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Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

January 23, 2017

RE: Ag Commissioner's Memo & Revisions to Draft Ordinance □

Honorable Board Members:

My comments may seem extensive and detailed, but I hope you understand that the changes I request or the questions I ask relate to issues that will have a significant impact on how the ordinance is implemented. Please have patience and carefully consider the items I list even if it seems to be detailed or tedious.

Section 10.A.17.040 C
(Page 8, line 8): "If no grid power is available… supporting both the required legal dwelling…" **Please insert "if required" after the term legal dwelling. Not all cultivation locations will require a legal dwelling.**
(Page 8, Lines 11-14): "permitee shall actively research and install…" **Please remove "actively research and" since all that matters is that they install, and there is no good way to prove whether they have researched or not. If any lenience or extension of time is granted based on the need to diligently show progress, then that could be stated, but if all you care about is the actual installation, then the rest is unnecessary.**
(Page 8 lines 14-16): "fully meet the combined needs of the cultivation operation and the..." **Please replace "the" with "any" since not all cultivation locations will require a legal dwelling unit.**

Section 10 A.17.050 (A & C)
(Page 9, Subsection A, line 2): "…affixed to base of plant…" **Please insert "or other unit/measurement as required by T&T" (i.e., lot, batch, tray, etc.). At this point, it is unclear whether the T&T system that might be used would actually be assigning a unique identifier to the base of each plant in all indoor or mixed light operations. Rather, it may be, that because plants are small, that batches, trays or some other unit is used to determine how many unique identifiers shall be used (rather than for each plant).**
(Page 9, Subsection B, lines 8-9): Same issue as above, but for voluntary zip ties. Currently, indoor or mixed light operations have zip ties for square footage not for each plant. They are affixed to the inside wall and then move with the plants if the plants move. If the plants go from indoor or mixed light to outdoor, then each plant gets a zip tie, but if the operation is only indoor or mixed light, the zip ties are assigned to the square footage (1 zip tie per 100 square feet).

Section 10A.17.060, Subsection A (Page 10): **Please insert "until such time as California law provides otherwise." I have repeatedly requested this change since it is likely that either AB 1575 or AB 64 will clarify that there is no**

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nonprofit requirement. Additionally, when implemented, Prop 64 will have no such requirement. Should this additional language not be inserted, the County is likely to be out of step with State law and could subject itself to unnecessary litigation. If the County is insisting on the nonprofit requirement after the State has lifted that condition, then I am not sure how it expects commercial cannabis activities to be able to pay the fees and taxes the County wishes to impose on top of the costs of compliance with every other requirement at the local and State level.

Section 10A.17.080 Subsection A (Page 13):

Item (5) (lines 5-6): "shall not increase in canopy area and shall only be issued if the existing cultivation site was..."

(1) Please correct for allowance for additional canopy area: Persons who chose to NOT participate in the Urgency Ordinance and instead chose to register under the Voluntary Registration program in order to maintain priority standing for applying this year, were SPECIFICALLY TOLD by they would be allowed to expand to the legal limit. I personally verified this with the Ag Commissioner BEFORE the Urgency Ordinance was cut off. So, if a cultivator only grew 15 outdoor plants, they would be allowed, under the C (small outdoor permit) to apply to grow 2500 square feet and would NOT be limited to 1500 square feet. I have multiple clients who intentionally verified this because they wanted to start small so they could handle the costs and efforts of compliance but did not want to lose the ability to expand this year. They should not be punished for being circumspect in how they achieved compliance and they should not be required to apply for a bigger permit if they want to stay at the cottage level but grow more than they did (such as 15) up t the limit for this permit type.

(2) Please change "was..." to "is..." If someone is NOW complying or willing to now comply with conditions A-I, it should not matter if they did previously conform to those requirements.

Item (6): Please consider the following problems with this subsection:

1. **Please consider exchanging the word "facilitate" for a different, more specific word ("request"?). It is very difficult to know whether someone would not be in compliance if we do not get specific. SO either define "facilitate" or please use a better word or group of words.**
2. **Please better define "if deemed necessary." By whom, the Ag Commissioner, the Third Party Inspector, some other Department?**
3. **How is one to determine who the "appropriate County official" is? Why not just state the Ag Commissioner or its designee?**
4. **Though it states they should notify at least 30 days before harvest, it is worded in a way that makes one think that they have to wait to notify until just before 30 days before harvest. If you insert "at any time" it may help to clarify that they can request the inspection well**

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before that. If it was intended that they not have an inspection until closer to harvest, then please consider a specific time range since it is sometimes difficult to know when harvest might be 30 days away since it can be largely up to conditions and factors out of the control of the cultivator.

5. **How does the cultivator determine who "the appropriate County official" is? Please change to "Ag Department designee."**

Section 10A.17.080 Subsection B (Page 14):

Item (3): As stated in a section above, legal dwellings may not be required at every location depending on the zoning. In addition to the expansion of the zoning areas where a legal dwelling unit is not required recommended by the Planning Commission, (in addition to TPZ and FL, the Planning Commission recently recommended the removal of the requirement for UR and to allow for an exemption from the requirement on RR-10 through an administrative use permit process). **Please amend to reflect the fact that a legal dwelling unit may not be required in various zoning areas (in addition to Industrial).**

Item (5): ..."that has undergone a conversion..." **Please modify to specify when. As written persons who bought a property that at some time in the past had undergone a conversion could be deemed in violation even if they did not know of it or continue it.**

Item (8): "shall not allow for any increase in canopy..." I was unaware that there was ever a restriction of increasing canopy size so long as the cultivator stayed within the allowable size limitation for the permit type. **In fact, I personally check with the Ag Commissioner that persons who Voluntarily registered last year, who wanted to start out small so they could handle getting all of their water issues and other compliance matters in order, would be allowed to increase to the allowable limit this year under the new permit system. While there may not be many people who grew less than the Cottage level amount last year, if there are, they should be allowed to expand up to the Cottage level limit if that is the permit they are applying for. Likewise, those that grew less than the limits now being instituted under the new ordinance for the permit type they will apply for want to expand to the maximum allowed for the permit type they are eligible for and want to apply for, they should be allowed to do so. A restriction of keeping to the same canopy size as previously would prevent that.**

Item (9): Same issues as in item (6) on page 13, above, with respect to the term "facilitate" as well as "as deemed necessary", "appropriate County official", and need to clarify if they can request an inspection much sooner than 30 days before or if it was intended to be within a time period of harvest, in which case a better time range would be more appropriate.

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Section 10A.17.080 Subsection C

Item (2) (Page 15): Same issue with respect to dwelling unit as described in 10A.17.040 C on page 8 as well as 10A.17.080 B on page 14, and as indicated throughout the ordinance.

Item (5) (page 15): Same issue as 10A.17.080 A, Item (5) on page 13, with respect to no increased canopy and with respect to replacing "was" in conformance with A-I with "is" in conformance with A-I.

Item (6) (page 15): Same issues as 10A.17.080 A, Item (6) on page 13, as well as 10A.17.080 B, Item (9) on page 14, with respect to "facilitate", "if deemed necessary", "appropriate County official", and the 30 days before harvest issue.

Suggestion re: difference between "on-site compliance" inspection and "consultation" inspection: Perhaps it would help if these two terms were defined in the definitions sections. Presumably, the difference is that one is conducted by the Ag Department and the other type is conducted by a Third Party inspector, but it is unclear. Both types of inspections are mandatory.

Section 10A.17.080 Subsection D

Item (4) (page 16): Same issue with respect to dwelling unit as identified in 10A.17.040 C (page 8), 10A.17.080 B (page 14), and as indicated throughout the ordinance.

Item (5) (page 16): Same problem with term "facilitate."

Item (6) (page 16): Same issue as 10A.17.080 A, Item (6) on page 13, 10A.17.080 B, Item (9) on page 14, and 10A.17.080 C, Item (6) on page 15, with respect to "facilitate", "if deemed necessary", "appropriate County official", and the 30 days before harvest issue.

Section 10A.17.080 Subsection E

Item (5) (page 17): Same problem with term "facilitate."

Item (6) (page 17): Same issue as 10A.17.080 A, Item (6) on page 13, 10A.17.080 B, Item (9) on page 14, 10A.17.080 C, Item (6) on page 15, and 10A.17.080D, Item (6) on page 16 with respect to "facilitate", "if deemed necessary", "appropriate County official", and the 30 days before harvest issue.

Section 10A.17.080 Subsection F

Item (4) (page 17): Legal dwelling issue.

Item (5) (page 17): Problem with term "facilitate."

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Item (6) (page 18): Same issues pertaining to "facilitate", "if deemed necessary", "appropriate County official" and the 30 days before harvest issue.

Section 10A.17.080 Subsection G

Exact same issues with Items (4), (5) and (6) (page 18) as the items listed above for subsection F, etc.

Section 10A.17.080 Subsection H

Exact same issues with Items (5) and (6) (page 19) as listed above.

Section 10A.17.080 Subsection I

Exact same issues with Items (4), (5) and (6) (page 19-20) as the items listed above for subsection F, G, etc.

Section 10A.17.080 Subsection J (Nursery)

QUESTIONS:
Can an applicant use 10,000 square feet for outdoor or other allowable cultivation and the remaining 12,000 square feet for Nursery cultivation if they are located on property that otherwise meets the Nursery and regular cultivation requirements?

Is it possible to clarify item (8) regarding canopy cover and what is intended? Perhaps examples of what can or cannot be done or an explanation of what is trying to be avoided?

Item (6) (page 20): Legal dwelling issue.

Item (9) (page 21): Legal dwelling issue.

Item (11) (page 21): TPZ or FL Nursery producers are limited to sell to other permit holders whereas other nursery permit holders (on parcels not zoned TPZ or FL) are allowed to sell to other permit holders OR to exempt individuals. Why can't nursery producers who grow from seed sell to exempt persons if all other record keeping and controls are in place?

Item (12) (page 21): Please insert the word "reasonable" in front of the word "requirements". One should not have to commit to abide by any requirements that are not yet established unless they have an assurance that they need only abide by all REASONABLE requirements established.

Item (14) (page 21): Same issue with respect to "facilitate", "if deemed necessary", "appropriate County official" and the 30 days before harvest issue.

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Section 10A.17.090:

1st Paragraph (page 22): Please remove "by both the Applicant and.." since it can be presumed that the Applicant will have to sign the application and it is impossible to otherwise determine whether the Applicant in fact reviewed it for accuracy. The main point is that the Ag Department will review it for accuracy. Obviously, if there are mistakes, the Ag Department can kick back the application or accept changes as they are discovered.

Subsection D (page 23): The site plan shall include... associated with cultivation... Please insert "cannabis" before the word cultivation. Also, the last sentence should be narrowed to apply to only those who are within some distance of one of those listed facilities or places (such as within 1500 feet). Otherwise, to require every site plan to determine where the nearest facility/place listed, even if they are miles away form one, would be unnecessarily burdensome.

Subsection F (page 23): Aren't cultivators supposed to WAIT to start planting until they have been approved after the 1st site inspection? If so, how could they submit pictures of "existing" cultivation (here, the term existing is NOT used to reflect prior to 1/1/16, but contemporaneous to the application).

Subsection G (page 23): Here is once again a long-standing objection to the requirement that applications require aerial/satellite date-stamped photographs that could incriminate them. The problem has been repeatedly compounded by Staff's incorrect insertion of an alternative type of proof as an **ADDITIONAL** requirement instead of as the **ALTERNATIVE** requirement that the Board approved of. PLEASE, **correct this mistake to allow alternative proof to date-stamped satellite pictures proving cannabis cultivation prior to 1/1/16**. How are people who grew indoors supposed to fulfill this requirement? Given that the District Attorney is now charging people with FELONY CONSPIRACY charges because he believes that the reduction to misdemeanors and Infractions under Prop 64 is too lenient, this issue takes on an even more critical status.

Subsection H (page 24): The requirement that **on TPZ and FL there must be proof of that applicant on that land is not consistent with the current laws** that still allow, and in fact **require that persons grow in collectives**. For example, if one cultivated with other persons who were known and listed on the Urgency Ordinance application as other people part of the management (or were added as such), but were not listed as co-applicants because the form was confusing or because people were in a rush to get the form in at the deadline, or even if they just did not think that someone else who was known to be growing with the applicant would not be able to replace the applicant (if they qualified) on the same cultivation site, is unreasonable. I know of two situations where **an adult child or other relative of an aging person wants to continue the permit even though the aging person is retiring or otherwise unable to continue as the applicant.** I also know of several situations where because the District Attorney took the position that some that made a plea agreement were not allowed to participate in the Urgency Ordinance permitting

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program, they were unable to be listed on a permit at their own home (they had to temporarily move), but **now either because their probation has been successfully completed or because Prop 64 reduced or terminated their sentence, they are now eligible to return to their own home and restart to cultivate** (the property continued to be cultivated so there is proof of the prior cultivation). There is no way they should not be allowed to cultivate just because their name could not be on the application in the past year.

(Continuation of Subsection H) Also, **what additional setbacks are required**? I looked at the 20.242 of the Municipal Code and could not discern what additional setbacks were applicable. **Please specify the exact additional setbacks and please enunciate when or how these were added as a requirement in this situation.**

Subsection R (page 25): **Partnership Agreements are PRIVATE documents** and are not relevant to the application process. Unlike Articles of Incorporation, which are a single page and filed with the Secretary of State as a public document, Partnership Agreements are usually many pages and are never filed with any State Agency. While requiring listing each partner may be very reasonable, **asking people to divulge private contracts pertaining to how their partnerships work is inappropriate and unnecessary.**

Subsection S (page 25): This section **seems to ignore the fact that patient collectives are still legal and required in California until 2018**. It is still lawful to collectively cultivate without being a dispensary or a processor, and it will still be a defense until one year after the State puts notice on its website that licenses are being issued. **In other words, the applicant can be a group; it does not have to have contracts with a group**. I have clients who have lawful collectives that still provide medicine to their own members. That is completely lawful. Now, you just have to have a permit or a license. **Also, see Item U which requires a Sellers permit if they are selling directly to patients! That means you do not have to have a contract with another business**, but the member must have a valid recommendation and be a member with your collective.

Subsection V (page 25): "Other appropriate agency representatives..." Who is "appropriate?" Please instead state "any designee of the Ag Commissioner."

Section 10A.17.100 (page 27): Please give deadlines/timeframes by which the Ag Department will: a) review an application after it has been submitted, b) contact the applicant to schedule and conduct a site inspection after the review has been conducted, and, c) issue the permit after the site inspection if it is eligible to be approved.

Section 10A.17.110 (page 27-28):

Subsection A (page 27): Please insert: "Any changes to site plans require written approval by the Ag Department." Please allow for the possibility of changing site

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plans/locations of cultivation, especially as people are able to prepare more environmentally appropriate locations on their land or as they make other improvements that they may not be able to finish before the site plan was submitted.

Subsection C (page 28): **Please consider changing from "affixed to each...plant" to "each ...unit required by T & T.**" It is possible that T & T systems (the one the County chooses or the State one, may use **units such as "batch", "tray", or "lot", especially for closely cultivated indoor crops**. Please allow for this possibility. It still can be as required by the T & T system, but since we don't yet have the T & T system, it does not make sense to limit the type of unique identifier unit to each plant when that is unknown at this time.

Subsection E (page 28): Please define "when under certain conditions" or remove that phrase. What are they? Also, the sentence containing the phrase "the containment area construction and dimensions..." does not make sense. Was it intended to use the word "construct" instead of "construction"? Finally, I suggest that reference be made in this section to the phased-in time frames as indicated earlier in the ordinance for clarity.

Subsection K (page 29): Issue pertaining to "facilitate."

Section 10A.17.130 Third Party Inspectors (page 31-32): Please consider inserting a provision regarding prevention of conflict of interest.

Section 10A.17.140 (page 33) First full sentence on the 2nd-3rd line on page: Ag Commissioner may amend amount of time if "deemed inappropriate." Please remove "if deemed inappropriate" and simply state that Ag Commissioner can amend the amount of time. That way if the Commissioner thinks it's appropriate; they can amend it (not just if inappropriate).

Further into the same paragraph, the term "facilitate is also mentioned again and is problematic without more specificity (or change to "schedule" or "request").

Line 6 of the same paragraph mentions a "failure to request... " Please insert a specific time frame by either stating to request within X time of X, or by stating the unscheduled visit will be within X time of X.

Second paragraph, first sentence: Please replace "If the" with "If any" non-compliances and specify within what specific time frame.

Second paragraph, line 8: The final re-inspection... has cured all issues of non-compliance." Please add: or has demonstrated to the Ag Commissioner's satisfaction, legitimate reasons why completion of such cures will take additional time."

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Second paragraph, line 10: "...to cure any items of non-compliance..." Please insert "or obtain a written extension of time for completing the cure" after the word " non-compliance" and before the word "shall...".

Second paragraph, line 14: Date "when" not "where."

Last part of second paragraph: Please insert a tolling provision whereby the per day fines are held in suspension during the appeal process. One should not be dissuaded from appealing a legitimate issue just for fear that the appeal itself will add so many additional days of fines.

Section 10A.17.150 (page 33): Please specify 10 business days (not calendar days). Please make it 3 business days (or U.S. mail delivery days) added for mailing.

Is the fee refundable if the person wins?

Section 10A.17.160 (page 34):

First paragraph, line 5: "where a permit is not required"? How can it be a violation of the Chapter if a permit is required? If trying to refer to 6 personal plants, then please be more specific. Was this a typo and it meant where a permit IS required?

Second paragraph, line 4: What does "prohibiting the maintenance of the violation of this Chapter" mean? I am an attorney used to reading statutes and other very complicated writings. I have no earthly idea what that sentence means.

Thank-you for your continued dedication and careful considerations of the issues. As I stated at the beginning of this memo, I hope that you will take these requests seriously since the impact for each item is real.

Respectfully submitted,

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January 23, 2017

RE: NOTICE for January 24, 2017 Board Meeting □

Notice for this item coming before the Board for this particular Meeting was inadvertently deficient. The Agenda for the 1/24/17 meeting has no indication at the beginning of the document of the number of pages it is. It also has no indication on the bottom of each page that the page is X page of a total of Y pages. The Agenda for the 1/24/17 meeting is continuous on pages 1-4. Then, on page 4, after one item, it is blank for the entire rest of the page. There is no mention that the document continues onto another page. Unless one were to immediately print out the entire agenda, or to download it from Legistar to their local computer, there would be nothing to indicate that there were more pages to the document. When one is online on the Legistar system, especially on a mobile device, there is NO way to know there are additional items or pages. **So, in this instance, it appeared that Item 5e was the last item**.

While you may not thing this is a big deal, it is, especially to me. I have worked for a year on following, responding to and advocating for refinement of the cannabis related ordinances. I even changed my flight to delay my trip to the East coast for a long-standing family obligation because after my ticket had been issued, the Planning Commission added another meeting on this topic and I felt it was just too important that I be there. I left the County Administration building at 6:30pm on Thursday night and checked the Legistar system at least two times that evening and again 3 times the next day before my flight to make sure there was no cannabis related agenda item for Monday or Tuesday's meetings. I was shocked and horrified to have an email from someone indicating that the issue was in fact on the calendar for Tuesday. While I certainly don't expect the Board to work around my schedule, and I understand that there is a great desire to keep things moving, **2 business days notice under normal circumstances would be woefully inadequate to be able to turn around and address the remaining important issues that must be addressed before the ordinance is passed, but with the inadvertently misleading agenda, it resulted in numerous people not even having that much notice.**

I respectfully request that this matter be continued to the next available date on the Board's calendar to allow sufficient time to address the critical issues that remain unresolved with respect to the cannabis licensing ordinance and the corollary zoning ordinance. In absence of that, I request that I be provided with additional time on February 7th to present the various issues that I believe are critical to address. Some items were touched upon in the past but never resolved. Other items were never raised. In any event, there are items that are critical to the smooth and swift

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implementation of the ordinances that must be resolved at the Board level and not be left to sort themselves out at the agency implementation level.

Please give me the courtesy of having more than 3 minutes to deal with these critical issues at the next meeting since I am unable to attend the meeting on the 24th. As I have indicated in the past, I am not charging ANY client for ANY of the policy work I have done in this past year. I am expending a tremendous amount of time and effort because I want sensible and PRACTICAL policy to be implemented. I helped to write the first cannabis regulations in this County and I consider it my civic duty to continue to engage in this process given the level of knowledge and experience I have in these matters.
Respectfully,

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