



North Coast Regional Water Quality Control Board

February 7, 2020

Rafael Diaz Velasquez
2657 Chism Court
Fortuna, CA 95540

Certified Mail No. 7016 2710 00000 2653 3210

Dear Mr. Rafael Diaz Velasquez:

Subject: Notice of Violation, Directive to Obtain Regulatory Coverage for Cannabis Cultivation, and Transmittal of Inspection Report for September 17, 2019 Inspection of Humboldt County Assessor's Parcel No. 208-281-003-000

File: Cannabis Program Inspections, Humboldt County, September 2019
HCSO/Green Wave Humboldt County Inspections, Rafael Diaz Velasquez,
CIWQS Place ID 844294

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):

California Water Code (Water Code) sections 13260 and 13264

This letter directs you, within 30 days, to take action to comply with Water Code 13260. In addition, 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.

Background

On September 17, 2019, staff from the North Coast Regional Water Quality Control Board (Regional Water Board), accompanied by personnel from the California Department of Fish and Wildlife (CDFW), State Water Resources Control Board Division of Water Rights, California Department of Food and Agriculture CalCannabis and various law enforcement agencies, inspected 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 (September 17, 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.

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 requirements and regulations.

Observed Violations

As documented in the inspection report, Regional Water Board staff observed cannabis cultivation and associated site disturbance of sufficient size and scope to require regulatory coverage under State Water Resources Control Board (State Water Board) Order No. WQ-2019-0001-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Statewide General Order). The Regional Water Board has no record of this Property's enrollment under the Statewide General Order. Outdoor cannabis cultivation activities in California with land disturbance of 2,000 square feet or more that are not enrolled for coverage under the Statewide General Order or individual waste discharge requirements violate Water Code section 13260.

Staff also observed violations of Water Code sections 13260 and 13264 associated with unauthorized discharge of waste into the pond at WQ 3.

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 the 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.

Directive to Obtain Regulatory Coverage

Based on the observations detailed in the attached inspection report, and mentioned above, the Regional Water Board has determined that you are required to comply with Water Code section 13260 by taking one of the following actions within **30 calendar days of this letter**:

- 1) Enroll the property under the Statewide General Order by providing the information required in the online application process. The application can be accessed at: <https://public2.waterboards.ca.gov/cgo> You must also submit an application fee to the State Water Board within 30 days of submitting the online application. The fee must be submitted to one of the following addresses, based on the method of delivery.

By U.S. Mail:	In person or by courier delivery:
Accounting Office Attn: Water Quality Fees – Cannabis General Order P.O. Box 1888 Sacramento, CA 95812-1888	Accounting Office Attn: Water Quality Fees – Cannabis General Order 1001 I Street Sacramento, CA 95814

- 2) File a Report of Waste Discharge in order to obtain individual Waste Discharge Requirements (WDRs) specific to your property.

Please submit the appropriate documents and payments to:

North Coast Water Board
Attn: Diana Henriouille
Cannabis Waste Discharge Regulatory Program
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

OR

- 3) If you believe regulatory coverage is not required under any of the options listed above, either because **there is no cultivation** or associated activities occurring, or because the operations that are occurring are not subject to regulation under the Statewide General Order or individual WDRs, please **provide a written response** explaining your non-applicability (with all supporting documentation including photos if necessary) to the Regional Water Board at the address provided above. Regional Water Board staff may contact you to verify your response.

Water Code section 13260 states, in relevant part:

- (a) Each of the following persons shall file with the appropriate regional board a report

of the discharge, containing the information which may be required by the regional board:

- (1) Any 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.

Water Code section 13264 states, in relevant part:

(a) 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 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

- (1) The issuance of waste discharge requirements pursuant to Section 13263.
- (2) The expiration of 140 days after compliance with section 13260....
- (3) The issuance of a waiver pursuant to section 13269.

Failure to comply with Water Code sections 13260 and 13264 may result in an administrative civil liability under Water code sections 13261 and 13265 not to exceed \$1,000 per violation for each day in which each violation occurs.

Inspection Report Recommendations

As mentioned above, the September 17, 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 Brian Fuller of your intentions, plan, and schedule to implement recommendations in the inspection report. Brian Fuller can be reached at (707) 576-2806 or by email at Brian.Fuller@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.

February 7, 2020

If you have any questions regarding this matter, please contact Brian Fuller at the phone number or email above. You may also contact me at Diana.Henriouille@waterboards.ca.gov or by phone 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 Henriouille, P.E.
Enforcement Unit

200107_BMF_dp_Rafael Diaz Velasquez NOV

Attachments: Attachment A – Regulatory Citations
Water Quality Report of September 17, 2019 Inspection

cc: Department of Fish and Wildlife

Warden Joshua Zulliger, Joshua.Zulliger@wildlife.ca.gov
David Manthorne, David.Manthorne@wildlife.ca.gov

Humboldt County Planning and Building Department
PlanningBuilding@co.humboldt.ca.us

North Coast Regional Water Quality Control Board
Kason Grady, Kason.Grady@waterboards.ca.gov
Brian Fuller, Brian.Fuller@Waterboards.ca.gov

State Water Resources Control Board Division of Water Rights
Gagan Bhullar, Gagan.Bhullar@Waterboards.ca.gov
Steven Hall, Steven.Hall@Waterboards.ca.gov
Stormer Feiler, Stormer.Feiler@waterboards.ca.gov

Attachment A – Regulatory Citations

Regulatory Section	Citation
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)	<p>“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).”</p>
California Water Code Section 13264 (a)	<p>“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:</p> <p>(1) The issuance of waste discharge requirements pursuant to Section 13263.</p> <p>(2) The expiration of 140 days after compliance with Section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance and any of the following applies:...</p> <p>(3) The issuance of a waiver pursuant to Section 13269.”</p>

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

FROM: Brian Fuller

DATE: January 16, 2020

Inspection Report for September 17, 2019 Warrant Inspection, Humboldt County Assessor's Parcel Number 208-281-003-000

File: Cannabis Program Inspections, Humboldt County, September 2019
HCSO/Green Wave Humboldt County Inspections, Rafael Diaz Velasquez,
CIWQS Place ID 844294

Property information:

County: Humboldt

Physical address: Unknown address on Gasline Road, south of Coyote Flat
Road/Rattlesnake Ridge Road, approximately 1.5 miles west northwest of Dinsmore.

APN: 208-281-003-000

Owner: Rafael Diaz Velasquez
2657 Chism Court
Fortuna, CA 95540

Transaction History (per LandVision): Rafael T. Diaz Velasquez purchased the property
from James Dennis Lee on December 27, 2002.

Size: 40 acres.

Watershed: Eel River Hydrologic Unit; Van Duzen River Hydrologic Area; Bridgeville
Hydrologic Subarea (HU/HA/HSA 111.22; Table 2-1, Water Quality Control Plan for the
North Coast Region).

Aerial Imagery Notes (Google Earth Pro): Small structure and no other apparent
development visible August 1998. July and November 2004 imagery suggest a
possible forest fire between the two photo dates. Several clearings are apparent on the
parcel. Patterns suggestive of cannabis cultivation visible October 2006, and continue
with some variation over subsequent images.

Hoop houses visible May 2014, through May 2016 with some variation, in April 2019 the greenhouses were no longer visible.

Regulatory status with the North Coast Regional Water Quality Control Board (Regional Water Board):

Site Development: N/A

Applicable programs: N/A

Regional Water Board's Clean Water Act section 401 Water Quality Certification permit for dredge/fill activities in a surface water

Onsite activities/operations: Third Party Timberland Resources Consultants submitted payment and NOI for coverage under Regional Water Board Order No. R1-2015-0023, (Regional Cannabis Order) for Discharger Rafael Diaz at APN 208-271-003, however the subwatershed (HUC 12) on the NOI corresponded with APN 208-281-003. Humboldt County APN 208-271-003-000 enrolled under the Regional Cannabis Order with a different discharger. Rafael Diaz's coverage under the Regional Water Board Order for APN 208-281-003-000 was effective from September 26, 2016 to June 30, 2019. The Regional Water Board does not have a record of transition to the State Water Board Order WQ 2019-0001-DWQ (Statewide General Order).

Applicable programs: State Water Board Order WQ 2019-0001-DWQ (Statewide General Order).

Inspection information:

Date/time: September 17, 2019/ midday

Type: Humboldt County Sheriff's Office (HCSO)/Green Wave Humboldt County Warrant Inspection.

Attendance:

David Manthorne, California Department of Fish and Wildlife (CDFW)
Personnel from, California Department of Food and Agriculture (CalCannabis)
Cann Doan, State Water Resources Control Board Division of Water Rights (DIV)
Christopher Van de Wyngard, DIV
Brian Fuller, Regional Water Board
Katherine Hawken, Regional Water Board
Multiple Law Enforcement Officials (LEO), HCSO

Background/Objective:

North Coast Regional Water Board (Regional Water Board) staff participated with staff of the Humboldt County Sheriff's Office (HCSO), California Department of Fish and Wildlife (CDFW), State Water Board's Division of Water Rights (DIV), California Department of Food and Agriculture CalCannabis (CalCannabis), and personnel from various law enforcement agencies in four days of inspections of multiple cannabis cultivation sites in Humboldt County, on September 17-19, 2019. Inspection objectives for Regional Water Board staff included observing site development and activities and identifying and assessing onsite features or conditions that are causing or may cause adverse impacts to the quality and beneficial uses of receiving waters, including surface and ground water.

Inspection Map

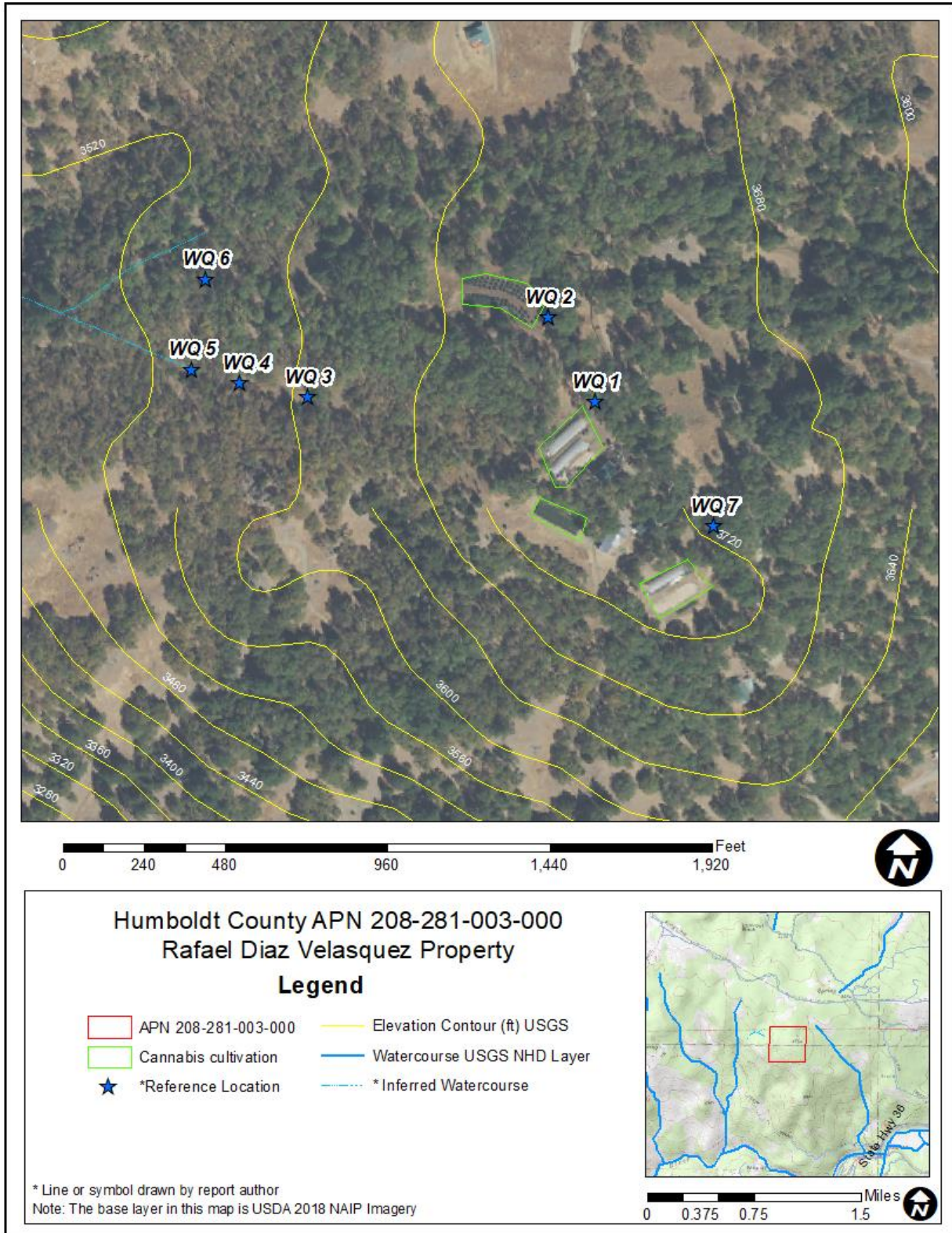


Figure 1: Map of Property, including inspection points of interest.

Inspection Observations:

Staff accessed the property from the north. I observed an outdoor cannabis cultivation area southwest of WQ 1 and I observed soils with white speckles spreading outside of the cultivation area (Photo 1). I also observed minor rills on the road (Photo 2). I walked down this road and observed more rilling and fine sediment that had deposited in the grass on the outboard edge of the road (Photo 3) in the vicinity of another outdoor cannabis cultivation area at WQ 2 (Photo 4).

After walking the perimeter of the cultivation area at WQ 2, I returned to WQ 1 and walked east, encountering a pond at WQ 3 (Photo 5) that had material excavated and an outflow pipe buried below a berm of excavated material (Photo 6). The excavation appeared to have occurred in a pre-existing pond or depression and I observed the plant species juncus growing on the borders of the pond. I walked downstream from the pond which was well vegetated and observed apparent scour around cobbles at WQ 4 suggesting there had been surface water flowing at this location. I continued walking downslope and observed a rock-armored ford watercourse-crossing (Photo 8) at WQ 5. I observed juncus growing at the ford crossing as well.

North of WQ 5, I observed waste oil containers, one of which was open at WQ 6 (Photo 9). I observed a watercourse approximately 100 feet north of WQ 6 (Photo 10 and Photo 11). I returned to WQ 1 and in the general vicinity I observed a fuel storage area that was covered and the tanks had secondary containment (Photo 12), a well in an enclosed structure (Photo 13), and a generator building with an impermeable floor (Photo 14). I observed generators outdoors and uncovered at WQ 7 (Photo 15) however, I did not observe any evidence that oil had leaked from the generators. I walked southwest of WQ 7 and observed another outdoor cultivation area (Photo 16).

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
WQ 1, WQ2, and south of WQ7	Cannabis cultivation areas	Approximately 1 acre of outdoor cannabis cultivation	Cannabis cultivation/discharge of waste without a report of waste discharge and/or coverage under State Water Board regulatory order	Photo 1, Photo 4, and Photo 16

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
WQ 3	Pond/suspected wetland.	Pond with outflow pipe buried in berm of excavated material.	Unauthorized dredge/fill in surface water	Photo 5 and Photo 6
WQ 5	Armored rock ford.	Armored rock ford on road that may not be needed.	Threatened discharge of waste to receiving waters	Photo 8
WQ 6	Waste oil containers	Two one-quart oil containers	Threatened discharge of waste to receiving waters	Photo 9

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:

Potting soils are spreading away from cultivation areas. The roads between WQ 1 and WQ 2 do not appear to be hydrologically connected to receiving waters; however, there is evidence that they are being eroded by stormwater at WQ 1 and WQ 2.

2. Stream crossing maintenance and improvement:

The ford crossing at WQ 4 is only partially armored with rock.

3. Stream and wetland buffers:

Cannabis cultivation areas appear to have buffers of sufficient width. Other than the excavation at WQ 3 and ford crossing at WQ 4 which are described above, I did not observe any water quality issues associated with wetland and riparian protection and management.

4. Spoils management: The material excavated from the pond/suspected wetland at WQ 3 is susceptible to erosion and transport downstream by stormwater.

5. Water storage and use: Staff did not review water storage and use at the Property.

6. Irrigation runoff: Staff did not observe water quality concerns associated with irrigation runoff.
7. Fertilizers and soil amendments: As noted above, I observed potting soils spreading outside of the cultivation area at WQ 1.
8. Pesticides: Staff did not identify any pesticides.
9. Petroleum products and other chemicals: I observed waste oil containers that were not adequately covered/contained at WQ 6, others that were adequately covered/contained in the generator building east of WQ 1. Fuels were stored appropriately in the fuel storage area pictured in Photo 12.
10. Cultivation-related wastes: Other than the potting soils spreading outside of the cultivation area at WQ 1, I did not observe any water quality issues associated with cultivation related waste.
11. Refuse and human waste: Staff did not review human waste disposal at the Property

Recommendations

1. Retain a qualified professional to develop a workplan and schedule to restore the pond/suspected wetland feature at WQ 3 to its natural state and to assess the crossing at WQ 5. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.
2. 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 hyperlink:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/wqc_docs/031616_401-Application.pdf

3. If the property owner and/or tenant(s) choose to continue to cultivate cannabis, enroll for coverage under and take steps to comply with the requirements of the Statewide General Order (Order WQ 2019-0001-DWQ, General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities). More information about the

Statewide General Order can be found at this hyperlink:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf

4. 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/

5. Remove and properly dispose waste oil containers at WQ 6 and any other refuse that may be present elsewhere on the property.
6. Provide secondary containment for equipment stored outside, such as the generators at WQ 7.

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



Photo 1—Outdoor cannabis cultivation southwest of WQ 1. Note white speckles of perlite showing that potting soils have spread away from cultivation area.



Photo 2— Looking north along road in the vicinity of WQ 1, note rill or rut on the left side of the road.



Photo 3—Looking east at road in the vicinity of WQ 2. Road discharges to cannabis cultivation area to the northwest.



Photo 4— Cannabis cultivation area in the vicinity of WQ 2.



Photo 5—Excavated pond at WQ 3



Photo 6— Berm with buried plastic outflow pipe at WQ 3.



Photo 7—Picture of ground at WQ 4. Note voids surrounding larger cobbles suggesting fine sediment had been transported by surface flow.



Photo 8—Rock armored ford at WQ 5.



Photo 9—bottles of waste motor oil on the bare ground at WQ 6. Note there is no cap of the bottle closest to the tree in the upper right of the image.



Photo 10—Looking downstream at watercourse located approximately 100 feet north of WQ 6.



Photo 11— Looking upstream at watercourse located 100 feet north of WQ 6.



Photo 12—Covered fuel storage with secondary containment.



Photo 13—Well house located southeast of WQ 1.



Photo 14—Generators and oil stored covered with impermeable floor in the vicinity of WQ 7.



Photo 15—Generators uncovered and outside at WQ 7.



Photo 16—Cannabis cultivation area southwest of WQ 7.