



# DEPARTMENT OF CONSERVATION

## DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEBSITE [conservation.ca.gov](http://conservation.ca.gov)

October 1, 2008

Mr. John Baker, Director  
County of Santa Barbara  
Planning and Development  
123 E. Anapamu Street  
Santa Barbara, CA 93101

Dear Mr. Baker:

Subject: Rescission of Land Conservation (Williamson Act) Contract  
Schulte Agricultural Preserve No. 77-AP-14, Dos Pueblos Ranch

Thank you for submitting notice to the Department of Conservation (Department) as required by Government Code §51284.1 for the above referenced matter.

The petition proposes to rescind 2,566 enforceably restricted acres (517 acres of prime agricultural land) from Dos Pueblos Ranch for the following purposes:

- Rescission of 274 acres for development of 40 residential lots.
- Rescission of 289 acres and entry into an Agricultural Conservation Easement (ACE).
- Rescission of 2,003 acres and entry into an ACE and a new Williamson Act Contract.
- Entry into an ACEs on an additional 391 acres.

The County and landowner propose to enter into an agreement to participate in the Department's Williamson Act Easement Exchange Program (WAEPP) as allowed under Government Code §51256. The WAEPP requires the County Board make the cancellation findings in §51282 of the Government Code. Additionally, the provisions of §51256, require final approval by the Director of Conservation. The Department has reviewed the petition and information provided and offers the following comments.

### Cancellation Findings

Government Code §51282 states that tentative approval for cancellation may be granted only if the local government makes one of the following findings: 1) cancellation is consistent with purposes of the Williamson Act or 2) cancellation is in the public interest.

### Public Interest

The petition proposes to cancel the Williamson Act contract based upon a public interest finding. For the cancellation to be in the public interest, the Board must make findings with respect to all of the following: (1) other public concerns substantially outweigh the objectives of the Williamson Act and (2) that there is no proximate non-contracted land which is available and suitable for the use proposed on the contracted land or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.

In order to find that “other public concerns substantially outweigh the objectives of the Williamson Act,” the Supreme Court has directed that the Board must consider the interest of the public as a whole in the value of the land for open space and agricultural use. Though the interests of the local and regional communities involved are also important, no decision regarding the public interest can be based exclusively on their parochialism. Moreover, the paramount ‘interest’ involved is the preservation of land in agricultural production. In providing for cancellation, the Legislature has recognized the relevance of other interests, such as housing, needed services, environmental protection through developed uses, economic growth and employment. However, it must be shown that open space objectives, explicitly and unequivocally protected by the act, are substantially outweighed by other public concerns before the cancellation can be deemed “in the public interest” (*Sierra Club v City of Hayward* (1981), 28 Cal. 3d. 840, 857).

#### *Other public concerns substantially outweigh the objectives of the Williamson Act*

Evidence provided to support the above required public interest sub finding includes the proposal to place ACEs (ACE) on approximately 2,653 acres. The proposed ACE offers permanent protection versus the 10-year rolling-term contractual obligation of a Williamson Act contract. Under provisions of the Williamson Act, a landowner has the right to nonrenew the contract provided a notice is filed and recorded with the local government. The contract nonrenewal period lasts nine years; after which the contract and its enforceable restrictions are terminated.

The ACE would protect 87 acres beyond the current acreage of the Williamson Act contract. It would provide permanent protection from development from the ocean to the mountains on the eastern Gaviota Coast. Additionally, the ACE provides a buffer.

Lastly, the County and landowner’s participation in the WAEPP assists in the resolution of long-standing land use and policy disputes involving the Official Map of the Town of Naples (Naples Map). Cancellation of the contract facilitates this comprehensive approach by reducing the number of legal lots from the Alt 1B project area from 235 to 71, providing protection in perpetuity to agriculture, wildlife and vegetative habitat resources, improving recreational and coastal access opportunities for citizens of the State.

The Department recommends the inclusion to the record of the following maps or graphics to clearly demonstrate the public benefits and concerns addressed by cancellation of the contract and resolution of land use issues.

- Official Map of Naples Map – a demonstration of the development potential and reduction afforded by cancellation of the contract and ACE agreements.
- A map delineating the boundaries of the City of Goleta and the existing urban limit line.
- Narrative and details of improved recreational opportunities and coastal access.
- A map of the proposed ACE boundaries.

*Availability and suitability of proximate non-contracted lands*

The Department concurs that due to the uniqueness and complexity of the land use and policy issues of this particular cancellation petition, there are no proximate non-contracted lands available and suitable for the alternative uses proposed.

A feasibility study to transfer the developments from Santa Barbara Ranch to more appropriate urban locations was conducted pursuant to Coastal Land Use Plan (CLUP) policy 2-13. The study concluded and found that complete extinguishment of development rights for the Naples Townsite was improbable. The study analyzed three different development configurations and reasonably concluded they were not feasible due to location, value and common interest.

The Department recommends the inclusion to the record of the following to further address the availability and suitability of proximate non-contracted lands:

- Legal decisions in reference to the Naples Townsite and culmination of the Memorandum of Understanding (MOU).
- The court approved MOU between the County and owners of Santa Barbara Ranch
- County CLUP; specifically Policy 2-13
- Pertinent sections of the County's General Plan related to resource conservation objectives, policies and goals.
- A copy of the Transfer of Development Rights (TDR) Feasibility Study and TDR Enabling Ordinance.
- Resource maps relied upon by the County to demonstrate the physical, environmental and policy constraints to development possible according to the project areas underlying land use designation.
- The proposed ACE documents.

Mr. John Baker  
October 1, 2008  
Page 4 of 4

Nonrenewal

As a general rule, land can be withdrawn from Williamson Act contract through the nine-year nonrenewal process. The Supreme Court has opined that cancellation is reserved for extraordinary situations (*Sierra Club v. City of Hayward* (1981), 28 Cal.3d 840). The Department agrees that the resolution long standing land use and policy disputes, coupled with the permanent preservation of 2,653 agricultural acres an extraordinary situation as interpreted by the State Court.

Provided that the information presented is complete and accurate, the Department concurs that there is an adequate basis to support the public interest finding required to cancel the proposed parcels of contracted land.

Thank you for the opportunity to provide comments on the proposed cancellation. Please provide our office with a copy of the Notice of the Public Hearing on this matter ten (10) working days before the hearing and a copy of the published notice of the Board's decision within 30 days of the tentative cancellation pursuant to §51284. Additionally, we request a copy of the Board's findings pursuant to §51282. If you have any questions concerning our comments, please contact Adele Lagomarsino, Program Analyst at (916) 445-9411.

Sincerely,

Brian Leahy  
Assistant Director

cc: Thomas Figg  
Brent Daniels

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896  
SACRAMENTO, CA 94296-0001  
(916) 653-6624 Fax: (916) 653-9824  
calshpo@ohp.parks.ca.gov



August 21, 2008

Tom Figg, Project Manager  
Santa Barbara County Planning and Development  
123 E Anapamu St  
Santa Barbara, CA 93101-2025  
tfigg@co.santa-barbara.ca.us

**RECEIVED**  
**AUG 25 2008**  
**S.B. COUNTY**  
**PLANNING & DEVELOPMENT**

Dear Mr. Figg:

Santa Barbara Ranch Project Final Environmental Impact Report (FEIR), State Clearinghouse No.2005011049

As you are aware, I provided correspondence to the Santa Barbara County Planning Commission on June 30, 2008, commenting on the FEIR for the Santa Barbara Ranch Project ("Project"). Since that time, I have been asked by several parties to clarify my position on several aspects of that letter. I am happy to provide this clarification.

### **Sources Used in Preparing the June 30 Correspondence**

I recognize it may not be readily apparent from a review of the June 30 correspondence what authorities and reports were used in its preparation. For clarification's sake, the environmental document consulted in preparing the letter was the Proposed Final EIR, with particular emphasis on the Cultural Resources section and the *Historic Landscape Assessment, Dos Pueblos Ranch Property, Santa Barbara County*, prepared by EDAW, found in Appendix F. It is important to note, however, that this was the third letter I wrote regarding the Project. As such, the June 30 letter can also be seen as relying on those earlier letters and the sources used in their preparation. The first letter commenting on the Project Draft EIR is dated October 6, 2006, and the second letter on the Recirculated DEIR, is dated January 23, 2008. The October 2006 letter was based on a review of the Public Draft DEIR, with particular emphasis on the Cultural Resources section and Appendix F, and the Addendum Archeological Resource Report for Santa Barbara Ranch Property, Naples, prepared by Western Points Archeology, Larry Carbone, May 2005, digital format, obtained from Tom Figg, Santa Barbara County Project Manager. The January 2008 letter was based on a review of the recirculated Draft EIR, with particular emphasis on the Cultural Resources section.

### **Project Alternatives**

A question was raised as to whether this office was taking a position in favor of one alternative over the others in terms of this Project. Please refer to the penultimate paragraph of the June 30 letter, which states in part "our comments herein are specifically related to the environmental review process and adequacy of documents prepared for the environmental review purposes. We [OHP] do not take positions in

support of or against projects, but rather focus on the environmental review process.” Nothing in the June 30 letter should be read to imply otherwise with respect to the Project. Likewise, OHP does not take a position in support of or in opposition to alternatives and nothing in the June 30 letter should be read to imply otherwise.

### **Data Recovery as a Mitigation Measure**

In stating that data recovery neither does nor can mitigate the adverse impacts to a historical resource that is significant under criteria A, B, and D, OHP did not mean to imply that such mitigation is improper or not provided for by law. Clearly it is. CEQA recognizes that there will be instances in which archeological resources cannot be preserved in place or left undisturbed. CEQA Guidelines found in California Code of Regulations, Title 14, Chapter 3, sections 15064.5(c) and 15126.4 (b) recognizes that data recovery is a form of legally acceptable mitigation; however, data recovery as a mitigation measure cannot reduce the adverse impact of an historical resource of an archeological nature to a less than significant level when significant under criterion A (History) and criterion B (People) because data recovery presupposes that the resource has been removed from a site that may provide the necessary historical or cultural context. Data recovery can reduce an adverse impact to a historical resource to a less than significant level when the resource is significant under Criterion D (Scientific Value). Such resources are significant only for the potential to yield information, and their significance is not dependent on a historical or cultural context.

In suggesting the County consider alternative mitigation measures, the OHP did not intend to take a position on one mitigation over another. It meant only to suggest that certain mitigation may reduce impacts to a greater level than other forms of mitigation. Indeed, CEQA Guidelines § 15126.4 (b) (3) states:

Public agencies should, whenever feasible, seek to avoid damaging effects on an historical resource of an archeological nature. Preservation in place is the preferred manner of mitigating impacts to archeological sites.

(A) Preservation in place maintains the relationship between artifacts and the archeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.”

Preservation in place may be accomplished by project planning to avoid sites, by incorporation of sites into open space, by site capping or by deeding sites into conservation easements. These mitigation measures would reduce impacts to a greater level than data collection, which presupposes site disturbance.

OHP, however, does not take a position on the feasibility or infeasibility of specific mitigation measures. With respect to the Project, however, we remain concerned that

Mr. Tom Figg  
August 21, 2008  
Page 3

the above section of the CEQA Guidelines has not been addressed in the Final EIR (pages 9.11-28-29) for Alternative 1 of the Project.

I hope these clarifying comments are useful to you and the County in making decisions about this Project. If you have any questions, please do not hesitate to contact me directly.

A handwritten signature in black ink, appearing to read "Milford Wayne Donaldson". The signature is written in a cursive style with some vertical lines extending upwards from the letters.

Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer

Cc:

Dr. Michael A. Glassow  
Christina McGinnis  
Marc Chyttilo  
Frank Arrendondo  
Larry Meyers  
Goleta Valley Historical Society  
Dr. Jarrell Jackman  
Jack Ainsworth  
Khatchik Achadjian  
Sean D. Doherty  
Stanley Lamport

State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF FISH AND GAME**<http://www.dfg.ca.gov>

South Coast Region  
4949 Viewridge Avenue  
San Diego, CA 92123  
(858) 467-4201



August 20, 2008

Mr. Stanley W. Lamport  
Cox, Castle and Nicholson  
2049 Century Park East, Suite 2800  
Los Angeles, CA 90067  
Facsimile: (310) 277-7889

**Subject: Santa Barbara Ranch Development and Dos Pueblos Ranch Water Diversion**

Dear Mr. Lamport:

Thank you for your recent communication with the Resources Agency and the California Department of Fish and Game (Department) regarding the Santa Barbara Ranch (Ranch) Development project. As we discussed on the August 14, 2008 conference call, the Department would like to meet with Ranch representatives in the very near future to discuss outstanding issues pursuant to the California Environmental Quality Act (CEQA). As you know, the Department has provided Santa Barbara County Planning and Development Department (County) CEQA comment letters on the Draft Environmental Impact Report (DEIR) and the Revised DEIR for the Ranch project, as well as testimony at the Planning Commission's hearing. I understand that there are several outstanding issues within the Revised DEIR the Department, County, and Santa Barbara Ranch will continue to work together to resolve, including impacts to native grasslands, protection of aquatic resources, fuel modification, impacts to jurisdictional drainages, and water usage from the Dos Pueblos Ranch water diversion. The Department will work with the Ranch as we continue to participate in the CEQA review process for the Ranch project within Santa Barbara County, California.

The Department looks forward to meeting with representatives of Santa Barbara Ranch and Dos Pueblos Ranch in the near future to address the outstanding CEQA issues. If you have additional questions, please contact Betty Courtney, Senior Environmental Scientist at (861) 263-8306.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmund J. Pert".

Edmund J. Pert  
Regional Manager  
South Coast Region

cc: Karen Scarborough, Resources Agency, Sacramento  
Helen Birss, DFG, Los Alamitos  
Betty Courtney, DFG, Newhall  
Warden Dave Brown, DFG, Santa Maria  
Tom Figg, Santa Barbara Co. Planning and Development Department  
David Fainer, Jr., Allen & Kimbell, LLP, Santa Barbara

*Conserving California's Wildlife Since 1870*