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| <p>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT Initial Commercial Cannabis Variance</p> |
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DATE PUBLISHED: April 17, 2020

PLANNER: Bella Hedtke, Associate Planner

APPLICANT AND PROPERTY OWNER: Chad Thao

CONSULTANT/AGENT: Deborah Risling

REQUEST: An application requesting a variance from the required 350' Cannabis cultivation setback from one neighboring residential dwelling (per Trinity County Code Section 17.43.050.A.8).

LOCATION: 159 Rose Ln., Hayfork (APN: 017-430-45-00)

APPROX. ACREAGE: 3.11

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

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

STAFF RECOMMENDATION: Approve with Conditions

ADJACENT LAND USE AND ZONING INFORMATION:

| Direction | Land Use | Zoning | General Plan Designation |
|-----------|---------------------------------------|--------|--------------------------|
| North | Residential/Proposed Cultivation Site | RR10 | RR-L |
| South | Residential | RR10 | RR-L |
| East | Vacant | RR10 | RR-L |
| West | Residential/Vacant | RR10 | RR-L |

ATTACHMENTS:

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

PROJECT BACKGROUND: The applicant has a pending Small Outdoor Commercial Cannabis Cultivation license application processing in the Trinity County's Commercial Cannabis Program. A Small Outdoor license type would allow the applicant to cultivate between 5,001 and 10,000 sq. ft. of total canopy. The applicant initially requested a variance to decrease the 350' setback from two neighboring dwellings, but given the suggestion from Cannabis Code Compliance staff, the variance request has been reduced from two neighboring residences to one neighboring residence as discussed below:

Comment from Cannabis Code Compliance Inspector: "By eliminating the need for a second variance by downsizing the designated area the applicant should still have the ability to cultivate 10,000 sq. ft. of canopy."

Please see Attachment 3 for a visualization explanation.

Response:

Per TCC 17.43.010 (Definitions), "Designation Area" is defined as:

"Designated area" means the hoop-house, greenhouse, and/or outdoor area(s), identified for the planting, growing and harvesting of cannabis, excluding drying, processing and other post-harvest cultivation activities. Designated area shall not exceed two hundred percent of the area for the license type unless otherwise approved by the planning director; canopy (mature plants) will not exceed the square footage allowed per license type and the additional square footage shall include immature plants (in a vegetative state prior to flowering) and access areas. Licensees propagating immature plants for distribution or seed for distribution to another licensee shall obtain a nursery license."

According to this definition, a Small Outdoor license type is allowed up to 20,000 sq. ft. of designation area (10,000 sq. ft x 200%=20,000 sq. ft.). The Code Compliance Inspector has recommended that the applicant reduce their designated area by approximately 1,800 sq. ft. by relocating a 30' x 60' section of canopy within the remaining 18,200 sq. ft. The applicant will be responsible for determining the exact site redistribution that will work for their parcel, while still meeting all other cultivation development standards (i.e. property line setback, riparian setback etc.). Proof of the relocation must be received and verified by the Code Compliance Inspector prior to license issuance (Condition #5). The applicant's consultant is aware of this condition and agrees that relocation/distribution is possible.

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 |
|---------------|--|----------------|
| 017-430-33-00 | 125' | No Comment |

AGENCY COMMENTS: Besides County Cannabis Code Compliance staff, no other public agencies provided comments on this project.

PUBLIC COMMENTS: As of the writing of this staff report, one public comment was received from a property owner (Sharlimar Gamlen) with a residence outside of the 350' setback but within 300' of the subject property lines (Attachment 5). This property owner received a legal notice regarding this project per Govt. Code Section 65091. A brief summary of Sharlimar's concerns and a response from County staff is written below:

Concern #1: Cannabis Allergies

Summary: Mrs. Gamlen's husband is allergic to Cannabis when it is ingested or smoked. They are unsure if the addition of a new Cannabis cultivation site nearby will aggravate his allergies or not.

Response: In order to reduce this cultivation site's overall need for a variance staff has required the applicant to relocate a 30' x 60' section of their cultivation site farther away from the residence on the southwest side of the cultivation site (same direction as Mrs. Gamlen's parcel). The residence located on APN 017-430-46-00 is now outside of the required 350' setback. The applicant's consultant reported that this section was relocated earlier this week. With this requirement the cultivation site was moved farther away from the parcel/ residence. Mrs. Gamlen's residence is approximately 440' from the closest edge of the proposed cultivation site, based on GIS aerial imagery (Attachment 3).

The 350' setback was incorporated into the cultivation ordinance (Ordinance No.315-843 Commercial Cannabis Cultivation Amendment) with the assumption that residences outside of this setback would experience less odor and other cannabis related nuisances than residences located within the 350' setback.

Concern #2: Road Maintenance

Summary: Mrs. Gamlen is concerned if the volume of heavy traffic will increase if this new cultivation site is approved. She mentions that she has noticed an increase in traffic since cultivation operations have moved in on Rose Ln, specifically in regards to activity associated with APN 017-430-33-00. She requests a road maintenance agreement in which the cost burden in which cultivators would pay a larger portion to maintain the road than residences that do not cultivate cannabis.

Response: Private roads are outside of the Trinity County Department of Transportation enforceable jurisdiction, therefore, road maintenance agreements are usually handled privately between property owners, so we are unable to condition this variance request to create and enforce a private road maintenance agreement.

Concern #3: Municipal Water Pressure

Summary: Mrs. Gamlen is concerned if water usage earlier in the water line will impact her property's water pressure.

Response: The applicant's only source of water will be municipal water provided by Trinity County Waterworks District No. 1 (Hayfork Water District). After speaking with the District Manager of Trinity County Waterworks he informed me that with the applicant's current residential meter Mrs. Gamlen probably won't experience a reduction in pressure due to someone else's water usage earlier in the water line. Staff will be adding a condition to the

applicant's variance that would require them to remain at a residential water meter so they would not be able to upgrade (Condition #6).

Additionally, the applicant's Site Management Plan states that the applicant will use a drip irrigation system to water their crops. Water usage is assumed to be more efficient through the use of a drip irrigation system, when managed properly, than conventional hand watering because there will be less overall water loss. Less water use could reduce any possible impact on water pressure later in the water line as well.

FINDINGS: The following findings shall apply to the C. Thao Commercial Cannabis Setback variance (CCV-20-01) for APN 017-430-45-00:

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 are less than 350' from the proposed cultivation site. While staff recognizes that the property owner of APN 017-430-47-00 has expressed their concerns, staff is recommending approval based on the following conclusions:

- They do not have a residence within 350' of the proposed cultivation site nor directly adjacent to the subject property.
- Their concerns regarding private road maintenance issues are outside of the County's enforceable jurisdiction.
- The water pressure concern is now considered a "nonissue" because the water district does not foresee a drop in water pressure will occur due to this variance request.
- After staff researched and provided additional information to Mrs. Gamlen's concerns, she seemed to no longer strongly object to the variance request.
- A commercial Cannabis variance must be renewed annually, if new concerns arise then those new concerns can be addressed prior to or at the renewal of this variance.

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-20-01 to reduce the cultivation site setback in Trinity County Code 17.43.050.A.8. from 350 feet to 125' from the residence located on APN 017-430-33-00, subject to the findings of fact and conditions as stated in this staff report.

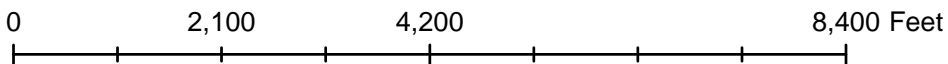
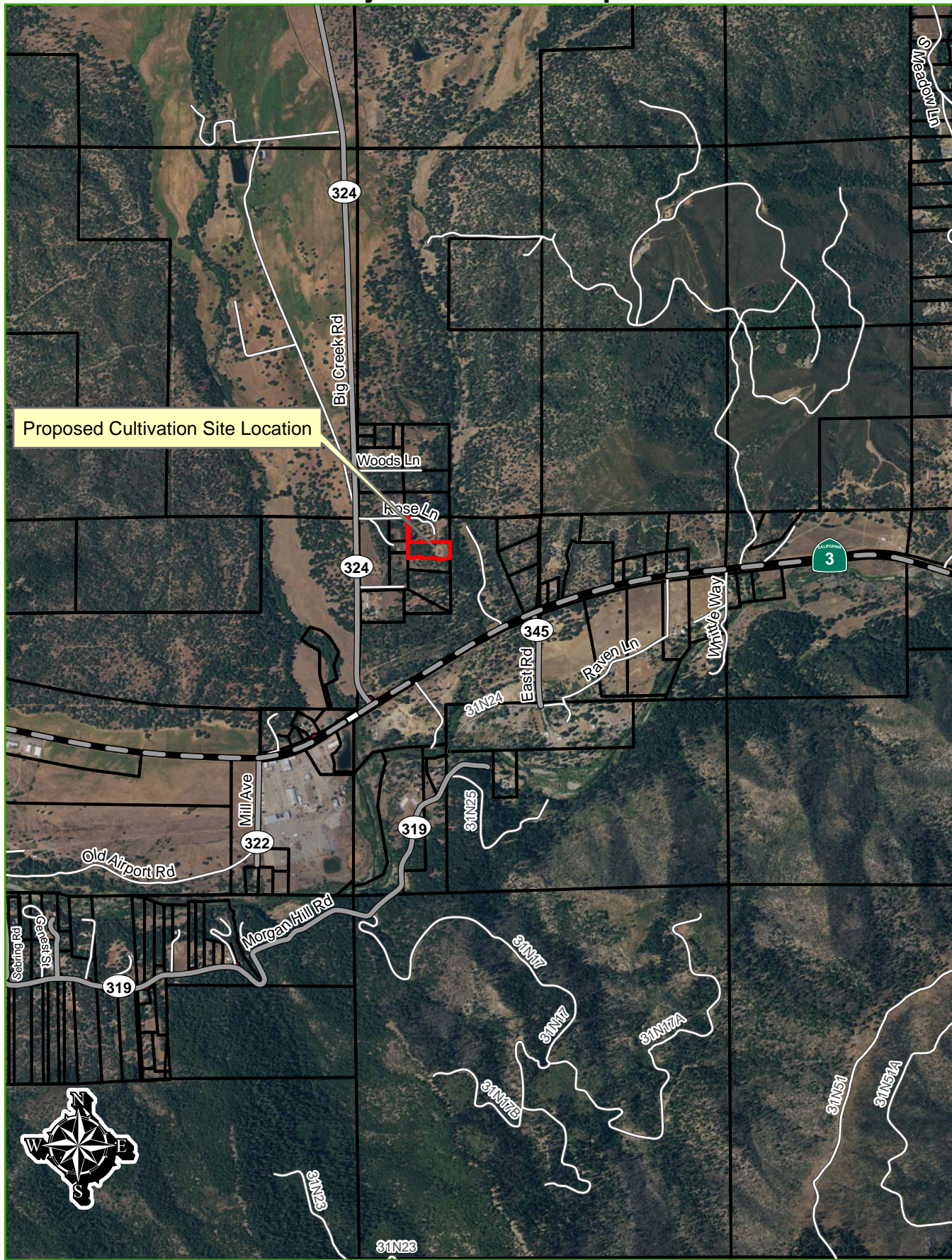
CONDITIONS OF APPROVAL: Upon approval by the Planning Commission, the following Conditions of Approval shall apply to the C. Thao Commercial Cannabis Setback Variance (CCV-20-01) for APN 017-430-45-00:

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.
 6. Photographic proof of relocation of the mentioned 30' x 60' section must be received and verified by the Code Compliance Inspector prior to license issuance.
 7. The parcel's municipal water meter must not be upgraded from a residential meter status.

END OF CONDITIONS

ATTACHMENT 1
CCV-20-01 C. Thao
APN 017-430-45-00
Project Location Map



Thao, Chad
159 Rose Lane
Hayfork, Ca. 96041
APN: 017-430-45-00

Access Road

Driveway

Proposed cultivation site

Cultivation Dimensions

ATTACHMENT 2 Site Map

Rose Lane

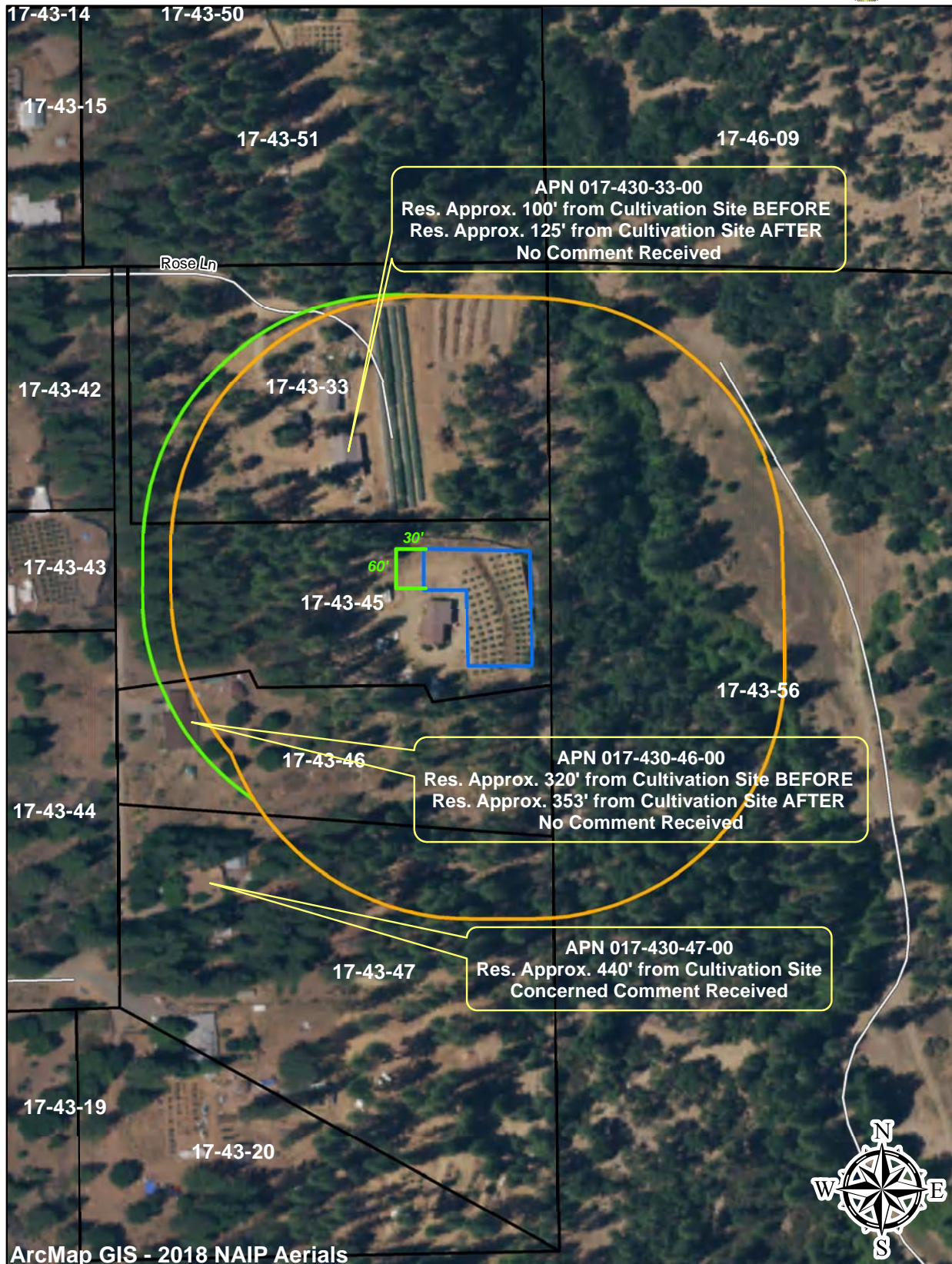
Gate

Home

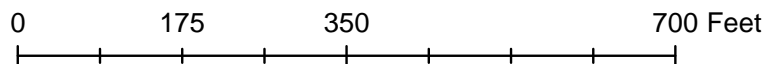
200 ft



ATTACHMENT 3
350' Setback with Comment Status Map
APN 017-430-45-00
CCV-20-01 C. Thao



ArcMap GIS - 2018 NAIP Aerials



**ATTACHMENT 4
Site Visit Photos
APN 017-430-45-00
CCV-20-01 C. Thao**



Photo of 30' x 60' section that will be relocated.



View of residence that is less than 350' from cultivation site.



View of small bank that separates upper and lower cultivation site.

General Site Condition Photos



ATTACHMENT 5
Concerned Neighbor Comment

Bella Hedtke

From: sharlimar gamlen <sharlimar8888@yahoo.com>
Sent: Wednesday, April 15, 2020 3:42 PM
To: Bella Hedtke
Subject: Re: parcel 017-430-45-00

Thank you for looking into our "concerns" regarding the variance. I'm glad we voiced them and that you were able to respond back. We will not be "appealing" this. I appreciate the time and effort you put into addressing our concerns and finding out how these issues will be handled, or that they cannot be address through your department. You stated that the water district said we "probably won't experience a reduction in pressure". In the event we have a noticeable reduction in pressure I will probably contact Craig Hair Jr and discuss matters with him. If we don't have a noticeable reduction in pressure then I will leave matters alone. We also have the option of looking into fees, permits, and testing regarding well drinking water if we are forced to seek the option of using a well for potable water, in which case I would probably contact Mr. Hedtke if he is still there. (Probably a relation of yours). Hopefully no drop in pressure will happen. Anyway, there are always options. Again, thank you.

On Wednesday, April 15, 2020, 09:29:25 AM PDT, Bella Hedtke <bhedtke@trinitycounty.org> wrote:

Hi Sharlimar,

I was able to speak with the Deputy Director of Planning, Lisa Lozier, and the Director of Building and Planning, Kim Hunter, in order to provide you with a thorough reply to your concerns.

Responses to your three concerns are written below:

Concern #1: Cannabis Allergies

Response: In order to reduce this cultivation site's overall need for a variance we have required the applicant to relocate a 30' x 60' section of their cultivation site farther away from the residence on the southwest side of the cultivation site (same direction as your parcel). The residence located on APN 017-430-46-00 is now outside of the required 350' setback. The applicant has already relocated this section earlier this week. With this requirement the cultivation site was moved farther away from your parcel/ residence. Your residence is approximately 440' from the closest edge of the proposed cultivation site, based on GIS aerial imagery. I've attached a GIS map for this variance request that will be included in the variance staff report so you can see a visual explanation of this.

The 350' setback was incorporated into the cultivation ordinance ([Ordinance No.315-843 Commercial Cannabis Cultivation Amendment](#)) with the assumption that residences outside of this setback would experience less odor nuisances than residences located within the 350' setback.

Concern #2: Road Maintenance

Response: Trinity County Department of Transportation does not have the authority to maintain private roads, therefore, road maintenance agreements are usually handled privately between property owners, so we are unable to condition this variance request to create and enforce a private road maintenance agreement.

Concern #3: Municipal Water Pressure

Response: The applicant's only source of water will be municipal water provided by Trinity County Waterworks District No. 1 (Hayfork Water District). After speaking with the District Manager of Trinity County Waterworks he informed me that with the applicant's current residential meter that you probably won't experience a reduction in pressure due to someone else's water usage earlier in the water line. We will be adding a condition to the applicant's variance that would require them to remain at a residential water meter so they would not be able to upgrade.

Additionally, below are two excerpts from the applicant's Site Management Plan from the Cultivation Site Characteristics section and the Conservation Methods section that mention water management:

From Cultivation Site Characteristics:

"Due to the inhospitable nature of the soils in this area, all cultivation and gardening will occur in above ground in raised planter boxes. The native soils are so dense, the watering methods used will be drip irrigation in an attempt to prevent any excess water from running off the hard, underlying surface. Domestic, landscape and agricultural water is derived from the local municipal water district."

From Conservation Methods:

"Water conservation shall include a closed irrigation system. Watering shall be restricted to mornings and evenings. No landscape watering will occur. There will be no water storage or containers. Domestic water is used conservatively."

Water usage is assumed to be more efficient through the use of a drip irrigation system, when managed properly, than conventional hand watering because there will be less overall water loss.

We appreciate you taking part in the public process and expressing your concerns for this variance request. At this time, we are going to recommend approval of this variance to the Planning Commission because 1) you do not have a residence within 350' of the proposed cultivation site, 2) your concerns regarding road maintenance are outside of the

County's enforceable jurisdiction and 3) the water pressure concern is now considered a "nonissue" because the water district does not foresee an issue will occur due to this variance request.

I would also like to take this time to mention the appeal process and annual approval process of the commercial Cannabis variance.

Appeal Process: If the Planning Commission approves this variance you will then have the opportunity to appeal the decision to the Board of Supervisors through the process outlined in [Trinity County Code Section 17.34.110 \(Appeals\)](#). There is a \$500 processing fee and an application that will need to be filled out.

Annual Process: After a commercial Cannabis variance request is approved by the Planning Commission, every subsequent year the applicant must renew the variance through a Director's Use Permit. You will be notified by mail next year when this variance is about to be renewed. At that time, we welcome you to provide your input and express any concerns that happened throughout the past year.

Lastly, your comment is considered public record. We normally attach comments to the variance staff report for the Planning Commission and public to read before making their final decision on the request. **Nevertheless, given the person medical history you provided about your husband, I wanted to ask if you and your husband are comfortable with us attaching your comment to the variance staff report?**

Thank you and please don't hesitate if you have any further questions/ concerns.

Bella Hedtke

Associate Planner

Trinity County Community Development Services

(Planning Department & Cannabis Division)

61 Airport Rd, Weaverville, CA 96093

Box 2819, Weaverville, CA 96093

bhedtke@trinitycounty.org

530-623-1351 ex. 5

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From: sharlimar gamlen <sharlimar8888@yahoo.com>
Sent: Sunday, April 12, 2020 8:38 AM
To: Bella Hedtke <bhedtke@trinitycounty.org>
Subject: Re: parcel 017-430-45-00

The other concern about the possible "variance" was one my spouse brought to my attention. He wonders if the water pressure will be affected by adding another grow area. Maybe the Hayfork water district maintains the same pressure regardless of how many are connected on this line and how much use. Also, the grow may intend to use nothing but "well" water. We are the very last ones on the water line here and at the end of it. We hope this doesn't affect us with a loss of pressure. Thank you.

On Friday, April 10, 2020, 05:12:00 PM PDT, Bella Hedtke <bhedtke@trinitycounty.org> wrote:

Hi Sharlimar,

To follow-up on our phone conversation, you would view the April 23rd at 7pm Planning Commission meeting on Dero Forslund's Youtube account, which can be accessed here:

<https://www.youtube.com/user/dforslund/featured>

And if you decide you would like to comment during the Public Comment period of this project you can call in on April 23rd at 7pm using this phone number and access code:

(800) 867-2581; Access Code is 6231382#

Additionally, you mentioned you may have more concerns, what were they?

Thank you for your input,

Bella Hedtke
Associate Planner
Trinity County Community Development Services
(Planning Department & Cannabis Division)
61 Airport Rd, Weaverville, CA 96093
Box 2819, Weaverville, CA 96093

bhedtke@trinitycounty.org

530-623-1351 ex. 5

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Trinity County Planning Department Webpage

Trinity County Cannabis Division Webpage

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-----Original Message-----

From: sharlimar gamlen <sharlimar8888@yahoo.com>

Sent: Friday, April 10, 2020 11:47 AM

To: Info.Planning <Info.Planning@trinitycounty.org>

Cc: sharlimar8888@yahoo.com

Subject: parcel 017-430-45-00

Hello. I recently received a letter from Trinity County Community Development Services. It stated, "Listed below is an application received by the Trinity County Planning Department. You have received this notice because you own property that is located within 300 feet of the subject property. Only that project highlighted is near your property".

The highlighted portion was stated, "Annual initial variance (CCV-20-01): A request for a variance from the required 350' Cannabis cultivation setback from a neighboring residential dwelling. (TCC 17.43.050.A.8). Project site is located at 159 Rose Ln., Assessor Parcel Number: 017-430-45-00; Applicant: C. Thao. Planner: B. Hedtke"

The letter also stated, "Please contact the Trinity County Planning Department for further assistance regarding this project at 61 Airport Road... ..or by email."

I have chosen to use email to contact you, as my automobile is in the shop and no telling when I will get it back.

The "issue(s)" I would like to raise are the following:

1) My husband is allergic to Cannabis. It may only be when it is ingested or smoked though. He used to use it for medical purposes, but the doctor determined that my spouse could no longer use it for that purpose because my spouse was allergic and was switched to other medications. I don't know if more concentrated growing in our area would matter or not, as like I stated, this was when he ingested or smoked the Cannabis. We have other "grows" next to us on one side, across the dirt road and down one parcel on the other side; another grow on the other side of the parcel that you are referring to. So on one hand it doesn't seem right to limit this particular parcel from getting to grow their Cannabis, yet allowing all the others to do so. (Also if the "allergy" problem is affected by Cannabis "grows" then I would think that it might already be troubling).

2) "Road upkeep issues" But on the other hand (And I don't even know if you address these issues here in "Planning" or if that is another department having nothing to do with the allowing or not of the variance) we live on a "private road" of which the parcel owners can allow their guests, etc to use the road. The other grows here, in particular the one on the other side of the parcel you are referring to, have many "heavy traffic". The road gets chewed up by this traffic way more than just the few residence and their guests. I am unsure if it is just the "heavy traffic" or if it is also the equipment to bring in shipping containers, fertilizers, etc. Will this allowed "variance" bring more grow heavy traffic to our road? Prior to the "grows" here on Rose Ln the road was very flat with no potholes. (That was in part due to less traffic, less heavy often loads, the neighbor and my husband filling any potholes that developed prior to the potholes getting out of hand. Now the neighbor has died, and my husband cannot keep up with the amount of damage. Both the neighbor and us are seniors, some with health issues.) (Also the neighbors and us had closed off the "end" of the road, because it was not meant to be a "loop" but a dead end. Since that time, the grow on the one side of us used another route to get to their grow using a driveway directly off of Big Creek Rd. The traffic seemed to be at an ordinary flow usual for

residential area. The road was maintainable after the "dead end" until the new grows came in.

Is there any way the heavy traffic grows can be "responsible" to upkeep the road some? (I am not referring to splitting the cost of road up keep equally between all parcel owners along the road, because the heavy use the grows maintain [budding traffic and growing traffic along with the equipment & supplies] is disproportionate to single family residential use. Also those of us that do not "grow Cannabis" do not make the money the grows make.

All the other issues: Water, fire, criminal element, etc. I would leave to your thoughts and ideas, as to how things will or will not be affected. If this variance only deals with the "distance" issue then I should think the neighbor next door (between us and the parcel you are referring to) would be more affected than us (That parcel is closer. We are within "300 ft"--the neighbor's parcel is even closer. Both are parcels are 3 acres).

Thank you for hearing me out on this matter.
Sharlimar Gamlen parcel # 017-430-47-00
More commonly known as 303 Rose Ln.
Hayfork, CA 96041 phone: (530) 628-1008