

TRINITY COUNTY PLANNING COMMISSION STAFF REPORT Initial Commercial Cannabis Variance

DATE PUBLISHED: July 2nd, 2020

PLANNER: Bella Hedtke, Associate Planner

APPLICANT: Peter Dobo

PROPERTY OWNER: Peter and Cheryl Dobo

CONSULTANT/AGENT: Trinity River Consulting

REQUEST: A request for a variance from the required 350' Cannabis cultivation setback from two (2) neighboring residential dwellings (TCC 17.43.050.A.8).

LOCATION: 150 Whispering Pines Rd., Hayfork (APN: 019-290-12-00)

APPROX. ACREAGE: 10

GENERAL PLAN DESIGNATION: Rural Residential (RR)

ZONING DISTRICT: Unclassified (UNC) | **OVERLAY ZONE:** N/A

STAFF RECOMMENDATION: Approve with Conditions

ADJACENT LAND USE AND ZONING INFORMATION:

Direction	Land Use	Zoning	General Plan Designation
North	Federal (USFS)	UNC	RE
South	Residential	UNC	RR
East	Vacant/Residential	UNC	RR
West	Vacant	UNC	RR

ATTACHMENTS:

- 1 – Project Location Map
- 2 – Site Map (Provided by Consultant)
- 3 – 350' Setback with Comment Status Map
- 4 – Site Visit Photos
- 5 – Variance Project Description
- 6 – Consultant Email Reply Regarding New Cultivation Site Location

PROJECT BACKGROUND: The applicant has been in Trinity County's Commercial Cannabis Program since 2017 and has an approved Small Mixed-Light Commercial Cannabis Cultivation License (CCL 011). The applicant is requesting to relocate their cultivation site from its existing location on the north end of their parcel to the south end of their parcel (Attachment 2). This relocation would require the new cultivation site location to be less than 350' from two neighboring residential structures (Attachment 3). The applicant is requesting to relocate due to security reasons (Attachment 5). The applicant is requesting this specific location, instead of locating the site outside of the 350' setback, because additional land disturbance would be necessary to do so (Attachment 6).

The applicant is requesting a variance to reduce the required 350' residential setback for the following residences:

APN	APPROX. DISTANCE FROM CULTIVATION SITE	COMMENT STATUS
019-290-31-00	250	No Comment
019-290-41-00	195	No Comment

PUBLIC COMMENTS: As of the date of this staff report, staff has not received any public comments regarding this variance request.

AGENCY COMMENTS: No agencies provided comments on this project.

FINDINGS: The following findings shall apply to the P. Dobo. Commercial Cannabis Setback variance (CCV-20-14) for APN 019-290-12-00:

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.

There are special circumstances (topography, irregular shape of parcels, and size of parcels) applicable to the project parcels that, with strict application of the Trinity County Zoning Code, deprives the property owner of privileges available to other property owners with similar zoning in the vicinity that plan to establish or have established a commercial Cannabis cultivation operation within the Trinity County Commercial Cannabis licensing program.

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.

This variance is to reduce the 350' setback requirement in Trinity County Code 17.43.050.A.8, not to allow a specific use in the Unclassified zoning district that is not currently allowed by ordinance.

3. **Disservice Not Permitted.** A variance must not be injurious to the public welfare, nor to adjacent properties.

The purpose of the 350' setback requirement in Trinity County Code 17.43.050.A.8. is to mitigate odor and other commercial Cannabis cultivation related activities to nearby neighbors, with emphasis given to neighbors that are less than 350' from the proposed cultivation site. As previously stated, no public comments were received for this variance request. Therefore, it can

be assumed that these neighbors would not consider approval of this variance request to be injurious to them. Nevertheless, the commercial Cannabis variance is renewed annually and both neighbors will have an opportunity to comment at that time as well.

4. **Not Adverse to 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.

While the applicant's parcel is unable to meet the 350' residential setback requirement, as per Trinity County Code Section 17.43.050.A.8., the proposed project is substantially in compliance with the Zoning Code provisions for Commercial Cannabis Cultivation, which the County has found are necessary to reduce the potential impacts associated with unregulated Cannabis cultivation. Trinity County Code Section 17.43.050.A.8. allows for variance requests to reduce the residential setback that are consistent with the requirements for variances in State law and the County Zoning Code. The subject parcel contains special circumstances, such as narrow lot shape and unusual topography, which justifies the granting of a variance from the residential setback requirement and would be appropriate for any property owner facing similar circumstances. As such, the proposed variance is consistent with the general purpose and intent of the Zoning Code and would not adversely affect the general plan or specific plans of the County.

5. **RD-1 Overlay Zone.** Prior to approval of a variance for property within the RD-1 overlay zone, permission must be granted or deemed not necessary by the Secretary of Agriculture.

This site is not within an RD-1 Overlay Zone.

STAFF RECOMMENDATION: Given the site conditions and above discussion, staff recommends the Planning Commission make the following motion:

To approve Commercial Cannabis Variance CCV-20-14 to reduce the cultivation site setback in Trinity County Code 17.43.050.A.8. from 350 feet to 250 feet from the residence located on APN 019-290-31-00 and from 350 feet to 195 feet from the residence located on 019-290-41-00, subject to the findings of fact and conditions as stated in this staff report.

CONDITIONS OF APPROVAL: Upon approval by the Planning Commission, the following Conditions of Approval shall apply to the P. Dobo. Commercial Cannabis Setback variance (CCV-20-14) for APN 019-290-12-00:

1. The variance is approved for a period of one year and shall expire on the same date as the Commercial Cannabis License that this variance and parcel is associated with; provided, however, that the variance shall be renewed annually through the Director's Use Permit application process.
 - a. Application for renewal shall be submitted by the applicant or designated agent/consultant prior to expiration of the variance and preferably no later than 60 days in advance.
 - b. The renewal 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

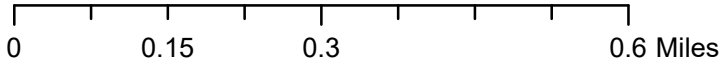
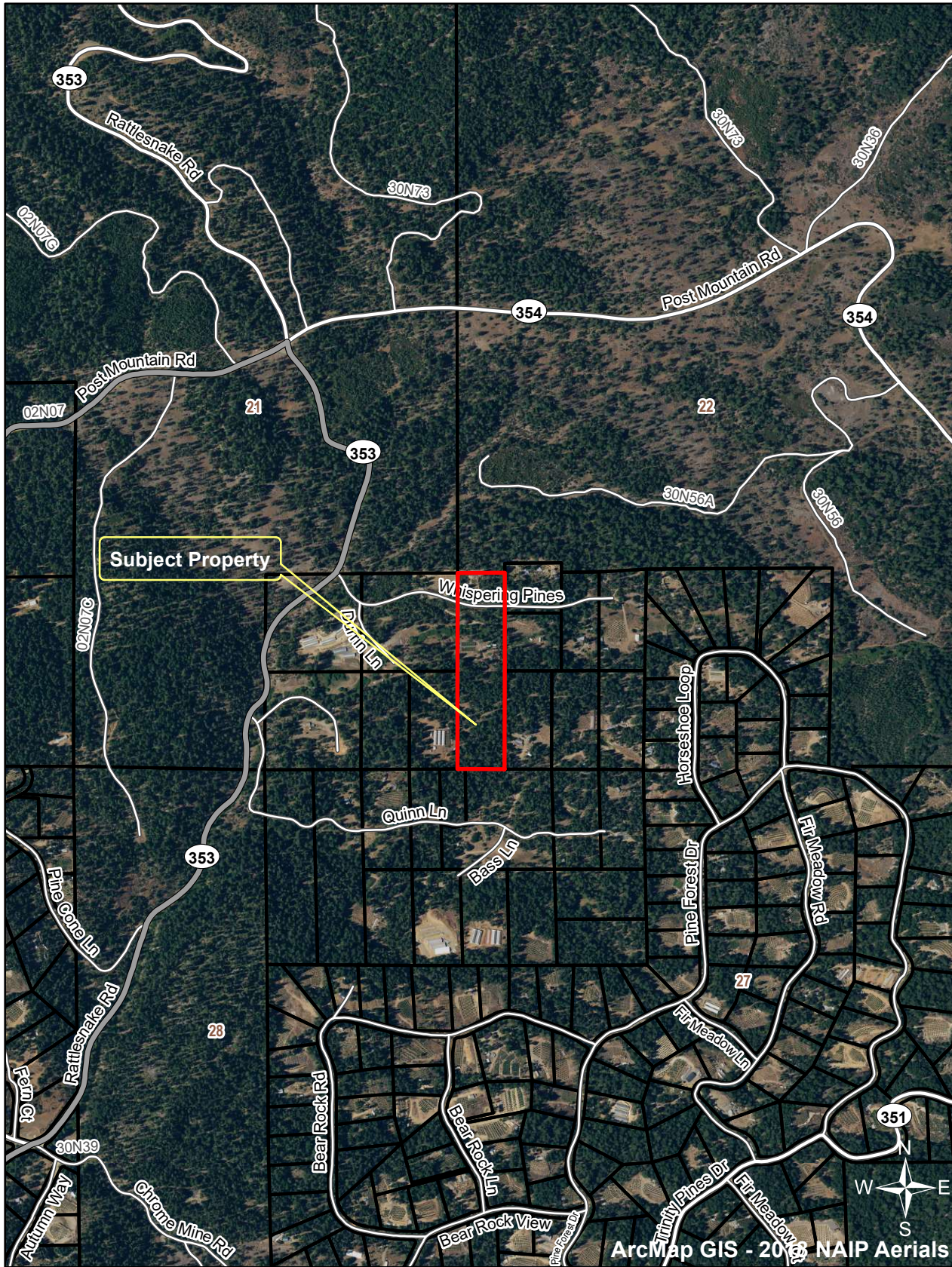
ten (10) days prior to the Planning Director's decision to approve or deny the annual renewal.

- c. Shall be subject to a filing fee as specified by resolution of the Board of Supervisors.
 - d. The Planning Director, at their 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.
2. The variance shall be subject to the securing of all necessary permits, licenses, and approvals for the proposed Commercial Cannabis Cultivation operation from all County and State agencies having jurisdiction over any aspect of the operation.
 3. Structures on the property shall be in compliance with the California Building Code and Trinity County Code.
 4. 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.
 5. No building permit or other county permit involving a variance shall be issued until the ten-day appeal period has expired. No building permit or other county permit involving a variance shall be issued while a variance hearing or appeal therefrom is pending.

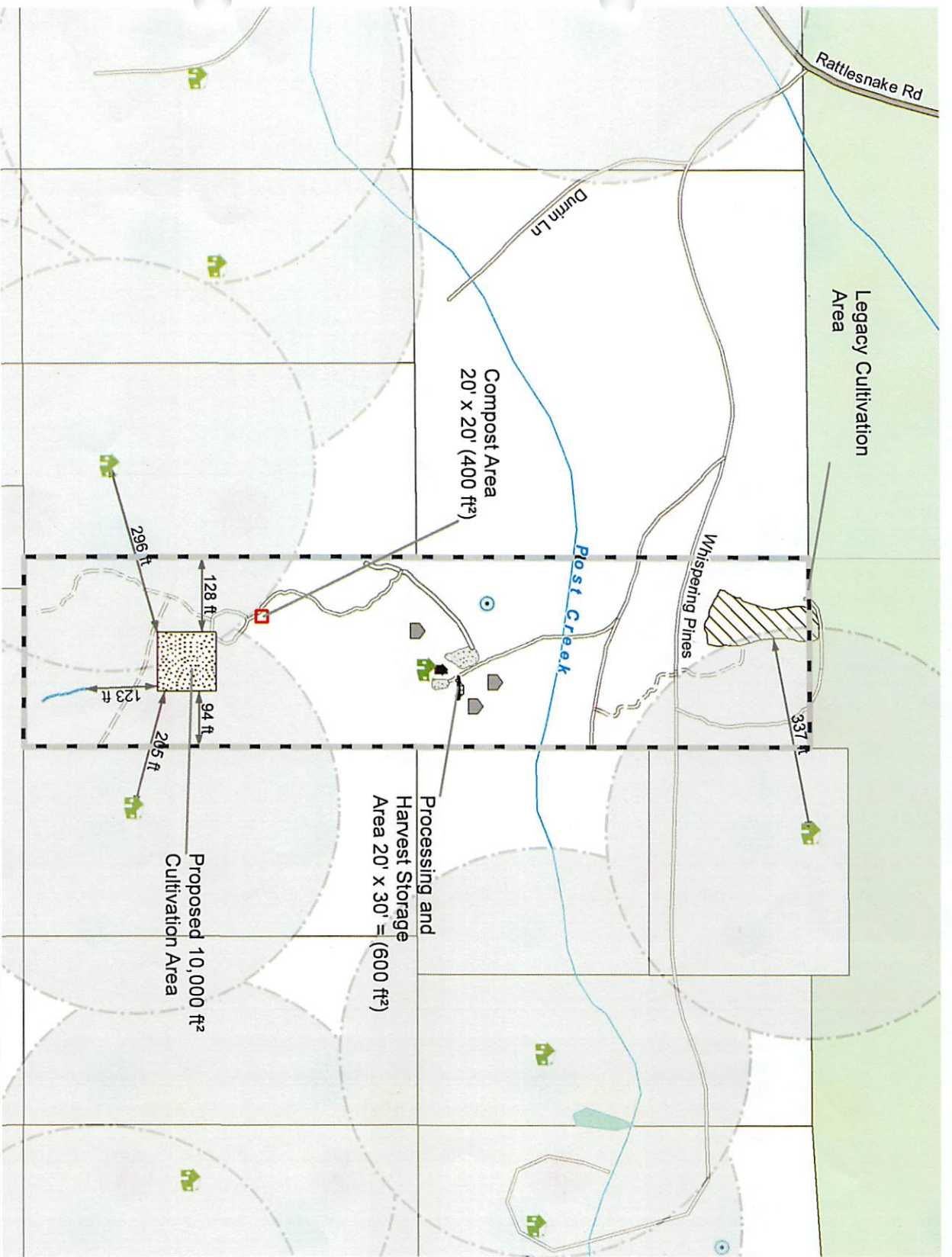
END OF CONDITIONS

ATTACHMENT 1

APN: 019-290-12-00
CCV-20-14 P. Dobo
Project Location Map



SITE PLAN



Scale: 1:3,000
 0 125 250 500 750 1,000 feet

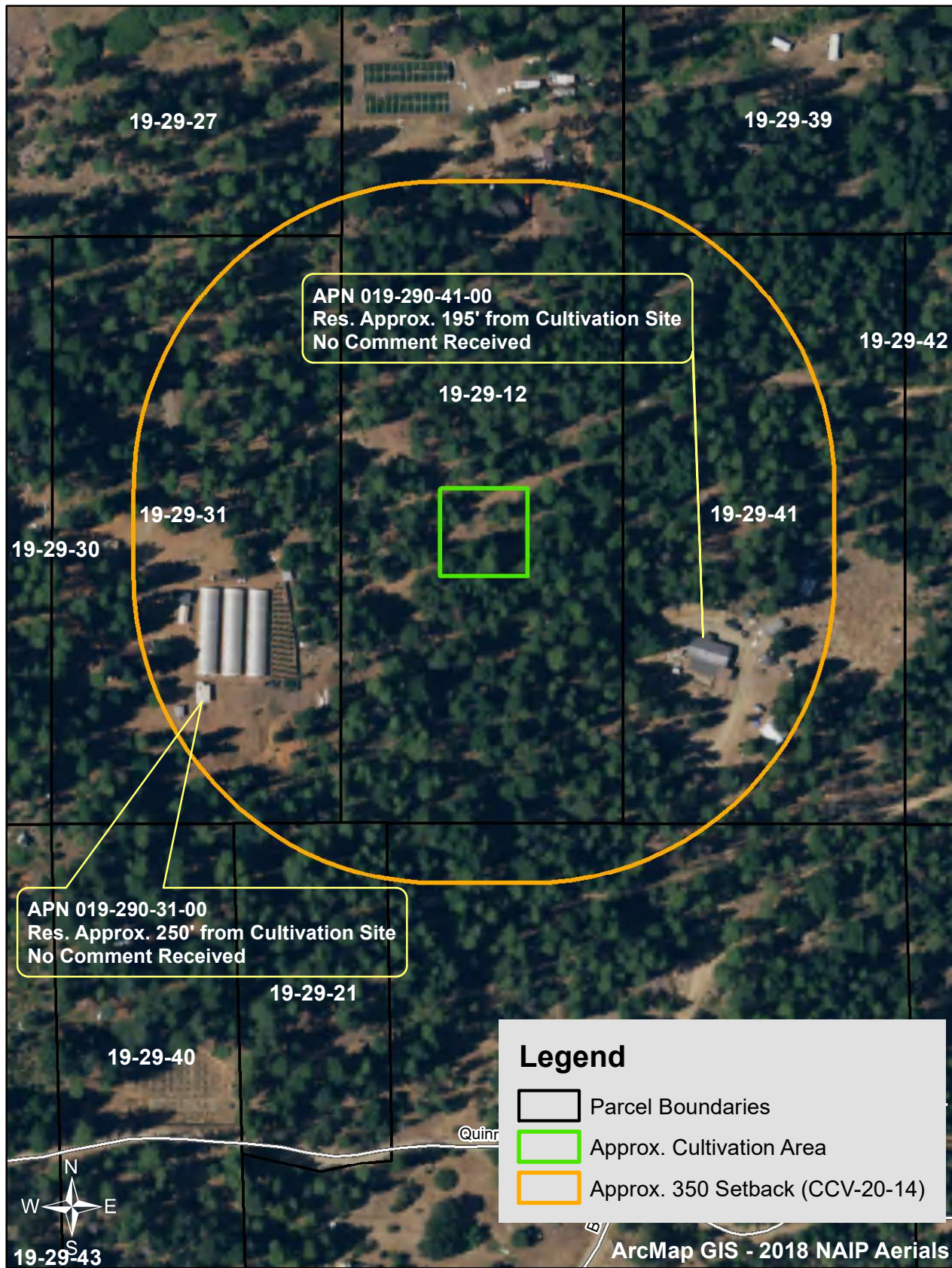
While we strive to present the most accurate data available, approximate scale, distances, location and site conditions may vary.



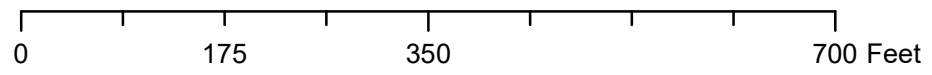
	Subject Property
	Proposed Cultivation Site
	350 ft Residence Buffer
	Residential
	Garage
	Residence
	Shed
	Well
	Roads
	Native
	Jeep/Skid Trail
	Disturbance
	Vehicle Parking Area
	Streams
	Intermittent
	Ponds
	Ownership
	Private / Other
	US Forest Service

TRINITY COUNTY PLANNING DEPARTMENT	
APPLICANT PREPARED SITE PLAN	
Application No. _____	APN: 019-290-12-00
Drawn By: S.Elliott	Zoning: UNC
Date: 10/18/2019	Lot Area: 10
Scale: 1:3,000	

ATTACHMENT 3
APN: 019-290-12-00
CCV-20-14 | P. Dobo
350' Setback with Comment Status Map



ArcMap GIS - 2018 NAIP Aerials



ATTACHMENT 4 SITE VISIT PHOTOS



View of Residence Located on
APN 19-290-41-00



View of Residence Located on
APN 19-290-31-00



Current Site Conditions of
Current Cultivation Location



Example View of Proposed New
Cultivation Location

ATTACHMENT 5

Dobo Variance Project Description
APN 019-290-12-00
Unclassified – Rural Residential

The Dobos own the above referenced 10-acre parcel. Mr. Dobo has a Trinity County Cannabis Cultivation License for a Small Mixed-Light garden. He is requesting a variance from two of his neighbors at APNs 019-290-31-00 (296 ft) and 019-290-41-00 (205 ft).

Mr. Dobo is seeking a variance due to security reasons. The current location of the garden is at the north end of the property. This is far away from the dwelling (across a creek, a road and up a steep hill) and the future employee housing that is planned on the property. He has contracted with a forester to apply for a less than 3-acre conversion permit for the area that would house the future garden and employee housing. A biological Assessment has been prepared.

Building employee housing next to the current garden location is not feasible, due to the slope and a stream to the east. If there was a security issue it would take law enforcement a tremendous amount of time to get to the property. The odds of a robbery occurring are much greater with the garden far away from the residents as opposed to closer. The property is 10 acres and mostly forested, therefore, a conversion of up to three (3) acres would still live ample trees on the property.

Mr. Dobo has been enrolled in the Water Board Discharge Waiver since 2016. The Dobos purchased the property in 2011. They maintain a very clean property and have obtained the necessary permits for all completed work. The property is gently sloped where the future development is desired. No cultivation occurred on the property during the 2019 growing season because the State cultivation license had not been approved yet.

ATTACHMENT 6

Bella Hedtke

From: Deidre Brower <db@trinityriverconsulting.com>
Sent: Friday, June 26, 2020 11:17 AM
To: Bella Hedtke
Subject: Dobo variance info

Good day Bella,

The reason Peter is requesting the variance as opposed to cultivating between that area and the dwelling is because that area is steep and north facing. It would require grading, cutting more trees than the requested area and not get enough sun. Please let me know if you need anything else. Thanks

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Deidre Brower
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(530) 739-8401 cell

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