

<p><b>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</b></p>
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**APPLICANT:** Kerwin Dixon

**REPORT BY:** Scott Watkins

**OWNER:** Kerwin Dixon

**APN:** 008-370-30

**PROJECT DESCRIPTION:**

Variance from required 350 foot cannabis cultivation setback from one neighboring residence.

**LOCATION:** 6821 Highway 299, Salyer, CA (Figure 1)

**PROJECT INFORMATION:**

- A) Planning Area: Salyer
- B) Existing General Plan Designation: Rural Residential (RR-2 ½)
- C) Existing Zoning: Rural Residential
- D) Existing Land Use: residence, commercial cannabis cultivation
- E) Adjacent Land Use Information:

	<b><u>Land Use</u></b>	<b><u>Zoning</u></b>	<b><u>General Plan Des.</u></b>
North:	Rural Residential	RR	Rural Residential
South:	Rural Residential	RR	Rural Residential
East:	Rural Residential	RR	Rural Residential
West:	Resource	Unclassified (UNC)	Resource

**BACKGROUND INFORMATION:**

The 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. 315-823)

The Cannabis Cultivation 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.

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.  
*The Cannabis cultivation site cannot be located elsewhere on the property due to the narrowness of the subject parcel and of surrounding parcels. The cultivation site is screened by vegetation from neighboring parcels. The cultivation site has resulted in the least amount of ground disturbance on the property.*
3. Disservice not permitted. A variance must not be injurious to the public welfare, nor to adjacent properties.
4. Not adverse to a 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.

#### 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 applicant is beginning the process of obtaining a Commercial Cannabis License under the county licensing program. The parcel is located on California State Highway 299, which winds North-West to South-East through Salyer. California State Highway 299 is a State of California maintained highway. The site plan prepared by staff (Figure 2) identifies on-site development and its relationship to the impacted residence (APN 008-370-29), which lies East of the subject parcel.

The subject property, 6821 Highway 299, Salyer, is 2 ½ acres and confined by a steep slope to the East, sloping into the Trinity River basin, and 500 ft. School Bus Stop buffers (Eastbound-Hwy 299 (E) Grey's Creek Turnout and Westbound-Hwy 299 (W) Pony Creek Road) to the South and West.

Relocation of cultivation areas is limited due to parcel size, buffers and topographical constraints of class I surface water, Trinity River, adjacent (west) to the subject property. Between the 350 ft. cultivation to home buffer, 30 ft. property line buffer, and 150 ft. Surface water setback from Trinity River, there is a limited amount of area remaining to cultivate due to the size of the parcel. Figure 3 – Site Map and affected Dwellings illustrate the overlap of the cultivation area buffer and the adjacent neighbor,

who is within the 350 ft. buffer. Based on a satellite review and in-person site visit, the subject property does not have any viable alternatives for relocating the Cultivation site.

Cody Smith, Code Compliance Specialist, has reviewed this project and provided the following comments: "Due to the size of the parcel, cultivation area could possibly be relocated."

A nearby resident, Rachel Baroni, owns a home at 6875 California State Highway 299 located 490 ft. to the north east of the cultivation area, has expressed concern that the cultivation areas are within the 500 ft. school bus stop buffer. The Trinity County Geographic Information System (GIS) mapping sites the Highway 299 school bus stop around the 299 bend near Ammon Rd.

After verifying the accuracy of the school bus stop locations with Kathleen Graham, the Superintendent/Principal of the Burnt Ranch School, staff developed Figure 4, which illustrates the relationship between the 500 ft. Eastbound-*Hwy 299 (E) Grey's Creek Turnout* and Westbound-*Hwy 299 (W) Pony Creek Road* bus stop buffers and the subject property's cultivation areas. Both subject property cultivation areas are outside of the school bus stop buffers.

As of this writing, no other comments have been received.

#### **ENVIRONMENTAL EVALUATION:**

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

#### **STAFF RECOMMENDATION:**

Staff recommends the following:

Approval of the variance to allow reduction of the Cannabis cultivation setback from 350 feet to 120 feet from the residence on APN 008-370-29, subject to the following conditions of approval and based on the following findings of fact:

#### ***Findings of Fact for the Variance***

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 to establish Type II, Cannabis cultivation, up to 10,000 square feet of canopy.
2. The variance is not a grant of special privilege to the applicant because relocation would result in unnecessary grading and environmental damage due to site topography. Applicant has agreed to reconfigure his cultivation area outside of the FEMA flood zone.

3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance 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  
DIXON CANNABIS SETBACK VARIANCE (CCV-18-012)**

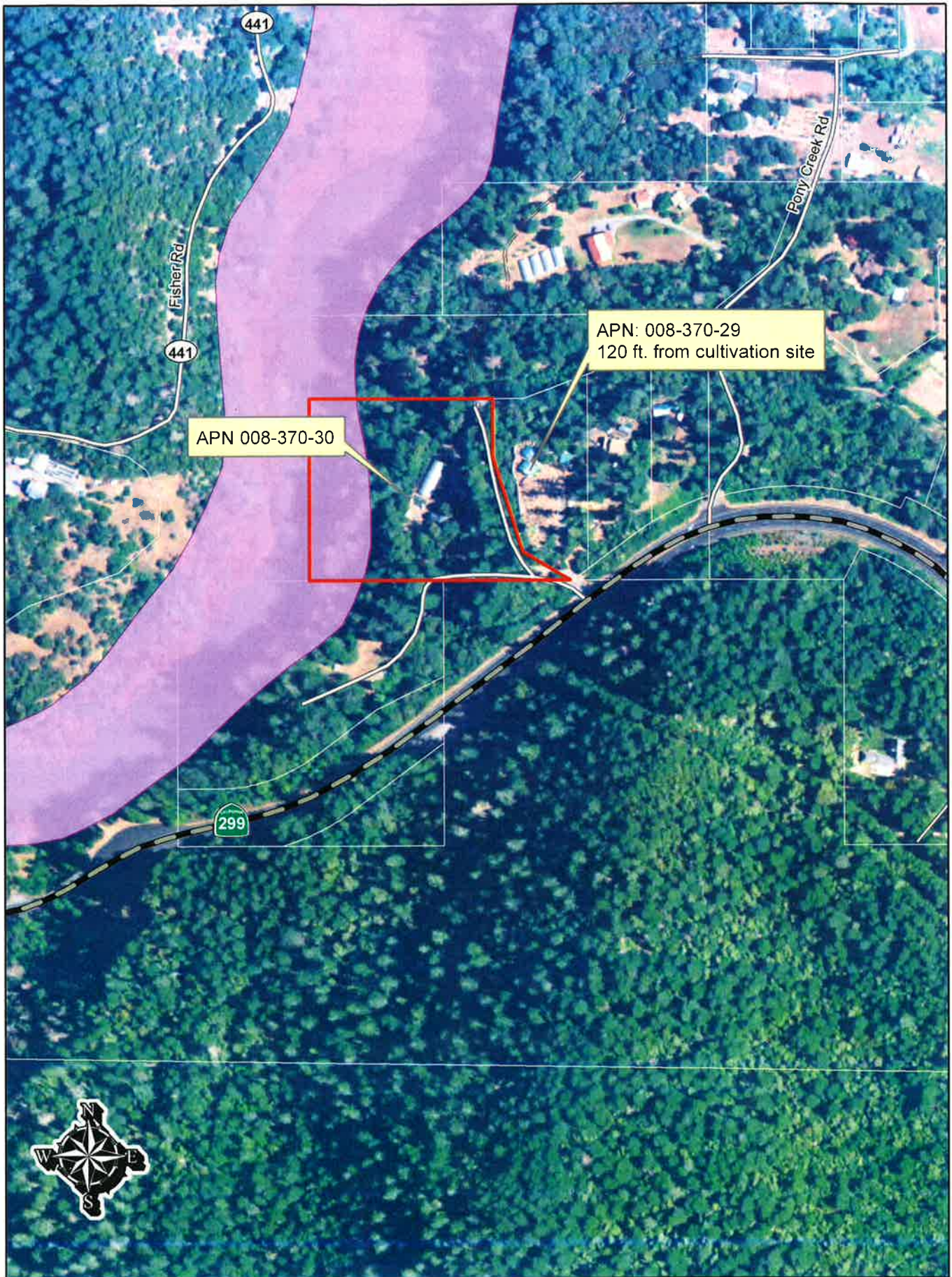
1. The variance is approved for a period of one year from **May 10, 2018** through **March 31, 2019**; provided, however, that the variance may be renewed annually.
  - a. Application for renewal shall be made by the applicant prior to expiration of the variance, preferably at least 30 days in advance;
  - 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.

# CCV-18-012 Dixon (CCL-2017-301)

## Figure 1 - Project Location and Zoning Map

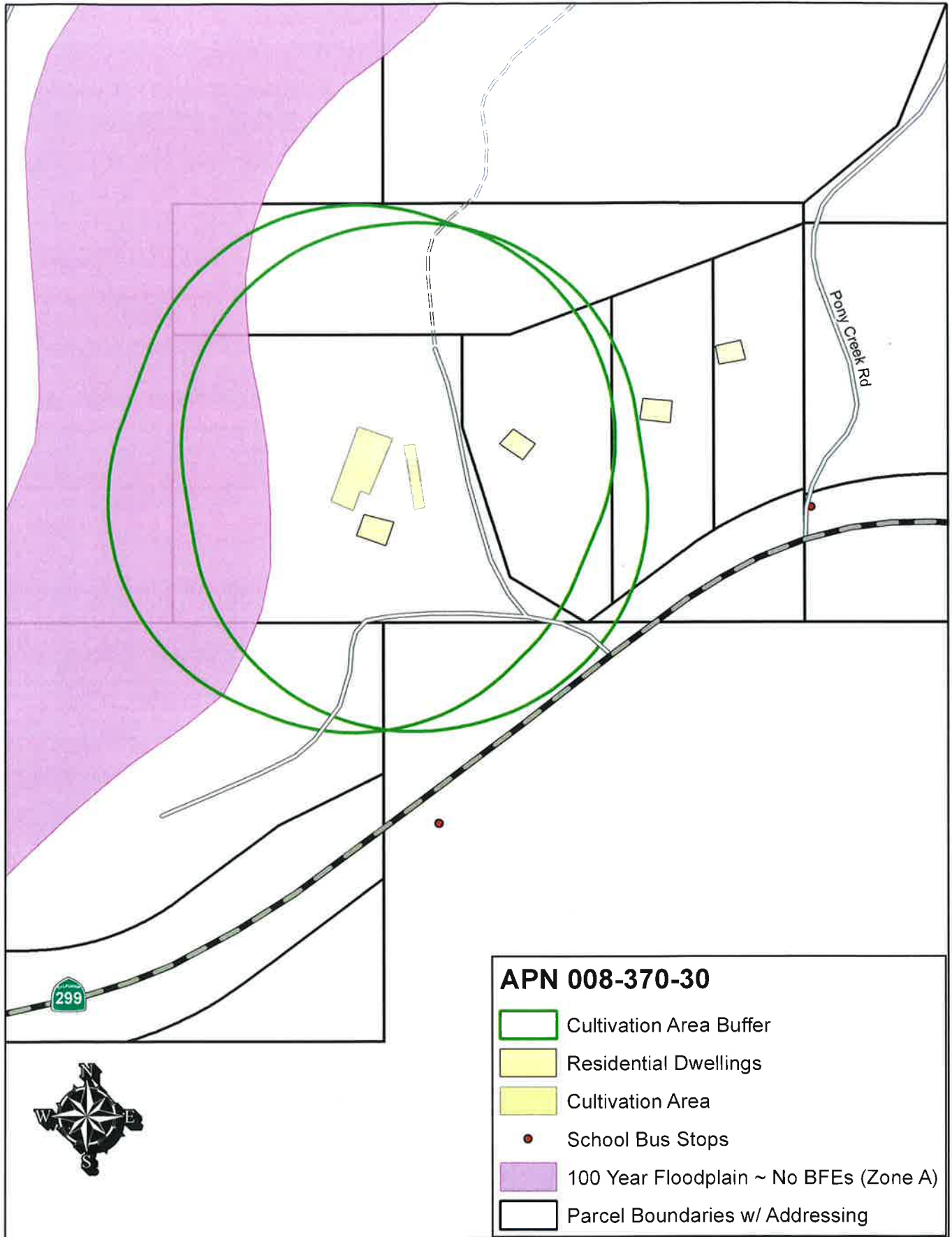


**CCV-18-012 Dixon**  
**Figure 2 - Site Map and Affected Neighbors**



0 80 160 320 480 640 Feet

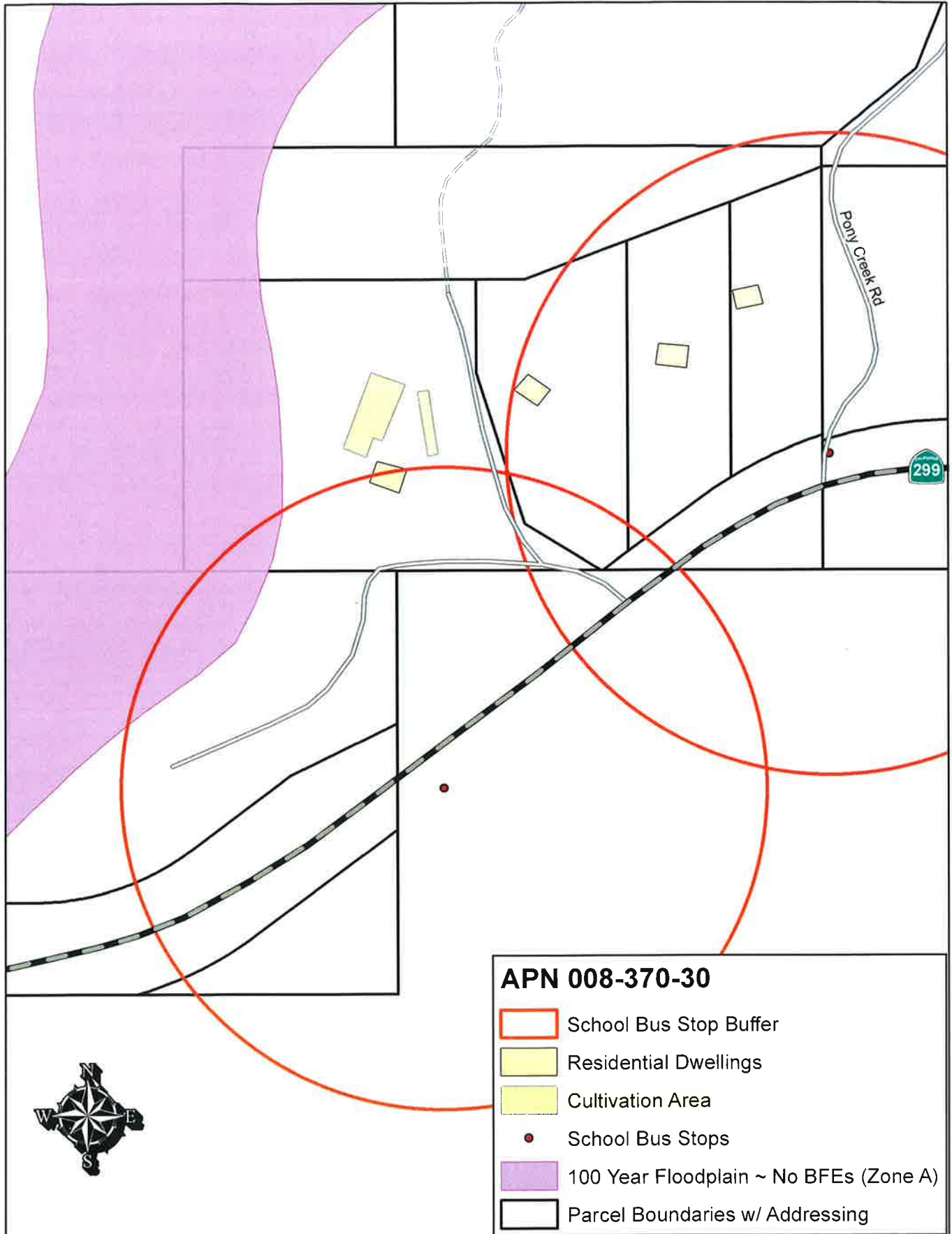
**CCV-18-012 Kerwin Dixon**  
**Figure 3 - Site Map and Affected Dwellings**



0 55 110 220 330 440 Feet

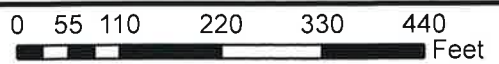


**CCV-18-012 Kerwin Dixon**  
**Figure 4 - School Bus Stop Buffer**



**APN 008-370-30**

- School Bus Stop Buffer
- Residential Dwellings
- Cultivation Area
- School Bus Stops
- 100 Year Floodplain ~ No BFEs (Zone A)
- Parcel Boundaries w/ Addressing





**CCV-18-012 Dixon CCL Variance Request**  
**Figure 5 – Site Pictures**



Picture 1: facing North towards the secondary cultivation area



Picture 2: facing South-West towards the primary cultivation area



## CCV-18-012 Dixon CCL Variance Request Figure 5 – Site Pictures



Picture 3: facing North towards the primary cultivation area



Picture 4: facing South towards the main entry gate into the subject property

Rachel Baroni  
1421 Albee Street  
Eureka, CA 95501

April 26, 2018

RECEIVED

APR 30 2018

TRINITY COUNTY  
PLANNING DEPARTMENT

Trinity County Planning  
61 Airport Road  
PO Box 2819  
Weaverville, CA 96093

Regarding: Request for "annual variance" from required 350' Cannabis cultivation setback from a neighboring residential dwelling [Ord. 315-816, Sec. 32.O.IV (5)(b)], located at 6821 State Highway 299, Salyer. APN: 005-370-30. Applicant: Dixon (CCV-18-12).

Dear Planning Commission and/or Board of Supervisors,

I am **opposed** to Applicant Dixon's request for "annual variance" from the existing Ordinance 315-816 that requires a 350' Cannabis cultivation setback for the following reasons:

- Ord. 315-816 (5) Limitation on Location to Cultivate Marijuana specifies in subsection (a) "an application **will not** be allowed for cultivation of marijuana in any amount or quantity (i) within 1000 feet of a youth-oriented facility or within 500 feet of an authorized school bus stop."
  - Pony Creek Road is a bus stop authorized by the Burnt Ranch School. This qualifies, by definition, as a "Youth-Oriented Facility" under Ord. 315-816. The Burnt Ranch School Bus delivers minor children from school to this authorized school bus stop.
- Ord. 315-816 (5) Limitation on Location to Cultivate Marijuana specifies in subsection (b) "Cultivation **will not** be allowed within 350 feet of a residential structure on any adjoining parcels."
  - There is an occupied residence within 350' setback established under Ord. 315-816.
- Ordinance No. 315-816 was declared necessary for the immediate preservation of the public peace, health and safety by balancing the needs of medical patients and their caregivers **with the needs of the community to be protected from public safety and nuisance issues** associated with the cultivation of cannabis.
  - Highway 299 is considered to be one of the most Dangerous Highways in California.
  - Pony Creek Road is located on a dangerous corner of Highway 299.
  - Increased slowdowns of the flow of traffic on Highway 299 endangers travelers.
  - Pony Creek Road is a dirt road privately maintained by its residents.
  - Marijuana cultivation has the potential to increase traffic to and from this location.
  - Increased traffic on Pony Creek Road will have adverse health effects on the residents and animals located in the area due to increased dust pollution.
  - Increased traffic on Pony Creek Road would put small children who play outside in this rural area at an additional risk of being hit by a vehicle.

"The adoption of a Zoning Plan is to promote and protect public health including but not limited to guidance, control and regulating future growth of the county; to **protect** the character and social and economic stability of residential areas within the County and to assure the orderly and beneficial development of such areas...."

## Scott Watkins

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**From:** Kathleen Graham <kgraham@tcoek12.org>  
**Sent:** Wednesday, May 2, 2018 8:57 AM  
**To:** Scott Watkins  
**Subject:** Re: verify Bus Stop location - 299

Scott- Yes, those two bus stops are accurate. The names of the stops are Eastbound-*Hwy 299 (E) Grey's Creek Turnout* and Westbound-*Hwy 299 (W) Pony Creek Road*.

Please let me know if there's any more information you need.

Thanks,

Kathleen Graham  
Superintendent/Principal  
Burnt Ranch School  
(530) 629-2543  
[kgraham@tcoek12.org](mailto:kgraham@tcoek12.org)

On May 1, 2018, at 4:16 PM, Scott Watkins <[swatkins@trinitycounty.org](mailto:swatkins@trinitycounty.org)> wrote:

Hello,

Can you please confirm the location of the two Bus Stops along 299, near Pony Creek Rd.? Below is a screenshot of the pick-up and drop-off locations as I currently understand them. Happy to discuss by phone, if that is more convenient.

<image001.png>

Cheers,

***Scott Watkins, MBA MPP***  
***Associate Planner – Cannabis Division***  
Trinity County Planning Department  
Box 2819, Weaverville, CA 96093  
530-623-1351 ex. 9

Have an awesome day!

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## Scott Watkins

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**From:** Scott Watkins  
**Sent:** Tuesday, May 1, 2018 4:16 PM  
**To:** 'kgraham@tcoek12.org'  
**Subject:** verify Bus Stop location - 299

Hello,

Can you please confirm the location of the two Bus Stops along 299, near Pony Creek Rd.? Below is a screenshot of the pick-up and drop-off locations as I currently understand them. Happy to discuss by phone, if that is more convenient.

