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BOARD OF SUPERVISORS  
EL DORADO COUNTY

## MEMORANDUM

**To:** El Dorado Business Alliance  
**From:** Dudek (Keith Babcock and June Collins)  
**Subject:** General Comparison of Conservation Strategies Regarding El Dorado County INRMP  
**Date:** April 25, 2007

### Background and Purpose

The purpose of this Memorandum is to outline issues and potential strategies associated with conservation planning and species permitting options in El Dorado County. Overall conservation planning goals are outlined in the Conservation and Open Space Element of the El Dorado County General Plan, particularly Policy 7.4.2.8 that refers to preparation and implementation of an Integrated Natural Resources Management Plan (INRMP) within 5 years following adoption of the General Plan (dated June 2004). It is our understanding that El Dorado County is currently considering several approaches to fold permitting for state and federally listed plant and animal species into the INRMP process. This Memorandum outlines some of the issues, benefits, and constraints of each approach.

This Memorandum relies on existing available information, including the following:

- El Dorado County General Plan
- El Dorado County General Plan EIR (including relevant biological data and maps)
- Draft Work Plan for the El Dorado County INRMP
- Existing available regulatory and policy guidance regarding Natural Community Conservation Plans (NCCPs) and Habitat Conservation Plans (HCPs)
- Dudek's existing files regarding Southern California multiple species conservation plans and NCCPs/HCPs (Dudek has been involved in these efforts in Southern California for about 15 years).

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## General Regulatory Framework

A number of state and federal regulations apply to the protection and conservation of plants and animals considered rare, threatened, or endangered by state and/or federal resource agencies. At the federal level, the federal Endangered Species Act (FESA) includes prohibitions for “take” of plant and animal species listed as threatened or endangered and provides two permitting mechanisms that allow take to occur: the Section 10 permit process that requires a HCP be prepared and results in an Incidental Take Permit, and the Section 7 consultation process that is triggered when the alteration of habitat on a given site requires the action (authorization, funding, permitting) of another federal agency. The resulting consultation between the two agencies typically results in a Biological Opinion that authorizes incidental take of a listed species. Of note, the FESA provides limited take authority over listed plants; that is, if a listed plant occurs on private land and there is no federal nexus to the alteration of the uses of that land, then the take prohibitions of the FESA may not apply.

At the state level, the California Endangered Species Act (CESA) includes prohibitions on take of plant and animal species listed as candidate, threatened, or endangered and provides permits, pursuant to Section 2081 of the CESA, authorizing take of such species incidental to lawful activities. The Native Plant Protection Act is another regulation that is intended to preserve and protect native plants listed as endangered or “rare” by the California Fish and Game Commission and includes prohibitions for taking of such plants.

The Natural Community Conservation Planning Act provides a mechanism (via an NCCP) for comprehensive management and conservation of multiple plant and wildlife species, including state-listed species, while allowing appropriate economic development and growth. The NCCP can ultimately provide coverage for take of listed as well as un-listed species and is similar to the federal HCP in that it identifies conservation objectives, management actions, and other elements that focus on the preservation, protection, and management of listed species and their habitats.

Proponents of both public and private development projects have expressed frustration in recent years over the difficulties in permitting under the state and federal ESAs resulting in costly project delays. In addition, from a biological perspective, a “project by project” permitting approach absent any comprehensive conservation strategy has been considered to be piecemeal, resulting in isolated, postage-stamp biological preserves that contribute to habitat loss and fragmentation, species decline, and overall reductions in biological diversity.

The multiple species conservation planning process undertaken as part of NCCPs and HCPs (often lumped together as an NCCP/HCP when both state- and federally-listed species are the focus) is viewed as a way to streamline FESA permitting by providing coverage for multiple species in a single permit process and turning over local permitting control for individual

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projects determined to be consistent with the NCCP/HCP. This approach is consistent with conservation planning principles embodied in the science of conservation biology, as well as conservation planning guidelines incorporated in the NCCP/HCP processes. The overall thrust of these efforts has been to devise ways to assemble, protect, and manage large interconnected biological preserves that accommodate the life history requirements of listed and sensitive species and preserve the rich, natural heritage of California landscapes for future generations to enjoy.

These permitting processes are complex and intertwined and not the subject of this Memorandum; however, it is accurate to note that there are differing views on the degree to which multiple species planning processes have or have not streamlined the permitting process for proponents of public and private development projects. It is Dudek's experience that there isn't a "one size fits all" approach for multiple species conservation planning and permitting efforts and that permitting approaches need to be considered strategically on a case-by-case basis.

### **Biological Resources of Concern**

Key considerations in selecting a permitting approach are the biological resources of concern and the listed and sensitive species that need to be addressed and are perceived as constraining local planning and development goals. Listing status and potential future listing status of the species, the number of listed species and/or whether the species are broadly dispersed, whether they are plants or animals, and whether they are primarily associated with wetlands or uplands are among the many factors to be considered in developing a strategic multiple species permitting approach.

It is our understanding that the focus of the proposed sensitive species conservation planning in El Dorado County centers on eight plants (often referred to as the "Pine Hill endemics") associated with gabbroic soils in the county. Of these, five are federally-listed as threatened or endangered, and three are neither state nor federally-listed but considered "sensitive" by the California Native Plant Society. Of the five federally-listed plants, four are also listed as "rare" by the state, and one is listed as California endangered. Based on an initial review of the existing available information, we understand that the majority of the known populations in the county of the eight gabbroic plants are located within areas designated as an Ecological Preserve, although some populations do occur outside these preserve areas, as stated in the EIR for the General Plan. One other state-listed endangered plant species, Tahoe yellow cress, is known to occur in the county. However, all known locations occur along the western perimeter of Lake Tahoe and would not be expected to occur in the areas of growth envisioned by the General Plan. A number of other non-listed species, but considered "sensitive" pursuant to CEQA, also occur throughout the county. However, because they are not state- or federally-listed as rare, threatened, or endangered, and because there is no reason to believe that any of these species

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would be proposed for listing in the near future, these species are not considered further in this memorandum. Potential future impacts to these species would be adequately addressed during project-level CEQA review.

Less attention has been focused on sensitive wildlife species, primarily because of the general lack of known occurrences of state- or federally-listed wildlife species within non-federal lands in the county. The two invertebrate species of concern in western El Dorado County, Valley elderberry longhorn beetle (recently proposed for de-listing as federally-threatened) and vernal pool fairy shrimp, are both listed as federally threatened. Known occurrences of these two species are generally relegated to one or two locations in the westernmost portion of the county. Several other listed wildlife species known to occur sporadically in the county include: bald eagle, mountain yellow-legged frog (not listed but considered a candidate for federal listing), willow flycatcher, bank swallow, California wolverine, Lahontan cutthroat trout, and Sierra Nevada red fox. Except for one bald eagle location near Highway 50 in the western portion of the county, the locations of the remaining species are generally east of the majority of proposed development envisioned in the General Plan, primarily in higher elevation National Forest land and/or along Lake Tahoe.

## **Conservation Planning Approaches**

It is our understanding that two primary conservation planning approaches are currently being considered by the County: an INRMP with NCCP/HCP and an INRMP with MOU. A third approach to be considered may be an INRMP Only with Project-by-Project Permitting. Key features, benefits, constraints, and potential costs/timing of these approaches and compliance with take prohibitions governing state and federal endangered species are summarized below.

### ***INRMP with NCCP/HCP***

Under this approach, the INRMP would be combined with an NCCP/HCP and would need to comply with the requirements and processes of the state NCCP Act and Section 10 of the FESA. Selected excerpts from the regulations that address various regulatory requirements are attached for further explanation.

#### **Key Features:**

- Planning Agreement that must include such elements as lists and discussions of covered species and geographic area; conservation objectives; process for independent scientific review; and process for public participation throughout plan development and review. The Planning Agreement requires an interim review process that addresses most proposed development projects whether or not listed species are impacted by the local jurisdictions (cities, counties, etc.) before the NCCP is approved.

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- Adaptive management strategies.
  - Conservation measures that include conserving, restoring, and managing natural landscapes in perpetuity; providing equivalent conservation of covered species; protecting and maintaining habitat large enough to support sustainable populations; and sustaining effective movement and interchange of organisms.
  - Identified activities and restrictions on activities allowed within the preserve areas consistent with conservation goals.
  - Monitoring program.
  - Process for implementation, including obligations and consequences for plan signatories.
  - Assurances for adequate funding.
  - Implementation agreement.
  - Measurable biological goals and objectives.

#### **Potential Cost**

- Highly variable. Costs for county-wide multi-species NCCP/HCPs in southern California in excess of \$5 million.

#### **Potential Timeline**

- Variable. Timeframes for multi-species NCCP/HCPs in southern California range from 5 years to 12 years.

#### **Benefits**

- Take authorization for identified listed and unlisted species.
- No surprises assurances under FESA.

#### **Constraints**

- High cost.
- Extended timeframe, potential delays.
- Extensive public participation.
- Extensive involvement by U.S. Fish and Wildlife Service and California Department of Fish and Game.
- Little County control over INRMP preparation, content, and schedule due to tie-ins with FESA/CESA.

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## ***INRMP with MOU***

### **Key Features**

- Separate INRMP developed per County's General Plan.
- Separate Memorandum of Understanding (MOU) between County and Wildlife Agencies to address the limited geographic area affected by the Pine Hill plants. MOU would form the basis of a comprehensive Section 7 consultation for potential future federal actions. Would also form a basis for CESA Section 2081 permit (or CESA Section 2080.1 consistency determination) for the one state-listed endangered plant species and a basis for a Planning Agreement under NPPA for protection of state-listed "rare" plants. Acquisition and maintenance of the five preserves for the Pine Hill plants, as incorporated into the MOU, would serve to mitigate future impacts on these plants pursuant to CEQA, and no additional mitigation would be required, per letter agreement with CDFG (1997).

### **Potential Cost**

- Could vary, depending on whether or not CESA Section 2080.1 consistency determination is viable for the one state-listed endangered plant; CESA Section 2081 permit would add extra cost. Assuming the existing database (including maps, species locations, etc.) is accurate and adequate, no additional data must be collected, with focused strategic direction and an approximate 12- to 16-month time frame for Plan and EIR preparation and processing, a potential cost range for INRMP, MOU, and associated County EIR could be between \$750,000 and \$1 million.

### **Potential Timeline**

- Given same assumptions as above for cost and that preparation of EIR is tracked concurrently with preparation of INRMP/MOU, potential timeline is 12 to 18 months.

### **Benefits**

- Streamlined, less cumbersome process than NCCP/HCP.
- INRMP still under County control.
- Some level of take authorization provided for listed plants.
- One comprehensive Section 7 consultation upfront; avoids need for future individual Section 7 consultations for projects with federal agency nexus.

### **Constraints**

- Does not provide regulatory assurances (i.e., "no surprises") normally obtained through FESA permit.
- No take coverage for listed animals.
- MOU as proposed does not address listed wildlife species.

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- Legal defensibility of this type of MOU not tested.
  - Because Section 7 aspect of MOU would only apply to projects with a federal agency nexus, MOU would not provide take coverage for projects impacting listed species without a federal nexus. Projects impacting listed wildlife species may need to individually comply with FESA/CESA. Federally-listed plants on private land being impacted by projects with no federal nexus may be exempt from the take prohibitions in FESA.
  - Ability to get take coverage for non-listed species is questionable under an MOU.
  - It is likely that only signatories to the MOU would have take authorization (unlike NCCP/HCP process where signatories can transfer take through third-party beneficiary or special participating entity process to applicants for individual projects within the Permittee's jurisdiction).

### ***INRMP ONLY with Project-by-Project Permitting for Individual Projects***

#### **Key Features**

- **Separate INRMP developed per County's General Plan.** The INRMP would be a comprehensive approach consistent with conservation planning principles and includes considerations for habitat acquisition, management, monitoring, funding, and stakeholder outreach. Plan would emphasize preservation and conservation of the Pine Hill plants and could minimize the need for future permitting by identifying areas where impacts (to both listed plants and animals) should be avoided and minimized. Plan would develop an overall conservation roadmap for the County consistent with the guidance provided in the General Plan.
- Public participation process for INRMP would include stakeholder outreach, including outreach to wildlife agencies, but such agencies would not be signatories to the INRMP.
- Assumes that majority of listed plant occurrences are within designated ecological preserve areas, that occurrences for listed wildlife in the western county are very limited, and that the potential for listed plants or animals to constrain existing or future development will be minimal.
- Data and mapping for biological resources within the county, including locations of state- and federally-listed rare, threatened, and endangered species and non-listed sensitive species, appear to be accurate and thorough. It is anticipated that relatively little additional fieldwork or analysis would need to be conducted to update and verify data/mapping in preparation of the INRMP.
- Projects impacting any of the five federally-listed plant species on private land, if there is no federal agency nexus, are assumed to be excluded from take prohibitions of FESA. Four of these plants are also listed as state "rare" and subject to prohibitions of NPPA. However, applicants may be authorized to take such plants subject to Section 1913(c) of the NPPA. Projects impacting the one plant that is also state-listed as endangered would

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be subject to compliance with CESA and would need to apply for an individual Section 2081 permit. Impacts to sensitive but non-listed species would be addressed in project-level CEQA review.

- Projects impacting Valley elderberry longhorn beetle, vernal pool fairy shrimp, and Lahontan cutthroat trout, all federally-listed animals associated with aquatic or riparian habitats, may trigger a Section 7 consultation if Army Corps of Engineers (Section 404) permits needed for impacts to such habitats.

### **Potential Cost**

- Given the same assumptions as for INRMP/MOU regarding quality and accuracy of existing County database and available information, potential cost is from \$500,000 to \$750,000.

### **Potential Timeline**

- Expected to be under 12 months. Preparation of EIR tracked concurrently with preparation of INRMP.

### **Benefits**

- Streamlined, straight-forward approach.
- Less costly/less time-consuming than any of the other options.
- County controls INRMP and completion schedule; no federal agency controls or tie-ins.

### **Constraints**

- No regional take authorization permits for identified listed or unlisted species.
- No “no surprises” coverage.
- Section 7 triggers conducted on individual basis.
- Some projects may still be subject to FESA or CESA compliance.

### **Summary**

The appropriate endangered species compliance strategy for a given jurisdiction is ultimately an exercise in risk management: to what degree are projects experiencing now, or expect to experience in the future, costly project delays due to permitting requirements associated with listed species? What is the risk that additional species could be listed in the near future and the potential for those species to pose constraints? What kinds of projects (public projects versus private development) are likely to be constrained by listed species the most? How are time and cost constraints associated with an NCCP/HCP approach weighed against not having comprehensive take coverage for listed and non-listed species? Is the tradeoff for obtaining these permits worth subjecting the INRMP to the regulatory requirements of the NCCP/HCP process, involving increased time and cost for the INRMP?



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Given the assumptions stated above regarding known extent of listed plant and animals species and the current constraint for public and private projects posed by those species, the County may want to consider the degree to which either the INRMP/MOU or INRMP Only approach would adequately address the County's FESA/CESA compliance issues without the increased time/cost and lack of control associated with an NCCP/HCP approach, despite the added take coverage and assurances of such an approach. The INRMP/MOU may offer advantages over both the NCCP/HCP and INRMP Only options by providing some level of take authorization for listed species without some of the processing requirements of the NCCP/HCP approach; however, much will depend on the mitigation agreed to by the signatories of the MOU and the take authorization offered by the MOU may come at a cost to the count. Essentially, the County is "buying assurances" and must consider the time, cost, and benefit of those assurances. Again, the appropriateness of any approach will largely depend on the level of perceived constraint posed by listed species on existing and future projects as well as other factors addressed above.

Danielle Y Sather/PV/EDC  
04/27/2007 04:18 PM

To Cindy L Keck/PV/EDC@TCP  
cc  
bcc  
Subject Fw: Second Opinion on INRMP from Dudek Consultants --  
Part 2

Danielle Sather  
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El Dorado County Board of Supervisors  
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----- Forwarded by Danielle Y Sather/PV/EDC on 04/27/2007 04:19 PM -----



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04/27/2007 04:17 PM

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cc  
Subject Re: Second Opinion on INRMP from Dudek Consultants --  
Part 2

Dear Supervisors and Assistants:

Due to an email problem (which was the result of operator error on my part, I'm sure), Thaleia was unable to send you our cover memo and a Permitting Flow Chart which we developed in response to some of the comments we've heard over the past several weeks.

I am attaching copies of those documents for your information with my sincere apologies for the late delivery. The cover memo refers to the Dudek analysis which was sent to you by Thaleia under separate cover.

If you have any questions or need further information, please don't hesitate to contact me.

Cindy Shaffer  
(530) 622-6010



See what's free at [AOL.com](http://AOL.com). INRMP Strategy 042707.doc Permitting Flowchart 042707.doc

## **A Sensible Strategy to Address Conservation Planning for El Dorado County**

A group of representatives from agriculture, land owners, real estate professionals, civil engineers, land use attorneys, land use consultants, and foresters, have been meeting for several months to address issues of mutual concern. We have reviewed the proposed scope of work for the contract to prepare the Integrated Natural Resources Management Plan (“INRMP”) as a Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”), and believe that approach is not in the best interests of the County.

We have retained Dudek, a firm with extensive experience in the full range of conservation planning alternatives, including the preparation of a number of multiple-species conservation plans and HCPs/NCCPs to assist us in our analysis of alternatives available to meet the objectives identified in the General Plan. A copy of their analysis is attached for your information and review (Attachment 1).

In addition, in an effort to illustrate the complex and often confusing process of endangered species permitting, we have developed a Permitting Flow Chart (Attachment 2). This Permitting Flow Chart illustrates, in general terms, the permitting options which might apply to a public works or private development project.

In the course of our analysis, we reviewed the mapping data already available through the County’s GIS system and other sources. We have concluded that most of the data which would form the basis of the INRMP already exists, with the exception of updating information pertaining to known locations of special status species occurrences.

Our experience in El Dorado County and review of the available data tells us that we do not have either a large number of endangered species or even a smaller number of species which are broadly dispersed in the path of development. Most of the listed species in the County are found either within wetland or riparian environments (which would be minimally impacted as required by a number of County, State and Federal regulations) or are found within the Pine Hill region, which is a relatively limited geographic area.

Accordingly, we believe that the more sensible approach for conservation planning in El Dorado County is to pursue either the “INRMP Only” alternative, or the “INRMP/MOU” alternative to address permitting issues relating to the Pine Hill plants.

