

SUPPLEMENTAL INFORMATION #1

For Planning Commission Agenda of:
July 6, 2023

<input checked="" type="checkbox"/>	Consent Agenda Item	No. E-4
<input type="checkbox"/>	Continued Hearing Item	
<input type="checkbox"/>	Public Hearing Item	
<input type="checkbox"/>	Department Report	
<input type="checkbox"/>	Old Business	

Re: Cali's Finest Gardens, LLC, Conditional Use Permit

Record Number: PLN-12468-CUP

Application Number: 12468

Assessor Parcel Number: 210-072-009-000

Bridgeville Area

The California Department of Fish & Wildlife (CDFW) has submitted updated comments on the project. Additional comments from CDFW included:

- I. Concerns regarding the sites condition during the April 25, 2023, site inspection, and requests that the applicant clean up the site immediately (by June 1, 2023) and prior to consideration of permit approval. The applicant has submitted a Property Cleanup Plan & Progress Report to show measures taken to clean up the site, and photos of the sites current condition. As well, a condition of approval for the project is to have a site inspection conducted within 30 days of approval in order to verify that the site has been cleaned up to the satisfaction of the County and CDFW.
- II. Concerns regarding non-compliance with the Lake and Streambed Alteration Agreement (LSA #1600-2019-0662-R1), and a Notice of Violation was sent to the applicant. The applicant is required to submit an LSA amendment in order to amend the Work Completion Date in the LSA, and the applicant is required to resolve the Fish & Game Code violations with CDFW prior to commencing cultivation activities on-site.
- III. Comments regarding the presence of stringed lights within some of the outdoor cultivation greenhouses. The applicant is required to remove all stringed lights from the outdoor cultivation greenhouses, and is required to have this completed and evident during the required site inspection within 30 days of approval.
- IV. CDFW has concerns regarding the Cultivation Area Verification (CAV) that was produced by the County for verification of pre-2016 cultivation activities, and feels that a potential expansion of cultivation area has occurred on the site. The original CAV produced by the County found a total of approximately 21,700 square feet of cultivation area utilizing a 2015 image from TerraServer. It was determined in August of 2018, after discussion and a meeting with the applicant that the relocation of historic cultivation areas occurred (some of which were not accounted for in the original CAV due to shading in the TerraServer 2015 image), and that no expansion had occurred

on the site. The CAV was modified at that time, and the Interim Permit was reissued for 30,000 square feet. Additional measurements have been calculated recently to justify the increase from 21,700 square feet of pre-existing cultivation to 30,000 square feet of cultivation. As the 2015 TerraServer image is no longer available, 2014 imagery from Google Earth Pro was used to measure the cultivation areas that were not accounted for in the original CAV. CDFW has attempted to produce their own measurements for Cultivation Area Verification utilizing a 2015 image from Vexcel imaging, and they calculated approximately 21,000 square feet of cultivation area. This did not include the additional areas that were existing under the canopy and in shaded areas on-site. The County supports the approval of 30,000 square feet of outdoor cannabis cultivation on the site.

1. Updated comments from CDFW and CDFW CAV.

Acevedo, Megan

From: Manthorne, David@Wildlife <David.Manthorne@wildlife.ca.gov>
Sent: Wednesday, June 28, 2023 9:35 AM
To: Acevedo, Megan
Cc: Johnson, Cliff; Kamoroff, Corrina@Wildlife
Subject: PLN-12468-CUP
Attachments: NOV_042523_HUM_MJ_210-072-009_Moffitt_Mule_Creek_OID3919_FINAL.docx.pdf; 1600-2019-0662-R1_HUM_MJ Moffitt_Stream Crossing and Pond_LSAAFinal.pdf; 12468_CAV_CDFW.pdf

Caution: This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

Hi Megan,
Please see the comments below regarding Cali's Finest Gardens (PLN-12468-CUP).

PROJECT DESCRIPTION

Cali's Finest Gardens LLC - Existing 35,500 outdoor cultivation and on and off-site processing

Cali's Finest Gardens seeks a Conditional Use Permit for 30,000 sf of pre-existing outdoor cannabis cultivation, with 4,110 sf of ancillary propagation. Planning staff is recommending that only 3,000 sf of propagation be permitted. Cultivation will utilize light-deprivation techniques in greenhouses without the use of supplemental lights. Water is sourced by an existing 345,000-gallon rain catchment pond, and an additional 70,000-gallon rain catchment pond is proposed. Annual water usage is estimated at 200,000 gallons (11 gal/sf/yr). Power is sourced from an existing solar array and three 7kW Honda generators will be onsite for emergency backup purposes. A full processing facility is proposed with ADA bathroom and septic. A total of five employees are used for operations on-site. One residence will be used for onsite employee housing.

CDFW COMMENTS

Thank you for referring this application to the California Department of Fish and Wildlife (CDFW) for review and comment.

On April 25, 2023, CDFW staff conducted a joint site inspection with Humboldt County Planning Department (HCPD) staff at the project and property, Assessor's Parcel Number (APN) 210-072-009. The Property is located within the Butte Creek watershed in Larabee Valley, County of Humboldt. During the visit staff walked the property to observe current and past cannabis cultivation areas, water storage facilities including the lined and expanded pond, sites of unpermitted timber conversion that occurred in 2019/2020, stream crossings, and structures associated with cultivation operations. While onsite CDFW observed violations of Fish and Game Code (FGC), noncompliance with the CDFW Lake or Streambed Alteration Agreement, and violations of the HCPD Interim Permit. CDFW issued a Notice of Violation (NOV) to document FGC violations, and to encourage the applicant to cure these violations.

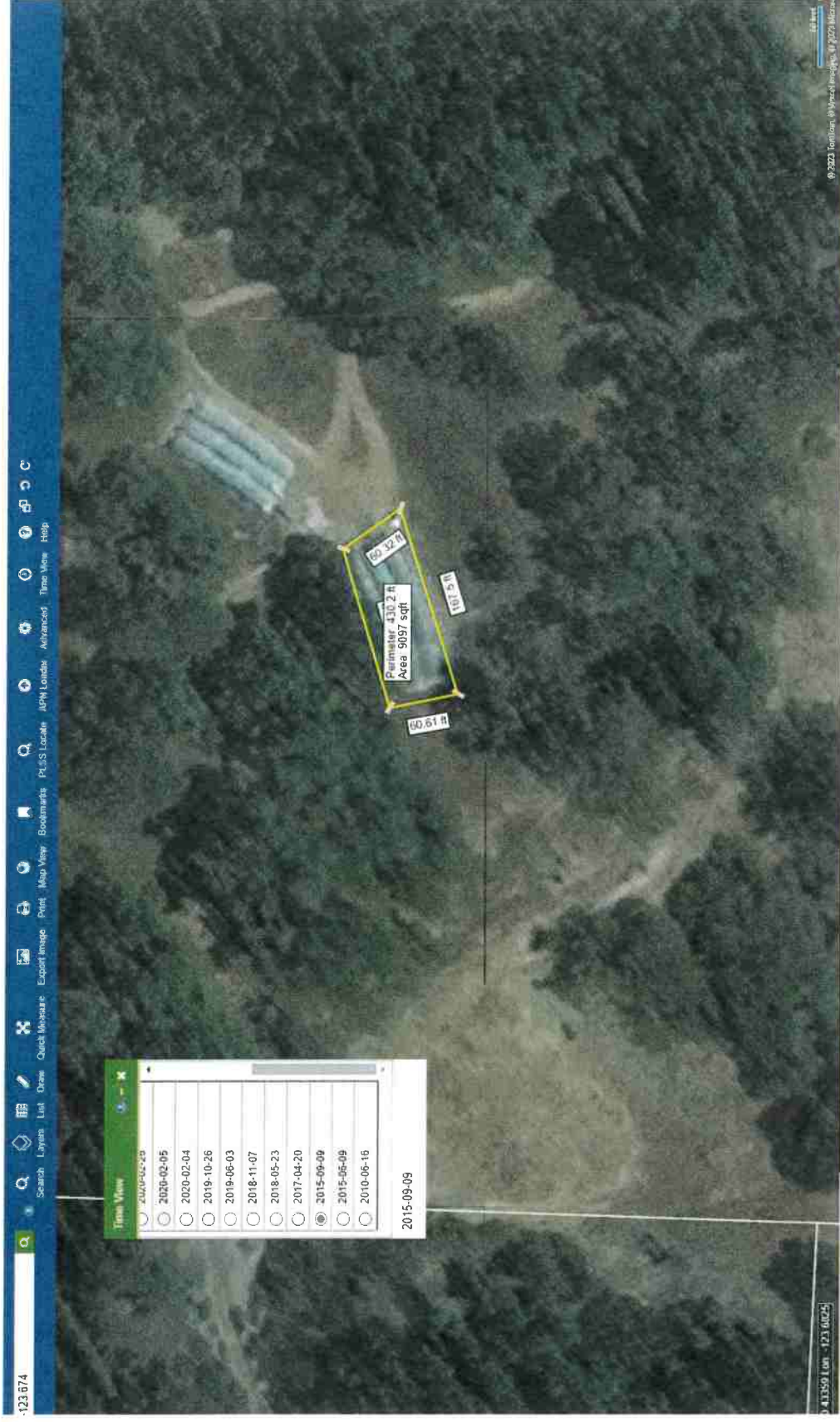
The following comments are intended to assist the Lead Agency in making informed decisions in the planning process. **Note, CDFW comments do not constitute recommendation for project approval.**

- On April 25, 2023, CDFW staff observed a substantial quantity of cannabis cultivation related waste uncontained and scattered throughout the property posing a threat to public trust resources. Fertilizers, pesticides, fuel, and other chemicals were improperly stored. Observed conditions were unsanitary and hazardous for wildlife, as well as for operations employees, and consumers of cannabis products that may be produced at this site. Provided the circumstances, CDFW requests that this site be cleaned up immediately (by June 1, 2023) and prior to consideration of permit approval.
- The applicant has a Lake and Streambed Alteration Agreement (LSA# 1600-2019-0662-R1). The applicant is currently **not in compliance** with the terms of the LSA. See the attached NOV for details.
- The consolidated cultivation area at the time of the visit contained five (5) greenhouses with artificial lighting. Artificial greenhouse lighting is inconsistent with baseline conditions and the proposed project. CDFW requests that the HCPD address noncompliance with the ordinance and Interim Permit. Artificial lighting can result in substantial light pollution effects on wildlife that include disruption of circadian rhythms and suppressed immune response, changes in foraging behavior, altered navigation, altered predator-prey relationships, impacts on reproduction, and phototaxis.
- Prior to and following the site visit, CDFW conducted an aerial imagery analysis of the property which suggests the cultivation area has expanded post CEQA baseline. In September 2015, the property contained, at most, 21,000 ft2 of cannabis cultivation. Following 2016, cannabis cultivation on the Property has increased to approximately 35,500 ft2. CDFW staff were unable to verify the HCPD CAV conducted with Google Earth Imagery from May 2014 and found the area of cultivation and found the area in May 2014 to be less than what existed is proposed for approval.
- Observations of FGC violations were documented onsite in conjunction with the cannabis cultivation activities. If HCPD elects to move this project forward, CDFW requests the applicant resolve all of FGC violations as a condition of project approval.

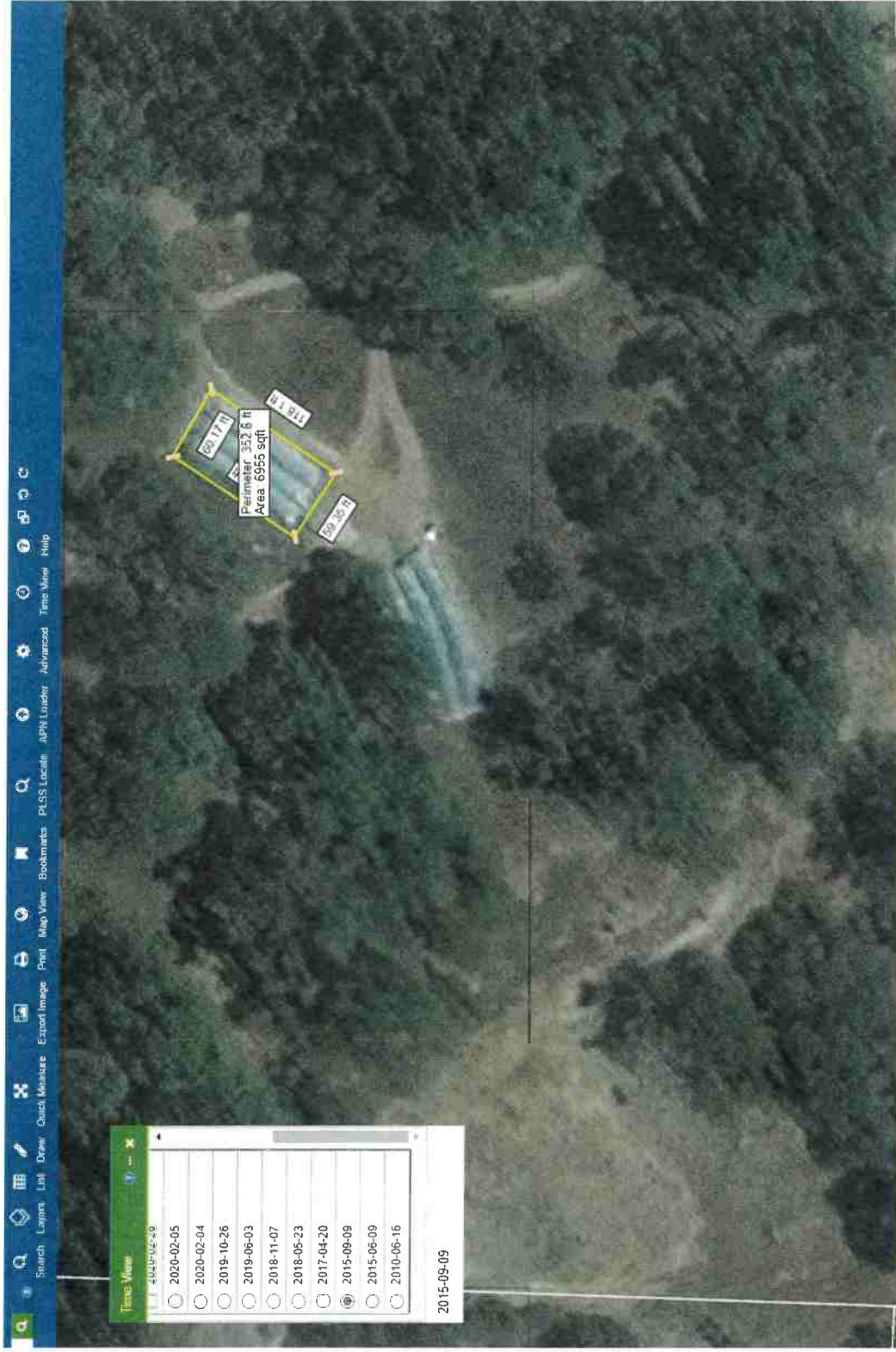
Thank you for the opportunity to comment on this Project.

David Manthorne
 Senior Environmental Scientist Supervisor
 Habitat Conservation and Planning
 Humboldt/Del Norte LSA Program
 California Department of Fish and Wildlife
 619 Second Street
 Eureka, CA 95501
 (707) 441-5900

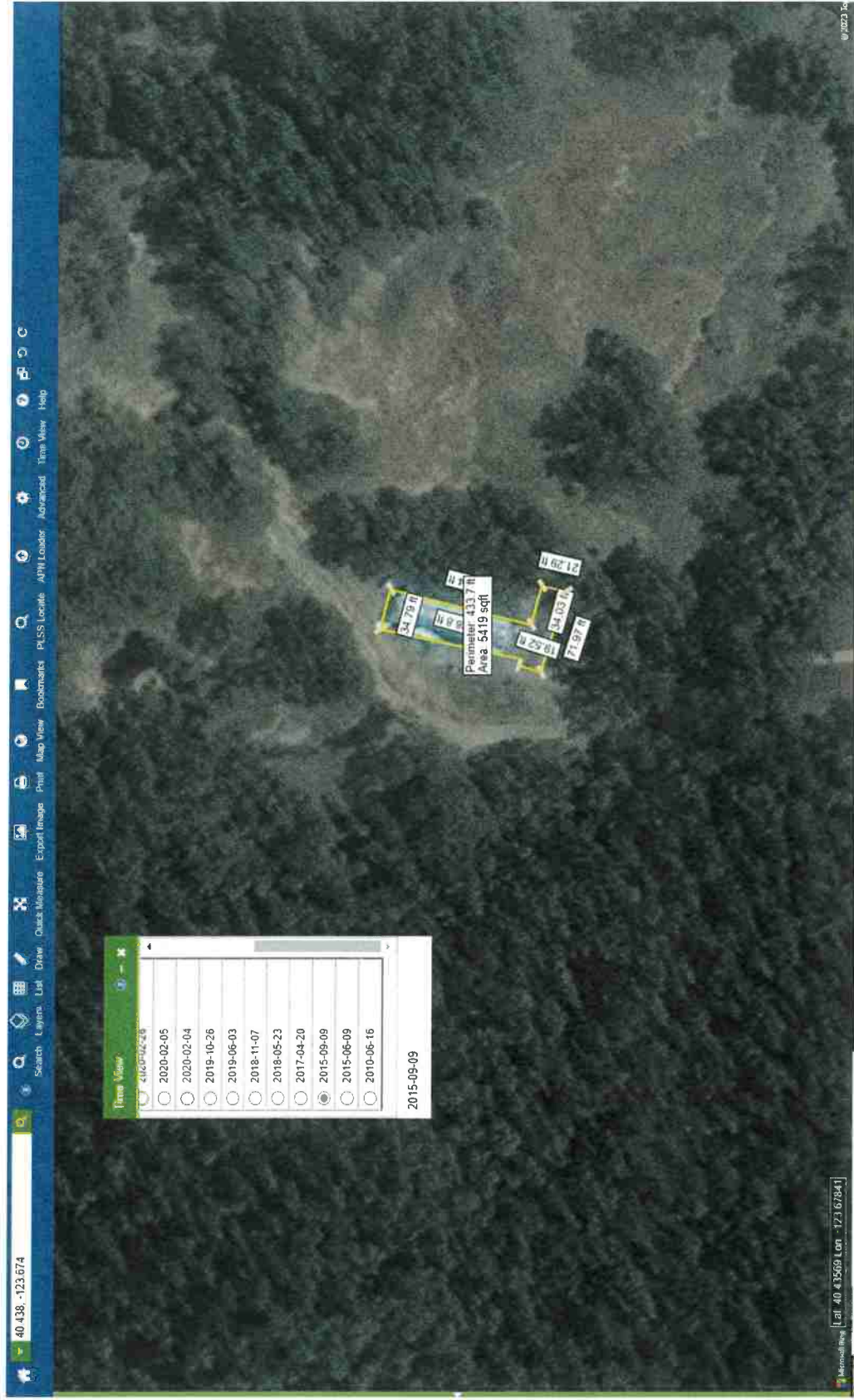
$$CA1 = 9097 + 6955 = 16,052$$



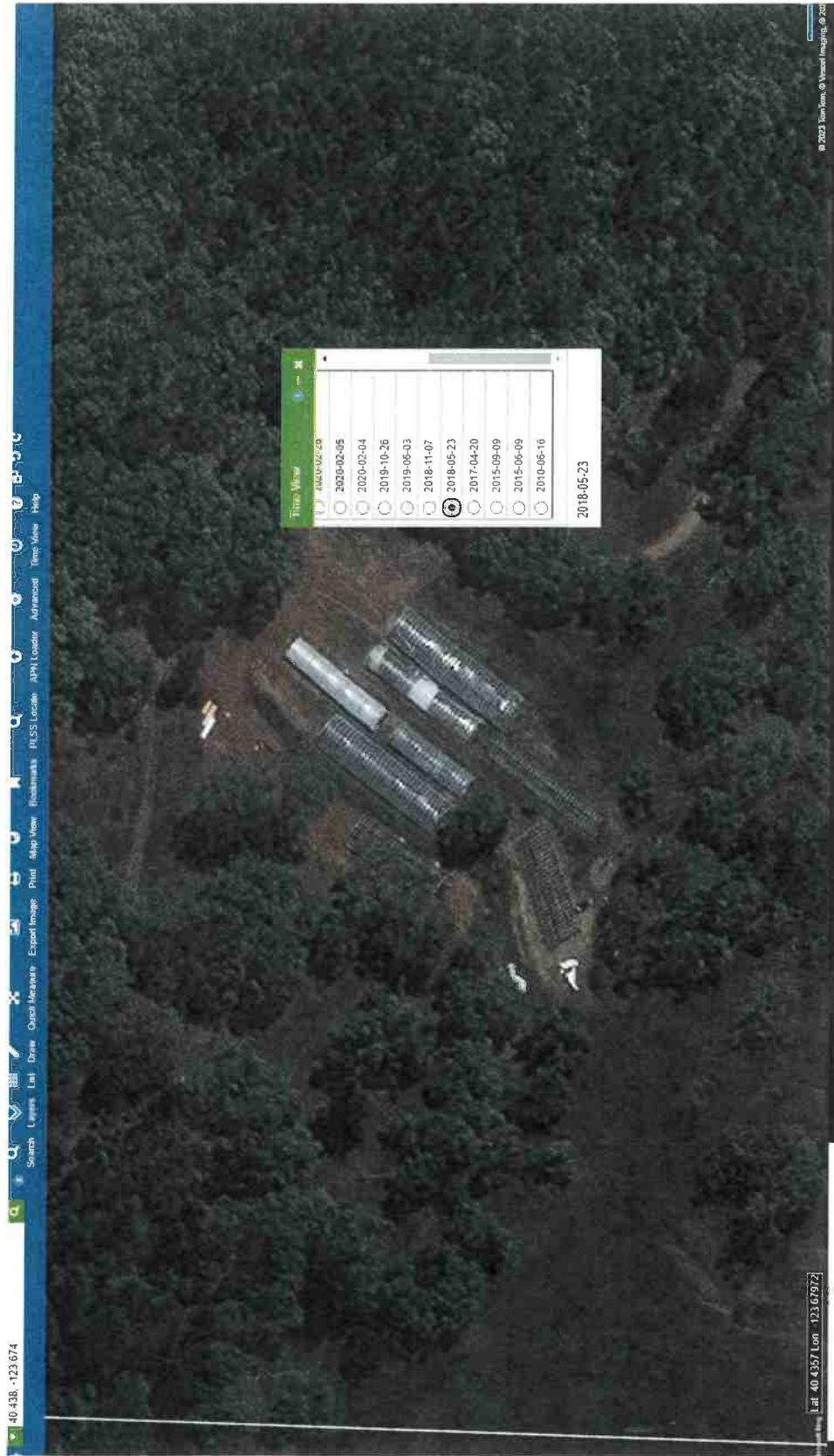
CA1



CA2 = 5,419







40.438, 123.074

Lat: 40.4357 Lon: 123.07972

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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:

1D82ADE7303A474...

Tina Bartlett, Regional Manager
Northern Region

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

Cliff Johnson, Megan Acevedo, and Karen Meynell
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Northcoast Regional Water Quality Control Board
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Taro Murano, Stormer Feiler
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