

ITEM NO. 9

MEETING DATE 04/11/2019

APPLICATION NO. CCV-2019-005

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

APPLICANT: Stephen Fogal

REPORT BY: Bella Hedtke

OWNER: Same

APN: 017-440-20-00

(8.00 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 one (1) neighboring residence at 251ft away on APN 017-440-21-00.

LOCATION: 940 S. Meadow Ln., Hayfork, CA 96041 (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Agricultural (A)
- C) Existing Zoning: Rural Residential Agricultural 20-acre minimum with a Critical Water Resource (CWR) Overlay
- 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	A20 w/ CWR	A
South:	Residential/Commercial Cannabis	A20 w/ CWR	A
East:	Residential	A20 w/ CWR	A
West:	Vacant	A20 w/ CWR	A

PROJECT EVALUATION:**Staff Review**

The applicant has a pending application in the County's commercial Cannabis cultivation licensing program. The parcel is located on 940 S. Meadow Ln., Hayfork, 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 Hayfork is 8 acres and surrounded by agricultural parcels no less than 8 acres on all four sides.

There are no bus stops within ½ mile of this site.

Agency/Departmental Comments:**Code Compliance Specialist:**

Code Compliance Staff reviewed this project and provided the following comments:

"Applicant is limited in his cultivation area due to parcel size, shape and terrain. Applicant has maintained existing setback with his current cultivation although he has the ability to expand with the addition of another greenhouse north of existing cultivation."

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 a brief conversation with the concerned neighbor within 350ft, staff recommends that the Planning Commission chooses one of the following options:

- 1) Continue this item to a later meeting in order for the proposed new property owner of APN 017-440-21-00 to comment, as requested by the current owner of APN 017-440-21-00 (see comments).

OR

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

- from 350ft to 251ft from the residence located on APN 017-440-21-00;

For staff acknowledges that at this time this project cannot meet the following finding:

- No opposition from surrounding property owners or review agencies was submitted that would adversely affect approval of the variance.

Yet, this an annual process and if the proposed new owner of APN 017-440-21-00 has any concerns, they will have the opportunity in the next year to raise their specific objections.

and 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
S. FOGAL CANNABIS SETBACK VARIANCE (CCV-2019-005)

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 017-440-20-00 CCV-2019-005 S. FOGAL Project Location and Zoning

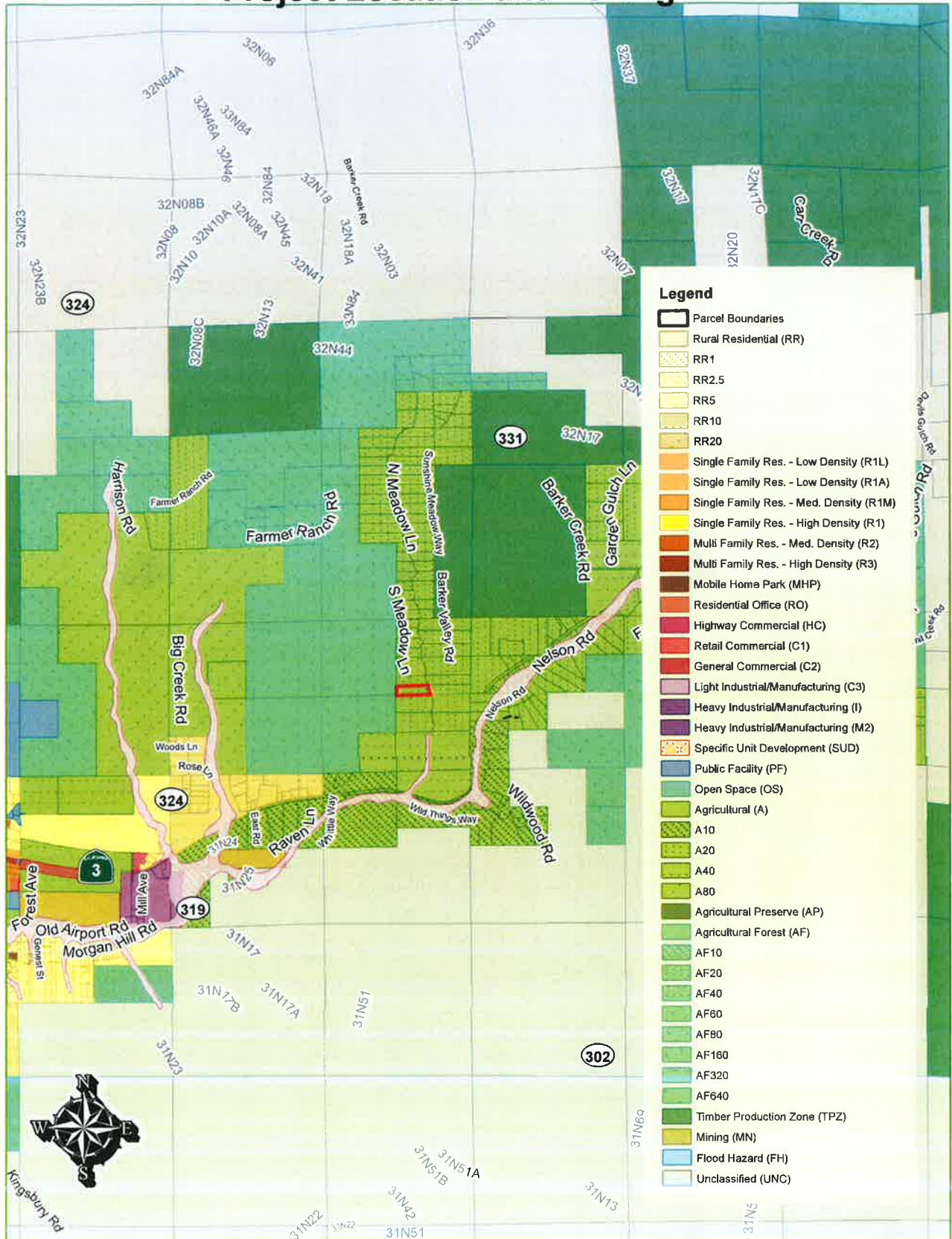
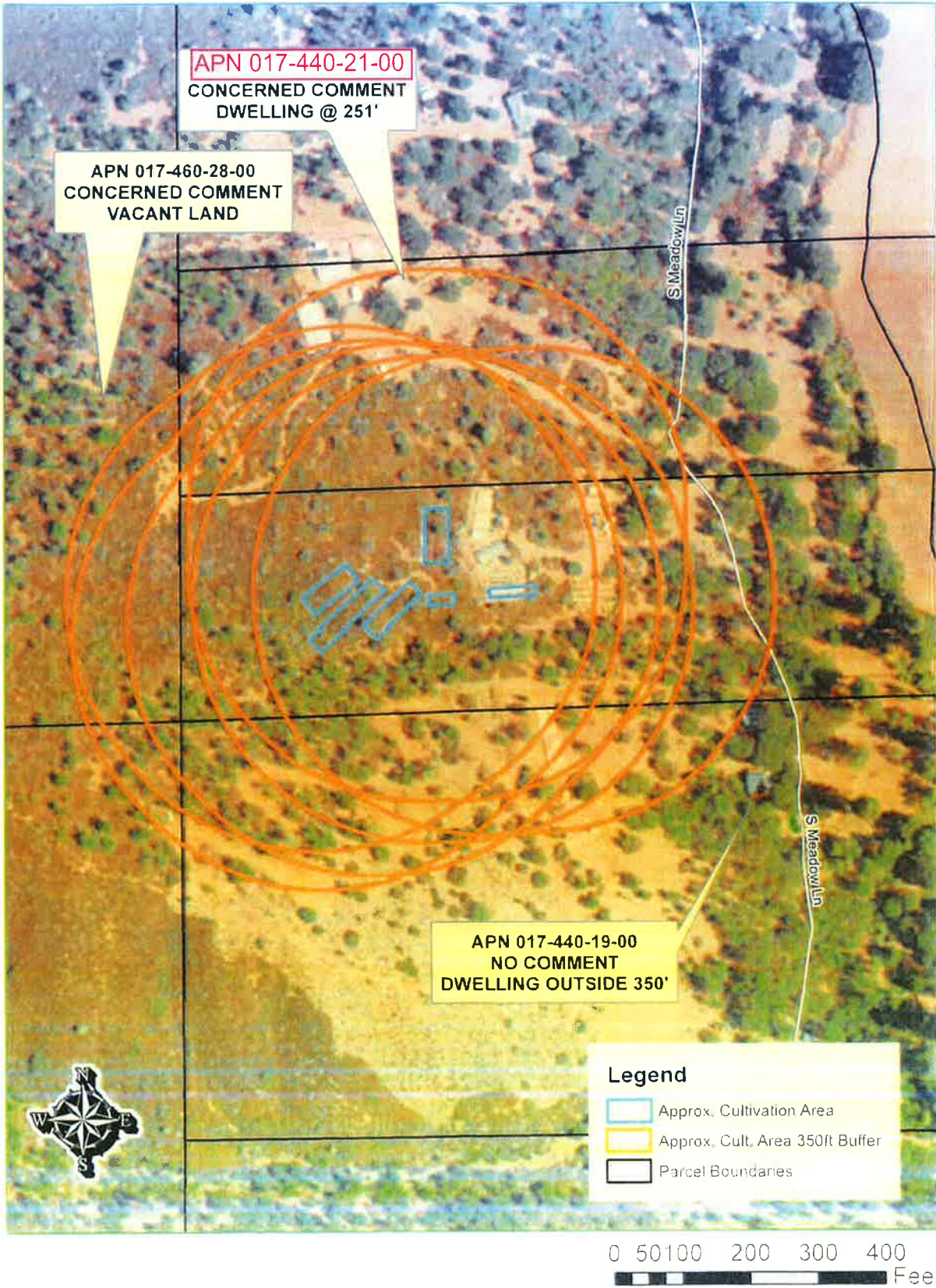


FIGURE 3

**APN 017-440-20-00
CCV-2019-005 S. FOGAL
Neighbor Proximity and Comment Status**



COMMENTS AS OF 4/4/2019

Fogal CCV-2019-005

RECEIVED

MAR 21 2019

TRINITY COUNTY
PLANNING DEPARTMENT

Athanasios Etmektzoglou,

Owner of Trinity County parcel APN 017-460-28-00

March 16, 2019

Trinity County Planning Department, 61 Airport Road,
P.O. Box 2819,
Weaverville, CA 96093

To whom it may concern,

This is in response to the solicitation for input at the Planning Commission public hearings to be held in the Trinity County Library Conference Room located at 351 Main Street, Weaverville, California, on March 28, 2019 at 7:00 pm (see attached copy of "Notice of Public Hearing")

As a property owner within 300 feet from the annual variance requested under item 6 for APN 017-440-20-00 located at 940 S. Meadow Ln.:

I have no objection to the variance request by the owners at 940 S. Meadow Ln – **so long as the granting of such variance does not result in future restrictions, additional expenses or regulatory and other burdens on my land.** For example, were I to desire to build a residence or auxiliary structure within 350' of the proposed Cannabis cultivation on APN: 017-440-20-00 the granting of such variance should not constitute reason to deny my future project or require me to be subject to additional expenses related to a new variance on my side, just because a neighbor got their variance first.

Pending the reservations expressed in the second portion of above paragraph, I have no objection to the variance on APN: 017-440-20-00, wish my neighbors the best of luck and I am actually very happy that they may use and enjoy their property in whichever way they see fit.

Best regards,



Athanasios Etmektzoglou

Owner of Trinity County APN 017-460-28-00

Fogal CCV-2019-005

Deva Hymen

Trinity County Planning Department
61 Airport Road
P.O. Box 2819
Weaverville, CA 96093

RE: APN: 017-44020-00

RECEIVED

MAR 21 2019

TRINITY COUNTY
PLANNING DEPARTMENT

Dear Planning Commission,

Regarding your letter reporting a request for an initial "annual variance" I wish at this time to deny such variance as I am currently in the process of selling my property and don't want anything to jeopardize the sale. I can bring it up with the new owner and the applicant may request the variance from the new owner after the sale is completed.

Thank you for your understanding and support. If there any questions or concerns, please contact me at [REDACTED] or the address above.

Sincerely,

Deva Hymen

3/17/19

Deva Hymen