

1 **NEVADA COUNTY PLANNING COMMISSION**
2 **NEVADA COUNTY, CALIFORNIA**

3
4 **MINUTES** of the regular meeting of the Planning Commission on April 11, 2019, at 1:30 p.m. in
5 the Board Chambers, Eric Rood Administrative Center, 950 Maidu Avenue, Nevada City,
6 California.

7
8
9 **MEMBERS PRESENT:** Chair Duncan and Commissioners Aguilar and Johansen were present
10 for the full meeting. Commissioner Coleman Hunt arrived at 2:13 p.m.

11
12 **MEMBERS ABSENT:** Commissioner Bullock.

13
14 **STAFF PRESENT:** Planning Director, Brian Foss; Agricultural Commissioner, Chris de Nijs;
15 Building Director, Craig Griesbach; Deputy Fire Marshal, Matt Furtado; Deputy County Counsel,
16 Rhetta VanderPloeg; Administrative Assistant, Tine Mathiasen.

17
18 **PUBLIC HEARING:**

- 19 1. Commercial Cannabis Cultivation Ordinance (ORD18-2; EIR18-0001)
20

21
22 **CALL MEETING TO ORDER:** Chair Duncan called the meeting to order at 1:41 p.m.

23
24 **STANDING ORDERS:**

- 25 1. **FLAG SALUTE.**
26 2. **ROLL CALL:** Four present; Chair Duncan announced that Commissioner Coleman-Hunt
27 would be arriving shortly.
28 3. **CHANGES TO AGENDA:** None.

29
30 **PUBLIC COMMENT:** Members of the public shall be allowed to address the Commission on
31 items not appearing on the agenda which are of interest to the public and are within the subject
32 matter jurisdiction of the Planning Commission, provided that no action shall be taken unless
33 otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code. None.

34
35 **COMMISSION BUSINESS:** None.

36
37 **CONSENT ITEMS:** None.

38
39 **PUBLIC HEARING:**

40
41 **1. ORD18-2; EIR18-0001; NEVADA COUNTY COMMERCIAL CANNABIS**
42 **CULTIVATION ORDINANCE.** A public hearing to consider and make recommendations to the
43 Board of Supervisors on an Ordinance amendment to Chapter II of the Land Use and Development
44 Code adding Section L-II 3.30 for the Nevada County Commercial Cannabis Cultivation
45 Ordinance (NCCO) drafted to be consistent with state law and to enable a procedure for the
46 cultivation of cannabis within all unincorporated areas within the County. The proposed NCCO
47 has been drafted pursuant to the authority granted by Article XI, Section 7 of the California
48 Constitution, Health and Safety Code section 11362.83, and Government Code Section 25845.
49 The proposed NCCO would be adopted to replace the existing cannabis regulations in the Nevada
50 County Land Use and Development Code (Development Code under Title 2, Chapter IV, Article

51 5 Cannabis Cultivation). The proposed NCCO details new County-specific regulations to address
52 the licensing of cannabis cultivation activities only in the unincorporated areas of the County. In
53 addition to the ordinance, consideration and recommendation to the Board of Supervisors to adopt
54 the Environmental Impact Report, Mitigation Monitoring Program and CEQA Findings and
55 Statement of Overriding Considerations (EIR18-0001, SCH#2018082023) prepared by Kimley-
56 Horn and Associates. **PROJECT LOCATION:** Countywide. **RECOMMENDED**
57 **ENVIRONMENTAL DETERMINATION:** Recommend adoption of the Environmental Impact
58 Report including Mitigation Monitoring and Reporting Program and CEQA Findings and
59 Statement of Overriding Considerations. **RECOMMENDED PROJECT ACTION:**
60 Recommend approval and adoption of the Nevada County Commercial Cannabis Cultivation
61 Ordinance. **STAFF:** Brian Foss, Director of Planning.

62
63 Planning Director Brian Foss introduced himself, Alex Jewell of Kimley-Horn, and Special
64 Counsel Christie Crowl. He gave the project background and the project description. He discussed
65 definitions, zoning classifications, cultivation area requirements, accessory structure requirements
66 and support areas. He reviewed required permits, their respective timelines, and application
67 submittal requirements. He gave an overview of required setbacks, options for Variances and
68 Setback Easements, and the handling of violations and abatement. He highlighted a few of the
69 ordinance's controversial issues as support area size, a transition period, industrial hemp, the
70 definition of nurseries, and the certificate of deposit requirement.

71
72 Alex Jewell gave an overview of the EIR. He discussed the timeline, circulation of the draft EIR,
73 and comments received. He gave an overview of the resources analyzed, the impact analysis,
74 proposed mitigation measures, significant and unavoidable impacts, significant and unavoidable
75 cumulative impacts, and overriding considerations.

76
77 Director Foss pointed out differences between the original draft ordinance and the one currently
78 before the Commission. He referenced his memo with the attached public comments and a
79 recommended amendment to the Final EIR in response to comments by NID. He listed staff's
80 recommendations to the Commission.

81
82 Commissioner Aguilar and Director Foss discussed personal use cultivation in residential zoning
83 districts and standards that would apply to this type of cultivation. Commissioner Aguilar asked
84 about enforcement and the intent of the overriding considerations. Director Foss noted the focus
85 on the commercial aspect.

86
87 Commission Aguilar wondered about complaints resulting from personal indoor grows. He asked
88 for clarification on whether the intent of the ordinance was to be driven by neighbor complaint that
89 would result in follow-up by the Cannabis Compliance Division. Chair Duncan clarified that
90 Commission Aguilar was wondering whether enforcement would be predicated on complaints.
91 Commissioner Aguilar asked about overriding considerations and the provision of an enforcement
92 mechanism. He asked whether the intention was to not enforce unless there was a complaint. He
93 asked about the focus on the commercial aspect when there may be more complaints regarding the
94 residential grows that require no permits.

95
96 At 2:13 p.m., Chair Duncan noted that Commissioner Coleman-Hunt had arrived at the meeting.

97

98 Commissioner Aguilar asked about inspections. Director of the Building Department and Cannabis
99 Compliance Division Craig Griesbach said that the process was the same as any other land use
100 violation and complaint.

101
102 Commissioner Johansen and Director Griesbach discussed the funding of the Cannabis
103 Compliance Division through General Fund and user fees, and that the division was complaint-
104 driven.

105
106 Commissioner Johansen discussed the public benefit of a well-regulated cannabis industry and the
107 importance of enforcement. He noted that one goal established by the CAG was to create an easier
108 pathway, which the application was not. He asked about state law. Director Foss explained state
109 regulations and limits on the purview of local jurisdictions. Director Foss stated that the ordinance
110 was based on direction from the Board of Supervisors as to the parameters of local control.

111
112 Commissioner Johansen discussed the goal of getting medicine to patients, the expansion of
113 medical cannabis as an overriding consideration, and the impact of the permitting process on
114 caregivers. He discussed the need to make obtaining CBD medicine for kids easier. He suggested
115 that the Commission make a recommendation to the Board of Supervisors regarding high CBD
116 production.

117
118 Chair Duncan noted that the information in the presentation was included in the staff report, which
119 Commissioner Coleman-Hunt had read. Commissioner Coleman-Hunt then described the
120 ordinance's projected level of cultivation as out of alignment with the expected level of actual
121 impact, and the results of that discrepancy. She wished the ordinance were more in line with the
122 actual size of the industry in the community, or that it identified the optimal size of the industry
123 based on the community's resources. She recognized the county's legacy cannabis community and
124 the need for the community to remain focused on small farms, and she wondered whether the
125 ordinance prioritized that. She also discussed offsite mitigation efforts and the absence of that
126 option in the ordinance. Director Foss clarified that it was an option and could be recommended
127 as part of a Management Plan, which would developed on a site-by-site basis.

128
129 Commissioner Aguilar and Director Griesbach discussed the maturity of plants in relation to the
130 definition of canopy size.

131
132 Commissioner Johansen and Director Foss discussed the possibility of meeting setback and
133 acreage requirements through Variances, Lot Mergers and Lot Line Adjustments, which would
134 necessitate a consideration of existing density and zoning.

135
136 Commissioner Johansen and Director Foss discussed natural resources and how the Natural
137 Diversity Database would be used.

138
139 Commissioner Johansen and Director Griesbach discussed LED lighting, building code, and
140 energy usage. Mr. Jewell explained the EIR's assumptions on LED usage in the energy
141 calculations.

142
143 Commissioner Johansen and Deputy Fire Marshal Matt Furtado discussed dead-end road issues
144 and road improvements. Deputy Fire Marshal Furtado listed mitigations that might be allowed on
145 a case-by-case basis.

146

147 Commissioner Johansen asked about value-added and vertical integration. Director Foss noted the
148 limited processes covered in the ordinance as opposed to all the components in the state allowances
149 for different types of permits. Director Foss acknowledged that it was a concern and the likelihood
150 that it would be a topic of discussion with the Board of Supervisors. Commissioner Johansen
151 discussed the potential benefits of a value-added approach.

152
153 Commissioner Johansen expressed his concerns about the overuse of phosphorous. Agricultural
154 Commissioner Chris de Nijs noted that fertilizer was regulated on the state level.

155
156 Chair Duncan opened public comment at 2:36 p.m.

157
158 John Krekorian discussed the stress of the permitting process, state requirements and the previous
159 ordinance. He outlined the timeline, the associated expenses and the money he had lost. He referred
160 to grower applicants as stewards of the land. He discussed his experience with his bank account
161 being closed and he requested the removal of the requirement for a certificate of deposit. He
162 discussed the financial aspect, the impact of the process on him, and the flourishing black market.
163 He requested the Commission recommend approval and recommend it be an urgency ordinance.

164
165 Matthew Coulter discussed his experiences as a cultivator, the timeline of cannabis regulation, and
166 finances and taxes. He expressed disapproval of the process and of the people the County had
167 hired. He mentioned the underregulation and lethal nature of pharma. He described the regulation
168 of cannabis cultivation and the permitting process as a deterrent that had resulted in attrition. He
169 expressed the need for the process to be investigated by the Grand Jury. He discussed the
170 destruction, overmanagement and overregulation of the industry. He asked the Commission get
171 something on the books to allow people to grow.

172
173 Yvonne Watcher discussed her experience as a patient and a caregiver. She highlighted the
174 importance of caregivers and argued that patient caregiver gardens were not commercial farms and
175 that they supplied medicine that saved lives. She recommended that the Commission recommend
176 the Board of Supervisors remove the requirement that patient caregivers and nonremuneration
177 must comply with commercial standards, and to allow for discretionary language for farmers
178 cultivating for patients.

179
180 Song Kowbell discussed her experiences growing since 1977 and her experience saving lives. She
181 requested that nothing be decided until Mr. Forrest Hurd was involved. She described her upset on
182 behalf of patients and she relayed the health struggles she and her family had faced. She discussed
183 tobacco and methamphetamine and reminded the Commission that the issue was about patients
184 and kids. She discussed the cost and unaffordability of cannabis. She asked the Commission to
185 protect sensitive populations. She asked to see a meeting about methamphetamines.

186
187 Gary Sobonya discussed the application's requirement of a CD at a local bank and pointed out that
188 local banks would not open accounts for known cannabis businesses. In contrast, the state required
189 a surety bond rather than a CD. He requested that the county change the requirement to allow for
190 a bond like the state.

191
192 Barbara Jones discussed the financial infeasibility of a \$5,000 CD. She discussed the generosity
193 of farmers and their donations to families and organizations. She argued that there would be
194 nothing wrong with the ordinance saying that nonremuneration was out of the question. She asked
195 the Commission to remember the patients.

196

197 John Foley requested an amendment before the ordinance was passed. He discussed his
198 experiences coming into compliance. The last minute changes to the draft ordinance and notice of
199 preparation would limit farmers' ability to run successful businesses. He discussed the limitation
200 on the support area and the impact on the safety of the working environment. He discussed his
201 property, licensure, building conversion, and setbacks. He discussed costs and the unrealistic and
202 unsafe limitations being placed on his business. He requested that the Commission advise the
203 Board of Supervisors to remove the support area size limitation. He suggested referring to existing
204 code pertaining to permanent open space requirements and maximum impervious surface. He
205 expressed concern about the ordinance project failing.

206

207 Commissioner Aguilar asked Mr. Foley what percent area he envisioned and Mr. Foley replied
208 that it would be a personal decision that would be different for every business model.

209

210 Patricia Rockwell emphasized the importance of the discussions on the 25 percent support area
211 restriction and about existing permitted structures. She made the point that a lot more is needed to
212 grow for medicine than to grow for flower. She argued that existing impervious surface standards
213 would limit overdevelopment and that the restriction of support area size would create unnecessary
214 overregulation and was not realistic. She wondered if the county had considered the additional
215 state requirements. She listed the negative consequences of an inadequate support area. She asked
216 the Commission to recommend the Board of Supervisors remove the 25 percent limit on support
217 area and replace it in accordance with industry practices and utilizing existing county policy. She
218 also asked the Commission to recommend that the Board of Supervisors allow permitted existing
219 structures that fall within the 100-foot setback to be used without a Variance or Setback Easement.

220

221 Douglas Potter discussed the existing grading on his site and the advisement he had received from
222 the Water Board. This year he decided on a smaller grow to establish his farm. He listed the reports
223 he had compiled, the work he planned to do for future development, and the extra mile he had
224 gone toward compliance. He asked the Commission to recommend the Board allow growing on
225 existing pads under specific conditions: no threat to health and human safety, only outdoor growing
226 allowed, no structures on the pads, and possession of required permits for growing. He asked that
227 existing county code on grading be applied to cannabis farms. An allowance to grow on existing
228 environmentally safe and inspected pads would allow many farmers to move forward.

229

230 Diana Gamzon spoke as the Executive Director of the Nevada County Cannabis Alliance. Her
231 organization had submitted a memo that analyzed the support area size needed. She spoke about
232 the Alliance and policy history on cannabis in Nevada County. The Alliance opposed the newly
233 added language on a 25 percent limit on support area, called for the limit to be adjusted in
234 accordance with standard practices and existing county code, and argued that the proposed limit
235 was unjustified and arbitrary. She argued that the limit did not appear in the draft ordinance, had
236 not been a part of previous discussions, would not be realistic, and would make operations
237 infeasible. She asked the Commission to provide her recommendation to the Board. She also
238 requested a change in the language of the ordinance to allow staff flexibility in the standards for
239 nonremunerative cultivation and thus remove undue burden from caregivers. She discussed craft
240 farming, overregulation and barriers to entry, and Nevada County's status as a legacy-producing
241 region. Additionally, she expressed concern that the EIR assumed a highly inflated number of
242 grows which in turn inflated their impacts, and stated that this should be taken into account in
243 deliberations. Finally, she noted the Alliance's support of staff's recommendations regarding the
244 EIR.

245
246 Commissioner Aguilar asked Ms. Gamzon for a better number. Ms. Gamzon listed the activities
247 that take place in a support area and explained the need for a support area of up to 90 percent of
248 canopy size. She hoped for the use of existing county code to regulate the issue. After clarification,
249 Ms. Gamzon then listed numbers and factors that might be taken into account to estimate a more
250 accurate number of commercial grows. She anticipated the number of farmers seeking licenses to
251 grow. Commissioner Johansen noted that the EIR took into account personal use, which may
252 increase at the same time commercial cultivation may decrease. Commissioner Johansen and Ms.
253 Gamzon discussed the possibility of pre-testing product before it left the farm.

254
255 Shelby Sachs discussed the impact of grow infrastructure on land disturbance and how the
256 backdoor of residential development had allowed for the avoidance of additional oversight and
257 regulation by the Water Board. She discussed her background as a civil engineer and cannabis
258 grower and discussed her activism around hemp. She described the negative impacts of her
259 neighbor's operation on her, including on impacts on property value, her health, her family's
260 perceived safety, fire risk, home insurance and home salability, privacy concerns, and road
261 maintenance disagreements. She also discussed flaws with the complaint driven nature of resolving
262 issues and the burden of proof. She discussed the decibel levels of fans, disharmonic resonance,
263 and grading. She also expressed frustration with her attempts to have discussions with the CDA.

264
265 Gary Baker discussed the comments he had submitted. He questioned the number of permits the
266 EIR used for the analysis. Costs would be passed on to cultivators who apply for permits and pay
267 mitigation fees. The project misses key objectives by omitting legacy cultivations and RA zones.
268 He suggested adding RA zoned parcels or parcels within 1,000 feet of rural zones because of the
269 transitional nature of the parcels. His comments addressed the 25 percent limitation and provided
270 justification for 93 percent of the canopy area. Also, the treatment of all cannabis projects as
271 commercial developments would create bigger impacts on the environment and on the growers.
272 He discussed the level of expense required to convert existing buildings to meet commercial
273 requirements.

274
275 Sebasbian Gotla requested the removal of commercial standards for patient caregiver
276 nonremunerative cultivation. As these were not commercial businesses, he suggested there be less
277 stringent regulations. He asked the Commission to recommend the Board of Supervisors align
278 patient caregiver nonremuneration activity in a category other than commercial. He also asked the
279 Commission to recommend the Board of Supervisors remove the restriction on support areas to 25
280 percent of canopy size as the provision was in conflict with state licensing authority. He asked the
281 Commission to eliminate the provision altogether. Finally, he asked the Commission to
282 recommend the Board of Supervisors pass the ordinance as an urgency ordinance.

283
284 Ashley Overhouse (representing SYRCL) noted that her organization had submitted comments
285 during the scoping process and on the DEIR. She asked that the item be tabled with no action taken
286 by the Commission. SYRCL was disappointed with the DEIR, requested an extension to submit
287 comments that was not acknowledged, and is disappointed with the response to comments in the
288 FEIR. The fundamental concern was the EIR's assumption that 100 percent of eligible parcels
289 would become commercial cannabis grows. SYRCL fundamentally disagrees that additional
290 analysis was not required to meet legal requirements. SYRCL disagreed that infeasibility of
291 additional analysis was not a valid excuse for not proposing adequate mitigation. Analysis was
292 still needed under scenarios other than the 30 percent cultivation alternative analysis. She referred
293 the Commission to the Public Resources Code and to SYRCL's suggested ordinance amendments.

294
295 Jack Jacobs discussed the challenges of opening a new business account at a local bank or credit
296 union. Cultivators cannot open a business account without lying, making the CD requirement
297 unrealistic. Also, the 25 percent support area limitation set growers up for failure.
298

299 Wade Laughter asked the Commission to pass the EIR and ordinance to the Board of Supervisors
300 for enactment, as flawed as they were. He requested language be added to the purpose and findings
301 that is welcoming to the growers attempting to come into the overregulated market. He discussed
302 the 25 percent support area limitation, and the choice to make cannabis work or to continue the
303 culture war. He suggested working in the direction of unifying the community. He discussed
304 cannabis as medicine and the county's position as a center of education, information and genetics
305 on cannabis as a healing plant. He asked for the Commission's help in allowing the community to
306 do that work.
307

308 Shelly Salvatore discussed the infeasibility of the 25 percent support area restriction. She asked
309 the Commission to think about the patients. Many people were looking for CBD, which had a lot
310 of potential in being grown in the county. She asked for support of small farmers and local people.
311 She asked that the Commission let the Board of Supervisors know that 25 percent would not work.
312

313 Aaron Perdue discussed expenses and the unavailability of financing, which separated growers
314 from the typical agrarian. All money was in capital and was not liquid. He argued that the farmers
315 who would survive the transition were the farmers willing to grow illegally in the interim. He was
316 used to regulation but it would be hard to get in the game without financing. He discussed the
317 small scale of a 2,500 square foot garden in terms of agriculture. He argued that lawyers should
318 not need to be hired to understand the proposal.
319

320 Lee French expressed his desire to work to uphold the law, his appreciation of the growers coming
321 into compliance and appreciation of the day's meeting. He expressed concern about nuisance to
322 the neighbors, especially with the allowance of outdoor grows in RA zoning, which would affect
323 many people. He asked the Commission to consider additional requirements or special applications
324 for grows in RA zoning that would protect people from the odor nuisance.
325

326 Jonathan Collier discussed obstacles to entry and the building code. He discussed small farmers
327 and dropping wealth. He discussed the removal of the provision that restricted financial interest to
328 three cannabis businesses. He expressed his support of the restriction on individuals to owning no
329 more than three cultivation licenses but disapproval of the restriction to three cannabis businesses.
330 This would limit the ability to vertically integrate and would be overly restrictive. He asked that
331 value-added aspects and vertical integration be addressed. He discussed the importance of setting
332 precedence and emphasized urgency.
333

334 Rodney Hennith discussed ADA requirements and the lack of applicability to small farmers with
335 fewer than 15 employees. He discussed the requirements and reasonable accommodations, which
336 would not apply to a small farm hand. The requirement was a major burden and he didn't see folks
337 with disabilities applying for the jobs. Finally, the state says to refer to federal requirements.
338

339 Abraham requested that the Commission recommend the Board of Supervisors include all
340 commercial cannabis structures and grading in the transition period and allow two years to get
341 existing grading permitted.
342

343 Chair Duncan closed public comment 3:55 p.m.

344
345 Director Foss said he expected that the Board of Supervisors would provide direction on the CD
346 requirement and that the Commission was welcome to make a recommendation. He discussed the
347 purpose of the requirement. Commissioner Aguilar asked why it was not a bond that was required.
348 Director Griesbach noted that a surety bond was one option staff would be recommending to the
349 Board. Commissioner Aguilar said he would like to recommend that as an option and noted that
350 other projects required bonds, which Director Griesbach confirmed. Commissioner Aguilar
351 emphasized that he wanted a functional ordinance, Commissioner Coleman-Hunt said the CD
352 requirement was out of sync with what was possible, and Commissioner Aguilar noted that he did
353 not want people to be pushed into lying. Chair Duncan noted that most of the Commissioners were
354 in agreement that the CD requirement was onerous. Director Foss asked for clarification on a
355 recommendation. Chair Duncan said that the bank aspect was not working and she asked staff to
356 research the issue and provide options to the Board. Commissioner Aguilar agreed that his issue
357 was with the method by which the money was required to be provided, not with the money
358 requirement itself.

359
360 Commissioner Johansen, Commissioner Aguilar and Chair Duncan discussed that would be best
361 to provide feedback to Director Foss as he addressed each issue. Chair Duncan clarified that there
362 were currently no motion and that the Commission was just providing feedback.

363
364 Director Foss discussed nonremuneration. He discussed the standards that that type of cultivation
365 fell under and said the Board could decide that it be treated separately or differently, with variables
366 such as zoning, size or fee structure. The Commission could make a recommendation to the Board.
367 Commissioner Coleman-Hunt was in favor of separating nonremuneration and medical cultivation
368 from commercial. Director Foss noted that, because many of the land use impacts were the same,
369 treating it completely differently could potentially require another ordinance and more
370 environmental review. He said that if the desire of the Commission was to look at how it could be
371 treated differently, that could be part of the recommendation to the Board. Commissioner
372 Coleman-Hunt said the grows were much smaller so the impacts were much smaller and it would
373 be appropriate to scale. Director Griesbach noted that the issue had been reviewed by the Board
374 and it was written as the Board recommended. Chair Duncan said that it is the gist of the
375 Commission that the Board consider it again.

376
377 Commissioner Johansen discussed loopholes and enforcement. He discussed small scale personal
378 use cultivation and asked about the state's regulations on giving away those plants. Director Foss
379 said he did not have expertise in that area. Commissioner Johansen said he would like to look into
380 that.

381
382 Director Foss addressed the concerns about the support area size restriction. He discussed the
383 original ordinance and how the 25 percent size was determined. He reviewed size limitations on
384 other types of commercial uses and why a size limitation might be important. He pointed out the
385 potential weakening of the environmental analysis if the percentage was deviated from greatly.
386 Director Foss said that there was some flexibility but that the further away from 25 percent, the
387 greater the risk of challenge to the adequacy of the EIR. Chair Duncan said the Commission was
388 anticipating future problems and the 25 percent was inadequate. Commissioner Aguilar noted the
389 requests in public comments and said that the Commission's recommendation needed to be to
390 increase the size allowance. Counsel Christie Crowl elaborated on the potential impacts on the
391 environmental review process of increasing the size, including the potential need for additional

392 analysis and circulation. She pointed to an alternative presented in the staff report that the
393 Commission could recommend to the Board that might allow more support area in existing
394 permitted structures. Chair Duncan touched on the possibility of having more than one support
395 area. Director Foss explained the option of allowing additional space within existing structures,
396 which would reduce the risk of the EIR being challenged as inadequate. Chair Duncan and Director
397 Foss clarified that the alternative would allow for 25 percent of newly developed area with an
398 addition of 50 percent in existing structures, for a total of 75 percent of the canopy size.
399 Commissioner Johansen mentioned the impact of vertical integration on square footage.
400 Commissioner Coleman-Hunt and Director Foss discussed why there was a need for a limit on the
401 size of the support area. Director Foss discussed the introduction of commercial use into residential
402 areas, odors, impacts on neighboring properties, and the nature of environmental review for
403 administrative permits.

404
405 Commissioner Aguilar and Director Griesbach discussed ADA requirements. Director Griesbach
406 explained that the Building Department governed public accommodations in commercial
407 buildings. He discussed California Building Standards Code and federal requirements.
408 Commissioner Aguilar and Director Griesbach confirmed that ADA requirements were not
409 dependent on number of employees and had more to do with the definition of a commercial
410 building, and that existing building would have to be up to ADA standards.

411
412 Director Foss addressed the policies on the three business types and licenses limitation. He said
413 that the purpose was to protect the small farmer and allow them to be competitive. The policy was
414 not a land use issue but rather a policy to help small business. The Board could direct staff to
415 remove or modify the limitation, and the Commission could provide input to the Board.
416 Commissioner Aguilar stated that small businesses should be protected, as the General Plan
417 indicates. Commissioner Johansen asked about what a better number might be. Director Foss said
418 that staff could work with the Alliance to identify a different number, which Chair Duncan
419 supported. Commissioner Aguilar discussed the intention of the limitation and Director Griesbach
420 clarified that financial interest was the issue. Chair Duncan noted that staff would refine the
421 number for the Board.

422
423 Director Foss discussed cultivation in the RA zone. He discussed analysis in the EIR and direction
424 from the Board to not include RA for commercial cultivation at this time.

425
426 Director Foss discussed a transition period to allow for the use of unpermitted structures. He
427 explained the proposed permitting requirements and the similarity to requirements for any other
428 type of use or structure. Allowing unpermitted structures would be a departure from existing
429 procedures and staff was aiming for consistency. Commissioner Aguilar discussed the potential
430 environmental impacts of not allowing grows on existing unpermitted grading and asked if there
431 could be an allowance for growing on existing pads during a grace period while fixing the
432 unpermitted grading in order to minimize new disturbance. Director Griesbach explained the
433 problematic nature of that proposal. It was not impossible but the Board would need to give policy
434 direction. Commissioner Aguilar asked about creating a process to determine if it would be
435 reasonable and Commissioner Coleman-Hunt agreed with that suggestion.

436
437 Chair Duncan asked about the possibility of an urgency ordinance. Director Foss and Counsel
438 VanderPloeg discussed CEQA, the urgency process and the findings necessary to justify urgency.
439 Commissioner Coleman-Hunt suggested passing the existing ordinance and then immediately
440 beginning the process of crafting a new and refined one. Director Foss and Commissioner

441 Coleman-Hunt discussed the potential timeline and Chair Duncan requested that these comments
442 be considered by the Board.
443
444 Commissioner Johansen discussed setbacks, stated that 100 feet was not enough and suggested
445 that grows be required to be closer to the grower's residence than the neighbor's. Chair Duncan
446 and Director Foss requested more guidance for staff and Director Foss requested that any direction
447 be the consensus of the Commission.
448
449 Chair Duncan called for a break at 4:33 p.m. and called the meeting back to order at 4:54 p.m.
450
451 Director Foss listed the seven recommendations that he understood the Commission desired to
452 make to the Board alongside their motion: 1) that other methods besides CDs, such as bonds, were
453 evaluated and perhaps allowed to serve the same purpose as a CD; 2) the consideration of different
454 standards, permitting or fee structures for nonremuneration cultivation; 3) allowance for flexibility
455 and an increase in the support area size allowance to more than 25 percent, as could be
456 accommodated by the existing EIR; 4) direction for staff to work with the Cannabis Alliance and
457 perhaps revise the language regarding the limitation to three licenses or permit types so that it
458 continued to protect small farmers but did not limit individuals to three businesses; 5) an allowance
459 for existing grading to be included in the transition period and allowance for permitting and
460 remediation to take place after the cannabis permit was issued; 6) if the findings could be made,
461 adopt the ordinance as an urgency ordinance; and, if the Commission could provide more
462 guidance, 7) increase or change the 100 foot setback requirement for parcels of a certain size.
463
464 Commissioner Aguilar asked about setbacks and growers who were in compliance based on
465 previous codes and now would not be. Director Foss explained that there were two issues: 1)
466 structures permitted for non-cannabis use that comply with standard 30-foot setbacks but were
467 within the 100-foot setback required for cannabis operations; and 2) a request to increase setbacks
468 to a larger number for larger parcels, as Commissioner Johansen had suggested. Director Griesbach
469 said the issue he had heard feedback on was buildings that met general land use setbacks but were
470 not permitted related to cannabis. He said that the prior ordinances had more strict setbacks than
471 the draft ordinance currently before the Commission. Chair Duncan asked about grandfathering in
472 structures built to code that are used for cannabis. Director Griesbach said there was no language
473 currently in the ordinance to allow this. After confirming that Director Foss needed more
474 clarification on the Commission's recommendation, Commissioner Coleman-Hunt stated that she
475 was in favor of grandfathering in permitted buildings as long as issues like odor and noise were
476 honored, and Commissioner Johansen agreed.
477
478 Commissioner Johansen argued that on larger parcels, commercial grows should be closer to the
479 grower's residence than the neighbor's residence, and/or the grower should take responsibility for
480 the grow rather than the neighbor having to. This policy should apply to parcels 20-acres or larger
481 and would not include a standard setback distance. Commissioner Coleman-Hunt suggested
482 keeping the 100-foot setback and allowing for neighbors to file complaints with Code Compliance.
483 Chair Duncan suggested the negotiation of issues during the application review period. Director
484 Griesbach confirmed that the ordinance would allow for neighbors to file complaints and that
485 potential issues would be vetted as part of the review process. Chair Duncan asked if neighbors
486 would be notified, Director Griesbach said no, and Commission Johansen stated that that was the
487 problem. He stated that public safety was paramount, it was a nuisance, and that he was standing
488 up for agriculture. Chair Duncan and Director Foss indicated that there needed to be a set number
489 so that it could be known with certainty. Commissioner Johansen gave examples of when set

490 numbers were not used, indicated that he considered this requirement appropriate for parcels 20-
491 acres or larger, and suggested that subdivisions to important farmland require a 300-foot setback.

492
493 Chair Duncan noted that there would be an opportunity for more public comment at the Board of
494 Supervisors meeting.

495
496 Director Foss stated that he heard a suggestion for a 300-foot setback for 20-acres or more.
497 Commissioner Johansen said he was not happy with the number but was happy with the
498 requirement that a grower be closer to the grower's house. Chair Duncan pointed out the challenges
499 of implementing Commissioner Johansen's suggestion and expressed the need for more certainty.
500 Commissioner Johansen noted that he had suggested both numbers and the use of natural barriers.
501 Commissioner Aguilar suggested that the setback be in relation to the zoning or parcel size of the
502 adjacent parcel.

503
504 Commissioner Aguilar and Director Griesbach discussed that, in regard to the first setback issue,
505 the buildings in question were not permitted for commercial use but rather for residential
506 agricultural uses. Commissioner Aguilar expressed concern and stated his support for keeping the
507 100-foot setback requirement. Commissioner Coleman-Hunt asked about allowing existing
508 buildings within the setback as long as there were mitigation measures in place to address the
509 negative impacts, and Commissioner Aguilar noted that that sounded like a Use Permit. Director
510 Foss explained that one purpose of the EIR was to attempt to cover the impacts for all future
511 permits so that each site would not have to go through further CEQA analysis. He noted the
512 challenges in enforcement of the 30-foot setback unless there were additional environmental
513 review or additional standards in the ordinance. Commissioner Coleman-Hunt and Director Foss
514 discussed the current allowance for Variances which could allow a 60-foot minimum setback.
515 Finally, Chair Duncan asked Director Foss to include this discussion in his report and to request
516 that the Board attempt to accommodate some of the situations discussed, and Director Foss agreed
517 to characterize the discussion.

518
519 Commissioner Coleman-Hunt, Commissioner Johansen and Chair Duncan requested the addition
520 of language into the ordinance that would affirm the value of encouraging small farms, small
521 business, small cannabis operations and small profits. Director Foss confirmed that he was working
522 with County Counsel to incorporate language to that effect. Chair Duncan noted the importance of
523 public comment and Commissioner Aguilar expressed welcome to and appreciation of growers
524 interested in compliance.

525
526 Chair Duncan reviewed the potential recommendations.

527
528 **Motion by Commissioner Johansen** to recommend the Board of Supervisors approve a
529 Resolution certifying the Final EIR (EIR18-0001, SCH#2018082023) based on CEQA Findings
530 of Fact, as amended; **second by Commissioner Coleman-Hunt. Motion carried on a roll call**
531 **vote 4/0 (Commissioner Bullock absent).**

532
533 **Motion by Commissioner Johansen** to recommend the Board of Supervisors adopt Ordinance
534 Text Amendment (ORD18-2) to Chapter II of the Nevada County Land Use and Development
535 Code adding Section L-II 3.30 Commercial Cannabis Cultivation Ordinance, and the seven
536 recommendations and discussion by the Planning Commission; **second by Commissioner**
537 **Coleman-Hunt. Motion carried on a roll call vote 4/0 (Commissioner Bullock absent).**

538

539 Discussion ensued regarding upcoming Commission meetings and ongoing project statuses.

540

541 **Motion by Commissioner Aguilar; second by Commissioner Johansen to adjourn. Motion**
542 **carried on voice vote 4/0 (Commissioner Bullock absent).**

543

544 There being no further business to come before the Commission, the meeting was adjourned at
545 5:31 p.m. to the next meeting scheduled for April 25, 2019, at 1:30 p.m. at the Board of Supervisors
546 Chambers, Eric Rood Administrative Center, 950 Maidu Avenue, Nevada City, California.

547

548

549 Passed and accepted this 25th day of April, 2019.

550

551 Brian Foss (by t.m.)

552 Brian Foss, Ex-Officio Secretary

553