

<p>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT Initial Commercial Cannabis Variance</p>
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DATE PUBLISHED: April 17, 2020

PLANNER: Bella Hedtke, Associate Planner

APPLICANT: Sor Xiong

PROPERTY OWNER: Chee Pheng Vang

CONSULTANT/AGENT: The Flowra Platform

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

LOCATION: 27 Log Cabin Ln., Douglas City (APN: 025-140-32-00)

APPROX. ACREAGE: 2.70

ZONING DISTRICT: Rural Residential 5-Acre Minimum (RR5)

GENERAL PLAN DESIGNATION: Rural Residential (RR)

STAFF RECOMMENDATION: Deny Request

ADJACENT LAND USE AND ZONING INFORMATION:

Direction	Land Use	Zoning	General Plan Designation
North	Residential/Cannabis Cultivation	RR5	RR
South	Residential	RR10	RR
East	Residential	RR5	RR
West	Residential	RR5	RR

ATTACHMENTS:

- 1 – Project Location Map
- 2 – Site Plan (Provided by Consultant)
- 3 – 350' Setback with Comment Status Map
- 4 – Site Visit Photos
- 5 – Concerned Comment from Neighboring Parcel Owner

PROJECT DESCRIPTION: The applicant has applied for a variance for Trinity County Code (TCC)17.43.050.A.8. (Limitation on Location to Cultivate Cannabis) to reduce the required 350' residential setback to allow their cultivation site to be located less than 350' from one (1) neighboring residence. The applicant has a pending Small Outdoor Commercial Cannabis Cultivation license application in the Trinity County's Commercial Cannabis Program. A Small Outdoor license type would allow the applicant to cultivate between 5,001 and 10,000 sq. ft. of total canopy.

The applicant is requesting a variance to reduce the required neighboring dwelling setback for the following residence:

APN	APPROX. DISTANCE FROM CULTIVATON SITE	COMMENT STATUS
025-140-33-00	210'	Concerned Comment Received

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

AGENCIES	COMMENT STATUS
County Assessor's Office	No Comment
County Transportation Department	No Comment
County Building Department	No Comment
County Environmental Health Division	No Comment
County Cannabis Code Compliance	No Comment
Caltrans (District 2)	No Comment
CALFIRE	No Comment

PUBLIC COMMENTS: As notated in the above referenced table, staff received a concerned comment from the property owner with the only residence that is located less than 350' from the proposed cultivation site (Attachment 5). No other comments were received from neighboring parcels.

Discussion:

Trinity County Code Section 17.31.010. provides the Planning Commission with five guiding principles when deciding whether to approve or deny a variance request. These five guiding principles have been used as findings to support approval of previous variances. The five guiding principles are listed below:

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.

Given Mr. Hennis' extensive list of objections, staff is unable to fully justify the third guiding principle (Disservice Not Permitted).

For this reason, staff recommends that the Planning Commission does the following:

- 1) Makes a motion to deny variance request CCV-19-63, Applicant Sor Xiong, APN 025-140-32-00 because this variance request, if approved, has the potential to be injurious to the public welfare, health and safety of the adjacent property owner due to any or all of the following reasons (per the letter displayed as Attachment 5 of this staff report):
 - Water Quantity Issues
 - Air Quality Issues
 - Pollution Issues
 - General Nuisance Issues

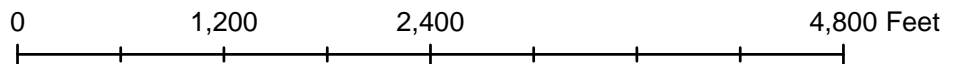
The Planning Commission can modify or add to the above issues as appropriate.

- 2) After the above motion is voted on, staff then recommends that the Planning Commission inform the applicant and their consultant that this denial is subject to the Appeal process as mentioned in Trinity County Code Section 17.34.110 if they wish to pursue this option.

ATTACHMENT 1
CCV-19-63 Sor Xiong
APN 025-140-32-00
Project Location Map



Proposed Cultivation Site Location



ATTACHMENT 2 Site Plan

Light-Blue-Dashed Lines
Indicate Water Transport
from Well to Water Tanks
to Cultivation

APN:
025-140-32-00

Immature Plants are Sourced From
Permitted Nursery

Total Premises Area:
181' x 254'
= 64,074 sq. ft.

Remaining
Portion
of Parcel is Unused



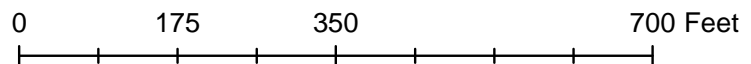
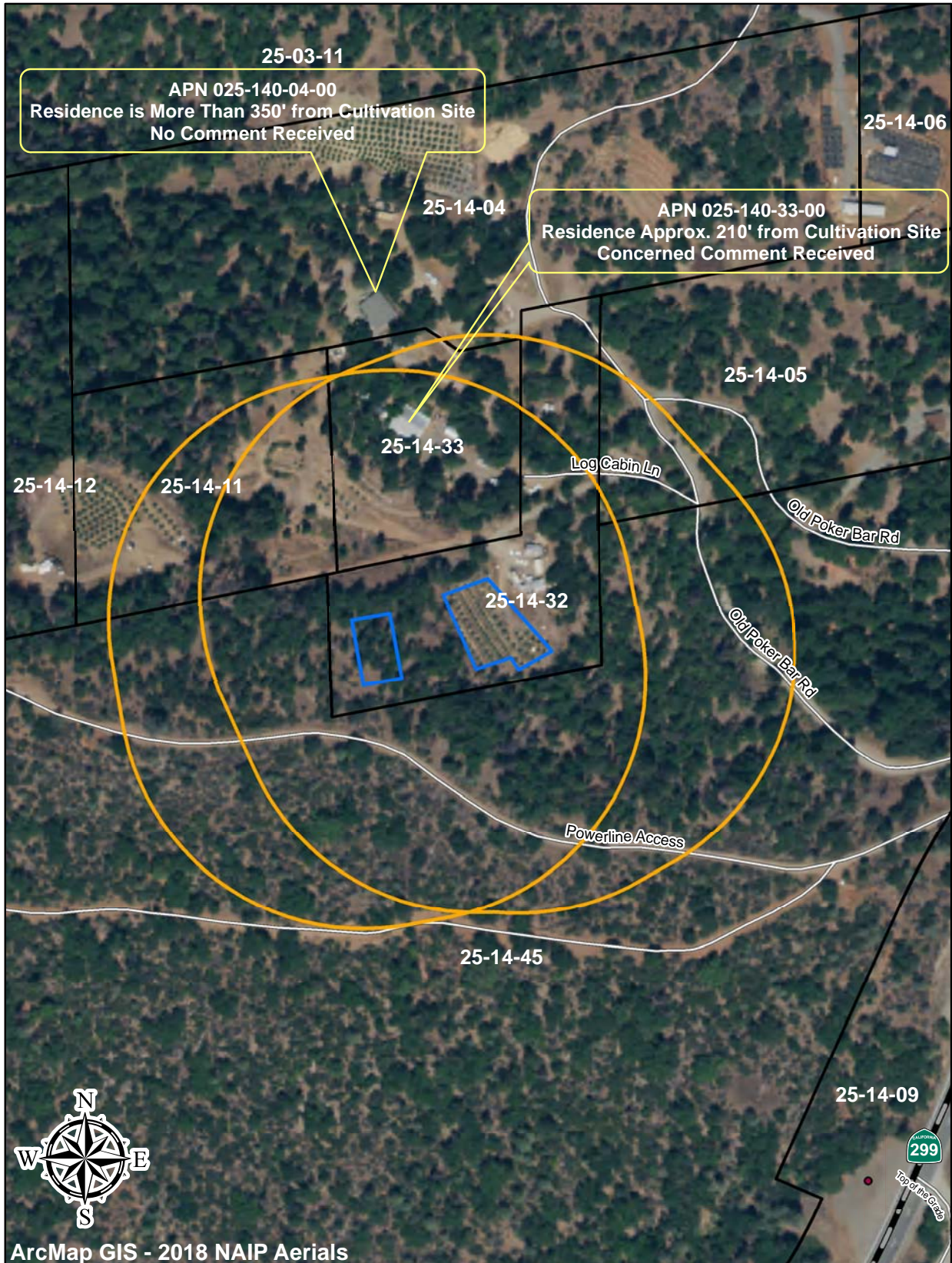
*Veg occurs in same area as flower, .95 indicates max veg state size

<p>Total Mature Canopy Area: $6' \times 6' = 36'(187) +$ $7' \times 7' = 49'(50)$ Total = 9,182 sq. ft.</p>
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<p>Total Immature Canopy Area: $9,182'(.95\%)MAX$ Total = 8,722.9 sq. ft.</p>
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ATTACHMENT 3
350' Setback with Comment Status Map
APN 025-140-32-00
CCV-19-63 S. Xiong



**ATTACHMENT 4
Site Visit Photos
APN 025-140-32-00
CCV-19-63 S. Xiong**



Current Cultivation Site Conditions



View of Upper Cultivation Site



Current Cultivation Site Conditions



RV without RV permit and unpermitted addition



View of Neighboring Residence on APN 025-140-33-00

ATTACHMENT 5
Concerned Neighbor Comment from APN 025-140-33-00

From: [Philip Hennis](#)
To: [Bella Hedtke](#)
Subject: RE: Comment on CCV-19-63
Date: Wednesday, March 18, 2020 4:26:12 PM

We would like to express our objection to the commercial medical marijuana grow permit proposed for the property next door to ours. I understand that this is about the proximity of their plants to our house, but our objection is based on a lot more than just that. What we mainly object to is not following the rules, and disrespect for the rights and wishes of their neighbors.

When they first moved in we supplied them with water for free, then we started charging them for our excess water, so they decided to drill their own well. They ask me how deep my well is, I said 185 feet but the water bearing strata is at about 85 feet. I also told them of the rule about wells being 100 feet apart, so they moved as far as they could and contracted to drill to 300 feet from the same elevation/bench as my well! That hole was solid blue shale with no water bearing strata at all, dry hole. The next year they moved up the hill to their main bench, contracted for 400 feet and drilled another well, without a new permit. I told them they could not drill because of the proximity to my well and their septic system. They stopped the drilling at 280 feet because of very little water, told the driller to go home they would decide what to do tomorrow. The next day it was caved in to less than 200 but they had him set casing anyway because the water was above that level. The second hole was not a good water producer, they blamed the driller. The next year they contracted with Shasta well drilling to go to 400 feet, moved over a few feet got a small amount of water and have pumped out of it nonstop for years. My water supply has depleted since their new well was put in and now there is hardly enough water for my household, let alone gardening! This is my main objection to their permit, they have pumped all my water supplies down to worse than the driest drought years.

When doing a project like a commercial grow it is imperative that you get along with the neighbors, these people do not they are bullies, tell us what they are going to do (close our secondary access road to our lower level/bench) and that there is nothing we can do about it. He told me he had a commercial permit and it was required by the state that he close the road, so he was going to put up green houses on the road. He didn't give me a chance to object just insisted he has a deed. He could of made a deal with me to reroute the road but was unwilling to consider any other options, he was closing the road weather I liked it or not. I do not handle intimidation well and felt very scared from the threats for many months. I have endured so much from these inconsiderate people, and I do not mean Hmong, I get along very well with most of the Hmong. I have been exposed to smells of every kind from super chemical to disgusting sewage smells, nasty cooking smells, probably from the wildlife they poached, the smell of burning plastic on a regular basis because they use the trash to start the cooking fire, they use outdoor fire to cook with so they are allowed to burn on no burn days and even on red flag days I have seen them burn trash for cooking.

I further object on the basis of unchecked pollution, on their other parcel APN 025-140-11-00 there is fertilizer left on the ground leaching into the runoff from the rain right onto my property, and they claim to be organic! They run their generator 24/7 in order to pump all the water they can, now they have PUD, how is that possible? They do not have a permitted structure anywhere, they have been living in tents and travel trailers for years if they planned on building a legal structure, they would have already done it. Years ago they broke the septic tank with a bulldozer left sewage running down the driveway for a week while they went home to Fresno. The dust from them flooring it to drive up their driveway, the noise OMG sometimes sounds like they wrecked they go so fast, at all hours.

Our objection is about following the rules neighborly considerations and decency, it is a very bad look on the county to allow this type of flagrant disregard of the laws and rules. From the highway you can see the plants and their green houses stand out like sore thumbs at night with all those lights plainly visible for miles.

One more thing we strongly object to is the animal abuse, I have called the ACO in the past. They leave the dogs tied up all the time and go back to Fresno, and the dog will bark non stop for literally days, no food or water for many days at a time. I have asked many times for them to stop the barking dog but he says he can't hear it barking, because it barks when he is gone. I very much object to the snaring and killing of wildlife they participate in. There are still snares left on the other piece of ground they leased, APN mentioned above. I would like to see all these messes cleaned up but would be happy to just get some water out of my well and spring like I used to. They left me with no choice, failure to negotiate. Furthermore I have legal easement to the upper road but he refuses to give me a key because he doesn't like the Chinese guy that they leased from anymore and is afraid I would let him up his road.

Thank You for considering my objections.

Philip and Elizabeth Hennis
(530)623-4229

Sent from [Mail](#) for Windows 10

From: [Bella Hedtken](#)

Sent: Tuesday, March 17, 2020 10:59 AM

To: 'feliparo54@gmail.com'

Subject: Comment on CCV-19-63

Hi Philip,

Here is my email so you can provide your comment regarding the variance request for application S. Xiong on APN 025-140-32-00. You can reply back to this email directly or attach a letter.

Let me know if you have any questions.

Best wishes,

Bella Hedtke

Associate Planner

Trinity County Community Development Services

(Planning Department & Cannabis Division)

61 Airport Rd, Weaverville, CA 96093

Box 2819, Weaverville, CA 96093

bhedtke@trinitycounty.org

530-623-1351 ex. 5

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[Trinity County Planning Department Webpage](#)

[Trinity County Cannabis Division Webpage](#)