June 7, 2018

Attn: Tehama County Planning Commission
C.c.: Tehama County Planning Department
Tehama County Board of Supervisors

From: Jason Browne, Liz Merry, Cannabis Research Committee and California Liberty Alliance - North River Chapter.

Re: Rezone #17-06 Application Completeness and Process for the Proposed Ordinance.

Tehama County Planning Commission,

Thank you for placing this matter on your agenda. We are formally requesting that the Tehama County Planning Commission consider recommending our Rezone Application for approval by the Board of Supervisors, with a CEQA exemption, or a Mitigated Negative Declaration, as it is currently written. We were provided with this option by the Tehama County Planning Department, in their letter dated February 13 2018, as an alternative to entering into a third party consultant agreement for an E.I.R. that we believe is completely unnecessary at this time. We believe that the Tehama County Planning Department is incorrect, and that they have provided little to no evidence that an E.I.R should be required for Rezone #17-06. In our communications with the Planning Department, and attached to the Staff Report we have provided you with the numerous reasons to move the project forward under a CEQA Exemption or a Mitigated Negative Declaration. We are offering the following points and authorities in order to substantiate our position and we are prepared to offer additional comments and answers to any of your questions during this public hearing. We thank you for your time, and consideration of the following:

1. We dispute the Planning Department's claim that the project will significantly impact all of the County. The Ordinance Finding H clearly addresses the need to prohibit all cultivation and the commercial distribution and processing of cannabis in various Zoning Districts, in order to reduce or eliminate any significant environmental impacts to the county. Part G of the Ordinance, titled <u>Outdoor Cannabis Cultivation, Distribution and Sales Prohibited</u> expressly prohibits all outdoor cannabis cultivation and the distribution or sales of cannabis in the R-2; Two-Family Residential District, R-3; Neighborhood Apartment District, R-4; General Apartment District, G-R; General Recreation District, AV; Airport District, PF; Primary Floodplain District, PA; Public Agency District, NR; Natural Resource Lands and Recreation District, FS; Farmland Security Combining District and TPZ; Timber Production Zoning Districts. These lands as designated above constitute a large portion of the 1.4 million acres in the County that the Planning Department has declared as being subjected to significant environmental impacts. Their statements are clearly not supported by any evidence. None of these Zoning Districts would be impacted by the adoption of the proposed Ordinance.

2. In the Planning Department's response letters, the County has not issued any determinations that no mitigations could be applied to the Project that would reduce its impacts to "less than significant levels". Only after doing so, could the County reasonably and legally assert that the Project might pose specific and significant environmental impacts that would require the Applicant to conduct an E.I.R. In fact, the county has specifically avoided its responsibilities in this regard. Our Application has not been circulated under the pre-consultation process to all agencies which may have jurisdiction regarding the Project. Those agencies that have reviewed our Application have not provided any research, empirical evidence or independent findings in support of the County's position in this matter.

3. As an example, we posit that in Tehama County it has been an established precedent that Rezone Applications for a Planned Development Rezone are and have been determined to be exempt from CEQA, because the Projects they represent would require further CEQA environmental analysis when specific projects are being considered for Use Permits. According to the provisions of this Project, every potential commercial application will require its own Use Permit, and would therefore be subject to site specific environmental analysis, on a case by case basis. Additionally, all non-commercial, personal cultivation of cannabis (under California's medical and adult use statutes) do not require any Use Permits, because they represent activities under specific conditions which are undertaken by right. According to information the Applicants have received from a recent California Association of Environmental Professionals Conference, the California Appellate Courts have ruled that lead agencies are not exempt from CEQA during actual developments and their individual applications, but they are exempt from CEQA while drafting ordinances and general plans. Unless the county independently assesses the merits of environmental issues for this entire Project, no E.I.R. is required at this stage of the Application. The first commercial applicant requesting a Use Permit may very well trigger CEQA requirements, based on their proposed operations, but our Application does not meet that criteria. The County has several options available once commercial Use Permit applications are received. The County may exempt a specific project under standard categorical or statutory exemptions, if the project's design and characteristics fall under various exemption categories, or it may perform initial studies and either issue a Negative Declaration or a Mitigated Negative Declaration. The County may determine that an E.I.R. should be performed for a specific project if adequate mitigations cannot reduce identified significant environmental impacts to a level of less than significant .The County may also conduct a tiered environmental analysis through determinations based on the E.I.R.'s conducted by the State of California, and adopt those findings itself. These are all options for the County to consider in the future, on a case by case basis, should our Project move forward as its currently written.

4. The County has misstated facts in regards to the number of dwelling units, and the total possible acreage impacted within the affected zoning districts, as they relate to this Project. The County's assertion that "18,218 households" would be adversely affected by Section 17.08.090(H) of the proposed Ordinance lacks any foundation. This Section merely recognizes what State law already allows (that patients and recreational

users may cultivate their own supplies of cannabis). The personal, non-commercial cultivation of cannabis is a right, and as such, it is exempt from any state or local permit requirements that might trigger an E.I.R. According to county voting data, 11,495 Tehama County residents voted in favor of Proposition 64 (to legalize the adult recreational use of cannabis). Even if we were to assume that 100% of these individuals might decide to cultivate their own cannabis, in accordance with the language of the proposed Ordinance, this would equate to a total of 39.58 acres. (150 square feet of plant canopy per individual; 6 plants x 25 square feet per plant). So, for 11,495 individuals, the total plant canopy for personal (non-commercial) cultivation in Tehama County would be around 1,724,250 square feet (or 39.58 acres). The County mistakenly calculated that "1.4 million acres of land" would become eligible and used for personal cultivation under the proposed Ordinance. The cultivation of cannabis on 39.58 acres of land, out of those 1.4 million acres, represents 0.000028% of land that would presumably be impacted by the personal cultivation of cannabis allowed under this Project. This is hardly a "significant environmental impact". Additionally, as mentioned previously, the proposed Ordinance excludes cultivation or commercial uses in many zoning districts. None of these Zoning Districts would be impacted by the adoption of the proposed Ordinance.

5. The County has misstated the State's position, and the California Zoning Codes, in regards to commercial cannabis cultivation. While it is true that California has exempted commercial cannabis operations from the "Right to Farm Act", it is also true that all commercial cannabis licenses granted by the State of California most definitely constitute "Agriculture", as that term is defined at law. Regarding the matter of any "increase of offensive odors," the Applicant must remind the County that all commercial agricultural operations in Tehama County are exempt from public nuisance complaints that stem from the odors, sounds, pesticides, dust and other public nuisances that are produced by those operations. Cannabis is now officially recognized as "agriculture" by the State of California, and any commercial cannabis cultivation Use Permits issued within the agricultural zoning districts of Tehama County would become immune from any nuisance complaints of "offensive odors," just as all other agricultural operations enjoy in Tehama County. Additionally, the Medical Marijuana Program Act already exempts qualified individuals from any criminal sanctions stemming from nuisance complaints that are based on their lawful cultivation of cannabis, for medical uses (*California Health and Safety Code, Section 11362.765*).

6. The County has incorrectly cited language from the California Department of Food and Agriculture E.I.R. (that was provided by Applicants, in support of our position here), as grounds for its requirement for an E.I.R. by Applicants under CEQA Guidelines - Sections 15064(d) and 15064(e). The County's premise for this is that adopting the proposed Ordinance would allegedly necessitate a significant increase in local Police, Fire Protection and Emergency Services. This is incorrect on three fronts.

Firstly, the County relies on a false premise that it would somehow be forced to issue a large number of new cannabis Use Permits under this Project. The reality is that the

County would have total control over the number of Use Permits it issues, as a matter of judgement that the project would meet the compatibility finding in each case.

Secondly, the County is mistaken in regards to the actual requirements under CEQA, involving projects that might or might not cause an increase in local emergency services. According to *City of Hayward v. Board of Trustees of the California State University (2012) Cal.App.4th,2012 WL 2832858 (cert. for pub. 6/28/2012)*, such "impacts" are not required to be analysed and mitigated under CEQA. In this case, the Court held that while the actual future expansion or construction of additional emergency services would be subject to a CEQA review, the impact of adding those services would be less than significant, "due to the limited area that is typically required to build (a fire station, in this case) and its urban location." The Court also held that the lower court was in error, when it appeared to believe that *any* project's need for fire and emergency services beyond those currently existing in its service jurisdiction must be analyzed as an "environmental impact" requiring mitigation (where the project proponent was responsible to pay for said increased costs). The Court essentially ruled that "the City (*or County*)...provides no authority for the contention that the (petitioners) must fund the expansion of fire department (*or other emergency*) services that the (project) will require, noting that implementation of the master plan will not result in a significant (environmental) impact." The Court held that "the need for additional fire protection services is not an environmental impact that CEQA requires a project proponent to mitigate."

We would argue that this logic also applies to the need for additional law enforcement or emergency services. The Court held that while it is true that delayed response times result in real health, safety and physical impacts, "the obligation to provide adequate fire and emergency medical services is the responsibility of the city (*or county*)." And the Court held that "although there is undoubtedly a cost involved in the provision of additional emergency services, there is no authority upholding the...view that C.E.Q.A. shifts financial responsibility for the provision of adequate fire and emergency response services to the project sponsor." The Court further noted that "nothing in (case law) implies that the delayed response times are an impact that must be mitigated by the project sponsor…". It is our contention here, that the California Department of Food and Agriculture E.I.R. essentially states the same thing...namely, that state and local implementation of California's new cannabis law (M.A.U.C.R.S.A.) will not result in a significant environmental impact. Please review the entire State E.I.R., in detail, as you review this Project. The California Department of Food and Agriculture "Final Program Environmental Impact Report" has determined that licensed commercial cannabis cultivation poses no significant environmental impacts. Additionally, this same "Final Program Environmental Impact Report" determined that the least environmentally impactful method of cannabis cultivation is outdoor cultivation, with mixed light cultivation being slightly more environmentally impactful, and indoor cultivation being the most environmentally impactful. The existing Cannabis Ordinances on the books in Tehama County ban the outdoor cultivation of cannabis, while requiring that even the personal, non-commercial cultivation of cannabis must be conducted indoors (in a Bunker). The proposed Ordinance, on the other hand, regulates all manner of cannabis

cultivation, and allows for the outdoor cultivation of cannabis. This means that the proposed Ordinance is demonstrably less environmentally impactful to Tehama County, than all the cannabis ordinances currently in place.

Thirdly, the County requested that Applicants document "the number of cannabis related code enforcement (Health Dept./Fire Dept.) charges for the past five years, and criminally related cannabis law enforcement cases for the past five years", as part of our responsibilities in order to further this Project. This is patently absurd, and completely disingenuous. The County itself, through its adoption of various "emergency" Ordinances, has literally created the problems that it now wants Petitioners to research and solve, all the while exempting itself from this very same research, and any of its own obligations under CEQA, by virtue of declaring every one of its cannabis ordinances as an "emergency". This very same "emergency" has apparently existed since 2010, 14 years after the implementation of the Compassionate Use Act, and also for two years since the passage of Prop. 64 and the adoption of M.A.U.C.R.S.A. by the State of California. This is obviously a gross misrepresentation of the term "emergency", as applied at law. If the County can exempt itself, in perpetuity, from conducting an E.I.R. or adhering to its obligations under CEQA, then it cannot, in good faith, bestow that burden exclusively to Applicants, for consideration of this Project.

7. In our application we did consider one impact related to public services as a potentially significant impact. That issue was the costs to the Planning Department for Monitoring any and all conditions that may be required by the approval of a Conditional Use Permit. It was our suggestion that the Planning Commission and the Board of Supervisors adopt a Use Permit Condition Monitoring Fee as a Mitigation to be paid annually by the Use Permit Applicant. This Monitoring Plan is the first to be presented to the County of Tehama even though Monitoring Fees have always been available through the application of CEQA. This Monitoring Plan would assure the people that all conditions are being adhered to and pays for an annual review of the project. This is something above and beyond any condition that has been applied to Use Permit projects in the past.

8. Section A of the proposed Ordinance allows for the personal and collective outdoor or mixed light Cannabis cultivation for adult and medicinal purposes in the AG-1, AG-2, AG-3, AG-4, RE and R1 Zoning Districts, provided that specific conditions are met. This section has been written in a manner that addresses all environmental issues as required by law.

I. T*he number of plants or area of plant canopy permitted does not exceed the limits set by the Compassionate Use Act (C.U.A.), the Medical Marijuana Program Act (M.M.P.A.) or the Medical and Adult Use of Cannabis Regulation and Safety Act (M.A.U.C.R.S.A.).* This Section meets the requirements in State Law for the Medical and Adult Use, Personal Cultivation of Cannabis.

II. *The total area of cannabis plant canopy shall not exceed 3% of the premises as defined in Section 17.04.464 of the Tehama County Code*. This section assures low density cultivation practices within the areas where cultivation is allowed.

III. *The cultivation area shall be less than 1,000 square feet, in all cases*. This limitation was specifically added by the Applicants to reduce the potential environmental impacts due to storm water runoff. The Regional Water Quality Control Board has developed guidelines for cannabis cultivation and has determined that cultivation sites of 1,000 square feet or larger would require special permitting. Cultivation sites of less than 1,000 square feet would not result in impacts that would require special attention and conditioning.

IV. *The cultivation area shall be securely confined and locked within a secured location that is neither visible, nor accessible to the public (such as a chain link enclosure with privacy slats or a fenced greenhouse)*. This stipulation for allowed uses addresses the issues related to visual and aesthetic impacts and security from criminal trespass.

V. *The cultivation area shall not be closer than twenty-five feet to any street or property line*. This requirement addresses the issue of odor. There are few thresholds of significance demonstrated in the Tehama County Zoning Code. However, setbacks for stables due to the odors that are associated with confined animal spaces, and the accumulation of animal feces, should be anticipated has providing such threshold. The setbacks for stables in a residential zone requires that the stable shall not be closer than twenty-five feet to any street or property line. It is our position that the odors emanating from a few cannabis plants is no worse, and some would consider much better, than those odors that would be expected from an allowed use of a stable. While the pros and cons of the smell of cannabis are certainly matters of personal opinion, there can be no doubt that any reasonable definition of a public nuisance based on smells would consider the smell of raw manure as being more odorous than the smell of cannabis flowers. It is our position that the proposed setback adequately reduces the potential impacts related to smell to a level of less than significant, especially when considered within the context of the limitations set by the State on numbers of plants that may be grown for non-commercial purposes.

VI. *Personal Cannabis cultivation for adult and medicinal uses shall not be made available for commercial purposes, or offered for sale on the premises.* This section is consistent with the County Zoning Code where the Code allows for Crop and Tree farming, but not for commercial purposes. This section reduces the impacts associated with incompatible commercial uses in all Zoning Districts where, under the provisions of this Ordinance, personal cannabis cultivation is allowed to a level of less than significant.

9. California law allows for local municipalities to implement M.A.U.C.R.S.A. in one of three ways. First, they can opt for a regulated industry and get completely involved, with the creation of Local Licensing Agencies. Second, they can opt for a regulated industry and be less involved, allowing local businesses to undergo the State Licensing process after simply obtaining local Use Permits. These first two options allow local

jurisdictions to propose adopting local cannabis sales and use taxes to the voters, during any regular or special election. They also allow local jurisdictions to receive a share of the State Tax Revenues, for various law-enforcement related, and other local programs. This is extremely significant to your decision making process here. The County has declared that adoption of our proposed ordinance would somehow add financial burdens to local emergency services, while the opposite is actually true. Third, they can ban all commercial cannabis operations and personal outdoor cultivation. By insisting on banning all commercial operations and personal outdoor farming, the County is literally choosing to turn down state revenues that it would otherwise be entitled to. Local jurisdictions that opt for maintaining cannabis "bans" will receive none of the funds generated through the state and local licensing programs, and none of the job creation from this emerging new cannabis industry. Our proposed Ordinance is the middle ground, and its adoption would enable Tehama County to implement M.A.U.C.R.S.A. and become the recipient of permit fees, state and local taxes, and more good paying jobs, without having to create any new agencies or becoming intimately involved with the industry itself. It could regulate the cannabis industry, at its own pace, through the issuance of Use Permits, without the need for creating any local licensing agencies.

10. If the Planning Commission recommends that the Board of Supervisors approves our Rezone Application, an added financial benefit would be the reduction in Code Enforcement expenses. If patients and adult recreational users are able to grow their own cannabis, and those that are unable have access to a local cannabis industry, the number of "code violations" will go down dramatically. Tehama County only spent $5,850 on cannabis code enforcement in 2014, before the first "bunker ordinance" was adopted. That cost rose to $426,565 in 2015 when outdoor growing was first banned, an increase of $420,000 in one year. It is now over $600,000 in 2018. This "Abatement Program" has already subjected the County to multiple lawsuits, and continues to expose the County to increased legal liabilities. This includes liabilities stemming from the misappropriation and siphoning of funds from federal law enforcement programs that were earmarked for the eradication of cartel grows from public lands, as well as possible misappropriation from other state and local programs (possibly including CHP Traffic Enforcement funds and local Search and Rescue funds). Banning and abating cannabis is not a fiscally sound policy for Tehama County, when compared to the alternative of regulating, taxing and allowing this legal industry to exist here. The Abatement Program as it currently operates, is unlawful, expensive, and has essentially created a "jobs program" for a few drug task force agents, at the expense of the health, safety and financial wellbeing of our entire community.

11. Local ordinances are currently exempt from CEQA In accordance with "SB 94" and "M.A.U.C.R.S.A.", California law exempts the adoption of any ordinance or regulation by a local jurisdiction from the California Environmental Quality Act, through July 1 of 2019, if the ordinance or regulation requires discretionary review and the approval of local permits or licenses for commercial cannabis activities. This means that our proposed Ordinance is likewise exempt from CEQA.

In summary, Tehama County has been on the wrong side of history regarding State laws governing the medical, and now adult uses of cannabis. For the past twenty-two years, this county has chosen to look backwards on this issue, and many hundreds of law abiding citizens have suffered the consequences of this policy. The Applicants plea that you allow the project to be processed under the Statutory Exemption provided by the State, or as a Mitigated Negative Declaration to include the Mitigation requiring a Use Permit Condition Monitoring Plan. As applicants, we have not been given the opportunity to address any specifically identified significant environmental impact. If there are any significant impacts identified, we would like the opportunity to discuss them and suggest mitigations to reduce the impact to a level of less than significant. This is not a special request, but a procedure that is supported by the California Environmental Quality Act as a means to avoid unnecessary review.

This ends my portion of this presentation. We have a few other presenters (that should be much shorter), and we're ready to answer any questions about our Project that you may have. Please take as much time as you need to review our Project and all the information you receive here today, before you make your final determination. We thank you for your time and consideration of this matter.

Sincerely,
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