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| TRINITY COUNTY PLANNING COMMISSION STAFF REPORT |
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APPLICANT: Curt Connor

REPORT BY: John Jelich

APN: 14-450-14

PROJECT DESCRIPTION:

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

LOCATION: 380 Brady Road, Hayfork (Exhibit A-1 & A-2)

PROJECT INFORMATION:

- A) Planning Area: Hayfork Community Plan
- B) Existing General Plan Designation: Rural Residential (RR)
- C) Existing Zoning: Specific Unit Development (SUD)
- D) Existing Land Use: residential
- E) Adjacent Land Use Information:

| | <u>Land Use</u> | <u>Zoning</u> | <u>General Plan Des.</u> |
|--------|------------------------|----------------------|---------------------------------|
| North: | residential | SUD | Rural Residential - LD |
| South: | residential | RR 2 1/2 | Rural Residential |
| East: | vacant | SUD | Rural Residential |
| West: | vacant | RR-5 | Rural Residential |

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.

Variances:

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.

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.

PROJECT EVALUATION:

The following urgency ordinance (Ord. No. 315-816. EXT (A1)) standards and definitions are also relevant to this application review:

Section 32 O. (1) (g) [Definitions]:

“Area” is the measurement of marijuana plant growth in square feet as defined by the California Department of Food and Agriculture. As of December 21, 2016, the Area is defined as canopy area, but it is subject to change. All changes by California Department of Food and Agriculture are automatically incorporated herein.”

“Cultivation Area” means the sum of the area(s) of cannabis cultivation as measured around that perimeter of each discrete area of cannabis cultivation on single Legal Parcel, as defined herein, or as defined by the State Department of Food and Agriculture.”

“Designated Area” means the area identified for potential cannabis cultivation.”

“Outdoors” or “Outdoor Cultivation” means cultivation in any location or by any means that is not “indoors” within a fully enclosed and secure structure as defined herein.”

Section 32.O. (3) (b) iii. 4. [Identify intended commercial cultivation license]:

Type 2 “outdoor” -- for outdoor cultivation up to a 10,000 sq. ft. Area.

Section 32.O. (5) (b) [Designated area]

“Designated Area shall not exceed 150% of the Area for the license type unless otherwise approved by the Planning Director. Cultivation will not be allowed within 350 feet of a residential structure on any adjoining parcels. Application for a variance from this provision will be considered by the Trinity County Planning Commission.”

The subject property lies within the School House Gulch Specific Unit Development (School House Gulch SUD). His parcel allows development of a dwelling. Other “uses, setbacks and other standards for development” allowed on his parcel are those set forth in the Rural Residential Zoning District. Therefore, cannabis cultivation could be permitted as currently allowed in the urgency ordinance.

The applicant plans to cultivate cannabis on his 14.23 acre parcel off of Brady Road in Hayfork. (The property lies within the Trinity County Waterworks District, but he falls under the 2016 cut-off exemption.) He has applied for a "Type 2" (outdoor) cannabis cultivation license (Application # CCL-2016-016). A Type 2 license limits the cultivation area to 10,000 sq. ft. plus the 150% provision would equal a total allowable cultivation area of 15,000 sq. ft. Mr. Connor has explained (see Exhibit "B") that his unique farming method will require a total area of 28,076 sq. ft. of land area devoted to cannabis cultivation which would result in a "canopy area" of approximately 10,000 sq. ft. [Note that on page 2 of Exhibit "B", labelled "2016 Existing Garden Area 100' x 130'" the garden area identifies how much of the existing cultivation area would be given up in order to meet the 350' dwelling setbacks. This area could, however, be used for non-cannabis farming.] The site plan (Exhibit C) identifies the existing garden location (the subject of this variance application); its proximity to neighboring dwellings; and the other two cultivation sites on his property.

The urgency ordinance allows a total of 15,000 sq. ft. of "designated area", within which 10,000 is the maximum "designated area" available for cultivation. There are no provisions for alternative methods of cultivation that would result in a greater area of disturbance for cultivation purposes.

As shown on the applicant's site plan (Exhibit "C"), there is sufficient land area on the 14 acre parcel to accommodate Type 2 Cultivation Area and comply with the urgency ordinance 350' setback requirement. Exhibits C & C-2 show approximate distances to neighboring dwellings. Two dwellings are affected. One is approximately 260 feet from the southern cultivation site; the other is approximately 206 feet from the southern cultivation site (identified as "existing garden" on Exhibit C).

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 known 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:

Deny the request for a variance from the dwelling setbacks on APN: 014-450-14 finding that:

1. The subject property is over 14 acres in size with ample area to develop cannabis cultivation and meet the 350' dwelling setbacks.

2. There are no development issues, such as size, shape, location, topography, or physical characteristics that would prevent the land owner from developing a cannabis cultivation site on the subject property in conformance with the urgency ordinance applicable to Commercial Marijuana Cultivation Regulation (Ord. No. 315-816.EXT (A1)).
3. The property is located within the Trinity County Waterworks District. Granting a variance from the 350' setbacks, when none is necessary to cultivate cannabis in accordance with the urgency ordinance, is contrary to the intent of Section (5) (Limitation on the Location to Cultivate Marijuana) which is written to restrict cannabis impacts in populated areas of the county, such as within the boundaries of Trinity County Waterworks District.
4. Approval of the variance to allow a greater cannabis cultivation than allowed by the urgency ordinance would be a special privilege granted to the applicant that is not available to other cannabis farmers.

Alternative determination:

If, after conducting the public hearing, the Commission determines that findings can be made to grant the variance, the next page identifies standard conditions of approval that could be applied to the variance.

CONDITIONS OF APPROVAL
CONNOR CANNABIS SETBACK VARIANCE (P-17-04)

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
Connor P-17-04



EXHIBIT A

~~CONFIDENTIAL~~
Additional ^{cc} Info

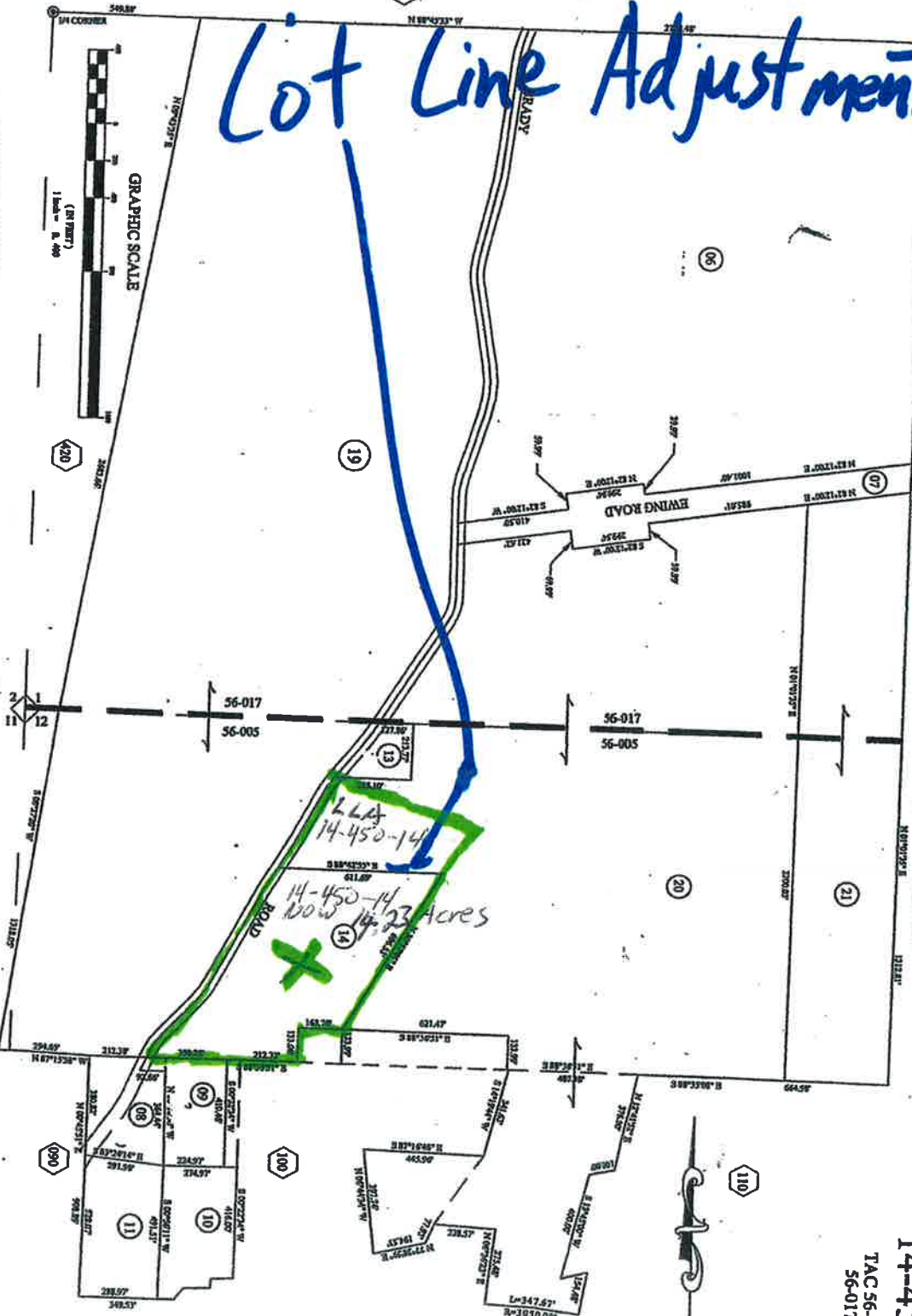
Lot Line Adjustment

PORTION OF SECTIONS 1, 11 & 12,

T. 31 N., R. 12 W., M.D.B. & M.

IMPORTANT This map is prepared by the Trinity County assessor for tax assessment purposes and it is furnished as a convenience only. There is no guarantee as to dimensions, distances or bearings.

ALTHOUGH BASED IN WHOLE OR IN PART ON RECORDED INFORMATION, THIS MAP IS NOT A GUARANTEE OF ACCURACY AND IS FOR ASSESSMENT PURPOSES ONLY.



2.64
14-450-14
14-450-14
100w 14.23 Acres

TRINITY COUNTY ASSESSOR'S OFFICE
BOOK FOURTEEN-PAGE FORTY FIVE

APRIL 3, 2007

14-450
TAC 56-005
56-017

EXHIBIT "A-3"

9

Page 9

2017 Commercial Cannabis Garden Area Proposal
#2

Connor Cannabis Company

APN: 14.450.14

December 23rd 2016

Garden Area Only 15,000 sq. ft. ???

The existing garden just south of the Cabin is 13,000 sq. ft. I will utilize 2,500 sq. ft. on the North end of this area for Garden Area #1 as shown in attachment (A). Plant spacing will be 10' on center in 300 gal grow bags holding 1.5 cu. yd. each of growing medium. This area will have 25 plants.

The New garden Area just North of the Cabin will be 12,500 sq. ft. and have 114 plants. Plant spacing will also be 10' on center in 300 gal grow bags (5" diameter) holding 1.5 cu. yd. of growing medium each, shown in attachment (B).

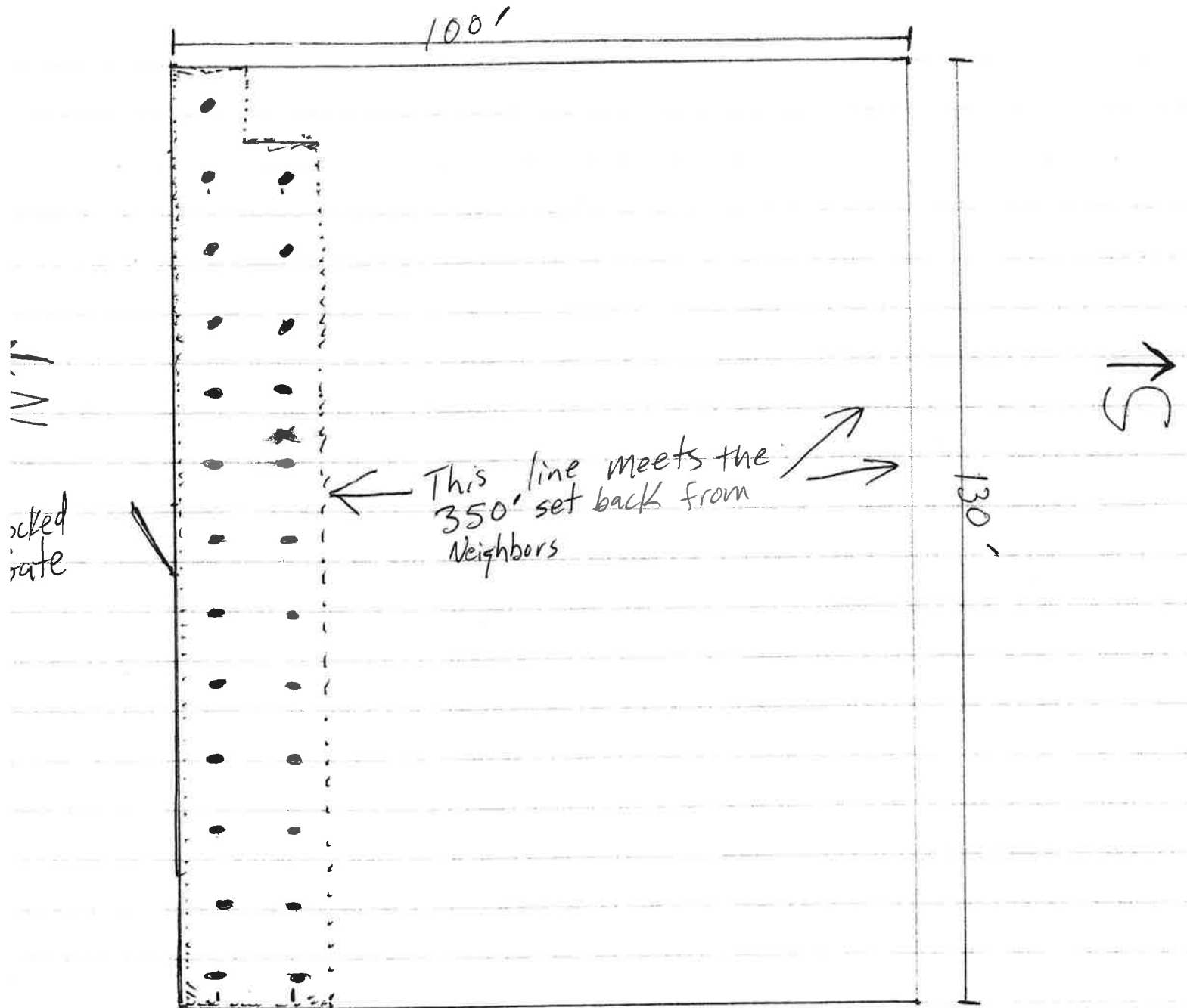
Protest: Attachment (C)

Copy of 1st Proposal - Attachments (D) + (E)

Another Request - Attachment (F)

EXHIBIT "B"

2016 Existing Garden Area 100' x 130'



● = Plants

..... = Proposed Commercial Garden Area of 2,500 sq ft and 25 Plants For Garden # 1 2017

Connor Cannabis Company

APN: 14-450-14

(B-2)

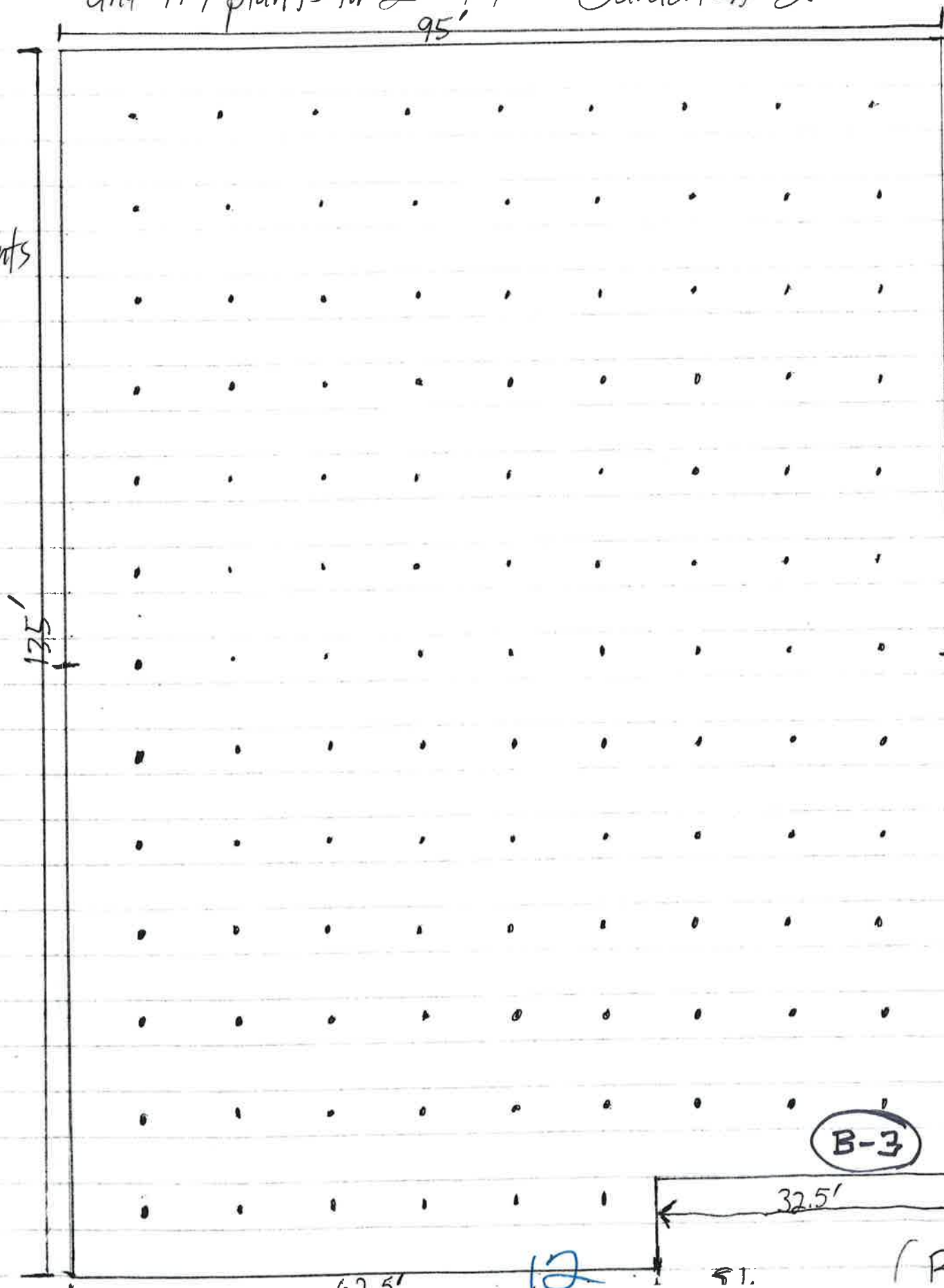
The remainder of existing garden Area will be utilized for vegetable, And Fruit, Personal (A)

Donnor
annabis
company

P.N:
-450-14

• = plants

Proposed New Garden Area for 12,500 sq ft
and 114 plants for 2017 Garden # 2



This proposal is made under protest. Trinity County is selling Connor Cannabis Company a Commercial license to grow 10,000 sq.ft. of Cannabis. By limiting garden area to 15,000 sq.ft., with my style of growing, I can only achieve 6,553.72 sq.ft. of canopy with 139 plants.

Calculations based on my Average canopy size, grown in 300 gal grow bags. (5' Diam)
Plant = 7.75 feet in diameter $3.875 \times 3.875 \times 3.14 =$
47.14906 sq.ft. of canopy per plant
 $\times 139$

6,553.72 sq.ft.

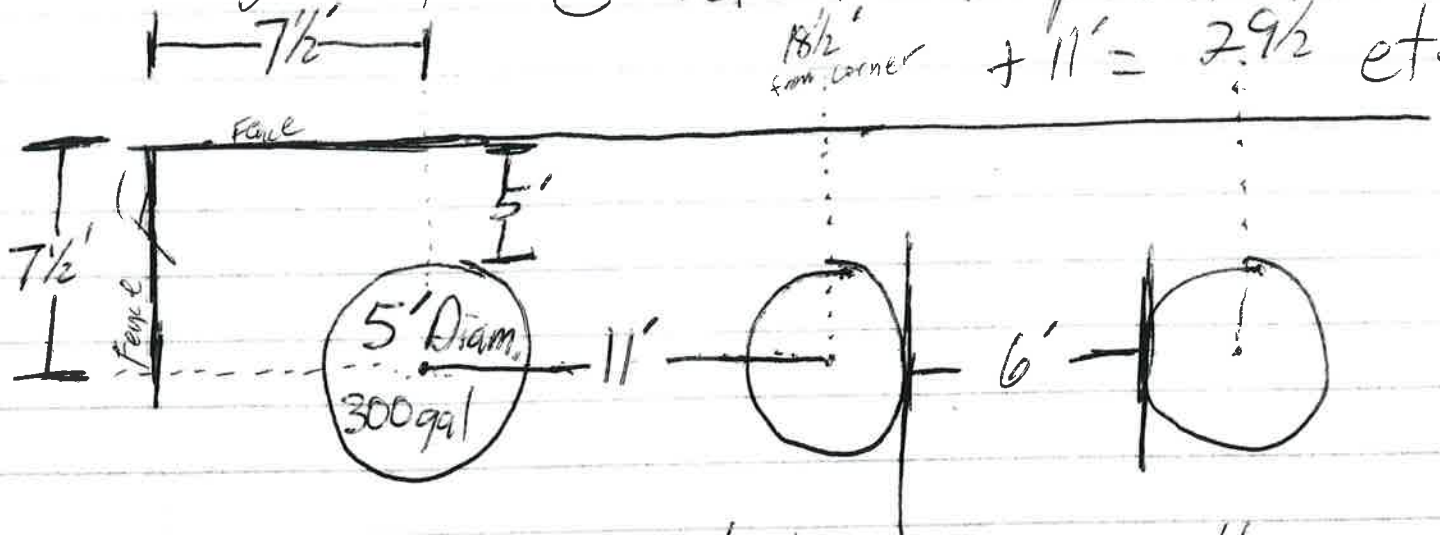
My first proposal of 28,076 sq.ft. of garden Area would allow me to meet the 10,000 sq.ft. of canopy.

Connor Cannabis Company
APN: 14-450-14

Curt M Connor

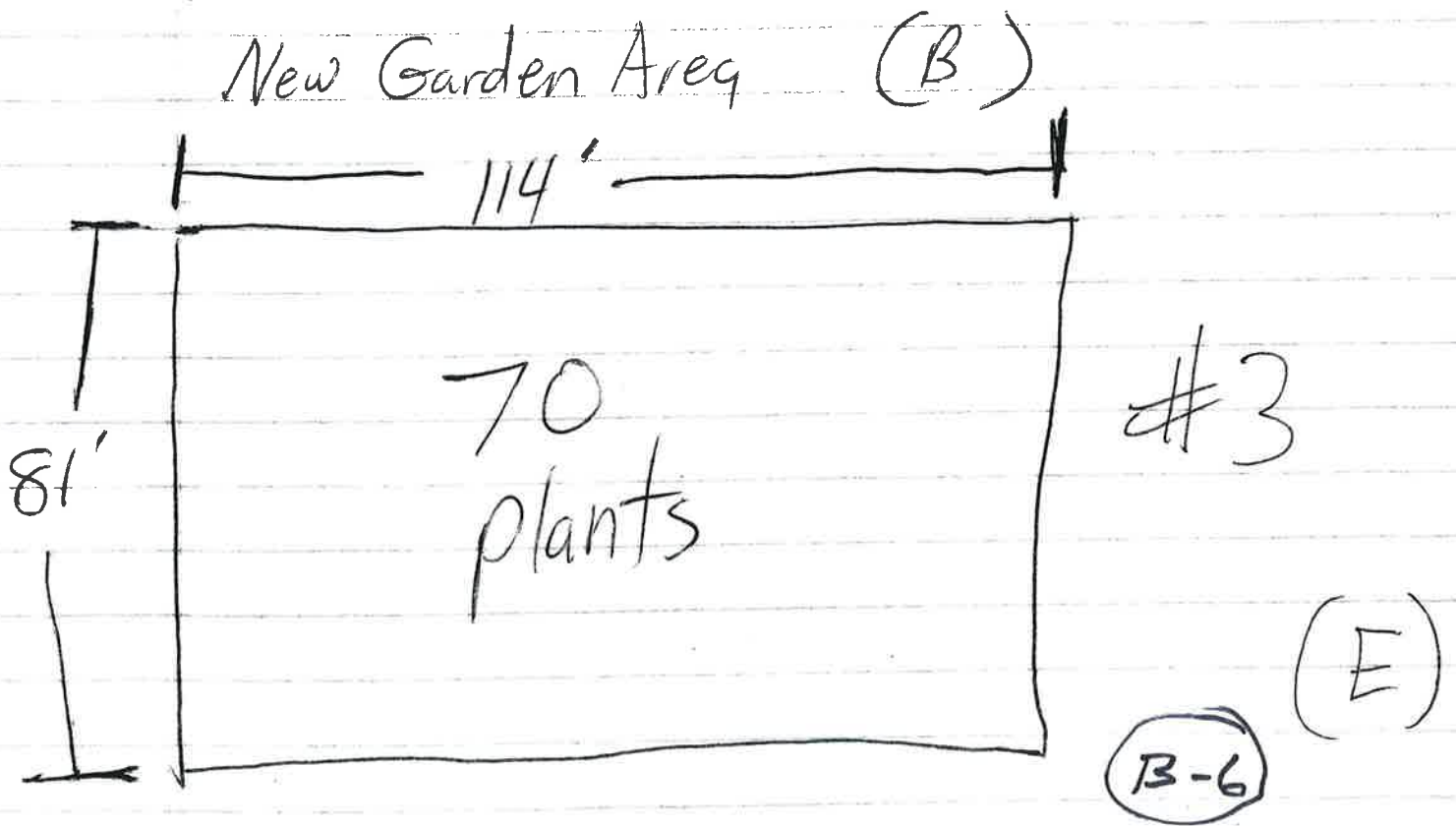
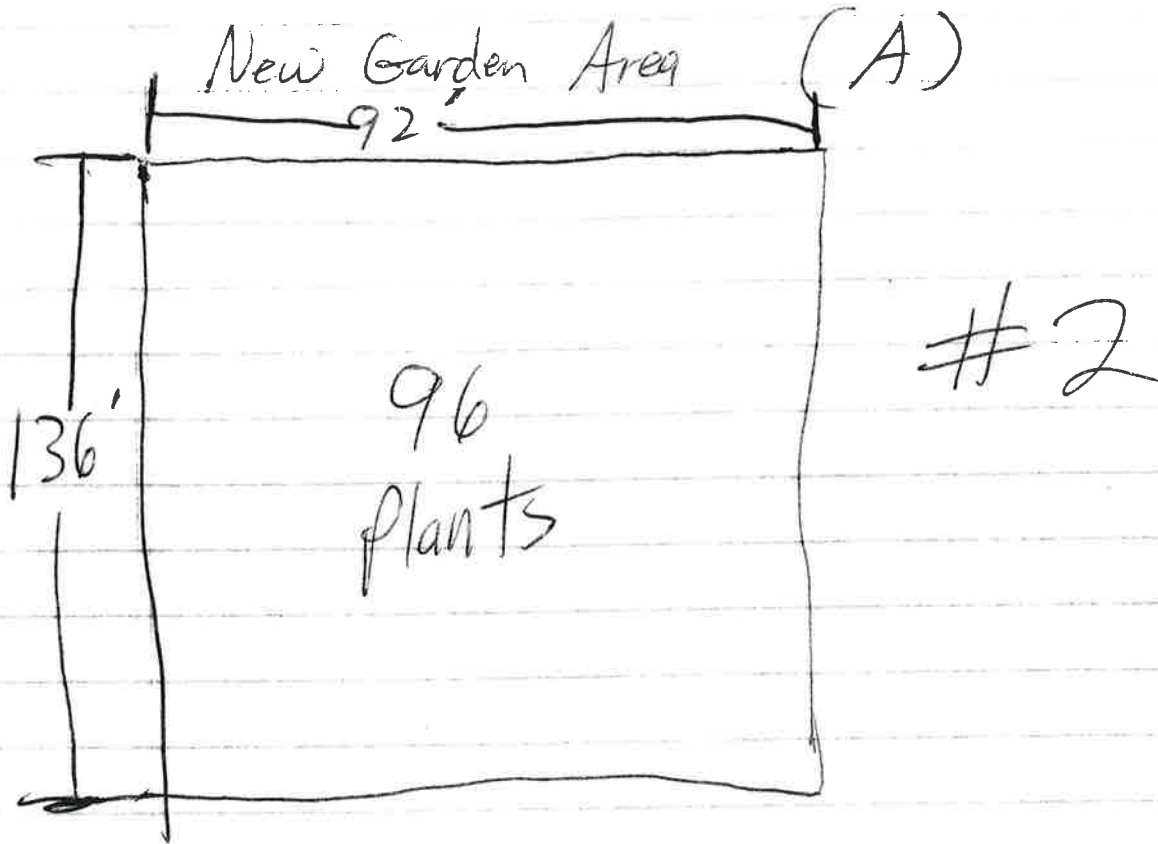
(B-4)

2017 Garden Proposal #1



My growing style in 300 gallon grow bags will produce an average 7.75' diameter plant. 10,000 sq ft. of Canopy = 212 plants. I will need 28,076 sq ft of garden Area. This will include 3 separate Fenced in + Locked Areas, Meeting all setback Requirements.





Will it be possible for Connor Cannabis Company, under this License, to lease out a portion of Garden Area and canopy to someone who could also purchase say a 1 C license.

If so, Garden Area 1 of 2500 sq. ft. and 25 plants would be utilized for this purpose.

Thank you for your consideration.

Curt M Connor

Connor Cannabis Company
 APN: 14-450-14

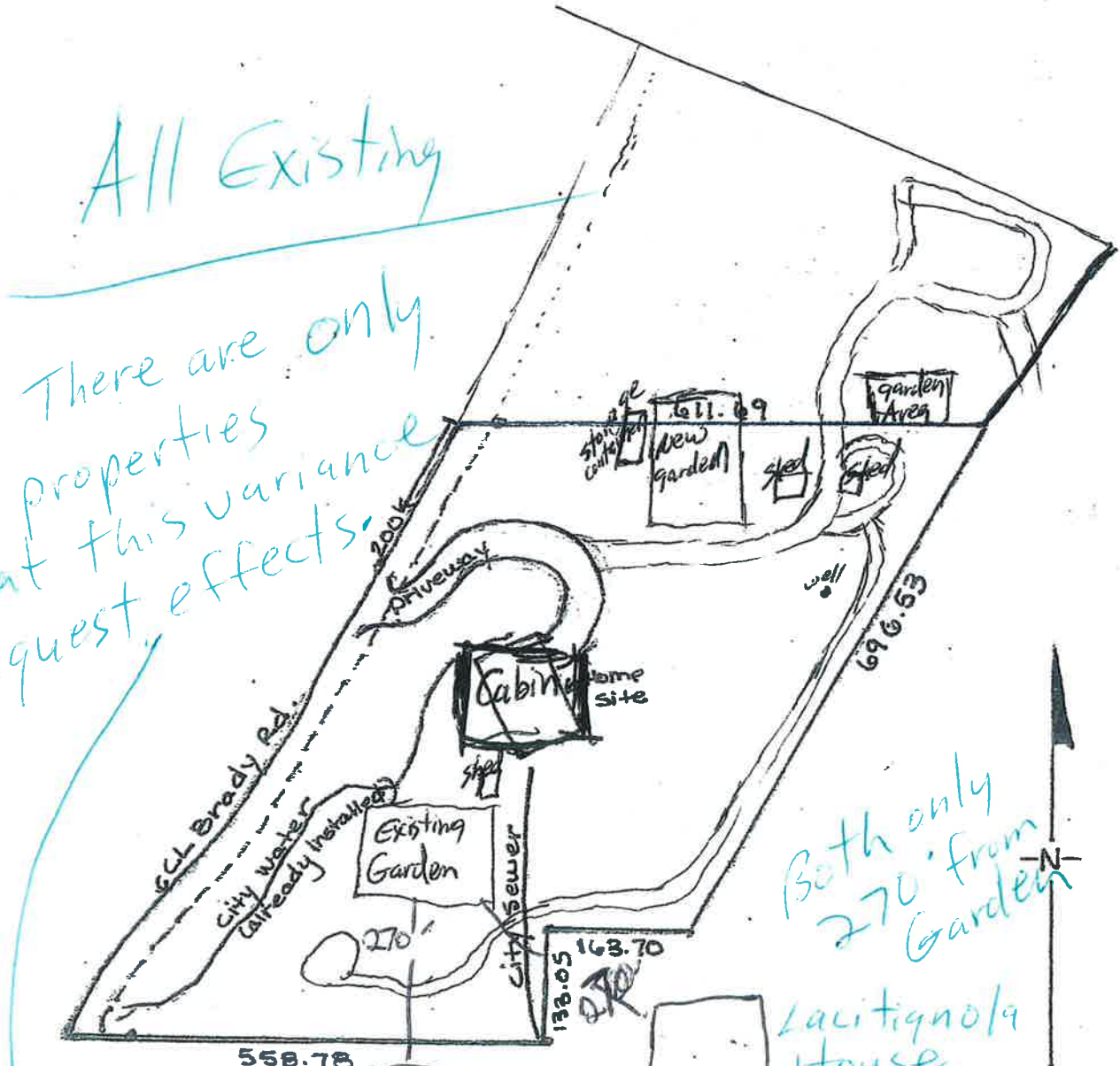
(F)

(B-6)

PLOT/SITE PLAN

All Existing

There are only 2 properties that this variance request effects.



Both only 270' from Garden

Lacitignola House

Mike + Shirley Armstead House

TRINITY COUNTY BUILDING DEPARTMENT

APPLICANT PREPARED SITE PLAN

Permit No.

| | |
|--------------------------------|-------------------------|
| Drawn By: <i>Curt Connor</i> | APN: 14-450-14 |
| Date: 2-7-17 2-7-17 | Owner Name: Connor |
| Scale: not to scale | Lot Area: <i>11,235</i> |

EXHIBIT "C"

Google Earth

feet
meters
← 120
← 100
← 80
← 60
← 40
← 20

1000

500



Google Earth



EXHIBIT C-2

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