



# Nevada County Cannabis Regulation Community Planning Process

## Summary of Community Advisory Group (CAG) Meeting #3, June 27, 2017

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Prepared by:



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## Introduction

On Tuesday, June 27, 2017, Nevada County convened the third meeting of the Community Advisory Group (CAG). The CAG includes 16 Nevada County residents who were appointed by the Board of Supervisors. The mission and charge of the CAG is to:

- Gather and analyze input from Nevada County community members with regard to perspectives on cannabis-related activities.
- Advise the Nevada County Board of Supervisors (BOS) regarding preparation of a revised ordinance to regulate cannabis-related activities in Nevada County.
- Formulate recommendations that Nevada County staff and the BOS can use to draft a revised County ordinance which regulates cannabis-related activities.

The CAG process is led by a four-person team that includes representatives from:

- MIG, Inc.: Daniel Iacofano, Lead Facilitator, and Joan Chaplick, Project Manager
- Nevada County: Sean Powers, Director, Community Development Agency, and Mali Dyck, Program Manager, Eligibility and Employment Services

This is the third of a series of meetings that will be conducted between May and September. The meeting notes are intended to provide a summary of key points of information, discussion topics, questions and agreements. The summary is not intended to serve as a transcription of the meeting. Meetings have been videotaped and are posted on the County website.

## 1. Welcome and Introductions

Daniel Iacofano, lead facilitator, opened the meeting and led the group in the Pledge of Allegiance. He welcomed the CAG members and members of the public to the meeting. All 16 members of the CAG were in attendance. Approximately 70 people attended along with representatives of local media.

Daniel reviewed the meeting agenda and objectives, which included:

- Review basic County land use and zoning concepts
- Review and discuss current land use and zoning parameters that apply to cannabis cultivation in the County and identify potential adjustments

Meeting Summary #2 was approved and accepted. Daniel noted that if any modifications were needed, they would be noted in the following meeting's summary.

Alison Barratt-Green, County Council, provided a short presentation on the Brown Act to help CAG members understand their responsibilities. The CAG is subject to the Brown Act and needs to comply with all requirements for communications. She also noted that the process has increased in complexity over the past several years. Since the CAG is making recommendations on cannabis policy, CAG members are covered by these rules.

Alison then described the different configurations of meetings and gatherings that are covered or not covered by the Brown Act. She noted that individual communications are not covered. She provided examples of some communications activities that are problematic and would be considered a violation. These include: polling CAG members regarding their opinions; “daisy chain” communications; hub-and-spoke communications where a member in the center contacts each person; and serial briefings. The safest strategy is to discuss CAG business during CAG meetings.

Electronic communications are subject to the Brown Act and members should avoid “replying all” to CAG emails. It can be easy to unintentionally violate the Brown ACT. Members should avoid: two-way communications between themselves and other CAG members; sharing the comments and positions of others in their conversations; and taking a position outside of an open and public meeting. It’s also important to avoid the appearance of impropriety. For example, a small social gathering of CAG members could be perceived as improper even if there is no discussion of CAG business. She recommended that those with questions contact County counsel for specific advice.

There were a few questions from the CAG members:

- For those who work with a related organization, what’s the difference between lobbying and education as it relates to the CAG?
  - Response: It’s appropriate to respond to basic questions, but it can be easy to cross the line. A CAG member referenced a brochure produced by the League of Women Voters that he thought could be helpful.
- There was a question about the placement of the public comment period: it is required to be held at a specific point in the meeting?
  - Response: No, it just needs to be held during the designated time on the agenda.

Daniel reviewed the CAG process, which focuses on phased discussions, and explained the general topics that would be covered in the upcoming meetings. He also provided some general direction to members of the public in attendance. He asked that people get their speaker cards in, so the comments process can be kept moving efficiently. He also requested that people respect CAG members’ privacy and give them their personal space during breaks and after the meetings.

## 2. Review of Basic Land Use and Zoning Comments

Brian Foss, Head Planner for the County, provided a presentation to help orient members to County responsibilities for planning and zoning. He reviewed the Planning Department Roles and responsibilities including: Current Planning; Advance Planning; and CEQA.

He described the purpose of zoning and why it was established. Zoning is designed to separate incompatible uses. Zoning was created over 100 years ago largely to keep industrial uses away

from residential areas, and to ensure that neighboring uses could co-exist without devaluing property.

### *Zoning Implementation*

Brian described the zoning district types and referenced the zoning maps which were posted on the wall. He defined key terms including: allowed; permitted; and not allowed. These are the three choices when it comes to zoning and setbacks are usually required.

He explained that residential use has 4 main zones and includes R1, R2, R3, single family, multi-family and residential agricultural. He briefly reviewed definitions for the rural districts: AG, AE, FR, and TPZ. He noted that there are also commercial and industrial districts to accommodate these uses in the County.

He reviewed zoning uses and affirmed that the allowed use is consistent with the primary purpose for which land is zoned. A permitted use may be compatible with the base zoning, depending on the design of the project and the characteristics of the property. He briefly reviewed setbacks, confirming that they are measured from the property line to the structure and not structure to structure.

He briefly reviewed the General Plan Land Use Designations and noted that zoning districts implement the General Plan. The General Plan is intended to be broad whereas zoning is specific.

He summarized the review process followed by County staff. First, they review applications/land uses for consistency with General Plan and Zoning Requirements. Then they ensure all existing structures are permitted. They check the legal status of property, including for parcels created by a subdivision map or certificate of compliance. Finally, they ensure use is allowed by zoning district; ensure setbacks; and confirm that height limits for fencing are met.

Brian then took questions from the CAG.

- Are there current variances in the zoning code?
  - Response: Yes, there are variances to the setbacks. They can be fairly difficult to achieve. It depends on size, shape and character of property. Setbacks are typically measured from the building to the property line and they can be written that way.
- Is there land zoned R2 and R3 outside of the city?
  - Response: Yes.
- Are there any variances currently from the outside living area of a house to the adjoining building?
  - Response: No, the County has been consistent.
- There are usually acreage figures attached to the zoning. Do ordinances apply only to different acreage figures?
  - Response: No, it's associated with density.

- Does a neighbor have the ability to grant an easement?
  - Response: Yes, the County allows what is called a setback easement. This extends the setback on to the neighboring property. The agreement needs to be formalized—just a verbal “ok” from the neighbor is not sufficient.
- Are there typically setbacks for non-buildings in agricultural areas?
  - Response: Yes, it is typically buildings and disturbed areas where there are some setbacks that apply.

It was confirmed that greenhouses require some level of permitting, but the specific details were not available at the meeting as the Building Department handles those permits.

### 3. Review of Land Use and Zoning Issues Related to Cannabis Cultivation in the County Today

Daniel then introduced Joan Chaplick, MIG, who reviewed the results of the interviews that were conducted in advance of the CAG process during April 2017. The purpose of the presentation was to remind the group of the potential impacts, identified by various community members, which revisions to the County ordinance should take into account. These included:

#### *Environmental Impacts*

- Impacts from use of pesticides, fertilizers and rodenticides
- Algae growth in creeks and water bodies
- Increased demand for water
- Illegal water diversions and water theft
- Deforestation and soil erosion
- Trespassing and related damages
- Improper disposal of waste, butane tanks, and debris from production and processing operations
- Substandard buildings and structures, electrical utilities, posing safety concerns, fire danger and other hazards for industry workers, nearby residents and the environment

#### *Public Health and Safety Impacts*

- Offensive odors for extended periods of time
- Increased local traffic and impacts on local roads
- Increased crime (real, perceived or the potential for)
- Intimidating presence of guard dogs, specifically pit bulls
- Uncertainty with respect to future landowners and their views
- Landlord and tenant rights regarding cannabis on their property

- Occupational safety and health of cultivation site workers

#### *Neighborhood Quality of Life Impacts; Other Concerns and Impacts*

- Indoor growing and related energy consumption
- Size and scale of site improvements
- Size and scale of equipment needed for growing in relation to surrounding residential developments and single family homes

The CAG was encouraged to keep these topics in mind as they considered the current ordinance and any potential modifications.

## 4. Review and Discussion of Current Land Use and Zoning Parameters for Cultivation Areas in the County and Identification of Potential Adjustments

Following this, Daniel introduced the worksheet which summarized key topics covered by the current ordinance. Sean Powers, Community Development Director, walked participants through the content of the worksheets, which he described as a quick attempt to summarize the current ordinance. A copy of the worksheet is attached as Appendix A.

Daniel asked the group to comment on the chart or ask questions to better understand the County ordinance. CAG members commented as follows:

- There is very little upward change. With R1, 2, 3 you are allowed, and would expect to be able to, grow more on larger, rural properties. It assumes that if you have more space, it would allow more growing.
- Outdoor growing is so limited until you get over 10 acres. This seems restrictive and more should be allowed, depending on topography and conditions.
- There appears to be some confusion between RA estate and RA rural. The houses are built close to the road. Residential areas should be focused on personal use. These are the most sensitive areas. Some grows are close to the house and it feels as if you are on a small lot.
- Right now, there is a maximum number of plants and in higher acreages, a maximum grow area. With the square footage plant count, water use has not been mentioned. We should consider water use and link cultivation capacity to water availability.
- Considers the current ordinance to be a quasi-ban; the policy doesn't reflect what is needed for medicinal and entrepreneurial purposes. Some areas should allow for personal use. Some plants would not fit into the current square footage given the size of a typical plant, which was suggested to be 10 x 10. The ordinance doesn't differentiate

between patient and commercial use; there is no system in place to help patients get what they need.

- The BOS made a very narrow adjustment to accommodate Prop 64. Given the complexity of the issues, it will be difficult to ensure compliance. Enforcement is currently complaint-driven. When a complaint is received, the County looks for things that are measurable and enforceable such as plant count and square footage.
- When we talk about square footage and plant counts, if we are going to consider commercial, then the numbers have to be sufficient to conduct a commercial operation. In response to earlier concerns about water use, the state has a lot of regulations in place to ensure that water is not diverted. If we are taking water use into account, our process can't be arbitrary. We must look at all the uses before we put anything in place.
- When something is designated as agriculture, that doesn't necessarily mean that it is the best use. We should pay attention to the third category, which includes AG, AE, FR and TPZ. These are more nuanced, and we may benefit from some finer distinctions in these categories.
- The current ordinance makes it hard to come into compliance. It would be helpful to know where the current grows are, what is their current zoning and how to help them come into compliance. The current ordinance encourages fragmentation of acreages. We should also consider what we are doing to encourage indoor growing, and its related energy consumption. Some growing is happening close to town; we don't need to push it into rural areas.
- Parcelizing the land creates more grow area. Also, if we have space limitations with the plant counts, we may be requiring growers to jam into a limited area, which may not be the best way to grow. Also, space limits can impact ADA accessibility.
- I encourage concentration on medicinal cultivation which can also be done commercially. This is for public health and safety for the patients. It would be interesting to learn what the demand is for the maximum number of plants, tonnage, etc. Let's do the math and get some numbers for us to consider. Some people want every possible site to be cultivated while other want none. There is also a need to take slope, depth of the well next door and other factors into account. The State will have a designated number of permits for large grows. Can we determine needs and then auction off the permits?
- In response to the calculation of demand, it was noted that patients are scattered throughout the area. Just as rural areas grow food to feed people in urban areas, medicine is grown in rural areas to be used in urban areas. The calculations of need in the County would not represent the demand that the growers need to meet. It's important that we differentiate between personal and commercial.
- The ordinance is antiquated; there are now standards and metrics that were introduced in 2015. If we are not using these standards, we are just throwing out random numbers.

Some grows are very small and only reference 3-5% of the parcel. We need to be sensitive to residential areas. Can we eliminate them in advance?

- There were questions about R3 zoning and what would be allowed. How does plant count apply to a plant that can be moved indoor/outdoors? R3 is denser and includes apartment buildings with balconies. There may be different interpretations of what is allowed. It was also noted that the word “minimum” is missing from the chart. We need to discuss minimum areas.
- There were questions about the other counties and how they arrived at their decisions. Each county is doing what would be best for them, and it might be interesting to better understand their rationales.
- There is still confusion about whether we are talking about growing medically or personally. We are talking about both, and the ordinance prohibits commercial. Concerns were also expressed about water use, logistical support needed (roads, etc.) and how resources are allocated. Some people are afraid to make complaints due to intimidation. We need to determine what role we want cannabis to play in our economy.
- The status of what is allowed in RA is still unclear. These are considered non-commercial areas.
  - RA includes farms and there is commercial activity in these areas. It would be helpful if this could be clarified.
- Measure W was voted down which banned outdoor cultivation and commercial activity. Our discussions need to include commercial use.
- Every number is modulated by the unrealistic setbacks. Even on a 5 acre parcel there’s a 100-foot setback, which greatly limits room for growing; setbacks need to be reasonable. There is an appreciable difference between personal and commercial use, since personal use can be very benign.

Next, Daniel moved the discussion to focus on the next section related to Residency Requirements (Page 2 of the worksheet). He described the general rationale behind this requirement—that it was intended to: encourage locally owned, locally grown cannabis; encourage more vested stakeholders; and provide a basis for permitting, inspection, monitoring and enforcement. He went on to describe setbacks and how they were intended to: reduce proximity to schools, youth-serving facilities, churches and related community uses; provide a buffer for adjacent property; and protect sensitive environmental resources. He summarized additional code requirements and the rationale behind those as well. He asked the CAG for their questions and comments regarding the residency requirement and setbacks.

A CAG member described his involvement in the residency requirement, since his community was impacted by a property zoned R1 with no residents. The property owners tore down the

trees and did some grading so they could grow. When the property was vandalized, the owners put up a sign that said “no trespassing, we have guns.” There was concern this would happen throughout the neighborhood.

CAG member concerns generally fell into the following categories:

### *Residency requirements*

- More than half the CAG members commented generally that they had no concerns about the residency requirement.
- One CAG member noted that non-residential grows have been the most problematic.
- There were some comments about be able to accommodate exceptions; for example, if a landowner owns adjoining parcels.
- Those with concerns about the residency requirement commented on the difficulty of a person trying to establish residency. They gave an example of someone with a 20-acre farm. While they are planning and building their home, the ordinance doesn't allow them to grow. We need to accommodate this situation by allowing temporary housing or other options.
- Need to consider a transition period to allow for growers who don't live on their property. This may be possible if security requirements are addressed.
- The residency requirement is a good tool for protecting open space.
- Variances may be a useful tool.
- Need to consider contradictory requirements. We don't want grows in residential areas, but we have a residency requirement. Requirements can impact caregivers and people growing for medicinal purposes.
- One CAG member described the residency requirement as the most restrictive requirement.

### *Setbacks*

- The greatest concern about setbacks was related to the 600 foot requirement for schools and keeping youth safe. Some want the County to consider an additional buffer. One CAG member suggested a setback of 1,000 feet from high schools.
- There were numerous comments about how the setbacks limit the growable area, and in some cases push the grow area to the least desirable location on the property. One example provided described how the setbacks limited the grow area to the center of a shared road on a person's property.
- Can setbacks be related to the size of the grow and not the size of the parcel?

- Can setbacks be adjusted so the grow area is closest to the grower’s home and not the adjoining property owners?
- Setbacks need to take into account how the parcels are aligned and the different configurations of the property. For some properties, the setbacks eliminate any viable grow area even though it is a relatively good size parcel.
- Want more information about the setbacks needed for environmental protection.
- Concerned about cookie cutter requirements. It may be difficult to fit all types of properties and achieve appropriate environmental protections.

Daniel concluded the CAG portion of the meeting by providing instruction for the next meeting. He asked the CAG members to take some time and provide additional comments on the remainder of the worksheet. He recommended that they take their binders home so they have all the information they need. CAG members were asked to comment on and return the worksheet by Monday, July 3rd at 5:00 p.m.

## 5. Public Comment Period

The following comments were contributed by members of the public:

- Numerous speakers expressed appreciation to the CAG members for their efforts.
- One speaker referenced a survey conducted by CDFA which surveyed people on the license types they were interested in. A total of 930 licenses were identified in Nevada County. The potential economic impact is huge and can’t be ignored.
- A speaker asked, how do we define “reasonable?” The ordinance needs to work for neighbors and restrict access to youth, but it must also allow a level of production that allows them to compete in the marketplace. It needs to allow larger grows.
- I have a 20-acre parcel and nearest house is 600 ft. The setback doesn’t make sense.
- Thoughts on measuring demand: give out licenses and let the silent hand of the market take care of it.
- A speaker had a large map of bus stops, which remove a lot of property. He believes that one can grow on 1.4% of the properties. County is significantly limiting what can be grown. (Map is included in Appendix B)
- It’s important for CAG members to read state regulations. The commenter spoke for a lot of people who are afraid to show up—lots of people with properties and young families who need some kind of help to be able to move forward. The limitations result in a ban. Owns 7.3 acres and would like a permit for a microbusiness. He likes Type 1B, Type 1 C, Type 2B, Type 3, and microbusiness so he can be able to produce medicinal products. Noted there is already an economic impact in this County.

- Speaker thanked the CAG for doing some homework, and requested the public receive at least 3 minutes. Compliance is an issue, and to get compliance, it's necessary to engage with your stakeholders. It's an incremental process.
- Outdoor cultivation is a smart business. Prioritize actionable items and incentivize those who are doing it right. Environmental impact is about health and safety. Ninety-eight percent take a priority in environmental impact. Don't penalize the remaining two percent. Need to look at license types for CDFA license types.
- The list of concerns presented did not include one patient advocacy group and no patients, advocacy groups, etc. were spoken to. I believe our focus and highest priority is to bring medical marijuana to the people. I live on a parcel that was 10 acres and setbacks eliminated the ability to grow. The current ordinance is punitive, not written to address the needs of our community. Please keep patient needs in mind.
- Speaking for patients and commercial growers. They grow for two reasons—either medical for themselves or for others who need it. Since they can't afford the medication, they will proceed illegally. For commercial growers, it all comes down to economic activity. In 2012, when the emergency ordinance came into effect, 90% of neighbors got in compliance and didn't stop growing. I encourage people to default to state regulations. Commercial growers are not going to stop.
- We need an economic impact report. The County must get this information. There are concerns about greenhouses and setbacks, and about people who can't enjoy outdoor grows—they don't exist. Doesn't believe odor is an issue. These meetings are covered by the Brown Act. Previous meetings were not be covered by Brown Act, so shouldn't these regulations be nullified because they were illegally gathered and illegally passed?
- Consider what our relationship with cannabis would be like if prohibition had never happened. We would have learned what it can do and how to farm it properly. Consider this as a human plant that shouldn't be demonized. The speaker offered CAG members a tour of his property, on which he grows medicinal marijuana to a very high standard. He considers his farm a "best practice" and one that can offer a good educational experience.
- The CAG has a difficult job. The closer we are to state law, the better. Let them do the hard work. Please look at those regulations, and remember Measure W, which was about banning outdoor and commercial and was voted down. This is not just about cultivation; there are other license types that must be considered.
- We need the CAG to hear more from the cannabis growers: here's what I have been doing, size of my parcel, etc. They could lay out what a cannabis industry in the County might look like. Look at the bigger picture. Where can these be accommodated?
- This is a hard job, with a lot to consider and a lot at stake. I want to emphasize the big picture. The industry is already here and in place. It's part of the economy and the culture. The current proposal is too restrictive. This will result in evaporation of the

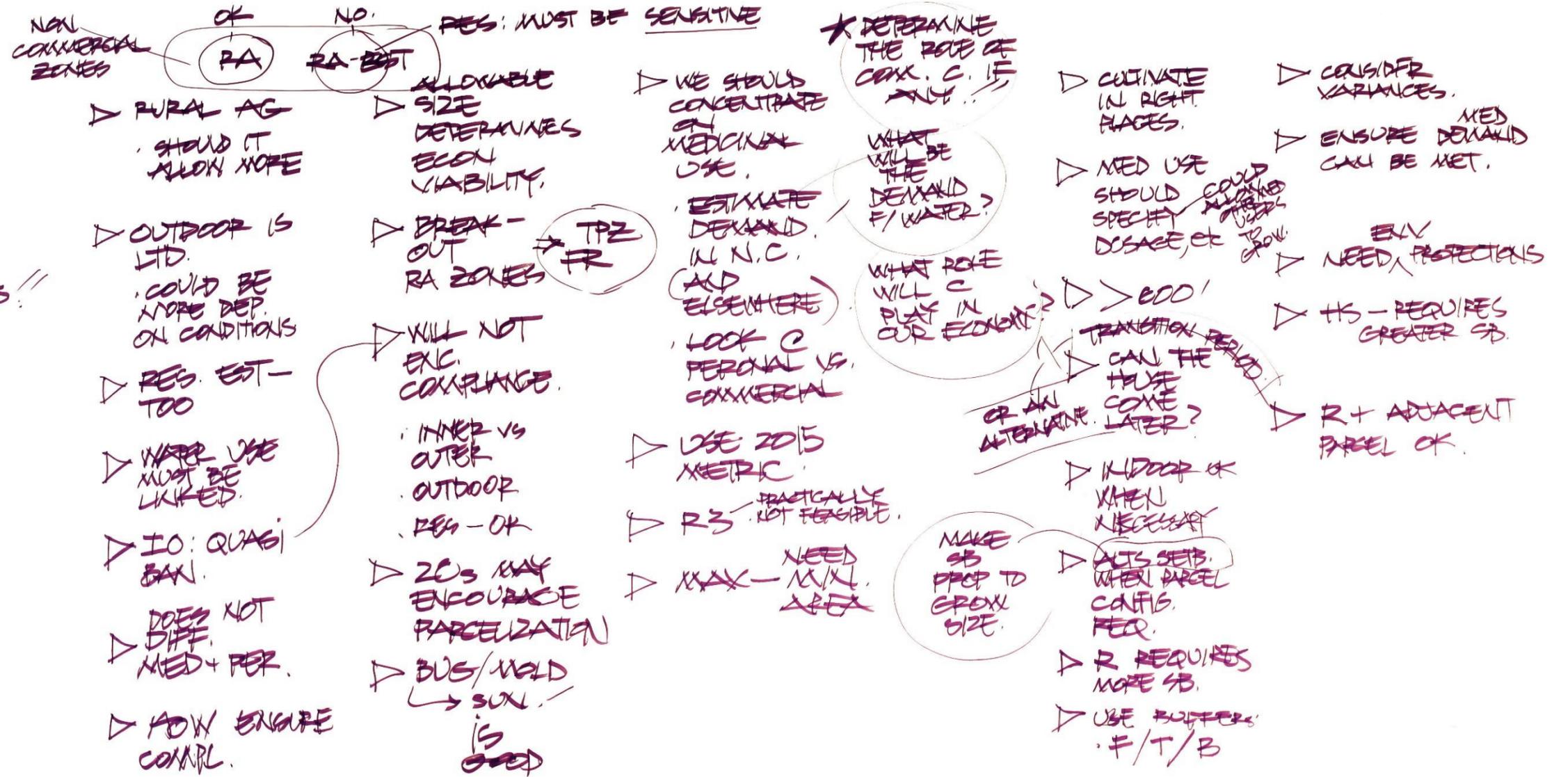
community. Can't meet the demand level, and there are no easy dollars even for cannabis farmers.

- Interested in license type 4- nursery cultivation. Want to introduce this permit type to the table—it is extremely different from cultivation. I hope these regulations are different.
- I am a farmer and grow CBD flowers for a local manufacturer. I encourage a regulation that encourages compliance. Rural designation, agricultural operations, natural resource uses and residential are of equal importance. Parcels can be as small as 1.5 acres. I don't believe my neighbors can't see my garden, so I cooperate with them to avoid problems.
- Very concerned about how discussion is being framed. Two minutes is too little time per speaker. We are using antiquated thinking and not current data. CBD is the basis for our health. Focus on helping the largest number of people, including children, people coming off opioids, and others in need. The regulations are coming from a punitive/enforcement standpoint. Can we produce the best medicine that will help the greatest number of people?
- I have been involved in two areas related to the ordinance, and believe that requiring indoor gardens is in no one's best interest. I've evaluated Title 24 requirements. Our ordinance does not come close to meeting good standards. Many elements are arbitrary and capricious, and put an unnecessary strain on our grid by forcing people indoors when they could be growing outdoors.
- The 348-member Cannabis Alliance will be conducting a survey, which will be done by the 5th meeting. How are we judging the success of this process? We win when we bring as many cannabis operators as possible into this regulated fold. For setbacks, let's not use arbitrary numbers, but do what actually makes sense. Look to our neighbors. Review our submitted packet for information.
- I served on the board that buys water from NID. Between 2013-2015, water use dropped substantially, but it went up last year. Please review state licensing requirements. These will be required by state. Measure S was opposed because it took property right away from owners—not a good measure. Permits from the state will have several requirements.
- Working with state on regulations and concerned about access for medical users. There are problems with residential land use; those most affected are usually poor. It's a defacto ban. They can't grow indoors due to insurance limitations. Need to help people grow on their lots. In El Dorado County, bus stops had a huge impact—consider removing this. Setbacks are eliminating people's ability to grow on 10-20 acre lots. We need commercial cultivation since that protects patients' rights.
- Most interested in hearing from people opposed to growing to help better understand. Many people live in the country so we can stay away from government.

- The reality is that cannabis is here and it's been voted in. The regulation is a defacto ban—no one can make a living based on these numbers. The CRDA identified a variety of license types and agreed with the residency requirement.
- Used to be able to sell products in San Francisco for a reasonable price. Many long time residents have been growing for years. It is part of their agricultural tradition and should be maintained. I want to see the community work together to protect cannabis cultivation.
- I'm very pro regulation. I have some awareness of need for medical cannabis. I live up on the ridge; it took a while to learn the full presence of cannabis in my neighborhood. Use of CBD changed my life. Would like to be able to legally help those who want her product.
- What's happening is the market is squeezing out small growers. Regulations are making it harder for a small-scale farmer to make a living. The black market is shrinking. Cannabis growing is going to shrink and impacts will shrink as well. Nevada County has a limited time to take advantage of this if you care about our economic viability — we have already had our mad rush. Current growers should get a two-year grace period to come into compliance. Low-tech impact manufacturing should be done on their property where they live. There's an election in June.
- Commenter referenced a show on CNN entitled, "Weed." We have been indoctrinated with negative info. A re-education process is needed. We need regulation. It's a benefit. Surprised the State has come up with a program; we should be able to follow it too.
- Read on the Nevada County website about recreational vehicles and how we may have the option to pull a permit. Seasonal stays are permitted on a resident's property. Every person can live on their property while they are building, except cultivators. Why are we excluded?
- A speaker stressed the importance of transition periods, citing language from the Sonoma County ordinance. We need some local authorization before 2018 so our farmers are not left behind.
- A farmer explained: I'm in it for the money. If we were talking about any other industry, it would be easier. Please look at setbacks again—they may be too limiting. Can we have a setbacks specialist? If I follow setbacks, I will be growing in most inappropriate place on the property. Indoor growing is very environmentally unfriendly. Consider the nursery license opportunity—it has fewer impacts.

Wallgraphic notes taken during the meeting are shown on the following page. The Cannabis Lane Use and Zoning Worksheet is attached as Appendix A; Comment cards and comments submitted via email by participants are attached as Appendix B.

NEVADA COUNTY



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CAG Meeting #3  
June 27, 2017