

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-11607-CUP, APN: 522-023-001
Date: Tuesday, October 03, 2023 7:05:18 AM
Attachments: [NOV9-11-2022.pdf](#)

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Good Morning,

Please see the comments below regarding the above referenced project.

Project Number: PLN-11607-CUP

Project Name: 707 Cultivation Company

APN(s): 522-023-001

Project Description

A Conditional Use Permit for 43,560 square feet (SF) of existing outdoor cannabis cultivation. Processing occurs offsite at a licensed third-party facility. Water for irrigation is sourced from a 200-foot well and two springs registered with the State Water Resources Control Board. Water is stored in hard tanks and bladders for a total of 88,500 gallons of available storage. Electricity is sourced from generator power.

CDFW COMMENTS:

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

The following comments are intended to assist the Lead Agency in making informed decisions in the planning process. The following comments shall supersede prior comments submitted by CDFW regarding PLN-11607-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 August 18, 2020, CDFW conducted a site inspection at the project and property, Assessor's Parcel Number (APN) 522-023-001. While onsite, CDFW staff observed activities that are in violation of Fish and Game Code (FGC) section 1602. Notably, there was substantial alteration of the natural flow of two Class II streams by water diversion using a plastic structure and poly pipe following excavation of the channel to create a pool for diversion. Staff also observed active cannabis cultivation in conjunction with these activities. CDFW issued a Notice of Violation (NOV, see attached) to document FGC violations, and to encourage the applicant to cure these violations.

- The applicant does not have a final Lake and Streambed Alteration Agreement (LSAA). On September 22, 2023, the applicant notified CDFW to remove the two PODs in part to settle a criminal case pending with the Humboldt County District Attorney office. The LSAA is currently in process with CDFW. CDFW requests the applicant receives a final LSAA and resolves all FGC violations prior to being permitted to cultivate cannabis.
- The project description states that the proposed water source for irrigation is from a permitted well that will be supplemented by two springs. A final LSAA is required prior to the diversion from waters of the state. At present, a LSAA has not been obtained for this project. Additionally, the LSAA that is in process with CDFW does not propose the diversion of surface water.
- During the 2020 site inspection it was determined that the groundwater well was not capable of producing water. The groundwater well was not connected or powered, and Mr. Cuevas stated that the groundwater well never produced water to support irrigation. Because of this, CDFW recommends that any project approved for this parcel be fully capable of storing rainwater to supply the irrigation and incidental needs. CDFW recommends that no less than 400,000 gallons be available and filled on site prior to allowing any cultivation activities to occur. Based on the site topography and remote location, CDFW staff do not believe there is adequate space to place water storage to support the size of this project.
- The project description states that water is stored in hard tanks and bladders for a total of 88,500 gallons of available storage. During the 2020 site visit, CDFW observed that the water bladders located on site had large holes and were no longer viable water storage for the proposed project.
- The proposed project is located adjacent to United States Forest Service (USFS) ownership. Due to the project's proximity to the USFS and habitat for sensitive wildlife species, the proposed project has the potential to significantly impact Special Status species including, but not limited to, the Northern Spotted Owl (*Strix occidentalis caurina*; NSO), the Fisher (*Pekania pennanti*) and the California Condor (*Gymnogyps californianus*). CDFW requests, prior to project approval, that a Biological Assessment is completed by a qualified professional and reviewed by CDFW to ensure that the proposed project will not significantly impact any sensitive species.

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 2nd Street
Eureka, CA 95501
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 11, 2020

Certified Mail:

7017 1450 0001 7871 8964

David Cuevas
P.O. Box 3521
Eureka, CA 95502

Subject: Notice of Violation of Fish and Game Code Section 1602 in Conjunction with Cannabis Production

Dear David Cuevas:

On August 18, 2020, Department of Fish and Wildlife (Department) staff visited your property, Assessor Parcel Number (APN) 522-023-001 (Property) located on unnamed tributaries to Supply Creek and Trinity River. During the visit, staff observed activities that are in violation of Fish and Game Code section 1602. 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.

In the Department's view, notification under FGC section 1602 was required for activities that affected unnamed tributaries to Supply Creek and the Trinity River. However, the Department was unable to locate a notification for these activities. The locations and descriptions of these activities are provided below (Table 1).

Table 1. Summary and description of Fish and Game Code (FGC) violations documented during CDFW staff visit on August 18, 2020.

Violation #	FGC Violation	Latitude/Longitude	Description
1	1602	40.9914, -123.7193	Substantial alteration of the natural flow of a Class II stream by water diversion using a plastic structure and poly pipe
2	1602	40.9856, -123.7210	Substantial alteration of the natural flow of a Class II stream by water diversion using a plastic structure and poly pipe

A person who violates FGC section 1602 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. 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 civilly. Specifically, under FGC sections 1615, a person who violates FGC section 1602 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 section 1602 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 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

David Cuevas
September 11, 2020
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violation of FGC section 1602, 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,

9/11/2020

X *D. Willson*

Lt. D. Willson
Law Enforcement Division
Signed by: 31ed880b-49a7-4150-942e-df2dbc6f5c00

ec: Douglas Wilson, Joshua Zulliger, Brendan Lynch, Kyle Shaw, Bradley Padilla, Eric Agoitia, Scott Bauer, David Manthorne, and Curt Babcock
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