

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No.

- Resolution of the Monterey County Board of Supervisors to:)
- a. Certify the Carmel Canine Sports Center Final EIR;)
 - b. Deny the Appeal by Quail Lodge, Inc., from the Planning Commission’s certification of an Environmental Impact Report, adoption of a Statement of Overriding Considerations, and approval of a Combined Development Permit for the Carmel Canine Sports Center;)
 - c. Deny the Appeal by Friends of Quail from the Planning Commission’s certification of an Environmental Impact Report, adoption of a Statement of Overriding Considerations, and approval of a Combined Development Permit for the Carmel Canine Sports Center; and)
 - d. Adopt CEQA findings, adopt a Statement of Overriding Considerations, and approve a Combined Development Permit consisting of: 1) Use Permit for the development of a canine training/sports facility and event center for daily member usage and up to 24 “event days” (daily maximum of 250 people/300 dogs) per year; 2) Administrative Permit to allow the construction/placement of modular (temporary) structures to include a 700 square foot office trailer, 600 square foot member trailer, 600 square foot restroom trailer and 400 square foot electrical/storage room; and 3) Design Approval [Site will also accommodate up to 70 recreational vehicles on a short-term basis during “events” (Maximum of 24 nights per year)] and)
 - e. Adopt a Mitigation Monitoring and Reporting Plan (MMRP).)

The appeals by Quail Lodge, Inc. and Friends of Quail from the Planning Commission’s decisions on the Carmel Canine Sports Center application (Wolter Properties, LLC/PLN130352) came on for a consolidated public hearing before the Monterey County Board of Supervisors on October 27, 2015. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

FINDINGS

- 1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is a Combined Development Permit consisting of: 1) Use Permit for the development of a canine training/sports facility and event center for daily member usage and up to 24 "event days" (daily maximum of 250 people/300 dogs) per year; 2) Administrative Permit to allow the construction/placement of modular (temporary) structures to include a 700 square foot office trailer, 600 square foot members trailer, 600 square foot restroom trailer and 400 square foot electrical/storage room; and 3) Design Approval. Site will also accommodate up to 70 recreational vehicles on a short-term basis during "events" (Maximum of 24 nights per year).

EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN130352.

CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS

- 2) **FINDING:** **CEQA (EIR)** - The County of Monterey has completed a Final Environmental Impact Report (EIR) in compliance with CEQA, and the Final EIR reflects the County of Monterey's independent judgment and analysis. The Final EIR was presented to the Board of Supervisors, and the Board of Supervisors has reviewed and considered the information contained in the Final EIR prior to approving the project.
- EVIDENCE:**
- a) The California Environmental Quality Act (CEQA) requires preparation of an environmental impact report if there is substantial evidence in light of the whole record that the project may have a significant effect on the environment.
 - b) Monterey County RMA-Planning prepared an Initial Study pursuant to CEQA. The Initial Study resulted in the preparation of a proposed Mitigated Negative Declaration which was circulated from December 23, 2013 to January 24, 2014. The Initial Study is on file in the offices of RMA-Planning and is hereby incorporated by reference (PLN130352). Because comments on the Initial Study/Mitigated Negative Declaration presented a "fair argument" of potential impacts related to Traffic/Transportation, an environmental impact report was prepared. (Draft EIR and Final EIR prepared for the Carmel Canine Sports Center (SCH# 2013121077).)
 - c) **SUMMARY OF IMPACTS**
Issues analyzed in the Draft EIR include aesthetics, agricultural resources, air quality and greenhouse gases, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, noise, recreation, transportation/traffic, public services and utilities, alternatives to the project, and cumulative effects.
 - d) Project changes which avoid or lessen significant effects on the environment have been incorporated into the project and/or are made conditions of approval to the extent feasible (see findings below). A Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation and is hereby incorporated herein by reference. The applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan" as a condition of project approval.
 - e) The Draft Environmental Impact Report ("DEIR") for the project was prepared in accordance with CEQA and circulated for public review from April 1, 2015 through May 18, 2015 (SCH#: 2013121077).
 - f) **DEPARTMENT OF FISH AND WILDLIFE FEES.**
Staff analysis contained in the EIR and the record as a whole indicate the project could result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Wildlife (CDFW) regulations. All land development projects that are subject to environmental review are

subject to a State filing fee plus the County recording fee, unless the California Department of Fish and Wildlife determines that the project will have no effect on fish and wildlife resources. For purposes of the Fish and Wildlife Code, the project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends. California Department of Fish and Wildlife reviewed the EIR to comment and recommend necessary conditions to protect biological resources in this area. Therefore, the project will be required to pay the State fee plus a fee payable to the Monterey County Clerk/Recorder for processing said fee and posting the Notice of Determination (NOD).

- g) The County prepared a FEIR for the Carmel Canine Sports Center. The FEIR was released to the public on August 14, 2015 and responds to all significant environmental issues raised by persons and organizations that commented on the DEIR. The County has considered the comments received during the public review period for the DEIR, and in the FEIR the County has provided responses to the comments received. Together, the DEIR and Responses to Comments, inclusive of attachments at J.6 of the FEIR and minor amendments to the DEIR, constitute the Final EIR on the project.
- h) Monterey County RMA-Planning, located at 168 W. Alisal, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to certify the EIR is based.

3) **FINDING:** **EIR-ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT** – The EIR identified potentially significant impacts to aesthetics and visual resources (lighting), biological impacts (noise, waste generation, and access to Carmel River), hazards and hazardous materials (fire risk), hydrology/water quality (waste generation), land use/planning (special events), noise (special events), and transportation/traffic (special events) which could result from the project as originally submitted. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the potentially significant environmental effect identified as identified in the Final EIR.

- EVIDENCE:**
- a) Potentially significant impacts on aesthetics and visual resources are mitigated to less than significant levels by a mitigation measure requiring the development of a Special Events Management Plan (SEMP) which prohibits the use of external lighting after 9:00 p.m. (Condition 22).
 - b) Potentially significant impacts on biological resources, specifically noise impacts to sensitive wildlife species, have been mitigated to a less than significant level through a condition of approval limiting the construction timing to normal daytime hours and a mitigation measure requiring the development of a SEMP which shall prohibit the use of RV generators outside of the hours of 8:00am to 7:00pm (Conditions 9 and 22.)
 - c) Potential significant impacts on biological resources, specifically impacts to aquatic habitat from animal waste runoff, have been mitigated to a less than significant level by a mitigation measure requiring the development of a Manure Management Plan requiring the daily collection of animal waste and deposit of waste into receptacles,

which plan must be submitted to and reviewed and approved by the Monterey County Health Department (Condition 34.)

- d) Potential significant impacts on biological resources, specifically impacts to the Carmel River riparian corridor from increased access, have been mitigated to a less than significant level by implementing mitigation measures to require dogs outside of the food safety fence to be leashed at all times; limiting daily access to the riparian area and establishing a cap of 30 owners with 30 dogs per day in this area; and developing a Habitat Management Plan and annual monitoring program to assess riparian vegetation cover, density, and animal occurrences (Condition 18).
- e) Potentially significant impacts associated with spread of non-native predatory wildlife was mitigated to a less than significant level in the DEIR through mitigation measures requiring fencing of the reservoir and draining and removing bull frogs from the reservoir. These mitigation measures have been removed because the reservoir has been conditioned to be removed from the project (See Finding 7 below.)
- f) Potential significant impacts on hazards/hazardous materials, specifically fire hazards, have been mitigated to a less than significant level by a mitigation measure requiring the designation of smoking areas, and prohibiting smoking within the upland (high hazard) areas along the Carmel River (Condition 21.)
- g) Potential significant impacts to hydrology/water quality, specifically impacts to water quality associated with the presence of animals on site, have been mitigated to a less than significant level by a mitigation measure requiring the development of a Manure Management Plan requiring the daily collection of animal waste and deposit of waste into receptacles, which plan must be submitted to and reviewed and approved by the Monterey County Health Department (Condition 34.)
- h) Potential significant impacts on land use/planning, specifically related to hosting of special events, have been mitigated to a less than significant level by a mitigation measure requiring the development of a SEMP which includes performance criteria addressing the hours of event operation, event capacity, parking and circulation, allowable noise levels, hours of external/exterior lighting, and hours of allowable RV generator use and annual monitoring to ensure that the plan is effective (Condition 22.)
- i) Potential significant impacts on noise, specifically special events, have been mitigated to a less than significant level by a mitigation measure requiring the development of a SEMP which shall prohibit the use of RV generators outside of the hours of 8:00am to 7:00pm, and shall prohibit owners from allowing uncontrollable barking of dogs. The SEMP shall detail and outline appropriate CCSC staff response(s) for violations (Condition 9.).
- j) Potential significant impacts on transportation/traffic, with the exception of the significant unavoidable impact described in Finding 4 below, have been mitigated to a less than significant level by a mitigation measure requiring the scheduling of daily classes to avoid the AM and PM peak hours and a mitigation measure requiring the funding and posting of “No Parking” signs along Valley Greens Drive. The applicant will not begin classes before 9:30 am and will not schedule classes in the afternoon between 3:00 – 5:30 pm (Condition 24.)

- k) Potential significant impacts on transportation/traffic, specifically related to the hosting of special events, have been mitigated to a less than significant level through a mitigation measure requiring: 1) the payment of the Carmel Valley Road Traffic Mitigation Fee toward potential future traffic improvements; 2) private agreements with private road holder to divert traffic, and/or 3) the provision of a sufficient number of traffic monitors for the duration of each event (Condition 23.)

4) **FINDING:** **EIR-ENVIRONMENTAL IMPACTS NOT MITIGATED TO LESS THAN SIGNIFICANT** – The project would result in significant and unavoidable impacts that would not be mitigated to a less than significant level even with incorporation of mitigation measures from the EIR into the conditions of project approval, as further described in the evidence below. There are specific economic, legal, social, technological, or other considerations which make infeasible mitigating these impacts to a less than significant level.

- EVIDENCE:**
- a) The DEIR found that direct project impacts to the multi-lane segment of Highway 1 from Ocean Avenue to Carmel Valley Road, which currently operates at an unacceptable LOS, could not be mitigated to a less than significant level. The project would add additional trips to this segment as a result of daily operations and during special events.
 - b) No feasible mitigation has been identified that would reduce these impacts to a less than significant level. The impacts to the Highway 1 segment are based upon existing and cumulative conditions, which is not the sole responsibility of the proposed project. An acceptable level-of-service (LOS) for this segment could be achieved by widening this portion of Highway 1; however such widening is not included as a programmed and planned regional transportation project, is not funded, and the cost would be grossly disproportional to the impact of the project. Therefore there is no feasible mitigation that would reduce this impact to a less than significant level.

5) **FINDING:** **EIR-CEQA ALTERNATIVES TO THE PROPOSED PROJECT** - The EIR considered several alternatives to the proposed project in compliance with CEQA Guidelines section 15126.6. The EIR considered the alternatives described below and as more fully described in the DEIR. Specific economic, legal, social, technological or other considerations, including provision of employment opportunities, make infeasible the project alternatives identified in the EIR for the reasons described below.

- EVIDENCE:**
- a) Alternative 1: No Overnight RV Parking/Camping Alternative. Under this alternative, proposed daily operations would not change. The project would continue to be open daily from 7:00am to 8:30pm, for members on a drop in basis. This alternative would still include the hosting of special events up to 24 days throughout the year; however it would prohibit the use of the event parking area for overnight parking of vendor and patron RVs and associated overnight campers during event days and weekends, and would limit special events to daytime hours only. Overall this alternative would have similar or reduced impacts associated with the proposed Project for most resource areas; however it would result in increased significant traffic impacts and would reduce the beneficial

impacts associated with the provision of an additional recreation resource. The increased transportation/traffic impacts would result from RVs, event trailers, and vendors having to enter and exit the site at the beginning and end of each event day. This alternative is infeasible because it would not achieve the Project objective of providing amenities needed to support canine sport facilities that include overnight stays for participants and staff and would increase transportation/traffic impacts.

- b) Alternative 2: No Special Events Alternative. Under this alternative, proposed daily operations would not change. The project would continue to be open daily from 7:00am to 8:30pm, for members on a drop in basis. However, this alternative would prohibit the hosting of special events, including overnight RV parking/camping. This alternative would not reduce cumulatively significant transportation/traffic impacts; however impacts would be lessened for most other resource areas since special events and overnight parking/camping would be eliminated. This alternative is not feasible because it would not achieve the Project objective of providing a location for agility trials to be conducted which is an important component of a local training facility to be able to host different types of events and trials giving opportunity for local residents to participate.
- c) Alternative 3: No-Project Alternative. Per the CEQA Guidelines, Section 15126.6 (f)(2), an alternative project location need only be analyzed if the significant effects of the proposed project would be avoided or substantially lessened by putting the project in another location.

The No Project Alternative considers not approving the development and operation of a canine training, recreation, and event facility; the site would remain in its existing condition. Overall, the No Project Alternative would have fewer impacts, or no impacts to the environmental issues and resources than the proposed project. However, the No Project Alternative would not meet the Project objectives, such as additional revenue source from a outdoor recreational use to support ongoing agriculture onsite; creation of a new local recreational resource for canine activities; provision of recreational canine-related activities for members compatible with nearby uses; and contribution to the local economy with creation of employment opportunities onsite and has thus been rejected as a preferred alternative.
- d) Environmentally Superior Alternative. Each of the alternatives either avoided or minimized to a greater extent the impacts associated with the proposed project. When all the alternatives were considered, the No Special Events Alternative is considered to be the Environmentally Superior Alternative because only the No Project Alternative avoided all the impacts related to the proposed project. However, as mentioned previously, Section 15126.6(e) of CEQA requires that if the No Project Alternative is the environmentally superior alternative, than another alternative must be identified amongst the alternatives considered as the Environmentally Superior Alternative. Therefore, the No Special Events Alternative (Alternative 2) is considered to be the Environmentally Superior Alternative because it meets most of the project objectives with incrementally less environmental impacts to traffic/transportation than the proposed project. These impacts are either less than significant or have been reduced to less than significant through project design and

mitigation. The No Special Events Alternative (Alternative 2) would not change the impacts associated with cumulative traffic which would remain significant and unavoidable.

- 6) **FINDING:** **EIR-STATEMENT OF OVERRIDING CONSIDERATIONS** - In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits of the project against its unavoidable significant environmental impacts in determining whether to approve the project, and has determined that the benefits of the project outweigh its unavoidable, adverse environmental impacts so that the identified significant unavoidable impact(s) may be considered acceptable.
- EVIDENCE:** a) The proposed project will result in development that will provide benefits described herein to the surrounding community and the County as a whole. The project would provide the following benefits to the public:
- 1) Continuance of agricultural production on prime farmland consistent with historical on-site use in the face of increasing development pressures. The project does not include permanent built improvements and is designed so that it will preserve farming opportunities on site over the long term. The term of the Combined Development Permit is only ten years.
 - 2) Creation of a new local recreation resource for canine activities. Public testimony at the public hearings on the project and public correspondence received on the project attest to the value of having a location for owners to train and exercise dogs and hold agility competitions and a safe and friendly off-street location for local residents to walk and play with their dogs. (See, e.g., correspondence attached as Attachment I to the October 27, 2015 staff report; letter from Salinas-Monterey Agility Racing Team, attached to Attachment K to the October 27, 2015 staff report.)
 - 3) Contribution to the local economy with the creation of employment opportunities on-site. The facility takes advantage of the growing pet services industry and could bring new revenue to the County. (See Attachment K to the October 27, 2015 staff report.)
- 7) **FINDING:** **REVISED MITIGATION MEASURES** Subsequent to the comment period on the DEIR, changes have been made to the Mitigation Measures. The Mitigation Measures as revised are as effective as or more effective than the Mitigation Measures presented in the DEIR in mitigating or avoiding potential significant effects, and . The revised Mitigation Measures themselves will not cause any potentially significant effect on the environment.
- EVIDENCE:** a) **MITITAGATION MEASURED REVISED IN THE FEIR.**
The following Mitigation Measures have been revised in the FEIR:
MM BIO-4b: Revised language to clarify restriction of owners with dogs outside of the food safety fence area.
MM BIO-4c: Revised language to include “fish” in the Habitat Management Plan and monitoring program and clarify management strategies relative to erosion control measures.
MM BIO -4d: New mitigation measure to add provision requiring riparian and picnic areas to be closed with MPWMD crews are

conducting steelhead rescue activities.

MM HYD-2: Added language relative to semi-annual water sampling and quality standards.

MM NOI-3: Added language to clarify use of security lighting during overnight events. Added language to state that project review by HCD will be required prior to clearance (issuance) of construction permits.

MM TRANS-3a, 3b, 3c: Combined mitigation measures into one comprehensive measure (MM-TRANS-3).

MM TRANS-5: Revised language to include prohibition on classes starting within P.M. peak hours.

b) **MITIGATION MEASURES REVISED IN MMRP.**

The following Mitigation Measures have been modified in the Condition Compliance and Mitigation Monitoring Reporting Plan (MMRP).

MM BIO-4d: Timing change to “prior to use of the Project site.”

MM BIO-5a: Mitigation removed because it pertained to the reservoir but the reservoir is not approved. A condition of approval has been added to require restoration of the pond/reservoir area. Therefore, the mitigation is unnecessary with Project revisions.

MM BIO-5b: Mitigation removed because it pertained to the reservoir but the reservoir is not approved. The mitigation is unnecessary with Project revisions. Construction of the reservoir/pond is not allowed per the added condition of approval.

MM NOI-3: Mitigation Measure language and timing changed to “prior to hosting of events involving the overnight parking of RVs”.

MM TRANS-7: Language change from reference from “Caltrans” to “Monterey County Public Works”; timing changed to “prior to use of the Project site”.

MM HYD-2: Timing change to “prior to use of the Project site.”

8) **FINDING:**

CEQA Guidelines Section 15088.5 requires that a lead agency recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review. Minor Revisions to EIR were made in the FEIR to amplify and clarify the analysis presented in the DEIR. In the response to comments of the FEIR information was presented to clarify the information already presented within the DEIR. This process resulted in some additional conditions of approval and/or mitigation measures being presented. The FEIR does not present new information related to a new significant environmental impact not previously disclosed, and does not present a substantial increase in the severity of identified environmental impacts resulting from implementation of the project or associated mitigation measures. No new information has been added which deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect or a feasible way to avoid or mitigate such an impact.

EVIDENCE: a)

Master Response 1 in the FEIR explained the nature of the Riparian Right and that the applicant was going to rely on the Riparian Right and abandon the possibility of using the Appropriative Right. The DEIR presented that either could be used to demonstrate a water right.

b)

Based upon the reliance on the use of the Riparian Water Right the project has been conditioned to remove the reservoir due to the State Department of Water Resources prohibition of storing water obtained

- through a riparian right.
- c) See modifications presented above in Finding 7 evidence a) and b) relative to changes to mitigation measures.

FINDINGS FOR APPROVAL OF COMBINED DEVELOPMENT PERMIT

9) **FINDING:** **CONSISTENCY/SITE SUITABILITY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development. The site is physically suitable for the use proposed.

EVIDENCE: a) **APPLICABLE PLAN AND APPLICABLE ZONING ORDINANCES.**

During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- the 2010 Monterey County General Plan;
- Carmel Valley Master Plan Area;
- Monterey County Zoning Ordinance (Title 21);

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

CONSISTENCY WITH ZONING ORDINANCE (TITLE 21).

- b) The property is located at 8100 Valley Greens Drive, Carmel Valley (Assessor's Parcel Number 169-431-001, -002, -003, -006, -007, -008, -011, AND -012), Carmel Valley Master Plan Area. The parcel is zoned "LDR/2.5" or Low Density Residential, 2.5 acre minimum, which allows for public/quasi-public uses such as "country clubs", "golf courses" and "other uses of similar character, density and intensity to those listed in the section" subject to approval of Use Permit. The Project is of similar character, density, and intensity of the adjacent golf course and country club and the Project application includes a request for a Use Permit to allow a membership-based sports and event center. Therefore, the project is an allowed land use for this site.
- c) The subject properties includes a "D" (Design Control) zoning overlay, which requires that a Design Approval application shall be submitted and approved prior to issuance of building permit for the construction of any structures in the "D" district (MCC Section 21.44.030). The proposed project includes the construction of a modular clubhouse, small modular office, modular restroom and small storage building; therefore a Design Approval application has been incorporated into the proposed project request.
- d) The subject properties include an "S" (Site Plan Review) zoning overlay, which requires that no construction of structures, additions, deposit or removal of materials shall be permitted without approval from the Appropriate Authority. All such development is subject to approval of an Administrative Permit. The Project application includes a request for an Administrative Permit to allow the construction 3 modular structures and an electrical/storage room.
- e) The subject properties include a "RAZ" (Residential Allocation Zoning) zoning overlay. This zone is placed on property to provide a district to denote that a specific area is subject to policies or ordinances which

specify limitation on the number of lots or units which may be created in a given time. The Project application does not propose to develop additional lots or involve the construction of residential units. Therefore the Project is not inconsistent with the RAZ zoning overlay.

CONSISTENCY WITH 2010 GENERAL PLAN POLICIES

f) General Plan Policy LU-2.34 states:

“The County shall establish regulations for and designate three categories of Rural Residential Land:

a. Low Density Residential (LDR): Low Density Residential areas are appropriate for residential (1-5 acres/unit) recreational, public and quasi public and limited agricultural activities that are incidental and subordinate to the residential use. The extent of use of land for this designation shall be limited to building coverage of 35% of the subject property if said property is less than 20,000 square feet and 25% of the subject property if said property is 20,000 square feet or more.

The Low Density Residential (LDR) land use allows recreation uses, which is what the Project proposes. The use of the site for recreation purposes is consistent with the LDR land use designation of the site.

g) General Plan Policy AG-1.1 states:

“Land uses that would interfere with routine and ongoing agricultural operations on viable farmlands designated as Prime, of Statewide Importance, Unique, or of Local Importance shall be prohibited.”

The Project would convert approximately 3.8 acres of existing agricultural fields for the development of parking areas, site entrance, path, and temporary structures. All structures and infrastructure are designed to be of a temporary nature, such that upon completion of the life of the project, all facilities could be removed and the site could return to organic agricultural production. Additionally, the Project will continue agricultural use on the majority of the site (39 acres), which is zoned Low Density Residential (LDR). The LDR zoning designation permits agricultural operations as an allowed use.

h) General Plan Policy C-1.1 states:

“The acceptable level of service for County roads and intersections shall be Level of Service (LOS) D, except as follows:

a. Acceptable level of service for County roads in Community Areas may be reduced below LOS D through the Community Plan process.

b. County roads operating at LOS D or below at the time of adopting this General Plan shall not be allowed to be degraded further except in Community Areas where a lower LOS may be approved through the Community Plan process.

c. Area Plans prepared for County Planning Areas may establish an acceptable level of service for County roads other than LOS D. The benefits which justify less than LOS D shall be identified in the Area Plan. Where an Area Plan does not establish a separate LOS, the standard LOS D shall apply.

In the Carmel Valley Master Plan area the operative LOS standards come from CV-2.17. The project has been evaluated in compliance with the standards set forth in CV-2.17.

- i) General Plan Policy C-1.3 states:
“Circulation improvements that mitigate Traffic Tier 1 direct on-site and off-site project impacts shall be constructed concurrently (as defined in subparagraph (a) only of the definition for “concurrency”) with new development. Off-site circulation improvements that mitigate Traffic Tier 2 or Traffic Tier 3 impacts either shall:
- a. be constructed concurrently with new development, or*
 - b. a fair share payment pursuant to Policy C-1.8 (County Traffic Impact Fee), Policy C-1.11 (Regional Development Impact Fee), and /or other applicable traffic fee programs shall be made at the discretion of the County.*

The Project would contribute a fair share payment toward future traffic improvements at Carmel Valley Road and Valley Greens Drive. Until completion of intersection improvements, Project traffic would be adequately mitigated with implementation of recommended mitigation measure (MM-TRANS 3).

- j) General Plan Policy C-1.4 states:
“Notwithstanding Policy C-1.3, projects that are found to result in reducing a County road below the acceptable LOS standard shall not be allowed to proceed unless the construction of the development and its associated improvements are phased in a manner that will maintain the acceptable LOS for all affected County roads. Where the LOS of a County road impacted by a specific project currently operates below LOS D and is listed on the CIFP as a high priority, Policy C-1.3 shall apply. Where the LOS of a County road impacted by a specific project currently operates below LOS D and is not listed on the CIFP as a high priority, development shall mitigate project impacts concurrently. The following are exempt from this Policy except that they shall be required to pay any applicable fair share fee pursuant to Policies C-1.8, C-1.11, and /or other applicable traffic fee programs:
- a. first single family dwelling on a lot of record;*
 - b. allowable non-habitable accessory structures on an existing lot of record;*
 - c. accessory units consistent with other policies and State Second Unit Housing law;*
 - d. Any use in a non-residential designation for which a discretionary permit is not required or for which the traffic generated is equivalent to no more than that generated by a single family residence (10 ADT); and*
 - e. Minimal use on a vacant lot in a non-residential designation sufficient to enable the owner to derive some economically viable use of the parcel.*

See discussion above under Evidence (p)

- k) The Project is consistent with General Plan Policies PS-3.1 and PS-3.2, as it provides a long-term sustainable water supply, both in quality and quantity to serve the development. (See Finding 5 – Long Term Sustainable Water Supply and Adequate Water Supply System).

CONSISTENCY WITH CARMEL VALLEY MASTER PLAN (CVMP) POLICIES

- l) CVMP Policy CV-1.1 states:
“All policies, ordinances, and decisions regarding Carmel Valley

shall be consistent with the goal of preserving Carmel Valley's rural character. In order to preserve the rural character of Carmel Valley, development shall follow a rural architectural theme with design review."

The Project proposes the construction of temporary modular buildings (2,300 square feet) and designated open spaces areas (39 acres) to be used for on-going agricultural and dog-training areas. This style and density of low-scale development will maintain the rural architectural theme and character of the project site.

m) CVMP Policy CV-1.16 states:

"Applications for service and special use facilities (including in Carmel Valley, Hidden Valley Music Seminars), as defined by the General Plan, are to be considered on their merits and shall not automatically be deemed inconsistent with the Plan. They must, however, conform to all applicable plan policies."

The Project is consistent with plan policies within the General Plan and Carmel Valley Master Plan. The Project is a conditionally allowed use within the applicable zoning designation. The Project has been thoroughly analyzed for its individual merits through the preparation and circulation of an EIR.

n) CVMP Policy CV-1.18 states:

"Facilities classified as either Public/Quasi-Public or Special Use (such as schools, churches, hospitals, convalescent homes, rehabilitation centers, hospice facilities, emergency facilities, and public facilities such as community halls) may be considered in any land use category provided that they meet the following criteria:

a. Low visibility

b. Safe and unobtrusive access away from pedestrian traffic areas.

c. Low noise impact on surrounding uses.

d. Development should follow a rural architectural theme with design review.

e. Conform to all other Plan requirements.

The Project allows for public/quasi-public use (membership-based canine sports club) within a zoning designation (LDR) which conditionally allows public/quasi-public uses. The Project has been designed to maintain the rural architectural theme, is subject to design review, and involves minimal development of structures, preserves the existing agricultural use of the property, and proposes inclusive on-site parking for members and visitors. The project is not anticipated to generate noise levels above the allowable threshold or noises inconsistent with the existing ambient noise within the local vicinity.

o) CVMP Policy CV-2.7 states:

"Off-street parking should be developed at suitable locations within development areas."

The Project involves the development of on-site (off-street) parking consisting of a 15-space aggregate-based parking area (6,400 square feet) for day-to-day use and a 200-space woodchip-base parking area (89,680 square feet) for events and overflow parking.

p) CVMP Policy CV-2.17 states:

"To implement traffic standards to provide adequate streets and highways in Carmel Valley, the County shall conduct and implement the following:

a) *Twice yearly monitoring by Public Works (in June and October) of peak hour traffic volumes and daily traffic volumes at the following six (6) locations indicated in bold (at least one of the yearly monitoring periods will occur when local schools are in session):*

Carmel Valley Road - ADT threshold

- 1. Holman Road to CVMP boundary - 8487*
- 2. Holman Road to Esquiline Road - 6835*
- 3. **Esquiline Road to Ford Road - 9065***
- 4. **Ford Road to Laureles Grade - 11,600***
- 5. **Laureles Grade to Robinson Canyon Road - 12,752***
- 6. **Robinson Canyon Road to Schulte Road - 15,499***
- 7. **Schulte Road to Rancho San Carlos Road - 16,340***
- 8. Rancho San Carlos Road to Rio Road - 48,487*
- 9. Rio Road to Carmel Rancho Boulevard - 51,401*
- 10. **Carmel Rancho Boulevard to SRI - 27,839***

Other Locations

- 11. Carmel Rancho Boulevard between Carmel Valley Road and Rio Road - 33,495*
- 12. Rio Road between its eastern terminus at Val Verde Drive and Carmel Rancho Boulevard - 6,416*
- 13. Rio Road between Carmel Rancho Boulevard and SRI - 33,928*

b) *A yearly evaluation report shall be prepared by the Public Works Department in December that shall report on traffic along the six (6) indicated (by bold) segments. The report shall evaluate traffic using the PTSF methodology (or such other methodology as may be appropriate for a given segment in the opinion of the Public Works Department), and the ADT methodology. ADT thresholds for each segment are listed above, and the Public Works Department shall annually establish appropriate PTSF or other methodology thresholds for each of the six (6) segments listed above.*

c) *A public hearing before the Board of Supervisors shall be held in January immediately following the December report when only 100 or fewer ADT remain before the ADT count for a segment will equal or exceed the indicated threshold, or where the PTSF (or such other methodology as may be appropriate for a given segment in the opinion of the Public Works Department) for a segment exceeds or is within one percent (1%) of the value that would cause a decrease in the LOS.*

d) *At five year intervals the County shall monitor all segments listed in Policy CV-2.17(a) and the annual report described in Policy CV-2.17(b) shall include a report on all segments. If such periodic monitoring and reporting shows that any segment not previously part of the annual report is within twenty percent (20%) of the listed ADT threshold, that segment shall thereafter be subject to the annual monitoring and reporting.*

e) *Also at five year intervals the County shall examine the degree to*

which estimates of changes in Levels of Service (“LOS”) in the Carmel Valley Master Plan Area may be occurring earlier than predicted in the General Plan Environmental Impact Report. If the examination indicates that LOS are likely to fall to a lower letter grade than predicted for 2030, then the County shall consider adjustments to the cap on new residential units established in Policy CV-1.6 and/or the cap on new visitor serving units established in Policy CV-1.15 or other measures that may reduce the impacts, including, but not limited to, deferral of development that would seriously impact traffic conditions.

f) The traffic standards (LOS as measured by peak hour conditions) for the CVMP Area shall be as follows:

- 1) Signalized Intersections – LOS of “C” is the acceptable condition.*
- 2) Unsignalized Intersections – LOS of “F” or meeting of any traffic signal warrant are defined as unacceptable conditions.*
- 3) Carmel Valley Road Segment Operations:
 - a) LOS of “C” and ADT below its threshold specified in Policy CV-2.17(a) for Segments 1, 2, 8, 9, 10, 11, 12 and 13 is an acceptable condition;*
 - b) LOS of “D” and ADT below its threshold specified in Policy CV-2.17(a) for Segments 3, 4, 5, 6, and 7 is an acceptable condition.**

During review of development applications that require a discretionary permit, if traffic analysis of the proposed project indicates that the project would result in traffic conditions that would exceed the standards described above in Policy CV 2.17(f), after the analysis takes into consideration the Carmel Valley Traffic Improvement Program to be funded by the Carmel Valley Road Traffic Mitigation Fee, then approval of the project shall be conditioned on the prior (e.g., prior to project-generated traffic) construction of additional roadway improvements or an Environmental Impact Report shall be prepared for the project, which will include evaluation of traffic impacts based on the ADT methodology. Such additional roadway improvements must be sufficient, when combined with the projects programmed for completion prior to the project generated traffic in the Carmel Valley Traffic Improvement Program, to allow County to find that the affected roadway segments or intersections would meet the acceptable standard upon completion of the programmed plus additional improvements. Any EIR required by this policy shall assess cumulative traffic impacts outside the CVMP area arising from development within the CVMP area.

This policy does not apply to the first single family residence on a legal lot of record. The use of the ADT methodology as set forth in this Policy CV-2.17 shall be limited to the purposes described in the Policy, and the County may utilize any traffic evaluation methodology it deems appropriate for other purposes, including

but not limited to, road and intersection design. This policy shall also not apply to commercial development in any Light Commercial Zoning (“LC”) district within the CVMP area where the Director of Planning has determined that the requirement for a General Development Plan, or amendment to a General Development Plan, may be waived pursuant to Monterey County Code section 21.18.030 (E). (Amended by Board Resolution 13-029)- (Underline added for emphasis).

In this particular case the traffic analysis identified that Segment 7 would exceed the ADT thresholds identified in this policy and consistent with the policy requirement an EIR was prepared. The EIR includes an evaluation of traffic impacts based on the ADT methodology in addition to evaluating LOS impacts, as dictated by Policy CV-2.17. The EIR concluded in Impact TRANS-11 that the impact under the cumulative condition would be significant and unavoidable because while segment widening could achieve acceptable operations this improvement is not included in the Carmel Valley Road Improvement List. The EIR did not identify any direct project impacts from the day to day operations, but did identify impacts to the Carmel Valley Road/Valley Greens Intersection associated with Special Events. This has been mitigated to a less than significant impact through MM Trans-3. The preparation of an EIR and use of the ADT methodology is satisfies the requirements of this Policy.

q) CVMP Policy CV-6.3 states:

“Croplands and orchards shall be retained for agricultural use. When a parcel cannot be developed because of this policy, a low-density, clustered development may be permitted in accordance with the following guidelines:

a. Development shall be located on portions of the land not in cultivation or on a portion of the land adjoining existing development in a manner that said development will not diminish the visual quality of such parcels.

b. Overall density shall not exceed one (1) unit per 2.5 acres

c. New residential units shall be sited on one-third (1/3) of the property or less.

d. Required agriculturally related structures and housing for workers of that parcel may be allowed on the property in a manner that does not diminish the visual quality of the open space.

The project site has historically been used for organic agricultural activities. The Project will preserve and continue the agricultural use on a large majority (39 acres) of the site, while in combination with a member-based canine sports/training facility. The Project does not propose any residential development, however will place modular (temporary) structures on site to serve an office, members area, restroom, and storage/electrical shed (2,300 square feet total).

r) **LAND USE ADVISORY COMMITTEE REVIEW.**

The project was referred to the Carmel Valley Land Use Advisory Committee (LUAC) for review on June 3, 2013 and January 6, 2014. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application did warrant referral to the LUAC because the project includes development requiring CEQA

review (EIR). On June 3, 2013, the LUAC continued the item pending more studies and preparation of an environmental review document. On January 6, 2014, the LUAC recommended denial of the project, by a 7-0 vote, due to concerns relative to traffic, cumulative traffic, and proposal of 24 special event days. The LUAC did not identify any inconsistency with the regulations and/or policies within the 2010 Monterey County General Plan, Carmel Valley Master Plan, or Zoning Code (Title 21).

s) **SITE SUITABILITY.**

The project has been reviewed for site suitability by the following departments and agencies: RMA- Planning, Monterey County Regional Fire Protection District, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.

t) The project planner conducted various site inspections to verify that the project on the subject parcel conforms to the plans listed above.

u) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN130352.

10) **FINDING:**

HEALTH AND SAFETY - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE:

- a) The project was reviewed by the RMA - Planning, Monterey County Regional Fire Protection District, RMA-Public Works, Environmental Health Bureau, and Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood. Necessary public facilities will be provided.
- b) Potable water will be provided via the use of an on-site well. The owner has a riparian right for the proposed water supply. (See Finding 5 – Long-Term Sustainable Water Supply). Testing has indicated trace amounts of arsenic in the on-site wells. The Monterey County Environmental Health Bureau has determined that the arsenic level does not warrant treatment of the water due to the fact that the water system will be of a “transient non-community” nature. A transient non-community water permit (serves at least 25 individuals daily for 60 days out of the year) will be required to serve the project. Conditions of project approval requiring a new water system permit (Condition 29), and design and installation of water system improvements (Conditions 30 and 31) have been added to the Project to ensure applicable water quality standards are met.
- c) Sewage collection will occur by way of the installation of a septic tank and associated leach field. The project is located within Sub Basin 32 of the Carmel Valley Wastewater Study (Montgomery Study – 1981), which limits onsite wastewater disposal to 300 gallons per day per

parcel; the project site comprises 8 parcels. The Monterey County Environmental Health Bureau has determined the Project site(s) to be adequate for wastewater disposal and limited the generation of wastewater to 2,100 gallons per day. The proposed project is estimated to generate approximately 960 gallons of wastewater per day for daily operations and 2,096 gallons of wastewater per day during special events; both are in compliance with the 2,100 gallon limitation.

d) See preceding and following Findings and Evidence.

- 11) **FINDING:** **NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.
- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is not aware of any violations existing on subject property.
 - b) The reservoir/pond was excavated without a grading permit, initially with the understanding that it was part of an ongoing agricultural activity. Ponds in agricultural districts are required to obtain a grading permit. The applicant was notified of this and applied for the grading permit, but it was not issued until completion of the CEQA determination and related action on the project. No violation was recorded on this as the applicant, when notified of the need for a grading permit pursued obtaining the permit.
 - c) See preceding and following Findings and Evidence.
- 12) **FINDING:** **LONG-TERM SUSTAINABLE WATER SUPPLY AND ADEQUATE WATER SUPPLY SYSTEM:** The project has a long-term, sustainable water supply, both in quality and quantity, and an adequate water supply system to serve the development, as required by General Plan Policies PS-3.1 and PS-3.2, respectively.
- EVIDENCE:**
- a) The proposed project is new development consisting of the development of a canine training/sports facility and event center for daily member usage and up to 24 "event days" (daily maximum of 250 people/300 dogs) per year; and modular (temporary) structures to include a 700 square foot office trailer, 600 square foot members trailer, 600 square foot restroom trailer and 400 square foot electrical/storage room. Site will also accommodate up to 70 recreational vehicles on a short-term basis during "events" (Maximum of 24 nights per year).
 - b) The new development will use or require the use of water. The existing water use, as determined by the Monterey Peninsula Water Management District (averaging the last 10 years of metered use) is 62.91 acre feet per year (AFY). The projected water demand for the new development is 60.91 AFY. (See Master Response 1 in the FEIR.)
 - c) The water source for the proposed new development is existing onsite wells which are within the Carmel Valley Alluvial Aquifer (CVAA). The applicant's right to use this water is based on an existing riparian right.
 - d) There is substantial evidence that the properties have a riparian right (see- July 7, 2015 Letter from Aengus Jeffers to David Mack and enclosures, p. J-633 et seq. in the FEIR.). The evidence includes a memo prepared by Fran Farina, Counsel to the Monterey Peninsula

Water Management District, dated February 21, 2014. (Attachment to the afore-referenced Jeffers' letter.) The memo from Fran Farina concludes: *“Our preliminary assessment concludes that subordinated water rights to Carmel River surface water for APN 169-431-007, and -008 are intact as they abut the Carmel River. In addition, all parcels overlie the CVAA and retain subsurface riparian rights.”*

- e) The water demand for the Project (60.91 AFY) is lower than the historical water use of the property (62.91 AFY); therefore the Project will not result in a cumulative negative impacts to existing or project future water demand from the Carmel Valley Alluvial Aquifer.
- f) The Project and estimated water demand is 2.0 AFY less than the historical agricultural use of the property and will not result in or require additional extraction or diversion of water from the Carmel River or Carmel Valley Alluvial Aquifer. Therefore, the Project's water use will not have a significant adverse effect on the environment, including in-stream flows necessary to support riparian vegetation, wetlands, fish or other aquatic life, and the migration potential for steelhead.
- g) The water quality for the water source complies with all requirements of Chapter 15.04 of the Monterey County Code and Chapter 15 of Title 22 of the California Code of Regulations. Testing has indicated trace amounts of arsenic in the on-site wells. The Monterey County Environmental Health Bureau has determined that the arsenic level does not warrant treatment of the water due to the fact that the water system will be of a “transient non-community” nature. (See Evidence 10b above).

- 13) **FINDING:** **PROCEDURAL BACKGROUND** – The project has been processed in compliance with County regulations, and due process has been afforded to the applicant and the public.
- EVIDENCE:**
- a) On May 16, 2013, Carmel Canine Sports Center filed an application with Monterey County RMA-Planning for a Combined Development Permit (PLN130352) to allow the development of a canine training/sports facility and event center for daily member usage and up to 24 “event days” per year; and the placement of modular structures to include a 700 square foot office trailer, 600 square foot members trailer, 600 square foot restroom trailer, and 400 square foot electrical/storage room.
 - b) The Combined Development Permit (PLN130352) was deemed complete on September 21, 2013.
 - c) A Draft Environmental Impact Report (DEIR) was prepared in accordance with CEQA and circulated for public review from April 1, 2015 through May 18, 2015.
 - d) A Final Environmental Impact Report (FEIR) was released to the public on August 14, 2015.
 - e) The project was brought to public hearing before the Monterey County Planning Commission on August 26, 2015. On August 26, 2015 the Planning Commission certified the EIR, adopted a Statement of Overriding Consideration, and approved the Combined Development Permit (PC Resolution No. 15-044 and 15-045).
 - f) An appeal from the Planning Commission's approval of the Combined Development Permit was timely filed by Quail Lodge (“appellant”), represented by Anthony Lombardo & Associates, on September 8,

2015.

- g) An appeal from the Planning Commission's approval of the Combined Development Permit was timely filed by Friends of Quail ("appellant"), represented by Offices of Stamp/Erickson, on September 8, 2015.
- h) The Board of Supervisors conducted a consolidated public hearing on both appeals on October 27, 2015. At least 10 days prior to the public hearing, notices of the public hearing were published in the *Monterey County Weekly* and were posted on and near the property and mailed to the property owners within 300 feet of the subject property as well as interested parties.
- i) Staff Report, minutes of the Planning Commission and Board of Supervisors, information and documents in Planning file PLN130352, documents in the files of the Clerk of the Board.

FINDING FOR DENIAL OF APPEAL FROM QUAIL LODGE (ANTHONY LOMBARDO & ASSOCIATES)

1 FINDING:

APPEAL AND APPELLANT CONTENTIONS

The appellant (Quail Lodge) requests that the Board of Supervisors grant the appeal and deny the Combined Development Permit application (PLN130352). The appeal alleges: the findings or decision or conditions are not supported by the evidence and the decision was contrary to law. The contentions are contained in the Notice of Appeal (**Attachment C of the October 27, 2015 Board of Supervisors Staff Report**) and listed below with responses. The Board of Supervisors finds that there is no substantial evidence to support the appeal and makes the following findings regarding the appellant's contentions:

Contention 1 – Use of an inadequate and illegal baseline of analysis.

The appellant contends the FEIR uses an inadequate and illegal baseline for determining environmental effects of the project. The appellant notes that the Notice of Preparation (NOP) for the project was not published at the time the project was deemed complete (September 21, 2013) and was not published until after the EIR was already under preparation. The appellant also contends that the date the application was deemed complete would also be inappropriate, since construction activities of an "illegal pond and installation of utilities had been started without necessary permits prior to the date the application was submitted." Based on this information, the appellant contends that the appropriate baseline date should be when the County accepted the application, which occurred on May 16, 2013.

Furthermore, the appellant contends that the water baseline used by the EIR (average of last ten years of metered use), ignores the previous 4 years of data, prior to CCSC assuming control/use of the property, during which time water use on the project site was zero for each year. The appellant contends that these years should be factored into the water baseline.

Response to Contention 1:

The project site has historically been used for routine and on-going

agricultural activities. At the time of initial site grading, including creation of the “pond”, the grading activities were considered to be a part of the agricultural use of the property. Subsequently, it was determined that grading of the “pond” does/did require issuance and approval of grading permit. Therefore, the Project application had been modified to include, the grading permit subject to analysis in this EIR. The EIR assumed the grading activities had not yet occurred, and analyzed potential grading of the pond from a baseline perspective of prior to grading activities. An appropriate baseline relative to site grading, including the pond was used and presented in the EIR.

The CEQA Guidelines Section 15125 states: “An EIR must include a description of 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. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” While issuance of the NOP is “normally” the time of the baseline, the baseline may be different if a different baseline more accurately depicts the existing conditions and thus results in a more accurate assessment of the impact of the project against baseline. In this particular case, the baseline that is the most accurate measure of existing physical conditions for purposes of assessing the impact of the project is the average historic water demand used to historically conduct the agricultural activities on the site.

The CEQA baseline for water use in this case is based upon the methodology employed by the Monterey Peninsula Water Management District averaging the last 10 years of metered use. This would result in a baseline of 62.91 AFY and does not include fallow years with no metered use. Currently, there is no restriction on water use by the property owner or applicant for irrigating agriculture on site.

The baseline is static using the last ten years of metered water use prior to initiation of this Project. No current water use is included in the calculations. The appellant’s argument that the application acceptance date versus the application completion date should be used does not affect the baseline, which is based on the actual average historic water use on the property, as explained above.

Contention 2 – Lack of proven Water Rights (Riparian and Appropriative).

The appellant contends there are no proven rights to any of the water that the project will use/consume. The contention states that while the EIR and staff reports state that there is substantial evidence to support a water right claim (riparian), there is no conclusive evidence that proves the water right. The contention claims that in fact, there is evidence in the record that the project does not have the water rights they claim to have; the appellant cites excerpts from comment letter submitted by the State Water Resources Control Board (SWRCB) and California American Water Company (Cal-Am). The SWRCB letter was written in

regards to an opinion relative to appropriate water rights. The Cal-Am letter was written in regards to an opinion relative to riparian water rights. The full excerpts cited are contained in Notice of Appeal (Attachment C of the October 27, 2015 Board of Supervisors Staff Report).

The appellant contends that the SWRCB letter/excerpt disputes the properties/project right to use an appropriate water right, based on non-water use/fallowing of the project site between the years of 2008-2013.

The appellant contends the Cal-Am letter/excerpt disputes the properties/project right to use a riparian water right, based on that right being severed from the project parcels and conveyed to California American Water Company's predecessor in 1906.

Response to Contention 2:

The Letter from the SWRCB is related to the use of Appropriative rights. Initially the applicant indicated that they would use either an Appropriative Right or a Riparian Right. The Appropriative Right has not yet been perfected and requires action by the SWRCB. In order to facilitate the consideration of the project the applicant informed staff that they would no longer pursue the Appropriative Right and would strictly rely upon the Riparian Right. The comments about the Appropriative Right do not apply to the use of the Riparian Right.

Cal Am argues that the Riparian Right was lost, but there is substantial evidence that the property has a riparian right (see July 7, 2015 letter from Aengus L. Jeffers to David Mack, and enclosures.) The evidence includes a memo prepared by Fran Farina, Counsel to the Monterey Peninsula Water Management District, dated February 21, 2014. The memo from Fran Farina concludes: *“Our preliminary assessment concludes that subordinated water rights to Carmel River surface water for APN 169-431-007, and -008 are intact as they abut the Carmel River. In addition, all parcels overlie the CVAA and retain subsurface riparian rights.”* As noted in the letter from Aengus Jeffers and Fran Farina, the County affirms that riparian rights on the property are intact for the Carmel Valley Alluvial Aquifer.

Contention 3 – Project is not an Agricultural Use.

The appellant contends that the project and related activities do not constitute an agricultural use. The appellant states that Staff likened the project and its activities to those of a country club and used this rationale as the basis for allowing the application to be accepted and processed in a residential district. The appellant contends that country clubs are not agricultural uses and do not involve the agricultural activities, such as “cultivating the ground; harvesting of crops; rearing and management of livestock; tillage; husbandry; horticulture; the production of animals useful to man; and/or wildlife management.”

The appellant further contends that CCSC is a private club focused on canine training activities, and although these activities include herding

of animals and maintenance of turf fields, these activities do not make CCSC an agricultural use.

Response to Contention 3:

The project is located within a Low Density Residential (LDR) General Plan Land Use designation and zoning designation, in which agricultural activities are an allowed use (no planning permit required). Staff stated on the record that the project would involve uses similar to and consisting of an agricultural use (management of livestock, planting/maintenance of irrigated fields and turf) as an accessory use of the property. This will continue to occupy most of the acreage of the site (approximately 20 acres.) Staff also stated that this accessory agricultural use was allowed within the underlying general plan and zoning designation. This statement was not made or intended to be the rationale for allowing the Combined Development Permit application to be accepted, as these uses would already be allowed in the LDR district.

Staff did liken the proposed Canine Training Facility portion of the project to that of a Country Club use, being that it includes payment of membership fees and the private/club uses. Additionally, CCSC will offer classes to the general public for a standard fee. These proposed uses are similar to that of a Country Club. In the LDR zoning district, Country Clubs are allowed subject to approval of Use Permit. The denial of the appeal and approval of the Use Permit would fulfill this requirement.

Contention 4 – Project constitutes an RV park.

The appellant contends that the project includes an RV park meeting the State requirements for a Special Occupancy park. The project will need to meet state requirements relative to access, roads, lighting, circulation, toilets and showers. Additionally, the appellant contends the EIR is inadequate in that it did not disclose these facts nor did it describe any physical improvements (roads, gates, driveways, fire protection, exterior lighting) that would be required under the State requirements.

Furthermore, the appellant contends that RV parks are not an allowed use in the LDR zoning district and are not typically associated with County Club uses.

Response to Contention 4:

The proposed project does involve the potential parking of RVs on site, during the hosting of special event activities, which is considered a component use of the Canine Training Center and not a standalone “RV park”. The EIR evaluates RVs parking on the site. The site plan clearly shows the access improvements and locations where RV’s may park. There will be permanent restroom facilities, but there will not be permanent shower facilities. The EIR and Use Permit evaluated and provided mitigation measures and conditions to address potential impacts associated with the parking of RV’s on site during special events. The impacts associated with the RV’s are disclosed and

Mitigation Measures are provided.

Both MM-NOI-3 and Condition 13 (PDSP002) state that if the project requires revisions to conform to HCD regulations or other safety regulations, and the revisions cannot be found in substantial conformance with the approved master plan, the project will require a permit amendment/revision, subject to additional review and approval. Under PDSP002, prior to the hosting of special events involving the overnight parking/camping of RVs, the Owner/Applicant/Operator shall present proof of review and approval from HCD to the Director of RMA-Planning. In the event that permitting from the State Housing and Community Development Department requires revisions not in substantial conformance with the use approved by the County's Combined Development Permit, a modification to the Combined Development Permit will be required; however, it is speculative to assume such modification would be required. Accordingly, impacts from such modifications are too speculative for evaluation under CEQA. If the HCD process results in the need for modification, however, the condition of approval makes clear that such modification would require another discretionary action by the County and hence would be subject to environmental review at that time.

Additionally, the project and its components were reviewed by the responsible fire protection district, Monterey County Rural Fire Protection District (MCRFPD), for public safety/fire access, including the design of the proposed access driveway and gates. MCRFPD applied appropriate conditions to the project (Conditions 35-43).

As stated above, the project has not been approved to operate or function as an "RV park". The potential for parking of RVs on the site is limited to the 24 event days, as an accessory use to the special events. The remainder of the operational year, the project will not allow overnight parking of RVs, and will functionally not operate as a RV park. The ability to have RVs on site, subject to review and approval by HCD, was approved under the Use Permit request required for the Special Event activities, which is allowed within the LDR zoning designation.

Contention 5 – Access to Valley Greens Drive (Private Road).

The appellant contends that CCSC does not have legal access for Valley Greens Drive for more than seven residential units. The appellant cites information regarding the history and removal of a non-access strip along Valley Greens Drive, noting that the original non-access strip was removed in May 2003, pursuant to Board Resolution 03-174, which was approved to "...accommodate construction of a shared driveway connection from four residential lots to the existing Valley Greens Drive Right-of-Way." The appellant further cites that following this action, a separate lot line adjustment was approved to reconfigure the project site into seven lots; and a license was subsequently granted for those seven lots to access Valley Greens for residential purposes. Based on this information, the appellant contends that CCSC does not have any

legal access to access/use Valley Greens Drive for more than seven residential lots.

Response to Contention 5:

The Project properties were granted legal access from Valley Greens Drive through a series of entitlements, which includes the removal of the “non-access” strip along a 60 foot section of VGD, subject to Board of Supervisors Resolution 03-174. Prior to 2003, there was a non-access strip along Valley Green Drive and the Wolters (property owners) had an agreement in place with the County to allow them access across Valley Greens Drive for their agricultural operations. In 2003, the County approved a Lot Line Adjustment (PLN010503 – Volume 27 of Surveys at Page 27) on the Wolter Property creating 4 residential lots, subject to BOS Resolution 03-174, which allowed access across Valley Greens for the 4 residential lots. In 2004, an additional Lot Line Adjustment (PLN030336 – Volume 27 of Surveys at Page 104) was approved reconfiguring a portion of what was Lot 4 and several other parcels. The Record of Survey recorded reflecting this LLA showed access for these newly created parcels with a reference to BOS Resolution No. 03-174. Subsequently, in November 2004, the County issued a license (Document No. 2005007120) to allow access to the reconfigured parcels created by the 2004 LLA (PLN030336), which does not limit access in any way. Based on this information, the Project has legal access to the site from Valley Greens Drive.

Contention 6 – Impacts from Special Events / Preparation of the Special Events Management Plan (SEMP) is deferred mitigation.

The appellant contends that while the impacts from proposed special events are discussed, they are only addressed in a cursory manner. The appellant further contends that the mitigation presented for anticipated impacts, the preparation of a Special Events Management Plan (SEMP) – MM-NOI-3, is a deferred study for mitigation. The appellant contends that the SEMP should have been presented in a draft form and available for public review and consideration by the decision makers.

Response to Contention 6:

The EIR process identified, discussed, and proposed mitigation for potential environmental impacts which could result from implementation of the project. The development of a Special Events Management Plan (SEMP), under MM-NOI-3, is not deferred mitigation because it contains performance standards for the SEMP to limit noise, restrict overnight parking and in-out procedures, and limit external lighting. These performance standards include that the SEMP must: address the hours of event operation, event capacity, allowable noise levels; prohibit amplified noise after 7:00pm; prohibit the use of outdoor light (except security lighting) after 9:00pm ; and prohibit the use of RV generators outside of set hours (8:00am to 7:00pm). The SEMP must be updated and submitted annually for County review, prior to hosting events in the upcoming event season. This report/document will be part of the public file and available for public review. The listing of when events will take place (date/time) Additionally, specific

project related impacts, including those from the hosting of special events, were detailed in the EIR and appropriate mitigations were developed for anticipated impacts, including traffic, hazards, biology, and hydrology. The requirement to have the applicant prepare a yearly document detailing the dates and times of anticipated special events, and memorializing limitations and prohibitions on noise and lighting is not deferred mitigation because the requirements that the plan must accomplish are stated in the Mitigation Measure. The SEMP will apply these standards.

Contention 7 – Use of Private Roads (Valley Greens and Rancho San Carlos Roads) for project traffic.

The appellant contends that the project approval was based on an assumed use of two private roads, Valley Greens Drive and Rancho San Carlos Road; however CCSC has not proven the right to use such private roads. Furthermore, the appellant details that a 125 foot portion of Valley Greens Drive, near the intersection of Ranch San Carlos Road is held in private ownership, and CCSC does not have a legal right to use this portion of the road. Based on these contentions, the appellant contends that the approval of the project does not comply with Monterey County Code Chapter 21.64.320 – Regulations Relating to Applications Involving Use of Private Roads.

Response to Contention 7:

The project is subject to mitigation measure MM-TRANS-3 (condition of approval no. 23), which would direct special event traffic to the signalized intersection of Rancho San Carlos Road and Carmel Valley Road (via Valley Greens Drive). This would eliminate the addition of proposed special event related traffic to the Valley Greens Drive and Carmel Valley Road intersection and eliminate the impact at this location. There is adequate capacity at the Rancho San Carlos Road and Carmel Valley Road intersection to accommodate the shifted traffic volumes. This intersection would operate at LOS B or better with shifted project traffic.

However, as described in MM TRANS-3, both the western 150 of Valley Greens Drive and Rancho San Carlos are private streets and require authorization from the road owner to utilize the roads. If the applicant cannot obtain permission to use the road for project traffic, the applicant is required to direct all traffic through the Carmel Valley Road/Valley Greens Drive intersection and provide a licensed traffic monitor(s) to direct traffic and manage traffic at that intersection during special events.

Consistent with CEQA Guideline 15126.4(B) which states “Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified”; MM TRANS-3 mitigates impacts to less than significant levels by providing strict measures. If agreements cannot be reached with private road holders, impacts could be reduced to less than significant levels with the applicant’s provision of licensed traffic

monitors during special events.

As discussed above in Response to Contention 5, the applicant (CCSC) has the ability to use Valley Greens Drive to access the project site. Therefore proof of access for this portion of Valley Greens Drive is not required. The applicant has the option to use Valley Greens Drive/Carmel Valley Road for routing of project related traffic, including special events, or obtain appropriate agreements/permission to use the remainder of Valley Greens Drive and Rancho San Carlos road.

Contention 8 – EIR inadequate relative to Traffic Impacts.

The appellant contends that the proposed traffic mitigations contained in the EIR are not adequate, unfeasible and un-controllable.

The appellant notes that several intersections on Carmel Valley Road are at peak hour LOS F and any new traffic through the intersection is a significant unavoidable impact. The appellant contends that mitigation restricting the scheduling of classes away from peak hours is not realistic and uncontrollable relative to when people travel.

Furthermore, the appellant contends that EIR relies on intersection improvements (signal or roundabout) at Carmel Valley Road and Valley Greens intersection, which are not part of the Carmel Valley Traffic Improvement Program (CVTIP); and the alternative mitigation of requiring traffic monitors at the intersection is impractical.

Response to Contention 8:

The project is subject to mitigation measure MM-TRANS-5, which requires the applicant to schedule classes to avoid both the Weekday AM and PM peak hours, and to not start classes before 9:30am and not within the PM peak hours. This mitigation was developed to lessen/reduce potential traffic related impacts resulting from left turns off Valley Greens Drive into the project driveway, and does not relate to traffic volumes on Carmel Valley Road. The proposed mitigation was developed in consultation with the County Traffic Engineer, who determined that delaying the start of classes would eliminate the need for a left turn lane on Valley Greens Drive. This is consistent with the left turn channelization guidelines which provide latitude for the County's Traffic Division to recommend left turn lanes based on a variety of factors besides the traffic volumes.

The project was approved subject to mitigation measure MM-TRANS-3, which states that the installation of a traffic signal or roundabout at the intersection of Carmel Valley Road and Valley Greens Drive will mitigate special event impacts at the subject intersection. The mitigation further states that if this improvement is funded and constructed, the applicant payment of the Carmel Valley Road Traffic Mitigation Fee will satisfy this mitigation requirement. And until such time that appropriate improvements are constructed, the applicant shall either 1) obtain agreements with private road holders to divert traffic to Rancho San Carlos Road; or 2) fund a sufficient number of traffic

monitors to direct/manage traffic at the Carmel Valley Road and Valley Greens Drive intersection during special events.

The ability to use Rancho San Carlos Road and westbound Valley Greens Drive (both private roads) is addressed in Response to Contention 5 and Response to Contention 7 above. Absent the ability to use these roads, trained transportation monitors (e.g., deputy sheriffs or other approved public safety officers) would provide acceptable operations, as they would mimic a demand-responsive traffic signal.

Based on this information, the mitigations contained in the EIR relating to traffic are not inadequate, unfeasible or uncontrollable.

Contention 9 – Lack of substantial evidence to support a Statement of Overriding Consideration.

The appellant contends that claims of “continued agricultural production on prime farmland”, “provision of a recreation resource for canine activities”, and “contribution to the local economy with the creation of employment opportunities” are not supported by substantial evidence support on the record to support the Statement of Overriding Considerations and the significant unavoidable effects on water and traffic are not outweighed by “...specific economic, legal, social, technological, or other benefits”, as required by CEQA

Response to Contention 9:

The project involves continued agricultural operations on prime farmland, in so much as the project involves the management of livestock, and planting/maintenance of irrigated fields and turf as an accessory use of the property, which is a use allowed within the Low Density Residential (LDR) zoning district without a discretionary permit. See Response to Contention 3. This continued use, combined with the temporary nature of the project (10 year lease and placement of modular buildings) does not result in the permanent conversion of prime farmland.

The project does provide a formalized recreational use/resource for canine activities which is not currently provided within the community. Implementation of the project will provide a dedicated area where community members can train and exercise their canines in a variety of specialties. Additionally, the project provides a dedicated area for the hosting of canine related special events and competition in a number of specialty disciplines. Substantial evidence exists in the record to support this benefit, including testimony and letters received from the public. (See Finding 6 above.)

The project will provide canine specific employment opportunities which do not currently exist within the community or region. CCSC is anticipated to employ 8 individuals in the course of daily business to assist members, support facility operations, and provide/teach varying classes throughout the day. Additionally, pet care is a growing industry, so this facility could bring added revenue to the County. (See Finding 6 above.)

FINDING FOR DENIAL OF APPEAL FROM FRIENDS OF QUAIL (OFFICES OF STAMP/ERICKSON)

2 FINDING: APPEAL AND APPELLANT CONTENTIONS

The appellant (Friends of Quail) requests that the Board of Supervisors grant the appeal and deny the Combined Development Permit application (PLN130352). The appeal alleges: there was a lack of fair or impartial hearing, the findings or decision or conditions are not supported by the evidence, and the decision was contrary to law. The contentions are contained in the Notice of Appeal (**Attachment D of the October 27, 2015 Board of Supervisors Staff Report**) and listed below with responses. The Board of Supervisors finds that there is no substantial evidence to support the appeal and makes the following findings regarding the appellant's contentions:

Contention 1 – Lack of Fair or Impartial Hearing.

The appellants contends the following are examples of the lack of a fair or impartial hearing:

- a) *The applicant's counsel was granted unlimited time to present, while the opposition was denied equal time; and the applicant's counsel was given opportunity to rebut arguments, however the Commission did not provide same opportunity to opponent's counsel.*

Response:

The appellant was afforded due process. The Planning Commission held a public hearing on the project on August 26, 2015. The Planning Commission received presentations from County staff and the project applicant and their counsel (Mr. Ottone), followed by testimony and presentations from the public during the hearing, and the appellant was provided the opportunity to present information to the Planning Commission and did so. Anyone wishing to speak had the opportunity to be heard. As is allowed under the Brown Act, the Chair set reasonable time limits on each speaker to enable every person wishing to speak to have the opportunity to do so. Upon the conclusion of public presentations, the Planning Commission gave the applicant's counsel an opportunity to respond to comments/questions raised by members of the public. Upon the close of the public hearing, staff responded to questions from the Planning Commission.

The steps of staff presentation, application presentation, and public testimony, followed by the applicant and staff responding to points raised by the public is the standard format for conducting a public hearing, is consistent with the Planning Commission Rules for the Transaction of Business, and was followed in this case. Additionally, the Board of Supervisors' hearing on the appeal is de novo, and appellant has the opportunity to testify to the Board of Supervisors at the Board's hearing.

- b) *The commission did not discuss the merits of the project, immediately made a motion to approve, followed by another motion*

to approve, and did not have any substantive discussion of the issues, merits, problems, and environmental impacts;

Response:

The Planning Commission held a full public hearing on the project on August 26, 2015, which included presentations and testimony from members of the public. During the public hearing, various letters were submitted to the Planning Commission for consideration, including a letters/information from the appellant. The information was provided to the Planning Commission. An initial motion to provide direction to staff and adopt a Resolution of Intent to Approve was made by Commissioner Brown; this motion did not receive a Second and was not supported by the Commission. Another motion to Certify the EIR, Adopt a Statement of Overriding Consideration, and Approve the Combined Development Permit was made by Commissioner Getzelman, seconded by Commissioner Mendez; this motion was unanimously supported by all members present and passed with a 6-0 vote (1 member absent, 3 members recused). The Planning Commission's resolution speaks for the Commission and provides its findings and determinations.

Additionally, the Board of Supervisors' hearing on the appeals and the application is de novo, and appellant has the opportunity to testify to the Board of Supervisors at the Board's hearing. The Board then has the opportunity to weigh the evidence and any information submitted prior to taking action on the appeal and project.

- c) The Commission lacked representation from the Fourth and Fifth Supervisorial districts, due to the identity of the project applicant, who is the chair of the Commission and long-term commissioner. The Fifth district is where the project is proposed and the Fifth District's constituents would be ones most affected by the project. The Fifth District was inadequately represented on the Commission.*

Response:

The Planning Commission is comprised to ten members and appointed by the Chair upon majority vote of the Board of Supervisors; no member represents a particular Supervisorial district, even if informally the public thinks of the commissioners as representing districts. (Monterey County Code section 2.48.010.) The Commission takes action as a whole body, not by Supervisorial district, and the Commission acts by majority vote. Additionally, pursuant to the Political Reform Act, no public official may make or participate in making a governmental decision in which he or she knows or has reason to know he or she has a financial interest. (Gov't Code section 87100.) Additionally, due process requires that the hearing be fair and impartial; each member has a responsibility to determine if he or she can make a decision based on the evidence with an open mind. On August 26, 2015, the Planning Commission had nine members present and one member absent (Commissioner Hert). All nine Commissioners considered other items scheduled before this particular project. Prior to consideration of this project, three members of the Commission recused

themselves from the hearing; Chair Diehl being the project applicant, Commissioner Vandevere being a friend of Ms. Diehl, and Commissioner Roberts having previously worked for the applicant. These recusals resulted in six Commissioners remaining, which still resulted in the Commission having a quorum. The recusals did not impair the hearing. The applicant and all members of the public were afforded due process and a fair and impartial hearing. Additionally, the appellant had and exercised its right of appeal to the Board of Supervisors, who is conducting a de novo, duly noticed public hearing.

d) The Commissioner's were affected by their relationship with the applicant, who is Chair of the Commission, and who has served on the Commission for 15 years. Five of the six commissioners who voted on the project have served on the Commission alongside the applicant for more than five years.

Response:

There is no evidence to substantiate the allegation that the Commissioners who voted were not fair or impartial or were influenced by their relationship with the applicant. Indeed, those who felt they could not be impartial recused themselves. See also response to contention 1 above.

Contention 2 – The Findings or Decision or Conditions Are Not Supported by the Evidence.

The appellant contends the following are examples that the Findings or Decision or Conditions are not supported by the Evidence:

a) The appellant states that Friends of Quail challenge each and every one of the Findings and Evidence in the Planning Commission resolutions.

Response:

The appellant does not specifically state what it challenges in “each” Finding and Evidence in the Planning Commission resolutions. The appellant does not describe, explain or substantiate how each Finding and Evidence is inadequate. The lack of specificity and vague, sweeping nature of the contention deprives the County of the opportunity to respond to this contention.

b) Finding 3 is not supported by the evidence. No statement of specific AM and PM hours that the applicant is to avoid is in the proposed mitigation. Carmel Valley Road has inconsistent and variable peak hours and really has peak times instead of peak hours. There is no performance standard by which the applicant or public can ensure adequate compliance with the mitigation. The mitigation is inadequate because it does not control departure times from the project site, and it merely states that classes should not start within “PM peak hours” but does not prevent classes from starting one minute after the peak hour.

Response:

Appellant does not cite the appropriate Resolution containing the referenced Finding 3. The contention appears to apply to Planning Commission Resolution No. 15-044 – Finding for Certification of EIR and Adoption of Overriding Consideration, Finding 3, Evidence (i). Planning Commission Resolution No. 15-045 – Approval of Combined Development, Finding 3 pertains to Health and Safety and does not make mention of any traffic volumes or mitigation measures.

The mitigation measure referenced in Planning Commission Resolution No. 15-044, Finding 3, Evidence (i) pertains to traffic impacts on Valley Greens Drive, not Carmel Valley Road. This mitigation was not intended to address any impacts along Carmel Valley Road, and is solely required to address the “left turn channelization” policy of the County. Implementation of the reference mitigation, limiting class time scheduling, would mitigate left turning movements from Valley Greens Drive into the project driveway, in lieu of the development/construction of a left turn pocket on Valley Greens Drive.

The Finding has been modified in the Board’s resolution to include a reference to the peak hours being avoided.

c) The project would generate nearly 500 new daily trips. Mitigations would not adequately reduce impacts to less than significant. No Finding and Evidence adequately identifies and discusses the unmitigated and unmitigatable traffic impacts to Carmel Valley Road.

Response:

This contention refers to no specific finding, evidence or condition. The EIR identified and proposed mitigation measures required for both Carmel Valley Road and Valley Green Drive, to mitigate traffic impacts resulting from daily operations. The EIR identified significant unavoidable cumulative impacts to Carmel Valley Road resulting from the hosting of special events. The EIR identified that segment widening would be required to address this cumulative plus project impact, but this project is not included in the Carmel Valley Road Improvement List, and therefore the impact is significant and unavoidable. In addition the EIR identified that the Special Events would have a potentially significant impact on the LOS of the Carmel Valley Road and Valley Greens Intersection. This impact would be mitigated through installation of a traffic signal or roundabout. Until that is accomplished Mitigation Measure Trans 3 will be implemented for Special events.

d) The EIR inadequately considers and improperly represents issues around traffic impacts to Valley Greens Drive. Public Works department states that sight distance to east is not adequate; EIR claims to contrary. The County has not adopted a proposal to restripe Carmel Valley Road; the proposed change has not gone through CEQA; and the proposed restriping would likely be

strongly opposed.

Response:

This contention refers to no specific finding, evidence or condition. During the review of this project the sight distance associated with the Carmel Valley Road and Valley Greens Drive intersection has been identified as being an existing condition that needs to be addressed. This is a County project which will be undertaken independently of this project. The improvements to address sight distance are thus a completely separate project from the analysis of this project, and the EIR acknowledges the concern, but identifies that the County will provide the fix.

- e) *EIR failed to adequately consider the nature of recreation vehicles – their bulk and mass, their slowness, and the fact that drivers are often not familiar with roads.*

Response:

This contention refers to no specific finding, evidence or condition. The EIR and project-specific traffic study assumed a number of heavy vehicles (including recreational vehicles) on the roadways. For the Level of Service (LOS) analysis, these vehicles are converted to passenger car equivalents prior to calculations being made.

- f) *The mitigation of 30 owners with dogs per day in the riparian area could mean up to 180 dogs per day in the riparian area. The Commission failed to address impacts of dogs in the riparian area, even if on leashes, and the lack of effectiveness of leash laws. The findings and evidence do not adequately address these issues.*

Response:

This contention refers to no specific finding, evidence or condition. To the extent the contention relates to MM BIO 4B, the original mitigation measure had a limit of 30 dogs to the riparian corridor per day. Based upon comments received the language was modified to say 30 owners with dogs which could be interpreted that more than 30 dogs are allowed. The Mitigation measure has been modified to reflect that the limitation is for 30 owners per day and 30 dogs per day.

- g) *Planning Commission received the DEIR and FEIR only days before the hearing, and only on CD. No commissioner mentioned anything in the EIR. It is likely that no Commissioners read it or exercised their independent judgment.*

Response:

Each member of the Planning Commission received an electronic copy (CD) of the DEIR on April 1, 2015, at the start of the 48 day public review period (April 1 – May 18, 2015). Each member of the Planning Commission received an electronic copy of the FEIR on August 13,

2015, which complied with the legal requirement of allowing public and responsible agency review at least 10 days prior to a decision.

Appellant contends that the Planning Commission members did not read the DEIR or FEIR and did not exercise independent judgment. No evidence to substantiate this allegation was submitted with the appeal. The Planning Commission resolution recites that the Commission reviewed and considered the EIR, and a majority of the Commission adopted the resolution, which speaks for the Commission.

h) The Statement of Overriding Considerations is not supported by the evidence. Continued agricultural use of the site is not a priority of the County; it is was the County would not have zoned the property "residential". The new recreational resource for canine activities is not significant in light of the many similar resources in Carmel Valley and the County. The creation of employment opportunities on site is minimal; jobs may be low-paying and not more numerous than the prior agricultural use. The Considerations are not adequate and fail to address or support the significant impacts of the special event use and RV use.

Response:

Refer to Finding 14-Response to Contention 9, pertaining to the Statement of Overriding Considerations.

i) The removal of the mitigations regarding the pond is not supported because there is no evidence that the reservoir/pond has been removed from the project description. The applicant and Staff made inconsistent statements regarding the pond at the Commission hearing. The project description, regarding the reservoir/pond is not adequately presented in the resolutions. There is no condition/mitigation that removes the reservoir/pond from the CEQA project description. Annotation of "reservoir not approved" on the map attached to the project resolution is not adequate. There is no condition requiring remediation of the reservoir site, which was excavated without benefit of permits. The EIR does not adequately address the issue of grading and remediation, and thus underestimated the environmental impacts.

Response:

As was detailed in the EIR, the reservoir was proposed in order to provide irrigation water and allow canine events. The project description included use of water either through a riparian right or an appropriative right. As explained in the FEIR (See Master Response 1), the appropriative right is not being pursued at this time. The use of the riparian right does not allow the storage of water; therefore, the Project has been conditioned to remove the reservoir and restore this area of the site. So that this requirement is clear, a condition of approval, requiring remediation/restoration of the reservoir/pond area has been added to the project (Condition no. 16.)

Proposed mitigation measures relating to the reservoir/pond are no longer necessary because the pond will not be allowed and are therefore not included in this resolution. (See above findings.)

- j) *Riparian rights at the site are in dispute and have not been confirmed. The Commission resolution incorrectly refers to “an existing riparian right”; the resolution fails to state that is right is not confirmed and fails to quantify a right, if any, in an amount necessary for the project. Evidence shows that no such right exists, or does not exist in sufficient amounts for the project. The County used the wrong test (sufficient evidence) to address this question.*

Response:

For response to the contention concerning the owner’s Riparian Right, please refer to Finding 14 – Response to Contention 2.

- k) *The water baseline within the EIR was not grounded in law or fact, and was “calculated” in a manner that violated CEQA. Project impacts on water supply would be significant and the EIR underestimated them. Fallow years have not been adequately considered in the baseline; the proper baseline is zero. Pumping of groundwater for the project would have significant unanalyzed and unmitigated environmental impacts, including decreased flows in the river causing impacts to fisheries and riparian habitat.*

Response:

The explanation of the Baseline and why it is appropriate is explained in Master Response 1 of the FEIR. See also Finding 13, response to Contention 1.

- l) *Traffic concerns identified by Carmel Valley Association and Tim Sanders have not been adequately addressed or mitigated. The County appears to be treating this project differently from others similarly situated and without adequate basis in law and fact.*

Response:

The Carmel Valley Association (CVA) and Tim Sanders have submitted numerous letters to the County expressing traffic concerns.

Letters submitted by CVA and Tim Sanders, during the public review period of the Draft EIR were responded to directly in the FEIR (Comment Letters 9, 10, and 77).

Since the Planning Commission approval, additional letters have been submitted to the County by both CVA and Tim Sanders; these letters have been responded to by Monterey County Resource Management Agency-Public Works staff (attached as attachments L and MA to the October 27, 2015 staff report and those responses are incorporated by

reference.

The appellant does not substantiate the contention that the County is treating this project differently from others in the Carmel Valley or the jurisdiction of the County of Monterey. No evidence to substantiate this allegation was submitted with the appeal.

m) The project would allow smoking in and along the Carmel River, introducing cigarette butts and ash to the riparian area; resulting in unmitigated and unaddressed environmental impacts.

Response:

The potential for smoking within the confines of the project site was discussed in the Draft EIR, Section 4.7 – Hazards and Hazardous Materials, relative to the site containing moderate and high fire hazard zones. To mitigate the potential fire hazard of smoking on site, mitigation measure MM-HAZ-1 was developed to reduce this risk to less than significant. MM-HAZ-1 was applied to the project approval as Condition 20, in Planning Commission Resolution No. 15-045, and requires the applicant to designate smoking areas for members, guests, and employees. These designated areas shall be away from onsite fire hazard areas; and smoking is prohibited within the upland areas along the Carmel River. The Board resolution also includes MM-HAZ-1.

Implementation of this Mitigation Measure will prohibit smoking and introduction of cigarette butts and ash into and/or near the riparian area, which is located adjacent to the Carmel River.

n) The Project's noise impacts were not adequately addressed, and expert comments submitted were summarily dismissed without adequate consideration.

Response:

The appellant does not provide specific information and/or examples as to how the project's noise impacts were not adequately addressed. The appellant claims that expert comments submitted were dismissed without adequate consideration; however appellant does not provide specific information and/or examples to support this allegation.

During public review of the DEIR, the County received comments regarding the noise section and potential noise-related impacts. All comments received were reviewed and considered. To the extent appellant is reiterating its comment letter on the DEIR, the DEIR comment letter submitted by the appellant is responded to in the FEIR (Comment Letter 12).

o) The approval allows 24 event days per year but prohibits the use of portable toilets for more than ten days per year. Those approvals are potentially inconsistent and set up unmitigated health hazards.

Response:

Condition 27 (Portable Toilets), applied by the Monterey County Environmental Health Bureau (EHB) pertains to the use and location of portable toilets on the project site. As stated in the condition, portable toilets are not allowed to be located on site, for the purposes of hosting special events, for more than 10 days per year. However, the project is not required to have portable toilets onsite for the hosting of special events. Based on the septic/wastewater capacity of the site, portable toilets are only required on site when more than 250 people will be attending. The project is condition to limit the number of people to a maximum of 250 people onsite during special events; therefore portable toilets are not required to be onsite for events. However in the event that the project applicant desires to supplement restroom facilities, although not required to do so, the provision of portable toilets cannot exceed the 10 day/year limit.

This does not set-up unmitigated health hazards, or involve approvals which are inconsistent with each other or applicable County codes.

Contention 3 – The Decision was Contrary to Law.

The appellants contends the following are examples that the Decision was contrary to law:

- a) *Each of the problems and issued identified in the preceding two sections is repeated as if fully incorporated into this section.*

Response:

The lack of specificity and vague, sweeping nature of the contention deprive the County of the opportunity to respond to specific issues. The appellant does not specifically state how each of the problems and issues identified in the preceding two sections demonstrate that the decision was contrary to law. However, please see responses to each problem and issue in the preceding two sections for appropriate responses.

- b) *The EIR contains flaws as identified in writing and orally at or before the Planning Commission, including but not limited to water baseline, water rights, water supply, traffic, noise, land use, aesthetics, biological impacts, hazards, special events, recreational vehicles, and other issues. The EIR improperly defers mitigation and fails to establish performance metrics. The Planning Commission adjusted mitigations without written presentation of changes to public, and without adequate time for public and resource agencies to review them and comment on them. The EIR failed to respond to comments. EIR failed to provide adequate on-the-ground information, use the proper baseline, investigate the potential impacts, and mitigate adequately for impacts.*

Response:

A general reference to flaws identified in unspecified letters cannot be responded to with any degree of validity. The mitigation measures imposed on the project do contain performance metrics. Although the appeal argues that the Planning Commission acted on the project without deliberation, in this contention appellant contends the Planning Commission adjusted mitigation without allowing public review. The contention presents rhetorical argument. To the extent the contention relates to issues specifically identified by appellant elsewhere in its appeal, the County hereby incorporates its responses to those specific issues.

c) Recreational Vehicle (RV) parks are not allowed in the low density residential (LDR) zone; nor are events of the type proposed for more than ten days/year. RV use is not typically associated with County Clubs; there is inadequate evidence to support any finding to the contrary.

Response:

Refer to Finding 14-Response to Contention 4 for information related to the RV use on site.

Relative to the permitting of special events on the site, the project includes a request for a Use Permit to allow a maximum o/f “24 event days”, which is subject to discretionary review and approval by the Planning Commission and now the Board of Supervisors on appeal. In this particular case, the Planning Commission approved the request to allow a maximum of 24 event days.

d) Use Permits cannot be restricted to ten years, as the Commission resolution and conditions purport to do. The EIR’s reliance on a ten-year period is inconsistent with CEQA and results in unmitigated impacts.

Response:

Discretionary Permits, including Use Permits, may legally be approved for a limited term. None of the cases cited by appellant (page 4 of August 25, 2015 letter to Planning Commission) prohibit a county from restricting a use permit to a set number of years. In this case, the project has a firm limit of ten years, so the EIR correctly analyzed it as a ten year project. The applicant’s permit request was for a limited term (10 years), and the project was approved only for the requested term. A condition of approval stating that the project was approved for the 10-year limited term was applied to the resolution of approval. While this condition does state that the permit can be renewed (prior to expiration), the renewal action would also be a discretionary action, subject to future environmental review, analysis and decision by the County of Monterey.

The EIR analyzed the potential environmental impacts which would result from the project for both the limited 10-year term and beyond. As such, the EIR considered and identified cumulative impacts which could result from implementation of the project.

e) Approvals rely on applicant self-reported compliance with the conditions and mitigations; instead of enforceable and independently verified condition compliance.

Response:

The project approval includes a condition of approval (Condition 6) which requires the applicant to enter into and fund a Condition of Approval/Mitigation Monitoring and/or Reporting Plan (MMRP).

Additionally, Condition 12 (Annual Compliance Report) requires the applicant to prepare and submit an annual compliance report to the County of Monterey for review and approval. If the County determines that conditions and/or mitigations are not implemented or are determined to not sufficiently address project-related effects, the County has remedies of which County may avail itself, including remedies required by the Board of Supervisors' adopted "County of Monterey Condition of Approval and Mitigation Monitoring and Reporting Program" (adopted December 16, 2014; Resolution No. 14-364.)

Other conditions and mitigations require the applicant to prepare and submit information to responsible County departments, as well as other public and State agencies/departments, including Housing and Community Development (HCD), Monterey Peninsula Water Management District (MPWMD), California Department of Fish and Wildlife (CDFW)

These reports/documents will be public documents, maintained in the County files, and available for public viewing.

f) Approvals would allow canine and human use of the riparian and upland areas which would be unable to be verified and enforced by the County and public. This would result in unmitigated significant impacts on wildlife, including fish and the area.

Response:

Refer to Finding 15 – Response to Contention 2(f) above.

g) The Final EIR did not show changes to the DEIR in a manner that is understandable. Exact language of the EIR is unknown and ambiguous. This is inconsistent with CEQA.

Response:

The FEIR included a Section labeled as "Amendments to the DEIR",

which detailed both global grammatical and section specific revisions made to the DEIR. The format used was ~~striketrough~~/underline. This particular section consisted of approximately 37 pages, including 6 revised Maps/Figures as referenced in the detailed amendments.

The appellant does not specifically state how the FEIR did not show changes which were not understandable, known, or ambiguous, nor how the” Amendments to the DEIR section” is inconsistent with CEQA.

h) Each and every objection raised in the letters of Friends of Quail, Carmel Valley Association, Quail Lodge, LandWatch Monterey County, and all other objections from all other persons, regarding the EIR are incorporated full herein the appeal.

Response:

This statement from the appellant is non-specific. The lack of specificity and vague, sweeping nature of the contention deprive the County of the opportunity to respond to specific issues. The County is unable to respond to such a non-specific contention. However, to the extent this contention purports to incorporate objections not specifically raised by Friends of Quail’s appeal, the County hereby incorporates any and all County responses in the record, both written and oral, to the issues raised by the groups referenced by the contention.

DECISION

NOW, THEREFORE, BE IT RESOLVED based on all of the above findings and evidence and the record as a whole, that the Board of Supervisors does hereby:

- a. Certify that the Carmel Canine Sports Center Project Final Environmental Impact Report (SCH # 2013121077) has been completed in compliance with CEQA; that the Final EIR was presented to the Board of Supervisors; that the Board of Supervisors considered the information contained in the Final EIR before taking action on the project; and that the Final EIR reflects the independent judgment and analysis of the County of Monterey;
- b. Deny the Appeal by Quail Lodge, Inc. from the Planning Commission’s certification of the Environmental Impact Report, adoption of a Statement of Overriding Considerations, and approval of an application by Carmel Canine Sports Center (Wolter Properties, LLC/PLN130352) for a Combined Development Permit;
- c. Deny the Appeal by Friends of Quail from the Planning Commission’s certification of the Environmental Impact Report, adoption of a Statement of Overriding Considerations, and approval of an application by Carmel Canine Sports Center (Wolter Properties, LLC/PLN130352) for a Combined Development Permit;
- d. Adopt the CEQA findings, adopt the Statement of Overriding Considerations, and approve the application by Carmel Canine Sports Center (Wolter Properties, LLC/PLN130352) for a Combined Development Permit consisting of: 1) Use Permit for the development of a canine training/sports facility and event center for daily member usage and up to 24 “event days” (daily maximum of 250 people/300 dogs) per year; 2) Administrative Permit to allow the construction/placement of modular (temporary)

structures to include a 700 square foot office trailer, 600 square foot member trailer, 600 square foot restroom trailer and 400 square foot electrical/storage room; and 3) Design Approval [Site will also accommodate up to 70 recreational vehicles on a short-term basis during “events” (Maximum of 24 nights per year)], subject to the conditions of approval and in general conformance with the project plans, both being attached hereto as Exhibits 1 and 2 respectively and incorporated herein by reference; and

- e. Adopt the Mitigation Monitoring and Reporting Plan, attached hereto as Exhibit 1.

PASSED AND ADOPTED on this ____ day of _____, 2015, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book____ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy