

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

PROJECT TITLE: Initial Commercial Cannabis Cultivation Variance

APPLICANT: Diane & Curtis Hicks

REPORT BY: Skylar Fisher, Associate Planner

LOCATION: 2761 Van Duzen Rd., Mad River (018-470-028)

ZONING DISTRICT: Unclassified

GENERAL PLAN DESIGNATION: Rural Residential

PROJECT DESCRIPTION:

A request for an initial commercial cannabis cultivation variance (CCV) from a neighboring residence for pending commercial cannabis cultivation license (CCL) 113 pursuant to Trinity County Code Section 17.43.050(A)(8).

Location	Land Use	Zoning District	General Plan Designation
North	US Forest Service	Unclassified	Resource
South	Residential Mobile/Manufactured Homes	Unclassified	Resource
East	US Forest Service	Unclassified	Resource
West	Residential Mobile/Manufactured Homes	Unclassified	Resource

Table 1: Surrounding Land Uses to Project Site

SITE DESCRIPTION:

The cultivation area includes an 80'x50' support building dedicated to an administrative hold area, immature plant area, harvest area, drying area, and additional storage space and a mature cultivation area. Also on the site is a 27'x32' structure dedicated to storage for nutrients, tools, and equipment, multiple dwellings, a well, and septic.

While the Van Duzen River runs through the parcel and a large portion of the west and southern sides look to be in the floodplain, there is no data available by the National Flood Hazard Layer as the area is unmapped. Per TCC Section 17.43.060, "Cultivation sites shall not place any structures or involve any grading that alters the capacity of the one-hundred-year floodplain. No storage of pesticides, fertilizers, fuel, or other chemicals will be allowed within the one-hundred-year floodplain." While other cultivation uses (plants, planter boxes and pots, and related materials) are allowed in the 100-year floodplain, these activities would need to be removed from the 100-year floodplain between November 1 and April 1 each year.

The eastern portion of the parcel is sloped. The existing 80'x50' structure is at what appears to be the flattest portion of this section of the parcel.

PROJECT EVALUATION:

Project Consistency with the Trinity County Zoning Code

Trinity County Code Chapter 17.43 – Commercial Cannabis Cultivation Regulations

Trinity County Code Section 17.43.050 describes the locations where CCLs are not allowed in the county. The Unclassified zoning district is not listed as barring commercial cannabis cultivation activities.

Within Section 17.43.050(A)(8), there are parameters given for cultivation variances:

“For specialty cottage, specialty and small licenses cultivation shall not be allowed within three hundred fifty feet of a residential structure on any adjoining parcels. For medium licenses, cultivation shall not be allowed within five hundred feet of an adjacent property line. Applications for a variance from this provision will be considered by the Trinity County Planning Commission. After obtaining an initial variance, the planning director can issue a director’s use permit for subsequent years after an inspection.”

The parameters for cultivation area are described in Section 17.43.010 where cultivation is defined as "... the planting, growing, harvesting, drying, or processing of cannabis plants or any part thereof.”

The term variance used in this chapter "is defined as Trinity County Ordinance No. 315, Section 31.”

As the license is for small (up to 10,000 sqft) outdoor cultivation, it is required to have all cultivation activity be at least 350-feet from any residences on an adjoined parcel unless a variance is obtained.

Trinity County Code Chapter 17.31 – Variances

Trinity County Code Section 17.31.010 states that the justification for a variance must be "... that the owner would otherwise suffer unique hardship under general zoning regulations because his or her particular parcel is different from others to which the regulation applies due to size, shape, or topography. Variances may be granted only to authorize a change in development standards which is not otherwise authorized by the zoning regulations.”

The following is a list of guidelines for reviewing variances:

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.*

Finding: The property has topographic constraints which would make it difficult for the applicant to develop outside of the required 350-foot residential setback. Primarily, a large portion of the parcel looks to be within the floodplain and includes a segment of the Van Duzen River. In addition, another section of the parcel has steep slope which would create difficulty for relocating the cultivation areas.

2. **Use Variance Prohibited:** *The consideration of "use variances" is specifically prohibited. These are variances which request approval to locate a use in a zone from which it is prohibited by ordinance.*

Finding: The granting of this variance does not create a variance from the uses allowed in the district.

3. **Disservice Not Permitted:** *A variance must not be injurious to the public welfare, nor to adjacent properties.*

Finding: There has not been evidence found by staff which indicates that the granting of a commercial cannabis cultivation variance would result in negative impacts to the surrounding parcels. At the time of writing this staff report, there have been no neighbor comments submitted.

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.*

Finding: The project is not found to conflict with the General Plan or any specific plans.

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.*

Finding: The project parcel is not located within an RD-1 overlay.

Project Consistency with the California Environmental Quality Act (CEQA)

Discussion and action on the request of a commercial cannabis cultivation variance qualifies as exempt from CEQA, based on Section 15061(b)(3) which states that a project is exempt if it is found that there is no possibility that the activity in question may have a significant effect on the environment.

STAFF RECOMMENDATION:

Planning staff recommends that the Planning Commission moves to:

- A. Adopt a California Environmental Quality Act (CEQA) determination that the project is exempt per Section 15061(b)(3)
- B. Adopt Resolution PC 2022-15 subject to Exhibit A – Conditions of Approval to reduce the 350-foot setback to 255-feet from the residence on APN 018-470-021 and to reduce the 350-foot setback to 250-feet from the residence on APN 018-470-011

ALTERNATIVES

If the Planning Commission does not wish to approve the CCV, the following alternatives are available:

- A. Continue the item to the next Planning Commission hearing on December 8, 2022 to receive more information
- B. Deny application CCV-22-41

ATTACHMENTS:

- A. Resolution PC-2022-15 and Exhibit A-Conditions of Approval
- B. Site Plan
- C. Residential Setback Map
- D. Location Map
- E. Aerial Photos
- F. Zoning Districts Map
- G. General Plan Designations Map
- H. FEMA Mapping

RESOLUTION NO. PC-2022-15

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF TRINITY**

**Approving an Initial Commercial Cannabis Variance
(Curtis & Diane Hicks, Commercial Cannabis Variance (CCV-22-41))**

WHEREAS, the Trinity County Planning Department has considered a request for an initial commercial cannabis variance, filed by Robert Brown, in accordance with Title 17, Trinity County Zoning Code Section 17.43.050A(8),

WHEREAS, for specialty cottage, specialty, and small licenses, cultivation shall not be allowed within three hundred fifty feet of a residential structure on any adjoining parcels unless an initial variance is obtained by approval of the Trinity County Planning Commission,

WHEREAS, approved or conditionally approved commercial cannabis variances are subject to annual renewal by the Planning Director through the director's use permit process, and

WHEREAS, the Planning Commission held a public hearing and considered this matter at the regular meeting held on October 27, 2022,

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the County of Trinity:

1. Finds the requested commercial cannabis variance to be exempt from the requirements of the California Environmental Quality Act under exemption 15061(b)(3) on the basis that there are no substantial changes to the project or to circumstances under which the project is proposed to be undertaken, and no new information has become available or been made known showing unanalyzed environmental effects; and
2. Makes the following findings:
 - A. The applicant will not be granted a special privilege upon the approval of the proposed commercial cannabis variance;
 - B. The approval of the proposed commercial cannabis variance is not for a variance for the use of the property;
 - C. The approval of the proposed commercial cannabis variance would not be injurious to general public welfare or to the adjacent properties;
 - D. The proposed commercial cannabis variance is not in conflict with the goals, objectives, and policies of the General Plan or any specific plans;
 - E. The project parcel is not located in a Recreation Development District (RD-1) overlay zone; and

Resolution No. PC-2022-15
November 10, 2022

3. Approves CCV-22-41 to reduce the 350-foot setback requirement from the residences on APN 018-470-021 and APN 018-470-011, subject to the conditions set forth in Exhibit A of this resolution and incorporated herein.

DULY PASSED AND ADOPTED this 20th day of November, 2022 by the Planning Commission of the County of Trinity by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:
RECUSE:

WILLIAM SHARP, CHAIRMAN
Planning Commission
County of Trinity
State of California

ATTEST:

By:

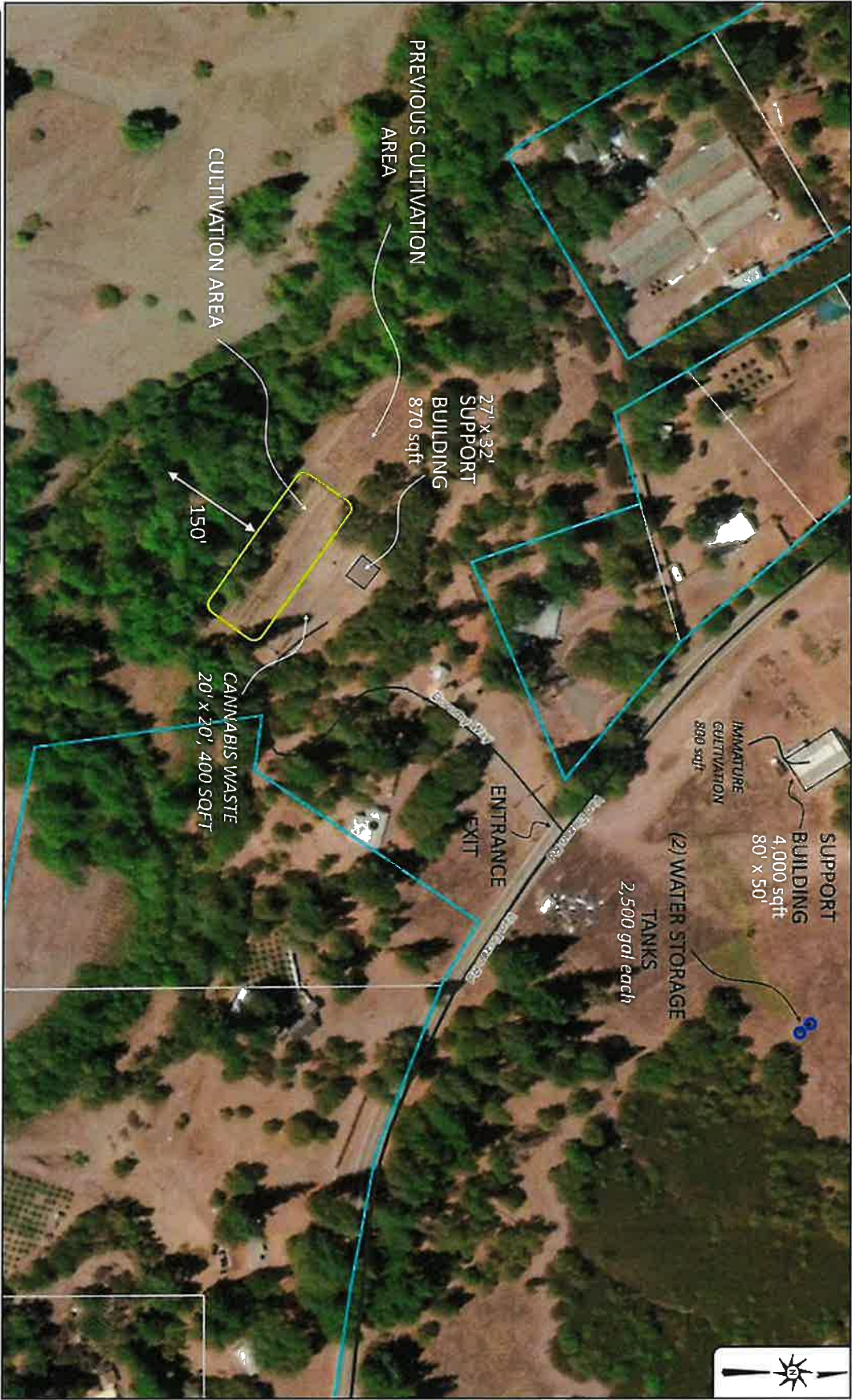
EDWARD PRESTLEY
Secretary of the Planning Commission
County of Trinity, State of California

EXHIBIT "A" to Resolution PC-2022-15
COMMERCIAL CANNABIS VARIANCE CONDITIONS OF APPROVAL

(Curtis & Diane Hicks, Commercial Cannabis Variance (CCV-22-41))

1. The commercial cannabis 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. The commercial cannabis renewal application shall:
 - A. 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. Be subject to a filing fee as specified by resolution of the Board of Supervisors;
 - C. Be approved, denied, or referred to the Planning Commission at the discretion of the Planning Director;
2. Structures on the property shall be in compliance with the California Building Code and Trinity County Code;
3. The applicant has the sole responsibility for renewing this commercial cannabis variance before its expiration. The County will not provide a notice prior to the expiration date;
4. No county permit or license shall be issued until the ten-day appeal period has expired. If the commercial cannabis variance approval is appealed, no county permit or license shall be issued while a commercial cannabis variance hearing or appeal is pending.

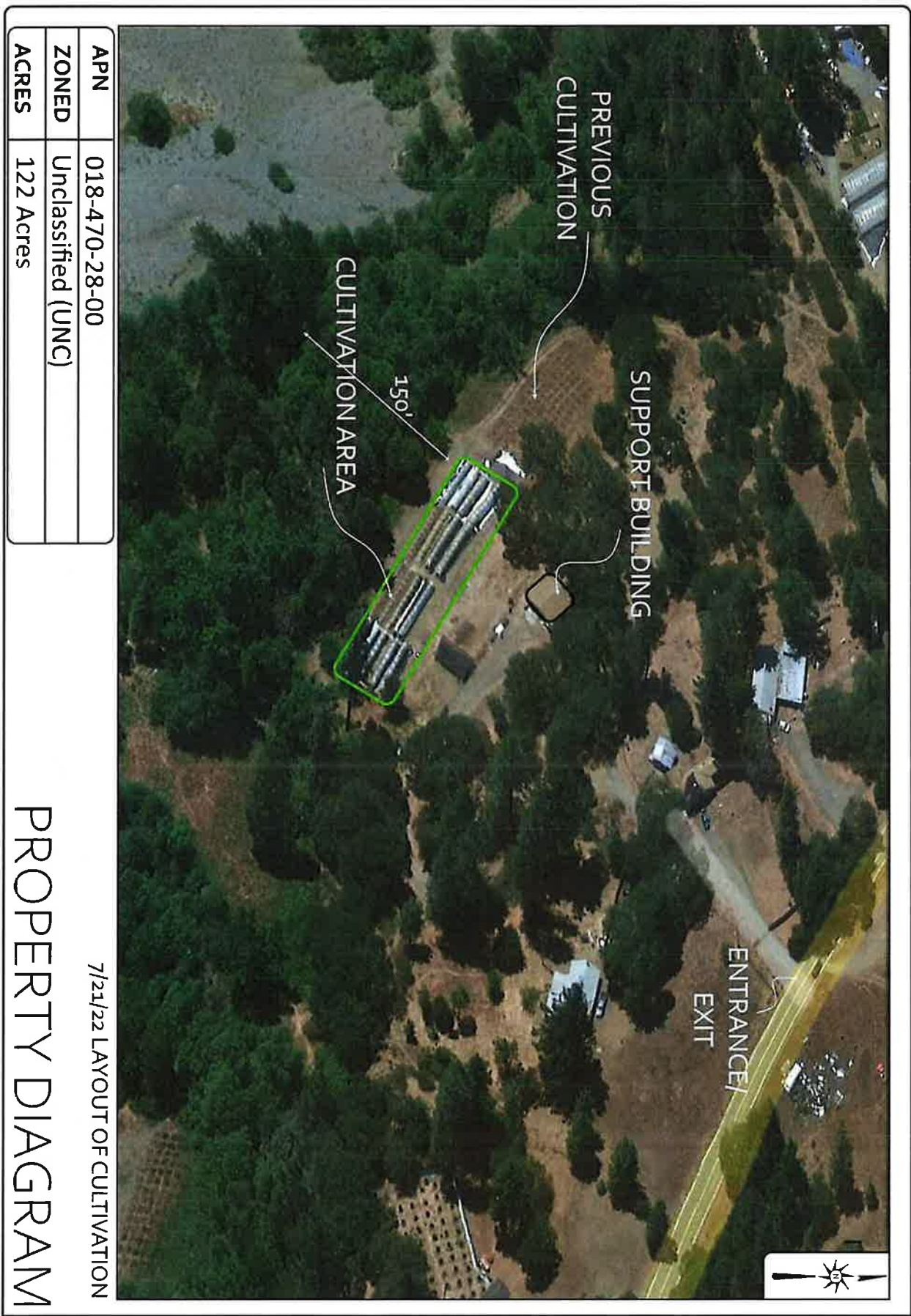
END OF CONDITIONS.



APN	018-470-28-00
ZONED	Unclassified (UNC)
ACRES	122 Acres

PROPERTY DIAGRAM

11/15/2021

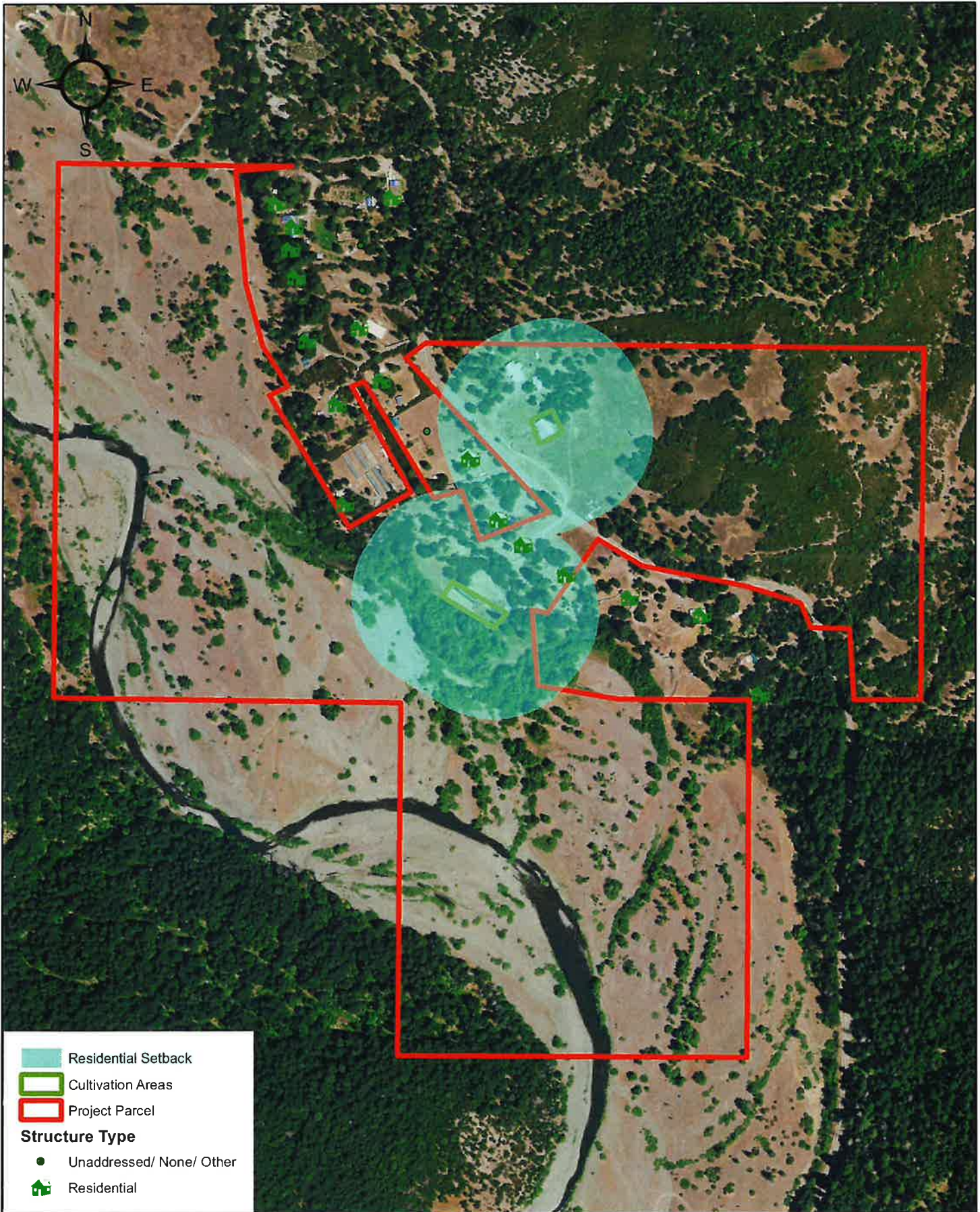


APN	018-470-28-00
ZONED	Unclassified (UNC)
ACRES	122 Acres

7/21/22 LAYOUT OF CULTIVATION

PROPERTY DIAGRAM

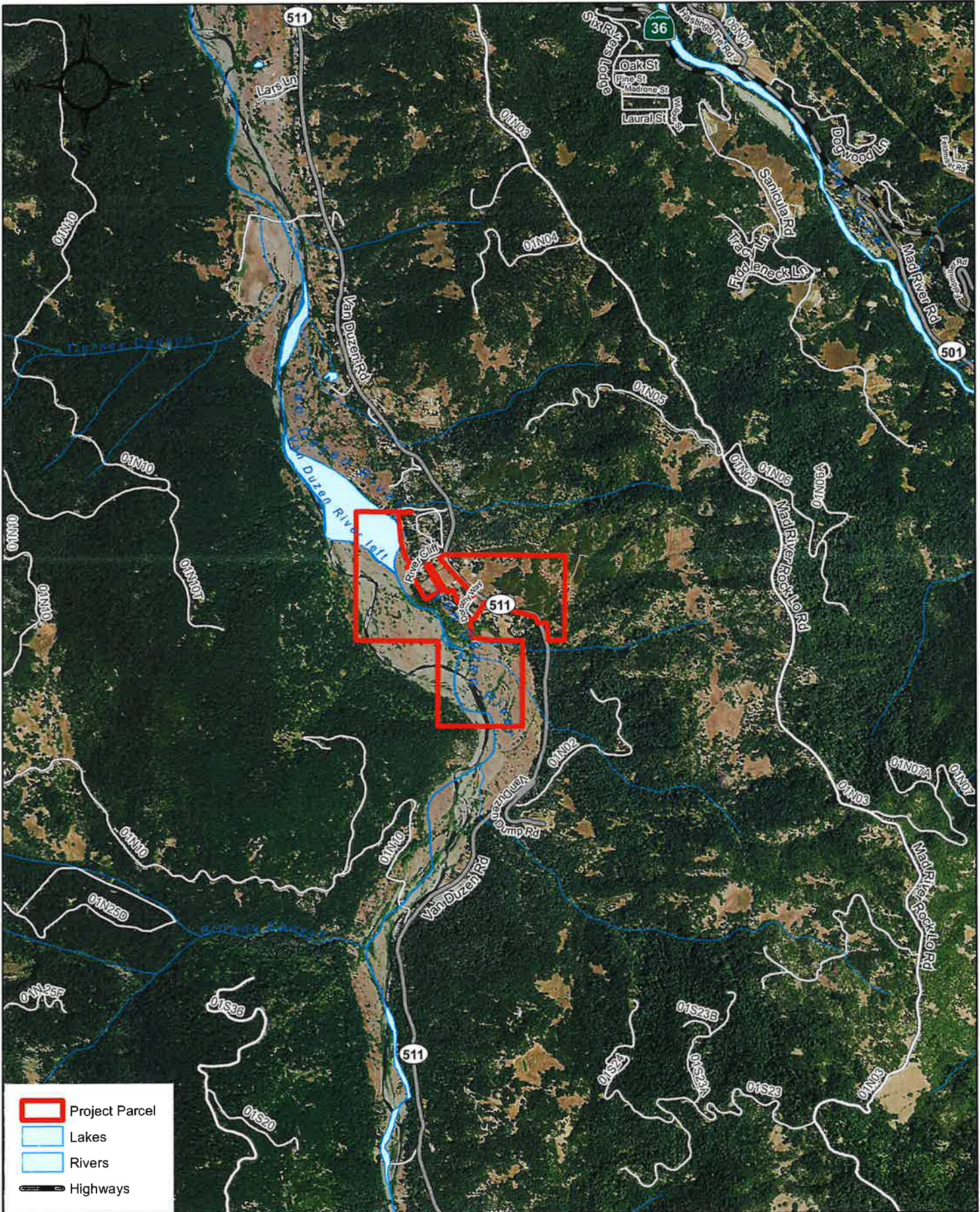
CCV-22-41 Residential Setback Map



- Residential Setback
 - Cultivation Areas
 - Project Parcel
- Structure Type**
- Unaddressed/ None/ Other
 - Residential



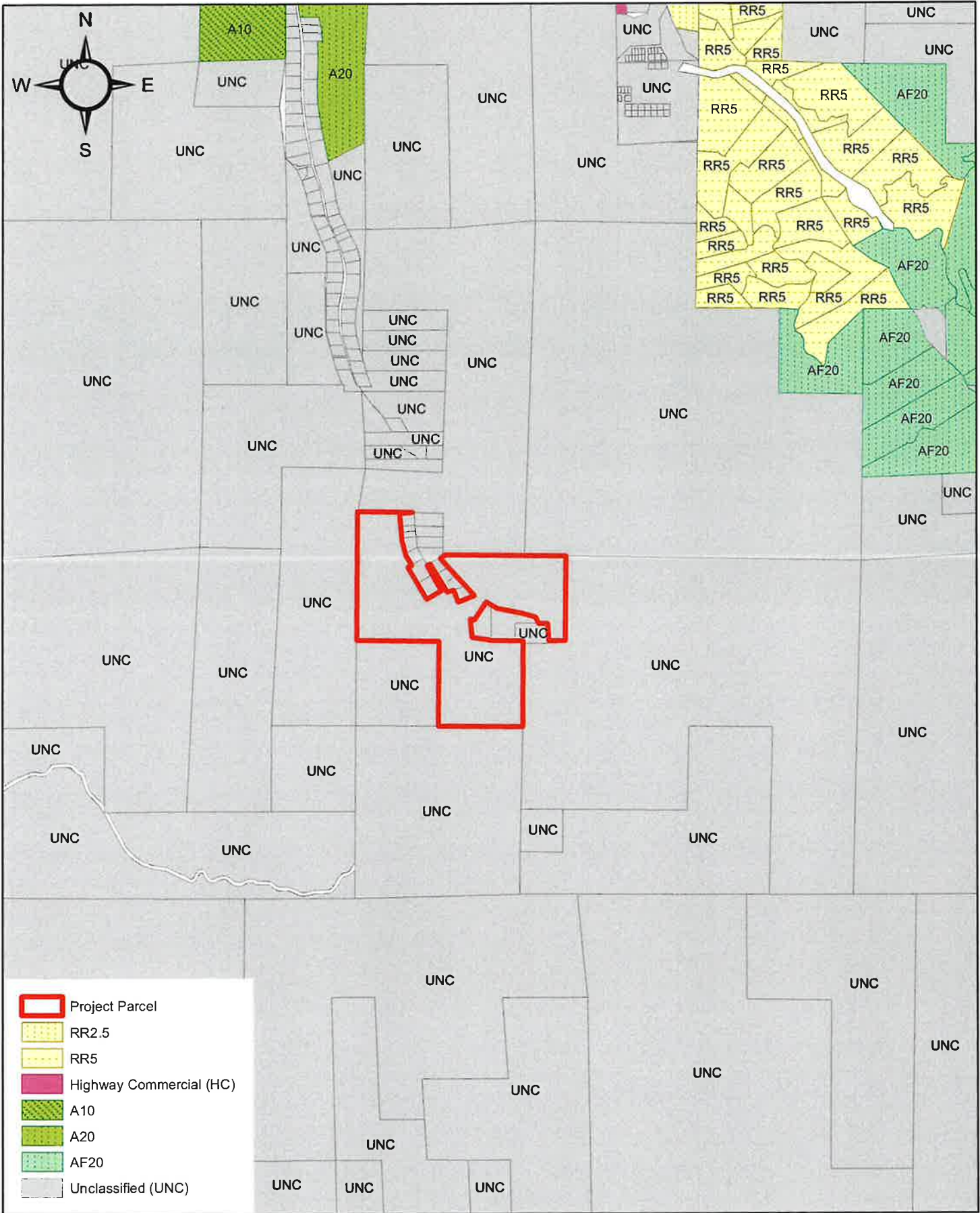
CCV-22-41 Location Map



Attachment E



CCV-22-41 Zoning Districts Map

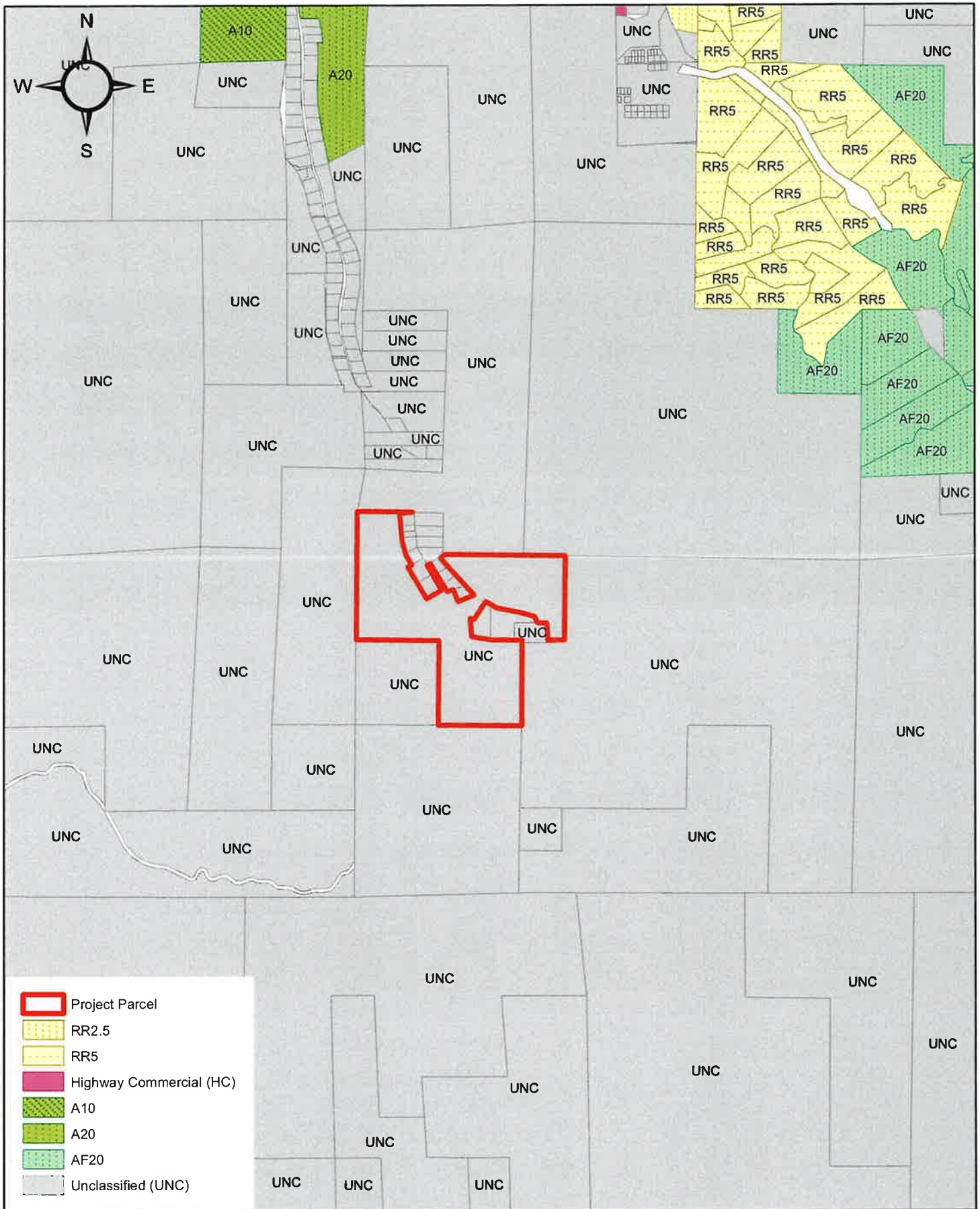


- Project Parcel
- RR2.5
- RR5
- Highway Commercial (HC)
- A10
- A20
- AF20
- Unclassified (UNC)

0 850 1,700 3,400 5,100 Feet

Attachment G

CCV-22-41 General Plan Designations Map



- Project Parcel
- RR2.5
- RR5
- Highway Commercial (HC)
- A10
- A20
- AF20
- Unclassified (UNC)

0 850 1,700 3,400 5,100
Feet

SF
Date: 11/2/2022

National Flood Hazard Layer FIRMette



123°31'24"W, 40°25'47"N



123°30'46"W, 40°25'19"N

Basemap: USGS National Map. Orthoimagery. Data refreshed October, 2020

Legend

SEE FIRM REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS

- Without Base Flood Elevation (BFE)
Zone X, V, A19
- With BFE or Depth *Zone AE, AH, VE, AR*
- Regulatory Floodway

0.2% Annual Chance Flood Hazard. Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile *Zone X*

OTHER AREAS OF FLOOD HAZARD

- Future Conditions 1% Annual Chance Flood Hazard *Zone X*
- Area with Reduced Flood Risk due to Levee. See Notes, *Zone X*
- Area with Flood Risk due to Levee *Zone Q*

OTHER AREAS

- NO SCREEN
- Area of Minimal Flood Hazard *Zone X*
- Effective LOMRs
- Area of Undetermined Flood Hazard *Zone Q*

GENERAL STRUCTURES

- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

- 20.2 Cross Sections with 1% Annual Chance
- 17.5 Water Surface Elevation

- Coastal Transect
- Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary

- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

- Digital Data Available
- No Digital Data Available
- Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on **11/2/2022 at 3:20 PM** and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.