

Julie Patterson-Hunter

From: Julie Patterson-Hunter
Sent: Monday, April 30, 2018 8:10 AM
To: All BOS Board Members
Cc: Rick Haffey; Alison Barratt-Green; Alison Lehman; Sean Powers; Mali Dyck
Subject: FW: Comments on the Draft Cannabis Ordinance

Dist 2

From: Gary Baker [REDACTED]
Sent: Sunday, April 29, 2018 1:52 PM
To: bdofsupervisors <bdofsupervisors@co.nevada.ca.us>
Subject: Comments on the Draft Cannabis Ordinance

Gary M. Baker
[REDACTED]
[REDACTED]

April 27, 2018

Honorable Ed Scofield, Chairman
Nevada County Board of Supervisors
959 Maidu Avenue
Nevada City, CA 95959

Regarding: Cannabis Cultivation Draft Ordinance

Dear Chairman Scofield,

Almost 2 years have passed since the defeat of Measure W and after numerous meetings with the Board of Supervisors and six months of meetings with the Community Advisory Group (CAG), last Thursday County staff has finally released a Draft Cannabis Ordinance. The tone of the resulting document is not only adversarial and insulting to growers; the content is disturbingly more restrictive than any previous County regulations and ultimately shows a bad faith effort to implement any of the feedback that the growing community and the CAG members have offered during this lengthy process. In addition it treats growers virtually as criminals in denying them their 2nd Amendment rights as a condition to obtain a County permit, and places new restrictions on residents for the personal cultivation of 6 plants or less contrary to what voters thought they approved in the passage of State Proposition 64 in 2016.

The cannabis community has worked with this Board diligently and respectfully over the past several years to build bridges and develop a workable permitting program which would allow regulated businesses' to obtain State licenses to grow and legally distribute products to other licensed entities. Quality and price are the main determining factors in the purchase of any product, and the product

quality of cannabis grown in Nevada County is considered some of the best in the State. However, by severely limiting the size of cannabis growing sites to only large AG parcels, it not only favors elitism, it locks at least 90% of the existing growers out of the process. Cultivation sizes recommended in the CAG report were strongly supported in the local community and the traditional smaller growing areas, as compared to many of the huge sites in other counties, would conceivably allow local cannabis cultivators a better chance in the marketplace.

Cannabis has been part of the Nevada County landscape for over 40 years and the majority of citizens support regulated cannabis cultivation. We are all aware of drug cartels operating cannabis farms illegally and of environmental damage caused by some bad actors, but the vast majority of cannabis cultivators are good citizens of this community and volunteer countless hours to improve this community. Cannabis cultivators are not just young upstarts trying to make a quick buck. Growing cannabis is hard work and most growers are people, who are conscientious, passionate and knowledgeable about their craft. These growers are looking to support themselves and their families (or in many cases are in retirement) by operating small cannabis farms. Because of the favorable weather and reasonable access to water, Nevada County is a prime location for cultivating cannabis outdoors. Reasonable regulations which allow for a transition from a totally unregulated environment into a licensed market are consistent with the goals of both the majority of the growers and the residents of the County. Creating rules where only a small fraction of parcels can qualify for a 10,000 square foot license, benefits wealthy land owners, yet drive the honest working class out of business or back into the shadows. By creating overly restrictive regulations and asserting assumptions that everyone involved in cannabis are criminals, does not achieve these goals, and more importantly is contrary to the spirit of the community process that has been underway the past 2 years.

Comments of Specific Sections of Draft Cannabis Ordinance

Sections G, H, I, J, K, L, & M all point to derogatory impacts of cannabis cultivation and clearly represent the actions of a small minority of cannabis cultivators operating in this county. By introducing these types of statements in the Cultivation Ordinance, the County is again setting up a situation of confrontation instead of one of reconciliation with the cannabis community. This is not a nuisance ordinance, but rather an ordinance to locally permit cannabis cultivation. Perhaps County staff could refer to adopted ordinances in Santa Barbara, Monterey, Humboldt or Mendocino Counties for professional language utilized in a drafting a cannabis ordinance.

The language contained in the ordinance is important and should recognize that licensed cultivation operations are important for the County. Currently there are between 3,000 and 3,500 cultivation sites in Nevada County and on average 2.3 people are employed seasonally at each site, and during harvest and trimming these numbers are higher. (Statewide the average is 3.2 workers per site according to published data, but the 2.3 figure was used here for a more conservative estimate) This indicates that collectively, cannabis cultivators are the largest employer in Nevada County. In addition to the growers, there are material suppliers, green house manufactures, soil vendors and numerous other businesses including hardware stores and equipment rentals that support the industry. Many of these businesses have been operating locally for a long time. If we estimate that there is only 5% of the number of supporting businesses as there are cultivators that would mean that there at least 150 to 175 supporting businesses directly tied to cannabis. If each operation employed only 2 people, 300 to 350 supporting jobs are tied directly to cannabis cultivation. If part time staff were included, another 300 to 350 people may be filling jobs in these supporting business operations. Total employment in the cannabis sector, at least seasonally, is likely in the range of 7,200 to 8,750 people, plus the seasonal workers during the harvest and trimming stage, and most of these are Nevada County

residents. This would represent that between 7.3% and 8.9% of the total population of the County is currently involved in the cannabis industry if all cannabis workers resided in the County. (If the 3.2 workers per site were used in these calculations, between 10,000 and 11,500 people are currently employed locally in the cannabis sector)

From an economic perspective, statewide there are about 68,000 cannabis farms which collectively produce about 13.6 million pounds of cannabis, which averages about 200 pounds per cultivation site. If cannabis were selling for \$800 per pound, and there were 3,000 cultivation sites, $(3,000 \times 200 \times \$800) = \$480$ Million Dollars in gross sales for just cannabis cultivation in the County. Much of this revenue is spent locally and many of these cultivators grew up here or have been long term residents. Many have kids in the local schools and are not in any way associated with the criminal element that was referenced in the draft ordinance.

Even if only 1,000 cannabis cultivation permits were initially issued and permit fees were \$500, \$500,000 would be generated annually for the County. Add to that a modest \$3.00 per square foot cultivation fee (which requires voters' approval as a new tax), and assume the average permitted site is 5,000 square feet, $(1,000 \times 5,000 \times \$3.00) = \$15$ million additional dollars directly from cannabis would be added to the County treasury each year. Additional sales taxes would also be generated. Cannabis revenue from permitted grow sites would offer very positive benefits to the County, and as more grow sites transition to a permitted and regulated environment, County revenues would continue to rise. Permit and cultivation fees are paid annually, so the County is potentially looking at a minimum of \$155 million in new revenue over the first 10 years, with just the first 1,000 permits.

Other alternatives to generate more substantial revenue for the County would require significant new development and considerable investment capital. Without providing major increases in housing, which most County residents do not support, major new employers will not be attracted to Nevada County. Regulated cannabis businesses do not require big infrastructure projects, can be limited to lots of adequate size, can protect neighbors with odor prevention controls and perhaps most importantly, most of these businesses are already here if the County can only recognize that and embrace it.

According to the latest Gallop Poll, 64% of Americans want to see cannabis legalized on the Federal level and completely removed from the Scheduled List of dangerous drugs. Last week a new Senate minority leader Chuck Schumer announced his intention to decriminalize cannabis federally and the previous week President Trump promised that he will support congressional efforts to protect states that have legalized cannabis. Considering the political shifts of attitude toward cannabis federally and the national support of citizens to completely legalize the use of this plant, it makes no sense whatsoever to create an ordinance where the hard working members of the cannabis community are treated so unfavorably, particularly in a community with such a long established cannabis heritage.

In Section R of the Draft Ordinance it states: "In an effort to gather community input on future cannabis regulations in the County of Nevada, a third-party, neutral facilitator was retained to selection and facilitate 10 meetings of a Community Advisory Group charged with making recommendations for commercial cannabis cultivation regulations to the Nevada County Board of Supervisors. The CAG's report was presented to the Board of Supervisors on January 9, 2018."

The panel members represented a cross-section of varying interests and there was solid community input at each meeting. Through an electronic voting system, information was obtained from the CAG Members a number of cannabis questions including the size of cannabis grows, location (zoning) where the grows should be allowed, setbacks, and minimum lot sizes for the cannabis cultivation. Strong agreement was reached by the CAG Members for allowing "Specialty Cottage" cultivation in areas zoned AG, AE, FR and RA with a 5 acre minimum lot for outdoor commercial cultivation. The

CAG Members also reached strong agreement for allowing commercial cultivation in areas zoned AG, AE, FR and RA for the "Small Outdoor" category, requiring a minimum parcel size of 10 acres.

These issues were thoroughly discussed over months of meetings and the recommendations by the Community Advisory Group regarding the applicable zoning, lot size and grow size were completely ignored in the Draft Ordinance! This input should not be discarded. The Board of Supervisors should incorporate the final CAG recommendations related to grow size, lot size and zoning into the Final Cultivation Ordinance. Six months of effort by the panel as well as \$150,000 of Nevada County taxpayer dollars went into creating the report along with significant staff time and community input at every meeting. Citizens and CAG Members volunteered many thousands of hours developing reasonable cultivation standards in an open process which was supported by the Board of Supervisors. Establishing the CAG process delayed developing a cultivation ordinance by at least 6 months, along with the further delay of the preparation of an EIR, which could have been accomplished in time for State issued permits for the 2018 growing season. By ignoring the CAG recommendations, all the money and time spent was just a wasted effort.

RA – Rural is identical to **AG** as far as what allowable uses are permitted as can be verified by just reading the text in the County Zoning Code. According to the Draft Cultivation Ordinance all options to gain a cultivation permit require a residence on a lot regardless of zoning. This really means that all lots are residential in some form no matter what the underlying zoning, for the purpose of obtaining cultivation permits in the County. Outdoor cultivation on any lot, especially those less than 5 acres, have more of a potential to impact adjacent properties regardless of zoning, than a cultivation site using a greenhouse or an indoor cultivation site with an odor control system. Yet sometimes even smaller lots have topography or other physical features that might mitigate and nuisances. RA-Rural zoned properties of adequate size have always been included in past cannabis ordinances in the County and are included in the CAG recommendations. RA-Rural properties are different than RA-Estate, R-1, R-2, or R-3 lots, and have always been treated separately. The RA-Rural designation provides for agriculture as an equal use to residential.

Personal Use which allow for up to 6 plants for personal use, as adopted by the voters of the State, should not require any registration with the County. Personal Use cultivations as required in the new Draft Ordinance should not be subject to inspections or fees and the only time an Enforcing Officer should visit a Personal Use site is in the event of a neighbor's complaint for smell, location of plants or evidence that more than 6 plants are being grown on the site.

Penalties outlined for violations of the Cultivation Ordinance are excessive and far exceed what could be considered reasonable, unless illegal water diversion, environmental destruction as a result of cannabis cultivation was occurring on a site. Of the five largest counties that permit cannabis cultivation, none of them have such high penalties as being proposed in Nevada County. In addition, allowing the County to foreclose on someone's home to collect these fees is purely an abuse of power and should not be permitted.

Finally there is the issue of firearms, and the clear violation of responsible American citizens 2nd Amendment rights, being proposed which require the forfeiture of any personal firearms in order to obtain a County Cultivation Permit. Furthermore, all cannabis permit holders are subject to background checks prior to issuance of a cannabis cultivation permit so anyone with a felony conviction would have a difficult time qualifying for a license in the first place. This proposed firearm restriction is not included in either the State license program or in Santa Barbara, Mendocino, Monterey or Humboldt Counties. Furthermore, this language was not included in any previous Nevada County Cultivation ordinance, nor has any similar firearms restriction been found in other counties where cannabis ordinances have been adopted. How could such a measure even be enforced by the County? Without a search warrant and complete home search for every applicant for

a cultivation permit, how would this be requirement even be verified, and is this gun grabbing scheme even legal to begin with? Are complimentary strip searches of the residents also included? Even with a search of someone's home, wouldn't any enforcement or inspection officer just assume that there was a firearm on the premises anyway?

Banks and liquor store owners don't have to surrender their firearm to get a business permit, and they are subject to robberies as are many other types of business in this County. By requiring cannabis cultivators to forfeit firearms, and then publicly listing the locations of license holders, cannabis cultivators would find themselves in a much higher risk situation and more than likely make them attractive targets. Criminals use guns. Law abiding citizens have a constitutional right to protect themselves and their families in their homes and should not be treated differently than any other business owner.

This entire requirement for surrendering firearms as a condition to obtain a local cultivation license must be removed from the Cultivation Ordinance.

Respectfully,

Gary M. Baker, Partner

[REDACTED]

Cc: Heidi Hall, Dan Miller, Hank Weston, Richard Anderson

Julie Patterson-Hunter

From: Julie Patterson-Hunter
Sent: Monday, April 30, 2018 8:07 AM
To: All BOS Board Members
Cc: Rick Haffey; Alison Barratt-Green; Alison Lehman; Sean Powers; Mali Dyck
Subject: FW: Draft Ordinance

Dist 2

-----Original Message-----

From: [REDACTED]
Sent: Saturday, April 28, 2018 4:19 PM
To: bdofsupervisors <bdofsupervisors@co.nevada.ca.us>
Cc: Ed Scofield <Ed.Scofield@co.nevada.ca.us>; Heidi Hall <Heidi.Hall@co.nevada.ca.us>; Dan Miller <Dan.Miller@co.nevada.ca.us>; Hank Weston <Hank.Weston@co.nevada.ca.us>; Richard Anderson <Richard.Anderson@co.nevada.ca.us>
Subject: Draft Ordinance

Dear Supervisors,

I am so disappointed in you. When measure W did not pass, due to the vote of the citizens of our county, you promised that you would come up with a fair ordinance.

This draft after a year and so much of our tax dollars spent on the CAG meetings is NOT.

Please follow the will of the people of Nevada County and have a fair ordinance that allows our current farmers to be in compliance. I am not a cannabis grower, but am very supportive of ALL of our farmers in the county.

You are not asking our wonderful wineries to move from R-AG land and you are not asking my neighbor who grows grapes for wine making to register with the county. It's a violation of personal rights to ask people who grow cannabis for themselves to register with the county.

Please allow our local cannabis farmers to be compliant by allowing grows on R-AG land. Our R-AG neighbors have cows, sheep, pigs, chickens, grow veggies and fruit. Why shouldn't they be able to grow cannabis now that it's legal in CA?

Regards,

Sheri Fogarty
Grass Valley

Julie Patterson-Hunter

From: fran freedle [REDACTED]
Sent: Friday, April 27, 2018 12:33 PM
To: bdofsupervisors
Subject: Cap on marijuana fines

This is a bad idea - once these non-compliant growers reach the threshold, they will just do what they usually do - grow how ever much they want and hope they won't get caught.

We should not change our county standards to accommodate a few growers
- allowing them to dictate the quality of life in Nevada County.
There are many other residents who disagree with the suggested accommodations.

We should maintain NO COMMERCIAL GROWS, only state allowed amounts, and not expand this intrusion of public policy for a few.

It would be far better to set strong penalties without a cap, and see if it can be the deterrent we in the rural community want, to try to stop the proliferation of grows that destroy our property values, way of life, and intrude upon our air and environmental quality.

Fran Freedle

Julie Patterson-Hunter

From: Julie Patterson-Hunter
Sent: Monday, April 30, 2018 8:03 AM
To: All BOS Board Members
Cc: Rick Haffey; Alison Barratt-Green; Alison Barratt-Green; Mali Dyck; Sean Powers
Subject: FW: Commercial Cannabis Permtting for the 2018 Cultivation Season
Attachments: Letter to Supervisor Hall re CEQA's Effect on Cultivation Permits 4.27.2018.pdf

Dist 1

From: Heather Burke [REDACTED]
Sent: Friday, April 27, 2018 5:25 PM
To: Heidi Hall <Heidi.Hall@co.nevada.ca.us>
Cc: bdofsupervisors <bdofsupervisors@co.nevada.ca.us>; Sarah Smale <Sarah.Smale@gmlaw.com>
Subject: Commercial Cannabis Permtting for the 2018 Cultivation Season

Supervisor Hall,

Please find attached my letter in support of a commercial cannabis permitting ordinance for the 2018 cultivation season, focusing on CEQA issues.

Sincere thanks for your consideration.

GreenspoonMarder

Heather L. Burke

Partner, Greenspoon Marder

[REDACTED]
[REDACTED]
[REDACTED]*
[REDACTED]
[REDACTED]
[REDACTED]

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April 27, 2018

Supervisor Heidi Hall, District 1
950 Maidu Avenue
Nevada City CA, 95959
By email to *Heidi.hall@co.nevada.ca.us*

Supervisor Hall,

I am an attorney who lives and works in downtown Nevada City, District 1, and am jointly submitting this letter with my associate attorney, Sarah L. Smale. I have been honored to represent cannabis patients, cultivators, retailers, and related businesses throughout my entire career.¹ On their behalf, I want to thank you sincerely for taking significant steps to regulate unregulated cannabis within Nevada County.

I understand your staff is recommending halting the issuance of commercial cultivation permits this season in order to prepare a full Environmental Impact Report [EIR] pursuant to the California Environmental Quality Act [CEQA].² While I agree the County must comply with CEQA, I write today to urge you to direct staff to consider other options, as outlined below. CEQA actually empowers this Board to issue commercial cultivation during the 2018 season, in some form, and you should do so in order to (1) immediately begin curbing environmental impacts associated with unregulated cultivation, (2) gather the data so important to a meaningful discourse regarding cultivation and related activities within the County, and (3) permit responsible operators to engage in the legal cannabis marketplace as soon as possible.

I am aware of the County's limited resources. However, a full EIR is the most costly of the options available to this Board, and other options may be pursued in a feasible manner that would not be unduly burdensome on our public resources. As such, my suggestions are limited to those possibilities which may be implemented in the most efficient manner with the lowest impact on the County's resources.³

¹ In addition to running a practice focused entirely on California cannabis law, I am a member of the International Cannabis Farmers Association, a national nonprofit comprised of farmers and scientists working to support sungrown cannabis and traditional cannabis farming methods. I am also a member of the California Cannabis Industry Association (CCIA), the National Organization for the Reform of Marijuana Laws (NORML), and a strong supporter of the Nevada County Cannabis Alliance, the local branch of the California Growers Association.

² See, Nevada County Cannabis Conversation, located online at <https://www.mynevadacounty.com/2185/Cannabis-Conversation>; see also, April 26, 2018 Staff Report (dated April 20, 2018.)

³ See, *Cal. Public Resources Code § 21003 (f)*, "Avoidance of Delay and Duplication," which imposes an efficiency requirement upon the public agencies involved in the CEQA process:

"All persons and public agencies involved in the environmental review process be responsible for

Brief Overview of CEQA Requirements

CEQA establishes a three-tier process to ensure environmental considerations inform the decisions made by public agencies:

The first tier is jurisdictional, requiring that an agency conduct a preliminary review to determine whether an activity is subject to CEQA. An activity that is not a project as defined in the Public Resources Code and the CEQA guidelines not subject to CEQA.⁴

A project, according to CEQA, is defined as “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”⁵

“Conversely, if an action *is* a project within the meaning of CEQA and [thus] not exempt, a public agency intending to approve it must first engage in environmental review, meaning that an environmental impact report or a negative declaration (explaining why no environmental impact report is necessary) must be prepared and must be considered by the agency.”⁶

Notably, the state Legislature declared CEQA “does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity” until July 1, 2019, provided site-specific reviews are completed.⁷

Summary of Available Courses of Action

Based on these rules, Nevada County is empowered to proceed in at least three ways:

1. Pursue the costliest and most time-consuming option to hold off on all permitting while a full EIR is prepared; or

carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.” *See also*, Title 14 of the California Code of Regulations [C.C.R.] § 15006, “Reducing Delay and Paperwork,” again emphasizing the need for efficiency in the CEQA analysis.

4 Union of Medical Marijuana Patients, Inc. v. City of San Diego, 4 Cal.App.5th 103, 111 (2016), internal citations omitted.

5 *Id.* at 112, citing *Cal. Public Resources Code* § 21065; *see also*, 14 C.C.R. § 15060(c)(2), (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and § 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment).

6 *Id.* at 111, internal citations omitted.

7 *Cal. Business & Professions Code* § 26055(h).

2. Immediately issue temporary permits to existing cultivators who do not expand their current cultivation sites under the temporary program, as they are not a “project” in that they are not a “direct physical change to the environment; or
3. Utilize the July 1, 2019, exemption to issue permits to new cultivators based on the newly proposed commercial cultivation ordinance, provided there is a site-specific discretionary review which may (but not necessarily will) require a site-specific Environmental Impact Report while the County takes the incremental step of *conducting an Initial Study* as a precursor to a full EIR to assess what categories can be “tiered off” the state Department of Food and Agriculture’s statewide EIR.

While each of these three primary avenues have benefits and burdens, the first option is by far the most time consuming and costly option. As it is unnecessary to perform a full EIR *without* an ancillary temporary permitting program, the remainder of this letter focuses on the *second* and *third* option, either of which are feasible options for the reasons set forth below.

A. Temporary Permits

As temporary permits for existing cultivators who do not expand the square footage of their cannabis gardens from the existing ordinance would not be considered a “project” under CEQA. Additionally, as a temporary permitting of existing farms would be subject to one of CEQA’s several categorical exemptions (*such as those listed here*⁸), a decision to issue such permits this season does not appear to subject the County to undue litigation.

PROS

As the April 26, 2018, Staff Report makes clear temporary permits may be issued after *one inspection*, this process strikes the balance of allowing cultivators to enter the regulated market the most quickly. This would immediately allow the County to enter these premises and inspect them, as well as bring them into state and local compliance as soon as possible. Additionally, it may be interpreted to kick off the two year transition period for Building and related code violations, should this Board so choose.

Of course, this temporary program would occur in *conjunction* with the preparation of an EIR for the more expansive commercial cultivation ordinance, allowing immediate permitting in addition to a full report.

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⁸ 14 C.C.R. 15301 (permitting, leasing and minor alterations to existing facilities), 15303 (construction and location of new, small structures), 15304 (minor alterations to land), 15307 (actions taken as authorized by local ordinance to assure protection of natural resources), and 15308 (actions taken as authorized by local ordinance to assure protection of the environment).

CONS

As these permits would not be able to expand beyond the current ordinance, which maxes out at 1000 square feet on parcels that are zoned AG, AE or FR and are greater than 20 acres, cultivators would be limited to the smallest state license types for the 2018 season.⁹

While the April 26, 2018, Staff Report indicates these licenses would be placed at risk because they would only be allowed to seek a Temporary License from the Department of Food and Agriculture, which are valid for 120 days, the County is empowered to authorize permittees to seek an annual license based on a temporary local permit, should an urgency ordinance do so expressly. (See, Attachment A.) Indeed, the urgency ordinance could simply include a one line addition stating: “Nothing in this ordinance shall be construed to preclude or prevent a temporary permittee from filing for an annual license from the State of California pursuant to 3 C.C.R. § 8103” or something along similar lines.

Additionally, multiple jurisdictions have brought the issue (of how to extend the state’s temporary licenses in areas where permanent land use entitlements are *pending*) to the attention of the state regulators, and I am confident the regulators will have worked it out long before Nevada County cultivators would be subject to this largely irrelevant quandary.

B. Tier Off of the CDFA’s PEIR via Business & Professions Code § 26055 (h)’s Temporary Exemption.

Although the County’s website indicates a full EIR is the *only* option, this is simply not so. In fact, should the County choose to rely on the limited exception of *B. & P. Code § 26055(h)*, it can and should pursue an *Initial Study* to determine whether a full EIR (the costliest and most time-consuming option) is necessary and determine where the County can “tier off” the CDFA’s Programmatic EIR.¹⁰

PROS

It would behoove the County’s bottom line to shift site-specific environmental analysis to the cultivator, although these costs would primarily be associated with larger farms who are greater threats to the environment. This option would also allow the County to use the CDFA’s PEIR checklist to “tier off” of the work already performed, further reducing time and cost to local taxpayers.

This pathway would also allow cultivators to come into compliance with the County’s codes as soon as practicable, requiring them to become locally and state law compliance from the outset and kicking off the two-year transition period for Building and related code issues.

Tiering off the CDFA’s PEIR while relying on the temporary discretionary review process would also better insulate the County from legal challenges, due to the unambiguous statutory exception, and would allow greater transparency in the EIR process by performing an Initial

⁹ Note that simply converting the current plant counts from “personal/collective/cooperative” to “commercial” under the existing ordinance would *not* give rise to any greater requirements under CEQA.

¹⁰ See, CDFA’s PEIR here: <https://www.cdfa.ca.gov/calcanabis/PEIR.html>.

Study as to the parameters of an eventual full report.

CONS

While County Counsel has repetitively characterized this pathway as “kicking the can down the line,” it does not. Rather, it allows for a shifting of the burden from the County to the individual on a case-by-case basis while the County performs the first step of an Initial Study.

The disadvantage of this pathway instead is the additional time and cost to the cultivators, already struggling under massive regulatory burdens and constantly dropping product prices. Like temporary (i.e. pre-CEQA) permits, however, this disadvantage to the small farmer can be ameliorated by not exceeding the square footage of their current garden size and demonstrating compliance with the state’s environmental regulations from the outset, which would presumably streamline the discretionary review process.

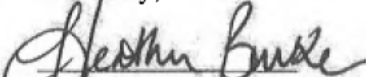
Another disadvantage, although also surmountable, would be the cost to the County for the discretionary review while it is preparing its Initial Study. These costs could be offset by requiring fees which do not exceed the cost to perform the discretionary review, or by streamlining the discretionary review in some manner.

CONCLUSION

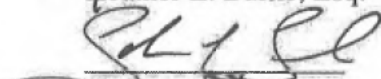
In sum, each path forward is cumbersome, and none are clearly easier than another. However, issuing temporary permits or allowing site-specific discretionary review are a more appropriate avenue for this County considering our unique political history and the strong public policy reasons for permitting these farmers as soon as reasonably practicable. Additionally, preparing a full EIR without an Initial Study may prove to be wasteful of precious taxpayer money in light of the significant ability to tier off the state’s PEIR. An Initial Study would allow our County to address the tiering off in a more measured, thoughtful, and transparent manner.

Thank you sincerely for taking the time to read this lengthy letter and engage with your constituents and our community on this complex issue of historic importance. Our office appreciates your leadership and look forward to working together with the County out of prohibition into reasonable regulations.

Sincerely,



Heather L. Burke, Esq.



Sarah L. Smale, Esq.

cc: bdofsupervisors@co.nevada.ca.us

Attachment A

Heather Burke

From: CDFA CalCannabis Cultivation Licensing@CDFA <CDFA.CalCannabis@cdfa.ca.gov>
Sent: Friday, April 27, 2018 4:45 PM
To: Heather Burke
Subject: RE: Filing for an Annual License with a Local Temporary Permit

Hello Heather,

Thank you for contacting CalCannabis Cultivation Licensing.

Yes, an applicant can submit a temporary permit as their local authorization document with their Annual application. The local authorization document is not required for the Annual application, but if it is submitted, the local jurisdiction will have 10 days to respond to our compliance request, versus 60 days if no document is submitted. Attaching a valid document, even a temporary permit, will help shorten the wait time.

Thank you for your inquiry,



Stay Connected



CalCannabis Cultivation Licensing

California Department of Food and Agriculture
1-833-225-4769
calcannabis@cdfa.ca.gov

Let's Get Growing

From: Heather Burke [REDACTED]
Sent: Friday, April 27, 2018 4:08 PM
To: CDFA CalCannabis Cultivation Licensing@CDFA <CDFA.CalCannabis@cdfa.ca.gov>
Subject: Filing for an Annual License with a Local Temporary Permit

Hi there,

I don't see the CDFA regs preclude filing for an annual license with a temporary permit from the local jurisdiction. Is the CDFA accepting annual licenses from applicants who are relying on temporary local authorizations?

Thanks for any insight on this issue.

GreenspoonMarder

Heather L. Barker

Partner, Greenspoon Marder

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

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A portion of our practice involves the collection of debt and any information you provide will be used for that purpose if we are attempting to collect a debt from you.

Julie Patterson-Hunter

From: Dan Miller
Sent: Saturday, April 28, 2018 4:53 PM
To: Ed Scofield; Hank Weston; Richard Anderson; Heidi Hall; Alison Lehman; Rick Haffey; Julie Patterson-Hunter; Alison Barratt-Green; Keith Royal
Subject: Fwd: Thoughts

I told Ed that I would forward.

Dan

Begin forwarded message:

From: Edward C Thomas [REDACTED]
Date: April 28, 2018 at 1:26:12 PM PDT
To: dan.miller@co.nevada.ca.us
Subject: Thoughts

TO THE BOARD OF SUPERVISORS-NEVADA COUNTY:

This is a note of support for the matters presented in the ad in The Union today (Saturday) paid for by the Cannabis Alliance. Cannabis growing is not going to go away. It would be terrific if our County supported the cannabis industry and adopts rules and regulations that will help build this industry to a supported, promoted and major **legal** economic contributor to our community.

I do not use cannabis recreation-ally, but just recently started using a CBD product that is helping some current back issues immensely. Most of the older generation (me included) have very limited or no experience with medical cannabis products. We all need to be more educated and discover how to work with this industry in a cooperative, creative and community beneficial way.

Thank you for your efforts. I realize what a tough issue this is for many, but it is also an area we need to listen to the younger generations about and how to work with the cannabis community. After all the dialogue and discussion, I suspect some of you have had some shift in your take on the cannabis issue. It has been hopeful to me to see comments from many of the supervisors that indicate you have done your homework and are open.

Nevada County has a big opportunity at its doorstep.

Regards, Ed Thomas

APR 19 2018

NEVADA COUNTY
BOARD OF SUPERVISORS
EACH SUPERVISOR REC'D.

Farmers for a Regulated Market

The Path to Becoming Legal ("Good Actors")

Responsible cannabis is here! Farmers want to be legal.

IMMEDIATE NEED:

A pathway forward for the 2018 season that allows farmers to enter the regulated marketplace. Farmers are well on the way to having legitimate businesses and are working hard to comply with state and local regulations. A partial list of tasks needed to meet licensing requirements can be found in **APPENDIX A**. In addition, there are huge economic benefits that the cannabis farmer community brings to the County. See **APPENDIX B**.

CHALLENGES:

Delay in getting an Ordinance in place for this growing season because County Staff insist that a CEQA analysis needs to be done prior to an Ordinance

CEQA and EIR:

- The county could continue with its plans to do a full EIR while it adopts an urgency ordinance that allows a limited number of acres to be cultivated.
- NCCA will be delivering updated information on options to CEQA that would enable local permitting while CEQA analysis is being done
- The proposed plan would allow farmers who are ready to make the transition to get permitted this season.

Cannabis Agricultural Cooperatives

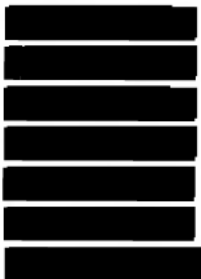
- SB 94 will give cannabis farmers a competitive advantage in the market by allowing small farmers to share proprietary genetics, standard operating procedures, cultivation methods, as well as costs, facilities, and staff associated with branding, processing, distribution, etc.
- This allows the farmer to focus on the task of farming, without having to take on the cumbersome and laborious extraneous steps in getting the product to market.
- These models are already established and have proven successful in other sectors of the agricultural community, e.g. the Blue Diamond almond cooperative. We would like to follow the same model with Cannabis.
- See full text in **APPENDIX C**

RECOMMENDATIONS

- That the Board of Supervisors adopt an Urgency Ordinance for 2018 growing season
- A First Phase Pilot Program for farmers who have started the process to become regulated
 - Will determine the number of farms that are ready to apply for permitting allowing the county to prepare the staff for hiring, project costs, and acquire important data for the permitting process. This small scale program will be the first phase of the County Cannabis Program.
 - Creating a pilot program with a small group of farmers will not trigger a CEQA requirement , i.e 100 farmers with an average of 5,000 square feet of flowering canopy will come up to 10.8 acre for the First Phase Pilot Program.
 - Will act as an incentive to farmers who see the County's act of good faith; this will encourage other farmers to come out of the Shadows and become compliant .
 - Will allow the farmers and the farms that are ready to continue into the legal market
 - Will provide an opportunity to normalize the cultivation of cannabis in the eyes of that part of the community unfamiliar with cannabis.
 - Encouraging early compliance is best for the local watersheds, by encouraging water conservation, preservation and enforcement. This will allow more farmers to install things such as rainwater catchment and implement BMP's.
- Transition Period for Code Compliance
 - Allow farmers to continue farming while bringing their property up to code, as is practiced in other code compliance situations
 - Allow farmers to use existing facilities while undergoing compliant processes.
 - Compliant Agreements should be written individually with each farmer based on unique needs for their farm.
- Processing
 - As part of the state licenses a cultivator can harvest, cure, trim, and package his own product
 - We recommend that the County adopt the State's regulations and other Cannabis regulated counties and to allow us to use facilities such as shipping containers and other permitted structures on the property for this process to avoid confusion for farmers and law and code enforcement officers.(see attached supporting documents from Mendocino county regarding Shipping containers and state Use Classification for processing facilities) .
- Local Transportation Permits
- State law requires a Transportation License in order to transport statewide however local authorization could be given .
 - Permits for cultivators to transport within county between processing centers if needed and to Distributors and Manufacturers that are within the county limits. Such permits provide a safer system and one that keeps local money within the County.

Respectfully submitted

- David Cooper
- John Foley
- Jon Oleson
- Douglas Potter
- Patricia Rockwell
- Abe Valensky
- Charma Pipersky



APPENDIX A

Tasks for Farmers to undertake to apply for a Cultivator State License

- writing business plans,
- creating site plans and cultivation plans,
- bringing as-built into code compliance,
- creating pest management and waste management plans.
- submitting applications to WaterBoard, Fish & Wildlife, etc.
- Financial Investments
 - hiring experts, consultants
 - hiring engineers, electricians, etc
- Additional requirements for Licensing
 - background checks
 - proper testing
 - taxes
 - distribution plans
 - track and trace compliance, etc.

APPENDIX B

Positive Economic and Neighborhood Impact of a regulated market on the Nevada County Community

- Jobs - New businesses being formed
- Community Alliances – i.e. Grass Valley Chamber of Commerce
- Continued customers to existing businesses
- Commitment to be good neighbors
- Sustainable Environmental Practices
- We all know by now that Cannabis has been a significant economic backbone to our local economy for the decades.
- There is a solid population of farmers, manufacturers, and distributors who are responsible citizens and represent a great value to our community.
- Becoming code compliant is a big task. Supporting these legitimate business owners so they don't have to wait another year will foster an environment of cooperation.

APPENDIX C

SB 94 Chapter 22 Article 3

Article 3. Purposes

26223. (a) Three or more natural persons, who are engaged in the cultivation of any cannabis product, may form an association pursuant to this chapter for the purpose of engaging in any activity in connection with any of the following:

- (1) The cultivation, marketing, or selling of the cannabis products of its members.
 - (2) The growing, harvesting, curing, drying, trimming, packing, grading, storing, or handling of any product of its members.
 - (3) The manufacturing, selling, or supplying to its members of machinery, equipment, or supplies.
 - (4) The financing of the activities that are specified by this section.
- (b) Members of a cannabis cooperative shall be disclosed to the licensing authority before the application is processed.
- (c) Members of a cannabis cooperative formed pursuant to this chapter shall be limited to cultivators who only hold a single Type 1 or Type 2 license.
- (d) Collectively, members of a cannabis cooperative shall not grow more than four acres of total canopy size of cultivation throughout the state during the period that the respective licensees are valid.
- (e) No member of a cooperative formed pursuant to this section shall be licensed to operate a cannabis business in another state or country.

(Link to SB 94 text:)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB94



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482
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Building Policy #3

Subject: Pre-manufactured Metal Shipping and Cargo Containers, Cargo Containers and Railroad Box Cars Used For Residential Storage Buildings.

Definitions:

Shipping and/or Cargo Container: A container used by the transportation industry to store and deliver goods on an ocean going vessel or on a railroad car.

Railroad Box Car: A four sided railroad car used by the railroad to store and deliver goods by train.

Submittal Requirements:

1. A building permit application declaring the use of the building as residential storage.
2. Three sets of plans showing the size (footprint) of the building and the door location.
3. Three copies of an 8 ½" x 11" plot plan showing the location of the building.
4. The building must meet setbacks to property lines per Chapter 20 of the Mendocino County Zoning Code.
5. A permanent placard attached to the doors of the container shall state " DOORS SHALL REMAIN UNLOCKED WHILE CONTAINER IS OCCUPIED"
6. Buildings may not be stacked or be more than one story in height.
7. Building may not be modified or altered and no additions added to other than the door hardware.
8. Electrical, mechanical or plumbing installations are prohibited.
9. Buildings are restricted to 400 Square feet in size, or less.
10. Buildings may rest on their bellies (bottom) without a permanent foundation.
11. Non-residential, alterations, additions or other uses of a shipping container, cargo container or railroad box car will require plans designed by a California Licensed Engineer or Architect addressing unconventional construction requirements in the California Building Codes.
12. Maximum of two containers allowed on any parcel one to five acres in size. Maximum of five containers allowed on any parcel five acres or larger.

This policy is derived from Section 104 of the California Building Code which authorizes the Building Official to render interpretations of the code and adopt policies and procedures to clarify the application of its provisions.

Mendocino County Planning and Building Services - Building Inspection Division

Adopted: June 11, 1996

Revised: December 20, 2017


Ignacio Gonzalez, Interim Director of Planning & Building

"Youth center" has the same meaning as in Section 11353.1 of the Health and Safety Code.

Section 20.243.040 - Use Classifications.

The purpose of these provisions is to classify uses into a limited number of use types on the basis of common functional, product or compatibility characteristics, thereby providing a basis for regulation of uses in accordance with criteria which are directly relevant to the public interest.

(A) Processing Facilities.

- (1) Processing facilities, as defined herein, shall be an agricultural use type.
- (2) Processing facilities for cannabis grown on site pursuant to a permitted cultivation operation shall be allowed as an accessory use in all zones where cultivation is permitted pursuant to Chapter 10A.17 *Medical Cannabis Cultivation Ordinance*.

(B) Manufacturing Facilities.

- (1) Manufacturing facilities, as defined herein, shall be an industrial use type.
- (2) Exception for home manufacturing.
 - (a) Manufacturing (Level 1) as an accessory use to cultivation is allowed in all zones where cultivation is allowed pursuant to Chapter 10A.17 *Medical Cannabis Cultivation Ordinance* and is subject to the provisions of Chapter 20.160 *Cottage Industry* and the following provisions:
 - (i) The cultivator engaging in home manufacturing must be permitted to cultivate pursuant to Chapter 10A.17 *Medical Cannabis Cultivation Ordinance* and must reside on the property where the home manufacturing is occurring.
 - (ii) All cannabis used in home manufacturing must be cultivated on site, under a cultivation permit issued pursuant to Chapter 10A.17.
 - (iii) The manufacturing of edible cannabis products is permitted in compliance with State of California regulations.
 - (iv) Only nonvolatile extraction methods may be used.

(C) Testing Laboratories and Research Institutions.

- (1) Testing laboratories and research institutions, as defined herein, shall be a commercial use type.
- (2) Testing licensees shall not
 - (a) hold a license in another facility or category established by this Chapter; or
 - (b) own or have an ownership interest in any other facility or category licensed pursuant to this Chapter.

(D) Retailer/Dispensary.

- (1) A Retailer/Dispensary, as defined herein, shall be a commercial use type.

Julie Patterson-Hunter

From: Julie Patterson-Hunter
Sent: Monday, April 30, 2018 12:28 PM
To: All BOS Board Members
Cc: Rick Haffey; Alison Barratt-Green; Alison Lehman; Sean Powers; Mali Dyck
Subject: FW: Personal registration

Dist 4

From: Lauren Wagner [REDACTED] >
Sent: Monday, April 30, 2018 12:25 PM
To: bdofsupervisors <bdofsupervisors@co.nevada.ca.us>; [REDACTED] >
Subject: Personal registration

Dear Mr. Beason and BOS staff and supervisors,
I am a medical marijuana user for a serious medical condition for which doctors nationwide recommend cannabis to mitigate symptoms. I have a doctor's recommendation and have had for several years. I am highly opposed to registering with the county for growing 6 plants, as this violates my rights to medical privacy. I believe it violates my HIPPA rights.
Thank you

Lauren Wagner

Julie Patterson-Hunter

From: Ed Scofield
Sent: Monday, April 30, 2018 4:46 PM
To: Julie Patterson-Hunter
Cc: Sean Powers
Subject: FW: Draft cannabis ordinance
Attachments: BOS cannabis letter.docx

Sean, Good questions here. When would a conditional use permit be required? How many 5+ contiguous parcels with a 2,500 ft. canopy would be allowed? (How many plants would you estimate for 2,500 sq. ft.)

Ed

From: lbarhydt [REDACTED]
Sent: Monday, April 30, 2018 2:32 PM
To: Ed Scofield <Ed.Scofield@co.nevada.ca.us>
Subject: Draft cannabis ordinance

Dave and I have a few concerns with the draft ordinance we would like to share with you. I know you are all working hard to get this done and we understand how difficult your job is. I have attached a letter and would love to talk it over with you when you have time.

Thank you for all you do.

Laura Barhydt

Sent from my Samsung Galaxy Tab®|PRO

I am writing this letter to express our concerns with the draft cannabis ordinance. My husband and I recognize that cannabis cultivation is legal and some are interested in becoming licensed and permitted businesses under state law and county ordinance. We agree that regulated cannabis cultivation is a step in the right direction in protecting the environment and the quality of life we enjoy in Nevada County. We have read through the proposed draft cannabis ordinance and have some serious concerns we would like to share.

- ◆ There does not seem to be a limit to the number of permits issued for commercial cultivation in AG, AE, and FR zoning.

There should be a limit to the number of permits issued for geographic areas. Unlimited numbers of outdoor cultivation sites in any area will create adverse impacts on neighboring properties. Before any type of permit is issued neighbors should be notified and allowed to comment potential impacts to private roads, the number of cultivation sites already in the area, security concerns or quality of life issues. This does not seem to be a requirement with only the Administrative Development Permit. Please consider Conditional Use Permits for all commercial cannabis cultivation sites regardless of size and type.

- ◆ Commercial grows of up to 2500 square feet would NOT require a Conditional Use Permit. This would not allow neighbors to have any advance notification of a land use change. Sec. 1.2 Definitions C. *"Cannabis" shall have the same meaning as that set forth in Health and Safety Code Section 11018, as may be amended. Cannabis, Medical Cannabis, and the Cultivation thereof, as defined in this Article shall not be considered an agricultural activity, operation or facility under Civil Code Section 3482.5 or an Agricultural Product as defined in Section L-II 3.3 of the Nevada County Land Use and Development Code, or an Agricultural Operation as defined in Sections L-II 3.3, L-II 6.1 and L-XIV 1.1 of the Nevada County Land Use and Development Code. For purposes of this Article, Cannabis does not include hemp, hemp products or hemp by-products.*

Commercial cannabis cultivation is a change in land use and should require a Conditional Use Permit. I have heard that several counties are requiring cannabis to be grown indoors only and some require it in industrial or commercial zoning for this reason. Neighbors who have purchased their dream home in a quiet area dotted with ranches and small farms may now find themselves surrounded by commercial cannabis operations subjecting them to unwanted odors, increased traffic, transient workers, and a possible increase in crime.

- ◆ 10 employees would be allowed on each cultivation site and presumably more with a variance.

Ten employees does not sound excessive until you add together multiple cultivation sites on one road. Many of our county roads are private, narrow, or in poor repair. We are also in a high fire danger zone. There are currently 5 cultivation sites on the road I live on. The road is in fair condition but does not receive regular maintenance or repairs. There is no formal road association that collects dues until major repairs are required. It is one lane with a few passing areas. If each cannabis grower had 10 employees we would have 50 extra cars using the road! In a fire we have only one way in and out. A dangerous situation for all. Another concern is where would all of these transient workers stay? Will they camp on site or on the creeks and rivers?

We live on a private road approximately 2 miles in length composed of parcels 10 acres minimum but several are slightly more. According to the draft ordinance outdoor grows up to 5000 sq ft could potentially be allowed on every parcel. This would negatively impact neighbors with odors, increased traffic, possible pollution to neighboring properties and increased potential for rural crime. We strongly encourage you to consider limiting the number of permits issued county wide but especially in geographic areas. We respect our neighbors property rights and their right to what they choose what they grow but we believe unlimited cannabis cultivation in agricultural areas will impact the ability of others to enjoy the quality of life we so cherish in Nevada County.

Dave and Laura Barhydt

[REDACTED] [REDACTED]