

TRINITY COUNTY PLANNING COMMISSION STAFF REPORT

APPLICANT: Xong Vang**REPORT BY:** Bella Hedtke**OWNER:** Same**APN:** 025-140-25-00

(3.24 acres)

PROJECT DESCRIPTION:

Initial annual variance from the required 350 ft residential setback provision found in Trinity County Code 17.43.050.A.8. to allow a proposed commercial Cannabis cultivation site to be located less than 350 ft from one (1) neighboring residence. The residence located on APN 025-140-23-00 is 110 ft from the proposed cultivation site.

LOCATION: 91 Shasta View Dr., Douglas City, CA (Figure 1)**PROJECT INFORMATION:**

- A) Planning Area: Douglas City
- B) Existing General Plan Designation: Rural Residential – (RR)
- C) Existing Zoning: Rural Residential 5-acre min – (RR5) with a Mobile Home Standard (MHS) Overlay
- D) Existing Land Use: Residential
- E) Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	Highway 299	RR5	RR
South:	Vacant/Residential	RR5	RR
East:	BLM Residential	AF160 RR5	RE RR
West:	Highway 299	RR5	RR

PROJECT EVALUATION/DISCUSSION:

The applicant has a pending application in the County's commercial Cannabis cultivation licensing program. Figure 2 is a site plan that was provided by the applicant/agent that illustrates specific site configurations of the commercial Cannabis cultivation operation. Figure 3 illustrates the location of the proposed commercial Cannabis cultivation site in relation to nearby impacted residences, as well as if the property owner commented on this project or not.

Figure 4 demonstrates compliance with Trinity County Code 17.43.050.A.2., that requires cannabis cultivation sites be at least 500 ft away from an authorized school bus stop.

Figure 5 shows the field conditions of the cultivation site taken during staff's site visit.

Agency/Departmental Comments:**1. Code Compliance Inspector:**

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

"It would not be feasible to move or relocate cultivation area due to terrain, parcel size and unnecessary additional grading that could occur if the site was elsewhere on the property."

2. The Bureau of Land Management (BLM):

BLM shares a property line with the subject property to the east (Figure 3) and was included in the 300 ft legal noticing requirements for this project. To clarify, there is no residential structure located on the BLM property. Figure 6 shows the agency's comment letter that includes the following recommendation in the third paragraph;

"We recommend that permit applicants adjacent to or near BLM lands have their parcels surveyed by a professional land surveyor so their operations to not trespass upon or cause impacts to federal lands."

The subject property was professionally surveyed by Hunt Land Surveying in January 2019 after the owner bought the property from the previous owner. A copy of the map is in the applicant's variance and commercial Cannabis license files. The map notates that stakes have been placed that confirm the property line between the applicant's parcel and BLM's parcel.

Neighbor Feedback:

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

As of this writing, no other comments from neighbors have been received.

COMMERCIAL CANNABIS VARIANCE PROCESS OVERVIEW:

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 Code Title 17 – Zoning. Both State code and County code provide criteria that must be considered when 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 17.43.050 (Limitation on location to cultivation cannabis) of the Trinity County Zoning Code states the following:

"17.43.050 – Limitation on location to cultivation cannabis.

A.8 For specialty cottage, specialty and small licenses cultivation shall not be allowed within three hundred fifty feet of a residential structure on any adjoining parcels. For medium licenses, cultivation shall not be allowed within five hundred feet of an adjacent property line. Applications for a variance from this provision will be considered by the Trinity County Planning Commission. After obtaining an

initial variance, the planning director can issue a director's use permit for subsequent years after an inspection.”

Section 17.43.010 (Definitions) of the Trinity County Zoning Code states that, ““Variance” is defined as Chapter 17.31 of this title.” Furthermore, Section 17.31.010 (General description), also known as Chapter 17.31, of Trinity County Zoning Code states the following:

“17.31.010 - General description

A variance is a waiver or modification of some requirement contained in the zoning ordinance. The statutory justification for a variance is that the owner would otherwise suffer unique hardship under general zoning regulations because his or her particular parcel is different from others to which the regulation applies due to size, shape, or topography. Variances may be granted only to authorize a change in development standards which is not otherwise authorized by the zoning regulations.

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.”

STAFF RECOMMENDATION:

Given the comments received and the discussion written above, staff recommends the Planning Commission make the following motion:

- To approve Commercial Cannabis Variance Application #2019-003 in order to allow the reduction of the commercial Cannabis cultivation setback provision outlined in Trinity County Code 17.43.050.A.8. from 350 ft to 110 ft from the residential structure located on APN 025-140-23-00 and shall be subject to the following Findings of Fact and Conditions of Approval.

Findings of Fact:

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.

There are special circumstances applicable to the property that, with strict application of the Trinity County Zoning Code, deprives the property owner of privileges available to other property owners with similar zoning in the vicinity that plan to establish or have established Type II, Cannabis cultivation, up to 10,000 sq. ft of canopy.

The following projects are examples of commercial Cannabis variances that have previously been approved by the Trinity County Planning Commission in which the property owner faced similar circumstances in the vicinity:

- P-17-52, Y. Lee, APN 025-140-23-00, 200 Shasta View Dr., Douglas City (Impacted Neighbor of CCV-2019-003)
- P-17-24, M. Hawkins, APN 025-530-34-00, 866 Top of the Grade Rd., Douglas City

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.

This variance is from the 350 ft setback requirement provision in Trinity County Code 17.43.050.A.8, not to allow a specific use in the RR5 zoning district that is not currently allowed by ordinance.

3. **Disservice Not Permitted.** A variance must not be injurious to the public welfare, nor to adjacent properties.

The purpose of the 350 ft setback requirement provision in Trinity County Code 17.43.050.A.8. is to mitigate odor to nearby neighbors. It should be

acknowledged that odor being injurious to adjacent properties is subjective. The neighbor that is within 350 ft has provided a letter in support of this application (Figure 7), therefore there is an assumption that the neighbor does not find the odor injurious. If the impacted property (APN 025-140-23-00) were to change ownership, the commercial Cannabis variance process is annual and will allow any future neighbors the opportunity to express their concerns for odor.

As previously mentioned, the subject property was professionally surveyed in January 2019, thus fulfilling BLM's recommended condition.

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.

The general purpose of the Zoning Code is to promote and protect the public health by providing a definite plan of development, protecting the character and the social and economic stability of land uses, and assuring orderly and beneficial development. The proposed project is substantially in compliance with the Zoning Code provisions for commercial Cannabis cultivation, which the County has found are necessary to reduce the potential impacts associated with unregulated cannabis cultivation. The one exception is the request for a reduction in the residential setback requirement in Section 17.43.050.A.8 of the Trinity County Code. Section 17.43.050.A.8 allows for variances from this standard, consistent with the requirements for variances in State law and the County Zoning Code. The subject parcel contains special circumstances related to topography, irregular shape, and size, which justifies the granting of a variance from the residential setback requirement and would be appropriate for any property owner facing similar circumstances. As such, the proposed variance is consistent with the general purpose and intent of the Zoning Code and would not 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.”

This site is not within an RD-1 Overlay Zone.

CONDITIONS OF APPROVAL
X. VANG CANNABIS SETBACK VARIANCE (CCV-2019-003)

1. The variance is approved for a period of one year from **May 9, 2019** through **May 9, 2020**; provided, however, that the variance shall be renewed annually.
 - a. Application for renewal shall be submitted by the applicant prior to expiration of the variance and preferably no later than 60 days in advance;
 - b. The renewal 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 of the operation.
3. Structures on the property shall be in compliance with the California Building Code and 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.

General Information Regarding Annual Renewal Process:

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

FIGURE 1

APN 025-140-25-00

CCV-2019-003 X. VANG

Project Location and Zoning

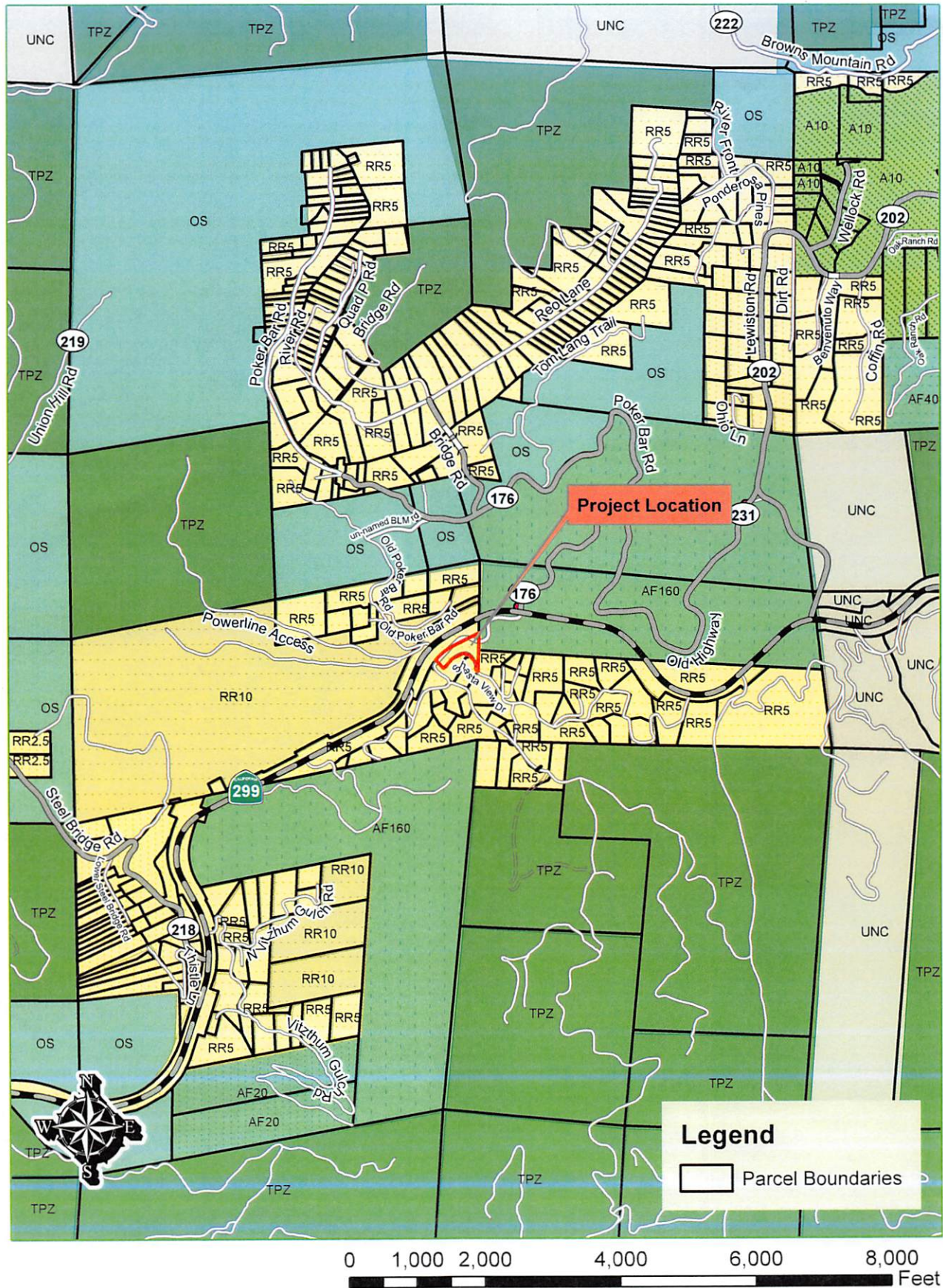
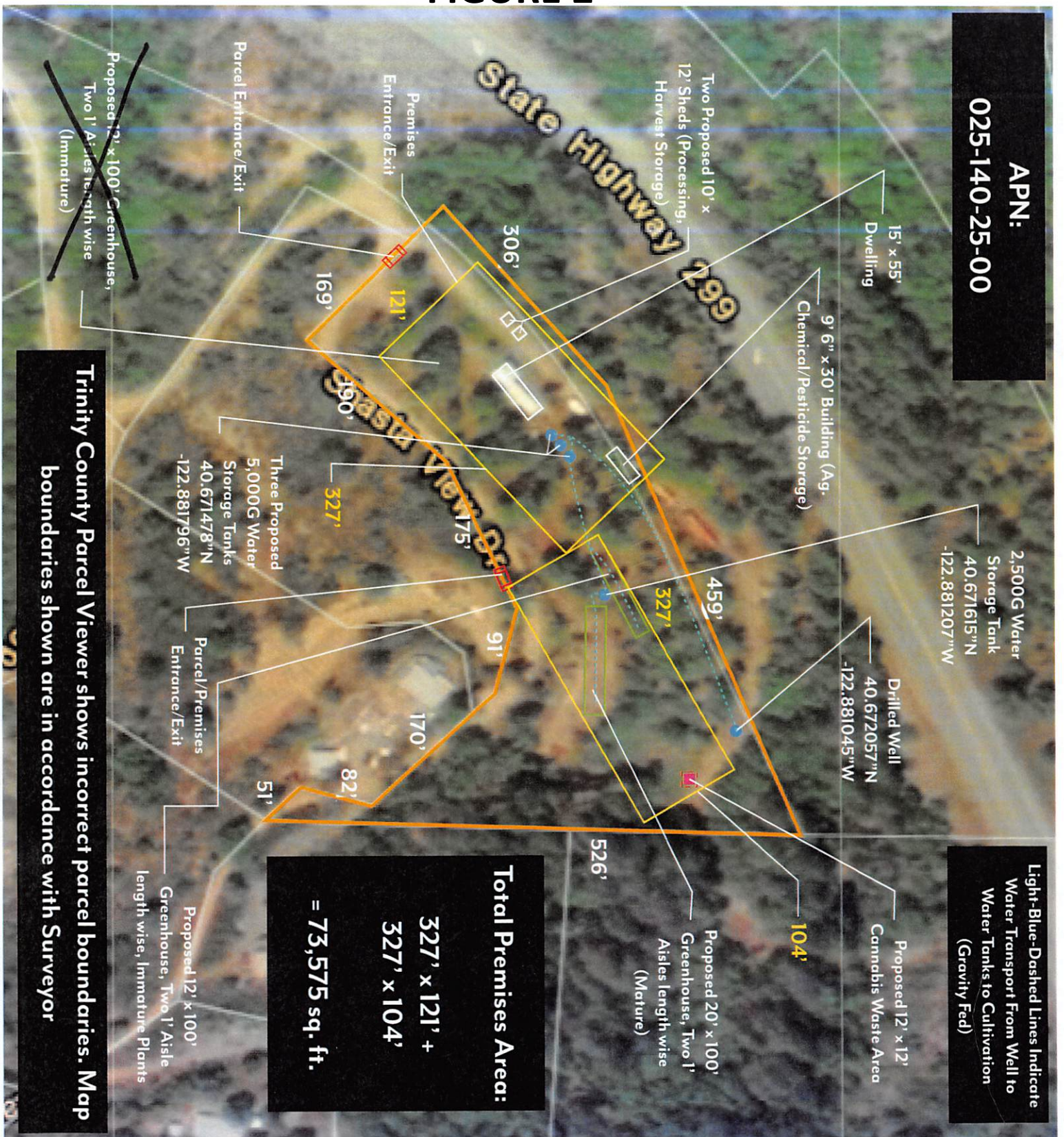


FIGURE 2



*Veg Occurs in Same Greenhouses Before Flower

Total Flower Canopy Area:
 $18' \times 100' = 1,800'$
 TOTAL= 1,800 sq. ft.

Total Veg Canopy Area:
 $10' \times 100' = 1,000'$
 TOTAL= 1,000 sq. ft.

TRINITY COUNTY
 PLANNING DEPARTMENT

APR 4 2019

RECEIVED

FIGURE 3

APN 025-140-25-00
CCV-2019-003 X. VANG

Neighbor Proximity and Commenting Status



FIGURE 4
APN 025-140-25-00
CCV-2019-003 X. VANG
Bus Stop

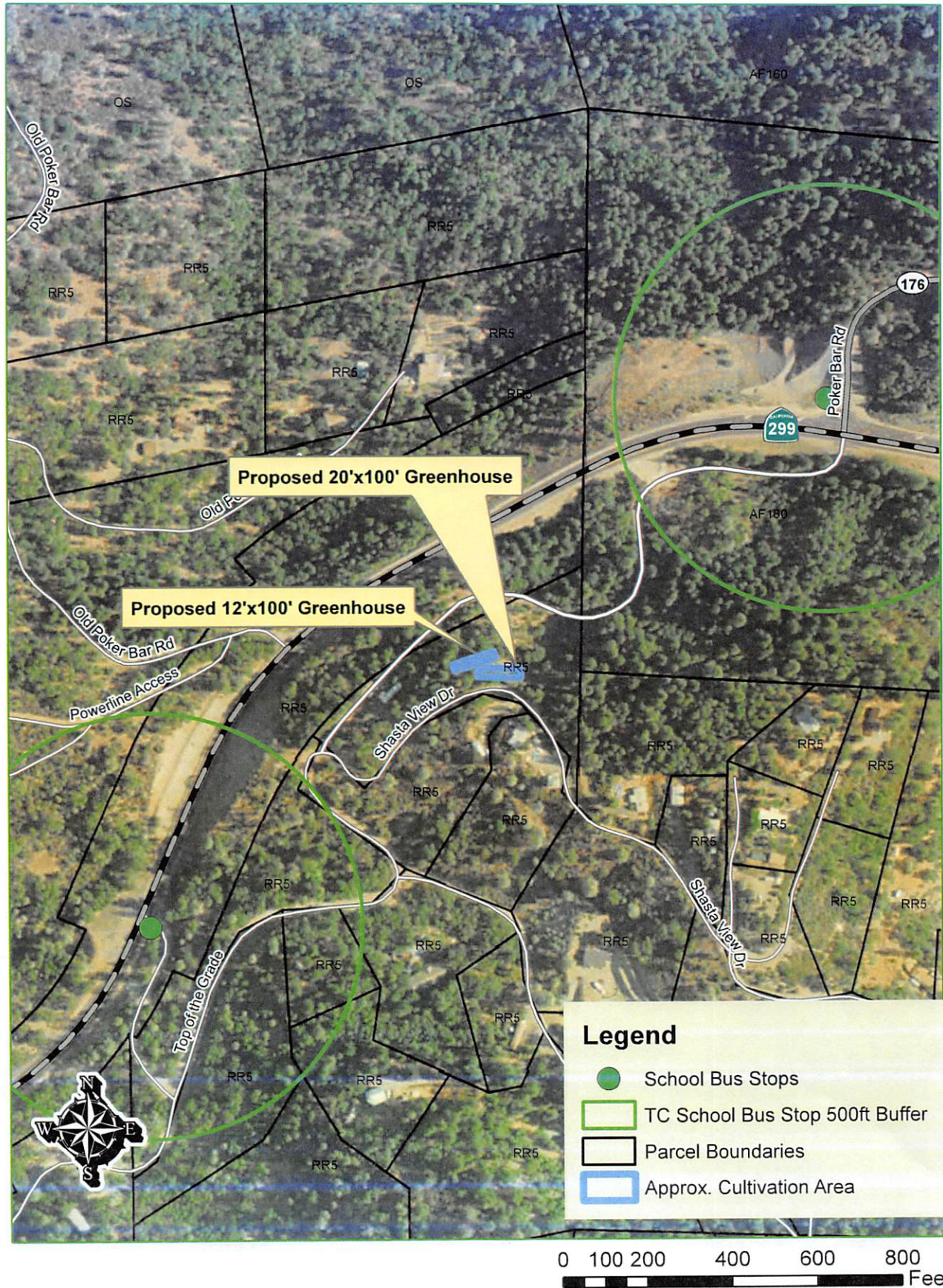


FIGURE 5 - STAFF VISIT PHOTOS



The house on **APN 025-530-45-00** is depicted in this image. Staff was standing in the approximate location that the upper level 20'x100'



This is the approximate location of the upper level 20'x100' greenhouse.

COMMENTS RECEIVED AS OF 4/17/2019

FIGURE 6



United States Department of the Interior BUREAU OF LAND MANAGEMENT

Redding Field Office
6640 Lockheed Drive
Redding, CA 96002
www.blm.gov/california



April 15, 2019

Trinity County Planning Department
Attn: Bella Hedtke
PO Box 2819
Weaverville, CA 96093

RECEIVED

APR 15 2019

TRINITY COUNTY
PLANNING DEPARTMENT

Dear Bella,

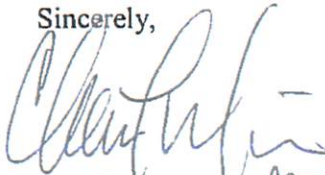
Thank you for providing the Bureau of Land Management (BLM) with the opportunity to share our concerns regarding county permitting for cannabis cultivation on private parcels if this affects federal lands or requires any federal authorizations.

The Comprehensive Drug Abuse Prevention and Control Act of 1970 and more specifically Title II of the act (the Controlled Substances Act), lists Cannabis as a Schedule I drug. The BLM does not have discretion to permit activities on the public land that will violate the Controlled Substances Act or any other federal law. The BLM therefore cannot authorize any activities related to cannabis operations on public land such as the *cultivation, production, transportation or distribution* of supplies or product.

We recommend that permit applicants adjacent to or near BLM lands have their parcels surveyed by a professional land surveyor so their operations do not trespass upon or cause impacts to federal lands. Individuals that cause resource damage (i.e. erosion or soil contamination) to BLM-administered lands form illicit acts, including the manufacturing of cannabis, may be subject to federal criminal and/or civil action. Permit applicants should also be aware that transporting cannabis across an existing right of way on federal lands to access a private parcel, is also illegal under federal law, and violators could face federal criminal action.

Thank you again for the opportunity to comment. Please contact me if you would like to further discuss this issue. You can reach me at 530-224-2100.

Sincerely,


Jennifer Mata
Field Manager

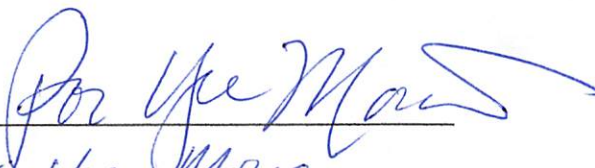
ACTING FOR

FIGURE 7

January 6, 2019

Trinity County Officials,

My neighbor, Xong Vang, wishes to cultivate cannabis on the property at 91 Shasta View Dr., APN 025-140-25. He is required to receive my permission before the appropriate permits can be supplied. As the owner of the property 200 Shasta View Dr., APN 025-140-23, I hereby state I have no objections to his cultivation.

Signature: 
Print: Por Yee Monica
Phone: 763-221-9283