

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

APPLICANT: Vang Moua

REPORT BY: Scott Watkins

OWNER: Vang Moua

APN: 019-340-36 (1.5 acres)

Opt-Out: None

PROJECT DESCRIPTION:

Variance from required 350 foot Cannabis cultivation setback from two (2) neighboring residences.

LOCATION: 250 Fir Meadow Road, Post Mountain, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Post Mountain
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Unclassified
- D) Existing Land Use: commercial cannabis cultivation
- E) Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	Vacant	Unclassified	Rural Residential
South:	Cannabis Cultivation	Unclassified	Rural Residential
East:	Cannabis Cultivation	Unclassified	Rural Residential
West:	Cannabis Cultivation	Unclassified	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.

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 in the process of obtaining a Commercial Cannabis License under the county licensing program. The parcel is located on Fir Meadow Road, a privately-maintained road. The site plan prepared by staff (Figure 2) identifies on-site development and its relationship to the nearby impacted residences, which are illustrated in Figure 3.

The subject property, 250 Fir Meadow Road, Post Mountain, is 1.5 acres but is limited in where commercial Cannabis cultivation can be sited. This is due to the subject property being completely covered by adjacent residential dwellings impacted by the 350 ft. residential dwelling setbacks.

At the same time, the site will be impacted by a future residential dwelling that is currently in the permitting process, see CCV-18-028, APN: 019-340-42. Both the subject property and the adjacent property, APN: 019-340-42, will require 350 residential setback variances from each other, once the required building permits are finalized.

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "There is no way to relocate the cultivation area without needing a variance."

The adjacent impacted properties have provided letters of support for the granting of these variances, see attached letters of support.

The adjacent impacted neighbor at APN: 019-340-38 has provided a letter of concern, see attached.

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:

Approve of the variance to allow reduction of the Cannabis cultivation setback;

- from 350 feet to 288 feet from the residence on APN 019-340-38,
- from 350 feet to 210 feet from the residence on APN 019-340-35,

subject to the following conditions of approval and based on the following findings of fact:

Findings of Fact for the Variance

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 to establish Type II, Cannabis cultivation, up to 10,000 square feet of canopy.
2. The variance is not a grant of special privilege to the applicant because relocation would result in unnecessary grading and environmental damage due to site topography.
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
VANG MOUA CANNABIS SETBACK VARIANCE (CCV-18-031)**

1. The variance is approved for a period of one year from **April 1, 2018** through **March 31, 2019**; provided, however, that the variance may be renewed annually.
 - a. Application for renewal shall be made by the applicant 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.

To Whom it May Concern,

I am Sean W Mentch and I reside at

141 Fir Meadow Rd Hayfork Ca 96041

I recognize my neighbor Vang Moua, located at 250 Fir Meadow Rd. Post Mountain, CA 96041, is in pursuit of renewing a commercial cultivation license and I have no objections and fully support this proposed operation.

Sincerely,

X  _____

To Whom it May Concern,

I am Shenda Lee and I reside at

1380 Pineforest Dr. Hayfork Ca 96041

I recognize my neighbor Vang Moua, located at 250 Fir Meadow Rd. Post Mountain, CA 96041, is in pursuit of renewing a commercial cultivation license and I have no objections and fully support this proposed operation.

Sincerely,

x Shenda Lee

To Whom it May Concern,

I am Bee Ann and I reside at

120 Fir Meadow

I recognize my neighbor Vang Moua, located at 250 Fir Meadow Rd. Post Mountain, CA 96041, is in pursuit of renewing a commercial cultivation license and I have no objections and fully support this proposed operation.

Sincerely,

X Bee Ann

Ruth Hanover

From: Ray Carpenter <playnwfires@yahoo.com>
Sent: Tuesday, May 15, 2018 12:41 PM
To: Info.Planning
Cc: John Fenley; Judy Morris; Bobbi Chadwick; Keith Groves; Terry Mines
Subject: Re; Request for Variance **CCV-18-31**

Re; Request for "annual variance" for Cannabis cultivation located at 250 Fir Meadow Rd. Post Mountain, APN: 019-340-36.

I do not believe this property qualifies for a Cannabis cultivation Lic. or a variance for the following reasons;

1. There is not a legal/permitted residence on this property, or under construction.
2. They are using 10-12 ft. tall black plastic/fabric as fencing which is a violation of the Cultivation ordinance as well as County Codes and presents a Fire Hazard in the event of a Wildland fire, as it would create firebrands which could spread fire for long distances. This "fencing" needs to be removed and replaced with a permanent and secure fence which meets Co. Codes. We no longer have a Fire Dept. here, so this is extremely important.
3. This property is located on a dirt road, which creates unnecessary dust that is not only a nuisance and health hazard, but this dust also contaminates their Cannabis product making it unhealthy for anyone to consume. This product will likely fail a test for contaminants, and as a result will only be able to be sold illegally on the black market.

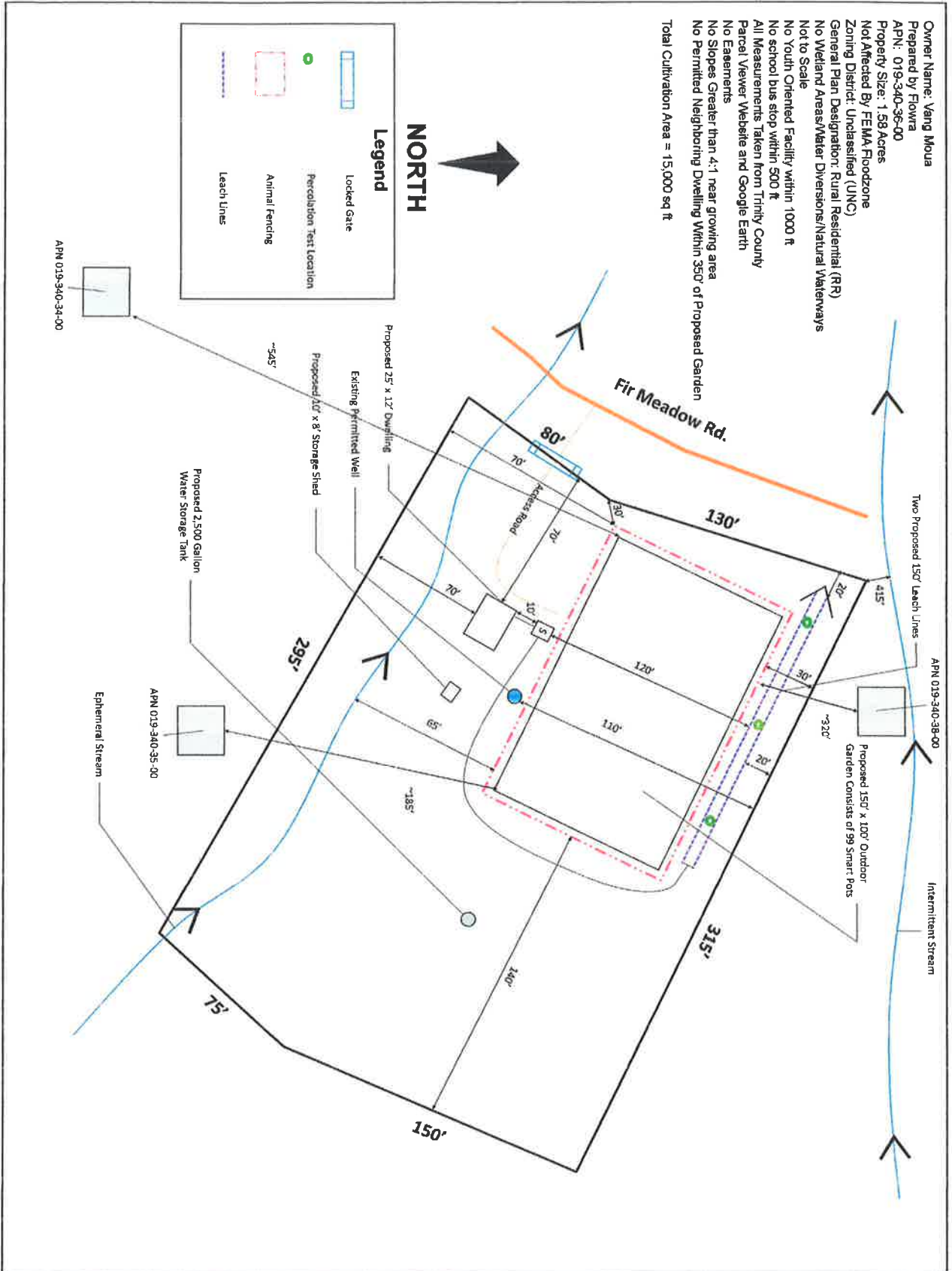
Please acknowledge receipt of this e-mail.

Sincerely,
Ray Carpenter
320 Fir Meadow Rd.
P.O. Box 1637
Hayfork, CA 96041-1637

Project Description

Vang Moua is in the process of renewing a Commercial Cannabis License and has encountered the need for an Application for Variance from the 350' required setback from two neighboring dwellings. The garden exists in the general north east sector of the property, and given the locations of the neighboring dwellings relative to the garden there is no feasible location on the property that will not require an Application for Variance.

Owner Name: Vang Moua
 Prepared by: Flowra
 APN: 019-340-36-00
 Property Size: 1.58 Acres
 Not Affected By FEMA Floodzone
 Zoning District: Unclassified (UNC)
 General Plan Designation: Rural Residential (RR)
 No Wetland Areas/Water Diversions/Natural Waterways
 Not to Scale
 No Youth Oriented Facility within 1000 ft
 No school bus stop within 500 ft
 All Measurements Taken from Trinity County
 Parcel Viewer Website and Google Earth
 No Easements
 No Slopes Greater than 4:1 near growing area
 No Permitted Neighboring Dwelling Within 350' of Proposed Garden
 Total Cultivation Area = 15,000 sq ft

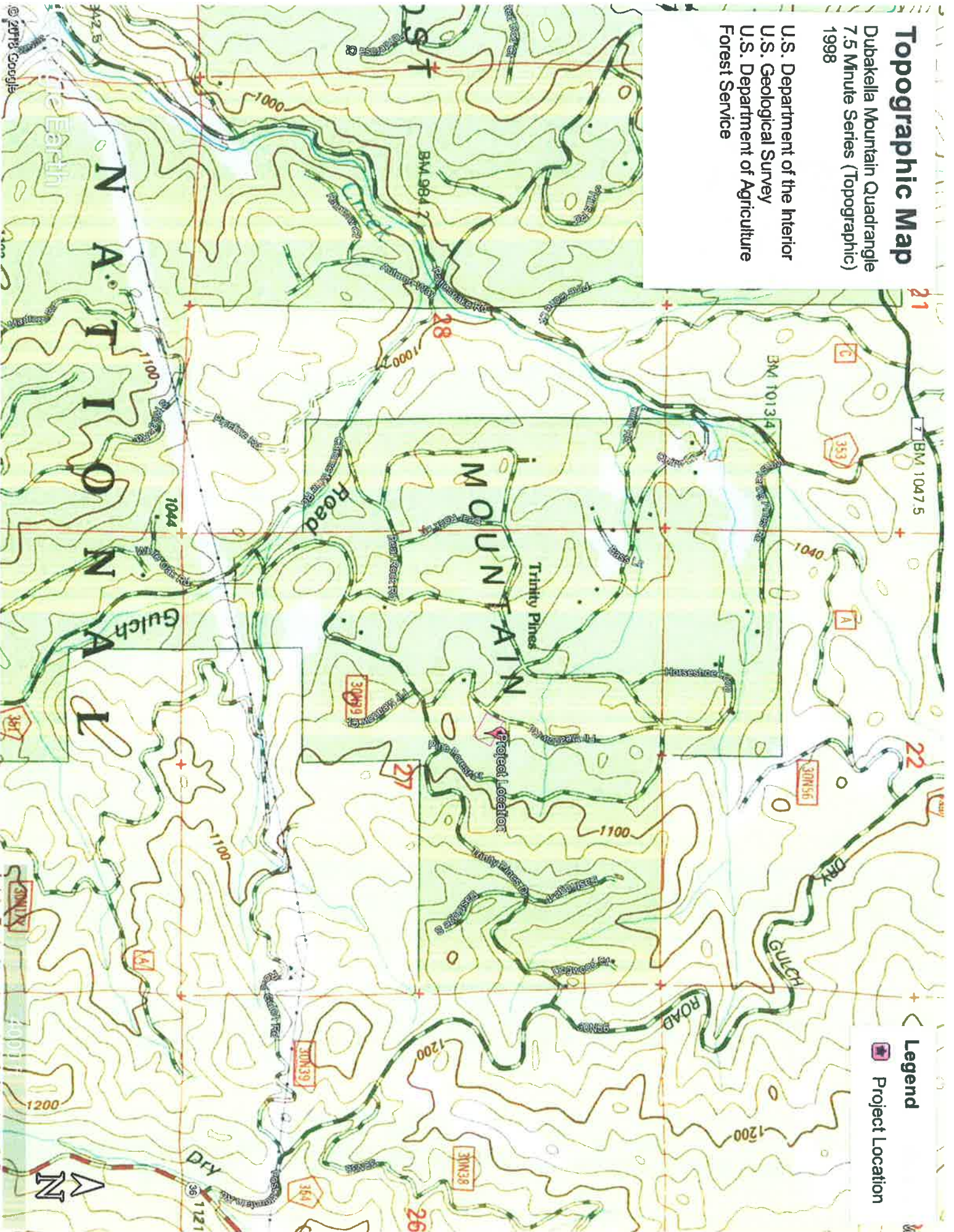


	Vang Moua Commercial Cannabis Application 250 Fir Meadow Rd. Post Mountain, CA 96041		DRAWN: MJ	PROJECT #: 744
	Site Map		DATE: 7/20/2017 5/2/18 Edit	FIGURE: Figure 1

Topographic Map

Dubakella Mountain Quadrangle
7.5 Minute Series (Topographic)
1998

U.S. Department of the Interior
U.S. Geological Survey
U.S. Department of Agriculture
Forest Service

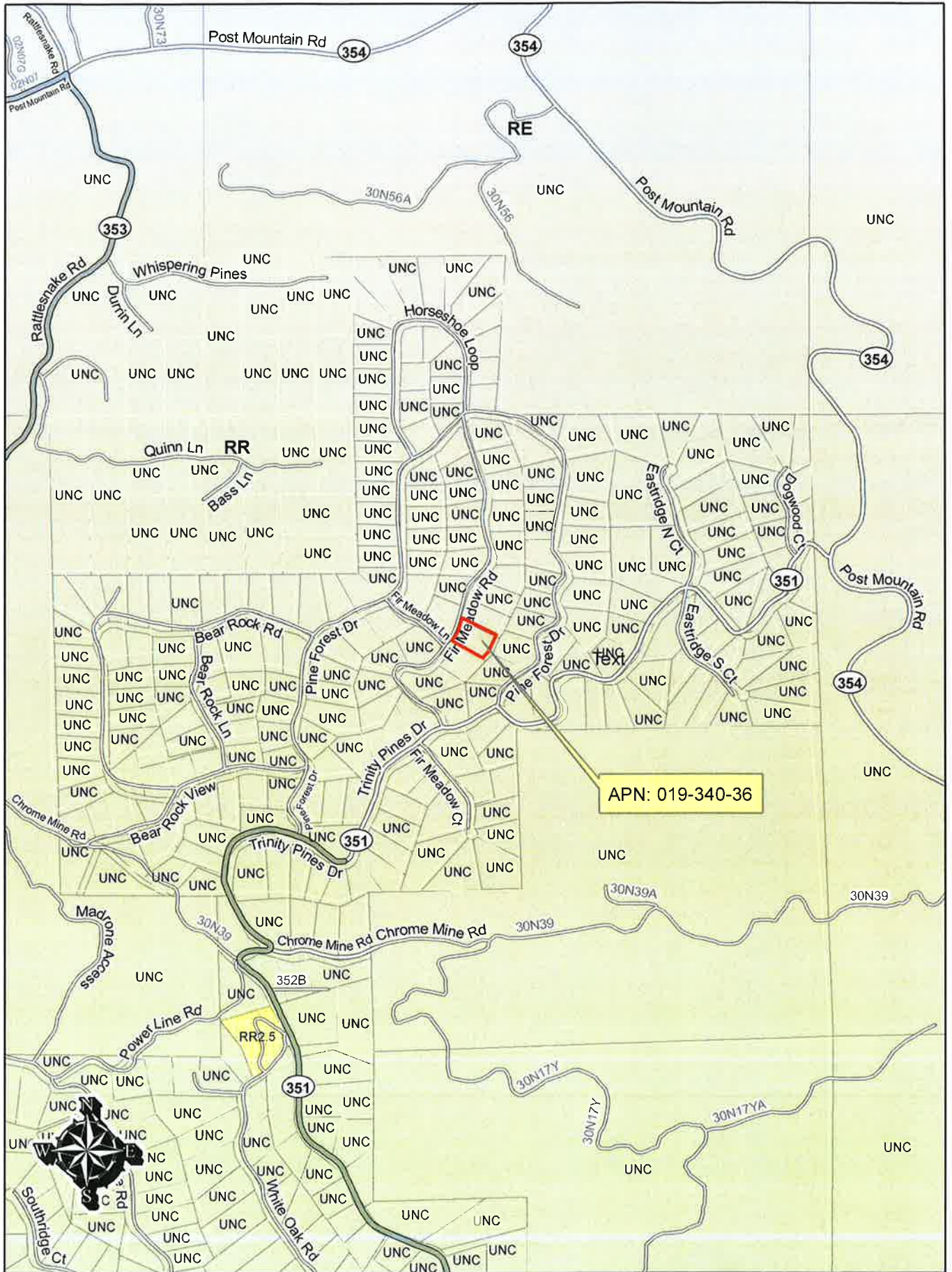


Legend
Project Location

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CCV-18-031 Vang Moua

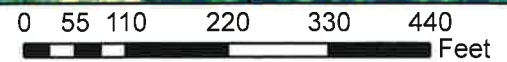
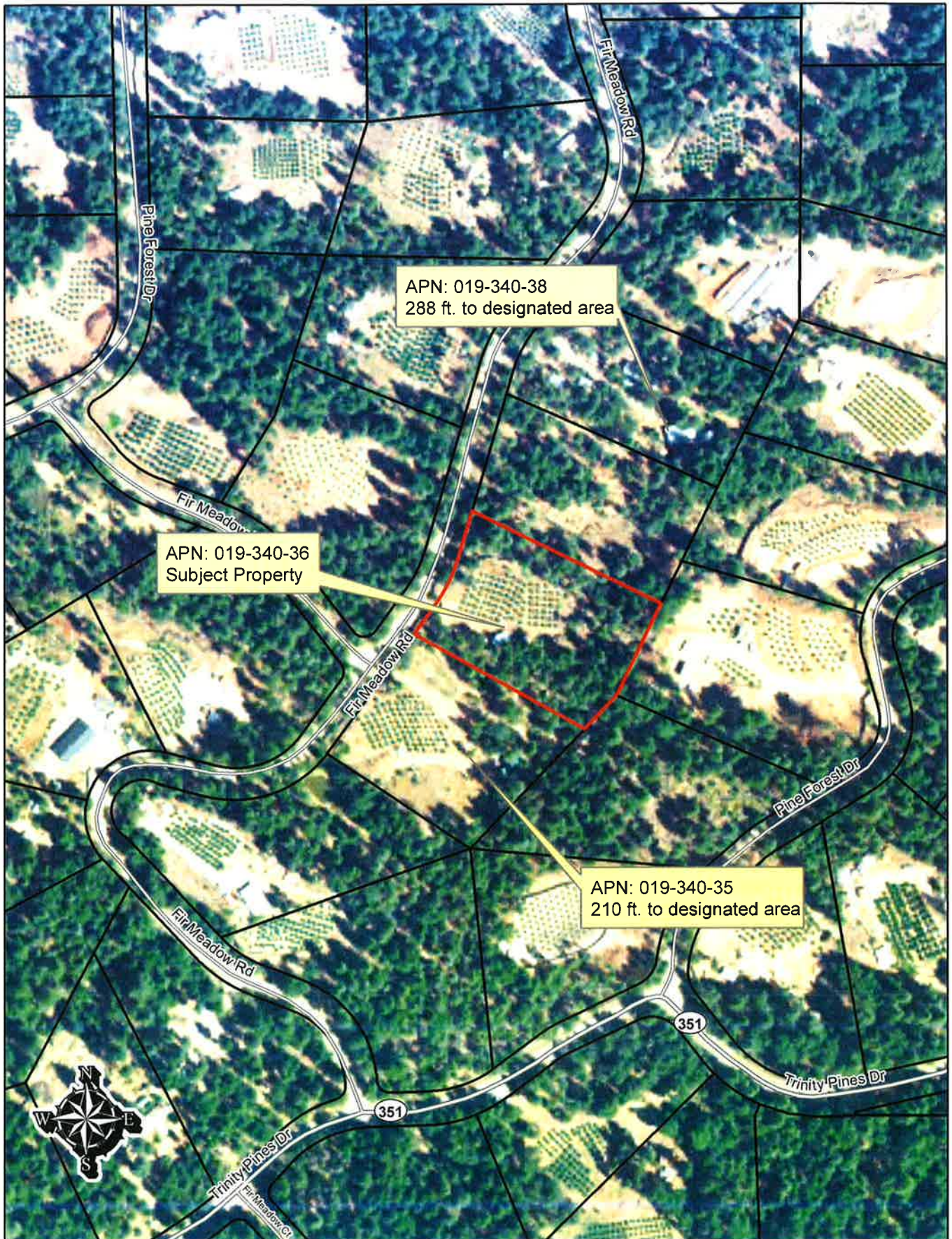
Figure 1 - Project Location and Zoning



0 280 560 1,120 1,680 2,240 Feet

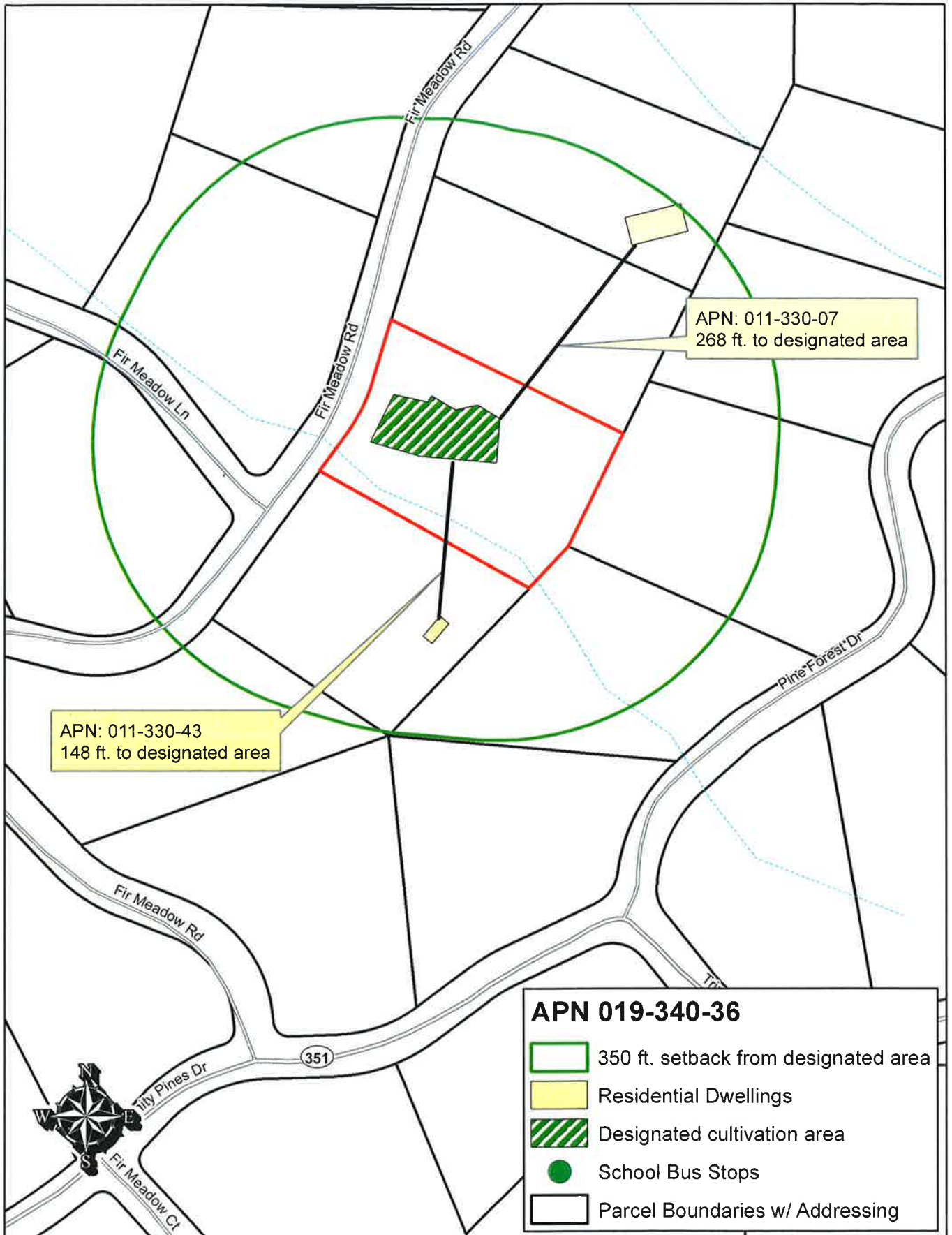
CCV-18-031 Vang Moua

Figure 2 - Site Map and Affected Neighbors



CCV-18-031 Vang Moa






Figure 3 - Buffer Map and Affected Dwelling

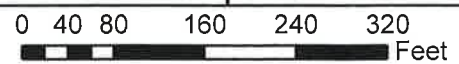


APN: 011-330-43
148 ft. to designated area

APN: 011-330-07
268 ft. to designated area

APN 019-340-36

-  350 ft. setback from designated area
-  Residential Dwellings
-  Designated cultivation area
-  School Bus Stops
-  Parcel Boundaries w/ Addressing





CCV-18-031 Vang Moua Figure 4 – Site Pictures



Picture 1: facing north showing non-compliant perimeter screening relationship to designated cultivation area



Picture 2: facing north-west showing designated cultivation area



CCV-18-031 Vang Moua Figure 4 – Site Pictures



Picture 3: facing west towards designated cultivation area



Picture 4: facing south-west towards living area



CCV-18-031 Vang Moua Figure 4 – Site Pictures



Picture 5: facing south-east towards designated cultivation area showing 30 ft. property line setback



Picture 6: facing south towards designated cultivation area