



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**
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**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memorandum**

MEETING DATE: January 10, 2023

TO: Board of Supervisors

FROM: Brian Foss, Planning Director

SUBJECT: A Resolution of the County of Nevada adopting an Addendum to the Certified Final Environmental Impact Report (EIR18-0001, SCH#2018082023) and an Ordinance amending Chapter II of the Nevada County Land Use and Development Code Zoning Regulations Section L-II 3.30 Commercial Cannabis Cultivation

RECOMMENDATION:

The Planning Commission recommends that the Board of Supervisors take the following actions:

- I. Environmental Action: Adopt the attached Resolution approving the Addendum to the Certified Final Environmental Impact Report (EIS18-0001, SCH# 2018082023) for Amendments to Section L-II 3.30 of the Nevada County Zoning Ordinance, pursuant to Section 15162 and 15164 of the California Environmental Quality Act Guidelines (*Attachment #1*).
- II. Project Action: Introduce, waive further reading and adopt the attached Ordinance (ORD22-2) amending Chapter II of the Nevada County Land Use and Development Code Sections L-II 3.30 (*Attachment #2*).

FUNDING: No budget amendments are required.

ATTACHMENTS:

1. Draft Resolution: Addendum to the Certified Final Environmental Impact Report for Amendments to Section L-II 3.30 of the Nevada County Zoning Ordinance
 2. Draft Ordinance: Ordinance Amending Chapter II of the Nevada County Land Use and Development Code, Sections L-II 3.30 – Cannabis Cultivation
 3. Redline Version of Proposed Text Amendments
 4. Homeowners Association Agreement
 5. December 8, 2022, Planning Commission Staff Report
 6. December 8, 2022, Planning Commission Summary Meeting Minutes
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BACKGROUND:

At the January 2022 Board of Supervisors workshop the Board discussed the Cannabis Cultivation Ordinance and the effectiveness of the cannabis permitting program. Since the original cannabis ordinance was approved by the Nevada County Board of Supervisors in May of 2019, user groups and stakeholders have requested updates and modifications to the Cannabis Cultivation ordinance. Input from the Cannabis Industry, stakeholders and neighborhoods was taken into account and the Board directed staff to consider amendments to the ordinance to address certain issues. The issues directed to be analyzed included allowing additional license types, adult use, larger canopy sizes, addressing the unintended consequences of parcelization and subdivisions, substandard housing and ensuring environmental protection and neighborhood compatibility.

Based on Board direction at the January 2022 workshop staff has proposed amendments to the Cannabis Cultivation Ordinance in order improve the cannabis permitting program to promote permitted cannabis activities while implementing additional on-site supply chain license types and tools to mitigate impacts to neighboring parcels.

The County circulated proposed updates to the Ordinance 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 a 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. Please see the attached Planning Commission staff report (Attachment #5) that contains a detailed discussion of the proposed changes. 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. Add language regarding compliance with Covenants Conditions and Restrictions (CC&R's)
10. Other minor changes and language clarifications.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission held a public hearing at their regular meeting of December 8, 2022 and discussed the proposed amendments. Several speakers spoke in support of the changes and several speakers expressed concerns with the allowances for larger canopy sizes and increased activities at cultivation sites. The issue of compliance with individual subdivisions' Conditions, Covenants and Restrictions (CC&R's) which may prohibit commercial activities on a property was discussed. The County does not enforce compliance with CC&R's but in order to put the responsibility on the applicant to be in compliance with any applicable CC&R's the Planning Commission recommended adding language to the Ordinance that would require a cannabis cultivator to sign an affidavit acknowledging compliance with their Homeowner's Association CC&R's if such rules are in effect and apply to the property proposed for commercial cannabis cultivation. The responsibility of compliance would be on the property owner and the applicant would indemnify and hold harmless the County against any liabilities. The proposed Ordinance has been amended to include this requirement as part of the application to include a signed affidavit placing the responsibility on the property owner to acknowledge compliance with any applicable CC&R's.

After Public Comment the Planning Commission voted 3 – 1 (1 absent) to recommend that the Nevada County Board of Supervisors adopt the Addendum to the adopt the Addendum to the Certified Final Environmental Impact Report (SCH# 2018082023) and a 4-0 (1 absent) recommendation that the Nevada County Board of Supervisors approve a Zoning Ordinance amendment to Section L-II 3.30 of Chapter II Zoning Regulations to amend the County's Commercial Cannabis Cultivation Ordinance.

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 (*Attachment #1*).

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 and the Planning Commission recommend that the Board of Supervisors adopt the Resolution approving the CEQA 15164 Addendum and the Ordinance amending Zoning Ordinance Section L-II 3.30 Commercial Cannabis Ordinance.

RECOMMENDATION: The Planning Commission has recommended that the Board of Supervisors take the following actions:

- I. Environmental Action: Adopt the attached Resolution approving the Addendum to the Certified Final Environmental Impact Report (EIS18-0001, SCH# 2018082023) for Amendments to Section L-II 3.30 of the Nevada County Zoning Ordinance, pursuant to Section 15162 and 15164 of the California Environmental Quality Act Guidelines (*Attachment #1*).
- II. Project Action: Introduce, waive further reading and adopt the attached Ordinance (ORD22-2) amending Chapter II of the Nevada County Land Use and Development Code Sections L-II 3.30 (*Attachment #2*).

Item Approved by: Brian Foss, Planning Director