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North Coast Regional Water Quality Control Board

July 25, 2022

Elk Canna Farm LLC  
8163 Elk River Road  
Eureka, CA 95503

Certified Mail 7021 0950 0001 6499 8111

Alan Da Silva  
2029 Donald Drive  
Moraga, CA 94556  
[alansf75@yahoo.com](mailto:alansf75@yahoo.com)

Certified Mail 7021 0950 0001 6499 8135

Dear Alan Da Silva:

Subject: **Notice of Violation for Humboldt County Assessor's Parcel 311-041-037-000, and Directive to Respond within 30 days**

File: Cannabis Program, Humboldt County, CIWQS Place ID 842096

**THIS LETTER REQUIRES THAT YOU ACT WITHIN 30 DAYS**

This letter is to notify you of observed violations of the requirements listed below, and cited in Attachment A, at the property identified as Humboldt County Assessor's Parcel Numbers: 311-041-037-000 (the Property):

1. State Water Resources Control Board Order No. WQ 2019-0000-DWQ *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Cannabis General Order) various provisions
2. California Water Code (Water Code) Section 13260 and 13264

According to our records, the cannabis cultivation operation located on the Property is enrolled for coverage under the Cannabis General Order as Tier 1, Low Risk to water quality.

On February 2, 2021, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Property along with personnel from the California Department of Fish and Wildlife and issued an inspection report (Attachment B) requiring that all cannabis cultivation related infrastructure be placed at least 150 feet away from the Elk River. Staff has become aware of a greenhouse within 150 feet of the Elk River that was installed on the Property after the February 2, 2021, inspection (Attachment C). Per recommendations in the February 2, 2021, inspection report, no cannabis cultivation related structures were to be placed within 150 feet of the Elk River as doing so would be out of compliance with the Cannabis General Order.

On February 8, 2021, Timberland Resource Consultants submitted a Site Management Plan on behalf of the Discharger. The map submitted with the Site Management Plan shows a 100-foot riparian setback drawn from the centerline of the Elk River, which is not compliant with the 150-foot riparian setback requirement applicable in the Cannabis General Order.

The Property was enrolled under the Regional Water Board Order No. R1-2015-0023 *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region* (Regional Cannabis Order) from July 31, 2017 through June 30, 2019. Per the Cannabis Cultivation Policy Staff Report (Attachment D), infrastructure in place during the Regional Cannabis Order may be grandfathered into the riparian setbacks of the Regional Cannabis Order in certain circumstances. However, upon review of aerial imagery (Attachment E), staff determined that no infrastructure was in place during the Regional Cannabis Order enrollment.

Grandfathered setbacks only apply to cultivation areas and associated activities that existed prior to adoption of the Cannabis General Order. Any new site disturbance associated with cannabis cultivation, including expansion or relocation of cultivation areas, must comply with the larger riparian setbacks specified in the Cannabis General Order. The greenhouse must comply with the larger riparian setbacks as its construction was associated with a new disturbed area. Since there was no infrastructure in place during the Regional Cannabis Order Enrollment, the Cannabis General Order riparian setback of 150 feet from the Elk River applies on the Property. Riparian setbacks are drawn from the top of bank or bankfull width, whichever is more conservative. Staff mapped a 150-foot riparian setback from the Elk River (Attachment F). Attachment F shows there is no feasible area on the Property for cannabis cultivation that can meet the required 150-foot setback from the *top of bank or bankfull width* of the Elk River.

## **Background**

Effective July 31, 2017, the Property was enrolled under the Regional Cannabis Order, with Discharger Sami Osman and WDID 1B171535CHUM.

On June 17, 2019, Sami Osman (landowner at the time) submitted information through the State Water Resources Control Board's (State Water Board's) online portal for discharges of waste associated with cannabis cultivation related activities for the Property. Based on the information submitted by Sami Osman, the cannabis cultivation activities were classified as Tier 1, Low Risk. Effective July 1, 2019, the Property was transitioned into State Cannabis Order No. WQ 2019-0001-DWQ with WDID 1\_12CC417418.

On April 24, 2020, Stephanie Bowler of Timberland Resource Consultants emailed the Regional Water Board acknowledging that the Property was in the Elk River floodplain, the proposed cultivation area was approximately 100 feet away from the Elk River, the Cannabis General Order requires a 150-foot setback, and there are no other locations on the Property for the cultivation area to be proposed (Attachment G).

On June 6, 2020, Sami Osman submitted a request to transfer the responsibility for Cannabis General Order enrollment to Ross Lamer. On October 13, 2020, Ross Lamer submitted a request to transfer the responsibility for Cannabis General Order enrollment to Alan Da Silva.

On February 8, 2021, Timberland Resource Consultants submitted a Site Management Plan on behalf of the Discharger.

LandVision records show that the Property was sold to Elk Canna Farm LLC by Alan Da Silva, on May 6, 2021. The California Secretary of State lists Elk Canna Farm LLC as registered on October 21, 2020, with an "active" status. LEGALZOOM.COM, INC. is identified as the Agent for Service of Process in the state of California, and Alan Da Silva as the sole manager of Elk Canna Farm LLC.

### **Relevant Requirements**

The greenhouse within the 150-foot riparian buffer to the Elk River is a violation of the Cannabis General Order, and the Water Code. Attachment A – Regulatory Citations, provides references to these requirements and regulations.

### **Observed Violations**

In reviewing aerial imagery (Attachment C) and available mapping of the Elk River (Attachment F), staff observed and documented cultivation areas, water storage facilities, and associated land disturbances adjacent to surface waters. This does not meet requirements to be considered a Tier 1, Low Risk site. Further, staff identified no feasible area on the Property to cultivate cannabis while meeting the riparian setback requirements of the Cannabis General Order.

### **Legal requirements and directive to modify or terminate enrollment in the Cannabis General Order**

Sami Osman in their application for enrollment under the Cannabis General Order, on June 17, 2019, indicated that no portion of the disturbed area was located within the required setbacks from surface waters, and self-certified the Property as a Tier 1, Low Risk site. The transfers of enrollment do not relieve any discharger and/or Property owner of responsibility to control waste discharges related to cultivation or related activities, and certify that Alan Da Silva has been notified of and accepts all responsibilities associated with the Order.

If any land disturbance activities have occurred or are occurring within the riparian setback, as defined within the Cannabis General Order, you must revise your enrollment under that order to reflect that the Property is a High Risk site. Note that the High Risk designation is considered to be a temporary condition, with the requirement that enrollees of High Risk sites will take steps to develop and implement Disturbed Area Stabilization Plans to stabilize the disturbed area and cease all cannabis cultivation-related activities located within the riparian setback. High Risk designation is, therefore, temporary until you reconfigure your operations to comply with the riparian setback requirements, per an approved plan.

Since there is no feasible area on the Property to relocate cannabis cultivation activities, cannabis cultivation at this site will not qualify for reclassification to a Low or Moderate Risk site. If the Discharger wishes to pursue a High Risk designation for **this growing season**, they will need to provide a Disturbed Area Stabilization Plan discussing how all cannabis cultivation related infrastructure in the riparian setbacks will be **permanently** removed by the onset of winter period, November 15, 2022. They will also need to pay the High Risk annual invoice issued in January of 2023 for Fiscal Year 2022-23 which runs from July 1, 2022 through June 30, 2023.

### **Directive to Respond Within 30 Days**

Based on the Property's proximity to the Elk River, and given the legal requirements detailed above, the Regional Water Board has determined that, pursuant to Water Code sections 13260<sup>1</sup> and 13264<sup>2</sup>, you are required to respond to this NOV within 30 days by EITHER:

- 1) Immediately ceasing cannabis cultivation activities and voluntarily requesting termination of the enrollment under the Cannabis General Order by providing the information required in the online survey Cannabis Order Termination Request Form: <https://public2.waterboards.ca.gov/cgo>.

OR

- 2) Remaining enrolled under the Cannabis General Order through November 15, 2022 by doing the following:
  - a) Filing a Report of Waste Discharge to attempt to obtain individual Waste Discharge Requirements (WDRs) specific to the Property and submitting the appropriate fee. Since this option is project-specific, you will need to contact staff for further instructions and to determine the appropriate application fee. Please note that individual WDRs take a significant amount of time to prepare and process and must be considered by the Regional Water Board at a public hearing. The approval of WDRs is a discretionary decision that may not be approved given the Property's proximity to the Elk River and the frequency of known flooding. Please note that filing a Report of Waste Discharge does not authorize cultivation and such cultivation would be prohibited after termination from the Cannabis General Order until WDRs are adopted, if ever, by the Regional Water Board;
  - b) Reclassifying the Property as High Risk for this growing season, submitting a Disturbed Area Stabilization Plan detailing how all cannabis related infrastructure will be permanently removed within 150 feet of the Elk River by the onset of the 2022 winter period (November 15, 2022), and paying the High Risk annual invoice issued in January of 2023; and
  - c) Submitting a termination request form upon completion of an approved Disturbed Area Stabilization Plan.

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<sup>1</sup> Water Code section 13260 states, in relevant part: (a) All 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.

<sup>2</sup> 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.

**If the Discharger fails to comply with either option 1 or 2, the Regional Water Board may administratively terminate the enrollment.**

Pursuant to Cannabis General Order Provision C.2.h, the Regional Water Board Executive Officer may terminate a Discharger's coverage under the Cannabis General Order for cause including, but not limited to, any of the following:

- i. Violation of any of the terms or conditions contained in the General Order.
- ii. Obtaining the General Order by misrepresentation, or failure to disclose fully all relevant facts.
- iii. A change in any condition that results in either a temporary or permanent need to reduce or eliminate the authorized discharge activities.
- iv. A material change in the activity, character, location, or volume of discharge.
- v. Adoption of a TMDL amendment, new TMDL, or TMDL alternative.

Be aware that termination of coverage under the Cannabis General Order may impact your ability to maintain a cannabis cultivation license with the California Department of Cannabis Control.

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.

**Additional Potential Liabilities**

The Regional Water Board is in the process of considering whether the violations of the Water Code 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.

## Recommendations

Within 30 days of this letter, please advise Regional Water Board staff Kate Hawken of your intentions to request voluntary termination of the enrollment or to reclassify the Property as High Risk for Fiscal Year 2022-23 by email at [Katherine.Hawken@waterboards.ca.gov](mailto:Katherine.Hawken@waterboards.ca.gov) or by phone at 707-445-6127.

You may also contact me at [Mona.Dougherty@waterboards.ca.gov](mailto:Mona.Dougherty@waterboards.ca.gov) or by phone at 707-445-6129. Additionally, we are available to meet with you if you wish to discuss this letter or our waste discharge regulatory programs in further detail.

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.

Sincerely,

Mona Dougherty, P.E.  
Senior Water Resource Control Engineer

220725\_KEH\_dp\_Da Silva\_NOV

Attachments:            Attachment A - Regulatory Citations  
                              Attachment B – February 2, 2021, Inspection Report  
                              Attachment C – Greenhouse Imagery  
                              Attachment D – Cannabis Cultivation Policy Staff Report  
                              Attachment E – Historical Imagery Review  
                              Attachment F – Site Map with Buffer  
                              Attachment G – April 24, 2020, Email from Consultant

Certified Mail – Return Receipt requested

**cc:**    **North Coast Regional Water Quality Control Board,**  
          [Northcoast.Cannabis@waterboards.ca.gov](mailto:Northcoast.Cannabis@waterboards.ca.gov)  
          Kason Grady, [Kason.Grady@waterboards.ca.gov](mailto:Kason.Grady@waterboards.ca.gov)  
          Jeremiah Puget, [Jeremiah.Puget@waterboards.ca.gov](mailto:Jeremiah.Puget@waterboards.ca.gov)

**Division of Water Rights**

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

Taro Murano, [Taro.Murano@waterboards.ca.gov](mailto:Taro.Murano@waterboards.ca.gov)

**Department of Fish and Wildlife**

Northern Region – Coastal, [R1LSAEureka@wildlife.ca.gov](mailto:R1LSAEureka@wildlife.ca.gov)

**Humboldt County**

Devin Sutfin, [dsutfin1@co.humboldt.ca.us](mailto:dsutfin1@co.humboldt.ca.us)

Robert Russell, [rrussell@co.humboldt.ca.us](mailto:rrussell@co.humboldt.ca.us)

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

**Department of Cannabis Control**

Erin Wonder, [erin.wonder@cannabis.ca.gov](mailto:erin.wonder@cannabis.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 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)	<p>“A person who fails to furnish a report or pay a fee under <a href="#">Section 13260</a> when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”</p>
Cannabis Policy and General Order No. WQ 2019-0001-DWQ	<p>State Water Resources Control Board Cannabis Cultivation Policy and General Waste Discharge Requirements Order No. WQ 2019-0001-DWQ for Discharges of Waste Associated with Cannabis Cultivation Activities  <a href="https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf">https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf</a>  and  <a href="https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf">https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf</a></p>

## Attachment B – February 2, 2021, Inspection Report

Inspection ID: 43391603

Date Printed: 04/23/2021

### FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 431529
Program Type: IRRICANNABIS	WDID: 1_12CC417418	Order Number: 2019-0001-DWQ
Scheduled Insp. Date:	Actual Insp. Date: 02/02/2021	

#### Discharger Information

Party ID: 618902	Discharger Organization Name: Silva, Alan Da
Address: 2029 Donald Drive	City, State, Zip: Moraga, CA 94556
Discharger Contact Person:	Discharger Contact Phone:
Discharger Contact Email Address:	

#### Facility Information

Place ID 842096	Facility Name: Alan Da Silva		
Address: 8163 Elk River Road	City, State, Zip: Eureka, CA 95503		
County: Humboldt	Latitude:	Longitude:	Method:

#### Lead Inspector Information

Lead Inspector Party ID: 569684	Lead Inspector Name: Katherine Hawken			
Inspector Type:	<input checked="" type="checkbox"/> State	<input type="checkbox"/> State Contractor	<input type="checkbox"/> EPA Contractor	<input type="checkbox"/> EPA (Regional)
	<input type="checkbox"/> EPA and State (EPA Lead)	<input type="checkbox"/> EPA and State (State Lead)		

### INSPECTION TYPE

Inspection Type: Complaint inspection

### VIOLATIONS

Were Violations noted during this inspection?  Yes  No

Violation ID	Violation Type	Occurrence Date	Rank	Description

**INSPECTION SUMMARY (REQUIRED) (500 character limit)**

I observed one acre of recent grading on the property. The property is surrounded on three sides by the Elk River. I observed approximately 1000 cubic feet of rock piled 20 feet from the river. Grading occurred as close as 5 feet from the Elk River bank on a road that parallels the river. I observed an oil sheen starting at a Bobcat and extending approximately 50 feet. I observed slash stockpiled on the riverbank. These observations represent threatened discharges of waste to the Elk River.

**GENERAL NOTES (OPTIONAL) (2000 character limit)**

Recommendations

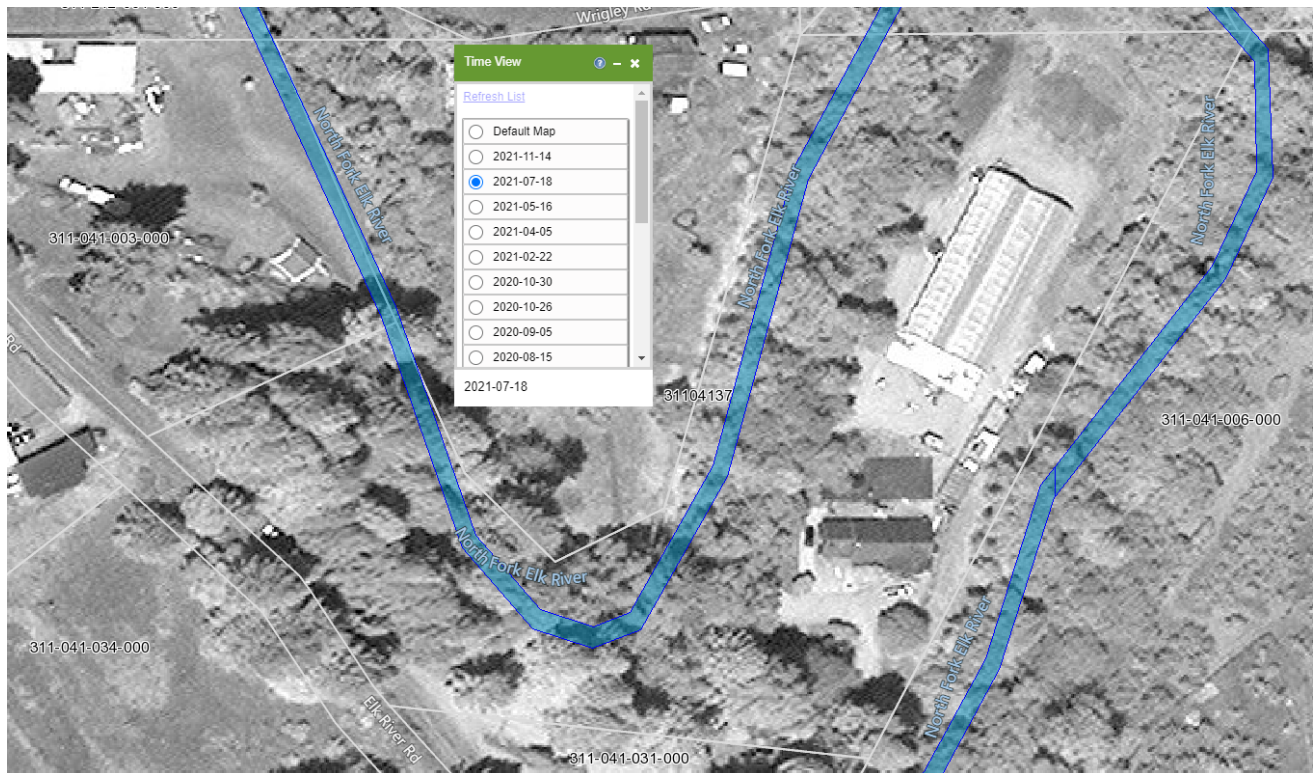
1. Do not perform heavy machinery work in the winter unless specifically authorized by Humboldt County, Water Board, and/or Department of Fish and Wildlife
2. Apply erosion control devices such as straw, native seed mix, and/or rock on all disturbed areas
3. Install sediment control devices such as silt fences, straw wattles, and/or straw bales along the edge of the disturbed area to prevent discharge of sediment to the Elk River
4. Ensure cannabis cultivation infrastructure complies with the minimum 150-foot setback from the Elk River. Revegetate and restore all disturbed areas in the setback. Do not cultivate in the setback
5. Stockpile slash, rock, and other materials outside of the riparian setback
6. Submit an updated Site Management Plan that includes a map of all aquatic features (streams, wetlands, ponds) on or within 150 feet of the parcel and the appropriate buffers

For Internal Use (Optional)

Reviewed By:	(1)	(2)	(3)
CIWQS Entry Date:		Regional Board File Number:	CIWQS Inspection ID:

Inspection report issued to Discharger on April 23, 2021, stating that cannabis cultivation infrastructure must comply with the minimum 150-foot setback from the Elk River.

## Attachment C - Greenhouse Imagery



Aerial imagery dated July 18, 2021, from LandVision, showing the greenhouse constructed after the February 2, 2021, inspection report was provided to the Discharger stating that infrastructure needs to be outside of the 150-foot riparian setback.

## Attachment D – Cannabis Cultivation Policy Staff Report – October 17, 2017

Link to full document:

[https://www.waterboards.ca.gov/water\\_issues/programs/cannabis/docs/cannabis\\_staff\\_report.pdf](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/cannabis_staff_report.pdf)

Excerpts:

Page 6: “The purpose of this Cannabis Cultivation Policy Staff Report (Staff Report) is to provide background, rationale and justification for the principles and guidelines contained in the Cannabis Cultivation Policy: Principles and Guidelines for Cannabis Cultivation (Policy).”

Page 40-41: “In some instances the Policy includes a larger riparian setback than was included in the Regional Water Board orders. Under the Policy, cannabis cultivators enrolled in a Regional Water Board order adopting waste discharge requirements (WDRs) or a waiver of WDRs for cannabis cultivation activities prior to October 17, 2017, may retain reduced setbacks applicable under that Regional Water Board order unless the Executive Officer determines that the reduced setbacks applicable under that order are not protective of water quality. The grandfather status, while not as protective as the Policy setback, is allowed for the following reasons:

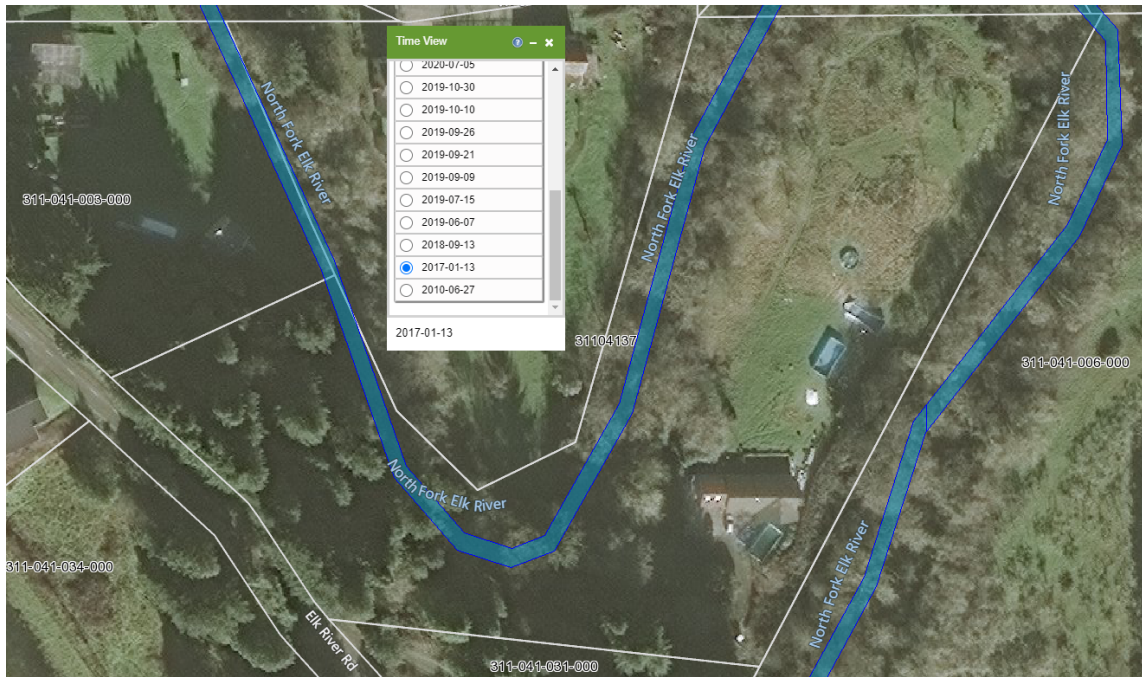
- Reconfiguring existing facilities that have already implemented mitigation measures to stabilize and reduce the potential threat of discharges of waste under the Regional Water Board’ cannabis cultivation orders would generate new areas of disturbed land and require stabilization of existing disturbed areas. Requiring such work would likely require the use of heavy equipment and transportation of construction equipment to the site. In many instances, the overall impact of such activity may be greater than the benefit that would be realized by requiring the work.

- **Grandfathered sites that expand their cultivation or other cannabis related activities must comply with the larger riparian setbacks for any new disturbed areas. It is anticipated that over time, some sites likely will migrate away from the waterbody and comply with the more conservative setbacks.**

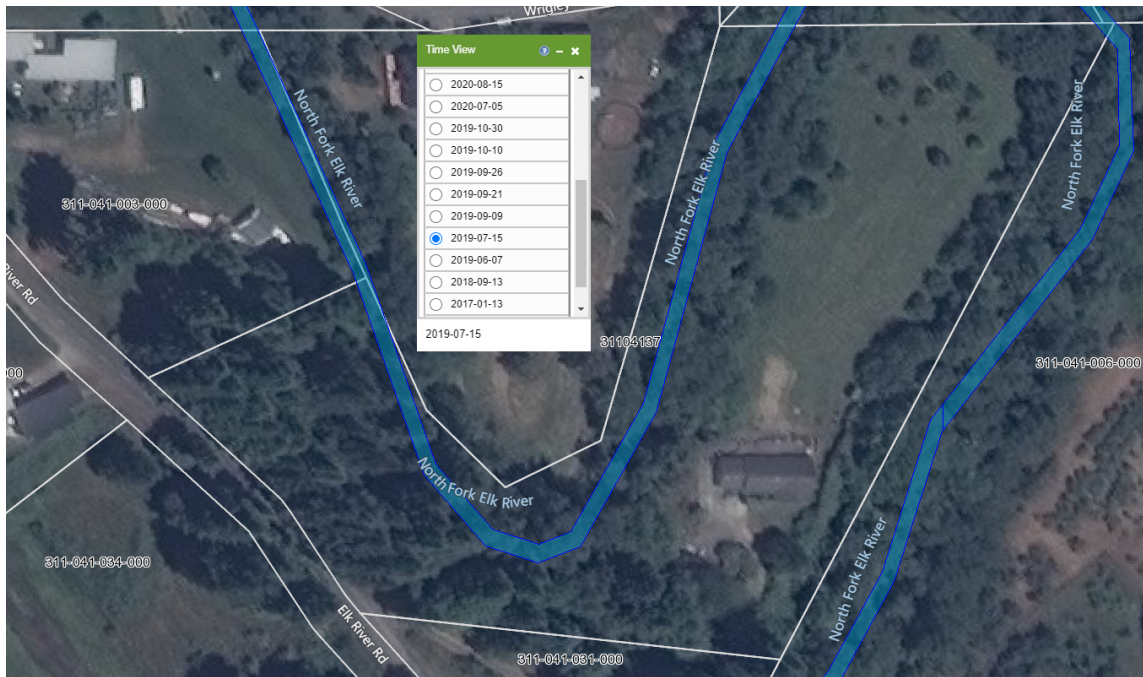
- Impacts from enrolled facilities that comply with the existing regional water board orders are already mitigated through implementation of technical reports submitted to and approved by Regional Water Boards.

- There are a limited number of enrolled facilities in both regions. While it is desirable for all cannabis cultivation activities to comply with the more protective riparian setbacks, the relatively small number of sites with the reduced setback under the existing Regional Water Boards’ cannabis cultivation orders are not anticipated to create significant water quality degradation.”

## Attachment E – Historical Imagery Review

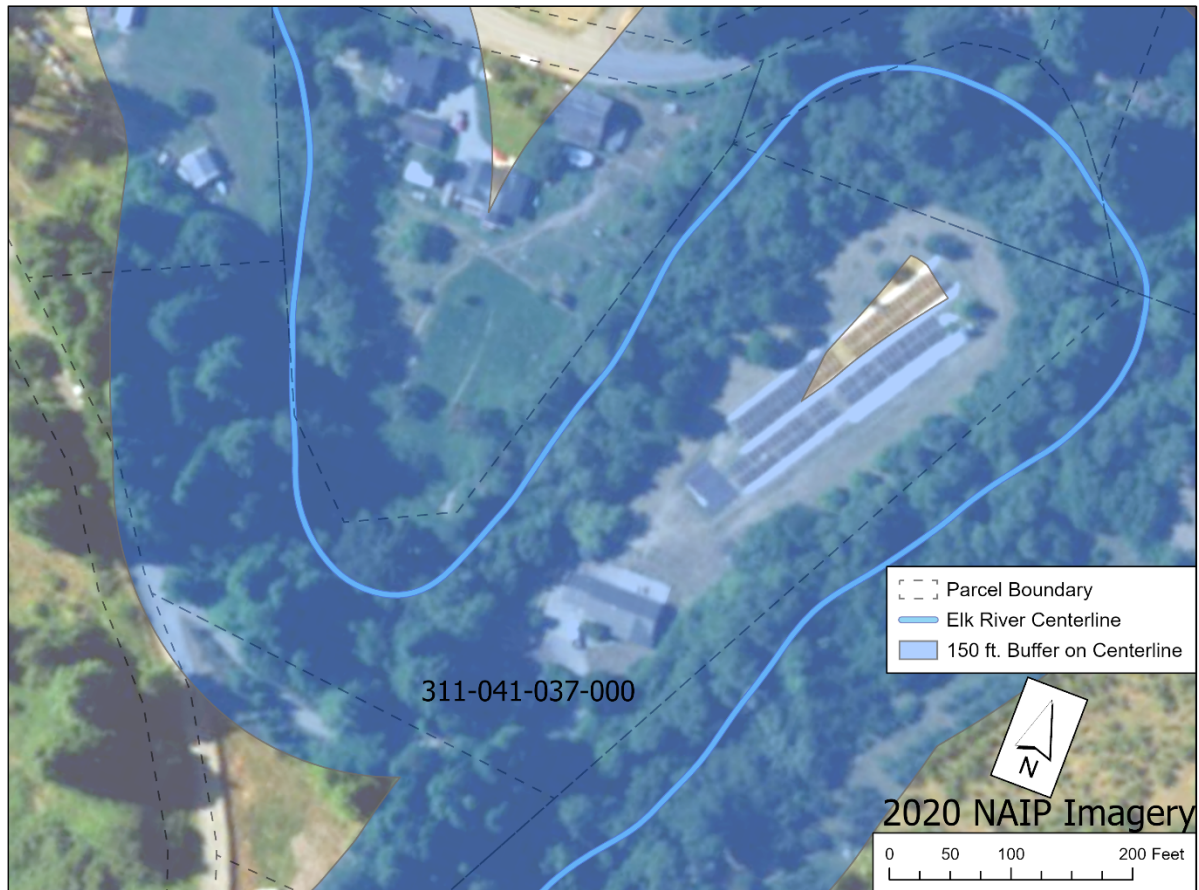


Aerial imagery dated January 13, 2017, from LandVision, showing the Property prior to enrollment in the Regional Cannabis Order.



Aerial imagery dated July 15, 2019, from LandVision, showing the Property at the time of enrollment transfer into the Cannabis General Order. Note, no cultivation infrastructure was in place during the Regional Cannabis Order enrollment.

## Attachment F – Site Map with Buffer



Map of Property with 2020 NAIP imagery base layer, parcel boundaries, the Elk River centerline, and a 150-foot buffer on the Elk River centerline, created by Kate Hawken. Note the riparian buffer requirement in the Cannabis General Order is 150 feet from the *top of bank or bankfull width*, whichever is more conservative. If the buffer is applied to the top of bank or bankfull width, the whole Property is covered by the buffer.

## Attachment G – April 24, 2020, Email from Consultant

From: [sbowler@timberlandresource.com](mailto:sbowler@timberlandresource.com) <[sbowler@timberlandresource.com](mailto:sbowler@timberlandresource.com)>  
Sent: Friday, April 24, 2020 3:18 PM  
To: Cannabis, NorthCoast@Waterboards <[NorthCoast.Cannabis@Waterboards.ca.gov](mailto:NorthCoast.Cannabis@Waterboards.ca.gov)>  
Subject: TRC: New Enrollment Risk Designation

EXTERNAL:

Hello,

I have a few questions about a new enrollment into the SWB Order. APN: 311-041-037 has been approved by Humboldt county for the commercial cannabis cultivation. The location of this property is in the Elk River floodplain (See screenshot below).



The cultivation area is described as the green rectangle on the east side of the parcel. The cultivation area is approximately 100 ft away from the water course outlined in dark blue. The SWB Order states cultivation area must be 150ft away from this class watercourse.

The high risk designation is a "temporary" level and cultivators are incentivized to go down in risk level over time. The goal being designated a lower risk is the purpose of a high risk site.

In this particular case, there are no other locations for the cultivation area to be proposed. Is it possible a site can remain as a high risk designation in this case?

Please advise.

Regards,  
Stephanie Bowler  
Water Rights and Water Quality Administrator  
Timberland Resource Consultants

Email from [sbowler@timberlandresource.com](mailto:sbowler@timberlandresource.com) to [northcoast.cannabis@waterboards.ca.gov](mailto:northcoast.cannabis@waterboards.ca.gov) on April 24, 2020, requesting advice on the Cannabis General Order enrollment of Humboldt parcel 311-041-037. Stephanie states the proposed cultivation area is approximately 100 feet away from the Elk River, acknowledges the Cannabis General Order requires a 150-foot setback, and states there are no other locations for the cultivation area to be proposed.