

TRINITY COUNTY PLANNING COMMISSION STAFF REPORT Initial Commercial Cannabis Variance

PLANNER: Bella Hedtke

APPLICANT: Matthew Jenkins

PROPERTY OWNER: Matthew Jenkins, Michael Jenkins and Shannon Jenkins

CONSULTANT: NA

REQUEST: Reduction of Commercial Cannabis Cultivation Variance residential setback (Trinity County Code 17.43.050.A.8)

LOCATION: 1141 Top of the Grade, Douglas City 96024 (APN: 025-530-03-00)

PARCEL SIZE: 3.01 acres

GENERAL PLAN DESIGNATION: Rural Residential (RR)

ZONING DISTRICT: Rural Residential 5-acre min (RR5)

RECOMMENDATION: Approve with Conditions

ADJACENT LAND USE AND ZONING INFORMATION:

Direction	Land Use	Zoning	General Plan Designation
North	Residential	RR5	RR
South	Private Timber Production	TPZ	RE
East	Residential	RR5	RR
West	Residential	RR5	RR

ATTACHMENTS:

- 1 – Project Location Map
- 2 – Detailed Site Map (Provided by Applicant)
- 3 – 350' Setback with Comment Status Map
- 4 – Site Visit Photos

DISCUSSION

PROJECT DESCRIPTION: The applicant has a pending Specialty 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	APPROX. DISTANCE FROM CULTIVATON SITE	COMMENT STATUS
025-530-33-00	250’	No Comment

REFERRAL 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 Comment
Code Enforcement	No Comment

STAFF RECOMMENDATION

Given the site conditions and above discussion, staff recommends the Planning Commission make the following motion:

To approve Commercial Cannabis Variance CCV-2019-59 to reduce the cultivation site setback in Trinity County Code 17.43.050.A.8. from 350 feet to 250’ from the residence located on APN 025-530-33-00, subject to the findings of fact and conditions as stated in this staff report.

FINDINGS OF FACT

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 Specialty Mixed-Light Commercial Cannabis Cultivation operation, up to 5,000 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. No comments were received for this project, although, 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: 025-530-03-00) the applicant would not otherwise be able to utilize the full 5,000 sq. ft. canopy size of a Specialty 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.

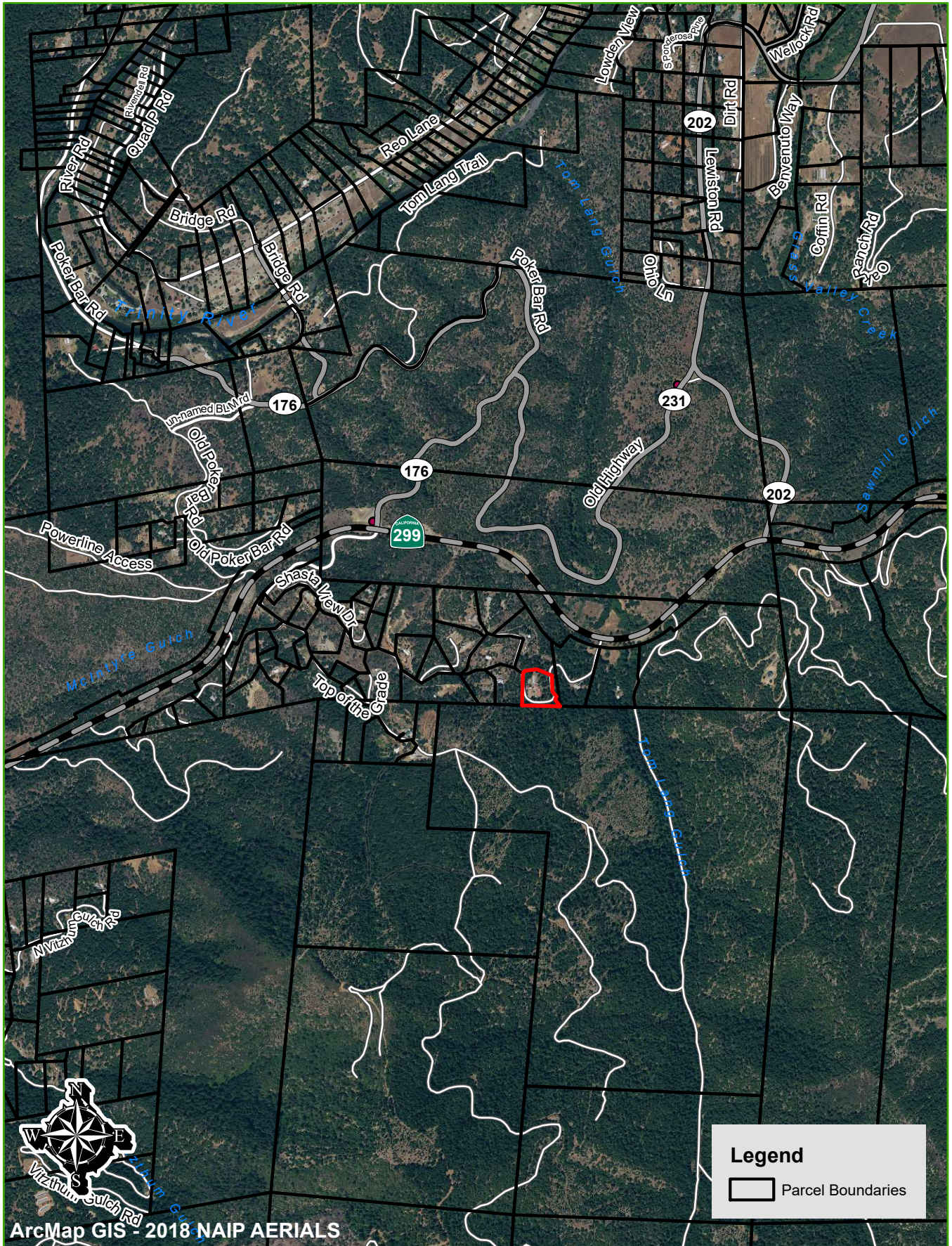
CONDITIONS OF APPROVAL

M. JENKINS COMMERCIAL CANNABIS SETBACK VARIANCE (CCV-2019-59)

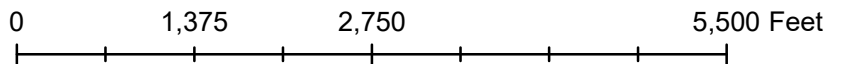
1. The variance is approved for a period of one year and shall expire on the same date as the Commercial Cannabis License that this variance and parcel is associated with; provided, however, that the variance shall be renewed annually through the Director's Use Permit application process.

- 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.

General Information Regarding Annual Renewal Process: Commercial Cannabis Variances are subject to an annual renewal process through the Director's Use Permit process (Trinity County Code 17.43.050.A.8.). The renewal date of the variance is the license issuance date of the applicant's commercial Cannabis cultivation license. Some factors that would be included in the review would be any complaints received during the previous year and new noticing period, ensuring that the cultivator 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.



ArcMap GIS - 2018 NAIP AERIALS



ATTACHMENT 2



LEGEND

- PROPERTY LINE:
- CULTIVATION AREAS: BP#: 2015-314
- FIRE ROAD EASEMENT:
- UTILITY EASEMENT:
- WOOD SHED:
- WELL - 1980: DR#: 112821
- GARAGE - 1981: BP#: 3948
- DWELLING - 1981: BP#: 3948
- LOCKED GATE/FENCING:
- SCEPTIC TANK - 1981: BP#: 3824
- LEACH FIELD:
- GRADED AREA:

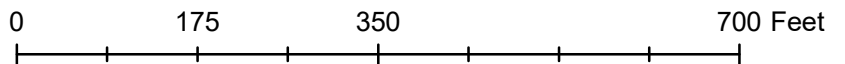
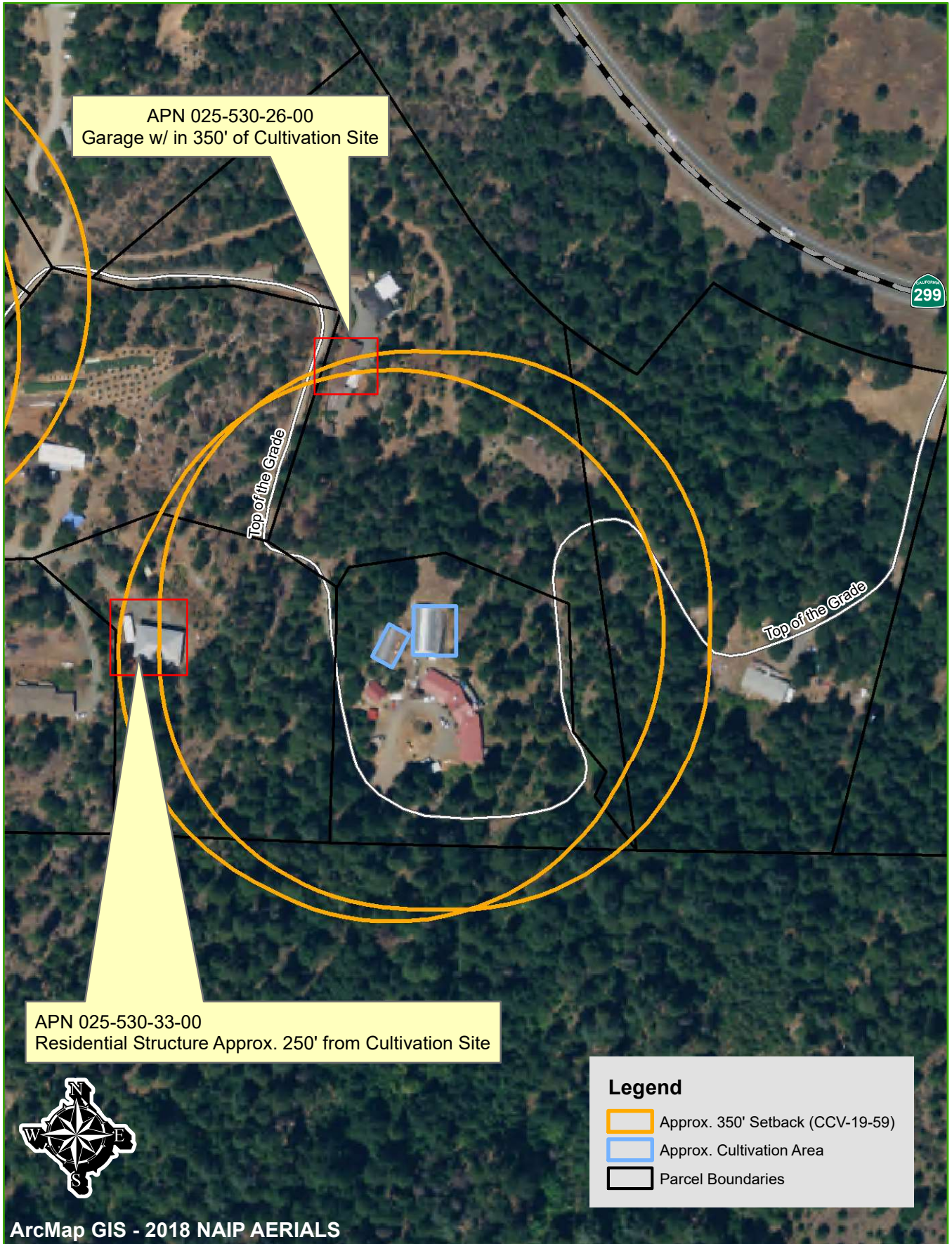
1141 Top of the Grade

Parcel: **025-530-03-00** Lot Area: **3.01 Acres**

Ownership: **Matthew Jenkins**

Community: **Douglas City**

Zip Code: **96024**



ATTACHMENT 4



Photo of proposed cultivation area on subject property.



View of neighboring parcel from subject parcel (house is not visible).