June 30, 2021

[Submitted via email to planningclerk@co.humboldt.ca.us]

Mr. Alan Bongio, Chairperson
Humboldt County Planning Commission
3015 H St.
Eureka, CA 95501

RE: July 1, 2021 Planning Commission Hearing: CCLUO Amendment
Agenda Item No. 4

Dear Chairperson Bongio and Members of the Commission,

This correspondence contains comments on the proposed Commercial Cannabis Land Use Ordinance ("CCLUO") amendment before you on July 1, 2021.

Prior to the comments there are two important items to note. First, this proposed amendment should be continued from July 1, 2021, to a later date to give cultivators additional time to review and respond to the proposed changes. Many permitted cultivators were unaware of these changes, and the Planning Department did not effectively circulate notice to ensure adequate public participation and comment. Put simply, there is not enough knowledge or time for affected permittees to present well-crafted comments to the proposed changes.

Secondarily, it should be noted that the proposed CCLUO amendment that allows for supplemental lighting for outdoor cultivation activities is a step in the right direction for permitted cannabis cultivators, and the Planning Department should be commended for this. The County should allow outdoor cultivators to use supplemental lighting for workplace safety and to maintain plants in a vegetative state, as is, and always has been the industry's practice. Moreover, the County should petition the relevant state agencies for a similar provision in state law to provide for the use of low wattage supplemental lighting for outdoor cannabis cultivation licenses. This would prevent crops from prematurely flowering causing potential catastrophic crop damage.

With those initial points in mind, the proposed CCLUO amendment has items that require further clarification and comment. This correspondence addresses two of these.

First, the CCLUO should not limit "propagation" to twenty-five percent of the approved cultivation area. For the reasons set out below this is not consistent with state regulations and would hinder many permitted cultivators. The propagation area should only be limited on a case-by-case basis in circumstances where physical constraints would necessitate it. Also, to remain consistent with state regulations, the CCLUO should be amended so that the definition of "propagation" is changed and new definition for "immature plant area" is added.

Secondly, the proposed CCLUO amendment would allow for lighting over the cultivation area, limited at 60 watts per 100 square feet. This proposed amendment is beneficial, but it should

be changed and modified. Limiting the lights to 60-watt bulbs, and using 60 watts per 100 square feet is not the best way to allow cultivators to use supplemental and safety lighting. The County should instead allow 0.06 watts per square foot of permitted cultivation area, and let the cultivators decide the lighting that works best within these parameters.

The full discussions of these points are set out further below.

Propagation Area

As stated above, the proposed CCLUO amendment is not consistent with state law. As it currently exists, the CCLUO and the California Department of Food and Agriculture CalCannabis ("CalCannabis") regulations, both allow for two types of areas associated with cannabis activity. These two areas are the actual canopy or cultivation area where the permit/license holder cultivates the mature cannabis plants, and also an area to keep immature plants prior to moving them to the canopy or cultivation area. The proposed CCLUO amendment would make the CCLUO more exacting than the CalCannabis regulations.

The CCLUO currently defines "propagation" as:

> [The] cultivation of immature, non-flowering cannabis plants. Areas used for Propagation which are incidental, accessory, and subordinate to Cultivation areas on the same Parcel or Premises may be excluded from the calculation of Cultivation area at the discretion of the Planning Director or Hearing Officer.

(CCLUO section 55.4.4.)

In simple terms, the CCLUO draws a distinction between the "cultivation area" that is permitted and the propagation area. The CCLUO makes clear that propagation area may be excluded from the calculation of the cultivation area, and it is also important to note that the CCLUO currently does not limit the propagation area based on a percentage of the cultivation area.

The CalCannabis regulations are similar to the CCLUO. The CalCannabis regulations do not define propagation or immature plant area, but instead require cannabis cultivation license applications to identify areas where immature plants are maintained. (California Code of Regulations ["CCR"] Title 3, section 8106(a)(1)(B).) Similar to the CCLUO, the CalCannabis regulations draw a distinction between the canopy and the immature plant area. The CalCannabis regulations require these immature plants to be kept in an area outside the licensed canopy. (See *ibid*.) Again, in simple terms, the CalCannabis regulations allow for a canopy area, with a distinct and separate immature plant area. Similar to the CCLUO, the CalCannabis regulation do not limit the size of the immature plant area.

The proposed CCLUO amendment would make the CCLUO more restrictive than state regulations, and remove the consistency outlined above. The staff report for the proposed CCLUO amendment states that the CCLUO amendment limiting propagation area to twenty-five percent of the approved cultivation area is done "to help align the CCLUO better with common commercial cannabis practices." (Staff report at p.4.) However, it is unclear why staff cites that common

practice is to limit the propagation area to twenty-five percent of the cultivation area. In fact, given the physical ability and the space to do so, many permitted cannabis cultivators use more than twenty-five percent of the permitted cultivation area for propagation. Giving permitted cultivators this flexibility allows them to respond to variable conditions and conduct successful cultivation activities.

Moreover, many permits granted under the CCLUO include a condition of approval that only allow the propagation area to a certain percent of the permitted cultivation area- several examples of which are before the Planning Commission tonight. If the Planning Department currently limits propagation area on a case-by-case basis, it is unclear why a blanket limitation is necessary now.

Undoubtedly, there are many projects and circumstances which require propagation areas that are limited in size. For instance, on parcels with slopes exceeding a certain gradient, near sensitive biological resources, or near other residences, limiting the propagation area would be beneficial and further the objectives of the CCLUO. However, in circumstances where the physical components of the project and the particular layout of the parcel allow for a larger propagation area, there is no need to limit it. The proposed CCLUO amendment would provide a blanket ceiling on the size of the propagation area that would apply to all projects, regardless of the circumstances. In many cases, this ceiling would disrupt and limit local cannabis businesses from efficiently conducting cannabis cultivation.

As an alternative to the Planning Department's proposed amendment, the following are two simple changes that would greatly benefit the cannabis industry. First, the Planning Commission should include a definition for "immature plant area" and stop using the term "propagation" or "propagation area." This changed definition would mirror the CalCannabis regulations and help avoid confusion when discussing the underlying requirements of the County permits vis-à-vis the CalCannabis licenses. Secondarily, the Planning Commission should not limit the size of the propagation area to twenty-five percent of the approved cultivation area. The Planning Department could, as is the current practice, at its discretion limit the propagation area where physical or other constraints indicate that it is appropriate. These changes would align the County's ordinance with state law and help many cultivators conduct successful cultivation activities.

Lighting in Cultivation Areas

As stated at outset, the County should allow supplemental and task lighting in cultivation areas to provide, as required by CalOSHA law, workplace safety. (See 8 CCR § 3449.) The supplemental lighting also allows cultivators to maintain plants in a vegetative state, and prevent catastrophic crop failures. This change is an important step in assisting County farmers to conduct successful operations. The proposed amendment limiting supplemental lighting should not, however, limit the types of lighting used to 60-watt or less bulbs.

The proposed amendment would limit the supplemental light to 60 watts per 100 square feet, and only allows for 60-watt bulbs. This standard is confusing, and difficult to implement. Many cultivators will need to be able to use stronger lights in certain areas in order to provide

adequate lighting for workplace safety and to maintain plants in a vegetative state. Moreover, CalCannabis regulations currently calculate light usage on a square foot basis, and do not dictate the type of light used. (See e.g. 3 CCR § 8000(t)(2) [defining the watts per square foot of mixed light licenses].) The County should likewise implement a wattage per square foot basis, with no limitation on type of lighting. Therefore, to remain consistent with the analysis contained in the staff report, the County should implement a 0.06 watts per square foot requirement, and eliminate a maximum wattage on the bulbs used. This would give cultivators the flexibility to utilize low level lights in the manner that best suits their needs, while also remaining within the bounds of the County's proposed amendment.

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I thank the Commission for the opportunity to present these comments, and I hope that the Commission takes them into consideration when making its final determination.

Sincerely,

Robert T. Renfro, Jr.
Panther Gap Farms
Innovation West Corporation