

**TRINITY COUNTY PLANNING COMMISSION  
STAFF REPORT**

**APPLICANT:** Xue Thao

**REPORT BY:** Scott Watkins

**OWNER:**

**APN:** 011-410-20 (5.5 acres)

Opt-Out: None

**PROJECT DESCRIPTION:**

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

**LOCATION:** 1642 Brady Road, Hayfork, CA (Figure 1)

**PROJECT INFORMATION:**

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Rural Residential – Low Density (RR-L)
- C) Existing Zoning: Rural Residential 10 acre minimum (RR10)
- D) Existing Land Use: Residence, commercial cannabis cultivation
- E) Adjacent Land Use Information:

|        | <b><u>Land Use</u></b> | <b><u>Zoning</u></b>      | <b><u>General Plan Des.</u></b> |
|--------|------------------------|---------------------------|---------------------------------|
| North: | Residential            | Rural Residential (RR-10) | Rural Residential (RR-L)        |
| South: | Residential            | Rural Residential (RR-10) | Rural Residential (RR-L)        |
| East:  | Residential            | Rural Residential (RR-10) | Rural Residential (RR-L)        |
| West:  | Residential            | Rural Residential (RR-10) | Rural Residential (RR-L)        |

**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 beginning the process of obtaining a Commercial Cannabis License under the county licensing program. The parcel is located on the corner of Carter Gulch Road and Brady Road, both county-maintained 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 property, 1642 Brady Road, Hayfork, is 5.5 acres. Based on a satellite review, the site appears to be able to move outside of the 350 ft. residential buffer by shifting 85 ft. to the west on the property, but after a site visit, staff identified physical barriers with this alternative location.

The subject property is confined by a natural gulley, with a steep drop-off, and is not viable for Commercial Cannabis Cultivation, as seen in Figure 4 site pictures. The natural gulley is located in the northern area of the property, an estimated 120 ft. west of the current designated cultivation area. The applicant states that this gulley fills with water during the winter months and may qualify as a Class III watercourse, which would require a 50 ft. setback buffer.

While the difference between the current designated cultivation area and a potential 50 ft. setback from the Class III watercourse is roughly 70 ft. it seems unreasonable to shift the designated cultivation area closer to the potential watercourse and cause additional soil disturbance. Furthermore, the subject property is well screened from the impacted adjacent property with mature trees, as seen in the site pictures in Figure 4.

During staff's research and mapping process, it was uncovered that a school bus stop is currently located on the corner of Brady Road and Carter Gultch Road. Staff created

Figure 5 to illustrate the relationship between the current designated cultivation area and the school bus stop. As illustrated in Figure 5, the required school bus stop buffer of 500 ft. is met with the current site location of the designated cultivation area.

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "If cultivation area is relocated applicant would need variance from additional parcels."

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 the variance to allow reduction of the Cannabis cultivation setback; from 350 feet to 265 feet from the residence on APN 011-410-39, 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  
XUE THAO CANNABIS SETBACK VARIANCE (CCV-18-027)**

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.

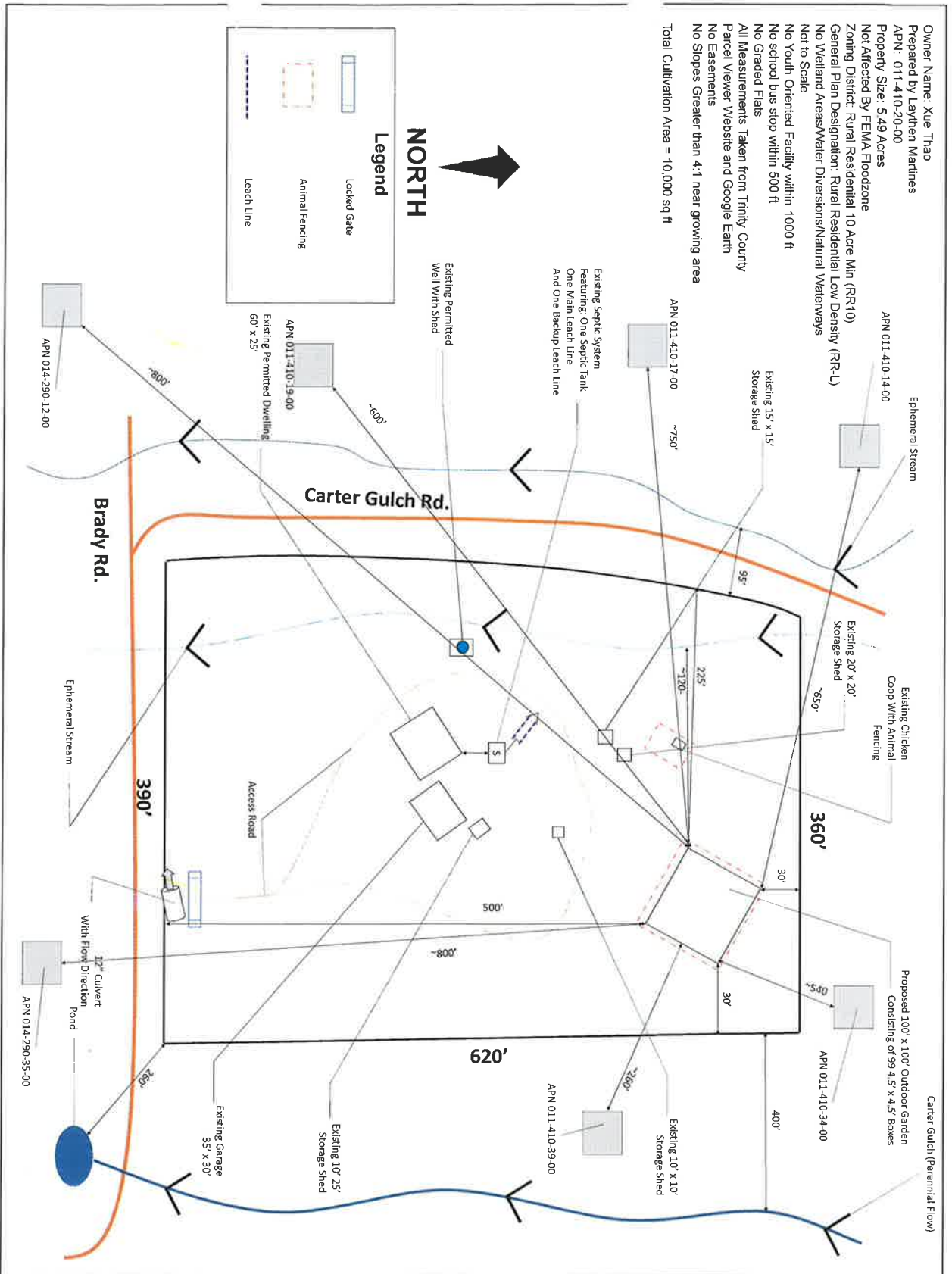
## Project Description

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Xue Thao 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 a single neighboring residence. The current garden is located in the northeast sector of the subject parcel. Relocation of the garden onto the west section of the property is not feasible given the emergent seasonal stream. Further, there is no location on the east side of the property that will not trigger the need for Application for Variance from the required setback. There is no feasible proposed location of the garden on the subject parcel that will not require a variance application.

See Attached Map Set.

Owner Name: Xue Thao  
 Prepared by Laythen Martines  
 APN: 011-410-20-00  
 Property Size: 5.49 Acres  
 Not Affected By FEMA Floodzone  
 Zoning District: Rural Residential 10 Acre Min (RR10)  
 General Plan Designation: Rural Residential Low Density (RR-L)  
 No Wetland Areas/Water Diversions/Natural Waterways  
 Not to Scale  
 No Youth Oriented Facility within 1000 ft  
 No school bus stop within 500 ft  
 No Graded Flats  
 All Measurements Taken from Trinity County Parcel Viewer Website and Google Earth  
 No Easements  
 No Slopes Greater than 4:1 near growing area  
 Total Cultivation Area = 10,000 sq ft



|  |  |                           |                            |
|--|--|---------------------------|----------------------------|
| <br>(707) 298-8105<br>7261 Highway 3<br>Hayfork, CA 96041 | <b>Xue Thao Commercial Cannabis Application</b><br>1642 Brady Rd.<br>Hayfork, CA 96041 | <b>DRAWN:</b><br>MJ       | <b>PROJECT #:</b><br>713   |
|  | <b>Site Map</b>  | <b>DATE:</b><br>7/12/2017 | <b>FIGURE:</b><br>Figure 1 |



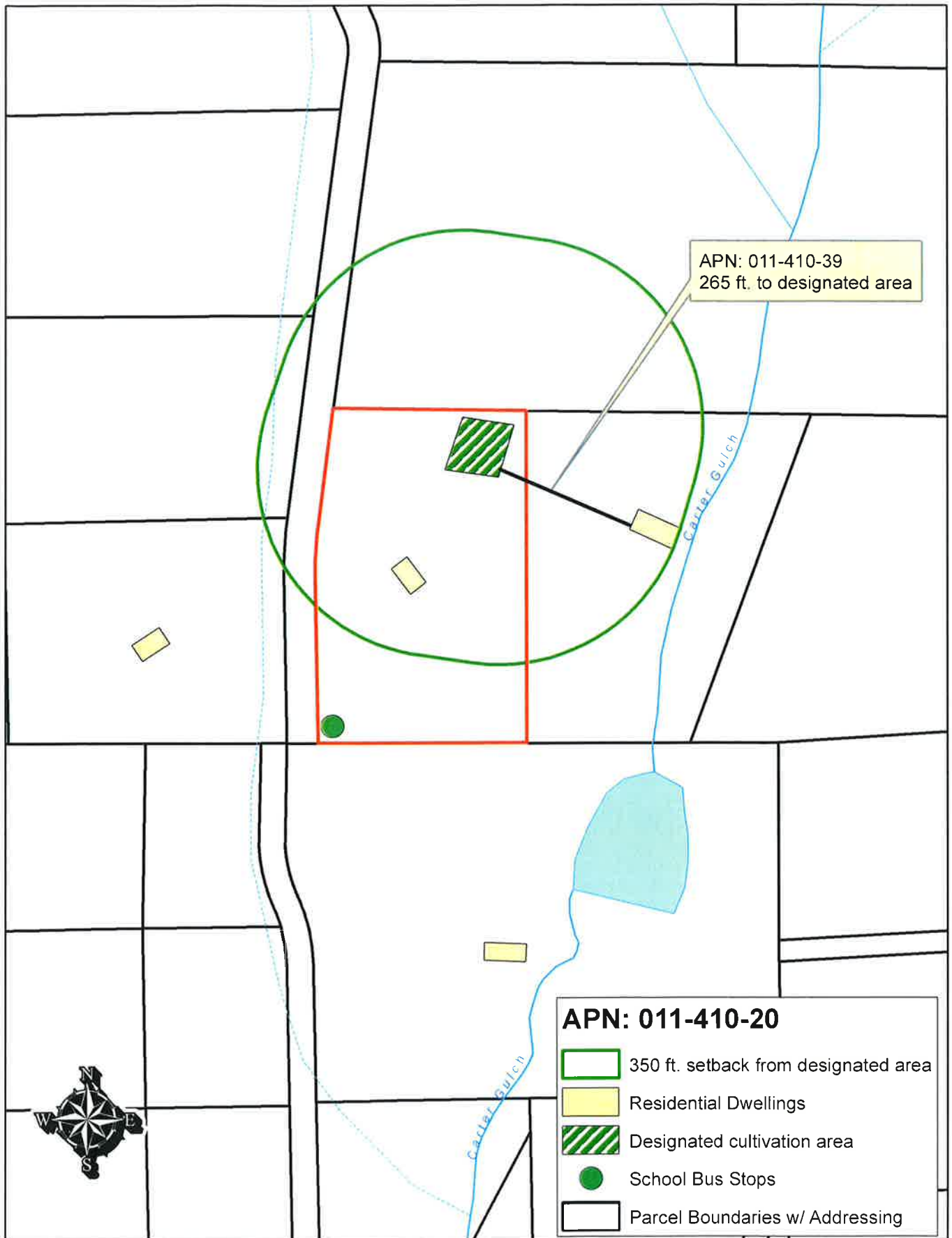


**CCV-18-027 Xue Thao**  
**Figure 2 - Site Map and Affected Neighbors**



# CCV-18-027 Xue Thao

## Figure 3 - Buffer Map and Affected Dwelling



0 65 130 260 390 520 Feet



## CCV-18-027 Xue Thao Figure 4 – Site Pictures



Picture 1: on Brady Road facing west towards the intersection of Brady Road and Carter Gultch Road, depicting school bus stop area



Picture 2: on Carter Gultch Road facing east towards designated cultivation area, showing slope of Class III watercourse gulley



## CCV-18-027 Xue Thao Figure 4 – Site Pictures



Picture 3: facing north towards designated cultivation area, natural tree screening



Picture 4: facing east towards impacted neighbor, natural tree screening



## CCV-18-027 Xue Thao Figure 4 – Site Pictures



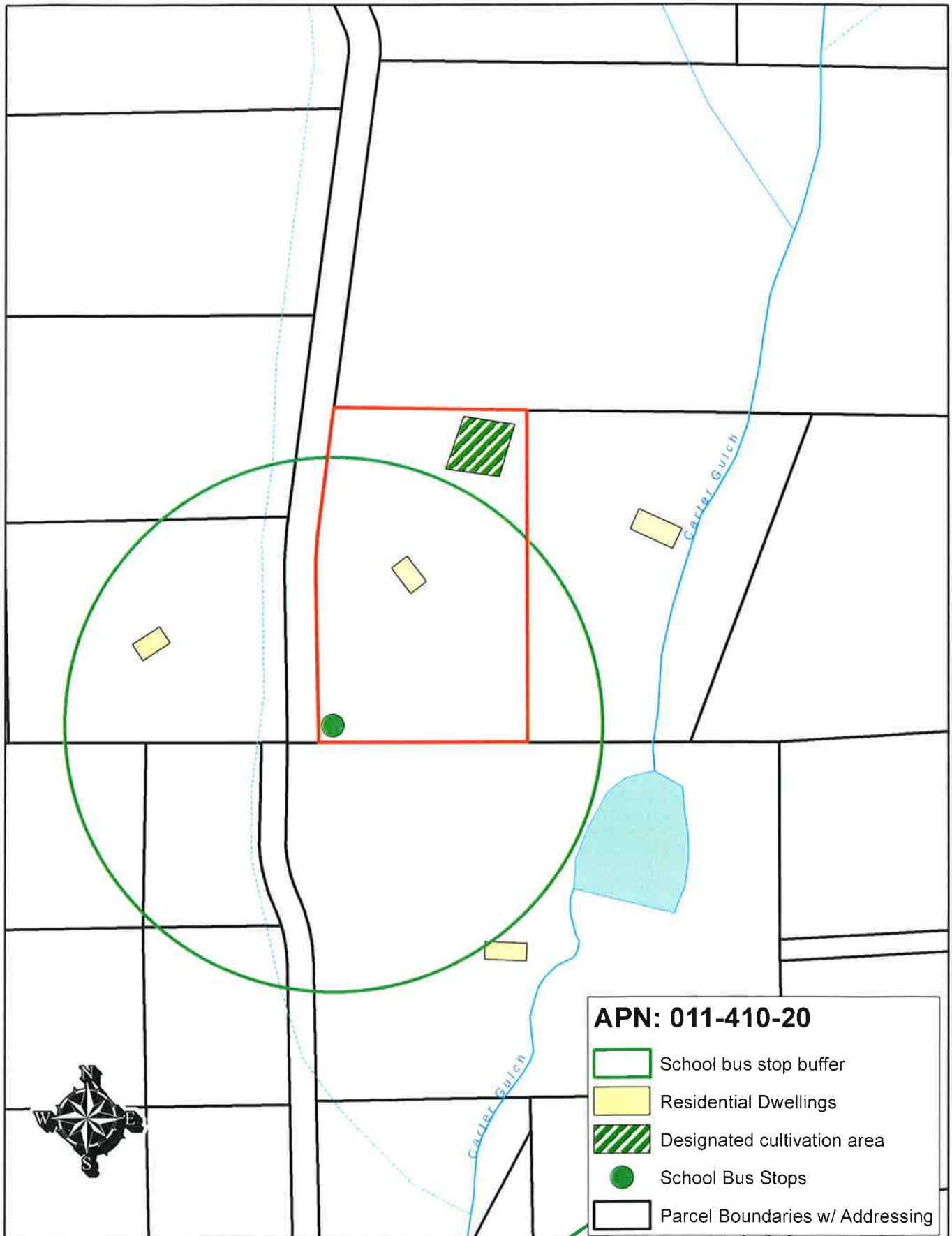
Picture 5: facing north towards slope of Class III watercourse gully



Picture 6: facing north-east towards designated cultivation area

# CCV-18-027 Xue Thao

## Figure 5 - School Bus Stop Buffer



0 65 130 260 390 520 Feet

Planning Commission:

We have lived at our current address for 16 years. In the past 10 years the proliferation of marijuana farms in our neighborhood has risen dramatically. We have endured water being stolen from our licensed and permitted pond by our pot grower neighbors. The creek that fills our pond has been diverted by pot farmers and has currently stopped running. Before all of the pot farms arrived, the creek used to flow into August.

Our 14 acre property is now almost surrounded by pot farms. We have counted 8 farms that are actively growing cannabis and have been doing so for years. None of these farms are for personal use as they all exceed the county limit and always have since they began operating. All of these pot farms are in the business of growing pot for commercial sales. Why would we want more cannabis being grown? This proposed variance will allow even more cannabis to be grown in our neighborhood!

Several years ago, I found out that I am allergic to the marijuana plant. The smell makes me physically ill. In the fall I can not go outside to water my vegetable garden or take care of my flower garden.

The variance being sought by my neighbor at 1642 Brady Road in Hayfork will bring the marijuana even closer to my home. Please do not grant this variance-we already have way too many active pot farms in our neighborhood!

*Sincerely,*  
*Elizabeth Moorman*  
ELIZABETH MOORMAN  
1481 BRADY RD,  
HAYFORK CA. 96041