

ATTACHMENT 4

REFERRAL AGENCY COMMENTS AND RECOMMENDATIONS

The project was referred to the following referral agencies for review and comment. Those agencies that provided written comments are checked off.

Referral Agency	Response	Recommendation	Location
Code Enforcement		No Response	
Building Inspection Division		No Response	
Division Environmental Health		No Response	
Public Works, Land Use Division	✓	Approval	On File
Loleta FPD		No Response	
PGE	✓	Approval	On File
California Department of Fish & Wildlife	✓	Comment	Attached
CalFire	✓	No Comment	On File
North Coast Regional Water Quality Control Board		No Response	
Wiyot Tribe		No Response	
Bear River Band	✓	Conditional Approval	On file and confidential
Northwest Information Center	✓	Further Study	On file and confidential

Santos, Steven A

From: Rian, Kathryn(Katie)@Wildlife <Kathryn.Rian@Wildlife.ca.gov>
Sent: Thursday, August 03, 2023 8:23 AM
To: Santos, Steven A
Subject: Hedding 18117 CDFW Recommendations

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Hi Steven,

I'd like to follow up on our site visit for the Hedding SMA special permit (PLN-2023-18117; APN 311-221-026) with several recommendations to bring the applicant into compliance with Fish and Game Code and mitigate for impacts to streams and riparian areas:

- **Covenant:** Record a covenant to ensure mitigation is completed to specifications and within a reasonable timeframe. Mitigation should be monitored over a period of five years, with remediation as necessary if performance criteria are not met.
- **Notification:** As a condition of approval, require the applicant to notify CDFW pursuant to Fish & Game Code section 1602 for violations associated with cannabis cultivation and unpermitted site development. The notification should include the following components:
 - Remove diversion infrastructure on the unnamed tributary north of the barn and restore the natural stream channel (see **Garage**, below, for additional discussion about this tributary).
 - Notification for three culverts including the two on the upper driveway that were recently replaced and the culvert that is mostly buried within the lower Willow Creek.
 - Mitigate for impacts to the unnamed tributaries conveyed under the driveway by daylighting culverts at the edge of asphalt and dissipating energy around the outlets via armoring, bioengineering, or other appropriate measures.
 - Remove the buried culvert in Willow Creek and restore the stream channel and banks. The floodplain of Willow Brook was impacted by unauthorized vegetation removal, slash piling, and grading, activities which resulted in notable sediment accumulation in the creek bed.
 - Restoration of the riparian floodplain/SMA altered without authorization. Although the current restoration plan includes planting redwoods, a greater diversity of riparian species would be more appropriate for the area. Alders, willows, and other fast-growing riparian shrubs would hasten recovery and provide benefits such as shading and soil stabilization. Natural recruitment may not be adequate and does not account for the temporal loss of habitat in the same way that more mature plantings would. As discussed above, routine monitoring should be required to assess progress and implement any necessary remediation.
 - Relocate and burn slash piles outside the wet season to minimize impacts to soil. Retain scattered slash piles to provide habitat for birds, invertebrates, and wildlife. Do not burn piles along the streambank or directly below the canopy of mature trees; these piles should be left in place as habitat features or transported elsewhere, provided they can be moved without damaging the streambank. I understand the project proponent may provide a revised biological assessment discussing potential buffer reductions, at which point CDFW will have the opportunity to comment.
- **Garage:** Remove the unpermitted garage and restore the site to pre-construction conditions. The adjacent unnamed tributary and its riparian forest serve as a cold-water source to Willow Brook and provide habitat for amphibians, birds, and invertebrates. Several special status species known to occur in the surrounding area also

use seeps, streams, and associated riparian vegetation, including Pacific tailed frog (*Ascaphus truei*; CDFW Species of Special Concern) and northern red-legged frog (*Rana aurora*; CDFW Species of Special Concern). Encroachment into riparian corridors decreases their value to fish and wildlife by degrading water quality, altering microclimate, and reducing habitat connectivity and complexity. Defensible space requirements for vegetation clearance increase the ecological footprint and environmental effects of development in or near streams. In addition to habitat loss associated with vegetation removal, indirect effects include the introduction or spread of invasive species, increased prevalence of predators, and light and noise disturbance. No-disturbance buffers, such as those required by the Humboldt County Streamside Management Areas and Wetlands Ordinance, are an effective means of mitigating for land use impacts in adjacent areas and should be maintained as described in the ordinance. The structure is located well within the prescribed buffer and its continued use and maintenance will further degrade adjacent habitat.

- If the Planning Department chooses to allow the building, mitigate for impacts to the riparian corridor at a ratio of 3:1, consulting with a qualified biologist to design an appropriate plan that incorporates invasive species management, revegetation, stormwater management, and other measures to enhance and protect aquatic and riparian habitat.
- **Trash:** Remove trash from the creeks. This does not need to be included as an activity in the notification but should be completed as soon as possible.
- **Stormwater Runoff:** Design vegetated bioswales, retention basins, or similar low impact development (LID) features to manage runoff from the house, driveway, and barn. Stormwater should not be discharged directly into streams.
- **Lighting:** In areas adjacent to forests, riparian areas, and other sensitive habitat, minimize light pollution by lighting areas only as necessary and installing outdoor fixtures that are fully shielded and downward facing, with color temperatures less than 3000K.

Please feel free to contact me if you have any questions.

Thanks,
Katie

Kathryn M. Rian

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GAVIN NEWSOM, Governor
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January 13, 2023

Certified Mail:

7020 0640 0001 2672 7008

Ryan Hedding
P.O. Box 3120
Eureka, CA 95502

Subject: Notice of Violation of Fish and Game Code Sections 1602, 5650, and 5652 in
Conjunction with Cannabis Production

Ryan Hedding:

On December 21, 2022, Department of Fish and Wildlife (Department) staff visited your property, Assessor Parcel Number (APN) 311-221-026 (Property) located on unnamed tributaries to Willow Brook and Humboldt Bay. During the visit, staff observed activities that are in violation of Fish and Game Code sections 1602, 5650, and 5652. Staff 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.

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.

In the Department's view, notification under FGC section 1602 was required for activities that affected unnamed tributaries to Willow Brook and Humboldt Bay. However, the Department was unable to locate a notification for these activities. The Department also observed activities in violation of FGC sections 5650 and

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5652. The locations and descriptions of these activities are provided below (Tables 1 and 2).

Table 1. Summary and description of Fish and Game Code (FGC) violations documented during CDFW staff visit on December 21, 2022. These violations appear to be associated with cannabis cultivation.

Violation #	FGC Violation	Latitude/Longitude	Description
1 (WS-1)	1602	40.6939, -124.1861	Failure to notify for substantial alteration of the natural flow of a stream by water diversion using a concrete cistern and poly pipe
2 (WS-1)	1602	40.6939, -124.1861	Failure to notify for substantial alteration of the bed, channel, and bank of a stream for installation and maintenance of a water diversion structure
3 (STX-1)	1602	40.6934, -124.1875	Failure to notify for substantial alteration of the bed, channel, and bank of a stream to install a culvert to convey a stream under a driveway
4 (PP-1)	5652	40.6932, -124.1875	Disposition of trash in a stream

Table 2. Summary and description of Fish and Game Code (FGC) violations documented during CDFW staff visit on December 21, 2022. These violations appear to be associated with parcel development.

Violation #	FGC Violation	Latitude/Longitude	Description
5 (STX-2)	1602	40.6937, -124.1882	Failure to notify for substantial alteration of the bed, channel, and bank of a stream to install a culvert to convey a stream under a driveway
6 (PP-2)	5652	40.6931, -124.1883	Disposition of trash in a stream
7 (STX-5)	1602	40.6923, -124.1893	Substantial alteration of the bed, channel, and bank from grading causing a culvert conveying a stream to be plugged with sediment
8 (PP-3)	5650	40.6925, -124.1898	Sediment discharge to waters of the State from stream alteration and grading on the bank of a stream
9 (HA-1)	1602	40.6923, -124.1894	Substantial alteration of the bed, channel, and bank of a stream by vegetation removal, grading, and alteration of the bank and adjacent riparian habitat

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, 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 or 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 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, and 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 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 DCC. (Bus. & Prof. Code, §§ 26057, 26060.1.**

As a first step to address this matter, the Department requests you contact the assigned Senior Environmental Scientist David Manthorne at david.manthorne@wildlife.ca.gov within 14 days of the date of this letter. CDFW personnel 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 the 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 sections 1602, 5650, and 5652, we encourage you to respond to this notice so that we may better assess the activity and limit any damage to resources.

Ryan Hedding
January 13, 2023
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The Department appreciates your cooperation.

Sincerely,



Lt. Brendan Lynch, CDFW
Law Enforcement Division

ec: California Department of Fish and Wildlife
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