



North Coast Regional Water Quality Control Board

October 4, 2021

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Subject: Notice of Violation, Cleanup and Abatement Order No. R1-2021-0003,
Directive No. 1 for California Property Solutions, LLC

File: California Property Solutions LLC; Cannabis Program Enforcement, Humboldt
County 2018; California Secretary of State File Number 201624210118;
CIWQS Place ID 843377; Cannabis General Order WDID 1_12CC416381

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Dear Mr. Jacobsen, Ms. Lyn, and Ms. Sodosky:

The purpose of this letter is to notify you that the Cleanup Restoration and Monitoring Plan (CRMP) submitted by Timberland Resource Consultants (TRC) on your behalf is incomplete and, as a result, you are in violation of Cleanup and Abatement Order No. R1-2021-0003. This letter also provides guidance for completing the CRMP.

Background

On February 5, 2021, the North Coast Regional Water Quality Control Board (Regional Water Board) issued Cleanup and Abatement Order No. R1-2021-0003 (CAO) to Tina Lyn, California Property Solutions LLC, Young Jacobsen, Diane Sodosky and Patient 2 Patient Inc (collectively, Dischargers). The CAO identifies the following features on Humboldt County Assessor's Parcel Number (APN) 214-142-012-000 (the Property) that are impacting or threatening to impact wetlands and watercourses tributary to the South Fork Eel River:

- A wetland that has been graded/developed for cannabis cultivation in the vicinity of Latitude 40° 10' 10", Longitude -123° 47' 46" (WQ1);
- A watercourse that has been culverted for more than 100 feet to enable access to a cannabis cultivation facility in the vicinity of Latitude 40° 10' 12", Longitude -123° 47' 55" (WQ3);
- Legacy reservoirs on the Property, at Latitude 40° 10' 6", Longitude -123° 47' 59" (WQ5), Latitude 40° 10' 16", Longitude -123° 47' 48" (WQ8), and Latitude 40° 10' 20", Longitude -123° 47' 53" (WQ9), that needed assessment by a qualified professional; and
- Watercourse crossings that represent controllable sources of sediment discharge to receiving waters at Latitude 40° 10' 6", Longitude -123° 47' 54" (WQ6), Latitude 40° 10' 5", Longitude -123° 47' 51" (WQ7) and Latitude 40° 10' 16", Longitude -123° 48' 4" (WQ10).

Directive No. 1 of the CAO (Directive No. 1) requires the Dischargers to have submitted a CRMP by April 15, 2021, including:

- a. An assessment of any direct and indirect impacts to any waters of the state on the Property, including, but not limited to, rivers, streams, seeps, springs, bogs, and wetlands, caused by the unauthorized activities, including all areas that have been developed or disturbed; and identify controllable sediment sources requiring restoration...Assessment findings before and after the unauthorized activities shall serve as the basis for the CRMP;
- b. A proposal to restore beneficial uses of any waters of the state on the Property that were adversely impacted by the unauthorized activities, including the South Fork Eel River, and its unnamed tributaries, and any springs, seeps, bogs, or

wetlands (e.g. complete removal of the greenhouses, roads and earthen fill placed within wetlands and full restoration of the wetlands);

- c. A proposal to provide compensatory mitigation to compensate for any temporal and/or permanent impacts to wetlands and other waters of the state that resulted from unauthorized activities on the Property; and
- d. An implementation schedule that includes a time schedule for submitting permit applications to all applicable local, state, and federal agencies necessary and, detailed project milestones to fulfill the requirements of this Order once those permits are obtained and a deadline for having fully implemented and completed the CRMP.

In response to Directive No. 1, TRC submitted plans on April 1, April 12, June 3, July 26, and July 30, 2021 (Submitted Plans). The Submitted Plans include a Cleanup Restoration and Monitoring Plan (2021 CRMP), a Grading and Erosion Control Plan (Grading Plan), an application for 401 Water Quality Certification (401 Application), with attached Revegetation and Planting Plan for Jacobsen Property (Revegetation Plan) and Aquatic Resources Delineation (Wetland Delineation), and an assessment of the watercourse crossing at WQ3 (July 30, 2021 Report). Regional Water Board staff (Staff) has reviewed these Submitted Plans and determined that they do not fully meet the requirements of Directive No. 1 as described below.

Directive No. 1a

The Submitted Plans provide an adequate assessment of: the impacts from constructing greenhouses in the vicinity of WQ1; the stability and threat of discharge from the reservoirs at WQ5, WQ8, and WQ9; and the controllable sources of sediment discharge at WQ6, WQ7 and WQ10. However, the Submitted Plans do not provide a comprehensive assessment of all impacts to aquatic resources on the Property from unauthorized activities and, therefore, do not fully meet the Requirements of Directive No. 1a.

Recommendation:

- Engage a wetland specialist to complete a comprehensive impact assessment to determine whether wetlands or other aquatic resources were impacted at any current or past cannabis cultivation sites on the Property. As documented in the July 30, 2021 Report, French drains that are in place to the north of the WQ3 cultivation pad suggest there may have been adequate hydrology to support wetlands and green patches of vegetation visible in historical imagery, also presented in the July 30, 2021 Report, suggest wetlands may have been present at this location prior to it being developed for cannabis cultivation. Additionally, potential sites for wetland creation presented by TRC during a September 14, 2021 meeting with Staff include former cannabis cultivation pads with suspected wetlands/waters of the state visible in historical aerial imagery. The Dischargers must restore any water of the state that they impacted while developing the Property for cannabis cultivation and the work to restore these features will not

count towards satisfying compensatory mitigation requirements for impacts elsewhere on the Property.

Directive No. 1b

The Submitted Plans include adequate proposed treatments to minimize controllable sources of sediment discharge to receiving waters at WQ6 and WQ7, but the Submitted Plans do not meet the Requirements of Directive No. 1b for the remainder of the proposed work because they do not provide sufficient design detail, nor adequate consideration for how the proposed plans will impact existing wetlands.

Recommendations:

- Confirm that references to proposed dimensions for instream work are consistent between the Grading Plans, 401 Application, and other submittals. The Grading Plans identify 37,443 square feet (or 0.86 acres) of affected wetlands at WQ1 while the dredge and fill table on page 11 of the 401 Application proposes work in 34,848 square feet of wetlands (or 0.80 acres). The differences between these values will need to be explained.
- Include a justification for hard armoring over bioengineering when proposing rock armor in watercourses. If rock armor is proposed in a water of the State, include the amount, material size, placement methods and areal and lineal coverage. CRMP page 10, WQ1 & 2, third stage proposes to “install [a] Rock Armor Spillway at the wetland concentration/knick point” and cites Grading Plan drawing Nos. CO5.5-6.1, and the 401 Application pages 18 and 19 for details. The referenced documents do not specify the rock armor placement location, quantity, material size or its method of placement. Section W in the Grading Plan drawing C05.9 shows the likely area where the wetland concentrates into a knickpoint at its southern boundary, but there is no mention of rock armor in the drawing.
- Consult with a wetland specialist to assess how redirecting the channel that delivers water to the reservoir at WQ5, as is proposed in the Submitted Plans, will impact the existing wetlands surrounding the reservoir.

Directive No. 1c

The Submitted Plans do not meet the Requirements of Directive No. 1c because they do not contain a complete proposal for mitigation to compensate for any temporal and/or permanent impacts to wetlands and other waters.

Recommendations:

- Engage a professional experienced in constructing wetlands and associated mitigation to identify potential in-kind mitigation on the Property and prepare a mitigation proposal that prioritizes onsite and in-kind mitigation over offsite mitigation. Staff acknowledge initially being supportive of the Dischargers’ attempts to develop an offsite mitigation proposal; however, the offsite mitigation proposals did not materialize. Staff has determined that given the Property size

and existing hydrology, in-kind onsite mitigation may be achievable and should be exhausted.

- Develop and conduct a wet-weather monitoring plan at potential wetland creation sites on the Property to inform their suitability for wetland creation.
- Include a suitable conservation easement or other deed restriction to secure wetlands created to satisfy compensatory mitigation requirements on the Property in perpetuity.

Directive No. 1d

The Submitted Plans do not meet the Requirements of Directive No. 1d because they do not include time schedules for developing the full scope of work required by the CAO.

Recommendations:

- Revise the timeline to include a comprehensive impact assessment and winter monitoring to inform restoration and mitigation plans.
- Continue removing the greenhouses and other infrastructure that are currently occupying the wetlands at WQ1. A 401 permit is not required for your client to remove these structures and they should be removed now to avoid any delays once permits are obtained.

Future Enforcement

Submittal of the CRMP is required pursuant to Water Code section 13267. Please note Water Code section 13268 states:

“Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 ... is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).”

“Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

“Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.”

TRC has communicated to Staff that you would like to urgently implement portions of the proposed wetland restoration at WQ1 this work season. We are interested in approving work to restore impacted wetlands as soon as possible; however, there

remains ambiguity about whether future compensatory mitigation work will overlap with the currently proposed wetland restoration area. Additionally, Staff has not received a clear plan describing what subset of work will be implemented urgently. Without clarity on the scope of compensatory mitigation relative to the location of the wetland restoration area and a more detailed plan of work to implement urgently, the Regional Water Board does not have enough information to approve such work.

Please note that CAO Directive No. 5 requires you implement an approved CRMP by October 15, 2021. Partial implementation of CRMP requirements will not remove this deadline. Your failure to meet the CAO deadlines may subject you to additional daily administrative penalties under Water Code section 13350. As noted above, we recommend that you focus your attention and effort on developing a comprehensive plan to meet CAO requirements. We will consider the timeliness and adequacy of your response in determining our next enforcement steps. Staff is committed to continue to advise you and your consultants about the CAO requirements; however, it is your responsibility to engage and authorize your qualified professionals to perform the full site assessment and plan preparation and submittal required by the CAO.

If you have any questions regarding this matter, please contact my staff, Brian Fuller, via email at Brian.Fuller@waterboards.ca.gov or by phone at (707) 576-2806.

Sincerely,

Kason Grady
Cannabis and Enforcement Division Supervisor

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