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Via E-Mail: bos@mendocinocounty.org

Mendocino County Board of Supervisors
Board Chambers, Room 1070
County Administration Center

**Re: Objections to Consent Calendar Matter 4 e)
The Agreement for Shared Exercise of Land Use and California
Building Code Authority on Mendocino County Parcel No. 178-210-01**

Dear Board of Supervisors:

This firm represents Vichy Springs Resort (VSR) which filed a Petition for Writ of Mandate and Complaint for Declaratory Relief against the City of Ukiah, Mendocino County, and the Ukiah Rifle and Pistol Club, Inc., Case Number SCUK-CVPT-18-70200. The core issue that drives VSR's action is the City's and the County's failure to regulate the Gun Club's use at the Vichy Springs Road property. This hurts the environment and the citizens of the County. The construction and use of the Gun Club's ranges, among other things, has lead to a proliferation of lead bullets throughout the subject site resulting in the contamination of water flowing from the property. Consequently, VSR seeks and strongly supports the County's efforts to regulate the Gun Club's property. However, the proposed Agreement does not fully protect the citizens of the County or comply with the law as follows:

1. The issuance of building permits by the City is not a "common power" with the County. Government Code § 6502 provides that two or more public agencies by agreement may jointly exercise any power "common" to the contracting parties. In this case, the City does not have the power to issue building permits to the Gun Club, a private Lessee, since the Gun Club's use of the property serves the Gun Club's private interest. (Government Code § 53090 and 53091) The Gun Club's Lease does not require the Gun Club to provide any public benefit. The Gun Club is not an arm or agent of the City. It is a member only private club.

The test for compliance with the common powers rule is whether each agency had the power to do unilaterally what was actually done. (Robings v. Santa Monica Mountains Conservancy (2010) 188 Cal.App.4th 952, 962) Further, the County cannot contract away its rights to exercise its police power in the future. The City, as Lessor, should require that the Gun Club comply with the County's General Plan, Zoning and Building Codes.

2. Even if we assume that the City has the power to issue building permits, Section 3 of the Agreement allows the City to issue building permits without the Gun Club complying with the County's zoning ordinance. Section 4 of the Agreement does not provide for a procedure to accomplish the purpose of the County exercising land use jurisdiction over the Gun Club property. (See Government Code § 6503) Prior to issuing any building permits to the Gun Club, the County should be consulted and the County should provide confirmation of whether the construction is permitted under the County's zoning and land use laws.

3. The Agreement does not provide that the City or the County will enforce its General Plan against the Gun Club. The Gun Club is not exempt from the County's General Plan. The Agreement should provide that the County will enforce its General Plan against the Gun Club property.


4. Section 6 of the Agreement allows the parties to withdraw upon a minimum of 90 days prior written notice with a July 1st effective date unless otherwise agreed to by the parties. This will allow the Gun Club property to be unregulated. The Agreement should be for the term of the Gun Club's Lease, without any termination right. In the alternative, if the Agreement is terminated by either party before the end of the Gun Club's Lease, the Agreement should provide that the County will regulate the Gun Club's property.

Despite VSR's request, the County did not provide the proposed Agreement to VSR until August 12, 2021, when the Board's Agenda was published. VSR requests that the matter be taken off the consent calendar so the VSR may address the above objections with County Counsel. VSR requests that the matter be continued to the Board of Supervisors' meeting of August 31, 2021 to allow VSR an opportunity to be heard.

Thank you for your consideration of this matter.

Very truly yours,

**PASSALACQUA, MAZZONI, GLADDEN,
LOPEZ & MARAVIGLIA, LLP**

A handwritten signature in black ink, appearing to read "Lourdes Lopez", written in a cursive style.

LOURDES LOPEZ

LL/dm

cc: Via e-mail:
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