

ITEM NO. 6

MEETING DATE 04/11/2019

APPLICATION NO. CCV-2018-046

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

APPLICANT: German Cruz

REPORT BY: Bella Hedtke

OWNER: Xou Saephan

APN: 009-490-20-00

(2.5 acres)

PROJECT DESCRIPTION:

Initial annual variance from the required 350ft residential setback provision found in Trinity County Code 17.43.050.A.8. to allow an existing commercial Cannabis cultivation site to be located less than 350ft from three (3) neighboring residences. The closest neighbor is located 153ft away on APN 009-490-21-00, then 210ft on APN 009-490-19-00 and 262ft on APN 009-490-24-00.

LOCATION: 60 Bear Springs Rd., Junction City, CA 96048 (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Junction City
- B) Existing General Plan Designation: Rural Residential – (RR)
- C) Existing Zoning: Rural Residential 2.5-acre min – (RR2.5) with Mobile Home Standard Overlay
- D) Existing Land Use: Commercial Cannabis Cultivation
- E) Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	Residential	RR-2.5	RR
South:	Residential	RR-2.5	RR
East:	Residential	RR-2.5	RR
West:	Residential	RR-2.5	RR

PROJECT EVALUATION:

Staff Review

The applicant has a pending application in the County's commercial Cannabis cultivation licensing program. The parcel is located on 60 Bear Springs Rd., a private road. A site plan provided by the applicant/agent illustrates specific site configurations of the commercial Cannabis cultivation operation (Figure 2).

The subject property in Junction City is 2.5 acres. The subject property is surrounded by residences on all sides. Figure 4 shows the field conditions of the cultivation site taken during staff's site visit, which shows the neighbor to the east on APN 009-490-19-00, who submitted a concerned comment (see comments). All other impacted residences are not visible from the cultivation site.

There are no bus stops within one mile of the subject property.

Agency/Departmental Comments:

A Code Compliance Specialist reviewed this project and provided the following comments: "*There is no way to relocate cultivation area and meet residential setback requirements.*"

Neighbor Feedback

- Neighbor feedback within 350 ft. **in favor** of granting this variance: 0
- Neighbor feedback within 350 ft. **concerned** with granting this variance: 1
- Neighbor feedback outside 350ft **concerned** with granting this variance: 1
- Neighbor feedback outside 350ft **in favor** with granting this variance: 0

As of this writing, no other comments have been received. Figure 3 shows which neighbors commented and their proximity to the existing commercial Cannabis cultivation site. If a parcel does not have a comment bubble attached to it we did not receive a comment from them.

STAFF RECOMMENDATION:

After discussions with the concerned neighbor within 350ft, staff recommends that the Planning Commission chooses one of the following options:

- 1) Deny the variance due to the project not being able to meet the following required Findings of Fact:
 - No opposition from surrounding property owners or review agencies was submitted that would adversely affect approval of the variance.

OR

2) Approve the variance to allow reduction of the commercial Cannabis cultivation setbacks;

- from 350ft to 153ft from the residence located on APN 009-490-21-00;
- from 350ft to 210ft from the residence located on APN 009-490-19-00;
- from 350ft to 262ft from the residence located on APN 009-490-24-00,

and add the following requirement to the Conditions of Approval list:

- Applicant shall finish constructing the fence on the southeast side of the parcel that is adjacent to APN 009-490-19-00 within 120 days and be subject to the following Conditions of Approval 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.
3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance provisions for commercial Cannabis cultivation.

VARIANCE OVERVIEW:

Trinity County Code 17.43.050.A.8., "Commercial Cannabis Cultivation Regulations", includes a provision that states: "...cultivation shall not be allowed within three hundred and fifty (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."

Trinity County Code 17.43.050.A.8., "Commercial Cannabis Cultivation Regulations", defines the term "Variance" as: "Variance" is defined as Trinity County Ordinance 315 section 31." 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 Zoning Ordinance 315. Both State law and the County zoning ordinance provides criteria to use in 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 31.A. of the County zoning ordinance further elaborates on the State 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 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.
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.

Annual Renewal:

As discussed during previous Commission meetings, variances from the Cannabis cultivation setback (350ft) 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:

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

CONDITIONS OF APPROVAL
G. CRUZ CANNABIS SETBACK VARIANCE (CCV-2018-046)

1. The variance is approved for a period of one year from April 25, 2019 through April 25, 2020; 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 60 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 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 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.

FIGURE 1

APN 009-490-20-00

CCV-2018-046 G. Cruz

Project Location and Zoning

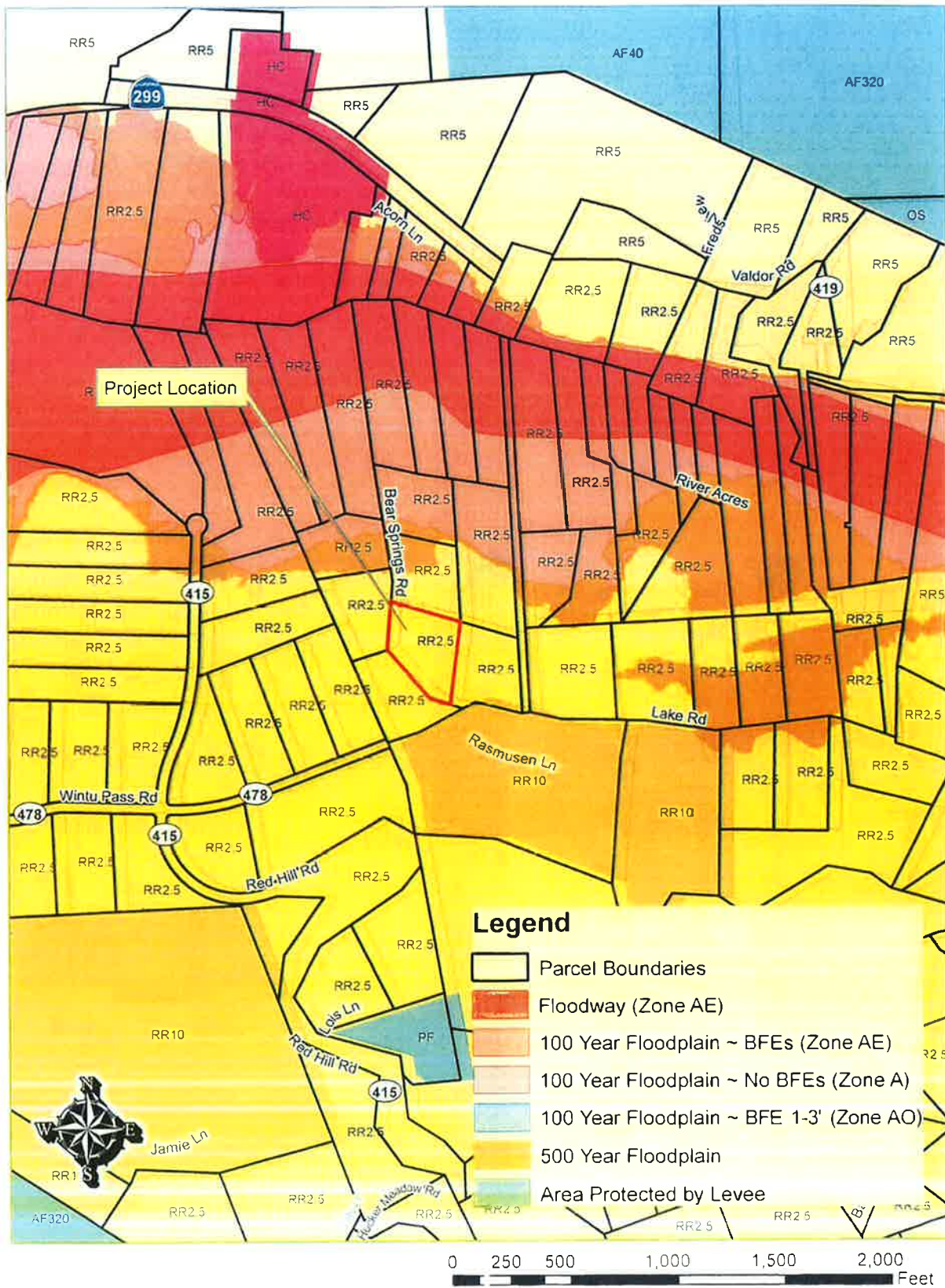


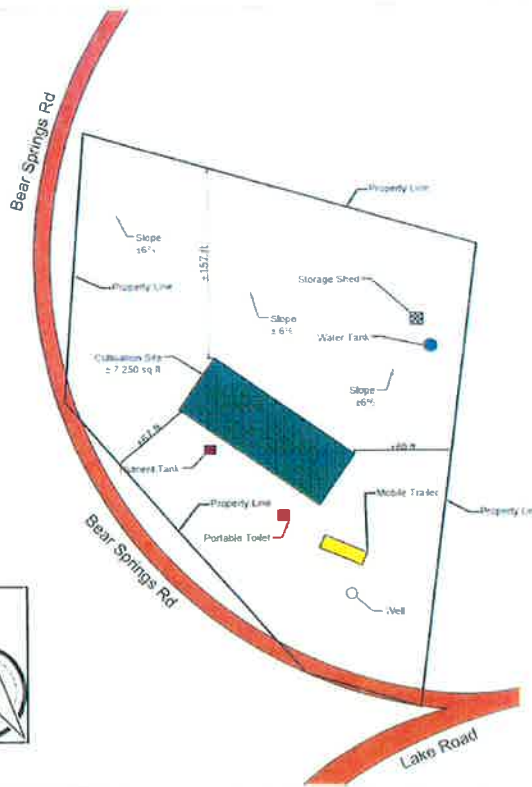
FIGURE 2

Site Map
 APN: 009-490-20-00
 60 Bear Springs Rd
 Junction City, CA 96048

- Legend**
- Residence
 - Portable Toilet
 - Cultivation Site
 - Nutrient Tank
 - Storage Shed
 - Water Tank
 - Well
 - Road
 - Property Line

-Cultivation site is approximately 7,250 sq ft.
 -Average slope through property is 0 - 6%

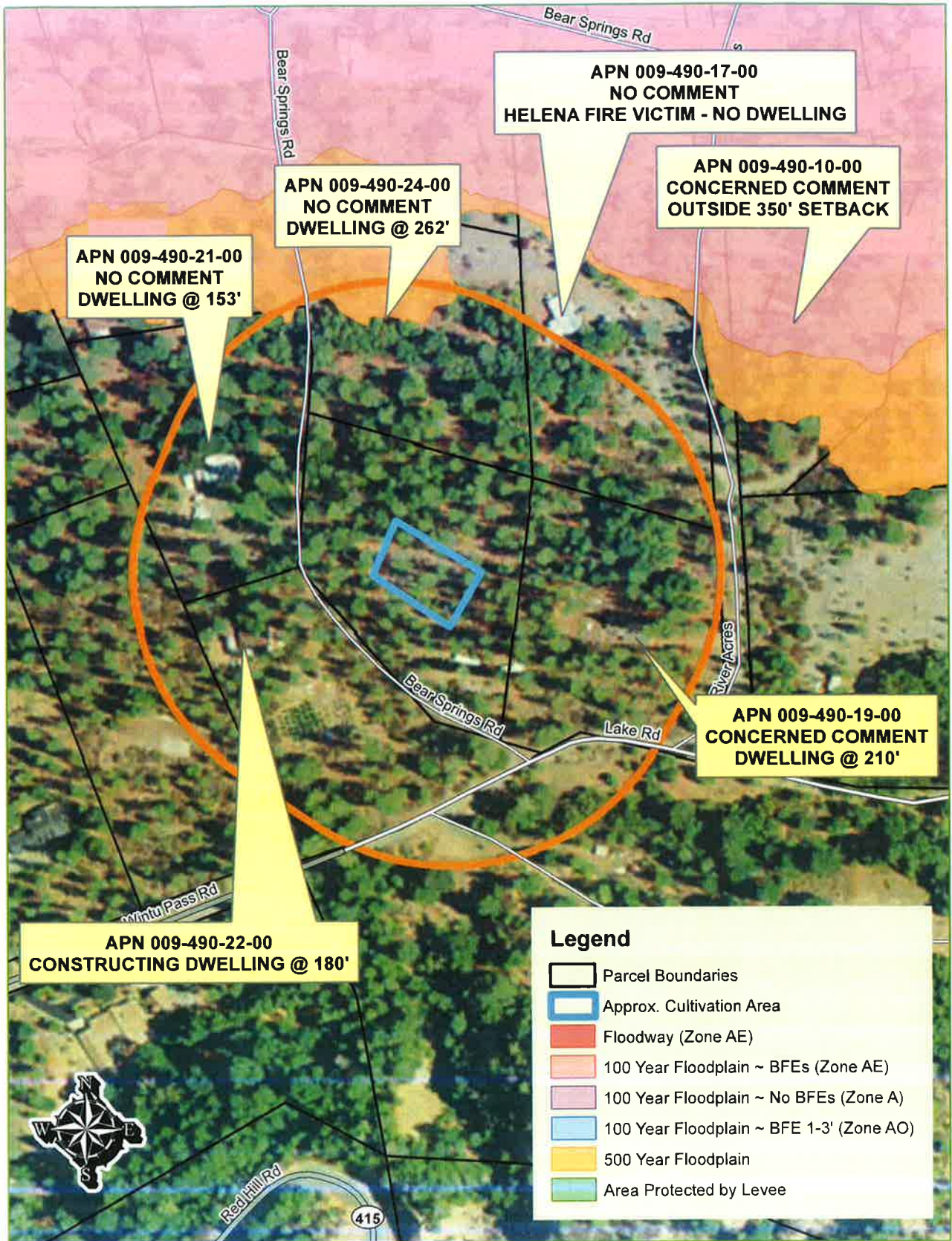
60 ft



German Cruz / Xou Saephan 60 Bear Springs Rd. Junction City, CA 96048 APN: 009-490-20-00	
Date: 6/24/18 Page: 1	Compliant Innovative Resources 4231 Shasta Dam Blvd Shasta Lake, CA 96019

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FIGURE 3
APN 009-490-20-00
CCV-2018-046 G. CRUZ
Neighbor Proximity and Comment Status



0 50 100 200 300 400 Feet

FIGURE 4



Picture of empty cultivation boxes, staff was standing in front of the RV and facing northwest.



Picture of northwest portion of parcel, staff was standing in front of the RV and turned northeast. The dwelling on APN 009-490-19-00 is outlined with a red rectangle.

COMMENTS AS OF 4/4/2019

Bella Hedtke

From: [REDACTED]
Sent: Monday, April 1, 2019 10:21 PM
To: Bella Hedtke
Cc: Leslie Hubbard; Mary B. Brinkley
Subject: RE: Notice of public hearing

Hello Bella,

I have asked that the owner put up a fence. They have been growing for years. My house used as a staging place for the robberies that took place this past summer. My garage man door was broken down and my house was trashed. This caused me a great expense, there is no septic, fence or house there and the place is a eyesore. My neighbors complain about the place. We have a pot farm nearby that is enough. Water is also a problem. I'm now retired and I just want to live in peace.

The people caught in Covington were at me place. I found Gun casings on my deck. The deputy followed me to my place because I did not feel safe after this incident.

Thank you,

-Mark

-----Original Message-----

>From: Bella Hedtke <bhedtke@trinitycounty.org>

>Sent: Apr 1, 2019 6:45 PM

>To: [REDACTED]

>Cc: Leslie Hubbard <lhubbard@trinitycounty.org>, "Mary B. Brinkley" <mbrinkley@trinitycounty.org>

>Subject: RE: Notice of public hearing

>

>Good Evening Mark,

>

>To clarify, are you opposed to the issuance of a commercial Cannabis cultivation license, the approval/denial of a commercial Cannabis cultivation variance by the Planning Commission or both Land Use Entitlements? And could you clarify your reasons why?

>

>Feel free to call or email me if you need more information.

>

>Thank you,

>

>Bella Hedtke

>Associate Planner

>Trinity County Planning Department

>61 Airport Rd, Weaverville, CA 96093

>Box 2819, Weaverville, CA 96093

>bhedtke@trinitycounty.org

>530-623-1351 ex. 5

>

>-----Original Message-----

>From: [REDACTED]

>Sent: Monday, April 1, 2019 3:58 PM

>To: Bella Hedtke <bhedtke@trinitycounty.org>; mbrinkley@trinitycoutu.org; Leslie Hubbard <lhubbard@trinitycounty.org>

>Subject: Notice of public hearing

>
>Hello,
>
>My name is Mark Nobles the owner of the property TFO&B, INC. Parcel 009-490-19-00. My home is within 300 feet of parcel 009-490-20-00.
>
>I appose the application for Commercial Cannabis Cultivation.
>
>Thank you,
>
>Mark Nobles

RECEIVED
MAR 21 2019
TRINITY COUNTY
PLANNING DEPARTMENT

March 21, 2019

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

To Whom It May Concern:

We, John E. Perris and Linnea Perris, request that you deny the Annual Variance for Cannabis cultivation on property at 60 Bear Springs Rd., Junction City, CA 96048 APN: 009-490-20-00.

We live in a area of Coopers Bar that is a private area and the roads are not paved all of the additional traffic on the roads causes dust and the roads get many holes. Growers bring in others to their property. There are other growers in the area where we live and it causes an awful smell for at least 3 months out of the year, we cannot enjoy being outside and the smell comes into our dryer and we have to keep our windows closed. There is a huge Cannabis grow across Bear Springs Road from 60 Bear Springs and there are others in our area.

Please consider our request.

Our Parcel No. 009-490-10-00
110 River Acres Rd.
Junction City, CA 96048



John E. Perris



Linnea Perris