Cannabis in Nevada County: A Growing Problem

2020-2021 Nevada County Grand Jury

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Summary

In May 2019, the Nevada County Board of Supervisors adopted County Ordinance No. 2467, an urgency ordinance adding County Code § L-II 3.30 (Refer to Government Code §§ 25123 and 25131 for information on urgency ordinances). This Ordinance follows the 2016 passage of California Proposition 64, "Control, Regulate and Tax Adult Use of Marijuana Act," a voter initiative to legalize cannabis in California.

One stated objective of the Nevada County Board of Supervisors is: "Adopt a County cannabis ordinance and implement an effective cannabis compliance and permitting program to promote permitted cannabis activities."

According to statistics presented in January 2020 to the Nevada County Board of Supervisors by County officials, Nevada County has an estimated 3,500 to 4,000 cannabis grow sites (Appendix Link 1). As of August 2020, the County has fewer than 100 permitted sites; permit applications are fewer than 200. Based on these statistics and assuming no changes are made regarding permitting and enforcement at the County level, the County is on pace to convert 2% to 3% of illegal growers annually.

To achieve County forecasts of increased revenues from cannabis permit fees and taxes, accelerated conversion of the 3,500 - 4,000 illegal growers to legal operators is needed. That goal requires streamlined permitting, increased enforcement and penalties, and the return of primary policing efforts to the Nevada County Sheriff's Office.

Glossary

ADA	Americans with Disabilities Act
AG	Agricultural
BOS	Nevada County Board of Supervisors
CCD	Cannabis Compliance Division
County	Nevada County
Jury	2020-2021 Nevada County Grand Jury
NCSO	Nevada County Sheriff's Office
Ordinance	Nevada County Ordinance No. 2467/County Code § L-II 3.30
RA	Residential/Agricultural

Background

A member of the public contacted the 2020-2021 Nevada County Grand Jury (Jury) with concerns regarding the negative effects of illegal cannabis cultivation in Nevada County (County). While researching this issue the Jury read, among other items, a County presentation evaluating the success of cannabis permitting efforts to date. The Jury also reviewed the 2015-2016 Nevada County Grand Jury report titled "Marijuana Cultivation - Environmental Impacts" that discussed many of the industry issues addressed in this current Jury report (Appendix Link 2). Information from those sources and more prompted the Jury to address the issue of illegal cannabis cultivation in Nevada County.

Approach

In preparation of this report, the Jury conducted independent research and related interviews, including the following:

- reviewed citizen complaint and interviewed complainant;
- conducted interviews with County and State officials;
- conducted interviews with industry leaders;
- researched Nevada County laws, ordinances and regulations;
- researched other California counties laws, ordinances and regulations;
- researched California state laws; and
- conducted internet based research including County website and related portals.

Discussion

Cannabis Compliance Division

The 2015-2016 Nevada County Grand Jury prepared a report entitled "Marijuana Cultivation - Environmental Impacts" that discussed many of the industry issues addressed in this current Jury report (Appendix Link 2). In an August 23, 2016 response to that Jury, the Nevada County Board of Supervisors (BOS) wrote in part, "the Sheriff's Office has the training and resources to address safely [sic] interactions with cultivators in the field" (Appendix Link 3). In May 2019, the BOS adopted County Ordinance No. 2467 (Ordinance), an urgency ordinance adding County Code § L-II 3.30 (Refer to Government Code §§ 25123 and 25131 for information on urgency ordinances). This Ordinance follows the 2016 passage of California Proposition 64, "Control, Regulate and Tax Adult Use of Marijuana Act," a voter initiative to legalize cannabis in California. Today, primary enforcement of the Ordinance comes from the Cannabis Policy and Compliance Division (CCD) of the Community Development Agency.

The CCD currently has two full-time staff members plus a half-time project manager and coordinates with other County departments in permitting, enforcement and compliance efforts. Its mission statement reads: "It is the mission of the Cannabis Policy and Compliance Division to work in partnership with the community to permit and maintain a safe and environmentally responsible cannabis industry. Cannabis Policy and Compliance helps maintain and improve the

quality of the community by administering a fair and unbiased enforcement program to correct violations of cannabis codes and ordinances enacted by the Board of Supervisors."

Permit Pathway

The new Ordinance provides a permit pathway to legally cultivate commercial cannabis for parcels zoned Agricultural (AG) that are greater than five acres, with a potential grow canopy up to 10,000 square feet depending on lot size. For parcels designated Residential/Agricultural (RA), commercial cultivation is prohibited and a path to permitting does not exist, regardless of lot size. The CCD is the main interface for the permitting process. The division has all needed applicant information for permitting on the County main web portal. As of August 2020, the County has fewer than 100 permitted sites; permit applications are fewer than 200. According to a CCD presentation to the BOS in January 2020, the average cannabis permit time from intake to approval was approximately 143 days. During the permitting process cannabis cultivation is prohibited for the site (Appendix Link 1).

As a commercial product under the Ordinance many additional compliance requirements must be met during the permitting process, including road width of 20 feet to meet fire standards, paved parking and other Americans with Disabilities Act (ADA) requirements, commercial fire alarms, permanent restroom facilities and related septic requirements for staffing and on site residency limited to owner residents. Approximately $85,000 is to be expected for a basic permitting process to meet all compliance standards under the Ordinance. These costs can reach up to $300,000 during permitting if the applicant is also required by the County to address and correct unpermitted structures, wells, grading, septic systems, electrical panels, etc.

Per interviews by the Jury and other evidence provided, the Ordinance creates a challenge to cannabis growers who desire to become compliant and legitimate because the costs may be financially prohibitive. Expensive permitting requirements such as paved parking, ADA compliance, permanent restroom facilities and related fees discourage illegal cannabis growers from becoming legal. High permitting costs place willing cannabis growers that desire to become legal at an economic disadvantage; besides excessive cost to permitting, revenue generating activities around growing are halted during the application and permitting process. If applicants have other unpermitted areas to address and remedy during the permitting process, the costs can significantly increase adding to this economic disadvantage.

Cannabis as a product operates in a volatile pricing market with moments of extreme price highs and lows. In addition to the economic barriers to compliance applicants face in the County, they also now compete with many more outside jurisdictions throughout the nation that have passed similar ordinances. Once permitted these applicants also see profits further eroded with local and state taxation requirements. All these costs faced by applicants present a challenge for the future economic viability of this industry in the County. These industry pioneers in our County are looking for additional industry support by the BOS to safeguard the significant investment made to comply with the Ordinance.

Enforcement and Compliance

The CCD is a new division within the County and has assumed the lead role from the Nevada County Sheriff's Office (NCSO) to provide permitting, enforcement and compliance within the cannabis industry since the passage of the Ordinance. In a January 2020 presentation to the BOS the CCD stated that the County has an estimated 3,500 to 4,000 grows. The CCD currently has two full-time staff members plus a half-time project manager and coordinates with other County departments in their enforcement and compliance efforts. The CCD will engage the NCSO on an as needed basis during investigations; however, this new division has replaced the NCSO in lead capacity to investigate citizen complaints received and enforce and ensure compliance with the Ordinance. The growing of cannabis in the County introduces the potential for criminal activities. The CCD is a new division facing a learning curve and the active assistance and prior expertise by the NCSO during this transition would add needed resources.

The County has chosen a citizen complaint-driven process as the source to investigate compliance and enforcement efforts. The Jury was told by County officials with the CCD that they do not pursue visible or obvious illegal cannabis operations unless a citizen complaint is filed. In 2019, there were 207 complaints received and the CCD anticipates approximately the same number of complaints for 2020 (Appendix Link 1). Other counties have implemented additional proactive tactics in their enforcement efforts. For example, Humboldt County has spent approximately $200,000 for a satellite contract to assist in their local enforcement initiative. Humboldt County also imposes a $10,000 per day fine with no grace period per day for non-compliance. The Ordinance in Nevada County provides for lesser fine amounts and a grace period for abatement adding potential benefit of non-compliance by illegal cannabis growers.

Complaints mostly come via the County's online web portal. Each complaint is logged into a software system and the CCD strives for a one to two week response time. Complaints can be anonymous. After receiving a citizen complaint, the CCD faces obstacles to enforcement. Many unpermitted sites have obstructed views due to fencing, etc. and complainants may not provide access via their nearby properties to view the offending site for fear of retaliation. The risk of intimidation or retaliation against complainants can discourage citizens from making a complaint.

Fines as Deterrent

County revenues received may be increased from higher fines, such as those imposed by other counties. In the presentation to the County referenced earlier (Appendix Link 1), total fines issued since the approval of the Ordinance were $66,607 to the date of the BOS presentation by the CCD. That number may be due in part to the cap on annual fines for a single violation: $25,000 (Ordinance § L-II 3.30). Contrast this with the fines imposed by Humboldt County, which can run $10,000 per day. In mid-2019, the *North Coast Journal* reported that Humboldt County had issued over $3 million in cannabis fines (Appendix Link 5).

County Endangerment

During the August 2020 Jones Fire, CAL FIRE diverted air support and resources for several hours to respond to a fire at an unpermitted cannabis grow. In 2019 a complaint had been filed against that very site, the fire's eventual source, but was labeled "unfounded." Fencing obstructed the view of County investigators and the matter was dropped.

Given the limited arsenal of CCD tools, enforcement is difficult in many areas in the County. Rugged terrain and the potential for future fires in highly flammable parts of the County will require additional BOS measures and support to mitigate the County risk. The NCSO's knowledge of the area could provide needed assistance to the new CCD Division in addressing this risk.

Other Criminal Activity

Records reviewed from local law enforcement and county prosecutors present evidence of criminal activity. Felony violations of law connected to illegal cannabis activity include, but are not limited to: homicide, attempted homicide, assaults with a deadly weapon, battery, robbery, theft, illegal possession of weapons, drug possession, illegal manufacturing of dangerous substances, use of firearms in the commission of these crimes and counterfeiting. Residents are placed at risk in instances of high-speed pursuits and weapons being fired at vehicles in residential neighborhoods.

Quality of Life

The most common complaints received from neighbors regarding cannabis grows include: obnoxious odors, eyesores, fencing issues, unknown individuals, an increase in criminal activity, thefts, heavy traffic, and water issues such as contamination and well abuse. Other complaints include lighting issues, road deterioration on private roads and excessive noise from grow site fans. Faced with a permitted 10,000 square foot canopy under the Ordinance and the concentration of permitting in agricultural zoned areas, neighbors must deal with the ongoing cannabis "skunk-like" smell in areas that previously hosted minimal agricultural activities (Appendix Link 4). Neighbors have complained of a decrease in well production levels and believe that drop is tied to the increase in neighborhood cannabis cultivation. Those citizens fear that well abuse, when coupled with the absence of potable NID water, will over time decrease property values.

Findings

F1 There are approximately 3,500 - 4,000 illegal growers of cannabis in Nevada County.

F2 Currently only 2% - 3% of illegal cannabis growers convert to legal, permitted growers annually.

F3 Costs tied to the legal permitting process discourage illegal cannabis growers from complying.

F4 For illegal growers, the current County Ordinance has a fine system that is low when compared to other counties in the state. The County's "grace period" to abate and avoid fines potentially is another disincentive for illegal growers to legalize operations.

F5 Enforcement of the Ordinance is assigned to a non-law enforcement agency known as the CCD.

F6 The CCD relies on citizen complaints to pursue and investigate illegal cannabis operations. Without a citizen's filed complaint, the CCD does not pursue visible or obvious illegal cannabis operations.

F7 The current limited prosecution of illegal grows increases environmental, wildfire and other criminal risks.

Recommendations

The Nevada County Grand Jury recommends the following:

R1 The County should streamline the permitting process and reduce the costs to legalize cannabis operations.

R2 The County should return primary enforcement of illegal cannabis violations to the Sheriff.

R3 The County should re-evaluate fines and abatements to ensure compliance by those that can afford to pay to continue growing illegally.

R4 The NCSO should explore the use of enforcement tools such as satellite technology, drones, aerial surveillance and if appropriate request needed funds to implement.

R5 The NCSO should evaluate the merits of additional Sheriff's substations in North San Juan and other remote areas to provide a local presence for the enforcement of the cannabis Ordinance.

Request for Responses

Pursuant to Penal Code §§ 933 and 933.05, the Nevada County Grand Jury requests from the Nevada County Board of Supervisors, within 90 days of the publication of this report, responses for the following:

- Recommendations: R1, R2 and R3.

Pursuant to Penal Code §§ 933 and 933.05, the Nevada County Grand Jury requests from Sheriff Moon, Nevada County Sheriff, within 60 days of the publication of this report, responses for the following:

- Recommendations: R4 and R5.

Appendix

The following is a list of links to reports used herein.

Link 1 - January 2020 presentation to the Nevada County Board of Supervisors by County officials tasked with permitting, compliance and enforcement:

https://www.mynevadacounty.com/DocumentCenter/View/32403/Cannabis-PPTPDF

Link 2 - 2015/2016 Nevada County Grand Jury report at the following link:

http://nccourt.net/documents/gjreports/1516-HEV-MarijuanaCultivation.pdf

Link 3 - Nevada County Board of Supervisors response to the 2015/2016 Nevada County Grand Jury Report at the following link:

http://nccourt.net/documents/gjreports/1516-HEV-MarijuanaCultivationRequiredResponse.pdf

Link 4 - Nevada County Sheriff's Office January 2016 presentation to the Nevada County Board of Supervisors, which shared the most common complaints received by the NCSO from citizens regarding cannabis grows:

https://www.mynevadacounty.com/DocumentCenter/View/2570/Marijuana-Powerpoint-Presentation-PPT?bidId=

Link 5 - North Coast Journal Article July 18, 2019 "Collateral Damage:"

https://www.northcoastjournal.com/humboldt/clam-beach-hike/Content?oid=14707956