



NEVADA COUNTY PLANNING COMMISSION
STAFF REPORT

APPLICANT/OWNER: Nevada County

REPRESENTATIVE: Nevada County

HEARING DATE: December 8, 2022

FILE NO: PLN22-0160, ORD22-2, EIS22-0012

PROJECT: A Zoning Ordinance amendment to Section L-II 3.30 of Chapter II Zoning Regulations to amend the County’s Commercial Cannabis Cultivation Ordinance. The draft ordinance proposes the following general changes in addition to other minor changes, clarifications, and clean-up: 1) Allow adult use cultivation in addition to medical use cultivation. 2) Combine Commercial Cannabis Permit (CCP) and Administrative Development Permit (ADP) application/permitting process. 3) Add standards and requirements for additional license types for distribution, non-volatile manufacturing, microbusinesses, and retail sales. 4) Remove onsite residence requirement for adjacent parcels included in common ownership or control of overall Premises. 5) Allow a percentage of Support Area to be used for additional Canopy Area and/or manufacturing/distribution operations. 6) Allow aggregate parcel sizes of multiple parcels to be used to calculate allowed maximum canopy sizes. 7) Modification to setback requirements to increase setbacks for larger cultivation sites, modify setbacks to sensitive sites to be consistent with State requirements, and modify setbacks for shared property lines of a Premises. 8) Add parking requirements. **PROJECT LOCATION:** Countywide. **RECOMMENDED ENVIRONMENTAL DETERMINATION:** Recommend adoption of the 15164 Addendum to Environmental Impact Report (EIR18-0001, SCH#2018082023) and CEQA Findings. **RECOMMENDED PROJECT ACTION:** Recommend approval and adoption of the Nevada County Commercial Cannabis Cultivation Ordinance amendments.

PROJECT LOCATION: All unincorporated areas of Nevada County

ASSESSOR’S PARCEL NUMBERS: All unincorporated areas of Nevada County

PROJECT PLANNER: Brian Foss, Planning Director

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|-----------------------|------------------------------------|--------------------|---------------|
| Zoning: | AG, AE and FR | ZDM #: | All |
| General Plan: | Rural | Schools: | All Districts |
| Water: | Nevada Irrigation District / Well | Recreation: | All Districts |
| Sewage: | N/A | Lot Size: | N/A |
| Fire: | All Districts | Sup. Dist.: | All Districts |
| Flood Map: | All unincorporated areas of County | | |
| Prev. File #s: | ORD18-2, EIR18-0001 | | |

ATTACHMENTS:

1. Draft Resolution to Adopt the CEQA 15164 Addendum
 2. Draft Ordinance L-II 3.30 Cannabis Cultivation
 3. Redline Version of Proposed Text Amendments
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BACKGROUND:

Since the original project was approved by the Nevada County Board of Supervisors in May of 2019, user groups and stakeholders have requested updates to the Cannabis Cultivation ordinance. The County has received input, and continues to solicit input from residents, cultivators, and other stakeholders requesting suggestions for updates and modifications to the original ordinance. Most recently, the County circulated the proposed updates in a Notice of Opportunity for Comments on Proposed Zoning Ordinance Amendments to Regulations for Commercial Cannabis Cultivation (County File No. PLN22-0160, ORD22-2, EIS22-0012) for a 30-day review period that closed on October 3, 2022. This was done prior to finalization of the ordinance evaluated in the Addendum and to incorporate public comment.

The updated ordinance is being used to balance the demand for cannabis and the feasibility of starting a cannabis business. Cannabis cultivation occupies a very small percentage of the overall 612,900 acres of County land. Cannabis cultivation has experienced a very small expansion in comparison to what was anticipated after approval of the original ordinance. Since the original ordinance was passed in 2019 a total of 207 permits have been issued for cannabis cultivation in the unincorporated area of the County totaling under 20 acres. This is an extremely small percentage of the approximate 450,996 acres of County land zoned general agriculture (AG), exclusive agriculture (AE) and forest land (FR) which provide opportunities for cultivation.

Based on the above information, desire to support the industry, and public comment, additional modifications and adjustments to the original ordinance were made and are presented in this report.

PROJECT 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.

PROJECT DESCRIPTION:

The updated ordinance is intended to respond to the needs of the cannabis cultivation community and to the evolving state laws and regulations and to address land use compatibility with neighboring parcels. This intent is matched by providing a more comprehensive process and viable business model to enable farmers to be involved in the industry and compliant with County rules and regulations. These changes have been made while being sensitive to concerns and discussions with other members of the public and with consideration for potential environmental concerns.

The updated ordinance does not change the three zones (AG - General Agriculture, AE - Agriculture Exclusive, and FR - Forest) in which cannabis operations would be authorized, but it would allow small areas of properties to be used for cannabis related uses including manufacturing or manufacturing opportunities, distribution, and retail sales, as well as operation as microbusinesses.

A generalized list of the proposed changes and how they relate to the updated ordinance is shown immediately below. All updates are considered minor and been made to clarify the permitting process and make the cultivation process within the County more efficient and responsive to the needs of the industry while balancing the potential impacts to neighborhoods.

1. Allow adult use cultivation in addition to medical use cultivation.
2. Combine Commercial Cannabis Permit (CCP) and Administrative Development Permit (ADP) application/permitting process.
3. Add standards and requirements for additional license types for distribution, non-volatile manufacturing, retail sales, and microbusinesses.
4. Remove onsite residence requirement for adjacent parcels included in common ownership or control of overall premises.
5. Allow a percentage of previously included Support Area(s) to be used for additional Canopy Area and/or manufacturing/distribution operations.
6. Allow aggregate parcel sizes of multiple parcels to be used to calculate allowed maximum canopy sizes.
7. Modifications to setback requirements:
 - a. Increase setbacks for larger cultivation sites,
 - b. modify setbacks to sensitive sites to be consistent with State requirements, and
 - c. modify setbacks for shared property lines of a Premises.
8. Add parking requirements.
9. Other minor changes and language clarifications.

STAFF COMMENT:

1. Adult Use: The amended ordinance proposes to remove the limitation of cultivated cannabis for medical use only and add the allowance for adult use. This change does not affect any land use impacts. There is no change in the process once the cannabis product is cultivated and distributed through the State's permitting system based on the classification of medical or adult use.

2. Combine Permit Types: The ordinance proposes to combine the processing of application into one standardized process. The Cannabis Cultivation Permit (CCP) would be eliminated and all cannabis applications regardless of canopy size or operation would be processed with an Administrative Development Permit. No land use impacts would occur as a result of this change. This would ensure more consistency in the permitting process.

3. Additional License Types: the proposed Ordinance would add four license types to the activities allowed onsite of a permitted cultivation site. The additional license types would include Manufacturing, Distribution, Retail Sales and Microbusinesses.

“Manufacturing” or “Manufacturing Operation” relates to the extraction process (removal/isolation of cannabis oils from the plant), infusion process, post-processing, remediation, and packaging and labeling, preparing, holding, and storing of cannabis products, or doing the same with other components or ingredients. Under the updated ordinance manufacturing would be allowed but be required to use non-volatile methods that could include using carbon dioxide, ethanol, and nonhydrocarbon-based or other solvents such as water,

vegetable glycerin, vegetable oil, animal fat, and glycerin. All manufacturing would be required to be conducted on the licensed premises and must register and operate the licensed premises as a shared-use facility in accordance with State requirements.

“Distributing” or “Distribution Operation” generally relates to the movement of cannabis and cannabis products between cultivation, manufacturing, or distribution premises; the movement of finished cannabis goods to retail premises; providing storage services to other licensees; and arrange for testing of cannabis goods. However, a distribution license under the updated ordinance will only be used for the transport of cannabis cultivated and/or processed on a given premise and taken to a local and state license holder for manufacturing, retail, and/or testing. Storage will only be allowed for products cultivated on the premises.

“Retail Sales” – (a) Storefront Retail Sales - refer to a building, room, or other area that is open to the public, and that is on the licensed retailer or licensed microbusiness premises. If properly licensed, retailers are authorized to engage in retail sales in which cannabis goods are sold or displayed. Delivery of cannabis products will not be allowed. (b) Non-Storefront Retail Sales – means conducting retail sales exclusively by delivery as defined in Business and Professional Code section 26001(o) and is closed to the public.

Storefront Retail sales would require the processing of a Use Permit. This would require additional CEQA review and analysis and require public noticing and a public hearing. The Use Permit is a discretionary process and would require Planning Commission approval. Neighborhood compatibility, traffic impacts, noise, lighting, signage and other environmental impacts would be evaluated on a project-by-project basis. Standards of the ordinance would still apply to a potential Storefront Retail business but site specific CEQA and land use compatibility would need to be considered.

Non-Storefront retail sales could be allowed through the Administrative Development Permit but would not allow public access or result in noticeable changes to the cultivation operation. The non-storefront retail sales allows the grower to transport the product to retailers and customers rather than only to a distributor.

“Microbusiness” – is an operation that engages in at least three (3) of the above commercial cannabis activities: (cultivation, manufacturing, distribution, and retail sales). Similar to the other uses and for each use on a microbusiness site, the proprietor must comply with all the rules and requirements (state and local) applicable to the respective activities. In accordance with Department of Cannabis Control (DCC) requirements microbusinesses, would be required to have a maximum cultivation area of 10,000 total square feet (sf), manufacturing must use of non-volatile solvents, mechanical extraction, or infusion, can only use distribution for transport, and can have a storefront or non-storefront.

4. Onsite Residence Requirement: The current ordinance requires an onsite residence for any parcel to cultivate the maximum canopy size allowed based on the parcel size. The current Ordinance does allow an adjacent parcel under common ownership or control to contain parts of the operation without another residence however, the total canopy size allowed by the largest parcel is the maximum size allowed across all parcels included in the premises.

The proposed ordinance would allow all parcels included in the operation's premises to cultivate the maximum canopy size allowed on each parcel based on the property size without the need for an additional residence on each parcel. A residence must still be located on one of the parcels included in the premises for the permitted operation.

For example, two adjacent parcels under common ownership or control, both 10 acres in size, would allow a total canopy of 5,000 square feet spread over both parcels unless there was a residence located on each parcel. In order to maximize the allowed canopy sizes on each parcel another residence would be required on the vacant parcel for a total of 10,000 square feet of canopy.

Under the proposed ordinance the parcels could accommodate 10,000 square feet spread over the two parcels with only one residence on either parcel. The amendment is intended to alleviate the trend of developing substandard housing on vacant parcels in order to achieve a larger canopy size. The proposed ordinance changes would not increase the net canopy coverage allowed currently on both parcels separately.

5. Use of Support Area: The proposed ordinance includes a provision to allow of to 55% of the allowed support area to be transferred and used as canopy area. Currently the ordinance allows 90% of the canopy size to be used and developed for support uses which could include structures and graded areas for processing, drying, and storage. An example would be a 10-acre parcel allows up to 5,000 square feet of canopy and 4,500 square feet ($5,000 \times 90\% = 4,500$) of support area. The proposed ordinance would allow 55% of the 4,500 square foot support area to be used for additional canopy which would equate to a total canopy size of 7,475 square feet leaving 2,025 square feet for support area. The total area dedicated and developed for the cannabis operation would remain at a total of 9,500 square feet consistent with the existing ordinance allowance.

The intent of this change is to allow for more flexibility in utilizing support areas for other activities. The original ordinance and supporting EIR identified a possible disturbance area of canopy area and 90% of the canopy size to be used for supporting activities. With the proposed changes there is no net increase in the amount of land that could be disturbed, developed and used, only the types of activities associated with the operation would be allowed in the support areas. This provides more options for the cultivator to utilize the areas of the property based on the farm's needs and operating plans.

6. Aggregate Parcel Sizes: The proposed ordinance would allow larger canopy sizes on larger parcels and the use of multiple parcels to be used to be counted toward the total acreage to avoid subdivisions of land.

Two examples of the current ordinance and proposed ordinance scenarios are shown graphically below. Figure 1 show the current ordinance allowance in that an 80 parcel would allow a maximum of 10,000 square feet of canopy and one residence. The parcel would need to be subdivided into 4 parcels and 3 additional houses would need to be constructed in order to grow up to 40,000 square feet of canopy. Figure 2 depicts the proposed ordinance requirements which would allow the 80-acre parcel to remain whole, allow up to 40,000 square feet of canopy and not require the construction of additional houses or more site disturbance.

Figure 1 – Existing Ordinance



Figure 2 – Proposed Ordinance



The second example of the proposed changes to allow aggregate parcels sizes is shown below. This situation is like that described above regarding the onsite residence requirement. The current ordinance only allows the maximum canopy size to be based on the largest parcel included in the premises. Figure 3 below shows 2 adjacent parcels, one 13.65 acres in size and one 7 acres in size. Under the current ordinance a maximum of 5,000 square feet of canopy would be allowed based on the fact that no parcel is over 20 acres. Figure 3 depicts the proposed ordinance requirements which would allow both acreages to be combined for a total of 20.65 acres that would allow up to 10,000 square feet of canopy.

Figure 3



7. Setbacks: The proposed ordinance includes modifications to the setback requirements for canopy and support areas. The current ordinance requires 100-foot setback from all property lines for all canopy and support areas. The proposed changes would allow operations that include multiple parcels to have reduced setbacks from the internal, shared property lines. The proposed setbacks from internal property lines would be 30 feet for all structures including hoophouses. The setbacks for outdoor canopy that does not include any structures can be zero feet. The 30-foot setback is required for structures for consistency with all other structure requirements prescribed by the zoning ordinance and is necessary for fire safety, defensible safety, and access to natural light and ventilation. The zero setback is proposed since the outdoor canopy areas would not include any structures or include any visually obstructive or flammable materials. Figure 4 below depicts the proposed allowable setbacks for outdoor cultivation with not structures of any kind. Figure 5 below shows the standard 30-foot setbacks for structures to the shared property lines of the parcels included in the premises of the operation.

Figure 4

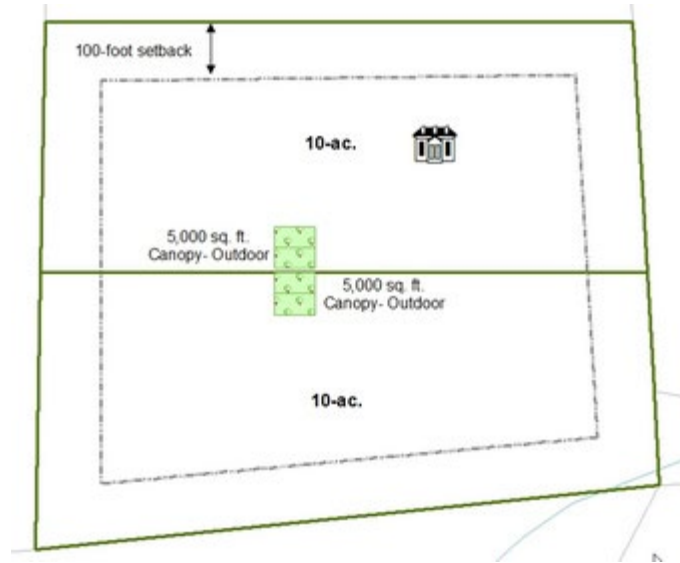
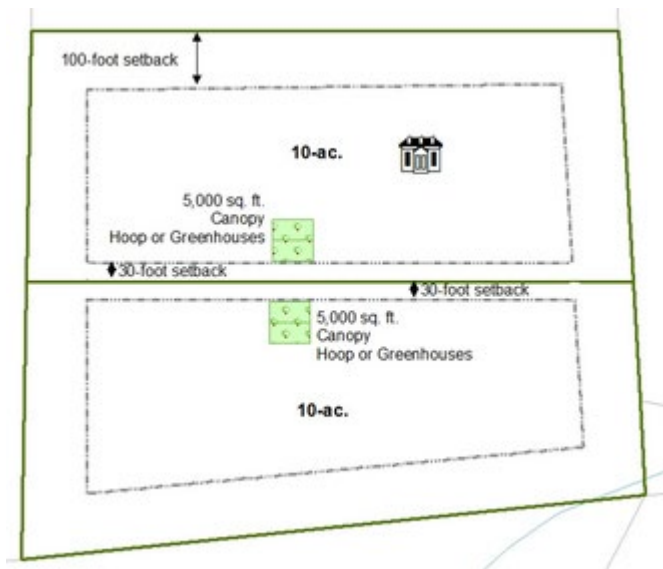


Figure 5



Additionally, setbacks would be increased for canopy sizes that are over 10,000 square feet. Canopy sizes that utilize the allowed support areas and are between 10,001 and 20,000 square feet would require a 150-foot setback from external property lines and canopy sizes 20,001 to 40,000 would require a 200-foot setback from exterior property lines.

It should be noted that the increased setbacks would only apply to new operations and the new canopy/support locations after the ordinance is approved. The increased setbacks would not be retroactive to existing permitted sites. No modifications or permit amendments would be required for permitted cultivation farms.

The setbacks to sensitive sites are proposed to be modified from 1,000 feet to 600 feet. The 600 feet setback is consistent with State regulations and is proposed in order to avoid confusion with local and State standards for licensing.

8. Parking Requirements: Parking requirements are proposed to be clearly defined in the revised ordinance. The Zoning Ordinance currently does not include standards for the uses allowed by the cannabis regulations. A policy was developed in 2020 to identify the parking requirements for cannabis cultivation operations and the same requirements are now being codified as part of the proposed ordinance amendments and are as follows:

Standard Parking: One regular space per employee shall be provided onsite.

Accessible Parking: The accessible parking standards for Commercial Cannabis operations shall be in accordance with the most recently adopted version of the California Building Standards Codes. These standards will be in accordance with Public Accommodations as outlined in Chapter 11B of the California Building Code, Accessible parking is required only when there are fully permitted commercial accessory structures such as processing structures, office buildings, and greenhouse structures. Ag exempt structures do not require disabled accessible parking facilities.

Parking spaces for non-ADA spaces may be gravel or other compacted surface capable of supporting vehicles. If employees are living onsite parking spaces required for the residence may be credited toward the total employee spaces required onsite (up to 2 spaces per legal dwelling). ADA parking spaces (if required) may be counted in the total required parking space count (i.e. 7 employees proposed, 6 regular spaces and 1 ADA space for a total of 7). Any parking spaces provided in excess of the required parking are not required to meet County standards. Driveway standards are required to be met for all cannabis projects regardless of parking requirements.

9. Minor Changes and Clarifications: Previous Findings numbers “1 through 14 and 16 through 21”, were all struck from the introduction section of the ordinance. The former text provided a summary of state legislation. The discussion also includes a brief overview of the intent of the original ordinance. This background information is not necessary since the ordinance is not a stand-alone document. The ordinance regulations are part of the overall larger Nevada County Zoning Ordinance and the reformatting was completed to be consistent with the format of all the other sections of the Zoning Ordinance.

An allowance for up to 1,000 gallons of liquified propane is proposed with the revised ordinance language. The existing ordinance only allowed up to 55 gallons of liquified propane, however, the small amount of onsite storage was not feasible for supplying cultivation operations. Significant deliveries of fuel would be required in order to maintain the acceptable levels of propane needed to support cultivation activities. The increased amount would still require oversight and permitting through the Environmental Health Department and Fire Districts and would not pose an increase in hazards.

Language regarding compliance with a property’s deed restrictions and/or Codes, Covenants and Restrictions (CC&R’s) is proposed. While the County does not enforce CC7R’s language was

added so that prospective applicants are made aware that some neighborhoods may prohibit commercial activity.

ENVIRONMENTAL REVIEW:

The environmental document prepared for the proposed ordinance amendments is an Addendum to the Nevada County Cannabis Cultivation Ordinance EIR that was originally published on January 11, 2019, State Clearinghouse (SCH #2018082023). The Final EIR for the project was certified by the Nevada County Board of Supervisors on May 14, 2019. Over the last three years, numerous cultivation permits have been issued under that guidance, but based on public input and request, and a desire by the County to be responsive to comments, reduce neighborhood impacts and to streamline the permitting process, minor changes have been proposed. The changes are included in a revised ordinance. The Addendum evaluates whether the proposed modifications to the ordinance, would result in any new or substantially more significant effects or require any new mitigation measures not identified in either the 2019 Final EIR. The Addendum, together with the 2019 Final EIR to be considered the environmental document for the consideration of the approval of the updated ordinance.

Based on the review and analysis provided in the Addendum, it was determined that the updates to the original ordinance would not cause any new significant effects not identified in the previous documentation nor would the update result in substantial or significant effects not previously disclosed. As such, no new mitigation measures would be required, but all previously adopted mitigation would remain and be implemented as appropriate on a project-by-project basis. There are no substantial changes to the circumstances related to the project and there is no new available information with respect to updated project that would cause new or substantially more severe environmental effects that were not identified in the previous document.

As noted, the Addendum incorporates by reference the mitigation measures detailed in the 2019 Final EIR. Thus, the updated project would still be within the framework of the evaluation for the original project as documented in the 2019 Final EIR and further environmental review for this updated project, beyond that contained in the Addendum is not required. Please see the attached Addendum for a complete discussion of the environmental analysis.

SUMMARY:

The updated ordinance is intended to respond to the needs of the cannabis cultivation community and to the evolving state laws and regulations as well as ensuring there are no increased impacts on neighboring properties or the environment. This intent is matched by providing a more comprehensive process and viable business model to enable residents to be involved in the industry. These changes have been made while being sensitive to concerns and discussions with other members of the public and with consideration for potential environmental concerns.

The updated ordinance does not change the three zones (AG - General Agriculture, AE - Agriculture Exclusive, and FR - Forest) in which cannabis operations would be authorized, but it would allow small areas of properties to be used for cannabis related uses including manufacturing or manufacturing opportunities, distribution, and retail sales, as well as operation as a microbusinesses.

All updates are considered minor and been made to clarify the permitting process and make the cultivation process within the County more efficient and responsive to the needs of permittees as well as insuring protection of surrounding land uses equal to the original ordinance protections. Staff is recommending that the Planning Commission recommend to the Board of Supervisors approval of the CEQA 15164 Addendum and the Zoning Ordinance Section L-II 3.30 text amendments.

RECOMMENDATION:

- I. Environmental Action: Recommend that the Board of Supervisors adopt a Resolution approving the Addendum to the Certified Final Environmental Impact Report (EIS18-0001, SCH# 2018082023) pursuant to Section 15162 and 15164 of the California Environmental Quality Act Guidelines
- II. Project Action: Recommend that the Board of Supervisors adopt the attached Ordinance (ORD22-2) amending Chapter II of the Nevada County Land Use and Development Code Sections L-II 3.30.

Respectfully submitted,

Brian Foss

Brian Foss, Director of Planning