

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Mitch Ivanoff

REPORT BY: Scott Watkins

OWNER: Santa Maria Equities LLC

APN: 025-350-12

(5.43 acres)

Opt-Out: Lewiston

PROJECT DESCRIPTION:

Variance from required 350-foot cannabis cultivation setback from one (1) neighboring residence.

LOCATION: 470 Henrietta Rd., Lewiston, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Lewiston
- B) Existing General Plan Designation: Resource (RE)
- C) Existing Zoning: Agricultural Forest 10-acre min (AF10)
- D) Existing Land Use: Residential and Commercial Cannabis cultivation
- E) Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	Residential	Agricultural Forest (AF)	Resource (RE)
South:	Vacant	Rural Residential (RR2.5)	Rural Residential (RR)
East:	Residential	Agricultural Forest (AF20)	Resource (RE)
West:	Residential	Rural Residential (RR2.5)	Rural Residential (RR)

PROJECT EVALUATION:

Staff review

The applicant is currently licensed commercial Cannabis cultivation under the county licensing program and has a temporary State of California temporary license to cultivate Cannabis, which is valid from May 22, through September 19 2018. The parcel is located on Henrietta Road, a private 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. Figure 4 shows the field conditions of the cultivation site taken during staff's site visit.

The subject property, 470 Henrietta Rd., Lewiston, is 5.43 acres. The subject property is confined by a class III watercourse buffer that splits the applicant's cultivation area in the middle, labeled cultivation site 1 and site 2 on Figure 3. Based on a satellite review, the site appears to be able to move outside of the watercourse buffer but would be pinched by the 350 ft. residential buffer from the neighbor to the east.

The applicant received a 3-acre conversion permit from CalFire in May of 2017 and removed trees and graded 3 flat areas, which are now the areas used for cultivation. The remainder of the property has steep slopes and would require extensive grading and additional tree removal that is not allowed for his commercial Cannabis license.

Code Compliance review

Code Compliance Staff reviewed this project and provided the following comments: Cultivation area could possibly be downsized and located so that a variance would not be required.

Updated review: After a July 17th 2018 compliance visit, Code Compliance Staff provided additional comments. With the granting of this variance, the applicant has stated his intention to replace his seasonal temporary hoophouses with engineered greenhouses, which are better suited to mitigate odor nuisances.

Neighbor Feedback:

- Neighbor feedback within 350 ft. **in favor** of granting this variance: 1
- Neighbor feedback within 350 ft. **concerned** with granting this variance: 0

The adjacent impacted neighbor has provided written support of the granting of this variance.

A letter of concern from a nearby neighbor (estimated 950 ft. from the cultivation area) was received by the County Planning Department on June 28, 2018.

As of this writing, no other comments have received.

STAFF RECOMMENDATION:

Staff recommends the following:

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

- from 350 feet to 250 feet from the residence on APN 025-350-22,

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 additional unpermitted tree removal.
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 impacted property owners within the 350-foot setback or review agencies was submitted that would adversely affect approval of the variance.

VARIANCE OVERVIEW:

The ordinance for “Commercial Cannabis 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.

ENVIRONMENTAL EVALUATION:

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

**CONDITIONS OF APPROVAL
MITCH IVANOFF CANNABIS SETBACK VARIANCE (CCV-18-038)**

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.

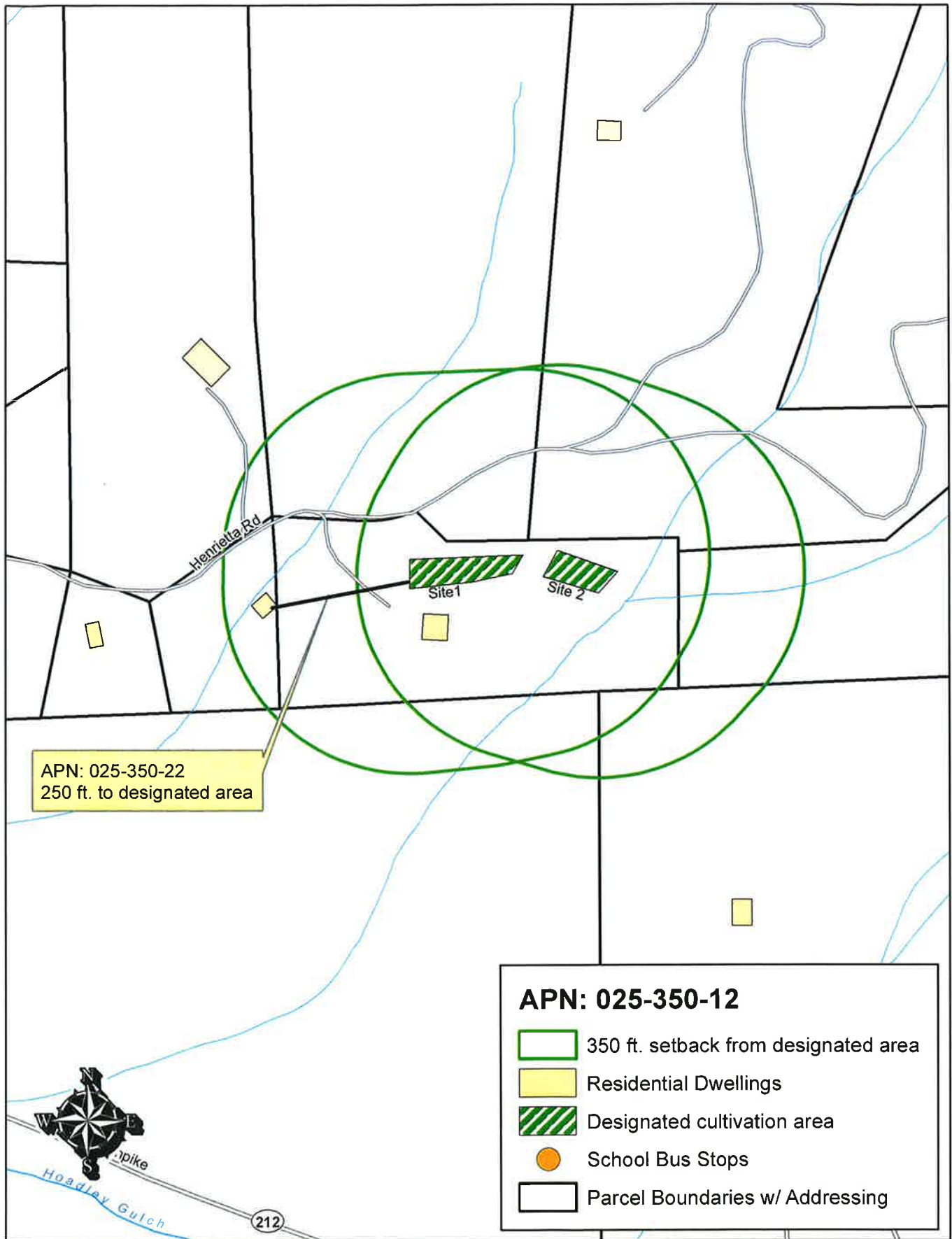
CCV-18-038 Mitch Ivanoff

Figure 2 - Site Map and Affected Neighbors



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Figure 3 - Buffer Map and Affected Dwelling



0 65 130 260 390 520 Feet



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Figure 4 – Site Pictures



Picture 1: facing east towards Site 1 terraced Hoop house area



Picture 2: facing east towards Site 2 terraced Hoop house area



CCV-18-038 Mitch Ivanoff
Figure 4 – Site Pictures



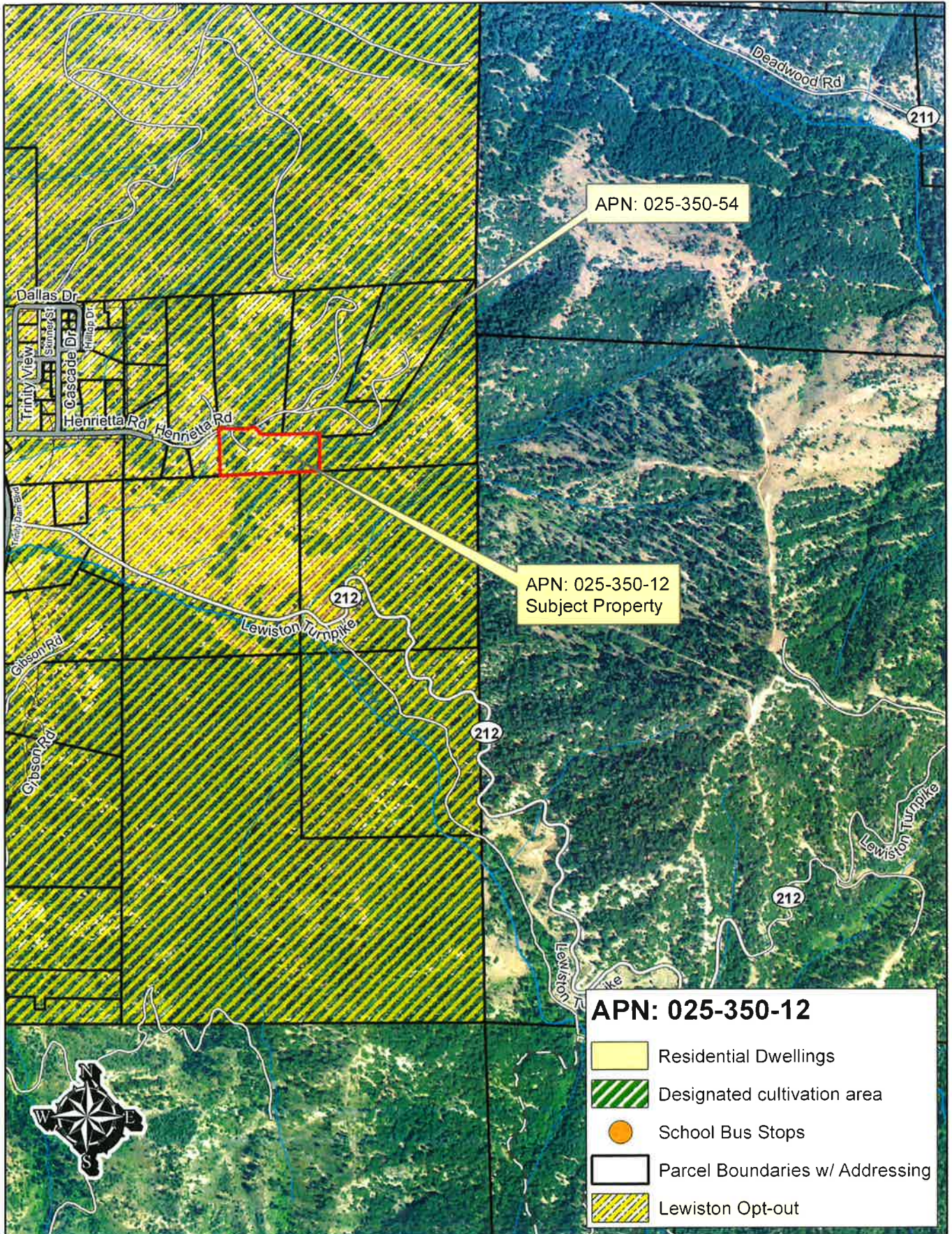
Picture 3: facing north-east towards the class III watercourse that separates the Site 1 and Site 2 designated cultivation areas



Picture 4: facing north-east near the residential dwelling toward the class III watercourse drainage and access road

CCV-18-038 Mitch Ivanoff

Figure 5 Lewiston Opt-out Zone



APN: 025-350-54

APN: 025-350-12
Subject Property

APN: 025-350-12

0 265 530 1,060 1,590 2,120 Feet

12

Danny Kuehl
380 Henrietta Rd.
Lewiston, CA 96052

June 20, 2018

To Whom It May Concern:

I, Danny Kuehl, the owner of the property located on 380 Henrietta Rd, Lewiston, adjacent to Santa Maria Equities, LLC owned property (APN: 025-350-12) located on 470 Henrietta Rd, Lewiston, grant support and have no objections to the variance sought by Santa Maria Equities, LLC for the property located on 470 Henrietta Rd., Lewiston, CA 96052. Furthermore, I understand that cannabis cultivation and related activities may occur on the property seeking variance and have no objections to such cultivation and activities.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

 6-20-18

Danny Kuehl

13

950 ft.
permitted

Item 8

Trinity Co. Planning Dept.

RECEIVED

JUN 28 2018

TRINITY COUNTY
PLANNING DEPARTMENT

In regards to the annual variance cannabis cultivation setback at 470 Henrietta Rd. Lewiston. We just recieved this notice Tues. June 26, 2018.

I Kim Christensen and My husband Wes Christensen are very much against any and all Cannabis Cultivation.

We live at 591 Henrietta Rd. Lewiston and are within the opt-out area of Lewiston and want it to remain that way. We believe we have already lost property value do to what Danny Kuehl was allowed to do to the property next to ours and do not want anything like that again.

Thank you
Kim & Wes Christensen
591 Henrietta Rd.
PO Box 482
Lewiston, CA 96052
530-778-3522

Kim Christensen 6.27.18
Wesley Christensen 6.27.18