

# TABLE OF CONTENTS

## BOARD OF SUPERVISORS' MEETING

April 18, 2017

FILE NUMBER:	CDEF 2016-049
PROPERTY OWNER:	Chanthala Vorachak
TYPE OF HEARING:	Assessment of Costs Related to Abatement Pursuant to Lassen County Code Title 19

Board Letter.....	1-3
Draft Resolution.....	4-5
Legal Description.....	6
Noticing of Public Hearing.....	7
Summary of Administrative Fines.....	8-9
Abatement Return and Warrant Packet.....	10-End



*County of Lassen*  
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

April 6, 2017

Maurice L. Anderson, Director  
707 Nevada Street, Suite 5  
Susanville, CA 96130-3912  
Phone: 530 251-8269  
Fax: 530 251-8373  
email: landuse@co.lassen.ca.us  
website: www.co.lassen.ca.us

TO: Board of Supervisors  
Agenda Date: April 18, 2017

FROM: Maurice L. Anderson, Director

Zoning & Building  
Inspection Requests  
Phone: 530 257-5263

SUBJECT: Hearing on Accounting pursuant to Lassen County Code Section 19.140; and Consideration of Report of Administrative civil penalties (as ordered to Chanthala Vorachak, by the Decision of Administrative Hearing Officer, MCOH-16-19; CDEF 2016-049 on September 1, 2016), charged pursuant to Lassen County Code Section 19.170.

Recommendation

1. Receive the Enforcing Officer's Report; and
2. Conduct a public hearing pursuant to County Code Section 19.140 (Hearing on Accounting); and
  - a. Consider enforcing, and recording in the Office of Lassen County Recorder, a lien against real property identified herein, on which marijuana cultivation occurred in violation of Lassen County Code Title 19, in order to recover both the administrative and abatement costs associated with said violation, as accounted for by the Enforcing Officer; or
  - b. Through adoption of a resolution, order that the administrative and abatement costs associated with the violation, as defined by Title 19 of Lassen County Code, be placed on the county tax roll, in an effort to recover said costs.

Summary

The purpose of this public hearing is to allow the Board of Supervisors to determine what costs (if any) will be recovered for the enforcement of the Lassen County Marijuana Cultivation Ordinance. The property described herein (EXHIBIT A), owned by Chanthala Vorachak, was found to be in violation of Lassen County Code Title 19 as outlined in the Decision of Hearing Officer dated September 1, 2016. This decision ordered the abatement of unlawful marijuana cultivation by the owner within five days or by the Enforcing Officer if the owner did not self-abate, and established Administrative Penalties to be imposed upon the owner on each day the violation did occur.

Because the unlawful marijuana cultivation was not abated by the property owner, the Enforcing Officer, with assistance from additional county personnel, executed the abatement of the unlawful marijuana cultivation on September 16, 2016. The Abatement Warrant and attachments thereto including the Decision of the Administrative Hearing Officer have been provided with this Board letter; the Abatement Warrant Return has also been provided. Physical costs of executing the

abatement, as well as administrative costs, as ordered by the Hearing Officer, have been accounted for in accordance with Lassen County code §19.120 and §19.170.

The purpose of this hearing is to receive the Enforcing Officer's report on accounting (attached) and to consider cost recovery. As stipulated under Section §19.080(e) of County Code, the decision of the Hearing Officer, with regard to the existence of unlawful marijuana cultivation and abatement of a nuisance, is final.

Report on Accounting

The physical and clerical costs of the completed abatement, as well as the total of the administrative penalties have been accounted for and total \$20,113.80. These costs incurred are reported in detail on the attached spreadsheet. Administrative penalties were applied, as established by the Hearing Officer, from August 11, 2016 through September 16, 2016, and interest did accrue on the Administrative penalties between August 11, 2016 and November 30, 2016.

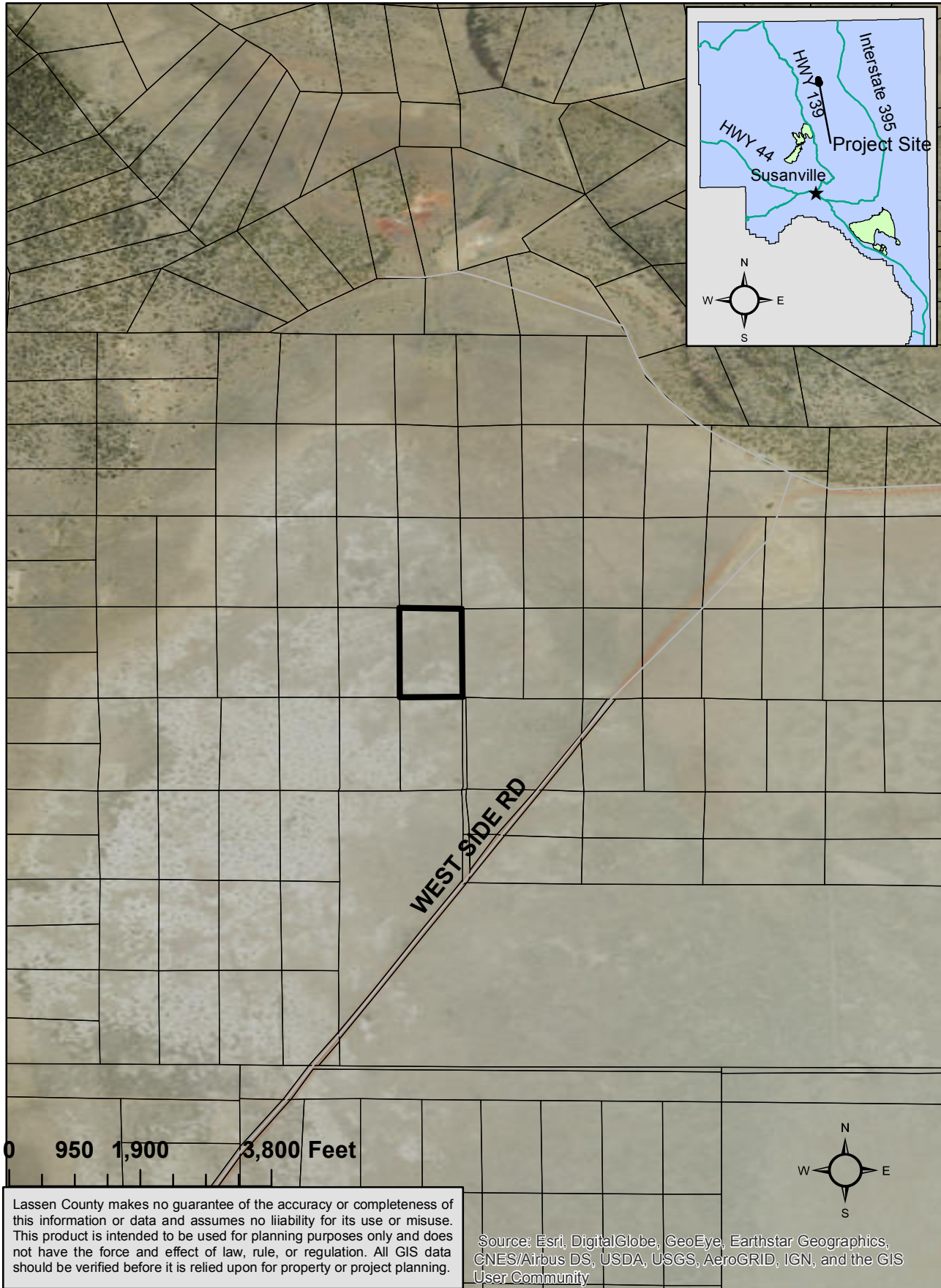
Along with the Lassen County Department of Planning and Building Services, the Following Agencies were involved in the physical and clerical aspects of the abatement.

Other Agency Involvement to Date  
Lassen County Sheriff's Office  
County Counsel

Other Agencies to be Involved Subsequent to Hearing  
County Auditor's Office  
Tax Collector's Office



# Vorachak APN: 031-170-73





**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION CONFIRMING ASSESSMENT OF COST**

**WHEREAS**, Assessor's Parcel Number 031-170-73 is owned by Chanthala Vorachak;  
and

**WHEREAS**, on September 1, 2016, the Administrative Hearing Officer rendered a Decision ordering the abatement of unlawful marijuana cultivation in violation of Lassen County Code Title 19; and

**WHEREAS**, on September 16, 2016, the County completed the abatement by eradication of marijuana plants located upon said property pursuant to Lassen County Code Title 19; and

**WHEREAS**, on April 18, 2017, the Board of Supervisors conducted a noticed public hearing whereat evidence was presented regarding the costs of abatement.

**NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. That the foregoing recitals are true and correct.
2. That notice of the hearing has been given as required by the Lassen County Code.
3. That it is found and ordered that the sum of \$20,113.80 as physical and administrative costs of abatement shall be assessed against Assessor's Parcel Numbers 031-170-73 as described in Exhibit A. The Lassen County Board of Supervisors hereby orders that this amount be placed upon the county tax roll against the respective parcels of land in accordance with Lassen County Code Title 19.
4. Notice of this resolution shall be given to Chanthala Vorachak as follows:
  1. First class mail.
  2. Certified mail.
  3. Posting this resolution on the property.

RESOLUTION NO. \_\_\_\_\_  
Chanthala Vorachak

The foregoing resolution was adopted at a regular meeting of the Board of Supervisors of the County of Lassen, State of California, held on the 18<sup>th</sup> day of April 2017, by the following vote:

**AYES:** \_\_\_\_\_

**NOES:** \_\_\_\_\_

**ABSENT:** \_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN of the Board of Supervisors,  
County of Lassen, State of California

**ATTEST:**  
JULIE BUSTAMANTE  
Clerk of the Board

BY \_\_\_\_\_  
MICHELE J. YDERRAGA Deputy Clerk of the Board

I, MICHELE J. YDERRAGA, Deputy Clerk of the Board of the Board of Supervisors, County of Lassen, do hereby certify that the foregoing resolution was adopted by the said Board of Supervisors at a regular meeting thereof held on the 18<sup>th</sup> day of April, 2017.

\_\_\_\_\_  
Deputy Clerk of the County of Lassen Board of Supervisors

**EXHIBIT A**  
**Legal Description**

**A.P.N. 031-170-73**

All that certain real property situated in a portion of Section 30, Township 36 North, Range 12 East, Mount Diablo Base and Meridian, in the unincorporated territory of Lassen County, California, more particularly described as follows:

Lot 588 as the same is shown on that certain map entitled "Moon Valley Ranch Unit No. 4" filed January 28, 1971 in the Office of the Lassen County Recorder, State of California, in Book 8 of Maps at Pages 8 through 32, inclusive.



*Don E. Willis*





## County of Lassen

### Department of Planning and Building Services

• Planning

• Building Permits

• Code Enforcement

• Surveyor

• Surface Mining

April 6, 2017

Maurice L. Anderson, *Director*

707 Nevada Street, Suite 5

Susanville, CA 96130-3912

Phone: 530 251-8269

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email: landuse@co.lassen.ca.us

website: www.co.lassen.ca.us

### NOTICE OF PUBLIC HEARING LASSEN COUNTY BOARD OF SUPERVISORS

The Lassen County Board of Supervisors solicits the aid of public agencies and the general public in consideration of the following item:

**Property Owner:** Chanthala Vorachak

**File Number:** CDEF 2016-049

**Project:** Public Hearing on Accounting pursuant to Lassen County Code Section 19.140; and Consideration of Report of Administrative civil penalties (as ordered to Chanthala Vorachak, by the Decision of Administrative Hearing Officer, MCOH-16-19; CDEF 2016-049 on September 1, 2016), charged pursuant to Lassen County Code Section 19.170.

**Location:** 699-900 Finch Road, Termo, CA 96132

**A.P.N.s:** 031-170-73

**Staff Contact:** Maurice L. Anderson, Marijuana Enforcement Officer

The Board of Supervisors will hold a public hearing on this item at 10:15 AM, on Tuesday April 18, 2017, in the Board Chambers, 707 Nevada Street, Susanville, California. All interested persons and agencies are invited to attend the meeting and be heard or to submit comments to the Commission prior to the hearing, c/o the Planning and Building Services Department, 707 Nevada Street, Suite 5, Susanville, California 96130.

For the Board of Supervisors,

Maurice L. Anderson,  
Director

MLA:mcrm

Distribution: Lassen County Supervisors; County Counsel; Property Owner (includes report on accounting; Sheriff; Co. Assessor's Office; property owners within 300 feet.

# Administrative and Physical Costs of Abatement

APN: 031-170-73

Property Address: 699-900 Finch Road

Owner Name: Chanthala Vorachak

Occupant:

Case Number: CDEF2016-049/MCOH 16-19

Need Time

Labor Date	Employee Name/Title	Work Performed	Time (hrs.)	Weighted Rate	Cost	Notes (mileage, materials, etc.)	Cost	Total Cost
9/15/2016	Melyssah Rios, Deputy County Counsel	drafting of abatement warrant	1.00	\$ 46.00	\$ 46.00			\$ 46.00
Various	Robert Burns, County Counsel	Admin Hearing, Abatement App.	3.00	\$ 92.00	\$ 276.00			\$ 276.00
9/15/2016	Melyssah Rios, Deputy County Counsel	processing of abatement warrant	0.75	\$ 46.00	\$ 34.50			\$ 34.50
9/16/2016	Maurice Anderson, Director of Planning and Building	abatement	3.00	\$ 63.86	\$ 191.58	120 miles @ \$.54	\$ 64.80	\$ 256.38
9/16/2016	Robert Burns, County Counsel	abatement	3.00	\$ 92.00	\$ 276.00			\$ 276.00
9/16/2016	Sgt. Gray, Lassen County Sheriff's Office	abatement	3.00	\$ 44.65	\$ 133.95	120 miles @ \$.54	\$ 64.80	\$ 198.75
9/16/2016	Deputy Lawton, Lassen County Sheriff's Office	abatement	3.00	\$ 27.36	\$ 82.08	120 miles @ \$.54	\$ 64.80	\$ 146.88
9/16/2016	Deputy Turner, Lassen County Sheriff's Office	abatement	3.00	\$ 27.94	\$ 83.82	120 miles @ \$.54	\$ 64.80	\$ 148.62
11/30/2016	Administrative Hearing 9/1/2016	administrative penalty set forth in Notice to abate \$500/day beginning on 8/1/2016				36		\$ 18,700.27
1/31/2017	Brooke Suarez, Fiscal Officer/Code Enforcement	cost of abatement	1	\$ 30.40	\$ 30.40			\$ 30.40
TOTAL			20.75		\$ 1,154.33		\$ 259.20	\$ 20,113.80

mu

### Interest Charge on Administrative fee

APN: 031-170-73

**Property Address:** 699-900 Finch Road

**Owner Name:** Chanthala Vorachak

Occupant:

Case Number: CDEF2016-049/MCOH 16-19

[illegible]



## ABATEMENT WARRANT RETURN

State of California  
County of Lassen  
Susanville, California

**FILED**

SEP 20 2016

A. BARONE, COURT EXEC. OFFICER  
LASSEN SUPERIOR COURT  
By [Signature], Deputy

On September 16, 2016, at approximately 0900 hours, an abatement warrant (#16-02) was executed at Assessor's Parcel Number 031-170-73 (the parcel is also identified as being located at 569-900 Finch Road in a rural area of Lassen County in the Termo area) by the Lassen County Department of Planning and Building Services. The search warrant was issued out of the Superior Court, County of Lassen, State of California, on September 15, 2016.

The following items were abated:

*520 marijuana plants were removed from the subject site and subsequently destroyed by the Lassen County Department of Planning and Building Services together with the assistance of the Lassen County Sheriff's Department.*

I declare under the penalty of perjury that the foregoing, and the attached warrant receipt is true and correct and that this was signed in the City of Susanville, California, on September 20, 2016.

[Signature]

(Judge of the Superior Court)

[Signature]

(Returning Agent)



SUPERIOR COURT OF CALIFORNIA  
County of Lassen



FILED

ABATEMENT WARRANT

SEP 15 2016

A. BARONE, COURT EXEC. OFFICER  
LASSEN SUPERIOR COURT

By [Signature], Deputy

*in this office I have*  
*State of California*

*State of California*

*By* [Signature] *Deputy*

WARRANT #: 16-02

ORIGINAL ☒  
DUPLICATE ☐

THE COUNTY OF LASSEN, to any Code Enforcement Officer in the County of Lassen and or his Designees:

Proof by written or oral affidavit having been made this day to me by MAURICE ANDERSON that there is reasonable cause to believe that the violations of the Lassen County Code described in this warrant are occurring at the following location ("Premises"):

THE PREMISES described by Assessor's Parcel Number 031-170-73 located at Finch Road in Termo, CA 96132.

The record owner(s) of the Premises, as indicated on the last equalized assessment roll, is:

Southwest Sea Land LLC  
551 Carla Way  
La Jolla, CA 92037

YOU ARE THEREFORE COMMANDED TO:

Enter upon all parts of the Premises consisting of: All open areas of the Premises where marijuana was previously seen growing, as well as any other areas where marijuana may be growing, including all buildings and/or structures on the Premises and to make forcible entry of such buildings and/or structures. In the event a structure, e.g., hoop house, grow house, etc., appears on the Premises (apparently to conceal or to prevent removal of unlawful marijuana cultivation) that was not accounted for in the initial and subsequent observations authorization is granted to enter into such structures to inspect for the unlawful marijuana cultivation.

FOR THE FOLLOWING ITEMS:

☒ Marijuana being cultivated outside the parameters of Title 19 of the Lassen County Code.

YOU ARE ORDERED to enter onto the Premises, including any and all open areas as well as any buildings and/or structures, including those not previously accounted for upon initial inspection, and to make forcible entry of such buildings and/or structures, including cutting locks or dismantling any



obstructions on the Premises in order to conduct the inspection, pursuant to Code of Civil Procedure section 1822.56.

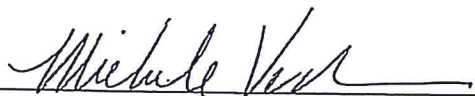
**YOU ARE FURTHER ORDERED** that upon such inspection, if marijuana previously deemed a "nuisance" by the hearing officer at the time of the administrative hearing, still exists, to abate such nuisance.

**NOTICE:** The Court waives the 24-hour notice to inspect the Premises and abate the nuisance, finding immediate execution is reasonably necessary in the circumstances shown, pursuant to Code of Civil Procedure section 1822.56. All abatement actions performed pursuant to this Warrant may take place in the absence of the owner and/or occupants of the Premises and without the consent of such.

This Warrant shall be served on the owner and/or occupant(s) by mail at their last known address and by posting on the Premises. No further notice to the owner and/or occupant is required prior to its execution and performance of the abatement actions.

**DURATION:** This warrant is effective immediately and for time period of not more than FOURTEEN (14) days, pursuant to Code of Civil Procedure section 1822.55.

**SERVICE:** This warrant shall be served and executed during the daytime hours between 8:00 am and 6:00 pm.



Judge of the Superior Court  
County of Lassen, State of California

Date

9/15/14

3:40

A.M. P.M.

ORIGINAL ☒  
DUPLICATE ☐



The foregoing instrument is a correct copy of the original on file  
in this office Dated 9-15-16  
J. Barone Court Executive Officer, Lassen Superior Court

# ABATEMENT WARRANT

## AFFIDAVIT

County of Lassen, State of California

FILED

SEP 15 2016

A. BARONE, COURT EXEC. OFFICER  
LASSEN SUPERIOR COURT  
By AK, Deputy

WARRANT#: 16-02

Being duly sworn, the undersigned MAURICE ANDERSON, say that at the place described in Exhibit "1" of this Affidavit there is a violation of Title 19 of the Lassen County Code occurring.

My qualifications for seeking this Warrant are attached to this Affidavit as Exhibit "2".

I have reasonable cause, pursuant to Code of Civil Procedure section 1822.52, to believe that the aforesaid violation(s) exist(s) at the aforesaid location based upon the attached statement of reasonable cause Exhibit "3".

My opinions and conclusions have been prepared in print and are attached to this Affidavit as Exhibit "4".

A true and correct copy of Title 19 of the Lassen County Code is attached hereto as Exhibit "5".

A true and correct copy of the Hearing Officer's Decision is attached hereto as Exhibit "6".

A true and correct copy of the Declaration of Service of the hearing officer's decision upon the owner of the Premises is attached hereto as Exhibit "7".

A true and correct copy of photographs obtained from a subsequent visit after the date of the administrative hearing is attached hereto as Exhibit "8" A-E.

Wherefore, it is prayed that an inspection and abatement warrant be issued based upon the above facts, for the authorization of entry onto the Premises pursuant to Section 1822.50 et seq of the California Code of Civil Procedure.

I declare under the penalty of perjury that the attached Exhibits and the contents therein are true and correct.



Affiant

Subscribed and sworn to before me this

15<sup>th</sup> day of Sept., 20 16 at 3:40 (A.M.) (P.M.)

Michelle Venn  
Judge of the Superior Court

**ABATEMENT WARRANT AFFIDAVIT**

**EXHIBIT "1"**

**WARRANT #:** \_\_\_\_\_

THE PREMISES described by Assessor's Parcel Number 031-170-73 located at Finch Road Terno, CA 96132.

The record owner(s) of the Premises, as indicated on the last equalized assessment roll, is:

Southwest Sea Land LLC, 551 Carla Way La Jolla, CA 92037 ("Owner").

## ABATEMENT WARRANT AFFIDAVIT

EXHIBIT "2"

WARRANT #: \_\_\_\_\_

### Qualifications of Maurice Anderson

I am the duly appointed Director of Planning and Building Services ("PBS") for Lassen County and I have been employed as such since 2009. My current business address is 707 Nevada St., Susanville, California.

As the Director of Planning and Building Services for Lassen County, I am charged with, among other things, enforcing all zoning and building ordinances in effect in Lassen County. I am also charged with enforcing Title 19 of the Lassen County Code, Lassen County's Marijuana Cultivation Ordinance as one of its designated "enforcing officers". A true and correct copy of Title 19 is attached hereto as Exhibit "5" and incorporated herein.



## ABATEMENT WARRANT AFFIDAVIT

EXHIBIT "3"

WARRANT #: \_\_\_\_\_

### Statement of Reasonable Cause

On August 11, 2016, I, Maurice Anderson, along with Tony Shaw, Lassen County Deputy County Administrative Officer, went to the Premises for the purposes of conducting an inspection, pursuant to Title 19 of Lassen County Code, for suspected unlawful cultivation of marijuana. On that date, no occupants were on site. We observed an active marijuana grow operation taking place on the property. Approximately 50 plants +/- were identified.

While there, a violation of Title 19 was observed, specifically, no person or grower was "residing on the premises" as required by Title 19, section 19.040(b). No residence was identified on the subject parcel. Pursuant to Title 19, a legally established dwelling is required to cultivate marijuana. As well no notarized permission from the land owner was presented.

Consequently, the owner and occupants (the grow was posted for potential occupants not present at the time) were issued Notices of Order to Show Cause, Proposed Administrative Penalty, and Notice to Abate. Additionally, a copy of this Notice was served on the land owner by mail.

Title 19 of the Lassen County Code prohibits marijuana cultivation, as defined in section 19.040, and declares marijuana cultivation to be a public nuisance unless such cultivation is conducted within the parameters of the "conditions of cultivation" identified therein. An owner or person in control of any private real property located within the County of Lassen is obligated pursuant to Title 19 to maintain the premises free of marijuana cultivation that does not comport with the "conditions of cultivation".

"Cultivation" is defined in Title 19 as: the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

Ordinarily, in the administrative context, entry onto private land by agents of the government for the purpose of acquiring evidence for administrative violations may only be made with consent. An enforcing officer is authorized, however, in the event that the right of entry is refused, to enter onto any premises or into any building with an inspection warrant issued pursuant to Code of Civil Procedure §§ 1822.50 et seq. Under certain circumstances, failure to seek such consent may be justified. (C.C.P. §1822.51.)

Code of Civil Procedure §§1822.50 et. seq. governs inspection warrants and authorizes such warrants for state and local officials to conduct inspections authorized by state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor or zoning. Under *Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241, 246-247, and *Gleaves v. Waters* (1985) 175 Cal.App.3d 413, 420, such a warrant may also be issued for the abatement of a public nuisance duly declared in accordance with local ordinance.

Title 19 affords the owner(s)/occupant(s) of land(s) on which there is a perceived unlawful marijuana cultivation occurring an administrative hearing, in front of a hearing officer, on a noticed date certain, whereat he/she/they may appear and present evidence and/or testimony as to why the marijuana cultivation does not constitute a "public nuisance".

The hearing for these Premises was scheduled for September 1, 2016, before Lassen County Hearing Officer Mr. Dan Howe. Prior to that hearing, I, along with Tony Shaw, went back to the location for the purpose of attempting to determine if the public nuisances which were detected on August 11, 2016, had been abated or not. The date of this re-inspection was August 23, 2016. We continued to observe the same condition upon the property – approximately 50 marijuana plants continued to be cultivated on the subject property.

At the hearing, Mr. Philip Decker appeared on behalf of the reported occupant, Mr. Chanthala Vorachak. Neither the land owner nor occupant were present. The hearing officer decided that there was sufficient evidence to find that a nuisance did in fact exist on the premises and made an order for abatement in the decision. A true and correct copy of that decision is attached hereto as Exhibit "6" and incorporated herein.

On September 2, 2016, a copy of the hearing officer's decision was served on the land owner by mail. A true and correct copy of the Declaration of Service by mail on September 2, 2016, is attached hereto as Exhibit "7".

On September 14, 2016, I re-inspected the Premises and found marijuana cultivation to still be occurring. I photographed the marijuana and true and correct copies of those photographs are attached hereto as Exhibit "8" A through E and incorporated herein.

I, Maurice Anderson, did not seek consent to inspect the Premises pursuant to Code of Civil Procedure section 1822.51. I believe that, in this case, my failure to seek such consent to inspect is reasonably justified by the particular circumstances and facts observed and/or known to me regarding the Premises.



## INSPECTION WARRANT AFFIDAVIT

**EXHIBIT "4"**

**WARRANT #:** \_\_\_\_\_

### Opinions and Conclusions

**Affiant // Maurice Anderson**

Based upon all of the foregoing information, I, Maurice Anderson, as Director of Planning and Building Services for Lassen County, have concluded the following:

On August 11, 2016, there existed a violation of Lassen County Title 19 of Lassen County Code in that no residence was identified on the subject parcel. Pursuant to Title 19, a legally established dwelling is required to cultivate marijuana. Approximately 50 plants were identified at the subject parcel.

The foregoing violation constitutes a public nuisance and is therefore an immediate threat to public health and/or safety for the following reason(s): Unlawful marijuana cultivation creates an increased risk of malodorous smell, damage to water supply, invitation to criminal activity, attractive nuisance to children, and exposure to dangerous pesticides.

It has been my experience as an Enforcement Officer that most non-compliant growers are unaware of what the standards and safeguards of cultivation are, which, consequently, creates an immediate and substantial threat to public health and/or safety.

For these reasons, I respectfully request that this court issue this Abatement Warrant allowing entry, as described above, onto the Premises, and inspection by me, other code enforcement staff, and staff from the Lassen County Sheriff's Office, collectively referred to as the "Inspection Team," to perform any specialized tasks necessary to effectuate the entry and inspection.

I further request that upon inspection, if the nuisance continues to exist (which it does based on the attached photographs), the Inspection Team be authorized to abate the nuisance.

I request that the Abatement Warrant be effective immediately upon signature by the judge, and remain effective for FOURTEEN (14) DAYS thereafter. I further request that entry, as described above, onto the Premises be authorized and that access be permitted between the hours of 8:00 a.m. and 6:00 p.m. each day during the entire duration of the Abatement Warrant.

In light of the above circumstances, and in order to ensure that the inspection and abatement can be accomplished in a safe and timely manner, I request that permission be given to conduct this entry and inspection immediately and without the presence of the owner(s) and/or occupant(s) and without the requirement of giving 24-hour notice to the owner(s) and/or occupant(s) of the Premises for the following reasons of which your affiant is aware:

- i. People who cultivate marijuana will sometimes use deadly force to protect their marijuana from being seized by law enforcement officers; and
- ii. People who cultivate marijuana sometimes arm themselves to protect themselves and their crops from thieves; and
- iii. Officer safety concerns are dependent upon the persons cultivating the marijuana who sometimes arm themselves with deadly force to protect their marijuana from seizure by law

enforcement officers and/or thieves, not upon the number of marijuana plants or location where marijuana is cultivated.

I believe that:

- i. If entry, as described above and requested herein, is denied, and law enforcement is prevented from entry by locks or obstacles and, consequently, must seek and obtain another warrant for forcible entry onto the Premises, the owner(s) and/or occupant(s) of the Premises may use that time to arm themselves with deadly force; and
- ii. If 24-hour notice is given to the owner(s) and/or occupant(s) of the Premises that law enforcement will be abating the nuisance from the Premises, if not voluntarily abated, they may use this time to secure the Premises to prevent law enforcement's entry or they may use the time to arm themselves with deadly force.

I believe that this Abatement Warrant is necessary to abate the violation of Title 19 of the Lassen County Code.

I am requesting that the Court grant immediate execution of this Warrant, finding good cause, grant entry, as described above and requested herein, onto the Premises and waive the 24-hour notice of the intention to serve said Warrant.



ORDINANCE NO. 2016-002

AN ORDINANCE AMENDING TITLE 19 TO THE LASSEN  
COUNTY CODE PERTAINING TO THE  
CULTIVATION OF MARIJUANA

THE BOARD OF SUPERVISORS OF THE COUNTY OF LASSEN ORDAINS as follows:

Ordinance Section One:

TITLE 19 of the Lassen County Code, enacted on April 21, 2015, is hereby repealed.

Ordinance Section Two:

Title 19 is hereby added to the Lassen County Code to read as follows:

TITLE 19 – MARIJUANA CULTIVATION  
(Ordinance \_\_\_\_\_)

19.010 Authority and title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, and Government Code sections 25845 and 53069.4, the Board of Supervisors hereby enacts this title, which shall be known and may be cited as the "Lassen County Marijuana Cultivation Ordinance."

19.020 Findings and purpose

The Board of Supervisors of the County of Lassen hereby finds and declares the following:

- (a) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996").
- (b) The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."
- (c) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq., and referred to as the "Medical Marijuana Program") to clarify the scope of Proposition 215; and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

COPY

- (d) Health and Safety Code section 11362.83, both as originally enacted, and as amended by Assembly Bill 1300, further recognize that counties and cities may also adopt and enforce any other ordinances that are consistent with the Medical Marijuana Program.
- (e) The courts in California have held that neither the Compassionate Use Act nor the Medical Marijuana Program grants anyone an unfettered right to cultivate marijuana for medical purposes or limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute. (See *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704 and *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729.)
- (f) Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provide comprehensive regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Lassen County can adversely affect the health, safety, and well-being of the County and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.
- (g) Cultivation of any amount of marijuana at locations or premises within 1000 feet of existing schools, public parks, and licensed day care facilities creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.
- (h) As recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- (i) It is the purpose and intent of this title to implement state law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Lassen. This title is intended to be consistent with Proposition 215 and Senate Bill 420, and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by state law. Rather, the intent and purpose of this title is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location or premises, in order to protect the public



health, safety, and welfare in Lassen County.

- (j) The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this title, the County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Lassen County.
- (k) Nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this title is to be deemed a defense or immunity to any action brought against any person by the Lassen County District Attorney, the Attorney General of State of California, or the United States of America through the United States Attorney.
- (l) The Lassen County Board of Supervisors received substantial testimony over the course of several months related to the impacts upon the peace, health, and safety of the residents of Lassen County as a result of the indoor and outdoor cultivation of marijuana. Specifically, the Board finds and declares that Lassen County does not currently have in place an Ordinance which attempts to mitigate these impacts. As a result of not having such an ordinance, Lassen County is an attractive place for marijuana growers to come and grow in large quantities unregulated. It has already been established to the Lassen County Board of Supervisors by substantial evidence that large marijuana grows are occurring in some of Lassen County's densely populated communities. Even in some of the less populated areas of Lassen County, the Board of Supervisors received substantial testimony that marijuana grows are impacting the communities in which they occur. These impacts include but are not limited to malodorous smell, damage to water supply, invitation to criminal activity, attractive nuisance to children, exposure to dangerous pesticides, at a minimum.

#### 19.030 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this title:

"Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

"Enforcing officer" means the Lassen County Sheriff, and his or her deputies, the Lassen County Director of Planning and Building Services, and his or her designee, and the Lassen County Director of Health and Social Services, and his or her designee, each of whom is independently authorized to enforce this title.

"Established marijuana grow" means a plot of land which has actually and lawfully been utilized for the outdoor cultivation of marijuana within the last full growing season. Full growing season means April 15 through and including November 15 of any calendar year.

"Indoor" or "Indoors" means within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of Lassen, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible

April 12, 2016

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only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. The cultivation of marijuana which occurs in a greenhouse is considered "outdoor" cultivation for purposes of this Title.

"Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

"Licensed Day Care Provider" means a Child Care Center or a Family Child Care Home licensed by the California Department of Social Services.

"Marijuana plant" means any mature or immature marijuana plant, or portion thereof, including without limitation, any marijuana seedling.

"Outdoor" or "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

"Premises" shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this title. Parcels are considered contiguous for purposes of this Title if they touch at any point along their respective boundaries.

"Primary caregiver" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

"Public Park" means an area of land designated by any local governmental entity empowered to create a public park as an area to be held open to the public for recreation purposes.

"Qualified patient" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

"Residing on the premises" means that the person cultivating marijuana, either the qualified patient themselves, or the designated primary caregiver for the qualified patient, must be a legal occupant of a lawfully established structure, suitable for human occupancy as required by section 17922 of the California Health and Safety Code, located on the premises upon which the cultivation is occurring. A recreational vehicle does not constitute a lawfully established structure for purposes of this ordinance.

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

#### 19.040 Conditions for Cultivation

- (a) The cultivation of marijuana in the unincorporated territory of Lassen County, indoors or outdoors, by any person, regardless of their status as a qualified patient or designated primary caregiver, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this title unless such cultivation is allowable pursuant to the conditions for cultivation set forth in section 19.040 of this title.



- (b) It is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this title for marijuana to be grown on any premises except for the personal consumption of a qualified patient residing on the premises or for use by a qualified patient for whom the person residing on the premises is a primary caregiver.
- (c) The cultivation of marijuana plants, either indoors or outdoors, on any premises in excess of the following limits on the number of plants and conditions set forth here, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this title:
1. For premises less than one (1) acre in size: Each person who resides on premises of less than one (1) acre in size may grow no more than twelve (12) marijuana plants, no more than six of which may be grown outdoors. There shall be no case in which the total number of marijuana plants being grown on premises of less than one (1) acre exceeds twelve (12) in number. All marijuana being cultivated outdoors on premises of less than one (1) acre in size shall be setback from all property lines at least twenty feet (20), and shall also be setback from all existing dwellings at least fifty feet (50), excepting therefrom dwellings located upon the premises where the marijuana is being cultivated. Such setback distance shall be measured in a straight line from the property line or dwelling to any fence required to be constructed to enclose an outdoor marijuana grow pursuant to this title.
  2. For premises one (1) acre in size up to but not including eleven (11) acres in size: Each person who resides on premises of one (1) acre in size up to but not including eleven (11) acres in size may grow no more than a total of twenty four (24) marijuana plants indoors and outdoors. However, there shall be no case in which the total number of marijuana plants being grown outdoors on premises of one (1) acre in size up to but not including eleven (11) acres in size exceeds twelve (12) in number. There shall be no case in which the total number of marijuana plants being grown indoors on premises of one (1) acre in size up to but not including eleven (11) acres in size exceeds twelve (12) in number. There shall be no case in which the total number of marijuana plants being grown on premises of one (1) acre in size up to but not including eleven (11) acres in size, indoors and outdoors, exceeds twenty-four (24) in number. All marijuana being cultivated outdoors on premises of one (1) acre in size up to but not including eleven (11) acres in size shall be setback from all property lines at least twenty feet (20), and shall also be setback from all existing dwellings at least fifty feet (50), excepting therefrom dwellings located upon the premises where the marijuana is being cultivated. Such setback distance shall be measured in a straight line from the property line or dwelling to any fence required to be constructed to enclose an outdoor marijuana grow pursuant to this title.
  3. For premises eleven (11) acres in size up to but not including forty one (41) acres in size: Each person who resides on premises of eleven (11) acres in size up to but not including forty one (41) acres in size may grow no more than twenty four (24) marijuana plants, indoors or outdoors. There shall be no case in which the total number of marijuana plants being grown on premises of eleven (11) acres in size up to but not including forty one (41) acres in size exceeds twenty four (24) in number. All marijuana being cultivated outdoors on premises of eleven (11) acre in size up to but not including forty one (41) acres in size shall be setback from all property lines at least one hundred fifty feet (150) and shall also be setback from all existing dwellings at least one hundred feet (100), excepting therefrom dwellings located upon the premises where the marijuana is being cultivated. Such setback

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distance shall be measured in a straight line from the property line to any fence required to be constructed to enclose an outdoor marijuana grow pursuant to this title.

4. For premises forty one (41) acres in size or larger. Each person who resides on premises forty one (41) acres in size or larger may grow no more than seventy two (72) marijuana plants, indoors or outdoors. There shall be no case in which the total number of marijuana plants being grown on premises of forty one (41) acres in size or larger which exceeds seventy two (72) in number. All marijuana being cultivated outdoors on premises forty one (41) acres in size or larger shall be set back from all property lines at least one hundred fifty feet (150), and shall also be setback from all existing dwellings at least five hundred feet (500), excepting therefrom dwellings located upon the premises where the marijuana is being cultivated. Such setback distance shall be measured in a straight line from the property line or dwelling to any fence required to be constructed to enclose an outdoor marijuana grow pursuant to this title.
5. Outdoor cultivation of marijuana on premises of any size: All marijuana being cultivated outdoors on premises of any size within the County of Lassen shall be fully enclosed by a seven foot fence of substantial construction. Substantial construction for this purpose means a fence constructed of four by four inch wood posts, spaced no further than ten feet apart, with two by four inch wood rails, no fewer than three each between posts, with one by six inch wood pickets that have no gap between them. Substantial construction of a fence for this purpose also means the erection of a seven foot chain link fence which includes sight obscuring slats.
6. Maximum number of plants per patient: Notwithstanding the allowances made above for the total number of marijuana plants to be grown on a particular premises depending on the size thereof, there shall be no case in which the total number of marijuana plants being grown for an individual qualified patient exceeds twelve in number, regardless of whether the marijuana plants are being grown by the patient him or herself or by a properly designated caregiver for said patient.
- (d) It is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this title for marijuana to be grown on any premises by anyone other than the owner of the premises or the legal resident thereof. If the person cultivating the marijuana is not the legal owner of the premises, such person shall possess a notarized letter from the legal owner consenting to the cultivation. This notarized consent shall be kept at all times on the premises where the marijuana is being cultivated and a copy of which shall be made available, upon demand, to any enforcing officer. The Lassen County Planning and Building Services Department will make forms for such purpose available.
- (e) The outdoor cultivation of marijuana, in any amount or quantity, upon any premises located within 1000 feet of any existing school, licensed day care provider, or public park, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this title. Such distance shall be measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the boundary line of the premises upon which the school, licensed day care provider, or Public Park is located. This provision does not apply and no abatement shall occur when such school, public park or licensed day care is created within the 1000 foot exclusion zone subsequent to an established marijuana grow as defined in this title. A school and licensed day care provider is created on the date it is licensed by the State of California for operation at that address. A public park is created on the date any local governmental entity empowered to create a public park dedicates public land for a public park at that location. The

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burden of proving the pre-existence of an established marijuana growing location, in proximity to a licensed day care provider, school or public park, is upon the owner or legal resident of the premises upon which the marijuana is being cultivated.

- (f) No person owning, leasing, occupying, or having charge or possession of any premises within the County shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this title.

19.050 Notice of Administrative Order to Show Cause

Whenever the enforcing officer determines that a public nuisance as described in this title exists on any premises within the unincorporated area of Lassen County, he or she is authorized to notify the owner(s) and/or occupant(s) of the property, through issuance of a "Notice of Administrative Order to Show Cause."

19.060 Contents of Notice

The notice set forth in Section 19.050 shall be in writing and shall:

- (a) Identify the owner(s) of the property upon which the nuisance exists, as named in the records of the County Assessor, and identify the occupant(s), if other than the owner(s), and if known or reasonably identifiable.
- (b) Describe the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property.
- (c) Identify such property by reference to the assessor's parcel number.
- (d) Contain a statement that unlawful marijuana cultivation exists on the premises and that it has been determined by the enforcing officer to be a public nuisance described in this title.
- (e) Describe the unlawful marijuana cultivation that exists and the actions required to abate it.
- (f) Contain a statement that the owner or occupant is required to abate the unlawful marijuana cultivation within ten (10) calendar days after the date that said notice was served.
- (g) Notify the recipient(s) that, unless the owner or occupant abates the conditions, a hearing will be held before a hearing officer appointed in accordance with this Section to determine whether there is any good cause why these conditions should not be abated. The notice shall specify the date, time, and location of this hearing, and shall state that the owner or occupant will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a nuisance under this title, or whether there is any other good cause why those conditions should not be abated.
- (h) Contain a statement that, unless the owner or occupant abates the conditions, or shows

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good cause before the hearing officer why the conditions should not be abated, the enforcing officer will abate the nuisance. It shall also state that the abatement costs, including administrative costs, may be made a special assessment added to the County assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.

- (i) State the applicable hearing fee, if such a fee has been established.

19.070 Service of Notice

- (a) The notice set forth in Section 19.050 shall be served by delivering it personally to the owner and to the occupant, or by mailing it, to the occupant of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last equalized assessment roll, except that:

1. Service by mail shall be made by first class postage prepaid United States mail service (USPS). If notice is served by mail, the time period for a hearing on said notice, as provided for in section 19.060, shall be extended by two additional days.
2. If the records of the County Assessor show that the ownership has changed since the last equalized assessment roll was completed, the notice shall also be mailed to the new owner at his or her address as it appears in said records, or
3. In the event that, after reasonable effort, the enforcing officer is unable to serve the notice as set above, service shall be accomplished by posting a copy of the notice on the real property upon which the nuisance exists as follows: Copies of the notice shall be posted along the frontage of the subject property and at such other locations on the property reasonably likely to provide notice to the owner. In no event shall fewer than two copies of the order be posted on a property pursuant to this section.

- (b) The date of deposit in the mail, personal delivery, or posting, as applicable, shall determine what the date of service is deemed to be for purposes of this title.

- (c) The failure of any owner or occupant to receive such notice shall not affect the validity of the proceedings.

19.075 Establishment of the Position of Administrative Hearing Officer

- (a) In order to hear cases brought by the enforcing officer under this Section, the Board of Supervisors hereby establishes for such purpose the Office of County Hearing Officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code, to which Office the Board of Supervisors shall appoint one or more hearing officers. Each such hearing officer shall be an attorney at law having been admitted to practice before the courts of this state for at least five years. Hearing officers shall be appointed for a period of not less than one year. In the event that the Board appoints more than one hearing officer, each day of hearings required under this Section shall be assigned to a hearing officer based upon an alphabetical rotation. Hearing officers shall have those powers set forth in sections 27721 and 27722 of the Government Code, including the power to conduct the hearing, the power to decide the matter under this Section upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas at the request of a party of interest, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the

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admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

19.080 Hearing on Administrative Order to Show Cause

- (a) Pursuant to Government Code sections 25845, subdivision (i) and 27721, subdivision (a), the hearing officer shall hold an administrative hearing to determine whether the conditions existing on the property subject to the notice constitute a nuisance under this title, or whether there is any other good cause why those conditions should not be abated. This hearing shall be held no less than ten (10) calendar days after service of the notice.
- (b) The owner or occupant of the property shall be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a nuisance under this title, or whether there is any other good cause why those conditions should not be abated.
- (c) In the event that the owner or occupant does not appear and present evidence at the hearing, the hearing officer may base the decision solely upon the evidence submitted by the enforcing officer. Failure of the owner or occupant to appear and present evidence at the hearing shall constitute a failure to exhaust administrative remedies.
- (d) Any hearing conducted pursuant to this title need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- (e) The hearing officer shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the notice and order. The hearing officer shall issue a written decision, which shall include findings relating to the existence or nonexistence of the alleged unlawful marijuana cultivation, as well as findings concerning the propriety and means of abatement of the conditions set forth in the notice. Such decision shall be mailed to, or personally served upon the parties upon whom the notice was served, and the enforcing officer. The decision shall be final when signed by the hearing officer and served as herein provided.

19.090 Liability for Costs

- (a) In any enforcement action brought pursuant to this title, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains the unlawful marijuana cultivation to exist shall be liable for all costs incurred by the County, including, but not limited to, administrative costs, costs incurred in conducting an administrative hearing when an order for abatement is upheld but not in a case where the order for abatement is not sustained, and any and all costs incurred to undertake, or to cause, or compel any responsible party to undertake, any abatement action in compliance with the requirements of this title, whether those costs are incurred prior to, during, or following enactment of this title;
- (b) In any action by the enforcing officer to abate unlawful marijuana cultivation under this title, whether by administrative proceedings, judicial proceedings, or summary abatement, the

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prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the County elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

19.100 Abatement by Owner or Occupant

Any owner or occupant may abate the unlawful marijuana cultivation or cause it to be abated at any time prior to commencement of abatement by, or at the direction of, the enforcing officer.

19.110 Enforcement

Whenever an enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within five (5) of the date of service of the decision of the hearing officer, made pursuant to this title, the enforcing officer may take one or more of the following actions:

- (a) Enter upon the property and abate the nuisance by county personnel, or by private contractor under the direction of the enforcing officer. The enforcing officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary. If any part of the work is to be accomplished by private contract, that contract shall be submitted to and approved by the Board of Supervisors prior to commencement of work. Nothing herein shall be construed to require that any private contract under this Code be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California; and/or
- (b) Request that the County Counsel commence a civil action to redress, enjoin, and abate the public nuisance.

19.120 Accounting

The enforcing officer shall keep an account of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the Board of Supervisors showing the cost of abatement and the administrative costs for each parcel.

19.130 Notice of Hearing on Accounting: Waiver by Payment

Upon receipt of the account of the enforcing officer, the Clerk of the Board of Supervisors shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, at a date and time not less than ten (10) business days after the date of mailing of the notice, the Board of Supervisors will meet to review the account and that the owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement and the cost of administration to the enforcing officer prior to the time set for the hearing by the Board of Supervisors. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

19.140 Hearing on Accounting

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- (a) At the time fixed, the Board of Supervisors shall meet to review the report of the enforcing officer. An owner may appear at said time and be heard on the questions whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed.
- (b) The report of the enforcing officer shall be admitted into evidence. The owner shall bear the burden of proving that the costs shown and the accounting is not accurate and reasonable.
- (c) The Board of Supervisors shall also determine whether or not the owner(s) had actual knowledge of the unlawful marijuana cultivation, or could have acquired such knowledge through the exercise of reasonable diligence. If it is determined at the hearing that the owner(s) did not have actual knowledge of the unlawful marijuana cultivation, and could not have acquired such knowledge through the exercise of reasonable diligence, costs for the abatement shall not be assessed against such parcel or otherwise attempted to be collected from the owner(s) of such parcel.

19.150 Modifications

The Board of Supervisors shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report by resolution.

19.160 Special Assessment/Charge and Lien

Pursuant to section 25845 of the Government Code, the Board of Supervisors may order that the cost of abating nuisances pursuant to this Title and the administrative costs as confirmed by the Board be placed upon the County tax roll against the respective parcels of land, or placed on the unsecured roll; provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to section 25845 of the Government Code.

19.170 Administrative Civil Penalties

- (a) In addition to any other remedy prescribed in this title, any nuisance as described in this title may be subject to an administrative penalty of up to \$1000.00 dollars per day. The administrative penalty may be imposed via the administrative process set forth in this section, as provided in Government Code Section 53069.4, or may be imposed by the court if the violation requires court enforcement.
- (b) Acts, omissions, or conditions in violation of this title that continue, exist, or occur on more than one day constitute separate violations on each day. Violations continuing, existing, or occurring on the service date, the effective date, and each day between the service date and the effective date are separate violations.
- (c) In the case of a continuing violation, if the violation does not create an immediate danger to health or safety, the enforcing officer or the court shall provide for a reasonable period of time, not to exceed five days, for the person responsible for the violation to correct or otherwise remedy the violation prior to the imposition of administrative penalties.
- (d) In determining the amount of the administrative penalty, the enforcing officer, or the court if the

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violation requires court enforcement without an administrative process, shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require.

- (e) The enforcing officer may commence the administrative process by issuance of a notice of violation and proposed administrative penalty, which shall state the amount of the proposed administrative penalty and the reasons therefore. The notice of violation and proposed administrative penalty may be combined with a notice and administrative order to show cause pursuant to Section 19.050. The notice of violation and proposed administrative penalty shall be served upon the same persons described in 19.070. Service of the notice shall be deemed sufficient if it is done in the manner described in 19.070. The failure to serve any person described in this subsection shall not affect the validity of service or the validity of any penalties imposed.
- (f) The hearing officer shall consider the matter de novo, and may affirm, reverse, or modify the proposed administrative penalties contained in the notice. The hearing officer shall issue a written decision, which shall include findings relating to the imposition of any proposed administrative penalties. Such decision shall be mailed to, or personally served upon the parties upon whom the notice was served, and the enforcing officer in the same manner as described in 19.070. The decision shall be final when signed by the hearing officer and served as herein provided.
- (g) Payment of an administrative penalty specified in the hearing officer's order shall be made to the County within twenty (20) days of service of the order, unless timely appealed to the Superior Court in accordance with Government Code section 53069.4, subdivision (b).
- (h) Interest shall accrue on all amounts due under this section, from the effective date of the administrative penalty order, as set forth in this section, to the date paid pursuant to the laws applicable to civil money judgments.
- (i) In addition to any other legal remedy, whenever the amount of any administrative penalty imposed pursuant to this section has not been satisfied in full within ninety days and has not been timely appealed to the Superior court in accordance with Government Code section 53069.4, subdivision (b), or if appealed, such appeal has been dismissed or denied, this obligation may be enforced as a lien against the real property on which the violation occurred.
  - 1. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Code of Civil Procedure section 697.340, and may be extended as provided in Code of Civil Procedure sections 683.110 to 683.220, inclusive.
  - 2. Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to the law applicable to civil money judgments.
  - 3. Prior to recording any such lien, the enforcing officer shall prepare and file with the Clerk of the Board of Supervisors a report stating the amounts due and owing.
  - 4. The Clerk of the Board of Supervisors will fix a time, date, and place for the Board of Supervisors to consider the report and any protests or objections to it.
  - 5. The Clerk of the Board of Supervisors shall serve the owner of the property with a hearing

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notice not less than ten days before the hearing date. The notice must set forth the amount of the delinquent administrative penalty that is due. Notice must be delivered by first class mail, postage prepaid, addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known. Service by mail is effective on the date of mailing and failure of owner to actually receive notice does not affect its validity.

6. Any person whose real property is subject to a lien pursuant to this section may file a written protest with the Clerk of the Board of Supervisors and/or may protest orally at the Board of Supervisors meeting. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.
  7. At the conclusion of the hearing, the Board of Supervisors will adopt a resolution confirming, discharging, or modifying the lien amount.
  8. Within thirty (30) days following the Board of Supervisors adoption of a resolution imposing a lien, the Clerk of the Board of Supervisors will file same as a judgment lien in the Lassen County Recorder's Office.
  9. Once the County receives full payment for outstanding principal, penalties, and costs, the Clerk of the Board of Supervisors will either record a notice of satisfaction or provide the owner with a notice of satisfaction for recordation at the Lassen County Recorder's Office. This notice of satisfaction will cancel the County's lien under this section.
  10. The lien may be foreclosed and the real property sold, by the filing of a complaint for foreclosure in a court of competent jurisdiction, and the issuance of a judgment to foreclose. The prevailing party shall be entitled to its attorney's fees and costs.
- (i) Administrative penalties imposed pursuant to this section shall also constitute a personal obligation of each person who causes, permits, maintains, conducts or otherwise suffers or allows the nuisance to exist. In the event that administrative penalties are imposed pursuant to this section on two or more persons for the same violation, all such persons shall be jointly and severally liable for the full amount of the penalties imposed. In addition to any other remedy, the County may prosecute a civil action through the Office of the County Counsel to collect any administrative penalty imposed pursuant to this section.
- (k) Payment of administrative penalties under this section does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the notice of violation and proposed administrative penalty. The payment of administrative penalties does not bar the County from taking any other enforcement action regarding a violation that is not corrected.

#### 19.180 Administrative Hearing Fees

- (a) The Board of Supervisors may, by resolution, establish fees for hearings conducted under Sections 19.080 and 19.170.
- (b) If the hearing fee is paid and the hearing officer finds there is no nuisance as described in this title, the hearing fee shall be refunded to the person who paid the fee, without interest.

#### 19.190 Enforcement by Civil Action



As an alternative to the procedures set forth in Sections 19.050 through 19.080, and 19.170, the County may abate the violation of this title by the prosecution of a civil action through the office of the County Counsel, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this title or requiring compliance with other terms.

19.200 Summary Abatement

Notwithstanding any other provision of this Title, when any unlawful marijuana cultivation constitutes an immediate threat to public health or safety, and when the procedures set forth in Section 19.050 through 19.080, and 19.170 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the County to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in Section 19.070, but the formal notice and hearing procedures set forth in this title shall not apply. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections 19.120 through 19.160. Any action to summarily abate under the provisions of this Section shall require that the enforcing officer, prior to the commencement of the abatement, prepare written findings of the grounds for such action and the exigencies supporting same which shall be reviewed and approved by the Lassen County District Attorney, as appropriate, prior to the abatement action.

19.210 No Duty to Enforce

Nothing in this title shall be construed as imposing on the enforcing officer or the County of Lassen any duty to issue a notice of administrative order to show cause, to propose any administrative penalties, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County of Lassen shall be held liable for failure to issue any such notices, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful marijuana cultivation.

19.220 Remedies Cumulative

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this title shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

19.230 Other Nuisance

Nothing in this title shall be construed as a limitation on the County's authority to abate any nuisance which may otherwise exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

19.240 Severability

If any section, subsection, sentence, clause, portion, or phrase of this title is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Board of Supervisors hereby declares that it would have passed this Title and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

COPY

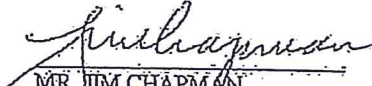


Ordinance Section Three:


This Ordinance shall become effective thirty (30) days after its date of final adoption. It shall be published in the Lassen County Times, a newspaper of general circulation in Lassen County, within fifteen (15) days of final adoption.

Introduced and adopted at a regular meeting of the Board of Supervisors held on the 12th day of April, 2016, by the following roll call vote, to wit:

AYES: Supervisors Pyle, Hemphill and Hammond  
NOES: Supervisor Chapman and Albaugh  
ABSTAIN: None  
ABSENT: None

  
MR. JIM CHAPMAN  
Chairman, Board of  
Supervisors

ATTEST:  
JULIE BUSTAMANTE  
Clerk of the Board

By   
I, SUSAN OSGOOD, Deputy Clerk of the Board of Supervisors, County of Lassen, do hereby certify that the foregoing ordinance was adopted by the said Board of Supervisors at a regular meeting thereof held on the 12 day of April, 2016.

Deputy Clerk of the County of Lassen  
Board of Supervisors


 COPY



EXHIBIT 6

Decision of Administrative Hearing Officer  
UNLAWFUL MARIJUANA CULTIVATION ORDINANCE  
(Lassen County Code Title 19)

ADMINISTRATIVE HEARING: MCOH-16- 19

CDEF 2016-049 Southwest Sea Land LLC

DATE OF DECISION: September 1, 2016

Property Owner Name and Last Known Address:

Southwest Sea Land LLC

551 Carla Way

La Jolla CA 92037

Site Address:

699-900 Finch Road

Terro CA 96132

Occupant:

No occupant at site

Assessor's Parcel Number:

031-170-73

Hearing Officer:

DAN A. HOWE

Date of Administrative Hearing:

September 1, 2016

WHEREAS, on August 11, 2016 ("Initial Inspection") the Lassen County enforcing officer observed unlawful marijuana cultivation on the Premises described above by Assessor's Parcel Number; and

WHEREAS, Lassen County Code Title 19, section 19.040, and its subsections (a)-(f), inclusive, provides that the cultivation of marijuana plants on any premises within the County of Lassen is declared to be unlawful and a public nuisance that may be abated in accordance with the procedures set forth in Title 19 of the Lassen County Code, unless conducted pursuant to the "conditions of cultivation" set forth in the above referenced subsections; and

WHEREAS, on August 11, 2016 the enforcing officer issued and served a Notice, attached hereto and incorporated herein as a part of Exhibit "C", to the owner(s) and/or occupant(s) of the Premises, in accordance with Lassen County Code Title 19, sections 19.070; and

WHEREAS, the Notice stated the specific section(s) of the Lassen County Code Title 19 that was/were violated, the condition(s) constituting the violation are a public nuisance, described the action(s) required to abate the nuisance, and further specified a time period not less than ten (10) calendar days from service of the Notice to abate the nuisance; and

WHEREAS, on August 23, 2016 the enforcing officer re-inspected the Premises and observed that the unlawful marijuana cultivation existing on the Premises as of the date of Initial Inspection:

☒ Continues to exist on the Premises; and

☐ Was voluntarily abated; and

☐ Other: \_\_\_\_\_; and

WHEREAS, the enforcing officer scheduled an Administrative Hearing on September 1, 2016, giving the owner(s) and/or occupant(s) of the Premises an opportunity to present evidence and elicit testimony regarding (i) whether the conditions existing on the Premises constitute a nuisance and/or whether there is any good cause why those conditions should not be abated, and (ii) whether the proposed amount of administrative penalty set forth in the Notice shall be imposed, modified, or disapproved, in whole or in part. The owner(s) and/or occupant(s):

☐ Failed to appear at the Administrative Hearing and failed to exhaust their administrative remedies; and

☒ The following person(s) appeared on his/her/their own behalf before this Hearing Officer:

Philip Decker on behalf of Mr. Vorachak

; and



☐ Other: \_\_\_\_\_; and

NOW, THEREFORE, as the Hearing Officer for the County of Lassen and based upon the record before me, issue the following findings and declarations:

☒ The foregoing recitals are true and correct; and

☒ I HEREBY FIND that the alleged violation(s) ☒ DID ☐ DID NOT occur on the Premises on the date of Initial Inspection based upon the following evidence presented at this Hearing:

☒ The Staff Report, attached hereto and incorporated herein, which lists the date(s) of inspection, date(s) the photograph(s) of the violation(s) was/were taken; and the date(s) that the notice was mailed to the owner(s) and/or occupant(s) of the Premises; and

☒ Statements from the enforcing officer attesting that:

☒ The information contained in the Staff Report is true and accurate; and

☐ Other: \_\_\_\_\_; and

☒ Photograph(s) of the violation(s) taken and submitted as evidence at this Hearing by:

☒ Enforcing Officer: and

☐ Other: \_\_\_\_\_; and

☒ Other evidence submitted at this Hearing by:

☐ Enforcing Officer: <sup>15</sup>and TESTIMONY AND DR. FERRERA'S STATEMENT

☐ Other: \_\_\_\_\_; and

☒ I HEREBY FIND, based on the foregoing evidence presented at this Hearing, the alleged violation(s):

☒ ~~Do~~ continue to exist on the Premises; <sup>a</sup> ~~and~~ <sup>ON 8/23/16</sup>

☐ Was voluntarily abated on \_\_\_\_\_ and no longer exists on the Premises; and

☐ Other: \_\_\_\_\_; and

☒ I HEREBY FIND that the proposed administrative penalty set forth in the Notice is:

☐ Imposed in the amount stated in the Notice.

☒ Modified to be: \$500 PER DAY BEGINNING ON 8/11/16

☐ Disapproved.

☐ Other: \_\_\_\_\_

☒ Based on the above findings, I hereby find the violation(s) alleged in the Notice are factually true and constitute a public nuisance under Lassen County Code Title 19, as set forth in the Notice; and

☒ The unlawful marijuana cultivated on the Premises is subject to abatement in accordance with Lassen County Code Title 19, and the means of abatement set forth in the Notice are proper.

NOW, THEREFORE, as the Hearing Officer for the County of Lassen and based upon the record before me, issue the following orders:

☒ The Notice issued by the enforcing officer on 8/11/16 is hereby affirmed in full; and <sup>EXCEPT FOR TOO MANY PLANTS PER PATIENT</sup> <sup>AMOUNT OF FINE</sup> -36- T



☒ All unlawful marijuana cultivated on the Premises shall be abated by the owner(s) and/or occupant(s) of the Premises, in the manner set forth in the Notice, within FIVE (5) CALENDAR DAYS of service of this Decision; and

☒ In the event that the marijuana is not abated by the owner(s) and/or occupant(s) of the Premises as set forth above, or the nuisance is recommenced, the Enforcing Officer shall abate, or cause to be abated, the marijuana and shall keep an itemized account of the costs incurred by the County to abate the nuisance, to be charged against the premises and against each person who causes, permits, suffers, or maintains the unlawful marijuana cultivation to exist, in accordance with the provisions of Lassen County Code Title 19.

☒ The amount of administrative penalty, as set forth above, shall be final and conclusive. Payment of the administrative penalty specified in this Decision shall be made in the manner set forth in Lassen County Code Title 19.

☒ Other: THE ADMINISTRATIVE PENALTY SHALL BE IMPOSED JOINTLY AND SEVERALLY ON OWNER & OCCUPANT.

NOTICE IS HEREBY GIVEN. You may challenge this Decision by timely filing a writ of mandate, pursuant to Code of Civil Procedure §§ 1094.5 and 1094.6, in the Lassen County Superior Court. A writ of mandate must be filed within NINETY (90) DAYS of this Decision. You may challenge the Decision imposing/modifying the administrative penalty by filing an appeal, pursuant to Government Code § 53069.4, subdivision (b), in the Lassen County Superior Court. An appeal must be filed within TWENTY (20) DAYS after service of this Decision.

**ATTENTION!**

If the amount of administrative penalty is imposed or modified, you are required to pay that amount within TWENTY (20) CALENDAR DAYS after service of this Decision.

If the administrative penalty is not satisfied IN FULL within NINETY (90) DAYS and/or has not been challenged by a timely writ of mandate or appeal, the Board of Supervisors may authorize recordation of a Notice of Administrative Penalty Lien against the Premises. (Government Code section 53069.4)

**ATTENTION!**

If the Enforcing Officer is required to abate the nuisance, you are required to pay the cost of abatement, including cost of administration, within NINETY (90) CALENDAR DAYS after service of this Decision.

If the cost of abatement, including cost of administration, is not satisfied in full within NINETY (90) DAYS and/or has not been challenged by a timely writ of mandate, the Board of Supervisors may specially assess the costs on the County tax roll and authorize recordation of a Notice of Abatement Lien against the Premises. (Government Code section 25845).

9/1/16  
Date of Decision

  
Dan A. Howe  
Lassen County Administrative Hearing Officer

EXHIBIT 7

DECLARATION OF SERVICE BY FIRST CLASS MAIL

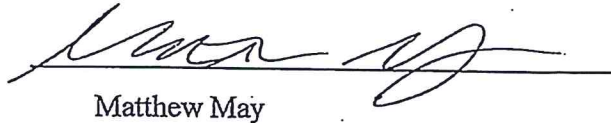
I, THE UNDERSIGNED, DECLARE THAT:

1. I am an employee of Lassen County, California, over the age of eighteen years and not a party to the within entitled cause or matter;
2. My business address is 707 Nevada Street, Suite 5, Susanville, California 96130; and;
3. I served the foregoing *Decision of Administrative Hearing Officer, Unlawful Marijuana Cultivation Ordinance*, on the interested parties in said cause by depositing true copies thereof enclosed in sealed envelopes and placing the envelopes for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in sealed envelopes with postage fully paid for 1<sup>st</sup> Class, in Susanville, California, on the 2<sup>nd</sup> day of September, 2016, addressed as follows:

SOUTHWEST SEA LAND LLC  
551 CARLA WAY  
LA JOLLA CA 92037

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of September, 2016, at Susanville, California 96130.



Matthew May