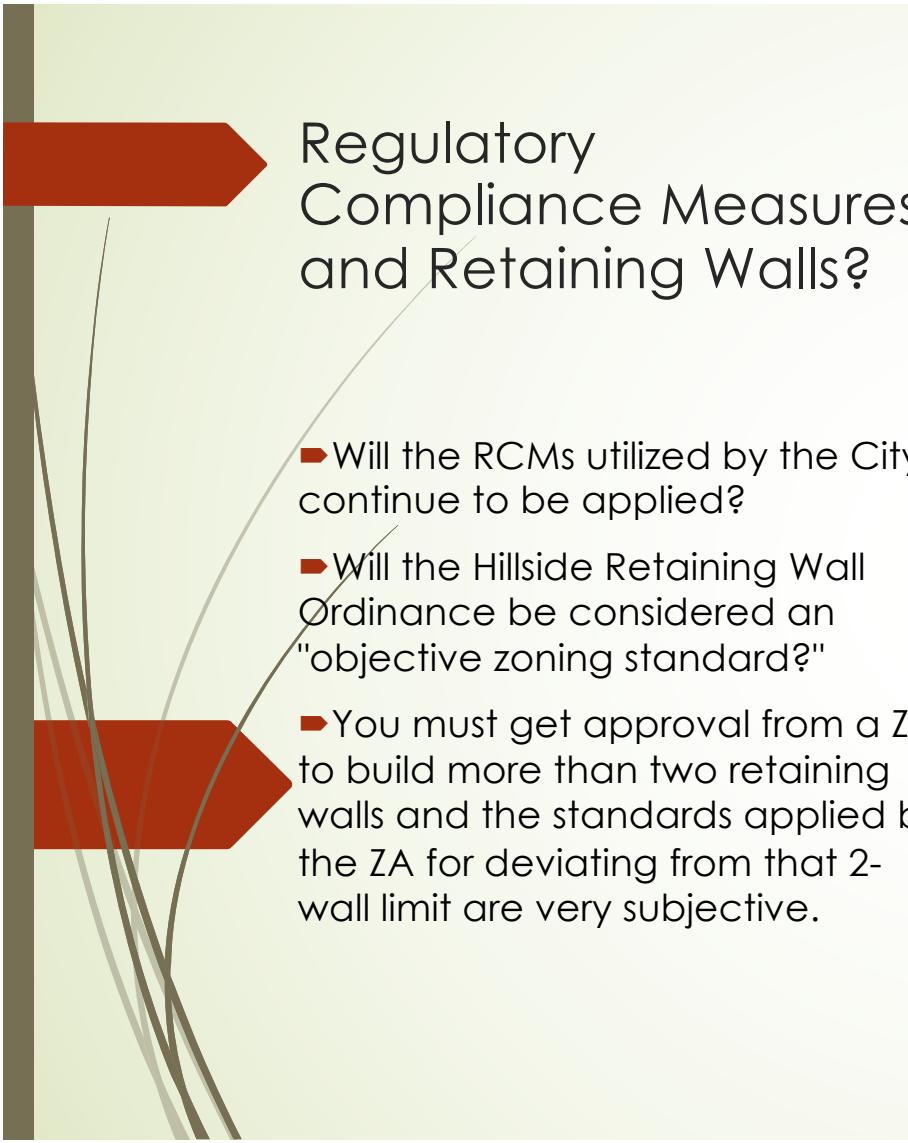
## Public Notice and Appeals

- ▶ I suspect the City is going to do "administrative reviews" for these projects. The City is calling them "project compliance reviews" and they issue Letters of Compliance.
- ▶ We need to get confirmation of the process for approval that the City intends to use. There should be some time of public notice so that interested parties can file CEQA Appeals pursuant to Public Resources Code Section 21151(c) if they believe that City got it wrong and the parcel does provide "habitat for protected species."
- ▶ I have zero confidence in the City. There is a very limited time to file such appeals under Ordinance 186338 and people need to be notified so that the appeal deadline is not missed. You have just 15 days to file an appeal once the City Planning determination is final.

## Protected Tree Ordinance Preempted?



► It is unclear if the City's Protected Tree Ordinance is an "objective zoning standard." The Ordinance does NOT mandate tree replacements contrary to popular belief. It gives the OPTION of the Board of Public Work to require such replacement IF the determine that removal is "necessary" in order to allow for "reasonable development." This seems pretty subjective to me. Further, the City takes the position that it is not a zoning regulation at all - but a regulatory compliance measure.



## Regulatory Compliance Measures and Retaining Walls?

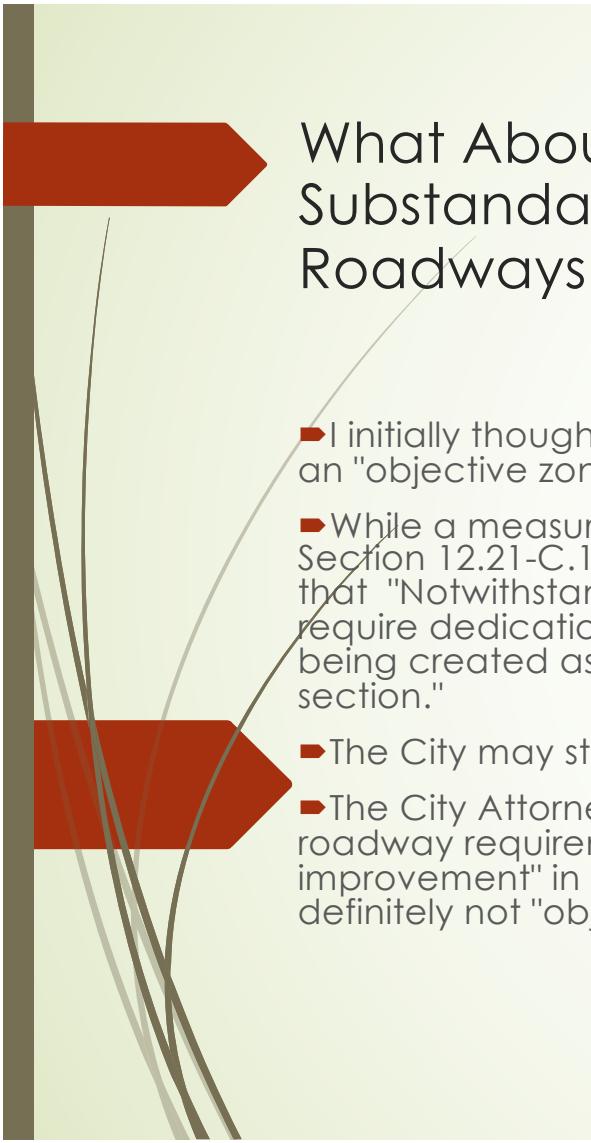
- ▶ Will the RCMs utilized by the City continue to be applied?
- ▶ Will the Hillside Retaining Wall Ordinance be considered an "objective zoning standard?"
- ▶ You must get approval from a ZA to build more than two retaining walls and the standards applied by the ZA for deviating from that 2-wall limit are very subjective.

### Regulatory Compliance Measures

In addition to the Mitigation Measures required of the project, and any proposed Project Design Features, the applicant shall also adhere to any applicable Regulatory Compliance Measures required by law. Listed below is a list of often required Regulatory Compliance Measures. Please note that requirements are determined on a case by case basis, and these are an example of the most often required Regulatory Compliance Measures.

#### AESTHETICS

- **Regulatory Compliance Measure RC-AE-1 (Hillside): Compliance with Baseline Hillside Ordinance.** To ensure consistency with the Baseline Hillside Ordinance, the project shall comply with the City's Hillside Development Guidelines, including but not limited to setback requirements, residential floor area maximums, height limits, lot coverage and grading restrictions.
- **Regulatory Compliance Measure RC-AE-2 (LA River): Compliance with provisions of the Los Angeles River Improvement Overlay District.** The project shall comply with development regulations set forth in Section 13.17.F of the Los Angeles Municipal Code as applicable, including but not necessarily limited to, landscaping, screening/fencing, and exterior site lighting.
- **Regulatory Compliance Measure RC-AE-3 (Vandalism): Compliance with provisions of the Los Angeles Building Code.** The project shall comply with all applicable building code requirements, including the following:
  - Every building, structure, or portion thereof, shall be maintained in a safe and sanitary condition and good repair, and free from, debris, rubbish, garbage, trash, overgrown vegetation or other similar material, pursuant to Municipal Code Section 91.8104.
  - The exterior of all buildings and fences shall be free from graffiti when such graffiti is visible from a street or alley, pursuant to Municipal Code Section 91.8104.15.
- **Regulatory Compliance Measure RC-AE-4 (Signage): Compliance with provisions of the Los Angeles Building Code.** The project shall comply with the Los Angeles Municipal Code Section 91.6205, including on-site signage maximums and multiple temporary sign restrictions, as applicable.
- **Regulatory Compliance Measure RC-AE-5 (Signage on Construction Barriers): Compliance with provisions of the Los Angeles Building Code.** The project shall comply with the Los Angeles Municipal Code Section 91.6205, including but not limited to the following provisions:
  - The applicant shall affix or paint a plainly visible sign, on publically accessible portions of the construction barriers, with the following language: "POST NO BILLS".



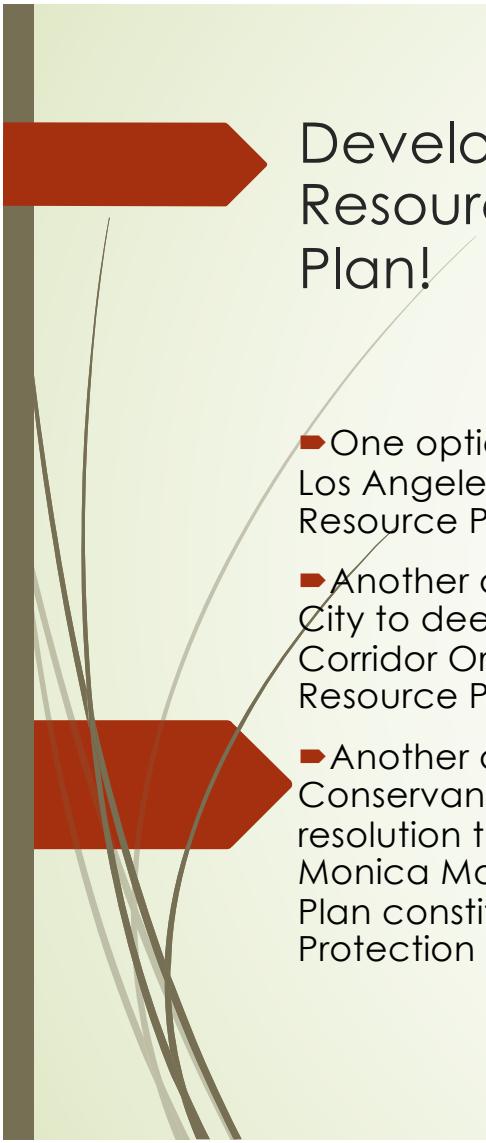
## What About Substandard Roadways?

- ▶ I initially thought that the 20 foot roadway requirement in the Hillside Ordinance was likely an "objective zoning standard."
- ▶ While a measurement is certainly "objective," SB9 may nonetheless preempt LAMC Section 12.21-C.10(i)(2) and 12.21-C.10(i)(3) of the Hillside Ordinance because the law states that "Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the **construction of offsite improvements** for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section."
- ▶ The City may still require this for the construction of duplexes that don't involve a lot split.
- ▶ The City Attorney will need to opine on this but I have a feeling that the continuous paved roadway requirement may be preempted because it would mandate an "offsite improvement" in order to comply with the law. And the standards for issuance of a ZAD are definitely not "objective zoning standards."

# An Escape Hatch!

- SB9 excludes "Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan."
- I did a little research regarding "Natural Resource Protection Plans." I couldn't find any good examples from California but many public agencies on the east coast have them.  
See <http://eastgoshen.org/wp-content/uploads/2014/08/Chapter-4.pdf>.
- These are separate and distinct from Natural Community Conservation Plans.





## Develop a Natural Resource Protection Plan!

- ▶ One option would be for the City of Los Angeles to adopt a Natural Resource Protection Plan.
- ▶ Another option would be for the City to deem the Draft Wildlife Corridor Ordinance a Natural Resource Protection Plan.
- ▶ Another adoption would be for the Conservancy to adopt a resolution that the Santa Monica Mountains Comprehensive Plan constitutes a Natural Resource Protection Plan.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

**SEC. 13##. WILDLIFE ORDINANCE.** (Added by Ord. No. ##,##, Eff. #/#/##.)

**A. Purpose.** This section sets forth procedures and standards for the Wildlife Ordinance. The purpose of the Wildlife Ordinance is to maintain and protect existing wildlife and their ecosystems and to provide co-benefits including climate resilience, resource management, and public health, by providing standards and regulations applicable to development in ecologically important areas. This is achieved through a balance between private property development and enhancement of habitat areas vital for wildlife connectivity. Protecting and maintaining areas for wildlife also serves the purposes of addressing safety and hazard mitigation (specifically wildfire, flooding, and erosion) while also addressing water and air quality. **The overall intent of the ordinance is to achieve protection of natural resources, wildlife, and open space and thereby advance sustainability and resilience goals for the City.**

# Implementation Issues

-SB9 allows cities to draft implementation ordinances. "(j) A local agency may adopt an ordinance to implement the provisions of this section."

-While the City would take FOREVER to do this, it would be useful if we could put some more meat on the bones as to what the City considers to be habitat for sensitive and candidate species and "objective" zoning standards.

-Will DCP Adopt an Implementation Memo in the Interim?

-Can the City Adopt a Moratorium While the Implementation Ordinance is Being Drafted?





## Building Official Can Deny In Extraordinary Circumstances

- The law states that a "local agency may deny a proposed housing development project if the building official makes a **written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact**, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, **upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.**"