Exhibit D

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RESOURCE CONSERVATION DISTRICT OF MONTEREY COUNTY

744 La Guardia Street, Building A, Salinas, CA 93905 (831) 975-7775

October 6, 2023

County of Monterey Housing and Community Development
Attn: Mary Israel
1441 Schilling Pl South 2nd Floor
Salinas, CA 93901

Re: Master Permit (RCDMC; File Number PLN220358-DEP)

From:
RCD of Monterey County
Paul Robins, Executive Director
831-236-1740
Paul.robins@rcdmonterey.org

To Whom it May Concern,

Thank you for your efforts in processing our above-referenced Master Permit Application for the Environmental Enhancement Streamlining Program (EESP) and preparation of the Notice of Intent to adopt the associated Mitigated Negative Declaration. We have commentary on one section ("Mitigation Measure CUL-1 Monitoring Action" on page 63) for your consideration with recommended language changes that we anticipate should not require recirculation of the NOI. Please see below for the specific comments and rationale.

As circulated, the text reads:

Mitigation Measure CUL-1 Monitoring Action: Before May 1st of each year, and prior to the authorization of a qualifying project by County of Monterey HCD Chief of Planning, a project-specific documentation shall be submitted for review and approval.

Per the program description, we will be conducting outreach to local Tribes and completing Phase I Cultural Resource Inventory for all projects and including the associated information with each project's Pre-Construction Notification (PCN). With the shared intent of reducing redundancies in the permit review and reporting process, we request that clarification be provided for the 'Mitigation Measure CUL-1 Monitoring Action' for when supplemental Cultural Resources reporting would be needed. When a Phase I Cultural Resource Inventory and Tribal outreach indicate that it is unlikely that there will be an impact to Cultural Resources, for example, we believe that the creation of a new report in addition to the information already provided in the PCN would not provide additional value for resource protection.

Instead, we believe it would add further delay and cost to an environmental enhancement project with a very low potential to impact Cultural Resources

We are requesting that the following clarification be incorporated into the existing language, as follows:

Mitigation Measure CUL-1 Monitoring Action: Before May 1st of each year, and prior to the authorization of a qualifying project by County of Monterey HCD Chief of Planning, *for any enhancement project for which the RCD of Monterey County's application of Archaeological, Historical, and Tribal Cultural Resources PGCs results in anticipated impacts requiring mitigations to protect resources,* ~~a~~ project-specific documentation *described in 1-4 of Mitigation Measure CUL-1* shall be submitted for review and approval. *Projects for which the RCD of Monterey County's application of Archaeological, Historical, and Tribal Cultural Resources PGCs result in no anticipated impacts to Archaeological, Historical, and Tribal Cultural Resources will not be required to present reports during or prior to authorization. Instead, a summary statement with brief evidence of the application of the PGCs will be required as part of the authorization packet submitted each spring.*

Thank you for your consideration of these comments and for your partnership in accelerating the pace and scale of critical environmental enhancement work in Monterey County. Please do not hesitate to contact me or our EESP program leads, Megan Barker and Adrienne Carter, if you have any questions.

Sincerely,

Paul Robins
Executive Director

Cc: Melanie Beretti, Acting Director, Housing and Community Development, berettim@co.monterey.ca.us
Benny Jefferson, RCDMC Board President, bblaster@jeffersonfarming.com
Megan Barker, RCDMC Environmental Scientist, megan.barker@rcdmonterey.org
Adrienne Carter, RCDMC Civil Engineer, adrienne.carter@rcdmonterey.org

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

November 03, 2023

Mary Israel, Supervising Planner, County of Monterey
Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527
(831) 755-5183
IsraelM@co.monterey.ca.us

Subject: Resource Conservation District of Monterey County (Master Permit)
Initial Study/Mitigated Negative Declaration (IS/MND)
SCH No.: 2023090196

Dear Mary Israel:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the County of Monterey to develop a Master Permit (Permit/Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Permit/Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Permit/Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code. CDFW appreciates the County formally extending the timeline to review and comment on the IS/MND for this Permit/Project as well as the recent coordination with the County and requests that our two agencies continue the positive dialogue as this Permit/Project moves toward being finalized.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statue for all the people of the State (Fish & Game Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., Section 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available,

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biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381). CDFW expects that it will need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, some future actions taken under the Permit/Project will be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, Section 1600 et seq.). Likewise, to the extent implementation of future actions taken under the Permit/Project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Resource Conservation District of Monterey County

Objective: To establish a master permit for an Environmental Enhancement Streamlining Program to allow environmental enhancement projects, coordinated by the Resource Conservation District of Monterey County (RCD), allowing the implementation of small, environmentally beneficial projects, such as stream bank protection, gully stabilization, culvert repair/replacement, erosion control structures, exotic vegetation removal, fire breaks for restoration-focused prescribed burns, and fish stream habitat improvement projects on private parcels throughout the unincorporated area of Monterey County (except within the "original jurisdiction" of the California Coastal Commission – i.e., primarily areas below the mean high tide line). The Programmatic Permit constitutes County approval for the conduct of 13 specific types of conservation practices. Eligible projects are subject to limiting criteria and shall be carried out under the auspices and oversight of the RCD and the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). The streamlined permitting program will incorporate all the standard permits and permissions normally required for these activities for a five-year term and the County will have the ability to extend the program upon Board of Supervisors approval.

Location: County-wide (Unincorporated Monterey County)

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations on the County of Monterey's CEQA document for the proposed master Permit/Project. This proposed

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programmatic permit is likely to result in significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Overall, CDFW feels that the Initial Study does not contain adequate specificity to allow CDFW to provide specific, effective feedback on potential direct and indirect impacts to trustee agency resources and CDFW is particularly concerned with the approach undertaken herein.

CDFW is concerned that the proposed IS/MND to cover a programmatic type of action is not being used as intended under CEQA and that CDFWs responsibilities under CEQA as a Trustee and/or Responsible Agency may be obfuscated as a result. CDFW recommends that the County of Monterey prepare a Programmatic EIR from which future projects approved under the proposed Permit/Project can be tiered. As described, the proposed Permit/Project does not clearly meet the definition of a “Project” under CEQA and lacks sufficient specificity and definition to perform any reasonable impacts analysis from which to draw conclusions. Many of the proposed future actions to be approved under this Permit/Project, although characterized as environmentally beneficial restoration projects, may actually result in potentially significant impacts to biological resources during and after the proposed restoration activities. CDFW finds that the lack of specificity, biological resource surveys, and project-specific analysis could lead to unauthorized take of listed species under CESA and/or unauthorized activities and impacts to streams protected by Fish and Game Code 1600.

While CDFW supports restoration activities that can result in benefits to the biological environment, as well as programmatic solutions and programs to streamline environmental review, CDFW is concerned that there was no early consultation or inter-agency coordination surrounding this proposed program. This is especially concerning given the types of projects or actions proposed under this Permit/Project and the likelihood that impacts to biological resources will occur during construction of the proposed restoration projects. Absent the environmental setting information necessary about a proposed project area, many of the project types proposed within “Table 1. Authorized Project Types” have the potential to significantly impact the biological environment. Even with consideration of the limitations proposed within “Table 2. Limitations for Qualifying Projects”, there is not enough information provided for the Lead Agency or any Trustee or Responsibly Agency to perform or evaluate the adequacy of an analysis and make reasonable conclusions of significance supported by substantial evidence, as required by CEQA. Dimensions alone, as described in Table 2 of the IS/MND, do not adequately justify conclusions that there will not be any direct, indirect, or cumulative impacts resulting from actions proposed for approval under this Permit/Project.

While there appears to be some level of future County review of proposed projects to be approved under this proposed Permit/Project, CDFW is concerned that its expertise as a Trustee and Responsible Agency under CEQA would be removed as a result of the proposed process. CDFW is concerned that the identified entities with future approval

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authority for proposed projects authorized under this Permit/Project may, or may not, retain the necessary expertise to determine if adequate biological surveys were conducted in support of the environmental setting, if all biological resources were adequately discovered, disclosed, and analyzed, if any proposed avoidance, minimization, and/or mitigation measures are adequate to reduce harm, and, as a result, whether compliance with CESA, the migratory bird treaty act, and various Sections of Fish and Game Code is accurate.

As presented in the IS/MND for the proposed Permit/Project, CDFW does not agree that the conditions in "Table 3. RCD of Monterey County Programmatic General Conditions" will completely avoid take as defined under CESA or avoid impacts to streams under Fish and Game Code section 1600. More specifically CDFW is concerned with the following conditions as proposed within Table 3:

COMMENT 1: BIO-3. Surveys for Special-Status Plants and Wildlife

The IS/MND states in BIO-3, page 12 that, "If special-status species and/or their habitat is present and cannot be avoided during project activities, a qualified biologist will follow the pre-construction survey requirements of the appropriate state and federal agencies." CDFW disagrees that following pre-construction survey requirements of "state and federal agencies" is sufficient alone to avoid unauthorized take under CESA or unauthorized impacts to streams under Fish and Game Code 1600. The proposed measure lacks the necessary specificity and enforceability to meet CEQA requirements of proposed avoidance, minimization, or mitigation measures to be actionable and enforceable.

COMMENT 2: BIO-4. Comply with Required State and Federal Permits

The IS/MND states in BIO-4, page 12 that, "Prior to exercise of this Programmatic Restoration Permit, documentation will be submitted for each project to County of Monterey HCD Chief of Planning certifying that all required state and federal approvals have been obtained." CDFW does not concur that the Monterey HCD Chief of Planning has the necessary experience, expertise, or authority to determine whether the regulatory authority assigned to CDFW as both a Responsible and Trustee Agency under CEQA has been adequately addressed. CDFW recommends that there be a mechanism within the County review process where CDFW could provide project specific input. This would help avoid project delays. CDFW has "Cutting the Green Tape" staff who assist with expediting review and permitting of restoration projects, and they could assist the County with project specific reviews authorized under this Program/Permit.

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COMMENT 3: BIO-5. Incorporate State and Federal Permit Protection Measures

The IS/MND states in BIO-5, page 12 that, "Plans for individual projects and practices will incorporate all conditions and recommendations of the approvals mentioned above. All recommended methods to lessen "take" of protected plants, animals, and habitats, including avoidance, will be incorporated into the design of each practice or project completed under this permit." CDFW does not recognize that the measures proposed above BIO-5, BIO-1 through BIO-4, would require any approvals from the necessary agency with jurisdiction under CESA and Fish and Game code. To comply with CESA, any "take" of State listed plants and animals could only be authorized through CDFW's issuance of an Incidental Take Permit, pursuant to Fish and Game Code section 2081 subdivision (b), section 2080.1 (Consistency Determination), section 2800 (Natural Community Conservation Plan, or NCCP), section 2086 (Voluntary Local Program, or VLP), section 2089.2 (Safe Harbor), or section 1654 (Habitat and Restoration Enhancement Act, or HREA). Some of these permitting options are discussed in more detail later in this letter.

COMMENT 4: BIO-8. Use Approved Biologist for Species Capture, Handling, and Translocation

The IS/MND states in BIO-8, page 12 that, "Any Federal or State-listed Species capture, handling, and translocation will only be conducted by the NOAA Fisheries, USFWS, and/or CDFW-Approved Biologist(s) with permission to handle that species." CDFW agrees with this proposed measure at a high level, however, CDFW is concerned that this measure could be interpreted to mean that project specific take of listed species in the form of species capture, handling, and/or translocation could be authorized by individuals possessing only a 2081(a) permit for research purposes. Any take of listed species including capture, handling, and/or translocation for any project proposed for approval under this Permit/Project likely can only be authorized through the issuance of an Incidental Take Permit, pursuant to Fish and Game Code section 2081 subdivision (b) to comply with CESA, except for when the other CESA permitting mechanisms listed in Comment 3 apply.

COMMENT 5: BIO-12. Monitor or Fence for Wildlife Exclusion and Species Protection

The IS/MND states in BIO-12, page 13 that, "Where appropriate, fencing and flagging will be used to minimize disturbance to environmentally sensitive areas and species habitat. Wildlife Exclusion Fencing will be installed between the active work area(s) and any suitable terrestrial habitat where species could enter the site. When fencing is not practicable due to project size, topography, soils, or other factors, monitoring by a qualified biologist during construction activities can be used to minimize impacts." CDFW would like to point out that the use of and/or placement of Wildlife Exclusion Fencing may result in take of listed species and its use should only occur in consultation

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with CDFW and can likely only be authorized through the issuance of an Incidental Take Permit, pursuant to Fish and Game Code section 2081 subdivision (b) to comply with CESA, except for when the other CESA permitting mechanisms listed in Comment 3 apply.

COMMENT 6: VEG-3. Revegetate Project Area with Native Plants

The IS/MND states in VEG-3, page 18 that, “Revegetation plans will be completed based on site-specific requirements. Plant materials will be sourced in order of the following preference, as available:

1. Plants salvaged from the site, plants propagated vegetatively from on-site plants or plants very close to the site, or plants grown from seed collected from the site or plants very close to the site.
2. Plant species that are native to the project site. Calscape and CalFlora are useful resources for determining native plant ranges.
3. Plant species that are native to the broader region (e.g., California Central Coast).
4. Non-native, non-invasive plant species. Natural recruitment is also allowed, in conjunction with erosion control, invasive plant control, and ensuring the site is properly revegetated. Plants rated as invasive by CalIPC or designated as noxious weeds by California Department of Food and Agriculture are prohibited from use (see Exhibit E for the full list of prohibited species).”

CDFW does not recommend that non-native, non-invasive plant species be an option for revegetation, even as a fourth option, and that all revegetation efforts for restoration projects proposed under this Permit/Project be required to establish appropriate, native plant assemblages appropriate to the specific geographic area of the County where the project is taking place.

COMMENT 7: LEDA-4. Follow Conditions in State and Federal Agreements/Permits

The IS/MND states in LEDA-4, page 19 that, “In situations where ground disturbance and/or vegetation removal in such areas cannot be avoided, all conditions specified in the agreements/permits of the participating State and/or Federal resource agencies will be followed to minimize negative impacts to State and/or federally listed animals and plants and their habitats during implementation of the conservation practices.” CDFW finds this proposed measure contradictory to the overall proposed process associated with this Permit/Project, which limits the future involvement of State and/or federal resource agencies with any project specific review. Further, most of the proposed project types found within Table 1 of the IS/MND are likely to involve ground disturbance and/or vegetation removal, further confusing what is being proposed with

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this Permit/Project. CDFW requests clarification of the intent of the Permit/Project and/or an update to the intent of LEDA-4 in this regard.

COMMENT 8: Limitations for Projects that can apply for the Master Permit

The IS/MND appears to be contradictory and does not have appropriate rigorous structure regarding which types of projects can or cannot apply for the master permit proposed in this Permit/Project. Table 2 in the IS/MND, page 5, lists the proposed limitations for qualifying projects, however, the table also includes that, "…projects may, on a case-by-case basis exceed the dimensions shown in Table 2. These projects would, however, be subject to additional review by the County of Monterey and RCD of Monterey County to determine whether they would result in additional environmental effects beyond those identified in this IS/MND." CDFW is concerned that this arbitrary clause invalidates the purpose of Table 2 in the IS/MND and gives the appearance that there are no real limitations to the types of potential projects, or their resultant impacts, that could be included in this Permit/Project. CDFW recommends that limitations be committed to without arbitrary language allowing them to be bypassed.

Editorial Comments

CDFW recommends the development of an appropriate programmatic type of CEQA document, developed in consultation and coordination with trustee and responsible CEQA agencies, to certify a program or master permit, such as is being proposed with this Permit/Project. The IS/MND lacks specificity, requiring vast assumptions and speculation that results in substantial conclusions being drawn without supporting evidence. CDFW offers the following specific comments:

COMMENT 9: Potential for significant impacts

The IS/MND on page 57 states that, "The implementation of qualifying projects under the Master Permit could have a substantial adverse effect on candidate, sensitive, or special status wildlife or plant species in connection with construction-related activities. Similarly, projects facilitated under the Master Permit could have a substantial adverse effect on a state or federally protected wetland. More specifically, these projects could result in potentially significant impacts during construction. As such, this represents a potentially significant impact that would be reduced to less than significant with implementation of PGCs, compliance with state and federal permitting requirements, and the Mitigation Measures BIO-1 and BIO-2."

CDFW agrees with this statement. This Permit/Project, as proposed, could result in potentially significant impacts, yet the proposed measures to minimize impacts do not appear to be sufficient and lack the necessary specifics. Many measures also do not appear to be actionable or enforceable. CDFW recommends that all qualifying projects be afforded appropriate CEQA review through the development of a programmatic

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CEQA document for a program, from which qualifying projects can be tiered with the appropriate subsequent review by trustee and responsible agencies and the public, with the appropriate CEQA documentation and avoidance, minimization, and mitigation measures developed specific to the project undertaken.

COMMENT 10: Potential for additional environmental review

The IS/MND on page 59 states that, “If a project cannot avoid potential impacts through the implementation of PGCs, project-specific avoidance and minimization measures, or applicable state and federal permit conditions, then the project would be subject to additional environmental review under CEQA.”

CDFW recommends that additional environmental review under CEQA be undertaken for every proposed project that could be authorized via this Permit/Project and that the appropriate type of programmatic CEQA document be drafted, circulated, and approved with the necessary information from which future discretionary approvals can be tiered.

COMMENT 11: Potential for cumulative impacts

The IS/MND states on page 58 that, “Qualifying projects facilitated under the Master Permit would result in long term and cumulatively beneficial effects to protected species, their habitats, and sensitive communities.”

CDFW finds no evidence in the IS/MND or supporting materials of an analysis of cumulative impacts resulting from this Permit/Project that supports this conclusion. CDFW recommends the development of a programmatic CEQA document that contains a cumulative impacts analysis conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Permit/Project, including those resources whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant) or beneficial. CDFW recommends cumulative impacts be analyzed for many of the listed species found in Monterey County using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Permit/Project. An appropriate resource study area should be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends a scientifically sound cumulative impacts analysis be conducted and included in an appropriate programmatic CEQA document from which future proposed projects undertaken can be tiered.

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COMMENT 12: Availability of other programs

CDFW would like to point out that there are other programs available to Lead Agency's to streamline environmental analysis, permitting, and CEQA compliance and that CDFW is available to discuss these programs and options. CDFW recommends the County consult with CDFW regarding their Cutting the Green Tape (CGT) program, a program available to qualified applicants for streamlining CDFW's review and permitting of restoration projects. In addition, CDFW recommends the County consider developing a Voluntary Local Program (VLP), a locally designed program that encourages farmers and ranchers to voluntarily enhance and maintain habitat for endangered, threatened, or candidate species in ways compatible with routine and ongoing agricultural activities. Upon CDFW authorization of a VLP, take of covered candidate, threatened, or endangered species is not prohibited by the California Endangered Species Act (CESA), provided that the take occurs while implementing the management practices specified in the VLP. VLPs provide flexibility for landowners to continue their agricultural activities while contributing to the survival of local wildlife and avoiding the risk of unauthorized take. Participants may opt out of the program at any time.

Environmental Data

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, Section 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during any surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

Filing Fees

The Permit/Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

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CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the County of Monterey in identifying and mitigating the potential Permit/Project impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Krista Tomlinson
12950B95267A4F5...

Krista Tomlinson for Julie A. Vance
Regional Manager

ec: California Department of Fish and Wildlife
CESA/ R4CESA@wildlife.ca.gov
LSA/ r4lsa@wildlife.ca.gov

State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

U.S. Fish and Wildlife Service
steve_henry@fws.gov