

**From:** [Kamoroff, Corrina@Wildlife](mailto:Kamoroff,Corrina@Wildlife)  
**To:** [Johnson, Cliff](mailto:Johnson,Cliff)  
**Cc:** [Manthorne, David@Wildlife](mailto:Manthorne,David@Wildlife)  
**Subject:** App: PLN-12460-CUP, APN: 522-024-001-000  
**Date:** Friday, October 06, 2023 12:28:23 PM

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Good Afternoon,

Please see the comments below regarding the above referenced project.

**Project Number:** PLN-12460-CUP

**Project Name:** Mojo Mountain, LLC-CUP for existing cultivation

**APN(s):** 522-024-001-000

Mojo Mountain, LLC seeks a Conditional Use Permit (CUP-16-695) for an existing 35,025 square foot (SF) outdoor cannabis cultivation operation. Irrigation water is sourced from a permitted groundwater well (11/12-0971). The groundwater well is supplemented by a point of diversion and rainwater catchment tanks. Existing available water storage is 19,000 gallons in 7 hard tanks distributed throughout the site. Estimated annual water usage was reported as 525,000 gallons. Drying will occur in the existing 768 SF drying building. Processing will occur offsite at a licensed processing facility. Trimming will also be done at an offsite licensed processing facility. In addition to the Agent, Lead Cultivator and Assistant Cultivator, up to six seasonal employees may be utilized during peak operations for a total of 9 employees. Power is provided by 2 Honda 6,500-watt and 2,000-watt generators for water pumps, lighting, general farm use, and drying cannabis.

#### **CDFW COMMENTS:**

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

The following background and comments are intended to assist the Lead Agency in making informed decisions in the planning process regarding PLN-12460-CUP on APN: 522-024-001-000. The following comments shall supersede prior comments submitted by CDFW regarding PLN-12460-CUP. CDFW requests that all comments are incorporated in the final Humboldt County Staff Report. **Note, CDFW comments do not constitute recommendation for project approval.**

- On May 4, 2020, the Department issued a draft Lake and Streambed Alteration Agreement (LSAA, 1600-2019-0611) for 12 projects to upgrade failing and undersized stream crossings. This draft agreement did not include any activity involving the diversion of surface water. Within 30 days of receipt of the draft Agreement, the

applicant was required to notify the Department in writing whether the measures to protect fish and wildlife resources were acceptable. The applicant did not notify CDFW to request any changes, and did not sign the draft LSAA. This LSAA was withdrawn and closed on June 23, 2021.

- On June 17, 2021, CDFW conducted a joint site inspection with California Department of Food and Agriculture, CalCannabis Cultivation licensing Division at the project and property, Assessor's Parcel Number (APN) 522-024-001. While onsite, CDFW staff observed activities that were in violation of Fish and Game Code (FGC) sections 1602 and 5650. This included unauthorized surface water diversion during the forbearance period during a drought year. Note that the applicant never requested to utilize surface water. CDFW issued a Notice of Violation (NOV, see attached) to document FGC violations, and to request that no further surface water be diverted.
- On July 27, 2021, a final LSAA (EPIMS-HUM-21613-R1) was issued to the applicant to upgrade 16 stream crossings and for one Point of Diversion (POD). On May 3, 2023, CDFW conducted a review of the Water Management Plan and Diversion Infrastructure Plan associated with the final LSAA. As a result of this review, CDFW identified deficiencies with the plans that must be corrected to comply with the measures of the Agreement. As of October 2, 2023, the applicant has not submitted a revised Water Management Plan and Diversion Infrastructure Plan and as a result is out of compliance with the LSAA. Additionally, A work completion date was set in the LSAA for October 1, 2023. As of October 2, 2023, no work has been completed, and as a result the applicant is out of compliance with additional measures in the LSAA. CDFW requests, as a condition of project approval, that the applicant achieve compliance with the LSAA, fix all failed stream crossings, and mitigate all substantial sediment discharge to streams prior to cultivating cannabis on the project site.
- On March 22, 2023, an Attorney General's Order (see attached) was issued, stating, in part, that the applicant may not engage or participate in commercial cannabis activity at the Premise (APN: 522-024-001-000) until the applicant provide confirmation from CDFW that the applicant has achieved full compliance with the LSAA (EPIMS-HUM-21613-R1) as approved or amended. As of October 2, 2023, the applicant is not in compliance with the LSAA.
- The proposed water source for irrigation is from a permitted well that is proposed to be supplemented by a surface water diversion (POD). In drought years, CDFW has observed wells going dry in the area and failing to yield water for the entire cultivation season. It is not clear if the groundwater well on this parcel is operational, yields water, or why the applicant utilized an unauthorized surface water diversion point in June 2021 instead of utilizing the groundwater well. It has been determined that the parcel

adjacent to this parcel has three groundwater wells that do not produce water. If the project is approved, CDFW requests a licensed geologist assess the potential production of the well by conducting a pump test or other analysis on the current well condition.

- The project does not propose to add water storage to the existing 19,000 gallons of water storage in 7 hard tanks distributed throughout the parcel. The project, as proposed, does not have enough water storage to support 35,025 sq ft of cultivation. The project will likely require substantial additional water storage to be viable. CDFW recommends no less than 300,000 gallons of water storage be in place to support this project. Additionally, there does not appear to be appropriate space on the parcel to hold the required amount of water storage for the proposed project. Prior to project approval, CDFW requests to review an updated project plan that has a detailed description of where water will be sourced and stored. Additionally, CDFW recommends that the applicant have the water storage in place and filled prior to cultivating cannabis.
- The access road to the cultivation sites is unstable, susceptible to rockslides, and does not provide a safe and reliable access to the cultivation sites. While onsite on August 2, 2023, CDFW observed multiple large boulders, rocks, and a significant rockslide on a road that cutoff access to the northwestern portion of the parcel. CDFW requests, prior to project approval, that the road is assessed by a qualified professional to determine if the proposed project has a safe and reliable ingress and egress.
- During the site visit on August 2, 2023, CDFW observed uncovered soil, uncontained trash and debris associated with cannabis cultivation. CDFW requests that the applicant fully contains all imported soil onsite and that all discarded soil and uncontained trash is removed and properly disposed of at a waste management facility.
- During the site visit on August 2, 2023, CDFW observed large quantities of uncontained monofilament netting that was used during cannabis cultivation operations. The existing monofilament netting currently pose a threat to wildlife. The monofilament netting should be removed as soon as possible from the parcel and be disposed of at a waste management facility. To minimize the risk of wildlife entrapment, CDFW requests, as a condition of project approval, the prohibition of synthetic netting (e.g., plastic or nylon) including photo or biodegradable plastic netting for the purpose of cultivation operations and/or erosion control.
- As a condition of the LSAA, the permittee has agreed to allow CDFW access to inspect and/or monitor the proposed work permitted in the agreement. The proposed project

(PLN-12460-CUP) is located behind a locked community gate on Three Creeks Road that only landowners have access to. CDFW does not currently have access through the locked community gate without being escorted by the permittee. CDFW requests, as a condition of project approval, that reliable access through the community gate on Three Creeks Road be made available by the lead agency to CDFW that need access for inspections for unresponsive Permittees.

- At least one known Northern Spotted Owl (*Strix occidentalis caurina*; NSO) Activity Center occurs within 1.3 miles of the cultivation sites (CDFW 2023). CDFW requests, as a condition of project approval, that any ground-breaking or construction activities on the parcel should be limited to occur outside of the breeding season for NSO (March 1 through July 10). Additionally, CDFW requests that the permittee implements substantive containment of all generators on the parcel to minimize noise disturbance when in use.

Thank you for the opportunity to comment on this project.

**Corrina Kamoroff**

Environmental Scientist  
Habitat Conservation and Planning  
Humboldt/Del Norte LSA Program  
California Department of Fish and Wildlife  
619 Second Street  
Eureka, CA 95501



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Region 1 - Northern  
619 Second Street  
Eureka, California 95501  
(707) 445-6493  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 21, 2021

**Certified Mail:**

# 7020 1810 0000 0508 3847

Samantha Phillips  
707 Realty LLC  
1660 Hannah Court  
McKinleyville, CA 95519  
[samantha@mojomountain.com](mailto:samantha@mojomountain.com)

Subject: Notice of Violation of Fish and Game Code Sections 1602 and 5650 in  
Conjunction with Cannabis Cultivation

Dear Samantha Phillips:

On June 17, 2021, Department of Fish and Wildlife (Department) staff visited your property at Assessor's Parcel Number (APN) 522-024-001 (Property) within the Supply Creek watershed, Tributary to the Trinity River, County of Humboldt, State of California. This visit was conducted in coordination with staff from the California Department of Food and Agriculture, CalCannabis Cultivation Licensing Division. During the visit, staff observed activities that are in violation of Fish and Game Code sections 1602 and 5650. Staff also observed active cannabis cultivation in conjunction with these activities.

Fish and Game Code (FGC) Section 1602 requires a person to submit a written notification to the Department 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 the Department violates Section 1602.

On May 4, 2020, the Department issued a draft Streambed Alteration Agreement (Agreement) (No. 1600-2019-0611) for 12 projects to upgrade failing and undersized stream crossings. This draft agreement did not include any activity involving the diversion of surface water. Within 30 days of receipt of the draft Agreement, the applicant was required to notify the Department in writing whether the measures to protect fish and wildlife resources were acceptable (Fish and Game Code section

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1603). Failure to respond in writing within 90 days of receiving the draft Agreement, the Department may withdraw the draft Agreement

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, oil, and sediment.

In the Department's view, notification under FGC Section 1602 was required for one activity that affected an unnamed tributary to Supply Creek. However, the Department was unable to locate a notification for this activity. The location and description of this activity is provided below (Table 1).

Table 1. Summary of Fish and Game Code (FGC) violations documented during CDFW staff visit on June 17, 2021.

Violation #	FGC Section	Violation description	Latitude*	Longitude*
1	5650	Water pollution from a hydrologically connected road surface and failing stream crossing, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to fish) into waters of the state and potential for future delivery.	40.978997	-123.736
2	1602	Failure to notify for the diversion of surface water, used to irrigate cannabis, resulting in substantial diversion and obstruction of the natural flow of waters of the state.	40.981331	-123.7296
3	5650^	Water pollution from placement and abandonment of gasoline (a material deleterious to fish and wildlife) where it can pass into waters of the state.	40.981331	-123.7296

\* Units = decimal degrees. Datum = WGS 84. ^Location is same as above violation.

The Department also observed two activities on the Property that are violations of FGC Section 5650 that affected unnamed tributaries to Supply Creek. The locations and descriptions of these activities are provided above (Table 1).

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

The Department 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. 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

Samantha Phillips

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District Attorney or the Attorney General may also enforce a violation of FGC sections 1602 or 5650 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 Food and Agriculture (CDFA) is the state licensing authority for commercial cannabis cultivation. CDFA and the Department 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 CDFA. (Bus. & Prof. Code, §§ 26057, 26060.1.)**

As a first step to address this matter, the Department requests you contact Senior Environmental Scientist Specialist Ryan Bourque at [ryan.bourque@wildlife.ca.gov](mailto:ryan.bourque@wildlife.ca.gov) within 14 days of the date of this letter. Mr. Bourque may propose certain actions to protect fish and wildlife resources that have been or could be affected by the activities described above, and may ask you to submit a written notification and fee for these activities. While the Department, 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 or 5650, we encourage you to respond to this notice so that we may better assess the activity and limit any damage to resources.

The Department appreciates your cooperation.

Sincerely,

 Recoverable Signature

X *D. Willson*

CDFW Lt. D. Willson  
Law Enforcement Division  
Signed by: 9882C700-FF1F-43F7-A176-8057709D1472

ec: Douglas Willson, Joshua Zulliger, Scott Bauer, Rebecca Garwood, Matthew Jones, Cheri Sanville, Andrew Orahoske, Laurie Harnsberger, and Ryan Bourque  
Department of Fish and Wildlife  
[douglas.willson@wildlife.ca.gov](mailto:douglas.willson@wildlife.ca.gov), [joshua.zulliger@wildlife.ca.gov](mailto:joshua.zulliger@wildlife.ca.gov),  
[scott.bauer@wildlife.ca.gov](mailto:scott.bauer@wildlife.ca.gov), [rebecca.garwood@wildlife.ca.gov](mailto:rebecca.garwood@wildlife.ca.gov),  
[matthew.jones@wildlife.ca.gov](mailto:matthew.jones@wildlife.ca.gov), [cheri.sanville@wildlife.ca.gov](mailto:cheri.sanville@wildlife.ca.gov),  
[andrew.orahoske@Wildlife.ca.gov](mailto:andrew.orahoske@Wildlife.ca.gov), [laurie.harnsberger@wildlife.ca.gov](mailto:laurie.harnsberger@wildlife.ca.gov), and  
[ryan.bourque@wildlife.ca.gov](mailto:ryan.bourque@wildlife.ca.gov)  
Samantha Phillips  
Mojo Mountain LLC

Samantha Phillips

June 21, 2021

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[samantha@mojomountain.com](mailto:samantha@mojomountain.com)

Lindsay Rains and Shannon Walkenhauer

CalCannabis Cultivation Licensing Division

California Department of Food and Agriculture

[lindsay.rains@cdfa.ca.gov](mailto:lindsay.rains@cdfa.ca.gov) and [shannon.walkenhauer@cdfa.ca.gov](mailto:shannon.walkenhauer@cdfa.ca.gov)

Steven Steward

Humboldt County District Attorney's Office

[SSteward@co.humboldt.ca.us](mailto:SSteward@co.humboldt.ca.us)

John Ford and Robert Russell

Humboldt County Planning and Building Department

[jford@co.humboldt.ca.us](mailto:jford@co.humboldt.ca.us) and [rrussell@co.humboldt.ca.us](mailto:rrussell@co.humboldt.ca.us)

Diana Henrioulle, Kason Grady, Adona White,

Northcoast Regional Water Quality Control Board

[diana.henrioulle@waterboards.ca.gov](mailto:diana.henrioulle@waterboards.ca.gov), [kason.grady@waterboards.ca.gov](mailto:kason.grady@waterboards.ca.gov) and

[northcoast.cannabis@waterboards.ca.gov](mailto:northcoast.cannabis@waterboards.ca.gov)

Stormer Feiler

State Water Resources Control Board

[stormer.feiler@waterboards.ca.gov](mailto:stormer.feiler@waterboards.ca.gov)