



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Region 1 - Northern
619 2nd Street
Eureka, California 95501
(707) 445-6493
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 23, 2023

Certified Mail:

#7022 0410 0001 7106 6007

Kurt Moffitt
Cali's Finest Gardens, LLC
3441 L Street
Eureka, CA 95503
kurt707moffitt@gmail.com

SUBJECT: NOTICE OF NON-COMPLIANCE WITH LAKE OR STREAMBED ALTERATION AGREEMENT NO. 1600-2019-0662-R1, AND NOTICE OF VIOLATION OF FISH AND GAME CODE SECTIONS 1602, 5650 AND 5652, IN CONJUNCTION WITH CANNABIS CULTIVATION

Dear Kurt Moffitt:

On April 25, 2023, California Department of Fish and Wildlife (CDFW) staff visited your property at Assessor's Parcel Number (APN) 210-072-009 (Property) within the Butte Creek watershed, County of Humboldt, State of California. During the visit, staff observed activities that are in violation of Fish and Game Code (FGC) sections 1602, 5650, and 5652. Staff also observed cannabis and associated cannabis cultivation activities in conjunction with these observations.

On May 15, 2020, CDFW issued you a Lake or Streambed Alteration (LSA) Agreement No. 1600-2019-0662 -R1 (Agreement) associated with your LSA Notification (Notification) to upgrade seven stream crossings (Crossing -1, Crossing-2, Crossing-3, Crossing-4, Crossing-5, Crossing-6, and Crossing-7).

During the April 25, 2023, site visit, CDFW observed activities that were out of compliance with measures in your Agreement. The specific measures of the Agreement that were non-compliant and descriptions of these measures are provided below (Table 1).

Table 1. Summary of non-compliance with Agreement (1600-2019-0662-R1) measures .

Agreement Measure**	Description of Non-Compliance
2.4/3.1 Work Completion	Failure to complete project work. Failure to submit reporting requirements.
2.11/3.2 Invasive Species Management for Reservoirs	Failure to submit reporting requirements.
2.21/3.3 Project Inspection	Failure to submit reporting requirements.
2.30/3.4 Stream Restoration Plan	Failure to submit reporting requirements.

** See Agreement for measure details.

Failure to correct the non-compliance with measures described in Table 1 of this notice may result in suspension or revocation of Agreement No. 1600-2019-0662 - R1. FGC Section 1612 states CDFW may suspend or revoke an agreement at any time if it determines the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the terms of the agreement or fails to provide timely status reports as required by subdivision (g) of FGC Section 1605. FGC Section 1612 further states the entity has an opportunity to correct any deficiency before CDFW suspends or revokes the agreement.

In addition to the observations of Agreement non-compliance, CDFW staff observed activities not disclosed in your Notification that are in violation of FGC, resulting in negative impacts to fish and wildlife resources and Waters of the State. The locations and descriptions of these activities are provided below (Table 2).

FGC Section 1602 requires a person to submit a written notification to CDFW before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. Hence, any person who engages in an activity subject to FGC Section 1602 without first notifying CDFW violates Section 1602.

Notification pursuant to FGC Section 1602 was required for three (3) activities that affected unnamed tributaries to Mule Creek. However, CDFW was unable to locate a notification for these activities. The locations and descriptions of these activities are provided below (Table 2).

FGC sections 5650 and 5652 make it unlawful to pollute Waters of the State. FGC

Section 5650 makes it unlawful to deposit in, permit to pass into, or place where it can pass into Waters of the State any substance or material deleterious to fish, plant life, mammals, or bird life, including, but not limited to gasoline and oil, as well as sediment. FGC Section 5652 makes it unlawful to deposit in, permit to pass into, or place where it can pass into Waters of the State, or to abandon, dispose of, or throw away, within 150 feet of the high-water mark of the Waters of the State, any garbage, refuse, or waste, among other materials.

CDFW observed eight (8) activities on the Property that are violations of FGC Section 5650 and six (6) violations of FGC Section 5652 that affected unnamed tributaries to Mule Creek. The locations and descriptions of these activities are provided below (Table 2).

Table 2. Summary of FGC violations documented on the property during the CDFW staff visit on April 25, 2023.

Violation No.	FGC Section	Latitude*	Longitude*	Violation Description	Feature Label
1	5650	40.4302	-123.6823	Water pollution from sediment (material deleterious to aquatic life) permitted to pass into Waters of the State.	SC-1
2	5650	40.4311	-123.6806	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-2
3	5652	40.4311	-123.6806	Water pollution from the abandonment of trash (plastic trash, etc.), associated with cannabis cultivation, into Waters of the State.	SC-2
4	5650	40.4327	-123.6781	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-3
5	5650	40.4341	-123.6762	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-4

Violation No.	FGC Section	Latitude*	Longitude*	Violation Description	Feature Label
6	5650	40.4351	-123.6788	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-5
7	5650	40.4347	-123.6762	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-7
8	1602	40.4324	-123.6844	Failure to notify for the diversion of surface water resulting in substantial stream alteration and diversion of natural flow from Waters of the State.	WS-2
9	5652	40.4324	-123.6844	Placement of trash (plastic trash, etc.) into, and within 150 feet of a stream.	WS-2
10	1602	40.4325	-123.6844	Failure to notify for the diversion of surface water resulting in substantial stream alteration and diversion of natural flow from Waters of the State.	WS-3
11	5652	40.4325	-123.6844	Placement of trash (plastic trash, etc.) into, and within 150 feet of a stream.	WS-3
12	1602	40.4325	-123.6845	Failure to notify for the diversion of surface water resulting in substantial stream alteration and diversion of natural flow from Waters of the State.	WS-4
13	5652	40.4325	-123.6845	Placement of trash (plastic trash, etc.) into, and within 150 feet of a stream.	WS-4
14	5652	40.429	-123.6800	Placement of trash, associated with cannabis cultivation, into, and within 150 feet of a stream.	MP-7
15	5650	40.4349	-123.6786	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	PP-1

Violation No.	FGC Section	Latitude*	Longitude*	Violation Description	Feature Label
16	5652	40.4324	-123.6841	Water pollution from the abandonment of trash (plastic water bladder, polyline, inoperable barbed wire fencing, other plastic trash), a portion of which is associated with cannabis cultivation, into Waters of the State.	PP-2
17	5650	40.4302	-123.6822	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	PL-1

*Units = decimal degrees. Datum = WGS 84

A person who violates FGC sections 1602, 5650, and 5652 in conjunction with the cultivation or production of cannabis is subject to significant penalties or fines. Specifically, CDFW may impose civil penalties administratively against any person found by CDFW to have violated these FGC sections in connection with the production or cultivation of cannabis following a complaint and, if requested, a hearing.

CDFW may request a maximum civil penalty of \$8,000 for each violation of FGC Section 1602, and \$20,000 for each violation of FGC Section 5650 or Section 5652. Each day the violation occurs or continues to occur constitutes a separate violation. (Fish & G. Code, § 12025, subds. (b)(1)(A), (2); (e)). Also, the District Attorney or the Attorney General may enforce a violation of FGC Section 1602 and FGC Section 5650 civilly. Specifically, under FGC sections 1615 and 5650.1, a person who violates FGC Section 1602 or Section 5650 is subject to a maximum civil penalty of \$25,000 for each violation. The District Attorney or the Attorney General may also enforce a violation of FGC sections 1602, 5650, or 5652 criminally. Under FGC Section 12000, each violation is a misdemeanor.

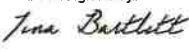
Be advised that absent provisions intended to protect patients and qualified caregivers, commercial cannabis cultivation without a state license is illegal (Bus. & Prof. Code, § 26032). The California Department of Cannabis Control (DCC) is the state licensing authority for commercial cannabis cultivation. DCC and CDFW are members of a multi-agency task force created to protect the state's resources from the adverse impact of cannabis cultivation (Fish & G. Code, § 12029.). Pursuant to state law, failure to address these violations may affect your ability to obtain a commercial cannabis cultivation license or license renewal from DCC (Bus. & Prof. Code, §§ 26057, 26060.1.).

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As a first step to address this matter, CDFW requests you contact Senior Environmental Scientist Specialist Kalyn Bocast at kalyn.bocast@wildlife.ca.gov within 14 days to acknowledge receipt of this letter. Ms. Bocast may propose certain actions to protect fish and wildlife resources that have been or could be impacted by the activities described above and may ask you to submit a written notification and fee for these activities. While CDFW, the District Attorney, or Attorney General may still decide to initiate an enforcement action against you if they determine these activities are in violation of FGC Section 1602, 5650, or 5652, we encourage you to respond to this notice so that we may better assess these activities and limit any damage to resources.

CDFW appreciates your cooperation.

Sincerely,

DocuSigned by:

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Tina Bartlett, Regional Manager
Northern Region

cc: Scott Bauer, Rebecca Garwood, David Manthorne, Joshua Zulliger, Jaymes Silveira, and Kalyn Bocast
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