

**NEVADA COUNTY PLANNING COMMISSION  
NEVADA COUNTY, CALIFORNIA**

**MINUTES** of the regular meeting of the Planning Commission on April 11, 2019, at 1:30 p.m. in the Board Chambers, Eric Rood Administrative Center, 950 Maidu Avenue, Nevada City, California.

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**MEMBERS PRESENT:** Chair Duncan and Commissioners Aguilar and Johansen were present for the full meeting. Commissioner Coleman Hunt arrived at 2:13 p.m.

**MEMBERS ABSENT:** Commissioner Bullock.

**STAFF PRESENT:** Planning Director, Brian Foss; Agricultural Commissioner, Chris de Nijs; Building Director, Craig Griesbach; Deputy Fire Marshal, Matt Furtado; Deputy County Counsel, Rhett Vanderploeg; Administrative Assistant, Tine Mathiasen.

**PUBLIC HEARING:**

1. Commercial Cannabis Cultivation Ordinance (ORD18-2; EIR18-0001)
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**CALL MEETING TO ORDER:** Chair Duncan called the meeting to order at 1:41 p.m.

**STANDING ORDERS:**

1. **FLAG SALUTE.**
2. **ROLL CALL:** Four present; Chair Duncan announced that Commissioner Coleman-Hunt would be arriving shortly.
3. **CHANGES TO AGENDA:** None.

**PUBLIC COMMENT:** Members of the public shall be allowed to address the Commission on items not appearing on the agenda which are of interest to the public and are within the subject matter jurisdiction of the Planning Commission, provided that no action shall be taken unless otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code. None.

**COMMISSION BUSINESS:** None.

**CONSENT ITEMS:** None.

**PUBLIC HEARING:**

**1. 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.

Planning Director Brian Foss introduced himself, Alex Jewell of Kimley-Horn, and Special Counsel Christie Crowl. He gave the project background and the project description. He discussed definitions, zoning classifications, cultivation area requirements, accessory structure requirements and support areas. He reviewed required permits, their respective timelines, and application submittal requirements. He gave an overview of required setbacks, options for Variances and Setback Easements, and the handling of violations and abatement. He highlighted a few of the ordinance's controversial issues as support area size, a transition period, industrial hemp, the definition of nurseries, and the certificate of deposit requirement.

Alex Jewell gave an overview of the EIR. He discussed the timeline, circulation of the draft EIR, and comments received. He gave an overview of the resources analyzed, the impact analysis, proposed mitigation measures, significant and unavoidable impacts, significant and unavoidable cumulative impacts, and overriding considerations.

Director Foss pointed out differences between the original draft ordinance and the one currently before the Commission. He referenced his memo with the attached public comments and a recommended amendment to the Final EIR in response to comments by NID. He listed staff's recommendations to the Commission.

Commissioner Aguilar and Director Foss discussed personal use cultivation in residential zoning districts and standards that would apply to this type of cultivation. Commissioner Aguilar asked about enforcement and the intent of the overriding considerations. Director Foss noted the focus on the commercial aspect.

Commission Aguilar wondered about complaints resulting from personal indoor grows. He asked for clarification on whether the intent of the ordinance was to be driven by neighbor complaint that would result in follow-up by the Cannabis Compliance Division. Chair Duncan clarified that Commission Aguilar was wondering whether enforcement would be predicated on complaints. Commissioner Aguilar asked about overriding considerations and the provision of an enforcement mechanism. He asked whether the intention was to not enforce unless there was a complaint. He asked about the focus on the commercial aspect when there may be more complaints regarding the residential grows that require no permits.

At 2:13 p.m., Chair Duncan noted that Commissioner Coleman-Hunt had arrived at the meeting.

Commissioner Aguilar asked about inspections. Director of the Building Department and Cannabis Compliance Division Craig Griesbach said that the process was the same as any other land use violation and complaint.

Commissioner Johansen and Director Griesbach discussed the funding of the Cannabis Compliance Division through General Fund and user fees, and that the division was complaint-driven.

Commissioner Johansen discussed the public benefit of a well-regulated cannabis industry and the importance of enforcement. He noted that one goal established by the CAG was to create an easier pathway, which the application was not. He asked about state law. Director Foss explained state regulations and limits on the purview of local jurisdictions. Director Foss stated that the ordinance was based on direction from the Board of Supervisors as to the parameters of local control.

Commissioner Johansen discussed the goal of getting medicine to patients, the expansion of medical cannabis as an overriding consideration, and the impact of the permitting process on caregivers. He discussed the need to make obtaining CBD medicine for kids easier. He suggested that the Commission make a recommendation to the Board of Supervisors regarding high CBD production.

Chair Duncan noted that the information in the presentation was included in the staff report, which Commissioner Coleman-Hunt had read. Commissioner Coleman-Hunt then described the ordinance's projected level of cultivation as out of alignment with the expected level of actual impact, and the results of that discrepancy. She wished the ordinance were more in line with the actual size of the industry in the community, or that it identified the optimal size of the industry based on the community's resources. She recognized the county's legacy cannabis community and the need for the community to remain focused on small farms, and she wondered whether the ordinance prioritized that. She also discussed offsite mitigation efforts and the absence of that option in the ordinance. Director Foss clarified that it was an option and could be recommended as part of a Management Plan, which would developed on a site-by-site basis.

Commissioner Aguilar and Director Griesbach discussed the maturity of plants in relation to the definition of canopy size.

Commissioner Johansen and Director Foss discussed the possibility of meeting setback and acreage requirements through Variances, Lot Mergers and Lot Line Adjustments, which would necessitate a consideration of existing density and zoning.

Commissioner Johansen and Director Foss discussed natural resources and how the Natural Diversity Database would be used.

Commissioner Johansen and Director Griesbach discussed LED lighting, building code, and energy usage. Mr. Jewell explained the EIR's assumptions on LED usage in the energy calculations.

Commissioner Johansen and Deputy Fire Marshal Matt Furtado discussed dead-end road issues and road improvements. Deputy Fire Marshal Furtado listed mitigations that might be allowed on a case-by-case basis.

Commissioner Johansen asked about value-added and vertical integration. Director Foss noted the limited processes covered in the ordinance as opposed to all the components in the state allowances for different types of permits. Director Foss acknowledged that it was a concern and the likelihood that it would be a topic of discussion with the Board of Supervisors. Commissioner Johansen discussed the potential benefits of a value-added approach.

Commissioner Johansen expressed his concerns about the overuse of phosphorous. Agricultural Commissioner Chris de Nijs noted that fertilizer was regulated on the state level.

Chair Duncan opened public comment at 2:36 p.m.

John Krekorian discussed the stress of the permitting process, state requirements and the previous ordinance. He outlined the timeline, the associated expenses and the money he had lost. He referred to grower applicants as stewards of the land. He discussed his experience with his bank account being closed and he requested the removal of the requirement for a certificate of deposit. He discussed the financial aspect, the impact of the process on him, and the flourishing black market. He requested the Commission recommend approval and recommend it be an urgency ordinance.

Matthew Coulter discussed his experiences as a cultivator, the timeline of cannabis regulation, and finances and taxes. He expressed disapproval of the process and of the people the County had hired. He mentioned the underregulation and lethal nature of pharma. He described the regulation of cannabis cultivation and the permitting process as a deterrent that had resulted in attrition. He expressed the need for the process to be investigated by the Grand Jury. He discussed the destruction, overmanagement and overregulation of the industry. He asked the Commission get something on the books to allow people to grow.

Yvonne Watcher discussed her experience as a patient and a caregiver. She highlighted the importance of caregivers and argued that patient caregiver gardens were not commercial farms and that they supplied medicine that saved lives. She recommended that the Commission recommend the Board of Supervisors remove the requirement that patient caregivers and nonremuneration must comply with commercial standards, and to allow for discretionary language for farmers cultivating for patients.

Song Kowbell discussed her experiences growing since 1977 and her experience saving lives. She requested that nothing be decided until Mr. Forrest Hurd was involved. She described her upset on behalf of patients and she relayed the health struggles she and her family had faced. She discussed tobacco and methamphetamine and reminded the Commission that the issue was about patients and kids. She discussed the cost and unaffordability of cannabis. She asked the Commission to protect sensitive populations. She asked to see a meeting about methamphetamines.

Gary Sobonya discussed the application's requirement of a CD at a local bank and pointed out that local banks would not open accounts for known cannabis businesses. In contrast, the state required a surety bond rather than a CD. He requested that the county change the requirement to allow for a bond like the state.

Barbara Jones discussed the financial infeasibility of a \$5,000 CD. She discussed the generosity of farmers and their donations to families and organizations. She argued that there would be nothing wrong with the ordinance saying that nonremuneration was out of the question. She asked the Commission to remember the patients.

John Foley requested an amendment before the ordinance was passed. He discussed his experiences coming into compliance. The last minute changes to the draft ordinance and notice of preparation would limit farmers' ability to run successful businesses. He discussed the limitation on the support area and the impact on the safety of the working environment. He discussed his property, licensure, building conversion, and setbacks. He discussed costs and the unrealistic and unsafe limitations being placed on his business. He requested that the Commission advise the Board of Supervisors to remove the support area size limitation. He suggested referring to existing code pertaining to permanent open space requirements and maximum impervious surface. He expressed concern about the ordinance project failing.

Commissioner Aguilar asked Mr. Foley what percent area he envisioned and Mr. Foley replied that it would be a personal decision that would be different for every business model.

Patricia Rockwell emphasized the importance of the discussions on the 25 percent support area restriction and about existing permitted structures. She made the point that a lot more is needed to grow for medicine than to grow for flower. She argued that existing impervious surface standards would limit overdevelopment and that the restriction of support area size would create unnecessary overregulation and was not realistic. She wondered if the county had considered the additional state requirements. She listed the negative consequences of an inadequate support area. She asked the Commission to recommend the Board of Supervisors remove the 25 percent limit on support area and replace it in accordance with industry practices and utilizing existing county policy. She also asked the Commission to recommend that the Board of Supervisors allow permitted existing structures that fall within the 100-foot setback to be used without a Variance or Setback Easement.

Douglas Potter discussed the existing grading on his site and the advisement he had received from the Water Board. This year he decided on a smaller grow to establish his farm. He listed the reports he had compiled, the work he planned to do for future development, and the extra mile he had gone toward compliance. He asked the Commission to recommend the Board allow growing on existing pads under specific conditions: no threat to health and human safety, only outdoor growing allowed, no structures on the pads, and possession of required permits for growing. He asked that existing county code on grading be applied to cannabis farms. An allowance to grow on existing environmentally safe and inspected pads would allow many farmers to move forward.

Diana Gamzon spoke as the Executive Director of the Nevada County Cannabis Alliance. Her organization had submitted a memo that analyzed the support area size needed. She spoke about the Alliance and policy history on cannabis in Nevada County. The Alliance opposed the newly added language on a 25 percent limit on support area, called for the limit to be adjusted in accordance with standard practices and existing county code, and argued that the proposed limit was unjustified and arbitrary. She argued that the limit did not appear in the draft ordinance, had not been a part of previous discussions, would not be realistic, and would make operations infeasible. She asked the Commission to provide her recommendation to the Board. She also requested a change in the language of the ordinance to allow staff flexibility in the standards for nonremunerative cultivation and thus remove undue burden from caregivers. She discussed craft farming, overregulation and barriers to entry, and Nevada County's status as a legacy-producing region. Additionally, she expressed concern that the EIR assumed a highly inflated number of grows which in turn inflated their impacts, and stated that this should be taken into account in deliberations. Finally, she noted the Alliance's support of staff's recommendations regarding the EIR.

Commissioner Aguilar asked Ms. Gamzon for a better number. Ms. Gamzon listed the activities that take place in a support area and explained the need for a support area of up to 90 percent of canopy size. She hoped for the use of existing county code to regulate the issue. After clarification, Ms. Gamzon then listed numbers and factors that might be taken into account to estimate a more accurate number of commercial grows. She anticipated the number of farmers seeking licenses to grow. Commissioner Johansen noted that the EIR took into account personal use, which may increase at the same time commercial cultivation may decrease. Commissioner Johansen and Ms. Gamzon discussed the possibility of pre-testing product before it left the farm.

Shelby Sachs discussed the impact of grow infrastructure on land disturbance and how the backdoor of residential development had allowed for the avoidance of additional oversight and regulation by the Water Board. She discussed her background as a civil engineer and cannabis grower and discussed her activism around hemp. She described the negative impacts of her neighbor's operation on her, including on impacts on property value, her health, her family's perceived safety, fire risk, home insurance and home salability, privacy concerns, and road maintenance disagreements. She also discussed flaws with the complaint driven nature of resolving issues and the burden of proof. She discussed the decibel levels of fans, disharmonic resonance, and grading. She also expressed frustration with her attempts to have discussions with the CDA.

Gary Baker discussed the comments he had submitted. He questioned the number of permits the EIR used for the analysis. Costs would be passed on to cultivators who apply for permits and pay mitigation fees. The project misses key objectives by omitting legacy cultivations and RA zones. He suggested adding RA zoned parcels or parcels within 1,000 feet of rural zones because of the transitional nature of the parcels. His comments addressed the 25 percent limitation and provided justification for 93 percent of the canopy area. Also, the treatment of all cannabis projects as commercial developments would create bigger impacts on the environment and on the growers. He discussed the level of expense required to convert existing buildings to meet commercial requirements.

Sebasbian Gotla requested the removal of commercial standards for patient caregiver nonremunerative cultivation. As these were not commercial businesses, he suggested there be less stringent regulations. He asked the Commission to recommend the Board of Supervisors align patient caregiver nonremuneration activity in a category other than commercial. He also asked the Commission to recommend the Board of Supervisors remove the restriction on support areas to 25 percent of canopy size as the provision was in conflict with state licensing authority. He asked the Commission to eliminate the provision altogether. Finally, he asked the Commission to recommend the Board of Supervisors pass the ordinance as an urgency ordinance.

Ashley Overhouse (representing SYRCL) noted that her organization had submitted comments during the scoping process and on the DEIR. She asked that the item be tabled with no action taken by the Commission. SYRCL was disappointed with the DEIR, requested an extension to submit comments that was not acknowledged, and is disappointed with the response to comments in the FEIR. The fundamental concern was the EIR's assumption that 100 percent of eligible parcels would become commercial cannabis grows. SYRCL fundamentally disagrees that additional analysis was not required to meet legal requirements. SYRCL disagreed that infeasibility of additional analysis was not a valid excuse for not proposing adequate mitigation. Analysis was still needed under scenarios other than the 30 percent cultivation alternative analysis. She referred the Commission to the Public Resources Code and to SYRCL's suggested ordinance amendments.

294  
295 Jack Jacobs discussed the challenges of opening a new business account at a local bank or credit  
296 union. Cultivators cannot open a business account without lying, making the CD requirement  
297 unrealistic. Also, the 25 percent support area limitation set growers up for failure.  
298

299 Wade Laughter asked the Commission to pass the EIR and ordinance to the Board of Supervisors  
300 for enactment, as flawed as they were. He requested language be added to the purpose and findings  
301 that is welcoming to the growers attempting to come into the overregulated market. He discussed  
302 the 25 percent support area limitation, and the choice to make cannabis work or to continue the  
303 culture war. He suggested working in the direction of unifying the community. He discussed  
304 cannabis as medicine and the county's position as a center of education, information and genetics  
305 on cannabis as a healing plant. He asked for the Commission's help in allowing the community to  
306 do that work.  
307

308 Shelly Salvatore discussed the infeasibility of the 25 percent support area restriction. She asked  
309 the Commission to think about the patients. Many people were looking for CBD, which had a lot  
310 of potential in being grown in the county. She asked for support of small farmers and local people.  
311 She asked that the Commission let the Board of Supervisors know that 25 percent would not work.  
312

313 Aaron Perdue discussed expenses and the unavailability of financing, which separated growers  
314 from the typical agrarian. All money was in capital and was not liquid. He argued that the farmers  
315 who would survive the transition were the farmers willing to grow illegally in the interim. He was  
316 used to regulation but it would be hard to get in the game without financing. He discussed the  
317 small scale of a 2,500 square foot garden in terms of agriculture. He argued that lawyers should  
318 not need to be hired to understand the proposal.  
319

320 Lee French expressed his desire to work to uphold the law, his appreciation of the growers coming  
321 into compliance and appreciation of the day's meeting. He expressed concern about nuisance to  
322 the neighbors, especially with the allowance of outdoor grows in RA zoning, which would affect  
323 many people. He asked the Commission to consider additional requirements or special applications  
324 for grows in RA zoning that would protect people from the odor nuisance.  
325

326 Jonathan Collier discussed obstacles to entry and the building code. He discussed small farmers  
327 and dropping wealth. He discussed the removal of the provision that restricted financial interest to  
328 three cannabis businesses. He expressed his support of the restriction on individuals to owning no  
329 more than three cultivation licenses but disapproval of the restriction to three cannabis businesses.  
330 This would limit the ability to vertically integrate and would be overly restrictive. He asked that  
331 value-added aspects and vertical integration be addressed. He discussed the importance of setting  
332 precedence and emphasized urgency.  
333

334 Rodney Hennith discussed ADA requirements and the lack of applicability to small farmers with  
335 fewer than 15 employees. He discussed the requirements and reasonable accommodations, which  
336 would not apply to a small farm hand. The requirement was a major burden and he didn't see folks  
337 with disabilities applying for the jobs. Finally, the state says to refer to federal requirements.  
338

339 Abraham requested that the Commission recommend the Board of Supervisors include all  
340 commercial cannabis structures and grading in the transition period and allow two years to get  
341 existing grading permitted.  
342

Chair Duncan closed public comment 3:55 p.m.

Director Foss said he expected that the Board of Supervisors would provide direction on the CD requirement and that the Commission was welcome to make a recommendation. He discussed the purpose of the requirement. Commissioner Aguilar asked why it was not a bond that was required. Director Griesbach noted that a surety bond was one option staff would be recommending to the Board. Commissioner Aguilar said he would like to recommend that as an option and noted that other projects required bonds, which Director Griesbach confirmed. Commissioner Aguilar emphasized that he wanted a functional ordinance, Commissioner Coleman-Hunt said the CD requirement was out of sync with what was possible, and Commissioner Aguilar noted that he did not want people to be pushed into lying. Chair Duncan noted that most of the Commissioners were in agreement that the CD requirement was onerous. Director Foss asked for clarification on a recommendation. Chair Duncan said that the bank aspect was not working and she asked staff to research the issue and provide options to the Board. Commissioner Aguilar agreed that his issue was with the method by which the money was required to be provided, not with the money requirement itself.

Commissioner Johansen, Commissioner Aguilar and Chair Duncan discussed that would be best to provide feedback to Director Foss as he addressed each issue. Chair Duncan clarified that there were currently no motion and that the Commission was just providing feedback.

Director Foss discussed nonremuneration. He discussed the standards that that type of cultivation fell under and said the Board could decide that it be treated separately or differently, with variables such as zoning, size or fee structure. The Commission could make a recommendation to the Board. Commissioner Coleman-Hunt was in favor of separating nonremuneration and medical cultivation from commercial. Director Foss noted that, because many of the land use impacts were the same, treating it completely differently could potentially require another ordinance and more environmental review. He said that if the desire of the Commission was to look at how it could be treated differently, that could be part of the recommendation to the Board. Commissioner Coleman-Hunt said the grows were much smaller so the impacts were much smaller and it would be appropriate to scale. Director Griesbach noted that the issue had been reviewed by the Board and it was written as the Board recommended. Chair Duncan said that it is the gist of the Commission that the Board consider it again.

Commissioner Johansen discussed loopholes and enforcement. He discussed small scale personal use cultivation and asked about the state's regulations on giving away those plants. Director Foss said he did not have expertise in that area. Commissioner Johansen said he would like to look into that.

Director Foss addressed the concerns about the support area size restriction. He discussed the original ordinance and how the 25 percent size was determined. He reviewed size limitations on other types of commercial uses and why a size limitation might be important. He pointed out the potential weakening of the environmental analysis if the percentage was deviated from greatly. Director Foss said that there was some flexibility but that the further away from 25 percent, the greater the risk of challenge to the adequacy of the EIR. Chair Duncan said the Commission was anticipating future problems and the 25 percent was inadequate. Commissioner Aguilar noted the requests in public comments and said that the Commission's recommendation needed to be to increase the size allowance. Counsel Christie Crowl elaborated on the potential impacts on the environmental review process of increasing the size, including the potential need for additional



analysis and circulation. She pointed to an alternative presented in the staff report that the Commission could recommend to the Board that might allow more support area in existing permitted structures. Chair Duncan touched on the possibility of having more than one support area. Director Foss explained the option of allowing additional space within existing structures, which would reduce the risk of the EIR being challenged as inadequate. Chair Duncan and Director Foss clarified that the alternative would allow for 25 percent of newly developed area with an addition of 50 percent in existing structures, for a total of 75 percent of the canopy size. Commissioner Johansen mentioned the impact of vertical integration on square footage. Commissioner Coleman-Hunt and Director Foss discussed why there was a need for a limit on the size of the support area. Director Foss discussed the introduction of commercial use into residential areas, odors, impacts on neighboring properties, and the nature of environmental review for administrative permits.

Commissioner Aguilar and Director Griesbach discussed ADA requirements. Director Griesbach explained that the Building Department governed public accommodations in commercial buildings. He discussed California Building Standards Code and federal requirements. Commissioner Aguilar and Director Griesbach confirmed that ADA requirements were not dependent on number of employees and had more to do with the definition of a commercial building, and that existing building would have to be up to ADA standards.

Director Foss addressed the policies on the three business types and licenses limitation. He said that the purpose was to protect the small farmer and allow them to be competitive. The policy was not a land use issue but rather a policy to help small business. The Board could direct staff to remove or modify the limitation, and the Commission could provide input to the Board. Commissioner Aguilar stated that small businesses should be protected, as the General Plan indicates. Commissioner Johansen asked about what a better number might be. Director Foss said that staff could work with the Alliance to identify a different number, which Chair Duncan supported. Commissioner Aguilar discussed the intention of the limitation and Director Griesbach clarified that financial interest was the issue. Chair Duncan noted that staff would refine the number for the Board.

Director Foss discussed cultivation in the RA zone. He discussed analysis in the EIR and direction from the Board to not include RA for commercial cultivation at this time.

Director Foss discussed a transition period to allow for the use of unpermitted structures. He explained the proposed permitting requirements and the similarity to requirements for any other type of use or structure. Allowing unpermitted structures would be a departure from existing procedures and staff was aiming for consistency. Commissioner Aguilar discussed the potential environmental impacts of not allowing grows on existing unpermitted grading and asked if there could be an allowance for growing on existing pads during a grace period while fixing the unpermitted grading in order to minimize new disturbance. Director Griesbach explained the problematic nature of that proposal. It was not impossible but the Board would need to give policy direction. Commissioner Aguilar asked about creating a process to determine if it would be reasonable and Commissioner Coleman-Hunt agreed with that suggestion.

Chair Duncan asked about the possibility of an urgency ordinance. Director Foss and Counsel VanderPloeg discussed CEQA, the urgency process and the findings necessary to justify urgency. Commissioner Coleman-Hunt suggested passing the existing ordinance and then immediately beginning the process of crafting a new and refined one. Director Foss and Commissioner

Coleman-Hunt discussed the potential timeline and Chair Duncan requested that these comments be considered by the Board.

Commissioner Johansen discussed setbacks, stated that 100 feet was not enough and suggested that grows be required to be closer to the grower's residence than the neighbor's. Chair Duncan and Director Foss requested more guidance for staff and Director Foss requested that any direction be the consensus of the Commission.

Chair Duncan called for a break at 4:33 p.m. and called the meeting back to order at 4:54 p.m.

Director Foss listed the seven recommendations that he understood the Commission desired to make to the Board alongside their motion: 1) that other methods besides CDs, such as bonds, were evaluated and perhaps allowed to serve the same purpose as a CD; 2) the consideration of different standards, permitting or fee structures for nonremuneration cultivation; 3) allowance for flexibility and an increase in the support area size allowance to more than 25 percent, as could be accommodated by the existing EIR; 4) direction for staff to work with the Cannabis Alliance and perhaps revise the language regarding the limitation to three licenses or permit types so that it continued to protect small farmers but did not limit individuals to three businesses; 5) an allowance for existing grading to be included in the transition period and allowance for permitting and remediation to take place after the cannabis permit was issued; 6) if the findings could be made, adopt the ordinance as an urgency ordinance; and, if the Commission could provide more guidance, 7) increase or change the 100 foot setback requirement for parcels of a certain size.

Commissioner Aguilar asked about setbacks and growers who were in compliance based on previous codes and now would not be. Director Foss explained that there were two issues: 1) structures permitted for non-cannabis use that comply with standard 30-foot setbacks but were within the 100-foot setback required for cannabis operations; and 2) a request to increase setbacks to a larger number for larger parcels, as Commissioner Johansen had suggested. Director Griesbach said the issue he had heard feedback on was buildings that met general land use setbacks but were not permitted related to cannabis. He said that the prior ordinances had more strict setbacks than the draft ordinance currently before the Commission. Chair Duncan asked about grandfathering in structures built to code that are used for cannabis. Director Griesbach said there was no language currently in the ordinance to allow this. After confirming that Director Foss needed more clarification on the Commission's recommendation, Commissioner Coleman-Hunt stated that she was in favor of grandfathering in permitted buildings as long as issues like odor and noise were honored, and Commissioner Johansen agreed.

Commissioner Johansen argued that on larger parcels, commercial grows should be closer to the grower's residence than the neighbor's residence, and/or the grower should take responsibility for the grow rather than the neighbor having to. This policy should apply to parcels 20-acres or larger and would not include a standard setback distance. Commissioner Coleman-Hunt suggested keeping the 100-foot setback and allowing for neighbors to file complaints with Code Compliance. Chair Duncan suggested the negotiation of issues during the application review period. Director Griesbach confirmed that the ordinance would allow for neighbors to file complaints and that potential issues would be vetted as part of the review process. Chair Duncan asked if neighbors would be notified, Director Griesbach said no, and Commissioner Johansen stated that that was the problem. He stated that public safety was paramount, it was a nuisance, and that he was standing up for agriculture. Chair Duncan and Director Foss indicated that there needed to be a set number so that it could be known with certainty. Commissioner Johansen gave examples of when set

numbers were not used, indicated that he considered this requirement appropriate for parcels 20-acres or larger, and suggested that subdivisions to important farmland require a 300-foot setback.

Chair Duncan noted that there would be an opportunity for more public comment at the Board of Supervisors meeting.

Director Foss stated that he heard a suggestion for a 300-foot setback for 20-acres or more. Commissioner Johansen said he was not happy with the number but was happy with the requirement that a grower be closer to the grower's house. Chair Duncan pointed out the challenges of implementing Commissioner Johansen's suggestion and expressed the need for more certainty. Commissioner Johansen noted that he had suggested both numbers and the use of natural barriers. Commissioner Aguilar suggested that the setback be in relation to the zoning or parcel size of the adjacent parcel.

Commissioner Aguilar and Director Griesbach discussed that, in regard to the first setback issue, the buildings in question were not permitted for commercial use but rather for residential agricultural uses. Commissioner Aguilar expressed concern and stated his support for keeping the 100-foot setback requirement. Commissioner Coleman-Hunt asked about allowing existing buildings within the setback as long as there were mitigation measures in place to address the negative impacts, and Commissioner Aguilar noted that that sounded like a Use Permit. Director Foss explained that one purpose of the EIR was to attempt to cover the impacts for all future permits so that each site would not have to go through further CEQA analysis. He noted the challenges in enforcement of the 30-foot setback unless there were additional environmental review or additional standards in the ordinance. Commissioner Coleman-Hunt and Director Foss discussed the current allowance for Variances which could allow a 60-foot minimum setback. Finally, Chair Duncan asked Director Foss to include this discussion in his report and to request that the Board attempt to accommodate some of the situations discussed, and Director Foss agreed to characterize the discussion.

Commissioner Coleman-Hunt, Commissioner Johansen and Chair Duncan requested the addition of language into the ordinance that would affirm the value of encouraging small farms, small business, small cannabis operations and small profits. Director Foss confirmed that he was working with County Counsel to incorporate language to that effect. Chair Duncan noted the importance of public comment and Commissioner Aguilar expressed welcome to and appreciation of growers interested in compliance.

Chair Duncan reviewed the potential recommendations.

**Motion by Commissioner Johansen** to recommend the Board of Supervisors approve a Resolution certifying the Final EIR (EIR18-0001, SCH#2018082023) based on CEQA Findings of Fact, as amended; **second by Commissioner Coleman-Hunt. Motion carried on a roll call vote 4/0 (Commissioner Bullock absent).**

**Motion by Commissioner Johansen** to recommend the Board of Supervisors adopt Ordinance Text Amendment (ORD18-2) to Chapter II of the Nevada County Land Use and Development Code adding Section L-II 3.30 Commercial Cannabis Cultivation Ordinance, and the seven recommendations and discussion by the Planning Commission; **second by Commissioner Coleman-Hunt. Motion carried on a roll call vote 4/0 (Commissioner Bullock absent).**

Discussion ensued regarding upcoming Commission meetings and ongoing project statuses.

**Motion by Commissioner Aguilar; second by Commissioner Johansen to adjourn. Motion carried on voice vote 4/0 (Commissioner Bullock absent).**

There being no further business to come before the Commission, the meeting was adjourned at 5:31 p.m. to the next meeting scheduled for April 25, 2019, at 1:30 p.m. at the Board of Supervisors Chambers, Eric Rood Administrative Center, 950 Maidu Avenue, Nevada City, California.

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Passed and accepted this 25<sup>th</sup> day of April, 2019.

Brian Foss (by t.m.)  
Brian Foss, Ex-Officio Secretary