

# Attachment C

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# NOTICE OF APPEAL

*Monterey County Code  
Title 19 (Subdivisions)  
Title 20 (Zoning)  
Title 21 (Zoning)*

RECEIVED  
MONTEREY COUNTY

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CLERK OF THE BOARD

JES DEPUTY  
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No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before September 8, 2015 (10 days after written notice of the decision has been mailed to the applicant). Date of decision August 26, 2015.

1. Please give the following information:
  - a) Your name Anthony Lombardo, Anthony Lombardo and Associates
  - b) Phone Number 831-751-2330
  - c) Address 144 West Gabilan City Salinas Zip 93901
  - d) Appellant's name (if different) Quail Lodge, Inc.

2. Indicate the appellant's interest in the decision by checking the appropriate box:
  - Applicant
  - Neighbor
  - Other (please state) \_\_\_\_\_

3. If you are not the applicant, please give the applicant's name: Carmel Canine Sports Center

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.
 

	File Number	Type of Application	Area
a) Planning Commission:	<u>PLN130352</u>	<u>Use Permit</u>	<u>Carmel Valley</u>
b) Zoning Administrator:	_____	_____	_____
c) Subdivision Committee:	_____	_____	_____
d) Administrative Permit:	_____	_____	_____

5. What is the nature of the appeal?

a) Is the appellant appealing the approval  or the denial  of an application? (Check appropriate box)

b) If the appellant is appealing one or more conditions of approval, list the condition number and state the condition(s) being appealed. (Attach extra sheets if necessary).

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6. Check the appropriate box(es) to indicate which of the following reasons form the basis for the appeal:

There was a lack of fair or impartial hearing; or

- The findings or decision or conditions are not supported by the evidence; or
- The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will **not** accept an application for appeal that is stated in generalities, legal or otherwise. If the appellant is appealing specific conditions, you must list the number of each condition and the basis for the appeal. (Attach extra sheets if necessary).

Points of Appeal are attached

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7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning). In order to file a valid appeal, you must give specific reasons why the appellant disagrees with the findings made. (Attach extra sheets if necessary).

Points of Appeal are attached

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8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency – Planning will provide you with a mailing list.

9. Your appeal is accepted when the Clerk of the Board's Office accepts the appeal as complete on its face, receives the filing fee (Refer to the most current adopted Monterey County Land Use Fees document posted on the RMA Planning website at [http://www.co.monterey.ca.us/planning/fees/fee\\_plan.htm](http://www.co.monterey.ca.us/planning/fees/fee_plan.htm)) and stamped addressed envelopes.

APPELLANT SIGNATURE  DATE 9/8/2015

ACCEPTED \_\_\_\_\_ DATE \_\_\_\_\_  
(Clerk to the Board)

APPEAL OF QUAIL LODGE, INC. TO THE DECISION OF THE PLANNING  
COMMISSION CERTIFYING AN EIR, ADOPTING FINDINGS OF OVERRIDING  
CONSIDERATION AND APPROVING THE COMBINED DEVELOPMENT PERMIT FOR  
CARMEL CANINE SPORTS CENTER (PLN 130352)

POINTS OF APPEAL

Baseline: The FEIR uses an inadequate and illegal baseline for determining the effects of the CCSC project.

CEQA requires that an EIR identify the environmental setting of the project (PRC 15063 (d) and PRC 15125). The environmental setting is to describe "... the physical environmental conditions in the vicinity of the project, *as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced*, from both a local and regional perspective."

The County failed to publish an NOP until months after the application was deemed complete and after the EIR was substantially written making the date of the CCSC NOP as a baseline meaningless. The appropriate baseline date would be the date the County accepted the application. While typically the County would have started its environmental review when the application was found to be complete (September 21, 2013) that date is inappropriate given that construction activities, including the construction of an illegal pond and installation of utilities, had been started without necessary permits prior to the date the application was submitted. The project proponents should not have benefit of those highly questionable and illegal activities in determining the baseline.

Instead, the FEIR uses a baseline used by the MPWMD for permitting water systems which is was averaging of the last ten years of *metered use*. The FEIR completely ignores the fact that for *the four years prior to CCSC assuming control of the property the metered use was zero and was zero at the time the County began its environmental review*.

Use of the MPWMD standard for historic use may be sufficient for District purposes for permitting a water system but is not the correct standard for establishing the CEQA mandated baseline for environmental review.

Water Rights: There are no proven rights to what, if any of the water the CCSC project will consume. The FEIR and staff report states there is substantial evidence to support a water rights claim but there is no conclusive evidence that proves the water right. In fact there is substantial evidence in the record that CCSC does not have the rights they claim to have.

- In a letter from the SWRCB Kathy Mwroka writes "... the Wolter Properties lands have been fallow since 2008. Division staff was unaware of the non-use issue until

the MND was issued. Decision 1632 does not provide for protection in cases where there is no ongoing use of water...Based on the decision, persons listed in Table 13 may seek a year-round diversion season. However, all others are limited to a four month winter diversion period. In the opinion of Division staff, *the Project will likely be limited to a reduced diversion season since there is no longer a basis for protecting ongoing water use.*” The FEIR does not discuss the “reduced diversion.”

- California American Water Company writes “Any riparian rights that may have at one time been appurtenant to the Wolters parcels were severed from those parcels and conveyed to California American Water Company’s predecessor, the Pacific Improvement Company (PIC), in 1906. This severance was permanent and final upon execution of those deeds...It is of no consequence that subsequent determinations by the State Water Resources Control Board in 1995 expanded the classification of waters of the Carmel River to include underflow and subterranean stream of the Carmel River ...the 1906 deeds conveyed a water right to the PIC and simultaneously divested the Wolters land of its riparian character...The subsequent expansion of the classification of the waters constituting the Carmel River does not have the effect of restoring the riparian rights so conveyed and severed from the Wolters land in 1906.”

The property does not have proven appropriative or riparian water rights necessary for this project. The FEIR defers a water rights opinion from the Monterey Peninsula Water Management District. However the District is not empowered to make that determination. The District may offer an opinion of those rights. They cannot grant those rights. Until either the Superior Court confirms those rights (as has been required of other applicants) or an appropriative water right to allow this use is obtained from the SWRCB this project does not have a proven, legal long term water supply.

Agricultural Use: The CCSC project purports to be an agricultural use which will continue the historic agricultural use of the Wolters property of row crop farming and orchards. CCSC is not an agricultural use.

The staff in its presentation and reports likened CCSC to a country club and used that rationale as the basis for allowing the application to be accepted and processed in a residential district. Country clubs are not agricultural uses and are not part of “...the art or science of cultivating the ground; harvesting of crops; rearing and management of livestock; tillage; husbandry; farming; horticulture; and forestry science and art of the production of plants and animals useful to man; and wildlife management (MCC Section 21.06.010 ).”

CCSC is a private club focused on canine training activities including herding of animals. To support that part of their use CCSC has turf fields and maintains a few animals, primarily sheep, for those training purposes. This does not make CCSC an agricultural use.

RV Park: The CCSC project includes an RV park that would be classified by the State of California as a Special Occupancy Park per H&S Code Section 18862.43 (“Special occupancy park” means a recreational vehicle park, temporary recreational vehicle park, incidental camping area, or tent camp.” The standards for access, roads, lighting, circulation, toilets and showers prescribed in Title 25, Chapter 2.2 CCR and the California Fire Code apply.

The FEIR is inadequate in that it does not disclose these facts nor does the FEIR describe any of the physical improvements (roads, gates and driveways, fire protection, exterior lighting, etc.) that will be required to meet the State requirements for a Special Occupancy park. Instead the FEIR and staff and ultimately the Planning Commission relied on an inadequate mitigation that would have the applicant, subsequent to the UP approval of the CDP, prepare a plan for the RV park and submit it to HCD for approval. Then, after state approval, the County would decide if it is in keeping with the use permit. That is tantamount to a deferred study which the courts have determined on numerous occasions to be illegal. The plan for the RV park needs to be done, confirmed as meeting HCD and Fire requirements and the construction impact assessed in the EIR before finding the EIR to be adequate as an decision making tool.

It is also important to note that RV parks are not an allowed use in the LDR zoning District (they are only listed as an allowable use in the VSC district subject to a use permit) and are not typically associated with country clubs.

Access to Valley Greens: The CCSC use does not have legal access to access Valley Greens for more than seven residential lots.

Valley Greens had a non-access strip along the frontage of this property. In May, 2003 the Board of Supervisors adopted Resolution 03-174 and approved the removal of a 60’ portion of that non-access strip “...to accommodate construction of a shared driveway connection from four residential lots to the existing Valley Greens Drive Right-of Way.” There was a subsequent lot line adjustment to reconfigure the Wolters property into seven lots. In light of that second lot line adjustment a license was granted for those seven lots to access Valley Greens for residential purposes.

There is no evidence in the record that CCSC has a right to use that driveway for any other purpose than for the seven residential lots.

Special Events: The CCSC project includes a number of special events and the impacts of those events are a significant issues with the neighborhood but are only addressed in the FEIR in a

cursory manner. The mitigation for most of those impacts is the preparation of a Special Events Management Plan. All of the mitigations and operational issues are to be addressed and resolved through the Plan. The Plan is to be evaluated annually and then adjusted. In effect, the Plan is a deferred study for the mitigation for the special event impacts. A Plan which is integral to mitigate the project impacts should be in at least draft form at this time so that the public and decision makers are fully informed of the impacts and methods of mitigation.

Private Roads: Rancho San Carlos Road and Valley Greens Road are to be used to access CCSC. Rancho San Carlos Road is a private road, and according to the FEIR, there is a 125 foot portion of Valley Greens Road that is also private. Approval of this permit does not meet the requirements of Chapter 21.64.320 - Regulations Relating to Applications Involving Use of Private Roads.

- There is no evidence that CCSC has rights to use the private road(s). The applicants did not provide the information required by 21.64.320 D (1) “Application review and procedures:
  1. Application Requirements. An applicant shall provide the following with any application, and an application will not be deemed complete until the information or documentation required is provided:
    - a. A copy of the private road agreement, if applicable;
    - b. A copy of the private road maintenance agreement, if applicable;
    - c. Written permission to use a private road for the project from a private road governing structure, if applicable;
    - d. A site plan that includes, but is not limited to, documentation showing existing access limits and minimum access requirements from the project to the primary public road or right-of-way. If access does not meet minimum requirements of the local Fire Authority and Monterey County Resource Management Agency—Public Works Department, the applicant must demonstrate the ability to meet the minimum level of improvements required.”
- The Director did not provide notice to all persons with rights to use those private roads as by 21.64.320 D (2)( b).
- The Director did not make the determinations required by Section 21.64. 320 D (2) (c).
- The Planning Commission did not properly condition the permit to “...require as a condition of project approval that the applicant provide the County with proof of access demonstrating that the dispute has been satisfactorily resolved, in accordance with the tier standards set forth above.”

In short, the CCSC relies heavily on the use of private roads which they have no demonstrated right to use.



Traffic: The FEIR does not adequately evaluate or mitigate the traffic impacts of the CCSC project.

Several intersections on Carmel Valley Road are at peak hour LOS F and the addition of any movements to those intersections is a significant unavoidable impact. The FEIR's mitigation is to regulate the hours of CCSC operation to avoid peak hour. There is no realistic ability of CCSC to control when people traveling to CCSC will come through those intersections. CCSC may control their operating hours but that will not eliminate peak hour trips through those intersections.

The FEIR relies on intersection improvements (signal or roundabout) at Carmel Valley Road and Valley Greens. However those improvements are not part of the CVTIP and are at best speculative as to if they will ever be part of the CVTIP. The alternate mitigation in the FEIR to mitigate traffic impacts during special events that intersection would be by someone standing in the Carmel Valley and trying to control traffic.

The FEIR correctly states that traffic impact on Highway 1 is a significant unavoidable impact.

Overriding Considerations: There is no substantial evidence to support a statement of overriding consideration.

CEQA provides that that "...If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable ... [and] (b) ... the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations *shall be supported by substantial evidence in the record.*

The findings of overriding considerations is that:

- *There will be continued agricultural production on the prime farm land.* However, there is no agricultural production on the property. The use, as described by the staff, is akin to a country club, not a farm. The "agricultural use" is limited to turf and a few small animals used to train the dogs in herding. CCSC does not engage in "...the art or science of cultivating the ground; harvesting of crops; rearing and management of livestock; tillage; husbandry; farming; horticulture; and forestry science and art of the production of plants and animals useful to man; and wildlife management."
- *This will be a "...new local recreation resource for canine activities."* This is a private country club for dog owners. Under this scenario any purported recreational use for a special interest group (race track, shooting range, water park, etc.) would be sufficient to outweigh significant adverse environmental effects.

- There will be a “Contribution to the local economy with the creation of employment opportunities on site.” The CCSC will have 8 employees and it is not clear if these are full or part time employees or what the pay range may be. Other than a statement in the FEIR there is no evidence there will be eight employees or what impact they will have on the economy. There is no evidence as to any broader economic impact in the record. There is no economic study that quantifies what the positive impact would be to the area’s economy. More importantly, there is no evidence that the CCSC would not have a negative economic impact.

The significant unavoidable effects on water and traffic are not outweighed by “...specific economic, legal, social, technological, or other benefits...from this project.