

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

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."

A second Code Compliance Staff member 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.”*

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:

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

- from 350 feet to 200 feet from the residence on APN 019-340-02,

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.

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.

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.

ENVIRONMENTAL EVALUATION:

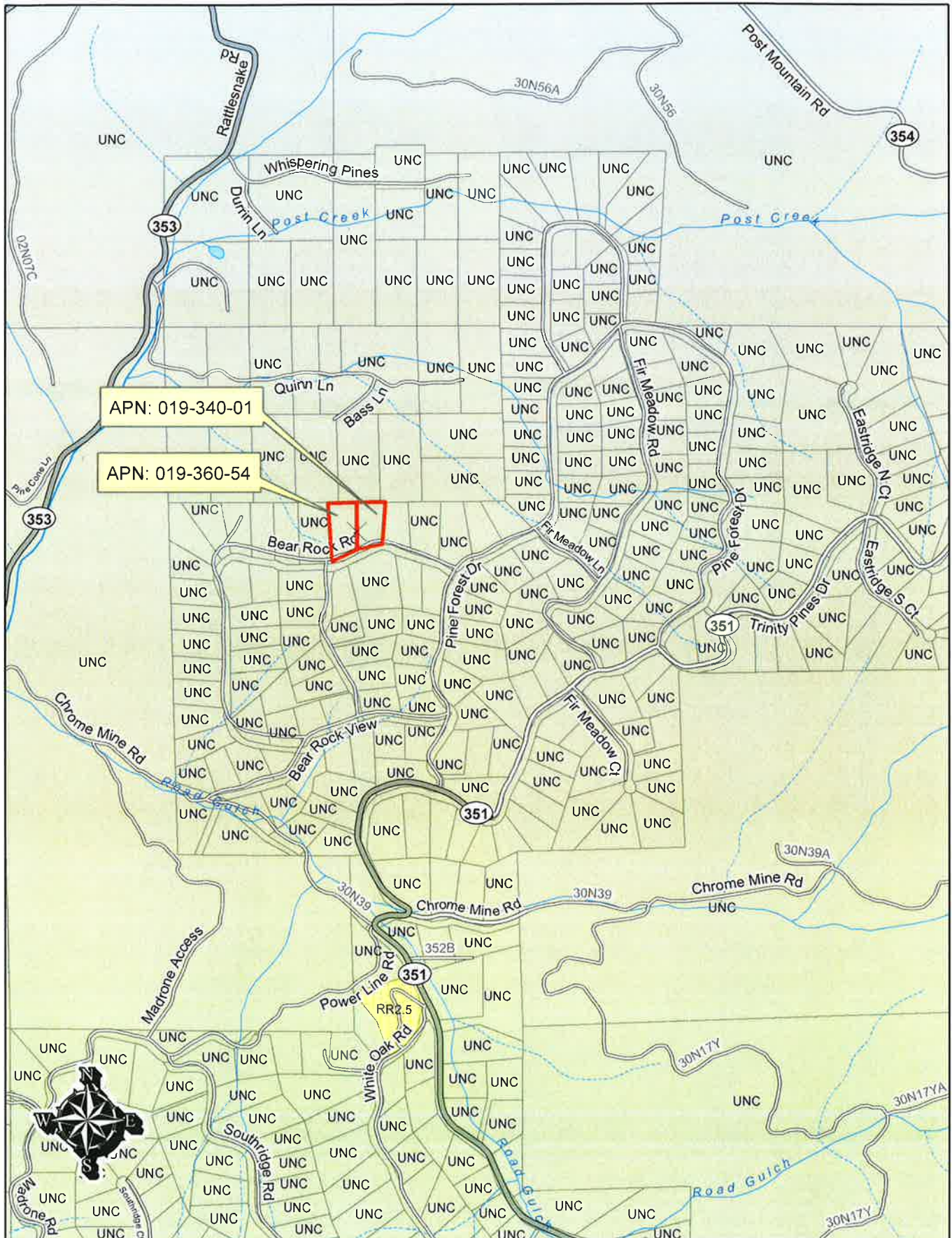
This variance request is exempt from CEQA review under Section 15305(a) [minor alteration of land use limitations].

**CONDITIONS OF APPROVAL
BEE MOUA CANNABIS SETBACK VARIANCE (CCV-18-034)**

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.

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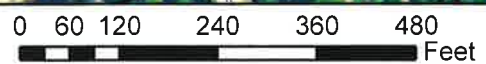
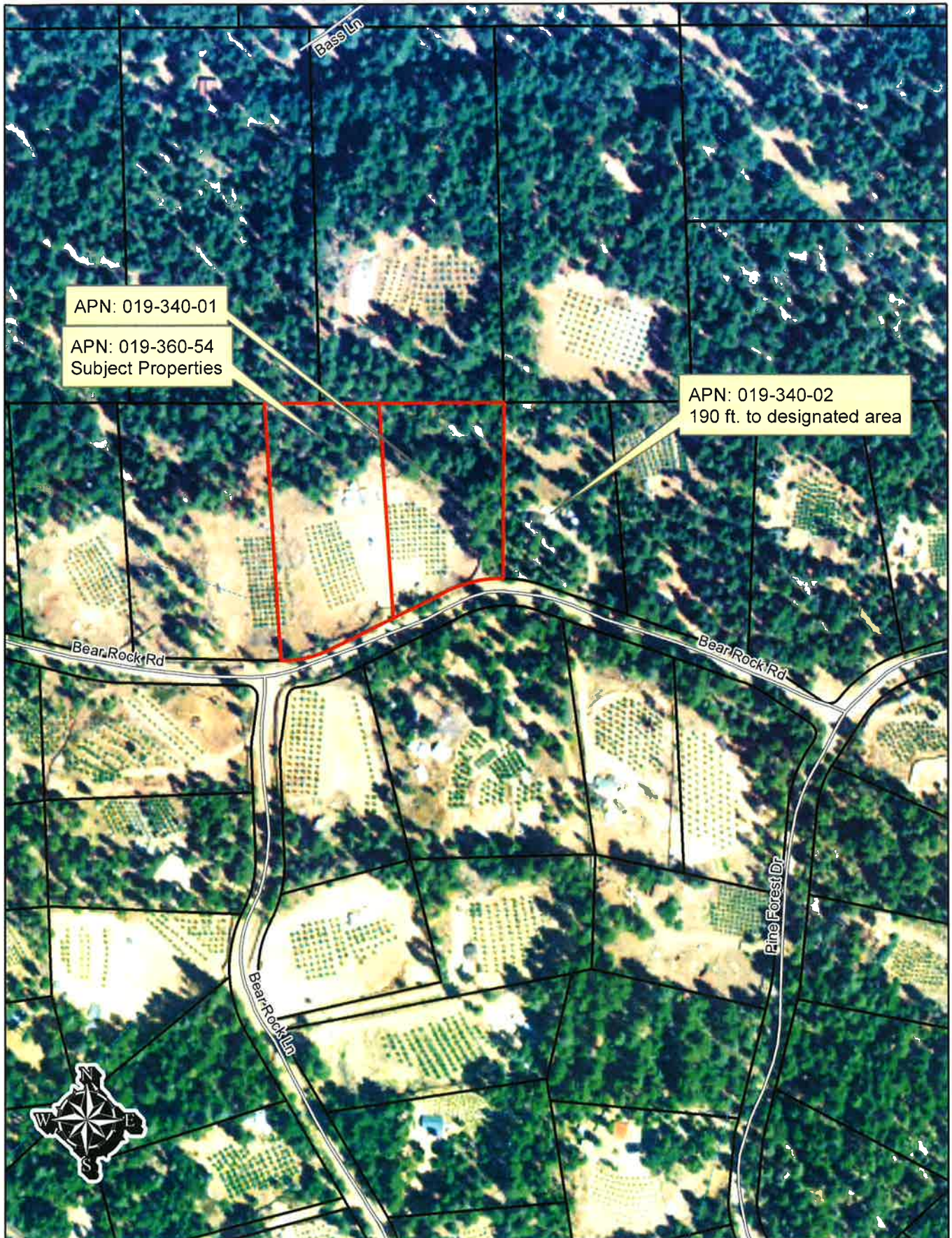
Figure 1 - Project Location and Zoning



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

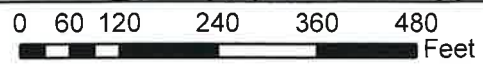
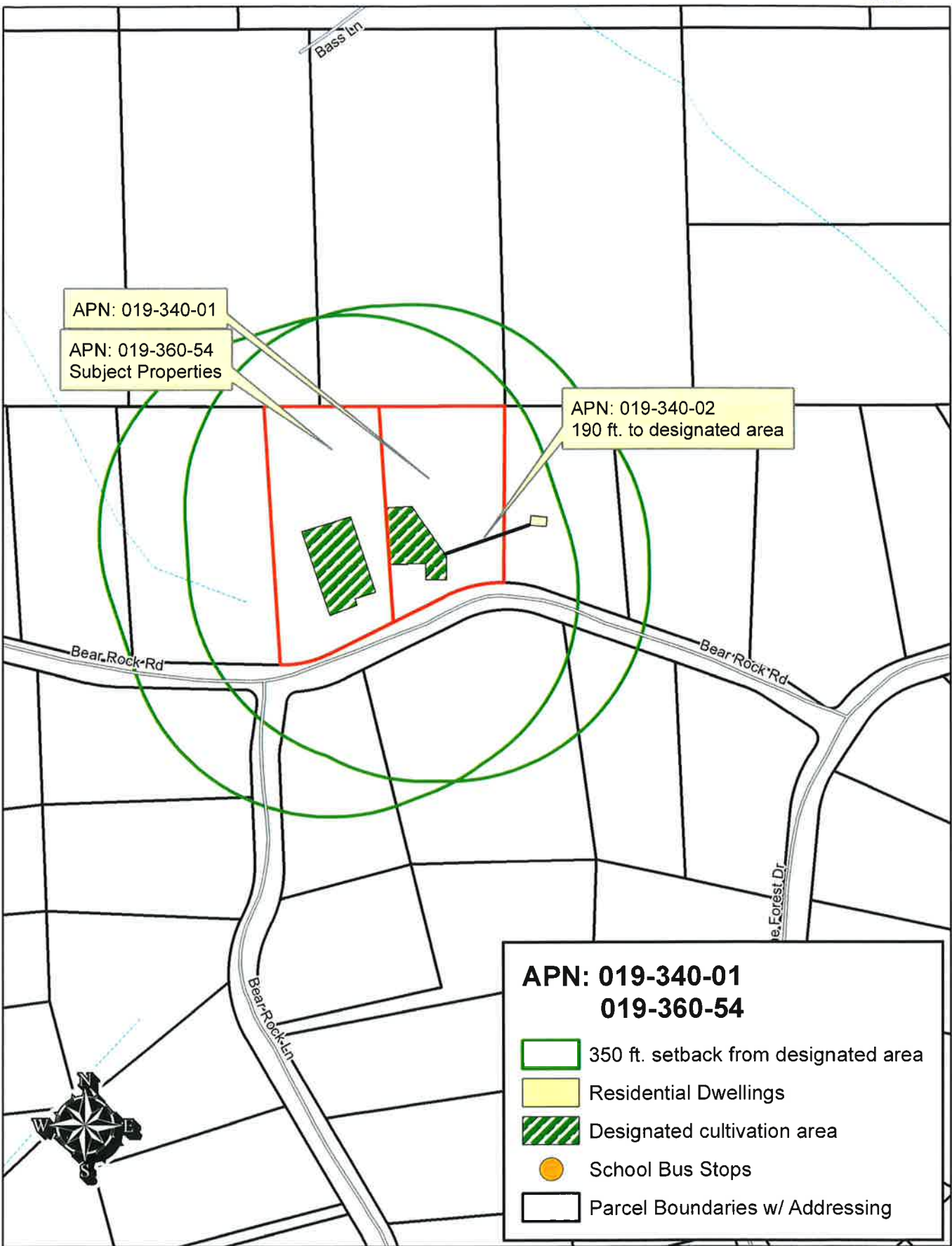
CCV-18-034 Bee Moua

Figure 2 - Site Map and Impacted Neighbor



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Figure 3 - Buffer Map and Impacted Neighbor





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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



CCV-18-034 Bee Moua 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



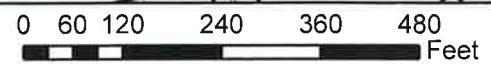
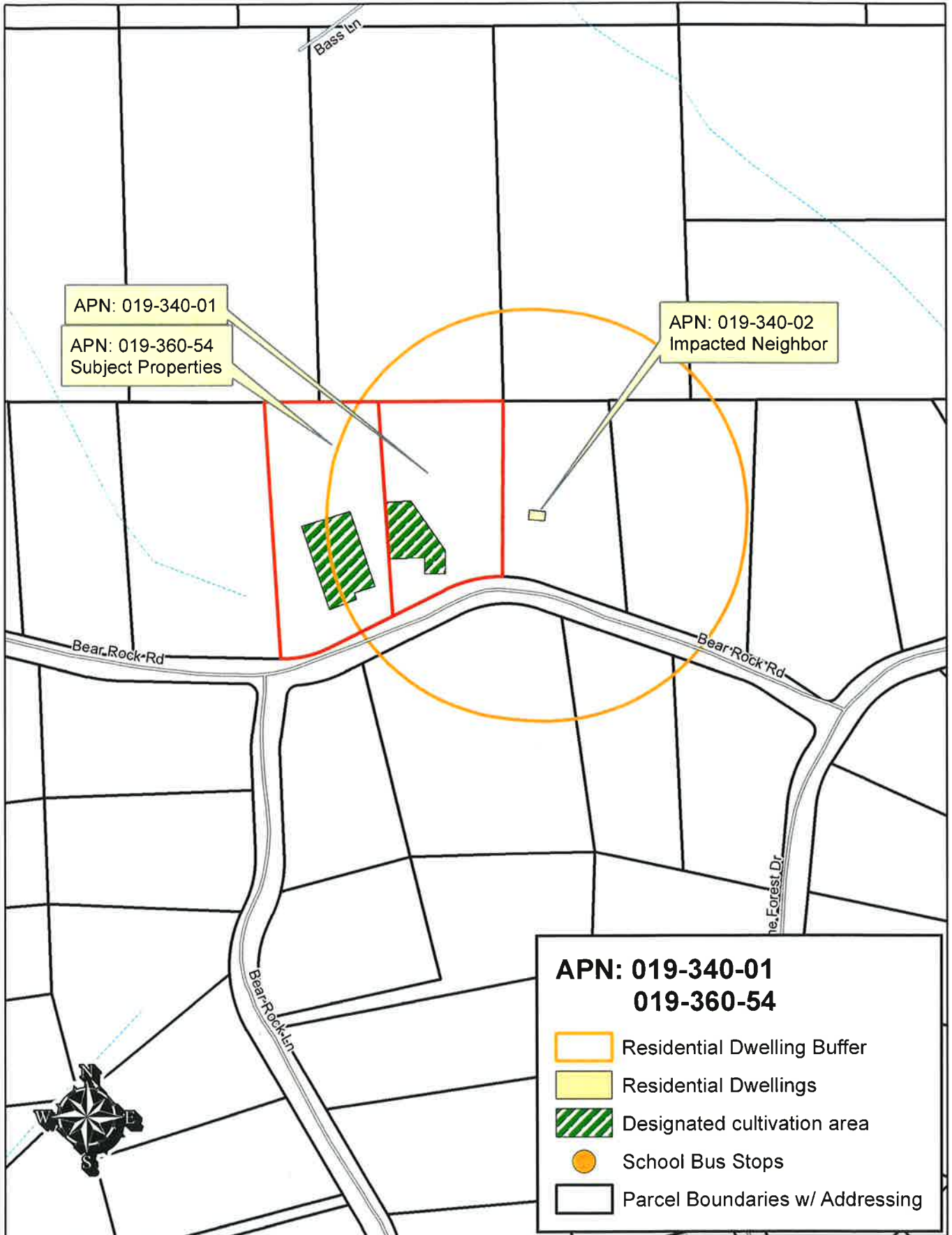
Picture 1: facing south-east from the property line illustrating cultivation within 30 ft. of Bear Rock Road property line



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

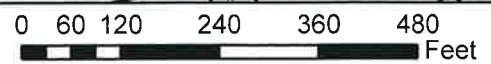
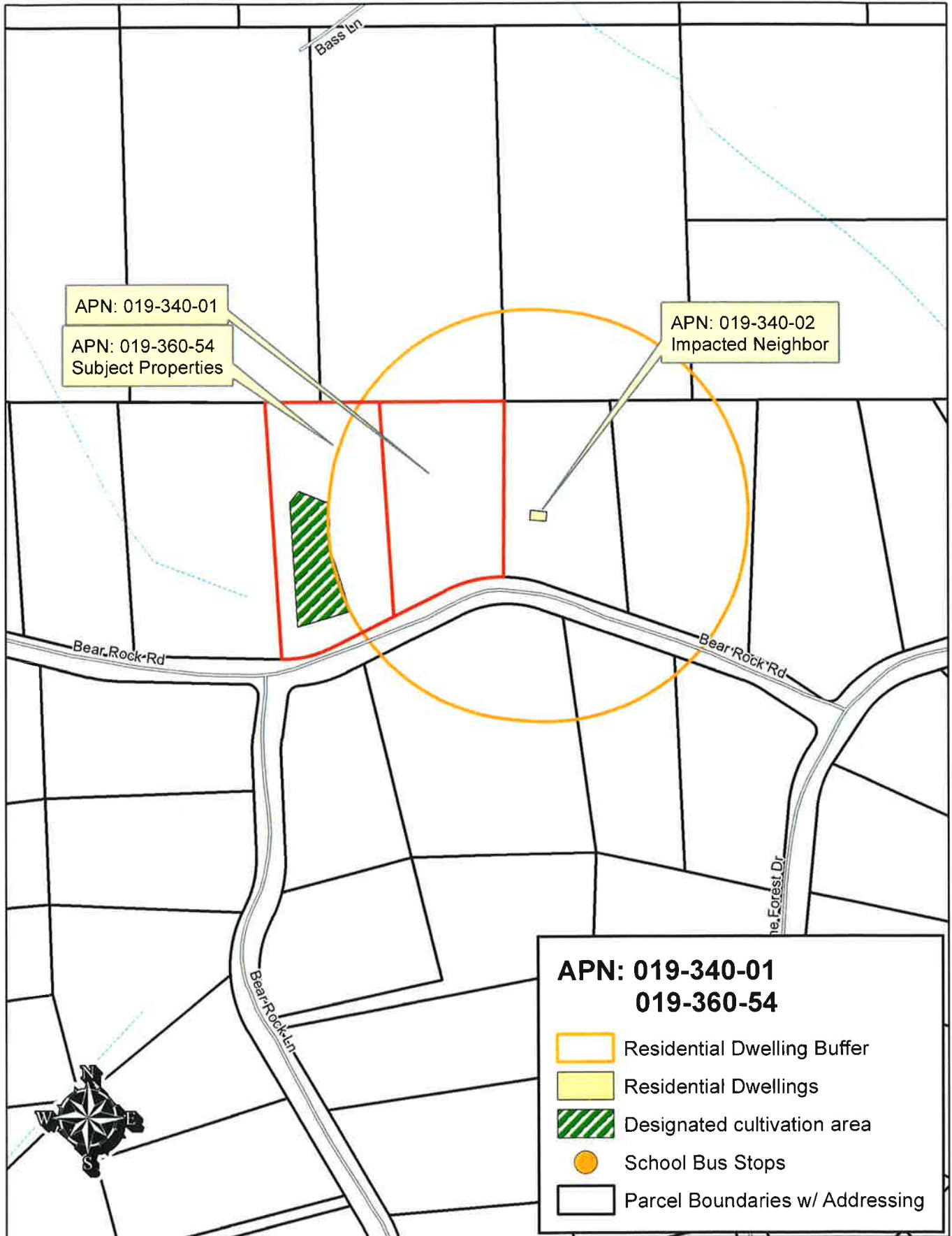
CCV-18-034 Bee Moua

Figure 5 - Impacted Neighbor Buffer Map



CCV-18-034 Bee Moua

Figure 6 - Garden Relocation option



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