

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

APPLICANT: Shenda Lee

REPORT BY: Scott Watkins

OWNER: Shenda Lee

APN: 019-340-42 (2 acres)

Opt-Out: None

PROJECT DESCRIPTION:

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

LOCATION: 1380 Pine Forest Drive, 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:	Cannabis Cultivation	Unclassified	Rural Residential
South:	Vacant	Rural Residential	Rural Residential
East:	Cannabis Cultivation	Unclassified	Rural Residential
West:	Vacant	Rural Residential	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 beginning the process of obtaining a Commercial Cannabis License under the county licensing program. The parcel is located on Pine Forest Drive, 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 property, 1380 Pine Forest Drive, Post Mountain, is 2 acres and was recently graded, which converted the designated cultivation area from a collection of terraces (as seen in Figure 2) into two (2) large terraces (as seen in the site pictures in Figure 4). Given the extensive grading that has recently taken place, the applicant has the ability to relocate the designated cultivation area outside of the 350 ft. setback from the neighboring dwelling.

At the same time, the site will be impacted by a future residential dwelling that is currently in the permitting process, see CCV-18-031. To which both the subject property and the adjacent property, CCV-18-031, 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: "Cannot move cultivation area and maintain setbacks."

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:

Deny of the variance to allow reduction of the Cannabis cultivation setback; from 350 feet to 120 feet from the residence on APN 019-340-38, subject to the following conditions of approval and based on 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. The granting of the variance will not be contrary to the intent of this chapter or to the public health, safety and welfare; and
2. In light of the extensive grading that recently occurred, which converted the designated cultivation area from a collection of terraces (as seen in Figure 2) into two (2) large terraces (as seen in the site pictures in Figure 4), the applicant can relocate the designated cultivation area outside the 350 ft. residential setback from APN: 019-340-38. Therefore, the applicant can meet the intent of the Cannabis cultivation ordinance and eliminate the need for a variance.

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.

To Whom it May Concern,

I am Bee Hang and I reside at

120 Fir Meadow

I recognize my neighbor Shenda Lee located at 1380 Pine Forest Dr. 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 Hang

To Whom it May Concern,

I am

Nong Vong

and I reside at

019-320-14-00

I recognize my neighbor Shenda Lee located at 1380 Pine Forest Dr. 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

[Signature]

To Whom it May Concern,

I am *Somchai Latsamont* and I reside at
019340-4400

I recognize my neighbor Shenda Lee located at 1380 Pine Forest Dr. 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 *Somchai Latsamont*

To Whom it May Concern,

I am Ving Mau and I reside at

250 Fir meadow Rd Hayfork, CA 96041

I recognize my neighbor Shenda Lee located at 1380 Pine Forest Dr. 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 Ving Mau

Ruth Hanover

From: Ray Carpenter <playnwfires@yahoo.com>
Sent: Tuesday, May 15, 2018 12:46 PM
To: Info.Planning
Cc: John Fenley; Judy Morris; Bobbi Chadwick; Keith Groves; Terry Mines
Subject: Re; request for variance **CCV-18-28**

Re; Request for "annual variance" for Cannabis cultivation located at 1380 Pine Forest Dr.. Post Mountain, APN: 019-340-42.

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

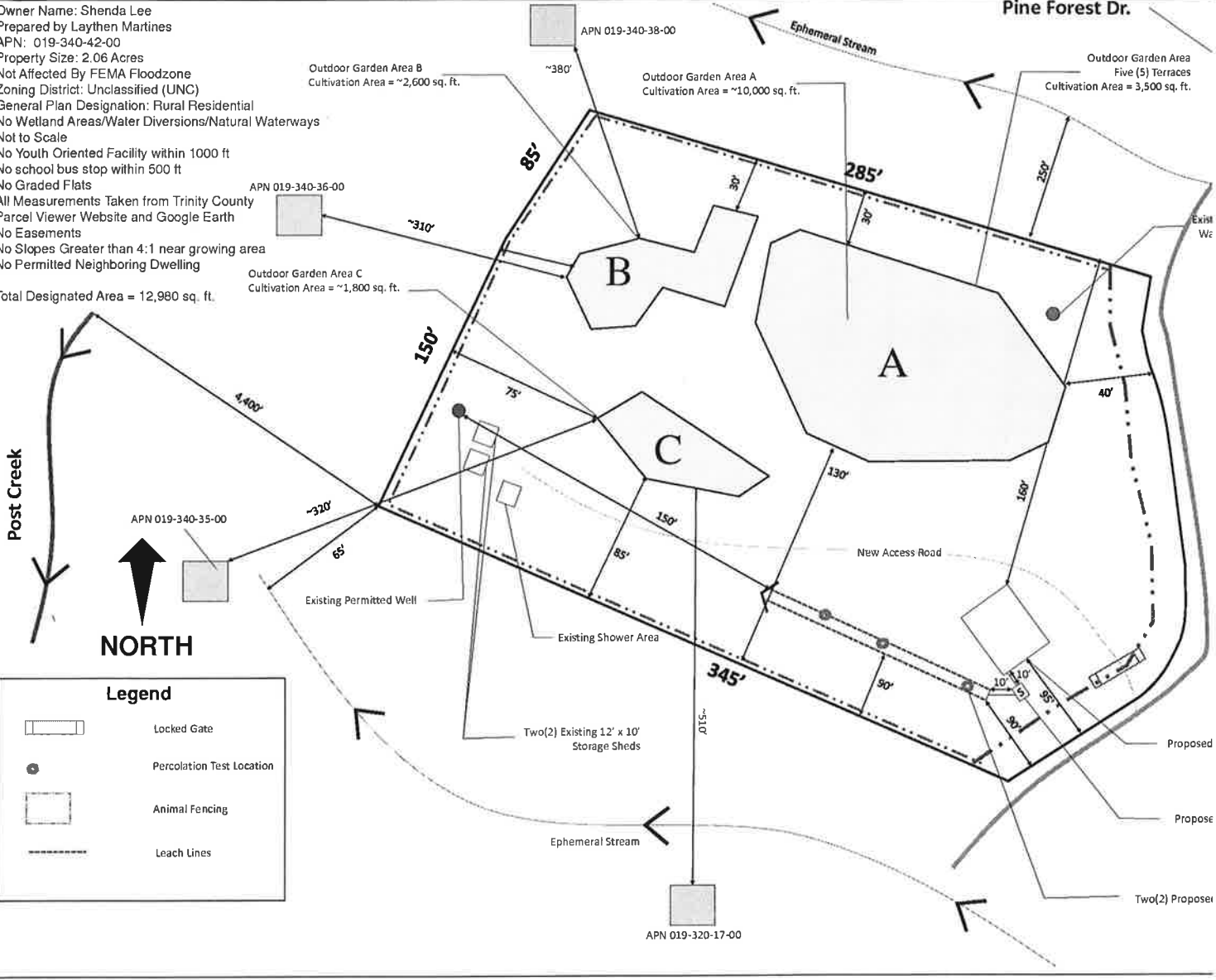
1. There is not a legal/permitted residence on this property, or under construction.
2. They are using 10-12 ft. tall black plastic/fabric as fencing which is a violation of the Cultivation ordinance as well as County Codes and presents a Fire Hazard in the event of a Wildland fire, as it would create 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





Owner Name: Shenda Lee
 Prepared by Laythen Martines
 APN: 019-340-42-00
 Property Size: 2.06 Acres
 Not Affected By FEMA Floodzone
 Zoning District: Unclassified (UNC)
 General Plan Designation: Rural Residential
 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
 No Permitted Neighboring Dwelling

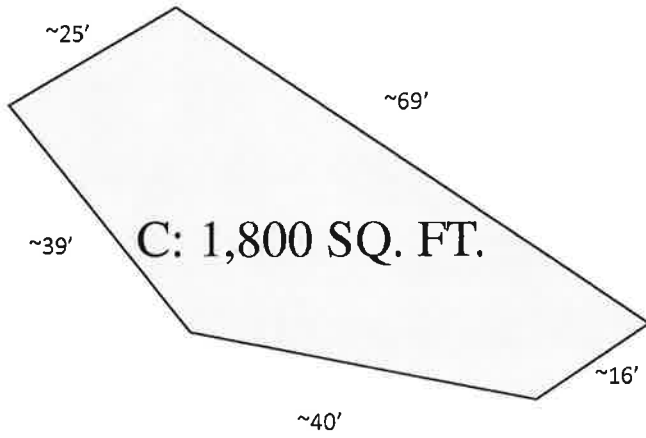
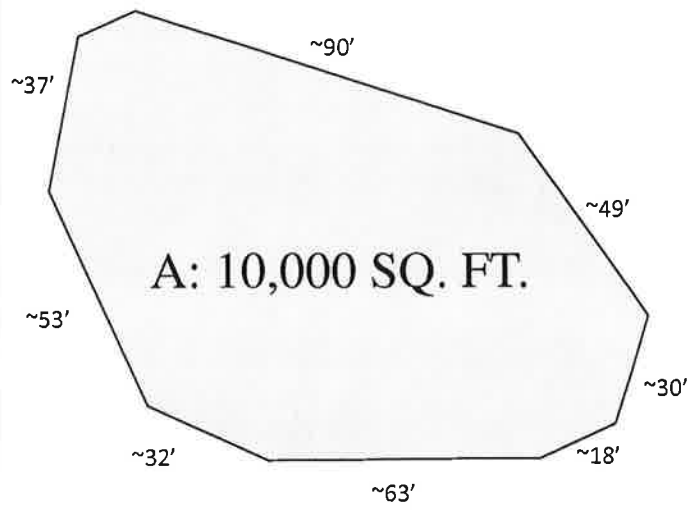
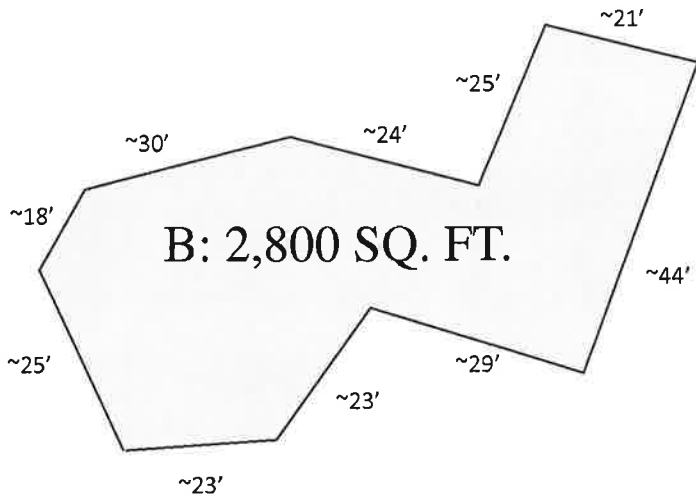
Total Designated Area = 12,980 sq. ft.



NORTH

Legend

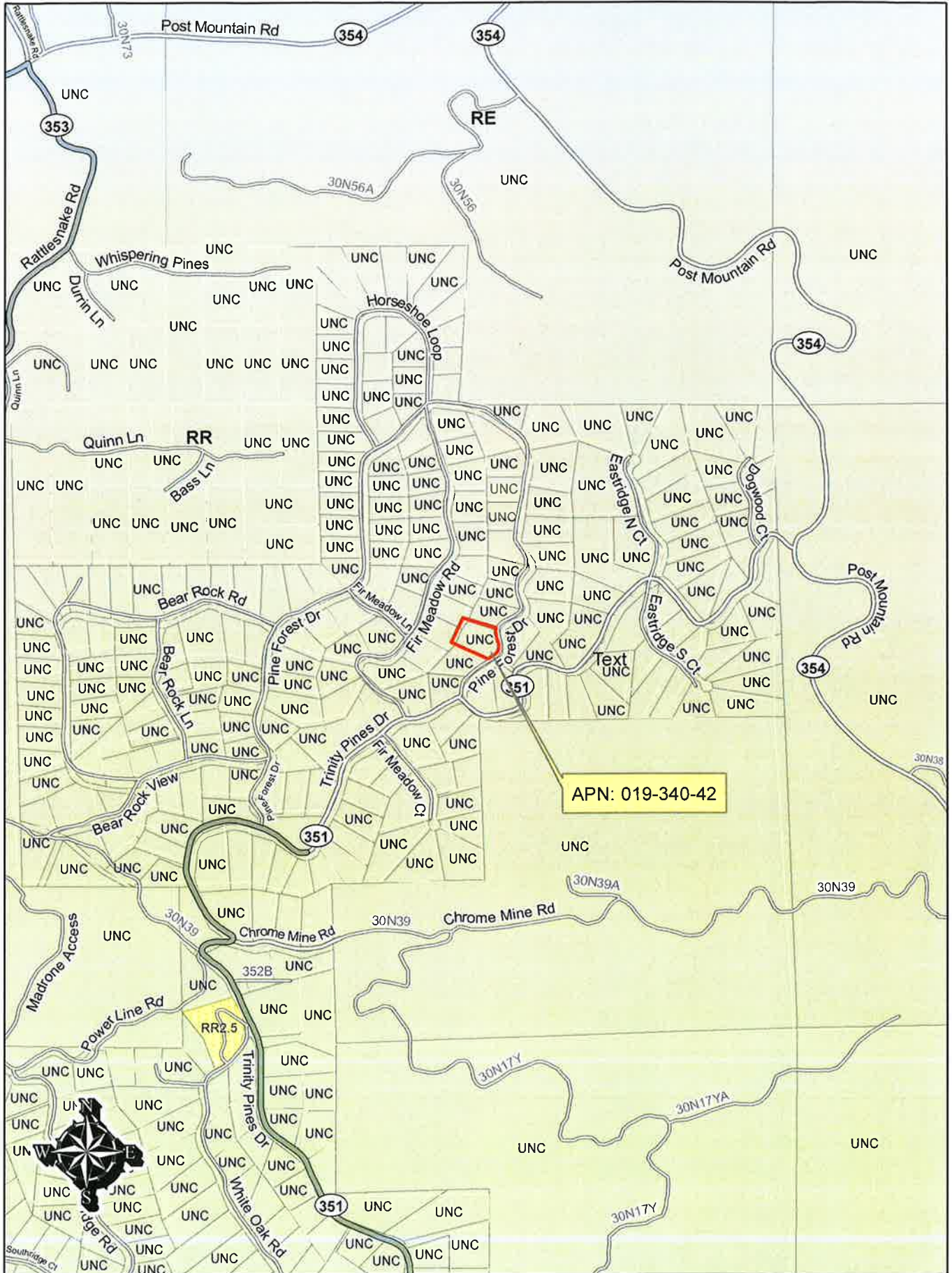
-  Locked Gate
-  Percolation Test Location
-  Animal Fencing
-  Leach Lines



NOT TO SCALE

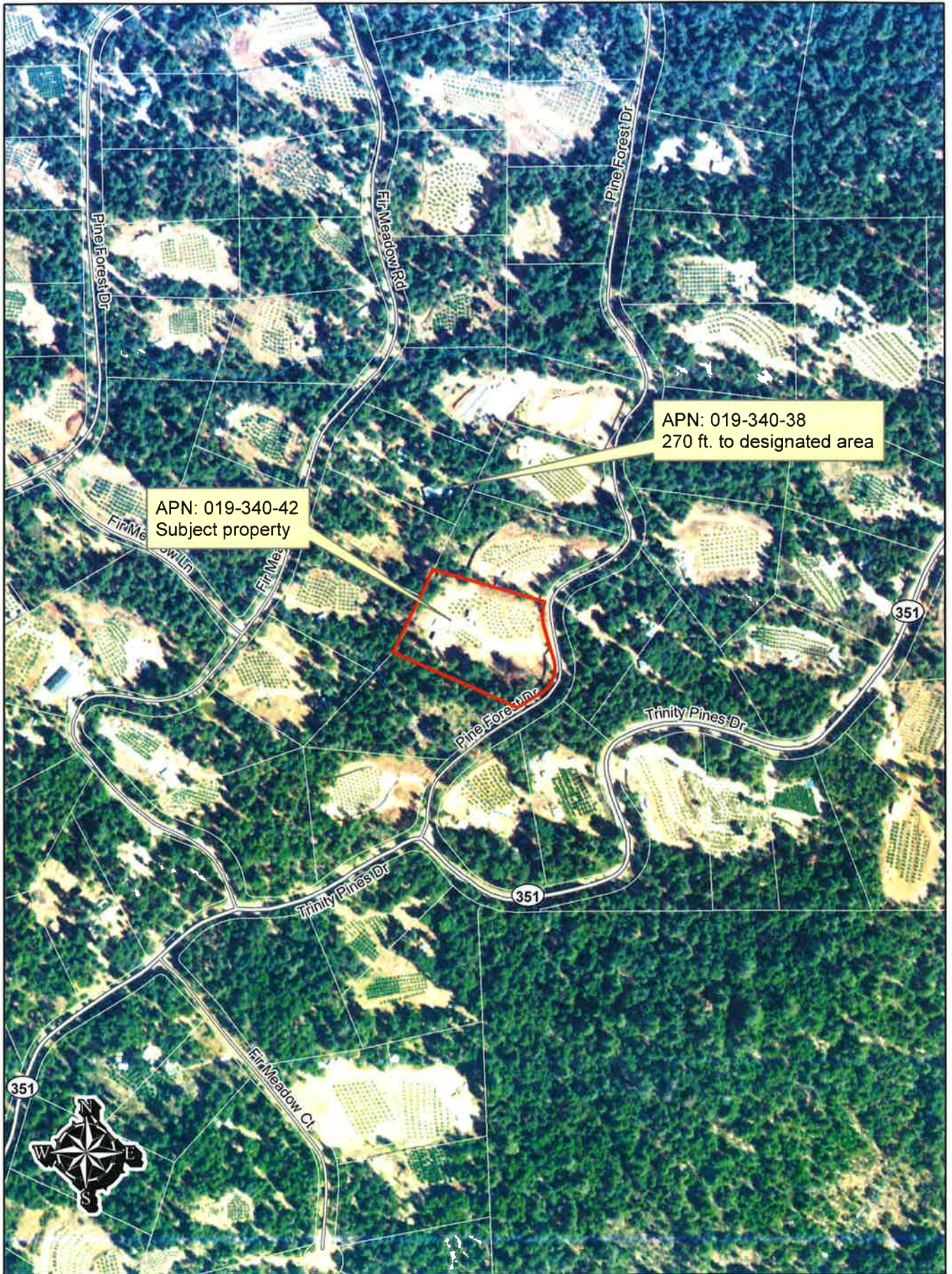
CCV-18-028 Shenda Lee

Figure 1 - Project Location and Zoning



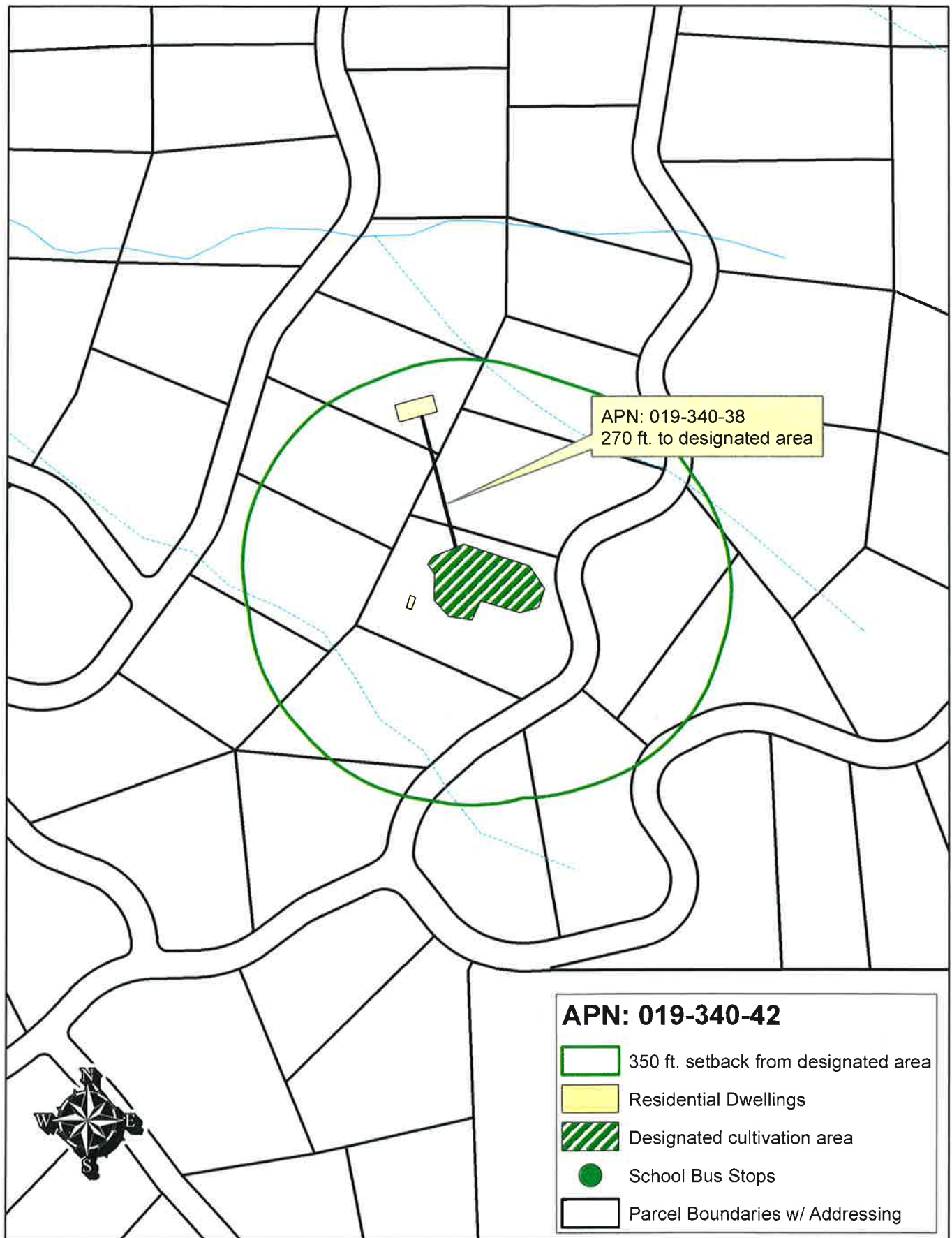
0 280 560 1,120 1,680 2,240 Feet

CCV-18-028 Shenda Lee
Figure 2 - Site Map and Affected Neighbors



0 80 160 320 480 640 Feet

CCV-18-028 Shenda Lee
Figure 3 - Buffer Map and Affected Dwelling



0 65 130 260 390 520 Feet



CCV-18-028 Shenda Lee Figure 4 – Site Pictures



Picture 1: facing west towards property access road and new upper garden plateau



Picture 2: facing north-west towards new upper garden plateau & designated cultivation area



CCV-18-028 Shenda Lee Figure 4 – Site Pictures



Picture 3: facing north towards new upper garden plateau designated cultivation area



Picture 4: facing east towards new upper garden plateau designated cultivation area



CCV-18-028 Shenda Lee
Figure 4 – Site Pictures



Picture 5: facing north-west towards clearing debris



Picture 6: facing west towards dwelling and new lower garden plateau



CCV-18-028 Shenda Lee Figure 4 – Site Pictures



Picture 7: facing west towards new lower garden plateau , designated cultivation area



Picture 8: facing east towards new lower garden plateau , designated cultivation area