

# DEVELOPMENT SERVICES DEPARTMENT

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EL DORADO

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April 18, 2007

Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

Dear Board Members:

Subject: Integrated Natural Resources Management Plan  
Presentation – Summary of Options

**Recommendation:**

Development Services submitting a presentation summarizing options for addressing rare plant issues and implementing the County's INRMP; then, provide appropriate direction to staff regarding the Board's preferred approach. Authorize the department to commence contract negotiations with Science Applications International Corporation (SAIC) and prepare a contract and revised scope of work for consideration by the Board. Provide further direction regarding a future joint session with El Dorado Irrigation District (EID) Board of Directors to discuss cooperation on the INRMP process.

**Background:**

On March 6, 2007, the Board of Supervisors conducted its fourth public workshop related to the approach and scope of work for the INRMP. This workshop focused on responses to comments on the draft work-plan, schedule and budget that were provided to the Board in December/January. The work program provided to your Board was based on a combined INRMP/HCP/NCCP approach as previously directed by the Board. After extensive discussion, your Board requested staff to determine whether there is a viable approach for completing the INRMP without the HCP/NCCP components while at the same time resolving the pending issues with state and federal regulatory agencies related to the County's rare plant mitigation program. Your Board also requested that Development Services staff work closely with EID and the Water Agency to learn about specific concerns and needs of those agencies related to the INRMP planning process. The Board was specifically interested in additional input concerning whether the County can accomplish its conservation goals and resolve rare plant mitigation issues without preparing a habitat conservation plan (HCP).

**Discussion:**

Development Services, County Counsel, and SAIC staff working with outside legal counsel, Ebbins Moser + Skaggs, LLP, have prepared a report entitled, "Options for Compliance with State and Federal Laws Regarding Eight Plan Species", dated April 5, 2007 (Attachment 1). The report responds to the Board's request to provide additional analysis of the various options available for resolving issues related to state and federal conservation laws applicable to eight plant species known as the Pine Hill endemics. The report discussion includes information concerning the existing legal framework of the Endangered Species Act (ESA), California Endangered Species Act (CESA), and

the California Native Plant Protection Act (NPPA) and approaches to compliance. The accompanying power point presentation summarizes the key conclusions of this report as they relate to the INRMP process to assist the Board in reaching a conclusion on the County's preferred approach for the INRMP work-plan.

### Regulatory Compliance Alternatives

Three approaches to regulatory compliance are addressed by the report. Approaches include:

- Joint INRMP/HCP/NCCP with off-ramps (the approach in the current work plan);
- INRMP *followed* by HCP to support ESA Section 10/CESA Section 2081 permits (discussed in prior workshops); and
- INRMP with separate state CESA and federal ESA compliance for Pine Hill plants through an MOU based on a federal Section 7 biological opinion and state Section 2081 permit (new option).

The Board of Supervisors has reviewed the first two alternatives during previous workshops concerning the INRMP. The third approach was developed based on Board direction from the March 6 workshop. Each of the three approaches is summarized as follows:

#### **Joint INRMP/HCP/NCCP with Off-ramps**

This approach is described in detail in SAIC's Work Plan presented to the Board on March 6, 2007. This approach provides maximum regulatory compliance under the ESA and NCCPA and authorizes incidental take of listed and unlisted wildlife and plant species for a wide range of covered activities to be undertaken in the western County. The process would be structured to allow the County to shift the work program away from preparation of the HCP/NCCP at designated milestones throughout the process (the "off-ramps").

Benefits include:

- State and Federal regulatory coverage and take authorization for all covered species, including listed and unlisted plant and animal species;
- No surprises assurances under the ESA and the NCCPA; and
- Federal/state grant funding available.

Constraints include:

- Longer time to complete final documents due the need to comply with both state and federal approval processes;
- More expensive because more information and level of public involvement needed to satisfy the HCP and NCCP requirements; and
- Greater involvement of the FWS and DFG in plan contents and approval.

#### **INRMP Followed by a HCP to Support ESA Section 10 and CESA Section 2081 Permits**

The INRMP would be prepared under the provisions of the County General Plan. Subsequently, the County would prepare a HCP to support ESA Section 10 and CESA Section 2081 take permits. This approach was presented to the Board at the November 6, 2006 Workshop.

Benefits include:

- County retains control of INRMP process;
- The INRMP can be completed more quickly without being delayed while waiting for state and federal actions; and
- The regulatory assurances of an HCP can be obtained.

Constraints include:

- Additional cost to achieve state and federal authorization for incidental take;
- Additional time to achieve state and federal authorization for incidental take;
- Coverage for unlisted species is not likely to be available under state law without an NCCP; and
- The INRMP may not be consistent with the outcome of the HCP process leading to delays and costs to rectify inconsistencies.

### **INRMP with Separate State and Federal Compliance through an MOU for Pine Hill Plants**

#### **INRMP**

The INRMP would be prepared to follow County General Plan policy requirements. The process would not include any effort to achieve compliance with federal ESA or state CESA. The INRMP would include General Plan process requirements: Public participation, Coordination with DFG and the FWS, and Coordination with PWTAC. The INRMP document would contain the contents required by the General Plan, including; Habitat inventory, Habitat protection strategy, Mitigation assistance program, Habitat acquisition program, Habitat management program, Monitoring program, and Funding strategy.

#### **Memorandum of Understanding (MOU) to Achieve Separate Compliance for the Eight Pine Hill Plant Species**

Obtaining compliance for the eight plant species could be through a written agreement, such as a MOU, which serves as the basis for a comprehensive ESA Section 7 consultation, a CESA permit of consistency determination, a formal agreement under the NPPA, and addresses impact evaluations required by NEPA and CEQA. Under this approach the County would develop a plant conservation strategy that would address the impacts of covered activities to ensure that effects would be minimized and mitigations developed to contribute to the conservation of all eight plant species. The conservation strategy would form the basis of an MOU between the County and wildlife agencies which could also include the Army Corps of Engineers (COE) and the Bureau of Reclamation (BOR). The MOU would provide that the County would review development projects and ensure that the requirements to minimize and mitigate impacts under the provisions of the conservation strategy are enforced. The MOU would trigger an ESA Section 7 process authorizing impacts to federally listed plants for otherwise non-federal actions. The Section 7 consultation would enable the FWS to provide regulatory coverage under ESA for covered activities through a biological opinion. Future federal actions could be streamlined by relying upon the biological opinion and the MOU to conclude that federal actions would not adversely impact the plant species.

Under this approach, the state listed Stebbins' morning glory would be covered under the provisions of the CESA, and the MOU would include the plant conservation strategy that could form the basis for a Section 2081 take permit. Alternatively, the County could use the federal biological opinion issued on the MOU to form the basis to request a consistency determination under CESA. Coverage under the NPPA would be provided by the MOU as it could serve as the basis for a formal agreement with DFG to conserve the four plant species listed as rare.

CEQA and NEPA compliance could be achieved as the plant conservation strategy included in the MOU could form the basis for analyzing impacts to all eight plant species during environmental review. The plant conservation strategy would need to provide conservation benefits for the eight species such that the impacts of covered activities would be less than significant.

Benefits include:

- The MOU approach could provide a streamlined process for addressing compliance issues under the ESA, CESA, the NPPA, NEPA and CEQA without a formal HCP process;
- Potential indirect effects of federal actions, such as water-related action by BOR, or permit related actions by COE, could be addressed up front, comprehensively, in a single Section 7 consultation; and
- The plant conservation strategy could be integrated into the INRMP or incorporated into a HCP and NCCP should the County elect to do that later.

Constraints include:

- The MOU/Section 7 consultation approach does not provide the regulatory assurances that would be obtained under an ESA Section 10 habitat conservation planning approach;
- Regulatory assurances under CESA may not be available as envisioned above given that the regulatory authority of DFG to provide regulatory assurances is currently under review by the California Supreme Court;
- The timeframe for developing an MOU with the Federal and State agencies can also be lengthy; and
- Grant funding may not be as readily available.

#### Agency Issues and Concerns

On March 23, 2007, EID staff, Water Agency, Development Services, and County Counsel staff participated in a joint meeting with the County's INRMP consultant team, including outside counsel. The purpose of the meeting was to respond to the Board of Supervisors direction to receive input from EID and the Water Agency regarding the needs for state and federal endangered species compliance. During the meeting EID staff explained the types of activities, such as long term capital improvement projects and projects necessary to support the implementation of the General Plan that EID could seek coverage for under a HCP or NCCP. EID staff clarified that due to ongoing or already completed Section 7 consultations, EID would not need to seek coverage for recently completed projects, such as; Project 184 relicensing and the ongoing consultation for the Fazio contract in coordination with the Water Agency and the BOR. EID staff also expressed concern for the need for an interagency agreement regarding potential partnership with the County in the process and questioned how utilization of one of the off-ramps by the County would affect EID in regards to

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recovery of any financial commitments to the process and affects on relationships with regulatory agencies. The Water Agency used the meeting as an opportunity to inform the participants about ongoing Section 7 consultation for the 15,000 acre feet Fazio Water Service Contract and potential effects to gabbro plant species.

In addition, the Department of Transportation (DOT) staff has concerns regarding the County's frequent involvement with ESA, CESA, NEPA, and CEQA compliance issues regarding the implementation of projects included in the Capital Improvement Program (CIP). Section 7 consultations often occur where projects trigger federal nexus due to funding sources and or permit requirements. CESA compliance issues may also arise on projects that are subject to take authorization and/or streambed alteration agreements by the DFG. Development Services staff has determined that in addition to DOT CIP projects, many other county-wide projects, such as parks, administrative buildings, animal shelters, etc., can be subject to NEPA and/or CEQA compliance issues related to endangered species and/or rare plants.

Conclusion

The information provided in this report responds to your Boards comments and direction at the March 6 workshop. The staff/consultant team has identified an approach that would allow the County to satisfy the requirements in the General Plan to prepare an INRMP, while also achieving some level of state and federal regulatory coverage for rare plants. Legal counsel advises that the degree of regulatory assurances that would be obtained through the MOU approach would be less than what would be achieved through an HCP. The cost and timeframe for completion is estimated to be somewhat less under the MOU approach; however grant funding may not be available. Both approaches will involve significant interaction with state and federal resource agencies to reach consensus on conservation strategies and mitigation and both approaches require environmental review under CEQA and NEPA.

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Attachments:

Attachment 1 - Options for Compliance with State and Federal Laws Regarding Eight Plant Species  
Attachment 2 - Power Point Presentation Summarizing INRMP Options  
Attachment 3 - List of Acronyms

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