



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

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IN REPLY REFER TO:
2008-FA-0073

October 10, 2008

Santa Barbara Clerk of the Board
Board of Supervisors
County of Santa Barbara
105 East Anapamu Street, Room 407
Santa Barbara, California 93101

Subject: Comments on the Proposed Final Environmental Impact Report for the Santa Barbara Ranch Project, Santa Barbara County, California (Case No. 04EIR-00000-00014)

Dear Supervisors:

We are writing in response to the County of Santa Barbara (County) Board of Supervisors' notice of public hearing for the proposed Santa Barbara Ranch Project, which was received in our office on October 3, 2008. The notice indicated that the County Planning Commission has made the following recommendations to the Board of Supervisors: (i) adopt findings in support of project approval; (ii) certify the final environmental impact report (FEIR); (iii) adopt implementing resolutions and ordinances; and (iv) approve Alternative 1B subject to specified conditions. We are providing comments on the FEIR, in order to address the adequacy of the County's responses (as described in the section 15.0 of the FEIR) to the comments contained in our January 23, 2008, letter regarding the draft environmental impact statement for the subject project.

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If a project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency

but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act.

General Comment

While we remain concerned with a number of the County's responses to issues raised in our January 23, 2008, comment letter, our primary concern is that the FEIR proposes to defer issues regarding the presence of federally-listed species and the proposed project's potential for take of these species, if present, to a time when opportunities for effectively incorporating avoidance and minimization measures into the project description would be lost. Deferring the identification of impacts to listed species may preclude our ability to meet permit issuance criteria and authorize take of federally listed species. A number of the County's responses in the FEIR do not address our request for the County's coordination with the Service on endangered species avoidance and protection issues. As stated during our site visit to the project area with County planning staff on December 13, 2006, and in our January 23, 2008, comment letter, we request that the County and the project proponent coordinate with us to ensure compliance with the Act. Deferring compliance with the Act to future parcel owners could preclude the development of an effective conservation strategy for listed species that may be adversely affected by the proposed project. As noted in our January 23, 2008, comment letter, despite the incorporation of any mitigation measures developed pursuant to the California Environmental Quality Act (CEQA), any take of listed species that would result from implementation of the proposed project would require exemption pursuant to section 7 or authorization pursuant to section 10(a)(1)(B) of the Act.

Specific Comments

Responses F-2-3, -4, and -5: It is our determination that water diversion from Dos Pueblos Creek could result in take of the federally threatened California red-legged frog (*Rana aurora draytonii*). Section 13.4 of the FEIR, which addresses water diversions from Dos Pueblos Creek, states that the subject project would use State Water for all new domestic purposes, and concludes that the project will not have any effect on surface flows in Dos Pueblos Creek. The FEIR further asserts that agency comments regarding the dewatering of Dos Pueblos Creek and the resulting impacts on riparian habitat are unfounded. We believe these previously-stated concerns are legitimate due to the decreasing reliability of State Water. As the FEIR states, an updated Draft Reliability Report has been published by the State Water Project (SWP) and indicates that instead of being able to deliver 80 percent of SWP's commitments 80 percent of the time, they will only be able to deliver 80 percent of their commitments 40 percent of the time. These projections do not appear to have been represented in the summary of water sources and uses presented in Table 13-3. Table 13-3 provides a water balance for Dos Pueblos Creek based on 100 percent, 80 percent, and 30 percent availability of State Water in wet, normal-dry, and very dry years respectively. These percentages appear high given the new estimated reliability of State Water. The deficit would need to be compensated by other sources, likely including diversion from Dos Pueblos Creek and pumping from wells that are hydrologically connected with Dos Pueblos Creek via subsurface flow.

Statements in the FEIR's responses to comments indicate that the proposed project will not have a significant effect on the California red-legged frog and that the most recent analysis conducted for the diversion permit was in 1991, prior to the Federal listing of the subspecies. Despite this discrepancy, the FEIR does not propose any revisions to the terms of this permit to address adverse effects of the diversion activities on this subspecies. The potential for take of listed and/or otherwise sensitive species (in this case, the California red-legged frog and potentially the federally endangered tidewater goby (*Eucyclogobius newberryi*) is typically analyzed and determined by a biologist or other qualified individual familiar with the species; however, the FEIR indicates that the landowner is the entity making the determination in this case (specifically, Response F-2-5).

Response F-2-5: Please note that a review of the species documented in the relevant USGS quadrangles in the 2005 California Natural Diversity Data Base (CNDDDB) is not sufficient to determine which species are not present, or have a low probability of occurrence, within the project area. The information within the CNDDDB is contributed voluntarily and many biologists do not participate in the development of this database. In addition, many areas of California, including substantial portions of Santa Barbara County, remain unsurveyed for the presence of sensitive plant and wildlife species.

The use of pre-construction surveys will not allow for impacts to be avoided or likely minimized and appears to presume that translocation would be acceptable as a mitigation measure (Mitigation Bio-1b). The Service does not typically concur with this approach, as most plant translocation efforts are not successful in re-establishing functional populations. Mitigation Bio-2b states that "in the event that any plant species designated as endangered, threatened, or rare under the Endangered Species Act or California Endangered Species Act are detected, construction on the subject lot shall not proceed until the USFWS and/or CDFG have been notified and any required authorizations are obtained." As noted in our General Comment above, this proposal defers mitigation or authorization to a time when many opportunities to avoid or minimize impacts may no longer be feasible or effective.

Response F-2-10: This response states that various species have the potential to occur in the project area but provides no data upon which to conduct an impact analysis. It is unclear why surveys for State- and federally-listed species were not conducted during the CEQA process, as this would have ensured that if impacts would occur during project implementation, the necessary species-specific mitigation measures could have been included for public and agency review.

Response F-2-12: In addition to typical pond or vernal pool habitats, those listed vernal pool branchiopod species with potential to occur onsite can be found in very small depressions and/or swales that exhibit a hydroperiod sufficient for them to complete a life cycle. It is unclear how the project will identify those seasonal water bodies that may contain State- or federally-listed vernal pool species such that they can be avoided and adequately buffered. While Mitigation Bio-5 states that these areas would be buffered by a distance of 100 feet, this alone may not be sufficient to avoid take of listed vernal pool branchiopod species.

Response F-2-14: As noted in our discussion regarding Response F-2-5 above, the CNDDDB should not be considered a substitute for habitat assessments and/or field surveys. In this case, the tidewater goby is known to recolonize historic locations such as Dos Pueblos Creek, and the absence of a CNDDDB record in 2005 cannot be considered conclusive evidence that the species is not present. The FEIR states that a recovery plan has not been prepared for the tidewater goby; however, a final recovery plan for the species was issued by the Service on December 7, 2005. The recovery plan and the tidewater goby survey guidelines contained within it were discussed in our January 23, 2008, comment letter on the project. In addition, although Response F-2-14 of the FEIR states otherwise, critical habitat for the tidewater goby was proposed on November 28, 2006, and was designated on January 31, 2008 (73 Federal Register 5920).

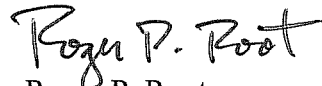
Response F-2-15: California red-legged frogs are known to move overland for distances well in excess of 100 feet from breeding habitat. Researchers in Santa Cruz County documented marked California red-legged frogs making overland movements of up to 2 miles over the course of a wet season. These individual frogs were observed to make long-distance movements that are straight-line, point to point migrations over variable upland terrain rather than using riparian corridors for movement between habitats. As such, a 100-foot buffer between development and habitat for these frogs is not sufficient to ensure that take would not occur during project implementation.

Response F-2-16: Public education and Covenants, Codes, and Restrictions are not measures that can be relied upon to ensure that take of California red-legged frogs (or other listed species) would not result from the increase in human presence and activity proximal to breeding and upland dispersal habitat. Covenants, Codes, and Restrictions can also be modified by a homeowner's association without input from the Service. Speed limits are difficult to enforce and, similarly, should not be relied upon as an avoidance measure to preclude take of dispersing California red-legged frogs.

Response F-2-17: While we recognize that the County would not have a direct role in any consultation between the U.S. Army Corps of Engineers and the Service pursuant to section 7 of the Act, the County does have a direct role in the approval of the project design that will be the subject of that consultation or a possible application for an incidental take permit submitted by the current or a future landowner(s). Survey information relative to the presence of such species within the project area is a necessary component of any consultation or incidental take permit application and should be gathered as early as possible in the project design/approval process. In order to be considered in the project design, these data should be collected and analyzed as part of the CEQA process. In this way, the opportunity for project modifications that could avoid adverse impacts to federally-listed species, and thereby avoid the need for future consultation or permit authorization, would be available for incorporation into the final design to minimize the need for future land owners to navigate endangered species issues. Based on our review of the FEIR, the trigger is unclear for future landowners to engage with the Service to ensure that take of federally listed species would not occur or is adequately authorized.

We appreciate the opportunity to provide these comments on the FEIR for the Santa Barbara Ranch project. We hope that you will consider and address the issues we have presented. We are available to work with you and County planning staff on this project and any others where endangered species issues are involved. If you have any questions regarding the content of this letter, please contact Julie M. Vanderwier or Jenny Phillips of my staff at (805) 644-1766, extension 222 or 325 respectively.

Sincerely,



Roger P. Root
Assistant Field Supervisor

cc:

Rodney McInnis, National Marine Fisheries Service
Betty Courtney, California Department of Fish and Game
Steve Herrera, California State Water Resources Control Board
David Lacaro, Regional Water Quality Control Board