

<p>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT Initial Commercial Cannabis Variance</p>
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PLANNER: Bella Hedtke

APPLICANT AND PROPERTY OWNER: Emilia Kotseva

CONSULTANT/AGENT: Mitch Ivanoff and Rayna Tchaleva

REQUEST: An application requesting a variance from the required 350' Cannabis cultivation setback from a neighboring residential dwelling (TCC 17.43.050.A.8).

LOCATION: 171 Bear Springs Rd., Junction City, CA (APN: 009-490-15-00)

APPROX. ACREAGE: 2.44

GENERAL PLAN DESIGNATION: Rural Residential (RR)

ZONING DISTRICT: Rural Residential 2.5-acre minimum (RR2.5)

RECOMMENDATION: Deny

ADJACENT LAND USE AND ZONING INFORMATION:

Direction	Land Use	Zoning	General Plan Designation
North	Mix of Vacant & Residential	RR2.5	RR
South	Residential	RR2.5	RR
East	Residential	RR2.5	RR
West	Residential	RR2.5	RR

ATTACHMENTS:

- 1 – Project Location Map
- 2 – Site Map (Provided by Applicant)
- 3 – 350' Setback with Comment Status Map
- 4-7 – Comment Letters from Nearby Property Owners
- 8 – Site Visit Photos

PROJECT DESCRIPTION: The applicant has applied for a variance for Trinity County Code 17.43.050.A.8. to reduce the required 350’ residential setback to allow their cultivation site to be located less than 350’ from three (3) neighboring residences. The applicant has a pending Specialty Cottage Mixed-Light Commercial Cannabis Cultivation license application in Trinity County’s Commercial Cannabis Program. While the Specialty Cottage Mixed-Light license type allows for a maximum of 2,500 sq. ft. of canopy, the applicant has reduced their proposed cultivation site to 1,200 sq. ft. in order to reduce the quantity of neighboring residences that are within 350’ of the proposed cultivation site.

FLOOD ZONE: The subject property is within the 500-year and 100-year floodplain. The proposed cultivation site is entirely within the 500-year floodplain and setback at least 50’ from the 100-year floodplain. There are no additional requirements for the cultivation site being located in the 500-year floodplain.

NEIGHBORING COMMENTS: Written comments are Attachments 4-7.

Staff received comments from two of the three residences that are within 350’ of the proposed cultivation site:

APN	APPROX. DISTANCE FROM CULTIVATON SITE	COMMENT STATUS
009-490-13-00	200’	Concerned Comment
009-510-14-00	315’	No Comment
009-490-21-00	275’	Supportive Comment

Staff received comments from the following residences that are both outside 350’ from the proposed cultivation site:

APN	APPROX. DISTANCE FROM CULTIVATON SITE	COMMENT STATUS
009-490-24-00	430’	Supportive Comment
009-510-10-00	700’	Supportive Comment

AGENCY COMMENTS: Project referrals were sent to the following agencies for comments:

AGENCIES	COMMENT STATUS
County Assessor’s Office	No Comment
County Building Department	No Comment
County Environmental Health Division	Comment
County Transportation Department	No Response
Cannabis Code Compliance	Comment

Comment from Environmental Health Division: “Concerned with the proximity to surrounding parcels/homes, high-density area, this is a very small parcel with little to no setbacks from the riparian area (this is important from an EH perspective, because of the geology of the property and the source of water for surrounding parcels). Area is known for seep wells or surface water as water source, deep water wells are generally low producing, run-off pollution to surrounding parcels/wells and/or surface water contamination (usually a contamination source would require setbacks in order to protect neighboring drinking water, which means out of the riparian area and in an area that can filtrate the contaminates properly) nitrates and nitrites are common

pollutants (found in Cannabis cultivation activities, “run-off of fertilizers”). This problem is made more complex by the sediment being composed of mostly mine tailings—meaning little to no filtration taking place from the pollution source.”

The Environmental Health Director will be present at the January 9, 2020 Planning Commission meeting to represent the Environmental Health Department regarding this comment.

Comment from Cannabis Code Compliance Inspector: “Applicant has demonstrated concern for the impact this activity may have on the surrounding neighbors by limiting the footprint of the proposed cultivation area”.

FINDINGS: The following findings shall apply to the E. Kotseva Commercial Cannabis Setback variance (CCV-19-60):

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 (topography, irregular shape of parcels, and size of parcels) applicable to the project parcels 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 a commercial Cannabis cultivation operation within the Trinity County Commercial Cannabis licensing program.

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 to reduce the 350 ft setback requirement provision in Trinity County Code 17.43.050.A.8, not to allow a specific use in the Rural Residential 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 and other commercial Cannabis cultivation related activities to nearby neighbors. Required Finding #3 does not provide a spectrum of what should be considered “injurious to the public welfare, nor to adjacent properties”. If there is any evidence that a project is considered to be “injurious to the public welfare, nor to adjacent properties” then staff cannot fully justify Finding #3.

It should be acknowledged that odor and other commercial Cannabis related activities being injurious to adjacent properties is subjective. Even though supportive comments were received from the owners of APN 009-490-21-00, APN 009-490-24-00, APN 009-510-10-00, a concerned comment was received by the owner of APN 009-490-13-00, thus rendering this project “injurious to adjacent properties”. Additionally, the Environmental Health Division has expressed concerns that this project has the potential to be “injurious to public welfare” due to its potential to negatively impact water quality in the surrounding region and watersheds.

Staff is unable to provide full justification for Finding #3.

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 specific variances from this standard, consistent with the requirements for variances in State law and the County Zoning Code. The subject parcel contains special circumstances 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.

END OF FINDINGS

STAFF RECOMMENDATION: Given that staff cannot fully justify required Finding #3, staff recommends the Planning Commission make the following motion to deny this commercial Cannabis variance request:

Deny Commercial Cannabis Variance Application CCV-19-60 (E. Kotseva) for the reason that this variance request is unable to fully meet required Finding #3 (Diservice Not Permitted) per Trinity County Code 17.31.010.C.

In the event that the Planning Commission wishes to approve this variance request, staff has included draft conditions below and suggests incorporating the measurement distances from neighboring residences on Page 2 of this staff report.

CONDITIONS OF APPROVAL: Upon approval by the Planning Commission, the following Conditions of Approval shall apply to the E. Kotseva Commercial Cannabis Setback Variance (CCV-19-60):

1. The variance is approved for a period of one year and shall expire on the same date as the Commercial Cannabis License that this variance and parcel is associated with; provided, however, that the variance shall be renewed annually through the Director's Use Permit application process.
 - a. Application for renewal shall be submitted by the applicant or designated agent/consultant prior to expiration of the variance and preferably no later than 60 days in advance.

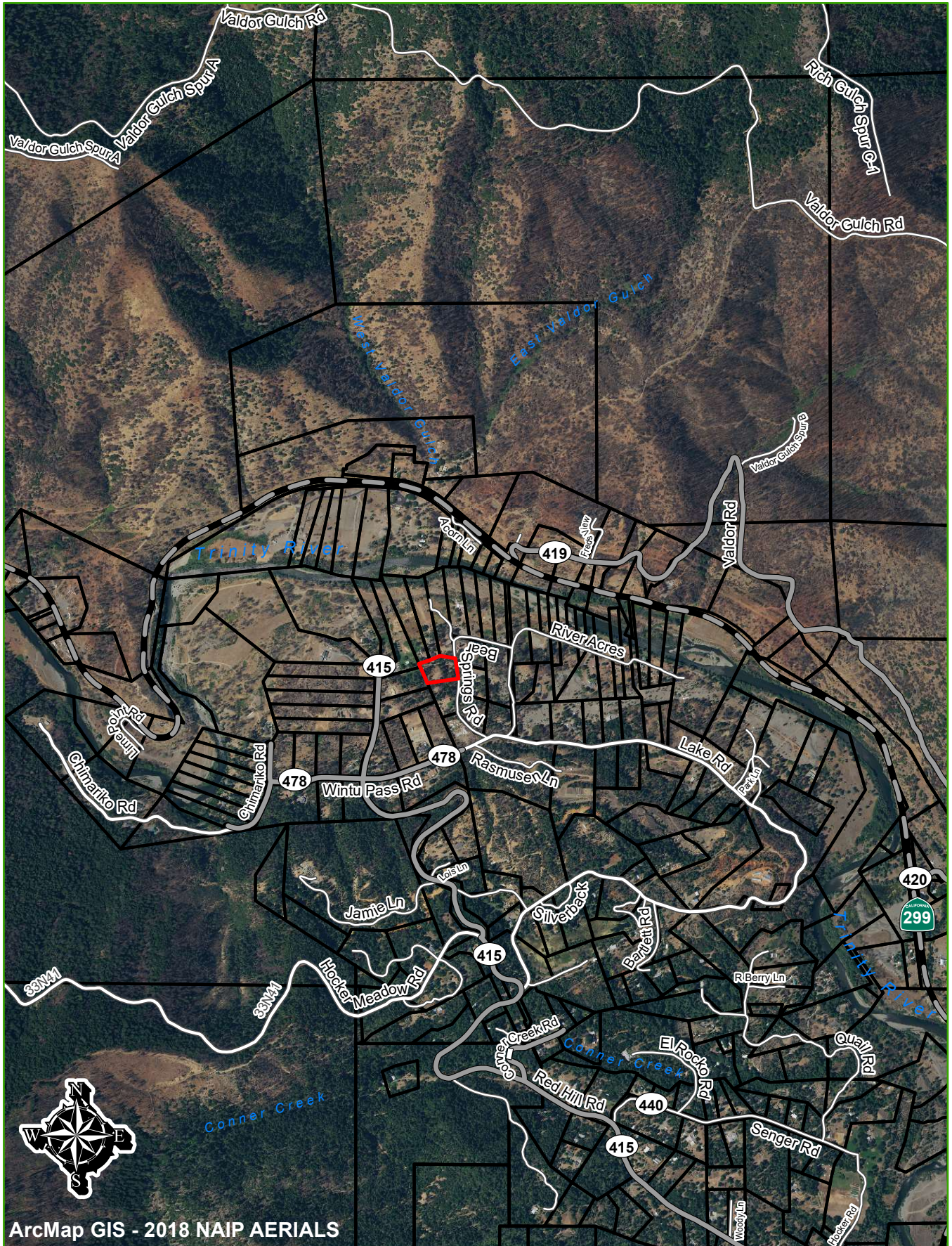
- b. The renewal shall not require a formal public hearing, unless specified by the Planning Director or referred to the Planning Commission; however, written notice shall be provided by the County to surrounding property owners at least ten (10) days prior to the Planning Director's decision to approve or deny the annual renewal.
 - 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.
2. The variance shall be subject to the securing of all necessary permits, licenses, and approvals for the proposed Commercial 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 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.

Environmental Health Division

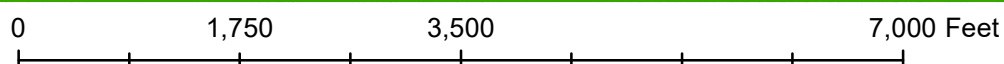
1. Concrete floored greenhouses to contain entire cultivation site draining to holding tank with regular disposal to prevent pollution.

END OF CONDITIONS

ATTACHMENT 1
Project Location Map
CCV-19-60 E. Kotseva
APN 009-490-15-00



ArcMap GIS - 2018 NAIP AERIALS



ATTACHMENT 2
Site Map

417N: 009-490-15-00

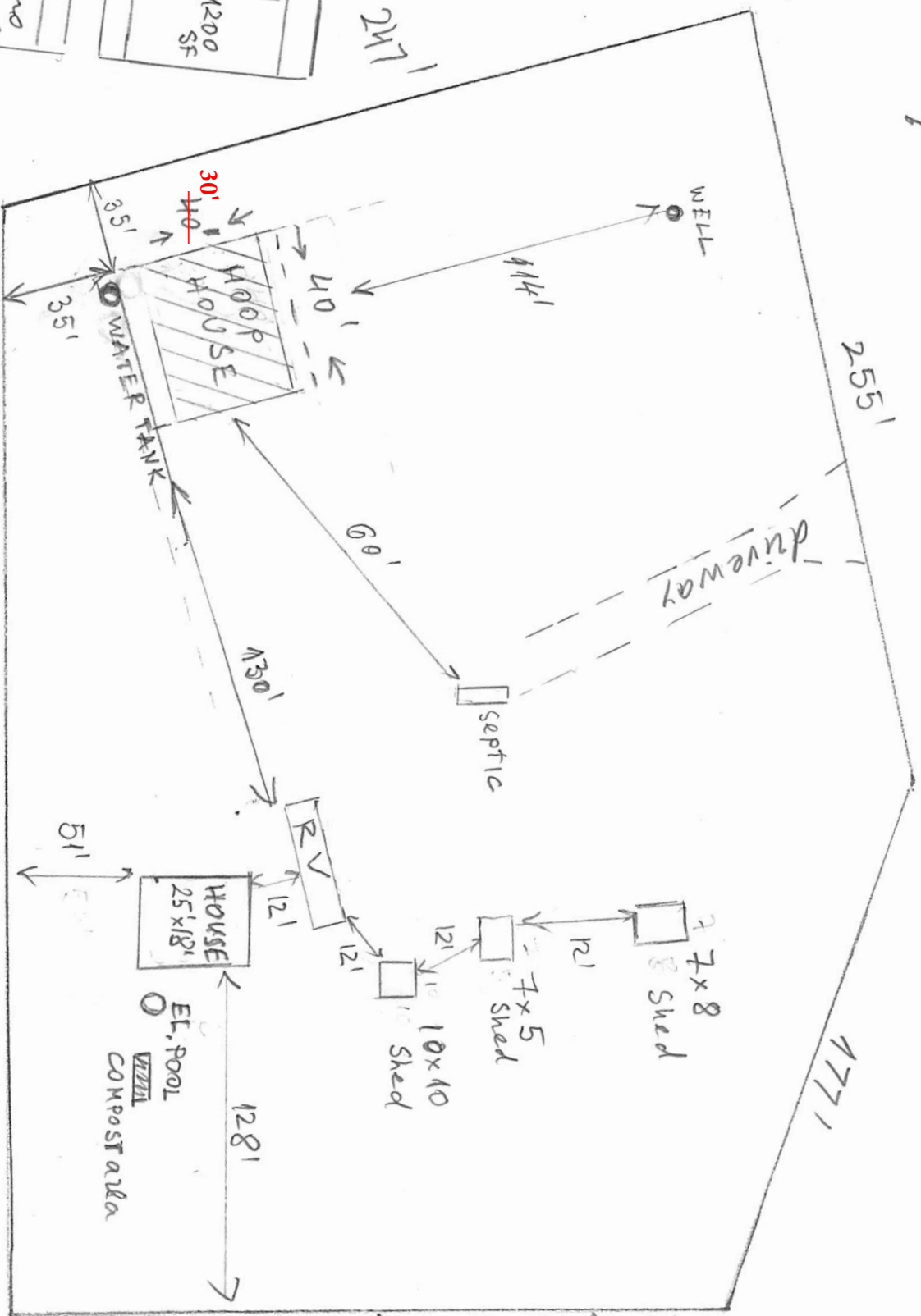
RECEIVED

DEC 1 1 2019

TRINITY COUNTY
PLANNING DEPARTMENT

CULTIVATION	
HOOP HOUSE	1200 SF
30' x 40'	
TOTAL: 1600 SF	1200 SF
	1200 sq. ft.

CULTIVATION NOTES
1. There are no schools, no school bus stops, places of worship, public parks or offices with 300' of cultivation areas



217'

N ↗

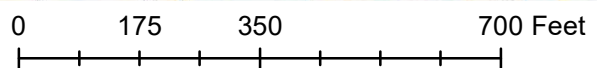
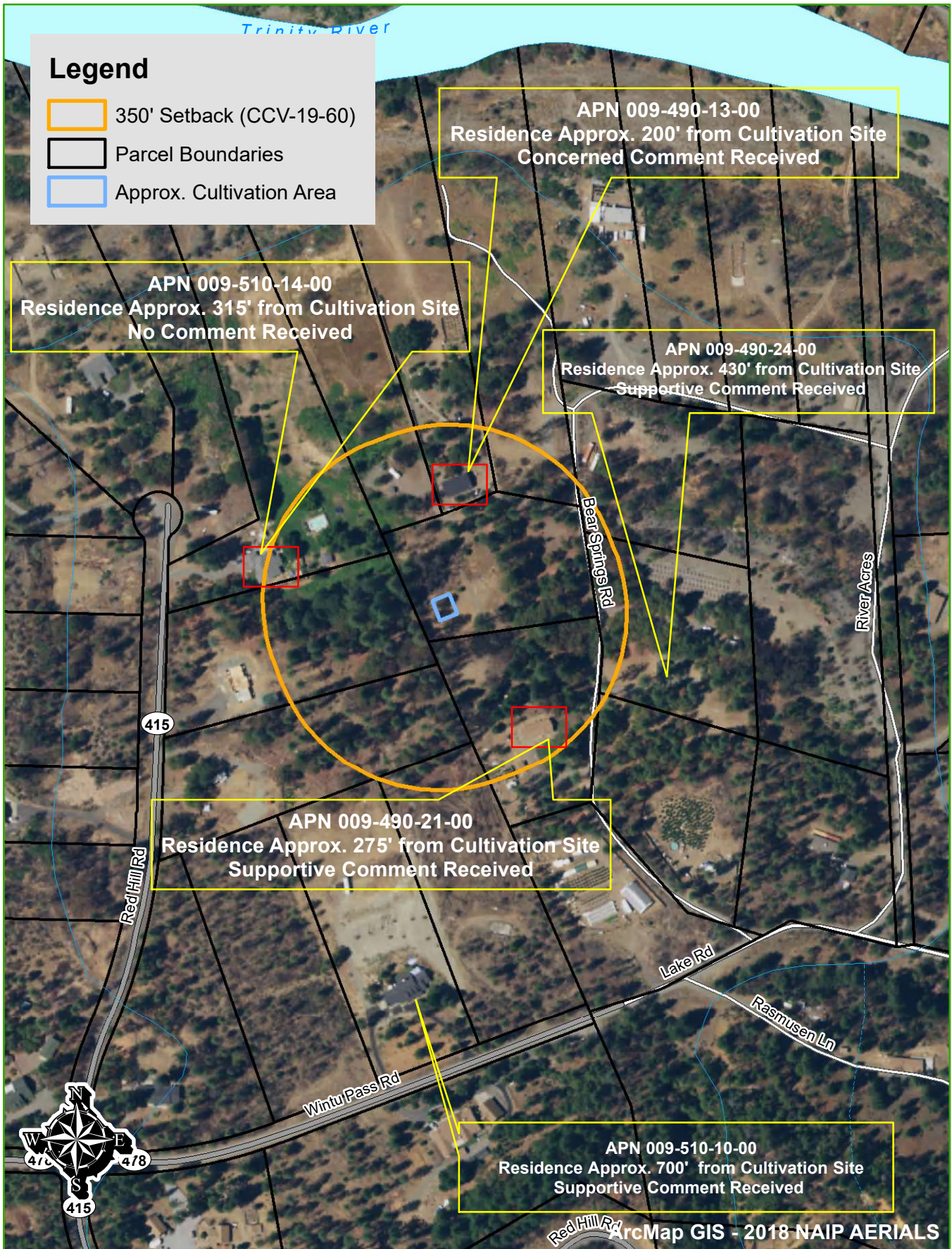
Bear Springs Rd 226'

ATTACHMENT 3

350' Setback with Comment Status Map

CCV-19-60 E. Kotseva

APN 009-490-15-00



**Written Comments from Neighbor's
with Residences within 350' of the
Proposed Cultivation Site**

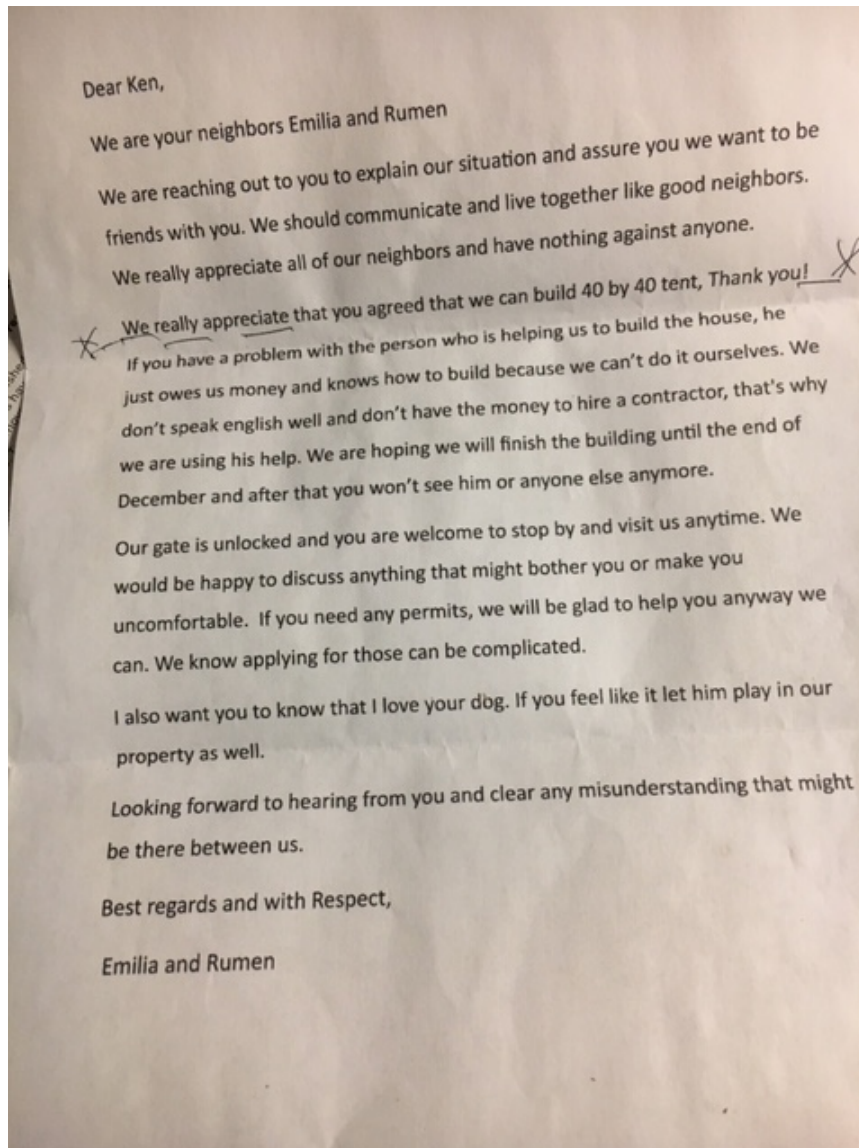
ATTACHMENT 4

Comment from Neighbor on APN 009-490-13-00

From: [Bette Williams](#)
To: [Bella Hedtke](#)
Subject: Regarding 350 variance
Date: Thursday, January 2, 2020 10:39:25 AM

Sent from my iPhone I live at 221 Beer Springs Rd. across the street from 177 beer Springs Road are used to have a House The house burn down when the Helena fire now we have six little buildings they're building a house and a mobile home over some type of a greenhouse I am against having the marijuana 40 x 40 tent in front of my picture window. Get a letter on our door that says we appreciate we really agree that you can build a 40 x 40 tent for the record we did not say anything that they could have that. Sneaky Bette Williams And my son Ken Locke. I moved here but this property in 1997 there was no marijuana around here if I would've known I would've never bought here.

This is a photo of a letter, written by the applicant (E. Kotseva), that was given to the neighbor located on parcel 009-490-13-00. This letter was included with the above comment.



Photo's Attached to Bette William's Comment



ATTACHMENT 5

Comment from Neighbor on APN 009-490-21-00

Name: Gary Lynn
Address: 54603 Bear Springs Rd, Junction City CA
Tel: 530 623 3483

RECEIVED
AUG 26 2019
TRINITY COUNTY
BUILDING DEPARTMENT

Date: 8/21/19

To Whom It May Concern:

I, Gary Lynn, the owner of the property located on 54603 Bear Springs Rd (APN: 009-490-21-00), adjacent to Emilia Kotseva owned property (APN: 009-490-15) located on 171 Bear Springs Rd, Junction City, CA 96048, grant support and have no objections to the variance sought by Emilia Kotseva for the property located on 171 Bear Springs Rd, Junction City, CA 96048. Furthermore, I understand that cannabis cultivation and related activities may occur on the property seeking variance and have no objections to such cultivation and activities.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



**Written Comments from Neighbor's with
Residences Outside 350' of the
Proposed Cultivation Site**

ATTACHMENT 6

Comment from Neighbor on APN 009-510-10-00

RECEIVED

AUG 19 2019

TRINITY COUNTY
PLANNING DEPARTMENT

Name: _____

Address: _____

Tel: _____

Date: 8/6/19

To Whom It May Concern:

Correct APN: 009-510-10-00

I, JACK & FRANKIE Schwenderman, the owner of the property located on 1850 WINTU PASS Rd (~~APN: 008-570-17~~), adjacent to Emilia Kotseva owned property (APN: 009-490-15) located on 171 Bear Springs Rd, Junction City, CA 96048, grant support and have no objections to the variance sought by Emilia Kotseva for the property located on 171 Bear Springs Rd, Junction City, CA 96048. Furthermore, I understand that cannabis cultivation and related activities may occur on the property seeking variance and have no objections to such cultivation and activities.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

J. Schwenderman



Staff confirmed that the owner of the residence located on APN 009-510-10-00 accidentally wrote the wrong APN. APN 008-570-17 should be APN 009-510-10-00.

ATTACHMENT 7

Comment from Neighbor on APN 009-490-24-00

RECEIVED

AUG 19 2019

TRINITY COUNTY
PLANNING DEPARTMENT

Name: Jesse Bramlett
Address: 142 Bear Springs
Rd. Junction City CA
Tel: [REDACTED]

Date: 8/10/19

To Whom It May Concern:

I, Jesse Bramlett, the owner of the property located on 142 Bear Springs Road (APN: 009-4900 24), adjacent to Emilia Kotseva owned property (APN: 009-490-15) located on 171 Bear Springs Rd, Junction City, CA 96048, grant support and have no objections to the variance sought by Emilia Kotseva for the property located on 171 Bear Springs Rd, Junction City, CA 96048. Furthermore, I understand that cannabis cultivation and related activities may occur on the property seeking variance and have no objections to such cultivation and activities.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Jesse Bramlett

ATTACHMENT 8
Staff Site Visit Photos



View of subject property from neighboring parcel (APN 009-490-13-00).



Proposed location of 1600 sq. ft cultivation site.



View of neighboring parcel (APN 009-490-21-00) from subject property.