

(Distributed at meeting)

PC 1/26/12 #10

DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

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TO: Planning Commission Agenda of: January 26, 2012
FROM: Tom Dougherty, Project Planner *T.D.* Item No.: 10
DATE: January 25, 2012
RE: Rezone Z10-0009/Planned Development PD10-0005/Tentative Parcel Map P10-0012/Creekside Plaza: Wetland and Riparian Habitat Mitigation Measures

The following are recommended mitigation measures drafted by the project biologist to address the concerns of the California Department of Fish and Game ("DF&G") as stated in their letter dated January 18, 2012 (copy attached) in response to the re-circulation of the project's Initial Study-Environmental Checklist. Also attached is a copy of DF&G's January 25, 2012 email to Tom Dougherty stating their approval of the recommended mitigation measures. Please note that there is not a **Bio-2** mitigation measure. Pursuant to CEQA Section 15074.1, Planning is recommending that the following sections of the Initial Study-Environmental Checklist include the following additions and modifications of mitigation measures based on the following finding:

CEQA FINDING

The Planning Commission finds that the additional mitigations are typical of those required of a California Department of Fish and Game ("DF&G") 1602 Permit, and that they expand and clarify the expected specific activities utilized to mitigate impacts. The addition of the mitigations does not change the initial conclusions and determinations, and the additional mitigations, prepared by the project biologist, have been approved by DF&G. The additional measures have been determined to be equivalent and more effective in mitigating potentially significant impacts to the wetlands and riparian habitat, as permitted by CEQA Section 15074.1 (b)(2).

The following is the section of the Initial Study-Environmental Checklist to be revised:

IV. BIOLOGICAL RESOURCES. (page 12, b-c)

b-c. **Riparian Habitat, Wetlands:** The submitted Biological Resource Assessment ("BRA") determined that the unnamed tributary to Weber Creek within the project boundaries, the associated riparian habitat, and the oak woodland, were potential important habitats present at the site. The BRA's wetland delineation determined that portions of the

proposed development area would occur within the 50-foot setback riparian area shown on the submitted site plan for the construction and installation of the retaining walls and parking areas. Approximately 299 feet of the identified intermittent stream and associated riparian area are proposed to be filled with soil beginning at the culvert under Forni Road then northwest into the project area. That portion would be routed through a 48-inch diameter culvert installed underground and routed to the west of proposed Building C, continue to just north of proposed Building B, then back into the remaining creek bed, eventually to join the waters of Weber Creek.

North Fork Associates delineated waters of the United States for the project site in July of 2006. The Department of the Army, Corps of Engineers ("Corps") verified the revised delineation on September 9, 2008. The letter verified that an intermittent stream (0.60 acre) and a wetland swale (0.06) were the only features found and verified to be within Corps jurisdiction (total 0.66 acre). The stream was determined to be intermittent, and identified as an unnamed tributary to Weber Creek. Activities affecting the unnamed stream would require a permit from the Corps.

The project description and Wetland Delineation Map were revised and sent to the Corps in a letter from the project Consulting Biologist dated January 4, 2010 for review under Nationwide 39 Permit requirements, required by Section 404. The Corps will analyze the project's proposed mitigations, development area, as well as any proposed potential impacts from undergrounding utilities through the wetland preserve. They will determine their final requirements that would assure the preservation of the wetland area to their specifications, but that would allow reasonable development of the constrained site.

The Corps reviewed the project and determined that the wetlands identified by the submitted report are regulated under Section 404 of the Clean Water Act. The applicants have initiated the permit application process for the project with the Corps, and they in turn are developing mitigation measures through the 404 Permit process. The Corps permit will define terms and conditions, including mitigation, for the fill activities. The project may also be regulated by potential Streambed Alteration Agreements to be obtained from CDFG, if applicable, pursuant to Sections 1602 of the California Fish and Game Code, as well as a potential California Water Quality Certification, Section 401 permit from the Regional Water Quality Control Board. All three agencies would require review of the development plans prior to issuance of a grading and/or building permit. The following Mitigation Measures are recommended to be included into the project Conditions of Approval in order to reduce the impacts to the unnamed creek area to a level that would be anticipated to be less than significant:

Impact: The project will affect the bed, bank, and channel of a stream, including the adjacent riparian habitat. The project as proposed will affect 0.5 acre of riparian habitat, including nearly 300 linear feet of stream channel. This impact is considered significant.

The applicant has submitted a permit to the California Department of Fish and Game for a Lake and Streambed Alteration Agreement (LSAA) pursuant to Section 1600 of the California Fish and Game Code. That application has measures to offset impacts to streams and riparian habitat.

Implementation of these mitigation measures would ensure the no-net-loss policies of the Department of Fish and Game and will reduce the project impacts to less-than-significant levels. The following mitigation measures would reduce impacts to the unnamed tributary to Weber Creek, including riparian habitat would be included and be implemented to the satisfaction of Fish and Game:

BIO-3: Streambed Alteration Agreement: *A Streambed Alteration Agreement, pursuant to Fish and Game Code 1602, shall be obtained by the applicants, from the California Department of Fish and Game, if applicable, for each stream crossing and any other activities affecting the bed, bank, or associated riparian vegetation of any stream on the site. Appropriate mitigation measures ~~would~~ shall be developed in coordination with CDFG in the context of the agreement process. Authorization prior to placement of any fill is required from the U.S. Army Corps of Engineers if any impacts are proposed to jurisdictional riparian habitat. This authorization may require mitigation as deemed necessary by the Corps of Engineers. The Agreement shall address the following to the satisfaction of the Department of Fish and Game:*

- a. The applicant will purchase credits in the National Fish and Wildlife Foundation Fund for impacts to the stream and riparian habitat. Credits will be obtained at a minimum ratio of 1:1. This must be done before County permits are issued.*
- b. The applicant will:*
 - i. Set aside the unimpacted portion of the stream and adjacent riparian habitat (approximately 0.9 acre) in separate legal parcel;*
 - ii. Place the preserved parcel in a Conservation Easement;*
 - iii. Obtain an approved 501(c)(3) non-profit organization to hold the Conservation Easement;*
 - iv. Provide a Long-term Operations and Management Plan describing activities for managing the preserved parcel, and*
 - v. Provide a long-term funding mechanism to be approved by the Department of Fish and Game.*
 - vi. Provisions a. through e. must be completed before County permits are issued.*
- c. The applicant will provide an approved restoration plan for riparian planting. Elements of that plan will include:*
 - i. A map of locations and species for the plants installed in the restoration area;*
 - ii. A discussion of performance standards stating that 80 percent of the planted trees will be alive at the end of the five-year monitoring;*
 - iii. The method for determining whether plantings are alive at the end of each monitoring year (that is, each tree will be counted and determined to be dead or alive; dead trees will be replanted)*
 - iv. A discussion contingency measures that could be used in the event that the restoration plantings fail. These measures could include, but are not limited to, making additional plantings and extending the monitoring period or purchasing additional credits in an acceptable fund or mitigation bank.*
 - v. Submission of annual reports for the restoration project to the Department of Fish and Game.*
 - vi. This plan must be approved by the Department of Fish and Game before County permits are issued.*

Monitoring Responsibility: *Planning Services*

Monitoring Requirement: *The applicant shall provide a copy of the 1602 Streambed Alteration Agreement to Development Services prior to issuance of the grading permit. If it has been determined by Fish and Game that said permit does not apply after their review of the development plans for the project, the applicant shall provide Planning Services with verification from Fish and Game that no Agreement is needed for the project, prior to issuance of a building and/or grading permit for the project area.*

Impact: Waters of the United States, including wetlands: The project would impact 0.29 acres of waters of the United States within the jurisdiction of the U.S. Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act. This includes impacts to Weber Creek, adjacent wetlands, and a wetland swale extending from Missouri Flat Road to Weber Creek. This impact would be considered significant.

Mitigation measures for impacts to waters of the United States: The area of Corps jurisdiction is much less than the area covered by Department of Fish and Game jurisdiction. Consequently, the mitigation measures for impacts to streams and riparian impacts would compensate for impacts to waters of the United States. Implementation of those measures would reduce impacts to waters of the United States to less-than-significant levels.

BIO-4: Wetland Delineation Verification: *An intermittent stream (0.60 acre) and a wetland swale (0.06) have been verified by the U.S. Army Corps of Engineers (Corps) as waters of the U.S. The applicants shall request for a Department of the Army authorization with the Corps prior to placement of fill material in waters of the U.S. through the 404 Permit process. Along with the request, the applicants shall provide project construction and development drawings or maps including e.g. wetland areas, denoting all proposed improvements in relation to the Ordinary High Water Mark (OHWM). Applicant shall strive to avoid adverse and minimize impacts to waters of the United States, and to achieve a goal of no net loss of wetlands functions and values. Applicant shall propose to the Corps appropriate mitigation for unavoidable losses to waters of the U.S. using Corps mitigation guidelines and regulations. The Corps permit will define terms and conditions, including mitigation, for the fill activities.*

Monitoring Responsibility: *Planning Services*

Monitoring Requirement: *The applicant shall provide either a copy of the Corps permit or no permit required letter and provide Planning Services with a copy prior to issuance of a building, and/or grading permit for the project area.*

Impact: The project could affect downstream water quality: The project has the potential to adversely affect water quality downstream, both during construction and during operation of the project. This impact would be significant. The applicant would implement the following mitigation measures to ensure downstream water quality. Implementation of these measures will reduce downstream water quality impacts to less-than-significant levels:

BIO-5: Water Quality Certification: *A Water Quality Certification, Section 401 permit, if applicable, shall be obtained by the applicant from the California Regional Water Quality Control Board for applicable project improvements. Appropriate mitigation measures shall be developed in coordination with in the context of the agreement process. Additionally, the following shall be included to the satisfaction of the California Regional Water Quality Control Board:*

- a. The applicant will prepare a Storm Water Pollution Prevention Plan for approval. That plan will describe methods for ensuring downstream water quality during construction and will be implemented before construction begins.
- b. Work areas will be separated by buffers and orange construction fencing to delineate the preserved riparian areas. No grading will be allowed within the fenced-off buffer zones.
- c. Waste and construction materials will be placed where they will not run off into the stream, or they will immediately be removed off-site.
- d. The project will include a Continuous Deflection Separation system to remove oil and other substances from runoff within the project area before it is discharged to Weber Creek. This system will be maintained by the property owner as described in the Contech Stormwater Solutions technical manuals.

Monitoring Responsibility: *Planning Services and Building Services or DOT.*

Monitoring Requirement: *The applicant shall provide a copy of the Section 401 permit to Development Services prior to issuance of the grading permit. If it has been determined by the California Regional Water Quality Control Board that said permit does not apply after their review of the development plans for the project, the applicant shall provide Planning Services with confirmation from them of that determination prior to issuance of a building and/or grading permit for the project area. The Storm Water Pollution Prevention Plan shall be reviewed and approved by Building Services or DOT prior to issuance of a grading permit.*



State of California - The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
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Rancho Cordova, CA 95667
(916) 358-2900
<http://www.dfg.ca.gov>

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



January 18, 2012

Tom Dougherty
County of El Dorado Planning Services
2850 Fairlane Court
Placerville, CA 95667

Subject: Comments on the Mitigated Negative Declaration for the Creekside Plaza Project, SCH# 2011092017

Dear Mr. Dougherty:

The California Department of Fish and Game (DFG) has reviewed the County of El Dorado's proposed Mitigated Negative Declaration (MND) for the rezone, planned development, and tentative parcel map associated with the Creekside Plaza project (Project) located on the northwest corner of the intersection of Forni and Missouri Flat Roads, in Placerville.

DFG is providing comments on the MND as both a trustee agency and responsible agency under the California Environmental Quality Act (CEQA). As trustee for the State's fish and wildlife resources, the DFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of such species. The DFG may also be a responsible agency for a project affecting biological resources where we will exercise our discretion after the lead agency to approve or carry out a proposed project or some facet thereof.

Impacts to Unnamed Tributary to Weber Creek

The MND should consider and analyze whether implementation of the proposed Project will result in reasonably foreseeable potentially significant impacts subject to regulation by the DFG under Section 1600 et seq. of the Fish and Game Code. In general, such impacts result whenever a proposed project involves work undertaken in or near a river, stream, or lake that flows at least intermittently through a bed or channel, including ephemeral streams and water courses. Impacts triggering regulation by the DFG under these provisions of the Fish and Game Code typically result from activities that:

- Divert, obstruct, or change the natural flow or the bed, channel or bank of any river, stream, or lake;
- Use material from a streambed; or
- Result in the disposal or deposition of debris, waste, or other material where it may pass into any river stream, or lake.

Conserving California's Wildlife Since 1870

STAFF MEMO 01-25-12 (WETLAND/RIPARIAN)
12-0224.E.6

In the event implementation of the proposed project involves such activities, and those activities will result in reasonably foreseeable substantial adverse effects on fish or wildlife, a Lake or Streambed Alteration Agreement (LSAA) will be required by the DFG. Because issuance of a LSAA is subject to review under the California Environmental Quality Act (CEQA), the MND should analyze whether the potentially feasible mitigation measures set forth below can avoid or substantially reduce impacts requiring a LSAA from the DFG.

1. Protection and maintenance of the riparian, wetland, stream or lake systems to ensure a no-net-loss of habitat value and acreage. Vegetation removal should not exceed the minimum necessary to complete operations.
2. Provisions for the protection of fish and wildlife resources at risk that consider various life stages, maintain migration and dispersal corridors, and protect essential breeding (i.e. spawning, nesting) habitats.
3. Delineation of buffers along streams and wetlands to provided adequate protection to the aquatic resource. No grading or construction activities should be allowed within these buffers.
4. Placement of construction materials, spoils or fill, so that they cannot be washed into a stream or lake.
5. Prevention of downstream sedimentation and pollution. Provisions may include but not be limited to oil/grit separators, detention ponds, buffering filter strips, silt barriers, etc., to prevent downstream sedimentation and pollution.
6. Restoration plans must include performance standards such as the types of vegetation to be used, the timing of implementation, and contingency plans if the replanting is not successful. Restoration of disturbed areas should utilize native vegetation.

The MND does not address significant impacts associated with the permanent loss of approximately 300 linear feet of the unnamed tributary to Weber Creek, nor does the MND address impacts associated with the removal of associated riparian vegetation. Mitigation Measure BIO-3 states that "a Streambed Alteration Agreement pursuant to Fish and Game Code 1602, shall be obtained by the applicants... Appropriate mitigation measures would be developed in coordination with CDFG in the context of the agreement process". Simply requiring the Project applicant to obtain a LSAA from the DFG does not reduce significant impacts to a level that is below significant under CEQA. As a responsible agency under CEQA, the DFG must rely on the CEQA analysis for the Project when exercising our discretion after the lead agency to approve or carry out some facet of a proposed project, such as the issuance of a LSAA. Therefore, the MND should include specific, enforceable mitigation and restoration actions that will reduce the significant impacts associated with the permanent removal of 300 linear feet of stream and riparian habitat identified in the MND, to a level that is below significant.

Enforceable Mitigation Measures

CEQA Guidelines §§15126.4 (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. The MND lists mitigation measures for aquatic resources (i.e. mitigation measures BIO-3, BIO-4, and BIO-5), and terrestrial biological resources (i.e. mitigation measure BIO-1), that rely on future surveys, approvals, or agreements with Resource Agencies as a means to bring identified significant environmental effects to below a level that is significant. Because there is no guarantee that these approvals or cooperation with all of the above entities will ultimately occur, the DFG believes that the above mitigation measures are unenforceable and do not bring the impacts to aquatic resources to below a level that is significant.

Mitigation measures should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented, and explain why the measure is feasible. Therefore, the DFG recommends that the mitigation measures include measures that are enforceable and do not defer mitigation details to some future time. The MND should identify the following items: how each measure will be carried out; who will perform the measures; when the measures will be performed; and the performance standards and mechanisms for achieving success, and an assured source of funding to acquire and manage identified mitigation lands. The MND should describe a range of enforceable mitigation measures that will be implemented in instances where approval and cooperation with the entities identified above either does or does not occur.

We appreciate your consideration of the DFG's comments. The DFG personnel are available for consultation regarding biological resources and strategies to minimize impacts. If you have questions please contact Patrick Moeszinger, Environmental Scientist, at 916-358-2850, or by e-mail at pmoeszinger@dfg.ca.gov

Sincerely,



Jeff Drongesen
Environmental Program Manager

cc: Jeff Drongesen
Jennifer Navicky
Patrick Moeszinger
Amy Kennedy



Tom Dougherty <tom.dougherty@edcgov.us>

Proposed Creekside Plaza-EI Dorado County

3 messages

Tom Dougherty <tom.dougherty@edcgov.us>

Wed, Jan 25, 2012 at 8:08 AM

To: Amy Kennedy <AKENNEDY@dfg.ca.gov>, Patrick Moeszinger <PMOESZINGER@dfg.ca.gov>

Cc: Jeff Drongesen <JDronges@dfg.ca.gov>, Jennifer Navicky <JDNAVICKY@dfg.ca.gov>, Shaundra Cashdollar <SCASHDOLLAR@dfg.ca.gov>

Amy and Patrick,

Attached are the recommended mitigation measures drafted by the project biologist, Barry Anderson, in response to your letter dated January 18, 2012 (also attached). The hearing is tomorrow at 9 am. Could you please review the attached draft from Barry and let us know as soon as possible if they will satisfy the concerns stated in your letter?

Tom Dougherty, Project Planner
 El Dorado County Development Services Department
 2850 Fairlane Court
 Placerville, CA 95667

Phone: (530) 621-5875; Fax: (530) 642-0508
tom.dougherty@edcgov.us

2 attachments

 Creekside Plaza Biologists Response to CDFG letter of 01-18-2012 (3).doc
 51K

 Fish and Game Comments on MND for Creekside Plaza (1).pdf
 878K

Patrick Moeszinger <PMOESZINGER@dfg.ca.gov>

Wed, Jan 25, 2012 at 12:22 PM

To: Tom Dougherty <tom.dougherty@edcgov.us>

Cc: Amy Kennedy <AKENNEDY@dfg.ca.gov>


 Tom,

The Department of Fish and Game (DFG) has reviewed the proposed revised mitigation measures provided by the project biologist, Barry Anderson (attached). The DFG believes that incorporation of these measures into the final CEQA document approved by the County will resolve our concern that the previous mitigation measures did not meet the standard identified under CEQA Guidelines section 15126.4.

As a responsible agency under CEQA, the DFG must rely on the CEQA analysis for the project when exercising our discretion after the lead agency to approve or carry out some facet of the proposed Project, such as the issuance of a Lake or Streambed Alteration Agreement (LSAA). Therefore, by including enforceable mitigation and restoration actions that will reduce the significant impacts associated with the stream and riparian habitat identified in the Mitigated Negative Declaration, DFG is able to exercise our discretion after the lead agency to approve or carry out a proposed project or some facet thereof, such as issuance of a LSAA.

Thank you,

Patrick Moeszinger
 Environmental Scientist
 California Department of Fish and Game
 North Central Region
 1701 Nimbus Road
 Rancho Cordova, CA 95670
 phone: (916) 358-2850
 fax: (916) 358-2912

>>> Tom Dougherty <tom.dougherty@edcgov.us> 1/25/2012 8:08 AM >>>

Amy and Patrick,

[Quoted text hidden]

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Thank you.

 **Creekside Plaza BiologistsResponse to CDFG letter of 01-18-2012 (3).doc**
51K

Tom Dougherty <tom.dougherty@edcgov.us>

Wed, Jan 25, 2012 at 12:32 PM

To: Barry Anderson <barry.botany@usamedia.tv>

[Quoted text hidden]

 **Creekside Plaza BiologistsResponse to CDFG letter of 01-18-2012 (3).doc**
51K

Creekside Plaza Impacts and Mitigation Measures

Impact: The project will affect the bed, bank, and channel of a stream, including the adjacent riparian habitat.

The project as proposed will affect 0.5 acre of riparian habitat, including nearly 300 linear feet of stream channel. This impact is considered significant.

The applicant has submitted a permit to the California Department of Fish and Game for a Lake and Streambed Alteration Agreement (LSAA) pursuant to Section 1600 of the California Fish and Game Code. That application has measures to offset impacts to streams and riparian habitat.

Mitigation Measures for impacts to riparian habitat

The following mitigation measures will reduce impacts to the unnamed tributary to Weber Creek, including riparian habitat.

- a) The applicant will purchase credits in the National Fish and Wildlife Foundation Fund for impacts to the stream and riparian habitat. Credits will be obtained at a minimum ratio of 1:1. This must be done before County permits are issued.
- b) The applicant will:
 - i. Set aside the unimpacted portion of the stream and adjacent riparian habitat (approximately 0.9 acre) in separate legal parcel;
 - ii. Place the preserved parcel in a Conservation Easement;
 - iii. Obtain an approved 501(c)(3) non-profit organization to hold the Conservation Easement;
 - iv. Provide a Long-term Operations and Management Plan describing activities for managing the preserved parcel, and
 - v. Provide a long-term funding mechanism to be approved by the Department of Fish and Game.
 - vi. Provisions a. through e. must be completed before County permits are issued.
- c) The applicant will provide an approved restoration plan for riparian planting. Elements of that plan will include:
 - i. A map of locations and species for the plants installed in the restoration area;
 - ii. A discussion of performance standards stating that 80 percent of the planted trees will be alive at the end of the five-year monitoring;
 - iii. The method for determining whether plantings are alive at the end of each monitoring year (that is, each tree will be counted and determined to be dead or alive; dead trees will be replanted)

- iv. A discussion contingency measures that could be used in the event that the restoration plantings fail. These measures could include, but are not limited to, making additional plantings and extending the monitoring period or purchasing additional credits in an acceptable fund or mitigation bank.
- v. Submission of annual reports for the restoration project to the Department of Fish and Game.
- vi. This plan must be approved by the Department of Fish and Game before County permits are issued.

Implementation of these mitigation measures will ensure the no-net-loss policies of the Department of Fish and Game and will reduce the project impacts to less-than-significant levels.

Impact: The project could affect downstream water quality.

The project has the potential to adversely affect water quality downstream, both during construction and during operation of the project. This impact would be significant.

Mitigation Measures to ensure downstream water quality.

The applicant will implement the following mitigation measures to ensure downstream water quality.

- a) The applicant will prepare a Storm Water Pollution Prevention Plan for approval. That plan will describe methods for ensuring downstream water quality during construction and will be implemented before construction begins.
- b) Work areas will be separated by buffers and orange construction fencing to delineate the preserved riparian areas. No grading will be allowed within the fenced-off buffer zones.
- c) Waste and construction materials will be placed where they will not run off into the stream, or they will immediately be removed off-site.
- d) The project will include a Continuous Deflection Separation system to remove oil and other substances from runoff within the project area before it is discharged to Weber Creek. This system will be maintained by the property owner as described in the Contech Stormwater Solutions technical manuals.

Implementation of these measures will reduce downstream water quality impacts to less-than-significant levels.

Impact: Waters of the United States, including wetlands.

The project would impact 0.29 acres of waters of the United States within the jurisdiction of the U.S. Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act. This includes impacts to Weber Creek, adjacent wetlands, and a wetland swale extending from Missouri Flat Road to Weber Creek. This impact would be considered significant.

Mitigation measures for impacts to waters of the United States

The area of Corps jurisdiction is much less than the area covered by Department of Fish and Game jurisdiction. Consequently, the mitigation measures for impacts to streams and riparian impacts would compensate for impacts to waters of the United States.

Implementation of those measures would reduce impacts to waters of the United States to less-than-significant levels.