

<b>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</b> <b>Initial Commercial Cannabis Variance</b>
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**DATE PUBLISHED:** June 5<sup>th</sup>, 2020

**PLANNER:** Bella Hedtke, Associate Planner

**APPLICANT:** Mihailo Lucic

**PROPERTY OWNER:** Bojana Sestovic

**CONSULTANT/AGENT:** Buildaberg

**REQUEST:** A request for a variance from the required 350' Cannabis cultivation setback from two (2) neighboring residential dwellings (TCC 17.43.050.A.8).

**LOCATION:** 2129 Morgan Hill Rd., Hayfork (APN: 017-350-28-00)

**APPROX. ACREAGE:** 5.50

**GENERAL PLAN DESIGNATION:** Rural Residential (RR)

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

**STAFF RECOMMENDATION:** Approve with Conditions

**ADJACENT LAND USE AND ZONING INFORMATION:**

Direction	Land Use	Zoning	General Plan Designation
North	Residential	RR5	RR
South	Undeveloped	RR5	RR
East	Residential	RR2.5	RR
West	Undeveloped	RR2.5	RR

**ATTACHMENTS:**

- 1 – Project Location Map
- 2 – Site Map (Provided by Consultant)
- 3 – 350' Setback with Comment Status Map
- 4 – Site Visit Photos
- 5 – Letters from Neighbors Located on APN 017-350-36-00 and 017-350-35-00

**PROJECT BACKGROUND:** The applicant has a processing Small Mixed Light Cultivation License application (CCL 666) in the Trinity County’s Commercial Cannabis Program. This license type allows up to 10,000 sq. ft. of cultivation.

The applicant is requesting a variance to reduce the required 350’ residential setback for the following residences:

APN	APPROX. DISTANCE FROM CULTIVATON SITE	COMMENT STATUS
017-350-36-00	105’	Supportive Comment
017-350-36-00	140’	Supportive Comment

**PUBLIC COMMENTS:** As of the date of this staff report, staff has received two public comments: 1) from the neighbor located on APN 017-350-36-00 and 2) from the neighbor located on 017-350-36-00 (Attachments 5).

**AGENCY COMMENTS:** No agencies provided comments on this project.

**FINDINGS:** The following findings shall apply to the M. Lucic. Commercial Cannabis Setback variance (CCV-20-06) for APN 017-350-28-00:

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’ setback requirement 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’ setback requirement in Trinity County Code 17.43.050.A.8. is to mitigate odor and other commercial Cannabis cultivation related activities to nearby neighbors, with emphasis given to neighbors that are less than 350’ from the proposed cultivation site. No public comments were received for this variance request. As previously stated, public comments in support of this variance request were received by the owners of the two parcels that have residences located less than 350’ from the cultivation site. Therefore, it can be assumed that these neighbors would not consider approval of this variance request to be injurious to them.

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.

While the applicant's parcel is unable to meet the 350' residential setback requirement, as per Trinity County Code Section 17.43.050.A.8., 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. Trinity County Code Section 17.43.050.A.8. allows for variance requests to reduce the residential setback that are consistent with the requirements for variances in State law and the County Zoning Code. The subject parcel contains special circumstances, such as narrow lot shape and unusual topography, 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.

**STAFF RECOMMENDATION:** Given the site conditions and above discussion, staff recommends the Planning Commission make the following motion:

To approve Commercial Cannabis Variance CCV-20-06 to reduce the cultivation site setback in Trinity County Code 17.43.050.A.8. from 350 feet to 105 feet from the residence located on APN 017-350-36-00 and from 350 feet to 140 feet from the residence located on APN 017-350-35-00, subject to the findings of fact and conditions as stated in this staff report.

**CONDITIONS OF APPROVAL:** Upon approval by the Planning Commission, the following Conditions of Approval shall apply to the M. Lucic Commercial Cannabis Setback Variance (CCV-20-06) for APN 017-350-28-00:

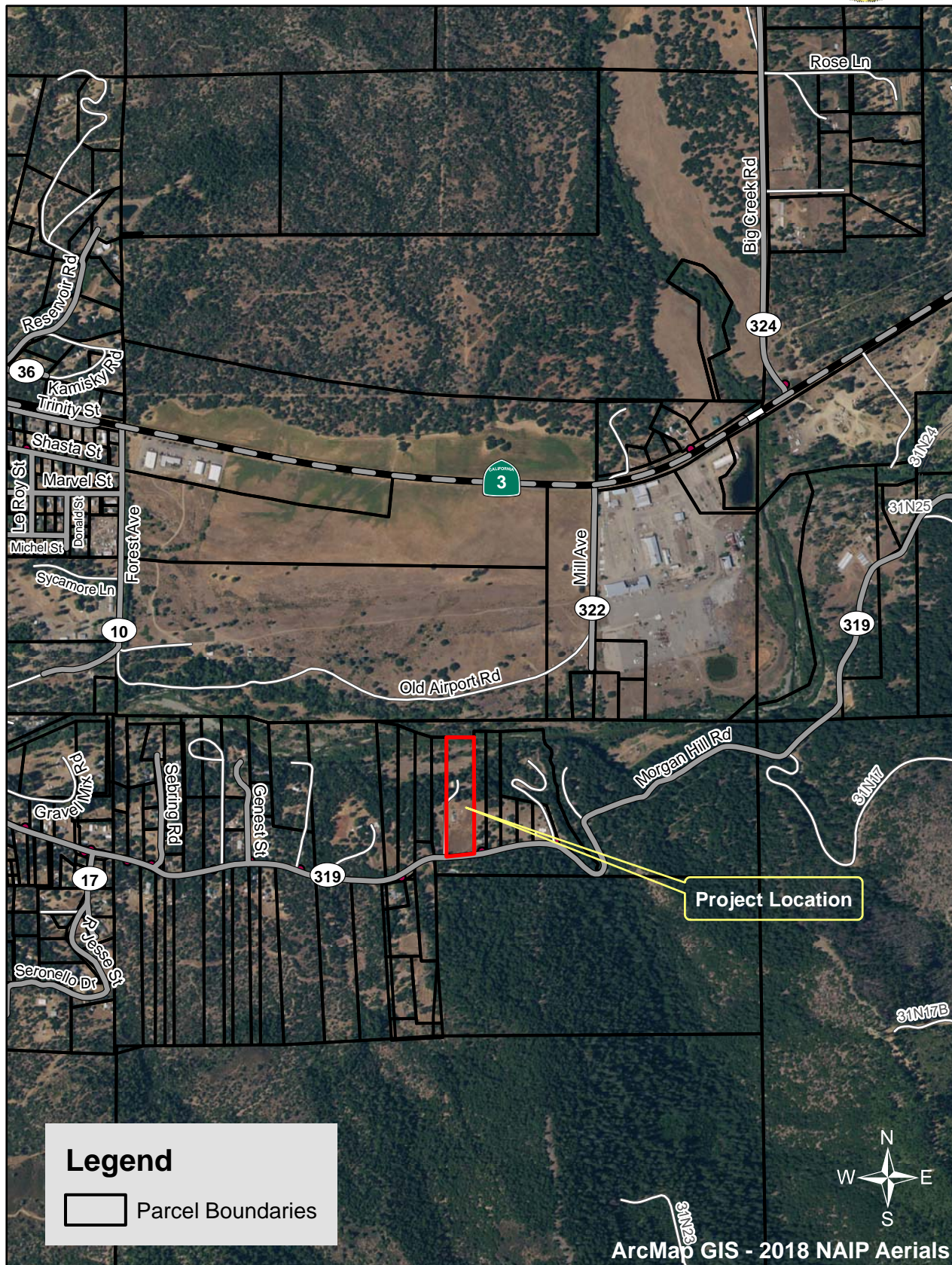
1. The variance is approved for a period of one year and shall expire on the same date as the Commercial Cannabis License that this variance and parcel is associated with; provided, however, that the variance shall be renewed annually through the Director's Use Permit application process.
  - a. Application 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.
  5. No building permit or other county permit involving a variance shall be issued until the ten-day appeal period has expired. No building permit or other county permit involving a variance shall be issued while a variance hearing or appeal therefrom is pending.

**END OF CONDITIONS**

# ATTACHMENT 1

APN 017-350-28-00  
CCV-20-06 M. Lucic  
Project Location Map



0 0.2 0.4 0.8 Miles

# 2129 Morgan Hill Road

Property Map

APN: 017-350-28-00



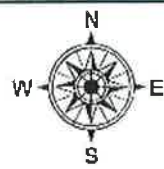
- Roads**
- Highway
  - Feeder
  - Rocked
  - Native
  - Decommission
  - Leveled Road

- Streams**
- Perennial
  - Intermittent
  - Ephemeral

- Stream Setbacks**
- Class 1 (150ft)
  - Class 2 (100ft)
  - Class 3 (50ft)

- CalFire Buffer (30')
- Dwelling Variance Buffer (350')
- FEMA Flood Zones (2016)**
- Floodway (Zone AE)
  - 100 Year Floodplain ~ EFEs (Zone AE)
  - 100 Year Floodplain ~ No EFEs (Zone A)
  - 100 Year Floodplain ~ EFE 1-3 (Zone AO)
  - 500 Year Floodplain
  - Area Protected by Levee

**Parcel Boundaries**



January 27, 2020  
 Project Name: 2129 Morgan Hill Rd  
 Map Rachel Wood - Buildaberg  
 All Rights Reserved

**ATTACHMENT 3**  
**APN 017-350-28-00**  
**CCV-20-06 | M. Lucic**



0 175 350 700 Feet

**ATTACHMENT 4  
Site Visit Photos**

**Current Site Conditions**



**View of neighbor on  
APN 17-350-35-00**

**View of neighbor on  
APN 17-350-36-00**





**ATTACHMENT 5**

**Letters from Neighbors Located on APN 017-350-35-00 and 017-350-36-00**

Trinity County Planning Department,

I am the owner/occupant of 2185 Morgan Hill Rd in Hayfork California (APN: 017-350-35). I am aware that the owner of 2129 Morgan Hill Road in Hayfork plans to develop and operate a commercial cannabis cultivation operation within 350 ft. of my residence. I support their proposed project, and do not take issue with the project being located near my property and residence.

Furthermore, I encourage the Trinity County Planning Department and Planning Commission to issue a Commercial Cannabis Variance for 2129 Morgan Hill Road for their proposed cultivation operation, so they can be issued a Trinity County Commercial Cannabis Cultivation License.

Thank you,

Joseph Murphy

Heather Murphy

**Letters from Neighbors Located on 017-350-35-00**

Trinity County Planning Department,

I am the owner/occupant of 2175 Morgan Hill Rd in Hayfork California (APN: 017-350-36). I am aware that the owner of 2129 Morgan Hill Road in Hayfork plans to develop and operate a commercial cannabis cultivation operation within 350 ft. of my residence. I support their proposed project, and do not take issue with the project being located near my property and residence.

Furthermore, I encourage the Trinity County Planning Department and Planning Commission to issue a Commercial Cannabis Variance for 2129 Morgan Hill Road for their proposed cultivation operation, so they can be issued a Trinity County Commercial Cannabis Cultivation License.

Thank you,

Reid Smith

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**Letters from Neighbors Located on APN 017-350-36-00**