

**MINUTES**

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**1. CALL TO ORDER**

Chair McHugh called the meeting to order at 7:00 p.m. Members present: Commissioner Hoard, Matthews, Frasier, Stewart and McHugh. Staff present: Deputy Director Leslie Hubbard, Environmental Compliance Specialist David Colebeck, Director of Environmental Health Kristy Anderson, Deputy County Counsel Joe Larmour, Associate Planner Bella Hedtke and Clerk Mary Beth Brinkley.

**2. PUBLIC COMMENT**

*Members of the public may address the Planning Commission concerning matters within their jurisdiction, which are not listed on the agenda and to request that a matter be agendized for a future meeting. No action may be taken on these matters at this meeting.*

Comments received from Veronica Kelly-Albiez.

**3. MINUTES – None.**

**OLD BUSINESS –**

**NEW BUSINESS**

**4. APPEAL OF PLANNING DIRECTOR’S DECISION TO ISSUE A COMMERCIAL CANNABIS CULTIVATION LICENSE P-19-08**

**Public Hearing:** Appeal of Planning Director’s Decision to issue a Trinity County Commercial Cannabis Cultivation License. Located 185 First Left Road, Weaverville. APN 010-680-07-00. Applicant: CCL2019-419, James Cook. Appellant: Steve Rhodehouse. P-19-10.

Deputy Director Hubbard presented the staff report. She stated the goal of this meeting this evening for this item is to have you to clarify the performance standards of the Cultivation Ordinance. Staff has interpreted what constitutes compliance a certain way, and we want to make sure that that is acknowledged in an open forum. The subject site, it is off First Left Road, north of Weaverville, off of Trinity Dam Blvd. It’s a 15-acre parcel, zoned Unclassified and the General Plan designation is Rural Residential. This site has been licensed with the County since 2018. We did receive comments, after the Agenda Packets went out, from people off of First Left Road, Rush Creek, and Rush Creek Estates. The comments received were from people anywhere from 1,000-1,500 hundred feet from the site. The Planning Department as we’re sending out notices prior to issuing licenses, and we sent out roughly 2000 letters to adjacent landowners, and we get comments back from people frequently that fall into the compliance category. The expectation is not at all for you to be compliance police, we have Code Compliance Specialists, we have three of them in the Cannabis Division, and so we don’t want you to have that role; however, if we have something that kind of falls into a grey area, we would like the Commission confirm that we are seeing things clearly as we are deciding, making discretionary call, on what we think constitutes compliance. We received this Appeal on April 3<sup>rd</sup> from Mr. Rhodehouse and he is here this evening; both the applicant and the appellant are here this evening.

We received this appeal on April 3<sup>rd</sup> and that was in response to public notice in the Trinity Journal and adjacent landowner letters that were sent out in the end of March. So, we identified that the site would receive a Class 1 Categorical Exemption. David Colbeck will speak to and size up that situation for you in a minute. We would like to make sure that you do recognize that staff frequently makes discretionary calls on issuing licenses and determining whether they are in compliance. There were two issues listed on the Appeal Form, one of them was that the hoop houses on site had been there for longer than 180 days, and the second complaint was that they had been hauling water. So, regarding the first issue, the hoop houses are not houses, they are permitted green houses. Regarding the second issue, that they have been hauling water, we did check in with the Applicant, and yes, they have been hauling water. They have a shared system of their water source and their water storage on site. It's a shared use between their house and cultivation site, so that brought a little ambiguity into the situation. Staff feels that the easiest solution is really to increase their storage. We do go out and witness that well tests were done, Environmental Health and Code Compliance Specialist that went out for the last 1 ½ hours of those tests to witness the tests and they did produce what is a threshold that we have. It is not written anywhere, but Environmental Health can speak to the threshold that generally we follow which is three gallons per minute. We need to have a water source onsite which will yield 3 gallons per minute. There were a couple of questions that came up also about why commercial water hauling wasn't ever allowed in the first place and so she spoke with the Ad Hoc. She said she was not in the seat at the time that the emergency ordinance was hatched, but part of the issue was not wanting to have water hauling be an acceptable way for someone to bring water into their cultivation site. She said really some of that was based on what impact water trucks would have on roads, tearing road surfaces and creating a lot of dust and noise as well. The State allows, our Ordinance does not, so in this case we feel like we can see can see that there could be a very easy pathway to compliance, but because there is some grey area in this, we want that to be vetted openly. She said Environmental Health Director Kristy Anderson is here and if you have questions regarding water, she can speak to that, and David Colbeck is here and will size up the Categorical Exemption for you.

Chair McHugh said he's trying to think of the best way to do this because you are going to come back to asking us about the question you asked about the gray area of the Ordinance, and he's thinking it might be efficient to deal with that issue, that topic, and once we have the context of that, then deal with the Appeal, which would be the CEQA, the different paths and the hauling at this particular site. He asked if staff is okay with that, does that make sense? Deputy Director Hubbard responded that's fine. Chair McHugh said why don't you speak to the question you have about, this is right at the end of your staff report, about what section of the Ordinance are you asking us to weigh in on, and what's the issue? Ms. Hubbard said the issue comes down to, in the Cultivation Ordinance, under Performance Standards, it says you have to have an on-site water source. Commercial water hauling is only allowed in emergencies, and defines emergencies as an unexpected occurrence. We did confirm with the Applicants that they did haul water during power outages last year when the Carr Fire, where they were out of power for a couple weeks and that was the case during part of that time; but, but the ambiguity for us is that if somebody is hauling water and it's used at the home, does that mean that they are automatically out of compliance with the Cannabis Ordinance because that water is also used on the cannabis cultivation site? We think the easiest way to handle it is just to make sure that you have enough storage where you're not going to have to be hauling water.

Chair McHugh asked do we all understand the issue? Do we have any other questions for staff? He said he thinks it would be effective to do have one public comment period, so he would like to get this question out in the clear in terms of staff report and questions on the staff report, then we will go through the Appeal same drill, questions of the staff, then the public comment on the entire issue, then motions and discussions on the motion.

Commissioner Stewart asked why is it mentioned in the staff report the possibility of two different storage

options or meters, one for the cannabis operations and one for the home, but it sounds like staff is recommending increased storage as opposed to the other, is that correct? On an overall basis and not ever considering the other, is that correct? Ms. Hubbard responded correct. It seems like it is the most straightforward, so it's the increased storage, if somebody, it's the way that they have their system plumbed, it might be difficult to separate those uses, that's an option though that she had put out. The staff recommendation was the one we put out as being the simple solution, to circumvent the whole situation.

Chair McHugh asked is the inference he's taking correct, that all storage is filled from wells, there's no hauling in the model you are talking about? Ms. Hubbard responded that's what she's talking about, she is saying that the 55,000 gallons, in this case that's based in part because the Applicant had been thinking about increasing their storage. She said the 55,000 gallons that is specifically proposed here, is the staff recommendation is based on, in part, what this Applicant said. We wanted them to come up with a solution. We said, hey, what are we going to do here? They plan to purchase that much storage. She asked if that answered his question. Chair McHugh responded yes, he guesses we are mixing the current case with the principle of what you want the ordinance to mean. So, in this case, there are wells that could fill more tanks that would cover the domestic situation, but if this cultivation site were on a full section of land and the cultivation site was a mile and a half from the house, are you suggesting that they need to put wells in for cultivation and they could or could not haul for the house separately? He said he's trying to understand, in the general case you don't want any hauling for cultivation, hauling for domestic use is okay, how do we keep that separate? In this case it makes sense, put a bigger tank in and pump it all from the wells, but that's not the general case?

Environmental Health Director Kristy Anderson responded that basically people have to either prove they have a well onsite that produces the maximum amount of water or a surface water diversion. In this case, their only choice was well water. The reason a lot of the ambiguity comes up with water trucks and water hauling is not just purely because of the roads, but the State only permits potable water trucks and potable water haulers, and she thinks we are down to one or two now in Trinity County, however people who live on Highway 36 would say there are hundreds. She said now non-potable water trucks, water trucks that have not been certified with the State, we don't know where they are drafting the water from, where they are taking it to, how are they're doing it, if they are even licensed to drive a vehicle, which we have found to be the case a lot of times, or they're not even plated right; that's a whole another topic, but it really comes down to it's a whole mess of problems when it comes to something that's not permitted, they're driving around the county taking water from one area to another. She thinks that has a lot to do with [inaudible].

Chair McHugh said he thinks what she is addressing is why there is a prohibition on *water hauling*. He said except that the Ordinance is the Ordinance, and we're trying to understand why they can't haul water for cultivation. He said he's trying to come up with a case where they need to haul it. So, one thing you could say is you can never haul water if you're in cultivation business, you must pump your domestic out of a well, which is what you are suggesting. If that means you must have a big tank because your pumping 24/7, you've got to store it up. That's okay and that's the suggestion that he sees in here for the present case, if there is adequate water here for cultivation but not also for domestic, are you also considering a case where they could haul water for domestic, but not for cultivation, if they were separately metered, separately managed and somehow you're truly convinced that they are kept separate? Ms. Anderson responded to kind of separate it from the State's perspective, potable water haulers can haul water to a house or household.

Chair McHugh said let's say if we have portable and we have licensed certified potable water for the house. Commissioner Stewart said basically where she's at is that it seems to her what you are saying is that you are always going to recommend that they increase their storage and never recommend that they

split them? It seems to her that sometimes splitting them might be a good choice. Deputy Director Hubbard responded not quite, that she will never say never, just because there may be some unique situations, but in general, that this would be the best solution. The only way is if you wanted to have hauling for domestic purposes and you have an on-site water source for your cultivation, then yes, you could do that. But you had better make sure they are clearly separated and we really don't want to create a compliance issue that would be difficult to nail down with increasing the storage, it is easier to nail down from a compliance standpoint. Chair McHugh stated your report uses the term "metering them separately", and asked do you meter the water going to the domestic water tank? Do they have to show how much is purchased and it has to be a reasonable usage level for a domestic situation? Ms. Hubbard responded it's not required yet, but it could be. Chair stated he thinks he understands the issue enough.

Commissioner Matthews said he has a lot of different issues. He said the water issue is very large, we've heard from people in the past, Mark Lancaster has made presentations to the Planning Commission about critical water overlays in certain watersheds, and there's those kinds of issues when you have water intensive new uses that threaten the existing water rights of the existing residents. He thinks that's an issue that we need to think about in these scenarios, not just water storage. There are some bigger issues relating to water that we need to grapple with at some point. Chair McHugh asked but do those issues relate to whether or not you should be issued a well permit in the first place because you are impacting the water table? Surface water diversions effect mountain streams, it's a different issue entirely. It's an issue, but a different one than we're talking about here. Commissioner Matthews said so that's one sort of overarching issue that he thinks we need to address as the Commission at some point. Also, the staff report mentioned rain catchment, but that hasn't really been brought up. Does the County allow rain catchment for commercial cannabis or for domestic use? EH Director Anderson responded we have no limitations on rain catchment [inaudible]. Deputy Director Hubbard advised we know of several people in the program that aggressively use rain catchment. Chair McHugh said okay, but he thinks the question we are being asked, since the Ordinance speaks to hauling water, is how can we help you interpret, all these other issues are valid issues, but the question we are being asked is hauling water for cultivation getting mixed with domestic scenarios? Commissioner Matthews said but the water issue is such that he personally believes that the uses should be separate and metered.

Chair McHugh said okay, end of discussion. He asked if there were any other questions for staff, otherwise we'll move on to discussion. Alright, let's go back to the Appeal, now that we understand the issue, your concern with this particular issue of hauling, we know you have a recommendation how to address the water in this case, the issue of hauling in water; but, the Appeal itself, you mentioned that there were two specific items in the Appeal and then the CEQA, we can look at the CEQA that's the purpose, those are the subjects on the Appeal? Ms. Hubbard responded the Appeal did not specifically say I have an issue the CEQA determination, the Appeal specifically listed the two items. As Commissioner Matthews said, the water issue makes you think a little bit more about that, but the way that we as staff approached this, we say okay here is the Appeal Form, there are two things listed on it and what are we going to do about these? What types of issues are these? Are these compliance issues? Is it challenging the CEQA determination, or does it fall into some other category? Maybe Counsel can give guidance regarding that. Or is it just going to be another issue? So far, the vast majority of things we have been dealing with have been compliance issues, and that is the way we saw this one, but with that ambiguity regarding those segments of water hauling, we thought, okay lets be prudent, let's put it out there and let everybody see the way that staff goes about making a decision about determining how we think somebody is compliant.

Counsel Larmour stated ultimately on this Appeal, there's two discretionary actions that have been taken by staff. One, with houses. In the report it noted that there are no unpermitted structures. The second issue, is where you get into the CEQA and staff has in their discretion, mitigated the CEQA issue of hauling by increasing the storage. So, what is before you today are those two discretionary acts and

whether you think you should uphold staff's discretionary mitigation of those two factors or whether you want to direct staff to do something different. Chair McHugh started he finds that confusing. What staff did was a Class 1 Categorical Exemption, that's not a CEQA study, that doesn't require mitigations, it's none of that. They have a mitigation in place for a compliance issue which was hauling water for cultivation; however, the CEQA was a discretionary action of the Director as well. Counsel Larmour advised and an exemption is also a discretionary act. Chair McHugh said and the discretionary issue has an exemption.

Chair McHugh stated he thinks David Colebeck was about to brief us on that part. Mr. Colebeck stated he is an Environmental Compliance Specialist who works at DOT. For the past five months we have been going through a process of reviewing each application or renewal, and they have been prioritized either based on the State license renewal deadlines or the County. As we have worked through our spreadsheets and prioritized which ones to address first, he has conducted a staff review for his part using GIS, doing a geo-spacial analysis of each location. He selected twenty-five to thirty factors to look at for each location, set the boundaries and the parameter for each location for any potential impacts, and he assesses it for one or two things. Does it qualify for a Categorical Exemption or CEQA, or a Class 1 existing facility? If he's not sure it does then you push it through to a Provisional process and additional staff review, where it goes to the Planning Department and then Planning staff will then assess whether they require more information to understand what is happening on the site, or if there are any potential mitigations that need to be put in place. In either case, a license is issued to that operation with the understanding that with the CEQA CE there are certain limitations on how that operation can function. For provisional license that requires more additional staff review, that can include everything from site visits to mitigations for density issues, cumulative impacts, roads, hydrology, odor. There are a number of factors that any individual license that is going through that additional review process may have to address. So, for the CEQA Categorical Exemption process, we have decided to make use of the Class 1 Exemption for existing facilities, which allows for consistence of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities and technical equipment or topographical features involving negligible or no extension of use beyond that existing at the time of the lead agency's determination. So, at the time that we're making a determination, it is based on the existing function of that cannabis cultivation location. It is that the operation of that facility that we are [inaudible], and it's the understanding in how the CE is actually drafted in the project description of that cultivation location, is that they are not going to change their facility, there's going to be no substantial expansion. Because there's no substantial expansion, then we have decided that there would be minimal or negligible or minor, any, environmental impact in the operation of that facility for the one-year period that the license is in effect. So that is kind of a crude overview. We have issued, at this point we have gone through about two-thirds of the roughly 330 licenses that are looking to be renewed; and again, those are prioritized either on the timeline of the State or County renewal process, their deadlines. We still have several more to go through of course. Once the CE determination is made it is posted in the paper, it is publicly noticed which allows for a 10-day period for that to be appealed and after that point, it essentially becomes effective when it is posted at the Clerk's Office. It is posted for a month, which allows for statute of limitations to proceed where it can be sued if somebody has standing to do so, and only if somebody has standing to do so, after any other administrative option is exhausted, such as the appeal process. The State is requiring us to provide them with those CEs to show that we are applying the discretionary review of each individual license.

Counsel Larmour stated and just for the Commission's knowledge, CEQA Counsel is standing by if you want to call him for a more in-depth discussion of the issue. Chair McHugh responded as you might imagine, he does have a couple of questions. He guesses this is a question for Counsel and he doesn't want to run around on this, but the Class 1 Categorical Exemption talks about, as you read off, "operation, repairs, etc., private structures and topographical features", and then it goes on to give sixteen examples, none of which include Agriculture, so the application of it to Agriculture he finds curious. He said you

also mentioned the cumulative impact, and in the CEQA Guidelines section of Title 14 it talks about exceptions to issuing CEs and the second was cumulative impact, as you mentioned. He said he's certain you're not going to take the position that if you are looking at the cumulative impact on the site itself, besides affecting its own site; therefore, the implication is the cumulative impact across sites. What is the cumulative impact of two-thirds of 300? 200 CE's from the CEQA standpoint. He asked has that been addressed anywhere at any time?

Mr. Colebeck responded to your first point, yes, there are a number of examples under the Class 1 Exemption. It is understood that those are guidelines, it even says in there that it's not an exhaustive list, of the way a Class 1 can be applied. Throughout all of the exemptions, of some 30 different classes of exemptions, it's understood that there are variations that can exist within that classification. That's also true of Appendix G, an idea that it is not an exhaustive list, and he doesn't mean get into the nomenclature, but he believes you understand what he means, is the idea that if you are conducting that Initial Study, what should you look at? What should CEQA be concerned with? Appendix G is a list of [inaudible] 19 that says this is what you should look at, and they give check boxes basically, of what is important and what is not, or what is applicable or not. So, for those examples, he understands that maybe none of them, as they are written, applies specifically to Agriculture; but our stance was, that for these facilities, and we will call them facilities, because they are essentially functioning as agriculture facility, a different bit of structure, but has a footprint on the landscape, it was applicable to use a Class 1.

But cumulative impacts, yes, that argument has been addressed with our Counsel, the notion of whether a cumulative impact is related to a single operation over a multitude of years, or if it's related to a number of operations within one year. For cumulative impacts, yes, there are quite a few CEs that we're looking at producing or have been. Again, we are using quite a bit of discretion, he can't give you an exact percentage of which have gone to additional staff review and which have gone directly to CEs, but it is not [inaudible]. So, for cumulative impacts, yes, there is quite a number of CEs, but you have to understand that the cultivation sites are spread out all over the county, and so our determination, for our initial review of whether the particular applicant would qualify for a CE, is related to where they are in the watershed and what density of cultivation activities [inaudible] that are licensed activities. So, with a discretionary threshold applied of ten cultivation sites within a single sub-watershed, then we felt that was something that would require further review, and there's a number of locations around the county where that is true. We've also taken measures to use watershed hydrological units, basically, Pump 12 is what it's called, it's a basic standard thing in natural resource conservation to use a small watershed delineation. We have gone beyond that to actually make sub-watersheds, to actually try to define areas that are smaller than Pump 12 that would allow us to really focus on areas of potential cumulative impact, and where we feel that it's appropriate, then we have not allowed these to move forward, for those areas that have high density cultivation activities.

Chair McHugh asked and what did happen in those areas? Mr. Colebeck responded they would be pushed to additional staff review through the process. Chair McHugh asked did any of those result in initial studies? Colebeck responded that is a potential. We have had a flowchart that has been available on the Planning Department website for several months now, that outlines the process that we are pursuing and one-half of that flowchart is after our initial discretionary review. He said let him speak a little more detailed, when he goes through and he's looking at these for their eligibility for CE, that is reviewed by several other staff members within the Planning Department, and it's a process of negotiation. Where he might be looking at one scale, they will be looking at individual files, individual cultivation license files, to verify what he's seeing, and to bring up other points that he wasn't seeing. So, he just wants to stress that it's definitely an exchange and it is a process for each of these licenses, license renewals. Colebeck said CDFA, Cal Cannabis, recognizes the use of several classifications for renewing cannabis licenses. The Class 1 is one that they have put a memo out that he's reviewed, that has some guidance about what is applicable and not applicable for using the Class 1 CE. They have also talked about Class 4s and several

other classifications, which Class 4 would be a minor alteration to landscape, which does allow some minor changes to land with some caveats, there's certain exceptions that need to be applied for Class 4 that do not have to be applied to Class 1. He stated he felt like he missed a question in there. Chair McHugh responded no he thinks he got it.

The Chair asked if there were any other questions. He asked we have vetted that? We've done the Appeal, we talked about... Do we have any other questions about the water hauling aspect of the Appeal itself? So, to be clear on that, water hauling has been happening as result of the Ordinance requiring no hauling, with that caused three wells to be put in or were they already there, or what is the story on the wells? Was that the mitigation that they put the wells in?

EH Director Anderson responded it's her understanding, looking through the well permits, that they were there previously. Chair McHugh said okay, so the wells were in place subsequent to the processing of the license; so, the license was noticed on March 27<sup>th</sup>, the approval was noticed on March 27<sup>th</sup>, which triggered an Appeal, timely Appeal. On March 27<sup>th</sup> these wells were in place and subsequently they were proved to be meeting your requirement of 3 gallons a minute? Ms. Anderson responded yes, we actually required additional testing to prove that. Chair McHugh asked since the wells were already in place was water hauling occurring, you probably already answered this, was water hauling for domestic use already happening before? Deputy Director Hubbard responded yes. Chair McHugh asked so the wells were inadequate for domestic use? Hubbard responded the wells were inadequate for domestic use and cannabis. She said the applicants, she did ask because she want as much background information as we could get, their history of water consumption on site has not been exclusively for domestic use, it has been a combined use since they have been there, from the way that she understand that.

Commissioner Stewart said you said that one of the time periods in which they were hauling water was during the fires when they had no electricity, so their pump wasn't working, so they weren't getting any water from the wells, and so that would be considered an emergency use of hauled water, correct? Ms. Hubbard responded correct. Commissioner Stewart said she's just making sure.

Commissioner Matthews said he has a question about the well test and asked if that correct to do at this point? The Chair responded sure, it's in the report. Matthews said he means testing well production in April doesn't mean very much in the dry part of the year, so what are the department's standards when you do a production well test? April is very different than October. Ms. Anderson said she agrees at a certain level. She said so when the standard came into effect it was [inaudible], we wanted to hold a consistent standard to every cannabis cultivator, and that was done through a series of calculations, and previous, like the Subdivision Ordinance for instance, equal water rate recovery was 3 gallons per minute. Now, we did not require a test at certain times of years because it really depends on well. We only have a true aquifer under the Hayfork Valley proper, so everywhere else is a fractured rock formation that holds pockets of water and it really is hit or miss here in Trinity County. Now if they were close to a stream or a creek, we could see some kind of influence from that or if historically the data shows that they have high ground water in that area, we could see that there would be a water table that could be impacted by wet weather, so this was a discretionary decision based on those facts. She asked if she answered his question? Commissioner Matthews responded if that's how you look at it. Chair McHugh said but nevertheless, even if the wells dry up in October, if they have to have stored enough water, there's no ground water, so they need to be storing in the case the wells aren't producing in October, or until the next rainy season, and asked is that your view of it? Ms. Anderson responded yes, and actually some of the State Water Board Regulations require storing of water during the wet season and using it during the dry season. Chair McHugh asked for other than surface water? Ms. Anderson responded yes, and now she think that's the question that you are asking is, well she will let you ask, but basically she doesn't see the time of year in April and then being on top of the ridge where they are with no surface water around and historically not high surface ground water level. She didn't see that as factor. She said a lot of our wells here in

Trinity County, unless they are close to the river, are 200 to 300 feet on average in depth.

Commissioner Matthews said in his own personal case, we get far less water out of our irrigation well, which is down along a little tributary on Browns Ranch Road in the fall and it will break suction and won't... it'll pump 200 gallons per day or whatever, whereas this time a year it'll produce as much water as he wants. So, there is a huge difference in the ability of a well, even in a nonaquifer. Ms. Anderson stated what you mentioned there, is the tributary on your property and there is a direct correlation between [inaudible] tributary and well production and its impact.

Commissioner Matthews said he had another question that is fire water storage, if we're talking about sort of a generic, many residences have requirements for water storage for fire purposes, how does this storage for cannabis, for domestic, for fire, play and is it all combined then? Is it just one big pot? Deputy Director Hubbard responded yes, it has been. The applicants at this site, matter of fact, they did haul water also during the time period before the power was out, from my understanding, they hauled water because the fire was making everybody pretty nervous and then they topped off their tanks because they wanted to have fire water on site as well. At this point there's no delineation between uses for water storage. Commissioner Matthews asked how did you arrive at the 55,000 gallons? Ms. Hubbard responded she tried to address that earlier, maybe she didn't make it clear, that was somewhat arbitrary, we spoke with the applicants, and said hey you know if you are doing this, you can't haul water, you can't do this, so they brought it to the table and said well, we are planning on increasing our storage, we've already purchased ten 5,000 gallon tanks, and they already had 5,000 gallons of storage on site. So, in this case add them up and we said okay 55,000 gallons that's approximately three times what their highest monthly water diversion would be. As part of your cannabis reporting, you need to estimate how much water you are diverting, whether it's ground water or surface water diversion, the State, the Water Board requires you to report what your diversion is on a monthly basis, and so their highest month was 15,000 gallons and the 55,000 gallons she's not sure if the applicants decided that they wanted 55,000 gallons of storage, but we looked at their water diversion that they have been reporting consistently for the last couple of years and like she said, it is over three times what they would divert on a monthly basis between what we estimate the domestic use would be, in addition to their cannabis diversion. So, it is somewhat arbitrary, that's what she means, is that we use discretion and we said okay well that seems reasonable to us, so the we think that would constitute being in compliance. They could circumvent hauling water and it seemed to make sense. Commissioner Matthews said but they could still have a shortfall, three months is only three months. Ms. Hubbard agreed stating yes, they could.

Chair McHugh said he thinks that vetted all the issues in the staff report, that brings us to public comment. We will do one public comment for everything we talked about. He said first, he would like to invite the Appellant to come up and talk, then we will hear from the Applicant if he chooses, then we will open it up to the 3-minute public comment.

Appellant Steve Rhodehouse stated it is imperative that you realize this isn't just for him, he doesn't have a personal grudge against these guys, it's for our community which is a very highly densely populated area, including Bear Creek, especially it takes First Left Road and up around Trinity Dam Boulevard. He said in relation to the staff report and in relation to the comments that Mary Beth has made, she mentioned that the zoning is Unclassified. He said he's been here for forty years, he's done three minor subdivisions and built houses on those subdivisions, and it's always been referred to by Planning as Rural Residential. That stuck in his head, and there's another place in the Ordinance, or the law, or wherever it's written, that claims it's that. Another thing, in relation to hoop houses, it says in the staff report that there are two that have been permitted, there are actually three he can see from his house and driving to and from. As far as the well test, the four hours required to adequately assess the viable nature of how much water is coming out over that period of time, cannot in any way be determined if somebody shows up in the final hour and a half to three wells at the same time, and say they're compliant. He said now, it may be that the well



drillers get “this is what that does” and “that’s what that does”, you know a lot of times people condemn themselves by themselves, so the accuracy is something he questions, the volume of which you guys have been talking too. As we go over to the next page it talks about how the 3 gallons per minute applies, and then it reads “The Applicant has reported that he has received hauled water at the subject parcel to supplement the volume ...”, and it’s an interesting thing, you know, you talked about increasing the water storage, having those 55,000 gallons there, those tanks are already there, they’re on site. It’s an interesting thing, we are finally getting an opportunity to appeal this, yet the decision has already been made. That is kind of like putting the cart before the horse. What’s the Commission for, if all these things are already done before the Appeal is even heard? He said and then calling 55,000 gallons emergency or domestic, you know it just doesn’t... If you think about how using fabricated words as a cloak for deception is all part of this. When you go up there and look at this thing, there is a multitude, he means a major amount. It’s not so much this 55,000 gallons just for domestic or fire, it’s just growing, now they have an opportunity, since they didn’t abide by the law in hauling water in the beginning, now they have the opportunity to fill up even more water and increase their greenhouses, which were hoop houses originally and they’ve been there for four years; they may have changed a bit, but they’ve never gone away visually. So, it’s a real conundrum to your guys to be sure, because there’s so much new information; but the law is the law, and this is the only vehicle that we have, the community, to say something about this. In a high-density area, he needs to say something, he’s just the voice, it’s not just him, like he said. He said there are also things, he doesn’t know if they were in your packet, he doesn’t know when you get it and he brought extras., you know the pipe, the 2” PVC pipe that goes up to the tank from the road, if you are even interested in looking at it, he has it. Chair McHugh asked are these the pictures in the packet? Deputy Director Hubbard said and there was one photo that you mention, you were talking about a photo of PVC pipe that goes from Trinity Dam Blvd.? Mr. Rhodehouse responded, no, from my road, First Left Road, that’s what he’s saying. He gave Deputy Director Hubbard the photos. Chair McHugh stated those are the photos in the packet, so he could pass them around. Mr. Rhodehouse said to keep it distinct here, because the well test has not been currently proven, you know the required four hours, make sure he does what he says he is going to do, nor has it in the past operated legally. If it had operated legally, the license should be not considered in good standing with the County or with the community, and the license should be denied. Again, this is not just him, he has already 70 signatures, we don’t want in our community.

Applicant James Cook stated he has all three permits here which are issued by the County, they’ve had them since the greenhouses were constructed, they are engineered, they are permitted structures. As far as water storage goes, yes, we have had to haul water in the past, we tried to fix that problem obviously, by adding more storage, 55,000 gallons, 5,000 of that is separate and dedicated specifically for emergencies, never used for domestic and cultivation. In their case 55,000 gallons of storage is because of the way their water system works, we use for domestic and also their vegetable garden because they grow a lot of their own food and share with their neighbors, and also for cultivation, and it’s also shared with another neighbor. He said to mitigate water usage, obviously add more storage, pump as much as we can during the winter. They drilled a new well at their expense, added the tanks at their expense, everything is permitted, because with 10,000 sq. ft. of canopy we know how much water we need. He said they’ve documented for two years already and they feel very confident that with their well production test and their storage that no more water hauling will occur, and that they will comply with the CUP, and especially next year where they can add more storage if necessary and continue. He said he wanted to bring a few things to your attention. He noticed in the packet there were letters written on their behalf that weren’t included in here, one of them being from their neighbors, and the other being from Down River Consulting. He didn’t see them in the packet and wasn’t sure if the Commission saw them. Chair McHugh stated apparently not. Mr. Cook said he has a copy here if the Commission would like it. Deputy Director Hubbard asked if he could please provide a copy. Mr. Cook provided a copy of the letter to the Clerk, stating this is from their direct neighbors, he doesn’t have the letter from Downriver Consulting though. Chair McHugh said he didn’t see it; no, we didn’t get them. Deputy Director Hubbard asked if they were provided by email. Mr. Cook responded he believes this one was mailed in,

yes, and he's not sure about Downriver Consulting, it would have been Marie, if they mailed it or emailed it. Chair McHugh asked if it was the wrong email again. Ms. Hubbard responded no, we're down some staff members and are trying to make sure we're getting all the correspondence that's coming in. Mr. Cook said we just wanted to make sure the Planning Commission had a chance to read those, since they are in their favor. He said he's not sure if there were any other questions he could answer, but he'd be happy to if you have any.

Chair McHugh asked it is your intent not to do any water hauling? Mr. Cook responded absolutely, you know, over \$50,000 was invested in our water system thus far, especially since last summer knowing that this would become an issue, we're trying to correct it. Chair McHugh asked between ongoing production of the wells and the 50,000 gallons, you can support your cultivation of the cannabis, plus your vegetable garden and domestic use. Mr. Cook said and domestic, and shared with our neighbor, he's absolutely confident that they can. Chair McHugh asked and what's shared with your neighbors? Mr. Cook responded our lower well.

Chair opened the hearing to public comment.

Comments received from Dave Albiez, Carol Fencil, Veronica Kelly-Albiez, Tom Sanders, Jim Taylor, Buzz Sharinghousen, Suzanne Wood, John Letton, Paul Duzr, John Brower and Gene Johnson.

Chair closed public comment period.

Chair McHugh recommended continuing the earlier model and first deal with the question that staff raised, the principal of hauling water vs. cultivation water. The first one is that Section 060 of the Ordinance. He said he thinks the issue was if there is going to be any water hauling, it has to be isolated from any cultivation. Water hauling can be used for any of the other things we talked about, fire, vegetable garden, domestic; but the cultivation has to be separate, separately metered, separately stored and can't be hauled, it has to be produced on site, either through surface water through surface water rules or through wells. He asked is that where we ended up, is he framing the issue?

Commissioner Stewart said if the State is saying, isn't it effective in a year, that domestic and cultivation use of water has to be separate and separately metered, then it seems to her that's what we should be doing and not just saying you have to increase storage. Chair McHugh said right, there was a comment about the bulk storage is shared, and he thinks you can't do that anymore. Commissioner Stewart said well actually what Leslie was saying is that they wanted to allow bulk storage, but that meant that they could not haul water for either domestic or cultivation, because it's bulk storage. She said if the State is saying it has to be separate, then that solves the whole problem. Counsel Larmour stated he thinks the only separation, in reviewing the code from the State, he doesn't think it talks about storage, he thinks it talks about metering, so from his understanding, the storage can be bulk, but the meter has to be fed for the commercial cannabis has to be separate.

Chair McHugh said the issue is, what is the source of the water for cultivation? It must be on site either from wells or from diversion. Diversion drives you to have storage, if that's the rule, for summer time. Wells may also drive you to have storage if they're inadequate to be irrigating in real time during the season. But the bulk storage, he thinks is not our issue. It's that the system has to be designed, however it works, so that domestic water cannot find its way into the cultivation system, if the domestic water is hauled. Commissioner Stewart said exactly. Chair McHugh said under domestic, he's throwing in fire and vegetable garden. He asked if the others agreed with that, he isn't hearing any motion.

Commissioner Stewart moved to recommend to the Planning Department that water storage, if in bulk, cannot ever have any... the water delivery, if there is the possibility of needing to have water delivered,

then the water for uses other than cultivation has to be separate so that cultivation water is metered separately from that for domestic use. She asked if that made sense at all?

Counsel Larmour stated he thinks that what the Commissioner is saying is if you have the ability to transport water, then you have to have segregated tanks which for domestic use only. If you're using bulk storage, no delivery is acceptable. Commissioner Stewart said that's exactly what she means, it may not have sounded like it, but that was it.

Chair McHugh asked that's your motion? Commissioner Stewart responded yes. Commissioner Matthews seconded the motion. Chair McHugh asked if anyone wrote it down. Deputy Director Hubbard stated he said that if there is a possibility that you will haul water for domestic purposes, water storage shall be kept separate for domestic use and commercial cannabis.

Commissioner Stewart asked if she could amend that to add water delivery, water transportation, shall be allowed for emergency situations, such as long-term outages, long term power outage. Counsel Larmour stated he thinks that is already contained in the ordinance. Commissioner Stewart said okay, she didn't know if we needed that.

Chair McHugh called for the vote on the motion. Motion carried unanimously.

Chair McHugh stated let's pick up the second portion, which is the Appeal. He thinks there are three elements to it, there's the CEQA question, there's the permits of the greenhouses question, and the water hauling question.

Commissioner Stewart asked Counsel if we needed a motion first in order to conduct... Counsel Larmour responded it sounds to him that the Commission has broken this up to three separate sections. If that's the case, then you would take it in three separate parts. It should start with a motion and a second, and then the discussion. Chair McHugh said it's one Appeal, it's one motion. We are either going to uphold the Appeal or not, that's the way he understood it. Counsel responded you can handle it that way, he was just taking it the way it was stated, that you were taking three separate parts. Chair McHugh said no, he said he sees there's three elements to the decision., that's what he's thinking. Those are the three topics that we discussed, but he believes it's one Appeal to uphold or not, we not going to uphold half of the Appeal.

Chair McHugh said so let's take the easy one, the greenhouses. Sounds like there's a non-issue here, it sounds like there's three buildings here, three permits. Commissioner Stewart said exactly. Chair McHugh asked are you confirming that as staff, the buildings in question are permitted structures. Deputy Director Hubbard responded correct. Chair McHugh asked and were at the time of issuance of the license? Ms. Hubbard responded correct. Chair McHugh said that sounds like it's an easy one.

Chair said let's do the water issue, the water hauling. Your recommendation, should we approve it, is simply that we tack on a condition to increase storage? You've decided 55,000 gallons is adequate based on your math? Ms. Hubbard nodded in the affirmative. Chair McHugh asked the other Commissioners for their thoughts on the water situation, saying remember, the context is just what we recommended regarding interpretation of the Ordinance. Commissioner Stewart said she personally thinks increasing the water storage is fine, but it would be a good idea to separate the domestic from the cultivation. Commissioner Matthews said he's not completely convinced 55,000 gallons of storage is really enough, but it's what staff, in consultation with the applicant, has decided [inaudible] any chance of water hauling being necessary. Chair McHugh asked Commissioner Stewart did you say the systems are separated? Commissioner Stewart responded that's what she would prefer to see. Chair McHugh asked if there's going to be a possibility of hauling, then they should be separate, not a single bulk storage? Commissioner Stewart responded yes, exactly. Chair McHugh asked Commissioner Matthews if he

understood what she was saying. Commissioner Matthews responded it's certainly better.

Commissioner Frasier said he doesn't see that it would really stop water hauling for the commercial cannabis, unless the tanks were completely separated, they were separately metered. If you wanted to pay the money, you could bring in potable water for domestic use and send it through the meter for your commercial cannabis. He said he also has some concern about the 3 gallon per minute well test producing enough water, even with 55,000 gallons of storage, it would take thirty-eight days to fill the tanks. If you ever ran out late in the season, you won't catch up. There's some issues with the amount of water, that's a lot of water storage, but it's going to take a long time to recover if it's used, is one of the issues he has with storage. Commissioner Stewart said one of the things that staff said is that they looked at the record of the amount of water used for the cultivation by the Applicant that was reported to the State, and that amount was 15,000. Deputy Director Hubbard interjected; the highest month was 15,000. Stewart said so that seems to her that this would be adequate, especially if the separate their cultivation from their domestic use, because then if their domestic use ran out, they could; and if they're separately metered, they're separate systems, it would be very difficult... maybe she's more trusting, but she doesn't think they're going to be dumping water into his domestic system and diverting it to his cultivation.

Commissioner Hoard said he had something to add to the discussion. In light of the motion that was recently presented that no deliveries shall be acceptable, if the system is bulk, it would be obviously in that case in the applicant's best interest, prior to the installation of the many tanks he has available, to separate the system, so if he would be required to get water for his domestic use, well then he would have that option; so, to add this as a further condition to the 55,000 gallons he's going to install, he thinks is unnecessary. He said also, several of the comments of the one and a half hours that Inspector Kristy Anderson was out there to test the delivery, and example would be a construction site, the inspector isn't there 24/7 while every single nail is being banged into a wall. They show up, they do their inspection and they leave; they show up during the time they deem necessary to assess the continuation or proper construction of the site. Same condition applies, Kristy was there for an hour and a half on a four-hour test done by a licensed contractor with liability due to the State, he thinks that suffices in his opinion, to the test produced here; so, he's in favor to adhere to staff's recommendation of the 55,000 gallons of storage. Commissioner Frasier asked are you saying adding a condition or not adding a condition? Commissioner Hoard responded that he is in favor of not addition a condition. It would be in the applicant's best interest to add that separate system if he wants to get, in light of the motion we did earlier, if he wants to get water delivered, yes, he should have a separate system; so for us to add that addition to the condition, he doesn't see it as necessary. Commissioner Frasier said he wanted to clarify that.

Chair McHugh said let's talk about CEQA for a minute and asked if anyone had comments on what we heard about it being a Class 1 CE and that whole discussion. Is it adequate? Appropriate? Commissioner Stewart stated that was not mentioned in the Appeal, and asked was it? She said she doesn't think we need to address it because it's not part of the Appeal. Chair McHugh said he doesn't think we need to, but he thinks we can, it's listed under purpose of the hearing and read that off of the staff report. Commissioner Stewart said yeah, but he did not appeal the staff report. Chair McHugh responded that's a fact. Commissioner Matthews said he thinks the logic test that was referred to in our testimony, that if you obtain a permit within one year and have existing facilities, but really don't go through any environmental review and then use that for the basis of a Categorical Exemption in your renewal, that could be a problem. He said you know, we are in the middle of a process that is changing, obviously changed this year, significantly, from what it had been in the past. He totally understands that there are some growing pains here or whatever, but if you look at that flow chart and think about it, it doesn't make a lot of sense to him.

Commissioner Hoard stated he agrees with Commissioner Matthews and it was very interesting the comment that Mr. John Letton made as well, and it does make sense. How do you base something that

has not really been properly, thoroughly gone through, basically has not gone through basically, the CEQA process, but however, are we in a position here today to change that? As we all know the County is in a lawsuit currently too and with new State regulations coming out, pending the outcome of the lawsuit, he means the process might be entirely changed, so do we need to discuss that, or just make further provisions based on that? Counsel Larmour stated he would ask, if you are going to weigh heavily on this, we can get CEQA Counsel on the phone.

Commissioner Stewart said she goes back to the fact that this was not part of this Appeal and she thinks we can discuss it all we want, but it's not part of this Appeal. Commissioner Hoard stated he agrees. Counsel Larmour said he thinks that's the case he agrees that the Appeal was not directed to the CEQA. Chair McHugh said the interesting thing is this is the first opportunity we've had to talk about this, 300 of these things have been issued and this is the first time the Commission has had to weigh in on our view [inaudible] of application of CEQA to discretionary action of the County. It's an interesting opportunity to give guidance to the County on it, at least to have the discussion, and in the end, he guesses we have to take Counsel's lead on whether we can consider that as part of the Appeal or not; but there are some very interesting nuances to this. His personal belief, he agrees with Commissioner Matthews that picking CEs out of the air for where there's no Initial Study done which is to say the basis for no change...

Counsel Larmour stopped Chair McHugh stating we are wading into the territory and so he's happy to get CEQA Counsel on the phone, but he's going to ask [inaudible] before you go any further. Chair McHugh asked if the Commission wanted to entertain some discussion or [inaudible], the will of the Commission.

Commissioner Stewart said quite frankly, she trusts what the Planning Department does and trust their judgment. Commissioner Matthews said he doesn't think we need to talk about it tonight. Chair McHugh said fair enough [inaudible], very well then, we need a motion, this would be a good time.

Commissioner Stewart moved that the Planning Commission deny the Appeal, finding the following: (A) The commercial cannabis cultivation site located on APN010-680-07 at 185 First Left Road, Weaverville, is operating in compliance with Trinity County Zoning Code Section 17.43; and (B) Water storage on site shall be increased to 55,000 gallons to provide adequate volume for domestic and commercial cannabis cultivation use and avoid the need for any water hauling unless for emergencies as defined in County Code Section 17.43.060 C. Seconded by Commissioner Hoard. Chair called for a roll call vote. Commissioners Stewart, Matthews and Hoard-Aye; Commissioners Frasier and McHugh-Nay. Motion carried 3 to 2.

## **5. MATTERS FROM THE COMMISSION**

Discussion regarding meeting schedule.

Chair McHugh stated he doesn't know where to go with this CEQA thing. It's a little late in the game, it's unfortunate that staff didn't bring it to the Commission earlier in the game to weigh in on the CEQA, in application of this discretionary CEQA decision being used at each of these grows. We are 200 in to them, and he's sure Counsel weighed in on that, but he's not sure he would agree with everything, Counsel's take on it. He's not sure what to do, not sure it be agendized at this point, pending the eminent EIR and all that other stuff that's about to change. It is unfortunate.

## **6. MATTERS FROM STAFF**

Deputy Director Hubbard said just to let you know, we are short staffed right now, we've had some people that have been out for at least a month out of Cannabis, so if your constituents approach you and say hey I'm not getting any response back, in particular with cannabis projects, that's why. Planning, we're pretty lean as well, we're trying to figure out how to handle it, but if your constituents come to you and they

don't feel they are getting a timely response, we will do our best to respond, but just to let you know that is happening right now. We have re-flown the Senior Planner and Associate Planner level positions and hopefully we will get some qualified applicants. Chair McHugh asked if there were any hints on the Director position. Hubbard responded she didn't know.

7. **ADJOURN**

The Chair adjourned the meeting at 8:52 p.m.