Response to Comment Letter N-2

Response to Comments N-2-1 and N-2-2

The U.S. Fish and Wildlife Service (Service) acknowledges the receipt of comments from the Wishtoyo Foundation on the Draft Environmental Impact Statement (EIS). All substantive comments provided on the Draft EIS were responded to in Volume II of the Supplemental Draft EIS. The joint comment letter, dated July 7, 2009, provided by the Wishtoyo Foundation, Center for Biological Diversity, and the Ventura Coastkeeper program is referenced in that document as Comment Letter 0-4. The following provides an update on the status of the consultation on the proposed action—in this case, issuance of an incidental take permit (ITP)—under the National Historic Preservation Act (NHPA) and responds to comments provided by the Wishtoyo Foundation on the Supplemental Draft EIS, in the letter dated May 1, 2012, and referenced in this document as Comment Letter N-2.

The comment requests that the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) ensure that preservation in place mitigation measures are analyzed and adopted consistent with the California Environmental Quality Act (CEQA). Section 10 of the Federal Endangered Species Act (ESA) provides a regulatory mechanism for non-Federal applicants to seek an ITP from the Service for the potential take of a federally listed species as a result of an otherwise lawful activity. Section 10(a) of the ESA provides for the issuance of an ITP when the permit applicant submits a habitat conservation plan (HCP) that satisfies ESA Section 10(a)(2)(A) and the Service determines the applicant has met the issuance criteria under Section(10)(a)(2)(B). Those issuance criteria are specific to the effects of the take on the Covered Species, and do not specifically address cultural resources. Instead, cultural resource considerations are addressed through compliance with the National Environmental Policy Act (NEPA) and the NHPA. Specifically, Section 106 of the NHPA requires the Service consult with Native American tribes to identify effects on potentially eligible properties (36 Code of Federal Regulations [CFR] 800.2), and the State Historic Preservation Officer (SHPO) to avoid, minimize, and mitigate the potential effects of the proposed action on cultural resources eligible for listing in the National Register of Historic Places (NRHP) (36 CFR 800.1). Thus, while the underlying private development (including, in part, the Tejon Mountain Village Project [TMV Project]) proposed for coverage under the ITP is subject to CEQA pursuant to the state and local approval process, the Service’s consideration of whether to issue an ITP requires compliance with NEPA, not CEQA. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS for an explanation of how potential effects on cultural resources are considered in this EIS.

Response to Comment N-2-3

Please refer to the Response to Comments N-2-1 and N-2-2. Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS also summarizes the outcome of the CEQA lawsuit specific to the TMV Project, which considered comments regarding the adequacy of the mitigation measures provided in the TMV Environmental Impact Report (EIR) (Kern County 2009) for Native American cultural resources under CEQA as well as other CEQA-related procedural concerns. The Service has evaluated potential effects on cultural resources consistent with its obligation pursuant to the NHPA and NEPA. As described in Section 4.5, Cultural Resources, in Volume I of the Supplemental Draft EIS, all development proposed under the TU MSHCP will be required to comply with applicable Federal, state, and local regulations as
carried out by the appropriate parties. Thus, in addition to NHPA consultation, which has been completed for the development areas, additional measures, if any, required under CEQA would also apply.

Response to Comment N-2-4

This comment indicates the TMV EIR analysis of mitigation for historical resources should be consistent with recent guidance by the Madera Oversight Coalition v. County of Madera (2011 Cal. App. LEXIS 1187). As discussed in Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, the proposed action being considered and evaluated by the Service is not subject to CEQA or, therefore, the guidance provided by this court case. Please refer to Master Response 1 for a discussion of the relationship between NEPA and CEQA and an explanation of how potential effects on cultural resources are considered in this EIS.

Response to Comment N-2-5

Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS for a discussion of the relationship between NEPA and CEQA and an explanation of how potential effects on cultural resources are considered in this EIS. Master Response 1 also summarizes the outcome of the CEQA lawsuit specific to the TMV Project, which considered comments regarding the adequacy of the mitigation measures provided in the TMV EIR (Kern County 2009) for Native American cultural resources as well as other CEQA-related procedural concerns. As noted in Master Response 1, Federal agencies are not subject to CEQA. The Service has evaluated potential effects on cultural resources consistent with its obligation under the NHPA and NEPA.

As described in Section 3.5, Cultural Resources, in Volume I of the Supplemental Draft EIS, the Service reviewed (1) the cultural resources reports for the TMV Planning Area, where eligible sites were identified and for which measures consistent with those identified for the TMV Project were proposed; and (2) additional cultural resource surveys for the Lebec/Existing Headquarters Area, where no eligible sites were identified. As discussed in Master Response 1, based on those reports and consideration of proposed mitigation measures, the Service made findings of no adverse effects. The SHPO concurred that the proposed measures were sufficient, with the exception that if avoidance or preservation in place could not be achieved, then additional consultation would be required. Ground disturbance in areas not previously surveyed also may trigger additional consultation. The Service agreed with the requirement for additional consultations, as indicated in the mitigation described in Section 4.5, Cultural Resources, in Volume I of the Supplemental Draft EIS.

Response to Comment N-2-6

This comment refers to a letter from Mati Waya, Chumash Ceremonial Elder, dated August 2, 2010, which speaks to the potential effects of the Newhall Ranch Resource Management and Development Plan and the Spineflower Conservation Plan EIR/EIS on the California condor and Native American cultures. The comment indicates there are concerns that the proposed action would similarly affect the religious and cultural practices of Native Americans as a result of adverse effects on the California condor. The commenter also includes the document, Wings of the Spirit by John W. Foster.
(undated) summarizing how the condor was incorporated into Native American ceremonies (see also Response to Comment N-2-10).

Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS, describes the potential effects of the proposed action on California condor and its habitat. Under the TU MSHCP, approximately 126,034 acres would be preserved in perpetuity in Open Space, including a subset of acreage that would continue to serve as foraging habitat for condors. In addition, species-specific conservation measures to reduce the potential for habituation to human structures and activities, collisions with power lines, and ingestion of microtrash would be implemented, as summarized in Table 2-3 in Chapter 2, Proposed TU MSHCP and Alternatives, of the Supplemental Draft EIS. As summarized in Master Response 2, California Condor Critical Habitat, in this Final EIS, in consideration of the open space preservation and species-specific conservation measures provided in the TU MSHCP, the Service does not anticipate that the development proposed under the TU MSHCP would substantially affect the condor through the loss of foraging habitat in the Covered Lands, changes in food availability, or adverse effects on condor overflight. The proposed ITP would also not authorize any lethal take of condors. Therefore, the Service does not agree that the TU MSHCP and proposed ITP would “drive away and kill condors” as suggested by the commenter. Rather, it is anticipated that the condor population would continue to expand in size and range with implementation of the TU MSHCP, which assures the permanent protection of important condor roosting and foraging habitat on Tejon Ranch. Thus, approval of the TU MSHCP and issuance of an ITP is not anticipated to compromise the condor in Native American culture and religious practices.

Of note, the Service cannot issue an ITP unless the following issuance criteria in Section (10)(a)(2)(B) have been met.

- The taking will be incidental to an otherwise lawful activity;
- The effects of such take will be minimized and mitigated to the maximum extent practicable;
- Adequate funding to implement the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The HCP includes measures to ensure that any other necessary measures required by the Service are met, including those measure the Service believes are necessary or appropriate for the purposes of plan implementation.

As discussed in Master Response 2, California Condor Critical Habitat, in this Final EIS, the Service will also make a statutory determination regarding the effects of the proposed Federal action on the California condor and its critical habitat in an intra-Service Biological Opinion prepared in accordance with Section 7 of the ESA. In the Section 7 consultation, the Service will formally consider the direct, indirect, and cumulative effects of the proposed action on the California condor and its critical habitat and make a determination as to whether critical habitat will continue to serve its intended conservation function and role.

The commenter also indicates the proposed action would have effects on traditional cultural properties (TCPs). The evidence presented by the commenter, however, which consists of general statements that the presence of the condor in the area is important to Chumash, do not make the ranch or the Covered Lands eligible for listing as a sacred site or a TCP. These classifications require eligibility criteria, including geographic specificity as further set forth in the National Park Service

Finally, as discussed in Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS, the Service requested additional consultation with Native American tribes that could be affected by the proposed action. The intent of this consultation was to solicit feedback from relevant tribal representatives regarding identified resources and to better understand Native American practices, including any TCPs, that may be affected by the proposed action. No Native American resources, including TCPs, were identified as a result of that consultation process.

**Response to Comment N-2-7**

Please refer to the Response to Comment N-2-6 for a discussion of the potential effects of the proposed action on California condor and its habitat, and a summary of the criteria the Service must consider prior to issuing an ITP.

The commenter also asserts that the proposed action would result in harm to cultural resources in the Covered Lands and should not be approved. As noted in Response to Comment N-2-6, the information presented by the commenter does not provide evidence that resources within the Covered Lands are sacred sites or that portions of the Covered Lands are eligible for listing as a TCP.

Further, as indicated in the Response to Comment N-2-1, the Service is required to evaluate potential effects on cultural resources consistent with the NHPA and NEPA. To that end, the Service has evaluated potential cultural sites identified in the surveys of the development areas and determined that there would be no adverse effect on identified eligible resources, as discussed in Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS. As further discussed in Master Response 1, the Service has continued consultation with Native American tribes, as well as other Native American groups, that may be affected by the proposed action and with the SHPO on cultural resources potentially eligible for listing in the NRHP. To date, no TCPs eligible for protection under the NHPA have been identified.

**Response to Comments N-2-8 through N-2-10**

These comments assert that the California condor should be evaluated as a TCP under the NHPA. The primary authority the commenter relies on to support the proposition that the California condor should be considered a cultural resource is the unpublished Federal district court decision *Okinawa Dugong v. Rumsfeld* (2005 WL 522106, N. District of California). Specifically, in the *Okinawa Dugong* case, the court held that the dugong, a marine mammal, should be considered a cultural resource for purposes of compliance with the NHPA with respect to the relocation of a U.S. Marine Corps base in Okinawa, Japan.

Two legal rules are relevant to the application of this case to the proposed action. First, under the relevant court rules, unpublished Federal decisions have no precedential value generally (Ninth Circuit Rule 36-3). Second, in the *Okinawa Dugong* decision, the court applied the requirements of the NHPA for Federal agency actions overseas (16 U.S.C [U.S.C] 470a-2). This section differs from the relevant section of the NHPA that governs Federal agency actions in the United States (16 U.S.C. 470f, commonly referred to as Section 106). Notably, Section 470a-2 (the section governing overseas Federal agency actions) requires the Federal agency to consider the effects of
the undertaking on any property listed in the foreign country's equivalent of the NRHP. The dugong is listed in the Japanese Law for the Protection of Cultural Properties. Accordingly, in the Okinawa Dugong decision, the court determined that the dugong was a property subject to review under 16 U.S.C. 470a-2. In contrast, the present undertaking is governed by Section 106 of the NHPA (16 U.S.C. 470f) and not the more permissive standards applicable to Federal agency actions under 16 U.S.C. 470a-2 that were applied in Okinawa Dugong.

Section 106 of the NHPA requires that Federal agencies consider the effects of their undertakings on resources included in or eligible to be included in the NRHP (16 U.S.C. 470f). Accordingly, consideration of the California condor as a cultural resource must be performed within the scope and limitations of Section 106 and associated regulatory guidance. The NRHP lists historic properties which may be composed of "districts, sites, buildings, structures, and objects" (16 U.S.C. 470a). The California condor is indisputably not a district, site, building, or structure. The remaining question is whether or not the California condor may qualify as an "object" eligible for listing in the NRHP.

Objects are defined in the NRHP regulations as a “material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment” (emphasis added) (36 CFR Section 60.j). In the Okinawa Dugong case, the court found the dugong was an object subject to Section 470a-2 because it was included on Japan’s equivalent of the NRHP, not that it was an object eligible for listing in the NRHP. The National Park Service guidance on evaluating resources for the NRHP provides that while objects may be small and movable, they should be associated with a specific setting or environment (National Park Service 1995:5). The guidance specifically stipulates that small objects not designed for a specific location are not typically eligible because they are not associated with a discrete place (National Park Service 1995:5). Nothing in the guidance or law governing application of the NHPA to domestic Federal actions suggests that free-roaming animals are covered by the NHPA or were intended to be covered by Congress. To the contrary, the absence of association with a fixed and discrete location indicates that animals cannot be NRHP-eligible objects within the meaning of the NHPA. Secondary sources echo this analysis: “By its plain language, the [NHPA] appears to preclude any listing of animals because wildlife are not ‘districts,’ ‘buildings,’ or ‘structures.’ Even if animals are classified as ‘objects,’ they do not possess ‘integrity of location’” (12 Hasting W-NW Journal of Environmental Law and Policy 147, 2006).

Accordingly, the California condor, in and of itself, is not a cultural resource subject to evaluation under the NHPA because animals by themselves cannot be historic properties. The Service, therefore, declines the commenter’s request that the California condor be evaluated as a TCP. A TCP is a discrete location that is significant in the ongoing cultural or religious life of particular people. The National Park Service provides a framework for evaluating TCPs as historic properties, and specifically identifies that TCPs must meet the criteria for listing in the NRHP (National Park Service 1998:12). Because the California condor cannot qualify as a historic property, it is not subject to evaluation as a TCP.

The Service acknowledges the information provided in the comment letter with respect to various testimonies provided by tribal representatives and recognizes the condor’s sacred standing among Native American tribes, but concludes that the information submitted does not overcome the fact that the condor is not a historic property eligible for listing in the NRHP within the meaning of the NHPA. While the Advisory Council on Historic Preservation guidelines on consulting with Indian tribes provide that “plant and animal communities” must be considered when evaluating the
potential effects of an undertaking, it is nevertheless the “place” or the “community” that potentially qualifies for listing in the NRHP, not the animal itself (see the Advisory Council on Historic Preservation’s (2008) Consultation with Indian Tribes in the Section 106 Review Process: A Handbook). California condors are highly mobile and may move into and out of geographical locations over time. The NRHP is limited to objects with fixed geographic locations, discernible histories, and precise physical descriptions. Thus, unlike the example of the “Friendship Oak” in Hatmaker v. Georgia Dept. of Transp., 973 F. Supp. 1047 (M.D. Ga. 1995) (a particular oak tree associated with particular historical events), which was found to be an eligible property, the California condor is not one object tied to one location and event, and the species does not meet the eligibility criteria for listing in the NRHP.

The potential effects of the proposed action on the California condor are discussed in detail in Section 4.1, Biological Resources, in Volume I of the Supplemental Draft EIS. Prior to issuing an ITP to Tejon Ranchcorp (TRC), the Service must conclude that the TU MSHCP minimizes and mitigates the effects of the proposed nonlethal take of condors to the maximum extent practicable, and that issuance of an ITP would not result in jeopardy to the condor or adverse modification of condor critical habitat. While the Service has not completed the formal evaluation of the proposed ITP under Sections 7 and 10 of the ESA, the Supplemental Draft EIS indicates that condors should continue to forage and roost on Tejon Ranch and should continue to expand their numbers and geographic range with implementation of the TU MSHCP. Thus, the condor should continue to serve its traditional cultural and religious role for Native American tribes.

Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS for a discussion of ongoing consultation with Native American tribes.

Response to Comment N-2-11

This comment reiterates the request that the HCP and EIS contain an analysis and adoption of preservation in place mitigation measures consistent with the requirements of CEQA. Please refer to Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS for a discussion of the relationship between NEPA and CEQA and an explanation of how potential effects on cultural resources are considered in this EIS.

Response to Comment N-2-12

This comment asserts that the TU MSHCP and EIS cannot be adopted unless the potential localized and regional effects on Native Americans associated with the localized and regional effects on the California condor are reduced. As described in Master Response 1, Relationship of CEQA and NEPA Environmental Review Processes with Respect to the TMV Project, in this Final EIS, the Service has addressed the potential effects of the proposed action on cultural resources consistent with the requirements of the NHPA and NEPA. In addition, as indicated in Response to Comment N-2-6, the Service has evaluated the potential effects of the proposed action on the California condor and has determined there would be no substantial adverse effects on Native American religious or cultural practices.
May 1, 2012

VIA E-MAIL

Roger Root
Assistant Field Supervisor
U.S. Fish and Wildlife Service
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Re: Comments on Draft Tehachapi Upland Multiple Species Habitat Conservation Plan, Draft SEIS.

Dear Mr. Root:

Thank you for the opportunity to comment on the Draft Tehachapi Uplands Multiple Species Habitat Conservation Plan (“HCP”) and its Draft SEIS.

Wishtoyo Foundation (“Wishtoyo”) is a 501 (c) (3) non-profit organization with over 700 members composed of Chumash Native Americans, Native Americans that reside in and around the TMV project area, Ventura County residents, Los Angeles County residents, Santa Barbara County residents, and San Luis Obispo County residents. Wishtoyo’s mission is to preserve, protect, and restore Chumash culture, the culture of all communities, and the environment. Wishtoyo also shares traditional Chumash beliefs, cultural practices, songs, dances, stories, and value with the public to instill environmental awareness and responsibility for sustaining the health of our land, air, and water for the benefit of future generations.

I. Need for Legally Adequate Preservation In Place Analysis and Adoption of Legally Adequate Preservation in Place Mitigation Measures

In addition to reiterating our concerns expressed in our July 7, 2009 DEIS letter, Wishtoyo requests that the HCP ensures that preservation in place mitigation measures for Chumash, Kitanemuk, Yowlumne Yokuts, Kawaiisu, and Tataviam Native American burial sites, sacred sites, archeological sites, and village sites are analyzed and adopted as required by the California Environmental Quality Act (“CEQA”).
To whom it may concern,

Attached are Wishtoyo Foundation's Tehachapi Upland Draft MSHCP/SEIS comments.

Please verify receipt.

Best of Regards,

Jason

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Page MR14-5 of the January 2012 SDEIS Tehachapi Uplands Multiple Species HCP response to Wishtoyo’s, Ventura Coastkeeper’s, and Center Biological Diversity’s July 7, 2009 DEIS letter, states:

As clarified in Section 4.5, Cultural Resources, in Volume I of this Supplemental Draft EIS, mitigation would include compliance with applicable Federal, state, and local regulations. For example, Kern County’s approval of the TMV Project includes extensive site analysis and mitigation to protect against any potential cultural resources effects. Thorough site surveys were required and 44 mitigation measures were developed to reduce the effects of the TMV Project on cultural resources (Appendix J, Specific and Community Plan Mitigation Monitoring and Reporting Program).

Accordingly, this HCP must ensure that preservation in place mitigation measures for impacts to local Native American cultural resources are analyzed and adopted as required by CEQA.

Page MR14-4 of the January 2012 SDEIS Tehachapi Uplands Multiple Species HCP response to Wishtoyo’s, Ventura Coastkeeper’s, and Center Biological Diversity’s July 7, 2009 DEIS letter, states:

Review of the TMV EIR (Kern County 2009) supports the finding that the mitigation measure is sufficient with respect to development. For example, for the TMV Project, Kern County required identification of all potential cultural resources that could be affected by the project and applied 44 mitigation measures, resulting in requirements to preserve in-place known resources through avoidance or capping (for one site, Phase III data recovery may be necessary) and staking and monitoring during grubbing and topsoil grading.

Contrary to the responses’ conclusion, 1.) the TMV EIR’s analysis of mitigation measures that would achieve preservation in place fails to adhere to CEQA’s legal requirements; 2.) the TMV EIR does not adopt mitigation measures that achieve preservation in place for all significant impacts to Native American cultural resources; and 3.) the TMV EIR also does not comply with CEQA’s procedural requirements because it impermissibly allows (at the developers discretion in lieu of preservation in place) for Phase III data recovery as a mitigation measure for significant impacts to a historic cultural site without setting forth a determination that mitigation in place would be technically or economically infeasible.

_Madera Oversight Coalition v. County of Madera_ (2011) 199 Cal.App.4th 48 at 85-87, clearly provides that the TMV EIR’s discussion of mitigation measures for the Development’s/Project’s forecasted adverse impacts to historical resources of an archeological nature - which in this case is 22 significant Native American burials, villages, sacred sites, and remains, must include preservation in place, and the discussion of preservation in place must discuss 4 things:
One: the discussion of preservation in place must include, but is not limited to, all of the four methods that may achieve preservation in place listed in CEQA Guidelines §15126.4(b)(3)(B):

The 4 methods include:
(1) Planning construction to avoid archeological sites
(2) Incorporation of sites within parks, green space, or other open space
(3) Covering the archeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on site
(4) Deeding the site to a permanent conservation easement

Not only is the Madera Oversight holding clear that all 4 methods must be discussed for their ability to achieve preservation in place, but so is the recent holding in Balona Wetlands Land Trust v. City of LA (2011) 201 Cal.App.4th 455, 134 Cal.Rptr.3d 194 at 205.

Two: The EIR’s discussion of preservation in place must state whether the methods of preservation in place listed in CEQA Guidelines §15126.4(b)(3)(B) are feasible and the reasons for that determination of feasibility.

Three: When more than one of the methods of preservation in place referenced in Guidelines section 15126.4 (b)(3) is available to mitigate an impact, the EIR’s discussion should include, “the basis for selecting a particular measure” §15126.4 (a)(1)(B)

Four: The forth discussion of preservation in place, that must be had in the EIR, as apparent by the plain language of §15126.4(b)(3)(B) and the Court’s holding in Madera Oversight is that: The EIR must discuss whether each of the 4 methods in Guidelines §15126.4(b)(3)(B) may - that is may - achieve preservation in place. The Guidelines don’t say each of the 4 methods achieve preservation in place. “May be accomplished by ” is not “is accomplished by” - in other words, the guidelines don’t read “preservation in place is accomplished by, but is not limited to any of the following four methods. In addition, Madera Oversight decision further supports our position that the EIR must discuss whether each of the 4 methods may achieve preservation in place - as it does not make sense to require discussion of each of the 4 methods of preservation in place if each of the methods automatically achieves preservation in place. And furthermore, because whether a particular method achieves preservation in place is based on a case by case analysis given the cultural historic resource at issue, an analysis of whether a particular measure achieves preservation in place, and if so to what degree, is necessary for the EIR to: “provide the basis for the particular measure”, which the Madera Oversight decision held as a requirement for the EIR’s discussion of preservation in place.
In addition, *Madera Oversight* clarified, that the Guidelines makes preservation in place mandatory when feasible, and thus that data recovery can only be set forth in the EIR as a mitigation measure or provided as an option for a mitigation measure when a method of preservation in place is not feasible.

The CEQA violations are numerous and extensive in the TMV EIR’s six page preservation in place mitigation analysis for forecasted adverse impacts to over 22 significant Native American historic resources. Here are the violations:

1. For forecasted significant adverse impacts to 1 site, CA- KER 6727, the EIR does not commit to adopting feasible preservation in place measures to mitigate impacts to historical resources, but instead allows for the adoption of data recovery in the absence of a lead agency determination that another form of mitigation is available and provides superior mitigation of the impact.

2. For forecasted significant adverse impacts to 10 sites, CA-KER 127, 265, 4011, 6705, 6709H, 6716, 6720, 6722, 6725, and 6727 the EIR does not discuss each of the four mitigation measures that may achieve preservation in place.

3. For forecasted significant adverse impacts to 10 sites, CA-KER 127, 265, 4011, 6705, 6709H, 6716, 6720, 6722, 6725, and 6727 the EIR sets forth a measure or measures(s) that may achieve preservation in place, but no discussion of whether any of the 4 methods *will actually* achieve preservation in place is present.

4. For forecasted significant adverse impacts to 7 sites, CA- 265, 6705, 6709H, 6716, 6722, 6725, and 6727 the EIR lists measure(s) that may achieve preservation in place, but no discussion of “the basis for selecting a particular measure” over the other is provided.

II. Need to Adequately Protect Native American Religious Practices and Historic Cultural Sites from Localized and Regional Impacts to the California Condor

Mati Waiya, Chumash Ceremonial Elder, set forth the religious and cultural significance of the Condor to Chumash People in his 8/2/2010 Newhall Ranch Resource Management and Development Plan and the Spineflower Conservation Plan Final EIR/EIS comments (see attached) as follows:

**Cultural Impacts from Project’s effect on the California Condor (“Condor”) in the Project Area**

I am also concerned about the impact of the Project on Chumash and Tataviam culture, and religious and spiritual practices due to localized impacts of the project on the California Condor. For Chumash people the condor is a symbol of our continuance as a people. To see the condor feeding, foraging, roosting, and laying eggs in the Project area connects
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The Chumash people to their ancestors that lived there and utilized the area. The presence of the Condor is also vital to our religious and spiritual practices. We have a condor dance that we continue to practice in our ceremonies, and many tribes as well as ours honor the condor. For the Chumash, the condor has always played a big role in the passing of our loved ones, as the condor cleans the land and cleans our souls after we die. The Chumash often offer a condor feather to the deceased as their last rite of passage because we believe the condor feather raises the spirit to the upper world.

The condor’s presence in the Project area, whether it be flying overhead, foraging for food, roosting in a tree, or cleaning itself near the river, or the knowledge that the condor is living and thriving in the Project Area, is thus an integral part of the sacredness of our ceremonies, cultural sites, prayers, and burial sites that take place or that will take place in the Project area. Anytime we are in a place where the memory of our people exists, we acknowledge the spirit of our ancestors with prayers and offerings. This holds true whether we are harvesting cultural resources from the rivers where our ancestors have been before, honoring our ancestors at a sacred or burial site, standing at a peak looking at our cultural landscape, or walking through a valley or grove of oak trees and see grinding stones. The absence of the condor from Chumash cultural landscape in the Project area from development related impacts will diminish our connection with our ancestors and our culture, and take away from our ceremonial and religious practices that take place or that will take place in and around the Project area. The Chumash people also collect Condor feathers for ceremonial offerings and to use in ceremonial regalia when they fall to the ground after Condors forage, clean themselves, and roost. I thus also fear that the Project as proposed with its bright lights, power lines, and other urban hazards that will drive away and kill condors in the Project area, will thus deprive Chumash people of religious and cultural practices and spirituality, while also depriving Chumash people of a place to harvest and find condor feathers.

The localized presence of the condor in the TMV project area plays the same cultural and religious role for the Chumash Peoples as does the presence of the condor in the Newhall Project area as described by Mati Waiya above. Thus the TMV project’s localized impacts to the California condor will affect the religious practices, culture, and historic cultural resources of the Chumash people as described by Mati Waiya in his 8/2/2010 letter. Furthermore, the TMV project’s regional impacts on the condor’s total population impacts Chumash and other Native American’s culture, cultural/historic resources, and religious practices in their historic territories that contain or have historically contained condors.

Wishtoyo thus requests that Draft HCP is not approved due to the Project’s adverse local and regional impacts to the California Condor that will 1.) not only harm the ability of the
local Native Americans and the Chumash to exercise religious practices in the Project area and throughout the current and historic range of the condor, but 2.) that will also significantly impact the historic and cultural integrity the local Native American’s burial, sacred, and village sites in the TMV Project/HCP area.

Furthermore, Wishtoyo requests that the USFWS evaluate the California Condor under the National Historic Preservation Act as a traditional Native American cultural property, and thus that the USFWS conduct a NHPA Section 106 Consultation with all of the local and affected Native American tribes as required by law.

Section 106 of the National Historic Preservation Act (“NHPA”) requires any federal agency that has direct or indirect jurisdiction over a federal or federally assisted undertaking, or any federal department or agency that has authority to license an undertaking, to take into account the effect of the undertaking on any site that is included or eligible for listing on the National Register. The federal agency must afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the effect(s) the undertaking might have on cultural properties.

Any Project carried out by a federal agency or that requires a federal permit, is considered an “undertaking” for purposes of the NHPA. A site on the area where the Permit is issued does not have to be listed on the National Register to trigger Section 106 review by the federal agency and the Advisory Council – it only has to be eligible for listing. Thus, any site associated with the cultural practices or beliefs of an Indian community that are rooted in the community’s history and important in maintaining the continuing cultural identity of the community must trigger this review.

Section 800.4(b)(1) of the NHPA, 16 U.S.C. § 800.4(b)(1), requires federal agencies to make a reasonable and good faith effort to carry out appropriate identification of historic properties. The appropriate level of effort includes taking into account past planning, research and studies, examining the magnitude and nature of the undertaking and the degree of federal involvement, the nature and extent of potential effects on historic properties and the likely nature and location of historic properties within the area of potential effects. Appropriate identification may include background research, consultation, oral history interviews, sample field investigation, and field survey.

Amendments to the NHPA in 1980 directed the Secretary of the Interior to “preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage.” As a result of this directive, the NPS issued Guidelines for

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1 An “undertaking” includes any Project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including (a) those carried out by or on behalf of an agency; (b) those carried out with federal financial assistance; (c) those requiring a federal permit, license, or approval; and (d) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. 16 U.S.C. § 470(w)(7).
2 NHPA 502; 16 U.S.C. 470a
**Evaluating and Nominating Traditional Cultural Properties**, to assist federal agencies when considering eligibility for the Register as part of the review process prescribed under Section 106 of the NHPA. According to the Guidelines, traditional cultural places are often difficult to recognize by non-group members and, “may not necessarily come to light through the conduct of archaeological, historical, or architectural surveys. The existence and significance of such locations often can be ascertained only through interviews with knowledgeable users of the area, or through other forms of ethnographic research.”

Recent case law has moved toward greater inclusiveness of cultural preservation, including the district court’s acceptance that wildlife may be protected under the National Historic Preservation Act. This acceptance has been confirmed with the ruling in *Okinawa Dugong v. Rumsfelds*, 2005 U.S. Dist. LEXIS 3123 N.D. Cal., Mar. 1 (2005). In *Okinawa Dugong v. Rumsfeld*, a number of conservation organizations from both the U.S. and Japan, along with several individual Japanese citizens, filed suit in the Northern District of California alleging that the U.S. government failed to comply with the NHPA by neglecting to take into account the presence of the dugong before beginning construction of the new military base in northeast Okinawa. The dugong, a herbivorous marine mammal that has one of the smallest known populations in the waters off the eastern coast of Okinawa, feeds on the few remaining sea grass beds in the area. *Id.* at 7. The animal is central to the creation mythology, folklore, and rituals of traditional Okinawan culture. *Id.* The district court dismissed the defendant’s motion to dismiss and motion for summary judgment on the issue of the applicability of the NHPA to the dugong affected by the proposed military base. The court considered among other issues, whether the dugong could be considered “property” as defined by the NHPA. The court concluded that that property is simply a “district, site, building, structure or object.” An object is defined as “a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, moveable yet related to a specific setting or environment.” The court held that the plaintiffs demonstrated that the dugong could be classified as property because the dugong is indisputably a “material thing,” as opposed to something of a spiritual or intellectual nature...the dugong possesses “functional, aesthetic, cultural, historical or scientific value,” particularly of special cultural significance in Okinawa...and there can be no dispute that the Okinawan dugong is “movable yet related to a specific setting or environment,” namely Heneko Bay. *Id.* at 34-35. The Court dismissed the defendant’s contentions that dugong are not property because of the Ninth Circuit’s ruling in *Christy v. Hodel* that state and federal government cannot “own” wild animals. *Id.* at 35. The court found that whether the government owns the property is irrelevant to a determination of eligibility for the National Register. *Id.* The court found the case to be analogous to *Hatmaker v. Georgia Department of Transportation*, which held that an unaltered oak tree of significance in Native American history was potentially eligible for the National Register. *Id.* at 34.

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Here, as expressed by Dee Dominguez, Chairwoman of the Kitanemuk and Yowlumne Yokut Tribe in written comment and in oral testimony during for the TMV EIR, and as expressed by Chumash members of the Wishtoyo Foundation, the Condor population that resides in and around the TMV Project area is a culturally significant species to the local Native American’s and Chumash way of life. The loss of the local Condor population in the TMV Project area would not only deprive local Native Americans and Chumash Peoples of religious and cultural practices and spirituality, but would also deprive them of a place to harvest and find condor feathers for ceremonial regalia. Accordingly, like the dugong habitat in southeast Okinawa, here, the Condor habitat within the TMV project area should be protected to ensure the survival of this species vital to the cultural preservation of the local Native American Peoples, and also to the cultural preservation of Native American’s that currently and historically reside in the historic range of California Condors.

In regards to documentation of the historic importance of the California Condor to Chumash Peoples, Mati Waiya is a Chumash Ceremonial leader of the Turtle Clan (The Turtle Clan is from the present day region named Saticoy along the Santa Clara River) who has studied with Chumash elders for twenty three years and is as an expert in matters relating to Chumash cultural practices and history, much of which has only been passed down orally (and safeguarded) from generation to generation of Chumash. In addition to Mr. Waiya’s account of the importance of the California Condor to the Chumash culture and Peoples that he shares in his August 2, 2010 letter for the Newhall FEIS/FEIR (attached), below is more information about the importance of the California Condor not only to the Chumash, but to other California tribes affected by the TMV Project, from John W. Foster, a Senior State of California Archaeologist:

From the California State Parks Website:  http://www.parks.ca.gov/?page_id=23527
(Last Visited May 1, 2012) (see next page):

Wings of the Spirit: California Condor
Introduction
In June 1579 a small sailing vessel made its way cautiously along the California coast. Francis Drake, destined to become one of the world's legendary sea captains, was looking for a place to careen his leaky vessel -- the Golden Hind. He had come halfway around the world, and was to complete his voyage by sailing across the Pacific and to England, but he desperately needed a place to make repairs.

As he approached the shore of this land never before seen by European eyes (assuming it was northern California), Drake's crew was surprised to see several canoes venturing out from shore. The descriptions of this event are sketchy, but it seems clear that the native in one canoe made a statement, perhaps a blessing, and then threw a black-feathered bundle onto the deck of Drake's ship. From its description, the feathers were probably from the California condor. Drake's reaction to this event is not recorded except that it's clear the Englishmen felt they were being worshiped as gods. In fact, they may have been perceived as ghosts, coming from the land of the dead. The first gift from native Californians was probably the feathers of a California condor, and a sign of mourning ritual.

This paper briefly summarizes how the California condor was incorporated into the cultures of the peoples of ancient California by considering archaeological remains, ceremonial activities and rock art depictions. I will present selected examples from southern California and the border region where possible, with the admittance that this treatment is very cursory at this point.
The California Condor

Who amongst us has not dreamed of soaring effortlessly over the landscape seeing everything in the daily lives of lowly earthbound pedestrians? With scarcely a wing flap, condors soar over the deserts to the seacoast, cresting the highest peaks and spanning the most foreboding terrain. Such is the perspective of the California condor and perhaps the key to its special place in many native cultures across the Californias.

The California condor (Gymnogyps californianus) is North America’s largest bird. With a wingspan of nearly 10 feet and a weight of 20-22 pounds, it commands the skies. The genus, Gymnogyps, means “naked vulture,” referring to the bird's bare head and neck. The name “condor” is derived from the Quechua “cuntur”, a name for the Andean condor of South America (Snyder and Rea 1998:32). Adult California Condors have a yellow-orange head, black plumage set with brown on the back, and a white triangle patch under each wing. A whitish wing bar is also found on the upper surface of the wing. As juveniles, they have black heads and light neck ring.

Condors are carrion eaters. They lack the strong talons and beaks of hawks and eagles, and depend on finding carcasses for food. They have never been known to attack a living animal. They will commonly gorge themselves when feeding on a carcass and may go days without eating. Their keen eyesight helps them locate food. They sometimes travel up to 140 miles per day in search of a meal. They are also keen observers of other scavengers like Turkey Vultures and Golden Eagles, and Common Ravens.

In Pleistocene times, California condors were found across much of North America. In a fossil context, the remains of condors are absent after about 11,000 years ago. This corresponds to the decline in large Pleistocene fauna on which they presumably fed. In historic times, the birds ranged from British Columbia to Baja California Sur, but by 1940, they were seen only in southern California. By 1977, approximately 45 birds were known to exist in the wild and by 1985, only 9 birds remained. On April 19, 1987 the last free-flying California condor was captured from the wild and placed in captivity. At that time, only 27 condors remained alive, all in zoos. Successful captive breeding programs have increased the number so that reintroductions to three different sites in southern California and the Grand Canyon have been started. The world's population has been increased to approximately 200 birds.

Condor Reintroduction to Baja California

In October of 2002, six pioneer condors raised at the Los Angeles Zoo were flown to Baja California to begin the process of reintroduction. This project is an extraordinary collaboration among the Instituto
Nacional de Ecología, the Comisión Nacional de Áreas Naturales Protegidas, the Centro de Investigación Científica y de Educación Superior de Ensenada (CICESE), the Zoological Society of San Diego, the US Fish and Wildlife Service, and the World Center for Birds of Prey in Boise, Idaho. Five young birds, under 3 years of age, were accompanied by "Xewe" an 11 year-old mentor bird who had known wild condor life. The five will be kept in a "condorminium" located in the Sierra San Pedro Mártir National Park and gradually habituated to wild living in the forests and canyons of Baja California. This marks the first time since 1930 that condors have been seen on the peninsula. It is hoped that the reintroduction of the California condor will spark an interest in bi-national conservation efforts within a proposed Biosphere Reserve.

Condors may have once been a common sight on the peninsula. Nelson's biological survey of 1906 observed a dozen condors feeding on a donkey carcass in the San Pedro Mártir range and noted they appeared "rather common" in the mountains (Nelson 1922:22). Within a decade, however, the population seriously declined throughout southern California and the peninsula. Invading gold minors apparently took a heavy toll. Condors were shot for their quills, which because of their lightness and unbreakable texture, were used to hold gold dust. These quills, worn around the neck, sold for $1.00 each (Snyder and Snyder 2000:47).

The California condor has long been a symbol of a wilderness heritage. It is surely the most impressive and majestic flying bird in North America and has figured prominently in the cultures of many North American natives. Perhaps its rebirth will signal a new understanding of the Native cultures that have known and revered it for centuries.

Flutes made from the wing bones of the California Condor have been found in central California archaeological sites. These are incised with intricate designs.

Condor Remains in an Archaeological Context
Simons (1983) has summarized the occurrence of Pacific coast condor remains in an archaeological context. He reports on 13 sites between Oregon and California spanning a time range between approximately 10,000 years ago and early historic times (1983:470). The greatest number of individual California condor bones has been recovered at the "Five Mile Rapids" site in Oregon. There the unmodified remains of 63 birds were present.

In the delta and San Francisco bay region of California, a concentration of sites have yielded bones of the California condor. These include condor bone tube/whistles fashioned from the wing bones. Some have delicate incisionment. In several cases these were recovered with human burials (Simons 1983:474). One site near Sacramento revealed the remains of a condor cape buried in a human grave. In several sites the condors themselves appear to have been intentionally buried. At the West Berkeley shell mound there was the suggestion of ritual condor burial.

Ceremonial Importance

There is scattered evidence of the ritual use of California condors through much of the Californias. The sacrifice of these birds seems to have been widespread. In general, this served to transfer the power of the bird sacrificed to those engaged in its ritual killing. Possibly the condor's association with the dead (being a carrion eater), led to its incorporation into mourning activities and renewal ceremonies. It may be noted that a similar ritual sacrifice of an Andean condor was observed in 1970 in Peru. Here a captured bird was ritually dispatched in public ceremony blending Inca and early Spanish traditions (Snyder and Snyder 2000:30-32).

California condor ceremonies have been lost in the mists of time, but there are adequate verbal accounts to provide some basis for understanding them. The first recorded account comes from October 8, 1769 when Fr. Juan Crespi observed a large stuffed condor in an Ohlone village near the present day Watsonville.

Many ceremonies throughout California involved dancers dressed in capes of condor skins or condor feather bands. The oldest extant example was collected by the Russian Illya Voznesenski in central California. It is preserved in the Museum of Anthropology and Ethnography in St. Petersburg. Condor ceremony took many forms. Central Miwok shamen acquired powers from condors that allowed them to suck supernatural poisons from their patients. Among the Maidu, condor capes were used by Moki or Kuksuyu dancers. These capes were sometimes combined with Golden Eagle feathers to exaggerate the wearer's height.

Perhaps the most detailed description of condor ceremony in southern California comes from the Panes (or bird) festival of the Luiseño. It was described by Friar Boscana of Mission San Juan Capistrano and by Friar Peyri of Mission San Luis Rey in the early 19th century. Similar ceremonies were held by the Gabrilieño, Cahuilla, Kumeyaay and Cupeño (Kroeber 1907; 2002).

The Panes (clearly a California condor from its description) is brought to the festival and placed upon an altar constructed for the purpose. The bird had been captured as a nestling, with condor nest sites being owned by the village. It was raised with great care until fully grown and selected for the sacrifice. Slowly, along with much crying and grimaces, the captive birds are killed by strangulation or pressing the heart. The bird's skin was removed in one piece and the flesh thrown on a fire. Skins and feathers were used to decorate venerated objects for the annual mourning ceremony. California condor skins were also used to make skirts that were retained as important ritual objects by their native owners (Bates et.al. 1993:41; Bates 1982). It should be noted that eagles were also sacrificed and some have argued (Geiger and Meighan 1976) that it was the Golden Eagle that was most powerful. Most experts have concluded that California condors held a unique place in the ceremonial life of California natives, and that eagles were used more commonly during the historic period as condor populations declined (Simons 1983, Bates et.al. 1993).
California condors could infuse humans with special powers. Vultures and condors, with their keen eyesight, were considered expert at finding lost objects. Among the Western Mono and Yokuts tribes, "money finders" wore full-length cloaks of condor feathers that reputedly enabled them to find lost valuables (Snyder and Snyder 2000:38). This power was extended to finding missing persons among condor shamans of the Chumash.

California condors also played a part in cosmic events. Among the Chumash, condors or eagles were sacrificed based on which celestial body was prominently visible at the time of the ceremony. Eagles were selected for rituals concerned with the Evening Star (Venus), while condors were chosen for rituals associated with the planet Mars (Hudson and Underhay 1978:88; Simons 1983).

Condor Cave near Santa Barbara features a spectacular condor in flight. It is painted over a bear-paw petroglyph. (Bill Hyder photo) The site has been identified as a probable winter solstice observatory from its orientation and designs (Hudson and Underhay 1978).
Other painted sites within Chumash territory have also produced avian images thought to be condors (Grant 1965). At Pool Rock, for example, a winged design is centrally placed among white, red and black elements. At Chumash Painted Cave, the winged design is mixed among other symbols in a complex panel. Nearby in the Carrizo Plain exists a natural sandstone outcrop sculpted into a shape resembling a condor's head. It is joined by the head of Coyote. The feature is embellished with red designs, which have survived only in the protected niches. The site was recently identified as a sacred condor site by a Chumash elder (Carl Bjork, personal communication). Red designs decorate the condor's neck. This has been identified as a sacred site. (Carl Bjork photo)

Several Chumash sites may show winged figures with anthropomorphic traits. These have been interpreted at Ven-195 as humans in condor or eagle dance regalia. Similar designs at Burro Flats may also be a blend of bird and human form within the context of shamanism and ritual (Gibson and Singer 1978, Hyder and Lee 1994, Lee and Horne 1978).

In Yokuts territory, a distinctive condor image has been recorded. It comes from Exeter Rocky Hill (CA-Tul-83) in Tulare County. In a shallow granite shelter formed from huge boulders, a giant figure is painted on the ceiling. It measures almost six feet in length and features well-defined feet and black and white patterned design in the outstretched wings.

One of the more common forms of depicting large birds in painted rock art is with "raked" wings. This shows the wings extended with feathers down. Although not an exclusive habit, living California condors often adopt this pose when warming or drying their wings, thus it is possible to imagine it as a view born from actual observation.

Almost lost among the giant painted images of Cueva La Pintada in the Sierra de San Francisco, Baja California, Mexico.
California Sur are several black images with raked wings. Perhaps these represent the former aerial masters of these desert canyons and their feeding on the carcasses of other animals so prominently depicted. Recent studies imply that California condors may have derived much of their food from scavenging sea mammal remains along the coast. This may have made Baja California a favored land for these birds. Another rock art site called "La Pintada" is situated in the rugged coastal volcanic canyons between Guaymas and Hermosillo in Sonora. On a protected face within a narrow canyon, is a pictograph display in red, black and white. (Pictured below) Most of the images take a geometric form with shields, or perhaps turtle-designs being prominent.

Below, these black avian figures with "raked" wings may be cormorants, or perhaps condors. In the center is a familiar black image with raked wings. It is strikingly similar to other painted designs across the former range of the California condor.

Another rock art site called "La Pintada" is situated in the rugged coastal volcanic canyons between Guaymas and Hermosillo in Sonora. On a protected face within a narrow canyon, is a pictograph display in red, black and white.

Summary and Conclusions
In this paper we have soared briefly across the cultural landscape of the California condor, its archaeology, ceremonial significance and painted imagery. It is apparent that California condors held a special place in the lives and ceremonies of California natives. It was a revered creature, a master of the spirit, who gave power to humans for a variety of world renewal and cosmic purposes. It was associated with death and mourning as well as rebirth and renewal.

So as we enter a new century, the fate of the California condor hangs in the balance. Perhaps the condor colonizers of Baja California will help insure the continuation of the species. But, why should we care about the condor's survival? As the noted biologist Ken Brower pointed out, "When the Vultures watching your civilization begin dropping dead...it is time to pause and wonder" (Erlich et.al. 1988). Amen.

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Grant, Campbell

Hudson, Travis and Ernest Underhay

Hyder, William D. and Georgia Lee

Kroeber, Alfred L.


Lee, Georgia and S. Home

Nelson, Edward W.

Simons, Dwight D.

Snyder, Noel F and Amadeo M. Rea

Snyder, Noel and Helen Snyder
Luhui Isha, Wishtoyo’s Cultural Resources and Education Director of Barbareño Chumash descent also affirms Mati Waiya’s account of the importance of the Condor to the Chumash Peoples and their culture in Mr. Waiya’s August 2, 2010 Newhall FEIS/FEIR letter (attached).

Thank you for your time and consideration in reviewing these comments. Please feel free to contact us with any questions. The HCP cannot be approved, and the SEIS cannot be adopted until a legally adequate preservation in place analysis for impacts to the Chumash, Kitanemuk, Yowlumne Yokuts, Kawaiisu, and Tataviam burial sites, villages, sacred sites, and cultural remains is conducted in accordance with CEQA, and until preservation in place mitigation measures are adopted for impacts to these Native American’s cultural resources as required by CEQA. Furthermore, the HCP cannot be approved, and the SEIS cannot be adopted unless the localized and regional impacts to affected Native Americans from the TMV Project’s localized and regional impacts to the California Condor are mitigated to a less than significant impact.

Sincerely,

Jason Weiner
Staff Attorney
Wishtoyo Foundation

cc: Mati Waiya, Executive Director Wishtoyo Foundation, Chumash Ceremonial Elder
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Luhui Isha, Wishtoyo Foundation Cultural Resources and Education Director;
luhuiisha@wishtoyo.org
August 2, 2010

VIA E-MAIL

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California Department of Fish and Game
Newhall Ranch EIS/EIR Project Comments
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Re: Impacts to Chumash Cultural Resources / Newhall Ranch Resource
Management and Development Plan and the Spineflower Conservation Plan Final
EIR/EIS

To Whom It May Concern:

I am writing in the capacity of a Chumash Native American with Chumash
ancestral ties to the Santa Clara River watershed, a Chumash ceremonial elder, and as the
founder and Executive Director of the Wishtoyo Foundation to ask that the Newhall
Ranch Resource Management and Development Plan and the Spineflower Conservation
Plan (“Project”) Final Environmental Impact Statement/Environmental Impact Report
(“FEIS/FEIR”) identifies, analyzes, and adequately avoids or mitigates the Project’s
impacts to Chumash cultural resources.

My family comes out of the Santa Clara River village of Saticoy. My ancestors
came down from the Piru and Fillmore area and would often travel along the Santa Clara
River to visit one village after another. My knowledge of Chumash cultural resources in
the Newhall Ranch project area comes from the oral history passed down from my elders
and ancestors through gatherings and storytelling. These stories of my ancestors traveling
up and down the river, burying our loved ones along and near the river, and utilizing the
abundance of food and supplies along the river have been passed down generation after
generation.

According to my ancestors’ passed down oral history, many Chumash men
intermarried with Tataviam women in the Newhall Project area, and lived in the Project
Area with the Tataviam woman’s families. These Chumash men continued Chumash
cultural practices in Tataviam territory and were buried in Tataviam territory with and
alongside the Tataviam People. The Newhall Ranch Project area was also a place where
many tribes traded with the Tataviam, and as such, was a historical trading area for the
Chumash. Thus many remnants of Chumash material culture were present in the Project area, and likely are buried there with or near Chumash burials.

I am concerned that the footprint of this project will be devastating to Chumash burial sites, cultural artifacts, ceremonial sites and sacred places, cultural resources such as the California Condor, and our cultural landscape. I thus ask that the FEIS/FEIR identifies impacts to these Chumash cultural resources, and sets forth mitigation measures to lessen these impacts to a less than significant effect.

**Impacts to Burial Sites and Cultural Resources**

The number of Native American burials sites and sites with cultural resources identified in the FEIS/FEIR seems very small in relation to the magnitude of the Project area, as the Tataviam people occupied and or culturally utilized much of the Project Area, which lies in their territory. Page 219 of the “Ethnographic Overview of the Los Padres National Forest” places the Tataviam village center of Tacuyam in the center of the Project Area, the village center of Camulus just downstream of the Project Area around the Santa Clara River (The FEIS/FEIR 4.10-.12 indicates this Native American village center was a mixed Chumash-Tataviam population), and indicates that an even bigger village center of Tochonanga lies just outside the Project Area.

Of the 11,999 acre Newhall Project area, the FEIS/FEIR only identifies eight Native American cultural resource sites, and of those sites only two, CA-LAN-2233 and CA-LAN2235, have been identified as containing Native American burials. Further, it appears from analysis in the FEIS/FEIR that these sites were only discovered because portions of these sites were unearthed by Cal Trans during the widening of Highway 126 in 1999. During the Cal Trans widening of Highway 126 completed in 1999 alone, which I believe encompassed a significantly smaller project area, there were 45 Native American burials unearthed, most of which were during project construction operations (FEIS/FEIR pg 4.10-7). I imagine that there will be hundreds upon hundreds of Tataviam and Chumash burials and cultural resources (such as beads, art, tools, musical instruments, jewelry, ect.) unearthed during construction of the Project that were not identified in the FEIS/FEIR. The problem with not identifying Native American Cultural resources in studies conducted as part of the FEIS/FEIR is that if all these cultural resources were identified in archeological studies, then the resources could be preserved in place. Even if the Project FEIS/FEIR called for moving the cultural resources and burials instead of preservation in place, the cultural resources could be carefully removed with screens and archeological tools. As is with the current identification of cultural resources as presented in the FEIS/FEIR, I fear that excavators will destroy burials (our ancestors, their spirits, our culture, and our history) when digging through the earth, and that many bones and or other cultural resources will be destroyed or unnoticed when the powerful machines rip through the ground. Any burial site, archaeological site, or village site is a sacred place. To the Chumash, any area with historic value has a deep sacred

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Sufficient and reasonably diligent field surveys are necessary to identify the impacts to Native American cultural and historic resources, and to prevent significant impacts to our resources and culture from occurring. It should be noted that in the Newhall Landmark Village DEIR, W&S Consultants, the firm conducting the surveys, found that The Tataviam Tribe is extinct. Likewise, W&S Consultants seem to be responsible for the FEIS/FEIR’s irresponsible omission of any mention of Chumash burials and cultural resources in the Project area. Entrusting a consulting firm who could make such an erroneous and culturally devastating oversight, with the archeological surveys referenced in the FEIS/FEIR to locate and identify Tataviam and Chumash burials is concerning. As mentioned previously, the only burial sites identified in the DEIS/DEIR are adjacent to burials already discovered by Cal Trans during their widening of Highway 126 in 1999. I fear that if the Project is approved and the FEIS/FEIR is certified, as is, without sufficiently extensive archeological surveys, it will result in another “Play Vista”, where in 1993 developers refused to stop excavating land near Centinela Creek when workers uncovered a 200-year-old Gabrieliño-Tongva Native American cemetery containing the remains of at least 160 tribal people. The discovery of this cemetery that without identification and thus mitigation measures set forth in the EIR, resulted in many Native American burials being bulldozed and the cemetery being removed instead of remaining in place. (available at: http://www.nathpo.org/News/NAGPRA/News-NAGPRA46.html, last visited 8/3/2010).

Cultural Impacts from Project’s effect on the California Condor (“Condor”) in the Project Area

I am also concerned about the impact of the Project on Chumash and Tataviam culture, and religious and spiritual practices due to localized impacts of the project on the California Condor. For Chumash people the condor is a symbol of our continuance as a people. To see the condor feeding, foraging, roosting, and laying eggs in the Project area connects Chumash people to their ancestors that lived there and utilized the area. The presence of the Condor is also vital to our religious and spiritual practices. We have a condor dance that we continue to practice in our ceremonies, and many tribes as well as ours honor the condor. For the Chumash, the condor has always played a big role in the passing of our loved ones, as the condor cleans the land and cleans our souls after we die. The Chumash often offer a condor feather to the deceased as their last rite of passage because we believe the condor feather raises the spirit to the upper world.

The condor’s presence in the Project area, whether it be flying overhead, foraging for food, roosting in a tree, or cleaning itself near the river, or the knowledge that the condor is living and thriving in the Project Area, is thus an integral part of the sacredness of our ceremonies, cultural sites, prayers, and burial sites that take place or that will take place in the Project area. Anytime we are in a place where the memory of our people exists, we acknowledge the spirit of our ancestors with prayers and offerings. This holds true whether we are harvesting cultural resources from the rivers where our ancestors have been before, honoring our ancestors at a sacred or burial site, standing at a peak
looking at our cultural landscape, or walking through a valley or grove of oak trees and see grinding stones. The absence of the condor from Chumash cultural landscape in the Project area from development related impacts will diminish our connection with our ancestors and our culture, and take away from our ceremonial and religious practices that take place or that will take place in and around the Project area. The Chumash people also collect Condor feathers for ceremonial offerings and to use in ceremonial regalia when they fall to the ground after Condors forage, clean themselves, and roost. I thus also fear that the Project as proposed with its bright lights, power lines, and other urban hazards that will drive away and kill condors in the Project area, will thus deprive Chumash people of religious and cultural practices and spirituality, while also depriving Chumash people of a place to harvest and find condor feathers.

**Impacts to Chumash Cultural Landscape**

In modern times, when Chumash access the Santa Clara River upper watershed to honor our ancestors and to harvest: willow for traditional dwelling units (aps); soap stones for ceremonial beads, pipes and bowls; river rocks for ceremonial sweats, and white sage from the riverbanks for ceremonial blessings, we immerse ourselves in our cultural landscape, which must remain in tact to preserve our culture. Our cultural landscape, the land that our ancestors were buried in, prayed in, and utilized, contains all the wildlife in the Santa Clar watershed, undeveloped hillsides, the Santa Clara River, small creeks, mountains, valleys, and our ancestor’s remains. The Project, which not only will eliminate the condor from the area, reduce other wildlife populations our ancestors regarded as spiritual and cultural resources, and unearthen and destroy our burials and cultural resources, will also line the hills, river banks, mountains, and valleys of our ancestors with buildings, power lines, and pavement, and thus will, in effect, destroy our cultural landscape that our current and future generations depend on to sustain our culture.

When I look at the river, I recall the years of going up and down the river with my uncle, cousin, and mother. It is one of the last wild rivers and holds deer, coyote, various natural and cultural resources, and our ancestors. It is hard to imagine destroying the Project area with concrete, buildings, noise, lights and trash pollution. Not only does this disturb the whole natural system, but also disturbs the spirits of our ancestors.

About five years ago, we participated in the 5K Peace and Dignity Run. It started in Alaska and finished in Tierra de Fuego. The Chumash picked it up from the Coast, ran up the Santa Clara River, and crossed over by Magic Mountain in Santa Clarita. It was an honor to be a part of the run and to carry the medicine of the condor and the eagle feathers on the land in which our ancestors lived. We stopped and performed an offering ceremony to remember our ancestors in the midst of the Project area overlooking the Santa Clara River and our People’s cultural landscape. I can’t image the same prayer being performed with the same effect overlooking thousands of houses, and without undeveloped natural areas and our cultural landscape surrounding us.

I fear that this development will also foster unwanted access to Native American cave paintings and sacred burial sites due to off-roading and hiking. Furthermore, the
project, through dredging of the Santa Clara River floodplain, will also eliminate sacred harvesting locations for white sage, soap stones, river rock, and willow.

I am shocked and disturbed that the FEIS/FEIR does not identify any Chumash Native American Cultural resources or even acknowledge the Chumash People’s presence and role in the Project area, which lies in Tataviam territory. The Chumash Peoples’ historical presence, cultural utilization, and important role in this area via their interaction with the Tataviam has been well documented by Chester King and other historians, and has passed down orally from one Chumash family and community to the next for thousands of years. Please modify the FEIS/FEIR to ensure that the FEIS/FEIR identifies, and provides sufficient mitigation measures to avoid, all significant impacts to Chumash and all Native American burial sites, our cultural landscape, sacred places, and cultural resources, including the localized impacts to the California Condor and wildlife that are essential to maintaining our cultural, spiritual, and religious practices and our connection with our ancestors.

Sincerely,

Mati Waiya
Chumash Ceremonial Elder
Upon completion of the Phase II analysis, 11 of the 33 tested sites proved to lack integrity and significance and/or Phase II fieldwork resulted in recovery of all extant resources. There is the potential, however, that additional resources could be located in the vicinity of these sites; if any unidentified resources were disturbed during construction, additional impacts could occur. Monitoring of these sites during grubbing and topsoil clearing is the only mitigation that would be required to address these potential impacts. With incorporation of mitigation, these impacts would be less than significant. Table 4.5-3 is a listing of these 11 sites.

Table 4.5-3. Archaeological Sites Addressed in Phase II Testing

<table>
<thead>
<tr>
<th>Site Trinomial</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA-KER-4010</td>
<td>Phase II testing found that the site had been destroyed by natural erosional processes, now lacks integrity, and is not significant or unique; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-4389</td>
<td>Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-4391</td>
<td>Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-6710</td>
<td>Phase II test excavations found no archaeological remains of any kind; however, remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-6712</td>
<td>Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-6718</td>
<td>Phase II test excavations collected an isolated artifact; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-6719</td>
<td>Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-6721</td>
<td>Phase I survey collected an isolated artifact; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-6728</td>
<td>Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-6733H</td>
<td>Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
<tr>
<td>CA-KER-6743</td>
<td>Phase II test excavations collected scientifically consequential information; however, additional remains may be uncovered or disturbed during development.</td>
</tr>
</tbody>
</table>

The remaining 22 archaeological tested sites were found to be significant, and the proposed development of the Tejon Mountain Village project would have the potential to result in adverse impacts. Table 4.5-4 is a listing of the 22 sites that had a Phase II analysis performed but additional mitigation is required, with a brief discussion of the results and proposed mitigation. With implementation of the proposed mitigation, impacts are considered less than significant.
Table 4.5-4. Archaeological Sites with Potential Adverse Impacts

<table>
<thead>
<tr>
<th>Site Trinomial</th>
<th>Potential Impact</th>
<th>Proposed Mitigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA-KER-127</td>
<td>Potential disturbance during construction or maintenance along existing roadway.</td>
<td>Preserve in place by staking and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-265</td>
<td>Potential disturbance during construction or maintenance of roadway.</td>
<td>Preserve in place by shifting road location to avoid or capping, staking, and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-307</td>
<td>Previously preserved by capping, but grubbing or topsoil grading could disturb cap.</td>
<td>Preserve in place by monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-4009</td>
<td>Potentially affected by development.</td>
<td>Preserve in place by deed restrictions or conservation easements.</td>
</tr>
<tr>
<td>CA-KER-4011</td>
<td>Potential disturbance by residential development and/or road building.</td>
<td>Preserve in place by deed restrictions or conservation easements, capping, staking, and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-4390</td>
<td>Immediately outside of development envelope, but may be affected by adjacent development.</td>
<td>Preserve in place by staking and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-6704</td>
<td>Immediately outside of development envelope, but may be affected by adjacent development.</td>
<td>Preserve in place by staking and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-6705</td>
<td>Potential disturbance during construction or maintenance along existing roadway.</td>
<td>Preserve in place by capping, staking, and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-6709H</td>
<td>Potential disturbance during construction or maintenance along existing roadway.</td>
<td>Preserve in place by avoidance or capping, staking, and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-6711</td>
<td>Potential disturbance by residential development.</td>
<td>Preserve in place by deed restrictions or conservation easements.</td>
</tr>
<tr>
<td>CA-KER-6716</td>
<td>Potential disturbance during construction or maintenance along existing roadway.</td>
<td>Preserve in place by avoidance or capping, staking, and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-6720</td>
<td>In a nondevelopment area, but potential disturbance from adjacent construction.</td>
<td>Preserve in place by staking and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-6722</td>
<td>Potential disturbance during construction or maintenance along existing roadway.</td>
<td>Preserve in place by avoidance, staking, and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-6725</td>
<td>Immediately outside development envelope, but may be affected by adjacent development or roadway construction.</td>
<td>Preserve in place by avoidance or capping, staking, and monitoring during grubbing and topsoil grading.</td>
</tr>
<tr>
<td>CA-KER-6726</td>
<td>Except for one small outlying feature, outside the development envelope, but this feature could be affected by development.</td>
<td>Preserve in place by avoidance, staking, and monitoring during grubbing and topsoil grading.</td>
</tr>
</tbody>
</table>
### Site Trinomial | Potential Impact | Proposed Mitigation
--- | --- | ---
CA-KER-6727 | Potentially affected by development. | Preserve in place by staking and monitoring during grubbing and topsoil grading, or conduct Phase III data recovery. |
CA-KER-6731 | Potentially affected by residential development. | Preserve in place by deed restrictions or conservation easements. |
CA-KER-6737 | Potentially affected by residential development. | Preserve in place by staking and monitoring during grubbing and topsoil grading. |
CA-KER-6739 | Potentially affected by development. | Preserve in place by staking and monitoring during grubbing and topsoil grading. |
CA-KER-6742 | Potentially affected by development. | Preserve in place by staking and monitoring during grubbing and topsoil grading. |
CA-KER-6744 | Potentially affected by development. | Preserve in place by staking and monitoring during grubbing and topsoil grading. |
CA-KER-6745 | Potentially affected by residential development. | Preserve in place by deed restrictions or conservation easements. |

### Native American Consultations
During the Phase II testing of the 33 sites on the project site, Gloria Montes Morgan and Kathy Van Meter, representing the Tejon Indian Tribe, and Richard Angulo, representing the California Indian Council Foundation – Chumash, served as Native American monitors and liaisons.

During geologic surveys of the project site, a buried site was identified 3 meters deep (CA-KER-6704) that included human remains. At that time, the project archaeologists consulted with the Native American Heritage Commission and Dee Dominguez, who the Commission designated as the Most Likely Descendant for the Tejon Ranch area. This consultation is described further in Impact 4.5.3 later in this section.

### Mitigation Measures
**Mitigation Measure 4.5-1:** The project proponent shall provide the Kern County Planning Department with a map indicating the location of each of the identified archaeological sites. This map will be kept in confidentiality by the Kern County Planning Department.

**Mitigation Measure 4.5-2:** Prior to the submittal of any building, grading, or construction application to Kern County, the project proponent shall request that the Tejon Mountain Village Design Review Committee provide a letter indicating whether the proposed activity is located within 2,500 feet of an archaeological site. This letter will be submitted to Kern County with the building, grading, or construction application. If the proposed activity is located...
within 2,500 feet of an archaeological site, County Staff shall make sure the appropriate mitigation measures listed below are observed.

**Mitigation Measure 4.5-3:** Prior to ground disturbing activities, all earth-moving and excavation contractor employees shall attend a "tailgate" session informing them of the potential for inadvertently discovered cultural resources and/or human remains, and protection measures to be followed to prevent destruction of any and all cultural resources discovered on site. The applicant's designated project construction manager, a qualified archaeologist, and a qualified cultural resource manager/monitor from a local California Native American tribe shall conduct the orientation. The orientation will include information regarding the potential for objects to occur on site, a summary of applicable environmental law, procedures to follow if potential cultural resources are found, and the measures to be taken if cultural resources and/or human remains are unearthed as part of the project. Within 14 days of the session, the project construction manager shall submit to the Kern County Planning Department a summary report that includes the following information:

a. When and where the session took place;

b. Topics discussed in the session; and

c. A session attendance roster signed by the employees at the tailgate session.

A copy of the report will be provided to the Southern San Joaquin Valley Information Center and maintained on site.

**Mitigation Measure 4.5-4:** Site CA-KER-4010, a bedrock mortar station, has been destroyed by natural erosional processes, lacks integrity, and is not significant or unique. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-5:** Site CA-KER-4389, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-6:** Site CA-KER-4391, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-7:** Based on Phase II test excavations, no archaeological site was present at CA-KER-6710. To ensure that additional
remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-8:** Site CA-KER-6712, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-9:** Site CA-KER-6718 was recorded during Phase II testing. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-10:** Site CA-KER-6719, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-11:** Site CA-KER-6721 was recorded during Phase II testing. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-12:** Site CA-KER-6728 was subject to Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-13:** Site CA-KER-6733H, which is an historical cairn, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-14:** Site CA-KER-6743, a bedrock mortar station, has been mitigated by the completion of Phase II test excavations. To ensure that additional remains are not uncovered and disturbed during development, the site
and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-15:** Site CA-KER-127 is a village site immediately adjacent to the existing Lake Drive. This site shall be preserved in place and capped with geotextile matting and fill. Prior to any construction of grading within 100 meters of the site, the site and a 25-meter buffer (where feasible) shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during grubbing and topsoil grading work in this area.

**Mitigation Measure 4.5-16:** Site CA-KER-265 is a prehistoric camp. This site shall be preserved in place. Locus A of this site is adjacent to the existing Bear Trap Ranch Road, and it shall be capped with a geotextile matting and fill. The route of Bear Trap Ranch Road will either be shifted north, beyond the site boundary, or the improved roadbed will be placed within but not through the fill capping. Utilities that may overlie the areas capped with geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed north of the site boundary.

Locus B, which is on a nearby but separate and isolated landform, shall be passively preserved intact. Prior to any construction or grading within 100 meters of Locus B, the site and a 25-meter buffer (where feasible) shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during any grubbing or topsoil grading in this 100-meter area.

**Mitigation Measure 4.5-17:** Site CA-KER-307, the historical village of Kashtiq, is preserved under existing geotextile matting and capping fill, under Lake Drive. Archaeological and/or Native American monitors shall be present during any grubbing or topsoil grading within 100 meters of the preserved site area.

**Mitigation Measure 4.5-18:** Site CA-KER-4009, a prehistoric camp, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement.

**Mitigation Measure 4.5-19:** Site CA-KER-4011, a large camp, shall be preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area. If the construction requires encroachment on the bedrock mortars on the south side of the site and upslope of the archaeological deposit, these shall be covered with geotextile matting and fill and preserved in place prior to construction.

**Mitigation Measure 4.6-20:** Site CA-KER-4390, a prehistoric camp, is outside the development envelope and shall be passively preserved in place. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100
meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-21: Site CA-KER-6704 is a camp with human burials that are covered by approximately 2 meters of natural soil located outside the development envelope. The site and a 25-meter buffer will be passively preserved in place. The site and the 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-22: Site CA-KER-6705 is a prehistoric campsite located near the existing Lake Drive. If Lake Drive is expanded in a manner that would encroach on CA-KER-6705, the site shall be preserved under geotextile matting and capping fill. Utilities that may overlie the geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed southeast of the site.

Prior to any construction or grading within 100 feet of the site, the site and a 25-meter buffer shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during any grubbing or topsoil grading in the 100-meter area.

Mitigation Measure 4.5-23: Site CA-KER-6709H is a historical site adjacent to Rising Canyon Road that shall either be avoided and passively preserved in place or capped with geotextile matting and fill. Utilities that may overlie the geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed northeast of the site.

Mitigation Measure 4.5-24: Site CA-KER-6711, a rock ring site, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement.

Mitigation Measure 4.5-25: Site CA-KER-6716 is a village site located near a road and shall either be avoided and passively preserved in place or capped with geotextile matting and fill. Utilities that may overlie the geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed southeast of the site. Prior to any construction or grading within 100 meters of the site, the site area and a 25-meter buffer shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in this 100-meter area.

Mitigation Measure 4.5-26: Site CA-KER-6720, a rock ring site, shall be preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area. If the construction requires encroachment on the bedrock mortars on the south side of the site and upslope of
the archaeological deposit, these shall be covered with geotextile matting and fill and preserved in place prior to construction.

**Mitigation Measure 4.5-27:** Site CA-KER-6722 is a campsite located near the existing Lake Drive. Prior to any construction or grading within 100 meters of the site, the site area and a 25-meter buffer shall be staked to prevent disturbance, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in this 100-meter area. Any expansion of Lake Drive to the northwest into the site area shall require preservation of the affected site area under geotextile matting and capping fill. Utilities that may overlie the geotextile matting and fill will be embedded within the fill cap, above the geotextile mat, or routed southeast of the site.

**Mitigation Measure 4.5-28:** Site CA-KER-6725, a prehistoric camp, is outside the development envelope and shall be preserved in place by avoidance or by coverage with geotextile matting and fill. Utilities that may overlie covered areas of the site will be embedded within the fill cap, above the geotextile mat, or routed east of the road and site area. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-29:** Site CA-KER-6726 is a large campsite outside the development envelope that shall be passively preserved in place. A small rock ring associated with the site shall be staked with a 5-meter buffer prior to construction, and shall be preserved in place in a nondevelopment area subject to an easement or deed restriction.

**Mitigation Measure 4.5-30:** Site CA-KER-6727, a prehistoric campsite, shall either be passively preserved in place or subject to Phase III data recovery. If the site area is preserved, it shall be staked prior to any construction or grading within 100 meters, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in this 100-meter area.

**Mitigation Measure 4.5-31:** Site CA-KER-6731, a bedrock mortar station, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement.

**Mitigation Measure 4.5-32:** Site CA-KER-6737, a bedrock mortar station, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

**Mitigation Measure 4.5-33:** Site CA-KER-6739, a series of small rock rings, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100
Mitigation Measure 4.5-34: Site CA-KER-6742, a campsite, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-35: Site CA-KER-6744, a prehistoric camp, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement. The site and a 25-meter buffer shall be staked prior to any construction or grading within 100 meters of the site, with archaeological and/or Native American monitors present during any grubbing or topsoil grading work in the 100-meter area.

Mitigation Measure 4.5-36: Site CA-KER-6745, a prehistoric camp, shall be passively preserved in place in a nondevelopment area that will either be deed-restricted or encumbered by a conservation easement.

Mitigation Measure 4.5-37: Archaeological and Native American monitors shall be present during any grubbing or topsoil grading work required to complete the water system improvements to the existing California Aqueduct turnout described in Section 3.5.3.2 and Figure 4.16.2 of this Draft EIR.

Level of Significance after Mitigation
Impacts would be less than significant.

Impact 4.5-2: Directly or Indirectly Destroy a Unique Paleontological Resource or Site or Unique Geologic Feature

Direct and indirect impacts to paleontological resources could result from ground-disturbing activities related to residential, commercial, and recreational construction; construction of the water distribution system, the wastewater system, and water tanks; construction of dry utilities infrastructure; construction of hiking and riding trails; implementation of design features as outlined in the Tejon Mountain Village Specific Plan and in Chapter 3, “Project Description”; and modifications to roadways. Direct adverse impacts primarily concern the destruction of paleontological resources and the loss of information associated with paleontological resources.

As described above in the Methodology section, paleontological sensitivity is defined as the potential for a geologic unit to produce scientifically significant fossils, with high sensitivity identified with sedimentary units. The majority of the site is composed of crystalline rocks, including granite, diorite, and quartz monzonite, estimated to be of Jurassic or Cretaceous age. These are volcanic
BAKERSFIELD, CALIFORNIA

BOARD OF SUPERVISORS MEETING

OCTOBER 5, 2009
A.M. SESSION

TEJON MOUNTAIN VILLAGE PROJECT

VOLUME I
PAGES 1-100
for the profit of a greedy few. The destruction would be permanent. It will never come back, and death is so final. God has given you the opportunity to preserve this part of His creation.

SUPERVISOR McQUISTON: Thank you, Mr. Fry.

I want to make a comment here. There was remarks early in the record about two of the supervisors not being here during the testimony. I'd like to note for the record that if we have to go to the men's room or into this area here, the live proceedings are broadcast, and we are hearing the discussion even though we may not be physically present. Supervisor Maben says, "We can run, but we can't hide."

Welcome.

MS. DOMINGUEZ: Hello. Good morning.

My name is Dee Dominguez, and my cultural affiliation is Kitanemuk and Yowlumne Yokuts and Ventureno Chumash. I am a member and chairwoman of the Kitanemuk and Yowlumne Tejon Indians. And our family members are descendents and the survivors of the people who lived on the Tejon Ranch lands from time in memorial.

I brought for you a picture of a Condor.

I want you to look this beautiful, beautiful bird. We
are very fortunate to have this bird live in our community. I heard earlier that this bird also goes to the San Gabriel Valley. I have a home in San Gabriel, and I have one in Bakersfield. I have never seen the Condor land in Bakersfield, and I have never seen it land in the San Gabriel Valley. I know that it probably flies over the San Gabriel Mountains, which is the Los Padres National Forest. This bird is a national treasure. We are so lucky to have this Condor in our midst.

I want to remind you about one that was killed on Tejon Ranch. That was an adult Condor Number 8. She was shot and left to die in a tree. What happened to Adult Condor Number 8? She's a treasure to this county. She's gone. Our tribe tried for two years and a half to have her brought back here, but we were not able to do that. We had worked with the U.S. Fish and Wildlife for two and a half years with five different tribes as a consortium to bring her back. She is very important to the Indian people, and she lived on Tejon Ranch. She was from here, and she should have been brought back.

I urge you to review that report from the biologist. It is very important. They work with the Condors every day. They are specialists. They know --
they have the information that you need to know about
the Condors. They need this area to survive.

You have heard that there is an incidental
take license that is still on the table with the Fish
and Wildlife. It's not granted to Tejon Ranch. Why
hasn't it been given to them? If it had been okay, it
would have been granted to them long ago, but it has
not. Think about that, people. Think about that.

This legacy of this ranch to this bird is
terrible. Look at the legacy. There was a time when
there were Condors in great numbers. And in the '80s
they almost were pushed into extinction, and this was
done by ranchers and farmers that -- when they first
came to this country in the 1850s, that thought the
Condors would kill their cattle; so they shot them and
killed them and killed them until, in our century, they
were almost driven to extinction.

They are not the only animal that was driven
to extinction. The white wolf -- there was a beautiful
white wolf that lived in our area in the southern
valley. Our tribe was named for that white wolf, the
Yowlumne Yokuts people. We are the white wolf people.
I don't want to see the Condors go through that same
death that the white wolf did. We have the power to
prevent that. You have the power. I hope that you
would read the report from the biologists.

Cultural and sacred sites. I am very concerned about that. On the Tejon Ranch, that's where I was called to go and see -- I am on the list of the most likely descendents for the State of California Native Americans Heritage Commission -- when I received a call from the Native American Heritage Commission, they told me that a grave had been disturbed; when, in fact, I arrived there, an entire cemetery had been torn to bits, and there were remains laying all over the ground. How many of you here would like to see that done to your families in their cemeteries? What if that happened to Greenlawn here and all their families were called to come and pick all the pieces of your families?

And now I'm hearing that those sites are going to be concreted. Well, are we going to concrete Greenlawn and Union Cemetery so that people don't go and vandalize them? There has to be a better way. We must go back to the drawing table on that. Tejon Ranch didn't talk to me about concreting those areas. I would never say that, and I suspect that neither of you here would do that either.

I saw those grinding rocks at the headquarters. I did not know they were there until
I saw them on the photo before the Planning Commission. I want to know where those came from. Was that site destroyed? Was it severely damaged? Has it been recorded? Was it eligible for inclusion into the National Register of Historic Places?

Those are the things we're looking at, people. Destruction. Complete destruction means that you just put it back together, just like a cemetery. Once you tear it up, you can't put it back together. The destruction is final, and I urge all of you -- some places should not be developed, and this is one of those places.

Thank you.

SUPERVISOR McQUISTON: Thank you.

MS. NELSON: Good morning.

SUPERVISOR McQUISTON: Good morning.

MS. NELSON: I would like to continue, actually, in the vein that Dr. Catherine King did earlier regarding the land use and ranch-wide agreements.

SUPERVISOR McQUISTON: May we have your name for the record.


Other commenters have been told that comments
July 12, 2009

Delia 'Dee' Domínguez
115 Radio St
Bakersfield, CA 93305

Craig M. Murphy
Kern County Planning Department
Public Services Building
2700 "M" Street, Suite 100
Bakersfield, CA 93301-237

Mr. Murphy:

I am writing to express my concerns with the Kern County Tejón Mountain Village and Frazier Park Estates Draft Environmental Impact Reports. I am writing in the capacity of a concerned citizen with strong ties to the Tejón Ranch property, a Mess Likely Descendant (MLD) for Kitsemsuk & Yowllumme Yokuts Indian Tribes, and as the Chairwoman of the Kitsemsuk & Yowllumme Tejón Indians.

The TMV-DEIR does not adequately consider the indigenous settlements for the entire Tejón Ranch area, and in particular the "CEQA Development Envelope" around Castac Lake, despite the presence of well-documented sacred sites of important cultural significance to the indigenous people.

The DEIR does identify a few sites, but does so incoherently. Instead of identifying villages by their name and addressing their individual significance, every "archaeological site" is grouped together and their identity is hidden by use of a number code. See pp. 4.5-22 through 28. Using numeric identifiers makes it simply impossible to know if the many villages and sacred sites around the Castac Lake site are the ones identified in the DEIR. This is a critical problem with the DEIR that renders the protection of cultural resources a guessing game at best and a clear disrespect for the sacred sites as well. Relying on numbers of the sites also allows for random misclassifying Indian settlements as "prehistoric camps" or "bedrock mortar station" when there is no means to verify the actual contents of that site. I object, however, to calling villages, settlements, and/or burial sites "prehistoric camps" since they were clearly of greater significance than camps and require additional protection as such. In determining the true significance, then, we are forced to rely on the word of the Ranch, the very ranch that kicked the Indian People off in the first place.

Even the few sites that the DEIR identifies are provided with insufficient mitigation measures. In particular, the use of textile matting and fill in order to build over sacred sites is particularly troublesome; this practice is noted repeatedly in the DEIR. Without independent analysis of these sites beyond the fictional group used by the Ranch,
there is no way of knowing if the mitigation suggested is either appropriate or actually practiced.

Indian Settlements:

My ancestors lived in long-established settlements in many of the canyons surrounding Castac Lake, and evidence of their settlements remain throughout the area. Generally speaking, Chumash Indians lived in the vicinity of Kashiq (now underwater because of Castac Lake expansion), while the Kitanemuk and Yowlumne tribes lived in the canyons east and north of the lake. General Beale forced all of these tribes to move to present-day Tejon Canyon, which made it the last Indian settlement on the property. The U.S. Government actually sued Tejon Ranch for this forced removal of Kitanemuk, Yowlumne and Chumash.

Because Tejon Ranch has historically blocked access to the property by MLD's such as myself, many of these settlements have not been officially identified. However, in my research in preparing a petition to the Bureau of Indian Affairs for Federal Recognition, I have reviewed the depositions taken by archaeologist (and translator) J.P. Harrington in 1922, on behalf of the U.S. Government, in its suit against Tejon Ranch for the forced removal of the Indians. The depositions are from Indians who were themselves moved from the canyons on the Westside of the Tejon Ranch property to the canyons to the East of the valley floor. The final removal was to the last canyon at the end of the canyon floor- Tejon Canyon/Creek. They were 70, 80, 90, and over 100 years old. Each one of them spoke of where they were born, where their parents were born, where they hunted, fished, gathered acorns, berries, pine nuts, described the elk drives on the plain all the way to Kern Lake, and many other things and places they knew in their native languages, Kitanemuk, Yowlumne, Chumash, including Castec Chumash. These included Eugenia Mendez, who was my Great, Great, Great Aunt who lived on Paso Creek at the Huesos de Arriba, as did my Great, Great Grandmother Magdalena Olivas, my Great Great Step-Grandfather Jose Juan Olivas, my Great, Great Uncle Jose Dionisio who described our travel to Caddy's Ranch, Frazier Mountain, and Pinos Mountain to gather pine nuts, my Great, Great Step Grandmother Maria Chololo, Juan Cebeci, a member of the Kitanemuk Tribe, and many others. All of them aware of the land surrounding Castac Lake.

The presence of Indian villages and sacred sites in the Castac Lake area are likewise documented in sources outside of these depositions, in such older works as the pioneering and well-preserved archaeology studies of J.P. Harrington (also the translator for the above depositions), as well as in Frank Latta's period biography of Jorge Jesus Lopez. Newer works documenting these sites include in the local "Hedge Route" chronicles of Bonnie Ketner Kane (see, e.g., Volume 1, page 8), and the archaeology as those of Jennings and John Johnson's 1978 article, The Trail to Kashiq. Johnson's Kashiq article in particular notes the "pattern of placement" of the villages, and that archaeologist Kroeber (1953) determined that the canyons surrounding the lake were named after villages in the mouth of those canyons.
Sacred Burial Sites

I am very familiar with Castac Lake. Currently I am 58 years old, and was born and raised in Bakersfield, California. As an adult I lived in and around Covina, California for about 25 years, and traveled home to Bakersfield 2-3 times every month to visit my mother, father and relatives driving over the ridge to arrive to Bakersfield. In doing so, I observed the lake often in every season of the year, Spring, Summer, Fall and Winter. The lake had water after the winter snow melt, and the water gradually disappeared by summertime, leaving only a white circle where the water had pooled. A few years ago, I observed the lake getting bigger and bigger with more water in it than I had seen in my lifetime. I knew it was not a normal occurrence and came to learn that the Tejon Ranch had artificially filled the lake beyond its normal capacity and beyond its natural shoreline. When I had been called to visit the Tejon Ranch property in September 2001, I was advised by the Ranch representatives that the original road from Hwy 5/99 on the north shore of Castac Lake was underwater due to the enlargement of the lake.

Since the Indian Village of Kashtiq is on the north shore, it too is underwater. How this has happened in an environmentally sensitive area affecting all surrounding communities must be adequately investigated and satisfactorily resolved. This is particularly so since a village like Kashtiq would have necessarily had a sacred burial site nearby, which has also been presumably flooded, in clear violation of state and federal laws.

Problems With Tejon Ranch Treatment of Sacred Burial Sites

As an MLD on the list with the State of California, Native American Heritage Commission, I was called upon by Rob Wood of the NAHC to visit the Tejon Ranch property in September 2001 when the ranch had damaged a single burial during their excavating activities for seismic testing. The location was ¼ mile east of Castac Lake. The archaeologist of record was Dave Whitley, and the Chumash on site monitor was Richard Angeles, from Ventura.

On arrival, I observed a trench 75 yards long, and 20 feet deep. The burial referred to was actually 2 burials in the eastern wall with a burn area referred to as a hearth estimated to be 2,000 years old. The graves were 6 to 9 feet from the top of the trench, and were close together in proximity. In addition were bones scattered inside the trench and bones scattered over the top of the trench where the bulldozer had dropped the soil excavated from both sides of the trench.

I have several concerns regarding this specific site.

1) Due to the large number of bones widely dispersed, was this an actual cemetery?

2) If it was a cemetery, it had been plundered prior to my visit;
3) Or, it was a dumping site for isolated burials or cemeteries found elsewhere on the Tejon Ranchlands.

4) I had been advised at that time that an archaeologist and an on-site monitor had been at the excavation site at the time of the excavation. If this was true, this should not have happened. At the moment a burial is encountered, all work should have stopped, the State of California, Native American Heritage Commission and the Kern County Coroner should have been notified immediately.

From my observation, not a single funerary item was scattered with these bones. This is not normal. Indian people like any other people bury their family member with momentos, special items of the deceased, and in that time period, clam shell beads, and if a person holding a high position, they were buried in special regalia. I observed none of these. The day the trench was filled in, I told Andrew Daymude to add an additional cover of soil over the site, and not to build a house or any other building on the site, which means 'complete avoidance'.

Misuse of 'Tejon Indian' To Verify Practically
The DEIR repeatedly references Tejon Ranch’s reliance on the 'Tejon Indians' as Indian monitors. As any Tejon Indian will tell you, though, the 'Tejon Indian' term is in fact purely geographic and does not refer to a specific tribe. For example, I have already described at minimum three such tribes on Ranch property, including Chumash, Kitanemuk and Yowlumne. All of those tribes would be considered "Tejon Indian" yet as most likely descendent (MLD) for two of those tribes it would seem like I would naturally be a "Tejon Indian." But in the sense that the Ranch uses the term, I am not. It is even unclear whether the Tejon Indians as a responsible group is not the pure invention of the Ranch. Worse, the use of "Tejon Indian" is not only vague, it is troublesome as there have been reports of a business relationship between Tejon Ranch and this so-called "tribe," calling for the eventual placement of a casino on Ranch property. Until these relationships are made transparent, the Ranch should not be allowed to rely on made-up tribes to cover their actions.

CULTURAL AND CEREMONIAL CONCERNS

For Indians, the Condor hold a very special place in our universe. It is as highly regarded as the Eagle. My Great Great Grandmother Magdalena Olivas has said that the Condor traveled the world. The condor is the largest bird in North America. Part of its habitat is on the Tejon Ranchlands and has been since time immemorial. There was a time, when condors were in abundance as was the white wolf from whom part of my heritage is named - Yowlumne. Yowlumne, the white wolf inhabited the southern end of the San Joaquin Valley, and as such, our people were named since we occupied the same geographical region. Yowlumne, the white wolf is extinct. The Condor, almost suffered the same fate until some very well educated biologists who could see into the future came together to stop this unexplainable fate of extinction caused by man. Together they collaborated with the Los Angeles Zoo, San Diego Zoo, and the Peregrine Fund for a captive breeding program, and today the Condors have a fighting chance.
biologists again came together to determine how to resolve the delinquent condor teenagers. They decided to release AC8 (Adult Condor #8) in the hopes that she could mentor these condor teenagers. She has been considered as the matriarch of the Condors; having been born in the wild and been part of the breeding program. Sadly within 2 years she was killed on the Tejon Ranchlands by 2 hunters. One drove the truck, and the other got off the truck and shot AC8 while she was sitting a tree waiting for the sun to come out to warm up and fly off. They were on the Tejon Ranch property with a permit for pig hunting. Our Tribe attended the sentencing hearing at the Federal Courthouse in Fresno where no one was allowed to make any comment. We did submit a written statement through the Federal Attorney where we asked for a maximum sentencing for such an atrocity of callously killing a magnificent bird protected under the Endangered Species Act. Subsequently we attended a public meeting near Frazier Park where Tejon Ranch was seeking a ‘take permit’ against the Condor. At the meeting we encountered Andrew Daymude, and Dennis Mullins, Ranch attorney, where we advised them both we did not support their request for the ‘take permit’. Andrew Daymude acknowledged our position.

Conclusion

Condors inhabited all of California, Washington, Oregon, Baja California, Mexico, Central America, South America, Arizona, and their remains have been found in Florida. Many tribes as well as ours honor animals as well as the Condor, and have a Condor dance that we practice in our ceremonies. When Europeans came to our lands, they considered the Condor vermin, erroneously thinking the condors would eat their cattle, and shot them in such numbers that they became fewer and fewer. This has caused an inability to practice this specific religious ceremony due to the scarcity of condor feathers needed for the necessary regalia. The DEIR should address the failure of Tejon Ranch to do more to protect these sacred animals for generations to come.

In addition, the DEIR virtually ignores many of the sacred sites in the Castac Lake area, and those that it does identify are numerically coded so as to hide their true use and identity. My understanding of CEQA is that the cultural resources I have identified around the lake must be identified as cultural resources and protected as such. CEQA requires that this protection go beyond mere identification and use of covering materials or ‘passive’ protections. I hope the Ranch will consult with other, non-biased Natives when conducting their research in the future.

Sincerely,

Delia Dominguez
Kitunenuk & Yowluumne Tejon Indians