

DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

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August 2, 2012

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA

Re: Development Services Department and County Counsel Presenting a Status Report on Progress of the Conservation Strategy for Gabbro Soils Rare Plants, and Requesting Board Authorization to Issue a Notice to Proceed to SAIC to Begin Work on an Impact Analysis and Mitigation Plan to Form the Basis of an Application for a Section 2081 Permit

Honorable Supervisors:

Recommendation:

Staff recommends that the Board of Supervisors receive and file this status report, and direct staff to issue a Notice to Proceed under its contract to prepare an impact analysis and mitigation plan to be used as a basis for an application for a Section 2081 permit to be filed by the County.

Reasons for Recommendation:

Background:

On January 24, 2012, the U.S. Fish and Wildlife Service (USFWS) made a presentation to the Board, describing a joint effort between Federal and State agencies and public interest groups, with participation by the County of El Dorado, to develop a "Conservation Strategy" aimed at recovery of the Gabbro Soils rare plants. It was to include consideration of mitigation for development in the Gabbro Soils area. At that time the Service noted that they were taking the lead in preparing a draft strategy that would, among other things, simplify the various processes under CEQA and the California Endangered Species Act. The purpose, however, was broader than providing mitigation for development. It was to provide for recovery and long-term persistence of the rare plants while identifying areas suitable for development within the habitat areas.

Certain provisions of the Strategy still reference a goal of long-term persistence of the plants.

Protection of the gabbro soils rare plants has been problematic for the County for many years. Lands identified as important habitat in the “Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills”, prepared by the USFWS in 2002, are in some cases lands that the County has identified as important for commercial, industrial, and multi-family housing development. The rare plant mitigation fee program, adopted by the County in 1998 has been determined by the appellate court to be inadequate for the purposes of mitigation under CEQA, at least in the case of one major development project.

On May 15, 2012, the Board approved a contract with SAIC for preparation of an impact analysis and mitigation plan to form the basis for a County-wide Section 2081 permit for development in the Gabbro Soils area. However, the Board directed staff to withhold the Notice to Proceed on the contract until the USFWS had more time to work on the Conservation Strategy. The Board directed that staff bring back a status report on July 31, 2012. On that date the status report was continued for one week, until August 7, 2012.

Status of Rare Plant Strategy:

Subsequent to the Service’s presentation, agency staff has been working on finishing the draft strategy document. A draft was reviewed by the management team (upper level managers of the agencies, key staff, and two members of the Board of Supervisors) on July 25, 2012. Some key issues still need to be resolved. The technical/biological team (staff from the various agencies, Planning Services staff, and representatives of public interest groups) were directed to provide additional input, and make final edits. A meeting was scheduled for August 14 to complete that task. The management team is then scheduled to reconvene on August 29 to finalize the document and release it for public review. When completed, it would then be presented to the Board of Supervisors for its analysis and review.

Coordination and cooperation between the agencies and different parties has been very effective and helpful in developing the strategy. The County, its consultants, and agency staff will utilize the strategy as a resource document to help develop the mitigation necessary for the 2081 permit.

Discussion:

The Conservation Strategy is not intended as a document having regulatory authority, although some of its language seems to be restrictive as to the actions of the parties. All parties recognize that a 2081 permit is necessary to formalize the mitigation program necessary to allow continued development consistent with the General Plan while providing protection of the rare plants. In meetings, the parties seem to recognize that the County will be applying for a blanket 2081 permit for specified species and other regulatory approvals from the State. All parties seem to acknowledge that the County requires a take permit under CESA 2081 that is sufficient to meet the County’s development and mitigation needs and which does not require a separate process for each new project. This acknowledgment forms the basis for our recommendation that the Board authorize staff to issue a Notice to Proceed to SAIC for preparation of an impact analysis and mitigation plan as a first step in the development of the permit application. The impact analysis and mitigation plan will be required regardless of the outcome on the Conservation

Strategy. Even if the language of the Conservation Strategy were finalized and finally accepted by the Board of Supervisors, we would still need to prepare the impact analysis and mitigation plan. The draft Conservation Strategy contains much information which will be valuable to inform SAIC in the process of describing mitigation measures. But, an impact analysis needs to be prepared in order to assess the magnitude of impacts and mitigation necessary under the permit. Waiting for finalization of the language of the Conservation Strategy, and review by the Board of Supervisors would only serve to delay the preparation of the impact analysis and mitigation plan and hence the permit application.

We want to be clear that the CESA 2081 permit process is separate from the Conservation Strategy negotiations and that both can be carried on simultaneously. Our recommendation to commence the 2081 process is not intended to mean that we would withdraw from discussions over the Conservation Strategy. The Conservation Strategy can continue to develop around some of the broader policies, or even further refine the proposals for mitigation it is putting forward for consideration by SAIC in developing the 2081 permit application.

The draft Conservation Strategy is a complex document. There seem to be multiple purposes addressed by it. It does provide information relevant to the County's immediate concern--drafting a mitigation plan for use in a 2081 permit application. In this respect, it contains much valuable information and many potentially helpful suggestions. SAIC will be able to use the Conservation Strategy as a reference document as it proceeds to do a more detailed impact analysis and mitigation plan.

Overall, however, the Conservation Strategy seems to go beyond the issue of mitigation for development and have a broader purpose—to provide for the recovery and persistence of the Gabbro Soils rare plants. In general, the strategy identifies the key areas of habitat that are needed to support the plants' recovery, identifies those areas of habitat that are suitable for development, and purports to create a methodology for off-setting the impacts of development within the habitat area. For example, it contains some recommendations for land use policies that may go beyond mitigation to recovery of the rare plants. The Board may well wish to participate in this broader effort. Staff is not making any judgment on that. But, the Board will have to make that decision and, if so, will have to review each of the proposed policies for acceptability. The concept of mitigation is more narrow and is tailored to offsetting the impacts of future development.

As stated, the Conservation Strategy will have great use as a reference document for preparation of the application of the County's 2081 permit. However, that permit application will need to be much more specific and comprehensive in its analysis of impacts of anticipated development in the rare plant habitat; and, to meet the County's objectives, it will need to precisely identify the necessary mitigation to satisfy CEQA, CESA, and the NPPA. It must study alternative mitigation measures and it must differentiate mitigation actions from actions that would more generally "conserve" the rare plants. There are many ways to establish compliance with CESA and the County needs to craft one that is consistent with its land use and other policies. This is why the application process is usually applicant driven and it is unusual for the federal or state agency to play a lead role in it. Many of the suggested mitigation measures proposed in the

Conservation Strategy might be incorporated in the CESA 2081 permit application. Of course, a CEQA document will need to be prepared for that permit, which will require an alternatives analysis, and likely will result in an update to the rare plant mitigation fee program, contained in Chapter 17.71 of the County Code.

The County's consultants now have the job of distilling the information contained in the Conservation Strategy, differentiating that which relates to mitigation as opposed to recovery, determining the amount of impact that development in the County is likely to have on the Gabbro Soils rare plants, determining the amount of land available for mitigation and developing the precise mitigation measures consistent with the County's land use policies. We believe that the Conservation Strategy is sufficiently complete to allow them to begin that work.

Next Steps for Rare Plant Protection and Permitting:

The technical/biological team has identified recommended areas that are important for rare plant persistence. The next step is to quantify the impact on rare plant habitat from future development, and develop specific mitigation for submittal as part of the 2081 permit application. The County has SAIC under contract to prepare such an impact analysis and mitigation plan for use in preparing a permit application under CESA, and associated approvals under the NPPA. In order to proceed with that permit, it is necessary to begin the analysis of impacts and filing for the application itself.

Recommendation:

Staff recommends that the Board of Supervisors receive and file this report and authorize County Counsel and Development Services to direct the consultant, SAIC, to begin preparation of an impact analysis and mitigation plan in preparation for the filing of a State of California Section 2081 permit.

We would be pleased to respond to any questions you might have.

Respectfully submitted,



Roger Trout, Director
Development Services Department



Louis Green
County Counsel