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Edmund G. Brown Jr.
Governor

Complaint Inspection Report Yi Joung Min Properties Inspection Report WDID# 1B1110532CNME

Date: August 23, 2011

To: Diana Henriouille - Enforcement Coordinator
David Leland - Watershed Protection Division Chief

From: Stormer Feiler, Environmental Scientist

Subject: July 8, 2011 Inspection of Yi Joung Min properties

Physical Site: 29980 HWY 101 North and 30010 HWY 101 North
County: Mendocino

Assessor Parcel
Number: 037-120-09 (29980 HWY 101 North), 037-120-08 (30010 HWY 101 North)

Mailing Address: 16226 Lindview Drive, San Leandro CA 95478

Watershed: Unnamed Tributary to Outlet Creek, and Middle Main Eel River (Cal Water Watershed Version 2.2 1111.610202 Lower Outlet Creek)

Violations: Violations of Basin Plan Prohibitions #1 and #2, potential violation of federal Clean Water Act (CWA) Section 301 and 402.

Inspection Attendance on July 8, 2011

Jeanette Pedersen-CAL FIRE
Craig Pedersen-CAL FIRE
Tim Meyers-CAL FIRE
Lou Schiochetti-CAL FIRE
Andy Whitlock-CAL FIRE
Dave Longstreth-California Geological Survey
Rusty Boccaleoni-California Department of Fish and Game
Bob Scaglione-Mendocino Air Quality Management District
Jim McCleary-Mendocino County Code Enforcement
Ray Madrigal- Mendocino County Code Enforcement
Stormer Feiler-North Coast Regional Water Quality Control Board

California Environmental Protection Agency

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Introduction

This report provides a written record of observations and findings made during an inspection of the above-referenced parcels (Site) owned by Yi Joung Min. The inspection was made in response to complaints received by CAL FIRE regarding heavy equipment operations, movement of large amounts of earthen materials, and tree felling. Prior to requesting an inspection warrant from the Mendocino County Court, CAL FIRE investigated the complaint to determine whether violation(s) of California Forest Practice laws were in progress as reported. CAL FIRE confirmed that violations were occurring and consulted with staff of the Regional Water Board and other agencies, and subsequently developed an inspection warrant that allowed full participation by State and County agencies with potential regulatory authority. Before agency staff accessed the Site, law enforcement staff from CAL FIRE, California Department of Fish and Game, and the Mendocino County Sheriff's Office cleared the Site to ensure a safe working environment for all participating parties.

On the morning of the inspection, at 0700 hours, the inspection team met to at the Howard Forest Cal FIRE meeting room to review last minute details and discuss the planned approach to inspecting the Site. During the pre-inspection briefing, Jeanette Pedersen informed the inspection team that the Site is part of a County of Mendocino 9.31 collective medical marijuana grow. Chapter 9.31 of the Mendocino County Code is an ordinance passed by the County Board of Supervisors entitled "Medical Marijuana Cultivation Regulation." The purpose and intent is to regulate the cultivation of medical marijuana. The ordinance includes a provision (Section 9.31.110) for collective gardens with more than 25 plants where the garden serves a larger group of medical marijuana users. The Mendocino County Sheriff's Department administers this program, and we understand that the Sheriff's Department had signed off on this Site certifying compliance with the 9.31.110 ordinance.

The Site consists of two separate parcels, Parcel 1 (29980 Highway 101) and Parcel 2 (30010 Highway 101), each leased and managed by a different individual. Anastacio Arturo Payan (DOB 1-25-68, CDL# C5601711, residence address 230 Buckingham Way 102, San Francisco, CA 94132) leases and manages Parcel 1, and Jason Brant Gregg (CID B4022073, Mailing address: 12401 Tomki Road, Redwood Valley, CA 95470) leases and manages Parcel 2. Both managers are covered under one collective, licensed to Mr. Payan through the Mendocino County 9.31 program, and we understand that each manager intends to grow 99 plants on his respective Parcel.

General Site Description

The Site is located approximately seven (7) air miles north of Willits, California, along Highway 101. Much of the Site is steeply sloped and forested with Douglas fir, Tan Oak, Redwood, and Madrone trees. The slopes leading to Highway 101 and to the local watercourses range on average from 80-90% in steepness.

The access road leading up from Highway 101 to the Site is unpaved and constructed on a grade of approximately 25-30%, without any water breaks or other apparent surface drainage features to reduce potential erosion. The access road has a berm along the outside edge, which prevents water from flowing off the road, concentrating flows, and increasing the potential erosion rate. The Site conditions and configuration observed during the inspection pose a substantial threat for sediment discharge to waters of the State if not removed/properly treated prior to winter rains.

The Site is located in the Upper Main Eel River watershed, which is federal Clean Water Act section 303(d)-listed as impaired for excessive sediment and high water temperature. The US Environmental Protection Agency has established Total Maximum Daily Loads (TMDLs) for sediment and temperature for this watershed. The sediment TMDL identifies road related landslides and surface erosion as primary sources of sediment requiring control in order to achieve the recovery of the beneficial uses of water.

There are several unnamed tributary Class II¹, and Class III² watercourses located within and adjacent to the Site. The main watercourses located below the access road and below Site 1 are likely large Class II watercourses³. The first order Class III watercourse to the south of Parcel 1 exhibits steep channel gradients, increasing the potential for transport of sediment into downstream large, unnamed, Class II and Class I⁴ watercourses. These unnamed watercourses flow through Reeves Canyon to Outlet Creek, which is tributary to the Eel River. Steelhead trout, Chinook, and Coho salmon are known to reside in the Class I watercourses in this watershed.

The federal Endangered Species Act (ESA) identifies Steelhead trout local to this watershed area as Threatened in the Northern California Coast Evolutionarily Significant Unit, as defined under the ESA by the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA).

¹ California Forest Practice Rules define a Class II watercourse as 1) a watercourse capable of supporting non-fish aquatic species, or 2) a watercourse within 1000 feet of a watercourse that seasonally or always has fish present. The definition excludes Class III watercourses from the exception.

² California Forest Practice Rules define a Class III watercourse as a watercourse with no aquatic life present, and that shows evidence of being capable of transporting sediment to Class I and Class II waters during high water flow conditions after completion of timber operations.

³ A large Class II watercourse is subset of the Class II watercourse definition used to identify streams that require greater protection. These watercourses are defined as 1) those that are blue line streams on a USGS Topographic map and 2) have surface flows in July 15 of an average water year; additional field verification is also generally required.

⁴ California Forest Practice Rules define a Class I watercourse as 1) a watercourse providing habitat for fish always or seasonally, and/or 2) providing a domestic water source.

The California Department of Fish and Game (DFG) Recovery Strategy for California Coho Salmon identifies Outlet Creek as a Coho Salmon stream. Outlet Creek Coho salmon are listed as Threatened in the Southern Oregon Northern California Coast Evolutionarily Significant Unit, as defined by the ESA.

The maps included in this report establish the approximate locations of the areas inspected, and illustrate proximity to waters of the State and United States.

Inspection Observations

This section describes inspection observations under sub headings. The subheadings correspond to areas of concern identified on the map at the rear of this report.

Parcel 1

The inspection team started the inspection on Parcel 1. Parcel 1 contains a large earthen pad (top surface area approximately 1.8 acres) prepared for marijuana cultivation by excavation of multiple holes (approximately 99) and filling the holes with soil amendment. Two workers were adding amendment to the holes during the inspection.

The Parcel 1 earthen pad appears to be underlain, and in some areas supported, by large and small woody debris and material. A Class III watercourse borders Parcel 1 on the southern edge; the watercourse flows to the east. There is a house pad located immediately below and northeast of the earthen pad (refer to the CGS Memo⁵ for detail).

The Parcel 1 earthen pad appears to have been constructed on terrain with natural slopes in excess of 80%. I measured the slope leading to the watercourse on the South Side of Site 1 with a clinometer and found that along the lower southeast side, the side slopes leading to the watercourse range from 68-75% and as the slope leads up to the west along this southern edge, native slopes increase to 90-94%. The earthen fill materials piled on top of the woody debris have side slopes ranging from 60-80%. The majority of the fill material side slopes are around 65-70%. The fill side slopes were loose and unconsolidated. There is no visible evidence to suggest that the earthen materials were compacted during construction. Dave Longstreth's inspection memo (referenced herein as the CGS Memo), indicates that the fill pad is estimated to be a maximum of about 20 to 25 feet thick and is estimated to be on the order of about 15,000 cubic yards of material. The earthen pad is located approximately 1,300 feet from Highway 101, as estimated from a USGS Topographic Map (Willits 7.5 minute Quadrangle).

⁵ CGS August 11, 2011 Engineering Geologic Assessment of Grading Operations at 29980 and 30010 Highway 101, Willits, CA; Cal Fire LE CaseCAMEUOO4127-46.

Based on my observations, it appears that construction of this pad resulted in the discharge of organic and earthen material into or where it could pass into waters of the State and United States. I observed woody material in the westerly portion of the Class III channel on the south side of the fill pad, and earthen materials perched within the woody materials less than 50 feet from the adjacent watercourse at the southwest corner of the fill, and within 150 feet of the watercourse at the southeast corner of the fill. I expect that with winter rainfall, much of the unconsolidated earthen fill material will slide down the steep slopes and deliver to the stream described above. In addition, the CGS Memo indicates that there appears to be a significant potential that if the fills used in the pad construction become saturated, the fill slopes will fail, likely impacting not only downslope watercourses, but the downslope house pad, site driveway, and Highway 101; saturation of the uncompacted fills could occur from irrigation of vegetation of plants on the pad and/or from winter rains.

Parcel 2

Parcel 2 contains a constructed earthen pad, approximately 0.7 acres in size, constructed in similar manner as the pad located on Parcel 1, though this pad appears to have been constructed by enlarging upon an existing landing, which likely indicates that the volume of earthen material excavated was not as extensive as that excavated to construct the pad on Parcel 1. The Parcel 2 pad does not appear to pose an immediate threat to water quality. The east edge of the unconsolidated earthen fill materials is perched on top of an 80% slope directly above, and about 800 feet from Highway 101. Similar to the earthen pad observed on Parcel 1, the perched earthen materials in the fill prism on Parcel 2 include large and small woody materials, and the earthen fill does not appear to have been compacted during construction. The CGS Memo indicates that the volume of fill materials involved in this prism is about 2,500 cubic yards.

I observed bags of soil amendment piled in various locations on the pad at Parcel 2, but I did not observe any planting holes. I observed marijuana plants (100) lined up across the west edge of the pad against the cut bank along the upper slope, and I observed water tanks among the trees above the pad.

The stream below Parcel 2 to the southeast appears prone to side slope failures and sediment delivery from both mass wasting events (debris slides) and the driveway and access road described in the next subsection. These existing conditions increase the risk of sediment delivery from Parcel 2, which will further compromise the integrity of the 42-inch culvert that passes the stream under Highway 101; the culvert is currently not functioning properly, as in-stream sediment deposition occludes half of the culvert capacity.

Access Road

The access road is constructed as a mid slope road on 80%+ slopes at approximately a 30% grade to where roads branch and lead off to Parcels 1 and 2. The grade on the segment of road leading to Parcel 2 varies from 0-10%. The access road appears to be an older road recently re-opened by grading over the road surface. The grading of the road surface has displaced soils and created an 8-12 inch high berm of loose soils along the outboard (down slope) edge of the access road. In my opinion, this berm appears substantial enough to prevent water from leaving the road surface and may cause the road to function as a drainage conveyance, collecting water and concentrating flows during rainfall. Often, in such circumstances, the concentrated flows will erode a road's surface, and result in increased erosion and sediment delivery to nearby streams. The CGS Memo also indicates that potential for sediment deposition onto Highway 101, which could adversely impact the safety of the motorists that use the Highway. When a large enough volume of flow becomes concentrated, it may breach the berm, causing gully erosion to form at the juncture of the native slope and road surface, further exacerbating erosion and sediment delivery.

At the location where the access road branches to the roads leading to Parcels 1 and 2, there is approximately 300-400⁶ cubic yards of earthen material sidecast off the outboard edge of the road. The sidecast material extends approximately 100 feet down the slope, reaching the watercourse channel below. This particular watercourse flows to and under Highway 101, passing under the Highway through the 42-inch culvert mentioned in the section above. As noted above, the culvert is already nearly half filled with deposited sediment; the sediment observed in the stream channel upstream of the culvert and sidecast material on the slope above the watercourse threatens to further fill and ultimately compromise the integrity of this culvert, and represents a discharge and threatened discharge to waters of the State and United States.

⁶ CGS August 11, 2011 Engineering Geologic Assessment previously referenced.

Inspection Photos

The photographs in this section are displayed under subtitles corresponding to the observation sections above. All photos were taken by Stormer Feiler on July 8, 2011.

Parcel 1



Photo #1- Parcel 1 earthen pad overview



Watercourse

Photo#2: Parcel 1 - woody and earthen materials in and perched adjacent to watercourse at top (west side of earthen pad)



Photo #3: Parcel 1 - side cast earthen materials on top of trees and brush above watercourse channel

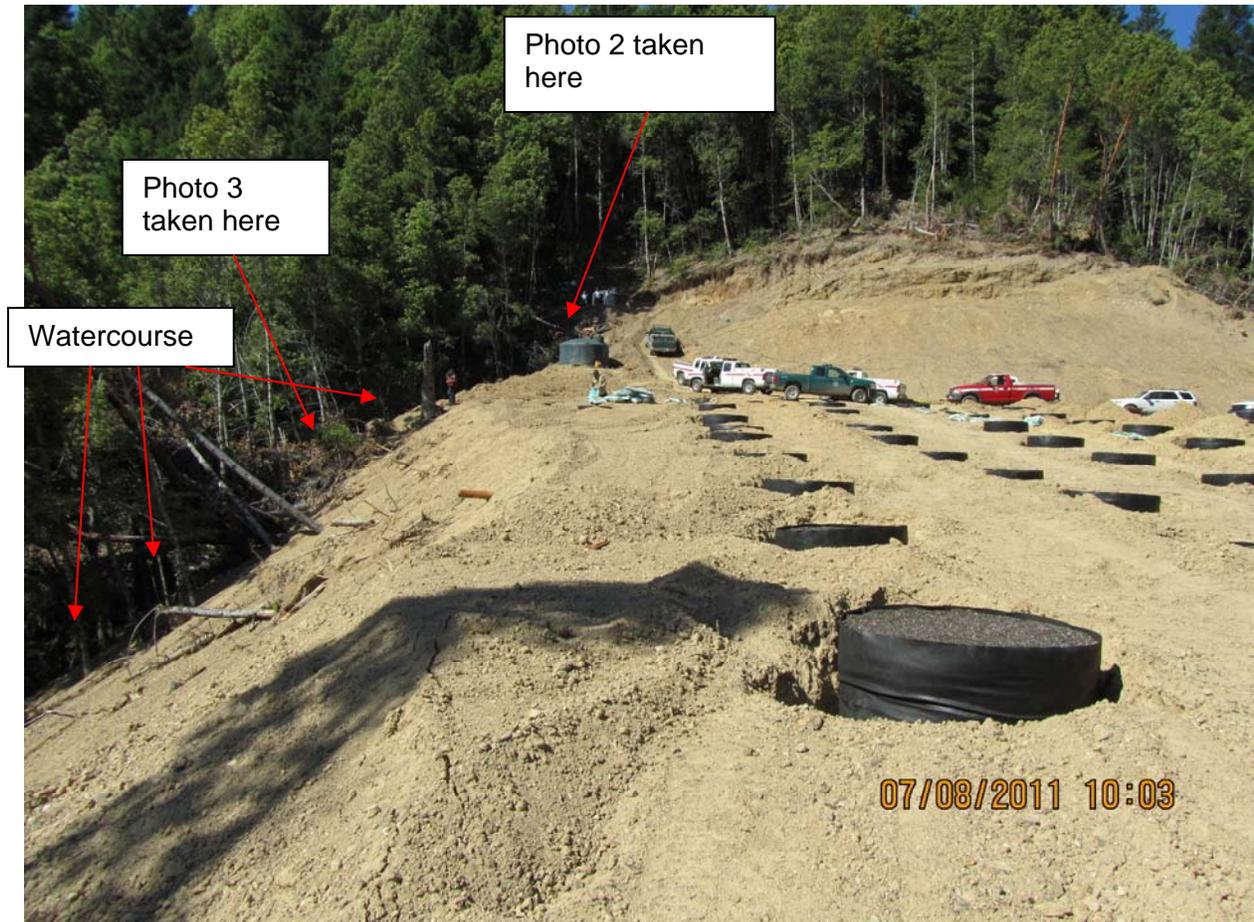


Photo #4: Parcel 1 - East end looking toward the west end.



Photo #5: Parcel 1 - looking west down south side (note the woody material sticking out of the earthen fills and depth of fills)



Photograph #6: Parcel 1 - looking up at fill slope from about 50 feet above the watercourse

Parcel 2



Photograph #7: Parcel 2 earthen pad overview, photo merge slightly skews the shape of Site 2, as it is relatively linear along the down slope edge. This photo series is taken from above the pad looking to the east.



Photograph #8: Parcel 2 - East side of pad looking North



Photograph #9: Parcel 2 - East side of pad looking south (note the loose earthen fills and the buried woody materials at the fill base)

Access Road

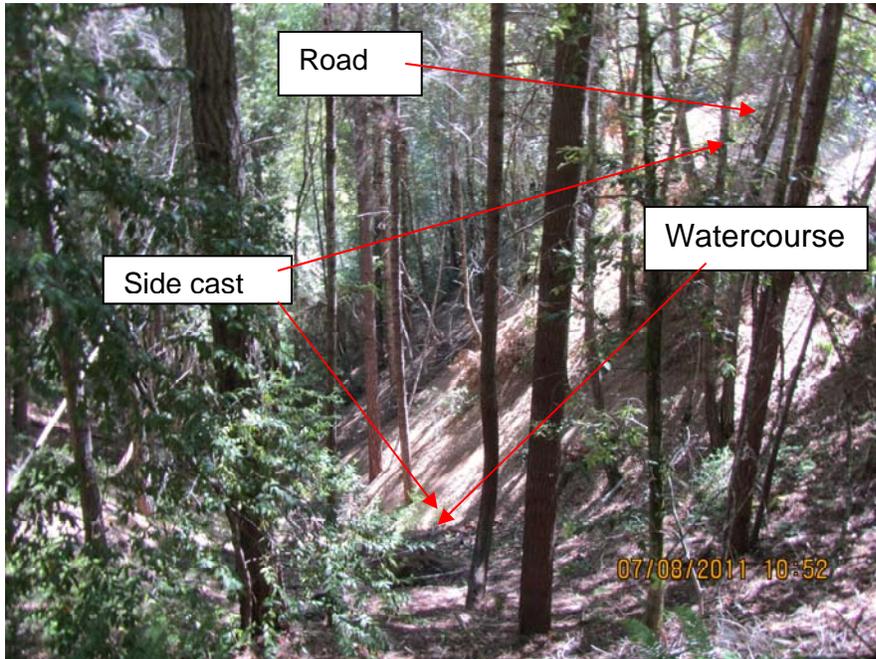


Photo #10: Access road – Side cast earthen materials extending approximately 100 feet down the slope from the road to the watercourse



Photo #11: - 42-inch culvert passing under Highway 101 (note the sediment deposits in stream occluding full flow through the culvert).

Summary

The configuration and conditions observed on the pads at both Parcels 1 and 2 and along the access road, specifically pad construction consisting of earthen materials piled on top of woody debris, and perched and sidecast earthen materials above watercourses pose a significant threat to water quality, as well as to public health and safety, due to the potential not only for surface erosion and sedimentation but for slope failure and mass wasting in the event of fill saturation. These conditions represent violations and threatened violations of multiple provisions of law, including the Water Quality Control Plan for the North Coast Region (Basin Plan), the California Water Code, and Clean Water Act.

The Water Quality Control Plan for the North Coast Region (Basin Plan) prohibits the discharge and/or the placement or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into or where it can enter into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses. Furthermore, the discharge of waste to waters of the State and of the United States without filing a report of waste discharge, or obtaining a proper permit, from the Regional Water Board violates both the Water Code and the Clean Water Act.

As described and shown above, construction of the two pads and the access road have involved and/or resulted in discharge of earthen and woody materials into and where they can enter downslope watercourses. As constructed, the pads and access roads will continue to cause and result in discharge of earthen and woody materials to receiving waters, potentially in catastrophic amounts during the rainy season.

A project of this nature and magnitude would typically undergo environmental and permitting review, by various environmental and resource protection agencies, requiring in part that the constructed features be designed and aspects of their construction overseen by licensed professionals with relevant experience. In absence of such design and oversight, the resulting project includes features and characteristics that would not have been permissible, that will likely not maintain their integrity over time and exposure to the elements, and that pose a substantial and immediate threat to public health and safety, and the environment.

Recommendations

I recommend that the responsible party be directed to engage a qualified licensed California Certified Engineering Geologist and Geotechnical Engineer experienced in slope stability, erosion control, and design construction of engineered fills, to develop an Emergency Plan to remove and stabilize all unstable earthen fills and woody debris before the start of the 2011/12 rainy season, and a to restore and monitor the success of site restoration and mitigation efforts.

References

CGS August 11, 2011 Engineering Geologic Assessment of Grading Operations at 29980 and 30010 Highway 101, Willits, CA; Cal Fire LE CaseCAMEUOO4127-46, by Dave Longstreth.

California Forest Practice Rules, 2011, California Department of Forestry and Fire Protection, Resource Management, Forest Practice Program.

California Department of Fish and Game, Recovery Strategy for the California Coho Salmon, Report to the Fish and Game Commission, February 2004.

North Coast Regional Water Quality Control Board, Water Quality Control Plan for the North Coast Region (Basin Plan), January 2007,.

Locations displayed on the maps below approximate Site and road locations

