

Why did CNPS File a Lawsuit to Protect the Endangered Pine Hill Ceanothus in El Dorado County?



The California Native Plant Society (CNPS) and the Center for Sierra Nevada Conservation (CSNC) filed a lawsuit against the County of El Dorado and the developer on January 12, 2007 in an effort to protect Pine Hill ceanothus (*Ceanothus roderickii*) and other rare and endangered plants that occur in the Cameron Park area. The proposed Congregate development project would eliminate approximately 33% of the known plants of Pine Hill ceanothus which is found only on gabbro soils in Western El Dorado County and nowhere else in the world. It would also eradicate 28 acres of essential rare plant habitat.

Attempts at early resolution without litigation failed to arrive at a viable solution

In December 2006 and early January 2007, CNPS attempted to address these issues with the developer and the County. While the developer was willing to consider other options, negotiations were unsuccessful. This was largely due to the County's lack of interest in ensuring consistency between the USFWS's recovery plan and the county's general plan, their failure to update rare plant mitigation fees since 1998, and the county's failure to establish the required conservation easements on rare plant habitat that had been set aside for mitigation purposes. The County refused to extend the agreement to continue negotiations and advised the developer to proceed with the project.

The development is inconsistent with the General Plan and the Pine Hill Recovery Plan

The development occurs within an area determined by the U.S. Fish and Wildlife Service as being essential "to prevent extinction or prevent the species from declining irreversibly in the foreseeable future." (U.S. Fish and Wildlife Service 2002, pp. V-1 and V-4). Acquisition of this occupied habitat was identified in the recovery plan as an action of the highest priority.

The County of El Dorado adopted a rare plant preserve system in 2004 but failed to include these essential lands in their preserve boundary. The general plan adopted by the County in 2004 also states that the County's actions shall be consistent with the recovery plan for the Pine Hill plants. The County's development of this area without identifying and acquiring replacement habitat of comparable biological value violates the county's general plan direction to be consistent with the recovery plan.

Approval of the development violated the California Environmental Quality Act (CEQA)

The County made significant changes to the development plan at a Board of Supervisor's meeting and approved the development as changed without the legally required public notice and comment period. The mitigation measures offered by the developer and accepted by the County are not adequate to protect Pine Hill ceanothus from extinction and fail to address the loss of 28 acres of rare plant habitat.

The County failed to implement the Rare Plant Mitigation Program in a manner that follows the law.

The program requires that the fees collected as mitigation for impacts to the Pine Hill plants be reviewed and updated annually. Since adoption in 1998, the County has never reviewed or revised the mitigation fees. Given the steep rise in land values over the past 8 years, fees collected today support the acquisition of far fewer acres than fees proposed in 1998. This under-funding of the rare plant program limits the County's ability to acquire habitat that is essential to prevent the extinction of the Pine Hill plants. The County has also failed to establish conservation easements for land that was set aside for the purposes of rare plant protection. To date, there is an unknown amount of rare plant habitat that has been lost because it has not been protected with conservation easements as required.

Why the Temporary Restraining Order (TRO)?

After the lawsuit was filed, and before the TRO was issued, the developer began clearing and spraying "brush" on the site. Court documents filed by the developer declared under penalty of perjury that such plants were "sprayed" for the purpose of trying to kill them before the Court could act on a TRO to protect them from a proposed development project. The full effect of clearing and spraying upon the rare plants on the site are not known at this time. Herbicide labels generally indicate that the product should only be applied when the potential for drift to adjacent sensitive areas (e.g., known habitat for threatened or endangered species) is minimal. Willful misuse of the product contrary to the label is a violation of federal law under FIFRA (section 12(a)(2)(G)). The TRO was needed to prevent further harm to the rare and endangered plants until the lawsuit is resolved.

But it is a Senior Care Facility?

The proposed Congregate project is a senior care facility. CNPS has no opposition to Senior Care facilities. A large percentage of our membership are seniors. Our opposition is to the location of development which eliminates rare and endangered plants and eradicates rare plant habitat. While the focus is on senior care, the developer and the County are actually piece meal development. The entire land parcel compromises some 68 acres in total, of which 28 acres are designated for the Congregate project. About 60% of the land parcel is planned for development as multi-family housing.

Pine Hill Plants: A unique plant community

The proposed Congregate project site has rare plants that are part of a unique plant community confined to soils known as the Rescue soils series, which in turn are associated with gabbro soils. The gabbro rock from which these soils are derived was originally formed deep in the earth's crust from molten rock about 165 million years ago. Through uplift of the crust and erosion of the ancestral Sierra Nevada, these rocks eventually became exposed at the earth's surface.

Gabbro soils have unusual properties derived from the underlying gabbro rock : they are generally red, mildly acidic, rich in iron and magnesium, and often contain other heavy metals such as chromium. Outcrops of another unusual rock type, serpentinite, also occur in the Pine Hill area. Over geologic time, a few plants uniquely adapted to survive on these unusual soil types have evolved. In addition, some 740 distinct plant species have been recorded in the Rescue soil series and adjoining serpentine and metamorphic rocks. This means that almost 10% of the native plant species known in California are represented within this tiny fraction of the state, making it a nationally significant site of species diversity.

Two endangered plants (Pine Hills Ceanothus and Stebbins' Morning Glory), one species of concern (El Dorado County Mules-ears), and one listed as rare by the State of California (Red Hills soaproot) are known to occur within the proposed Congregate development area. The development would eliminate approximately 1/3 of all the known plants of Pine Hill Ceanothus and fully develop 28 acres of rare plant habitat.

Pine Hills Ceanothus (*Ceanothus roderickii*)



This low-growing shrub has grey-brown bark and leaves that are small, tough, green on the upper surface, grey-green underneath and occasionally have toothed edges. Very

small white to slightly blue or pink flowers form in clusters that look somewhat like cotton balls. This species grows only on gabbro soils in western El Dorado County, scattered throughout areas of chaparral. *It is found nowhere else in the world and is listed under the Federal Endangered Species Act as endangered and with the State of California as rare.*

Photo by Joanne Geggatt

Stebbin's Morning Glory (*Calystegia stebbinsii*)



This non-woody perennial vine has showy white flowers that look very much like a common morning glory, but is distinctive because of its leaves, each of which are divided into 5 to 7 very thin lobes that resemble fingers on a hand. Stebbins' morning-glory grows in gabbro soils in El Do-

rado and Nevada County in openings in the chaparral. *It is found nowhere else in the world, and is listed under the Federal Endangered Species Act and with the State of California as endangered.*

Photo by Joanne Geggatt

El Dorado mule-ears (*Wyethia reticulata*)



El Dorado mule-ears is a perennial sunflower that dies back to the ground's surface each year. The leaves grow along the stem and are large (up to six inches long) and triangular in shape. The flower heads are up to three inches in diameter and look like a typical sunflower.

El Dorado mule-ears grows only in

the gabbro soil region of western El Dorado County and is listed as a species of concern.

Photo by Steve Tyrone

Red Hills soaproot (*Chlorogalum grandiflorum*)



Photo by Steve Tyrone

Photo by George Hartwell

This perennial herb is a member

of the lily family and grows from a bulb. Several leaves radiate from the base of the plant. They are usually four to twelve inches long, between one fourth and one half inch in width, linear and wavy. The flowers, which open in the evening, bloom along the upper portion of slender stalks which are one to two feet in height. The six petals are about an inch long, slender and white, with a vein of purple down the middle. The slender petals curve backward when the flowers open in the evening, attracting moths as pollinators. *It is found almost entirely in western El Dorado County and the Red Hills in Tuolumne County and is listed by the State of California as rare.*

For more information, please visit:

Pine Hill Plant Preserve

<http://www.pinehillpreserves.org>

U.S. Fish and Wildlife Service, Recovery Plan for the Pine Hill plants

http://ecos.fws.gov/docs/recovery_plans/2002/020803.pdf

California Native Plant Society

www.cnps.org

El Dorado County, Endangered Species

<http://www.co.el-dorado.ca.us/Planning/EndangeredSpecies.html>

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