
North Coast Regional Water Quality Control Board

August 28, 2019

Houston Muthart
3535 E. Branch Road
Garberville, CA 95542

Certified Mail No. 7016 2070 0000 6486 3385

Dear Mr. Muthart:

Subject: **Notice of Violation and Transmittal of Inspection Report for June 19, 2019, Inspection of Humboldt County Assessor's Parcel No. 223-075-016**

File: Cannabis Inspections, Humboldt County, 2019,
190619 Houston Muthart 23-075-016, CIWQS Place ID No. 850977

This letter is to notify you of observed violations of the requirements listed below for unauthorized discharges to waters of the state from the above-referenced parcel (Property):

1. California Water Code (Water Code) sections 13260 and 13264
2. Water Quality Control Plan for the North Coast Region (Basin Plan) section 4.2.1 Prohibitions 1 and 2

This letter directs you, within 30 days, to contact Regional Water Board staff to advise of your plan to implement recommendations in the attached report.

I. Background

On June 19, 2019, staff from the Regional Water Board, accompanied by staff of the California Department of Fish and Wildlife (CDFW), State Water Resources Control Board Division of Water Rights, Humboldt County Building and Planning, met with you and your consultants from TRC to inspect the subject Property. The purpose of the inspection was to evaluate onsite development and conditions, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state.

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Attached is a copy of the water quality inspection report (June 19, 2019, Inspection Report). Please review the Inspection Report carefully and completely. The Inspection Report contains recommendations for correcting observed violations and water quality concerns observed on the Property and advises you of the Regional Water Board permits necessary for instream work and projects/activities that result in discharges of waste to receiving waters.

A. Relevant Requirements

During the inspection, Regional Water Board staff observed features and conditions on the Property that represent violations of water quality requirements and regulations. Attachment A – Regulatory Citations, provides references to these, and related, requirements and regulations.

B. Observed Violations

As documented in the June 19, 2019 Inspection Report, Regional Water Board staff observed violations of Water Code sections 13260, 13264, and/or Basin Plan section 4.2.1 Prohibitions 1 and 2 associated with the onstream pond. As described in the Inspection Report, staff also observed potential water quality concerns associated with the low water crossing.

C. Additional Potential Liabilities

The Regional Water Board is in the process of considering whether the violations of the Water Code and the Basin Plan warrant further enforcement. We encourage you to take steps, to correct the violations as soon as possible, securing any applicable permits from this and other agencies prior to conducting work. Please note that the existing conditions, as observed and documented in the Inspection Report, may represent continuing violations of the Water Code and Basin Plan.

Please note that correcting the conditions of non-compliance at the Property does not preclude enforcement for the violations alleged in this notice. As noted above, the Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's office. Administrative civil liabilities may be assessed on a daily basis in the amount up to \$5,000 for each day the violation occurs or up to \$10 per gallon, but not both pursuant to Water Code section 13350.

E. Inspection Report Recommendations

As mentioned above, the June 19, 2019, inspection report provides recommendations to correct violations, as well as to address features and conditions that threaten to impact water quality. Within 30 days of this letter, please advise Adona White of your intentions, plan, and schedule to implement recommendations in the inspection report.

Adona can be reached at (707) 576-2672 or, by email at Adona.White@waterboards.ca.gov.

Future correspondence regarding this matter will be sent to you at this address unless an alternative address is provided to the Regional Water Board. Failure to accept mail from the Regional Water Board is not a valid excuse for non-compliance with any future enforcement orders, and a failure to respond or otherwise appear at a future enforcement proceeding could subject you to a default order and the imposition of administrative civil liability.

If you have any questions regarding this matter, please contact Adona White at the telephone number or email above. You may also contact me at Diana.Henrioulle@waterboards.ca.gov or by telephone at (707) 576-2350. Additionally, we are available to meet with you if you wish to discuss this letter, in inspection report, or our waste discharge regulatory programs in further detail.

Sincerely,

Diana Henrioulle, P.E.
Enforcement Unit

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Attachments: Attachment A – Regulatory Citations
June 19, 2019, Water Quality Inspection Report

cc: Humboldt County

Meghan Ryan, Building and Planning, Cannabis Division
mryan@co.humboldt.ca.us

Department of Fish and Wildlife

David Manthorne, CDFW, David.Manthorne@wildlife.ca.gov

North Coast Regional Water Quality Control Board

Kason Grady, Kason.Grady@waterboards.ca.gov
Adona White, Adona.White@waterboards.ca.gov

State Water Resources Control Board Division of Water Rights

Stormer Feiler, SWRCB DIV, Stormer.Feiler@waterboards.ca.gov
Steven Hall, SWRCB DIV, Steven.Hall@Waterboards.ca.gov
Skylar Anderson, SWRCB DIV, Skylar.Anderson@waterboards.ca.gov

Attachment A – Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 1	Prohibits “[t]he discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses.”
Basin Plan Section 4.2.1, Prohibition 2	Prohibits “[t]he placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses.”
California Water Code Section 13260	<p>“(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:</p> <p>(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.</p> <p>(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.”</p>
California Water Code Section 13261(a)	“A person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”
California Water Code Section 13264 (a)	“No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:”

Regulatory Section	Citation
California Water Code Section 13265(a)	"Any person discharging waste in violation of Section 13264 , after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense."
California Water Code Section 13350	"A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."

North Coast Regional Water Quality Control Board

TO: Diana Henriouille, PE, Senior Water Resource Control Engineer, Enforcement Unit

FROM: Adona White, PE, Water Resource Control Engineer, Enforcement Unit

DATE: August 21, 2019

Inspection Report for June 19, 2019, Consent Inspection Humboldt County Assessor's Parcel Number 223-075-016

File: Cannabis Program Inspections, Humboldt County, Houston Muthart, CIWQS
Place ID. 850977, CIWQS Inspection ID 37195307

Property information:

County: Humboldt

Physical address: 3535 East Branch Road, Garberville, CA 95542

APN: 223-075-016

Coordinates: 40.06978, -123.75266

Owner: Houston Muthart

Size: 200 acres

Watershed: Eel River Hydrologic Unit; South Fork Eel River Hydrologic Area; Benbow Hydrologic Subarea (HU/HA/HSA 111.32; Table 2-1, Water Quality Control Plan for the North Coast Region).

Aerial Imagery Notes (Google Earth Pro): 2004 imagery shows site conditions prior to vineyard development; the road through the Property is visible. By 2009, the vineyard is visible. By 2014, the pond and constructed flat are visible. See Figures 3-7.

Regulatory status with the Regional Water Board:

Site Development: None

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Applicable programs: Clean Water Act Section 401, Water Quality Certification for instream work; Construction General Storm Water Permit (CGP) for soil disturbance of one acre or more.

Onsite activities/operations: Enrollee General WDR and General Waiver 2019-0001-DWQ for Cannabis Cultivation, WDID 1_12CC404193

Applicable programs: Cannabis cultivation waste discharge regulatory program.

Inspection information:

Date/time: June 19, 2019

Type: Consent Inspection

Attendance:

- Adona White, PE, North Coast Regional Water Quality Control Board (Regional Water Board)
- Dave Manthorne, Senior Environmental Scientist (Senior ES), California Dept of Fish and Wildlife (CDFW)
- Steven Hall, ES and Skylar Anderson, Senior ES, State Water Resources Control Board's Division of Water Rights (DIV)
- Meghan Ryan, Humboldt County Building and Planning, Cannabis Division (County Planning)
- Houston Muthart, Landowner
- Skyler Twohig and Jessie Cahill, Timberland Resource Consultants (TRC)

Background/Objective:

On June 19, 2019, Regional Water Board staff participated in an inspection of the subject Property with staff of CDFW, DIV, County Planning, TRC, and the landowner. Inspection objectives for Regional Water Board staff included observing site development and activities, in particular an onstream reservoir, and identifying and assessing onsite features or conditions that are impacting or may impact the quality and beneficial uses of receiving waters, including surface and ground water.

Figure 1 shows the Property, topography, and aerial imagery from 2016.

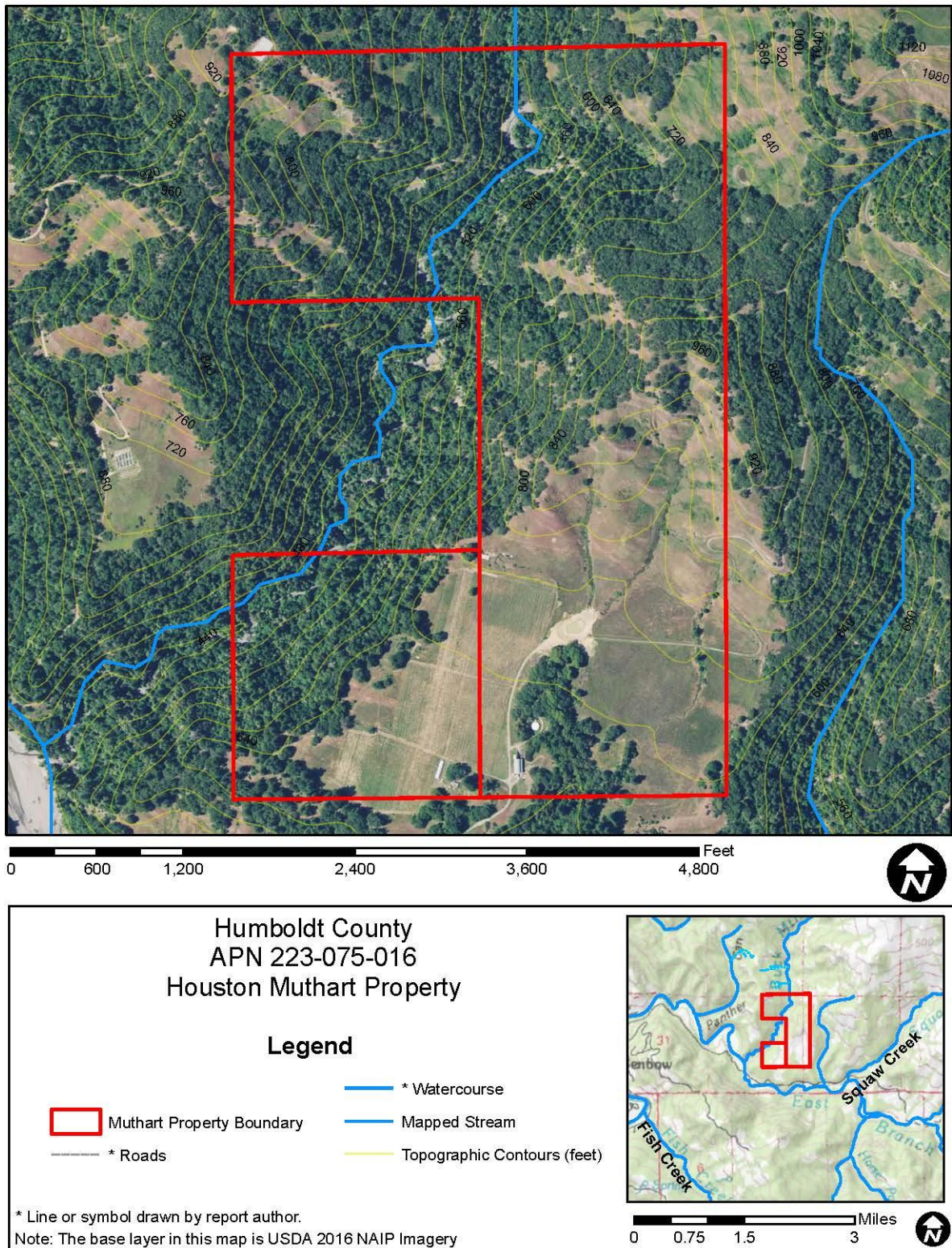


Figure 1. Property map.

History of pond construction and use:

During the inspection, Mr. Muthart explained the history of the pond. He planted grape vines in 2007 and used well water for irrigation. In 2009 there was a drought, the well ran dry, and he lost 1400 vines. Katie Dobar of USDA in Mendocino contacted him and offered to provide \$10,000 to help fund construction of a pond for drought protection. Due to an active lawsuit associated with parcels in the Tooby subdivision (Tooby Lawsuit), Humboldt County Planning Department did not issue any permits for projects on the Tooby parcels from 2001-2015. Mr. Muthart opted to build the pond without a County grading permit. In 2015, the County approved deeds and took the original application, including the grading permit for the pond construction.

Also according to Mr. Muthart, in a typical year, he uses half of the water stored in the pond to water the vines four times via drip irrigation. The pond also provides water storage for fire suppression. Even though the pond is close to his cannabis cultivation area, he is not currently proposing to use water in the pond for cannabis irrigation; he stated that he relies on groundwater from the existing well for cannabis irrigation and did not discuss a contingency plan in the event the well runs dry during irrigation season.

Inspection Map

Figure 2 is from Google Earth, April 21, 2019, zoomed to highlight the pond and constructed flat cultivation area.

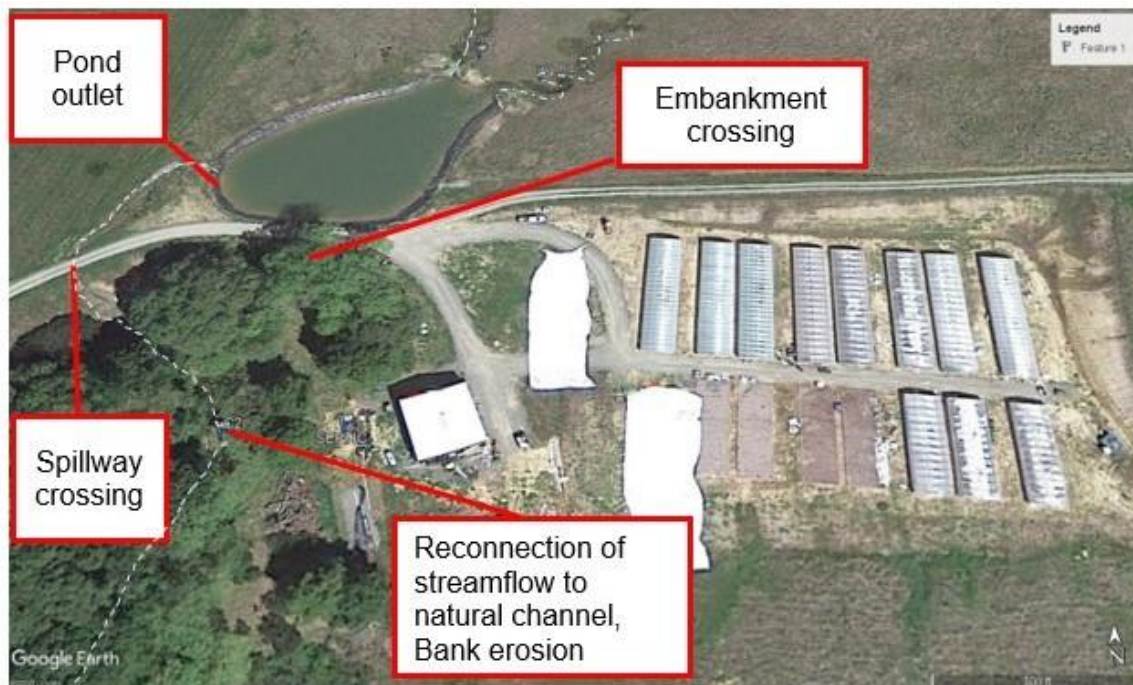


Figure 2. Pond and cultivation area. Dashed lines are added for illustration purposes to show current flow path of water into and out of pond, spillway, and natural channel.

The pond is constructed onstream, upstream of an existing ranch road stream crossing on a Class II watercourse. The pond is 200' long and is situated over the confluence of two tributary Class II watercourses, thus impounding and impacting an estimated 325' of Class II watercourse (30' of southern tributary, 50' of northern tributary, and 145' below confluence to the road crossing). Upstream of the pond, both the northern and southern tributaries have channels that are approximately 2' wide and 8' deep. Wetlands occur in the watercourses and the vegetation extends up the channels well beyond the influence of the pond.

The pond is lined with a plastic liner. The spillway drains the pond overflow west toward the vineyard and under the road via culvert and through a riparian oak stand and to the natural channel. The spillway channel is approximately 300' long, rock-armored (with some raw spots) to the crossing, then continues over unarmored natural ground. It appears that an oak branch fell and impeded the flowpath, splitting the flow to discharge to the bank of the Class II watercourse in a couple of locations. I observed two bank erosion voids (~5yd³ each) at discharge points, approximately 100' downstream of the road crossing. The spillway routing has resulted in dewatering of approximately 100' feet of natural watercourse channel. The watercourse flows approximately 2000' down to the East Branch of the South Fork Eel.

A comparison of conditions observed on the site with categories of activities typically associated with water quality concerns at cannabis cultivation sites:

1. Site maintenance, erosion control and drainage features: Generally, the roads and developed features appeared to be stabilized and to not pose a threat to water quality.
2. Stream crossing maintenance and improvement: The Property is accessed via a low water bridge over East Branch South Fork Eel River. This year, the bridge was installed in early or mid-June. I understand that prior to the installation of the bridge, crews may access the Property by fording the river instead of driving in from Alderpoint Road. Use of the river ford is likely to cause erosion and damage to the watercourse channel and banks, and adverse impacts to water quality.

There is stream crossing across the impounded watercourse. In the current configuration of the pond, the crossing is dewatered as the pond spillway follows a path that bypasses the crossing.

There is reportedly an old crossing on a different portion of the Property that we did not access or inspect.

3. Stream and wetland buffers: Cannabis cultivation appeared to be adequately out of stream and wetland setbacks.
4. Spoils management: Staff observed no water quality concerns associated with spoils management.

5. Water storage and use: The Discharger reportedly uses well water to irrigate cannabis. The well does not appear to be hydrologically influenced by the river, as it periodically goes dry.

The Discharger reportedly uses water in the pond for irrigation of grape vines and for fire suppression. As discussed above, the onstream pond was constructed without permits, and appears to impact or be resulting in impacts to more than 400 feet of natural stream channel. Outflows from the pond appear to be causing ongoing erosion and sediment discharges

6. Irrigation runoff: Staff observed no water quality concerns associated with irrigation runoff.

7. Fertilizers and soil amendments: Staff observed no water quality concerns associated with storage or use of fertilizers and soil amendments.

8. Pesticides: Staff observed no water quality concerns associated with the storage or use of pesticides.

9. Petroleum products and other chemicals: Staff observed no water quality concerns associated with the storage or use of petroleum products and other chemicals

10. Cultivation-related wastes: Staff observed no water quality concerns associated with storage or disposal of cultivation-related wastes.

11. Refuse and human waste: Staff observed no water quality concerns associated with refuse management. Staff observed a recently installed mound septic system within approximately 70' of the top of bank of a Class II watercourse. The Onsite Waste Treatment Policy in the Basin Plan describes minimum setbacks from ephemeral streams to be 50' and 100' on perennial streams.

Recommendations:

1. Do not use the river ford associated with cultivation activities. Use an alternate route unless a low water bridge is properly installed.
2. Retain appropriately licensed and qualified professionals to prepare and submit for Regional Water Board concurrence, a pond removal/remediation and watercourse and wetland restoration plan. The pond remediation and restoration plan should, at a minimum:
 - a) Characterize the impacts to date with respect to wetlands and watercourses resulting from the pond construction and management.

- b) Describe an interim pond maintenance and management plan to minimize impacts to water resources associated with the pond, including surface flow, water quality, controllable sediment delivery, and channel stability. This interim plan should include, but not necessarily be limited to clearing the branch and any other debris from the flow path, protecting the bank at the discharge point, applying additional rock to the spillway, as needed, to protect exposed, erodible soil.
 - c) Decommission the pond and restore the topography, hydrology, and soils of the natural watercourses and associated wetlands, revegetate to mimic natural conditions, and monitor the success. The plan should include proposed compensatory mitigation to address the temporal and permanent losses of watercourse and wetland value and function. Compensatory mitigation ratios shall be developed according to the US Army Corps of Engineers Standard Operating Procedure and associated 12501.1-SPD Mitigation Ratio Checklist:

<https://www.spd.usace.army.mil/Portals/13/docs/regulatory/qmsref/ratio/12501-SPD.pdf>
 - d) Include, a project description, goal of restoration, implementation plan and schedule, plan for monitoring and site maintenance following restoration, and contingency measures addressing the diversity index of wetland/ non-wetland native plant species occurring on the Property. The plan should include specifications for debris removal and disposal.
3. Prior to conducting any instream work associated with Recommendation 1, above, submit to the Regional Water Board an application for Clean Water Act section 401 water quality certification, and secure approval from the Regional Water Board. The 401 Application may be found at the following link:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/wqc_docs/031616_401-Application.pdf
 4. Work with CDFW and the State Water Resources Control Board's Division of Water Rights (DIV) to determine and secure any applicable permits or licensing required for surface water diversion, storage, and use on the site. If the existing surface water diversions do not meet applicable CDFW or DIV requirements, remove diversion infrastructure from surface waters and ensure that restoration plans developed pursuant to Recommendation 1, above, include provisions for restoring any instream or riparian disturbance associated with this features or removal thereof.
 5. If the landowner seeks to construct/develop a new onsite reservoir/impoundment, identify and schedule a feasible alternative to the water storage needs that

avoids impacts to watercourses and wetlands. To avoid additional impacts to wetlands, engage an appropriately licensed, qualified professional to conduct a U.S. Army Corps verified forensic wetland delineation of the portions of the Property in the vicinity of the proposed project.

6. In the event that the property owner and/or tenant(s) propose in the future to develop or use the Property in a manner or method that will or may result in a discharge of waste to waters of the state in the future, staff recommend that the owner(s)/tenant(s) be aware of and comply with relevant regulatory requirements for water quality protection. For example, Water Code section 13260 requires that a person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system shall file with the appropriate regional board a report of the discharge. Further, Water Code section 13264 states, in part: "No person shall initiate any new discharge of waste or make any material changes in any discharge...prior to the filing of the report required by Section 13260." In addition, projects involving the disturbance of an acre or more of land are subject to regulation under the State Water Board's Construction General Stormwater permit, and projects involving dredge or fill in waters of the United States are subject to regulation under Clean Water Act section 401. You may find further information about Water Board permits that may apply to proposed site development or land use activities at this hyperlink:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/permit/

Enforcement Discretion:

The observations in this report will be assessed for violations of the California Water Code. The Regional Water Board and the State Water Board reserve the rights to take any enforcement action authorized by law.

PHOTO APPENDIX



Figure 3. 2004



Figure 4. 2009 – Vineyard visible.



Figure 5. 2019 – Vineyard and pond visible



Figure 6. Pond area – 2014 – Pond not constructed.



Figure 7. Pond area - 2019 pond and cannabis cultivation area developed.



Figure 8. View of pond from upstream near southern tributary.



Figure 9. Northern tributary, upstream of influence of pond has wetland vegetation and stable banks.



Figure 10. Southern tributary where it enters pond has vertical banks and loss of wetland vegetation.



Figure 11. Southern tributary where it enters pond.



Figure 12. Southern tributary upstream of pond.



Figure 13. Embankment and dewatered section of watercourse at road crossing.

Spillway:



Figure 14. Where spillway goes under roadway and onto earthen surface before discharge to Class II watercourse.



Figure 15. Downstream of spillway crossing, water flows over earthen surface before discharge to Class II watercourse. Water can mobilize fine sediment on its path.



Figure 16. Bank erosion voids at spillway discharge point on Class II bank.

Septic:



Figure 17. Recently installed mound septic system within 70' of top of bank of Class II watercourse.



Figure 20. Location where cultivation area ditch dissipates into meadow.

Cultivation area:



Figure 18. Meadow adjacent to cultivation area, looking approximately north west.



Figure 19. North of the cultivation area, a small swale is intercepted by the cultivation flat; a ditch was constructed to convey water around the flat and into the meadow.

Low water river crossing:



Figure 21. Low water crossing.



Figure 22. Low water bridge with unprotected embankments.



Figure 23. Terrace mined for embankment material.