

ATTACHMENT 5

**DRAFT SMALL CULTIVATOR AMENDMENTS TO THE
COMMERCIAL CANNABIS LAND USE ORDINANCE (CCLUO)**

ORDINANCE AMENDING SECTIONS 314-55.4.6.1, 314-55.4.6.5 AND 314-55.4.12.1.10 OF THE COMMERCIAL CANNABIS LAND USE ORDINANCE IN CHAPTER 4 - ZONING REGULATIONS (TITLE III OF HUMBOLDT COUNTY CODE) TO FACILITATE PERMITTING OF SMALL FARMS ADJACENT TO HOMES

ORDINANCE NO. _____

The Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1. PURPOSE. The ordinance facilitates permitting of small new and pre-existing cannabis farms adjacent to homes that existed prior to December 31, 2016 by establishing a streamlined permitting pathway. The eligible farms minimize the impacts on the environment and archaeological resources because they are owner-occupied, the cultivation area is no more than 2,000 square feet in size and within the already disturbed homesite area of the existing home. Also, water for irrigation is provided from permitted non-diversionary sources, permaculture is practiced, and the cultivation is done outdoors or in permitted or ag exempted hoopouses/greenhouses and does not use generators for electrical power.

SECTION 2. TEXT AMENDMENTS.

Section 314-55.4.4 of Chapter 4 of Division 1 of Title III of the Humboldt County Code is hereby amended as follows:

55.4.4 **DEFINITIONS**

“Homesite Area” means the land up to 2-acres immediately surrounding a house or dwelling, including any closely associated buildings and structures, garden, storage, driveway and parking areas, but excluding any associated "open fields beyond", and also excluding any closely associated buildings, structures, or divisions that contain the separate activities of their own respective occupants with those occupying residents being persons other than those residents of the house or dwelling of which the building is associated.

“On-site Nursery” means a facility that produces only clones, immature plants, and seeds for licensed cultivators to be used specifically for on-site planting, propagation, and cultivation of cannabis, of which does not exceed 20% of the area of the Cultivation Area.

“Permaculture” means is a set of design principles centered on whole systems thinking, simulating, or directly utilizing the patterns and resilient features observed in natural ecosystems. Commonly associated with permaculture include agro-forestry, swales, contour plantings, soil and water management, hedgerows and windbreaks, and integrated farming systems such as pond-dike aquaculture, aquaponics, intercropping, and polyculture. For the purposes of this Section, Permaculture includes the exclusive use of native soil; organic fertilizers, pesticides, rodenticides and insecticides; and use of water efficient irrigation systems for all commercial cannabis cultivation.

Section 314-55.4.6.1 of Chapter 3 of Division 1 of Title III of the Humboldt County Code is hereby amended as follows:

55.4.6.1 Eligibility Criteria - Resource Production and Residential Areas

55.4.6.1.1 Zoning

AE, AG, FR, and U when accompanied by a Resource Production General Plan land use designation (not including Timberland) or Residential land use designation requiring parcel sizes of more than 5 acres.

55.4.6.1.2 Minimum Parcel Size and allowed Cultivation Area

- a) On parcels one acre or larger in size, up to 2,000 square feet of Cultivation Area is allowed on a property where all the following criteria are met:
1. Cultivation is located within the Homesite Area of the home, and the home existed prior to December 31, 2016; and
 2. The property is owner-occupied; and
 3. Water source for Irrigation is permitted and non-diversionary; and
 4. Cultivation is full sun outdoor or outdoor within permitted or ag exempted hoopouses or greenhouses without the use of lights or fans or other components which would otherwise require the use of generators for electrical power; and
 5. Permaculture is practiced; and
 6. Cultivation is not located on, above, or disrupting leach field areas or systems; and
 7. The Cultivation Area is not located on a parcel with any other Commercial Cannabis Activity; and
 8. The parcel is confirmed to be a legally created parcel.

Where an application for cultivation meets all the above criteria, the application is exempted from section 55.4.12.1.8- Performance Standard–Road Systems, and as long as a Special Permit or Conditional Use Permit is not otherwise required, the application shall be processed as a Zoning Clearance and approved within 30 days, or will be automatically approved unless the applicant is notified in writing of specific deficiencies related to compliance with this Section. The cost of the Zoning Clearance Certificate shall not exceed the initial deposit for processing the application.

- ~~a~~ b) Five (5) acre minimum parcel size, on parcels between 5 and 10 acres in size:
- 1) up to 5,000 sq. ft. of Cultivation Area with a Zoning Clearance Certificate;
 - 2) up to 10,000 sq. ft. of Cultivation Area with a Special Permit.
- ~~b~~ c) On parcels 10 acres or larger in size:
- 1) up to 10,000 sq. ft. of Cultivation Area with a Zoning Clearance Certificate;
 - 2) up to 43,560 sq. ft. of Cultivation Area with a Special Permit.

- e d) On parcels 320 acres or larger in size, up to 43,560 sq. ft. of Cultivation Area per 100-acre increment can be permitted subject to approval of a Use Permit, up to a maximum of eight (8) acres can be permitted. All cultivation areas must have access from paved roads with centerline stripe, meeting the Category 4 standard. Exceptions may be considered subject to a separate Use Permit. Where an exception is sought, the Use Permit application shall include an evaluation (prepared by a licensed engineer) of the local road network providing access to the site. The Hearing Officer shall not grant an exception unless there is substantial evidence to support a finding that the cultivation sites will not adversely affect the public health, safety, and welfare because the roads as they exist or are improved provide fire safe road access, capacity to support anticipated traffic volumes, maintain water quality objectives, and protect sensitive habitats.

Section 314-55.4.6.5 of Chapter 3 of Division 1 of Title III of the Humboldt County Code is hereby amended as follows:

55.4.6.5 Accommodations for Pre-Existing Cultivation Sites

As set forth in the following subsections, Pre-Existing Cultivation Sites that meet all other Eligibility and Siting Criteria and Performance Standards, may be permitted within AE, AG, RA, FR, FP, TPZ, and U zoning districts, where accompanied by a Resource Production General Plan land use designation or Residential land use designation requiring parcel sizes of more than 5 acres. Expansion of Pre-Existing Cultivation Sites is prohibited where located within TPZ zones or U zones where the General Plan land use designation is “Timberland”. For other areas, where the size of a Pre-Existing Cultivation Site is smaller than the allowed cultivation area which can be permitted, the site may be expanded to the maximum allowed for the applicable parcel size and permit type within existing Non-Forested areas with Slopes of 15 percent or less.

Permit applications for Pre-Existing Cultivation Sites shall provide dated satellite imagery or other evidence satisfactory to the Planning and Building Department establishing the existence and area of cultivation between January 1, 2006 and December 31, 2015.

Except as stated below, applications for Pre-Existing Cultivation Sites submitted before December 31, 2018 may be permitted at one hundred percent of the documented pre-existing cultivation area and applications for pre-existing cultivation submitted between January 1, 2019 and December 31, 2019 shall not be approved for more than fifty percent of the documented existing cultivation area. No new applications for Pre-Existing Cultivation Sites shall be accepted after December 31, 2019, except applications for cultivation sites of 2,000 square feet or less pursuant to Section 55.4.6.5.1.1(a) may be submitted after December 31, 2019, and (b) may be permitted for one hundred percent of the documented pre-existing Cultivation Area up to 2,000 square feet.

55.4.6.5.1 Small Cultivation Sites

55.4.6.5.1.1 On parcels one acre or larger in size, up to 2,000 square feet of Cultivation Area is allowed on a property where all the following criteria are met:

- a) On parcels one acre or larger in size, up to 2,000 square feet of Cultivation Area is allowed on a property where all the following criteria are met:

1. Cultivation is located within the 2-acre Homesite Area of the home, and the home existed prior to December 31, 2016; and
2. The property is owner-occupied; and
3. Water source for Irrigation is permitted and non-diversionary; and
4. Cultivation is full sun outdoor or outdoor within permitted or ag exempted hoophouses or greenhouses without the use of lights or fans or other components which would otherwise require the use of generators for electrical power; and
5. Permaculture is practiced; and
6. Cultivation is not located on, above, or disrupting leach field areas or systems; and
7. The Cultivation Area is not located on a parcel with any other Commercial Cannabis Activity; and
8. The parcel is confirmed to be a legally created parcel.

Where an application for cultivation meets all the above criteria, the application is exempted from section 55.4.12.1.8- Performance Standard–Road Systems, and as long as a Special Permit or Conditional Use Permit is not otherwise required, the application shall be processed as a Zoning Clearance and approved within 30 days, or will be automatically approved unless the applicant is notified in writing of specific deficiencies related to compliance with this Section. The cost of the Zoning Clearance Certificate shall not exceed the initial deposit for processing the application.

55.4.6.5.1.2 On Parcels 5 acres or larger in size, up to 3,000 square feet of Outdoor or Mixed-Light Cultivation, or any combination thereof, may be permitted with a Zoning Clearance Certificate, subject to the following additional requirements and allowances:

- a) The operator’s principal residence is located on the same parcel and the residence was in existence before January 1, 2016
- b) Not more than one cultivation permit may be issued for the same Parcel.
- c) The Road Systems Performance Standards in Sections 55.4.12.1.8(a) shall not apply
- d) The Road Systems Performance Standards in Sections 55.4.12.1.8(c) and (d) shall apply as follows:
 - i. Within one year of provisional permit approval, permittees of small cultivation sites are responsible to join or form a Road Maintenance Association pursuant to 55.4.12.1.8(d)1, and submit a report prepared pursuant 55.4.12.1.8(c)2, unless one has already been submitted for other commercial cannabis activity sites within the roadshed.
 - ii. Improvements must be implemented within 2 years of approval of the provisional permit. The timeframe for completing improvements may be extended for cause by the Director of Planning and Building.
- e) The existing area of cultivation may be located on Slopes greater than 15 percent, but less than 30 percent with a Zoning Clearance Certificate.

55.4.6.5.2 On an AE zoned parcel less than one acre in size, up to 2,500 square feet of Cultivation Area may be permitted with a Special Permit.

55.4.6.5.3 On parcels between one acre and five acres in size, up to 3,000 square feet of Cultivation Area may be permitted with a Special Permit.

Section 314-55.4.12.1.10 of Chapter 4 of Division 1 of Title III of the Humboldt County Code is hereby amended as follows:

55.4.12.1.10 Performance Standard – Biological Resource Protections

Projects proposing new development activities shall provide the necessary information to implement the following mitigation measures from the Final Environmental Impact Report:

Mitigation Measure #	Description of Mitigation
3.4-1a	Biological reconnaissance surveys
3.4-1b	Special-status amphibian surveys and relocation/buffers
3.4-1c	Western pond turtle surveys and relocation/buffers
3.4-1d	Nesting raptor surveys and relocation/buffers
3.4-1e	Northern Spotted owl surveys
3.4-1f	Special-status nesting bird surveys/buffers
3.4-1g	Marbled murrelet habitat suitability surveys/buffers
3.4-1i	American badger surveys and buffers
3.4-1j	Fisher and Humboldt marten surveys and den site preservation/buffers
3.4-1k	Bat survey and Buffers
3.4-1l	Vole survey and relocation/buffers
3.4-3a	Special-status plants surveys
3.4-4	Protection of sensitive natural communities, riparian habitat, wetland vegetation
3.4-5	Waters of the United States
3.4-6b	Retention of Fisher and Humboldt marten habitat features

Exception: This section shall not apply to new development activities within the footprint of existing structures or proposed on lands planned or zoned for commercial or industrial activities. .

During permitting of pre-existing cultivation sites, the Department shall determine the necessity and focus of any biological evaluations required in concert with consultation with the California Department of Fish and Wildlife. For pre-existing cultivation sites that submitted for permitting prior to December 31, 2019 within 0.7 miles of a known northern spotted owl activity center, a qualified biologist, familiar with the life history of the northern spotted owl, shall conduct a disturbance and habitat modification assessment to determine the presence of the species and whether the cultivation site can operate or have its operation modified to avoid take of the species. If it is determined that take of the species could occur, the cultivation site will be required to participate in the Retirement, Remediation, and Relocation provisions of the proposed ordinance to relocate the cannabis cultivation to outside of the northern spotted owl activity area.

SECTION 3. SEVERABILITY. The individual parts of this ordinance are severable, such that if one or more parts are determined to be invalid, all the other parts will remain in full force and effect.

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after the date of its passage.

PASSED, APPROVED, AND ADOPTED the ____ day of _____, 2020, on the following vote, to wit:

AYES: Supervisors
NOES: Supervisors
ABSENT: Supervisors

ESTELLE FENNELL, Chair
Board of Supervisors, County of Humboldt
State of California

ATTEST:
Kathy Hayes, Clerk of the Board of Supervisors
of the County of Humboldt, State of California

By: _____
Ryan Sharp, Deputy Clerk

Date: