

1 **NEVADA COUNTY PLANNING COMMISSION**
2 **NEVADA COUNTY, CALIFORNIA**

3
4 **MINUTES** of the meeting of February 7, 2019, 1:30 PM, Board Chambers, Eric Rood
5 Administration Center, 950 Maidu Avenue, Nevada City, California
6

7
8 **MEMBERS PRESENT:** Commissioners Coleman-Hunt, Duncan, Aguilar, Johansen and
9 Bullock.

10
11 **MEMBERS ABSENT:** None.

12
13 **STAFF PRESENT:** Planning Director, Brian Foss; Deputy County Counsel, Rhetta VanderPloeg;
14 Administrative Assistant, Tine Mathiasen.
15

16
17 **PUBLIC HEARINGS:**

- 18
19 1. Commercial Cannabis Ordinance Draft EIR Public Comments
20 EIR18-0001

Page 1, Line 41

21
22 **CALL MEETING TO ORDER:** The meeting was called to order at 1:32 p.m. The flag salute
23 was followed by roll call.

24
25 **CHANGES TO AGENDA:** None.

26
27 **PUBLIC COMMENT:** Members of the public shall be allowed to address the Commission on
28 items not appearing on the agenda which are of interest to the public and are within the subject
29 matter jurisdiction of the Planning Commission, provided that no action shall be taken unless
30 otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code. None.

31
32 **COMMISSION BUSINESS:** Selection of Commission Chair and Vice Chair. Motion by
33 Commissioner Aguilar, seconded by Commissioner Johansen, to nominate Commissioner Duncan
34 for Chair. Passed on voice vote. Motion by Chair Duncan, seconded by Commissioner Coleman-
35 Hunt, to nominate Commissioner Aguilar for Vice Chair. Passed on voice vote.

36
37 **CONSENT ITEMS:** None.

38
39 **PUBLIC HEARING:**

40
41 **EIR18-0001:** Public hearing to accept comments on the adequacy of the Draft Environmental
42 Impact Report (EIR18-0001) for the Nevada County Commercial Cannabis Cultivation Ordinance
43 (NCCO) drafted to be consistent with state law and to enable a procedure for the cultivation of
44 cannabis within all unincorporated areas within the County. The proposed NCCO has been drafted
45 pursuant to the authority granted by Article XI, Section 7 of the California Constitution, Health
46 and Safety Code section 11362.83, and Government Code Section 25845. The proposed NCCO
47 would be adopted to replace the existing cannabis regulations in the Nevada County Land Use and
48 Development Code (Development Code under Title 2, Chapter IV, Article 5 Cannabis
49 Cultivation). The proposed NCCO details new County-specific regulations to address the licensing

50 of cannabis cultivation activities only in the unincorporated areas of the County. **Location:** The
51 proposed project would apply to all parcels located in the unincorporated areas of Nevada County.
52 Nevada County's total land area is 978 square miles, of which approximately 70% is privately
53 owned and approximately 30% is public lands.

54
55 Director Foss introduced himself and EIR consultant Alex Jewell of Kimley-Horn. He provided a
56 brief summary of the EIR and how the meeting would be conducted. The purpose of the EIR
57 comment hearing is to inform the public and the Planning Commission about the proposed project
58 and the EIR, and to receive public and agency comments as they relate to the adequacy of the
59 environmental review. The comments today should be focused on the adequacy of the EIR only.
60 All comments received during the 45-day comment period, including verbal comments made at
61 the hearing, will be responded to as part of the final EIR. The consultant and staff will not be
62 responding to comments made today and will only be answering questions about process and to
63 provide clarification. Other comments will be reviewed by the consultant and included in the final
64 EIR. Specifics of the ordinance are not the purview of today's hearing, though there will be future
65 hearings at which the ordinance may be discussed. No final actions or decisions will be made by
66 the Planning Commission today; just directions from Commission for staff and the consultant to
67 address comments in the final EIR. The time clock is available to be used for public comment if
68 the Chair so pleases. Director Foss then reviewed the project background, staff's directions from
69 the Board, and the current status of the ordinance.

70
71 Commissioner Johansen informed Director Foss that the Commission's dais computers were not
72 showing staff's presentation.

73
74 Chair Duncan requested that the meeting continue while a tech was called to address the computer
75 issue.

76
77 Mr. Jewell reviewed the project description of the ordinance that was evaluated in the EIR. Intent,
78 definitions, types of cultivation, zoning and general plan designations, allowable uses and
79 cultivation requirements were discussed.

80
81 Counsel VanderPloeg requested a short recess to address technical difficulties. Chair Duncan
82 called a brief recess at 1:45 p.m. The meeting was called back to order at 1:46 p.m.

83
84 Mr. Jewell discussed permitting types. In the EIR, 17 issue areas were evaluated. A worst case
85 scenario approach was used to provide a broad range of analysis and to provide staff flexibility
86 when permits were submitted for review. The impact analysis relied on existing county codes and
87 ordinances to reduce or avoid impacts. In several cases, mitigation measures to reduce impacts
88 would require amendments to the ordinance. Significant and unavoidable impacts were identified
89 for several resources and cumulative impacts. Mr. Jewell reviewed the CEQA process, beginning
90 in 2017. After the 45-day public review period, the consultant will respond to the comments and
91 prepare the final EIR, which will be brought before the Planning Commission for recommendation
92 to the Board. Opportunities to comment on the EIR include today's hearing, the remainder of the
93 45-day review period, and the upcoming Planning Commission and Board of Supervisors hearings.

94
95 Chair Duncan noted that the Commission's computer screens were again not working but that the
96 meeting would carry on in spite of that. She opened public comment at 1:51 p.m.

97

98 Gary Baker raised concern with the EIR's calculation of number of parcels affected. He raised
99 concern regarding an energy use table and the use of a one-month period versus a 12-month period.
100 He discussed practicalities and implications in terms of new residences as well as the different
101 impacts of cultivation versus production. Energy use is underestimated in the document, while
102 water use is overestimated. The project is not realistically sized. Many growers are in limbo and
103 the current timeline to get an ordinance adopted is unrealistic. An alternative would be to draft an
104 emergency ordinance or to adopt this ordinance and adjust the impact fees to allow growers to
105 obtain provisional licenses from the state. He wondered what might be an adequate size of the
106 project.

107
108 Chair Duncan and the Clerk discussed the use of the countdown timer.

109
110 Jan Howard owns a parcel close to land zoned AG. She noted that the most controversial issue
111 regarding cannabis cultivation is odor. This is well documented and acknowledged in the EIR. It
112 is disconcerting that odor is acknowledged as a big impact but there is no mitigation for it. Odor
113 may result in devaluation, being trapped in one's house, and deterioration of quality of life. The
114 worst case must be planned for. The EIR and ordinance are deficient in addressing the odor issue.
115 She wonders whether the EIR says there is nothing more to do or that there is more work to be
116 done. That would be unacceptable. There must be more time to get more information in order to
117 address odor. There needs to be a clear path for citizens to have their concerns heard as well as
118 objective ways of measuring odor. "Reasonable" is too vague a standard.

119
120 Steve Baker introduced himself as a hydrogeologist. He noted that groundwater is a significant
121 issue in cannabis cultivation. An aquifer study was completed, resulting in a monitoring approach
122 and a groundwater management strategy that is effective in the foothills as it takes into account
123 the behavior of the population and the type of geology. Water quality and groundwater dewatering
124 can be managed. Groundwater issues are mitigatable with proper monitoring and management.

125
126 Michael Chustone commented on cannabis support areas (page 330-31). He asked that the
127 maximum canopy percentage range not be specified. It should be discretionary as 25 percent may
128 not be sufficient. The 25 percent restriction will not encourage best practices.

129
130 Abraham Valensky discussed water, specifically section 4.8.2 Regulatory Setting. The Water
131 Board and Fish and Wildlife already regulate activity, so it is not like things are not or will not be
132 regulated. The report implies that things are very loose. Existing seasonal restrictions on grading
133 and heavy equipment were not mentioned in the report. 85 percent or more of the County's current
134 growers are using groundwater. Rather than prohibition, measurements like well logs and meters
135 could be used. There is no way to measure water under rock, so how this will effect groundwater
136 is an assumption. In impact 4.8-3, the EIR seems to suggest people buy water from NID. He asked
137 why it is okay to use NID groundwater but not private wells, whether NID knows how much
138 groundwater they have, and why this information is not in the EIR.

139
140 Mark Johnson asked how an EIR can be issued when important facts are unknown. He asked how
141 indoor growing affects energy usage, how energy usage affects air quality, how utilities will accept
142 energy overload, and what number of growers will grow indoors. There are only assumptions on
143 these issues. He asked how an EIR can be issued on assumptions and how many of the CAG's
144 recommendations were implemented in research for the EIR. If CAG recommendations are
145 implemented, many people will not have to grow indoors, therefore not putting strain on air quality,
146 energy usage, utilities or infrastructure. He wonders why the CAG recommendations were not

147 considered or implemented when they would in fact make the County, taxpayers and landowners
148 better off. He wants to know how an EIR can be commissioned on assumptions rather than facts.
149
150 Chair Duncan explained the public comment process. She closed public comment at 2:14 p.m. She
151 asked that a few comments be responded to in order to provide clarification.
152
153 Director Foss began to explain why they were not going to respond to comments.
154
155 Chair Duncan said that Mr. Abraham's questions about the source of water could easily be
156 responded to.
157
158 Direction Foss asked if Chair Duncan was asking about the source of NID water.
159
160 Chair Duncan said right. She noted NID is a public utility.
161
162 Director Foss agreed.
163
164 Mr. Jewell said that NID gets water from different sources, groundwater being one of them. NID
165 provides details and a forecast for coming years, which are publically available.
166
167 Chair Duncan said staff will respond to all comments as part of the final EIR, not right now. She
168 welcomed people to submit written comments. She thinks the stated purpose for preparing the EIR
169 is succinct. The Commission will take this under advisement. There will be no action by the
170 Commission as the meeting today was merely to hold the public forum.
171
172 Director Foss asked Chair Duncan to give direction to staff and the consultant to respond to
173 comments as part of the final EIR.
174
175 Chair Duncan asked for a motion.
176
177 **Motion by Commissioner Aguilar** to have staff and the consultant prepare comments and respond
178 in preparation for the document. **Second by Commissioner Johansen. Motion carried on a voice**
179 **vote 5/0.**
180
181 Discussion ensued regarding upcoming Commission meetings and trainings. Chair Duncan
182 welcomed the new Commissioners.
183
184 Conversation returned to the EIR. In general terms, Commissioners discussed the EIR process and
185 how challenging it is to separate conversation on the EIR from the ordinance. Director Foss and
186 the Commissioners discussed the CEQA process, the Commissioners' means of providing
187 comments, the role of an EIR, the relationship between accepting the EIR and approving the
188 ordinance, public notification and outreach, and training on the EIR process. The Commission
189 touched on the definition of "adequacy" and the issue of unmitigatable impacts. Additionally,
190 Counsel VanderPloeg reminded the Commissioners that they are beholden to the Brown Act and
191 that outside conversation must be limited.
192
193 **Motion by Commissioner Johansen to adjourn; second by Commissioner Hardy. Motion**
194 **carried on voice vote 5/0.**
195

196 There being no further business to come before the Commission, the meeting was adjourned at
197 2:35 p.m. to the next meeting scheduled for February 14, 2019, in the Town of Truckee's Council
198 Chambers, 10183 Truckee Airport Road, Truckee, California.

199

200

201 Passed and accepted this 28th day of *February*, 2019.

202

203 *Brian Foss (tm)*

204 Brian Foss, Ex-Officio Secretary