



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482
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ATTACHMENT A

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Cannabis Program

Mendocino County Cannabis Ordinance

(MCCO) Sec. 10A.17.100(A)(2) Pilot Policy For

Sensitive Species Review (SSR) In Cooperation

with CDFW

PURPOSE

The purpose of this pilot policy is to satisfy the requirements of MCCO Sec. 10A.17.100(A)(2) by creating the required policy in consultation with the California Department of Fish and Wildlife (CDFW) in order to provide a process to evaluate the potential impact to sensitive species on proposed Cannabis Cultivation Permit locations and receive a determination from CDFW, if necessary, in order to issue a Mendocino County Cannabis Cultivation Permit.

AUTHORITY

MCCO Sec. 10A.17.100(A)(2) requires that the Cannabis Cultivation Program may only issue a Cannabis Cultivation Permit after qualified County staff review the proposed permit location and identify where habitat suitable for sensitive species may exist. The ordinance also requires the County to consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species at the proposed Permit location. Upon consultation, CDFW may recommend (1) approval of the proposed development, (2) ask to conduct a site inspection or (3) request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria, as defined in attached Exhibit A, that applications can be checked against during Phases 1 and 2 permitting. A formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the issuance of this pilot policy, consultation with CDFW for a determination shall not be required if the Cannabis Program can make the determination. During Phase 3 permitting, all applications will be referred to CDFW for a determination.

PROCEDURE

The following will be required of each Phase 1 and Phase 2 Mendocino County Cannabis Cultivation Permit Applicant and a County cultivation permit will not be issued until such time as the applicant can demonstrate that there will be a less than significant impact to sensitive species for the permit location:

1. Each Applicant seeking a Mendocino County Cultivation Permit for a particular cultivation location will complete a "Sensitive Species Habitat Questionnaire" (SSHQ) that is attached to the standard

Original Policy Date:

Revision Date:

Mendocino County Cannabis Cultivation Package.

2. Applicants that have completed their permit application or have been issued a cultivation permit without SSR prior to the effective date of this policy and the development of the SSHQ, will be required to complete the SSHQ and undergo the necessary review before a permit or renewal of an already issued permit may be issued.
3. During the permit application review process, the Cannabis Program shall review the information provided in the SSHQ, the CNDDDB and any other resource information available to the Program to determine if the information shall be referred to CDFW pursuant to MCCO Sec. 10A.17.100(A)(2).
4. If the Cannabis Program finds that a determination from CDFW, because of unique site specific concerns or practices, is necessary under this policy, any relevant documentation shall be referred to CDFW.
5. During the duration of this pilot policy, the Cannabis Program will set periodic meetings with CDFW to review findings on projects that were given clearance without referral to CDFW.
6. CDFW will review the information received from the Cannabis Program, for those projects referred to them, and respond in writing with either a determination that there will be a less than significant impacts to sensitive species for the proposed cultivation permit location or that the applicant will need to provide further studies and information to satisfy CDFW. CDFW may also request an inspection of the proposed cultivation permit location if they deem it is necessary to aid them in making their determination.
7. Pursuant to MCC Sec. 10A.17.090, any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.
8. Any required responses from applicants, after proper notice, for information needed to fulfill the requirements for a determination required by MCC Sec. 10A.17.100(A)(2), will be on the same time-line as any other request for information as set by policy of the Cannabis Program.
9. A Cannabis Cultivation Permit will not be issued to an applicant that cannot demonstrate there will be a less than significant impact to sensitive species at their proposed Cannabis Cultivation Permit location.

This pilot policy is developed in consultation between The Mendocino County Cannabis Program and the California Department of Fish and Wildlife.

Policy Approved: _____ Date: _____

*Brent Schultz
Director of Planning and Building Services*

Original Policy Date:
Revision Date:

EXHIBIT A – TO MCCO 10A.17.100(A)(2) PILOT POLICY WITH CDFW

For the purposes of this document, the “project” includes, but is not limited to, existing or proposed access roads, cultivation areas, and ancillary structures and activities related to cultivation.

For projects meeting all of the following requirements, referral of the cannabis cultivation permit application to the California Department of Fish and Wildlife (CDFW) would be optional based on County discretion.

- **No Notice of Violation** has been issued by CDFW for the parcel. If a Notice of Violation was issued by CDFW, written verification is required from CDFW stating that the violation has been resolved, or that the violation is in the process of being resolved satisfactorily and that approving the cultivation permit would not risk further impact to public trust resources.
- **No obvious violations of Fish and Game Code (FGC)** are present on the project parcel. CDFW will provide information and training to County staff regarding identification of the most common types of FGC violations on cannabis cultivation sites, and trained staff should make this determination. If FGC violations are present or violation status is unknown, the project should be referred to CDFW.
- **No expansion of project footprint**, grading or vegetation removal is proposed beyond what existed on January 1, 2016.
- Project shall completely **avoid impacts to oak woodlands** (genus *Quercus*) and provide an adequate protection buffer between oak woodlands and project activities.
- For projects with a **surface water source** (stream, spring, pond, or offset/shallow/hydrologically connected well) for cultivation, domestic, or other consumptive use; stream crossings (culverts, bridges, fords, etc.); or other FGC 1602 jurisdictional activities on the property, either:
 - a) applicant has obtained a final LSA Agreement, or
 - b) if applicant has not obtained an LSA Agreement: applicant has submitted an LSA Notification to CDFW. Obtaining a final LSA Agreement or other written documentation from CDFW - within the one year cultivation permit term - shall be made a condition of cultivation permit approval (i.e. County cultivation permit shall not be renewed without a final LSA Agreement).

Please note that the applicant may not proceed with portions of the project within FGC Section 1602 jurisdiction until the LSA Notification is deemed complete, and the applicant has obtained a finalized Lake or Streambed Alteration Agreement.

- Project meets the following **stream and wetland setbacks** (for cultivation sites and associated infrastructure): a minimum of 150 feet from perennial streams/wetlands, and a minimum of 50 feet from intermittent streams, measured from the outer edge of the riparian vegetation or top of bank, whichever is greater. These areas should be identified as no-disturbance buffers. The County shall document confirmation of the appropriate setback prior to project approval.

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- Permanent infrastructure associated with cannabis cultivation is located outside of the **100-year floodplain**.
- For a project with an **existing pond** of any kind (on- or off-stream, including rainwater catchment), applicant shall implement a **bullfrog monitoring and management plan**. CDFW will provide a sample plan to the County. Projects proposing new ponds, or where a pond has been constructed within the past five years, should be referred to CDFW.
- If **artificial light** will be used for cultivation, a plan shall be submitted demonstrating that the proposed cultivation area would not deliver, or have the potential to deliver, light pollution during the hours from sunset to sunrise.
- **Noise** generated on any portion of the project site shall not exceed 50 decibels when measured from 100 feet. This includes but is not limited to projects using a **generator** for any purpose, motorized trimming machines, fans, ventilation systems, and other machinery. The applicant shall submit information on containment structures, and a plan demonstrating that the generator or other machinery would not deliver, or have the potential to deliver noise exceeding the above limits.
- **Synthetic netting** will not be used. To minimize the risk of wildlife entrapment, permittee shall not use erosion control materials that contain synthetic (e.g., plastic or nylon) netting, including photo- or biodegradable plastic netting. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves.
- No evidence suggests (based on County staff scoping using CNDDDB and other tools¹, biological assessment or survey reports, or observation of the site) that sensitive natural resources would be impacted by the proposed project.

Projects that shall require referral to CDFW:

- Evidence suggests there is a potential for the project to impact rare, sensitive, threatened or endangered species, or streams, springs, seeps, wetlands, oak woodlands, native grasslands, or other sensitive resources or habitats.
- If the project footprint will be expanded or significantly modified, or vegetation removal or grading is proposed beyond what was existing on January 1, 2016:
 - The County should require a biological survey, the type and scope of which would be based on the risk of potential impacts (proposed size increase, site characteristics, potential species or habitat to be affected, etc.)
 - If impacts are unknown or likely to be significant, the County should refer the project (with completed biological survey) to CDFW. If preferred, the County

¹ Examples include but are not limited to USGS ultramafic soil maps, USFWS IPaC, National Wetland Inventory, CNPS Rare Plant Inventory, etc.

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may contact CDFW for recommendations regarding the type/scope of biological survey to require.

- If County staff believe impacts are likely to be minimal, County may refer the project to CDFW for a recommendation regarding whether a biological survey should be required.
- A new pond is proposed, or was constructed on the parcel within the past five years.
- Applicant is unable (for any reason) to comply with all standard recommended conditions detailed above.

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Proposed Cannabis Cultivation Permit Location Sensitive Species Habitat Applicant Questionnaire

Completion of this Questionnaire is required for all Mendocino County Cannabis Cultivation Applications. Pursuant to MCCO Sec. § 10A.17.100(A)(2) and the adopted Cannabis Program Pilot Policy,

1. Has the proposed Cannabis Cultivation Permit Location (the legal parcel) ever been issued a Department of Fish and Wildlife (CDFW), County of Mendocino or any other State Regulatory Agency Notice of Violation?

(circle one) No Yes (Copies Attached) ☐

2. For the cultivation location (the legal parcel), has the applicant applied for or obtained a 1602-Lake and Streambed Alteration Agreement or Notification to CDFW?

Applied: (circle one) No Yes (Copies Attached) ☐

Obtained: (circle one) No Yes

3. Does the cultivation sites and associated infrastructure meet required stream and wetland setbacks? (a minimum of 150 feet from perennial streams/wetlands, and a minimum of 50 feet from intermittent streams, measured from the outer edge of the riparian vegetation or top of bank, whichever is greater).

(circle one) No Yes

4. Has any grading or tree removal been done on the parcel after May 4, 2017?

(circle one) No Yes (Permit Attached) ☐

5. Is the permanent infrastructure associated with the cannabis cultivation located outside the 100 year floodplain?

(circle one) No Yes (Permit Attached) ☐

6. Has a pond been constructed on the parcel within the last 5 years or are you proposing a new pond?

(circle one) No Yes (Copies Attached) ☐

7. Are you using or going to use a generator and/or artificial light for your cannabis cultivation activities?

Generator: (circle one) No Yes (Copies Attached) ☐

Artificial Light: (circle one) No Yes (Copies Attached)

Date Completed: _____

Applicant Permit Number: _____

Signature of Applicant: _____

Name: _____