

ATTACHMENT 3

**Draft Board of Supervisors Ordinance
Repealing the Existing Cannabis Cultivation for Personal Use Ordinance
(Part A - 313-55.1 & 2 of Title III, Division I, Chapter 3)
to be replaced by the same ordinance with the
modifications suggested by the Coastal Commission**

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

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Meeting of _____

Ordinance No. _____

REPEALING THE EXISTING CANNABIS PERSONAL USE ORDINANCE #2523 (SECTION 313-55.1 AND 313-55.2 OF CHAPTER 3 OF DIVISION 1 OF TITLE III OF THE COUNTY CODE) TO BE REPLACED BY THE PROVISIONS OF THE PROPOSED ORDINANCE (SECTION 313-55.1 AND 313-55.2 OF CHAPTER 3 OF DIVISION 1 OF TITLE III) WITH THE MODIFICATIONS SUGGESTED BY THE COASTAL COMMISSION INCORPORATED.

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

SECTION 1. PURPOSE OF ZONING REGULATION AMENDMENTS. Chapter 3 of the Zoning Regulations (Title III of Humboldt County Code) is hereby being amended to incorporate the modifications suggested by the Coastal Commission at their meeting on August 7, 2019. The nature of the changes made by the Coastal Commission did not change the regulatory intent or approach of the ordinance as crafted. Most of the changes are intended to increase clarity relative to regulations and policies specific to the Coastal Zone.

SECTION 2. The following subdivisions of Section 313-55.1 regarding Indoor Cultivation of Cannabis for Personal Use in Title III, Division 1, Chapter 3 of the Humboldt County Code are repealed and replaced to read as follows:

313-55.1 CANNABIS LAND USES: COASTAL

55.1 Indoor Cultivation of Cannabis for Personal Use

55.1.1 Authority and Title

This Section (hereafter all references to “this Section” or “this Code” mean Section 313-55.1 *et seq.* of the Humboldt County certified coastal zoning regulations) shall be known and may be cited as the “Cannabis Land Use Code for Personal Indoor Cultivation”.

55.1.2 Purpose and Intent

The purpose and intent of the Cannabis Land Use Code for Personal Indoor Cultivation (“this Code”) is to regulate the cultivation of cannabis for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of people to have access to cannabis; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the cultivation and processing of cannabis for an individual’s personal use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany cannabis cultivation.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; or allow any activity relating to the cultivation, processing, distribution, or consumption of cannabis that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Applicability and Interpretation

55.1.3.1 The indoor cultivation and processing of cannabis for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.

55.1.3.2 Nothing in this Code is intended, nor shall it be construed, to exempt any indoor cultivation of cannabis for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or compliance with the Coastal Act, or any other applicable state or federal laws.

55.1.3.3 Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking, or other related activities by tenants.

55.1.3.4 The definitions in this Code are intended to apply to this Code. Applicable definitions in Humboldt County Code sections 313-136 et seq. and 111-1 et seq. may also apply to this Code.

55.1.4 Compliance with Other Laws.

No provision of this Section shall be constructed to authorize, legalize, allow, approve, or condone any activity that violates any provision of State or federal law or this Code. Nothing in this Section shall be construed to allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under State or federal law. No provision of this Section may be deemed a defense or immunity to any action brought against any person by the Humboldt County District Attorney, the Attorney General of the State of California, or the Attorney General of the United States of America.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code. Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws.

55.1.7 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Code:

Cannabis: means any mature or immature male or female *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties.

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same parcel, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. For the purposes of this Section, a greenhouse or hoophouse shall not be considered to be a detached accessory building.

Indoor(s): within a fully enclosed and secure structure that has a roof supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached.

Indoor Cultivation of Cannabis for Personal Use: cultivation and processing of cannabis for personal use indoors in a residence or detached accessory structure. The cultivation area may not exceed fifty (50) square feet or ten (10) feet in height. No more than six (6) cannabis plants may be cultivated for personal use in any residence or detached accessory structure at any time. Such cultivation shall be subordinate, incidental, and accessory to an existing residential use.

Personal Use Cannabis: cannabis that is cultivated, processed, or stored for a single person or household's exclusive use.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

55.1.8 Indoor Cultivation for Personal Use

The County shall not interfere with indoor cultivation of cannabis for personal use in the coastal zone, so long as the cultivation is in conformance with this Code and state law, including the California Coastal Act.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor cannabis cultivation and processing for personal use shall be in conformance with the following standards:

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

55.1.8.1 Cultivation of cannabis for personal use in a residence shall not exceed six (6) plants, 50 square feet of canopy area or exceed ten (10) feet in height per residence on a parcel; and

55.1.8.2 Cannabis cultivation in detached accessory buildings shall not exceed six (6) plants, 50 square feet of canopy area or exceed ten (10) feet in height per residence on a parcel; and

55.1.8.3 A total of 50 square feet of indoor cannabis cultivation for personal use, which does not exceed six (6) plants or ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than six (6) plants, 50 square feet or more than ten (10) feet in height of cannabis cultivation area per residence on the parcel, regardless of the number of persons residing at the residence or participating directly or indirectly in the cultivation; and

55.1.8.4 The cannabis cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, and secured against unauthorized entry; and

55.1.8.5 Grow lights for cannabis cultivation for personal use in a residence or a detached accessory building shall not exceed 1200 watts total; and

55.1.8.6 All electrical equipment used in the indoor cultivation of cannabis in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the indoor cultivation of cannabis for personal use is prohibited; and

55.1.8.7 The use of gas products (CO₂, butane, etc.) for indoor cannabis cultivation or processing in a residence or a detached accessory building is prohibited; and

55.1.8.8 No toxic or flammable fumigant shall be used for indoor cultivation of cannabis in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and

55.1.8.9 On parcels that contain more than one residence, no odor of cannabis shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of cannabis shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the cannabis cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of cannabis from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and

55.1.8.10 From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor cannabis at the residence or detached accessory building that is detectable by a person of ordinary senses; and

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

55.1.8.11 Cannabis cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and

55.1.8.12 No sale, trading, or dispensing of cannabis is allowed on a parcel where indoor cultivation of cannabis for personal use occurs; and

55.1.8.13 No person may cultivate cannabis for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and

55.1.8.14 The residence where cannabis is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for cannabis cultivation; and

55.1.8.15 No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor cultivation of cannabis for personal use; and

55.1.8.16 The indoor cultivation of cannabis for personal use shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of cannabis; and

55.1.8.17 Indoor cultivation of cannabis for personal use must comply with all applicable state and county laws, including fire and building codes.

55.1.8.18 A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

55.1.8.19 Outdoor cultivation, as described in Section 313-55.2, may not occur on any parcel in addition to the indoor cultivation provisions described herein.

SECTION 3. The following subdivisions of Section 313-55.2 regarding Outdoor Cultivation of Cannabis for Personal Use in Title III, Division 1, Chapter 3 of the Humboldt County Code are repealed and replaced to read as follows:

55.2 Outdoor Cultivation of Cannabis for Personal Use

55.2.1 Authority and Title

This Section (hereafter all references to “this Section” or “this Code” mean Section 313-55.2 *et seq.* of the Humboldt County certified coastal zoning regulations) shall be known and may be cited as the “Cannabis Land Use Code for Personal Outdoor Cultivation”.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

55.2.2 Purpose and Intent

The purpose and intent of the Cannabis Land Use Code for Personal Outdoor Cultivation (“this Code”) is to establish reasonable regulations governing the outdoor cultivation of cannabis for personal use as defined herein, in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of people to have access to cannabis; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the cultivation and processing of cannabis for an individual’s personal use; and the need to eliminate, or at least limit to the greatest extent possible, harmful environmental impacts that can accompany outdoor cannabis cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; or allow any activity relating to the cultivation, processing, distribution, or consumption of cannabis that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.2.3 Applicability and Interpretation

55.2.3.1 The outdoor cultivation and processing of cannabis for personal use within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the governed activities were established or occurred prior to the adoption of this Code.

55.2.3.2 Nothing in this Code is intended to exempt, nor shall it be construed to exempt any outdoor cultivation of cannabis for personal use from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or compliance with the Coastal Act, or any other applicable state or federal laws. If outdoor cultivation of cannabis for personal use involves development as defined under Section 30106 of the Coastal Act, pursuant to Section 312-3.1.4 of the Humboldt County Code a Coastal Development Permit must be secured, unless the development is exempted or excluded under the California Public Resources Code (Section 30000, and following) or the California Code of Regulations.

55.2.3.3 Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking, or other related activities by tenants.

55.2.3.4 The definitions in this Code are intended to apply to this Code. Applicable definitions in Humboldt County Code sections 313-136 et seq. and 111-1 et seq. may also apply to this Code.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

55.2.4 Compliance with Other Laws.

No provision of this Section shall be constructed to authorize, legalize, allow, approve, or condone any activity that violates any provision of State or federal law or this Code. Nothing in this Section shall be construed to allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under State or federal law. No provision of this Section may be deemed a defense or immunity to any action brought against any person by the Humboldt County District Attorney, the Attorney General of the State of California, or the Attorney General of the United States of America.

55.2.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.2.6 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Code:

Acre: means 43,560 square feet. See also the definition of “Lot Size” found under Section 313-147 of the code.

Cannabis: means any mature or immature male or female Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties.

Canopy: means the area, in square feet, of vegetative growth, of a cannabis plant including starts.

Enforcing Officer: means the Code Enforcement Investigator or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Code.

Outdoor(s): means not within an enclosed building, excepting a greenhouse or hoophouse, but instead on an open and uncovered portion of the property.

Outdoor Cultivation of Cannabis for Personal Use: means the planting, growing, harvesting, drying, processing, or storage of one or more cannabis plants, or any part thereof, in any outdoor location. Such cultivation shall be subordinate, incidental, and accessory to an existing residential use.

Public Park: means land that is publicly owned or controlled for the purpose of providing recreation and/or open space for public use.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

Property: shall mean a single, legal parcel. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single “property” for purposes of this Section.

Personal Use Cannabis: cannabis that is cultivated, processed, or stored for a single person or household’s exclusive use.

Pesticides: shall have the same meaning as set forth in Article 1, Division 6, Section 6000 of the California Code of Regulations, and Article 1, Division 7, Section 12753 of the California Food and Agriculture Code.

Place of Religious Worship: a specially designed structure or consecrated space where individuals or a group of people such as a congregation come to perform acts of devotion, veneration, or religious study.

School: means an institution of learning for minors, whether public or private, offering a regular course of instruction as required by the California Education Code. This definition includes a kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

School Bus Stop: means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.

Traditional Native American Cultural Site: means a place with an association with cultural practices and beliefs that are rooted in the local tribal history and are important to maintaining the continuity of a tribal community’s traditional beliefs and practices.

55.2.7 Outdoor Cultivation for Personal Use

The County shall not interfere with outdoor cultivation of cannabis for personal use in the coastal zone, so long as the cultivation is in conformance with this Code and state law, including the California Coastal Act.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, all outdoor cannabis cultivation and processing for personal use shall be in conformance with the following standards:

55.2.7.1 Parcel size shall be determined in accordance with the definition of “Lot Size” found under Section 313-147 of the code.

55.2.7.2 Cultivation of cannabis outdoors for personal use is allowed as an alternative to indoor cultivation, as defined herein, if the following restrictions are adhered to:

55.2.7.2.1 On parcels one (1) acre or smaller in size, up to six plants may be cultivated for personal use provided the total plant canopy of the cannabis cultivated outdoors does not exceed

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

100 square feet in size, and no part of the cultivation area occurs within 20 feet of a property boundary line; and

55.2.7.2.2 On parcels greater than one (1) acre in size, up to six (6) plants may be cultivated for personal use provided the total plant canopy of cannabis cultivated outdoors does not exceed 200 square feet in size, no part of the cultivation area occurs within 40 feet of a property boundary line, where the neighboring parcel is less than five (5) acres in size, or 20 feet of a property line, where the neighboring parcel is five (5) acres or above in size; and

55.2.7.2.3 No outdoor cultivation for personal use may occur within 600 feet of any School, School Bus Stop, Public Park, Place of Religious Worship, or Traditional Native American Cultural Site, so long as these uses existed prior to the outdoor cultivation of cannabis in compliance with this Code; and

55.2.7.2.4 Indoor cannabis cultivation for personal use may not occur in addition to the outdoor cultivation provisions described herein.

55.2.7.2.5 No person may cultivate cannabis for his or her personal use in more than one residence, or detached accessory building, or outdoor cultivation area within the jurisdiction of the County of Humboldt; and

55.2.7.2.6 Cultivation within a greenhouse or “hoophouse” for personal use shall be deemed outdoor cultivation subject to the requirements of this Code, including the parcel-size-specific canopy restrictions and setbacks.

55.2.7.2.7 No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other man-made or natural drainage systems including those that lead to rivers, streams and bays as a result of indoor or outdoor cultivation of cannabis for personal use; and

55.2.7.2.8 The outdoor cultivation of cannabis shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of cannabis; and

55.2.7.2.9 Where applicable, private water systems utilized in association with outdoor cultivation of cannabis pursuant to this Code shall comply with Section 1602 of the Fish and Game Code. This includes notification of the California Department of Fish and Wildlife of associated water diversions to determine whether a Lake and Streambed Alteration Agreement is necessary. If such an Agreement is required, the water use must comply with all of its terms.

55.2.7.3 On lands within the Shelter Cove community served by the Resort Improvement District, outdoor cultivation of cannabis for personal use may only be done by a person who occupies a permitted residence located on the same property that is host to the cultivation activities. If the person cultivating cannabis outdoors for personal use is not the owner of the property, they must be a leaseholder or lawful occupant who has retained the notarized consent

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

of the property owner, or their designated agent specifically approving the outdoor cultivation on the property.

55.2.8 Enforcement

55.2.8.1 Any violation of this Section shall be unlawful and constitute a public nuisance per se and be subject to injunction, abatement, or any other remedy available to the County as provided by all applicable provisions of law. Development that exceeds the minimum necessary to abate the public nuisance requires a Coastal Development Permit.

55.2.9 Best Practices

The following guidelines are advisory and represent “good neighbor” cultivation practice recommendations designed to insure compatibility with adjacent land uses, medicine safety, and responsible environmental stewardship.

55.2.9.1 **Low Odor Strains.** To alleviate the potential the potential for unwelcome odors escaping beyond the property and affecting neighboring residents during the flowering period, cultivation of low odor strains is recommended.

55.2.9.2 **Greenhouses.** If cultivating within a greenhouse, invest in a permanent greenhouse with a poured concrete or similar foundation, walls and roof made using tempered glass or other similarly durable solid material, and a filtration system to minimize odors.

55.2.9.3 **Water Supply.** To reduce potential impacts on neighboring rivers and streams and the fish and wildlife that depend on these ecosystems, cultivating using water from a municipal source or rain catchment system. If a private water system must be used, maintain sufficient water storage capacity to satisfy or supplement watering needs during the driest months, July 15th through November 1st.

55.2.9.4 **Potential Toxics.** Avoid use of chemicals and other potentially harmful substances on or near cannabis or the area where cannabis is being cultivated. Grow, process, and store cannabis in as “organic” and safe a fashion as possible to reduce potential adverse effects during use.

55.2.9.5 **Best Practices.** Review and consider implementing the recommendations contained in Best Management Practices –Northern California Farmer’s Guide.

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective immediately upon certification by the Coastal Commission.

PASSED, APPROVED AND ADOPTED this 4th day of February 2020, by the following vote, to wit:

AYES: Supervisors:
NOES: Supervisors:

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings

Meeting of _____

ABSENT: Supervisors:

Estelle Fennell, Chair
Board of Supervisors of the County of Humboldt
State of California

(SEAL)

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

By: Ryan Sharp, Deputy