

## **CHAPTER 130.71 – ECOLOGICAL PRESERVE FEE**

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### **130.71.010 Purpose**

The purpose of this Chapter is to implement the Pine Hill Endemics rare plant fee payment in lieu of mitigation for Mitigation Areas 1 and 2.

### **130.71.020 Applicability**

The fee program set forth in this Chapter shall apply to all lands delineated as Pine Hill Endemic Rare Plant Mitigation Areas 1 and 2, as defined in Section 130.71.030 (Definitions) below in this Chapter.

### **130.71.030 Definitions**

As used in this Chapter, the following terms shall have the meanings set forth below:

**Mitigation Area 0.** Lands within the Gabbro Soils Rare Plant Ecological Preserve, as shown on maps on file in the Department, adopted by Ordinance 4500.

**Mitigation Area 1.** Lands outside of Mitigation Area 0 but within the area described as the "rare soils study area," as shown on maps on file in the Department, adopted by Ordinance 4500.

**Mitigation Area 2.** Lands outside of Mitigation Areas 0 and 1 but within the EID service area, excluding those lots served by wells, as shown on maps on file in the Department, adopted by Ordinance 4500.

**Pine Hill Endemics.** Plants found in serpentine or gabbroic soils that are listed as rare, threatened, or endangered on a state or federal list prepared under the Federal or California Endangered Species Acts or identified as species of special concern. This term includes the following species:

El Dorado bedstraw	Galium californicum ssp. sierrae
Laynes butterweed	Senecio layneae
Pine Hill ceanothus	Ceanothus roderickii
Pine Hill flannel bush	Fremontodendron californicum ssp. decumbens
Stebbins morning glory	Calystegia stebbinsii
Bisbee Peak rush rose	Helianthemum suffrutescens
El Dorado mule ears	Wyethia reticulata
Red Hills soaproot	Chlorogalum grandiflorum <i>Ord. 4500 modified</i>

#### **130.71.040 Ecological Preserve Mitigation and Fee in Lieu of Mitigation**

There are hereby established an Ecological Preserve Mitigation requirement comprised of on-site and off-site mitigation standards and an ecological preserve fee in lieu of such mitigation. The amounts of the fee shall be established periodically by resolution of the Board and shall be based on the formula set forth in this Ordinance.

#### **130.71.050 On-Site Mitigation in Mitigation Area 0**

Development within Mitigation Area 0 will continue to address mitigation for impact to rare plants on an individual basis. Within Mitigation Area 0, on-site mitigation is strongly encouraged. Developments within Mitigation Area 0 shall mitigate impacts by exercising one of the following three options:

- A. Set aside a part of the property and dedicate a perpetual conservation easement for habitat protection; or
- B. Cluster development in the least environmentally sensitive portion of the property according to the Implementation Strategy adopted by the County in March 1993 and receive in appropriate cases a density bonus in return for dedication of a perpetual conservation easement over the remainder of the property; or
- C. Provide an independent mitigation plan that meets CEQA requirements, such as the purpose of long-term protection of an amount of habitat in the same Ecological Preserve and as close to the development site as feasible, equal to at least 1.5 times the acreage developed.

Option B, above, shall apply only to properties greater than five (5) acres in area.

**130.71.060 Off-site Mitigation or Fee Payment in Lieu of Ecological Preserve Mitigation in Mitigation Areas 1 and 2**

Payment of a fee in lieu of Ecological Preserve Mitigation is encouraged in Mitigation Areas 1 and 2. Developments in Mitigation Areas 1 and 2 shall mitigate impacts by exercising one of the following two options:

- A. Pay the appropriate fee in lieu of Ecological Preserve Mitigation for the direct or indirect impacts caused by development on rare plants and rare plant habitat; or
- B. Participate in a Rare Plant Off-Site Mitigation Program, upon adoption of such program by the Board.

**130.71.070 Ecological Preserve Fee; Formula**

The amount of the fee is based on the following formula: Mitigation Areas 1 and 2 are each assigned 50 percent of the total local cost of the Rare Plant Mitigation Program, based upon the probability that 50 percent of the total adverse impact of development on rare plant habitat will be caused by future development within each Mitigation Area. The fee is then charged on a per dwelling unit equivalent basis, where one single-family unit equals one dwelling unit equivalent, one multi-family unit equals 0.75 dwelling unit equivalent, and 1,500 square feet of commercial space equals one dwelling unit equivalent. The actual amount of the fees per dwelling unit equivalent in Mitigation Areas 1 and 2 are as set forth in the then-current Board resolution establishing the actual fee amounts.

**130.71.080 Annual Fee Review**

The fee amounts shall be reviewed on an annual basis and adjusted as necessary to insure that the anticipated fees are no more and no less than required for the purpose for which they are collected.

**130.71.090 Time of Fee Payment**

The fee is due at the time of final inspection or certificate of occupancy, whichever is first, unless the Board in adopting the fee resolution establishes that the fee may be collected at any earlier time.

**130.71.100 Exemption or Credits**

If the Director, in consultation with the California Department of Fish and Wildlife (DFW) and the United States Fish and Wildlife Service (USFWS), finds that a development project which has already received all needed discretionary approvals at the effective date of this chapter has

already met its mitigation obligations in whole or in part, such project will be exempted or credited against its Rare Plant Mitigation Obligation or fee in lieu thereof to a degree equivalent to the mitigation already provided. No other exemptions or credits to the Rare Plant Mitigation or fee in lieu thereof shall be allowed.

#### **130.71.110 Accounting**

The County shall maintain a separate rare plant ecological preserve account for fees collected, and provide an accounting within 60 days of the close of each fiscal year. Any person may request an audit of the fund. In addition, the County shall make findings each fifth fiscal year following the first deposit into the fund with respect to unexpended portions of the fund, in which the County: identifies the purpose to which the fee is to put; demonstrates a reasonable relationship between the fee and the purpose for which it is charged; identifies all sources and amounts of funding anticipated to complete financing; and designates the approximate dates on which the funding is expected to be deposited.

#### **130.71.120 Handling**

The fee shall be collected by the Planning and Building Department. The County treasurer shall maintain the account. The Department, in consultation with DFW and USFWS, shall make recommendations to the Board regarding the expenditures of funds from the account to acquire or maintain designated preserve land.

#### **130.71.130 Appeals**

An appeal from a decision made pursuant to this Ordinance shall be in accordance with the appeals procedures set forth in Section 130.52.090 (Appeals) in Article 5 (Planning Permit Processing) of this Title, except that DFW shall also be notified of the appeal hearing in writing at least five days in advance of the hearing.

#### **130.71.140 Termination of Mitigation Requirement or Fee in Lieu of Mitigation**

The requirements of mitigation or payment of a fee in lieu of Ecological Preserve Mitigation shall terminate at such time as the Board finds, and DFW and USFSWS concur, that a fully funded system of five rare plant preserves has been established in the on-going operation and maintenance of said preserves is fully funded.