

**SUMMARY OF CHANGES FROM DRAFT TO FINAL DRAFT PROPOSED UPDATES TO CANNABIS CULTIVATION POLICY – PRINCIPLES AND GUIDELINES FOR CANNABIS CULTIVATION
(Proposed Revisions Since Release of Draft Updates on September 28, 2018)**

New updates to the Cannabis Policy and Staff Report are listed in order of appearance in the document. Cannabis Policy and Staff Report language in each section is *italicized*. The original proposed edits released for public comment on September 28, 2018, are shown in **bold/underline** and **bold/strike-out** for deleted text. New proposed edits, based upon response to comments, are shown in **bold/underline** and **bold/strike-out** for deleted text. Please note that corresponding updates will also be made to the Cannabis Cultivation General Order, as appropriate. Page numbers correspond to the updated version of Cannabis Policy and Staff Report released for public comment on September 28, 2018. Please note, this summary does not include minor formatting, punctuation, and grammatical changes.

Cannabis Policy – Attachment A, Section 1, Requirement 19, page 20

Prior to acting on a cannabis cultivator’s request to cultivate cannabis on tribal lands¹ or within 600 feet of tribal lands⁷, the Water Boards will notify the governing body of any affected California Native American tribe or the governing body’s authorized representative, as applicable. A 45-day review period will commence upon receipt of the notice by the affected tribe.

During the 45-day review period, the affected tribe may, at its discretion, accept, reject, or not act regarding the cannabis cultivation proposal. If the tribe rejects the proposed cultivation, the cannabis cultivator is prohibited from cultivating cannabis on or within 600 feet of the affected tribe’s tribal lands. If the affected tribe accepts the cannabis cultivation proposal or does not act during the 45-day review period, the Water Boards may proceed with a decision on the cannabis cultivation request as though the affected tribe accepted the cannabis cultivation proposal. ~~The Water Boards will consider requests to extend the 45-day review period on a case by case basis.~~

The governing bodies of California Native American tribes may, at their discretion, notify the State Water Board’s Executive Director in writing that they: a) reject all proposed cannabis cultivation; or b) waive the 45-day review period for all current and future proposed cannabis cultivation on their tribal lands, on portions of their tribal lands, or within 600 feet of their tribal lands. Upon the Executive Director’s receipt of written notice, the Water Boards will, based on the nature of the request, either:

- a. Not approve cannabis cultivation proposals on or within 600 feet of the affected tribe’s tribal lands, as applicable; or**
- b. Abide by the waiver and, at the Water Boards discretion, act on cannabis cultivation requests on or within 600 feet of tribal lands, as applicable, as though the affected tribe accepted the proposal.**

~~The governing bodies of California Native American tribes may, at their discretion, reject all proposed cannabis cultivation on their tribal lands, on portions of their tribal lands, or within 600 feet of their tribal lands. The Water Boards will observe the prohibition once the governing body of the affected tribe has notified the State Water Board’s Executive Director in writing of its decision to reject all cannabis cultivation on tribal lands, on portions of tribal lands, or within 600 feet of its tribal lands. Upon receipt of notification current and future cannabis cultivation proposals will be prohibited on or within 600 feet~~

⁷ “Tribal Lands” means lands recognized as “Indian country” within the meaning of title 18, United States Code, section 1151.

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~~of tribal lands of the affected tribe and the Water Boards will not approve cannabis cultivation proposals on or within 600 feet of the affected tribe's tribal lands, as applicable.~~

~~The governing bodies of California Native American tribes may, at their discretion, waive the 45-day review period for all current and future proposed cannabis cultivation on or within 600 feet of tribal lands. The Water Boards will abide by a waiver once the governing body of the affected tribe has notified the State Water Board's Executive Director in writing of its decision to waive the 45-day review period for all proposed cannabis cultivation on their tribal lands, on portions of their tribal lands, or within 600 feet of their tribal lands. Upon receipt of notification of such waiver, the Water Boards, at their discretion, will act on cannabis cultivation requests on or within 600 feet of tribal lands, as applicable, as though the affected tribe accepted the proposal.~~

The governing bodies of California Native American tribes may, at their discretion, withdraw a previously issued decision regarding cannabis cultivation on or within 600 feet of their tribal lands. In such instances, the governing body of the affected tribe should notify the State Water Board's Executive Director in writing. The Water Boards will abide by the withdrawal of the affected tribe's decision for any new cannabis cultivation proposals received after the date the State Water Board Executive Director has notified the governing body of the affected tribe that its decision was received. The Water Boards will coordinate with the affected tribe to address existing permitted cannabis cultivation sites on the affected tribe's lands, as necessary.

Nothing in this provision shall be construed to modify or interpret tribal law **or tribal jurisdiction** in any way.

Cannabis Policy – Attachment A, Section 1, Requirement 20, page 21

No cannabis cultivation activities shall occur within 600 feet of an identified tribal cultural resource site. The State Water Board may modify this requirement for specific identified tribal cultural resource sites at the request of an affected California Native American tribe(s) after consultation with the affected tribe(s). The cannabis cultivator is solely responsible for identifying any tribal cultural resource sites⁸ within the cannabis cultivation area.

⁸ "Identified tribal cultural resource site" means a tribal cultural resource that meets the requirements of section 21074, subdivision (a)(1) of the Public Resources Code.

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Cannabis Policy - Attachment A, Section 1, Requirement 38, page 28

38. Indoor cannabis cultivation¹² structures are exempt from the riparian setback (Requirement 37) and tribal buffer (Requirement 19) if either of the following conditions are met:

a) The indoor cannabis cultivation structure:

- i. has a building permit *or other similar authorization issued by a federally recognized Indian tribe* on file with the county, city, local jurisdiction, or federally recognized Indian tribe, as applicable, and started construction prior to October 1, 2018;**
- ii. has a valid certificate of occupancy or amended certificate of occupancy for indoor cannabis cultivation; and**
- iii. either (A) is connected to and discharges any industrial wastewater to a permitted wastewater treatment collection system and facility that accepts cannabis cultivation wastewater or (B) discharges any industrial wastewater directly to an appropriately designed and connected storage tank located outside of the riparian setback, and the discharge is properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts the industrial wastewater.**

OR

b) The indoor cannabis cultivation structure:

- i. has a building permit *or other similar authorization issued by a federally recognized Indian tribe* on file with the county, city, local jurisdiction, or federally recognized Indian tribe, as applicable, and construction started on or after October 1, 2018;**
- ii. has a valid certificate of occupancy or amended certificate of occupancy for indoor cannabis cultivation; and**
- iii. is connected to and discharges any industrial wastewater to a permitted wastewater treatment collection system and facility that accepts cannabis cultivation wastewater. If the permitted wastewater treatment collection system and facility that the structure is connected to does not accept cannabis cultivation wastewater, the structure may still qualify for the setback exemptions if the structure discharges any industrial wastewater directly to an appropriately designed and connected storage tank located outside of the riparian setback, and the discharge is properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts the industrial wastewater**

The riparian setback exemption shall not apply if the Regional Water Board's Executive Officer determines that an exemption from the riparian setbacks is not protective of water quality.

¹² **Indoor cannabis cultivation is cannabis cultivation that occurs within a structure with a permanent roof, a permanent relatively impermeable floor (e.g., concrete or asphalt paved), and either 1) discharge all industrial wastewaters generated to a permitted wastewater treatment collection system and facility that accepts cannabis cultivation wastewater or 2) collect all industrial wastewater in an appropriate storage container to be collected and properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts cannabis cultivation wastewater.**

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All other applicable Requirements apply to any cannabis cultivation activities, including setbacks for cannabis cultivation activities that occur outside of the permitted indoor cannabis cultivation structure.

Cannabis Policy - Attachment A, Section 2, Requirement 91, page 49

91. Cannabis cultivators shall install vertical and horizontal storage tanks according to manufacturer's specifications and shall place tanks on properly compacted soil that is free of rocks and sharp objects and capable of bearing the weight of the tank and its maximum contents with minimal settlement. Cannabis cultivators shall maintain a written or electronic copy of the manufacturer's specifications for each storage tank installed and used for cannabis cultivation activities, if available from the manufacturer in hardcopy or on the internet for a period of 12 months beyond the last day the storage tank is used. Tanks shall not be located in areas of slope instability. Cannabis cultivators shall install water storage tanks capable of containing more than 8,000 gallons only on a reinforced concrete pad providing adequate support and enough space to attach a tank restraint system (anchor using the molded-in tie down lugs with moderate tension, being careful not to over-tighten) per the recommendations of a Qualified Professional ~~qualified professional~~. Nothing in this Requirement supersedes other applicable state, county, or local requirements for the installation of water storage tanks, whichever is more stringent shall apply.

Cannabis Policy – Attachment A, Section 2, Requirement 121, page 54

121. Wastewater tanks or storage containers must be rigid, enclosed to the environment, and appropriately designed to hold wastewater. They shall not be located within the riparian setback. Cannabis cultivators shall place wastewater storage tanks in areas that allow for ease of installation, access, maintenance, and minimize road development.

Cannabis cultivators shall install tanks according to manufacturer's specifications and shall place tanks on properly compacted soil or other surface (e.g., concrete) that is free of rocks and sharp objects and capable of bearing the weight of the tank and its maximum contents with minimal settlement. Cannabis cultivators shall maintain a written or electronic copy of the manufacturer's specifications for each tank installed and used for cannabis cultivation activities, if available from the manufacturer in hardcopy or on the internet.

Tanks shall not be located in areas of slope instability or next to equipment that generates heat. Cannabis cultivators shall install wastewater storage tanks capable of containing more than 8,000 gallons only on a reinforced concrete pad providing adequate support and enough space to attach a tank restraint system (anchor using the molded-in tie down lugs with moderate tension, being careful not to over-tighten) per the recommendations of a Qualified Professional.

To prevent rupture or overflow and runoff, cannabis cultivators shall only use wastewater storage tanks equipped with a float valve, or equivalent device, to shut off inflow when storage systems are full. Cannabis cultivators shall install any other measures necessary to prevent overflow of storage systems and prevent spills or leaks. Cannabis cultivators shall regularly inspect for and repair all leaks of the storage system.

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Nothing in this Requirement supersedes other applicable state, county, or local requirements for the installation of wastewater tanks or storage containers, whichever is more stringent shall apply.

Cannabis Policy – Attachment A, Section 2, Update Requirements 128 and 129, page 55

128. Cannabis cultivators shall not operate heavy equipment of any kind at the cannabis cultivation site during the winter period, unless authorized **(1) in a site management plan as described below, or (2) for emergency repairs contained in an enforcement order issued by the State Water Board, Regional Water Board, or other agency having jurisdiction. Use of heavy equipment (e.g. agricultural equipment) for routine cannabis cultivation soil preparation or planting may be authorized in a site management plan approved by the applicable Regional Water Board Executive Officer or designee if both of the following conditions are met:**

- a) all soil preparation and planting activities occur outside of the riparian setbacks; and**
- b) all soil preparation and planting activities are located on an average slope equal to or less than five percent (5%) (e.g., valley floor).**

129. Cannabis cultivators shall apply linear sediment controls (e.g., silt fences, wattles, etc.) along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow length^{29 26} at the frequency specified below **or as authorized in a site management plan approved by the applicable Regional Water Board Executive Officer or designee.**

Slope (percent)	Sheet Flow Length Not to Exceed (feet)
0 – 25	20
25 – 50	15
>50	10

Cannabis Cultivation Policy Staff Report, page 49, Line 17

Withdrawal of water for cannabis cultivation activities from an approved onstream reservoirs, approved under a Cannabis SIUR Certificate, for cannabis cultivation activities is will only be allowed during the surface water forbearance diversion period to minimize the impacts of the reservoir on high flow variability during the wet season.

^{29 26} Sheet flow length is the length that shallow, low velocity flow travels across a site.

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Cannabis Cultivation Policy Staff Report, page 50

Winterization Requirements

In California rainstorm events that create sediment transporting flows on upland slopes and in channels typically occur during the winter period or non-growing season for outdoor cannabis cultivation. One of the main water quality concerns during the winter period is the increased potential for sediment transport due to storm water or water flow from cannabis cultivation activities, especially in areas that are considered “hilly” or “mountainous”. The frequency and risk of erosion or sediment transport on upland slopes can be correlated to average slope of the land. As summarized in Table 4. Slope Gradient Thresholds for Erosion and Deposition, the risk of erosion, potential for sediment transport into stream channels, and the need for additional best management practices proportionately increases as slope increases above five percent (5%).

Table 4 – Slope Gradient Thresholds for Erosion and Deposition

<u>Average Land Slope</u>	<u>Expected Sediment Transport Type</u>
<u>>20%</u>	<u>Erosion: Flows with enough magnitude to transport sediment should result in erosion without significant deposition. Land management goals need to cover significant erosion.</u>
<u>5% – 25%</u>	<u>Transitional (Erosion and Deposition): Flows with enough magnitude to transport sediment should result in both erosion and deposition as land slopes decrease. Land management goals need to cover both erosion and deposition.</u>
<u><10%</u>	<u>Depositional: Flows from higher slopes transporting sediment become primarily depositional, with the most deposition occurring between 2% - 6% slope. Land management goals need to cover deposition of sediment from higher properties.</u>

Benda et al. (2005) “Geomorphology of Steepland Headwaters: the Transition from Hillslopes to Channels.”

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The State Water Board has determined that the use of heavy equipment (e.g., agriculture equipment) during the winter period for soil preparation and planting activities on land with average slopes equal to or less than five percent (5%) have a lower risk for erosion and sediment transport and that risk can be mitigated through best management practices developed as part of a Site Management Plan approved by the applicable Regional Water Board. In addition, this requirement is consistent with the California Regional Water Board San Francisco Bay Region’s General Waste Discharge Requirements for Vineyard Properties in the Napa River and Sonoma Creek Watersheds (Order No. R2-2017-0033), which requires additional performance standards to control storm runoff from vineyards and sediment discharge from roads on hillslope vineyard parcels where the average slope of the planted area is greater than five percent (5%) (California Regional Water Quality Control Board, San Francisco Region, 2017).

Cannabis Cultivation Policy Staff Report, pages 88-89

Benda et al. 2005. “Geomorphology of Steepland Headwaters: the Transition from Hillslopes to Channels.” Journal of the American Water Resources Association. Available at: http://geog.uoregon.edu/amarcus/geog607w09/Readings/Benda-et-al2005_JAWRA.pdf

California Regional Water Quality Control Board, San Francisco Region. 2017. “General Waste Discharge Requirements for Vineyard Properties in the Napa River and Sonoma Creek Watersheds”. Available at: https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/agriculture/vineyard/final_docs/Vineyard%20General%20WDRs%20-%202017-17.pdf