

**Policy and Procedure for  
Implementing the Cannabis Ordinance  
Cultural and Historic Resource Standard  
SCC Sec. 26-88-254(f)(14)**

**Purpose:**

The purpose of this policy and procedure is to govern the Department of Agriculture/Weights and Measures' (Department) process for evaluating impacts to cultural and historic resources, including tribal cultural resources, and referring ministerial cannabis cultivation permit applications to tribes for their review and response regarding whether mitigation is required to ensure there are no impacts to cultural resources in accordance with the Cannabis Land Use Ordinance, Sonoma County Code Section 26-88-254(f)(14).

**Background:**

The Cannabis Land Use Ordinance applies to all commercial cannabis cultivation in the unincorporated County and authorizes commercial cultivation with a ministerial zoning permit or use permit depending on the location, scale, and nature of the proposed cultivation operation. The Department of Agriculture/Weights and Measures is authorized to issue ministerial permits for cottage and small outdoor cannabis cultivation in the agricultural zones, and the Permit and Resource Management Department (Permit Sonoma) is authorized to issue all other ministerial cannabis permits (both referred to as "Department").

Use permits are discretionary and thus generally subject to environmental review in accordance with the California Environmental Quality Act (CEQA). CEQA, as amended by Assembly Bill 52 (Gatto, 2014), requires early referral to tribal governments in order to identify and address potential adverse impacts to tribal cultural resources. Through the AB 52 consultation process, local governments work with tribes to appropriately analyze and apply mitigation measures to proposed projects.

Ministerial permits are not subject to CEQA and thus not subject to the AB 52 consultation process. In order to address potential impacts from ministerial cannabis cultivation permits cultural and historic resources, the Board of Supervisors adopted the following standard in the Cannabis Land Use Ordinance (SCC Sec. 26-88-254(f)(14) in relevant part):

*Cultural and Historic Resources. Cultivation sites shall avoid impacts to significant cultural and historic resources by complying with the following standards. . . Cultivation operations involving ground disturbing activities, including but not limited to, new structures, roads, water storage, trenching for utilities, water, wastewater, or drainage systems shall be subject to design standards and referral to the Northwest Information Center and local tribes. A*

*use permit will be required if mitigation is recommended by the cultural resource survey or local tribe.*

Under this provision, all ministerial cannabis cultivation permit applications proposing ground disturbing activities must complete a cultural resource survey and be referred to the Northwest Information Center and local tribes. Ground disturbance includes any activity that disturbs or compacts the ground and includes, among other activities, clearing vegetation, discing, and placing aboveground pots and planters. Cultural and historic resources include those defined by California Public Resources Code Section 21084.1 and include tribal cultural resources as defined by California Public Resources Code Section 21074. Tribes may review the permit applications and inform the County if mitigation is required to avoid impacts to tribal cultural resources. If mitigation is required by the cultural resource survey or a tribe, the applicant must withdraw the ministerial zoning permit and apply for a conditional use permit through Permit Sonoma. The use permit will then be processed in accordance with CEQA, including tribal consultation as required.

## **Referral and Review Procedure:**

### **1. Cultural Resource Survey.**

- a. *Survey Standards.* Each cannabis cultivation land use application must include a confidential cultural resource survey conducted by a qualified archeologist in accordance with the [\*Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation\*](#).
- b. *Preliminary Surveys.* Applicants are encouraged to work with the archeologist to conduct a preliminary survey and design their projects in order to ensure impacts to cultural and historic resources are avoided.
- c. *Coordination with Interested Tribes.* The archaeologist conducting the survey may consult with interested tribes and may request that one or more tribal cultural monitors be present during the survey. Tribes may require an agreement for tribal cultural monitors and charge a fee for their services. Such services and charges are separate from and in addition to any permit fees paid to the County. The archaeologist may share a draft report with an interested tribe for review and comment. Communication and participation by a tribe is at each tribe's sole discretion.
- d. *Contact List for Tribes.* To facilitate coordination between the archeologist and the tribes, the archeologist should reach out to the California Native American Heritage Commission to obtain a list of tribes, tribal representatives, and their contact information.
- e. *Cultural Resource Survey Conclusions.* The cultural resource survey must conclude that the proposed activity will avoid impacts to cultural and historic resources. If mitigation is recommended by the cultural resource survey, a use permit will be required, see #4.

### **2. Referrals.** Following submittal of a complete permit application:

- a. *Referral to NWIC.* The Department will send a referral packet containing the application materials, including the cultural resource survey, to the Northwest Information Center (NWIC).
  - b. *Referral to Tribes.* The Department will send a referral packet containing the application materials, including the cultural resource survey, to each tribe on the list maintained by the Native American Heritage Commission.
  - c. *Response Timeline and Template.* The referral sent to each tribe will request a response within 30 calendar days of the date of a referral and provide an optional form for such response.
  - d. *Requests for Meetings or Additional Information.* A tribe may request to meet with County staff to obtain additional information or clarify information on the permit application for the purpose of enabling the tribe to determine whether it will recommend mitigation due to potential impacts to tribal cultural resources. Follow up meetings may be scheduled as needed.
  - e. *No Response Following Request for Meeting or Additional Information.* If a tribe has requested additional information or time to respond or has met with County staff regarding a project but has not submitted a written recommendation for mitigation, the County will email the tribal representative requesting a final response. If no response is received within 10 calendar days, the County may issue the permit. However, a tribe may request mitigation at any time prior to permit approval.
3. **Recommending Mitigation.** In order to recommend mitigation for a particular application, a tribe must submit a written recommendation for mitigation to the Department. In the written recommendation, a tribe need not include specific information about the tribal cultural resource requiring protection nor the nature of the recommended mitigations. Any request that is in addition to or deviates from what is already required under County Code or proposed in the application materials will be considered mitigation.
  4. **Use Permit Required.** If the County receives a written recommendation for mitigation prior to permit approval, the County will send a letter to the applicant requesting that the applicant withdraw the ministerial cannabis cultivation permit within 10 calendar days and informing the applicant that the proposed project is subject to a use permit through Permit Sonoma. If an applicant does not pursue a timely withdrawal of its application, the application will be denied.

**Confidentiality:**

The California Legislature has recognized the strong public policy interest in maintaining the confidentiality of information associated with tribal cultural resources in order to ensure those resources remain protected. Archeological site information and reports, records of Native American graves, cemeteries, and sacred places, and records of Native American places,

features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code are exempt from disclosure under the California Public Records Act. (Cal. Gov. Code § 6254(r); § 6254.10.) As such, the County will not release any such records that are exempt from disclosure to the applicant or any other member of the public.

While the County values transparency with its permit applicants and the general public, protection of tribal cultural resources is of the utmost importance. If the applicant chooses to withdraw and reapply for a use permit, confidential information on tribal cultural resources may be shared with the applicant and property owner during the AB 52 consultation process.

The Department will develop and provide training materials to employees and consultants with access to confidential application materials to ensure confidential materials are not inadvertently disclosed.

The Department may consult County Counsel as needed regarding public records determinations. The following are guidelines only.

**The following records are generally public, unless an exclusion applies under the Public Records Act (this is not an exclusive list):**

- The list of tribes the Department maintains and their contact information. Invitations to the tribe to update their contact information, and the tribes' responses to such invitations.
- Referral packet sent to NWIC and tribes, *excluding* all confidential application materials, which includes all confidential cultural resource surveys or other information related to cultural resources.

**The following records are excluded from public disclosure (this is not an exclusive list):**

- Cultural Resource Surveys and their reports.
- A tribe's responses to the County regarding the referral packet.
- Communications between the County and a tribe on the referral packet, following the initial referral.
- Any document, record, or communication containing confidential information, including cultural resource information.

**NOTICE ON PROTECTION OF TRIBAL CULTURAL RESOURCES:** Property owners and applicants should be aware that there are affirmative statutory obligations for protection of Native American human remains and that property owners and applicants may be subject to criminal liability for failing to comply with such obligations and for removing, obtaining, or possessing Native American artifacts or remains. (See, for example, California Health and Safety Code Section 7050.5 and California Public Resources Code Sections 5097.98 and 5097.99.)