

<p>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT Initial Commercial Cannabis Variance</p>
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PLANNER: Bella Hedtke

APPLICANT AND PROPERTY OWNER: Nataliya Mihailova

AGENT: Mitch Ivanoff

REQUEST: Initial Commercial Cannabis Variance from the required 350' cultivation setback from a neighboring residential dwelling. (Trinity County Code 17.43.050.A.8)

LOCATION: 1531 Lower Mad River Rd., Mad River, CA 95552 (APN: 018-050-67-00)

GENERAL PLAN DESIGNATION: Rural Residential (RR)

ZONING DISTRICT: Rural Residential 10-acre minimum (RR10)

RECOMMENDATION: Approve with Conditions

ADJACENT LAND USE AND ZONING INFORMATION:

Direction	Land Use	Zoning	General Plan Designation
North	Res., Cannabis	UNC	RE
South	Residential	RR10	RR
East	Residential	RR10	RR
West	Res., Cannabis	RR10	RR

ATTACHMENTS:

- 1 – Project Location Map
- 2 – Detailed Site Map (Provided by Agent)
- 3 – 350' Setback with Comment Status Map
- 4 – Site Visit Photos
- 5 – Slope Map
- 6 – Written Agreement
- 7 – Applicant's Supplemental Comment

PROJECT DESCRIPTION: The applicant has a pending Small Mixed-Light Commercial Cannabis Cultivation license application in Trinity County's Commercial Cannabis Program. As part of this process the applicant has applied for a variance for Trinity County Code 17.43.050.A.8. to reduce the required 350' residential setback to allow their cultivation site to be located less than 350' from one (1) neighboring residence.

APN	DISTANCE FROM CULTIVATON SITE	COMMENT STATUS
018-050-68-00	150'	No Comment

The owner of APN 018-050-68-00 did not submit formal comments, although the applicant submitted a written agreement that was signed between the applicant and the impacted neighbor (Attachment 6).

AGENCY COMMENTS: Project referrals were sent to the following agencies.

REFERRAL AGENCIES	COMMENT STATUS
County Assessor's Office	No Comment
County Building Department	No Comment
County Environmental Health	No Comment
County Transportation Department	No Response
Code Compliance	Comment

Code Compliance Inspector: "The parcel is large enough to relocate cultivation area. Need a site visit to determine if terrain would allow relocation."

Staff Response: Staff visited the site on August 28, 2019. Moving the cultivation site to the northwestern portion of the parcel would allow the applicant to meet the 350' requirement. However, the northwestern portion of the parcel has steep slope and uneven terrain and would result in high levels of unnecessary mass grading and possible erosion/sediment runoff to relocate the existing cultivation site (Attachment 5). The applicant provided a supplemental letter that mentions this concept (Attachment 7).

ENVIRONMENTAL EVALUATION: Categorical Exemption (15301 Existing Facilities)

FINDINGS: The following findings shall apply to the N. Mihailova Commercial Cannabis Setback Variance (CCV-2019-033):

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 Small Mixed-Light Commercial Cannabis Cultivation operation, 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, 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 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 impacted neighbor, whose residence is within 150' feet of the proposed cultivation area, has entered into a written agreement with the applicant (Attachment 6). Therefore, there is an established dialogue between the neighbor and the applicant if the odor were to become injurious. If the impacted property (APN 018-050-68-00) 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 specific variances from this standard, consistent with the requirements for variances in State law and the County Zoning Code. The subject parcel contains special circumstances which justifies the granting of a variance from the residential setback requirement and would be appropriate for any property owner facing similar circumstances. Given the topography, irregular shape, and size of the project parcel (APN: 018-050-67-00) the applicant would not otherwise be able to utilize the full 10,000 sq. ft. canopy size of a Small Mixed-Light Commercial Cannabis Cultivation license as other program applicants in the nearby region. 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:

- Approve Commercial Cannabis Variance Application CCV-2019-033 to reduce the cultivation site setback in Trinity County Code 17.43.050.A.8. from 350 feet to 150' from the residence located on APN 018-050-68-00, subject to the findings and conditions as stated in this staff report.

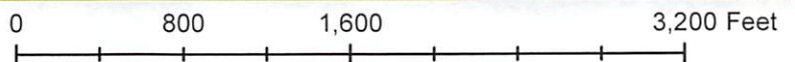
CONDITIONS OF APPROVAL: Upon approval by the Planning Commission, the following Conditions of Approval shall apply to the N. Mihailova Commercial Cannabis Setback Variance (CCV-2019-033):

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. The renewal 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.

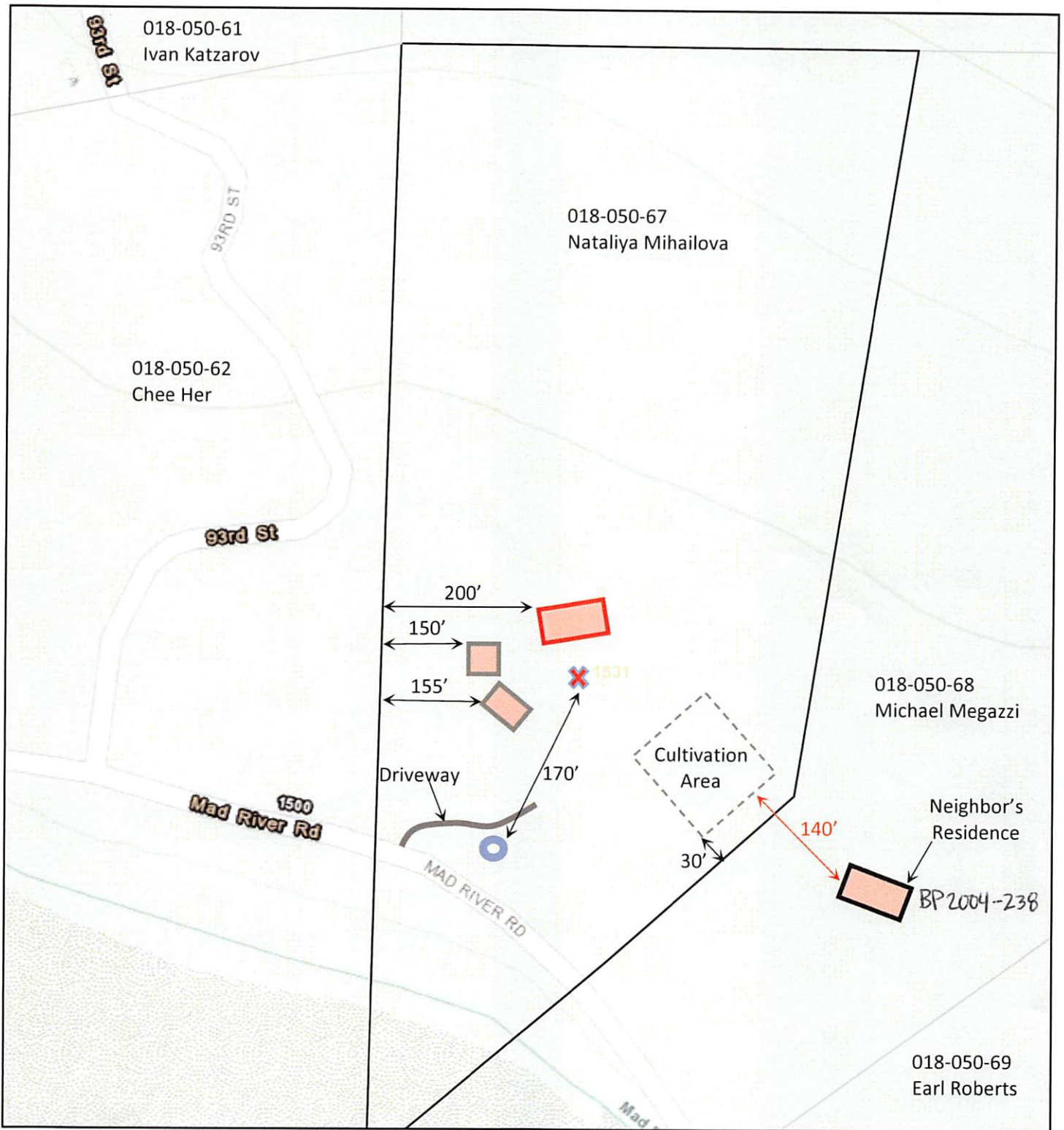
2. The variance shall be subject to the securing of all necessary permits, licenses, and approvals for the proposed Commercial Cannabis Cultivation operation from all County and State agencies having jurisdiction over any aspect of the operation.
3. Structures on the property shall be in compliance with 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.




ATTACHMENT 1

CCV-19-33
APN 018-050-67-00
Project Location

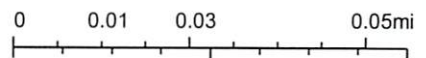


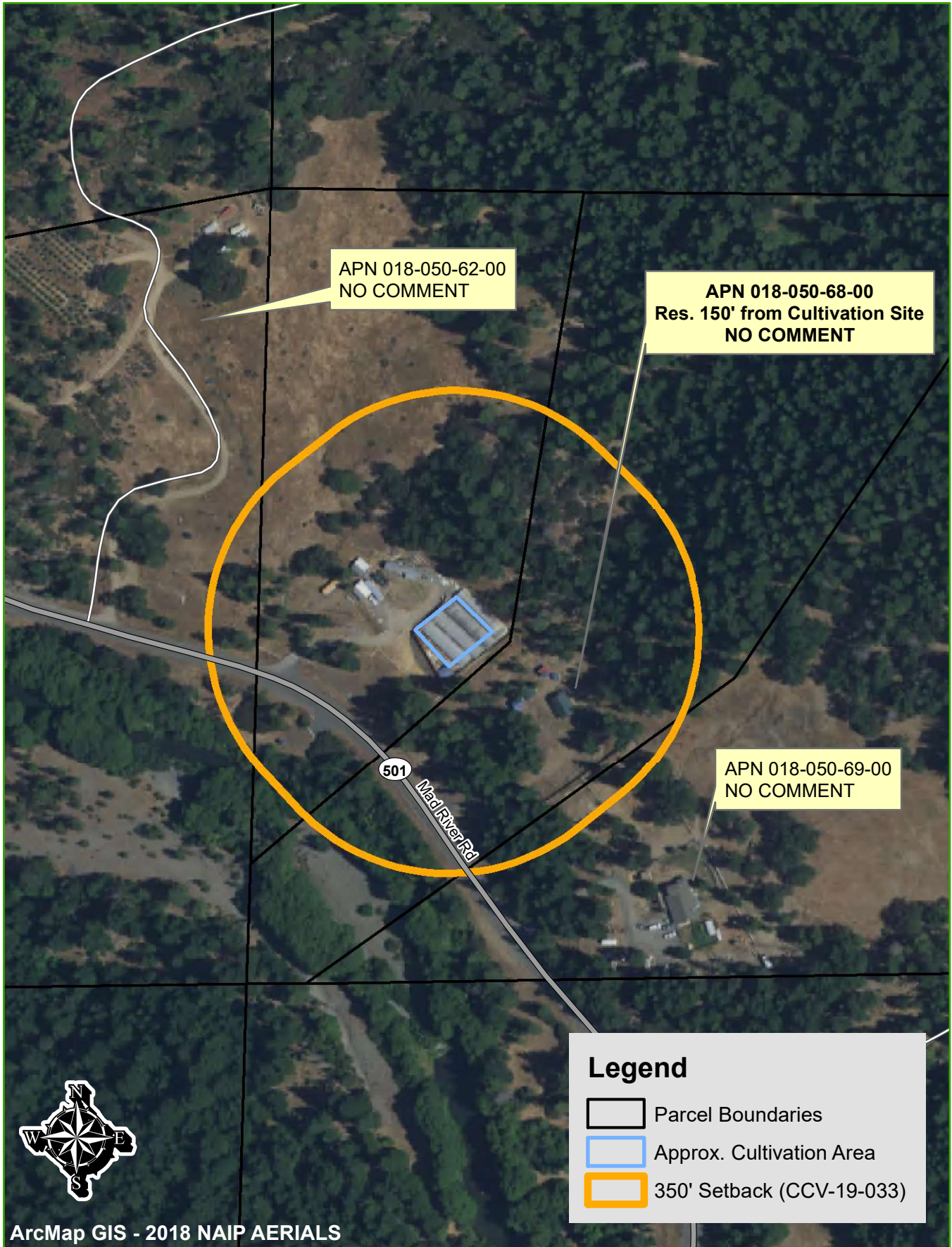
ATTACHMENT 2 - DETAILED SITE MAP



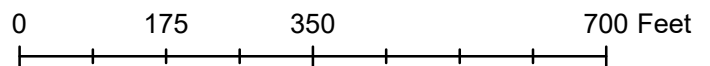
-  Proposed new well location
-  Existing permitted septic
-  Existing sheds

1:2,257





ArcMap GIS - 2018 NAIP AERIALS



ATTACHMENT 4 - SITE VISIT PHOTOS



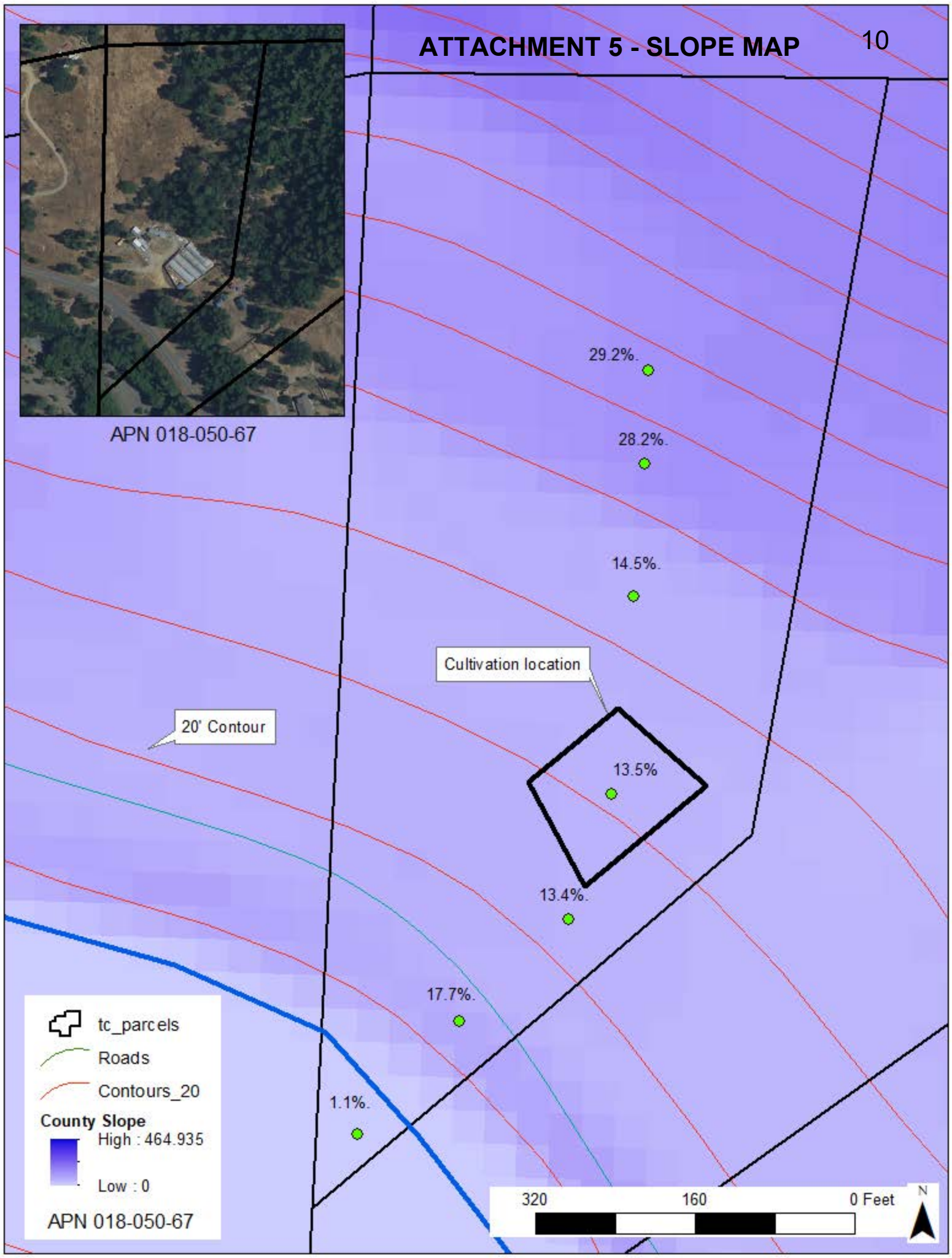
Current site conditions.



ATTACHMENT 5 - SLOPE MAP





APN 018-050-67




20' Contour

Cultivation location

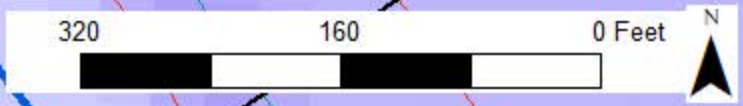
 tc_parcel

 Roads

 Contours_20

County Slope
High : 464.935
Low : 0

APN 018-050-67



ATTACHMENT 6 - WRITTEN AGREEMENT


Agreement

This agreement is herein entered between Michael Magazzi, residing on 1631 Mad River Road, Mad River, CA 95552, and Nataliya Mihailova, residing on 1531 Mad River Road, Mad River, CA 95552.

Nataliya Mihailova agrees that she will locate her gardening area 30 feet away from the property line of her property located on 1531 Mad River Road, Mad River, CA 95552, adjacent to Michael Megazzi owned property located on 1631 Mad River Road, Mad River, CA 95552.

Furthermore, Nataliya Mihailova agrees that she and/or her agents will not allow artificial light to escape from her gardening area after sunset and before sunrise.

This agreement is effective upon signing and until revoked by both parties.

 *May 17 2019*
Michael Megazzi


Nataliya Mihailova

Date: May 17, 2019

ATTACHMENT 7 - Applicant's Supplemental Comment

1. The existing ordinance provides specific guidelines that the Commission needs to follow when considering approving variances; more exactly Section 31 of Ordinance No. 315 titled Variances with which I'm sure the Commission is more than familiar with. The guidelines are as follows:
 1. No special privilege. Approving this ordinance would not be an extension of special privilege to the subject property as all license holders in Trinity County are entitled to the same rights under the county ordinance and have the same responsibility to abide by the county laws. Furthermore, the circumstances are such that the same variance would be appropriate for any property owner facing similar circumstances. This is because any property owner who secures support from the impacted neighboring property owners and complies with all applicable laws shall be entitled to such variance.
 2. Use variance prohibited. This variance is not intended to locate a use in a zone from which it is prohibited by the Ordinance. This is because the Ordinance allows for cannabis cultivation on properties zoned RR-10
 3. Disservice not permitted. Approving this ordinance will not be injurious to the public welfare, nor to the adjacent properties or natural environment. As a matter of fact, approving the variance will be beneficial to the local community and natural environment. For example, it will bring investment to the local economy, boost revenues of local business owners, generate county fees, increase in real property values, help with unemployment, create larger buffer zones from any water courses, and reduce grading.
 4. Not adverse to the General or Specific Plan. Approval of this variance would not materially change or impact the purpose or intent of the Zoning Ordinance, General Plan, or Specific Plans of the county. Actually, not approving the variance would constitute material alteration and deviation from the Zoning Ordinance and/or General Plan. This is because the current law provide for the approval of variances for properties with the same zoning and variances for properties under the same circumstances have been approved in the past by the Commission.
 5. RD-1 Overlay Zone. This item from the variance guidelines does not apply to this case.

2. From the very beginning, the intent of the county has been to prevent or lessen any adverse effects from cannabis cultivation on the local community by establishing strict guidelines. However, if all variance impacted neighbors have no objections to a variance sought by their neighbor, it only makes sense to approve such variance, since these same activities that require variance would not adversely impact any neighboring properties, the environment, and the community as whole. That is why the public hearing process was established. It was established to consider comments from all parties impacted. If no objections are presented by any impacted parties (impacted parties are ones that are within 350 feet of a cultivation site) and all applicable laws are followed by the party seeking variance, it would be prohibitive to deny this variance.

3. Relocating the cultivation area outside of the 350 feet distance will cause unnecessary environmental disturbance and damage. Without the variance, major grading needs to be completed to accommodate the project. Grading, as we all know, is one of the main causes of erosion and sediment delivery to water courses. Moreover, the unique size, shape, topography of the property, and the existence of a Class-3 water course currently create unique hardship to this project. Moving the existing cultivation area out of the 350-foot buffer zone will relocate the cultivation area closer to the natural water courses on the property and may pose additional risks to fish, wildlife, and the environment as whole.

Based on the fact that 1) there are no objections from any impacted property owners, 2) the verbiage of the existing county ordinance, 4) unique hardship that may be created by the topography, size, and shape of the property, 5) risks of erosion and sediment delivery to water courses due to grading and relocating the existing cultivation area, and 5) the county variance guidelines, I respectfully request the approval of this variance by Trinity County Planning Commission.

Thank you very much for the time, attention, and understanding.

Respectfully,

Nataliya Mihailova