

**TRINITY COUNTY PLANNING COMMISSION STAFF REPORT  
Commercial Cannabis Variance**

**APPLICANT/OWNER:** Nicholas Holliday

**REPORT BY:** Bella Hedtke

**AGENT:** Down River Consulting

**APN:** 008-210-10-00 (200 acres)

**PROJECT DESCRIPTION:**

Annual Commercial Cannabis Variance from Trinity County Code 17.43.050.A.8. provision to allow a Type 3 (up to one acre of canopy) cultivation site to be located closer than the required 500 ft setback from adjacent property lines. This variance application is associated with a Type 3 Commercial Cannabis Cultivation Conditional Use Permit (CUP) that was approved by the Trinity County Planning Department on June 13, 2019.

**LOCATION:** 610 Kaut Rd., Burnt Ranch, CA 95527 (Appendix 1)

**PROJECT INFORMATION:**

- A) Existing General Plan Designation: Resource (RE)
- B) Existing Zoning: Agricultural Preserve (AP)
- C) Existing Land Use: Residential, Cannabis Cultivation, Other Farm Activities
- D) Adjacent Land Use Information: Rural Residential, Forest Service

<b>Direction</b>	<b>Land Use</b>	<b>Zoning</b>	<b>General Plan Designation</b>
North	Rural Residential, Vacant	Unclassified (UNC)	Resource (RE)
South	Vacant (USFS)	Unclassified (UNC)	Resource (RE)
East	Vacant (USFS)	Unclassified (UNC)	Resource (RE)
West	Vacant (USFS)	Unclassified (UNC)	Resource (RE)

**PROJECT EVALUATION/DISCUSSION:**

This annual variance application is associated with a Type 3 Commercial Cannabis Cultivation CUP that was approved by the Trinity County Planning Department on June 13, 2019. This Commercial Cannabis Variance application is to allow the applicant to operate a Type 3 cultivation site closer than the required 500 ft setback required in Trinity County Code 17.43.050.A.8. from an adjacent property line, **not from a residential structure**, as is required of Type 2, Type 1 and Cottage cultivation sites.

Several appendices are attached to the staff report that illustrates the variance request. Appendix 2 is a site plan that was previously included in the staff report for the Type 3 CUP application that illustrates specific site configurations of the commercial Cannabis cultivation operation. Appendices 3 and 4 illustrate the location of the proposed commercial Cannabis cultivation site in relation to adjacent property boundaries, as well as if the property owner commented on this project or not.

The 500 ft setback around the cultivation site crosses two adjacent property lines (APN 008-210-40-00 and APN 008-210-30-00). The closest property line is approximately 215 ft away from the cultivation site on APN 008-210-40-00 (Appendix 3). A letter of support was written by the owner of APN 008-210-40-00 (Appendix 5). The other property line boundary that is within 500 ft of the cultivation site is APN 008-210-30-00 and is 485 ft away (Appendix 3).

**Agency/Departmental Comments:**

1. Code Compliance Inspector: Appendix 6
2. U.S. Forest Service: Appendix 7

Staff Response: On page 7 of the Initial Study for the project, the following addresses the cultivation sites water usage situation:

“Water is provided to the project site from a perennial creek and a spring as a part of the property’s pre-1914 water rights. The water diversions for irrigation and domestic uses are maintained as two separate systems. Water storage onsite consists of two 5,000-gallon water storage tanks, a 750,000-gallon storage pond and a 2,500-gallon storage tank.”

Per the Lake or Streambed Alteration Agreement and the Water Resource Protection Plan prepared for the project, the two points of diversion are located on the applicant’s parcel.

**3. CA Fish and Wildlife:**

The County received a comment letter in response to this variance from the California Department of Fish and Wildlife (Appendix 8). Responses to comments are provided below. The comments have been summarized to provide a context for the response.

Comment Regarding Biological Resource Assessment: The commenter recommended that a biological resource assessment be prepared for the project.

Response: The applicant's agent prepared a Biological Report for the project that addresses all of the commenter's recommendations with the exception of a wetland delineation. The applicant proposes to locate the cultivation operation in an upland area in an effort to deliberately avoid potential impacts to wetlands and waters of the U.S. and State.

In addition, Planning Staff proposed a Mitigated Negative Declaration including a cumulative environmental impact analysis for the project that the Planning Commission approved on June 13, 2019 while considering the Conditional Use Permit for the project.

Comment Regarding Wetlands: The commenter recommended that a wetland delineation be completed for the project.

Response: See above response related to wetland delineation.

Comment Regarding Surveys: The commenter recommended that all surveys be conducted prior to project approval and that they conform to survey protocols as can be found on the Fish and Wildlife Department's website and that survey data be submitted to the California Natural Diversity Data Base online.

Response: Protocol-level surveys were not completed for the project. If suitable habitat for special-status species was identified on site, presence was assumed and avoidance or mitigation measures proposed.

Comment Regarding Lighting: The commenter recommended that light pollution be avoided and night light be prohibited.

Response: Performance standards included in Trinity County Code 17.43.060 require that all lighting associated with cultivation operations be downcast, shielded and/or screened to keep light from emanating off-site or into the sky and that those cultivation sites using artificial lighting for mixed-light cultivations shall shield greenhouses so that little to no light escapes. Light shall not escape at a level that is visible from neighboring properties between sunset and sunrise.

Comment Regarding Noise: The commenter recommends the use of low-noise technology equipment or building noise-reducing structures to house noisy equipment; noise generating equipment not be operated from one hour before sunset to one hour after sunrise; and generators not be permitted as a primary power source except for temporary use in emergencies.

Response: Performance standards included in Trinity County Code 17.43.060B require that the cultivation of cannabis not exceed the noise level standards as set forth in the county general plan: Fifty-five dBA from seven a.m. to seven p.m. and fifty dBA from seven p.m. to seven a.m. measured at the property line, except that generators associated with a commercial grow are not to be used between ten p.m. and seven a.m.

Comment Regarding Invasive species: The commenter suggests that the adoption of a site-specific invasive species management plan may reduce the risk of colonization by invasive species including bullfrogs, although no recommendation is provided.

Response: The Biology Report for the project indicated the limited presence of two invasive plant species on site. Each species has a very limited known distribution in the county and are considered highest priority for treatment by the natural resource management professionals in the Trinity County Weed Management Association. One of the species located on site, jointed goat grass, was removed from the site and disposed of at the Weaverville Solid Waste Transfer Station.

Comment Regarding Irrigation supply: The commenter recommends that the County provide a cumulative impacts analysis of groundwater use on summer base flow.

Response: The proposed project is served by two existing surface water diversions. Water is carried from these diversions to a storage pond and several storage tanks. There are no existing groundwater wells and none are proposed as part of the project.

Comment Regarding California Endangered Species Act: The commenter recommends that the project applicant consult with the California Department of Fish and Wildlife if CESA-listed species are present and affected by the project.

Response: The Biology Report indicated that no mollusk, fish, reptile, or amphibian TES species would be affected by the project because they are either not present on the site or the habitat areas are not considered part of the project site (Down River, 2018). Investigations determined that the Fisher (*Pekania pennanti*), and seven bat species are all considered sensitive and can be assumed to be present due to habitat suitability and historical observations in the area. Impacts to the fisher and bat species will be mitigated using preventative and integrated pest management strategies as noted below under Mitigation Measure BR-1 included in the Conditional Use Permit approved for the project.

Mitigation Measure BR-1: Integrated Pest Management – The project applicant and/or operator shall utilize preventative non-chemical strategies, and IPM strategies identified by the California Department of Pesticide Regulation for cannabis production, to control the onsite proliferation of rodents. This shall include the following strategies to reduce the property's rodent carrying capacity:

- Remove food access and features that could provide habitat to rodents. Examples include, but are not limited to, using trash cans with lids, sealing holes along structures, maintaining a sealed compost area, eliminating standing surface water (puddles) and limiting the height of grasses around the project vicinity.
- Utilize traps and EradiBait, a non-coagulant powder corn cob to extirpate the species.
- If necessary, utilize domestic predators such as cats or dogs bred to hunt rodents.

- Use of rodenticides that are not DPR-restricted or federally restricted-use pesticides and registered for a broad enough use to include use in or around marijuana cultivation sites.

Of the identified bird species listed as species of concern, only the Northern Spotted Owl (NSO) has been observed in the project area. While no nesting activity is known to occur onsite, the site could potentially be utilized for foraging activities. It should be noted that no NSO habitat will be removed as a result of the proposed project. In order to minimize unintended harm to foraging NSOs the project applicant proposes to utilize IPM strategies to control rodents as described in Mitigation Measure BR-1. The rodent prevention strategy focuses on the reduction of the property's rodent carrying capacity by removing food access and features that could provide habitat to rodents. The project applicant may also utilize domestic predators such as cats or dogs bred to hunt rodents if needed. Traps utilizing EradiBait, a non-coagulant powder corn cob, may also be used to reduce the rodent species as necessary at the project site (refer to Mitigation Measure BR-1).

Comment Regarding Notification of Lake or Streambed Alteration: The commenter recommended that the applicant file a California Department of Fish and Wildlife Notification for project activities.

Response: There is a Lake and Streambed Alteration Agreement in place between the landowner (applicant) and the California Department of Fish and Wildlife.

#### **Neighbor Feedback:**

As stated earlier, this Commercial Cannabis Variance application is to allow the applicant to operate a Type 3 cultivation site closer than the required 500 ft setback required in Trinity County Code 17.43.050.A.8. from an adjacent property line, **not from a residential structure**, as is required of Type 2, Type 1 and Cottage cultivation sites. There are no residences located within the 500 ft setback. This can be demonstrated using the map in Appendix 3. Although, Appendix 5 is a letter in support from the owner of APN 008-210-40-00. No other comments from nearby private property were received.

#### **COMMERCIAL CANNABIS VARIANCE PROCESS OVERVIEW:**

During the November 17, 2016 meeting the Planning Commission discussed both the State and County requirements for issuing a variance.

Each zoning classification and land use designation has an associated set of development standards, which are specified in Trinity County Code Title 17 – Zoning. Both State code and County code provide criteria that must be considered when evaluating a variance application.

California Government Code Section 65906 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 17.43.050 (Limitation on location to cultivation cannabis) of the Trinity County Zoning Code states the following:

"17.43.050 – Limitation on location to cultivation cannabis.

A.8 For specialty cottage, specialty and small licenses cultivation shall not be allowed within three hundred fifty feet of a residential structure on any adjoining parcels. For medium licenses, cultivation shall not be allowed within five hundred feet of an adjacent property line. Applications for a variance from this provision will be considered by the Trinity County Planning Commission. After obtaining an initial variance, the planning director can issue a director's use permit for subsequent years after an inspection."

Section 17.43.010 (Definitions) of the Trinity County Zoning Code states that, "“Variance” is defined as Chapter 17.31 of this title.” Furthermore, Section 17.31.010 (General description), also known as Chapter 17.31, of Trinity County Zoning Code states the following:

“17.31.010 - General description

A variance is a waiver or modification of some requirement contained in the zoning ordinance. The statutory justification for a variance is that the owner would otherwise suffer unique hardship under general zoning regulations because his or her particular parcel is different from others to which the regulation applies due to size, shape, or topography. Variances may be granted only to authorize a change in development standards which is not otherwise authorized by the zoning regulations.

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."

#### **STAFF RECOMMENDATION:**

The closest property line is approximately 215 ft from the closest edge of the cultivation area. As written below, staff proposes that the Commission make a motion that reduces the 500 ft setback to 200 ft to allow the applicant 15 ft of adjustable space.

Given the comments received and the discussion written above, staff recommends the Planning Commission make the following motion:

- To approve Commercial Cannabis Variance Application (CCV-2018-039) in order to allow the reduction of the commercial Cannabis cultivation setback provision outlined in Trinity County Code 17.43.050.A.8. for a Type 3 Commercial Cannabis License from 500 ft to 200 ft and shall be subject to the following Findings of Fact and Conditions of Approval.

#### **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 applicable to the property 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 Type 3, Cannabis cultivation, up to one acre 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 500 ft setback requirement for Type 3 cultivation sites in Trinity County Code 17.43.050.A.8, not to allow a specific use in the AP zoning district that is not currently allowed by ordinance.

As stated in Trinity County Zoning Code 17.13A – Agricultural Preserve District or "AP" District:

"Agricultural preserve zoning districts are those areas of the county containing agricultural lands of at least one hundred acres which qualify for inclusion under the California Land Conservation Act (California Government Code, Section 51200 et seq.). Purpose of this zoning district is to preserve and insure the continuing utilization of lands for agricultural production purposes."

The disapproval of this variance application would ultimately restrict the general purpose of the Agricultural Preserve zoning district.

3. **Disservice Not Permitted.** A variance must not be injurious to the public welfare, nor to adjacent properties.

The purpose of the 500 ft setback requirement 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 IS/MND was created to address and possibly mitigate any potential impacts this project could cause that was approved by the Trinity County Planning Commission on June 13, 2019.

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 property line setback requirement for Type 3 cultivation sites in Section 17.43.050.A.8 of the Trinity County Code. Section 17.43.050.A.8 allows for variances from this standard, consistent with the requirements for variances in State law and the County Zoning Code. The subject parcel contains special circumstances related to topography, irregular



shape, and size, which justifies the granting of a variance from the property line setback requirement and would be appropriate for any property owner facing similar circumstances. The applicant proposes to locate the cultivation operation in an upland area in an effort to deliberately avoid potential impacts to wetlands and waters of the U.S. and State. 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**

##### **N. HOLLIDAY CANNABIS SETBACK VARIANCE (CCV-18-039)**

1. The variance is approved for a period of one year and shall expire on the same date as the Type 3 Commercial Cannabis License date that this variance is associated with; provided, however, that the variance shall be renewed annually.
  - a. Application for renewal shall be submitted by the applicant 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; and
  - 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, 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 of the operation.
3. Structures on the property shall be in compliance with the California Building Code and 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.

**General Information Regarding Annual Renewal Process:**

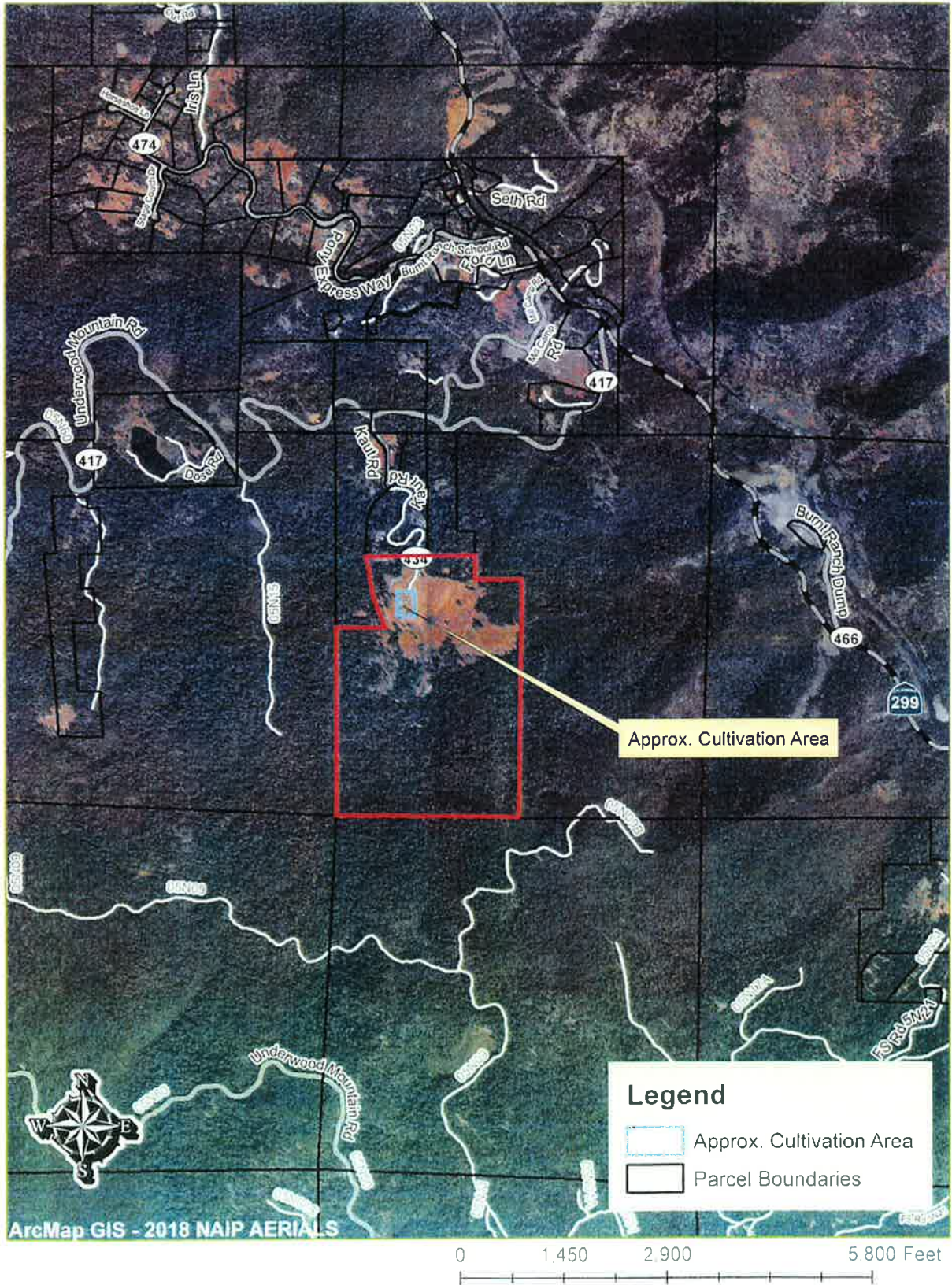
As discussed during previous Commission meetings, variances from the Cannabis cultivation setback (Type 3; 500 ft) requirement are issued for a period of one year. This should be tied to the commercial Cannabis cultivation license effective dates. The renewal is predicted to be fairly simple and will be decided by the Planning Director or their designee through the Director's Use Permit application process. 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 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.

**Environmental Evaluation:**

A Mitigated Negative Declaration for the subject site was approved by the Trinity County Planning Commission during review of the Conditional Use Permit on June 13, 2019 and a Notice of Determination was posted for the project on June 17, 2019.

# APPENDIX 1


## APN 008-210-10-00 N. Holliday CCV-18-39 Project Location Map



# APPENDIX

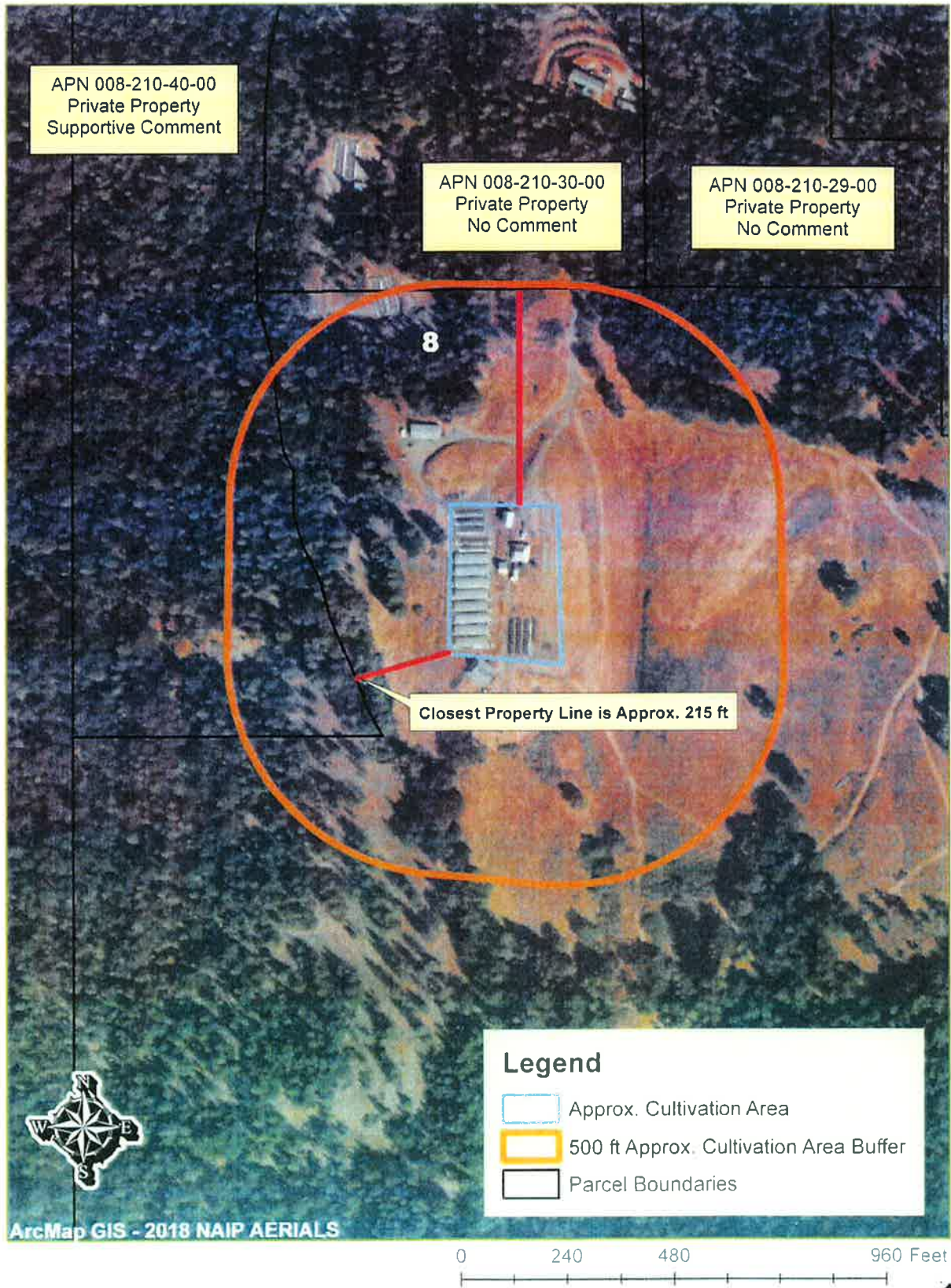


Source: Down River Consulting, Applicant Site Plan, 2019

	<p>Holiday Cannabis Cultivation Facility          Conditional Use Permit Project          APN 008-210-10          Burnt Ranch, Trinity County, California</p>	<p>Site Plan          ICR #518009-800</p>
	<p>March 2019</p> <p><small>E:\2018\518009-TrinityCo_CUP\200- "VREDDINGSVR\projects\52018\518009-TrinityCo_CUP\800-Holiday CUP</small></p>	<p>Figure #2</p>

# APPENDIX 3

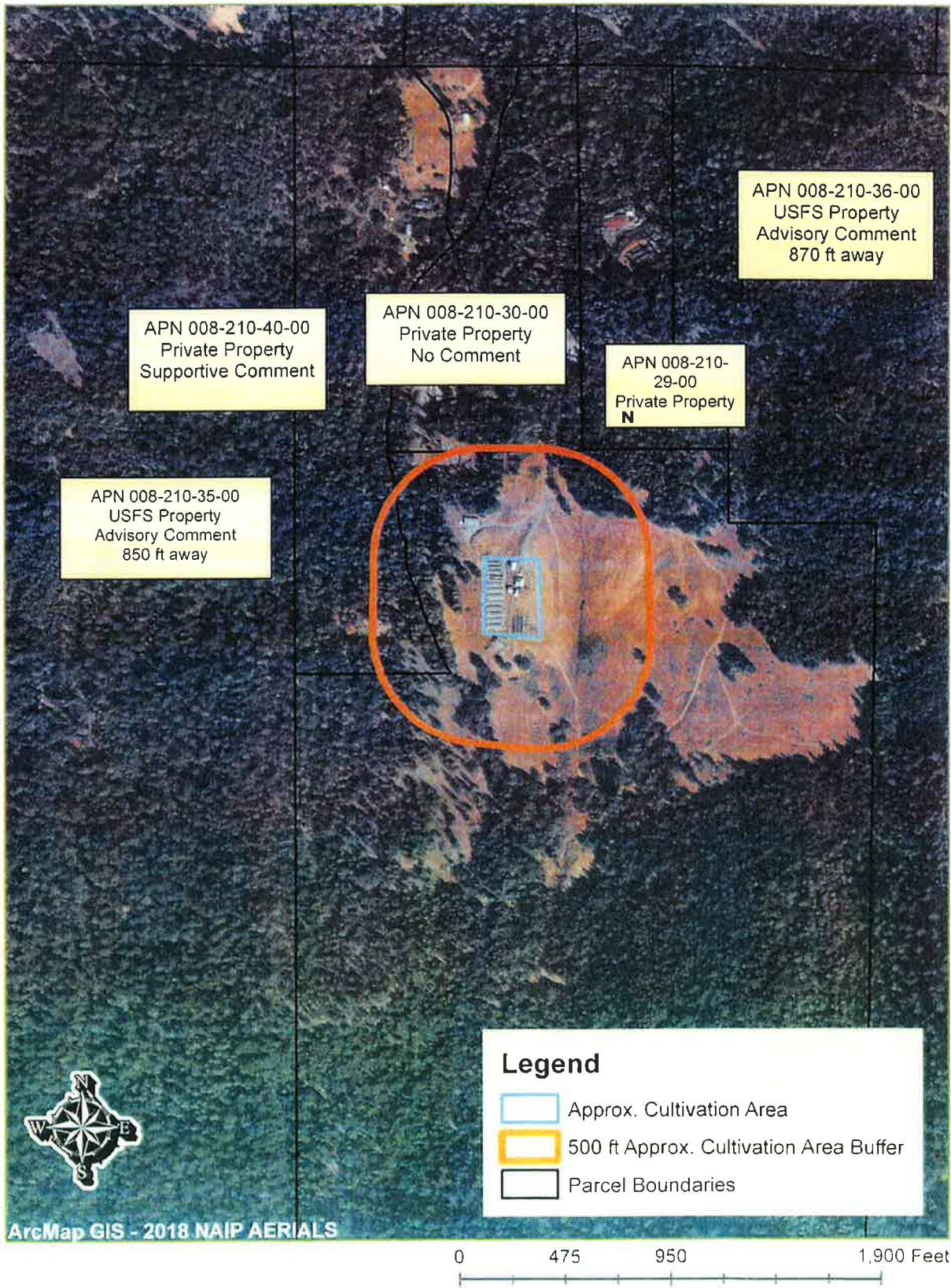
## APN 008-210-10-00 N. Holliday CCV-18-39 500 ft Cultivation Area Buffer Map



# APPENDIX

## APN 008-210-10-00 N. Holliday CCV-18-39

### 500 ft Cultivation Area Buffer Map



September 20, 2018

Trinity County Planning Dept.  
61 Airport Road  
Weaverville, CA 96093

Re: CUP-Variance for Nicholas Holliday; APN 008-210-10

Dear Sir or Madam:

I am the property owner of 190 Kaut Road, Burnt Ranch (APN 008-210-40) and the next door neighbor of Nicholas Holliday. I understand that he has applied for a type 3 cannabis cultivation license with the county. My property is within 500 feet of his garden which requires him to get a variance. Nicholas has been a good neighbor and I am supportive of his plans to expand. If you have any questions, please feel free to contact me.

Sincerely,

Andrew Martin



9/24/18



TRINITY COUNTY  
PLANNING DEPARTMENT

APPENDIX 6

P.O. Box 2819  
Weaverville, CA 96093  
Email: [bhedtke@trinitycounty.org](mailto:bhedtke@trinitycounty.org)

530-623-1351 x 5  
530-623-1353 (FAX)

File #: CCUPT3-18-07

Date: 2/27/19

REQUEST FOR COMMENTS

To:	
<input checked="" type="checkbox"/> County Assessor's Office	<input checked="" type="checkbox"/> North Coast Water Quality Control
<input checked="" type="checkbox"/> County Building Department	<input type="checkbox"/> North Coast Unified Air Quality Management Dist.
<input checked="" type="checkbox"/> County Environmental Health	<input type="checkbox"/> Northeast information Center - Chico State
<input checked="" type="checkbox"/> County Public Works	<input checked="" type="checkbox"/> Forest Service: Weaverville Station
<input type="checkbox"/> County Surveyor	<input type="checkbox"/> Fire District:
<input type="checkbox"/> Supervisor:	<input type="checkbox"/> C.S.D.:
<input type="checkbox"/> Caltrans - District: 02	<input checked="" type="checkbox"/> Code Enforcement
<input checked="" type="checkbox"/> CalFire/County Fire Chief's Association	<input type="checkbox"/> Other:
<input type="checkbox"/> B.L.M.	<input type="checkbox"/> Other:
<input checked="" type="checkbox"/> Calif. Dept. of Fish & Wildlife	<input type="checkbox"/> Other:

The following project has been submitted to the Trinity County Planning Department for discretionary action (Use Permit, Rezone, Subdivision, etc.). An assessment of the potential impacts of the project is being made. Please review and submit comments by **March 14, 2019**.

**Project Description:** Annual Variance from Ordinance No. 315-823 (5) viii provision to allow existing cultivation site to be located closer than the required 500ft setback from an adjacent property line. The 500ft buffer around the cultivation site approx. crosses three adjacent property lines, the closest property line is approx. 310ft. This Annual Variance is in conjunction with a Type 3 Commercial Cannabis Cultivation License.

**Location:** 610 Kaut Rd., Burnt Ranch  
**Environmental Evaluation:** None

**APN:** 008-210-10-00  
**Lot Acreage:** 200  
**Sec:** 23 Twn. 5N Rge. 6E H.B. & M.  
**Applicant:** Nicholas Holliday  
PO BOX 220  
Burnt Ranch, CA 95527  
(707) 498-0123

**Existing Zoning:** Agricultural Preserve (AP)  
**Existing General Plan Designation:** Resource (RE)  
**Agent:** Down River Consulting  
PO BOX 15  
Weaverville, CA 96093  
(530) 623-1175

For information regarding this project contact Bella Hedtke, Associate Planner at 530-623-1351, Ext. 5

Comments:

[ ] No Comment. [ ] See attached comments.

Date: 2/27/19

We have reviewed the above request and have the following comments:

Due to the fact that there are no neighbors that should be affected and location of suspected wetlands, I feel that to avoid further environmental impact the existing cultivation location should be approved.

Reviewing Agency: Code Enforcement

Signature:

File # CCUPT3-18-07





TRINITY COUNTY  
PLANNING DEPARTMENT

APPENDIX 7

P.O. Box 2819 530-623-1351 x 5  
Weaverville, CA 96093 530-623-1353 (FAX)  
Email: [bhedtke@trinitycounty.org](mailto:bhedtke@trinitycounty.org)

File #: CCUPT3-18-07

Date: 2/27/19

MAR 29 2019

REQUEST FOR COMMENTS

To:

TRINITY COUNTY  
PLANNING DEPARTMENT

- County Assessor's Office
- County Building Department
- County Environmental Health
- County Public Works
- County Surveyor
- Supervisor:
- Caltrans - District: 02
- CalFire/County Fire Chief's Association
- B.L.M.
- Calif. Dept. of Fish & Wildlife

- North Coast Water Quality Control
- North Coast Unified Air Quality Management Dist.
- Northeast information Center - Chico State
- Forest Service: Weaverville Station
- Fire District:
- C.S.D.:
- Code Enforcement
- Other:
- Other:
- Other:

The following project has been submitted to the Trinity County Planning Department for discretionary action (Use Permit, Rezone, Subdivision, etc.). An assessment of the potential impacts of the project is being made. Please review and submit comments by **March 14, 2019**.

**Project Description:** Annual Variance from Ordinance No. 315-823 (5) viii provision to allow existing cultivation site to be located closer than the required 500ft setback from an adjacent property line. The 500ft buffer around the cultivation site approx. crosses three adjacent property lines, the closest property line is approx. 310ft. This Annual Variance is in conjunction with a **Type 3 Commercial Cannabis Cultivation License**.

**Location:** 610 Kaut Rd., Burnt Ranch

**Environmental Evaluation:** None

**APN:** 008-210-10-00  
**Lot Acreage:** 200  
**Sec:** 23 Twn. 5N Rge. 6E H.B. & M.  
**Applicant:** Nicholas Holliday  
PO BOX 220  
Burnt Ranch, CA 95527  
(707) 498-0123

**Existing Zoning:** Agricultural Preserve (AP)  
**Existing General Plan Designation:** Resource (RE)

**Agent:** Down River Consulting  
PO BOX 15  
Weaverville, CA 96093  
(530) 623-1175

For information regarding this project contact **Bella Hedtke, Associate Planner** at 530-623-1351, Ext. 5

Comments:

[ ] No Comment.

*MH* See attached comments.

Date: 03/29/19

We have reviewed the above request and have the following comments:

Please be advised that no water from NATIONAL FOREST SYSTEM LANDS are to be used for this Type 3 Commercial Cannabis Cultivation. Additionally, the Forest Service is not supportive of the setback variance as proposed.

Reviewing Agency:

USDA Forest Service, Trinity River Mgmt. UNIT

Signature:

Joe D. Smiles District Ranger  
530-623-1700 File # CCUPT3-18-07



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Northern Region  
 601 Locust Street  
 Redding, CA 96001  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

AVIN NEWSOM, Governor  
 CHARLTON H. BONHAM, Director



## APPENDIX 8

March 20, 2019

RECEIVED

Bella Hedtke, Associate Planner  
 Trinity County Planning Department  
 P.O. Box 2819  
 Weaverville, CA 96093

MAR 25 2019  
 TRINITY COUNTY  
 PLANNING DEPARTMENT

**Subject: Review of the Request for Comments for an Annual Variance from Ordinance No. 315-823 (5) viii, Assessor Parcel Numbers 008-210-10-00, Trinity County**

Dear Ms. Hedtke:

The California Department of Fish and Wildlife (Department) has reviewed the Request for Comments dated February 27, 2019, for the above-referenced project (Project). As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and their habitat. As a responsible agency, the Department administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code that conserve the State's fish and wildlife public trust resources. The Department offers the following comments and recommendations on this Project in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act (CEQA), California Public Resources Code section 21000 et seq. The following are informal comments intended to assist the Lead Agency in making informed decisions early in the Project development and review process.

### Project Description

The Project as proposed is an Annual Variance from Ordinance No. 315-823 (5) viii provision to allow an existing cultivation site to be located closer than the 500-foot setback from an adjacent property line. This Annual Variance is in conjunction with the Trinity County (County) Type 3 Commercial Cannabis Cultivation License. The project is located at 610 Kaut Road, Burnt Ranch, County Assessor's Parcel Number 008-210-10-00.

### Comments and Recommendations

The Department has the following recommendations and comments as they pertain to biological resources.

### Biological Resource Assessment

The Department recommends the inclusion of a thorough biological resource assessment in the CEQA document to evaluate any future construction, vegetation removal, or ground disturbing activities on the parcel. This assessment should include locally unique species, rare natural communities, wetlands, and waterways, if present, and should focus on special-status species including sensitive, rare, threatened, and endangered species with potential to occur in the Project area. The assessment must occur at the appropriate time of year when sensitive species are both evident and identifiable. Field visits should be scheduled to coincide with the appropriate breeding or life history stage of animals, when they are likely to be evident, or with peak flowering periods and/or during periods of phenological development that are necessary to identify a plant species of concern. The biological assessment area should include all areas with potential for disturbance, including construction and ground disturbance areas, staging areas, areas of fuel modification, ingress and egress routes, and utility routes, and be large enough to encompass areas subject to both direct and indirect Project impacts.

At a minimum, the assessment should include the following information:

1. A map depicting the Project boundary, including the proposed or potential disturbance activities and the special-status species and habitats found on site.
2. A description of the assessment methodology and any protocols utilized during the assessment.
3. A description of the natural environment.
4. Evaluation of impacts to riparian habitat and other sensitive natural communities identified in local or regional plans, policies, regulations, or by the Department or U.S. Fish and Wildlife Service (USFWS).
5. A delineation of wetlands and waters of the U.S. and State, and an evaluation of potential impacts to resources regulated under section 404 of the U.S. Clean Water Act and the Porter-Cologne Water Quality Control Act.
6. Determination of the potential for special-status species and habitats to occur within the Project footprint by analyzing various electronic databases including the Department's California Natural Diversity Database (CNDDDB), as well as those maintained by the California Native Plant Society, USFWS, and National Marine Fisheries Service.

7. A list of common and special-status plant and wildlife species as well as habitats present or adjacent to the site at the time of the survey(s).
8. A complete evaluation of potential effects to special-status plant or wildlife species that may be impacted by the Project. The evaluation should take into consideration:
  - a. The effect(s) of sedimentation and agricultural pollution on downslope terrestrial and aquatic species and habitats;
  - b. The colonization of invasive plant species resulting from clearing and grading;
  - c. The effect(s) of artificial lighting on nocturnal species;
  - d. The effect(s) of above-ambient, cultivation related noise to species such as northern spotted owl (NSO) (*Strix occidentalis caurina*);
  - e. Hazardous features which could trap, displace, or lead to the death of wildlife;
  - f. The effect(s) of physical barriers such as perimeter fencing and screening that could impede wildlife movement or cause entrapment; and
  - g. The effect(s) of potential site expansion over time (e.g., removal of surrounding trees and vegetation to provide additional daylight to or manage fuels surrounding a cultivation area).
9. A cumulative environmental impact analysis that takes into account past and current cannabis cultivation activities within the appropriate sub-watershed watershed.
10. Resource and species-specific analyses and recommendations for avoidance or mitigation measures to reduce direct and indirect impacts to less than significant.

### Wetlands

Recent aerial photography shows vegetation and drainage patterns indicative of wetlands occurring immediately adjacent to the project site, including sections of possible wetlands intersected by road crossings. The Department recommends wetland delineations be conducted to determine the boundaries of wetlands that the subsequent Project activity may impact. Resource agencies do not use the same criteria to identify wetlands (e.g., the Department, California Coastal Commission, State Water Resources Control Board, and Army Corps of Engineers). Therefore, prior to conducting a delineation, the Project applicant should consult with the resource agencies with jurisdiction over the Project activity, including the Department, to determine the appropriate criteria for identifying wetlands.

### Survey Protocols

All surveys should be conducted prior to approval of the Project. Survey protocols for many species can be found on the Department's website at <https://www.wildlife.ca.gov/conservation/survey-protocols>. A thorough assessment of rare plants and rare natural communities should be conducted following the Department's March 2018 *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (<https://www.wildlife.ca.gov/conservation/survey-protocols#377281280-plants>). Survey results should be sent to the Department at the following address: Department of Fish and Wildlife, Attn: Interior Cannabis and Conservation Planning, 601 Locust Street, Redding, CA 96001 or emailed to the contract person identified in this letter. If any special-status species are found during surveys, the Department requests that CNDDDB forms be filled out and sent to Sacramento and a copy of the form be sent to the Regional office at the above address. Instructions for providing data to the CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

### Lighting

Cannabis cultivation sites in Trinity County, such as the one proposed in this Project, are commonly located in remote forested areas. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication, determining when to begin foraging, behavior thermoregulation, and migration. Even aquatic species can be affected; migration of salmonids can be slowed or halted by the presence of artificial lighting. Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it. Because the Request for Comments does not identify the type of cultivation license used onsite (e.g., mixed light, outdoor, etc.), any future CEQA document should discuss the use of supplemental lighting for cannabis cultivation. The Department recommends that if supplemental lighting is used that a clear performance standard and enforcement policy for light pollution control be developed that ensures light does not spill over onto other structures, properties, or the night sky. Additionally, the Department recommends that light not be visible outside of any structure used for cannabis cultivation e.g., black-out curtains on greenhouses, and that the site design eliminate all non-essential lighting from cannabis site.

### Noise

Noise at even moderate levels (40-60 dB) is associated with physiological and behavioral changes in birds, terrestrial mammals, amphibians, and bats. For example, the USFWS has recommended guidelines for Project-generated sound

levels to avoid certain impacts on NSO. Since the Project site is adjacent to federally designated Critical Habitat for NSO and known NSO activity centers, the CEQA document should analyze Project noise contributions to ensure that loud pumps and generators do not significantly impact the local fauna. To avoid or minimize potentially significant impacts, the environmental document should require: (1) use of low-noise technology equipment or building noise-reducing structures to house noisy equipment, (2) noise generating equipment should not be operated from one hour before sunset to one hour after sunrise, (3) generators should not be permitted as a primary power source except for temporary use in emergencies.

#### Invasive Species

Aerial imagery indicates the Project site may have ponds onsite. Ponds have been shown to become breeding habitat for invasive species such as the American bullfrog (*Lithobates catesbeianus*), which prey on native wildlife including State Candidate foothill yellow-legged frog (*Rana boylei*). The Department recommends the adoption of a site-specific invasive species management plan may minimize the risk of colonization by invasive species including bullfrogs.

#### Irrigation Supply

A cultivation operation of up to one acre in size would be expected to utilize large quantities of water and may substantially affect nearby surface waters if a well is hydrologically connected to nearby streams. If the applicant proposes the use of a groundwater well for irrigation, the Department recommends that the CEQA document prepared for this Project adequately analyze stream flow impacts that may occur from the Project to adjacent streams. The County should be aware that very little annual rainfall occurs during the summer months when juvenile salmonids, aquatic invertebrates, and other fish and wildlife resources are most vulnerable to reductions in cold water from base flow provided by groundwater aquifers. Considering the relatively low flow conditions during the summer months when cannabis irrigation is occurring, in conjunction with consumptive groundwater use within the watershed, the effects of reduced summer base flow on fish and wildlife resources may be significant. The Department recommends the County provide a thorough analysis of the cumulative effect of consumptive groundwater use on summer base flow in the CEQA document. This analysis should consider the needs of potentially occurring aquatic species during all seasons and life-history requirements. Any adverse effects of reduced flow should be avoided, minimized, or mitigated to a level of insignificance.

### California Endangered Species Act

If the biological surveys and effect evaluations determine that CESA-listed species are present and affected by the Project, the CEQA document should require the project applicant consult with the Department for any Project activity that may result in "take" of CESA-listed species, and that for unavoidable "take" the applicant will submit an Incidental Take Permit application to the Department and receive authorization prior to implementing the Project. Early consultation with the Department is encouraged because significant modification to a subsequent Project activity and mitigation measures, and an additional CEQA document may be required. Additionally, "take" of species listed under the federal Endangered Species Act (ESA) requires consultation pursuant to section 7 of the ESA from the USFWS and/or National Marine Fisheries Service.

### Notification of Lake and Streambed Alteration

For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which includes associated riparian resources) of a river or stream, or use material from a streambed, the Department will require a Lake and Streambed Alteration (LSA) Notification, pursuant to Fish and Game section 1600 et seq. of the Fish and Game Code, from the applicant. Project activities, which would be subject to LSA Notification requirements, include construction of roads, ponds, bank revetments, and modification of associated riparian resources growing on the bank. Issuance of an LSA Agreement is subject to CEQA. The Department, as a responsible agency under CEQA, will consider the CEQA document for the project. The CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the agreement. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/Conservation/LSA> or to request a notification package, contact the Lake and Streambed Alteration Program at (530) 225-2367 or [R1LSARedding@wildlife.ca.gov](mailto:R1LSARedding@wildlife.ca.gov).

### Filing Fees

The Department anticipates the Project will have an impact to fish and/or wildlife habitat, and assessment of filing fees is necessary (Pub. Resources Code, § 21089; Fish & G. Code, § 711.4.). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the Department.

Bella Hedtke, Associate Planner  
Trinity County Planning Department  
March 20, 2019  
Page 7

If you have any questions, please contact Kate Blanchard, Senior Environmental Scientist (Specialist), at (530) 225-2239, or by e-mail at [Katherine.Blanchard@wildlife.ca.gov](mailto:Katherine.Blanchard@wildlife.ca.gov).

Sincerely,



**Curt Babcock**  
Habitat Conservation Program Manager

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