

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

APPLICANT: Johanas Colby

REPORT BY: Scott Watkins

OWNER: Johanas Colby – 37 || Cherlyn Van Kirk – 36

APN: 011-330-36 & 37 (2.67 & 4.75 acres) Opt-Out: None

PROJECT DESCRIPTION:

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

LOCATION: 81 and 151 Christie 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 20 acre minimum (RR20)
- D) Existing Land Use: Residence, commercial cannabis cultivation
- E) Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	Residential	Rural Residential (RR-20)	Rural Residential (RR-L)
South:	Residential	Rural Residential (RR-20)	Rural Residential (RR-L)
East:	Residential	Rural Residential (RR-20)	Rural Residential (RR-L)
West:	Residential	Rural Residential (RR-20)	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 in the process of obtaining a commercial Cannabis license under the county licensing program. The parcel is located on Christie Road, a county-maintained road, which intersects CA-3 by way of Brady Road. The site plan prepared by staff (Figure 2) identifies on-site development and its relationship to the nearby impacted residence, which is illustrated in Figure 3.

The subject properties, 81 and 151 Christie Road, Hayfork, are 2.67 and 4.75 acres, respectively. Cumulatively, the two parcels are 7.42 acres. Based on a satellite review, the site appears to be able to move outside of the 350 ft. residential buffer by shifting both designated cultivation areas to the southern portion of APN 011-330-36. In doing so, additional grading and environmental impact would be necessary due to site topography. Encompassing the alternative location are a naturally wooded forest and a water storage pond for Cannabis cultivation.

Furthermore, the subject property's designated cultivation area is well screened from the impacted adjacent property and public right-of-way with mature trees, as seen in the site pictures in Figure 4.

A school bus stop is currently located across the street from the subject property at the intersection of Brady Road and Christie 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. encompasses the current designated cultivation areas.

While setbacks from school bus stops are outside the scope of this 350 ft. residential setback variance, it is worth noting that the applicant's consultant, after contacting the

Superintendent of the Mountain Valley Unified School District, relayed that the School District would not oppose Commercial Cannabis Cultivation sites that were within the 500 ft. school bus stop setback.

Staff communicated directly with Debbie Miller, Mountain Valley School District Superintendent to verify the district's position. Superintendent Miller confirmed the school district's Board of Directors met on May 9th to formally discuss the juxtaposition of school bus stops and commercial Cannabis cultivation. In an email dated May 10th 2018, Superintendent Miller relayed to County staff that ***"The board is planning on passing a resolution at their June meeting that will confirm that we do not plan on opposing any variances for a Cannabis grow."***

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "If cultivation area was relocated on either parcel there would be no way to avoid the need for a variance."

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 setbacks;

- from 350 feet to 268 feet from the residence on APN 011-330-07,
- from 350 feet to 148 feet from the residence on APN 011-330-43,

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
JOHANAS COLBY CANNABIS SETBACK VARIANCE (CCV-18-033)**

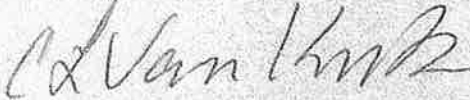
1. The variance is approved for a period of one year from **April 1, 2018** through **March 31, 2019**; provided, however, that the variance may be renewed annually.
 - a. Application for renewal shall be made by the applicant prior to expiration of the variance, preferably at least 30 days in advance;
 - 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.

September 15, 2017

To Whom it may Concern,

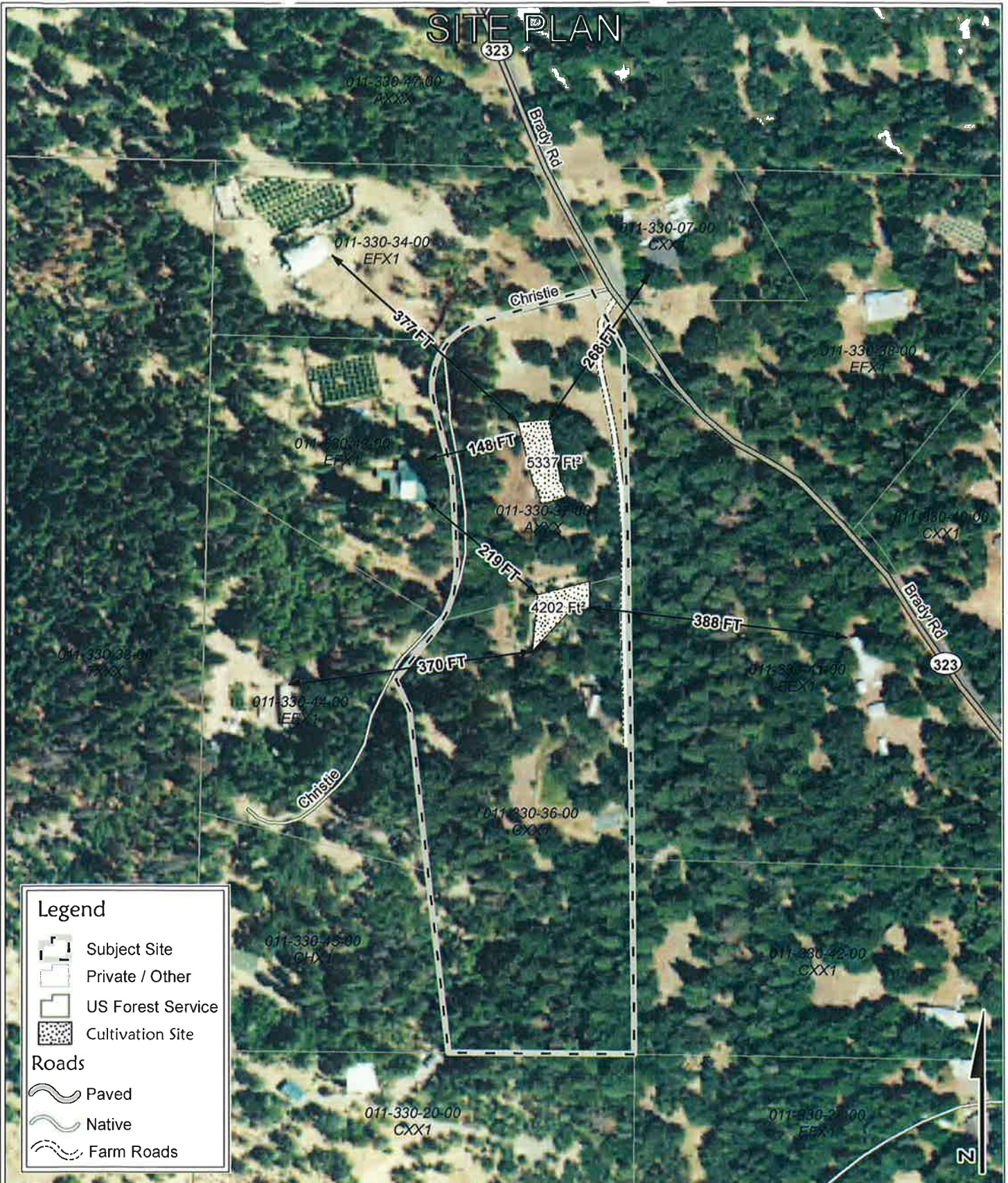
This letter is for the purpose of making known that I, Cherylyn Van Kirk, owner of of property 151 Christy Rd, Hayfork, CA 96041, wish to sell said property to Stephan Johanas Colby as soon as possible.

Cordially yours,

A handwritten signature in cursive script that reads "Cherylyn Van Kirk". The signature is written in dark ink and is positioned above the printed name.

Cherylyn Van Kirk

SITE PLAN



Legend

- Subject Site
- Private / Other
- US Forest Service
- Cultivation Site

Roads

- Paved
- Native
- Farm Roads



Coordinate System: NAD 1983 UTM Zone 10N
 Projection: Transverse Mercator
 1Approximate Scale, Distance and Position

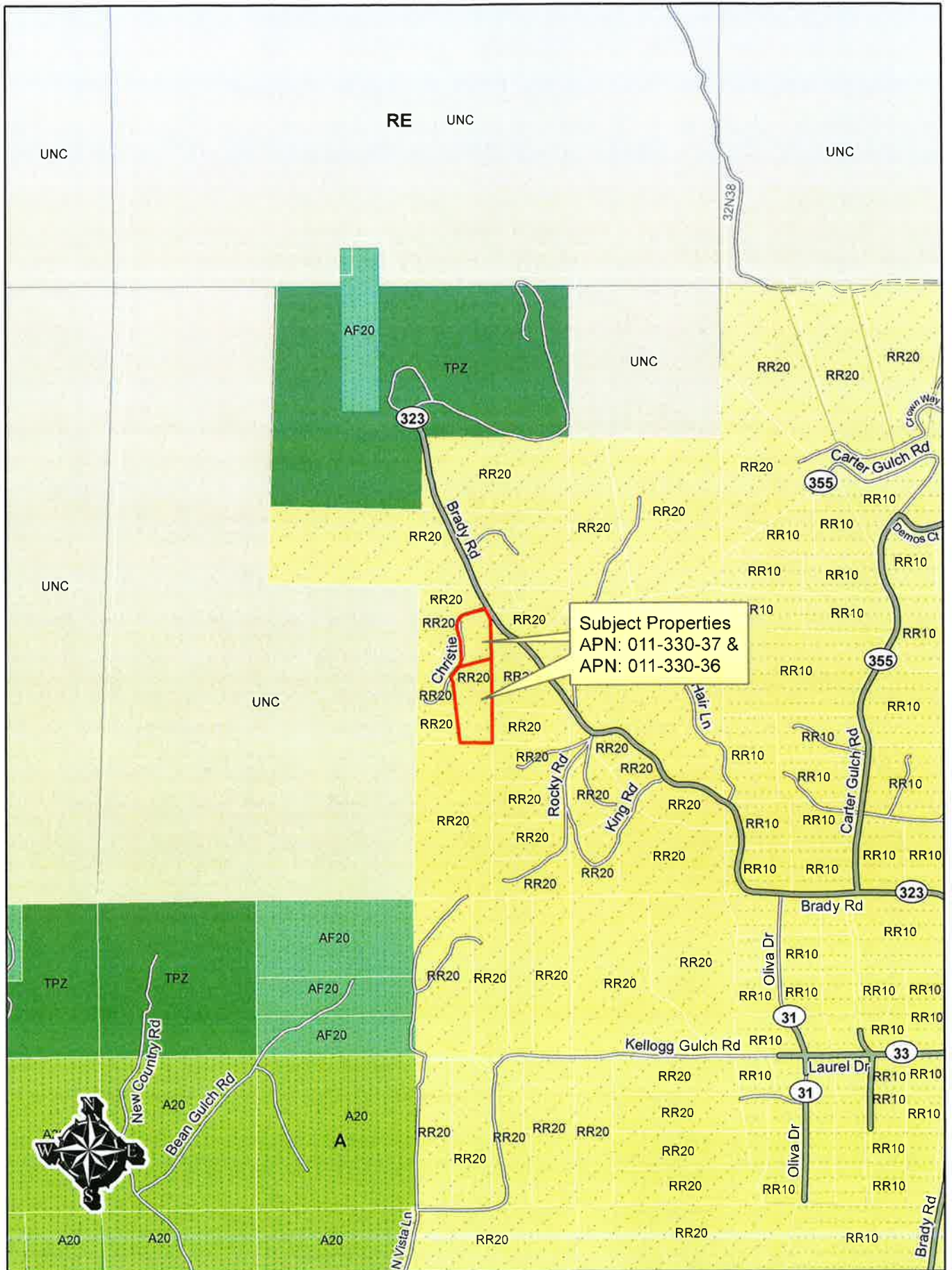


TRINITY COUNTY PLANNING DEPARTMENT
 APPLICANT PREPARED SITE PLAN
 Application No. _____
 Drawn By: H. BAKER APN: 011-330-37-00, 36-00
 Date: 4/23/2018 Zoning: RR
 Scale: 1:2,400 Lot Area: 2.67 ac, 4.75 ac



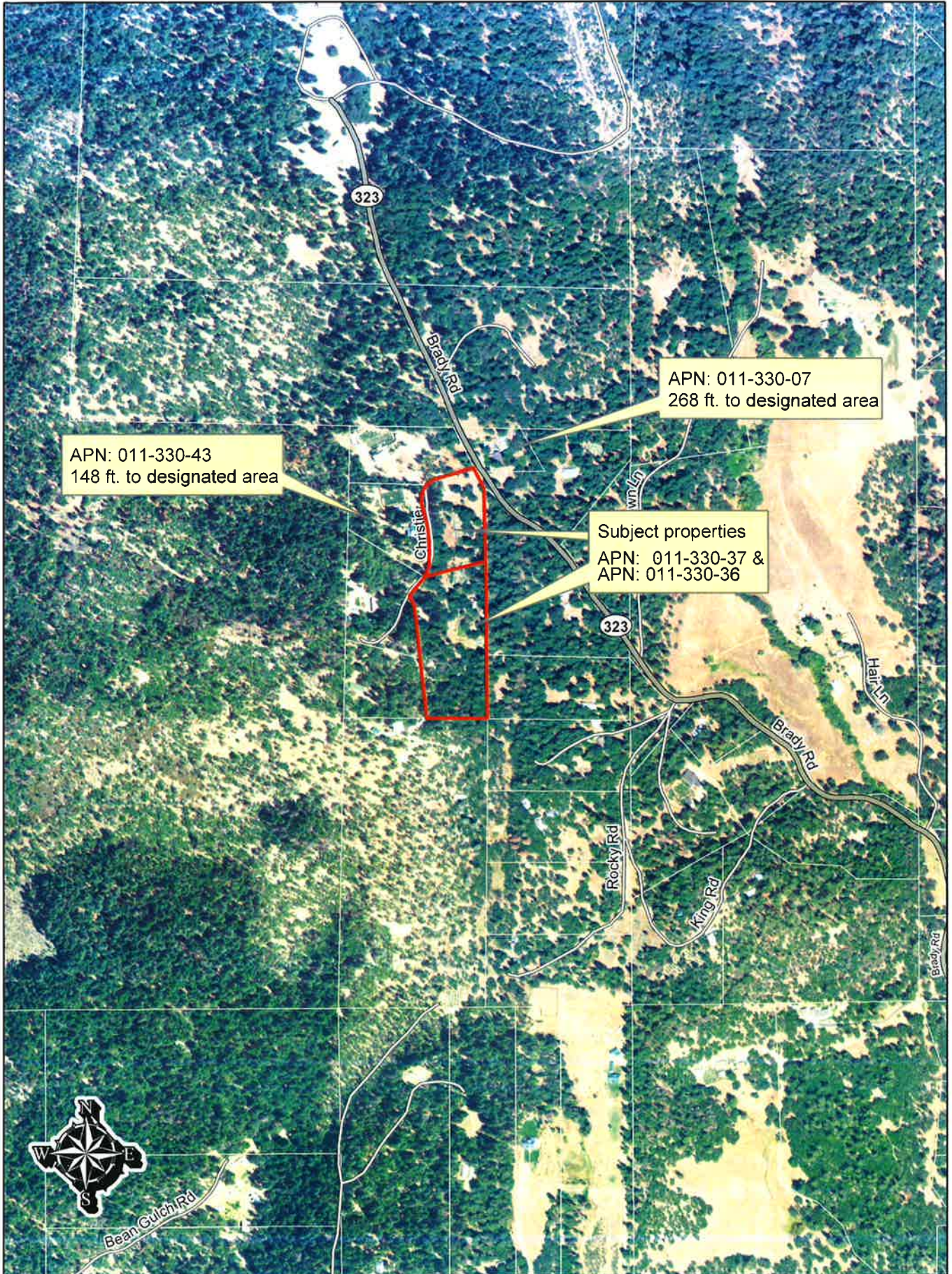
CCV-18-033 Colby

Figure 1 - Project Location and Zoning



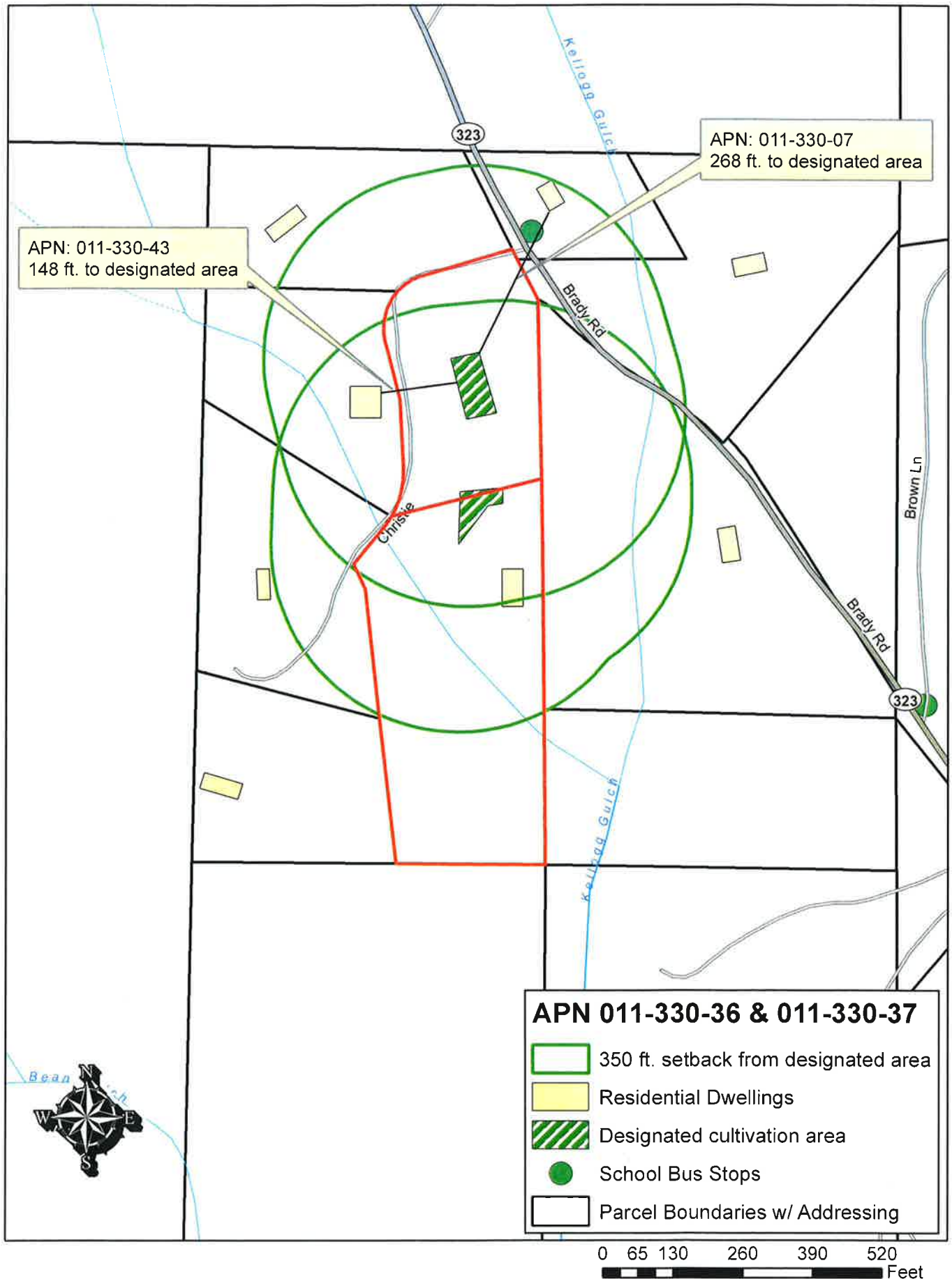
0 280 560 1,120 1,680 2,240 Feet

CCV-18-033 Johanas Colby
Figure 2 - Site Map and Affected Neighbors



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Figure 3 - Buffer Map and Affected Dwelling





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Figure 4 – Site Pictures



Picture 1: facing west from Brady Road towards front designated cultivation area, natural tree screening



Picture 2: facing west from the driveway towards front designated cultivation area, natural tree screening



CCV-18-033 Johanas Colby Figure 4 – Site Pictures



Picture 3: facing south-west overlooking on-site water storage pond



Picture 4: facing north-west towards 011-330-37 designated cultivation area



CCV-18-033 Johanas Colby
Figure 4 – Site Pictures



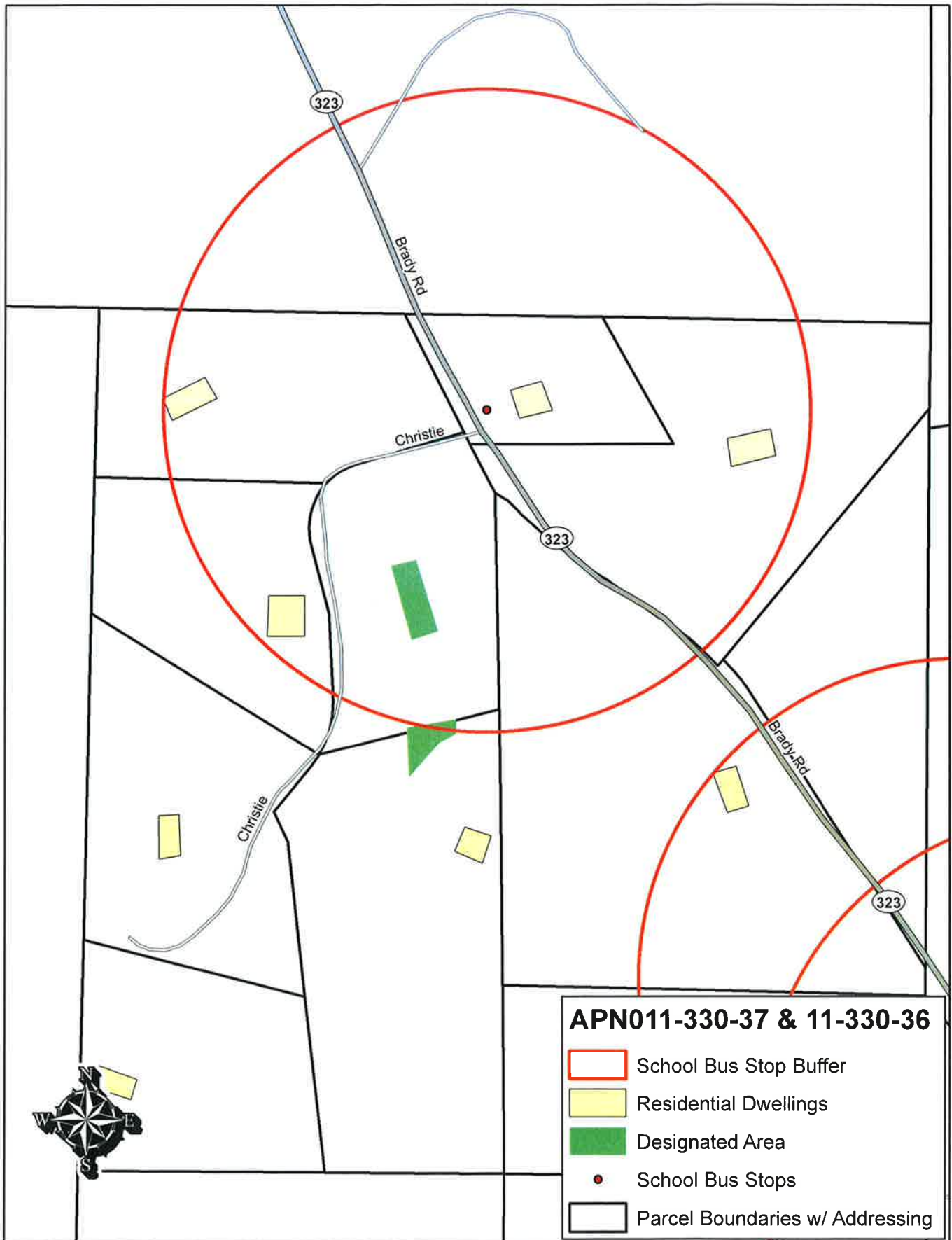
Picture 5: facing west overlooking designated cultivation area 011-330-36



Picture 6: facing south overlooking designated cultivation area 011-330-36

CCV-18-033 Johanas Colby

Figure 5 - School Bus Stop Buffer



0 55 110 220 330 440 Feet