

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

APPLICANT: Ben Lingemann

REPORT BY: Colleen O’Sullivan

OWNER: Ben Lingemann

APN: 012-260-96

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from one neighboring residence.

LOCATION: 460 Senger Road, Junction City, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Junction City
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Rural Residential, 2.5 acre minimum (RR-2.5)
- D) Existing Land Use: residence, commercial cannabis cultivation
- E) Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	residential	RR-2.5	Rural Residential
South:	residential	RR-2.5	Rural Residential
East:	residential	RR-2.5	Rural Residential
West:	residential	RR-2.5	Rural Residential

BACKGROUND INFORMATION:

The ordinance for “Commercial Marijuana Cultivation Regulation” includes a provision reading in part: “Cultivation will not be allowed within 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.” (Ord. 315-823)

The Cannabis Cultivation Ordinance defines the term “variance” as: “Variance” is defined as Trinity County Ordinance 315 section 31.” During its November 17, 2016 meeting the Commission spent time discussing both the state and county requirements for issuing a variance.

Each zoning classification and land use has an associated set of development standards, which are specified in the Trinity County Zoning Ordinance. Both State law and the zoning ordinance provide criteria to use in evaluating a variance application. Section 65906 of the California Government Code 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 zoning ordinance further elaborates on the State's 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 (350 feet) are issued for a period of one year. (This should be tied to the license effective dates.) The renewal is predicted to be fairly simple and will be performed by the Planning Director or his/her designee. Some factors that would be included in the review would be any complaints received during the previous year, 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.

PROJECT EVALUATION:

The applicant is beginning the process of obtaining a Commercial Cannabis License under the county licensing program (CCL 2017-173). The parcel is located at 460 Senger Road, which comes off of Red Hill Road in Junction City. The site plan prepared by the consultant (Figure 2) and staff (Figure 3) identifies on-site development and its relationship to the residence (APN 012-260-94), which lies north of the subject parcel. Both figures also show the cultivation area relative to the watercourse to the south. The cultivation area is visible from the affected neighbor as this general area is flat with open fields surrounded by forested areas. The applicant cannot move the site to the south without encroaching into the setback of an unnamed stream that crosses the southern portion of the property (it is a direct tributary to the Trinity River). He could decrease the cultivation area by half and probably meet the setback, but this could affect the economic viability of his business.

Jeff Dickey, Code Compliance Specialist, and staff made a site visit, reviewed this project and provided the following comments: The applicant cannot relocate the cultivation area too far to the south without affecting setbacks from the creek that crosses his property. He would also have to remove trees." Photos are attached (Figure 5) that show the relationship of the cultivation area to the affected neighbor.

The affected resident, Mr. Ken Moore APN 012-260-94), has written a letter of support (Figure 4).

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

ENVIRONMENTAL EVALUATION:

This variance request is exempt from CEQA review under Section 15305(a) [minor alteration of land use limitations].

STAFF RECOMMENDATION:

Staff recommends the following:

Approval of the variance to allow reduction of the Cannabis cultivation setback from 350 feet to 253 feet from the residence on APN 012-260-94, subject to the following conditions of approval and based on the following findings of fact:

Findings of Fact for the Use Permit

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 cannabis cultivation.
2. The variance is not a grant of special privilege to the applicant because relocation to the south would result in encroachment into the setbacks from an unnamed stream, which is a violation of the cultivation licensing requirements. Moving the site to the west would not significantly change the variance setback distance.
3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance provisions for commercial cannabis cultivation.
4. No opposition from surrounding property owners or review agencies was submitted that would adversely affect approval of the variance.

**CONDITIONS OF APPROVAL
LINGEMANN CANNABIS SETBACK VARIANCE (CCV-18-003)**

1. The variance is approved for a period of one year from **April 1, 2017** through **March 31, 2018**; provided, however, that the variance may be renewed annually.
 - a. Application for renewal shall be made prior to expiration of the variance, preferably at least 30 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 his/her 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 : PROJECT LOCATION MAP
Lingemann CCV-2018-003

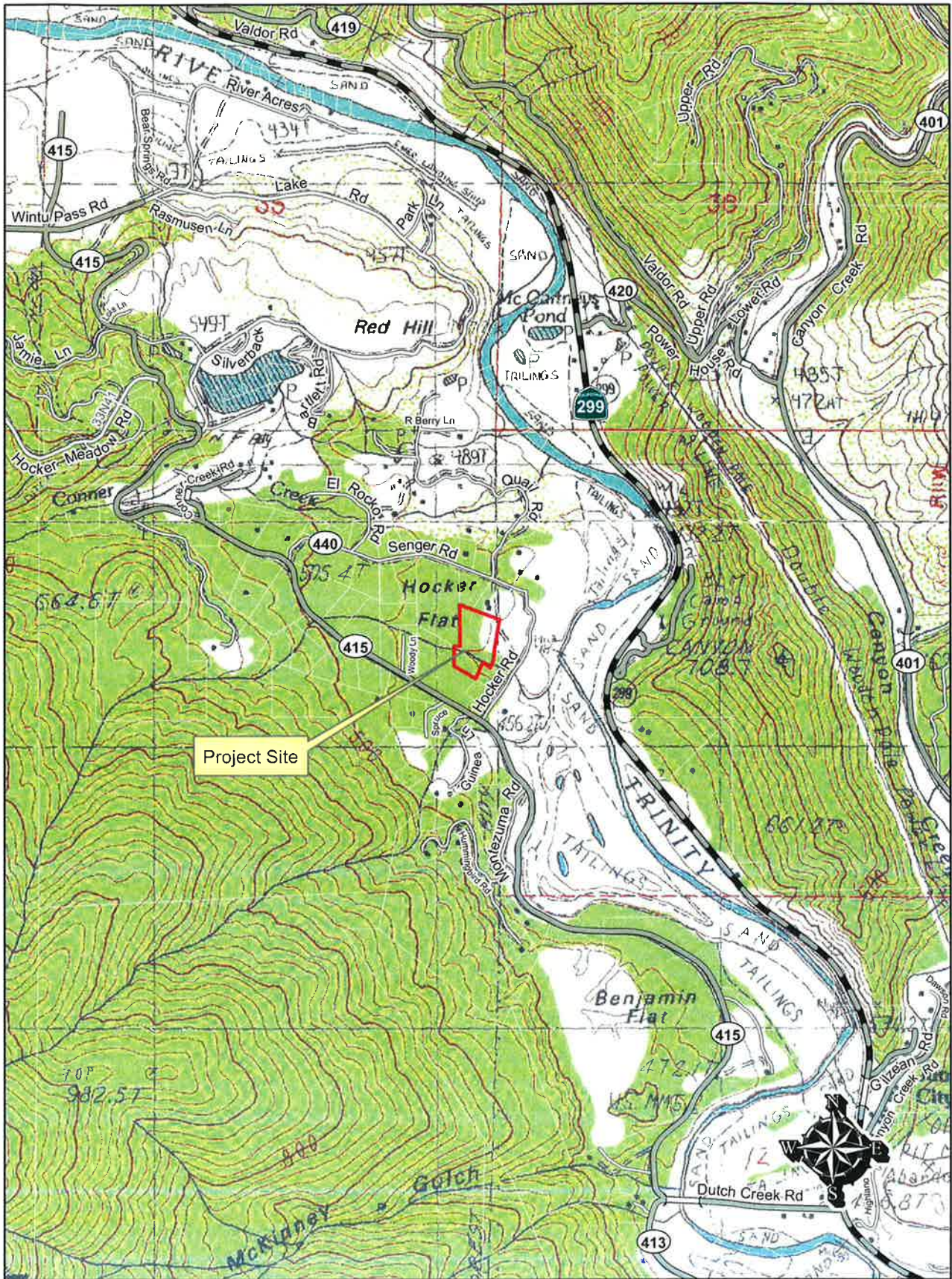


FIGURE 2 - SITE PLAN



2016 NAIP Aerial Imagery
 Coordinate System: NAD 1983 UTM Zone 10N
 Projection: Transverse Mercator



Positions, scales and dimensions approximate




TRINITY COUNTY PLANNING DEPARTMENT
 APPLICANT PREPARED SITE PLAN

Application No.	_____	
Drawn By:	H. BAKER	APN: 012-260-96-00
Date:	12/20/2017	Zoning: RR
Scale:	1:1,200	Lot Area: 6.91 Acres

FIGURE 3 - AFFECTED NEIGHBOR



APN: 012-260-96

-  Structure Buffer - 380'
-  Cultivation Site
- Streams**
-  Intermittent



0 25 50 100 Meters

0 100 200 400 Feet



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FIGURE 4 - AFFECTED NEIGHBOR LETTER OF SUPPORT

January 26, 2018

Trinity County Planning
PO Box 2819
Weaverville, CA 96093

Re: Ben Lingemann variance

Dear Commissioners and Staff:

I am Ben Lingemann's neighbor on Senger and understand that he has applied for cannabis cultivation license and needs a variance. My house is the only house that his garden is within 350' of. I fully support granting this variance.

Sincerely,


Ken Moore

Figure 5 – SITE VISIT PHOTOS



FROM THE NORTHEAST CORNER OF LINGEMANN'S FENCED CULTIVATION SITE TO MR. MOORE'S PROPERTY



FROM MR. MOORE'S RESIDENCE TO LINGEMANN'S SITE