TRINITY COUNTY PLANNING COMMISSION STAFF REPORT
Initial Commercial Cannabis Variance

DATE PUBLISHED: January 22nd, 2021

PLANNER: Bella Hedtke, Associate Planner

APPLICANT: Moua Lee

PROPERTY OWNER: Moua Lee and Naruemon Wanasuwadi

CONSULTANT/AGENT: N/A

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

LOCATION: 211 N. Salt Creek Rd., Hayfork (APN: 016-200-33-00)

APPROX. ACREAGE: 2.53

GENERAL PLAN DESIGNATION: Agricultural (A)

ZONING DISTRICT: Agricultural 10-Acre Min (A10)

OVERLAY ZONE: Critical Water Resource (CWR)

STAFF RECOMMENDATION: Approve with Conditions

ADJACENT LAND USE AND ZONING INFORMATION:

Direction	Land Use	Zoning	General Plan Designation
North	Residential/Agricultural	A10	A
South	Residential	A10	A
East	Residential	A10	A
West	Ag Forest	AF40	RE

ATTACHMENTS:
1 – Project Location Map
2 – Site Plan
3 – 350ft Setback Map
4 – Site Visit Photos

LICENSE TYPE: The applicant has a pending small outdoor license (up to 10,000 sq. ft.) in the Trinity County Commercial Cannabis Program (CCL650).

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

APN	APPROX. DISTANCE FROM CULTIVATON SITE	COMMENT STATUS
016-200-06-00	320ft	No Comment
016-200-08-00	235ft	No Comment

PUBLIC COMMENTS: As of the date of this staff report, staff has not received any public comments regarding this item.

FINDINGS: The following findings shall apply to the M. Lee Commercial Cannabis Setback Variance (CCV-20-26) for APN 016-200-33-00:

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 Agricultural 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 have a legal residence less than 350' from the proposed cultivation site. As previously mentioned, staff has not received any public comments regarding this item. Therefore, it can be assumed that the two neighbors located less than 350' from the proposed cultivation site do not consider this cultivation site 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.

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-20-26 to reduce the cultivation site setback in Trinity County Code 17.43.050.A.8. from 350 feet to 320 feet from the residence located on APN 016-200-06-00 and from 350ft to 235ft from the residence located on APN 016-200-08-00, 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. Lee Commercial Cannabis Setback Variance (CCV-20-26) for APN 016-200-33-00:

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.

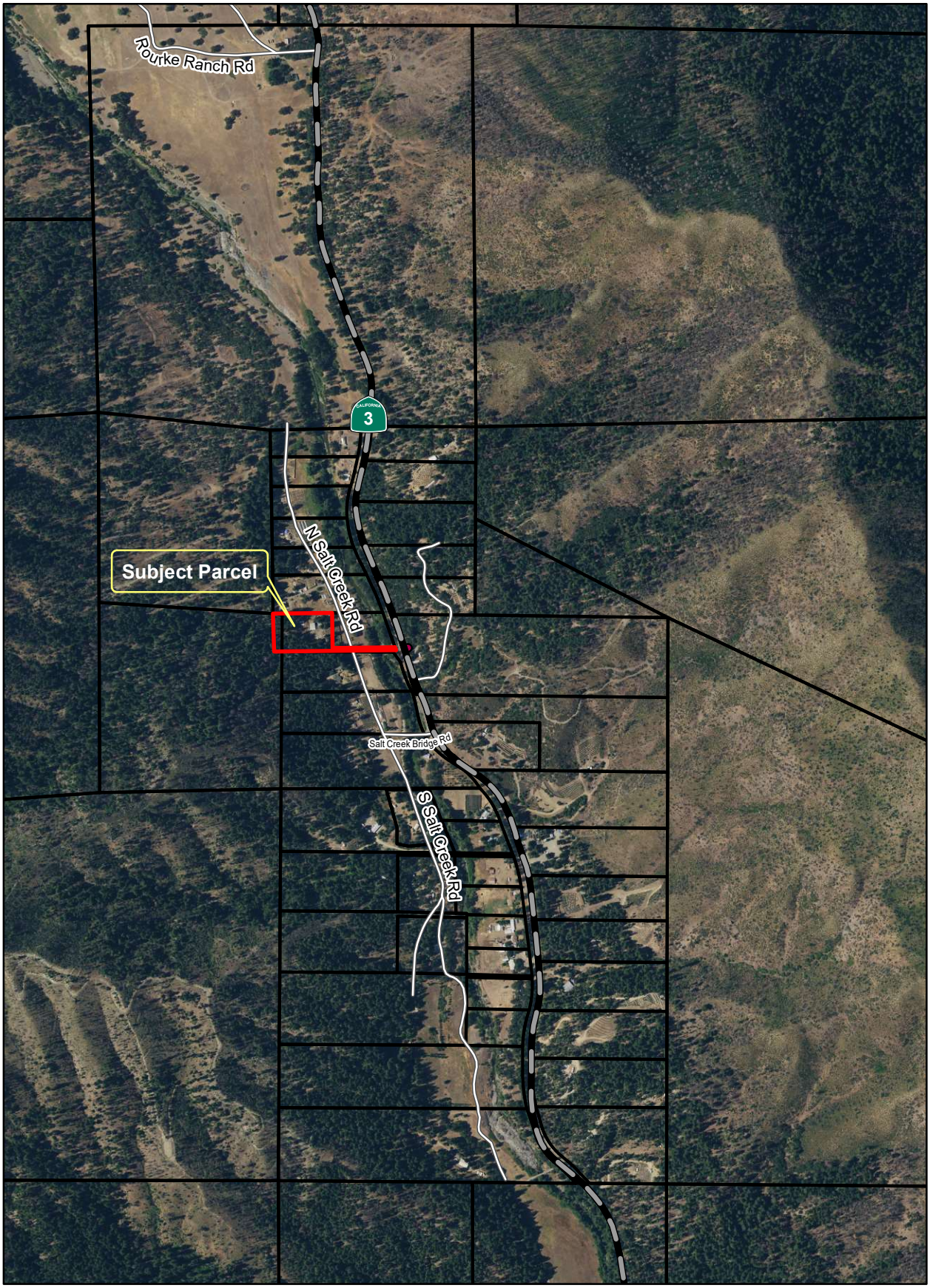
3. Structures on the property shall be in compliance with the California Building Code and Trinity County Code.

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.

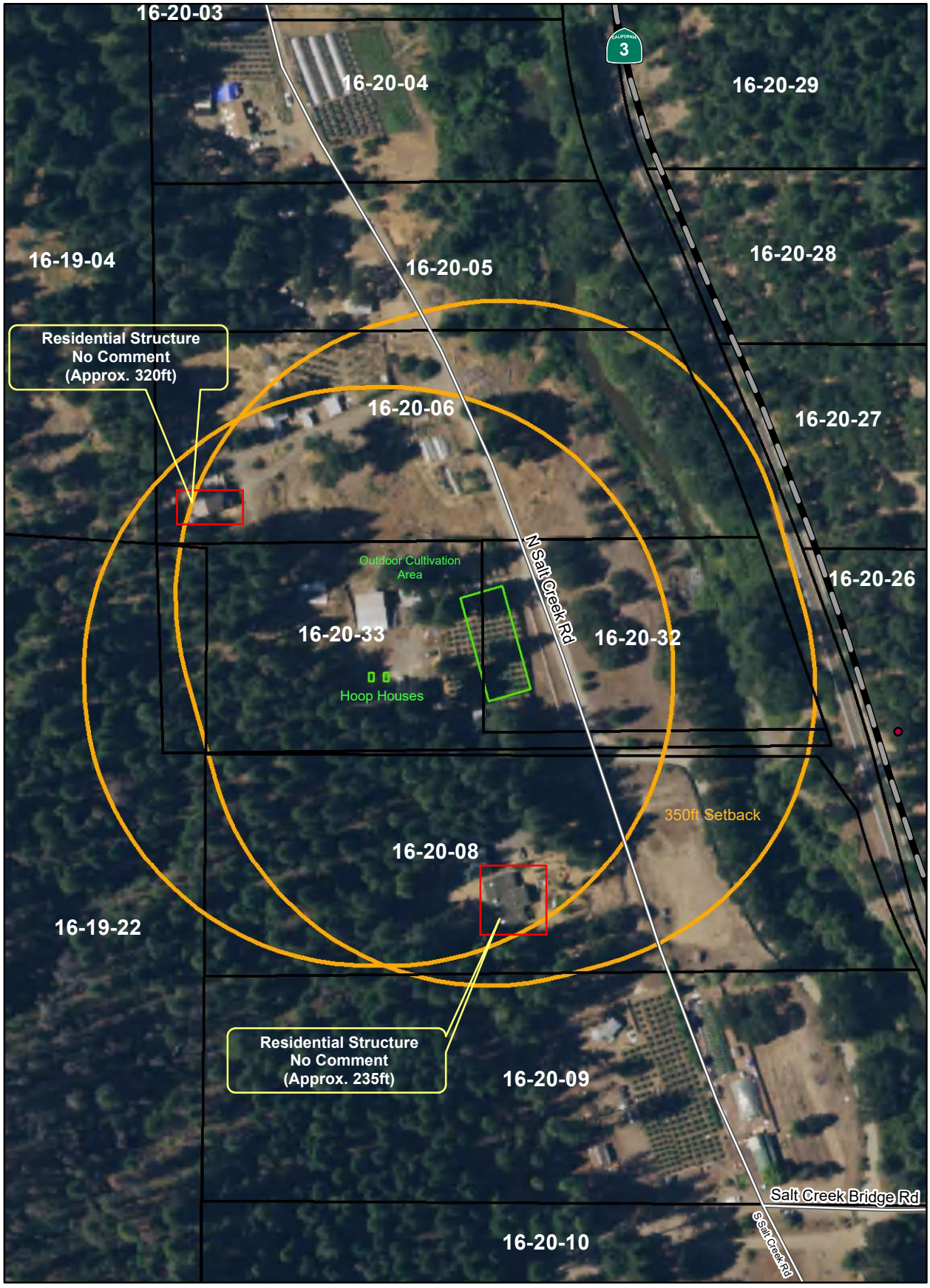
END OF CONDITIONS

ATTACHMENT 1
APN 016-200-33-00
CCV-20-26
Moua Lee
Project Location Map



ATTACHMENT 2
Site Plan

ATTACHMENT 3
350ft Setback Map
CCV-20-26 | APN 16-200-33-00



ATTACHMENT 4
Site Visit Photos

<-- Current Site Conditions

Residence Located on APN 016-200-006 -->

<-- Residence Located on APN 016-200-008