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November 17, 2008

The Honorable Jim Wattenberger, Chair
and Members Board of Supervisors
Mendocino County
501 Low Gap Road
Ukiah, California 95482
(707) 463-4221 463-4245

re: General Plan Update
Regulation of Medical Marijuana

Dear Chairman Wattenburger and Members of the Board

We have been retained by the Mendocino Medical Marijuana Advisory Board to present to you recommendations for the regulated, controlled and publicly beneficial production of Medical Marijuana in Mendocino County, as authorized under California Health and Safety Codes 11362.5 et seq.

There is a window of economic opportunity the county would be wise to pursue at this juncture in time, in light of imminent California Supreme Court rulings and the California Attorney General issuing medical marijuana guidelines for Proposition 215 and Senate Bill 420, especially regarding collectives and cooperatives.

We do not believe that any one ordinance can address all of the issues surrounding this new economic opportunity for Mendocino County. However, with the fortuitous occasion of the General Plan Update, we can establish and limit the land use types on which medical marijuana can be produced and what conditions its production must meet.

We appreciate that your Board and its Standing Committees have struggled long and hard to bring about reasonable responsible regulation of medical marijuana

production. While the efforts have been commendable, the results have been limited, controversial, litigious and unpopular.

The question is: Where and How can the legitimate growing of medical marijuana be enabled to serve patient-growers, collectives and cooperatives, as well as the County?

Years ago when the Board of Supervisors was confronted with another significant land use issue, resolution was found during the update process of the General Plan. The issue was the reality that hundreds (or more) owner-builders had constructed their homes without benefit of building permits. Through the Board's Clean Slate program and the new Intent Section of the County General Plan, those structures were then recognized by the County. (Attached please see a brief history of the 1960-1990 planning process).

The Mendocino Medical Marijuana Advisory Board believes that the two challenges--owner-builders and providing medical marijuana--are remarkably similar. It was a General Plan change that broke the intractable impasse between the County and the owner-builder community. Today's Board has the opportunity to permit and regulate what is allowed by State law but is not recognized to date by the County.

The owner-builder issue was greatly influenced by a published court decision (*City of Santa Barbara v Mary Adamson*, 1982). The current situation regarding medical cannabis guidelines (*P v Kelly* and *P v Phomphakdy*, 2008) is now under review by the State Supreme Court with sections of H&S Code 11362.7 at the heart of the discussion.

With that successful history in mind, we now recommend that the Board begin regulating the legal production of medical cannabis under specific land use designations with either a Use by Right (i.e., Ministerial with no permit required) or by approval of a Minor or Major Use Permit for "collective cooperative cultivation projects" (SB 420) or by any other appropriate land use designation that fulfills the regulation purpose of the legislation.

In addition we suggest that the number of Medical Marijuana Use Permits (MMUP) be initially limited and gradually adjusted as the permit process evolves: 1) to encourage responsible production and 2) to reduce control and enforcement issues (similar to how the number of taxi cabs is limited in urban areas).

Now that the Attorney General has issued legal guidelines and the courts are issuing theirs, it is time to begin taking the necessary steps to adopt an economic model allowing the County to regulate medical cannabis production, for the express purpose of benefiting and sustaining the county economically for the foreseeable future.

I look forward to further discussions with your Board on this issue.

Sincerely,

Norman L. de Vall
Agent on behalf of Mendocino Medical Marijuana Advisory Board

cc: Sheriff Tom Allman
District Attorney Meredith Lintott
Presiding Superior Court Judge Cindy Mayfield
Congressman Mike Thompson
Assembly Member Patty Berg
Assembly Member Wesley Chesbro
State Senator Patricia Wiggins
Governors' Office of Planning and Research
Mendocino Medical Marijuana Advisory Board
MMMAB Counsel Keith Faulder
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