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10A.17.100(A)(2) SUMMARY: PILOT POLICY WITH CDFW
EXHIBIT A
SENSITIVE SPECIES PERFORMANCE STANDARDS REVIEW

Applicant Name:	**{Planner to insert applicant name}**
Current Mendocino County Cannabis Application or Permit Number (AG_XXXX-XXXX):	**{Planner to insert AG Number. If completing for Cultivation and Nursery, insert both AG numbers}**
APN:	**{Planner to insert ALL applicable APN's}**
Site Address:	**{Planner to insert site address for cultivation}**

SENSITIVE SPECIES PERFORMANCE STANDARDS

Instructions: *The Cannabis Program Planner assigned will review SSHQ materials, and the CNDDB data base and any other resource information available to the Cannabis Program to determine if the information meets the performance standards outlined below.*

***If all performance standards are met**, this completed review form is an approval determination that the cultivator has demonstrated that there will be a less than significant impact to sensitive species on the parcel of the proposed cultivation permit location. The assigned Cannabis Planner must complete all the appropriate reviews, check boxes, and clearance section with signature and review determination.*

***If one or more do not meet the performance standards, or one or more performance standards are unknown**, the application must be referred to CDFW for final determination, per the 10A.17.100(A)(2) Pilot Policy for Sensitive Species Review in Cooperation with CDFW.*

For the purposes of this document, the "project" includes the cultivation site, as that term is defined by Mendocino County Code Section 10A.17.020, but is not limited to, existing or proposed access roads, cultivation areas, and associated structures and activities related to cultivation.

Commented [LA1]: This is too limiting, as it basically describes the footprint of the cultivation site. This would not include surrounding areas that might be impacted by cultivation activities. We may be able to refine what was previously included. However, limiting review to the cultivation footprint is not what was intended by CDFW or previous County staff, and does not provide adequate protection as outlined in the County's CEQA document.

Commented [SM2R1]: MCD agrees to leave in the existing language.

Commented [HN3R1]: We went through an entire ordinance amendment related to defining cultivation site and the scope of the tree removal inquiry. The BoS intentionally took a more narrow approach by limiting the inquiry to cultivation site as defined. CDFW seeks to acquire jurisdiction over the entire parcel regardless of whether the entire parcel is utilized for cultivation. If the BoS more limited scope (admittedly which was for purposes of tree removal, but seems relevant to SSHR screening) is to be ignored, perhaps there is a middle ground?

Meets performance standard			
Yes	No	Unknown	
☐	☐	☐	**1. No Notice of Violation from CDFW** Meets performance standard: • No Notice of Violation has been issued by CDFW for the parcel, or • CDFW has provided written verification 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. Does not meet performance standard: • A Notice of Violation has been issued by CDFW and has not been, or is not being, resolved satisfactorily
☐	☐	☐	**2. No obvious violations of Fish and Game Code (FGC), or unpermitted activities that would require a permit from CDFW, are observed during the County's site inspection. ~~present on the project parcel, to the best of County staff's knowledge.~~** Staff knowledgeable about the most common types of FGC violations on cannabis cultivation sites staff should make this assessment based on information in the cannabis application and reference to other site information (e.g. aerial imagery). The most violations most frequently observed relate to water diversion and/or stream alteration (e.g. road/stream crossings, ponds, etc.), and water pollution (trash, sediment, and/or other materials). Refer to reference material from CDFW.
☐	☐	☐	**3. Project footprint has not expanded and is not proposed for expansion: Grading related to cultivation beyond what existed on ~~January 1, 2016~~November 7, 2016. ~~3.~~**
☐	☐	☐	**4. Project footprint has not expanded and is not proposed for expansion. Tree removal or vegetation removal is not proposed (nor has occurred) related to cultivation beyond what existed on ~~January 1, 2016~~November 7, 2016.**

Commented [JS4]: Additional proposed change.

Commented [AL5]: Since there are other ways to detect possible violations (e.g. site photos, verbal communication, aerial imagery), and regular site visits by County staff no longer seem standard, I propose we keep the existing language. It does not mean County staff will be responsible for being aware of violations that have not been brought to their attention.

Commented [JS6R5]: MCD conducts site inspection before any CCBL issuance and before all renewals where the inspector should identify unpermitted water diversion and/or stream alteration, and water pollution to the CCBL Holder to ensure compliance with CDFW and 10A.17

Commented [HN7R5]: additionally, code enforcement, CDFW and WB enforcement divisions and other mechanisms are in place to prevent violations from not being enforced.

Commented [JS8]: Additional proposed change due to the rejected change to the definition of the "project". Prior proposed change was to limit grading "for the project"

Commented [HN9R8]: Thank you. But also the date needs to change. Everyone has admitted that the date of the MND is the operative date, not 1/1/16. The MND was first published on 11/7/16 and not adopted until 3/17/17

Commented [HN10]: 1/1/16 is the proof of prior cult date NOT the date that the MND was 1st published which is the legal date that a requirement under it can attach to. 11/7/16 is the publish date, though it was modified a number of times and was not adopted until 3/17/17, so arguably, that date would be controlling. But at the very least, it needs to be the November date

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Commented [HN11]: all vegetation? What about invasive and nonnative species?

Commented [JS12]: Same comment as above in #3.

Commented [HN13]: see comment above 11/7/16 or 3/17/17

☐	☐	☐	**5. 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 activities subject to Fish and Game Code Section 1602:** ○ **a) Applicant has obtained a final LSA Agreement, verification an LSA Agreement is not needed, or an "operation of law" letter**, OR ○ **b) If applicant has not obtained one of the above documents: 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 required (i.e. County cultivation permit shall not be renewed without a final LSA Agreement).~~
Yes	No	Unknown	
☐	☐	☐	**6. Project meets the following stream and wetland setbacks:** a. If not enrolled under a Regional Water Board order prior to October 17, 2017, a minimum of 150 feet from perennial streams (or springs and ponds), a minimum of 100 feet from intermittent streams and wetlands, and a minimum of 50 feet from ephemeral streams. Distance to be measured from the bankfull stage or from the top edge of the waterbody bank in incised channels, whichever is more conservative. ~~6.~~b. If enrolled under a Regional Water Board order prior to October 17, 2017, a minimum of 100 feet from perennial and intermittent streams, and 50 feet from ephemeral streams or wetlands. Distance to be measured from the bankfull stage or from the top edge of the waterbody bank in incised channels, whichever is more conservative. ~~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 and maintained as no disturbance buffers.~~

Commented [HN14]: why is this not being removed as HN & CS suggested? If we are concerned with cultivation impacts, then domestic or other consumptive use is not an appropriate trigger for the referral

Commented [JS15]: Additional proposal. MCD proposes to remove this language because the SSHR is preformed before CCBL issuance.

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Commented [JS16]: Additional proposed new language to align the review with the State Water Board Cannabis General Order's minimum riparian setbacks.

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☐	☐	☐	~~7. For projects with existing or proposed ponds~~ ~~Bullfrog monitoring and management plan has been submitted. Plan appears feasible and includes sufficient detail.~~ ~~For a project with an existing or proposed pond of any kind (on- or off-stream, including rainwater catchment), applicant shall implement a bullfrog monitoring and management plan. Projects proposing new ponds, or where a pond has been constructed within the past five years, should be referred to CDFW.~~
☐	☐	☐	~~8. Permanent infrastructure associated with cannabis cultivation is located outside of the 100-year floodplain.~~
☐	☐	☐	~~9.~~7. **Project shall ~~completely~~ avoid significant impacts to oak woodlands (genus *Quercus*) and provide an adequate protection buffer between oak woodlands and project activities.**
☐	☐	☐	~~10.~~8. **Cultivation site is not located within 0.25 mile of a known Northern Spotted Owl activity center or forested habitat contiguous with a known activity center.**
☐	☐	☐	~~11.~~9. **For projects using artificial light** **Light containment plan has been submitted. Plan ~~appears feasible and~~ includes sufficient detail.** To protect wildlife and comply with the County ordinance, all lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process.
☐	☐	☐	~~12.~~10. **For projects using generators and other machinery** **Noise containment plan has been submitted. Plan ~~appears feasible and~~ includes sufficient detail.** Noise generated on any portion of the project site shall not exceed ~~50~~ 55 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.
Yes	No	Unknown	

Commented [AL17]: Agree.

Commented [AL18]: Agree, as this is better handled through CDFW's FGC 1600 et seq authority.

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Commented [AL19]: Do not currently agree. I would like to understand the County's reasoning, and how many projects have been affected by this standard, or referred or otherwise delayed because of it.

Commented [JS20R19]: MCD agrees to leave in the existing language.

Commented [HN21R19]: isn't floodplain stuff usually caught with building permit stuff? It would prevent permanent infrastructure from being built in flood plain. Turning the question around, how does this cause separate trigger for SSHR? Also, is staff adequately trained to know difference between permanent and non-permanent infrastructure?

Commented [AL22]: Disagree. I would like to understand the County's reasoning, and how many projects have been affected by this.

Commented [JS23R22]: MCD agrees to leave the existing language.

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Commented [JS24]: Additional proposed language to better align with standards found in the MND.

Commented [JS25]: Additional proposed revision. As-is, this is an overly subjective standard.

Commented [JS26]: Same comment as above in #9

Commented [JS27]: Additional proposed revisions to align with DE100, 101, & 103.

☐	☐	☐	~~13.~~11. **To protect fish and wildlife and comply with the State Water Resources Control Board Cannabis Policy:** Cannabis cultivators shall only use geotextiles, fiber rolls, and other erosion control measures made of loose-weave mesh (e.g., jute, coconut (coir) fiber, or from other products without welded weaves). To minimize the risk of ensnaring and strangling wildlife, cannabis cultivators shall not use synthetic (e.g., plastic or nylon) monofilament netting materials for erosion control for any cannabis cultivation activities. This prohibition includes photo- or bio-degradable plastic netting.
☐	☐	☐	~~14.~~12. **No evidence suggests that sensitive natural resources would be impacted by the proposed project (based on County staff scoping using CNDDB and other recommended resources, biological assessment or survey reports, or observation of the site).**

CANNABIS PROGRAM PLANNER REFERENCE RESOURCES USED

Reference Resources Used			
Yes	No	Unavailable	
☐	☐	☐	**Most recent aerial imagery available** (Google Earth, Bing maps, NAIP imagery, etc.). Imagery source: __ ____ Date of Imagery: _____
			BIOS/California Natural Diversity Database **https://apps.wildlife.ca.gov/bios6/Default.aspx?bookmark=326** Minimum recommended data sets:
☐	☐	☐	▪ California Natural Diversity Database (CNDDB) – 9 quad search
☐	☐	☐	▪ Unprocessed Data from CNDDB Online Field Survey Form
☐	☐	☐	▪ ~~Northern spotted owl observations~~
☐	☐	☐	▪ ~~California Streams~~
☐	☐	☐	▪ USFWS National Wetlands Inventory
☐	☐	☐	▪ NFHL 1% Annual Chance Flood (100 Year Flood)
☐	☐	☐	▪ Vegetation - Mendocino Cypress and Related Vegetation
☐	☐	☐	~~USFWS IPaC~~
☐	☐	☐	USGS soils maps
☐	☐	☐	CNPS Rare Plant Inventory

Commented [AL28]: I do not agree with the County omitting any reference material (including USFWS resources) that will give planners information regarding what sensitive species may be impacted by the project, including NSO observations and the California Streams layer. I would like to understand the County's reasoning for proposing this.

Commented [JS29R28]: MCD agrees to leave the existing language.

Commented [SM30]: MCD believes this language does not need to be deleted.

Commented [JS31]: Is this redundant given all other resources?

CANNABIS PROGRAM PLANNER DETERMINATION

Meets criteria to be referred to CDFW			
Yes	No	Unknown	
☐	☐	☐	Evidence suggests there is a potential for the project to significantly impact rare, sensitive, threatened or endangered species, or streams, springs, seeps, wetlands, oak woodlands, native grasslands, or other sensitive resources or habitats. (See also "Expansion and Biological Surveys" section below.)
☐	☐	☐	A new pond is proposed, or was constructed on the parcel within the past (approximately) five years.
☐	☐	☐	~~Applicant is unable (for any reason) to comply with performance standards detailed above.~~

Expansion and Biological Surveys

Projects that meet Expansion Definition and Require a Biological Survey

Request Biological Survey from applicant	Significant impacts likely: refer to CDFW	Significant impacts unlikely: consult with CDFW	
☐	☐	☐	If the project footprint has been or will be significantly expanded or modified, or significant vegetation removal or grading has occurred or is proposed beyond what was existing on January 1, 2016, and/or tree removal is proposed or occurred after May 4, 2017 (Meeting Standards Criteria #3): • 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 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.***

Commented [AL32]: I strongly disagree with the proposal to remove this language.

Commented [JS33R32]: What was being proposed to be removed? It appears that there was just the addition of "significantly" in this sentence.

Commented [JS34]: Does this require an automatic referral if even if all questions were answered "yes" above? If not, this should be removed.

Commented [LA35R34]: It should probably be refined, e.g. is the pond permitted either through the County or CDFW? If unpermitted it definitely should be referred; if on-stream and not permitted by CDFW, it should be referred.

Commented [JS36R34]: Got confirmation that this is an automatic referral. MCD is okay with leaving the language as is.

Commented [LA37]: Currently disagree as I do not understand the reasoning for removing this.

Commented [JS38R37]: MCD agrees to leave the existing language.

Commented [JS39]: Removed due to reference to performance standards.

Commented [JS40]: Needs objective standards. Can you please recommend?

Commented [LA41R40]: How does the County define "major vegetation removal" in the coastal zone? This might be a useful parallel.

Commented [JS42R40]: The County uses a questionnaire to determine major vegetation removal. I will send it along for your review with our comments.

Commented [JS43]: Same as above.

CANNABIS PROGRAM PLANNER DETERMINATION CONTINUED

Meets all Performance Standards:	☐ **Yes** ☐ **No**
Cannabis Planner Recommendation of Proposed Project:	☐ **Approval** ☐ **Denial** ☐ **CDFW Referral** ☐ **Biological Survey from Applicant due to Expansion Definition**
Potential Impact Comments for CDFW Referral:	
CDFW Referral Required:	☐ **Yes** ☐ **No**
CDFW Referral Sent Date:	**Date:** ☐ **N/A**
Reviewing Planner's Name:	
Planner's Signature:	
Review Date:	

Attachments Required for CDFW Referral:

Exhibit A
Aerial Image from 2016
Aerial Image from most current (Either 2020 NAIP from BIOS or Google Earth)
LSAA - Lake and Streambed Alteration Agreement
SSHQ - Sensitive Species Habitat Questionnaire
Site Plan
Cultivation & Operations Plan

Optional:

Bullfrog Management Plan (Must provide if a pond is on site)
Artificial Light Management Plan (must provide if artificial light is being used)
Generator Noise Management Plan (must provide if a generator is used)
NOV's if indicated
Biological reports, if any exist
Reports from other professionals relating to tree removal or other environmental issues, if they exist

Commented [HN44]: Need to tie to month of MND (after November 7th 2016

Commented [HN45]: Sometimes infrastructure has been removed after it was put in place (or expansion reduced again). There should be a policy that if structures List, site plan, etc. can be verified as having gone back to 11/7/16 size or removed and remediated infrastructure, and that can be proved with ground photos or inspection no referral is needed unless triggered by something else.

Who to Email:

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