

<p><b>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</b></p>
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**APPLICANT:** Elisabeth & Duncan McIntosh      **REPORT BY:** John Jelichich

**APN:** 12-370-14

**PROJECT DESCRIPTION:**

Variance from required 350' cannabis cultivation setback from a neighboring residential dwelling.

**LOCATION:** 30 Quail Road, Junction City (Exhibit A-1)

**PROJECT INFORMATION:**

- A) Planning Area: Junction City Community Plan
- B) Existing General Plan Designation: Rural Residential (RR)
- C) Existing Zoning: Rural Residential 2 1/2 acre minimum (RR 2 1/2)
- D) Existing Land Use: residential
- E) Adjacent Land Use Information:

	<b><u>Land Use</u></b>	<b><u>Zoning</u></b>	<b><u>General Plan Des.</u></b>
North:	house	RR 2 1/2	Rural Residential
South:	house	RR 2 1/2	Rural Residential
East:	house	RR 2 1/2	Rural Residential
West:	house	RR 2 1/2	Rural Residential/FH

**BACKGROUND INFORMATION:**

The urgency 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. 315-816; Sec. 32.O.IV (5) (b))

The urgency 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.

The applicants plan to cultivate cannabis on their 7.36 acre parcel off of Quail Road in Junction City. The site plan provided by the applicant (Exhibit “A-1” & “A-2”) identifies the location of the subject property in relation to neighboring parcels (Exhibit A-1) and the on-site development, including constraints to development (wetlands), other buildings on the property, the unusual shape of the property and the location of the proposed cannabis cultivation site.

Planning staff has discussed the variance application with Jeff Dickey, Code Enforcement Officer. He reported that he is familiar with the property and that due to the odd shape of the property, location of swampy areas (wetlands), and the location of other buildings on the site, the cultivation location shown on the applicant’s site plan is reasonable. Further, if the cultivation site could to be moved further toward the center of the property, the applicant would be less than 350 feet from the other neighbor’s property.

The applicant also requested a “variance for two existing structures currently a part of the cannabis project.” The issue of whether a structure complies with the California Building Code and the Trinity County Code affecting construction is not within the authority of the Planning Commission. The applicant should contact the County Building Department regarding the building permit violations.

Duncan and Elisabeth McIntosh submitted a letter on January 31, 2017 explaining their request for a setback variance, referencing their understanding of procedures used in Humboldt County, new photographs of the project site and also discussing the building code violations. (see Exhibit B).

**PROJECT EVALUATION:**

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 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.

Since the cannabis cultivation site cannot be located elsewhere on the property due to the shape of the property, location of wetlands, proximity to other neighbors affecting relocation of the site, the granting of the variance would not be a special privilege for the applicant that could not also apply to other commercial cannabis growers under identical circumstances.

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:**

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

It is consistent with the site's General Plan designation of Rural Residential and, with the exception of the setback, complies with the County's urgency ordinance (315-816.EXT (A1)); complies with all other zoning requirements for the site; and the cultivation area is not located within the 100 year floodplain, will not result in the removal of riparian vegetation, and is not located in an environmentally sensitive area. The project will not have a significant adverse impact on the environment, or contribute to a cumulatively significant adverse impacts. The project will not affect a state scenic highway, cultural or historic resources, federal or state listed species or species proposed for listing, jurisdictional wetlands, or established floodways. The project is not located within a toxic site listed by the California Environmental Protection Agency as provided under Section 65962.5 of the Government Code.

### **STAFF RECOMMENDATION:**

Staff recommends the following:

Approval of the variance to allow reduction of the cannabis cultivation setback from 150 feet to zero on APN 012-370-14, subject to the following conditions of approval and based on the following findings of fact:

#### ***Findings***

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 cannabis cultivation.
2. The variance is not a grant of special privilege to the applicant because the applicants property is an odd shape, contains wetlands and the cultivation site cannot be located elsewhere on the property and still meet the cannabis setback requirements.
3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance urgency 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  
MC INTOSH CANNABIS SETBACK VARIANCE (P-17-01)

1. The variance is approved for a period of one year from **April 1, 2017** through **March 31, 2018**; provided, however, that the variance may be renewed annually.
  - a. Application for renewal shall be made 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.

**PROJECT LOCATION MAP**  
**McIntosh Commercial Cannabis Variance - P-17-01**

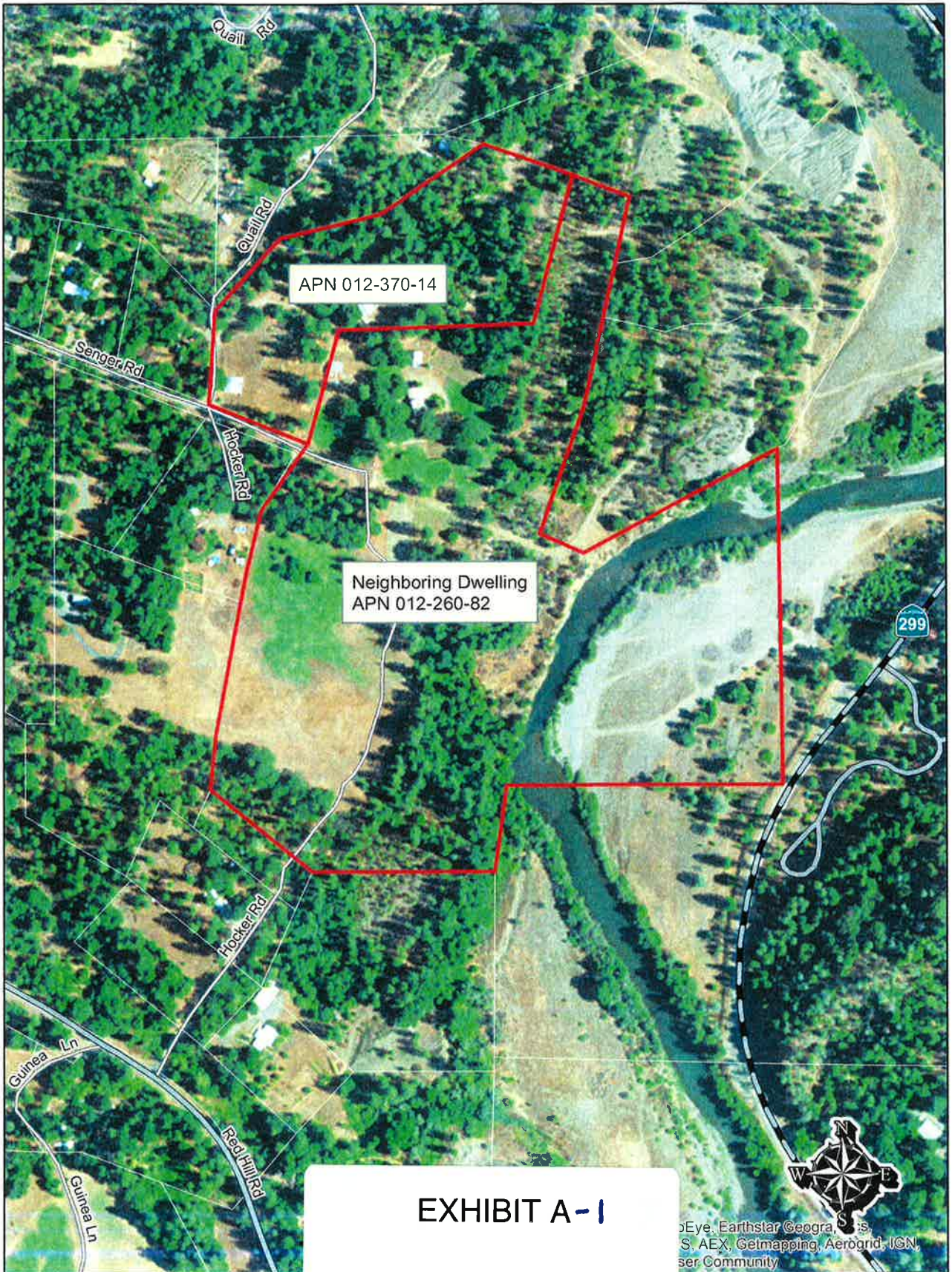
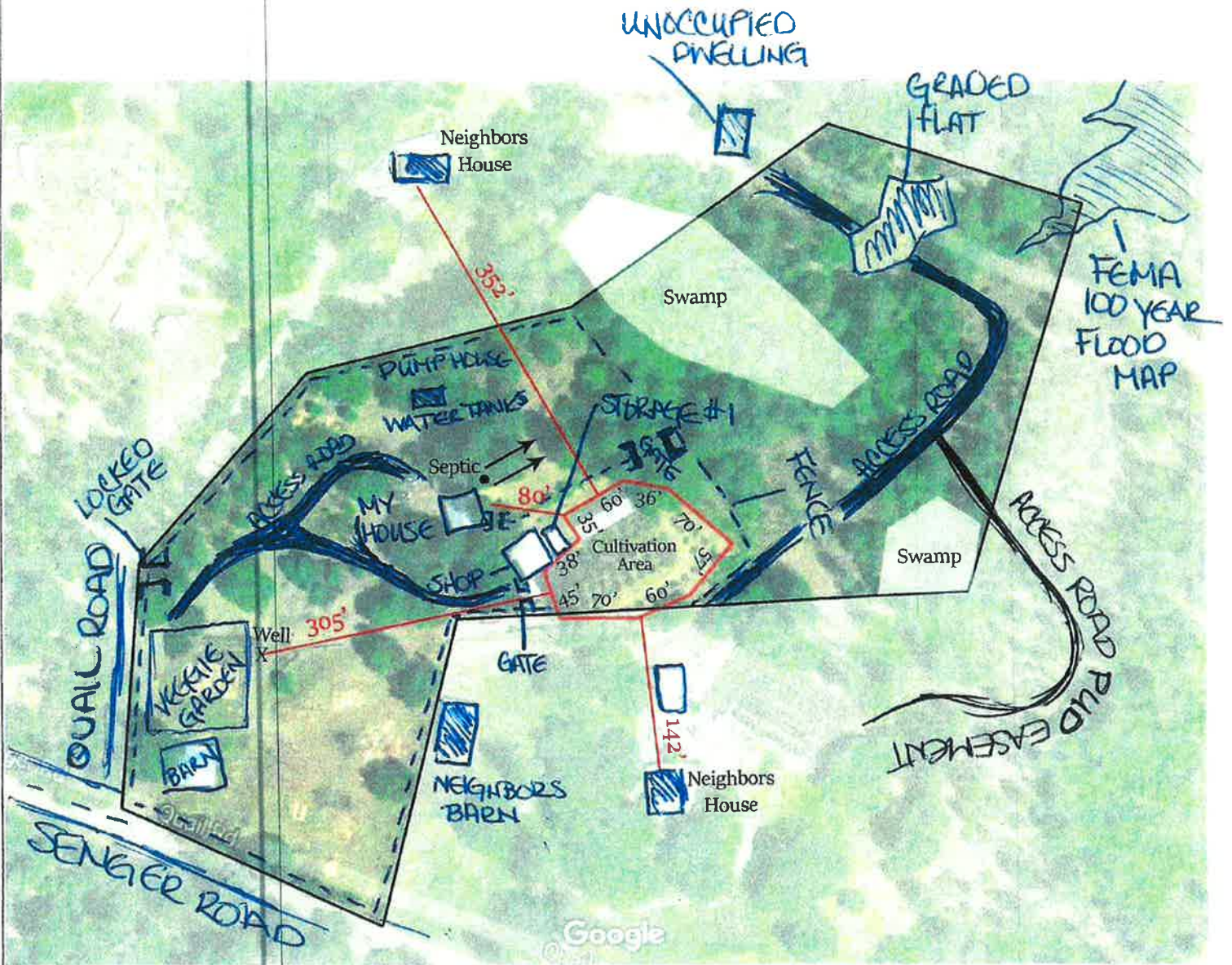


EXHIBIT A-1

6

# PLOT/SITE PLAN



## KEY

MY HOUSE EST. 1955

SHOP EST. 2002

STORAGE SHED EST. 2008?

⇒ LEACH LINES

X WELL EST. 2015

SHOP - STORAGE / DRYING

STORAGE #1 - STORAGE FOR EQUIPMENT

GREENHOUSE (INSIDE CULTIVATION AREA)  
EST: 2014

LIVESTOCK BARN: ESTABLISHED 1950'S?

TRINITY COUNTY BUILDING DEPARTMENT

EXHIBIT A-2

APPLICANT PREPARED SITE PLAN

Permit No.

Drawn By: ELISABETH MCINTOSH	APN: 012-370-14
Date: 10/12/2016	Owner Name: MCINTOSH
Scale: NOT TO SCALE	Lot Area: 7,36

## Ruth Hanover

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**From:** Liz McIntosh <mcinchap09@gmail.com>  
**Sent:** Tuesday, January 31, 2017 9:07 AM  
**To:** Ruth Hanover  
**Subject:** Variance Docs  
**Attachments:** McIntosh Variance Request.pdf

Hi Ruth,

Hope your day is off to a great start. I have attached a document to this email to be included in next weeks PC meeting staff report. Our farm is going before the commission for a variance and so this file includes a letter laying out our request along with supporting pictures and forms.

Thanks for all that you do! Please let me know if you have any troubles with the file.

Have a great rest of your day,  
Liz McIntosh

EXHIBIT B



JAN 31 2017

TRINITY COUNTY  
PLANNING DEPARTMENT

Dear Chairman Matthews and Commissioners,

January 31, 2017

Thank you for considering our variance for the cannabis permit program. We wanted to give you some background information in advance as well as some support documents that might aid in your decision making. We are very excited to be one of the first “neighborhood” growers to go through this process and we are going to make every effort to demonstrate that we are good neighbors and a benefit to our surrounding community. This is not just our business, it is our home first and foremost. We have 3 kids in the elementary and high schools here. We love this community and we are not just looking at our profit margins for the next few years; we are looking far into the future in hopes Trinity will build a bustling economy our children will want to come back home for.

On our application, we asked for variance from two sections of the current Urgency Ordinance. We’ve never gone through this process before and so we were unsure if we could only ask for an exception to one part at a time or if it was okay to ask for several exceptions at once when they are all under the same ordinance. We are hopeful that because our variance will expire a year from now and our urgency ordinance is temporary and subject to change, our request may be more feasible.

Our top priority is the variance from the 350-foot setback to a neighboring dwelling. We haven’t fanned out notifications in 300’ from every property line until now; but we have talked with all of our closest neighbors at length (especially the ones with the greatest impact) about getting our farm permitted. So far, we have enjoyed unanimous support. This is not a new and untested location. 2017 will be our 4<sup>th</sup> year growing in the same spot successfully with no complaints. The family closest to us moved in the year before last. Since there is really no hiding it completely, they (and anyone else looking at the property) were well aware that they were buying next to cannabis cultivators. The previous residents lived there over 40 years and they too did not object to us cultivating. They had no problem selling their property at high value; it was in escrow within just a few weeks of going on the market. Although our closest neighbors have not voiced any concerns to us we are growing up a live fence of native landscaping to obscure the view of the cultivation site.

We all know that Trinity County topography is extremely diverse. Often when we talk about these regulations they make the most sense when pictured on a big, flat, and rectangular parcel with the farm in the center. (Case in point: check out the sample site map in the program application) Unfortunately, this ideal farm imagery does not address cultivation as it currently exists here, which is the intent behind MCRSA and (to a lesser extent) AUMA. It also does not reflect the common topography of Trinity County parcels or the best growing sites on said parcels. Our farm is a good example of Trinity’s unique topography. Our 7.5 acres is the first house on a private road, adjacent to a County Road. The farm and house area are raised up above most of our neighbors on what we believe to be old tailing piles but the back half of our acreage is below a 70-foot cliff and contains a swamp created by hydraulic mining.

One of the first questions we’ve encountered at the outset of this process is – can’t you just move your garden so you don’t need to do a variance? Indeed, we’ve heard of many others who have done exactly that. We don’t think this is an option for us but we did not explore it at great length because we feel our garden is exactly where it should be considering all factors outside of the setback. We also feel it is very important that the County puts the environment first in this process and does not encourage new impacts by forcing people like us to relocate, unless it is absolutely necessary.

The variance request for our buildings within the cultivating area is a secondary request but it is important to consider under this temporary ordinance. As you may or may not have heard, one of the greatest stumbling blocks we are trying to work out is how to deal with structures. People are having trouble in the process because they have unpermitted structures for their cannabis operation and also for their residential uses. There are those who aren't signing up because their chicken coop or storage shed isn't permitted. They can't afford to permit the buildings or to lose them so they just don't apply to the program. Unpermitted structures are a widespread issue in a homesteading County like Trinity and it is not limited by any means to property owners who are cultivating cannabis.

More importantly, we are in the thick of hashing out the process as problems arise. We understand a need for caution and safety but uniformly requiring permanent permitted solutions that include people's residential structures under a temporary ordinance seems to put the cart before the horse. In some cases, it is causing unnecessary burden to property owners.

We believe this to be especially true for those of us jumping in first and guinea pigging the program. In our case, it has already cost us more under the temporary ordinance than what it might cost under the permanent ordinance depending on the route we choose.

We think that the ordinance already decouples the permit program for cannabis from residential structures, it just isn't being interpreted that way by the planning department at this time. Only one area that we can find in the ordinance pulls in compliance with the Building and Planning department. Section 4(7)(a)(iii), under Denials and Rescissions, states that you could be denied licensure if:

"The **operation** as proposed by the Registrant, if permitted, would not have complied with all applicable laws, including, but not limited to; the Building, Planning, Housing, Fire and Health Codes of the County, including the provisions of this Chapter and with all applicable laws including zoning and County ordinances."

The word "operation" is used a handful of times in the ordinance and it is used when talking about cultivation sites and operations ONLY, not homes, barns, storage sheds and chicken coops. Many of us bought our properties with these structures and their value was assessed in our appraisals which we pay taxes on. We have made suggestions to the Ad Hoc about cleaning up the language to include a sentence clarifying that Building and Planning will not pursue violations related to personal residences or other structures that are not used for commercial cannabis activity.

Humboldt has made this differentiation and they have also done something else we hope to see adopted here. They are employing agricultural exemptions. We've contacted their Permitting Specialist and she sent us their documents which we've included for your review. Essentially, if you have Ag structures that are used solely for cannabis, that have no electricity (other than lights on timers) and if there is no human habitation within them; you can pay \$150 per structure and have it exempted from the permitting process.

As people who are jumping through the hoops earlier than most, we can assure you that employing this type of clarity and exemption would have saved us considerable time and money. Just our initial site visit with an engineer for the structures We've received violations on since applying to this program was \$275. Both of these structures fit the definitions of the exemption form from Humboldt and if we had it, it would have cost us \$300 to have them exempted.

We have already seen the requirements change since the ordinance was first adopted in August. At first, the message was that all buildings after 1974 had to be permitted. Then we heard barns after 1990 could be exempted. Then, at the amendment meeting at the BOS on December 21<sup>st</sup> we were told that accessory buildings built before the year 2000 would also be exempt from the permit process. While these continued changes are wonderful and greatly appreciated people like us have already incurred charges because of the original requirements. Ironically, just after the meeting ended on the 21st, we were contacted by our engineer who let us know our plans were ready for our fire wood shed, we bought with the property that was built before 2000.

The buildings we are asking for temporary permit variance for are our 30x66 Greenhouse and our 10x20 metal factory shed. To permit our greenhouse, we were told we would have to put a concrete footing around the entire structure to make it permanent. We do not want this to be permanent and according to Farm Tech, one of our nation's largest greenhouse manufacturers, Trinity County is the only place asking for permit plans for cold frame greenhouses.

Ag exemptions for greenhouses and other structures isn't limited to Humboldt's cannabis program either. These kinds of exemptions are commonplace throughout the state – even places that have snow loads similar to us such as Siskiyou and Tehama employ Ag exemptions. Our greenhouse has a skin that is easily taken off and on. During the summer months we roll up the sides so that the wind can easily pass through the structure and in the winter months the skin is completely taken off so wind and snow is not a concern.

When we applied to the cannabis program and turned in our site map we then received our violations on the buildings. Making the greenhouse permanent was not an option for us so we resolved that we would sell it and take it down. The 10x20 storage shed came with the property when we bought it, it's value was assessed into our appraisal and it has been here since at least 2006. We were told that it would be easy to permit, and we needed the storage so onward we went. However, we changed our minds when the engineer got back to us a month ago and said it might cost as much as \$3000 to get it permitted. The previous property owners told us they bought the thing for \$1,500 so that just seemed insane to us. We have found a buyer for that and we are taking it down.

Though we are working with the County and actively working toward the removal of these buildings, we are asking for the temporary variance to be applied to them mainly to give us a little breathing room while the County finalizes this program (should our buyers fall through). We believe there are many farmers not applying to the program for these reasons and allowing a 1 year variance for this purpose will set a precedence for others that will alleviate the extra burdens and costs to property owners in this situation.

Again, thank you for your consideration. We are grateful for the opportunity to be a registered family farm and business in Trinity County.

Sincerely,

Duncan and Elisabeth McIntosh



Photos Taken  
January 11 & 15  
2017



Facing our neighbors house. The structure in the picture is their shop, not their home. There is native vegetation between us and we are promoting its growth.



The 30x66 greenhouse and the 10x20 metal storage shed - currently under violation with the planning department because of the our application to the cannabis permit program.



\*\*\*photos were taken January 8, 2017 during the "Atmospheric River" 10 year storm event\*\*\*



**COUNTY OF HUMBOLDT**  
**PLANNING AND BUILDING DEPARTMENT**  
**BUILDING DIVISION**

3015 H STREET EUREKA CA 95501  
PHONE: (707) 445-7245 FAX: (707) 445-7446

## **Cannabis Operations**

### **Cultivation:**

Greenhouse structures with no conditioned space, heating or cooling used for cannabis cultivation are allowed as agricultural exempt structures regardless of whether or not there are employees working in the structures. Lighting used for cultivation is exempt from the energy code when such lighting operates on timers. Area and task lighting will require a Lighting Energy Analysis Report.

Indoor cultivation structures where employees or sub-contractors are working must be processed as a commercial building permit application and must be fully ADA compliant. This use will be classified as a U Occupancy. Exception: Structure can go Ag Exempt if the space is not conditioned and there are no interior finishes.

### **Processing, treating or packaging products:**

- 1) Trim rooms or structures where employees or sub-contractors will be working must be processed as a commercial building permit application and shall be fully ADA compliant. This use will be classified as an F-1 Occupancy
- 2) Drying rooms or structures that are heated or cooled will not qualify for an agricultural exemption. This use will be classified as either an F-1 or S-1 Occupancy. Structures will be required to comply with commercial building codes and shall be fully ADA compliant.
- 3) Extraction rooms or structures will either be classified as an F-1 with Control Area(s), H-2 or H-3 occupancy type, depending on the type of solvent used in the extraction process. Structures will be required to comply with commercial building codes and shall be fully ADA compliant. Applicants will also be required to submit a plan of operation at the time of application for the building permit(s).

Projects located within Arcata, Blue Lake, Fortuna or Humboldt Bay Fire District will be referred to them for their review and approval.

Note: This document is not intended to address all possible situations; therefore, there may be additional requirements or restrictions depending on the particular application.



**COUNTY OF HUMBOLDT**  
**PLANNING AND BUILDING DEPARTMENT**  
**BUILDING DIVISION**

3015 H STREET EUREKA CA 95501  
PHONE: (707) 445-7245 FAX: (707) 445-7446

## **Cannabis Operations**

### **Extraction**

Extraction rooms or structures will either be classified as an F-1 with Control Area(s), H-2 or H-3 occupancy type, depending on the type of solvent used in the extraction process. Structures will be required to comply with commercial building codes and shall be fully ADA compliant. Applicants will also be required to submit a plan of operation at the time of application for the building permit(s). Building permits will be required for new construction, change in occupancy and tenant improvements for structures containing this type of use.

Additional Requirements that may apply for this type of use include but are not limited to the following:

- 1) Buildings containing an H Occupancy, the entire structure shall have an automatic sprinkler system.
- 2) Additional set back to property lines.
- 3) More restrictive Fire-Resistance Rating of Exterior Wall based on Fire Separation Distance.
- 4) Occupancy separations, 1-3 Hour Fire-Resistance Rating.
- 5) Fire Barriers, 1 Hour Fire-Resistance Rating.
- 6) Mechanical Ventilation.
- 7) Explosion Control, Venting and Prevention Systems.
- 8) Emergency or Standby Power.
- 9) Emergency Alarms.

Projects with this type of use located within Arcata, Blue Lake, Fortuna or Humboldt Bay Fire District will be referred to them for their review and approval otherwise they will be referred to the State Fire Marshal for review and approval.

Note: This document is not intended to address all possible situations; therefore, there may be additional requirements or restrictions depending on the particular application.

**LETTER OF INTENT  
 AGRICULTURAL EXEMPT STRUCTURES  
 HUMBOLDT COUNTY PLANNING AND BUILDING DEPARTMENT**

As defined in the **Uniform Building Code**: *An Agricultural Building is a structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.*

In order to obtain *Agricultural Exempt* status for your project, the following questionnaire must be completed. Check the appropriate box.

- |    |   |     |     |
|----|---|-----|-----|
| 1. | Is the proposed structure designed to house <u>anything other than</u> farm implements, hay, grain, poultry, livestock, or other horticultural products?..... | YES | NO  |
|    |   | [ ] | [ ] |
| 2. | Will this structure be a place of human habitation?.....  | [ ] | [ ] |
| 3. | Are there employees on the parcel?.....   | [ ] | [ ] |
| 4. | Will this structure be used to process, treat or package products?.....   | [ ] | [ ] |
| 5. | Will the public be allowed on this parcel?.....   | [ ] | [ ] |
| 6. | State the intended use/purpose of the structure. _____<br>_____<br>_____<br>_____<br>_____  |     |     |
| 7. | Who will use/occupy the structure? _____<br>_____<br>_____  |     |     |

ONCE SIGNED THIS SHEET BECOMES PART OF THE AGRICULTURAL EXEMPT APPLICATION

OWNER'S ACKNOWLEDGMENT

OWNER'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
 ASSESSOR'S PARCEL \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

AGRICULTURAL EXEMPTION GRANTED

BUILDING INSPECTOR'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_