

**TRINITY COUNTY PLANNING COMMISSION  
STAFF REPORT**

**APPLICANT/OWNER:** Joel Wilken-Simon **REPORT BY:** Richard Tippett, Naomi Merwin

**AGENT:** Hollie Hall

**APN:** 018-100-10-00

**PROPOSAL:**

To responsibly and lawfully cultivate 99 marijuana plants. The proposed agricultural activity will be accompanied by the land and water management activities outlined in the attached Holistic Property Management Plan to ensure environmental stewardship and protect against environmental degradation.

**LOCATION:**

West of the community of Hayfork, aka 3075 Friends Lake Road.

**PROJECT INFORMATION:**

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Resource
- C) Existing Zoning: Unclassified
- D) Existing Land Use: Single Family Dwelling
- E) Adjacent Land Use Information:

	<b><u>Land Use</u></b>	<b><u>Zoning</u></b>	<b><u>General Plan Des.</u></b>
North:	U.S. Forest Service	Unclassified	Resource
South:	U.S. Forest Service	Unclassified	Resource
East:	Residential	Unclassified	Resource
West:	Residential	Unclassified	Resource

**BACKGROUND INFORMATION:**

Applicant seeks variance to cultivate 99 marijuana plants on a 20+- acre parcel located on Friend Lake Road, approximately 12 miles west of the community of Hayfork. Applicant has a permitted septic and permitted one bedroom home on the property. The parcel is in a fairly isolated area, predominately surrounded by land managed by the U.S. Forest Service. A few isolated private properties are in the area. The area is all in a Resource General Plan land use designation and is zoned Unclassified.

Applicant’s attorney informed staff that he operates as a collective/cooperative with a seller’s permit from the California State Board of Equalization, under the business entity North Coast Agricultural. The applicant serves members, qualified patients and/or qualified caregivers.

Zoning Ordinance 315 Section 31 provides:

*In considering a variance, 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 variances" 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.*

Zoning Code Ordinance No. 315-797, states:

*In light of the considerable and extensive public comments provided to the Planning Commission and Board of Supervisors, received during numerous meetings held over a period of three years, the Board of Supervisors concludes that the deleterious impacts of marijuana cultivation, as described above, are fully confirmed and supported by the great weight of evidence. The Board further concludes these impacts create significant public nuisances\* and that the failure to enact regulations to control such operations would be detrimental to the public health, safety, and welfare and would results in further sand significant degradation of the environment.*

Zoning Code Ordinance 315-797 further states:

*The cultivation, harvesting, processing, drying, or assembling of marijuana are expressly declared to be unauthorized land uses in any zoning district of the County.*

Finally, Zoning Code Ordinance 315-797 provides immunity from enforcement of Ordinance 315 as long as they are in compliance with the section, including:

*Activities shall be considered to be conducted for personal use in accordance with subsection (e) only if they are conducted to provide for the medical needs of qualified patients living on the parcel, and/or up to no more than one qualified patient living off the parcel*

\*Emphasis added

**ENVIRONMENTAL EVALUATION:**

An evaluation of environmental impact (Initial Study) was not prepared for this project pursuant to the California Environmental Quality Act (CEQA) because it was clear upon initial analysis that staff recommendation would be denial of the variance request.

**STAFF RECOMMENDATION:**

By virtue of the Board declaring growing marijuana a nuisance, this makes the statement that growing marijuana is only to be allowed under very specific circumstances, and that no other provisions can be made without specific direction. Based on the size of the property, only 8 mature plants are allowed on the property, not 99 mature plants.

Staff recommends denial of the variance, finding that on the basis of the whole record before the Commission, that the project will 1) create a significant public nuisance, and 2) the applicant is not in compliance with Section 1(f) of Zoning Ordinance 315-797. A denial reflects the Commission's independent judgment and analysis.

Should the Commission decide to approve the project, staff recommends an environmental assessment as part of the conditional requirements of approval.