

TRINITY COUNTY PLANNING COMMISSION STAFF REPORT Initial Commercial Cannabis Variance

DATE PUBLISHED: October 2nd, 2020

PLANNER: Bella Hedtke, Associate Planner

APPLICANT AND PROPERTY OWNER: Xue Thao

CONSULTANT/AGENT: Compliant Innovative Resources (CIR)

REQUEST: A request for a variance from the required 350' Cannabis cultivation setback from one (1) neighboring residential dwelling (TCC 17.43.050.A.8).

LOCATION: 61 Woods Ln., Hayfork (APN: 017-430-013)

APPROX. ACREAGE: 5.00

GENERAL PLAN DESIGNATION: Rural Residential-Low Density (RR-L)

ZONING DISTRICT: Rural Residential 10-Acre Min (RR10)

OVERLAY ZONE: N/A

STAFF RECOMMENDATION: Approve with Conditions

ADJACENT LAND USE AND ZONING INFORMATION:

Direction	Land Use	Zoning	General Plan Designation
North	Vacant/Residential	RR10	RR-L
South	Residential	RR10	RR-L
East	Residential	RR10	RR-L
West	Residential/Agricultural	A80	A

ATTACHMENTS:

- 1 – Project Location Map
- 2 – Site Map (Provided by Consultant)
- 3 – 350ft Setback with Comment Status Map
- 4 – Site Visit Photos

LICENSE TYPE: The applicant has a pending small mixed-light license (up to 10,000 sq. ft.) in the Trinity County Commercial Cannabis Program (CCL652).

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

APN	APPROX. DISTANCE FROM CULTIVATION SITE	COMMENT STATUS
017-430-016	195ft	No Comment

PUBLIC COMMENTS: As of the date of this staff report, staff has received one public comment from the property owner of APN 017-430-38 (Attachment 5).

Staff Response: After receiving the above-mentioned comment staff established direct communication between the neighbor and the applicant's consultant, Michelle Gargano of CIR. The residence located on APN 017-430-38 is more than 350ft (approx. 385ft) from the proposed cultivation site (Attachment 3).

AGENCY COMMENTS: As of the date of this staff report, staff has not received any agency comments.

FINDINGS: The following findings shall apply to the X. Thao Commercial Cannabis Setback Variance (CCV-20-29) for APN: 017-430-013:

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 Rural Residential 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 have a legal residence less than 350' from the proposed cultivation site. As previously mentioned, staff received one public comment from the property owner of APN 017-430-38 (Attachment 5). While staff acknowledges that the neighbor has

expressed their concerns, staff recommends approval of this variance request based on the following conclusions:

- The concerned neighbor's residence is located more than 350ft (approx. 385ft) from the proposed cultivation site (Attachment 3).
- The opportunity to directly communicate current or potential concerns between neighbors has been established.

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-20-29 to reduce the cultivation site setback in Trinity County Code 17.43.050.A.8. from 350 feet to 195 feet from the residence located on APN 017-430-016, subject to the findings of fact and conditions as stated in this staff report.

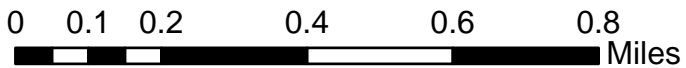
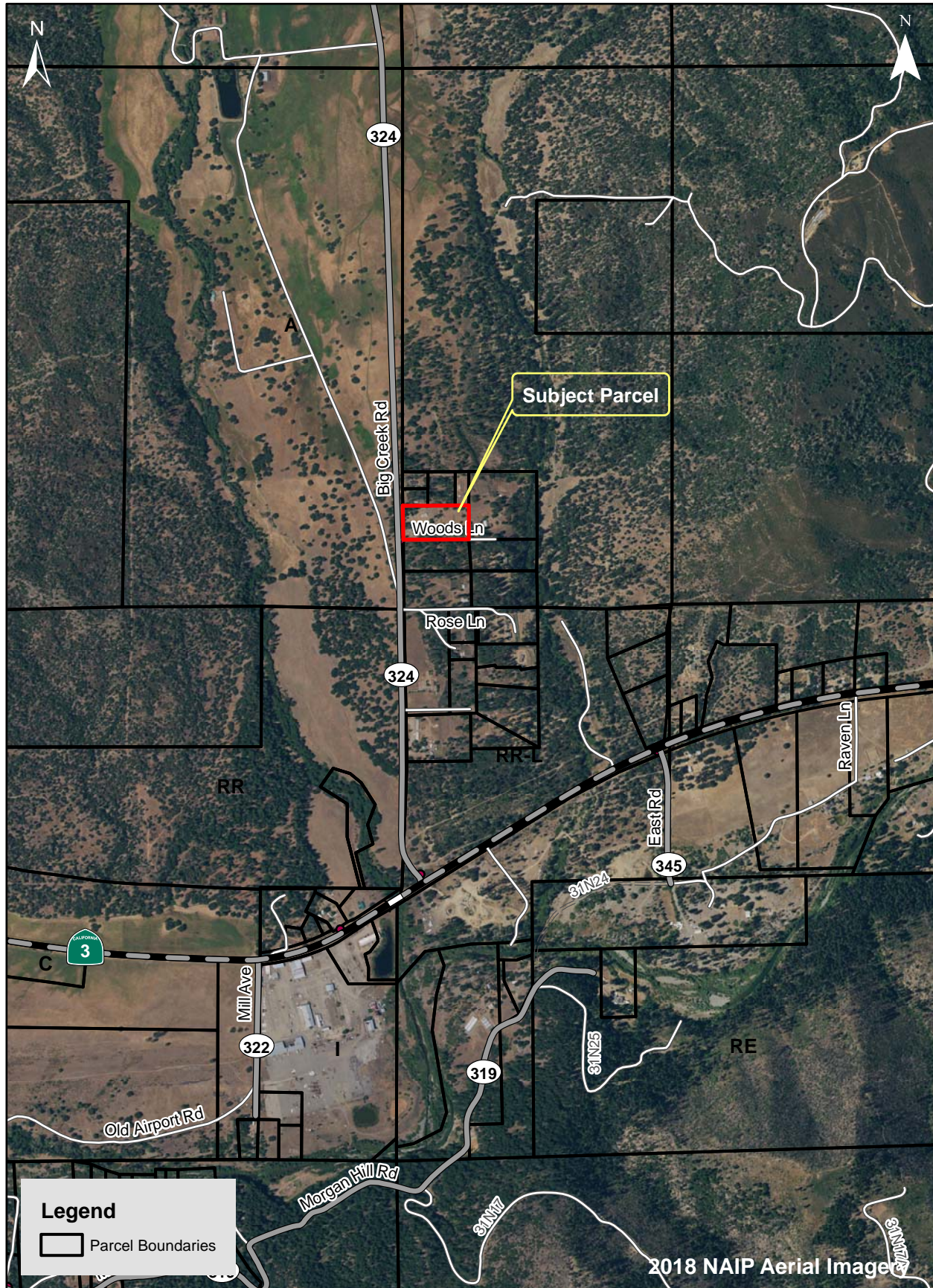
CONDITIONS OF APPROVAL: Upon approval by the Planning Commission, the following Conditions of Approval shall apply to the X. Thao Commercial Cannabis Setback variance (CCV-20-29) for APN: 017-430-013:

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.

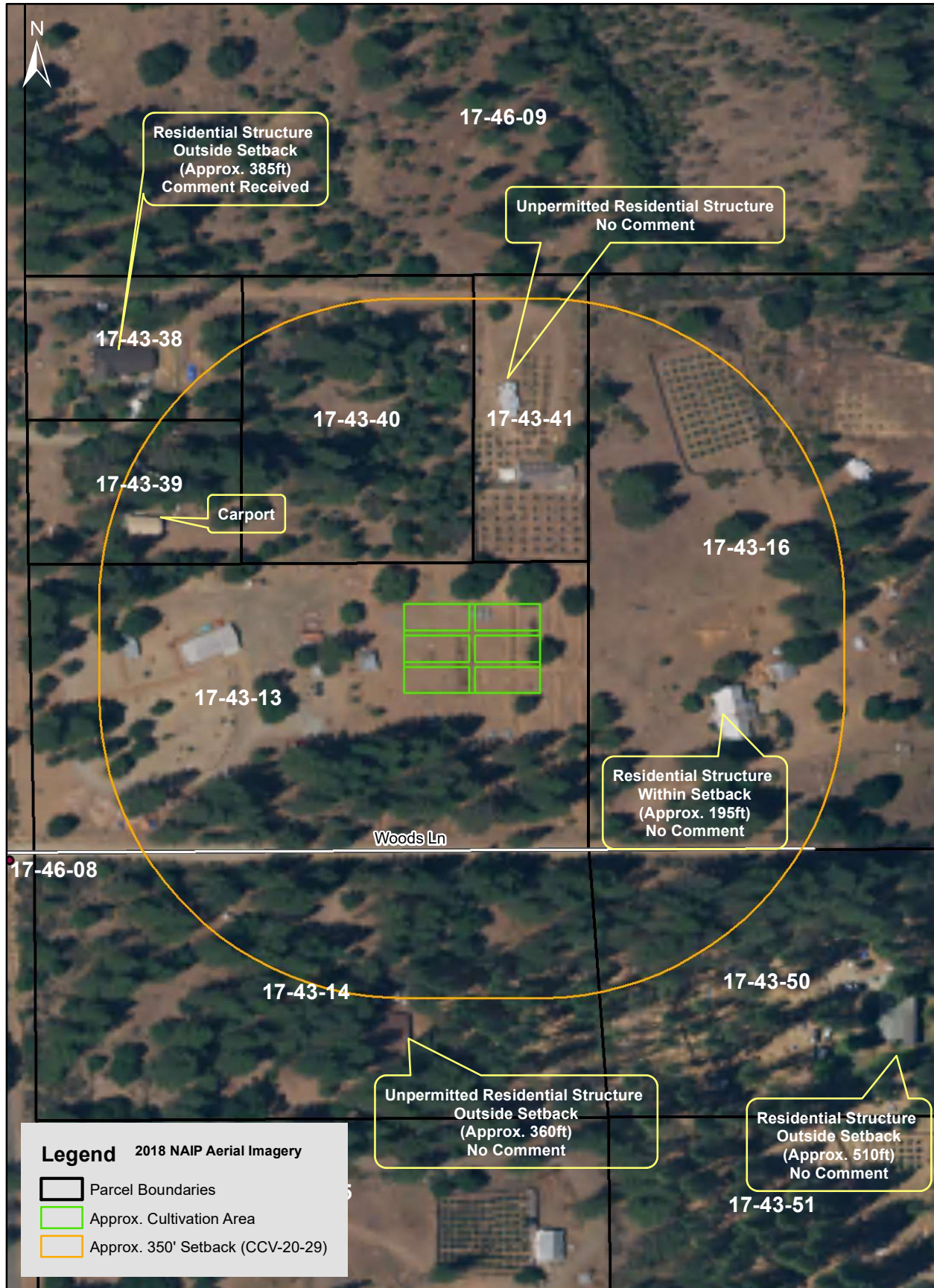
- b. The renewal shall not require a formal public hearing, unless specified by the Planning Director or referred to the Planning Commission; however, written notice shall be provided by the County to surrounding property owners at least ten (10) days prior to the Planning Director's decision to approve 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
CCV-20-29 | X. Thao
APN 017-430-13-00
Project Location



**ATTACHMENT 3
CCV-20-29 X. Thao
APN 017-430-13-00
350ft Setback Map**



Residential Structure
Outside Setback
(Approx. 385ft)
Comment Received

Unpermitted Residential Structure
No Comment

Carport

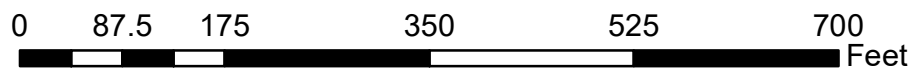
Residential Structure
Within Setback
(Approx. 195ft)
No Comment

Unpermitted Residential Structure
Outside Setback
(Approx. 360ft)
No Comment

Residential Structure
Outside Setback
(Approx. 510ft)
No Comment

Legend 2018 NAIP Aerial Imagery

- Parcel Boundaries
- Approx. Cultivation Area
- Approx. 350' Setback (CCV-20-29)



ATTACHMENT 4
Site Visit Photos



Current Site Conditions



View of Residential Structure on APN 017-430-16

Bella Hedtke

From: Elizabeth Wines <bwines51@gmail.com>
Sent: Saturday, September 26, 2020 9:42 PM
To: Info.Planning
Subject: Variance Request 017-430-13 61 Woods Lane

We have received the notice of an application for a MJ grow. Of course, we are not happy about it! However, we pretty much figured it was just a matter of time we would have to face this.

I don't know what questions need to be asked to try to protect our property and our personal environment/our personal space. There is an existing wood fence between half of the length of our adjoining properties, so that is good.

We are interested in knowing what steps this applicant will take to try to keep our life unaffected.

Our experience in the past has been with a very hostile grower, so we are sure not happy!

No, we do not approve this variance request.

Thanks!

Elizabeth (Betty) Wines