



Nevada County Cannabis Regulation Community Planning Process

Summary of Community Advisory Group (CAG) Meeting #5, July 25, 2017

Prepared by:



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Introduction

On Tuesday, July 25, 2017, Nevada County convened the fifth meeting of the Community Advisory Group (CAG). The CAG includes 16 Nevada County residents who were appointed by the Board of Supervisors. The mission and charge of the CAG is to:

- Gather and analyze input from Nevada County community members with regard to perspectives on cannabis-related activities.
- Advise the Nevada County Board of Supervisors (BOS) regarding preparation of a revised ordinance to regulate cannabis-related activities in Nevada County.
- Formulate recommendations that Nevada County staff and the BOS can use to draft a revised County ordinance which regulates cannabis-related activities.

The CAG process is led by a four-person team that includes representatives from:

- MIG, Inc.: Daniel Iacofano, Lead Facilitator, and Joan Chaplick, Project Manager
- Nevada County: Sean Powers, Director, Community Development Agency, and Mali Dyck, Program Manager, Eligibility and Employment Services

This is the fifth of a series of meetings that will be conducted between May and September. The meeting notes are intended to provide a summary of key points of information, discussion topics, questions and agreements. The summary is not intended to serve as a transcription of the meeting or the presentations. Meetings have been videotaped and are posted on the County website.

1. Welcome and Introductions

Daniel Iacofano, lead facilitator, welcomed the participants and briefly reviewed the agenda. Daniel asked for comments on the summaries from Meetings #3 and #4. No changes were requested and MIG will finalize the summaries.

Daniel noted some important upcoming dates. The next CAG meeting is August 8. The August 22nd CAG meeting will be cancelled. On September 5 at 9 a.m., the BOS will host a special meeting to receive an update on the CAG process. CAG members are requested to attend. The next CAG meeting will be on September 12. After that, we expect to be meeting sometime in October with the 3rd, 10th and 24th as potential dates. Daniel provided a brief review of the CAG process to date and then introduced James Drew as the newest CAG member. James was appointed by the BOS to fill the vacancy created when Matthew Shapero resigned from the CAG due to his relocation to Southern California.

2. Presentation of State Cannabis Regulations

The bulk of the meeting focused on presentations by Amber Morris, the Branch Chief, CalCannabis Cultivation Licensing, California Department of Food and Agriculture, and Arthur Wylene and Paul Smith, Rural County Representatives of California (RCRC). To start, the RCRC

representatives provided some information about their organization. RCRC is a member organization that includes 35 rural counties, including Nevada County. RCRC lobbies and advocates on behalf of rural county government. They seek to help policy makers understand and respond to the unique needs of rural counties. They also emphasized that the presentation is not an avocation for cannabis—it is intended to be informational and explain the consequences of the different routes that can be taken.

Key Documents and Policies

The presentation started with information about key documents and policies that have influenced cannabis policy at the federal and state level. These include two memos from the US Department of Justice: the Ogden Memo and the Cole memo. The Ogden memo noted that federal resources would not be focused on actions related to the medical use of marijuana. The Cole Memo provided guidelines for state and industry players to minimize federal intervention in enforcement of activities related to distribution of marijuana to minors, revenues from sales, diversion of marijuana from states where it is legal and activities related to other drugs or illegal activity. Basically, it made these a low priority for prosecution. This is not a law and the memorandum has not been disavowed by the current administration. The Cole memo is relevant to track and trace. They also mentioned the Orbacher amendment, which puts a restriction on the DOJ spending federal dollars related to medical marijuana. It expires September 30. It's a liberalization as to the reach of the amendment and only applies to medical and not adult use. The current administration recommends not renewing this amendment.

They reviewed key legislative activities at the state level, including the 2015 Medical Cannabis Legislative framework established by state legislature and Prop 64, which was approved last November.

They noted some key provisions, including that Prop 64 allows 6 plants indoors in a residency or accessory structure. Local governments can't ban this but the law allows them to "reasonably regulate."

They shared an example where the City of Fontana was sued because the restrictions they put in place, in their totality were considered by the plaintiff, the ACLU, to be unreasonable. They included a requirement for a permit, landlord consent, inspection of grow site required, background check for all personal growers and exclusions for people with certain criminal backgrounds. The City put these provisions in their ordinance. The fact that it has been challenged gives us some idea of where the line is, but the case has not yet been resolved by the courts. It was filed recently, on June 5, 2017, and the case is pending in Superior Court. It will likely take 12-18 months for a decision, then another 12-18 months for an appeal.

They noted two key points regarding restrictions the County could put in place: 1) The County can prohibit use while in County-owned facilities; and 2) Employers have the right to maintain a

drug-free workplace. An employer can impose a zero-tolerance rule if that is what is desired in that workplace.

They clarified the reference to the 1,000 foot versus 600 foot setback. 1,000 foot applies to personal use, 600 foot applies to businesses.

Cannabis Budget Trailer Bill

In late June, the Cannabis Budget Trailer Bill created one framework to administer the policies. Other states encouraged California to have one set of rules so compliance is easier for everyone. It helps ensure compliance and helps people comply. However, a local jurisdiction can separate the two and allow only medical cannabis if they want.

The Cannabis Budget Trailer Bill must follow the Prop 64 model, and it will need a two-thirds vote to change. This bill is the law of the land today. It went into effect on June 27th and Nevada County is not waiting until January 1st.

Key Local Control Provisions in the Cannabis Budget Trailer Bill abolished the dual licensing scheme. It's been suggested a local jurisdiction adopt a licensing scheme at the local level. This is not prohibited, nor is it required. Ordinance 26055 (d) of the MCRSA was very clear—without a local permit, no license will be issued. This changed with Prop 64, in which the State can't issue a license that is in violation of local statutes. The RCRC suggests that local entities not be silent on topics- it's better to be as clear as possible.

Regarding state verification of local approval, how does state know what the local rules are? There needs to be some type of communication, proceeding via the following steps: 1) The jurisdiction must send a commercial ordinance to the state bureau. This gets circulated to the other agencies. 2) The agency sends the local jurisdiction a notification asking, are they or are they not in compliance with the local ordinance? There are three options for response: if yes, the state proceeds. If the local jurisdiction says no, the state denies the application. If the local jurisdiction does not respond at all within 60 business days, the state can presume the applicant complies and proceed with licensing. This is not quite a "yes," since if they find out the person is not in compliance, the locals can notify the state and not renew the license.

Another key aspect of the Trailer Bill is ending the collective and moving to a strict licensing scheme. The law says that a year after state licensing authorities begin issuing commercial cannabis licenses, Health and Safety Code 11362.775 (providing for marijuana collectives and cooperatives) is repealed. The intent is to remove any grey area regarding what activity does or does not require a license. The state is working to see if applications can be accepted prior to January 1.

A CAG member asked what the BOS' position is on commercial activity. The response was that it was suggested that the County create a commercial approval process ahead of time and seek to align with some of the state license types. Another asked, can a County allow commercial activity for medical cannabis only? The response was "yes."

The Trailer Bill allows license exemptions for personal grows and patient caregivers, but these are still subject to local regulation.

There is a temporary CEQA exemption imbedded in SB 94, to incentivize locals to do the necessary CEQA work ahead of time. The exemption is in place through 2019, and applies to local ordinances.

A CAG member asked, if the County enacts a permitting ordinance and issues permits, do they have to comply with CEQA? The response was “yes.” The CAG member asked whether that means that if they don’t issue permits, there is no CEQA requirement. The response was that no, that isn’t quite correct. The ordinance typically requires CEQA. In addition, the approval of a permit is an action that can trigger CEQA.

If you’re in a local jurisdiction that provides for future permitting, no CEQA is required at the time of adoption; you just need to do CEQA review as permits are received. It encourages a process where the review is done once at the local level. The ordinance must be adopted by 2019 to qualify for this exemption. It allows CEQA to be done when individual applications come in. For the statewide program, they have been unable to analyze certain areas because they don’t know where the grows will be. In terms of CEQA, you must look at the baseline and what impacts licensing will have on that baseline. It could be beneficial, since permits and requirements may reduce the impacts and baseline.

CEQA must only be done once, and done locally at the site-specific phase. The person applying is the one who would pay for the CEQA review. There is a timeline on CEQA: past July 2019, you miss this exemption.

A CAG member whether the patient caregiver exemption addresses this. The response was that the patient caregiver is exempt from state licensing, but not exempt from CEQA.

Other Regulations

A County has both explicit and broad taxing authority over cannabis. The process for approving a tax on cannabis is the same—it still must go to the voters. The language in Revenue and Taxation Code 34021.5 cuts the resolution timeline from seven years down to three years. This will lead to lawsuits being filed.

The speakers briefly reviewed cannabis license types. There are certain limitations on licensing types, and the State will likely distinguish between adult use and medical use. A CAG member asked: if you have a specialty cottage license, is it one or the other? The response was that one person can have a combination of licenses that total up to 4 acres.

There is no requirement that permitting must be in place by Jan 1, 2018. However, it’s advised that if you want to get into commercial growing, you should do it sooner rather than later. There is a priority for local applicants in good standing—they will go to the head of the line—so having a permitting process in place could be helpful.

If you don't have a local license, you can't get a state temporary license.

CalCannabis is deploying two technology projects by January 2018; one will allow cultivators to apply on line and the other is the track and trace system. The vendor for the Track and Trace system has been selected, and they have a solution in place.

Licensing requirements are based on legislation, which is complicated. It is not a simple or easy process. The law has dictated the requirements.

Regarding mobile deliveries, a local jurisdiction can prohibit or regulate them with their authority, but can't prevent delivery personnel from traveling through their jurisdiction on public roads.

Local enforcement has broad authority; State or County regulations cannot be interpreted to supersede or limit local authority for enforcement activities. Indoor and outdoor cultivation of cannabis must be conducted in accordance with both state and local laws. The California Department of Food and Agriculture is authorized to enter into cooperative agreements with County agricultural commissioners to administer, investigate, inspect and license medical cannabis cultivation.

Cities may have a regulatory function. For facilities issued a state license that are located within a city's incorporated area, the city has full authority to enforce the regulations if so delegated by the state.

Background checks will be required for licensing. Local requirements are allowed to exceed state requirements, but this is likely to be litigated. The state licensing process will be strict.

Retailers are required to implement security measures to deter and prevent diversion of cannabis and related products. They are also required to notify the licensing authority and appropriate law enforcement authorities within 24 hours after theft or diversion.

Transport requirements focus on transport between licensees and licensed distributors. They authorize limited cannabis transport between licensees and licensed facilities, with requirements for bonding and insurance, minimum security measures, electronic shipping manifests, and prohibit local government from preventing transportation by a licensed distributor on public roads.

A unified regulatory scheme confers much regulatory authority to state licensing agencies. The Bureau of Cannabis Control regulates retailers, microbusinesses, distributors and testing laboratories; the Department of Public Health Licenses, manufacturers; and the Department of Food and Agriculture Licenses regulates cultivators and nurseries.

Proposed draft regulations from all three licensing agencies were released on April 28, 2017. These will be withdrawn once the Cannabis Budget Trailer Bill is signed into law. New

emergency regulations will be put forth in the summer for both uses. CDFA released a draft EIR for the state licensing program for both medical and adult use on June 15, 2017 with the comment period ending on July 31st.

Proposed cultivation regulations apply to definitions, application, licensing, site specific requirements, records and track and trace, inspections, and enforcement.

Medical cannabis regulations will need to be withdrawn, but they were written so they could be recycled. The State will provide a document with the comments that have been made. Out of 58 pages, there are about 10 areas that the RCRC are going to be reviewing. Emergency regulations put forth in the summer will be final but temporary; the State will have 360 days to finalize them.

For information about the proposed cultivation regulations, the regulations set for medical are a good place to look. The new regulations will cover adult and medical uses. There was a question about cannabis as it relates to agriculture. Cultivation is covered as related to agriculture, but the coverage is only for the act, not for other uses.

Prop 64 was relatively silent on the issue of drugged driving. The state legislature is aware of the gaps and will likely weigh in on this.

Regarding the State tax aspects of Prop 64, the Board of Equalization collects taxes. Proceeds from taxes are placed in the Marijuana Tax Fund and, after covering administration costs, are dedicated as follows: 60% to youth-related use; 20% to environment-related use; and the remaining 20% to local governments (those that do not ban outdoor cultivation or retail sale) and the CHP.

Some rural counties are restricted to personal grows; these include Glenn, Madera, Mariposa and San Benito Counties. Rural counties sanctioning commercial grows include Humboldt, Inyo, Mendocino, Santa Cruz, Sonoma, Trinity and Yolo (for medical only).

Industrial hemp has also been decriminalized and regulated by Prop 64, but it is separate from cannabis and will be regulated separately.

Many Native American tribes want to get into the market. The issue is seeking a license from the state. They can grow, sell, and do everything on tribal land without restrictions. But if they want to sell, it changes, since that requires transportation between licensees.

CAG Comments and Questions

Daniel closed the discussion by asking for comments and question from the CAG. Several CAG members expressed their appreciation to the speakers. Additional comments included:

- A request was made for information from other counties.
- A CAG member expressed concern about overburdening our County. They asked, have other Counties found a way to streamline their permitting process?

- Response: The legislation assumes they have been vetted at the local level. The belief is this is a cooperative process. At the local level, we need to address the local impacts.
- We should populate the ordinance matrix (from meeting #2) with the counties referenced by RCRC.
- The burden for enforcement, inspection etc. is on the local level. We need to keep perspective on the size of County government.
- We should follow the state regulations as much as we can. We need to focus on issues relevant to Nevada County.
- Is track and trace in place and ready to go? How do users access it?
 - The State covers the costs, but costs are passed on to the licensee.
- Regulated product should not be moving randomly in cars. Transportation and delivery is heavily regulated. Law enforcement needs to be able to verify that the licensee is in compliance.
- Does RCRC has a website we can look at?
 - Yes, www.rcrcnet.org, but this presentation is not available on the website. It is easier to call for information.
- A CAG member shared concerns about the County having the resources for a good monitoring program.
- Do you have any caveats for us as we start on our recommendations?
 - One lesson we've learned is that you are going to get sued and must be prepared. Be clear and specific—think through the logic tree. The more you can answer questions before adoption, the more likely it is that issues will be resolved sooner rather than later.
- This process is going to be expensive for the Agricultural Commission. Glenn and Yolo Counties have 1-acre grow sites. Neighbors didn't like having three 1-acre grow sites, and now growers there are hurting. It may also be that sites may not have previously been allowed.
- The suggestion was made to encourage permits versus just relying on zoning. We want to be clear on who can get a permit; the ordinance will address this. Also, we want to help minimize lawsuits by being clear at the local level.
- In every zone, there are uses permitted and conditional use permits. Also, the gaps in CEQA must be dealt with at state level, at County expense.
- I am appreciative that CEQA is site specific.
- A CAG member asked about license types and what they are projected to look like.
 - The smallest types are what the people have been asking for—Type 1C.
- Can you stack license types?

- Response: There's a big discussion going on with this. We could limit ability to stack. SB 94 briefly reviewed the patient caregivers, and we have eliminated collectives. Caregiver cultivation is still subject to local control. They can limit the number of plants and set other limits.
- I don't want the ordinance to permit something that triggers the need for a state license.
- The Nevada County Cannabis Alliance put together two binders that are a great resource. CAG members are free to share the information.

Daniel thanked speakers and then opened up the floor for public comment.

3. Public Comment Period

The following comments were contributed by members of the public:

- If a local County decides they want to stop the state regulations and not develop their own ordinance, would that put all the responsibility on the State?
- We're in position for a paradigm shift, in which cannabis goes from an underground economy to a legal, economic development opportunity which involves adopting the state regulations. We need to look at other frameworks. Why are you not looking at the framework components? The framework listed a range of components. What are the pathways to success? It's a market opportunity.
- I'm concerned about the potential increase in security lighting in residential areas. What are County regulations to control nuisance lighting? LED lights are very bright. I value the dark night sky.
- What does a microbusiness include? What are requirements for a processing center? If feds come to my farm and I'm permitted and licensed, who will protect me? Will the County or State help?
- This process brought cannabis advocates out. I would like our county to be a medical cannabis county. Recreational cannabis is misunderstood. The sooner we can get this done, the better the economic and health benefits.
- This is a sea of complexity, and it begs for simplicity. The more locally variant you are, the more costs and responsibility you bear. Stay with the State and have a good reason when we stray from it.
- There were many questions about funding at the last meeting. If you are a County and you ban outdoor cultivation, will you be ineligible for state funding? Advocating for personal outdoor grows and commerce can make us eligible for funding or else we will have to rely on our own resources.

- The state regulatory framework is complex to say the least. The regulations will function as a natural screen for those not able to meet the requirements. The ordinance shouldn't be so complex that it drives away anyone but the most well-resourced.
- Give us something to comply with, and have it allow us to compete in the market. 10,000 sq. foot is not a huge grow. Personal grows should have a completely different set of rules.
- The process allows for traits and growing practices that define the appellation of origin. They would need to have local and state licenses to push forward. We hope to get the license for these soon. Question: Where are we in the state appellation process and is there any process for us if the County doesn't grant local licenses?
- A member of the community invited CAG members to come see his grow site as a best practice. The state's process is going to be very difficult, yet currently cannabis is a huge part of the economy. He asked that the County have respect for the work that has been done. If the County creates a bunch of hoops to jump through in order to get in line just to do the same with the state, you are encouraging the black market. Also, make the system self-reporting, like our taxes.
- I live across the street from a grower. We smell it and can't open our windows due to the smell. We have grow houses that light up the sky at night. Grow it where it's not in the face of the neighbors, and won't impact neighborhoods.
- Thank you to CAG members who are using the binders provided by the Nevada County Cannabis Alliance. Also, the Alliance recently completed a survey and we are in the process of analyzing the results.

4. Review of Upcoming Meetings and Next Steps

Daniel announced that August 8th is the next meeting, and that the CAG will continue with items they didn't get to during this meeting. The CAG is on the BOS' agenda for September 5. The next CAG meeting following that will be on September 12.

No wallgraphic notes were taken during this meeting. Comment cards and comments submitted via email by participants are attached as Appendix A.