

ITEM NO. 7

MEETING DATE 04/11/2019

APPLICATION NO. CCV-2019-001

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

APPLICANT: Shauna Hill

REPORT BY: Bella Hedtke

OWNER: Same

APN: 008-400-48-00 (4.13 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 180ft away on APN 008-400-49-00, then 205ft on APN 008-400-46-00 and 245ft on APN 008-400-47-00.

LOCATION: 80 Suzy Q. Rd., Hawkins Bar, CA 95527 (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Junction City
- B) Existing General Plan Designation: Rural Residential (RR)
- C) Existing Zoning: Unclassified (UNC)
- D) Existing Land Use: Residential and Commercial Cannabis Cultivation
- E) Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	Residential	UNC	RR
South:	Residential/Vacant	UNC	RR
East:	Residential	RR2.5	RR
West:	Residential	UNC	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 80 Suzy Q. Rd., Hawkins Bar, 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 Hawkins Bar is 4.13 acres and is confined by a 500ft bus stop setback on the south side and a forest on the southeast side. At least 34% of the property is unbuildable due to uneven terrain/cliff edge and forest cover. Figure 5 shows the field conditions of the cultivation site taken during staff's site visit, and also shows the neighbor's dwelling to the southwest on APN 008-400-49-00.

Figure 4 demonstrates the location of the proposed cultivation site is outside of the closest 500ft bus stop setback. According to satellite imagery, the closest wall of the well house is 40ft within the bus stop setback. Staff measured and marked with a flag the closest cultivation corner at 50ft from the well house, thus the cultivation site is 10ft outside of the 500ft bus stop buffer.

Agency/Departmental Comments:

Code Compliance Inspector:

Code Compliance Staff reviewed this project and provided the following comments: "*Cultivation area cannot be relocated on parcel without encroaching on school bus setback given the topographical limitations of the parcel.*"

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 proposed commercial Cannabis cultivation site. If a parcel does not have a comment bubble attached to it, we did not receive a comment from them. A third neighbor did call staff to express their concern with water usage on their shared water table, but after staff informed the neighbor of the water use documentation that is required for commercial Cannabis licensees, the neighbor withdrew their concerns.

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 180ft from the residence located on APN 008-400-49-00;
 - from 350ft to 205ft from the residence located on APN 0008-400-46-00;
 - from 350ft to 245ft from the residence located on APN 008-400-47-00.

subject to the following conditions of approval and 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
S. HILL CANNABIS SETBACK VARIANCE (CCV-2019-001)**

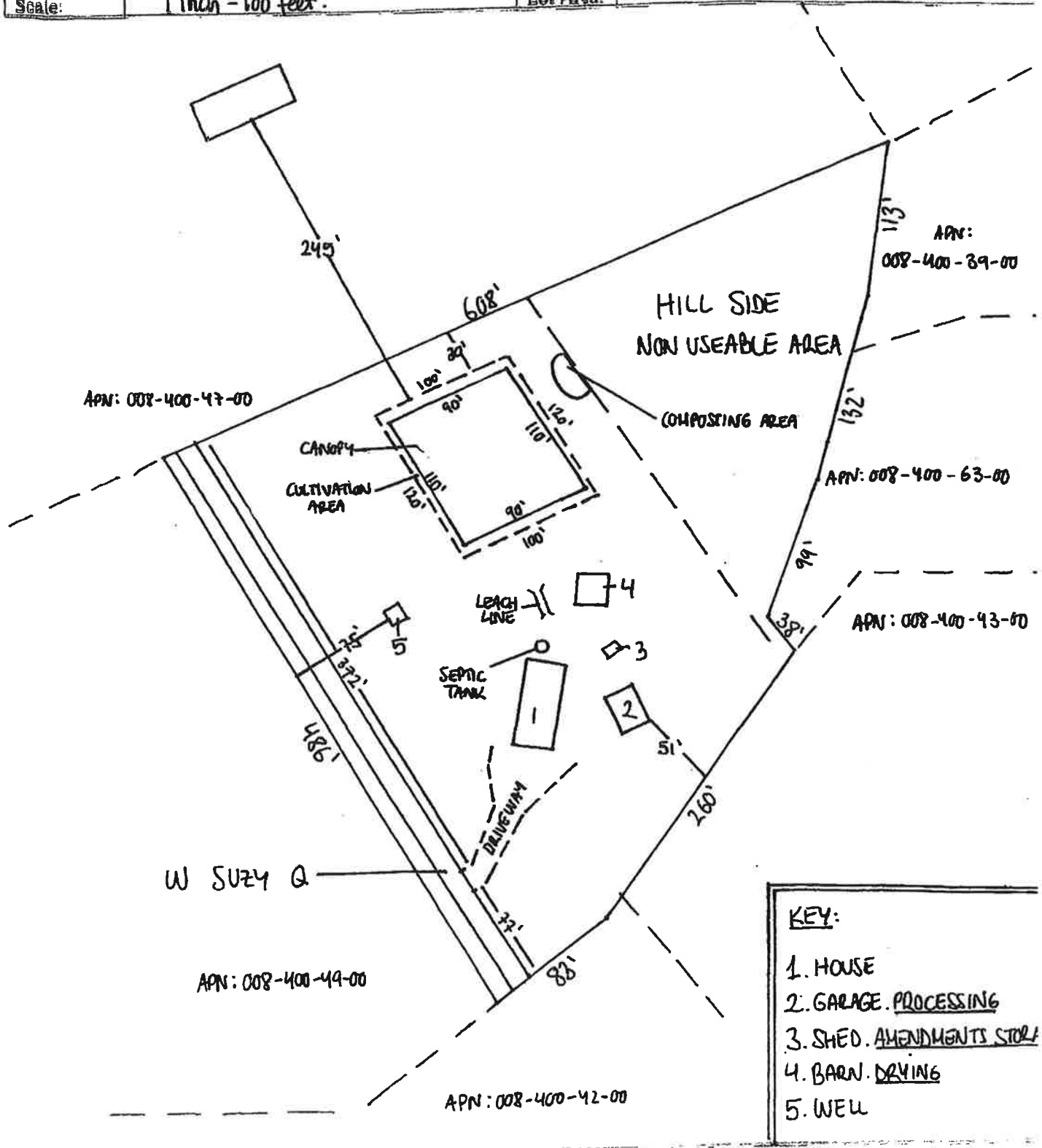
1. The variance is approved for a period of one year from **April 25, 2019** through **April 25, 2020**; provided, however, that the variance may be renewed annually.
 - a. Application for renewal shall be made by the applicant prior to expiration of the variance, preferably at least 60 days in advance;
 - 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 2

SITE PLAN

Applicant Prepared Site Plan to Accompany Director's Issued Use Permit Application
Application No.

Drawn By:	S.C.A.	APN:	008-400-48-00
Date:	12/30/18	Zoning:	UNC
Scale:	1 inch = 100 feet.	Lot Area:	



KEY:
1. HOUSE
2. GARAGE. <u>PROCESSING</u>
3. SHED. <u>AMENDMENTS STOR</u>
4. BARN. <u>DRIVING</u>
5. WELL

FIGURE 3
APN 008-400-48-00
CCV-2019-001 S. Hill
Neighbor Proximity and Commenting Status

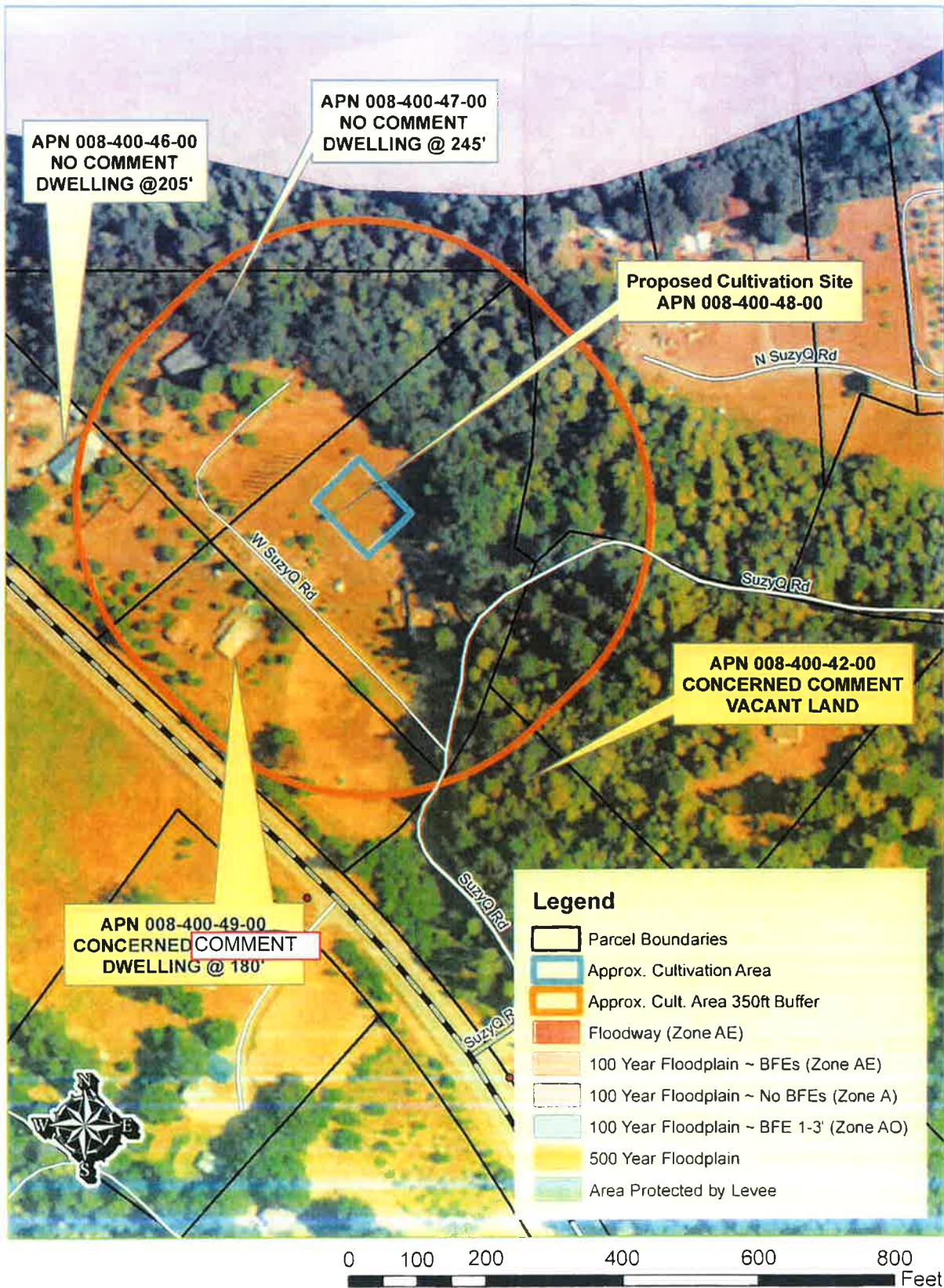


FIGURE 4
APN 008-400-48-00
CCV-2019-001 S. Hill
Bus Stop Proximity

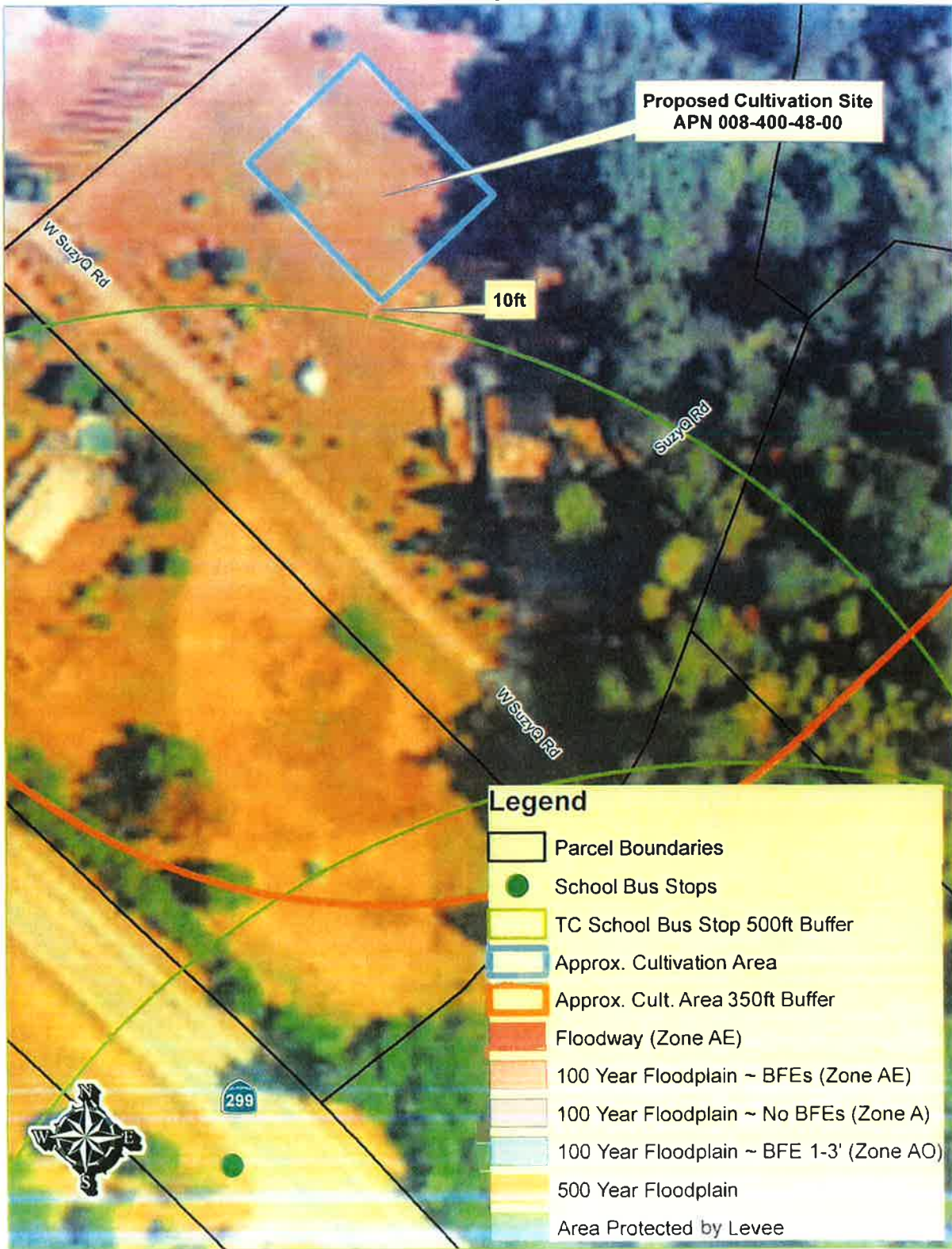


FIGURE 5



Picture of the approx. location of the proposed cultivation site (blue) and neighboring home on APN 008-400-49-00 (red). Staff was facing southwest.

Bella Hedtke

From: mike jones [REDACTED]
Sent: Monday, March 25, 2019 5:10 PM
To: Bella Hedtke
Subject: Re: Notice of public hearing

Ms. Hedtke,

I have been opposed to the legalization of Marijuana from the outset. That being said, people have the right by way of the vote to use marijuana and now to grow it under established rules. I have the right to protest when someone wants to thwart the rules, in this case ignoring the 350 foot setback. I do not want to see it, i do not want to smell it and i do not want my grandkids exposed to it. In addition, it degrades the value of my property. In case you hadn't noticed, property values have dropped considerably in Trinity County as a result of the lure of cannabis growing..

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

From: Bella Hedtke <bhedtke@trinitycounty.org>
To: 'Louis M Jones' [REDACTED]
Sent: Mon, Mar 25, 2019 10:20 am
Subject: RE: Notice of public hearing

Good Morning Louis,

I am confirming receipt of your email comment in regards to CCV-2019-001. This hearing has been rescheduled to April 11th, 2019 at 7pm at the Trinity County Library (351 Main St, Weaverville CA). You will receive an updated legal notice shortly.

May I ask what your concerns are with the Cannabis cultivation site on your neighbor's property?

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: Louis M Jones [REDACTED]
Sent: Thursday, March 21, 2019 12:21 PM
To: Bella Hedtke <bhedtke@trinitycounty.org>
Subject: Notice of public hearing

Regarding Trinity County Planning Commission public hearings planned for Match 28, 2019 at 351 main st., Weaverville CA. I am hereby protesting the "Request for an initial "annual variance" from the required 350' Cannabis cultivation setback from a neighboring residential dwelling located at 80 Suzy Q road, Salyer. APN 008-400-48-00. Applicant: Shauna Hill. CCV-2019-001.

Trans-Wood Co.
[REDACTED]

Redding CA 96009
Louis M. Jones, V.P.
Sent from my iPhone

March 15, 2019

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

RECEIVED
MAR 20 2019
TRINITY COUNTY
PLANNING DEPARTMENT

To Whom It May Concern:

We, Bill and Kim Brittain are responding to the request for an initial "annual variance" project located at 80 Suzy Q Road, Salyer APN:008-400-48-00. We are not in favor of the request.

We have owned our home at 101 Suzy Q Road, Salyer for 33 years and at the time we purchased it we never thought we would have to deal with a cannabis situation. We are firm believers that a property owner should be able to do what they want on their own property however your code states that a cannabis cultivation is required to be 350' from a neighboring residential dwelling (Trinity County Code 17.43.050.A.8.) and the property in question does not meet that requirement. We believe that a cannabis grow will infringe on our enjoyment and investment of our property. We have some concerns that we would like you to consider.

We are worried about our property value being negatively impacted. We feel that it would be harder to find someone to purchase it with a commercial cannabis grow or any other industrial operation so close.

We don't feel that having a commercial business in our residential neighborhood is appropriate. Having a cannabis operation will likely increase vehicle and foot traffic in our quiet neighborhood. We have had illegal parking on our property already and don't want to have to deal with this issue on a regular basis. The horrendous smell has been an issue for us and negatively impacts the enjoyment of our home.

We don't want to have to worry about the grow using an unusual amount of water and it effecting our water supply especially during the summer months. We have run out of water in previous years. We are also concerned about the amount and type of pesticides that may be used in this operation.

We enjoy sharing our home with our family which includes our grandchildren, nieces and nephews. We don't think it is necessary for them to be exposed to the cannabis culture.

Thank you for your time and consideration.

Bill and Kim Brittain

Bill and Kim Brittain

101 Suzy Q Road, Salyer