



RESOLUTION NO. 196-2023

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

**ADOPTING MITIGATION FEE FINDINGS FOR THE ECOLOGICAL PRESERVE FEE
PROGRAM**

WHEREAS, the Ecological Preserve Fee (also known as the Rare Plant Fee) has been collected since establishment in 1998 through Ordinance 4500 and Resolution 205-98 for the purpose of protection of certain gabbro soils rare plants through property acquisition and management in five designated preserves; and

WHEREAS, The Ecological Preserve Fee is collected at time of issuance of building permits for new dwelling units and new commercial or industrial square footage within Mitigation Areas 1 and 2; and

WHEREAS, California Government Code Section 66000, et seq., known as the "Mitigation Fee Act", requires local agencies that impose mitigation fees to make certain findings (California Government Code Section 66001(d)); and

WHEREAS, when such findings are required, they must be made in connection with the public information required by California Government Code 66006(b); and

WHEREAS, the public information required by the Mitigation Fee Act was reviewed by the Board of Supervisors in connection with review and consideration of the mitigation fee findings,

NOW, THEREFORE, BE IT RESOLVED

- A. The Board of Supervisors hereby makes the mitigation fee findings, as required by Government Code Section 66001, for the Ecological Preserve Fee, also known as the Rare Plant Fee, as set forth below, which is attached hereto and incorporated herein.
- B. Collection of the Ecological Preserve Fee as a condition of approval for development projects in specified mitigation areas is consistent with the County's General Plan (e.g. General Plan objective 7.4.1, Land Use Diagram LU-1, Implementation Measure CO-K).

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 12th day of December, 2023, by the following vote of said Board:

Attest:
Kim Dawson
Clerk of the Board of Supervisors

Ayes: Thomas, Hidahl, Turnboo, Parlin, Laine
Noes: None
Absent: None

By: 
Deputy Clerk


Wendy Thomas
Chair, Board of Supervisors

El Dorado County - Findings for Ecological Preserve Fee Program (FY19 / 20) - As required by Government Code Section 66001(d)(1)

Section 66001(d)(1)(A): Identify the purpose to which the fee is to be put.

Finding for Section 66001(d)(1)(A): The Ecological Preserve Fee (Rare Plant Fee) has been collected since establishment in 1998 through Ordinance 4500 and Resolution 205-98 for the purpose of protecting eight special-status gabbro soils plant species (i.e., El Dorado bedstraw, Laynes butterweed, Pine Hill ceanothus, Pine Hill flannel bush, Stebbins morning glory, Bisbee Peak rush rose, El Dorado mule ears, Red Hills soaproot) through property acquisition, conservation easements, and management within five designated ecological preserves: Salmon Falls, Martel Creek, Pine Hill, Cameron Park, Penny Lane Ridge. The Rare Plant Fee is collected at time of issuance of building permits for new dwelling units (single-family and multi-family) and new commercial or industrial square footage. The fees are only collected on permits within designated Mitigation Areas 1 and 2, with certain exceptions.

Section 66001(d)(1)(B): Demonstrate a reasonable relationship between the fee and the purpose for which it is charged

Finding Section 66001(d)(1)(B): The reasonable relationship between the fee and purpose for which it is charged is set forth in Ordinance 4500, Resolution 205-98, the Economic and Planning Systems (EPS) Memorandum of March 16, 1998, in the section titled "Fee Assumptions and Calculations, as well as the EPS Memorandum of July 17, 1998." The ordinance, resolution and the memoranda also demonstrate the specific nexus between the fee and the Mitigation Areas 1 and 2.

The fee program is not applied to properties within Mitigation Area 0, the boundaries of which are coterminous with the General Plan Ecological Preserve overlay, because these properties are required to provide on-site preservation of gabbro soils rare plants. The fee program is applied to properties in Mitigation Area 1, because the properties within Mitigation Area 1 comprise the "Rare Soils Study Area" (EPS Memorandum, March 16, 1998). In other words, Mitigation Area 1 properties contain gabbro soils or serpentine soils adjacent to or near gabbro soils, which provide suitable habitat for the gabbro soils rare plants. Properties within Mitigation Area 1 are currently subject to the fee, because the Board of Supervisors has not established an off-site rare plant mitigation program, which would be the other option for properties in Mitigation Areas 1 and 2.

The fee program is applied to Mitigation Area 2, which, as Ordinance 4500 defines, comprises land outside of Mitigation Areas 0 and 1 but is within the EID service district boundaries (excludes parcels served by wells). (The rare plant fees established in Resolution 205-98 reference the tables and calculations included in the memorandum dated March 16, 1998, which use the EID service district boundaries for Mitigation Area 2. However, the memorandum describes Mitigation Area 2 as the EID sphere of influence, which is not consistent with Ordinance 4500 or Resolution 205-98 and is therefore disregarded).

Properties within Mitigation Area 2 are required to pay the rare plant fee due to their potential direct or indirect impacts to gabbro soils rare plants and their habitats when new development

occurs and accesses public water through El Dorado Irrigation District (EID). Therefore, properties within the EID service district are required to share in the cost of mitigating direct and indirect, existing and future, adverse impact upon the gabbro soils rare plants and their habitats.

The March 16,1998 memorandum states that Mitigation Areas 1 and 2 are each assigned 50 percent of the total property acquisition cost of the Rare Plant Mitigation Program, which includes an ongoing operations and maintenance endowment fund for the BLM-managed Pine Hill Preserve. The fees are calculated by distributing the cost among the projected new development in Mitigation Areas 1 and 2 (July 17,1998 memorandum, Tables 7 & 8). The fees are collected at time of building permit issuance, with a fixed fee per equivalent dwelling unit for new residential development and a per square foot fee for new commercial or industrial development.

Section 66001(d)(1)(C): Identify all sources and amounts of funding anticipated to complete financing incomplete improvements identified in paragraph (2) of subdivision (a) (of Section 66001).

Finding 66001(d)(1)(C): There are no sources and amounts of funding anticipated to complete financing of incomplete improvements as identified in paragraph (2) of subdivision (a) (of Section 66001). The County Rare Plant Fee is the local component of a formalized multi-agency and multi- organization effort (Pine Hill Preserve Cooperative Management Agreement) to protect the gabbro soils rare plants. Additional funding sources to acquire and manage lands containing gabbro soils rare plants habitat include federal sources, such as United States Fish and Wildlife Service, Bureau of Land Management, and Bureau of Reclamation; State sources, such as California Department of Fish and Wildlife and California Department of Forestry and Fire Protection; and other sources including the El Dorado Irrigation District, El Dorado County Water Agency, and American River Conservancy. These external funding sources have, at times, complemented funds from the County Rare Plant fee program for joint land purchases by the participating agencies. However, the County Rare Plant Fee program is defined as its own standalone program and does not rely upon external funding sources to implement the planned acquisition, management and maintenance of rare plant lands on El Dorado County's behalf.

El Dorado County has used the funding that comes from the rare plant fee program to purchase gabbro soils rare plant properties for the purpose of rare plant preservation and inclusion into the Pine Hill Preserve. In 2010, the County purchased Detmold, an 8.93-acre parcel (Legistar no. 10-1206). In 2018, the County purchased Scariot-DeWolf, a 51.12-acre parcel (Legistar no. 18-0941).

Section 66001(d)(1)(D): Designate the approximate dates on which the funding referred to in subparagraph (C) is expected to be deposited into the appropriate account or fund.

Finding 66001(d)(1)(D): The Ecological Preserve Fee is designed to acquire land for rare plant mitigation and does not include construction of public improvements. Therefore, there is no approximate date by which construction of a public improvement would commence and no information to disclose. However, revenues are continuously being collected at the time building

permits are issued within the designated Mitigation Areas.

In 2008, the County established a Cooperative Agreement with the United States Bureau of Land Management (BLM), in which the County provided an annual amount to BLM to contribute towards the Pine Hill Preserve Manager's salary. The Pine Hill Preserve Manager is responsible for the regular oversight and maintenance of the five-unit Pine Hill Preserve, which includes coordination with all partner agencies. During FY 15/16, the County paid BLM \$75,000 for work done in 2013, 2014, and 2015 (Cooperative Management Agreement effective 10/1/2013, Legistar no. 15-0754). In FY 16/17, the County paid BLM \$40,000, \$25,000 of which to contribute to the Pine Hill Preserve Manager salary and \$15,000 of which to contribute towards management activities within the Pine Hill Preserve. In FY 17/18, the County paid BLM \$25,000 for the Pine Hill Preserve manager salary. The County also paid for a clean-up on the County-owned rare plant properties (Carriage Hills, Detmold, Scariot DeWolf) in Shingle/Springs (\$15,894). In FY 18/19, the County paid for clean-up of the County-owned rare plant properties (\$3,611). In FY 19/20, the County paid BLM \$40,000, \$25,000 for the Pine Hill Preserve manager salary and \$15,000 for management activities (Cooperative Management Agreement effective 10/1/2018, Legistar no. 18-0885). Also, the County paid for clean-up of the County-owned properties (\$14,568).

Expenditures for acquisition of land, associated costs, or additional management costs are authorized by separate Board of Supervisors Actions. In FY 17/18, the County provided a \$14,883 payment to County DOT for labor for Right-of-Way Supervisor assistance in land purchase. FY 18/19, the County purchased Scariot DeWolf through the Ecological Preserve Fee Special Revenue Collection fund; the purchase cost \$1,670,431 (Legistar no. 18-0941).

In the next five years (2021-2025), the County Planning Division plans to collaborate with the County's Department of Transportation (DOT) to propose to the Board of Supervisors the reimbursement of the Road Funds with rare plant funds for the purchase of the Carriage Hills properties (20.11 acres) and their eventual inclusion into the Pine Hill Preserve. In 2010, DOT bought Carriage Hills as potential mitigation for future transportation projects. Since then, DOT has found that it does not need to use Carriage Hills for such purposes, because DOT has determined, with the help of plant surveys, that the rare plant impacts from the transportation projects likely does not require as much mitigation as originally estimated.

In addition, the County Planning Division will work to provide a draft management plan for Carriage Hills, Detmold, and Scariot DeWolf to the Board of Supervisors, so that these properties may be accepted into the Pine Hill Preserve and be managed by BLM. It is anticipated that the County will need to provide BLM with funds to manage and conserve these properties on the County's behalf.

The Rare Plant Fee will continue to be collected on applicable building permits and held in the Ecological Preserve Fee special revenue account (FAMIS 7729304/7734504 / FENIX 3770754) and partially distributed to the Rare Plant Preserve Endowment Fund (FAMIS 8959500 / FENIX 3799900), Building Services operating account (FAMIS 341000 / FENIX 3710100), and Planning Services operating account (FAMIS 345000 / FENIX 3720200) as specified in Resolution 205-98.

The funds are collected throughout the year, as building permits are issued, deposited a minimum of weekly, and distributed quarterly to the endowment fund and operating account.

Additional Findings:

1. In FY 15/16, the County's Planning and Building Department number changed, which resulted in the Ecological Preserve Fee special revenue account number to change from 7729304 to 7734504.
2. The County financial system was upgraded in January of 2018 and the FAMIS account 7734504 and 8959500 were closed and reopened in the new financial system FENIX as respectively, account numbers 3770754 and 3799900.
3. The Rare Plant funds are separated into two accounts. One is to establish an endowment to provide perpetual funding for management of lands acquired and added to the Pine Hill Preserve, and the other fund is used for rare plant habitat acquisition purposes.
4. The Rare Plant Fees have been spent for the purpose for which they were collected as required by law:
 - a. Expenditures are identified in Exhibit C "Cash Statement" of the Annual Mitigation Fee Act Reports: Legistar items: 16-1222, 17-1294, 19-1553, 20-1305

General Plan Finding: The Rare Plant fee program is consistent with the General Plan (e.g., Objectives 7.4.1 and 7.4.3, Land Use Diagram LU-1, Implementation Measure CO-K).

The County is currently in litigation (Thomas Austin and Helen Austin v. County of El Dorado, El Dorado County Superior Court Case No. PC20150633) related to the Mitigation Fee Act (MFA). The Court ruled that the ecological in-lieu fees (Ecological Preserve Fee and Oak Woodland Conservation Fee Programs) are not "development impact fees" and are not subject to the MFA. While the Superior Court has ruled that the MFA does not apply to the Ecological Preserve Fee Program or the Oak Woodland Fee Program, there is the potential for an appeal once the trial court litigation concludes. As a result, until it has been conclusively decided that the Ecological Preserve In-lieu fee and the Oak Woodland In-lieu fee are not subject to the MFA, the County is taking a conservative approach and is treating the fee in accordance with the requirements of the MFA. The Superior Court also held that taking a conservative approach and following the MFA requirements does not convert the fees into development impact fees.