

Date: September 26, 2008

To: Tom Figg

From: John Larson

Subject: **Santa Barbara Ranch Cultural Resource Impacts and Mitigation**

At your request, we have reviewed the Final EIR sections, comments and responses regarding cultural resources, and have reviewed the latest correspondence from the California Office of Historic Preservation (OHP) dated August 21, 2008. In summary, we appreciate the clarifications in the August 21, 2008 letter and do not believe that any of this information changes the conclusions in the Final EIR with respect to potential impacts on cultural resources and recommended mitigation measures.

The introductory paragraphs in the August 21, 2008 letter regarding Sources Used and Project Alternatives do not raise any issues and simply confirm that OHP does not take a position in support of or in opposition to any alternatives. The only remaining confusion relates to the prioritization of mitigation measures, and whether the mitigation measures proposed within the Final EIR are adequate to avoid or reduce significant impacts.

The August 21, 2008 letter references the earlier OHP letter dated June 30, 2008, which was submitted after preparation of the Final EIR during the Planning Commission hearing process. We were prepared to address the points raised in the June 30 letter, but there were no specific questions or requests on those issues at that time so we did not offer specific testimony related to that letter. The basic issue raised by OHP in the June 30 letter, and repeated with some explanation in the August 21 letter, is whether mitigation measures that involve data recovery at a pre-historic site are adequate to mitigate impacts related to various criteria used to determine the importance of a site.

The criteria used to judge whether a cultural resource is important (or "historically significant," which is the phrase used in the Public Resource Code) from the CEQA Guidelines (15064.5(a)(3)) are as follows:

Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code, § 5024.1, Title 14 CCR, Section 4852) including the following:

- (A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- (B) Is associated with the lives of persons important in our past;
- (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- (D) Has yielded, or may be likely to yield, information important in prehistory or history.

In our original evaluation of the pre-historic sites on the property, we explained that a formal evaluation of eligibility for listing has not been performed but based on the available information it appears that two sites (CA-SBA-77 *Kuyamu*, and CA-SBA-78 *Mikiw*) would likely be eligible based on criteria A, B, and D above (Final EIR page 9.11-14). The identification of these sites in early historic accounts (leading to the "Dos

Pueblos” identifications) and their presence during the early mission period support criteria A and B, while their remaining artifact contents support criteria D. Other prehistoric sites (CA-SBA-79 and 144) were believed to be potentially eligible under criterion D only (Final EIR page 9.11-15). In our summary discussion of these sites in the Final EIR General Responses (Section 13.31.2), we did not draw this distinction.

In our discussion of how these criteria are applied by the County Guidelines and Thresholds, the EIR (Final EIR page 9.11-24) also explains that:

Prehistoric resources are generally evaluated as CRHR eligible under criterion number four. In this evaluation eligibility hinges on the nature of intact archaeological deposits or features in a particular resource

In our presentation of impacts and mitigation, we went to some lengths to describe aspects of, or changes in, the project design and other measures that avoid or minimize any physical changes to these sites (Final EIR General Responses Section 13.3.2). CA-SBA-77 will not be physically altered by the project as demonstrated by the extended Phase I testing. CA-SBA-144 likewise will not be directly affected by the project. Physical impacts to CA-SBA-78 will be limited to the existing footprint of disturbance at the existing house on Lot DP-16, and possible disturbance on Lot DP-20, which the applicant re-located to the far western and lowest density area of the archaeological deposit. We also suggested the relocation of the development envelope for Lot DP-15 to a location where previous research indicates there will be no or minimal impacts at CA-SBA-79 (considered eligible under criteria D only).

Thus, to a very great extent the conditions of the most important prehistoric sites will not be altered by the project. In this context, the project will not alter their eligibility under criteria A or B. Virtually all of the current extent of these two village sites will be retained, and their historic connections or other aspects making them eligible for listing under criteria A and B will not be altered in any way by the project.

The only physical changes at CA-SBA-77 and 78 will be limited to minor incidental disturbance in areas already disturbed, or possible uncovering of isolated artifacts outside of the mapped areas of these sites. While minor, these types of impacts would remove or disturb artifacts that may have some scientific value and we did characterize these effects as a potential significant impact. We also describe the necessary testing and data recovery, if warranted, to provide appropriate mitigation for this impact.

We continue to hold that impacts to the prehistoric sites within the project area are “Class II” significant and mitigable. The opinion expressed in the June 30 OHP letter that these impacts would be Class I (significant and not mitigable) does not recognize the degree of avoidance that has been achieved through the project design changes, or other factors which we have presented in the Final EIR, in support of our conclusions.

Date: September 24, 2008

To: Tom Figg

From: John Larson

Subject: **Interpretation of Mitigation Measure Regarding Dog Restrictions**

Earlier this week you raised a question regarding the interpretation of one of the EIR mitigation measures that implies all dogs should be restricted to development envelopes. In the specific instance of Lot 132, virtually the entire lot is within a development envelope so there would not be a concern here. For larger agricultural lots, however, we agree that some clarification is in order. You did not specifically mention working dogs associated with cattle or sheep grazing, but that would be one potential concern. In addition, I agree that it may not be reasonable or practical to expect the owner of a large agricultural lot (Lot 185, Lot DP-10C, or any of the DP lots south of Highway 101) to keep dogs out of agricultural or similar low quality habitat areas. In response to your request for clarification on this matter, I consulted with our biologists and can provide the following interpretation.

The following excerpt from Mitigation Measure Bio-9b related to wildlife mortality describes a component of the public education program, which is part of this mitigation measure and must include:

- A presentation (accompanied by literature) to the home owner's association by a qualified local biologist and/or local CDFG biologist/game warden every two years as long as there are occupied residences in the project area. Costs of implementing this measure shall be borne by the Home Owners Association. The presentation and literature shall discuss proactive measures that landowners can implement to reduce or avoid negative human/wildlife interactions, including, but not limited to: keeping cats and dogs in at night in order to reduce predation by them on native wildlife and to prevent them from being preyed upon by coyotes and mountain lions; leash requirements for dogs on hiking trails; measures to prevent domestic cats and dogs from roaming habitats outside the building envelopes; preventing domestic cats and dogs from reproducing and becoming feral; eliminating food sources and other attractive nuisances to wildlife in and around building envelopes; measures for minimizing exposure to illnesses borne by mosquitoes, impacts of non-native aquatic and terrestrial plants and animals on native wildlife and habitats; prohibitions against release of non-native animals into open spaces and collecting of native wildlife, such as turtles, frogs, and snakes; education concerning snakes shall include a discussion of the benefits of these predators for rodent control, identification of harmless species, and the alternative of capturing and moving snakes to open space areas rather than killing them; the value of swallows, black phoebes, and other eave-nesting birds for insect control, and simple, proactive, non-invasive measures that can be implemented by landowners to prevent nesting by these species on residences and other structures; and other relevant topics. These topics shall also be included in the CC&Rs for this project. Because it is foreseeable that new technologies and methods for accomplishing these goals will be developed during the life of the proposed project, the presentation and accompanying literature shall be updated prior to each presentation to prevent obsolescence of materials.

From the above excerpt, the specific reference to prohibiting dogs outside of development envelopes is:

The presentation ... shall discuss ... measures that landowners can implement to reduce or avoid negative human/wildlife interactions including but not limited to: ... measures to prevent domestic cats and dogs from roaming habitats outside the building envelopes...

In discussing the matter with our biologists, the major concern is prohibiting dogs from the beach. The biology section of the EIR also makes references to potential predation by dogs on a variety of sensitive species that may be present (red legged frogs, various reptiles and amphibians, bats). The mitigation measure above does not present a specific restriction—it deals with information that should be presented to residents. For a specific restriction that is consistent with the intent of the mitigation measure above, it is not necessary to restrict dogs just to development envelopes, but they should be prevented from entering habitat areas. Dogs should be restricted completely from the beach, and should be restricted from Open Space Conservation Easement areas. Since the intent of the Private Agricultural Conservation Easement (PACE) areas was to preserve foraging habitat over those grazing lands, dogs should be restricted in those areas as well.

In my opinion, it is not necessary to modify the language of the mitigation measure.

Date: September 11, 2008

To: Tom Figg

From: John Larson

Subject: **Santa Barbara Ranch EIR, California Department of Fish and Game Comments**

In response to your request, I have assembled the following information and provided copies of some of the background material for Chris Julian to deliver to Betty Courtney at CDFG tomorrow. My understanding of the current concerns of CDFG is based on testimony by Martin Potter and Natasha Lohmus at the Planning Commission hearing of August 13, 2008, to which I responded, and on your summary of communications between you and Betty Courtney since then. We have always considered biological resources to be one of the most important issues with this project, but I believe that all of the current issues have already been addressed in the Final Environmental Impact Report (EIR). The information that various groups and individuals, including CDFG, presented during Planning Commission hearings was not new. In reviewing that information, and in addressing it during the hearing process, we see no reason to change any of the conclusions in the Final EIR with respect to impacts and mitigation measures. The following paragraphs identify the current issues, as I understand them, and describe our responses to them. There are many other biological issues, impacts, and mitigation measures. If I have missed any major items of concern to CDFG or others, and you would like additional information, please let me know.

1. Adequacy of Native Grassland Mapping
 - a. Santa Barbara Ranch Property

There are several distinct arguments and responses related to this issue, the first of which is raised clearly in the CDFG comment letter on the Revised Draft EIR (Comment S-6-4). The Revised Draft EIR referred to "...areas where native grasses exceeded 10%..." when referencing the County of Santa Barbara native grassland mapping procedures. I have admitted that this was an editorial error on our part, and in the Final EIR we have used the more appropriate phrase "native grassland species" in describing the procedure (see page 9.4-10). SAIC did the mapping of native grassland areas on the Santa Barbara Ranch property under a separate contract with the County. Their description of the native grassland mapping procedures was not entirely clear. Our response S-6-4 provides a more thorough description of the SAIC procedures, and we did correct the references in the Final EIR, as noted above. In his original comment letter on the Revised Draft EIR, David Magney provided a more clear explanation and opinion that SAIC had generally followed the County's procedures for mapping native grassland (see Comment G-3-38 and G-3-39).

Elsewhere in his comment letter (see Comments G-3-46, G-3-47, his Table 4, and G-3-48) Mr. Magney argues that the identification of native herbaceous species associated with native grasslands should be based on a broader list of species including, in particular *Deinandra [Hemizonia] fasciculata* (also emphasized in Magney's subsequent letter dated June 30, 2008, page 4). Our botanists are unanimous in their strong disagreement with

this position. This particular species, “common tarweed,” is quite invasive into disturbed areas such as grazing lands. Absent native grasses or other species more indicative of native grasslands, we would not consider a pasture as native grassland based on the presence of this species. I do not believe that CDFG has commented on or taken a position on this point.

b. Dos Pueblos Ranch Property

A separate criticism relates to the URS mapping of vegetative communities on the Dos Pueblos Ranch property, within the Alternative 1 (and now Alternative 1B) design. This issue was not raised by the CDFG comment letter, but has been raised by others. Our vegetation mapping was done by Don Mitchell, a qualified biologist who is unfortunately no longer with the firm. As we described in the Final EIR (page 9.4-6) vegetation mapping was accomplished through meandering on-foot surveys over all areas and the use of aerial photographs. When this issue arose, I interviewed Don Mitchell and he confirmed that other than isolated small bunches of purple needle grass scattered throughout the non-native grassland areas, with some areas of concentration at the interface between non-native grassland and coastal scrub, there were no concentrations of native grasses present throughout the large annual grassland areas. Consequently, Don Mitchell did not perform any transect surveys since there were no areas that seemed appropriate for that type of analysis. While I am not a botanist, I did walk through large portions of these areas and was impressed by the abundance of mustard in some areas, and only saw purple needle grass in isolated bunches at the edge of some coastal scrub areas. County Biologist Melissa Mooney was present with me on one of these site visits, and confirmed our conclusion that there were no mappable units of native grassland in these northern areas of the Dos Pueblos Ranch property.

2. Biological Survey Procedures

Again, this is not an issue raised originally by CDFG. Several other commenters, most notably David Magney, did raise this issue and argue that the conclusions of the EIR are not supportable because of several alleged deficiencies in the surveys and reporting. In general, the points raised are as follows:

- A single, complete floral checklist including identification of all plants to species and subspecies was not prepared
- Specific survey protocols for various species, both plants and animals, were not followed
- Complete formal wetland delineations following the U.S. Army Corps of Engineers procedures were not performed
- A single, complete Biological Survey Report containing all of the tabulations and technical analyses was not prepared for this project

Based on our conversations, I believe that this is an issue of concern to CDFG. This is a very complex project, with a very complex history, and there is no single response to these criticisms. County Counsel reviewed this issue and provided guidance to the Planning Commission during their hearings. In summary, he made a strong argument that CEQA does not require the County to follow any specific procedure or protocol, and provided case citations to make the point. I agree with his position.

In separate responses, we have addressed the specific points related to the adequacy of the surveys conducted and our analysis of the information gained from them (see Responses G-3-7 through G-3-38). We reviewed the difficulties in finalizing wetland delineation in the text of the EIR (page 9.4-12, page 9.4-19, Tables 9.4-2 and 9.4-5, and Figures 9.4-2 and 9.4-3), and repeated this information for the Planning Commission. I would also

emphasize that most of the referenced “protocol” surveys are designed to provide evidence that a species is not present. For some sensitive species on the project site, we observed them or otherwise documented their presence and we did identify potential impacts and appropriate mitigation measures. In this circumstance, it is not necessary or reasonable to do certain “protocol” surveys.

Finally, I must emphasize that the County’s direction in handling the lengthy discussions of biological issues in the body of the EIR was in part responsive to input from the Naples Coalition and other project opponents not to “hide” information by relying on extensive technical appendices.

3. Status of California Annual Grassland

Several entities have argued that non-native grassland or California annual grassland should be afforded special protection as an Environmentally Sensitive Habitat Area (ESHA) because some sensitive species may be found there--in particular since white-tailed kites forage over such areas. We have addressed this issue in Section 13.5.3 of the Final EIR. In summary, other than the grassland specifically associated More Mesa, the County has not designated any such areas as ESHA in their Coastal Land Use Plan (CLUP). In our analysis, even if such a designation were to have occurred the project as designed would be consistent with the applicable policies from the CLUP, since they are aimed primarily at avoiding nesting and roosting areas for white-tailed kite.

From the start, the project design has been oriented towards preserving higher quality native vegetation communities—meaning virtually all of the areas containing native vegetation. Until there is a clear policy decision to the contrary, supported by evidence that indicates the non-native grazing and pasture land not only provides better biological habitat but is also in danger of being greatly reduced throughout the region, I think the approach used in this project is appropriate.

There is a point of confusion, however, which may have influenced the CDFG comment (see Comment S-6-13) that characterizes California annual grassland as “...high conservation value habitat in the Department’s Gaviota Coast Conceptual Area Protection Plan.” The confusion stems from the CDFG disagreement with our finding that the cumulative loss of the Coastal and Foothill Habitats, and in particular the loss of the coastal terrace grasslands in the region, cannot be mitigated. This is an involved and important topic, to which we devoted considerable explanation. Our description of this cumulative effect (Impact Bio-22) is over three pages long, and our position is explained again below.

4. Cumulative Impact – Loss of Coastal Terrace Grassland

The lead biologist working on this project has considerable experience throughout the Gaviota Coast, and he identified this issue as significant for several specific reasons. The quality of the grassland habitat (non-native as well as native) along the flatter coastal terrace, generally south of Highway 101 between Coal Oil Point on the east and El Capitan Point on the west, is higher than similar habitat found elsewhere throughout the Gaviota Coast mostly on somewhat steeper slopes north of the highway. The difference involves a combination of flatter slope, deeper and better developed soil profile, higher habitat diversity provided by the incised coastal streams, and the movement corridors provided by these streams to help interconnect the coastal terrace with the inland habitat areas. This issue and our conclusions were discussed with other biologists familiar with the region. While the applicant’s representatives were skeptical, I felt the biologists made a convincing argument and I supported their position in the first Draft EIR. This was a serious issue, and led to design changes in the project.

These included altering the configuration of access roads and driveways south of Highway 101 to provide better continuity in the remaining areas of this habitat, defining the Private Agricultural Conservation Easements (PACE) which will prohibit intense cultivation and restrict activities to grazing similar to current uses, and several other design details to minimize the barrier effect of development. While the project opponents have described these changes as minor and of no imposition to the applicant, we believe that the changes are important.

We do not believe, however, that the cumulative effect related to the loss of this coastal terrace grassland and its interconnectivity to the foothills can be mitigated. The main reason for our conclusion is that most of the loss has already occurred in the urban development of Goleta and surrounding unincorporated areas. CDFG disagreed with our conclusion (in their Comment S-6-13), and argued that offsite compensation in the form of preserving areas of California annual grassland on the slopes north of the highway would provide adequate mitigation. They cite the report referenced above (the Department's Gaviota Coast Conceptual Area Protection Plan), but we have been unable to find a copy of this report. Martin Potter repeated the CDFG position—that the loss of the coastal terrace grasslands could be mitigated through preservation of areas on the slopes to the north—at the Planning Commission hearing on August 13, 2008. My testimony in response to his comments, involved the information presented in the EIR and summarized here.

5. Dos Pueblos Creek Diversion

This is an issue between CDFG and the Schulte family. Despite statements from project opponents to the contrary, the project as proposed will not have any affect to increase or decrease the pattern of permitted diversion. My position is set forth clearly in Section 13.4 of the Final EIR, which simply provides more detail for our discussion in the original EIR. My presentation and testimony to the Planning Commission was perhaps more dramatic than intended. I am a groundwater chemist, and I have been involved in a dozen or so of these types of surface and groundwater basin studies over the last 30 years, including two recent similar reviews in San Luis Obispo County, and one other in Santa Barbara County. I have listened very carefully to all of the arguments on this issue, and have not heard anyone disagree with my numerical summaries and conclusion on this matter, let alone provide any evidence indicating that I am in error. In my opinion, the record on this issue is very clear that the current pattern of diversion does not result in adverse habitat effects. I do not know, however, whether or not the streambed alteration agreement requirements of Section 1600 can apply retroactively.

Based on my discussions with you, and on reviewing the subsequent letters and testimony, I think the above points cover the major issues that may be of concern to CDFG. There are many other biological issues, impacts, and mitigation procedures that remain important. If these need elaboration beyond what we have already provided, please let me know.