



CALIFORNIA
NATIVE PLANT SOCIETY

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December 8, 2017

Board of Supervisors
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

Sent via email: planning@edcgov.us

Re: Comments on the Ponte Palmero Project

To the Board of Supervisors:

We have a longstanding interest in this project since development of the site will affect significant numbers of rare plants and their habitat which is associated with the gabbro soil complex located in El Dorado County. Here we generally refer to these as the "Pine Hill plants" with specific impacts described in the FEIR for several species that occur on the undeveloped property. We last communicated with your agency about this project in March 2017 in our comments on the DEIR. Some but not all of the issues we raised were resolved in the FEIR.

The principle issue we raise in the comments below concerns the protection and conservation of four plant species that are identified as rare, threatened or endangered (under state and/or federal regulation). These rare species occur within the proposed project area and the impacts to them are not adequately mitigated in the scenarios presented in the DEIR. Furthermore, the proposed project and alternatives do not avoid the take of species listed under the California Endangered Species Act or the Native Plant Protection Act as required by law. Because the project does not avoid take of species listed as rare under the Native Plant Protection Act, it must "fully mitigate" the impacts to state listed rare species. However, the project as described in either scenario does not fully mitigate impacts to these species.

Specific Comments

I. Analysis of impacts and mitigation

Table 4.3-2 of the DEIR appropriately identifies two species that occur on the project site, *Ceanothus roderickii* and *Packera layneae*, as "California rare" species, as denoted by "R" in the table. This means that these species are protected under the Native Plant Protection Act. The Act provides protection for plants designated as "rare" and regulations issued by the California Department of Fish and Wildlife (CDFW) provide a permitting process, e.g., the 2081 permitting process used for the California Endangered Species Act, that ensures compliance with the law.

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The staff report mentions the intention of the project proponent to apply for a 2081 permit from CDFW. This means that the proponent intends to “take” listed species. The terms of a 2081 permit require that the impacts to the species affected be “fully mitigated.” There is no analysis in the FEIR that evaluates the ability of the project under the two scenarios presented to “fully mitigate” impacts to these species. Scenario 2 certainly does not fully mitigate impacts to listed species and scenario one may not as well.

Mitigation Scenario 2

Mitigation scenario 2 includes the dedication of only 1.17 acres of degraded land that was illegally cleared of vegetation, including destroying rare plants, and graded during the Congregate Care project. In addition, transplantation of *Ceanothus* cuttings is proposed for this site and the payment of about \$68,000 in rare plant fees. These activities by themselves are not adequate to “fully mitigate” the loss of habitat occupied by *Ceanothus* and surrounding this species. The mitigation area itself is too small, and protection of the dedicated area is not assured, since this isolated property is not adjacent to existing preserve lands. This scenario also does not adopt all feasible mitigation measures since it omits the dedication of approximately 9.47 acres of habitat occupied by the affected rare species. Such a dedication would certainly further lessen the impacts to rare species and is clearly “feasible” since it was included in Scenario 1.

Mitigation scenario 2 is also the same type of mitigation package that was offered for the Congregate Care project. That mitigation package was found by the courts to be inadequate to substantially lessen or avoid impacts to protected plant species. The decision on that project was set aside by the Third District Court of Appeal in 2009 finding that the mitigation was inadequate. (*CNPS v. County of El Dorado* (2009) 170 Cal.App.4th 1026.)

The FEIR should not be certified with Scenario 2 as a potential development option, since it would not be consistent with direction in CEQA to adopt feasible mitigation measures to lessen impacts and would not fully protect the species listed under the Native Plant Protection Act. This scenario would also not “protect State and Federally recognized rare, threatened, or endangered species and their habitats consistent with Federal and State laws” as required by General Plan Objective 7.4.1.

Mitigation Scenario 1

Mitigation scenario 1 includes the dedication of approximately 9.47 acres of intact rare plant habitat, i.e., the portion that has not been degraded by the project proponent’s actions. Less than half of the rare *Ceanothus* occurs on the area to be dedicated, and more than half of the *Ceanothus* plants on the site will be destroyed by the development. Scenario 2 also includes transplantation of *Ceanothus* cuttings the degraded parcel (1.17 acres). These actions do not reduce direct impacts to less than significant as claimed in the FEIR, nor do they “fully mitigate” for the take of state listed rare species.

The FEIR concludes that under Scenario 1 the direct impacts to the rare plants and gabbro soil habitat would be less than significant. “The dedication of 10.64 acres of land to the Pine Hill Preserve, in the event that another lawsuit is not filed, would reduce impacts to the special-status plant species located within the 9.11 acres designated for development to less than significant.” There is no analysis provided to support this conclusion.

There is an “Applicant Proposed Draft CEQA Impact Analysis and Mitigation Measures for Ponte Palmero II Project, June 23, 2016” provided in Appendix D of the DEIR. This report merely provides an accounting of acres of rare plant habitat to be developed and numbers of rare plants to be removed as a result of the proposed development. There are no analyses or discussion that evaluates the impacts of the loss of this habitat and the loss of individuals to the persistence of the affected species. This lack of analysis is especially glaring considering that the project as proposed will result in the “take” of over 3,000 individuals of *Ceanothus roderickii*, a state-listed rare plant.

The completed Congregate Care Project destroyed about 7,000 individuals of *Ceanothus roderickii*. The original estimate from 2005 was that there were about 12,000 plants of this species distributed across the 60-acre property. A consequence of development of the Congregate Project and completion of the Ponte Palmero project as currently proposed would result in the destruction or “take” of about 10,000 individuals. In no other location within the gabbro soils area have such high numbers of this rare species been recorded. The loss of this historically rich occurrence is not addressed in the analysis.

The analysis provided in the FEIR also does not evaluate the standard “fully mitigate” which is applicable to rare species listed under the Native Plant Protection Act. The “fully mitigate” standard is a higher conservation standard than the “reduce to less than significant” standard required by CEQA. Further, the “fully mitigate” standard is not subject to overriding considerations that can be made by the decision making body as is the case under CEQA.

II. Dedication of Parcel 4 Does Not Meet the Settlement Agreement or Provide for Mitigation.

Parcel 4 has been identified as mitigation for project impacts and as satisfying, in part, the settlement agreement. The settlement agreement presumes that the area designated for rare plant mitigation is relatively undisturbed rare plant habitat. As we noted in our comments on the approach to mitigation for this project proposed in 2012 and 2014, unpermitted grading and disturbance occurred on this parcel during the development of the Congregate Project. To our knowledge, damage to the plant resources from this illegal disturbance has never been addressed or mitigated. Furthermore, most of Parcel 4 has been identified as “ruderal/disturbed” in the project documents as a result of the illegal removal of most of the vegetation which was followed by a heavy application of mulch or straw. This graded and disturbed area should not be counted towards meeting the terms of the settlement. This small isolated parcel that is surrounded by intensive develop is also not suitable for dedication to the Pine Hill Plant Preserve.

The project proponent in the FEIR now proposes to transplant cuttings of the rare *Ceanothus* to this location as mitigation for the loss of plants. This is an improvement over the proposal in the DEIS. However, the proposed mitigation leaves unaddressed the long-term protection and management of this isolated parcel. In the likely event that the BLM is unwilling to accept management of this parcel that is small and not adjacent to any preserve lands (as they declined to accept a similarly degraded area associated with the Congregate Care project), no alternative is provided to protect and manage the area in perpetuity. Such a provision is required by CEQA and if this dedication becomes part of the management actions that contribute to the take permit that the project proponents plans to seek from CDFW, it would be required for that permitting process as well.

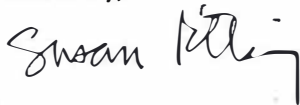
The project description must address how any lands dedicated as mitigation measures will be protected in perpetuity.

III. Integrating Planning and Permitting Processes for the Pine Hill Plants

We ask that the County develop an approach to planning and permitting for projects that affect the Pine Hill plants that integrates the permitting requirements that required by the US Fish and Wildlife Service, the California Department of Fish and Wildlife, with the environmental approval process undertaken by the County. Integration of the environmental review and approval process is the only way the County will be able to achieve the General Plan Objective 7.4.1 to “protect State and Federally recognized rare, threatened, or endangered species and their habitats consistent with Federal and State laws.”

We ask that the FEIR for the proposed project not be certified until the issues identified in section I and II, above, are addressed and resolved. If you have any questions about these comments, please contact me at (530) 295-8210 or britting@earthlink.net.

Sincerely,



Susan Britting, Ph.D.
Conservation Chair, El Dorado Chapter