

Superior Court of California,  
County of Monterey  
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13 Attorneys for Petitioners and Plaintiffs

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF MONTEREY

16 ANIMAL LEGAL DEFENSE FUND, a )  
17 California nonprofit corporation, ANIMAL )  
18 WELFARE INSTITUTE, a Delaware nonprofit )  
19 corporation, MOUNTAIN LION )  
20 FOUNDATION, a California nonprofit )  
21 corporation, NATURAL RESOURCES )  
22 DEFENSE COUNCIL, INC., a New York )  
23 nonprofit corporation, PROJECT )  
24 COYOTE/EARTH ISLAND INSTITUTE, a )  
25 California nonprofit corporation, THE CENTER )  
26 FOR BIOLOGICAL DIVERSITY, a California )  
27 nonprofit corporation, and MARLENE ATTELL, )  
28  
29 Petitioner-Plaintiffs, )  
30  
31 v. )  
32  
33 MONTEREY COUNTY, )  
34  
35 Defendant-Respondent. )

CASE NO.: 16CV001670  
**VERIFIED PETITION AND  
COMPLAINT FOR WRIT OF  
MANDATE, DECLARATORY  
RELIEF, AND INJUNCTIVE  
RELIEF**  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT

27 Petitioners and Plaintiffs Animal Legal Defense Fund, Animal Welfare Institute,  
28 Mountain Lion Foundation, Natural Resources Defense Council, Inc., Project Coyote/Earth

1 Island Institute, Center for Biological Diversity, on their own behalf and on behalf of their  
2 adversely affected members and the citizens residing in the State of California and in the County  
3 of Monterey, and Marlene Attell on her own behalf (collectively, “Petitioner-Plaintiffs”), allege  
4 as follows:

5 **INTRODUCTION**

6 1. Defendant-Respondent Monterey County (“Monterey County” or “the County”)  
7 has a long-running lethal predator control program known today as the “Integrated Wildlife  
8 Damage Management Program” (the “IWDM Program” or “Program”) that targets and  
9 exterminates wildlife within Monterey County. On information and belief, the County pays over  
10 \$100,000 of taxpayer dollars each year to the United States Department of Agriculture Animal  
11 and Plant Health Inspection Service’s Wildlife Services agency (“APHIS-Wildlife Services” or  
12 “Wildlife Services”) to manage and implement the IWDM program to kill hundreds of native  
13 predators and other animals in the name of commercial agricultural interests and under the  
14 auspices of the Program.

15 2. Each year, without state oversight or any environmental investigation or analysis,  
16 the County renews its contract with Wildlife Services, which in turn targets and exterminates  
17 wildlife within Monterey County. The County and Wildlife Services call this annual contract “an  
18 annual work and financial plan.” The annual work and financial plan defines the objectives, plan  
19 of action, resources, and budget for IWDM Program as implemented by Wildlife Services  
20 throughout Monterey County. On information and belief, a new annual work and financial plan is  
21 discussed, negotiated, and agreed to by both the County and Wildlife Services each year.

22 3. Under the California Environmental Quality Act (“CEQA”), Monterey County has  
23 a duty to review the impacts of its activities that affect California’s environment, including  
24 wildlife. In continuing to renew its agreements with Wildlife Services without conducting an  
25 environmental analysis, Monterey County has failed to follow the legal procedure mandated by  
26 CEQA.

27 4. On information and belief, the County negotiated, executed, and approved the  
28 2016 annual work and financial plan with Wildlife Services in March or April 2016. However,

1 on information and belief, prior to approving this annual work and financial plan, the County  
2 failed to conduct an initial study or perform any other environmental review in accordance with  
3 CEQA requirements (such as the preparation of a negative declaration, mitigated negative  
4 declaration, or environmental impact report).

5 5. Instead, on or around April 27, 2016, Robert Roach (who, on information and  
6 belief, is an employee of the County in the Agricultural Department) prepared a document  
7 entitled “Notice of Exemption” regarding the IWDM program as implemented by Wildlife  
8 Services pursuant to the work and financial plan. (*See* Exhibit A.) This Notice of Exemption  
9 claims that the IWDM Program—as outlined in the 2016 annual work and financial plan with  
10 Wildlife Services—is exempt from CEQA as a “ministerial” project under California Public  
11 Resources Code Section 21080(b)(1) and Title 14, Section 15268 of the California Code of  
12 Regulations.

13 6. Monterey County cannot lawfully apply the ministerial exemption to its decision  
14 to implement the IWDM Program by contracting with Wildlife Services. Accordingly,  
15 Petitioner-Plaintiffs bring this action seeking a Writ of Mandate and related relief challenging the  
16 County’s exemption claim.

17 **PARTIES**

18 7. Petitioner-Plaintiff Animal Legal Defense Fund (“ALDF”) is a non-profit  
19 corporation registered in the State of California. ALDF and its more than 200,000 members and  
20 supporters are dedicated to protecting the lives and advancing the interests of animals through the  
21 legal system. ALDF and its members derive scientific, recreation, conservation, and aesthetic  
22 benefits from the existence of the diverse wildlife native to Monterey County.

23 8. Petitioner-Plaintiff Animal Welfare Institute (“AWI”) is a national, non-profit  
24 charitable organization headquartered in Washington D.C. and founded in 1951 to reduce the sum  
25 total of pain and fear inflicted on non-human animals by people. AWI and its members derive  
26 scientific, recreation, conservation, and aesthetic benefits from the existence of the diverse  
27 wildlife native to Monterey County. AWI is dedicated to minimizing the impacts of human  
28

1 actions detrimental to endangered or threatened species, including harassment, habitat  
2 degradation, encroachment and destruction, and irresponsible hunting and trapping practices.

3 9. Petitioner-Plaintiff Mountain Lion Foundation (“Foundation”) is a non-profit  
4 public benefit corporation incorporated in the State of California on August 15, 1986. The  
5 Foundation’s mission is to protect mountain lions and their habitat. For 29 years, the Mountain  
6 Lion Foundation has worked with member volunteers and activists to create and further wildlife  
7 policies that seek to protect mountain lions, people, and domestic animals without resorting to  
8 lethal measures. More than 200 Mountain Lion Foundation members reside in Monterey County.  
9 Mountain Lion Foundation and its members derive scientific, recreation, conservation and  
10 aesthetic benefits from the existence of the diverse wildlife native to Monterey County.

11 10. Petitioner-Plaintiff Natural Resources Defense Council (“NRDC”) is an  
12 international non-profit environmental organization with more than 2.4 million members and  
13 online activists, tens of thousands of which reside in California and hundreds of whom reside in  
14 Monterey County. Since 1970, NRDC’s lawyers, scientists, and other environmental specialists  
15 have worked to protect the world’s natural resources, public health, and the environment. NRDC  
16 and its members derive scientific, recreation, conservation, and aesthetic benefits from the diverse  
17 wildlife native to Monterey County.

18 11. Petitioner-Plaintiff Project Coyote is a fiscally sponsored project of Earth Island  
19 Institute, an international non-profit organization based in Northern California. Project Coyote is  
20 made up of a coalition of wildlife scientists, educators, ranchers, and community leaders and  
21 promotes compassionate conservation and coexistence between people and wildlife. Project  
22 Coyote is dedicated to changing negative attitudes toward coyotes, wolves, and other native  
23 carnivores by replacing ignorance and fear with understanding, respect, and appreciation. Project  
24 Coyote and its members derive scientific, recreation, conservation, and aesthetic benefits from the  
25 existence of the diverse wildlife native to Monterey County.

26 12. Petitioner-Plaintiff, Marlene Attell, is a resident of Monterey County in the State  
27 of California. Ms. Attell regularly utilizes natural areas in Monterey County for recreational use  
28

1 and plans to continue doing so in the future and enjoys viewing wildlife while participating in  
2 recreational activities.

3 13. Petitioner-Plaintiff Center for Biological Diversity (“Center”) is a non-profit  
4 organization that is incorporated in California with approximately 48,500 members who live  
5 throughout the United States, including in Monterey County. The Center’s mission is to protect  
6 endangered species and wild places through science, policy, education, and environmental law.  
7 Center and its members derive scientific, recreation, conservation, and aesthetic benefits from the  
8 existence of the diverse wildlife native to Monterey County.

9 14. Defendant-Respondent Monterey County is a political subdivision of the State of  
10 California.

### 11 **JURISDICTION AND VENUE**

12 15. This Court has jurisdiction over the matters alleged in this Petition pursuant to  
13 Code Civ. Proc. §§ 1085, 1094.5, and 1060 and Pub. Res. Code § 21167.

14 16. Venue is proper in this Court under Code Civ. Proc. §§ 393 and 394(a).

15 17. Petitioner-Plaintiffs have exhausted all administrative remedies. There was no  
16 public hearing or other opportunity for members of the public to raise objections to the County’s  
17 claim that the IWDM Program is exempt from CEQA.

18 18. Moreover, the County failed to give the public adequate notice of the Notice of  
19 Exemption at least by failing to include the Notice of Exemption on the Monterey County Public  
20 Access Retrieval Information System’s (“PARIS”) CEQA Index.

21 19. Petitioner-Plaintiffs complied with Cal. Pub. Res. Code § 21167.5 by mailing to  
22 Monterey County a written notice of the commencement of this action, identifying the project.

### 23 **BACKGROUND OF WILDLIFE SERVICES’ OPERATIONS**

24 20. At the core of this dispute is Monterey County’s decision to retain Wildlife  
25 Services to implement an IWDM Program in accordance with the annual work and financial plan.  
26 The background and context of Wildlife Service’s operations are therefore relevant to  
27 understanding the potential significant environmental impact that may be caused by such a  
28

1 program—particularly if implemented by Wildlife Services, given that agency’s widespread  
2 extermination of wildlife throughout Monterey County, California, and the United States.

3 21. Wildlife Services’ operates throughout the United States and within a majority of  
4 California’s 52 counties (including Monterey County).

5 22. The scope of Wildlife Services’ wildlife extermination efforts is well documented.  
6 For example, Wildlife Services reports that it kills millions of animals every year. From 2003 to  
7 2012, a tally of the statistics reveals “nearly 14 million native animal deaths from 475 species  
8 over the past decade, an average of nearly 1,400,000 animals per year.” (Center for Biological  
9 Diversity, Project Coyote, Animal Welfare Institute, Animal Legal Defense Fund, *Petition for*  
10 *Rulemaking Pursuant to the Administrative Procedure Act*, 5 U.S.C. § 553(e) (Dec. 2, 2013)  
11 (“Petition” hereafter) at 24.) In Fiscal Year 2014, Wildlife Services killed 2.7 million wild  
12 animals nationwide. (The Editorial Board, *Agriculture’s Misnamed Agency*, The New York  
13 Times (July 17, 2013) <http://nyti.ms/15NPwa7>;  
14 [https://www.aphis.usda.gov/wildlife\\_damage/prog\\_data/2014/G/Tables/Table%20G\\_ShortRepor.](https://www.aphis.usda.gov/wildlife_damage/prog_data/2014/G/Tables/Table%20G_ShortRepor.pdf)  
15 [.pdf](https://www.aphis.usda.gov/wildlife_damage/prog_data/2014/G/Tables/Table%20G_ShortRepor.pdf).) Within California alone, Wildlife Services reportedly kills as many as 80,000 animals  
16 annually. (Lee M. Talbot, *Stopping the Slaughter of America’s Native Wildlife, One County at a*  
17 *Time*, Sacramento Bee, April 25, 2015, at 3;  
18 [https://www.aphis.usda.gov/wildlife\\_damage/prog\\_data/2010\\_prog\\_data/PDR\\_G/Basic\\_Tables](https://www.aphis.usda.gov/wildlife_damage/prog_data/2010_prog_data/PDR_G/Basic_Tables_PDR_G/StateTables/Table_G_State_Level-CA.pdf)  
19 [PDR\\_G/StateTables/Table\\_G\\_State\\_Level-CA.pdf](https://www.aphis.usda.gov/wildlife_damage/prog_data/2010_prog_data/PDR_G/Basic_Tables_PDR_G/StateTables/Table_G_State_Level-CA.pdf).) Wildlife Services has killed more than  
20 3,000 animals in Monterey County since 2010.

21 23. Yet, as astonishing as these numbers are, a former Wildlife Services specialist has  
22 revealed that “[t]he field guys do not report even a fraction of the non-target animals they catch.”  
23 (Petition, at 45.)

24 24. Coyotes are among the animals which are intentionally killed most frequently.  
25 Tom Knudson, a reporter for the *Sacramento Bee* who reported extensively in 2012 and 2013 on  
26 Wildlife Services’ operations throughout the Western United States, observed that from 2001-  
27 2011, Wildlife Services’ employees killed nearly a million coyotes, mostly in the West. (Petition,  
28

1 at 24 n.131.) Thousands of dens and burrows are destroyed annually, and an unknown number of  
2 animals are injured or maimed, but never reported. (*Id.*)

3 25. Over 52,000 of the Wildlife Services' reported killings since 2003 were  
4 "unintentional" or non-target. (*Id.* at p. 25.) Knudson reported that Wildlife Services has  
5 "accidentally killed . . . black bears, raccoons, ravens, bobcats, kit foxes, wild pigs, opossums,  
6 and federally protected bald eagles." (*Id.* at p. 25 n.135).

7 26. In fact, over the past century, Wildlife Services has contributed to the  
8 "endangerment of the bald eagle, California condor, Canada lynx, kit fox, swift fox, Utah prairie  
9 dog, Gunnison's prairie dog, grizzly bear, gray wolf, Mexican gray wolf, fisher, wolverine, and  
10 others." (*Id.*) In 2014 alone, the agency recorded the deaths of "322 gray wolves, 61,702  
11 coyotes, 580 black bears, 305 mountain lions, 796 bobcats, 454 river otters, 2,930 foxes, three  
12 bald eagles, five golden eagles and 22,496 beavers." (Lee M. Talbot, *Stopping the Slaughter of*  
13 *America's Native Wildlife, One County at a Time*, Sacramento Bee, April 25, 2015, at 3;  
14 [https://www.aphis.usda.gov/wildlife\\_damage/prog\\_data/2014/G/Tables/Table%20G\\_ShortReport](https://www.aphis.usda.gov/wildlife_damage/prog_data/2014/G/Tables/Table%20G_ShortReport.pdf)  
15 [.pdf](https://www.aphis.usda.gov/wildlife_damage/prog_data/2014/G/Tables/Table%20G_ShortReport.pdf).)

16 27. The agency's indiscriminate killing tactics do not cease at wildlife. Wildlife  
17 Services' employees have been known to place poisonous M-44s near roads and places  
18 frequented by humans and their pets. As Knudson reported in 2012, the agency has killed "over  
19 1,100 dogs including family pets since 2000; many of these were animals who died from agency  
20 poisons." (Petition at 35 n.188.)

21 28. Wildlife Services has, at various times and in various parts of California, used  
22 methods of taking animals that are fundamentally nonselective, environmentally destructive, and  
23 often ineffective. Such methods include (without limitation) leghold traps, body-gripping traps,  
24 snares, and gas cartridges. These methods are recognized in several countries throughout the  
25 world (including several jurisdictions in the United States) as being inherently cruel. For  
26 example, leghold traps are considered particularly inhuman because trapped animals frantically  
27 struggle to free themselves both by attempting to pull the trapped limb out of the device and by  
28 chewing at the trap itself or even their own limbs. This struggle results in severe trauma to the

1 animal, including mangling of the limb, fractures, damage to muscles and tendons, lacerations,  
2 injury to the face and mouth, broken teeth, loss of circulation, frostbite, and amputation. Wildlife  
3 Service’s own records indicate that nearly every animal captured in leghold traps and snares is  
4 killed. Even animals that are released prior to death may still not survive, because of gangrene or  
5 other stress-related illness brought on by the animal’s trauma. Importantly, such traps and snares  
6 have a tendency to capture both target and non-target species. Of relevance to this petition,  
7 Monterey County has never conducted an environmental review under CEQA that determines the  
8 extent to which Wildlife Services continues to use these methods in Monterey County and  
9 assesses the consequential environmental impact of such methods.

10 29. People suffer injuries as a result of Wildlife Services’ actions too. Since 1987, 18  
11 Wildlife Services’ staff and members of the public have been exposed to chemicals that cause  
12 nausea, blurred vision, and other problems. (*Id.* at p. 35 n.189.) One hunter received serious  
13 injuries when attempting to remove his dog from a poisonous trap. (Tiffany Bacon, *The*  
14 *Implementation of the Animal Damage Control Act: A Comment on Wildlife Service’s Methods of*  
15 *Predatory Animal Control*, 32 Nat’l Ass’n L. Judiciary 362, 380 (2012).) In another incident, an  
16 eleven-year-old boy was shot in the face with poison from such a device. (*Id.*) Indeed, there is a  
17 “small but growing body of law” that imposes liability on the agency for negligence causing  
18 human injury. (*Id.*)

19 30. Not surprisingly given these activities, Wildlife Services is not transparent; to the  
20 contrary, it “operates in the shadows.” (Petition, at 35 n. 193.) The California State Director for  
21 Wildlife Services has boasted that “[w]e pride ourselves on our ability to go in and get the job  
22 done quietly without many people knowing about it.” (*Id.*) Indeed, Wildlife Services does not  
23 routinely make available specific, reliable information about its activities, including the specific  
24 wildlife “problems” that it purports to solve, on whose behalf it conducts its activities, or where.  
25 Wildlife Services’ website provides only broad summaries of program activities and categories of  
26 funding sources. The program self-reports the number of animals that it kills, but these figures  
27 are not reliable, as former agency personnel have revealed that the program kills far more animals  
28 than it reports. The program also has no accurate sense of whether it is effective, as it “conducts



1 little or no population monitoring of lethally controlled mammals nor of their alternate natural  
2 prey, no studies of whether [Wildlife Services] is additive with other causes of mortality, and no  
3 studies of how control affects populations of non-target species that are unintentionally killed.”  
4 (*Id.* at 36 n. 196)

5 **The Potential for Significant Environmental Impact by the IWDM Program Is High**

6 31. The IWDM Program—particularly as implemented by Wildlife Services pursuant  
7 to the work and financial plan entered into with Monterey County—uses lethal methods to  
8 exterminate wild animals rather than using, or requiring livestock owners to use, non-lethal  
9 methods like clearing of carcasses and after-births quickly, confining herds at night or during  
10 calving/lambing, increasing human presence with animals, and installing fencing and using  
11 livestock guard animals.

12 32. These lethal methods—considered in cumulation—can have ecosystem-level  
13 impacts that not only affect the targeted animals, but also other species along the food chain,  
14 including plants.

15 33. For any project that may significantly affect the environment directly and/or  
16 indirectly, CEQA requires, prior to approval, the preparation of an EIR, which is an informational  
17 document that provides agencies and the public with detailed information about the effect of a  
18 proposed project, lists ways in which the significant effects might be minimized, and considers  
19 alternatives. (Cal. Pub. Resources Code §§ 21165 and 21102.1(a).) In addition to direct and  
20 indirect effects, a project is deemed to have a significant effect on the environment if “the  
21 possible effects of a project are individually limited but cumulatively considerable.” (Cal. Pub.  
22 Res. Code § 21083.) A project’s cumulative impact is to be considered “when viewed in  
23 connection with the effects of past projects, the effects of other current projects, and the effects of  
24 probable future projects.” (*Id.*)

25 34. For instance, coyotes are the most-targeted animals under the IWDM Program in  
26 Monterey County and nationwide. Yet, coyotes are one of the most adaptable mammals and,  
27 hence, are not easily exterminated, especially across large geographic areas. (Petition, at 1-2.)  
28 This does not mean that there are no significant impacts from killing large numbers of coyotes

1 every year, however. For example, if the alpha male or female of a particular coyote pack is  
2 killed, the remaining members may splinter into multiple packs, leading to an increase in  
3 breeding adults. (Gese, E., (1998), (2013), *Response of neighboring coyotes (Canis latrans) to*  
4 *social disruption in an adjacent pack*, Can. J. Zool., v. 76.)

5 35. Indeed, predators exist in an ecosystem for a reason, as “[p]redation is a  
6 fundamental biological process . . . .” (Tiffany Bacon, *The Implementation of the Animal Control*  
7 *Act. A comment on Wildlife Service’s Methods of Predatory Animal Control*, 32 J. Nat’l Ass’n  
8 Admin. L. Judiciary 362, 384 (2012).) Disruption of the balance between predator and prey has a  
9 wider impact on animal species and plants throughout an ecosystem and can result in biodiversity  
10 loss. (*Id.*)

11 36. “Apex predators” like coyotes, bears, and mountain lions—*i.e.*, predators at the top  
12 of a food chain in a given area—create a “trophic cascade” of beneficial effects that flow through  
13 and sustain ecosystems and the web of life. For example, wolves in Yellowstone and Grand  
14 Teton National Parks have been found to benefit a host of species, including aspen, songbirds,  
15 beavers, bison, fish, pronghorn, foxes, and grizzly bears. (See Ripple, W.J., Beschta, R.L., Fortin  
16 J.K. & Robbins, C.T. (2013), *Trophic cascades from wolves to grizzly bears in Yellowstone*,  
17 *Journal of Animal Ecology*, v. 82; Ripple, W.J., Wirsing, A.J., Beschta, R.L. & Buskirk, S.W.  
18 (2011), *Can restoring wolves aid in lynx recovery?*, *Wildlife Society Bulletin*, v. 35, at 514; and  
19 Ripple, W.J. & Beschta, R.L. (2011), *Trophic Cascades In Yellowstone. The First 15 Years After*  
20 *Wolf Reintroduction*, *Biological Conservation*, v. 145, p.205.)

21 37. Conversely, falling numbers of apex predators can result in the loss of these  
22 beneficial effects and/or the “release” of mid-sized or “mesopredators” like foxes, raccoons, and  
23 skunks that are not at the top of the food chain in the presence of coyotes, bears, or mountain  
24 lions. (Petition at 27.) Increased numbers of mesopredators, in turn, negatively affects prey,  
25 including ground-nesting birds, rodents, lagomorphs, and others. (*Id.*) “Mesopredator release”  
26 has been documented in coastal southern California, where coyotes play the role of apex predator.  
27 As coyotes have disappeared, populations of smaller carnivores, like foxes and domestic cats,  
28 have grown and depleted populations of native birds that serve as prey to the smaller predators.

1 As a study of this area observed, “[i]t appears that the decline and disappearance of the coyote, in  
2 conjunction with the effects of habitat fragmentation, affect the distribution and abundance of  
3 smaller carnivores and the persistence of their avian prey.” (Soule, M.E., et al., *Reconstructed*  
4 *Dynamics of Rapid Extinctions of Chaparral-Requiring Birds in Urban Habitat Islands*,  
5 *Conservation Biology* 2:75-92, at 84.)

6 38. On information and belief, the IWDM Program contributes to ecosystem  
7 disruption, mesopredator release, and loss of biodiversity within Monterey County due to its  
8 concentrated focus on particular species, such as coyotes and other wild animals.

9 39. The potential environmental impacts caused by wildlife extermination programs  
10 like the IWDM Program are also cumulatively significant when measured against other causes of  
11 wildlife losses. One such impact is the potential for causing biodiversity loss simply from the  
12 sheer numbers of animals that Wildlife Services kills.

13 40. Moreover, the potential negative impacts to the ecosystem outweigh the usefulness  
14 of coyote control for livestock protection. Studies have shown that lethal predator control  
15 programs are often ineffective at achieving their stated purposes—protecting livestock or  
16 boosting game species. Other studies have found that removing coyotes—the most frequently-  
17 persecuted mammal by Wildlife Services—is ineffective at reducing coyote populations in the  
18 long term. (Petition at 29.)

19 41. Loss of biodiversity, trophic cascades, and mesopredator release are just a few of  
20 the potential environmental impacts that may be caused by the long-term extermination of wild  
21 animals pursuant to the IWDM Program and similar programs throughout the region and  
22 California. However, on information and belief, Monterey County has never performed a full  
23 study that analyzes the potential for either—or, indeed, any—categories of significant  
24 environmental impact caused by the IWDM Program.

25 **APPLICABLE LEGAL STANDARDS**

26 42. This litigation pertains to the California Environment Quality Act (Cal. Pub. Res.  
27 Code §§ 21000 *et seq.*) and, in particular, Monterey County’s claim that the IWDM Program as  
28

1 implemented by Wildlife Services pursuant to the work and financial plan is exempt from CEQA  
2 as a “ministerial project.”

3 43. Enacted in 1970, CEQA imposes a statewide policy of environmental protection.  
4 CEQA’s basic purpose includes: informing government decision makers and the public about the  
5 potential, significant environmental effects of proposed activities; identifying ways that  
6 environmental damage can be avoided or significantly reduced; and preventing significant,  
7 avoidable damage to the environment by requiring changes in projects through the use of  
8 alternatives or mitigation measures when the governmental agency finds the changes to be  
9 feasible. (Guidelines<sup>1</sup> § 15002(a).) CEQA applies whenever a government agency approves a  
10 discretionary project, defined as “an activity which may cause either a direct physical change in  
11 the environment, or a reasonably foreseeable indirect physical change in the environment.” (Cal.  
12 Pub. Res. Code § 21065.) The California Supreme Court has stated that applicability of CEQA  
13 must “be interpreted in such manner as to afford the *fullest possible protection* to the environment  
14 within the *reasonable* scope of the statutory language. (*Friends of Mammoth v. Board of*  
15 *Supervisors*, 8 Cal.3d 247, 259 (1972) (emphasis added).)

16 44. Prior to the approval of a project, CEQA requires that the lead agency prepare an  
17 Environmental Impact Report (“EIR”) if the agency “finds substantial evidence that the project  
18 may have a significant effect on the environment.” (Cal. Pub. Res. Code § 21165; Guidelines  
19 §§ 15002(f)(1) & 15064(a)(1).) An EIR is a public document that is “used by the governmental  
20 agency to analyze the significant environmental effects of a proposed project, to identify  
21 alternatives, and to disclose possible ways to reduce or avoid the possible environmental  
22 damage.” (Guidelines § 15002(f).) Whether a project may have a significant effect on the  
23 environment “calls for careful judgment on the part of the public agency involved, based to the  
24 extent possible on scientific and factual data.” (Guidelines § 15064(b).)

25 45. CEQA does not apply if a project fits within an exemption. For example, one type  
26 of CEQA exemption—and the one relevant to this litigation—is the exemption for “ministerial”

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27 <sup>1</sup> “Guidelines” refers to Title 14, Chapter 3 of the California Code of Regulations, including  
28 14 CCR §§ 15000 – 15387 and Appendices A through N.

1 projects. (See Cal. Pub. Res. Code § 21080(b) (“[CEQA] does not apply to . . . ministerial  
2 projects proposed to be carried out or approved by public agencies.”); Guidelines § 15268(a)  
3 (“Ministerial projects are exempt from the requirements of CEQA.”).)

4 46. The scope of the ministerial exemption has been discussed by CEQA’s  
5 implementing regulations and precedential case law. For example, the CEQA Guidelines provide  
6 the following description of what constitutes a “ministerial” act for the purposes of CEQA:

7 “Ministerial” describes a governmental decision involving little or  
8 no personal judgment by the public official as to the wisdom or  
9 manner of carrying out the project. The public official merely applies  
10 the law to the facts as presented but uses no special discretion or  
11 judgment in reaching a decision. A ministerial decision involves  
only the use of fixed standards or objective measurements, and the  
public official cannot use personal, subjective judgment in deciding  
whether or how the project should be carried out.

12 (Guidelines § 15369.) “Common examples of ministerial permits include automobile  
13 registrations, dog licenses, and marriage licenses.” (*Id.*)

14 47. Courts construing the ministerial exemption’s scope have applied similar  
15 principles. For example, in *Friends of Juana Briones House v. City of Palo Alto*, 190 Cal. App.  
16 4th 286 (2010), the court applied a “functional test” that

17 [E]xamines whether the agency has the power to shape the project in  
18 ways that are responsive to environmental concerns. Under this  
19 functional test, a project qualifies as ministerial when a private party  
20 can legally compel approval without any changes in the design of its  
21 project which might alleviate adverse environmental consequences.  
22 Conversely, where the agency possesses enough authority (that is,  
discretion) to deny or modify the proposed project on the basis of  
environment consequences the EIR might conceivably uncover, the  
permit process is discretionary within the meaning of CEQA.

23 (*Id.* at 302 (internal quotations and citations omitted).) The court also noted that “in keeping with  
24 the Guidelines, judicial decisions have adopted a restrictive definition of ‘ministerial projects’  
25 considered exempt from environmental review.” (*Id.* at 301 (internal citations omitted).)

26 48. The California Supreme Court has similarly explained that “where a project  
27 involves elements of both ministerial and discretionary action, it is subject to CEQA.” (*Mountain  
28 Lion Found. v. Fish & Game Com.*, 16 Cal. 4th 105, 119 (1997).)



1 Program, or the terms of its implementation by Wildlife Services as memorialized in the annual  
2 work and financial plan.

3 53. To the contrary, Monterey County, in fact, both possessed and exercised sufficient  
4 discretion to preclude the applicability of ministerial exemption. As shown in the Notice of  
5 Exemption, Monterey County negotiated multiple aspects of the annual work and financial plan  
6 that affects the scope of the IWDM Program and how it would be implemented by Wildlife  
7 Services. These aspects include, without limitation, the program's objectives, plan of action,  
8 resources, and budget. (Exhibit A.)

9 54. Consequently, given Monterey County's exercise of discretion, the recited project  
10 is not a ministerial act, and the County's invocation of the ministerial exemption was improper  
11 and violates CEQA.

12 **Petitioner-Plaintiffs Exhausted their Administrative Remedies and Complied with CEQA**

13 55. Prior to bringing this action, Petitioner-Plaintiffs exhausted their administrative  
14 remedies with respect to the CEQA claims. There was no public hearing or other opportunity for  
15 members of the public to raise objections to the County's claim that the IWDM Program is  
16 exempt from CEQA. Moreover, the County failed to give the public adequate notice of the  
17 Notice of Exemption at least by failing to include the Notice of Exemption on the Monterey  
18 County Public Access Retrieval Information System's ("PARIS") CEQA Index.

19 56. Thus, Petitioner-Plaintiffs have no plain, speedy, or adequate remedy in the course  
20 of the ordinary law unless this Court grants the requested Writ of Mandate and declaratory and  
21 injunctive relief. In the absence of such remedies, Monterey County's continued activities  
22 pursuant to the IWDM Program will continue to be in violation of the law.

23 57. Petitioner-Plaintiffs have complied with Public Resources Code section 21167.5  
24 by executing prior service of a notice upon Monterey County indicating their intent to file this  
25 Petition. Proof of Service of this notification, with the notification attached, is attached as  
26 **Exhibit C.**

27 **Administrative Record in this Case**

1           58.     Petitioner-Plaintiffs elect to prepare the record of proceedings pursuant to Public  
2 Resources Code section 21167.6(b)(2).

3                                   **Petitioner-Plaintiffs Are Entitled to Injunctive Relief**

4           59.     Monterey County failed to fulfill its duties under CEQA by claiming that the  
5 IWDM Program (as implemented through the work and financial plan with Wildlife Services) is  
6 exempt from CEQA.

7           60.     Monterey County is in clear violation of CEQA because it has improperly and  
8 incorrectly claimed that the IWDM Program is exempt from CEQA. The IWDM Program,  
9 operated through Wildlife Services, exterminates hundreds of animals in and around Monterey  
10 County each year, and has the potential to exterminate many more such animals, including  
11 endangered and protected species. Before approving the work and financial plan with Wildlife  
12 Services, Monterey County had the discretion and ability to conduct a necessary CEQA review,  
13 prepare an EIR, and limit the scope of the work and financial plan in a manner that does not  
14 violate CEQA or cause significant environmental impact. In proceeding with the IWDM  
15 Program without conducting the necessary CEQA review, and without providing the required  
16 notices under CEQA, Petitioner-Plaintiffs and the citizens of California have been deprived of  
17 their right to understand the full potential environmental impacts of the Program. Monterey  
18 County's actions should be enjoined, the authorizations and contracts rescinded, and any new  
19 authorizations prohibited unless and until the Petitioner-Plaintiffs'—and the people of  
20 California's—rights have been satisfied.

21                                   **FIRST CAUSE OF ACTION**

22                   **Petition for Writ of Mandate under the California Environmental Quality Act**

23           61.     The allegations in the preceding paragraphs are re-alleged and incorporated by  
24 reference as if fully set forth herein.

25           62.     Monterey County's IWDM Program has the potential to kill hundreds of animals  
26 in Monterey County each year, including the potential to kill endangered and protected species.  
27 The cumulative impact of these killings—both over time and when combined with similar  
28



1 programs throughout California and the United States—will have a significant impact on wildlife  
2 and a deleterious effect on the environment and various ecosystems.

3 63. Because the IWDM Program as operated may have a significant impact on the  
4 environment, Monterey County was required to prepare an EIR. (Cal. Pub. Resources Code  
5 §§ 21083(b)(2) & 21151.) However, Monterey County failed to prepare an EIR as required, and  
6 in so doing violated California law.

7 64. For the reasons discussed above, the IWDM Program is not exempt from CEQA.

8 65. For the reasons set forth herein, Petitioner-Plaintiffs are entitled to relief under  
9 CEQA, including, but not limited to, a peremptory Writ of Mandamus directing Monterey County  
10 to prepare an EIR in compliance with CEQA, and to otherwise comply with CEQA in any  
11 subsequent action taken to approve the project.

## 12 **SECOND CAUSE OF ACTION**

### 13 **Declaratory Relief with Respect to the California Environmental Quality Act**

14 66. The allegations in the preceding paragraphs are re-alleged and incorporated by  
15 reference as if fully set forth herein.

16 67. Petitioner-Plaintiffs contend that the IWDM Program, as well as Monterey  
17 County's approval of the work and financial plan with Wildlife Services to implement the IWDM  
18 Program, violate California law and CEQA for the reasons alleged herein. Petitioner-Plaintiffs  
19 are informed and believe that Monterey County disputes this contention. Accordingly, Petitioner-  
20 Plaintiffs are entitled to this Court's declaration resolving such dispute.

21 68. Petitioner-Plaintiffs are entitled to maintain this declaratory relief action against  
22 Monterey County under the authority of Section 1060 of the Code of Civil Procedure. (*See*  
23 *generally Colberg, Inc. v. State of California ex rel. Dep't of Pub. Works* (1967) 67 Cal.2d 408.)

## 24 **THIRD CAUSE OF ACTION**

### 25 **Petition for Writ of Mandate and Declaratory Relief to Set Aside the County's Project** 26 **Approval as Contrary to the California Environmental Quality Act**

27 69. The allegations in the preceding paragraphs are re-alleged and incorporated by  
28 reference as if fully set forth herein.

1           70.     Petitioner-Plaintiffs challenge Monterey County's claim of exemption. Monterey  
2 County's claimed exemptions do not apply for the reasons discussed. As discussed above, the  
3 public record on this issue demonstrates that the IWDM Program exterminates hundreds of  
4 animals within Monterey County each year. Moreover, the public record shows that the agency  
5 actually conducting these exterminations—Wildlife Services—has a record of using methods that  
6 inadvertently exterminate protected and endangered species. The potential impacts caused by  
7 these disruptions on the ecosystem, including the potential for disrupting populations of  
8 endangered and protected species, could be mitigated and minimized through exercise of the  
9 County's discretion in setting the terms of its contract with Wildlife Services. Accordingly,  
10 Monterey County claim of a "ministerial exemption" does not apply to the IWDM Program.

11           71.     Because the County improperly relied upon an exemption to CEQA, in violation of  
12 at least CEQA Guideline § 15061, the County's approval of the IWDM Program (by virtue of the  
13 approval of the work and financial plan with Wildlife Services) must be set aside unless and until  
14 the County complies with CEQA.

15   **PRAYER FOR RELIEF**

16           WHEREFORE, Petitioner-Plaintiffs seek judgment as follows:

- 17           a) For alternative and peremptory Writs of Mandate, commanding Respondent  
18           Monterey County:
- 19                       1. To vacate and set aside its Notice of Exemption;
  - 20                       2. To vacate and set aside the approval of the work and financial plan with  
21                       Wildlife Services;
  - 22                       3. To prepare and certify a legally adequate EIR for the IWDM Program as  
23                       implemented by Wildlife Services; and
  - 24                       4. To suspend any and all activity pursuant to Monterey County's approval of  
25                       the IWDM Program as implemented by Wildlife Services (through the work  
26                       and financial plan) until Monterey County has complied with all  
27                       requirements of CEQA and all other applicable state and local laws,  
28                       policies, ordinances, and regulations as are directed by this Court pursuant  
                         to Public Resources Code section 21168.9.
- b) For a stay, temporary restraining order, preliminary injunction, and permanent  
          injunction prohibiting any actions by Monterey County pursuant to its earlier  
          approvals and contracts relating to the IWDM Program as implemented by Wildlife  
          Services (through the work and financial plan) until Respondents have fully

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complied with all requirements of CEQA and all other applicable state and local laws, policies, ordinances, and regulations;

- c) For a judicial declaration that Monterey County has violated its statutory obligations under CEQA;
- d) For an award to the Petitioner-Plaintiffs of all applicable costs and the reimbursement of reasonable attorneys' fees, to the extent permitted by the law; and
- e) For any other and further relief as the court may deem just and proper.

Respectfully submitted,

Dated: June 1, 2016

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By: 

KATHERINE L. HENDERSON  
CHRISTOPHER D. MAYS  
MARY PROCACCIO-FLOWERS

Attorneys for Petitioners and Plaintiffs

# Exhibit A

**Notice of Exemption**

**Form D**

To:  Office of Planning and Research  
PO Box 3044, 1400 Tenth Street, Room 212  
Sacramento, CA 95812-3044

From: (Public Agency) County of Monterey  
168 W. Alisal Street, 2nd Floor  
Salinas, CA 93901  
*(Address)*

County Clerk  
County of County of Monterey  
168 W. Alisal Street, 1st Floor  
Salinas, CA 93901

**Project Title:** Work Plan for Integrated Wildlife Damage Management (IWDM)

**Project Location - Specific:**

Throughout Monterey County

**Project Location – City:** \_\_\_\_\_ **Project Location – County:** Monterey

**Description of Project:**

A work and financial plan between the County of Monterey and the US Department of Agriculture, Animal and Plant Health Inspection Service-Wildlife Services (APHIS-WS) defining the objectives, plan of action, resources and budget for the maintenance of an Integrated Wildlife Damage Management (IWDM) program throughout Monterey County.

**Name of Public Agency Approving Project:** County of Monterey

**Name of Person or Agency Carrying Out Project:** US Department of Agriculture (APHIS-WS)

**Exempt Status:** *(check one)*

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: \_\_\_\_\_
- Statutory Exemptions. State code number: \_\_\_\_\_

**Reasons why project is exempt:**

The project consists of a work and financial plan that was authorized by a previously approved action of the Monterey County Board of Supervisors.

**Lead Agency**

**Contact Person:** Robert Roach Area Code/Telephone/Extension: 831-759-7379

**If filed by applicant:**

- 1. Attach certified document of exemption finding.
- 2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature: *Robert H. Roach* Date: 4/27/16 Title: Assistant Agricultural Commissioner

- Signed by Lead Agency
  - Signed by Applicant
- Date received for filing at OPR: \_\_\_\_\_

January 2004

# Exhibit B

May 31, 2016

**VIA EXPRESS MAIL**

Monterey County Clerk of the Board Gail T. Borkowski  
168 West Alisal Street  
First Floor  
Salinas, CA 93901

Monterey County Agricultural Commissioner Eric Lauritzen  
1428 Abbott Street  
Salinas, CA 93901

Charles J. McKee  
Monterey County Counsel  
168 West Alisal Street  
Third Floor  
Salinas, CA 93901

Re: **NOTICE OF COMMENCEMENT OF CEQA ACTION**

Dear Ms. Borkowski and Mssrs. Lauritzen and McKee:

Please take notice that on June 1, 2016, the Animal Legal Defense Fund, Animal Welfare Institute, Natural Resources Defense Council, Inc., Project Coyote, Center for Biological Diversity, and Mountain Lion Foundation (collectively "Petitioner-Plaintiffs") intend to file a Petition and Complaint for Writ of Mandate compelling Monterey County to comply with its legal obligations under the California Environmental Quality Act ("CEQA").

This action relates to Monterey County's approval of a work and financial plan agreement for a predatory animal damage control program with the United States Department of Agriculture Animal and Plant Health Inspection Services' Wildlife Services agency (the "Project"), and Monterey County's subsequent claim that the Project is exempt from CEQA as a ministerial act. However, the Project does not qualify as a ministerial act and therefore the ministerial exemption does not apply. Consequently, and because the Program will likely have a significant impact on the environment, Monterey County was obligated to prepare an environmental impact report and otherwise comply with CEQA prior to approving the Project.

Monterey County – Notice of Commencement of Action  
May 31, 2016  
Page 2

Regards,



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Christopher D. Mays  
Attorney for Petitioners



# Exhibit C

1 **PROOF OF SERVICE**

2 I, Christopher D. Mays, declare:

3 I am employed in Santa Clara County, State of California. I am over the age of 18 years  
4 and not a party to this action. My business address is Wilson Sonsini Goodrich & Rosati, 650  
5 Page Mill Road, Palo Alto, California 94304-1050.

6 I hereby certify that on May 31, 2016 I caused to be served by mail copies of the  
7 following:

8 **LETTER RE NOTICE OF COMMENCEMENT OF CEQA ACTION**

9 on the persons listed below by placing true copies thereof enclosed in a sealed envelope and  
10 mailing via the United States Postal Service with postage fully pre-paid as follows:

11 Gail T. Borkowski  
12 Monterey County Clerk of the Board  
13 168 West Alisal Street  
14 First Floor  
15 Salinas, CA 93901

16 Eric Lauritzen  
17 Monterey County Agricultural Commissioner  
18 1428 Abbott Street  
19 Salinas, CA 93901

20 Charles J. McKee  
21 Monterey County Consel  
22 168 West Alisal Street  
23 Third Floor  
24 Salinas, CA 93901

25 I certify under penalty of perjury that the foregoing is true and correct. Executed on May  
26 31, 2016, in Palo Alto, California.

27 

28 

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Christopher D. Mays

# Exhibit D

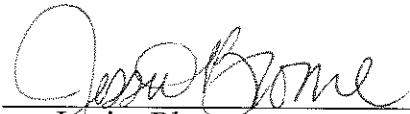
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**VERIFICATION**

I am a staff attorney for the Animal Legal Defense Fund, which is a party to this action and am authorized to make this verification for and on its behalf. I have read the Petition and Complaint for Writ of Mandate and know its contents thereof. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

Executed on June 1, 2016 at Cotati, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
Jessica Blome  
Animal Legal Defense Fund