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## North Coast Regional Water Quality Control Board

June 20, 2020

Certified Mail No. 7016 2710 0000 2653 2572

Mazari Farms Inc. and  
Flore Farms Inc.  
Tobias Hafenecker-Dodge  
60 Rausch Street #208  
San Francisco, CA, 94103  
[lastresortsvip@gmail.com](mailto:lastresortsvip@gmail.com)  
[tobiasdodge@mac.com](mailto:tobiasdodge@mac.com)

Dear Tobias Hafenecker-Dodge:

Subject:     **Notice of Violation**

File:         Tobias Hafenecker-Dodge, Cannabis Waste Discharge Regulatory  
Program, CIWQS Place ID No. 823853, Cannabis General Order,  
WDID 1\_12CC403261

The purpose of this letter is to notify you that #1 Tooby RD LLC, #3 Tooby RD LLC, Mazari Farms Inc., Flore Farms Inc. and you (collectively, Dischargers) are in violation of the requirements listed below, and cited in Attachment A, at the property identified as Humboldt County Assessor's Parcel Numbers: 223-074-004-000 and 223-074-009-000, (the Property).

1. State Water Resources Control Board Order WQ 2019-0000-DWQ General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order) various provisions,
2. Water Quality Control Plan for the North Coast Region (Basin Plan) section 4.2.1,
3. The Porter-Cologne Water Quality Control Act (Porter-Cologne, or Water Code) sections 13260, and 13264.

### Background

On May 5, 2020, Regional Water Board staff inspected the property. The report of this inspection (Inspection Report, Attachment B) identifies five locations of unauthorized work in waters of the state of California that resulted in the placement of waste concrete in these watercourses. The Inspection Report also identifies segments of roads and

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

watercourse crossings, that continue to threaten to discharge sediment to waters of the state of California at other locations on the property.

### Relevant Requirements

During the inspection, 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 violations of the California Water Code, the Basin Plan and the Cannabis General Order as summarized in the below table:

**Table 1. Summary of violations documented by Staff during May 7, 2019 Inspection.**

<b>Locations<sup>1</sup></b>	<b>Violation types</b>
Road Points 49, 50, 51, 55 and 56	Cannabis General Order, Basin Plan Prohibition 1, Porter Cologne 13260, 13264
Site 5, Site 1, and the roads between Site 2 and Site 4	Cannabis General Order, Basin Plan Prohibition 2

### Site Management Plan (SMP)

Pursuant to the Cannabis General Order, all enrollees must submit a Site Management Plan within 90 days of enrollment. It has been more than 90 days since you enrolled your Property for coverage under the Cannabis General Order; to date, we have not received an acceptable SMP.

### Potential Liabilities

The Regional Water Board reserves the right to take any enforcement action the law allows. Additionally, enrollment in the Cannabis General Order does not relieve you of responsibility to obtain other necessary local, state, or federal permits, nor does the Cannabis General Order prevent imposition of additional standards, requirements, or conditions by any other agency. In the event of duplicate or conflicting requirements, the most stringent requirement applies.

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<sup>1</sup> Sites and Road Points are identified on the map located on page 4 of the Inspection Report included as Attachment B.

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.

An actual discharge to waters of the state, including waste discharges in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued by a regional board may subject a person to an administrative liability up to \$5,000 per day of violation for each violation, or \$10 for each gallon of waste discharged pursuant to Water Code section 13350 or up to \$10 per gallon for each gallon over 1,000 gallons not cleaned up, and up to \$10,000 per day per violation pursuant to Water Code section 13385.

Additionally, pursuant to Water Code sections 13261 and 13265, it is the Regional Water Board's intent for this Notice of Violation to constitute the type of notice that is required as a condition precedent to the potential penalties described therein.

### **Inspection Report Recommendations**

The Inspection Report provides recommendations to correct violations, as well as to address features and conditions that threaten to impact water quality. Any work in waters of the state, including streams or wetlands, requires a water quality certification prior to conducting the work. To obtain such certification requires the applicant to submit a complete application<sup>2</sup> and pay a fee, which are in addition to the fees paid for enrollment in the Cannabis General Order. Failure to obtain such certification may subject the responsible parties to additional civil liabilities. **Within 30 days of the date 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](mailto: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

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<sup>2</sup> Requirements for a complete application can be found in the California Code of Regulations Title 23. Waters Division 3 State Water Resources Control Board Chapter 28. Certifications:  
[https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/401regs.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/401regs.pdf)

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 Brian Fuller at the phone number or email above. You may also contact me at [Diana.Henriouille@waterboards.ca.gov](mailto: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, the Inspection Report, or our waste discharge regulatory programs in further detail.

Sincerely,

Diana Henriouille, P.E.  
Enforcement Unit

200720\_BMF\_er\_Hafenecker-Dodge NOV

Certified Mail – Return Receipt requested

Attachments: Attachment A – Regulatory Citations  
Attachment B – Water Quality Report of May 7, 2019 Inspection

cc:

**Consultants for the Discharger**

Mike Atkins, Mad River Properties Inc., [mike@madriverpropertiesinc.com](mailto:mike@madriverpropertiesinc.com)

**Department of Fish and Wildlife**

Kalyn Bocast, [Kalyn.Bocast@wildlife.ca.gov](mailto:Kalyn.Bocast@wildlife.ca.gov)

Warden Bradley Padilla, [Bradley.Padilla@wildlife.ca.gov](mailto:Bradley.Padilla@wildlife.ca.gov)

**Department of Food and Agriculture**

Rebecca Garwood, [Rebecca.Garwood@cdfa.ca.gov](mailto:Rebecca.Garwood@cdfa.ca.gov)

**North Coast Regional Water Quality Control Board**

Brian Fuller, [Brian.Fuller@waterboards.ca.gov](mailto:Brian.Fuller@waterboards.ca.gov)

Adona White, [Adona.White@waterboards.ca.gov](mailto:Adona.White@waterboards.ca.gov)

Diana Henriouille, [Diana.Henriouille@waterboards.ca.gov](mailto:Diana.Henriouille@waterboards.ca.gov)

Kason Grady, [Kason.Grady@waterboards.ca.gov](mailto:Kason.Grady@waterboards.ca.gov)

Claudia Villacorta, [Claudia.Villacorta@waterboards.ca.gov](mailto:Claudia.Villacorta@waterboards.ca.gov)

Hafenecker-Dodge Property  
Notice of Violation  
CIWQS Place ID. 823853

- 5 -

July 20, 2020

**County of Humboldt**

Rodney Yandell, [RYandell@co.humboldt.ca.us](mailto:RYandell@co.humboldt.ca.us)

Cliff Johnson, [CJohnson@co.humboldt.ca.us](mailto:CJohnson@co.humboldt.ca.us)

**State Water Resources Control Board, Division of Water Rights**

Stormer Feiler, [Stormer.Feiler@waterboards.ca.gov](mailto:Stormer.Feiler@waterboards.ca.gov)

**State Water Resources Control Board, Office of Enforcement**

Andrew Tauriainen, [Andrew.Tauriainen@waterboards.ca.gov](mailto:Andrew.Tauriainen@waterboards.ca.gov)

Attachment A – Regulatory Citations

Attachment A – Regulatory Citations <b>Regulatory Section</b>	<b>Citation</b>
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>

Attachment A – Regulatory Citations

Attachment A – Regulatory Citations <b>Regulatory Section</b>	<b>Citation</b>
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>
California Water Code Section 13265(a)	<p>“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.”</p>
California Water Code Section 13350	<p>“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).”</p>

Attachment A – Regulatory Citations

Attachment A – Regulatory Citations <b>Regulatory Section</b>	<b>Citation</b>
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.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 1, Cannabis General Water Quality Certification— Term 4	“[a] cannabis cultivator seeking water quality certification coverage for activities in surface waters shall notify the Executive Officer of the Regional Water Board or State Water Board Executive Director at least 60 days prior to commencement of the activity and submit information regarding the construction schedule and other relevant information. Work may not commence until the cannabis cultivator is provided authorization by the appropriate Executive Officer of the Regional Water Board or Executive Director of the State Water Board. The Executive Officer of the Regional Water Board or Executive Director of the State Water Board may include specific monitoring requirements for turbidity and other constituents that may be associated with the activity to ensure applicable state water quality standards are met.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2 –Term 3	“[c]annabis cultivators shall not drive or operate vehicles or equipment within the riparian setbacks or within waters of the state unless authorized under 404/401 CWA permits, a CDFW LSA Agreement, coverage under the Cannabis Cultivation General Order water quality certification, or site-specific WDRs issued by the Regional Water Board. This requirement does not prohibit driving on established, maintained access roads that are in compliance with this Policy.”

Attachment A – Regulatory Citations

Attachment A – Regulatory Citations <b>Regulatory Section</b>	<b>Citation</b>
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 15	“[a]ccess roads shall be constructed consistent with the requirements of California Code of Regulations Title 14, Chapter 4. The Road Handbook describes how to implement the regulations and is available at <a href="http://www.pacificwatershed.com/PWA-publications-library">http://www.pacificwatershed.com/PWA-publications-library</a> . Existing access roads shall be upgraded to comply with the Road Handbook.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 17	“[c]annabis cultivators shall ensure that all access roads are hydrologically disconnected to receiving waters to the extent possible by installing disconnecting drainage features, increasing the frequency of (inside) ditch drain relief as needed, constructing out-sloped roads, constructing energy dissipating structures, avoiding concentrating flows in unstable areas, and performing inspection and maintenance as needed to optimize the access road performance.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 19	“[c]annabis cultivators shall decommission or relocate existing roads away from riparian setbacks whenever possible. Roads that are proposed for decommissioning shall be abandoned and left in a condition that provides for long-term, maintenance-free function of drainage and erosion controls. Abandoned roads shall be blocked to prevent unauthorized vehicle traffic.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 20	“[i]f site conditions prohibit drainage structures (including rolling dips and ditch-relief culverts) at adequate intervals to avoid erosion, the cannabis cultivator shall use bioengineering techniques as the preferred measure to minimize erosion (e.g., live fascines). If bioengineering cannot be used, then engineering fixes such as armoring (e.g., rock of adequate size and depth to remain in place under traffic and flow conditions) and velocity dissipaters (e.g., gravel-filled “pillows” in an inside ditch to trap sediment) may be used for problem sites. The maximum distance between water breaks shall not exceed those defined in the Road Handbook.”

Attachment A – Regulatory Citations

Attachment A – Regulatory Citations <b>Regulatory Section</b>	<b>Citation</b>
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 26	“[c]annabis cultivators shall ensure that access roads are not allowed to develop or show evidence of significant surface rutting or gulying. Cannabis cultivators shall use water bars and rolling dips as designed by a Qualified Professional to minimize access road surface erosion and dissipate runoff.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 31	“[c]annabis cultivators shall ensure that all permanent watercourse crossings that are constructed or reconstructed are capable of accommodating the estimated 100-year flood flow, including debris and sediment loads. Watercourse crossings shall be designed and sized by a Qualified Professional.”
Cannabis General Order Attachment A, Cannabis Cultivation Policy, Section 2, Term 59	“[c]annabis cultivators shall store erodible soil, soil amendments, and spoil piles to prevent sediment discharges in storm water. Storage practices may include use of tarps, upslope land contouring to divert surface flow around the material, or use of sediment control devices (e.g., silt fences, straw wattles, etc.).”
Cannabis General Order Attachment A, Cannabis Cultivation Policy, Section 2, Term 62	“[c]annabis cultivators shall haul away and properly dispose of excess soil and other debris as needed to prevent discharge to waters of the state.”



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## North Coast Regional Water Quality Control Board

TO: Diana Henriouille

FROM: Brian Fuller

DATE: May 12, 2020

**Inspection Report for May 5, 2020 Consent Inspection,  
Humboldt County Assessor's Parcel Numbers (APNs) 223-074-004-000,  
223-074-006-000, and 223-074-009-000 (the "Property")**

File: Cannabis Program Inspections, Humboldt County, May 5, 2019, Tobias Hafenecker-Dodge Property, CIWQS Place ID 823853

**Property information:**

County: Humboldt

APN 223-074-004-000

Size: 160 acres

Owner: 1 Tooby RD LLC

APN 223-074-009-000,

Size: 160 acres

Owner: 3 Tooby RD LLC

APN 223-074-006-000

Size: 80 acres

Owner: Kenneth Bullock

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)

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

Site development: There was no regulatory coverage with the Regional Water Board for site development on the property.

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

5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | [www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)

Applicable programs:

- State Water Resources Control Board Order 2009-0009-DWQ Construction general permit, for construction disturbing an acre or more of land.
  - Regional Water Board's Clean Water Act section 401 Water Quality Certification permit for dredge/fill activities in a surface water.
- or
- Appendix D to the Regional Water Board Order R1-2015-0023 (Regional Cannabis Order).

Onsite activities/operations:

- On June 22, 2016, Tobias Hafenecker-Dodge enrolled parcels 223-074-004 and 223-074-009 as a Tier 2 site under Order No. R1-2015-0023 (Regional Cannabis Order) and was assigned WDID: 1B16290CHUM.
- On July 2, 2018, Tobias Hafenecker-Dodge transferred enrollment of the Property from the Regional Cannabis Order to Order WQ 2017-0023-DWQ (Cannabis General Order) and was assigned WDID 1\_12CC403261.
- On July 1, 2019, Tobias Hafenecker-Dodge submitted an application change, changing his enrollment status in the Cannabis General Order from Tier 1 Low Risk to Tier 2 High Risk.

**Inspection information:**

Date/time: May 5, 2020/8am -3pm

Type: Follow-up (enforcement) Inspection.

Attendance:

Tobias Hafenecker-Dodge  
Jasmin Barraze Guerra  
Mike Atkins, Mad River Properties INC.  
Marlen Richmond, California Department of Food and Agriculture (CDFA)  
Shannon Walkenhauer CDFA  
Kalya Bocast, California Department of Fish and Wildlife (CDFW)  
Warden Bradley Padilla, CDFW  
Brian Fuller, Regional Water Board

Background/Objective:

On September 27, 2019, Division Supervisor Kason Grady, on behalf of the Executive Officer of the Regional Water Board, issued Cleanup and Abatement Order No. R1-2019-0051 (CAO) to Tobias Hafenecker-Dodge, #1 Tooby RD LLC, #3 Tooby RD LLC,

Mazari Farms Inc., and Flore Farms Inc., (the “Dischargers”). The CAO pertains to observed discharges and threatened discharges to receiving water associated with constructed features on the Property—including a failing instream reservoir—that do not have adequate erosion and sediment controls and that were constructed without authorization from applicable federal, state, and local agencies.

On November 20, 2019, Regional Water Board staff transmitted to the Dischargers a Notice of Violation of the above-referenced CAO Required Actions No. 1.b-d., for failure to submit a complete and acceptable Interim Plan by October 7, 2019, and Required Action No. 2, for failure to Implement an Interim Plan by October 21, 2019.

On November 21, 22, and 23, 2019, Mr. Hafenecker-Dodge emailed pictures showing work performed in response to Required Action No 1.a. These emails did not address Required Actions No. 1.b-d.

On December 2, 2019, the Dischargers’ consultant, A.M Baird Engineering and Surveying INC. (A.M Baird Engineering), emailed a report entitled “As Built Roadway Winterization Report” (Winterization Report). The Winterization Report includes pictures of armored segments of road and aggregate in watercourses, and proposes adding a water bar and more aggregate at the culvert locations. The Winterization Report does not include the components listed in Required Actions No. 1.b-d. Regional Water Board staff did not reply to nor comment on this Report.

On March 19, 2020, Regional Water Board staff sent Mr. Hafenecker-Dodge an email asking about the status the Cleanup, Restoration, and Monitoring Plan (CRMP) that had been due by March 15, 2020. Mr. Hafenecker-Dodge did not respond.

On March 24, 2020, Regional Water Board staff issued to the Dischargers a Notice of Violation of the CAO Required Action No. 4., for their failure to submit a proposed CRMP by March 15, 2020.

To date, the North Coast Regional Water Quality Control Board has not received the required CRMP. Mr. Hafenecker-Dodge has requested an extension of the CAO deadline for the CRMP, but to date, he has not provided adequate justification for the delay, pursuant to directive 7 in the General Requirements and Notices section of the CAO.

### Inspection Map

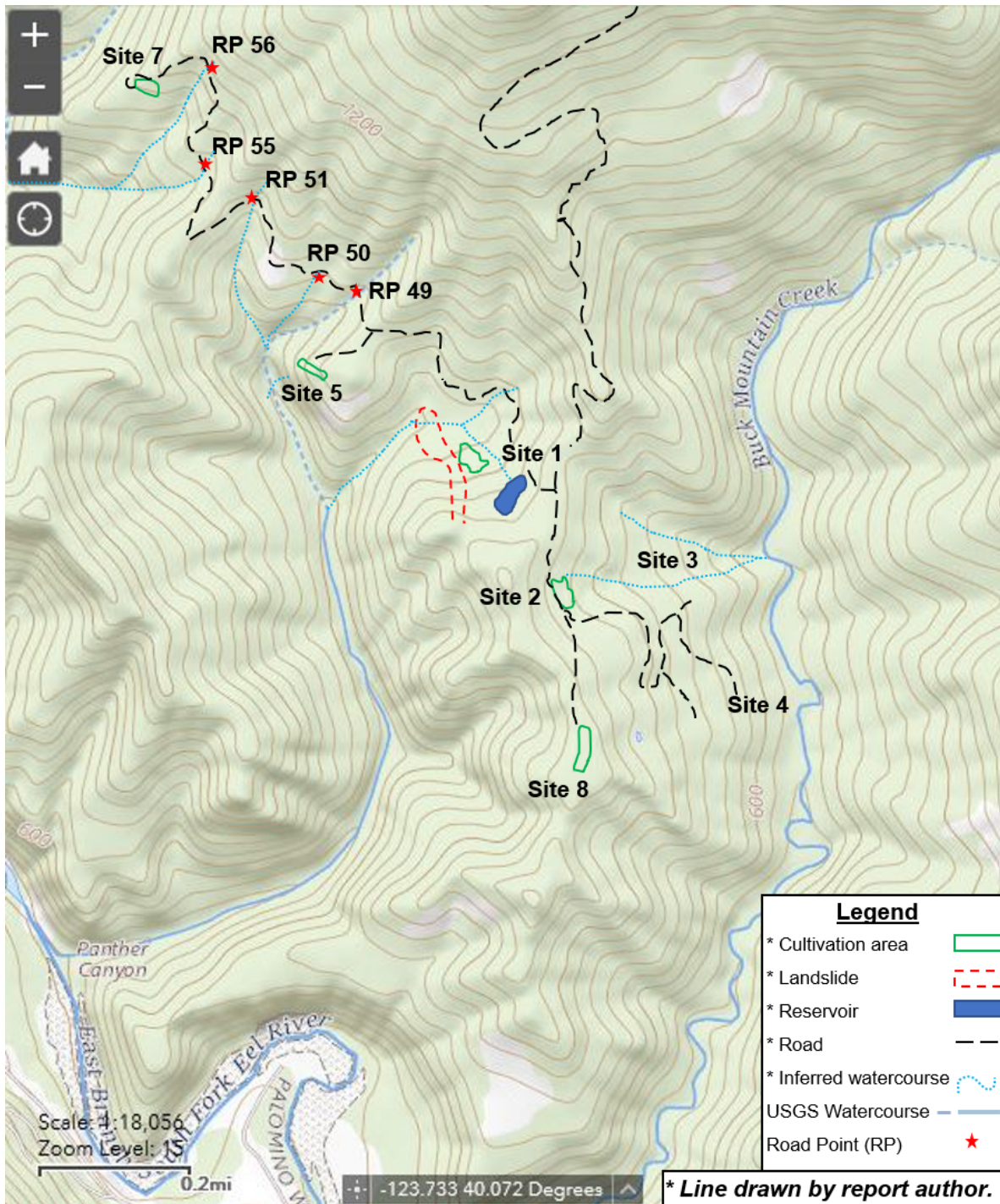


Figure 1: Annotated map of property from USGS National Map Viewer<sup>1</sup>. Site numbering follows that of report of April 10, 2018 inspection. Road Points numbering follows that presented in the dischargers June 5, 2018 Road Plan.

<sup>1</sup> <https://viewer.nationalmap.gov/advanced-viewer/>

**Inspection Narrative:**

Inspection attendees met at the turn-off from Alderpoint Road in the vicinity of latitude 40.107812, and longitude -123.747553. We followed Mr. Hafenecker-Dodge onto the property and parked vehicles near his house, south of Site 1 (refer to Figure 1, inspection map, above). At this location, I asked Mr. Hafenecker-Dodge for permission to take photos on the property, and he agreed. We then discussed the nearby reservoir; Mr. Hafenecker-Dodge reported that the County had agreed to permit the reservoir. I explained that the Regional Water Board had issued Mr. Hafenecker-Dodge a cleanup and abatement order which included a requirement that he submit plans by March 15, 2020, to remove the reservoir and restore the stream channel, as well as other features property-wide.

Mr. Hafenecker-Dodge reported that the Water Boards had earlier said he could keep the reservoir and that he had not received consistent guidance from regulators about how to rectify the violations on the property. Mr. Hafenecker-Dodge appeared to be referencing discussions he had had with staff from the Division of Water Rights. Ms. Bocast explained to Mr. Hafenecker-Dodge that, independent of conversations he may have had with staff from the Division of Water Rights, he needed authorization from CDFW and the Regional Water Board to maintain the unpermitted onstream feature.

We then agreed to look at the northern part of the property first. While driving to Site 7, I observed five new culverts that had been installed where the road crossed watercourses. When we arrived at Site 7, I explained to Mr. Hafenecker-Dodge that permits from the Regional Water Board (Water Quality Certifications or WQC) were required prior to installing the culverts. Mr. Hafenecker-Dodge asked if he could obtain retroactive permits and I replied “no”; however, I said I would inspect the culverts and include my observations in a report.

I had last inspected Site 7 on April 10, 2018. During that inspection I identified water seeping from a cut-bank onto the road, and an incising inboard ditch. During the May 5, 2020 inspection, I observed that earthen material had still been seeping onto the road in the past year (Photo 1), however rock had been added to prevent the road from eroding at the location of the seep and along the steep section of road approaching the site (Photo 2). Additionally, a ditch relief culvert (DRC) had been added (Photo 3) directing stormwater away from the inboard ditch.

I observed active cannabis cultivation operations at Site 7 (Photo 4), as well as piles of uncontained refuse (Photo 5). From Site 7, Mr. Hafenecker-Dodge and CDFA staff proceeded to the next cultivation site while Mr. Atkinson, CDFW staff, and I inspected the new DRC and the five new culverted watercourse crossings.

The five new culverts between Sites 5 and 7 correspond with road points 49, 50, 51, 55 and 56 in an erosion control plan provided by Mr. Hafenecker-Dodge to the Regional Water Board on June 5, 2018 (Road Plan). The culverts appeared to be adequately aligned with the stream channels, and their diameters approximated what was proposed

in the Road Plan. However, the inlets and outlets were armored with 2 – 6 inch rock that seemed too small (Photo 6); the Road Plan called for 12 – 24 inch rock. Additionally, a significant proportion of the rock was composed of recycled concrete (Photo 6).

We reconvened with CDFW staff at Site 5. I observed a steep, unarmored road accessing the site (Photo 7), and a swale at the end of the road. I observed the cultivation area was approximately 10 feet from the swale (Photo 8). There were nearby piles of cultivation waste, and bags of soil amendments were partially buried in the swale (Photo 9). I followed the swale to a point 170 feet downstream, where I observed a scoured channel bed (Photo 10). Downstream from this location, the channel continued over a steep drop and into Panther Canyon, 100 feet away.

We next went to the earthen pad with a nursery, northwest and downstream from the reservoir at Site 1 (the “Glass House”). Here I observed that the cultivation waste from previous years had been cleaned up (Photo 11 through Photo 14). I observed that roof gutters had been installed (Photo 15 and Photo 16), discharging stormwater to the hillslope east of the glass house, instead of allowing it to run off the roof and transport waste potting soils to receiving waters, as I had observed in previous years. I also noted that the large pile of imported potting soils that I had observed north of the Glass House in previous years was no longer there (Photo 14 and Photo 15). On the hillslope east of the Glass House, I observed wattles (Photo 17); however, close examination showed substantial perlite below the wattles, suggesting they overlaid potting soil spoils. I had observed in previous years that the watercourse east of the Glass House pad had aggraded with fine sediment two or more feet deep and that a pulse of incision had begun migrating upstream through the aggraded fine sediment. During the May 5, 2020 inspection, I observed haybale dams spanning the channel (Photo 18).

Mr. Atkins and I then proceeded to the crest of the reservoir impounding berm. I observed that the surface of the lowered weir was composed of loose, fine gravel, and Mr. Atkins suggested the water level in the reservoir had never reached the weir crest during the past wet weather season. Mr. Hafenecker-Dodge joined us at the dam crest, and I explained that the lowering of the weir was meant to be a temporary solution to prevent the buttress from failing during the previous wet-weather season, but that a plan was required to remediate the area. Mr. Hafenecker-Dodge responded that AM Baird Engineering had done this work. I replied that the previous fall, when I had explained to Peter Seidel with AM Baird Engineering that a property-wide interim plan was needed at that time and a final restoration plan was needed on March 15, 2020, Mr. Seidel had told me that AM Baird Engineering was only under contract for the lowering of the weir. Mr. Atkins suggested to Mr. Hafenecker-Dodge that he reengage with Trinity Valley Consulting Engineers, Inc. (TVCE), who had been developing property-wide restoration plans.

CDFW staff joined us at the dam crest and we then proposed to look at the former cultivation area west of the reservoir, however the path was blocked by landslide material that prevented us from walking directly there. We walked back to the vehicles

southeast of the reservoir, and I drove to Site 3. Here I did not note any material changes to the roads or cultivation area since the previous year (Photo 21). I walked east along the road leading to Site 4 with Mr. Atkins and CDFW staff, and I observed that the same road drainage problems observed along this stretch in previous years had not been addressed (Photo 22 through Photo 27). I then left Mr. Atkins and CDFW staff to retrieve my vehicle, and I drove to the easternmost road west of Buck Mountain Creek, which exits the property to the south to check a culvert (Photo 28) which I had observed in previous years. This culvert receives flows from two watercourses that are incising both upstream and downstream from the culvert. In a nearby clearing bordering the road, there are uncontained cultivation materials (Photo 29). The road in this area, and continuing south, has rills and ruts and appears to be rarely used and poorly maintained.

I drove back north along the road, parked and walked to Site 3 ("Shady Grove"), where I met back up with CDFW staff. Here I observed more cultivation waste had been removed from a watercourse (Photo 30) since the previous year; there were now three covered piles surrounded by wattles (Photo 31). I observed perlite in the watercourse throughout the area (Photo 30).

After making observations at Site 3, I drove to Site 8, noting along the way that the ruts on the steep section of road, observed during the previous year, had now been repaired. I observed cannabis cultivation operations at Site 8. I then drove north and turned west down a road that led to a large water storage tank above Site 1. From the tank, I walked northwest along a foot path to the head-scarp of the landslide that passes to the west of the reservoir and the Glass House (Photo 32). From this location I looked across a small valley to the west, and observed the former cultivation area, which had weeds growing on it, and did not look like it had been used recently. I walked back to the water tank and met with Mr. Hafenecker-Dodge. I advised Mr. Hafenecker-Dodge that I had finished my inspection and asked if we could reconvene with CDFA staff to have a closing discussion about the inspection.

Inspection participants reconvened at Site 1. I reiterated to Mr. Hafenecker-Dodge that the Regional Water Board had issued a CAO requiring plans and work to be submitted and completed by set dates. I explained that noncompliance with CAO directives was an enforcement priority for the Regional Water Board, and that Mr. Hafenecker-Dodge may be liable for significant penalties. Mr. Hafenecker-Dodge replied that he could not restore the area of the existing reservoir until he had other water storage built, and that the Water Boards had not approved other locations for water storage. I replied that I did not recollect receiving a proposal for alternative water storage locations. Ultimately, Mr. Hafenecker-Dodge stated that he intended to comply with the requirements of the CAO and he expected to contact his engineers/consultants within a week to begin compiling the plans.

## **Discussion**

### Culverts replaced without permits:

In my email correspondence with Mr. Hafenecker-Dodge as early as July 30, 2018, I have advised him that he must get permits from the Regional Water Board for any instream work. In summer 2019, TVCE advised Regional Water Board staff they were working on WQC applications for the proposed instream work on the property. Mr. Hafenecker-Dodge reportedly fired TVCE before they submitted the applications. In a fall 2019 telephone call with Mr. Hafenecker-Dodge, I discussed with him implementing measures to prevent his reservoir from failing. During the conversation, Mr. Hafenecker-Dodge mentioned six culverts that he was going to replace, per CDFW requirements. I did not talk about the culverts and instead steered the conversation back to preparing the reservoir for the upcoming wet weather season.

Five of the six culverts that had been installed on APN 223-074-009-000 were instream and would have required Clean Water Act section 401 water quality certification (WQC), or waiver thereof, from the Regional Water Board. Through the application process for this permit, the Regional Water Board staff could have provided guidance about the rock size and type used to armor the watercourse. Instead, as part of the unpermitted work, Mr. Hafenecker-Dodge, or his agent(s), used small rock, which may transport downstream during high flow events, leaving the watercourse in the vicinity of the culvert outlets exposed and susceptible to erosion and scouring, and eroding unarmored channel segments downstream. Additionally, a large amount of waste concrete had been placed in the watercourses. Concrete may contain hazardous materials, such as fly ash.

### The Glass House:

The areas north and west of the Glass House had been substantially cleaned up compared to previous years; however, there appeared to be a substantial amount of imported potting soils and cultivation waste underlying straw and wattles on the eastern berm of the Glass House pad. These materials continue to threaten to discharge to the watercourse below.

Hay bales had been installed in the watercourse east of the Glass House without a WQC or a submitted plan. The hay bales were apparently installed to prevent the downstream transport of fine sediment which was likely deposited in the watercourse when the area was developed in 2015.

### The Reservoir or Enlarged Pond

Lowering the weir has decreased the capacity of the reservoir, however the pond buttress is still too steep—threatening failure—and the feature continues to encroach on aquatic resources.

Roads:

As documented during previous inspections, the roads between Sites 2 and 4 need to be reshaped, and culverts must be installed or upgraded. The road east of Site 4, and continuing south of the property, appears to be rarely used and poorly maintained.

Site 3 Shady Grove:

A significant amount of imported potting soils remain in the eastern watercourse. The road accessing Site 3 has a ford-type watercourse crossing.

**Required permits and plans:**

a) Clean Water Act section 401 Water Quality Certification (WQC)

All work conducted in waters of the state of California, including removal/replacement of culverts, requires a WQC from the Regional Water Board. Application for Water Quality Certification under the Cannabis General Order can be found at the following website:

[https://www.waterboards.ca.gov/northcoast/water\\_issues/programs/cannabis/pdf/200204/RB1\\_Cannabis\\_WQC\\_401\\_App.pdf](https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/200204/RB1_Cannabis_WQC_401_App.pdf)

b) Site Management Plan; Disturbed Area Stabilization Plan; and Site Erosion and Sediment Control Plan

As discussed above, the Property is enrolled for coverage as a Tier 2, High Risk site under the Cannabis General Order. Accordingly, the dischargers must submit a Site Management Plan (SMP), Disturbed Area Stabilization Plan (DASP), and Site Erosion and Sediment Control Plan (SESCP). Attachment D to the Cannabis General Order provides general guidance for preparing these plans:

[https://www.waterboards.ca.gov/water\\_issues/programs/cannabis/docs/finaladoptedcan-go101717.pdf#page=123](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/finaladoptedcan-go101717.pdf#page=123)

c) Cleanup, Restoration, and Monitoring Plan (CRMP)

Cleanup and Abatement Order No. R1-2019-0051 requires the dischargers to submit a CRMP by March 15, 2020. As discussed above, to date, the dischargers have failed to submit the CRMP. Pages 13 and 14 of the CAO provide information about the required components of the CRMP. The CAO is available for reference at the following web location:

[https://www.waterboards.ca.gov/northcoast/board\\_decisions/adopted\\_orders/pdf/2019/19\\_0051\\_Tobias\\_Hafenecker\\_Dodge\\_CAO.pdf](https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2019/19_0051_Tobias_Hafenecker_Dodge_CAO.pdf)

Ensure that these plans include/address the following recommendations, as applicable.

**Recommendations:**

- At Site 5, remove the soil amendments from the swale and implement housekeeping measures to prevent waste from being transported down the swale and into Panther Canyon.
- For the Glass House Site, include a plan to remove the sediment from the watercourse and a long-term solution for stabilizing the banks of the pad occupied by the Glass House, as part of the CRMP and the application for WQC.
- For the Reservoir or Enlarged Pond, include a plan to remediate the area, as part of the CRMP and the application for WQC.
- For the roads, include a plan to control erosion and prevent sediment transport and delivery to receiving waters, a timeline for implementing this work as part of the CRMP, and the application for WQC for all Instream work locations associated with culvert installation/replacement.
- For the Shady Grove site, propose a plan to remove waste potting soils without adversely affecting the watercourse channel bed and bank. The plan should include a proposed timeline for doing the work, a permanent location for disposing of the imported potting soils, and a description of what equipment will be used and how it will access the area. The plan should include remediating or decommissioning the road accessing the site. The work will require a WQC. The Shady Grove site is not part of the area covered by the CAO, however the discharger may opt to include a restoration plan for this area with the CRMP, or the discharger may provide a separate plan/schedule to address that area.
- Include plans for water quality threats identified in previous inspection reports, or through site assessments by qualified professionals that may also be within the scope of work required in the CRMP even if I did not observe those features during the May 5 inspection or include them in this report.

**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—Looking east along the road accessing Site 7. Dried clumps of earth on road's cut-bank suggests water continues to seep seasonally from the area from a watercourse that infiltrates the earthflow material to the left of the image.*



*Photo 2—Looking northeast up a partially rocked road used to access Site 7 which is to the back-right of the photographer. Note small rolling dip in road at the center of image.*



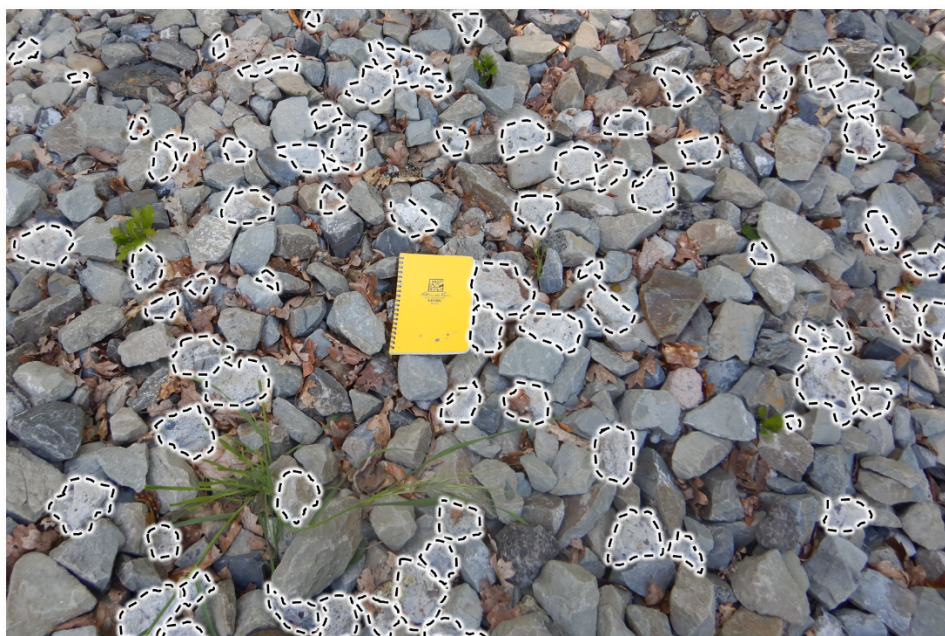
*Photo 3—Outlet of the ditch relief culvert on steep section of road approaching Site 7.*



*Photo 4—Cannabis plants growing at Site 7.*



*Photo 5—Road entering Site 7. Cannabis cultivation is in the left of the image. There are piles of uncontained refuse around the cultivation area.*



*Photo 6—Shows sample of rock, photographed near Road Point 55, used to armor culvert inlets and outlets. The yellow (spiral bound) notebook in the middle of the image is 7 inches tall and 5 inches wide. Black dashed lines, added by author, identify clasts composed of recycled concrete.*



*Photo 7—Road approaching Site 5. Greenhouses can be seen in the upper left of the image.*



*Photo 8—Location where road enters Site 5. CDFW staff can be seen in the upper left of the image at the location of a swale approximately 10 feet from the cultivation area which is to the left of the image.*



*Photo 9—Soil amendment bag in swale near to the location where CDFW staff were standing in previous image.*



*Photo 10—Swale where channelization is evident 170 feet downstream from the previous image. The channel steepens precipitously past the first row of trees in the back of the image before joining Panther Canyon.*



*Photo 11—An earthen berm with staked wattles. The ditch at the base of the berm drains to a culvert in the back right of the image, which discharges into the watercourse running along the east side of the Glass House at Site 1.*



*Photo 12—Shows the area west of the Glass House at Site 1.*



*Photo 13—Looking north at the building west of and occupying the same pad as the Glass House.*



*Photo 14—The area north of the Glass House at Site 1. I had observed a large pile of waste potting soils in this area during a previous inspection.*



*Photo 15— The northern exterior of the Glass House at Site 1. The piping strapped to the side of the building conveys stormwater collected by the roof to an area east of the pad.*



*Photo 16—Discharge location of the roof gutter system pictured in previous image.*



*Photo 17—Cultivation waste underlying straw and wattles on the edge of the fill pad encroaching on the watercourse east of the greenhouse at Site 1. A cannabis plant stem and root ball are visible in the middle of the image.*



*Photo 18—Hay bales installed in the sediment-filled watercourse east of the greenhouse at Site 1.*



*Photo 19—Looking west at the Reservoir weir. The overflow is composed of fine gravel.*



*Photo 20—Looking north at the reservoir outflow.*



*Photo 21—Looking west from Site 2 at a fork in the road. The Road in the middle of the image leads to Site 8, the road to the left leads to Site 4.*



*Photo 22—Location where spring-flow enters a roadside ditch instead of being conveyed across the road.*



*Photo 23—Stormwater from the road leading to Site 4 (Photo 21), the ditch in Photo 22, and a watercourse converge and flow over the road in the center of the image.*



*Photo 24—The watercourse downstream from the access drive pictured in the previous image. Note the watercourse is deeply incised.*



*Photo 25—Looking south at an incising channel east of an access road leading to a second set of small cabins, east from the first set.*



*Photo 26—Looking west at second (easterly set) of small cabins. The cabins are located in the same path of stormwater as in previous years.*



*Photo 27—Location where stormwater exits the dirt-surfaced parking area in front of the small cabins pictured in previous image.*



*Photo 28—Looking east from the easternmost road, west of Buck Mountain Creek, which exits the property to the south. A culvert receiving flow from two watercourses. The watercourses are incising both upstream and downstream from the culvert.*



*Photo 29—Piles of refuse stored uncontained on bare ground in a clearing on the side of the easternmost road, west of Buck Mountain Creek, which exits the property to the south.*



*Photo 30—Watercourse where imported potting soils from a former indoor cannabis grow-site had been disposed of at Site 3. Perlite is visible in the foreground of the image suggesting more potting soils remain in the watercourse.*



*Photo 31—Three piles of imported potting soil covered and surrounded by wattles at Site 3.*



*Photo 32—Looking north at landslide from landslide scarp. The Glass House at Site 1 can be seen in the middle of the image.*