



North Coast Regional Water Quality Control Board

January 7, 2020

Certified Mail No. 7016 0750 0001 0048 6603

Michael Kavanaugh
2333 Harris Street
Eureka, CA 95503

Dear Mr. Kavanaugh:

Subject: Notice of Violation, Directive to Obtain Regulatory Coverage for Cannabis Cultivation, and Transmittal of Inspection Report for September 3, 2019, Inspection of Humboldt County Assessor's Parcel Nos. 107-112-001 and -002

File: Cannabis Inspections, Humboldt County, 2019, 190903 Michael Kavanaugh 107-112-001 and -002, CIWQS Place ID Nos. 861020 and 861021

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 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.

A. Background

On September 3, 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 HAZMAT, and various law enforcement personnel, inspected the subject Property.

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

5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | www.waterboards.ca.gov/northcoast

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.

Attached is a copy of the water quality inspection report (September 3, 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.

B. 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.

C. Observed Violations

As documented in the September 3, 2019 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, 13264, and/or Basin Plan section 4.2.1 Prohibitions 1 and 2 at the Property locations identified as CMP and WST1 in the September 3, 2019, inspection report.

D. 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. 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 this link: https://www.waterboards.ca.gov/water_issues/programs/cannabis/

Submit the application fee within **30 days** of submitting the on-line application. Failure to submit the application fee within 30 days will result in the application being voided and authorization terminated. Payments shall be identified using the Fee Payment Application Number (found on the Notice of Receipt). All checks or money orders shall be made payable to: "State Water Resources Control Board," and shall be delivered to:

(By US Mail):

Accounting Office
Attn: Water Quality Fees –
Cannabis General Order
P.O. Box 1888
Sacramento, CA 95812-1888

(In person or by courier delivery):

Accounting Office
Attn: Water Quality Fees –
Cannabis General Order
1001 I Street
Sacramento, CA 95814-2828

- 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
Enforcement Unit
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

OR

- 3) If you believe regulatory coverage is not required under either of the options listed above, either because you and/or your tenants elect to not resume or continue cannabis cultivation or associated activities, 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.

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.

F. Inspection Report Recommendations

As mentioned above, the September 3, 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 Ermias Berhe of your intentions, plan, and schedule to implement recommendations in the inspection report. Ermias can be reached at (707)445-6128 or, by email at Ermias.Berhe@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 Ermias Berhe 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, the 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
September 3, 2019, Water Quality Inspection Report

cc: Humboldt County
PlanningBuilding@co.humboldt.ca.us

Department of Fish and Wildlife
Cheri Sanville, Cheri.Sanville@wildlife.ca.gov
David Manthorne, David.Manthorne@wildlife.ca.gov

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

State Water Resources Control Board Division of Water Rights
Stormer Feiler, Stormer.Feiler@waterboards.ca.gov
Akiko Masuda, Akiko.Masuda@waterboards.ca.gov
David Rosas, David.Rosas@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 style="padding-left: 40px;">(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 style="padding-left: 40px;">(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

FROM: Ermias Berhe

DATE: October 8, 2019

Inspection Report for September 03, 2019, Warrant Inspection Humboldt County Assessor's Parcel Numbers 107-112-001 and -002

File: Cannabis Program Inspections, Humboldt County, September 2019 HCSO
CAMP Inspections, Michael Kavanaugh, CIWQS Place IDs 861020 and 861021

Property information:

County: Humboldt

Physical address: 2002 Doreen Drive, Honeydew, 95545

APN: **107-112-001 AND -002**

Owner: Michael Kavanaugh
2333 Harris Street
Eureka, CA 95503

Transaction History: Parcel -001: sales May 26, 2006, and October 12, 2007, from seller Marea Zendran. LandVision identifies Michael Kavanaugh as the owner of -002, as well; transaction history report shows sales December 14, 2001 from seller Eel River Sawmills Inc to Michael and Marea Kavanaugh; May 29, 2007, from sellers Maria Kavanaugh and Maria Zendran to buyer Michael Kavanaugh, and October 16, 2008, from sellers R. Scott and Christina Davies to Robert Landry III.

Size: Parcel -001: 40 acres; parcel -002: 119 acres.

Watershed: Cape Mendocino Hydrologic Unit; Mattole River Hydrologic Area (HU/HA/HSA 112.30; Table 2-1, Water Quality Control Plan for the North Coast Region).

Aerial Imagery Notes (Google Earth Pro): Roads and structures visible in earliest available imagery (June 1993). New clearing and roads visible in October 2004 on eastern part of -002; patterns suggestive of cannabis cultivation on -001. Structure on clearing on -002, August 2005. Two more clearings and a hoop house visible on -002, June 2009; additional clearing visible on -001. Additional structures on -002, and additional areas with patterning suggestive of cannabis on -001, August 2012. Additional clearing visible on -002, April 2019.

Regulatory status with the Regional Water Board:

Site Development: N/A

Applicable programs: 401 Water Quality Certification

Onsite activities/operations: N/A.

Applicable programs: Cannabis cultivation waste discharge regulatory program, State Water Board Order WQ 2019-0001-DWQ.

Inspection information:

Date/time: September 03, 2019

Type: Humboldt County Sheriff's Office (HCSO)/Campaign Against Marijuana Planting (CAMP) Warrant Inspection

Attendance:

David Manthorne, ES, CDFW

Akiko Masuda, ES, Division of Water Rights (DIV)

David Rosas, ES, Division of Water Rights (DIV)

Adona White, WRCE North Coast Regional Water Quality Control Board (NCRWQCB)

Ermias Berhe, EG, NCRWQCB Staff,

Humboldt County HAZMAT

Multiple Law Enforcement Officials (LEO), HCSO

Multiple LEOs, CAMP

Multiple LEOs, CDFW

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), Humboldt County HAZMAT, and personnel from various law enforcement agencies in four days of inspections of multiple cannabis cultivation sites in Humboldt County, on September 3-6, 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

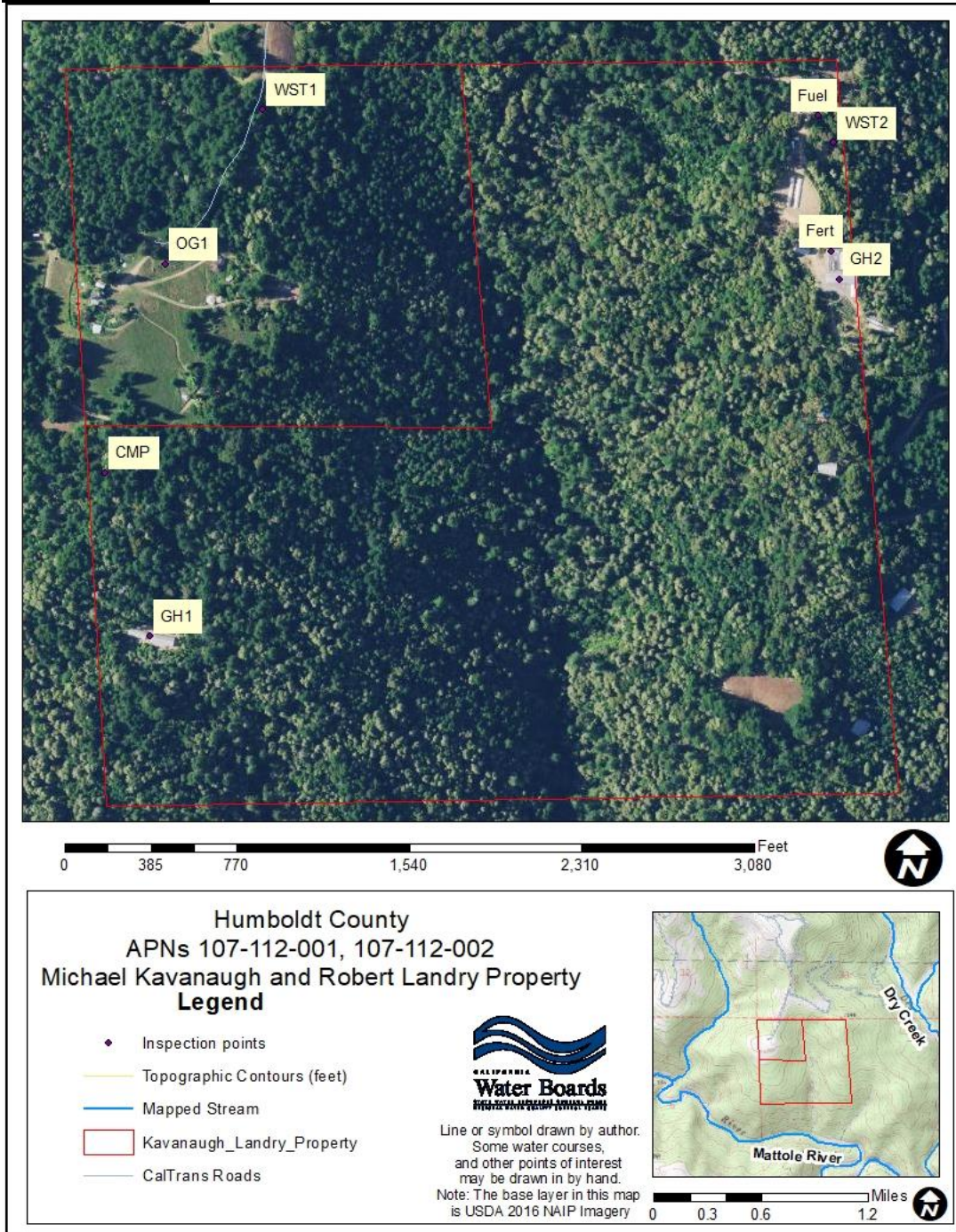


Figure 1, Inspection map with inspection points

Inspection Observations:

On September 3, 2019, I inspected the subject property. Figure 1, above, shows the inspection points discussed below, including inspection points GH1, CMP, OG1, WST1, Fuel, WST2, Fert, GH2. In addition to those features marked on the inspection map, we observed and photo-documented other issues of water quality concern.

OG1 (photo 3), the first cannabis cultivation area we inspected, was located about 500 feet east of the northwestern property line. This area has a flat topography covering an approximate area of 5,000 square feet. GH1 (Photo 4) is a greenhouse located at the southwestern part of the property, with a total area of approximately 2,500 square feet.

CMP, just south of OG1, (photo 1) is a culverted stream crossing, not properly constructed to provide stable conveyance for stream flows. It is longer than the road prism on the outlet side causing erosion to the streambed of a class III watercourse, threatening sediment delivery.

WST1 and WST2 (Photo 2 and Photo 6) are water storage tanks located on the northwestern and northeastern parts of the property respectively. The tanks at WST1 are positioned on a steep slope and pose a threat to water quality in times of storm events.

Fuel (Photo 5), located near the northeastern corner of the property, is a structure providing a roof and secondary containment for petroleum storage, with a generator in a trailer parked alongside. Just south of the fuel and water storage at Fuel and WST2, I observed a cultivation area with food agriculture greenhouses, including GH2 (Photo 8), a greenhouse with cannabis cultivation area of approximately 300 square feet. In this area, I observed a fertilizer storage area (Fert) that appeared to provide adequate cover and containment (Photo 7).

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
CMP	Culverted stream crossing	Road built through Class III water course; evidence of sediment delivery.	Discharge and threatened discharge of waste to waters of the state	Photo 1

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
WST1	Water storage tanks	Water storage tanks placed on a steep slope	Threatened discharge	Photo 2
GH1, GH2 and OG1	Cannabis cultivation areas	2 greenhouses and one open cultivation area with active cannabis cultivation	Cannabis cultivation without report of waste discharge and/or enrollment in Water Boards cannabis program.	Photos 3,4 and 8

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: I observed no evidence of water quality concerns associated with site maintenance, erosion control and drainage features.

2. Stream crossing maintenance and improvement: I observed a stream crossing (CMP) on the access road to the property; as discussed above. CMP is poorly constructed culverted crossings, causing or resulting in active discharge of sediment to class III water course.

3. Stream and wetland buffers: I observed no evidence of water quality concerns associated with proximity of cultivation areas to streams or wetlands.

4. Spoils management: I observed no evidence of water quality issues associated with spoils management.

5. Water storage and use: As noted above, the water storage tanks at WST1 are on a steep, unstable location which may fail and deliver sediment to waters of the state.

6. Irrigation runoff: I observed no evidence of water quality issues associated with crop irrigation practices.

7. Fertilizers and soil amendments: I observed no evidence of water quality issues associated with fertilizers and soil amendments storage and use.

8. Pesticides: I observed no evidence of water quality concerns associated with storage and use of pesticides.

9. Petroleum products and other chemicals: I observed no evidence of water quality concerns associated with petroleum and other chemicals.

10. Cultivation-related wastes I observed no evidence of water quality concerns associated with cultivation related wastes.

11. Refuse and human waste: I observed no evidence of water quality concerns associated with storage/containment of refuse. I did not observe or review human waste collection/disposal features or facilities.

Recommendations:

1. Retain a licensed professional to inventory, assess, and develop a workplan and schedule to implement measures to ensure that all developed features, roads, watercourse crossings, and cultivation areas throughout the Property are corrected, restored, and/or maintained in conditions that prevent or minimize erosion, sediment transport/delivery, and adverse impacts to water quality and beneficial uses. Include measures to ensure that unstable features caused or affected by onsite development and operations are removed or otherwise protected so as to minimize the potential for these features to cause adverse impacts to water quality and beneficial uses. 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 CANGO (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 CANGO 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/

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 Culverted stream crossing at inspection point CMP



Photo 2 water storage tanks at inspection point WST1



Photo 3, Open grow at inspection point OG1



Photo 4, Green house at inspection point GH1



Photo 5, Petroleum and generator at inspection point Fuel



Photo 6, Water storages at inspection point WST2



Photo 7, Fertilizers at inspection point Fert



Photo 8, Green house at inspection point GH2