

<p><b>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</b></p>
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**APPLICANT:** Mao Lee

**REPORT BY:** Scott Watkins

**OWNER:**

**APN:** 014-440-48 (2.8 acres)

Opt-Out: None

**PROJECT DESCRIPTION:**

Variance from required 350 foot cannabis cultivation setback from two (2) neighboring residences.

**LOCATION:** 738 Dirt Road, Hayfork, CA (Figure 1)

**PROJECT INFORMATION:**

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Rural Residential – Low Density (RR-L)
- C) Existing Zoning: Rural Residential 10 acre minimum (RR10)
- D) Existing Land Use: commercial cannabis cultivation
- E) Adjacent Land Use Information:

	<b><u>Land Use</u></b>	<b><u>Zoning</u></b>	<b><u>General Plan Des.</u></b>
North:	Residential	Rural Residential (RR10)	Rural Residential (RR-L)
South:	Vacant	Unclassified	Rural Residential (RR-L)
East:	Residential	Rural Residential (RR10)	Rural Residential (RR-L)
West:	Cannabis Cultivation	Unclassified	Rural Residential

## **BACKGROUND INFORMATION:**

The ordinance for "Commercial Marijuana Cultivation Regulation" includes a provision reading in part: "Cultivation will not be allowed within 350 feet of a residential structure on any adjoining parcels. Applications for a variance from this provision will be considered by the Trinity County Planning Commission." (Ord. 315-823)

The Cannabis Cultivation Ordinance defines the term "variance" as: "Variance" is defined as Trinity County Ordinance 315 section 31." During its November 17, 2016 meeting the Commission spent time discussing both the state and county requirements for issuing a variance.

Each zoning classification and land use has an associated set of development standards, which are specified in the Trinity County Zoning Ordinance. Both State law and the zoning ordinance provide criteria to use in evaluating a variance application. Section 65906 of the California Government Code reads as follows:

"Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits."

Section 31.A. of the zoning ordinance further elaborates on the State's Government Code standards by establishing the following criteria:

In considering a variance request, the following guidelines shall be observed:

1. **No special privilege.** A variance cannot be a special privilege extended to one individual property owner. The circumstances must be such that the same variance would be appropriate for any property owner facing similar circumstances.
2. **Use variance prohibited.** The consideration of "use variance" is specifically prohibited. These are variances, which request approval to locate a use in a zone from which it is prohibited by Ordinance.

3. Disservice not permitted. A variance must not be injurious to the public welfare, nor to adjacent properties.
4. Not adverse to a General or Specific Plan. A variance must be in harmony with the general purpose and intent of the Zoning Ordinance and cannot adversely affect the General Plan or Specific Plans of the County.

#### Annual Renewal:

As discussed during previous Commission meetings, variances from the cannabis cultivation setback (350 feet) are issued for a period of one year. (This should be tied to the license effective dates.) The renewal is predicted to be fairly simple and will be performed by the Planning Director or his/her designee. Some factors that would be included in the review would be any complaints received during the previous year, ensuring that the grower is in good standing with the County and State licensing requirements, and that there are no other changes to the property that could affect the continuation of the variance.

#### **PROJECT EVALUATION:**

The applicant is in the process of obtaining a Commercial Cannabis License under the county licensing program. The parcel is located on Dirt Road, a privately-maintained road. The site plan prepared by staff (Figure 2) provides aerial views of the project. Figure 3 illustrates on-site development and its relationship to the nearby impacted residence.

The subject property, 738 Dirt Road, Hayfork, is 2.8 acres but is limited in where Commercial Cannabis Cultivation can be sited due to a class III Watercourse. The existing designated cultivation area is partially within the 50 ft. watercourse setback. As such, the applicant has voluntarily relocated the designated cultivation area to a more appropriate area north east of the current cultivation area. Relocation of the designated cultivation area reduces the residential setback to, APN 014-440-47, to the north of the subject property and creates a new need for a residential setback variance, APN 014-440-49, to the east of the subject property.

There are no viable relocation options from the designated cultivation area given the need for a 30 ft. property line setback and 350 ft. residential setback that will keep the designated cultivation area out of public view.

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "There is no way to relocate or adjust the cultivation area on this parcel without needing a variance."

As of this writing, no other comments have been received.

**ENVIRONMENTAL EVALUATION:**

This variance request is exempt from CEQA review under Section 15305(a) [minor alteration of land use limitations].

**STAFF RECOMMENDATION:**

Staff recommends the following:

Approve of the variance to allow reduction of the Cannabis cultivation setbacks;

- from 350 feet to 100 feet from the residence on APN 014-440-47,
- from 350 feet to 275 feet from the residence on APN 014-440-48,

subject to the following conditions of approval and based on the following findings of fact:

***Findings of Fact for the Variance***

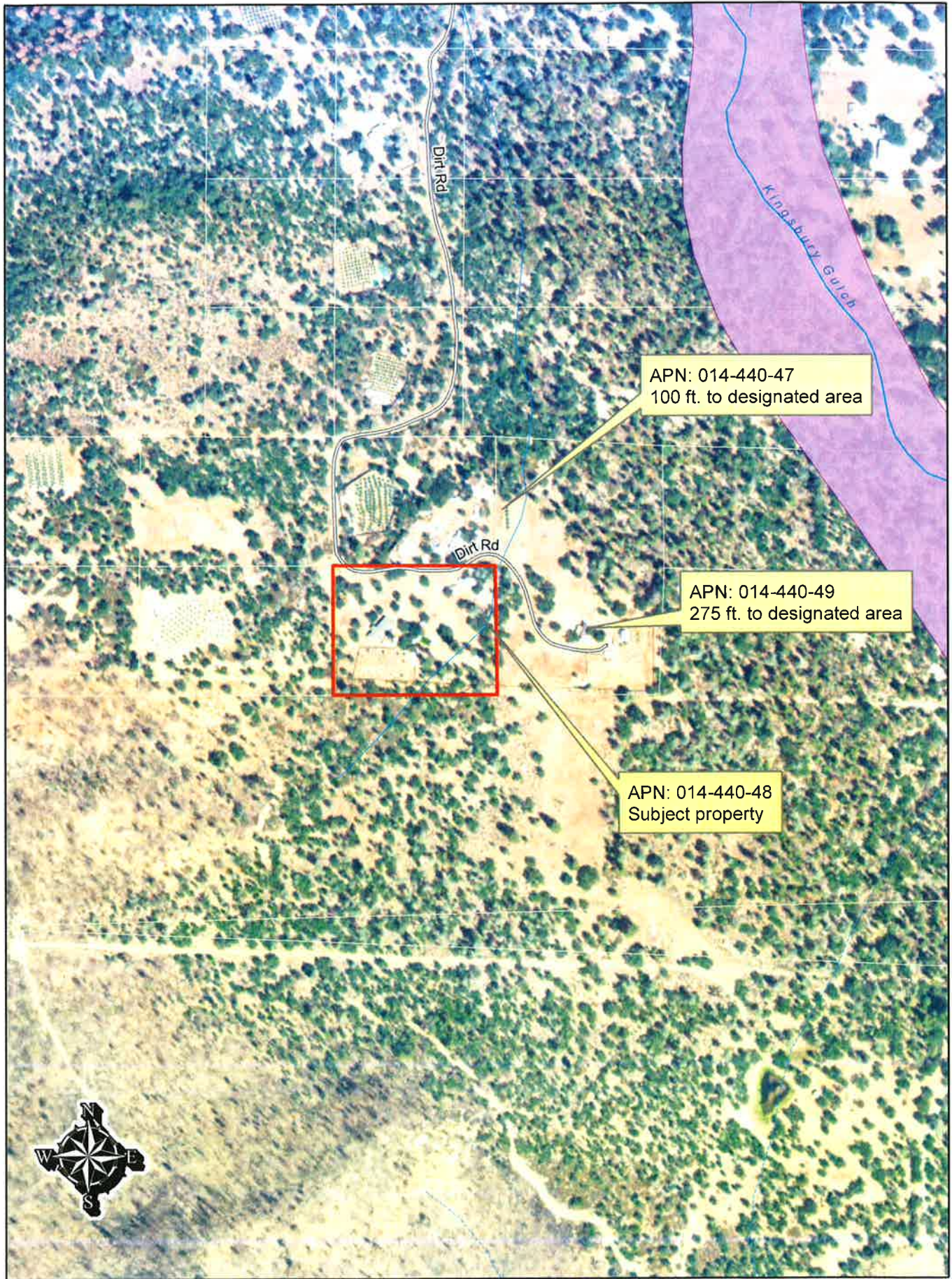
1. There are special circumstances applicable to the property that, with strict application of the zoning ordinance, deprives it of privileges available to other properties with similar zoning in the vicinity that plan to establish Type II, Cannabis cultivation, up to 10,000 square feet of canopy.
2. The variance is not a grant of special privilege to the applicant because relocation would result in unnecessary grading and environmental damage due to site topography.
3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance provisions for commercial cannabis cultivation.
4. No opposition from surrounding property owners or review agencies was submitted that would adversely affect approval of the variance.

**CONDITIONS OF APPROVAL  
MOA LEE CANNABIS SETBACK VARIANCE (CCV-18-026)**

1. The variance is approved for a period of one year from **April 1, 2018** through **March 31, 2019**; provided, however, that the variance may be renewed annually.
  - a. Application for renewal shall be made by the applicant prior to expiration of the variance, preferably at least 30 days in advance;
  - b. Shall not require a formal public hearing, unless specified by the Planning Director or referred to the Planning Commission; however, written notice shall be provided by the County to surrounding property owners at least ten (10) days prior to the Planning Director's decision to approve or deny the annual renewal; and
  - c. Shall be subject to a filing fee as specified by resolution of the Board of Supervisors.
  - d. The Planning Director, at his/her discretion, may approve, deny or refer the annual renewal request to the Planning Commission. The director shall not add or modify conditions of approval applied by the Planning Commission. If submitted to the Planning Commission by the Planning Director for action, no additional fees will be required.
  - e. Action to renew the variance by the Planning Director may be appealed to the Planning Commission in accordance with Section 34 of the Zoning Ordinance, including the required appeal fee.
2. The variance shall be subject to the securing of all necessary permits, licenses, and approvals for the proposed cannabis cultivation operation from all County and State agencies having jurisdiction over any aspect the operation.
3. Structures on the property shall be in compliance with the California Building Code and the Trinity County Code.
4. The variance shall become effective after all applicable appeal periods have been expired or appeal processes have been exhausted. The applicant has the sole responsibility for renewing this variance before the expiration date listed above. The County will not provide a notice prior to the expiration date.

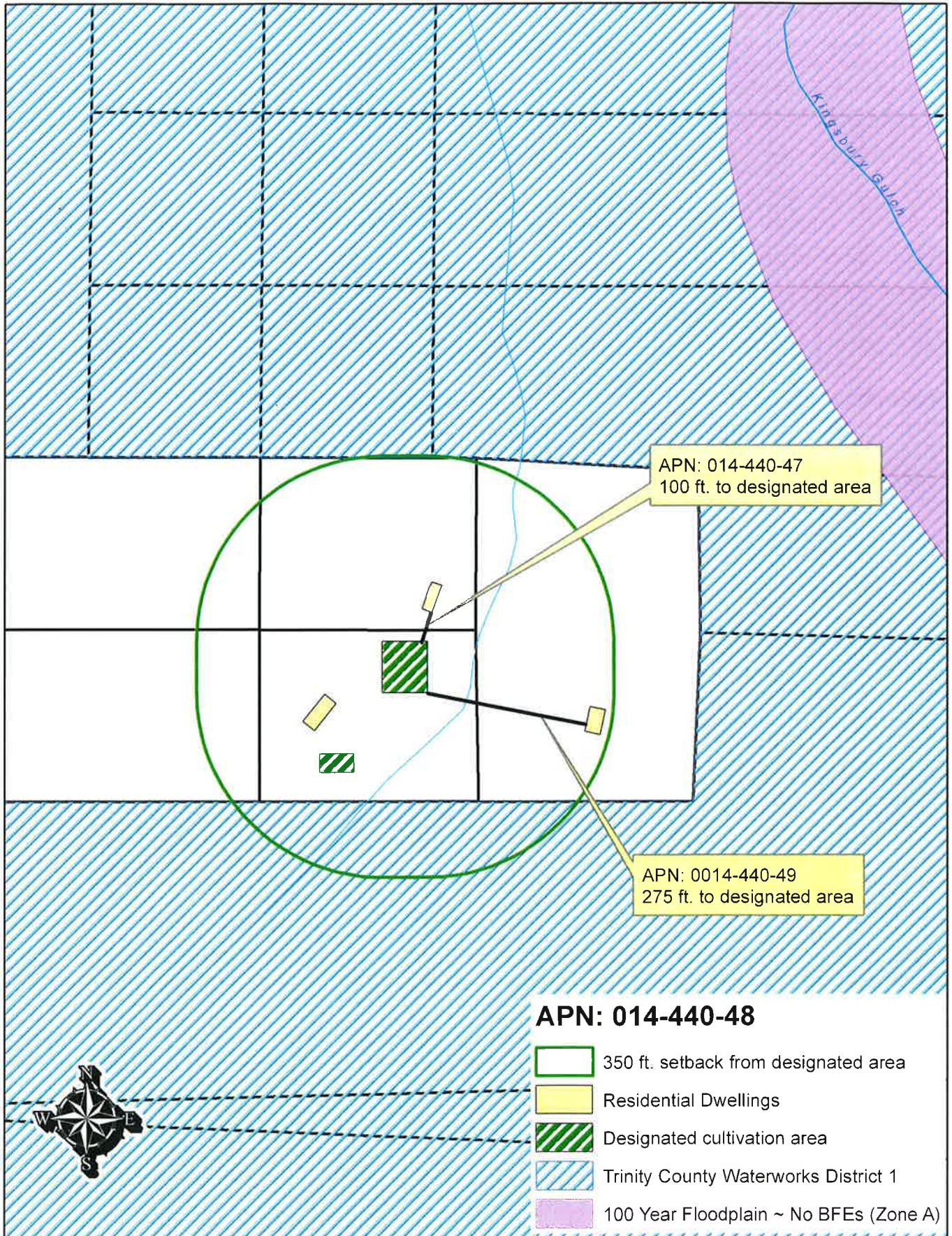


**CCV-18-026 Mao Lee**  
**Figure 2 - Site Map and Affected Neighbors**








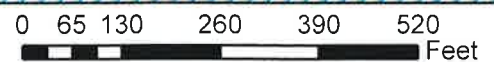
0 80 160 320 480 640 Feet

**CCV-18-026 Mao Lee**  
**Figure 3 - Buffer Map and Affected Dwelling**



**APN: 014-440-48**

-  350 ft. setback from designated area
-  Residential Dwellings
-  Designated cultivation area
-  Trinity County Waterworks District 1
-  100 Year Floodplain ~ No BFEs (Zone A)







**CCV-18-026 Mao Lee**  
**Figure 4 – Site Pictures**



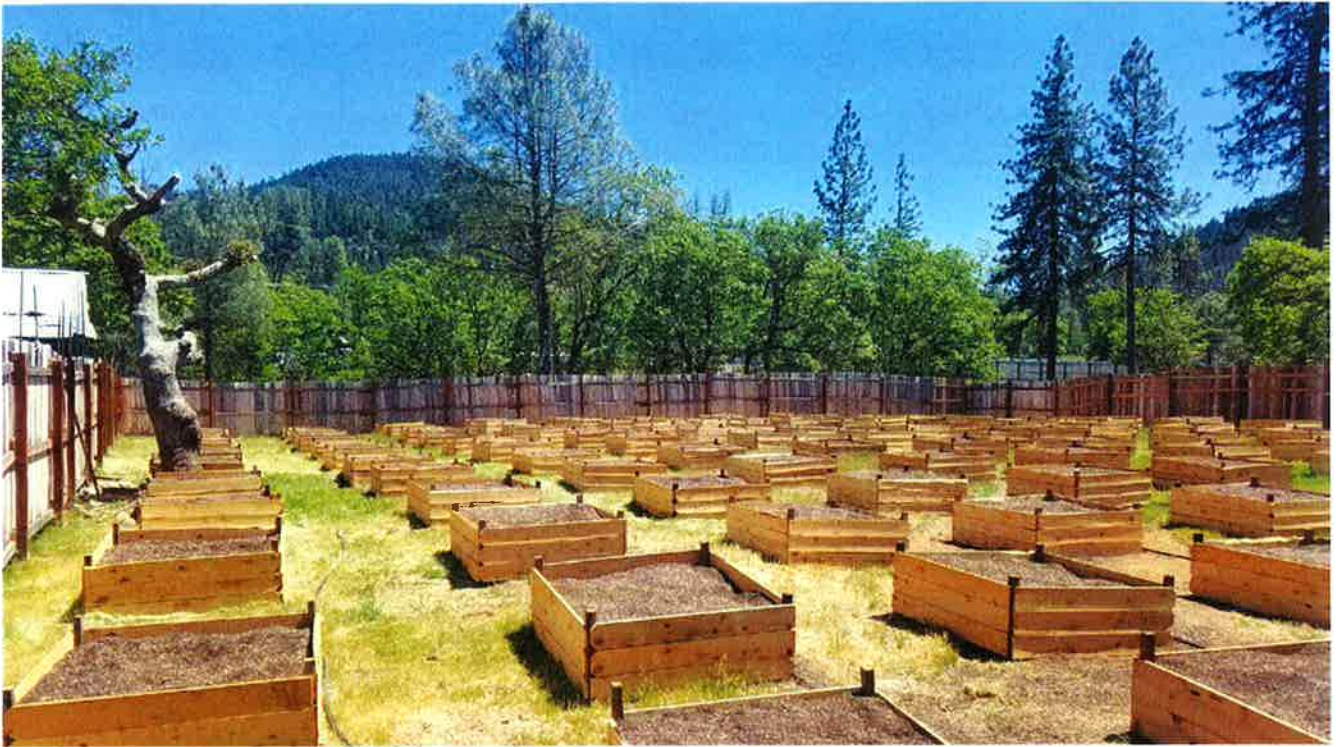
Picture 1: facing east towards Class III watercourse



Picture 2: facing east towards designated cultivation area



**CCV-18-026 Mao Lee**  
**Figure 4 – Site Pictures**



Picture 3: facing east inside designated cultivation area



Picture 4: facing south-east inside designated cultivation area and adjacent storage



**CCV-18-026 Mao Lee**  
**Figure 4 – Site Pictures**



Picture 5: facing south towards secondary designated cultivation area, hoophouse area



Picture 6: facing south-west towards secondary designated cultivation area, hoophouse area

Mao Marylyn Lee

738 Dirt Road, PO Box 1326

Hayfork, CA 96041, Tel: 414 232 8179

May 15, 2018

Subject: Cultivation Variance

Dear neighbors,

Recently, I spoke with you in person regarding my commercial cannabis growing in my property which you had no objection. By the County cannabis cultivation regulations, if you are located within 350 feet from my cultivation area, I must submit a various to the County. Variance application already submitted to them. Please expect to receive a letter from them.

This letter is just a written follow up on my cannabis growing. I thank you for your kind support. As I will not have any negative objection on your cultivation when you decide to cultivate in your property.

By signing below, you as my nearby neighbor have no objection on my cultivation.

Please print and sign your name with your address below.

Printed name: CHONG XIONG Signature: Chong Xiong Date: 5-16-18  
Address: 771 DIRT RD HAYFORK CA 96041

Printed name: Rick Lewis Signature: [Signature] Date: 5-16-18  
Address: 729 DIRT Rd Hayfork CA 96041

Printed name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Address: \_\_\_\_\_

Sincerely,  
*Mao Lee*  
Mao M Lee