

EXHIBIT A



ORDINANCE No. 4500

**ADDING CHAPTER 17.71, "ECOLOGICAL PRESERVES,"
TO THE EL DORADO COUNTY ORDINANCE CODE**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES
ORDAIN AS FOLLOWS:**

WHEREAS, Objective 7.4.1 of the El Dorado County General Plan and the Policies thereunder call for the establishment, management, maintenance, and monitoring of preserve sites for State and Federally recognized rare, threatened, or endangered plant species and their habitats, identified in the General Plan as the "Pine Hill endemics," consistent with State and Federal laws; and

WHEREAS, land acquisition, capital improvement, and operation and maintenance costs for such preserve sites require public funding; and

WHEREAS, under El Dorado County's land-use policies, the California Environmental Quality Act, and the State and Federal Endangered Species Acts, the protection of, and mitigation for impacts upon, rare, threatened, or endangered plant species and their habitat are legal requirements that can be triggered by development activities on sensitive land or by governmental actions, such as the acquisition or perpetuation of water supplies, that can facilitate development upon such land but from which development on all land served by such supplies also benefits; and

WHEREAS, for these reasons, and for the reasons set forth below, the Board of Supervisors deems it appropriate, within its power, and in the best interests of El Dorado County to establish a program of Ecological Preserve Mitigation and fees in lieu of such mitigation;

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES
ORDAIN AS FOLLOWS:**

Section 1 (UNCODIFIED): Purpose. The purpose of this Ordinance is to establish an integrated method of protecting certain rare, threatened, or endangered plant species and their habitat in the County as required by the El Dorado County General Plan, the California Environmental Quality Act, and the State and Federal Endangered Species Acts and, at the same time, to make the

development process simpler for landowners who, by complying with this Ordinance, may be able to minimize or avoid the more complicated process of crafting individualized mitigation measures for the direct or indirect impacts of the development of their property on these plant species and their habitat. Section 17.71.010 is hereby added to the El Dorado County Ordinance Code as follows:

Section 2 (Uncodified): Chapter 17.71, "Ecological Preserves," is hereby added to the El Dorado County Ordinance Code as set forth in this Ordinance.

Section 3: Section 17.71.010 is hereby added to the El Dorado County Ordinance Code as follows:

17.71.010 Definitions. In this Chapter,

- A. "California Endangered Species Act" or "State Endangered Species Act" means those statutes found at California Fish and Game Code sections 2050-2098 and implementing regulations.
- B. "California Environmental Quality Act" or "CEQA" means those statutes set forth at California Public Resources Code section 21000 et seq. The "CEQA Guidelines" are set forth at the California Code of Regulations, Title 14, Section 15000 et seq.
- C. "California Department of Fish and Game" or "DFG" means the California State Department of Fish and Game, a part of the State Resources Agency.
- D. "Development Project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of any discretionary or ministerial approval or permit, including a permit for construction or reconstruction, but not a permit to operate.
- E. "Ecological Preserve" means an area officially designated as such on General Plan maps on file in the County Planning Department.
- F. "Ecological Preserve Mitigation" means on and off-site mitigation standards that address direct or indirect impacts on rare plants or rare plant habitat and includes the Rare Plant Off-Site Mitigation Program.
- G. "EID" means the El Dorado County Irrigation District.

- H. "Federal Endangered Species Act" means those federal statutes found at 16 U.S.C. 1531 et seq. and implementing regulations.
- I. "Mitigation Area 0" means lands within an Ecological Preserve as shown officially on maps on file in the County Planning Department.
- J. "Mitigation Area 1" means lands outside of Mitigation Area 0 but within the area described as the "rare soils study area," shown officially on maps on file in the County Planning Department.
- K. "Mitigation Area 2" means lands outside of Mitigation Areas 0 and 1 but within the EID service area, excluding those parcels served by wells, shown officially on maps on file in the County Planning Department.
- L. "Rare plants" or "Pine Hill endemics" means plants found in serpentine or gabbroic soils that are considered rare, threatened or endangered on a state or federal list prepared under the Endangered Species Acts. At the time of adoption of this chapter, rare plants included the species listed below. Other plant species added to the state or federal lists in the future are automatically deemed to be included here, unless the county is notified by the DFG that the added species habitat requires modification of this chapter.

El Dorado bedstraw	Galium californicum ssp. sierrae
Laynes butterweed	Senecio layneae
Pine Hill ceanothus	Ceanothus roderickii
Pine Hill flannel bush	Fremontodendron californicum ssp. decumbens
Stebbins' morning glory	Calystegia stebbinsii
Bisbee Peak rush rose	Helianthemum suffrutescens
El Dorado mule ears	Wyethia reticulata
Red Hills soaproot	Chlorogalum grandiflorum

- M. "Rare Plant Off-Site Mitigation Program" means acquiring and restoring rare plant habitat through the purchase of fee interests or conservation easements of land within a designated Ecological Preserve. Acquisition and Restoration of rare plant habitat must be equal to 1.5 times the number of acres developed. Off-site mitigation must be conducted according to guidelines established by the county and will be subject to review by

representatives of USFSWS and DFG. The land or development rights purchased must be dedicated to a specified resource protection agency such as the Bureau of Land Management, DFG or a designee of the agency.

- N. "USBR" means the United States Bureau of Reclamation.
- O. "USFWS" means the United States Fish & Wildlife Service.

Section 4 (Uncodified): Findings. The Board of Supervisors hereby makes the following findings of fact and declares them to be the basis upon which this Ordinance is enacted:

For the reasons set forth below, the establishment and maintenance of a fully funded system of five rare plant preserves is a legitimate state interest; the requirements of Ecological Preserve Mitigation or a fee in lieu thereof in the Mitigation Areas substantially furthers that interest; and the requirements of Ecological Preserve Mitigation or a fee in lieu thereof are reasonably related to impacts of development and the cost of establishing and maintaining the preserve system.

- A. There are eight rare, threatened, or endangered plant species found in western El Dorado County: El Dorado bedstraw, Laynes butterweed, Pine Hill ceanothus, Pine Hill flannelbush, Stebbins' morning glory, Bisbee Peak rush rose, El Dorado County mule ears, and Red Hills soaproot. Habitat for these plant species is on gabbroic and serpentine soils areas.
- B. Protecting rare, threatened, or endangered species and their habitat is required by law. Under CEQA, a development project is considered to have a significant effect on the environment if it would substantially affect a rare or endangered species or its habitat. (CEQA Guidelines, App. G, subd. (c).) A lead agency for a project is required to make all feasible changes in a project to lessen or avoid significant adverse effects on the environment. (Pub. Resources Code §§ 21002; 21002.1, subd. (b); 21081, subd. (a).)

The California Endangered Species Act provides that it is the policy of the state to conserve, protect, restore, and enhance any endangered or threatened species and its habitat, and generally outlaws the "take" of such species. (Fish & Game Code §§ 2052, 2080.)

The Federal Endangered Species Act provides that it is the policy of Congress that all federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of those purposes, and generally outlaws the "take" of any such species from areas under federal jurisdiction or in violation of state law. (16 U.S.C. § 1538, subd. (a)(2).)

- C. The El Dorado County General Plan provides that the County shall protect state and federally recognized rare, threatened, or endangered species and their habitat consistent with federal and state laws. The policies include coordination with DFG and other appropriate agencies, development of mechanisms for the establishment of preserves, development of programs to fund the purchase of property and easements and to maintain preserve sites, and the establishment of guidelines for management of preserve sites. (Conservation and Open Space Element, Goal 7.4, Objective 7.1.) The County has legal authority to impose such regulations to promote the public welfare. (Cal. Const. art. XI, § 7.)
- D. Generally, before development occurs in Mitigation Areas 0 and 1, a property owner must undergo and pay for an evaluation of whether or not there are rare, threatened, or endangered plants on the property. If there are, mitigation measures to protect the plants may be imposed as conditions of approval to development. Currently, mitigation is done primarily through the establishment of "non-building areas" on subdivision or parcel maps, thereby setting aside a portion of the property to sustain some protected habitat area. Such mitigation has been on a localized, project-by-project basis, often focusing on a single species. In Mitigation Area 2, the need for mitigation for direct or indirect impacts to rare plants and their habitat may not have been recognized in all cases.
- E. There are two difficulties in the current approach. First, it results in a fragmented and sometimes ineffective means of protecting the species because the protected habitat areas are too small, piecemeal, and geographically isolated from one another. Because of their small size and isolation from other patches of habitat, they are vulnerable to loss of the rare plant populations they are established to protect. Management and monitoring of such small areas with the limited state and local government resources available is difficult and sometimes impractical. Second, for the landowner, the current process is often frustrating and uncertain.

There are significant costs and delays. Plant surveys must be done on individual parcels, and conducted according to established protocols by a professional botanist. There are additional delays and costs associated with developing and implementing mitigation plans for each development project. Extensive coordination is required among County staff, DFG, USFWS and the landowner.

- F. In 1993, the El Dorado Rare Plant Technical Advisory Committee recommended, and the board of supervisors approved, a more effective, coordinated approach: to focus mitigation for impacts to rare plants by establishing and providing for management of a preserve system. The advantages of establishing preserves are threefold: ensuring that rare plant species within the gabbro and serpentine soils area are preserved; reducing the costs, delay, and uncertainty for landowners seeking approval for development activities; and reducing the need for DFG to recommend non-building, non-grazing, non-landscaping areas on individual properties. Further, by identifying the best preserve areas and protecting multiple species over these larger areas, the species are more likely to survive and be protected and long-term maintenance and monitoring of the areas is more efficient and effective.
- G. On February 26, 1993, the board of supervisors unanimously approved in concept a plan to create preserve areas and directed the staff to develop funding mechanisms.
- H. The preserve areas, the Ecological Preserve Mitigation including the Rare Plant Off-Site Mitigation Program, and the fee in lieu of such mitigation are all based upon the following studies, which are incorporated herein by reference:

"Preserve Sites and Preservation Strategies for Rare Plant Species in Western El Dorado County," prepared for El Dorado County by EIP Associates, November 1991;

Planning department agenda transmittal memorandum to board of supervisors entitled "Rare Plant Preserve Program," dated February 26, 1993;

The Economic Feasibility Study for the El Dorado County Ecological Preserves, dated February 3, 1997, prepared by Economic and Planning Systems, Inc. (EPS);

Addendum and Update to the Economic Feasibility Study for the El Dorado County Ecological Preserves, dated July 1997, prepared by EPS;

Memorandum to El Dorado County board of supervisors, dated March 16, 1998, prepared by EPS.

- I. In addition to the regulations in this Ordinance, there are proposed separate and supplemental local funding mechanisms for the acquisition and maintenance of the preserve sites. These include contributions from private, non-profit organizations and from other agencies (including EID, El Dorado County Water Agency, CalTrans, the Wildlife Conservation Board of DFG, USBR, and the U.S. Bureau of Land Management). The federal and state funding agencies require local matching funds in order to authorize grants for the acquisition of rare plant habitat lands, and have not offered sufficient funding to fully fund the preserve system in any event.
- J. This Ordinance partially implements Goal 7.4 of the county General Plan as to protection of rare, threatened, and endangered plant species and their habitats.
- K. With respect to all of the Mitigation Areas, there is a reasonable relationship between the need for the preserve areas and the type of development project on which the fee can be paid in lieu of Ecological Preserve Mitigation, because the development projects potentially subject to the fee create a demand for water supplies that cannot be met unless the full ecological preserve system is established. There is a reasonable relationship between the fee's use and the type of development project on which the fee can be paid in lieu of Ecological Preserve Mitigation, because the fee will be used to establish and maintain the full ecological preserve system.
- L. The development projects subject to the fee are all associated with land uses that require water. Those water demands are expected to be satisfied via public water service, because all lands within Mitigation Areas 0 and 2 are also within the EID service area, and all lands within Mitigation Area 1 are within the service area of a public water purveyor, primarily EID.
- M. As set forth in more detail in EID's 1997 and 1998 Updates to the Water Supply and Demand Report and El Dorado County's Approved 1996 Update Water Supply and Demand Report and 1996 Public Water Availability Evaluation, each of which documents are incorporated

herein by this reference, EID can satisfy current levels of water demand, and a limited amount of future additional demands, from its existing water supplies. The majority of those existing supplies are obtained through water supply contracts with USBR for water from the Sly Park Reservoir unit of the Central Valley Project (CVP) and water from the Folsom Reservoir unit of the CVP. Without both of these USBR contracts, EID could not supply current demand, much less additional future demand from new development projects.

- N. EID plans to supply a substantial amount of additional future water demand within Mitigation Areas 0, 1, and 2 from a proposed water supply contract between El Dorado County Water Agency (EDCWA) and USBR for other water from the Folsom Reservoir unit of the CVP. Without this EDCWA/USBR contract, EID's ability to supply additional future water demand is likely to be limited.
- O. Thus, it is necessary for EID both to maintain its existing USBR contracts, and to obtain the benefits of the proposed EDCWA/USBR contract, for there to be sufficient water supplies available to meet the demands of new development projects within the Mitigation Areas.
- P. The purpose of the ecological preserve system for which Ecological Preserve Mitigation or a fee in lieu thereof will be required is to sustain the eight rare plant species. Virtually all known occurrences of the rare plants are within Mitigation Areas 0 and 1. Five of the eight species are listed as rare or endangered under the California Endangered Species Act, and listed as endangered or threatened under the Federal Endangered Species Act (FESA).
- Q. Pursuant to the FESA, USFWS has duly identified the past and ongoing destruction of the rare plants and their habitat as adverse environmental impacts of the CVP in a memorandum to the USBR Regional Director in Sacramento dated February 27, 1995, which memorandum and all attachments are incorporated herein by this reference. ~~By virtue of that determination, neither interim nor long-term renewals of both of EID's existing USBR contracts can proceed unless actions are taken to avoid jeopardy to the rare plants and to ensure their long-term survival. By inference, the EDCWA/USBR contract will not be executed unless actions are taken to avoid jeopardy to the rare plants and to ensure their long-term survival.~~
- R. EID's USBR contract for Sly Park is presently due for renewal. EID's USBR contract for Folsom Reservoir is due

for renewal in the near future. The EDCWA/USBR contract is authorized by federal legislation, upon the completion of environmental studies. Thus, the issue of CVP impacts on the rare plants has immediate consequences for both the maintenance and expansion of EID's existing water supplies.

- S. Based upon statements by authoritative representatives of the California Department of Fish & Game in prior public hearings before the El Dorado County Board of Supervisors and the EID Board of Directors, upon the November 1991 report entitled *Preserve Site and Preservation Strategies for Rare Plant Species in Western El Dorado County*, upon the recommendation of the County Planning Department dated February 26, 1993 and considered by the Board of Supervisors on March 9, 1993, and upon the applicable policies and provisions of the County General Plan, all of which are incorporated herein by this reference, the County hereby finds and determines that a fully-funded program for the establishment and operation of the full rare plant preserve system is necessary and sufficient to avoid jeopardy to the rare plants and to ensure their long-term survival.
- T. Therefore, it is necessary for the County to impose an Ecological Preserve Mitigation requirement or a fee in lieu thereof to alleviate the adverse impacts that development projects in the Mitigation Areas impose upon needed existing and future water supplies, as a result of jeopardy to the rare plants and their habitat from the use of those water supplies.
- U. With respect to Mitigation Areas 1 and 2, there is also a reasonable relationship between the need for the preserve areas and the type of development project on which the Ecological Preserve Mitigation requirement or fee in lieu thereof is imposed, because the development projects subject to the requirement or fee create direct and indirect adverse impacts upon the rare plants and their habitat. There is a reasonable relationship between the imposition of the Ecological Preserve Mitigation requirement or fee in lieu thereof and the type of development project on which they are imposed, because the lands acquired or fees paid will be used to establish and maintain the full ecological preserve system.
- V. As demonstrated by the traffic analyses performed for the County General Plan, which analyses are incorporated herein by this reference, the development projects subject to Ecological Preserve Mitigation or fee in lieu

thereof are all associated with land uses that increase demands on road capacity within the fee area and countywide. As a consequence, road improvements will be required within the Mitigation Areas that will adversely impact the rare plants and their habitat. Establishment of the full ecological preserve system will mitigate those adverse impacts.

- W. As demonstrated by the air quality analyses performed for the County General Plan, which analyses are incorporated herein by this reference, the development projects subject to Ecological Preserve Mitigation or fee in lieu thereof are all associated with land uses that will increase air pollution within the Mitigation Areas and countywide. This degradation in air quality has a demonstrated adverse impact on plant vegetation generally. Establishment of the full ecological preserve system will mitigate those adverse impacts on the rare plants.
- X. The development projects subject to Ecological Preserve Mitigation or the fee in lieu thereof are all associated with land uses that convert land from open-space uses. The conversion of land within the habitat of the rare plants has obvious and direct adverse impacts on the rare plants and their habitat. Even the conversion of land nearby the habitat of the rare plants has an indirect adverse impact on the rare plants and their habitat in the following ways: the presence of more intensive neighboring land uses has "edge effects" that degrades habitat by subjecting remaining open space lands to increased informal, unauthorized, and/or incompatible uses such as animal invasion, vehicular travel, and rubbish dumping; neighboring development increases the difficulty of carrying out appropriate management activities, such as prescribed burning, within the remaining open space.
- Y. With respect to Mitigation Areas 1 and 2, there is a reasonable relationship between the amount of the fee and the portion of the cost of the preserve areas attributable to the development upon which the fee can be paid in lieu of Ecological Preserve Mitigation, and the fee does not exceed the estimated reasonable cost of providing the ecological preserve system for which it is imposed, as established by the documents previously incorporated herein by reference.

Section 5: Sections 17.71.200-17.71.300 are hereby added to the El Dorado County Ordinance Code as follows:

17.71.200 Ecological Preserve Mitigation and Fee in Lieu of Mitigation. There are hereby established an Ecological Preserve Mitigation requirement comprised of on-site and off-site mitigation standards and an ecological preserve fee in lieu of such mitigation. The amounts of the fee shall be established periodically by resolution of the board of supervisors and shall be based on the formula set forth in this Ordinance.

17.71.210 On-site Mitigation in Mitigation Area 0. Development within Mitigation Area 0 will continue to address mitigation for impacts to rare plants on an individual basis. Within Mitigation Area 0, on-site mitigation is strongly encouraged. Developments within Mitigation Area 0 shall mitigate impacts by exercising one of the following three options:

- A. Set aside a part of the property and dedicate a perpetual conservation easement for habitat protection; or
- B. Cluster development in the least environmentally sensitive portion of the property according to the Implementation Strategy adopted by the County in March 1993 and receive in appropriate cases a density bonus in return for dedication of a perpetual conservation easement over the remainder of the property; or
- C. Provide an independent mitigation plan that meets CEQA requirements, such as the purpose of long-term protection of an amount of habitat in the same Ecological Preserve and as close to the development site as feasible, equal to at least 1.5 times the acreage developed.

Option B, above, shall apply only to properties greater than five (5) acres in area.

17.71.220 Off-site Mitigation or Fee Payment in Lieu of Ecological Preserve Mitigation in Mitigation Areas 1 and 2. Payment of a fee in lieu of Ecological Preserve Mitigation is encouraged in Mitigation Areas 1 and 2. Developments in Mitigation Areas 1 and 2 shall mitigate impacts by exercising one of the following two options:

- A. Pay the appropriate fee in lieu of Ecological Preserve Mitigation for the direct or indirect impacts caused by development on rare plants and rare plant habitat; or
- B. Participate in the Rare Plant Off-Site Mitigation Program.

17.71.230 Ecological Preserve Fee; Formula. The amount of the fee is based on the following formula: Mitigation Areas 1 and 2 are each assigned 50% of the total local cost of the Rare Plant Mitigation Program, based upon the probability that 50% of the total adverse impact of development on rare plant habitat will be caused by future development within each Mitigation Area. The fee is then charged on a per dwelling unit equivalent basis, where one single-family unit equals one dwelling unit equivalent, one multi-family unit equals 0.75 dwelling unit equivalent, and 1,500 sq. ft. of commercial space equals one dwelling unit equivalent. The actual amount of the fees per dwelling unit equivalent in Mitigation Areas 1 and 2 are as set forth in the then-current board of supervisors resolution establishing the actual fee amounts.

17.71.240 Annual Fee Review. The fee amounts shall be reviewed on an annual basis and adjusted as necessary to insure that the anticipated fees are no more and no less than required for the purpose for which they are collected.

17.71.250 Time of Fee Payment. The fee is due at the time of final inspection or certificate of occupancy, whichever is first, unless the board of supervisors in adopting the fee resolution establishes that the fee may be collected at any earlier time.

17.71.260 Exemption or Credits. If the county planning director in consultation with DFG and USFWS finds that a development project which has already received all needed discretionary approvals at the effective date of this Chapter has already met its mitigation obligations in whole or in part, such project will be exempted or credited against its Rare Plant Mitigation Obligation or fee in lieu thereof to a degree equivalent to the mitigation already provided. No other exemptions or credits to the Rare Plant Mitigation or fee in lieu thereof shall be allowed.

17.71.270 Accounting. The county shall maintain a separate rare plant ecological preserve account for fees collected, and provide an accounting within sixty (60) days of the close of each fiscal year. Any person may request an audit of the fund. In addition, the county shall make findings each fifth fiscal year following the first deposit into the fund with respect to unexpended portions of the fund, in which the county: identifies the purpose to which the fee is to put; demonstrates a reasonable relationship between the fee and the purpose for which it is charged; identifies all sources and amounts of funding anticipated to complete financing; and designates the approximate dates on which the funding is expected to be deposited.

17.71.280 Handling. The fee shall be collected by the county building department. The county treasurer shall maintain the account. The county planning department, in consultation with DFG

and USFWS, shall make recommendations to the board of supervisors regarding the expenditures of funds from the account to acquire or maintain designated preserve land.

17.71.290 Appeals. An appeal from a decision made pursuant to this Ordinance shall be in accordance with the appeals procedures set forth in chapter 17.08 of the county ordinance code, except that DFG shall also be notified of the appeal hearing in writing at least five (5) days in advance of the hearing.

17.71.300 Termination of Mitigation Requirement or Fee in Lieu of Mitigation. The requirements of mitigation or payment of a fee in lieu of Ecological Preserve Mitigation shall terminate at such time as the board of supervisors finds, and DFG and USFWS concur, that a fully funded system of five (5) rare plant preserves has been established in the on-going operation and maintenance of said preserves is fully funded.

Section 6 (Uncodified): Severability. The board of supervisors hereby declares that it would have passed this ordinance notwithstanding any partial invalidity, and that if any portion of this ordinance is finally held by a court of competent jurisdiction to be unlawful, unconstitutional, invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

Section 7 (Uncodified): Effective Date. This ordinance shall be effective and take effect 60 days from and after the date of its final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 28TH day of JULY, 1998 by the following vote of said Board:

SUPERVISORS: SUPERVISORS: WILLIAM S. BRADLEY,
Ayes: J. MARK NIELSEN, WALTER L. SHULTZ,
JOHN E. UPTON

ATTEST
DIXIE L. FOOTE
Clerk of the Board of Supervisors

Noes: SUPERVISOR: RAYMOND J. NUTTING
Absent: NONE

By Margaret E. Moody
Deputy Clerk

John E. Upton
Chairman, Board of Supervisors

I CERTIFY THAT:
THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

Date _____
ATTEST: DIXIE L. FOOTE, Clerk of the Board of Supervisors
of the County of El Dorado, State of California.

By _____
Deputy Clerk

TDC:sln
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