NEVADA COUNTY PLANNING COMMISSION
NEVADA COUNTY, CALIFORNIA

MINUTES of the meeting of February 7, 2019, 1:30 PM, Board Chambers, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California

MEMBERS PRESENT: Commissioners Coleman-Hunt, Duncan, Aguilar, Johansen and Bullock.

MEMBERS ABSENT: None.

STAFF PRESENT: Planning Director, Brian Foss; Deputy County Counsel, Rhetta VanderPloeg; Administrative Assistant, Tine Mathiasen.

PUBLIC HEARINGS:

1. Commercial Cannabis Ordinance Draft EIR Public Comments
   EIR18-0001

CALL MEETING TO ORDER: The meeting was called to order at 1:32 p.m. The flag salute was followed by roll call.

CHANGES TO AGENDA: None.

PUBLIC COMMENT: Members of the public shall be allowed to address the Commission on items not appearing on the agenda which are of interest to the public and are within the subject matter jurisdiction of the Planning Commission, provided that no action shall be taken unless otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code. None.

COMMISSION BUSINESS: Selection of Commission Chair and Vice Chair. Motion by Commissioner Aguilar, seconded by Commissioner Johansen, to nominate Commissioner Duncan for Chair. Passed on voice vote. Motion by Chair Duncan, seconded by Commissioner Coleman-Hunt, to nominate Commissioner Aguilar for Vice Chair. Passed on voice vote.

CONSENT ITEMS: None.

PUBLIC HEARING:

EIR18-0001: Public hearing to accept comments on the adequacy of the Draft Environmental Impact Report (EIR18-0001) for the Nevada County Commercial Cannabis Cultivation Ordinance (NCCO) drafted to be consistent with state law and to enable a procedure for the cultivation of cannabis within all unincorporated areas within the County. The proposed NCCO has been drafted pursuant to the authority granted by Article XI, Section 7 of the California Constitution, Health and Safety Code section 11362.83, and Government Code Section 25845. The proposed NCCO would be adopted to replace the existing cannabis regulations in the Nevada County Land Use and Development Code (Development Code under Title 2, Chapter IV, Article 5 Cannabis Cultivation). The proposed NCCO details new County-specific regulations to address the licensing
of cannabis cultivation activities only in the unincorporated areas of the County. **Location:** The proposed project would apply to all parcels located in the unincorporated areas of Nevada County. Nevada County’s total land area is 978 square miles, of which approximately 70% is privately owned and approximately 30% is public lands.

Director Foss introduced himself and EIR consultant Alex Jewell of Kimley-Horn. He provided a brief summary of the EIR and how the meeting would be conducted. The purpose of the EIR comment hearing is to inform the public and the Planning Commission about the proposed project and the EIR, and to receive public and agency comments as they relate to the adequacy of the environmental review. The comments today should be focused on the adequacy of the EIR only. All comments received during the 45-day comment period, including verbal comments made at the hearing, will be responded to as part of the final EIR. The consultant and staff will not be responding to comments made today and will only be answering questions about process and to provide clarification. Other comments will be reviewed by the consultant and included in the final EIR. Specifics of the ordinance are not the purview of today’s hearing, though there will be future hearings at which the ordinance may be discussed. No final actions or decisions will be made by the Planning Commission today; just directions from Commission for staff and the consultant to address comments in the final EIR. The time clock is available to be used for public comment if the Chair so pleases. Director Foss then reviewed the project background, staff’s directions from the Board, and the current status of the ordinance.

Commissioner Johansen informed Director Foss that the Commission’s dais computers were not showing staff’s presentation.

Chair Duncan requested that the meeting continue while a tech was called to address the computer issue.

Mr. Jewell reviewed the project description of the ordinance that was evaluated in the EIR. Intent, definitions, types of cultivation, zoning and general plan designations, allowable uses and cultivation requirements were discussed.

Counsel VanderPloeg requested a short recess to address technical difficulties. Chair Duncan called a brief recess at 1:45 p.m. The meeting was called back to order at 1:46 p.m.

Mr. Jewell discussed permitting types. In the EIR, 17 issue areas were evaluated. A worst case scenario approach was used to provide a broad range of analysis and to provide staff flexibility when permits were submitted for review. The impact analysis relied on existing county codes and ordinances to reduce or avoid impacts. In several cases, mitigation measures to reduce impacts would require amendments to the ordinance. Significant and unavoidable impacts were identified for several resources and cumulative impacts. Mr. Jewell reviewed the CEQA process, beginning in 2017. After the 45-day public review period, the consultant will respond to the comments and prepare the final EIR, which will be brought before the Planning Commission for recommendation to the Board. Opportunities to comment on the EIR include today’s hearing, the remainder of the 45-day review period, and the upcoming Planning Commission and Board of Supervisors hearings.

Chair Duncan noted that the Commission’s computer screens were again not working but that the meeting would carry on in spite of that. She opened public comment at 1:51 p.m.
Gary Baker raised concern with the EIR’s calculation of number of parcels affected. He raised concern regarding an energy use table and the use of a one-month period versus a 12-month period. He discussed practicalities and implications in terms of new residences as well as the different impacts of cultivation versus production. Energy use is underestimated in the document, while water use is overestimated. The project is not realistically sized. Many growers are in limbo and the current timeline to get an ordinance adopted is unrealistic. An alternative would be to draft an emergency ordinance or to adopt this ordinance and adjust the impact fees to allow growers to obtain provisional licenses from the state. He wondered what might be an adequate size of the project.

Chair Duncan and the Clerk discussed the use of the countdown timer.

Jan Howard owns a parcel close to land zoned AG. She noted that the most controversial issue regarding cannabis cultivation is odor. This is well documented and acknowledged in the EIR. It is disconcerting that odor is acknowledged as a big impact but there is no mitigation for it. Odor may result in devaluation, being trapped in one’s house, and deterioration of quality of life. The worst case must be planned for. The EIR and ordinance are deficient in addressing the odor issue. She wonders whether the EIR says there is nothing more to do or that there is more work to be done. That would be unacceptable. There must be more time to get more information in order to address odor. There needs to be a clear path for citizens to have their concerns heard as well as objective ways of measuring odor. “Reasonable” is too vague a standard.

Steve Baker introduced himself as a hydrogeologist. He noted that groundwater is a significant issue in cannabis cultivation. An aquifer study was completed, resulting in a monitoring approach and a groundwater management strategy that is effective in the foothills as it takes into account the behavior of the population and the type of geology. Water quality and groundwater dewatering can be managed. Groundwater issues are mitigatable with proper monitoring and management.

Michael Chustone commented on cannabis support areas (page 330-31). He asked that the maximum canopy percentage range not be specified. It should be discretionary as 25 percent may not be sufficient. The 25 percent restriction will not encourage best practices.

Abraham Valensky discussed water, specifically section 4.8.2 Regulatory Setting. The Water Board and Fish and Wildlife already regulate activity, so it is not like things are not or will not be regulated. The report implies that things are very loose. Existing seasonal restrictions on grading and heavy equipment were not mentioned in the report. 85 percent or more of the County’s current growers are using groundwater. Rather than prohibition, measurements like well logs and meters could be used. There is no way to measure water under rock, so how this will effect groundwater is an assumption. In impact 4.8-3, the EIR seems to suggest people buy water from NID. He asked why it is okay to use NID groundwater but not private wells, whether NID knows how much groundwater they have, and why this information is not in the EIR.

Mark Johnson asked how an EIR can be issued when important facts are unknown. He asked how indoor growing affects energy usage, how energy usage affects air quality, how utilities will accept energy overload, and what number of growers will grow indoors. There are only assumptions on these issues. He asked how an EIR can be issued on assumptions and how many of the CAG’s recommendations were implemented in research for the EIR. If CAG recommendations are implemented, many people will not have to grow indoors, therefore not putting strain on air quality, energy usage, utilities or infrastructure. He wonders why the CAG recommendations were not
considered or implemented when they would in fact make the County, taxpayers and landowners better off. He wants to know how an EIR can be commissioned on assumptions rather than facts.

Chair Duncan explained the public comment process. She closed public comment at 2:14 p.m. She asked that a few comments be responded to in order to provide clarification.

Director Foss began to explain why they were not going to respond to comments.

Chair Duncan said that Mr. Abraham’s questions about the source of water could easily be responded to.

Director Foss asked if Chair Duncan was asking about the source of NID water.

Chair Duncan said right. She noted NID is a public utility.

Director Foss agreed.

Mr. Jewell said that NID gets water from different sources, groundwater being one of them. NID provides details and a forecast for coming years, which are publically available.

Chair Duncan said staff will respond to all comments as part of the final EIR, not right now. She welcomed people to submit written comments. She thinks the stated purpose for preparing the EIR is succinct. The Commission will take this under advisement. There will be no action by the Commission as the meeting today was merely to hold the public forum.

Director Foss asked Chair Duncan to give direction to staff and the consultant to respond to comments as part of the final EIR.

Chair Duncan asked for a motion.

Motion by Commissioner Aguilar to have staff and the consultant prepare comments and respond in preparation for the document. Second by Commissioner Johansen. Motion carried on a voice vote 5/0.

Discussion ensued regarding upcoming Commission meetings and trainings. Chair Duncan welcomed the new Commissioners.

Conversation returned to the EIR. In general terms, Commissioners discussed the EIR process and how challenging it is to separate conversation on the EIR from the ordinance. Director Foss and the Commissioners discussed the CEQA process, the Commissioners’ means of providing comments, the role of an EIR, the relationship between accepting the EIR and approving the ordinance, public notification and outreach, and training on the EIR process. The Commission touched on the definition of “adequacy” and the issue of unmitigatable impacts. Additionally, Counsel VanderPloeg reminded the Commissioners that they are beholden to the Brown Act and that outside conversation must be limited.

Motion by Commissioner Johansen to adjourn; second by Commissioner Hardy. Motion carried on voice vote 5/0.
There being no further business to come before the Commission, the meeting was adjourned at 2:35 p.m. to the next meeting scheduled for February 14, 2019, in the Town of Truckee’s Council Chambers, 10183 Truckee Airport Road, Truckee, California.

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Passed and accepted this 28th day of February, 2019.

Brian Foss, Ex-Officio Secretary