

NEVADA COUNTY PLANNING COMMISSION
STAFF REPORT

APPLICANT: County of Nevada

HEARING DATE: April 11, 2019

OWNER: N/A

FILE NO: ORD18-2, EIR18-0001

PROJECT: **ORD18-2; EIR18-0001; NEVADA COUNTY COMMERCIAL CANNABIS CULTIVATION ORDINANCE.** A public hearing to consider and make recommendations to the Board of Supervisors on an Ordinance amendment to Chapter II of the Land Use and Development Code adding Section L-II 3.30 for the Nevada County Commercial Cannabis Cultivation Ordinance (NCCO) drafted to be consistent with state law and to enable a procedure for the cultivation of cannabis within all unincorporated areas within the County. The proposed NCCO has been drafted pursuant to the authority granted by Article XI, Section 7 of the California Constitution, Health and Safety Code section 11362.83, and Government Code Section 25845. The proposed NCCO would be adopted to replace the existing cannabis regulations in the Nevada County Land Use and Development Code (Development Code under Title 2, Chapter IV, Article 5 Cannabis Cultivation). The proposed NCCO details new County-specific regulations to address the licensing of cannabis cultivation activities only in the unincorporated areas of the County. In addition to the ordinance, consideration and recommendation to the Board of Supervisors to adopt the Environmental Impact Report, Mitigation Monitoring Program and CEQA Findings and Statement of Overriding Considerations (EIR18-0001, SCH#2018082023) prepared by Kimley-Horn and Associates.

PROJECT LOCATION: Countywide. **RECOMMENDED ENVIRONMENTAL DETERMINATION:** Recommend adoption of the Environmental Impact Report including Mitigation Monitoring and Reporting Program and CEQA Findings and Statement of Overriding Considerations. **RECOMMENDED PROJECT ACTION:** Recommend approval and adoption of the Nevada County Commercial Cannabis Cultivation Ordinance. **STAFF:** Brian Foss, Director of Planning.

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.

ASSESSOR'S PARCEL NO's.: N/A - Countywide Ordinance

PROJECT PLANNER: Brian Foss, Director of Planning

General Plan:	All Designations	Schools:	N/A
Zoning:	All Districts	ZDM No.:	All ZDM maps
Region/Center:	All Regions	Recreation:	All Districts
Sewage:	N/A	Parcel Size:	N/A
Water:	N/A	Sup. Dist.:	All Districts
Fire:	All Districts		
Flood Map:	All unincorporated areas of County		
Date Filed:	May 1, 2018 (Direction from Board of Supervisors to proceed date)		
Prev. File No's:	N/A		

ATTACHMENTS:

1. Draft Resolution for EIR Certification and CEQA Findings of Fact
2. Draft Ordinance for Zoning Ordinance Section L-II 3.30 Commercial Cannabis Cultivation
3. Final EIR (Planning Commission only, available online at: <https://www.mynevadacounty.com/2188/Supporting-Documents>)

RECOMMENDATION:

Staff recommends the Planning Commission take the following actions:

- I. Recommend the Board of Supervisors approve a Resolution certifying the Final EIR (EIR18-001, SCH#2018082023) as adequate for the Nevada County Commercial Cannabis Cultivation Ordinance, and that it has been completed in compliance with the California Environmental Quality Act and based on the CEQA Findings of Fact contained in Attachment 1.
- II. Recommend the Board of Supervisors adopt the attached Ordinance approving a Zoning Ordinance Text Amendment (ORD18-2) to Chapter II of the Nevada County Land Use and Development Code establishing Section L-II 3.30 Cannabis Cultivation Ordinance.

STAFF COMMENT:

The Nevada County Commercial Cannabis Cultivation Ordinance is intended to detail County regulations consistent with state law to enable a structured and logical management procedure for the cultivation of cannabis within all unincorporated areas within the County. Commercial cannabis cultivation would be strictly limited for medical purposes. An unincorporated area is defined as an area or region of land that is not governed by a local municipal corporation, such as a city. The proposed project defines and provides for the regulation for the personal use of

cannabis and commercial cannabis cultivation within unincorporated County land. The proposed project is a substantial overhaul and comprehensive update to the County's existing cannabis regulations and is being proposed, in part, as an attempt to regulate the cultivation and reduce existing environmental effects of illegal cultivation operations. Adoption of the proposed project would render indoor, mixed-light, and outdoor cultivation of cannabis, on any parcel or premises in an area or in a quantity greater than as provided by the proposed project, or in any other way not in conformance with or in violation of the provisions of the proposed project and/or state law, as a public nuisance that may be abated by any means available by law. Indoor, Mixed-Light, and Outdoor Cultivation are defined as follows:

Indoor or Indoors— Indoor cultivation means cultivation using exclusively artificial light within a detached fully enclosed and secure accessory structure using artificial light at a rate above twenty-five watts per square foot and that complies with the California Building Code (Title 24, California Code of Regulations) for that specific occupancy type, as adopted by the County of Nevada, except for structures that are exempt from the requirement to obtain a building permit under the Nevada County Land Use and Development Code. For purposes of Personal Use only, "indoor" or indoors" shall also include Cultivation inside a private residence or attached garage, but not in areas inhabited by humans, including, but not limited to bedrooms and kitchens.

Mixed-Light- Mixed-Light means the cultivation of mature or immature cannabis plants in an accessory structure permitted in compliance with local building codes and permitted specifically for cannabis cultivation using light deprivation and/or one of the artificial lighting models described below:

Mixed-Light Tier 1: The use of artificial light at a rate of six watts per square foot or less;
Mixed-Light Tier 2: The use of artificial light at a rate above six watts and below or equal to twenty watts per square foot. Mixed-light cultivation must take place in an accessory structure permitted in compliance with local building codes and permitted specifically for cannabis cultivation.

Outdoor or Outdoors -Outdoor cultivation means cultivation of cannabis in any location that is not "indoors" not "mixed-light" and which is cultivated without the use of any artificial light at any time.

The proposed ordinance has been written, in part, to remedy existing issues including environmental degradation to water quality, creation of objectionable odors, land use conflicts, and impacts to the visual character of the County. The ordinance establishes certain requirements for land use permits and the annual permitting process. Under the proposed project there will be a three-tier system for 1) personal use; 2) commercial use, and 3) non-remuneration cultivation use. The regulations for cultivation of cannabis have been developed to be consistent with requirements of other commercial activities as well as consistent with state law. Under the proposed project cannabis cultivation would be managed using the policies and regulations within the ordinance. Based on these and other factors, the general intent of the proposed project is to result in:

- Removing or reducing cannabis cultivation in residential areas and allowing increased cannabis cultivation in the AG, AE and FR zones, including commercial cultivation for medical purposes.
- Eliminating the existing set of regulations intended for personal and/or cooperative cannabis cultivation and replacing these regulations with a three-tier system based on the nature of the cultivation activity at issue (personal, commercial or non-remuneration cultivation), to align with current State law.
- Adding requirements for certain land use permits (for the property on which cultivation would occur) and an annual regulatory permit (for the cannabis operation). This facilitates issuance of local authorizations and align cannabis regulations with regulations applicable to other commercial activities.
- Updating definitions and other technical requirements to align with current State law and addressing environmental impacts related to cultivation.
- Revising and increasing penalties for failing to comply with County cannabis regulations including increased fines, permit revocations and criminal penalties.

The proposed project would allow for the cultivation of cannabis for personal use within eight zoning classifications.

Cultivation for personal use would be allowed in four residential zones including:

- R-1 (Single Family);
- R-2 (Medium Density);
- R-3 (High Density);
- R-A (Residential Agriculture);

And four non-residential zones including:

- General Agricultural (AG);
- Agriculture Exclusive (AE);
- Forest (FR): and
- the Timber Production Zone (TPZ).

Commercial cannabis cultivation would be prohibited in the following zones:

- R1, R2, and, R3 (High Density);
- RA (Residential Designation) zones: and,
- TPZ (Timber Production Zone).

Commercial Cannabis Cultivation would be allowed in the following zones:

- AG (General Agriculture);
- AE (Agriculture Exclusive); and,
- FR (Forest) zones.

The proposed NCCO provides for both commercial cultivation of cannabis as well as cultivation for personal use. The following regulations provide written description of the zoning and maximum grow sizes:

- For Personal Use only, cannabis cultivation may occur only on a Parcel or Premises with a Legally Permitted Primary Residence and only in zones as set forth as follows:
 - R-1, R-2, R-3 and R-A (Residential Designation):
 - Indoors: maximum of six plants, mature or immature.
 - Mixed-light, or outdoors: cultivation is prohibited.
 - R-A (Rural and Estate Designation (Parcels of 5 acres or more):
 - Indoors, mixed-light and outdoors or a combination of methods: a maximum of 6 plants, mature or immature
 - AG, AE, FR, and TPZ (Parcels of equal to or less than one to three acres):
 - Indoors: a maximum of 6 plants, mature or immature.
 - Mixed-light and outdoors: cultivation is prohibited
 - AG, AE, FR, and TPZ (Parcels of greater than one to three acres):
 - Indoors, mixed-light and outdoors: a maximum of 6 plants, mature or immature.

Table 1: Cannabis Cultivation for Personal Use, below provides a breakdown of the allowable number of plants based on zoning, parcel acreage, and cultivation method. Cultivation in all other zones would not be a permitted use.

Table 1: Cannabis Cultivation for Personal Use				
Zoning	Parcel Acreage	Cultivation Method		
		Indoor	Mixed-Light	Outdoor
R1 R2 R3 RA (Residential Designation)	Parcel of Any Size	Maximum of six plants, mature or immature.	Cultivation is Prohibited	Cultivation is Prohibited
R-A (Rural and Estate Designation)	5.00 Acres or greater	Maximum of Six Plants, mature or immature		
AG AE FR TPZ	1.99 or less	Maximum of Six Plants, mature or immature	Cultivation is Prohibited	Cultivation is Prohibited
	Parcels 2.00 acres or greater	Maximum of Six Plants, mature or immature		

Source: Nevada County, 2018
 Abbreviations: R-1 (Single Family); R-2 (Medium Density); R-3 (High Density); R-A (Residential Agriculture); AG (General Agriculture), AE (Agriculture Exclusive), FR (Forest), TPZ (Timber Production Zone).

Cultivation of commercial cannabis will be specifically regulated under the proposed NCCO. The following regulations provide written description of the zoning and maximum grow sizes. Commercial cannabis cultivation could occur only on a parcel or premises with a legally permitted residence, or on a vacant parcel adjacent to a parcel with a legally permitted residence under common ownership, and only in zones as set forth as follows:

- R-1, R-2, R-3 and R-A (Regardless of General Plan Designation) and TPZ:
 - Commercial cannabis cultivation is prohibited.
- AG, AE, and FR:
 - Parcels of less than or equal to 1.99 acres:
 - Commercial cannabis is prohibited.
 - Parcels of 2 (two) acres up to 4.99 acres
 - Indoors: a maximum of 500 sf of canopy.
 - Mixed-light and outdoors: commercial cannabis is prohibited.
 - Parcels of 5 (five) acres up to 9.99 acres:
 - Indoors, mixed-light, outdoors or a combination of said methods: maximum of 2,500 sf of Canopy.
 - Parcels of 10 (ten) acres up to 19.99 acres:
 - Indoors, mixed-light, outdoors, or a combination of said methods: a maximum of 5,000 sf of canopy.
 - Parcels of 20 acres or greater:
 - Indoors, mixed-light, outdoors or combination of said methods: a maximum of 10,000 sf of Canopy.

Table 2: Cannabis Cultivation for Commercial Use, below, provides a breakdown of the of the allowable square feet of allowable plants canopy based on zoning, parcel acreage, and cultivation method.

Table 2: Cannabis Cultivation for Commercial Use				
Zone	Parcel acre	Cultivation Method		
		Indoor	Mixed-Light	Outdoor
R1 R2 R3 RA (Regardless of Zone Designation)	Parcel of Any acreage	Commercial Cultivation is Prohibited		
AG AE FR	2.0 acres or less	Commercial Cultivation is Prohibited		
	Parcels 2.00 acres to 4.99 acre	Maximum of 500 sf canopy	Commercial Cultivation is Prohibited	
	Parcels 5.00 acres to 9.99 acres	Up to a maximum of 2,500 sf of canopy for any method or combination thereof.		
	Parcels 10.00 acres to 19.99 acres	Up to a maximum of 5,000 sf of canopy for any method or combination thereof.		
	Parcels 20 acres or greater	Up to a maximum of 10,000 sf of canopy for any method or combination thereof.		

Source: Nevada County, 2018
 Abbreviations: R-1 (Single Family); R-2 (Medium Density); R-3 (High Density); R-A (Residential Agriculture); AG (General Agriculture), AE (Agriculture Exclusive), FR (Forest), TPZ (Timber Production Zone).

CULTIVATION AREA REQUIREMENTS

In addition to the zoning restrictions discussed above, the proposed project also includes elements and requirements that involve all cultivation areas. These regulations are in place to provide a defined process and to detail requirements related to cannabis cultivation. Additional details and requirements for persons engaging in cultivation for personal use of cannabis and commercial cannabis cultivation are further defined below and are within the attached copy of the full proposed NCCO in Attachment 1. Relating to all areas and purposes, all cannabis cultivation areas shall comply with the following requirements:

- All cannabis cultivation sites shall be adequately secured to prevent unauthorized entry, including a secure locking mechanism that shall remain locked at all times when the Cultivator is not present within the Cultivation area;
- Cannabis cultivation shall not adversely affect the health, safety, or general welfare of persons at the Cultivation site or at any nearby residence by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, light, or vibration, by the use or storage of hazardous materials, processes, products or wastes, or by any other way. The cultivation of cannabis shall not subject residents of neighboring parcels who are of normal sensitivity to reasonably objectionable odors;
- All electrical, mechanical, and plumbing used for Indoor or Mixed-Light Cultivation of Cannabis shall be installed with valid electrical, mechanical, and plumbing permits issued and inspected by the Nevada County Building Department, which building permits shall only be issued to the legal owner of the Premises or their authorized agent. The collective draw from all electrical appliances on the Premises shall not exceed the maximum rating of the approved electrical panel for the Parcel. Electrical utilities shall be supplied by a commercial power source. If generators are used for emergency purposes as approved by the Enforcing Officer all generators shall be located in containment sheds while in use to reduce generator noise to no greater than 50dB as measured at 100 feet from any sensitive habitat or known sensitive species. This would be an annual requirement and verified yearly when the ACP is renewed. If conformance is not shown, the permit shall be denied or the held in abeyance until the project infraction is brought into conformance with this Article.
- Cultivation of cannabis indoors shall contain effective ventilation, air filtration and odor-reducing or odor-eliminating filters to prevent odor, mold and mildew in any area used for Cultivation or which is used as, designed, or intended for human occupancy, or on adjacent premises.
- All structure and site utilities (plumbing, electrical, and mechanical) shall comply with the California Building Standards Codes, as adopted by the County of Nevada.

- All lights used for the cultivation of cannabis shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the Parcel upon which they are placed and shall comply with the requirements of Section L-II 4.2.8.D. of the Nevada County Land Use and Development Code. Lights are not permitted to be detectable during the night time hours. If lights are to be used during night time hours, black out or light barriers must be used to ensure no light is visible during night time hours.
- Noise levels generated by Cultivation shall not exceed the standards set forth in Table L-II 4.1.7 (Exterior Noise Limits) of the Nevada County Zoning Ordinance applicable to the Land Use Category and Zoning District for the Premises on which the Cultivation occurs.
- If the person(s) cultivating cannabis on any Legal Parcel is/are not the legal owner(s) of the parcel, the person(s) who is cultivating cannabis on such parcel shall: (a) give written notice to the legal owner(s) of the parcel prior to commencing cultivation of cannabis on such parcel, and (b) shall obtain a signed and notarized Nevada County issued authorization form from the legal owner(s) consenting to the specific cannabis activity for which a local permit and state license are being sought on the Parcel and provide said authorization to Nevada County prior to the commencement of any Cultivation activities and at least annually thereafter. A copy of the most current letter of consent shall be displayed in the same immediate area as designated in the permit and license, in such a manner as to allow law enforcement and other Enforcing Officers to easily see the authorization without having to enter any building of any type. Such authorization must also be presented immediately upon request by an Enforcing Officer.
- The use of Hazardous Materials shall be prohibited in Cannabis Cultivation except for limited quantities of Hazardous Materials that are below State of California threshold levels of 55 gallons of liquid, 500 pounds of solid, or 200 cubic feet of compressed gas. Any Hazardous Materials stored shall maintain a minimum setback distance from water sources in accordance with Nevada County Land Use and Development Code Chapter X. The production of any Hazardous Waste as part of the Cultivation process shall be prohibited.
- All Premises used for Cannabis Cultivation shall have a legal and permitted water source and shall not engage in unlawful or unpermitted drawing of surface water or permit illegal discharges of water. For purposes of engaging in Cannabis Cultivation pursuant to this Article, water delivery is prohibited.
- All Premises used for Cannabis Cultivation shall have a legal and permitted sewage disposal system and shall not engage in unlawful or unpermitted drawing of surface water or permit illegal discharges of water.
- The six (6) plants permitted to be Cultivated on any Premises for Personal Use in accordance with this Article and state law may be Cultivated in addition to the amounts allowed for Commercial Cannabis Cultivation by this Article.

- Commercial Cannabis may be Cultivated on Premises with multiple Parcels only if there is direct access from one Parcel to the other. The total Canopy Area shall not exceed that allowed area based on the largest of the Parcel sizes. The total Canopy Area shall not exceed the area of the Parcel used for Cultivation. The total Canopy Area and any Support Area must comply with all setback requirements and may not straddle any Parcel boundary. This provision does not prohibit, for example, location of one Canopy Area on one Parcel and another Canopy Area on an adjacent Parcel as long as setback, total square footage, and other requirements of this Article are met.
- All those engaged in Commercial Cannabis Cultivation in Nevada County must possess and maintain the appropriate Commercial Cannabis license(s) from the State of California. State licenses must cover and allow for the Commercial Cannabis Cultivation activities being conducted in Nevada County.
- The holder of an Annual Cannabis Permit for Commercial Cannabis Cultivation or for Non-Remuneration Cultivation in Nevada County may also Transport its own Cannabis from its licensed and permitted Premises to the extent allowed by the permit holder's State license and State law without obtaining an additional permit from Nevada County. The permit from Nevada County, however, must indicate that such Transport is specifically allowed. In order to engage in Transport of Cannabis or Cannabis products, the permit holder must provide the County with proof of possession of a "Distributor Transport Only" (Self-Distribution only) California State license, as set forth in California Code of Regulations, Title 16, Division 42, Chapter 2, section 5315, allowing for Transport of Cannabis from the Cultivation site as long as said license is necessary under State law. Said State license must be maintained in good standing in order to engage in the Transport of cannabis in the County of Nevada. Notwithstanding the foregoing, this provision does not authorize the holder of an ACP to Transport Cannabis away from the Cultivation sites of other permit holders.
- Commercial Cannabis Activity in County of Nevada may only be conducted by individuals and/or entities licensed by the State of California to engage in the activity for which a permit was issued by the County of Nevada. Commercial Cannabis Activities may not commence, and the Nevada County permit is not valid, until the appropriate license is obtained from the State of California.
- A maximum of three (3) Cultivation permits will be issued per person or entity for purpose of engaging in Commercial Cannabis Activities. No person or entity may have any financial interest in more than three (3) Commercial Cannabis businesses and/or enterprises in Nevada County.
- A Primary Caregiver may cultivate no more than five hundred (500) square feet of Canopy per Qualified Patient for up to five (5) specified Qualified Patients for whom he or she is the Primary Caregiver within the meaning of Section 11362.7 of the Health and Safety Code, if said Primary Caregiver does not receive remuneration for these activities except for

compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code. Cultivation under this provision, however, must otherwise comply with all other regulations applying to Commercial Cannabis Cultivation under this Article.

- Cannabis Support Areas are limited to a maximum area equal to 25% of the overall Canopy Area. The Support Area boundary shall be clearly identified on any plans that are submitted and on the Premises.

ACCESSORY STRUCTURES

Accessory structures used for the cultivation of cannabis would need to meet all of the following criteria:

- The Accessory Structure, regardless of size, shall be legally constructed in accordance with all applicable development permits and entitlements including, but not limited to, grading, building, structural, electrical, mechanical and plumbing permits approved by applicable federal, state and local authorities prior to the commencement of any Cultivation Activity. The conversion of any existing accessory structure, or portion thereof, for Cultivation shall be subject to these same permit requirements and must be inspected for compliance by the applicable federal, state and local authorities prior to commencement of any Cultivation Activity. Any Accessory Structure must also be permitted for the specific purpose of Commercial Cannabis Cultivation. Agricultural structures constructed in compliance with the Nevada County Land Use and Development Code may be used for commercial cannabis cultivation that obtain a letter of exemption issued by the Nevada County Chief Building Official or their approved designee that meet all requirements to receive a letter of agricultural exemption.
- The Accessory Structure shall not be built or placed within any setback as required by the Nevada County Land Use and Development Code or approved development permit or entitlement.
- Accessory Structures shall not be served by temporary extension cords. All electrical shall be permitted and permanently installed.
- Accessory Structures used for indoor cultivation shall be equipped with a permanently installed and permitted odor control filtration and ventilation system adequate to prevent any odor, humidity, or mold problem within the structure, on the Parcel, or on adjacent Parcels.
- Any structure used for Indoor Cultivation shall have a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood, polycarbonate panels, or equivalent materials. Exterior walls

must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy these requirements.

REQUIRED PERMITS

The permitting of commercial and non-remuneration cannabis activities is defined in the proposed NCCO. The proposed NCCO lists the permitting requirements for locations that would be engaged in commercial and non-remuneration cannabis activities. The types of permits that would be needed include either a CCP or an ADP, in addition to an ACP. A summary of these permits is provided in Table 3: Required Permits for Commercial Cannabis Cultivation.

Table 3: Required Permits for Commercial Cannabis Cultivation

Cannabis Cultivation Permit	A CCP would be required for commercial cultivation activities for all canopy sizes up to 2,500 sf. An ADP would apply to all indoor, mixed-light, or outdoor cultivation. An ADP would only be issued to the legal owner of the parcel of premises.
Administrative Development Permit	An ADP would be required for commercial cultivation activities for all canopy sizes to between 2,501 sf to a maximum of 10,000 sf. An ADP would apply to all indoor, mixed light, or outdoor cultivation. An ADP would only be issued to the legal owner of the parcel of premises.
Annual Cannabis Permit	An ACP would be issued to the individual or entity engaging in the commercial cannabis activity or non-remuneration cultivation and must be renewed annually.

Table 3: Required Permits for Commercial Cannabis Cultivation, above, provides a summary of the permits needed for cannabis cultivation, the following regulations provide written description of the zoning and maximum cultivation sizes. Permitting to engage in commercial cannabis activities or nonremunerative cannabis cultivation in Nevada County is a two-prong process: both a Land Use Permit and an ACP must be obtained. Land Use Permits would be issued only to the legal owner of the parcel or premises.

CANNABIS CULTIVATION PERMIT (CCP)

The CCP permitting process would be for commercial and non-remuneration cultivation of cannabis with 2,500 sf of canopy size and less. This permitting process is considered ministerial and would be processed by the Building Department. The application for the CCP would be reviewed for completeness and adequacy by staff and to ensure all permit requirements are included to the application. CCP permits would be subject to Standard Development Conditions, and after review staff would have the option, if required, to include additional Conditions of Approval to the cultivation project. Upon completion of review, payment of all applicable fees,

conclusion that the application is complete, agreement by the applicant to implement all Standard Development Conditions, and if necessary additional Conditions of Approval, the CCP may be issued. The following lists the basic requirements to obtain a CCP. As discussed above, the County may include additional conditions based on the nature of the proposed cultivation site.

Cannabis Cultivation Permit (CCP) requirements are as follows:

- a. Canopy sizes of a combined total of up to 2,500 sq. feet (Indoors, Mixed-Light or Outdoors) on the Premises.
- b. Compliance with all local CCP permitting requirements is necessary.
- c. CCPs are not transferrable or assignable to any other person, entity or property.
- d. Applicant must provide the following as part of their application for a CCP:
 - i. A complete application.
 - ii. A list of all individuals and/or entities with any financial interest in the Commercial Cannabis Activity, including names, addresses, titles, nature and extent of financial interest, and disclosure of all financial interest in any and all cannabis businesses in the County.
 - iii. Copy of identification acceptable to County, including but not limited to driver's license or passport.
 - iv. All CCP permits are subject to all of the resource protection standards identified in Section L-II 4.3.3 of this Chapter.
 - v. A detailed site plan setting forth the intended location of the Canopy Area and any Support Area, detailed description of intended activities, setbacks, descriptions of existing and proposed structures and any other information required to show compliance with this Article. In addition the site plan shall include:
 - a) All landmark trees, landmark groves and heritage trees and groves as defined by the Zoning Ordinance. If such trees exist, the applicant shall indicate that the proposed cultivation sites and any proposed ancillary structures would not require removal of any of the listed trees and that all cannabis cultivation and accessory structures are outside the existing drip line of all trees. If any Cultivation or accessory structure would require removal or encroach in the drip line of any trees and the project plans shall be revised to avoid the trees. If any trees or groves are dead, dying, or a public safety hazard as determined by a qualified professional, no further action is required.
 - b) All Prime Farmland, Unique Farmland, or Farmland of Statewide Importance based on the most recent available mapping provided by the California Department of Conservation (CDOC) Farmland Mapping & Monitoring Program (FMMP) that exist on the project site. If such lands exist, the applicant shall show on the site plan(s) that any proposed accessory structure and related improvements (e.g., driveways, staging areas, etc.) have been located on the property in which impacts to mapped farmlands are reduced to the maximum extent practicable. A Management Plan pursuant to LUDC section L-II 4.3.3 shall be required if any cultivation activities or structures encroach into mapped farmland.

- vi. Irrigation water service verification.
- vii. Sewer/septic service verification.
- viii. Electrical service verification.
- ix. A security plan.
- x. A light control plan that demonstrates how light used for cultivation purposes would be controlled. Light control measures may include but not be limited to means such as using blackout tarps to completely cover all greenhouses and hoop-houses or restricting the use of lighting between sunset and sunrise.
- xi. All Commercial Cannabis Cultivation applications shall include language in project cultivation plans and on project site plans when applicable, that the grading or building permit for the proposed project shall comply with applicable state and federal air pollution control laws and regulations, and with applicable rules and regulations of the NSAQMD during any construction and during operations of cannabis facilities. Compliance with NSAQMD Rule 226 Dust Control Plan shall be required, and all construction equipment (75 horsepower and greater) shall not be less than Tier 3, less than Tier 4 Interim if construction starts after 2025, and Tier 4 Final if construction starts after 2030. Written documentation that the cannabis facility is in compliance with the NSAQMD shall be provided to the Nevada County Planning Department.
- xii. All Commercial Cannabis Cultivation and Non-Remuneration Cultivation operations are restricted from burning any cannabis or other vegetative materials. The following language shall be included on all site plans: “The burning of any part of the cannabis plant or plant materials that is considered excess or waste is prohibited from being burned.”
- xiii. All applications shall include biological pre-screening materials. The materials shall include adequate information to define site constraints and show potentially sensitive biological resource areas. Materials shall include, at a minimum, project location (site address and parcel numbers); site aerials, photographs of proposed areas of disturbance (includes canopy area, accessory structures, and any related improvements [e.g., driveways, staging areas, etc.]), photographs of vegetative cover, a thorough project description describing all phases of construction, all proposed structures and cultivation areas, location of any streams, rivers, or other water bodies, limits and depth of grading, any grading cut or fill in a stream, river, or other water body, any water diversions and/or description of the source of water, water storage locations, and source of electricity (if applicable). If avoidance or protection measures are required, a Habitat Management Plan (HMP) consistent with the requirements of Section L-II 4.3.3 of the Nevada County Land Use and Development Code shall be prepared. If potential impacts on these biological resources cannot be reduced to less than significant levels, no permit shall be issued.
- xiv. Applications shall include a Non-Confidential Records Search to NCIC to determine the potential for Commercial Cannabis Cultivation sites to disturb historic, cultural, or tribal resources. Upon receipt, should the County find the NCIC recommends a cultural resource study, the applicant shall retain a qualified

professional to conduct a cultural resource study of the project area. No permit shall be issued until the completion of such report, and if needed, until recommended mitigation is implemented, or a plan has been submitted to the County for implementation.

- xv. All applications that include ground disturbance shall include a note on the plans that if subsurface archeological and/or paleontological features or unique geologic features are discovered during construction or ground disturbance, all activities within 50-feet of the find shall cease and the County shall be notified immediately. A qualified archaeologist/paleontologist shall be retained by the County to assess the find and shall have the authority to prescribe all appropriate protection measures to future work. If buried human remains are discovered during construction or ground disturbance, all activities shall cease and the County shall be notified immediately. The County shall notify the coroner to examine the remains. If the remains are determined to be of Native American origin, the Native American Heritage Commission shall be notified, and all sections details in Section 5097.98 of the California Public Resources Code shall be followed.
 - xvi. Copy of Deed to Property indicating applicant ownership.
 - xvii. Acknowledgement of standards set forth in ordinance.
 - xviii. Copy of valid state license application allowing for type of Commercial Cannabis Activity applied for (if available).
 - xix. Lease information.
 - xx. Payment of applicable fees.
 - xxi. Provide proof of purchase of a Certificate of Deposit from a commercial banking institution approved by the Enforcing Officer in the amount of \$5,000.00 which may be accessed by County of Nevada.
 - xxii. A valid email address and acknowledgement that the applicant agrees to accept service of any notice required or allowed by this Article via email.
- e. Applicant must allow for right of entry and inspections to ensure permit eligibility and compliance.
 - f. Secondary Access and Dead End Road Requirement Exemption:
Secondary access may be waived at the discretion of the Permitting Authority if applicant attests that there will be no special events held on the Premises and that the general public will not have access to the Premises.
 - h. Applicant shall obtain and keep a valid and active ACP for the CCP to remain active. If an ACP is not obtained within six months of issuance of the CCP, or if the ACP is revoked or denied renewal, the County may take any actions allowed by this Article or by law to revoke the CCP.

ADMINISTRATIVE DEVELOPMENT PERMIT (ADP)

The ADP permitting process would be for commercial and non-remuneration cultivation of cannabis with 2,501 sf to 10,000 sf of canopy size. This permitting process is considered administrative and would be processed by the Planning Department. The application for the ADP

would be reviewed for completeness and adequacy by staff and to ensure all permit requirements are included to the application. ADP permits would be subject to Standard Development Conditions, and after review staff would have the option, if required, to include additional Conditions of Approval to the cultivation project. Upon completion of review, payment of all applicable fees, conclusion that the application is complete, agreement by the applicant to implement all Standard Development Conditions, and if necessary additional Conditions of Approval, the ADP may be issued. The following lists the basic requirements to obtain a CCP. As discussed above, the County may include additional conditions based on the nature of the proposed cultivation site. The applicant will submit the following information as part of the application process:

- a. Canopy sizes of a combined total of 2,501-10,000 sq. feet (Indoors, Mixed-Light or Outdoors on the Premises).
- b. Compliance with all ADP permitting requirements is necessary.
- c. ADPs are not transferrable or assignable to any other person, entity or property.
- d. Applicant must provide a complete application that contains all requirements of the CCP application listed in Section G.1.d, above.
- e. Applicant must allow for right of entry and inspections to ensure permit eligibility and compliance.
- f. Secondary Access and Dead End Road Requirement Exemption:
Secondary access may be waived at the discretion of the Permitting Authority if applicant attests that there will be no special events held on the Premises, that the general public will not have access to the Premises, that no more than ten (10) employees will be on the Premises at any given time, and that the Fire Authority approves the exemption.
- g. Applicant shall obtain and keep a valid and active ACP for the ADP to remain active. If an ACP is not obtained within six months of issuance of the ADP, or if the ACP is revoked or denied renewal, the County may take any actions allowed by this Article or by law to revoke the ADP.

ANNUAL CANNABIS PERMIT (ACP)

This permit will be issued to the individual/entity engaging in the commercial cannabis activity and nonremuneration cultivation. The ACP must be renewed annually. The applicant must submit the following information as part of the application process:

- a. Permit for Commercial Cannabis Activities:
 - i. A complete application.
 - ii. The exact location of the proposed Cannabis Activity.
 - iii. A copy of all applications of licensure submitted to the State of California related to the proposed Cannabis Activities.
 - iv. A list of all individuals and/or entities with any financial interest in the Commercial Cannabis Activity, including names, addresses, titles, nature and extent of financial interest, and disclosure of all financial interest in any and all cannabis businesses in the County.
 - v. Tax identification information.

- vi. Detailed description of any law enforcement and/or code enforcement activities at the Premises proposed for the Cannabis Activities.
- vii. Copy of identification acceptable to County, including but not limited to driver's license or passport.
- viii. A detailed site plan setting forth the intended location of the Canopy Area and any Support Area, detailed description of intended Cannabis Activities, setbacks, descriptions of existing and proposed structures and any other aspects required to show compliance with this Article.
- ix. Irrigation water service verification.
- x. Sewer/septic service verification.
- xi. Electrical service verification.
- xii. A security plan.
- xiii. Notarized landlord authorization to engage in activity or deed of ownership.
- xiv. Acknowledgement of standards set forth in ordinance.
- xv. Copy of valid state license application allowing for type of Commercial Cannabis Activity applied for (if available).
- xvi. Lease information.
- xvii. Payment of applicable fees as may be established and amended by the County.
- xviii. A valid email address and acknowledgement that the applicant agrees to accept service of any notice required or allowed by this Article via email.

b. Non-Remunerative ACP applicants must submit the following:

- i. A complete application.
- ii. The exact location of the proposed Cultivation.
- iii. Sufficient proof that the applicant is a Qualified Caregiver.
- iv. Copies of valid recommendations from qualified physicians for each Qualified Individual for whom Cannabis is being cultivated.
- v. Background information, including but not limited to a statement that the applicant and owner have submitted to a Live Scan background check no earlier than 30 days prior the date of application.
- vi. Detailed description of any law enforcement and/or code enforcement activities at the Premises proposed for the Cannabis Cultivation.
- vii. Copy of approved identification.
- viii. A detailed site plan setting forth the intended location of the Canopy Area and any Support Area, detailed description of intended activities, setbacks, descriptions of existing and proposed structures and any other information required to show compliance with this Article.
- ix. Irrigation water service verification.
- x. Sewer/septic service verification.
- xi. Electrical service verification.
- xii. A security plan.
- xiii. Notarized landlord authorization to engage in activity or deed of ownership.
- xiv. Acknowledgement of standards set forth in ordinance.
- xv. Lease information.

- xvi. Payment of applicable fees as may be established and amended by the County.
 - xvii. A valid email address and acknowledgement that the applicant agrees to accept service of any notice required or allowed by this Article via email.
- c. Applicant must allow for right of entry and inspections to ensure permit eligibility and compliance.
- d. Secondary Access and Dead End Road Requirement Exemption:
Secondary access may be mitigated at the discretion of the Permitting Authority if applicant attests that there will be no special events held on the Premises, that the general public will not have access to the Premises, that no more than ten (10) employees will be on the Premises at any given time, and that Fire Authority approves the exemption.
- e. ACPs must be renewed annually.

VARIANCES AND SETBACK EASEMENTS

In the event that the proposed site plan does not meet the setback requirements of the Ordinance, the applicant may propose use of an easement agreement with an adjacent property owner or obtain a setback variance in order to satisfy the setback requirements (a “Setback Easement” or “Setback Variance”). Setback Easements and/or Variances relating to Indoor, Mixed-Light and Outdoor Cultivation and Support Areas will be granted and issued at the discretion of the Permitting Authority, and only as follows:

- a. Setback Variances shall follow the requirements of Sec. L-II 5.7 of the Nevada County Land Use and Development Code. Setback Variances shall be limited to a minimum setback of 60ft to property lines. Except as set forth in subsections below, no Setback Variance will be considered for any other provision of this Article including, but not limited to, Canopy Area, minimum parcel size, zoning designations or methods of cultivation. The findings required for approval of a Setback Variance shall be those listed in Sec. L-II 5.7 in addition to the following finding:
 - i. The Setback Variance will not result in any increased odor impacts to neighboring properties and all potential increases in odor impacts have been adequately mitigated.
- b. Setback Easements are intended to allow limited flexibility for purposes of compliance with setback requirements only. Except as set forth in subsections below, no Setback Easement will be considered for any other provision of this Article including, but not limited to, Canopy Area, minimum parcel size, zoning designations or methods of cultivation.
- c. Setback Easements must comply with the following:
 - i. Setback Easement area cannot exceed 40% of the required setback.
 - ii. The majority of the burden of the setback must remain with the applicant.

- iii. The easement must contain the following language: “This easement may be used to meet the Nevada County setback requirements to construct an Accessory Structure for the purpose of Cultivating Cannabis Indoors, Mixed-Light, or Outdoors pursuant to the Nevada County Code.”
- iv. All other legal and local requirements of a Setback Easement must be met.

SENSITIVE SITES

Cultivation will not be allowed within 1,000 feet of sensitive sites. Current State law requires a setback from schools, daycare centers, and youth centers. Accordingly, the proposed NCCO defines a sensitive site to include a school, church, park, child or day care center, or youth-oriented facility. A youth-oriented facility is defined as any facility that caters to, or provides services primarily intended for, minors, or the individuals who regularly patronize, congregate or assemble at the establishments are predominantly minors. The proposed NCCO includes provisions for the consideration of locating a sensitive use in proximity to a cannabis cultivation area and mechanism for disseminating information to the cultivators.

- d. The Permitting Authority has the discretion to authorize construction of an Accessory Structure a distance less than 1000 feet from a state and/or federal Park if the following criteria are met:
 - i. the proposed site is at least 300 feet from the property line of the State or Federal Park; and
 - ii. the portion of the State or Federal Park that is adjacent to the Parcel or Premises upon which the Accessory Structure is proposed to be constructed is inaccessible by the public and is unimproved.

The Permitting Authority has the authority to submit the application through the Planning Commission process for approval if, in his/her discretion, such approval is appropriate.

To the extent feasible, the County shall encourage any person proposing to construct or operate a new or relocated School, Sensitive Site, Church, Park, Day Care, or Child Care Center, or Youth-Oriented Facility to consider whether the proposed location of such use is within 1,000 feet of a Premises upon which Cannabis Cultivation is permitted or where a Notice to Abate has been issued within the past year. Upon request, the Enforcing Officer shall inform any person proposing to construct or operate a new or relocated School, Church, Park, Daycare, Childcare Center, or Youth-Oriented Facility regarding whether there is such a Premises within 1,000 feet of the proposed location of such use, and, if so, shall also inform the person, owning, leasing, occupying, or having charge or possession of that Premises that such a use is being proposed within 1,000 feet of the Premises.

NON-CONFORMING CULTIVATION

If violations of the ordinance occur, the property owner and/or cultivator may be subject to permit denial, suspension and/or revocation in addition to citations, fines and/or abatement. The

complete procedure for permit denial, suspension and/or revocation citations, fines and abatement is included in the attached ordinance.

For instances in which either indoor, mixed light or outdoor cultivation, does not conform to the proposed ordinance (either permitted or unpermitted cultivation of cannabis) that cultivation is considered a public nuisance that may be abated by any means available by law. The abatement process and notification and appeal process for abatement proceedings is included in the attached ordinance.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Final Environmental Impact Report (FEIR) was prepared by Kimley-Horn, the environmental firm retained by the County to undertake the preparation of the environmental document on behalf of the County for the Commercial Cannabis Cultivation Ordinance project.

The FEIR reviewed all the potential environmental impacts associated with the project. To help identify those potential impacts, a Notice of Preparation (NOP) was circulated to various state and local agencies prior to preparation of the Draft EIR. The responses to the NOP are included in the appendices of the Draft EIR and the comments from the comment period for the Draft EIR are included in the Final EIR. A 45-day public review period was provided to allow agencies and the public to submit written comments regarding the adequacy of the Draft EIR. This EIR comment period opened on Friday, January 11, 2019 and closed on Monday, February 25, 2019, at 5:00 PM. An errata was also prepared to identify the changes and amendments to the FIER based on the comments received.

The FEIR analyzed the following potentially significant environmental impacts areas that may be impacted by the project:

Aesthetics	Agriculture and Forestry	Air Quality
Biological Resources	Cultural and Tribal Resources	Energy Conservation
Geology and Soils	Greenhouse Gas Emissions	Hazards, Hazardous Material
Hydrology and Water Quality	Land Use and Planning	Mineral Resources
Noise	Population and Housing	Public Services
Recreation	Transportation and Traffic	Utilities and Service Systems
Cumulative Impacts	Growth Inducing Impacts	

Implementation of the proposed mitigation measures would reduce these impacts to a less than significant level, with the exception of Aesthetics, Agricultural Resources, Air Quality, Biological Resources, Hydrology and Water Quality, Land Use and Planning, Utilities and Service Systems and Energy in which there are significant and unavoidable impacts as described below:

Aesthetics: Cumulative Impact: The project would result in cumulative nighttime glow from artificially lighted nighttime cultivations may occur. Taken in sum, for all cultivation operations, this could result in a significant lighting impacts.

Agriculture and Forestry Resources: The project would result in the permanent conversion of prime farmland, unique farmland, or farmland of statewide importance to a non-agricultural use. The project would result on the loss of forest land or conversion of forest land to a non-forest use. The project would result in changes to the environment which would result in the conversion of farmland to non-agricultural use or conversion of forest land to non-forest use.

Air Quality and Greenhouse Gas Emissions: The project would conflict with or obstruct implementation of the applicable air quality plan. The project would violate an air quality standard or contribute substantially to an existing or projected air quality violation. The project would result in a cumulatively considerable net increase of any criteria pollutant for which the region is nonattainment under an applicable federal or state ambient air quality standards. The project would create objectionable odors affecting a substantial number of people. The project would generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment based on any applicable threshold of significance.

Cumulative Impact: The project would result in peak emissions of PM₁₀ during the harvest season from road dust, which would contribute to an existing or projected air quality violation. The project would result in an increase to the number of commercial cannabis outdoor and mixed-light cultivation operations throughout the County that are a significant source of cannabis odor, thereby increasing the potential cultivation-related odor sources throughout the County.

Biological Resources: Cumulative Impacts: The project's contribution to significant cumulative impacts on sensitive natural communities, special status plants, riparian habitats, wetlands and waters of the United States, and wildlife corridors would be cumulatively considerable and significant and unavoidable when considered over the whole of the unincorporated area of the County.

Hydrology and Water Quality: The project could substantially deplete groundwater supplies such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.

Cumulative Impact: The project would result in an increase in demand for local groundwater resources that could contribute to cumulative groundwater supply and impacts in areas of the County with limited groundwater resources (e.g., fractured bedrock conditions). In addition, the potential decrease of water infiltration due to development of accessory structures combined with the cumulative increase in groundwater use being unknown at this time, the potential impacts would be cumulatively considerable and significant and unavoidable.

Land Use: Implementation of the proposed ordinance could result in the permitting of a commercial cannabis operation within the Truckee SOI. Land use conflicts could arise in future

annexation applications because commercial cultivation is not an allowable uses pursuant to Truckee planning documents.

Transportation and Traffic: The project would result in additional traffic on regional roadways segments causing a decrease in LOS standards and conflicting associated goals, policies, and objectives related to traffic service standards for local, regional, and highways and would make existing unacceptable LOS conditions worse. The project would increase traffic volumes, some of which would reasonably be dispersed to intersections located outside of the County's jurisdiction (i.e. Caltrans facilities) that currently and/or are projected to operate at or near deficient LOS, the proposed project may contribute towards an exceedance of LOS standards or exacerbate existing deficient roadway LOS.

Utilities and Service Systems: The project would utilize groundwater supply for commercial cannabis irrigation. Neither the County nor the State has governing rules that would give one overlying groundwater user an advantage over a new overlying groundwater user for cannabis cultivation purposes. Neither the County nor the State have a mechanism in place to track or monitor groundwater production in individual wells. As such, commercial cannabis operations could result in overdrafting of local groundwater aquifers.

Cumulative Impact: The project would increase the demand for groundwater within the Nevada Irrigation service area, and it is unknown whether the public water service providers would have adequate water supply to meet future development needs and potential commercial cannabis operations located within their service boundaries, and the existing ground water supply for some cultivation sites may be inadequate, the proposed ordinance's contribution to water supply would be cumulatively considerable and significant and unavoidable.

Less than Significant Impacts with Mitigation

Mitigation Measures that were identified in the EIR have been incorporated into the draft ordinance in order to reduce or eliminate significant environmental impacts. The Mitigation Measures that were identified and have been included into the Draft Ordinance are as follows:

All Resources: Implement Land Use and Development Code Section L-II 4.3 for all resource standards for all levels of cannabis permitting. The existing zoning ordinance identifies 17 resources that are to be protected and avoided by development. Utilizing this exiting requirement for cannabis development consistent with the regulations for other types of development will ensure that there are no significant impacts to identified sensitive resources. A Management Plan may be required for any cannabis project that encroaches in to sensitive resources. The Management Plan will identify measures to avoid and/or reduce impacts to the resources including but not limited to: steep slopes, biological resources, water resources, archaeological resources, oak trees, and agricultural resources.

Aesthetics: Protected Tree Avoidance. The ordinance was amended to require all commercial cannabis applications to show on project site plans any landmark trees, landmark groves, and

heritage trees and groves that exist on the project site. If such trees exist, the applicant shall indicate that the proposed cultivation sites and any proposed ancillary structures would not require removal of any of the listed trees and that all cannabis cultivation and accessory structures are outside the existing drip line of all trees. If any cultivation or accessory structure would require removal or encroach in the drip line of any trees and the project plans shall be revised to avoid the trees. If any trees or groves are dead, dying, or a public safety hazard as determined by a qualified professional, no further action is required.

Aesthetics: Lighting Control Plan. The ordinance was amended to require commercial cannabis cultivation applicants with exterior light fixtures (including mixed light applications) to submit a light control plan that would demonstrate how light used for cultivation purposes would be controlled. Light control measures may include but not be limited to means such as using blackout tarps to completely cover all greenhouses and hoop-houses or restricting the use of lighting between sunset and sunrise.

Air Quality: Conformance to NSAQMD Rules and Regulations. The ordinance was amended to require all commercial cannabis applications to include language in project cultivation plans and on project site plans when applicable, that that the grading or building permit for the proposed project shall comply with applicable state and federal air pollution control laws and regulations, and with applicable rules and regulations of the NSAQMD during any construction and during operations of cannabis facilities. Compliance with NSAQMD Rule 226 Dust Control Plan shall be required, and all construction equipment (75 horsepower and greater) shall not be less than Tier 3, less than Tier 4 Interim if construction starts after 2025, and Tier 4 Final if construction starts after 2030. Written documentation that the cannabis facility is in compliance with the NSAQMD shall be provided to the Nevada County Planning Department.

Air Quality: Prohibit burning of cannabis and other vegetation. The ordinance was amended to prohibit all commercial and non-remuneration operations to from burning any cannabis or other vegetative materials. The following language was added to the ordinance: “The burning of any part of the cannabis plant or plant materials that is considered excess or waste is prohibited from being burned.”

Biological Resources: Generator Noise: The ordinance was amended to require all projects under either a CCP or an ADP to keep all generators in containment sheds whiles in use to reduce generator noise to no greater than 50dB as measured at 100 feet from any sensitive habitat or known sensitive species. This would be an annual requirement and verified yearly when the ACP is renewed. If conformance is not shown, the permit shall be denied or the held in abeyance until the project infraction is brought into conformance with the ordinance.

Biological Resources Pre-Screening: The ordinance was amended to require all applicants to submit biological pre-screening materials of all project sites for both CCP and ADP applications. The materials shall include adequate information to define site constraints and show potentially sensitive biological resource areas. Materials shall include, at a minimum, project location (site address and parcel numbers); site aerials, photographs of proposed areas of disturbance (includes

canopy area, accessory structures, and any related improvements [e.g., driveways, staging areas, etc.]), photographs of vegetative cover, a thorough project description describing all phases of construction, all proposed structures and cultivation areas, location of any streams, rivers, or other water bodies, limits and depth of grading, any grading cut or fill in a stream, river, or other water body, any water diversions and/or description of the source of water, water storage locations, and source of electricity (if applicable).

The applicant shall provide site plan(s) showing all areas of disturbance, multiple site plans may be used to clearly show the following; site aerials showing vegetation patterns and habitats (without snow cover), location of any water courses including ephemeral drainages and any other water bodies, all existing or proposed cultivation areas and structures, location of electric generators (if applicable), and grading plans with areas of cut and fill (if applicable).

If the pre-screening materials identify habitats known to support sensitive or special status plant or animal species, then avoidance of the sensitive or special status species shall be required. If avoidance of a special status species cannot be achieved, then a Biological Inventory shall be prepared. The Biological Inventory shall be prepared by a qualified biologist. The Biological Inventory shall contain an environmental setting, a project description, review of CNDDDB database for the project location, a description of potential sensitive habitats existing on site, field survey methodology and findings (if needed), mitigation to reduce impacts (if needed), level of impacts conclusion. Due to the varying nature of biological conditions and variable locations of habitat types and dispersion of sensitive species, additional evaluations such as wetland delineations, protocol level surveys, nesting bird surveys, etc., may be required consistent with the applicable resources standards identified in Sections L-II 4.3 of the Nevada County Land Use and Development Code. If additional avoidance or protection measures are required, a Habitat Management Plan (HMP) consistent with the requirements of Section L-II 4.3.3 of the Nevada County Land Use and Development Code shall be prepared for both CCP and ADP permit applications. The HMPs would be implemented on a project by project basis and included as part of the project-specific approval process. If potential impacts on these biological resources cannot be reduced to less than significant, no permit shall be issued.

Cultural Resources: Prior to project approval of either a CCP or an ADP, the project applicant, to the satisfaction of the County Planning Department shall submit a Non-Confidential Records Search to NCIC to determine the sensitivity of potential commercial cannabis cultivation site to disturb historic, cultural, or tribal resources. The applicant shall submit the sensitivity letter with the CCP or ADP. Upon receipt, should the County find the NCIC recommends a cultural resource study, the applicant shall retain a qualified professional to conduct a cultural resource study of the project area. No permit shall be issued until the completion of such report, and if needed, until recommended mitigation is implemented, or a plan has been submitted to the County for implementation.

Cultural Resources: The ordinance was amended to include a Cultural Resources Inadvertent Discovery Protocol (IDP) and Paleontological and Unique Geologic Resources Inadvertent Discovery Protocol (IDP for projects that require grading or ground disturbance. The IDP shall

include requirements that if subsurface archaeological features or deposits are discovered during construction or ground disturbance all activities within 50-feet of the find shall cease and the County shall be notified immediately. A qualified archeologist or paleontologist shall be retained by the County to assess the find and shall have the authority to prescribe all appropriate protection measures to future work. If buried human remains are discovered during construction or ground disturbance all activities shall cease and the County shall be notified immediately. The County shall notify the coroner to examine the remains. If the remains are determined to be of Native American origin, the Native American Heritage Commission shall be notified, and all sections detailed in Section 5097.98 of the California Public Resources Code shall be followed.

Ordinance Policy Issues

The following issue have been raised during the comment periods for the draft ordinance. These issues may require revisions to the draft ordinance at the discretion of the Board of Supervisors. The changes may have implications on the adequacy of the EIR or other factors as described below.

Support Areas: Based on the draft ordinance a support area of 25% of the overall canopy area has been designated to be used for drying, curing, grading, trimming, rolling, storing, packaging, and labeling of non-manufactured cannabis. This area was included in the draft ordinance to add areas for support activities as it was recognized that these areas are needed as part of cannabis business operations. This was also needed to include this area to be part of the environmental analysis in the Cannabis Environmental Impact Report (EIR) or the support area activities would have been included in the allowed canopy area only as part of the global assessment of environmental impacts. This additional area was recognized as a need by staff, stakeholders, and consultants and was added to the draft ordinance. There have been many concerns from the cannabis community that this size allowance for support area activities is not large enough for typical cannabis business operations. After review of this requirement by staff, consultants, and Counsel an option to allow greater support area allowances while not impacting the EIR would be the following:

- New support areas would be allowed to be 25% of the allowable canopy area. Any existing structures constructed and completed prior to cannabis ordinance adoption could be used for additional support areas up to an additional 50% of the canopy area. This would allow for additional support areas up to a total of 75% of the canopy area without any new specific site impacts or impacts to the Cannabis EIR. New support areas would be new designated exterior areas or new structures constructed and completed or structures in the process of being constructed after ordinance adoption. All existing structures constructed and completed prior to ordinance adoption would be required to be fully permitted based on the specific support area uses and occupancy types per the requirements in the California Building Standards Codes.

Setbacks to Support Areas: The draft ordinance requires all support and canopy areas to have a minimum setback to property lines of 100ft. The cannabis community has expressed concerns

regarding this setback requirement to existing structures being too restrictive. The ordinance allows for setback variances and setback easements to be completed on neighboring parcels to mitigate this for existing or new improvements. Applicants may also apply for and complete lot line adjustments and lot mergers in accordance with current Nevada County Land Use and Development Code standards.

Transition Period: The draft ordinance allows for improvements and violations not associated to commercial cannabis activities to be included in a two year transition plan to bring a parcel into full compliance if there are not any fire and life safety hazards associated to those improvements. The cannabis community has concerns that this is too restrictive and cannabis associated improvements should be allowed in the transition period. The California Building and Fire Codes as well as other adopted County Ordinances do not allow any improvements to be used and/or occupied prior to being fully permitted, obtaining required inspections, and receiving a final certificate of occupancy.

Restriction of Limiting 3-Financial Interested Parties: The draft ordinance restricts any person or entity from having a financial interest in more than three (3) Commercial Cannabis businesses and/or enterprises in the County. The cannabis community has concerns that this is too restrictive and has requested that this section in the ordinance be removed.

Industrial Hemp: The draft ordinance includes Industrial Hemp in the definition of Commercial Cannabis Cultivation and the regulatory standards in the ordinance related to Commercial Cannabis Cultivation are applied consistently to both Cannabis and Industrial Hemp cultivation activities. The cannabis community has concerns regarding the impacts that the cultivation of Industrial Hemp has on cannabis related businesses and suggests there needs to be further research done prior to allowing Industrial Hemp cultivation. An option moving forward could be to remove Industrial Hemp from the ordinance and place a moratorium on Industrial Hemp cultivation activities until further research is completed.

Nurseries: The draft ordinance is in need of adding a “Nursery” definition to the ordinance. Adding this definition will allow nursery state license holders to cultivate immature cannabis plants under the same mature canopy allowances in the ordinance without any increase in overall canopy sizes or site impacts.

SUMMARY

Because the Planning Commission is acting in an advisory capacity to the Board of Supervisors for the project, the project will be forwarded to the Board of Supervisors for final action following consideration and a recommendation by the Planning Commission. The Commercial Cannabis Cultivation ordinance has been in the drafting process for two years based on direction from the Board of Supervisors and through public involvement including the Community Advisory Group process. Staff recommends the Planning Commission take public testimony and make recommendations to the Board of Supervisors for final action on the environmental document and ordinance.

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

- I. Recommend the Board of Supervisors approve a Resolution certifying the Final EIR (EIR18-001, SCH#2018082023) as adequate for the Nevada County Commercial Cannabis Cultivation Ordinance, and that it has been completed in compliance with the California Environmental Quality Act and based on the CEQA Findings of Fact contained in Attachment 1.

- II. Recommend the Board of Supervisors adopt the attached Ordinance approving a Zoning Ordinance Text Amendment (ORD18-2) to Chapter II of the Nevada County Land Use and Development Code establishing Section L-II 3.30 Commercial Cannabis Cultivation Ordinance contained in Attachment 2.

Respectfully Submitted,

Brian Foss, Director of Planning