

**TRINITY COUNTY PLANNING COMMISSION STAFF REPORT
Commercial Cannabis Variance**

APPLICANT: Qingming Hou (David)**REPORT BY:** Bella Hedtke**OWNER:** Kenneth X. Hou**AGENT:** Mitch Ivanoff**APN:** 016-200-03-00 (2.51 acres)**PROJECT DESCRIPTION:**

Initial annual variance from the required 350 ft residential setback provision found in Trinity County Code 17.43.050.A.8. to allow a proposed commercial Cannabis cultivation site to be located less than 350 ft from two (2) neighboring residences. The residence located on APN 016-200-02-00 is 280 ft and the residence located on APN 016-200-04-00 is 135 ft from the proposed cultivation site.

LOCATION: 365 N. Salt Creek, Hayfork CA 96041 (Appendix 1)**PROJECT INFORMATION:**

- A) Existing General Plan Designation: Agricultural (A)
- B) Existing Zoning District: Agricultural 10-acre minimum (A10) with Critical Water Resource Zoning Overlay District
- C) Existing Land Use: Residential, Cannabis Cultivation
- D) Adjacent Land Use Information:

Direction	Land Use	Zoning	General Plan Designation
North	Residential	A10 w/ CWR	A
South	Res., Cannabis Cultivation	A10 w/ CWR	A
East	Res., Cannabis Cultivation	A10 w/ CWR	A
West	Vacant, Timber	AP	RE

PROJECT EVALUATION/DISCUSSION:

The applicant is in the process of preparing an application for submittal to the County for the commercial Cannabis cultivation licensing program. As part of this process the applicant has applied for a variance from the required 350 ft residential setback provision found in Trinity County Code 17.43.050.A.8.

Several appendices are attached to the staff report that illustrate the variance request. Appendix 2 is a site plan that was provided by the agent that illustrates specific site configurations of the commercial Cannabis cultivation operation. Appendix 3 illustrates the location of the proposed commercial Cannabis cultivation site in relation to nearby impacted residences, as well as if the property owner commented on this project or not. Appendix 4 shows the field conditions of the cultivation site taken during staff's site visit.

Agency/Departmental Comments:

1. Code Compliance Inspector:

Code Compliance Staff reviewed this project and provided the following comments:

“Due to unique terrain/parcel shape, the cultivation site cannot be moved to meet 350 ft setback requirement.”

All other departments/agencies responded with “No Comment”.

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
- Neighbor feedback outside 350 ft **in favor** with granting this variance: 0
- Neighbor feedback outside 350 ft **concerned** with granting this variance: 0

Appendix 5 shows a supportive letter from the neighbor on APN 016-200-04-00. As of this writing, no other comments from neighbors have been received.

COMMERCIAL CANNABIS VARIANCE PROCESS OVERVIEW:

During the November 17, 2016 meeting the Planning Commission discussed both the State and County requirements for issuing a variance.

Each zoning classification and land use designation has an associated set of development standards, which are specified in Trinity County Code Title 17 – Zoning. Both State code and County code provide criteria that must be considered when evaluating a variance application.

California Government Code Section 65906 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 17.43.050 (Limitation on location to cultivation cannabis) of the Trinity County Zoning Code states the following:

"17.43.050 – Limitation on location to cultivation cannabis.

A.8 For specialty cottage, specialty and small licenses cultivation shall not be allowed within three hundred fifty feet of a residential structure on any adjoining parcels. For medium licenses, cultivation shall not be allowed within five hundred feet of an adjacent property line. Applications for a variance from this provision will be considered by the Trinity County Planning Commission. After obtaining an initial variance, the planning director can issue a director's use permit for subsequent years after an inspection."

Section 17.43.010 (Definitions) of the Trinity County Zoning Code states that, "Variance" is defined as Chapter 17.31 of this title." Furthermore, Section 17.31.010 (General description), also known as Chapter 17.31, of Trinity County Zoning Code states the following:

"17.31.010 - General description

A variance is a waiver or modification of some requirement contained in the zoning ordinance. The statutory justification for a variance is that the owner would otherwise suffer unique hardship under general zoning regulations because his or her particular parcel is different from others to which the regulation applies due to size, shape, or topography. Variances may be granted only to authorize a change in development standards which is not otherwise authorized by the zoning regulations.

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 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.
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."

STAFF RECOMMENDATION:

Given the discussion written above, staff recommends the Planning Commission make the following motion:

- To approve Commercial Cannabis Variance Application (CCV-2019-010) in order to allow the reduction of the commercial Cannabis cultivation setback provision outlined in Trinity County Code 17.43.050.A.8. from 350 ft to 280 ft for the residence located on APN 016-200-02-00 and 135 ft for the residence located on APN 016-200-04-00 and shall be subject to the following Findings of Fact and Conditions of Approval.

Findings of Fact:

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 applicable to the property (i.e., unique terrain/parcel shape) 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 Type II, Cannabis cultivation, up to 10,000 sq. ft of canopy.

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 from the 350 ft setback requirement provision in Trinity County Code 17.43.050.A.8, and would not allow a specific use in the A10 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 ft setback requirement provision in Trinity County Code 17.43.050.A.8. is to mitigate odor to nearby neighbors. It should be acknowledged that odor being injurious to adjacent properties is subjective. The closest neighbor, whose residence is within 135 feet of the proposed cultivation area, has provided a letter in support of this application (Appendix 5). No comments were received from the neighbor whose residence is within 280 feet of the proposed cultivation area. Therefore, there is an assumption that the neighbors do not find the odor injurious. If the impacted properties were to change ownership, the commercial Cannabis variance process is annual and will allow any future neighbors the opportunity to express their concerns about odor.

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.

The general purpose of the Zoning Code is to promote and protect the public health by providing a definite plan of development, protecting the character and the social and economic stability of land uses, and assuring orderly and beneficial development. 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. The one exception is the request for a reduction in the residential setback requirement in Section 17.43.050.A.8 of the Trinity County Code. Section 17.43.050.A.8 allows for variances from this standard, consistent with the requirements for variances in State law and the County Zoning Code. The subject parcel contains special circumstances related to topography, irregular shape, and size, 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.

CONDITIONS OF APPROVAL

Q. HOU CANNABIS SETBACK VARIANCE (CCV-2019-010)

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 is associated with; provided, however, that the variance shall be renewed annually.
 - a. Application for renewal shall be submitted by the applicant 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; and
 - 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, 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 of the operation.
3. Structures on the property shall be in compliance with the California Building Code and 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.

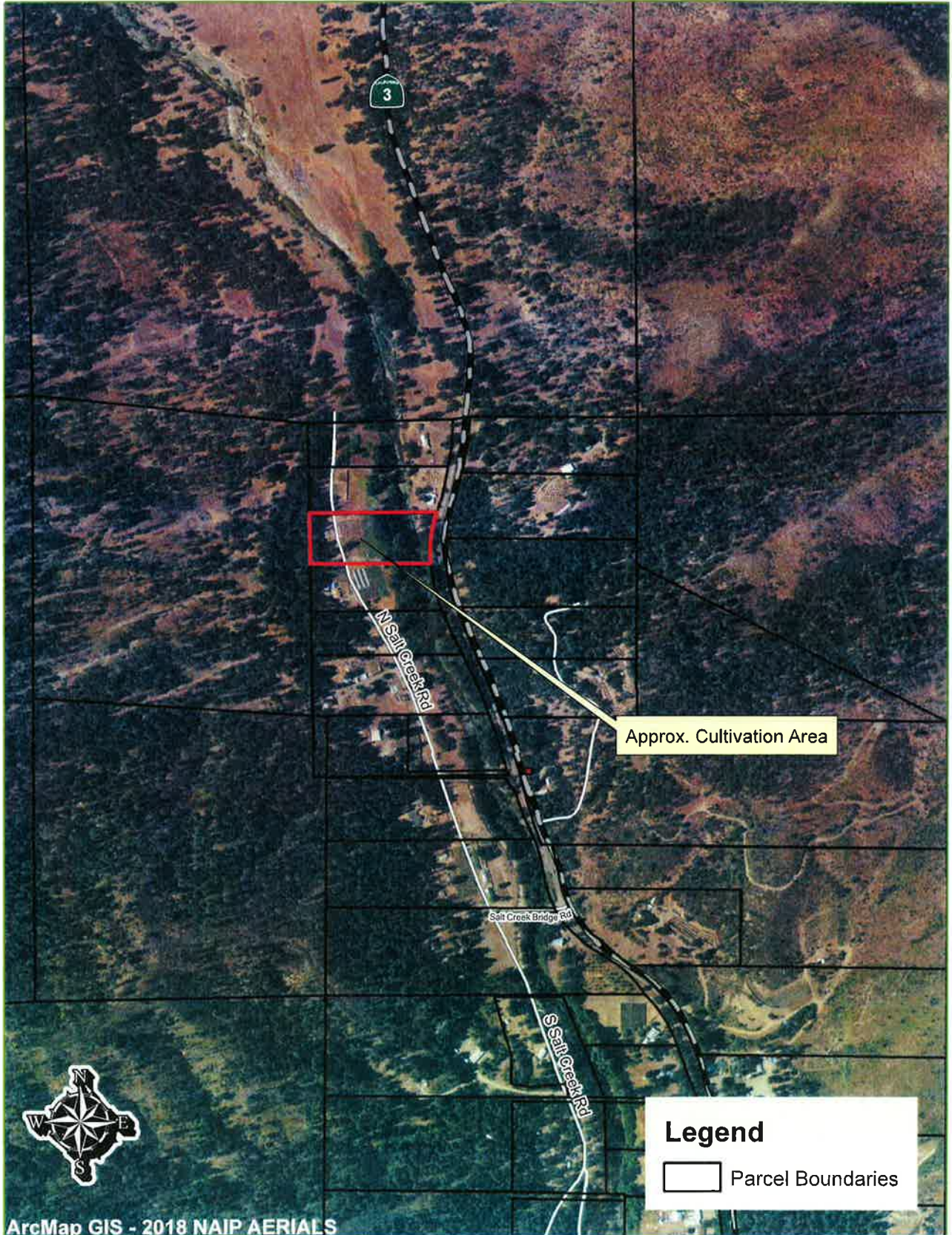
General Information Regarding Annual Renewal Process:

As discussed during previous Commission meetings, variances from the Cannabis cultivation setback (350 ft) requirement are issued for a period of one year. This should be tied to the commercial Cannabis cultivation license effective dates. The renewal is predicted to be fairly simple and will be decided by the Planning Director or their designee through the Director's Use Permit application process. Some factors that would be included in the review would be any complaints received during the previous year and new noticing period, 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.

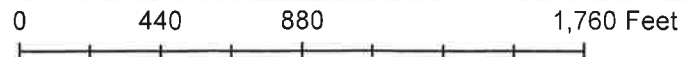
Environmental Evaluation:

Environmental review of the subject site is performed during the commercial cannabis licensing process.

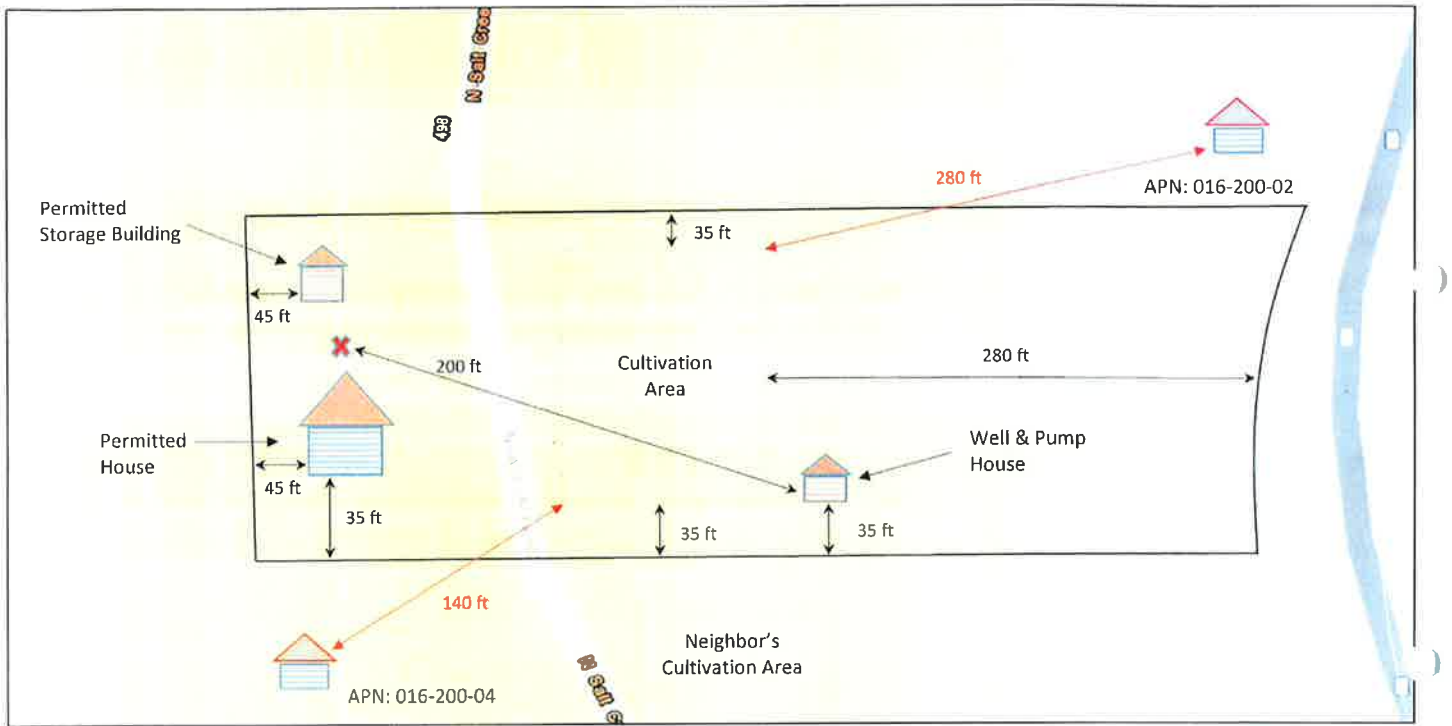
APPENDIX 1
Q. Hou CCV-19-10
APN 016-200-03-00 Project Location Map



ArcMap GIS - 2018 NAIP AERIALS



APPENDIX 2

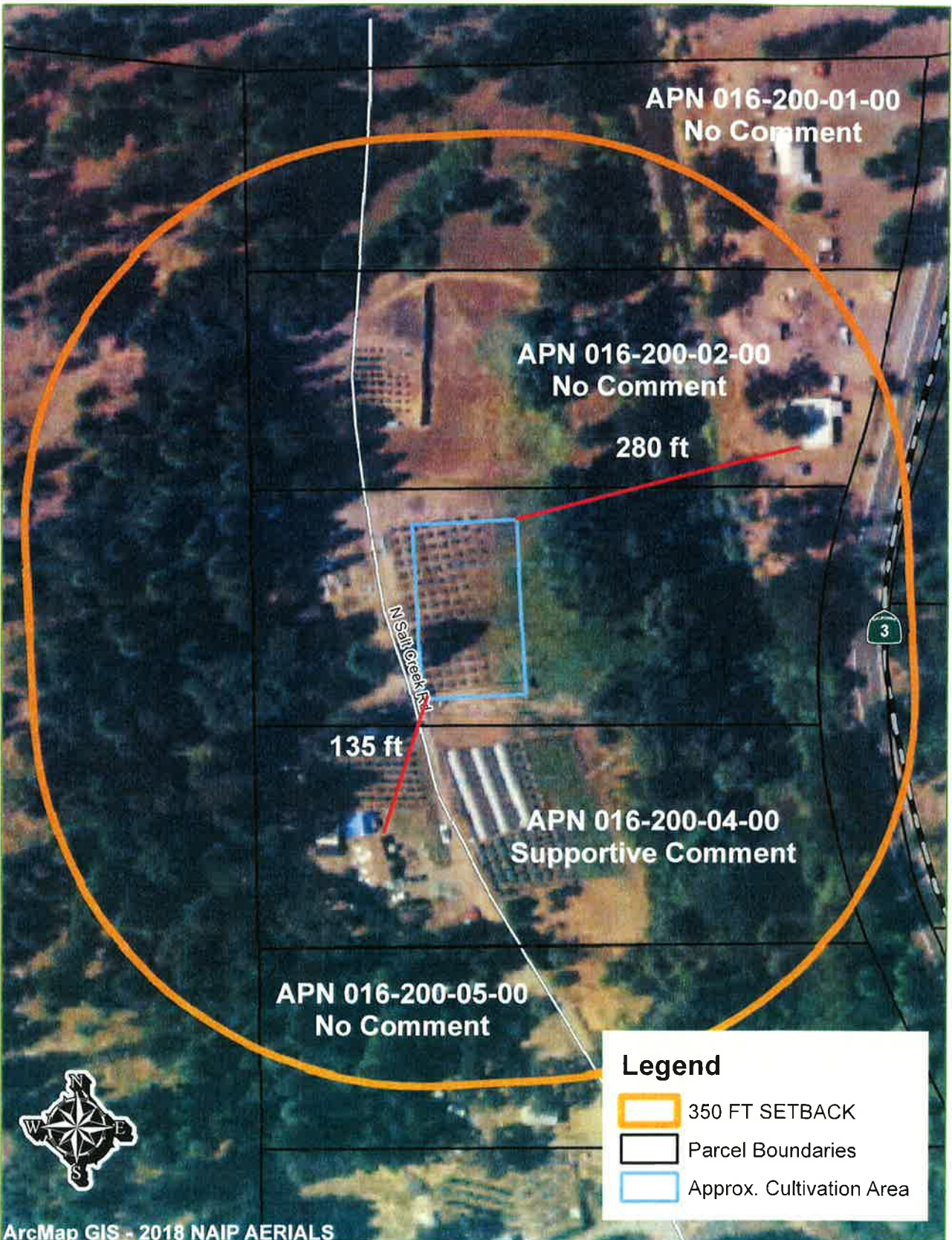


1:1,128

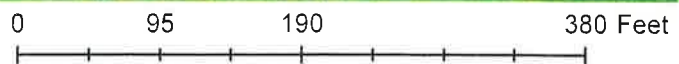
✘ Septic



350 ft Setback and Comment Status



ArcMap GIS - 2018 NAIP AERIALS



APPENDIX 4 SITE VISIT PHOTOS



Example of current site conditions.

View of residence on APN 016-200-02-00 from subject property.



View of residence on APN 016-200-04-00 from subject property.

APPENDIX 5

Peter Vue
331 N. Salt Creek Rd.
Hayfork, CA 96041

February 11, 2019

To Whom It May Concern:

I, Peter Vue, the owner of the property located on 331 N. Salt Creek Rd, Hayfork, CA 96041 (APN: 016-200-04), adjacent to Kenneth X. Hou owned property (APN: 016-200-03) located on 365 N. Salt Creek Rd, Hayfork, CA 96041, grant support and have no objections to the variance sought by Kenneth Hou for the property located on 365 N. Salt Creek Rd, Hayfork, CA 96041. 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,



Peter Vue