

<p><b>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</b></p>
---

**APPLICANT:** John Miller

**REPORT BY:** John Jelcich

**APN:** 009-440-54

**PROJECT DESCRIPTION:**

Variance from required 350' cannabis cultivation setback from a neighboring residential dwelling.

**LOCATION:** 710 Upper Road, Junction City (Exhibit A-1 & A-2)

**PROJECT INFORMATION:**

- A) Planning Area: Junction City
- B) Existing General Plan Designation: Rural Residential (RR)
- C) Existing Zoning: Rural Residential, 10 acre minimum (RR-10)
- D) Existing Land Use: residential
- E) Adjacent Land Use Information:

	<b><u>Land Use</u></b>	<b><u>Zoning</u></b>	<b><u>General Plan Des.</u></b>
North:	residential	RR-10	Rural Residential
South:	residential	RR-10	Rural Residential
East:	residential	RR-10	Rural Residential
West:	residential	RR-10	Rural Residential

**BACKGROUND INFORMATION:**

The urgency 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. 315-816; Sec. 32.O.IV (5) (b))

The urgency 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.
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.

Since the cannabis cultivation site cannot be located elsewhere on the property due to the shape of the property, location of wetlands, proximity to other neighbors affecting relocation of the site, the granting of the variance would not be a special privilege for the applicant that could not also apply to other commercial cannabis growers under identical circumstances.

#### 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 plans to cultivate cannabis on his 1.9 acre parcel off of Upper Road in Junction City. The site plan provided by the applicant (Exhibit "B-1" & "B-2") identifies the location of the subject property in relation to neighboring parcels (Exhibit B-1) and the on-site development, including water tanks, dwelling and the location of the proposed cannabis cultivation site.

The applicant submitted a letter, dated March 27, 2017, that provides the status of the project and a statement signed by the neighboring property owner affected by this application supporting for the variance. (Exhibit C)

Jeff Dickey, Code Enforcement Officer, has reviewed the application and verifies that the topography of the property and its location precludes relocation. He also has verified the statements made in the applicant's letter dated March 27, 2017.

#### **ENVIRONMENTAL EVALUATION:**

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

It is consistent with the site's General Plan designation of Rural Residential and, with the exception of the setback, complies with the County's urgency ordinance (315-816.EXT (A1)); complies with all other zoning requirements for the site; and the cultivation area is not located within the 100 year floodplain, will not result in the removal of riparian vegetation, and is not located in an environmentally sensitive area. The project will not have a significant adverse impact on the environment, or contribute to a cumulatively significant adverse impacts. The project will not affect a state scenic highway, cultural or historic resources, federal or state listed species or species proposed for listing, jurisdictional wetlands, or established floodways. The project is not located within a toxic site listed by the California Environmental Protection Agency as provided under Section 65962.5 of the Government Code.

**STAFF RECOMMENDATION:**

Staff recommends the following:

Approval of the variance to allow reduction of the cannabis cultivation area setback from 350 feet to 175 feet on APN 009-440-54, subject to the following conditions of approval and based on the following findings of fact:

***Findings***

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 cannabis cultivation.
2. The variance is not a grant of special privilege to the applicant because the applicants property is only 1.9 acres, contains steep slopes and other topographic constraints such that the cultivation area cannot be relocated without doing environmental damage.
3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance urgency 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  
MILLER CANNABIS SETBACK VARIANCE (P-17-06)

1. The variance is approved for a period of one year from **April 1, 2017** through **March 31, 2018**; provided, however, that the variance may be renewed annually.
  - a. Application for renewal shall be made 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.

# PROJECT LOCATION MAP

## Miller CC Variance P-17-06

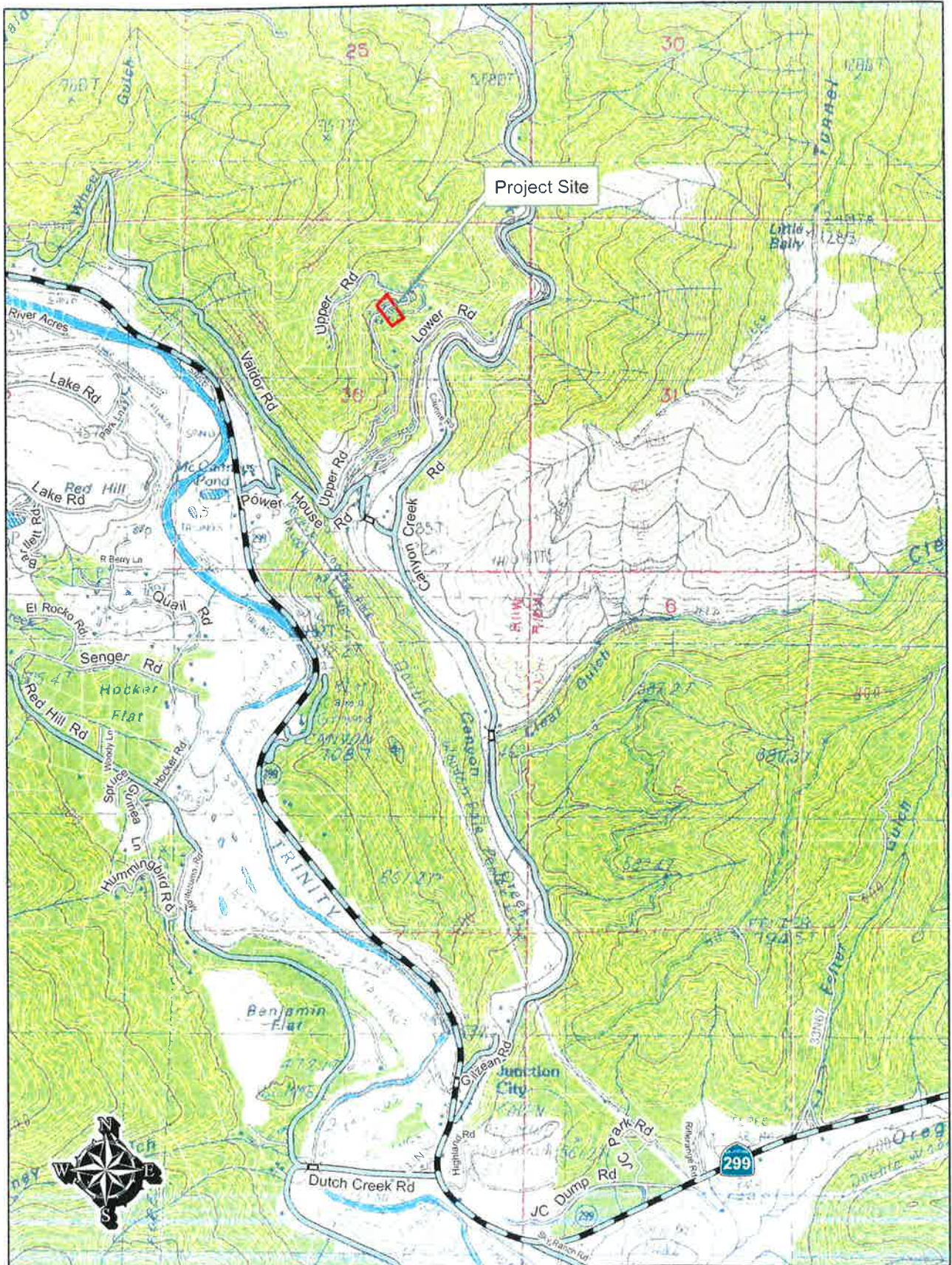


EXHIBIT A-1

6

# ZONING

## Miller CC Variance P-17-06

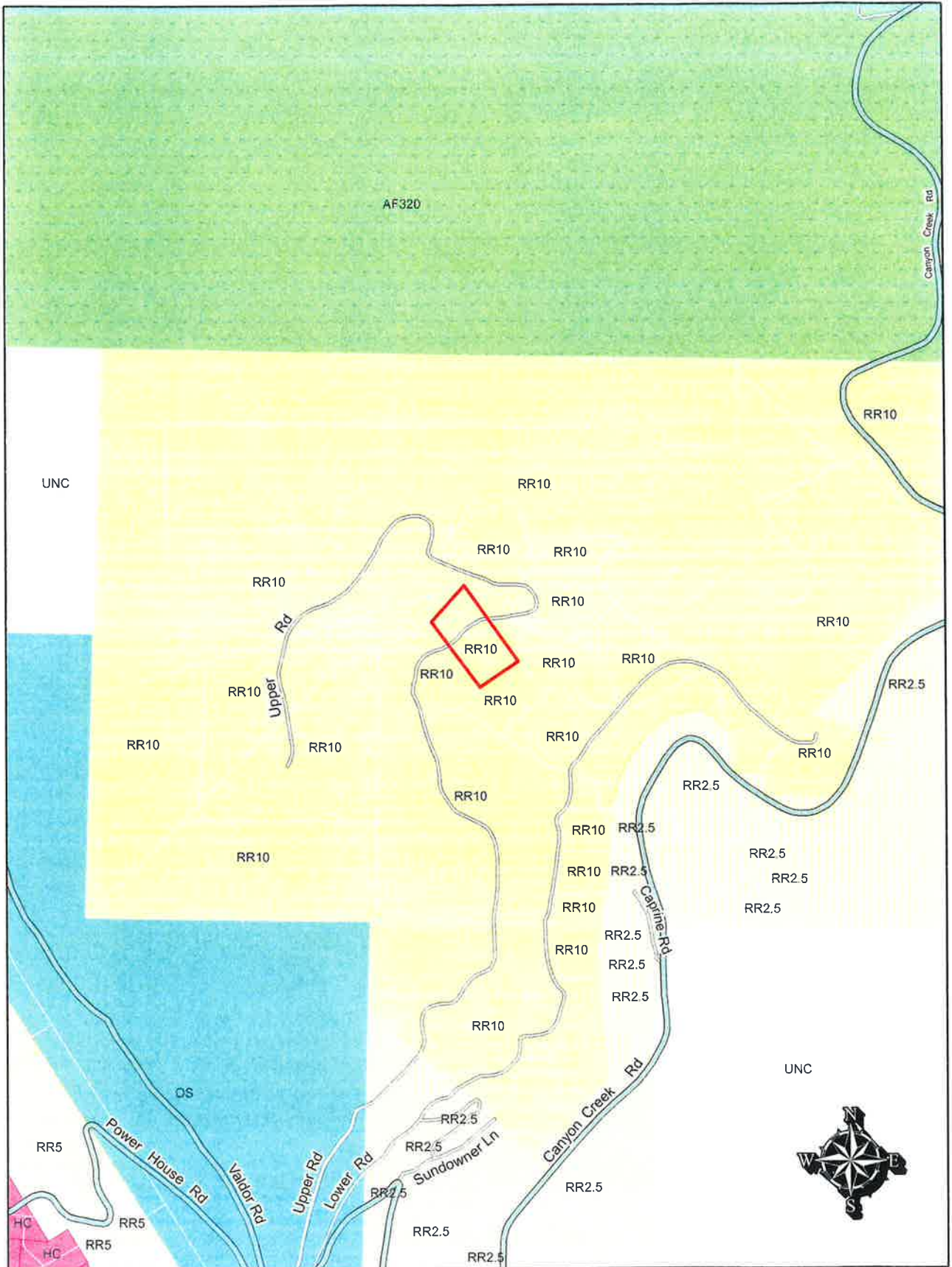


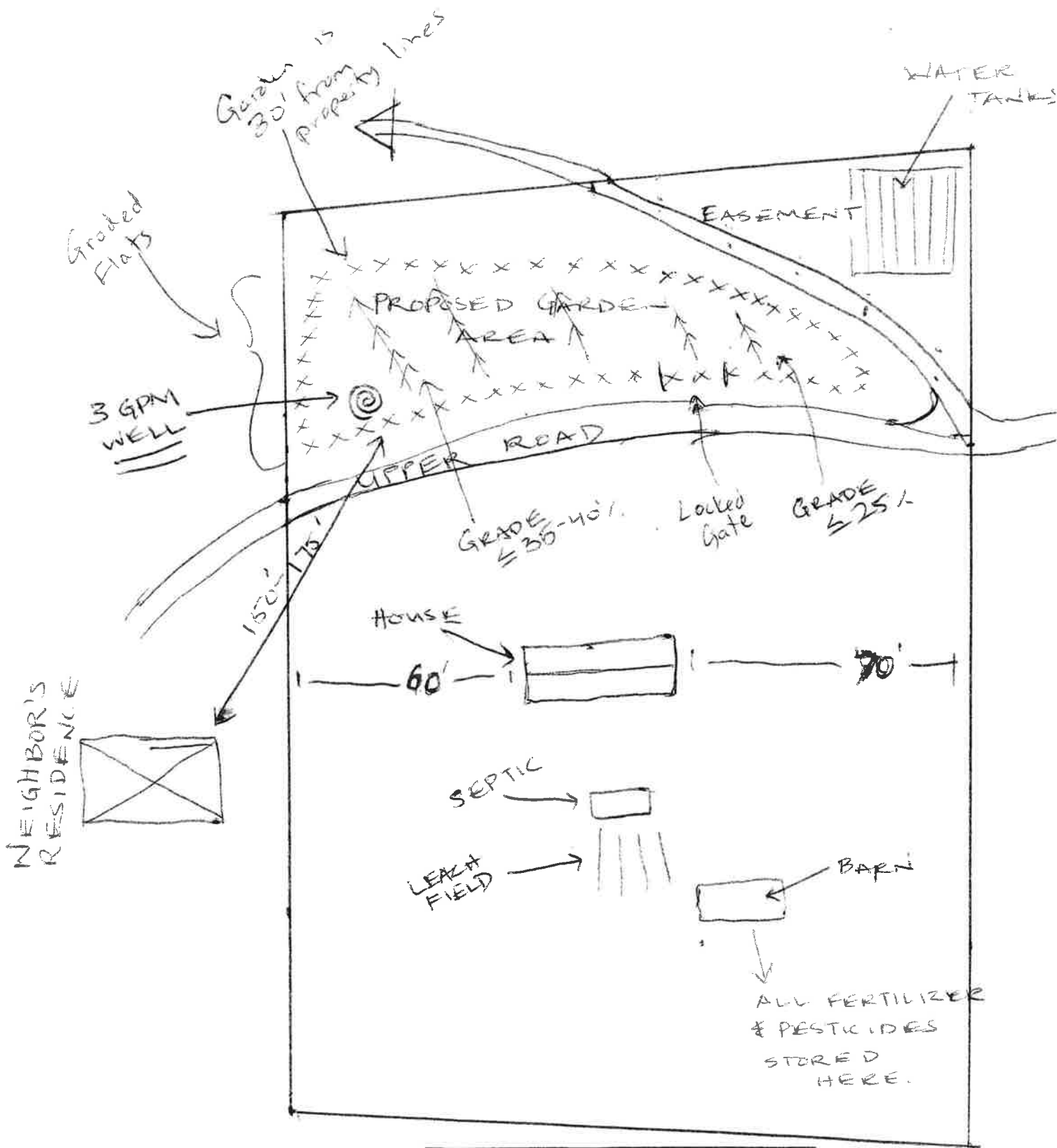
EXHIBIT A-2



EXHIBIT B-1

8





**KEY:**  
 X = FENCED GARDEN AREA  
 [Hatched Box] = WATER STORAGE [Circle with Dot] = WELL

EXHIBIT B.2

March 27, 2017

Quantum Organics/ (John Miller)  
PO Box 147  
Junction City, California 96048  
quantumorganicsca@gmail.com  
(530) 605-9083

Trinity County Building Department  
61 Airport Road  
Weaverville, California 96093

Dear Trinity County Building Department:

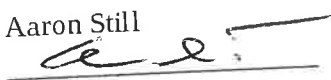
I am writing this letter as a follow up for the variance application for my commercial cannabis garden located at 710 Upper Road Junction City, California. Attached is a map showing the topography of the property; it displays the location of my residence, the location of the cannabis cultivation area, and the cultivation area's proximity to the neighbor's residence. The reason I am asking for a variance is because the current location of the garden allocates for the maximum distance between the neighbors house and the cultivation area. There is nowhere on the parcel where the garden could be relocated to allow for a greater distance to the neighbor's dwelling.

The garden has also been inspected by Jeff Dickey, who only called for having the remainder of the fence to be constructed, as well as having gates and locks installed. Since his visit earlier this month we have completed everything he asked for.

The second part of this letter serves as acknowledgement and consent of the direct neighbor Aaron Still to allow my cultivation in the current location, whose residence is located under 350 feet from the cultivation area.

I Aaron Still do give permission and consent to John Miller of Quantum Organics LLC to cultivate medical/commercial cannabis in the current location of his garden. Additionally, I consent and will approve the variance needed for his cultivation permit. We are neighbors on good terms, and both have the understanding that Mr. Miller's cultivation will only positively affect the neighborhood and surrounding community.

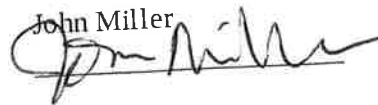
Aaron Still



Phone: 598-0597

Address: 680 upper rd.  
Junction City, ca.  
96048

John Miller



RECEIVED

MAR 29 2017

TRINITY COUNTY  
PLANNING DEPARTMENT

EXHIBIT C

10