

Julie Patterson-Hunter

From: Julie Patterson-Hunter
Sent: Monday, May 6, 2019 4:45 PM
To: All BOS Board Members
Cc: Alison Barratt-Green; Alison Lehman; Sean Powers; Brian Foss
Subject: FW: Letters to the Board of Supervisors for May 7 Meeting
Attachments: Board of Supervisors 5-2-2019.docx; RA-10 Zoned Parcels May 2, 2019.docx

District 2

From: Gary Baker <gary@plan-aire.com>
Sent: Monday, May 6, 2019 4:39 PM
To: Julie Patterson-Hunter <Julie.Patterson-Hunter@co.nevada.ca.us>
Subject: Re: Letters to the Board of Supervisors for May 7 Meeting

Thank you. Attached are the two letters.

Gary

From: Julie Patterson-Hunter
Sent: Monday, May 06, 2019 4:29 PM
To: Gary Baker
Subject: RE: Letters to the Board of Supervisors for May 7 Meeting

Hi Gary –

Were they sent separately to each Board member's email address, or directly to the ALIBOSBoardMembers@co.nevada.ca.us email address?

If the letters went to each member separately, I would not necessary know that an email was received.

If you can resend to the above address I can include the letters with the rest of the correspondence.

Thank you for bringing this to my attention!

Julie Patterson Hunter, CCB
Clerk of the Board

From: Gary Baker <[REDACTED]>
Sent: Monday, May 6, 2019 4:24 PM
To: Julie Patterson-Hunter <Julie.Patterson-Hunter@co.nevada.ca.us>
Subject: Letters to the Board of Supervisors for May 7 Meeting

Julie

Last week on May 1st and on May 2nd I sent two different letters to the Board of Supervisors and copied the Department of Community Development. Neither of those letters are shown in the correspondence for Tuesdays Hearing. Can you please let me know how these letters were omitted and how they can be included.

Gary M. Baker
Plan-aire

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May 2, 2019

Nevada County Board of Supervisors
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

Attention: Chairman Richard Anderson

Cc: Board of Supervisors

E-mail: planning@co.nevada.ca.us

Regarding: Comments on Cannabis Cultivation Ordinance

Submitted By:

Gary M. Baker
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Dear Nevada County Board of Supervisors

Please consider the following comments for the cannabis cultivation ordinance. These are not EIR related concerns, but practical suggestions for inclusion in the final ordinance based on real issues facing applicants in the preparation of planning and permitting documents to secure a cultivation license. As a cannabis cultivation planning and permitting consultants, we are involved with a number of projects where we are trying to obtain permits for converting existing cultivation sites into permitted facilities. Many of these issues can be resolved with just some minor changes to the language of the proposed ordinance.

1. Propane Tanks –

The ordinance is requiring applicants which have compressed gas storage tanks over 200 CF, which is 5.5 gallons of propane, to prepare a hazardous material business plan. Development of a hazardous business plan requires an inventory of hazardous materials, a site plan, an emergency plan and a training program for employees. This plan must be submitted to the state and then circulated to the fire department, hazardous materials response teams and local area regulatory groups. This is an onerous requirement for an existing propane tank on a residential / commercial cannabis property and would not only increase the paperwork load for an applicant but increase the paperwork and processing load for many public agencies who are already overburdened with paperwork. All residential propane tanks in Nevada County should be exempt.

2. Commercial requirement for existing structures –

The ordinance is requiring existing structures which are going to be used for cannabis related functions to be converted to commercial buildings. This requires new plans, calculations and upgrades to structures to meet these commercial and ADA requirements. For existing permitted structures which meet the ordinance setback requirements, please allow for a 2 year transition time to fully convert existing structures used for cannabis processing, drying, storage or other cannabis an adequate period to convert to commercial use buildings.

What we are witnessing is that the current language requiring a commercial building for processing and drying is pushing cultivation operators to transport plants after harvesting to offsite facilities for processing. Since standalone processing facilities are not allowed in Nevada County, local jobs are being lost and the cultivation site operators receive far less compensation for their cannabis product. Commercial buildings are expensive to construct and conversion of existing facilities is also cost prohibitive the way the current ordinance is being interpreted for the ADA bathroom (requiring separate sewer system – see below) and other conversion plans, engineering and construction costs. If these commercial requirements for existing buildings were phased in over a period of time, it would help many operators. The state permit process requires modification of an application if there are changes to the site plan once a permit is issued. The current State system practically requires a new application for site plan changes and while they are anticipating updating these requirements, currently making any changes to a site plan is barrier for cultivators.

3. ADA Compliant Bathroom –

Cannabis cultivation, as a commercial activity, requires an ADA compliant bathroom. Environmental Health is overestimating the number of employees at 12 on commercial cannabis sites while the EIR reflects about 3 employees onsite. The current requirement now being quoted by Environmental Health is the requirement for the construction of a new septic tank and leach field for the new ADA bathroom. As a comparison, a second home on the same site allows for a new septic tank and the use of the existing leach field with some expansion for the new bedrooms. The residential requirements for a sewer system in the second home ordinance would be higher than a commercial bathroom serving the generally seasonal needs for the cultivation site. A new leach field would have a far greater impact at the site, disturbing more land area, and having other environmental and setback restraints than just expanding an existing leach field. The number of 12 employees is unrealistic and is not consistent with the number of employees used in the EIR for traffic generation and employment.

4. The 25% Limit for Accessory Structures –

The 25% limit is unrealistic considering the actual area required for processing, drying, post-harvest storage; immature plant area, pesticide storage, hazardous materials storage, covered soils storage and the State required Administrative Hold Area. When the need for an ADA compliant bathroom, a hand wash station, is also included as well as areas for secure storage and administration record keeping, the 25% space limitation is completely unrealistic. The number should be a minimum of 90% to 100% of the size of the canopy.

5. Setback for Structures not Containing Cannabis –

The ordinance calls for a 100' setback area for cultivation and cannabis storage, processing, trimming or drying. However, in building areas where there is no cannabis stored, grown or processed, or areas where there are no employees, such as the soil storage area, pesticide storage areas, compost area or areas where tools and other garden related supplies are stored, should be considered exempt from the 100' setback requirement, and use the standard building setbacks as applicable.

6. Existing Cannabis Ordinance -

Further complicating the local cultivation issue this year is that the current ordinance, which is still in place, which allows for more than 6 plants on parcels depending on the zoning and lot size. Cultivators who have planted in accordance with the existing

ordinance, (which is the only ordinance currently in place), would not be in compliance with the new ordinance which sets a limit of 6 plants for personal use unless a commercial cannabis license is obtained for the property. There should be a transitional period for this year for those who have planted in conformance with the existing cannabis ordinance. If an applicant for a commercial cultivation license was compliant with the current ordinance they should not be penalized during the required site inspections as long as they did not exceed the number of plants allowed in the current ordinance.

7. County Interface and State License Transition Period –

The State's Temporary and Annual Licensing Program is seriously impacting cultivators. As of today there are only 2 valid Temporary Cultivation Licenses in Nevada County and the outlook for passing Senate Bill SB-67 is not looking promising, as was described in an article today as "it's dead". This bill would have extended Temporary Licenses until September 15, 2019 as long as an applicant had applied for an Annual License when their Temporary License was still active. Without any extensions there is no provision for operating within the States Cultivation Program without a valid Annual, Provisional or Active Temporary License.

The time frame to obtain an Annual State License is estimated by the California Department of Agriculture at 150 to 180 days, yet most licenses being issued now are for applications that were submitted in July, 2018. A county permit to cultivate is not a State License, and while passing a local ordinance is critical for those applying for State Licenses, there still is a considerable gap to overcome for applicants regarding this growing season with site inspections, (both county and state), as well as the commercial provisions of the County ordinance and the costs associated with all levels of compliance. Clearly there is no simple fix to the problems, but being aware of the issues facing those who are following the path to becoming fully licensed facilities is in everyone's best interest. This is just not a Nevada County problem as 7,849 Temporary Licenses have now expired statewide.

Obtaining Annual Licenses from the State of California is difficult, expensive and time consuming and as of Friday April 26, 2019 there were only 77 Adult Use Annual Licenses issued and 39 Medical Annual Licenses issued in the entire state. Also as of this date, there were 567 Provisional Adult Use licenses issued and 314 Medical Provisional licenses issued in the state. The State is working to issue as many Provisional Licenses as they can to applicants with valid Temporary Licenses. But if a Temporary License expires, a provisional license cannot be issued. There may be a few exceptions for applications that were pending, but for the most part most applicants will no longer be eligible for a Provisional License and with the emphasis now at the State to

turn out as many of these types of licenses as fast as possible, staff time devoted to Annual Licenses appears to be compromised. In other words, there could be a chance for only a very few cultivators in Nevada County to obtain a Provisional License for this year's cultivation season, but most will not and any applicant that did not have a Temporary can only apply for an Annual License which are much more difficult to obtain and are taking about 9 to 10 months to acquire. So of the 123 Temporary License holders in Nevada County only a very small number even have a chance to be permitted this season and everyone else is will probably miss the entire growing season as a State Licensed Cultivator.

It is important to recognize that all growers are in a transitional phase and that the conditions for obtaining licenses are outside of the cultivator's hands as well as the hands of the local agency. Everyone needs time to adapt to the real legal cannabis market and regulations, and while many observers can point out the many flaws in the State system, apparently the State does not recognize that there is an issue according to those very close to the decision makers.

When this process started in Nevada County about 3 years ago, growers were operating under a very different set of rules. While Proposition 215 passed in 1996 had many flaws the measure passed by the voters in 2016 also has flaws. Currently California is one of the few states where the traditional market (black market) has actually expanded after the legalization of cannabis according to the following article in the [New York Times](#)

In addition, the spot market price for cannabis ranged from \$1,500 to \$2,000 a pound just a few years ago, and as of last week that number was down to under \$600 per pound. For most cultivators there is a very high cost associated with the conversion of existing cultivation sites into commercial facilities, and many small scale operators just cannot afford these commercial improvements required for their sites. Between the cost of licensing, permits, environmental studies and consultants the average costs statewide on cultivation permitting is about \$10 to \$15 per square foot (\$50,000 to \$75,000 for a 5,000 SF canopy or \$100,000 to \$150,000 for a 10,000 SF canopy) in locations where there is a lead agency preparing an EIR (these figures do not any construction costs). Those planning and permitting costs are much higher in areas I locations where the applicants are being required to prepare their own environmental documentation.

Those who are trying to be compliant with all of the rules and obtain the required permits are being the most penalized in the cannabis marketplace. It is not just the cost associated with permitting that is hurting legitimate growers, it is the time required to obtain permits, the cost of compliance associated with the permits and all of the taxes, testing and business restrictions associated with the legal cannabis industry. It is no wonder that there are only just a few applicants for permits. But those that do apply

should not be unduly penalized during this transition period or overburdened with expensive or impractical local requirements.

Thank you for your consideration on these items.

We would appreciate your help on modifying some of these proposed regulations and provide transition time for the cultivators. By allowing more use of the existing permitted structures to be used for cannabis related activities and the others stated above would be appreciated by Nevada County cultivators who are trying to obtain cultivation licenses.

Gary M. Baker

Plan-aire, Licensed Landscape Architects

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May 2, 2019

Nevada County Board of Supervisors
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

Attention: Chairman Richard Anderson

Cc: Board of Supervisors

Regarding: Comments on Cannabis Cultivation Ordinance, Addition of RA-10 Zoning

Submitted By:

Gary M. Baker
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Dear Nevada County Board of Supervisors

For over a year I have submitted information relating to the inclusion of the RA-Rural zoning into the proposed cannabis cultivation ordinance. The CAG committee recommended that this land use designation be included in the ordinance, yet the Board of Supervisors has been reluctant to include the RA-Rural designation since it was interpreted as being in conflict with residential neighborhoods. The EIR examined the total RA zone as an alternative, which included over 30,000 parcels and contained not only RA-Rural, but RA-Estate and RA-Residential designated parcels in the evaluation which was never the intent of CAG, nor the many previous requests which was just to include only RA-Rural zoned parcels.

I would like to amend this request to only include RA-10 zoned properties in the proposed cannabis ordinance. The RA-10 zone occurs in just a few areas of the county

as can be seen on the attached colored zoning maps and represents only about 1% of the total number of RA zoned parcels. The RA-10 zoning in most areas abuts either AG or FR Zones or other RA zones such as RA-5 which is similar to the conditions in the AG zones. There are AG-5 zoned parcels which are allowed in the draft ordinance for cultivation of cannabis while the RA-10 zoned properties are not currently allowed.

One of the stated goals of the cannabis ordinance is provide a path for the conversion of existing cultivation sites into a permitted and regulated permit system. As there are many existing cultivation sites on these RA-10 zoned parcels, these owners would be left with no path to become compliant with permitted cultivation activities in Nevada County. Yet the parcel sizes in the RA-10 areas are in many cases the same size or larger than many AG parcels and they not located in residential neighborhoods. The land uses allowed in the RA-Rural and AG zones are almost identical in every aspect and the RA-10 zoned parcels are in many instances, served by NID water which would reduce the impact to ground water.

To summarize, inclusion of these few RA-10 zoned properties with the same rules and restrictions as the AG, AE and FR zones, would allow for a few more existing cultivation sites to become compliant with the cannabis regulations. The overall environmental impact of inclusion of these parcels would be very small considering the 27,207 parcels analyzed in the EIR. Most of these RA-10 parcels are located near existing infrastructure and unlike some of the AG, AE and FR zoned parcels would not require extensive improvements to develop compliant cultivation sites. The following analysis describes the RA-10 zoning areas shown on the attached maps. The yellow coloring is the RA-10 zoned properties and the green line represents AG zoned lands.

Analysis:

Zoning Map - ZDM 44

The RA-10 area is almost completely surrounded by AG zoned parcels. Number of total lots estimated at about 100

ZDM 43

The RA-10 area is bounded on at least 2 sides by AG zoned properties. Number of parcels estimated less than 30

ZDM 52

The RA-10 zoned parcels are surrounded on two to three sides by AG lands. The total number of parcels is estimated at about 100

ZDM 56 The

Ra-10 zoned parcels are fronted on one side by AG zoned lands and on three sides by RA-5 zoned parcels. These RA-10 parcels are located a significant distance from residential areas. The parcel sizes average between 5 to 30 acres. Total number of parcels is estimated at about 50

ZDM 76

The RA-10 zoned properties are adjacent to a park and FR and AG zoned parcels. The 1,000 setback for the park would impact many of these parcels. The total number of parcels is estimated less than 30

Conclusion:

The exhibits represent all of the RA-10 zoned areas in the county that were found by searching every single zoning map. Inadvertently some areas may have been missed but the data of these parcels would be available in the areas of the county database not available to the public. In most cases the adjacent AG lands are similar to the RA-10 lands except for the zoning designation. These are all rural properties and there has been historic cannabis cultivation on some of these sites.

Based on this analysis there are about 310 parcels in the RA-10 zoned areas of the county which is about 1% of the 30,000 RA zoned parcels analyzed in the EIR. Clearly the inclusion of just 1% of the parcels would have no environmental impact based on the program level documentation contained in the Final EIR. All mitigation measures, setbacks and cultivation size restrictions would apply to these RA-10 zoned parcels.

I respectfully request that the Board of Supervisors include the RA-10 zoned parcels in the Cannabis Cultivation Ordinance.

Gary M. Baker

Plan-aire Landscape Architects and Planners

Attachment: Zoning Maps of RA-10 Parcels (5 maps)

