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January 24, 2014

Mike Novo
County of Monterey
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**Subject: Mitigated Negative Declaration (MND) for the Wolter Properties LP
Carmel Canine Sports Center PLN130352, SCH No. 2013121077**

Dear Mr. Novo:

The Department of Fish and Wildlife (Department) is in receipt of the Mitigated Negative Declaration (MND) for the Wolter Properties LP Carmel Canine Sports Center (Project). The proposed Project is for the development of a canine training/sports facility and event center on 43 acres. The Project is to include the development of four modular structures, fenced pastures and fields, permeable parking area, walking paths, an irrigation system and reservoir, livestock housing (sheep, goats, and ducks) and accommodation of up to seventy recreational vehicles during special events. Site grading to include 90 cubic yards of cut and fill. The Project abuts the Carmel River Riparian Corridor to the south.

Please be advised that the Project area may include potential habitat for the State and federally threatened California tiger salamander (*Ambystoma californiense*, CTS), the State Species of Special Concern (SSC) and federally threatened California red legged frog (*Rana draytonii*), the SSC western pond turtle (*Emys marmorata*), and may have associated impacts to the SSC and federally threatened steelhead – south central California coast DPS (*Oncorhynchus mykiss*) and riparian nesting bird species.

The Department has concerns about the Project-related impacts to the surface waters, riparian and upland habitats that are adjacent to or within the Project site, as well as the associated impacts to species that utilize these habitat types. Project-related impacts to these special status biological resources should be evaluated and addressed prior to Project implementation, in order to comply with State laws described below. It is not clear what evidence the County utilized to make findings that all potential impacts to biological resources (which have yet to be fully identified) would be mitigated to a level of less than significant without accurate identification of the type and extent of sensitive resources, as well as potential effects on those resources. Therefore, the Department recommends that biological surveys be conducted by a qualified wildlife biologist and

botanist during the appropriate season(s) and that the results of these surveys are used to inform the analysis of impacts to resources and to provision suitable avoidance, minimization, and mitigation measures to reduce impacts to less than significant levels.

Moreover, revisions to the MND should be made that include an accurate description of proposed Project development activities, a discussion regarding pre-existing grading and structural development in connection with Project design plans (including but not limited to irrigation pond construction and turf development), and an appropriate discussion of biological resources located within the Project area identified through biological surveys as discussed above. The California Environmental Quality Act (CEQA) document should include a Project description sufficient to accurately identify impacts to wildlife species and habitat, and measures which would mitigate impacts to such species to a level of less than significant including a discussion of potential impacts to sensitive species that may have already occurred as a result of previous unpermitted land disturbance activities in association with the Project. Therefore, the Department recommends a new CEQA document be prepared and re-circulated for review once adequate surveys and impact analyses have been completed to determine what measures would mitigate potential effects of the Project.

Department Jurisdiction

Trustee Agency Role: The Department is a Trustee Agency with the responsibility under the CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA.

Responsible Agency Role: The Department is a Responsible Agency when a subsequent permit or other type of discretionary approval is required from the Department, such as an Incidental Take Permit (ITP), pursuant to the California Endangered Species Act (CESA), or a Lake and Streambed Alteration Agreement (LSAA) issued under Fish and Game Code Sections 1600 *et seq.*

The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, or designated as a candidate for listing, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species pursuant to CESA, the Department may need to issue an ITP for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001(c), 21083, Guidelines Sections 15380, 15064, 15065). Significant impacts must be avoided or "fully mitigated" in order for "take" authorization to be issued by the Department, and while the CEQA Lead Agency may make a supported Statement of

Overriding Considerations (SOC), the Department cannot issue a "take" authorization unless all impacts have been "minimized and fully mitigated" (Fish and Game Code Section 2081).

The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with CESA. In other words, compliance with CESA does not automatically occur based on local agency project approvals or CEQA compliance; consultation with the Department is warranted to ensure that Project implementation does not result in unauthorized "take" of a State-listed species.

Incidental "take" authority is required prior to engaging in lawful "take" of any plant or animal species listed under CESA. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act. No direct or indirect disturbance, including translocation, may legally occur to State-listed species prior to the applicant obtaining incidental "take" authority in the form of an ITP.

Permit Streamlining: Issuance of an LSAA and/or an ITP by the Department is considered a "project" (CEQA Guidelines Section 15378) and is subject to CEQA. The Department typically relies on the Lead Agency's CEQA compliance to make our own findings. For the Lead Agency's CEQA document to suffice for permit/agreement issuance, it must commit to fully describing the potential Project-related impacts to stream/riparian resources and listed species, as well as measures to avoid, minimize, and mitigate impacts to these resources. Impacts to State-listed species must be "fully mitigated" in order to comply with CESA (California Fish and Game Code Section 2081(b)(2)). If the CEQA document issued by the County for this Project does not adequately analyze impacts to resources that require permits issued by the Department, the Department may need to act as a Lead CEQA Agency and complete a subsequent CEQA document. This could significantly delay permit issuance and, subsequently, Project implementation. For that reason, it is very important that the revised MND reflect suitable and feasible avoidance, minimization, and compensatory mitigation, such that we are able to make findings per CEQA necessary for ITP issuance. In addition, CEQA grants Responsible Agencies authority to require changes in a Project to lessen or avoid effects of that part of the Project which the Responsible Agency will be called on to approve (CEQA Guidelines Section 15041).

Bird Protection: The Department has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include sections 3503 (regarding unlawful "take", possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take", possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird).

Water Rights: The MND indicates that the applicant has not clearly identified a water right which supports use of water for the Project, and that the Project proponent has to

perfect a water right, either by receiving a Riparian Rights determination from the Monterey Peninsula Water Management District (MPWMD) or obtain an appropriative right from the State Water Resources Control Board (SWRCB). Additionally, because the previous water right is based on an agricultural use, and the proposed use is not agricultural in nature, an existing water right may have to be reconsidered to transfer the right, and the amount predicated on a different basis related to the new reasonable and beneficial use.

Additionally, MPWMD and the SWRCB both have an independent obligation to address public trust resources, as required by the 1983 Supreme Court decision in *National Audubon Society v. Superior Court of Alpine County*; this decision requires these agencies to balance potential value of the project against the impact on trust resources. The Department, as Trustee and Responsible Agency, is consulted by the SWRCB during the water rights application process to provide terms and conditions designed to protect fish and wildlife public trust resources prior to appropriation of the State's water resources. Certain fish and wildlife resources are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. The Department therefore has a material interest in assuring that adequate water flows are maintained within streams for the protection, maintenance and proper stewardship of those resources. The Department recommends that water allocated for this Project be done in a manner which protects a bypass flow, the amount of which is determined to avoid impacts to public trust resources. The bypass flow requirements for the Carmel River should require the cessation of pumping whenever river flow drops below a specified rate(s) as measured at an appropriate river gage. The Department provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

Biological Information: It is not clear how the County concluded that impacts to biological resources are less than significant with mitigation incorporated when the initial study does not address question 4.(a) as to whether the Project would have adverse effects on any candidate, sensitive, or special status species. There is no discussion regarding the potential for the above mentioned species to occupy the site including CTS and CRLF. Based on the information provided in the MND it appears that biological surveys have not been performed on the Project site. The MND states that the Project site has been left fallow for over five years. Again, absent the completion of essential biological assessments and surveys to determine which species have the potential to occupy or use the Project site, it is not clear how the County can conclude that biological resources are either not present or that measures proposed are adequate to reduce impacts to less than significant. As required by CEQA, the MND should clearly identify resources on the Project site and their potential to be impacted by the proposed Project; analyze potential impacts as to their significance; and identify measures to reduce all potentially significant impacts to a level of less-than-significant. This includes water use of the Carmel River and its associated biological impacts to aquatic species. Impact analysis should be predicated on complete biological surveys. Measures and alternatives that would avoid and minimize potential impacts to resources of concern, as well as on-site conservation measures, should be considered prior to

measures and alternatives that would provide for compensatory resources on- or off-site.

The Department advises surveys be conducted at the appropriate time of year to determine the presence/absence, location, and abundance of sensitive plant and animal species and natural communities that may occur on or adjacent to the Project site. In addition to the specific surveys that we have recommended below, general wildlife surveys should be conducted over the entire Project site to determine potential impacts to wildlife species and habitats of concern. Sensitive natural communities that may occur on the Project site advised to also be identified and mapped and potential impacts evaluated and mitigated.

The Department also has concerns regarding the potential discharge of storm water runoff or other potential discharges from the facility site where animal wastes and other constituents of concern could impact seasonal wetlands and the Carmel River and riparian corridor adjacent to the Project site. Wastewater from confined animal facilities is known to contaminate surface and groundwater alike. Surface water and groundwater contamination includes the increase of nitrogen compounds, salts, pesticides, pathogens, dissolved solids, and other constituents of concern. The CEQA document prepared for this Project is advised to evaluate the potential impacts to groundwater and surface water contamination, and the potential related impacts to plants and wildlife that depend on these aquatic resources for all or part of their life cycle. The project allows for the accommodation of up to 70 recreational vehicles during special events. The Department is concerned that the MND does not address whether sewage hookups and tanks will be constructed on site for the disposal of waste water from recreational vehicles. Given that the project site overlays the Carmel River aquifer and is within the flood plain, any sewage leaks could potentially affect the water quality of the Carmel River and its aquifer. The Department recommends that the County require that all recreational vehicle sewage and waste water disposal occur at an appropriate off-site facility.

The Department submits the following recommendations on specific biological resources and issues that should be discussed in the MND.

Botanical Inventory: There is the potential for sensitive plant species to occur within the Project area. Botanical surveys are recommended to be conducted prior to Project activities and be performed in accordance with guidelines developed by the Department (DFG, 2000) and the United States Fish and Wildlife Service (USFWS) (USFWS, 2000). Botanical surveys are floristic in nature and must be timed appropriately and cover the entire property and may require multiple surveys in order to detect all species which could potentially be present on the property before impact analysis occurs. Note the above referenced guidelines instruct the use of reference sites to confirm appropriate survey timing, particularly for seasonably variable, often difficult to detect species.

Nesting Birds: The trees, shrubs, and grasses within and in the vicinity of the Project site likely provide nesting habitat for songbirds and raptors. The Department

encourages Project implementation to occur during the non-nesting bird season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), Project applicant is responsible for ensuring that implementation of the Project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above. Prior to work commencing; including staging, clearing, and grubbing, the Department recommends surveys for active nests be conducted by a qualified wildlife biologist no more than 10 days prior to the start of the Project commencing and that the surveys be conducted in a sufficient area around the work site to identify any nests that are present and to determine their status. A sufficient area means any nest within an area that could potentially be affected by the Project. In addition to direct impacts, such as nest destruction, nests might be affected by noise, vibration, odors, and movement of workers or equipment. Identified nests should be continuously surveyed for the first 24 hours prior to any construction related activities to establish a behavioral baseline. Once work commences, all nests should be continuously monitored to detect any behavioral changes as a result of the Project. If behavioral changes are observed, the work causing that change should cease and the Department consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, the Department also recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500 foot no-disturbance buffer around the nests of unlisted raptors until the breeding season has ended, or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers may be implemented when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. Any variance from these buffers is advised to be supported by a qualified wildlife biologist and it is recommended the Department be notified in advance of implementation of a no-disturbance buffer variance.

California Tiger Salamander (CTS): As previously mentioned CTS are known to occur within the Planning Area and may occur within the Project site. The MND is advised to clearly disclose the potential impacts that the Project may have on CTS and provide measures to mitigate for all potential impacts to CTS. Due to the potential for CTS to occur on site and the potential for "take" of the species to occur as a result of Project implementation, acquisition of a State Incidental Take Permit (ITP) from the Department may be warranted. Project-related impacts to CTS are recommended to be evaluated and addressed prior to Project implementation, in order to comply with State laws. With the known occurrences of CTS in the general location of the Project, as well as identified aquatic features adjacent to the Project site, the Department recommends that a site assessment and protocol level surveys be conducted for CTS. Surveys for this species should follow current United States Fish and Wildlife Service (USFWS) protocol methods. Survey guidance can be found at: <http://www.dfg.ca.gov/wildlife/nongame/docs/CTSFinalGuide10-03.pdf>.

The results of the site assessment and protocol level surveys can then be utilized to evaluate the potential for impacts to the species which would be analyzed by the County in the CEQA document, as well as to determine the potential for "take" to occur. If the Project has the potential to result in "take" of this species, "take" authorization from the Department in the form of an ITP, pursuant to Fish and Game Code Section 2081(b), would be required prior to Project implementation. In the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an ITP. For information regarding ITPs please see the following link:

<http://www.dfg.ca.gov/habcon/cesa/>. Included in the ITP would be measures required to avoid and/or minimize direct "take" of CTS on the Project site, as well as measures to fully mitigate the impact of the "take". All impacts related to the permitted taking of CTS must be minimized and fully mitigated.

California Species of Special Concern (CSSC): Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, Section 15380), it should be fully considered in the environmental analysis for the Project. This should include CSSC that are known to the Project area vicinity and could occur in the Project area such as California red-legged frog, western pond turtle, and steelhead trout; as such, impacts to these species and their habitats must be identified and mitigated to a level of less than significant. These species forage, breed and nest in aquatic systems, riparian areas and associated uplands and may utilize sites within and around the Project Area. These species have all been identified to occur on adjacent sites.

As California red-legged frog and steelhead are also federally threatened species, the Department recommends you consult concurrently with the USFWS and NOAA as you work with the Department to ensure you are in compliance with both the State and Federal Endangered Species Acts.

Hydrology: The MND states that water for the proposed use will come from the Carmel Valley Alluvial Aquifer (Aquifer). As stated, the Aquifer is in an over-appropriated condition; therefore any use of water from the aquifer (not just additional use over the baseline, the standard utilized in the MND) may have significant impacts to the critical habitat for the CSSC and federally listed California red-legged frog and CSSC and federally listed steelhead trout. As stated above, the allocation of water includes an independent obligation to address public trust resources per the *National Audubon* decision. This obligation is independent of any baseline determination, impact analyses or mitigation which might be applied to a project subject to review under CEQA. The MND is advised to identify as a standard of significance any Project element which would substantially decrease the amount of streamflow such that there would be a potential for impacts to public trust resources. Additionally, there does not appear to be any section of the MND which actually discusses what public trust resources would be subject to this independent obligation; nor any descriptions, standards, thresholds or any other such analysis or requirements which would clarify how the County actually

considered such resources and identified a project or project alternative, including appropriate limits on allowable diversions, which would feasibly protect public trust values. Again, under this condition it is not clear how the County can conclude that impacts to biological resources are considered less than significant with mitigation incorporated when essential biological assessments have not been performed to identify potential impacts to these public trust resources. The Department recommends that further studies be conducted to determine the impacts that the Project will have on aquatic resources.

The Department also has concerns regarding the baseline utilized in the MND. CEQA impacts related to water usage for the Project is based on the difference between projected use and a historic baseline of the site; the MND utilizes as baseline a period of time in which the primary use was active irrigated agriculture. As previously noted the site has been left fallow for over five years; therefore the Department does not concur that the baseline period chosen by the County is appropriate, especially in view of the fact that the beneficial use of the water as proposed is recreational, not agricultural. We recommend a more appropriate baseline for water use would be the period of time immediately preceding the release of the MND, during which the agricultural fields were fallow.

The Department has concerns regarding the amount of water which is projected to be utilized by the proposed project. The MND states that in the application to the MPWMD the applicant identifies that 58.03 acre feet of water will be used for Irrigation/Agriculture. It does not clearly identify the amount of irrigated water use for turf at the facility to be used for daily training and exercise activities as well as special events, along with other irrigation uses; that amount should be separately identified. The maintenance of turf is not an agricultural use, in that no agricultural commodities are produced. Additionally, it is not clear that the non-turf areas would be considered agriculture, rather than vegetation which is cultivated specifically for the dog training and special events. The majority of the Project as proposed is not for an active agricultural use, and appropriate mitigation measures to reduce the overall water demand of the Project to reduce impacts on riverine resources could include the maintenance of other more drought tolerant landscaping/vegetation in which training and special events can occur. The MND does not evaluate the significance of potential impacts to public trust resources which would result from reduction in flows resulting from a diversion to support the proposed project, nor offer any specific measures which would mitigate these adverse effects. The Department believes that these could be significant and potentially unmitigable, except by reducing the diversion and enforcing limits on pumping, both instantaneously and on a seasonal basis.

The Department is concerned that the diversion will result in direct and cumulative adverse impacts to the resources of the river by reducing instream flow and water availability needed to maintain fish and wildlife habitat within and adjacent to the river. The Department recommends that the MND fully disclose the direct and cumulative effects of the Project's diversions (the amount of which would be determined under a perfected water right) from the river. This obligation is independent of any baseline

determination, impact analyses or mitigation which might be applied to a project subject to review under CEQA. The Department recommends that water allocated for this project be done in a manner which protects a bypass flow, especially during the low-flow season, the amount of which is determined to avoid impacts to public trust resources. The bypass flow requirements for the Carmel River advised to require the cessation of pumping whenever river flow drops below a specified rate(s) as measured at an appropriate river gage.

As noted above, the MND indicates that the applicant has not clearly identified a water right which supports use of water for the Project, and that the Project proponent has to perfect a water right. Until such time as a water right has been identified and perfected, and the amount of that right has been determined as consistent the potential beneficial use proposed, it is not possible for the County to analyze the effect of the project, either in terms of the absolute effect of the project on public trust resources or in terms of the effect attributable to the difference between proposed use and the CEQA baseline.

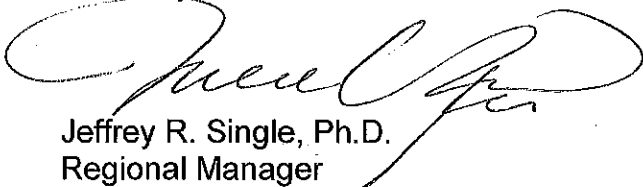
River Access: The MND states that the applicant is proposing access to the Carmel River for dog activities and picnicking. However, the MND also states that further information regarding activities to gain access to the river has not been provided and has not been shown to be consistent with County policies. The Department agrees with the conditions provided in the MND to preclude river access and not allow removal of riparian vegetation within the Carmel River corridor. The Department has a no-net-loss policy regarding riparian vegetation; therefore if the riparian vegetation is to be impacted by the Project there must be measures put in place to fully mitigate for any riparian loss.

USFWS & NOAA Consultation: As stated previously, the Department recommends consultation with the USFWS prior to any ground disturbance related to this Project due to potential impacts to federally listed species. "Take" under the Federal Endangered Species Act (FESA) is more stringently defined than under CESA; "take" under FESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS and NOAA in order to comply with FESA is advised well in advance of Project implementation.

Conclusions: Biological studies are recommended to include, but not be limited to, CTS, California red-legged frog, western pond turtle, steelhead trout, rare plants, and nesting birds. Surveys are instructed to be comprehensive and address the subsequent impact assessment of all special status species that are found to occur or are likely to occur on or near the Project site. Impact analysis is also advised to address direct, indirect, temporary, and permanent impacts, as well as potential impacts to sensitive species that may have already occurred as a result of previous land disturbance activities. Proposed measures to mitigate Project impacts are recommended to emphasize avoidance and minimization over translocation of resources or provision of compensatory resources on- or off-site. In addition, the Department recommends that the USFWS and NOAA be consulted due to potential impacts to federally listed species.

Thank you for the opportunity to comment on the MND for the Carmel Canine Sports Center. The Department recommends that the MND be withdrawn, and a revised CEQA document be prepared and circulated for review once adequate surveys and impact analyses have been completed, and after a water right for the project has been identified and perfected by the project proponent. The Department is available to consult with the County regarding potential effects to fish and wildlife resources, as well as specific measures which would mitigate potential effects of the project, once appropriate surveys have been conducted. Depending upon the results of the described biological surveys, actual Project site configuration, and other details which should be disclosed in the MND, we may have additional comments and recommendations regarding avoidance, minimization, and mitigation of Project impacts to habitat and special status species. If you have any questions regarding these comments, please contact Brandon Sanderson, Environmental Scientist, at 3196 Higuera Street, Suite A, San Luis Obispo, California 93401, by telephone at (805) 594-6141, or by email at brandon.sanderson@wildlife.ca.gov. You may also contact Annee Ferranti, Senior Environmental Scientist, by telephone at (559) 243 4014, or by e-mail at annee.ferranti@wildlife.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey R. Single', written over a horizontal line.

Jeffrey R. Single, Ph.D.
Regional Manager

ec: See Page Eleven

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Monterey County Planning
January 24, 2014
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