



ITEM NO. 6

MEETING DATE 06/28/2018

APPLICATION NO. CCV-18-034

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Bee Moua

REPORT BY: Scott Watkins

OWNER:

APN: 019-360-54 & 019-340-01 (1.91 & 1.56 acres)

Opt-Out: None

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from one (1) neighboring residence.

LOCATION: 571 & 631 Bear Rock Rd. Hayfork, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Rural Residential – (RR)
- 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:	Cannabis cultivation	Unclassified	Rural Residential (RR)
South:	Cannabis cultivation	Unclassified	Rural Residential (RR)
East:	Residential	Unclassified	Rural Residential (RR)
West:	Cannabis cultivation	Unclassified	Rural Residential (RR)

PROJECT EVALUATION:

Staff review

The applicant is in the process of applying for a commercial Cannabis cultivation license under the county licensing program. The parcel is located on Bear Rock Road, a private road. The site plan prepared by staff (Figure 2) provides aerial views of the project. Figure 3 illustrates on-site development and its relationship to the nearby impacted residence.

The subject properties, 571 and 631 Bear Rock Road, Hayfork, are 1.91 and 1.56 acres, respectively. Cumulatively, the two parcels are 3.57 acres. Based on a satellite review, the site appears to be able to move outside of the 350 ft. residential buffer by shifting the designated cultivation areas on APN 019-340-01 and APN: 019-360-54 outside the 350 ft. setback from 019-340-02, see Figures 5 & 6. Consequently, this shift would render the majority of the subject properties unusable for Cannabis related cultivation activities.

Another alternative could allow the reduction of Cannabis cultivation setbacks to a reasonable distance (200 ft.) from APN 019-340-02 and require the applicant to mitigate existing impacts to APN 019-340-02 by remediating the surplus vacated area with replanting of native trees and foliage. The subject property's current designated cultivation area is marginally screened from the impacted adjacent property APN: 019-340-02 as seen in the site pictures (picture 1) in Figure 4. Replanting of trees could help further screen the subject property's cultivation from the impacted APN: 019-340-02.

Upon re-inspection of the subject property, Trinity County Code Compliance Staff identified that the applicant's cultivation area expanded towards Bear Rock Rd. and the eastern most area of the property of APN: 019-360-54. While this expansion coincides with staff's recommendation to shift away from the impacted neighbor APN 019-340-02, the existing cultivation area within the residential setback from APN: 019-340-02 remains, though the setback has been increased from 155 ft. to 190 ft.

Code Compliance review

Per Trinity County Code Compliance Staff re-inspection report, *"when the Cannabis Planner and Compliance Staff first went out to the subject property, on April 30th 2018, the applicant was instructed that a variance is necessary or he was going to have to move his cultivation area to meet the 350 ft. setback. Currently, the cultivation area is within 350 ft. of the east neighbor (APN 019-340-01-00), which requires a variance from 350 ft. to 190 ft.*

"The total cultivation area right now is 19,430 Square Feet and if the variance is denied the applicant will have to remove 10,135 Square Feet of cultivation area to be in compliance. Leaving 9,295 Square Feet of the allowable 20,000 cultivation area."

Neighbor Feedback:

- Neighbor feedback within 350 ft. **in favor** of granting this variance: 0
- Neighbor feedback within 350 ft. **concerned** with granting this variance: 1

The adjacent impacted neighbor APN: 019-340-02 has provided a letter of concern.

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

Staff Recommendation

Staff recommends the following:

Deny of the variance to allow reduction of the Cannabis cultivation setback; from 350 feet to 190 feet from the residence on APN 019-340-02, subject to the following findings of fact:

Findings of Denial for the Variance

According to County Code 8.60.100, applications for variance shall contain evidence showing that

1. No opposition from surrounding property owners or review agencies was submitted that would adversely affect approval of the variance.; and
2. The applicant cannot relocate the designated cultivation area outside the 350 ft. residential setback.

Pursuant to Ordinance 315-823, the applicant has the right to appeal to the Planning Commission regarding staff’s decision:

- (a) Applicant shall have the right to appeal any denials to the Planning Director. Any person dissatisfied with a decision of the Planning Director may appeal therefrom to the Planning Commission at any time within ten (10) working days after notice of the decision is given. Such appeal is taken by filing a notice of appeal with the Planning Director and paying the required appeal fee. Upon filing of a notice of appeal, the Planning Director shall within ten (10) days transmit to the Secretary of the Planning Commission all papers and documents on file with the Planning Director relating to the appeal and schedule the appeal for the Commission hearing.

VARIANCE OVERVIEW:

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."

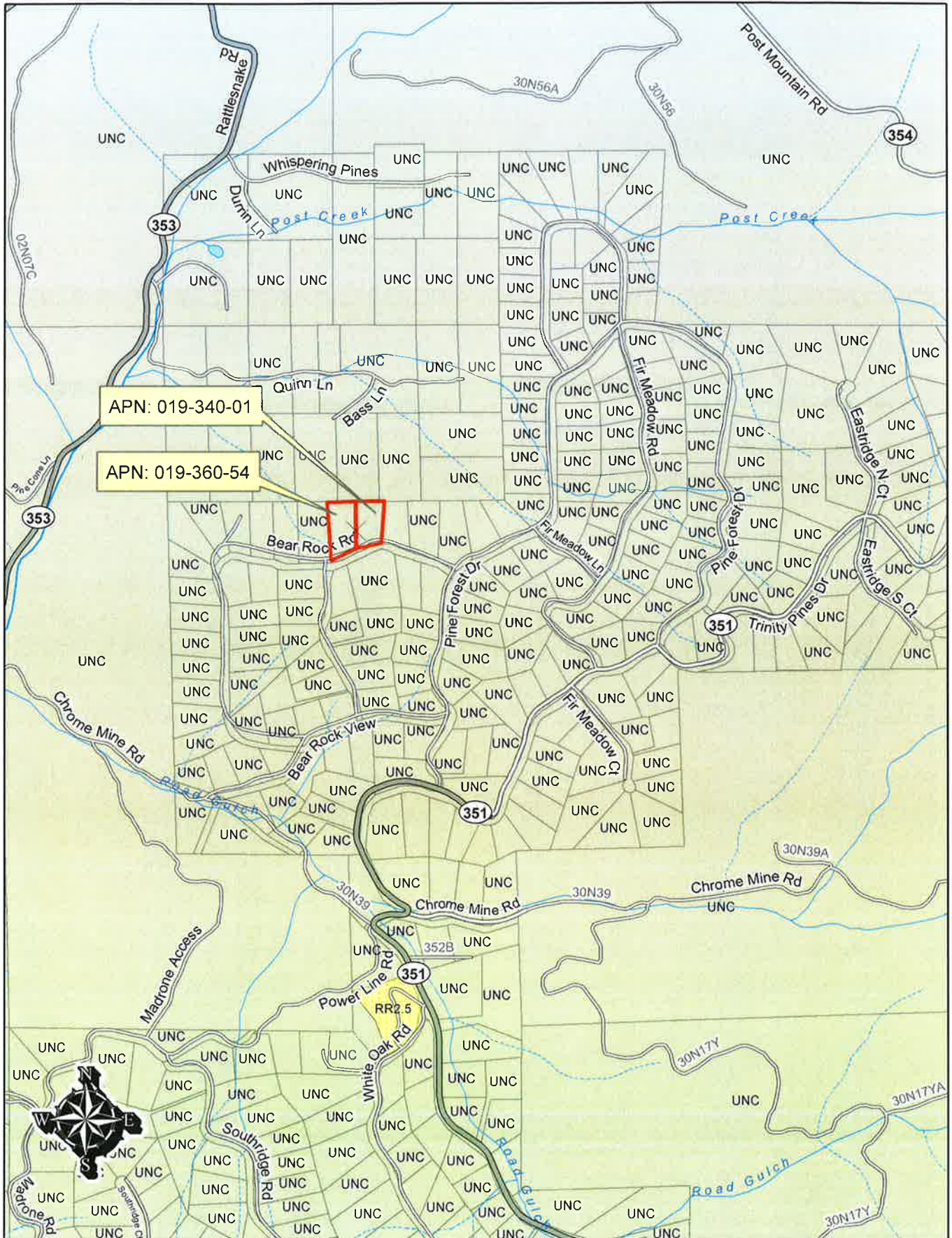
Section 31.A. of the zoning ordinance further elaborates on the State's Government Code standards by establishing the following criteria:

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.

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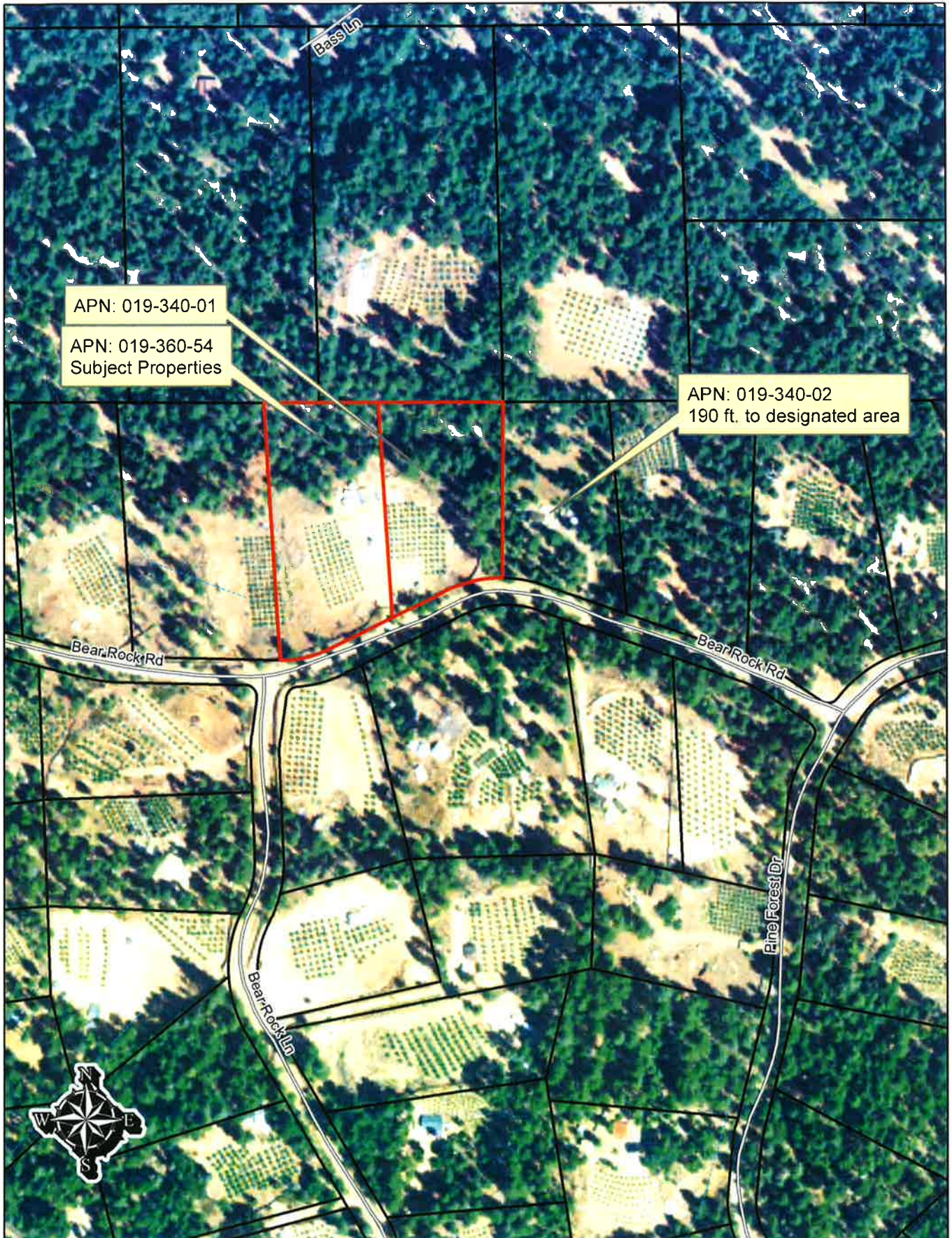
Figure 1 - Project Location and Zoning



0 275 550 1,100 1,650 2,200 Feet

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Figure 2 - Site Map and Impacted Neighbor



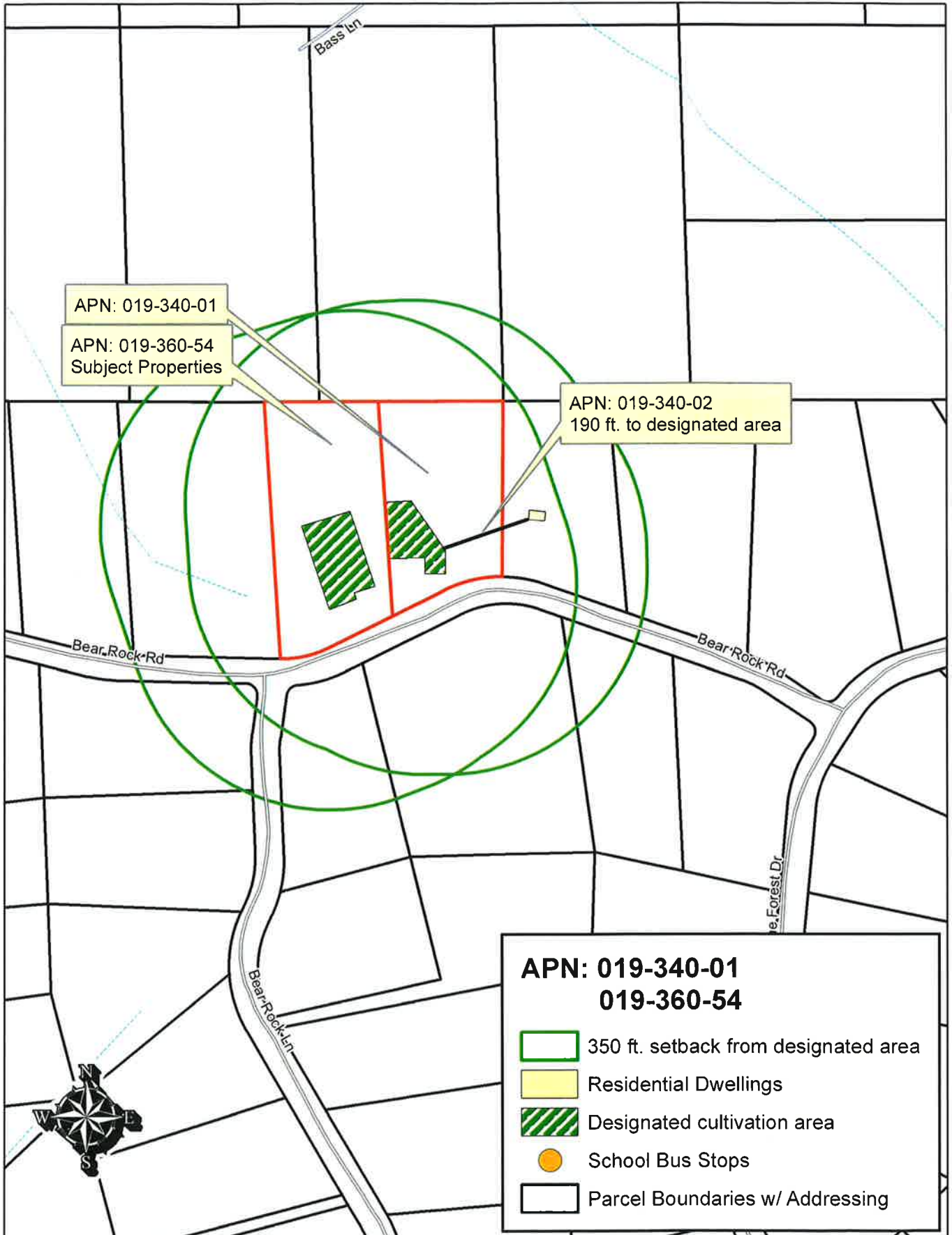
APN: 019-340-01
APN: 019-360-54
Subject Properties

APN: 019-340-02
190 ft. to designated area

0 60 120 240 360 480 Feet

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Figure 3 - Buffer Map and Impacted Neighbor



**APN: 019-340-01
019-360-54**

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



CCV-18-034 Bee Moua **Figure 4 – Site Pictures**



Picture 1: facing east toward the impacted residence APN 019-340-02, natural tree screening from subject property existing cultivation area APN 019-340-01



Picture 2: facing south-west near subject property APN 019-360-54 driveway, non-compliant plastic screening to be removed



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Figure 4 – Site Pictures



Picture 1: facing west toward subject property APN 019-360-54 showing slope of property and adjacent property.



Picture 2: facing south-west showing existing APN 019-360-54 cultivation area



CCV-18-034 Bee Moua Figure 4 – Site Pictures



Picture 1: facing south-east from the property line illustrating cultivation within 30 ft. of Bear Rock Road property line

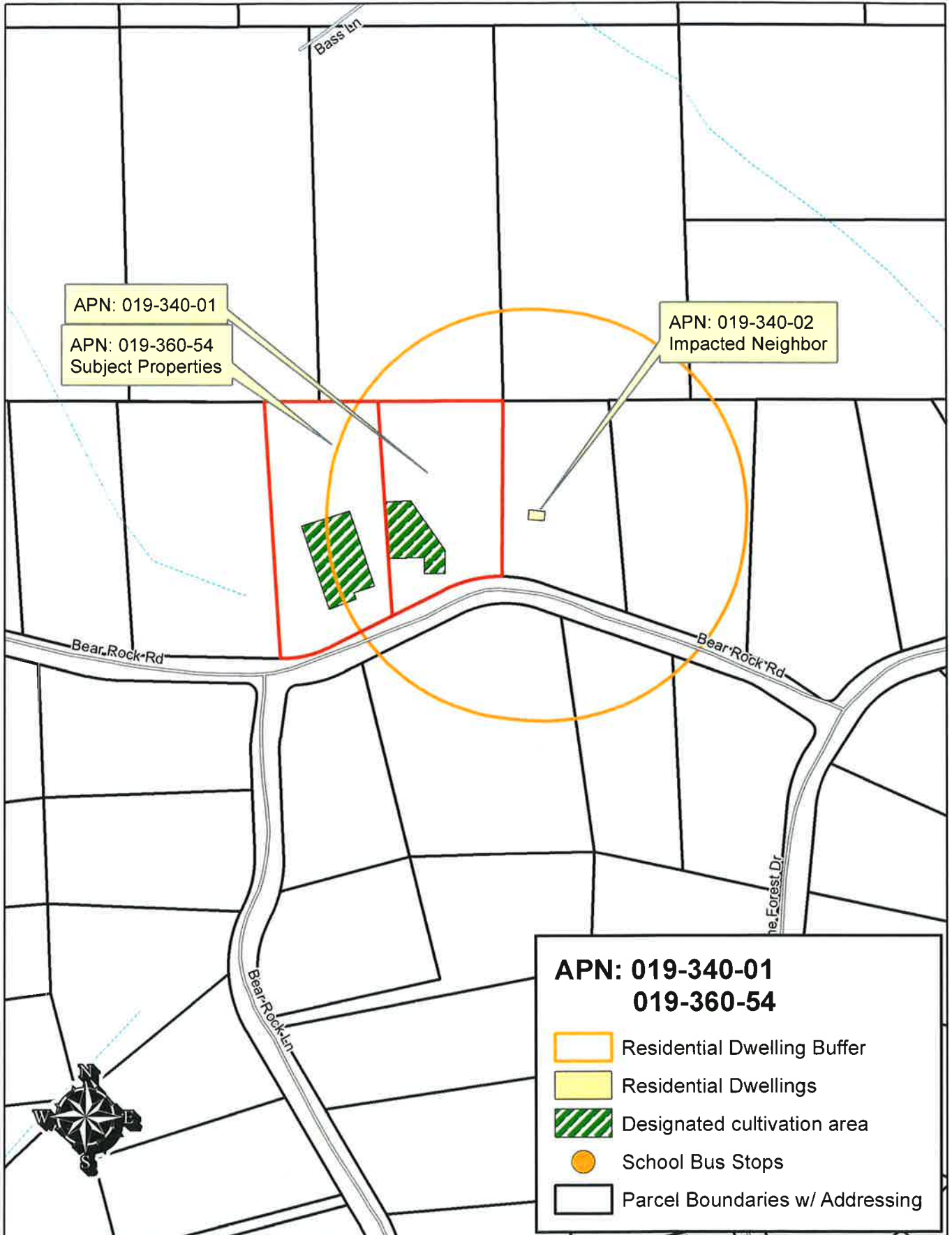


Picture 2: facing north-east on APN 019-360-54 toward APN 019-340-01 and adjacent impacted neighbor

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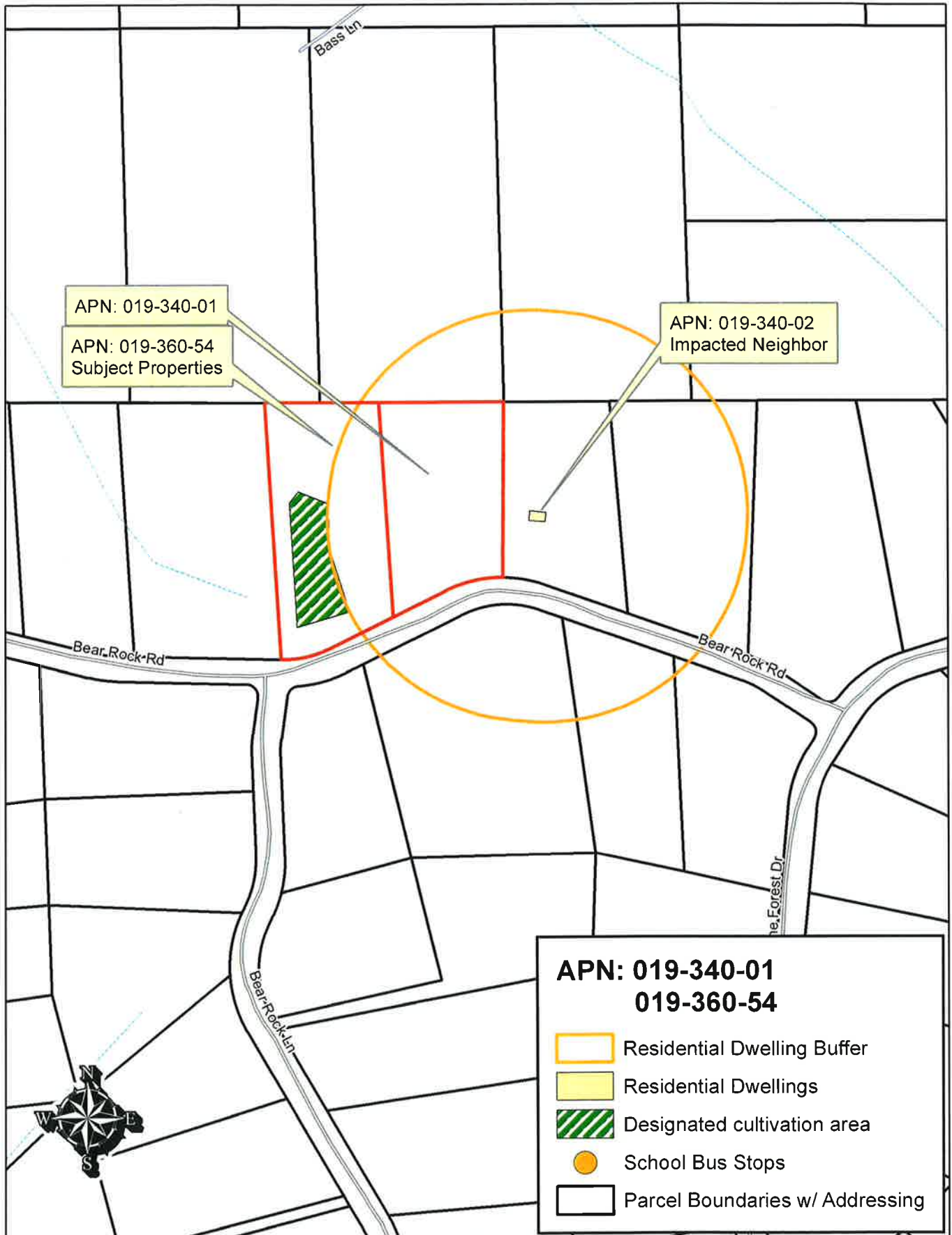
Figure 5 - Impacted Neighbor Buffer Map



0 60 120 240 360 480 Feet

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Figure 6 - Garden Relocation option



APN: 019-340-01
APN: 019-360-54
Subject Properties

APN: 019-340-02
Impacted Neighbor

**APN: 019-340-01
019-360-54**

- Residential Dwelling Buffer
- Residential Dwellings
- Designated cultivation area
- School Bus Stops
- Parcel Boundaries w/ Addressing

0 60 120 240 360 480 Feet

Ruth Hanover

From: Philip J Kearney <pjkearney@fastmail.fm>
Sent: Sunday, June 03, 2018 11:44 AM
To: Info.Planning
Cc: Leslie Hubbard; John Fenley
Subject: Variance Application: Moua (CCV-18-034)

To Whom It May Concern:

I am the resident and home-owner at 671 Bear Rock Road, Post Mountain. I have read the Notice of Public Hearing in regard to the above Variance Application. published in the Trinity Journal, May 30, 2018. I wish to oppose the granting of the variance at APN 019-340-01, as the grow site is only 156 feet from my dwelling, and is clearly visible from my home. I have noted that there is no staff report yet posted in this regard. Therefore, I intend to attend the Public Hearing of June 14 to state further details why this variance should not be granted.

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Philip J Kearney
pjkearney@fastmail.fm