

## TRINITY COUNTY PLANNING COMMISSION

### STAFF REPORT

**PROJECT TITLE:** Cannabis Cultivation Variance

**APPLICANT:** Eduardo Fernandez

**PROPERTY OWNER:** Eduardo Fernandez

**REPORT BY:** Skylar Fisher

**LOCATION:** 310 Coffin Rd., Lewiston (APN 025-180-010)

**ZONING DISTRICT:** Rural Residential with a 5-acre minimum

**GENERAL PLAN DESIGNATION:** Rural Residential

**PROJECT DESCRIPTION:**

The applicant is requesting a variance from the required 350-feet cannabis cultivation setback from a neighboring residential dwelling (Trinity County Code Section 17.43.050A(8)). The requested reduced setback is 215-feet from the residence on the adjoining parcel.

Location	Land Use	Zoning District	General Plan Designation
North	Residential Single Family/ Commercial Cannabis Cultivation	Rural Residential with a 5-acre min	Rural Residential
South	Federal Land	Unclassified	Resource
East	Residential Single Family	Agricultural Forest	Agricultural
West	Commercial/Vacant	Rural Residential with a 5-acre min	Rural Residential

Table 1: Surrounding Land Uses to Project Site

**BACKGROUND INFORMATION:**

Eduardo Fernandez originally had his license, CCL 133, issued in November 2019. The parcel is currently in the "Lewiston Opt-Out Expansion" which went into effect by Zoning Ordinance No. 315-850 "An Urgency Interim Ordinance of the Board of Supervisors of the County of Trinity Imposing a Temporary Moratorium on the Issuance of Commercial Cannabis Cultivation Licenses within the Area of Lewiston."

CCL 133 has a submitted Appendix C to ensure that the proposed operations are consistent with the Cannabis Program's Program Environmental Impact Report (PEIR) and the California Environmental Quality Act (CEQA). The Appendix C document has finished technical review, which

indicates that the document is compliant with the environmental review standards for license issuance.

Due to the license being close to 2022 license issuance, cannabis staff performed a site visit to ensure that the Appendix C was accurate and reflected the site conditions. During this site inspection, staff discovered that a 60' x 80' shop used for agriculture and chemical/pesticide storage, an admin hold area, and processing area to become a harvest storage area was within the 350-foot setback from a neighboring parcel. Otherwise, notes from the site inspection indicate the site was clean and compliant. Once the licensee was notified of the need for a cannabis cultivation variance, he submitted an initial variance application to the Planning Department.

### **PROJECT EVALUATION/DISCUSSION:**

#### ***Project Consistency with the Trinity County Zoning Code and General of Specific Plans***

##### **Trinity County Zoning Code Consistency**

The guidelines for variances in the zoning ordinance are provided in TCC Chapter 17.31. Specifically, a variance should only be granted if the subject parcel is under unique hardship due to its size, shape, or topography.

- 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.**

Finding: The development of the parcel is concentrated in one flat area. This cultivation area is away from the 100-year floodplain, not on the side of a hill, and minimizes the need to clear any additional trees. If a different parcel was under similar circumstances, this development would be preferable to the alternative of developing closer to the floodplain, on the side of a hill, or having to clear any additional trees.

- 2. Use Variance Prohibited. The consideration of "use variances" is specifically prohibited. These are variances which request approval to locate a use in a zone from which it is prohibited by ordinance.**

Finding: This variance would not grant a use variance. The proposed use of a small mixed-light cannabis cultivation is an allowed use on the parcel and a grandfathered use in the "Lewiston Opt Out Extension area."

- 3. Disservice Not Permitted. A variance must not be injurious to the public welfare, nor to adjacent properties.**

Finding: This variance would not be injurious to the public welfare nor to the adjacent properties. During the staff/agency comment period, there was no comment submitted regarding the cultivation negatively impacting the surrounding community.

- 4. Not Adverse to 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.**

Finding: This variance is not in conflict with the Trinity County General Plan or Specific Plan.

5. **RD-1 Overlay Zone.** Prior to approval of a variance for property within the RD-1 overlay zone, permission must be granted or deemed not necessary by the Secretary of Agriculture.

Finding: The project parcel is not located within the Recreation Development District (RD-1) or RD-1 overlay zone.

General and Specific Plan Consistency  
*County Staff/Agency Comments*

Project referrals were sent out to various county departments and applicable government agencies on 6/29/22. A summary of the comment received are contained in Table 2 below.

Department/Agency	Comment	Response
Assessor's Office	No comment	N/A
Building Department	No comment	N/A
Cannabis Division	The property is consistently compliant to the performance standards of the Trinity County Commercial Cannabis Program during site inspections. The CCV is the only deficiency for recommending license approval. The neighbor whose residence is within the 350-foot setback of the applicant's cultivation is also an applicant in the Trinity County Cannabis Program	N/A
CAL FIRE	No comment	N/A
Environmental Health Division	No Comment	N/A
Transportation Department	No comment submitted	N/A
Trinity Public Utilities District	No comment submitted	N/A

Table 2: Request for Comment Log

***Project Consistency with the California Environmental Quality Act (CEQA)***

The California Environmental Quality Act (CEQA) exempts activities where it can be seen with certainty that there is no possibility of causing a significant effect on the environment under the General Rule exemption 15061(b)(3).

**STAFF RECOMMENDATION:**

Staff recommends that the Planning Commission adopt draft Resolution PC-2022-11 and Exhibit A – Conditions of Approval to:

- A. Adopt a California Environmental Quality Act (CEQA) determination of a General Rule exemption 15061(b)(3);
- B. Approve the requested cannabis cultivation variance to reduce the cultivation setback from 350-feet to 215-feet from the residence located on APN 025-180-038

**ATTACHMENTS:**

1. Draft Resolution PC-2022-11 and Exhibit A – Conditions of Approval
2. Buffer Map
3. Topographic Map
4. Location Map
5. Zoning Districts Map
6. General Plan Designations Map
7. "Lewiston Expansion Opt Out Area" Map

**RESOLUTION NO. PC-2022-11**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE COUNTY OF TRINITY**

**Approving an Initial Commercial Cannabis Variance**

**WHEREAS**, the Trinity County Planning Department has considered a request for an initial commercial cannabis variance, filed by Eduardo Fernandez, in accordance with Title 17, Trinity County Zoning Code Section 17.43.050A(8),

**WHEREAS**, for specialty cottage, specialty, and small licenses, cultivation shall not be allowed within three hundred fifty feet of a residential structure on any adjoining parcels unless an initial variance is obtained by approval of the Trinity County Planning Commission,

**WHEREAS**, approved or conditionally approved commercial cannabis variances are subject to annual renewal by the Planning Director through the director's use permit process, and

**WHEREAS**, the Planning Commission held a public hearing and considered this matter at the regular meeting held on August 11, 2022,

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the County of Trinity:

1. Finds the requested commercial cannabis variance to be exempt from the requirements of the California Environmental Quality Act under the General Rule exemption 15061(b)(3) on the basis that there are no substantial changes to the project or to circumstances under which the project is proposed to be undertaken, and no new information has become available or been made known showing unanalyzed environmental effects; and
2. Makes the following findings:
  - A. The applicant will not be granted a special privilege upon the approval of the proposed commercial cannabis variance;
  - B. The approval of the proposed commercial cannabis variance is not for a variance for the use of the property;
  - C. The approval of the proposed commercial cannabis variance would not be injurious to general public welfare or to the adjacent properties;
  - D. The proposed commercial cannabis variance is not in conflict with the goals, objectives, and policies of the General Plan or any specific plans;
  - E. The project parcel is not located in a Recreation Development District (RD-1) overlay zone; and

Resolution No. PC-2022-11  
August 11, 2022

3. Approves CCV-22-22, subject to the conditions set forth in Exhibit A of this resolution and incorporated herein.

**DULY PASSED AND ADOPTED** this 11<sup>th</sup> day of August, 2022 by the Planning Commission of the County of Trinity by the following vote:

AYES:  
NAYS:  
ABSENT:  
ABSTAIN:  
RECUSE:

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WILLIAM SHARP, CHAIRMAN  
Planning Commission  
County of Trinity  
State of California

ATTEST:

By: \_\_\_\_\_  
Edward Prestley  
Secretary of the Planning Commission  
County of Trinity, State of California

**EXHIBIT “A” to Resolution PC-2022-11**  
**COMMERCIAL CANNABIS VARIANCE CONDITIONS OF APPROVAL**

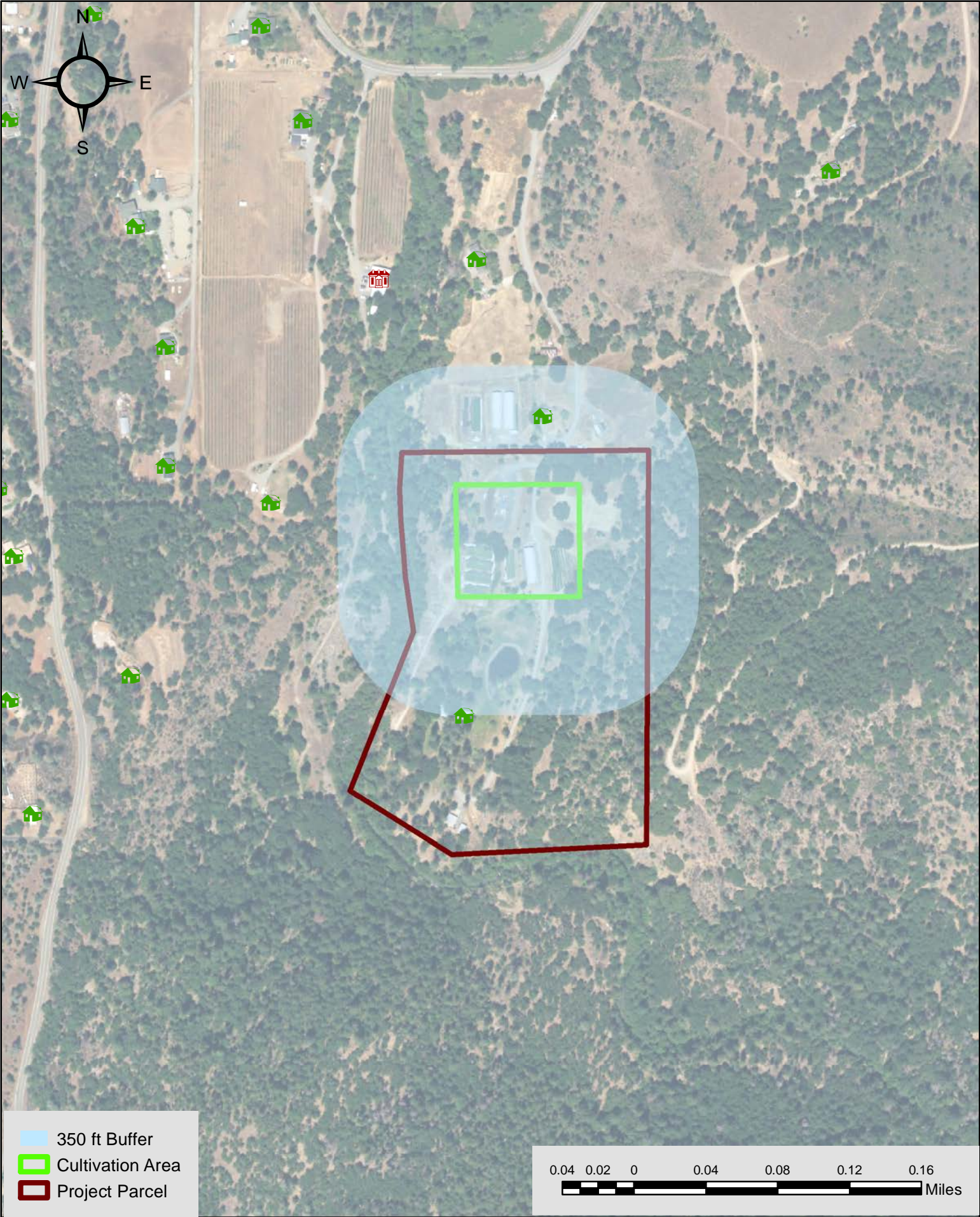
(Eduardo Fernandez, Commercial Cannabis Variance (CCV-22-22))

1. The commercial cannabis variance is approved for a period of one year and shall expire on the same date as the commercial cannabis license that this variance and parcel is associated with; provided, however, that the variance shall be renewed annually through the Director’s Use Permit application process. The commercial cannabis renewal application shall:
  - A. Be submitted by the applicant or designated agent/consultant prior to expiration of the variance and preferably no later than 60 days in advance;
  - B. Be subject to a filing fee as specified by resolution of the Board of Supervisors;
  - C. Be approved, denied, or referred to the Planning Commission at the discretion of the Planning Director;
2. Structures on the property shall be in compliance with the California Building Code and Trinity County Code;
3. The applicant has the sole responsibility for renewing this commercial cannabis variance before its expiration. The County will not provide a notice prior to the expiration date;
4. No county permit or license shall be issued until the ten-day appeal period has expired. If the commercial cannabis variance approval is appealed, no county permit or license shall be issued while a commercial cannabis variance hearing or appeal is pending.

**END OF CONDITIONS.**

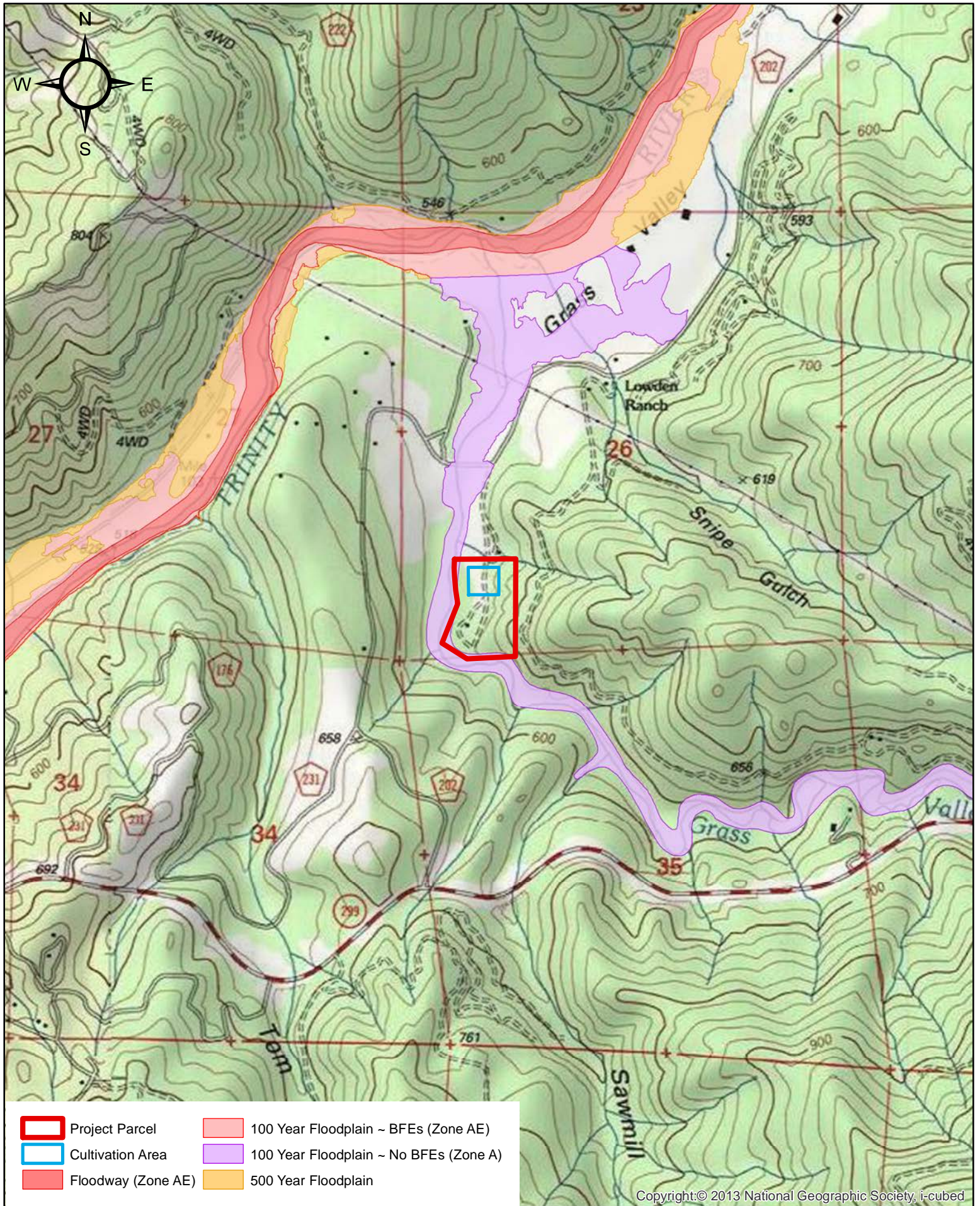


# Attachment 2: 350-ft Buffer Map





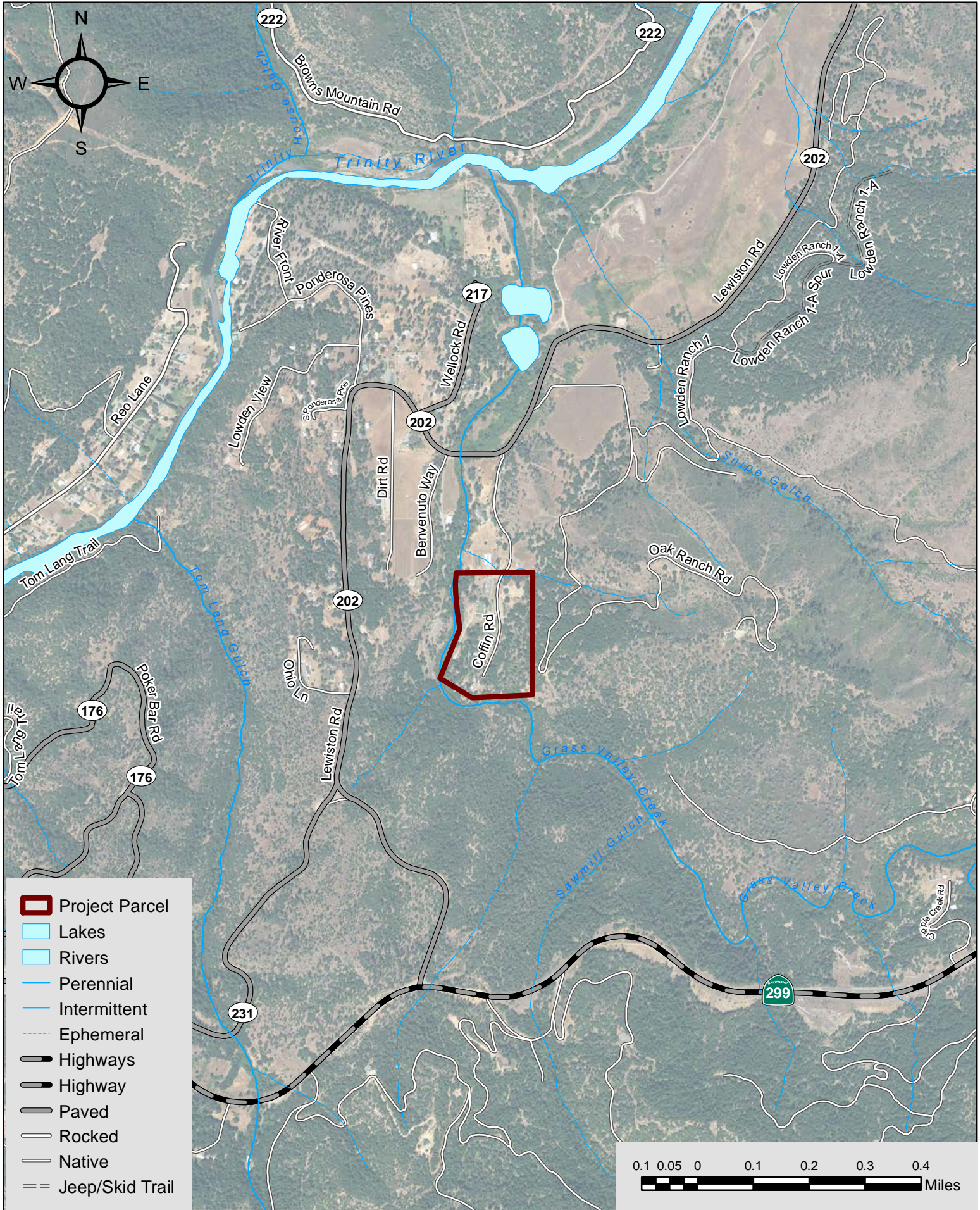
# Attachment 3: Topographic Map



0.15 0.075 0 0.15 0.3 0.45 0.6 Miles

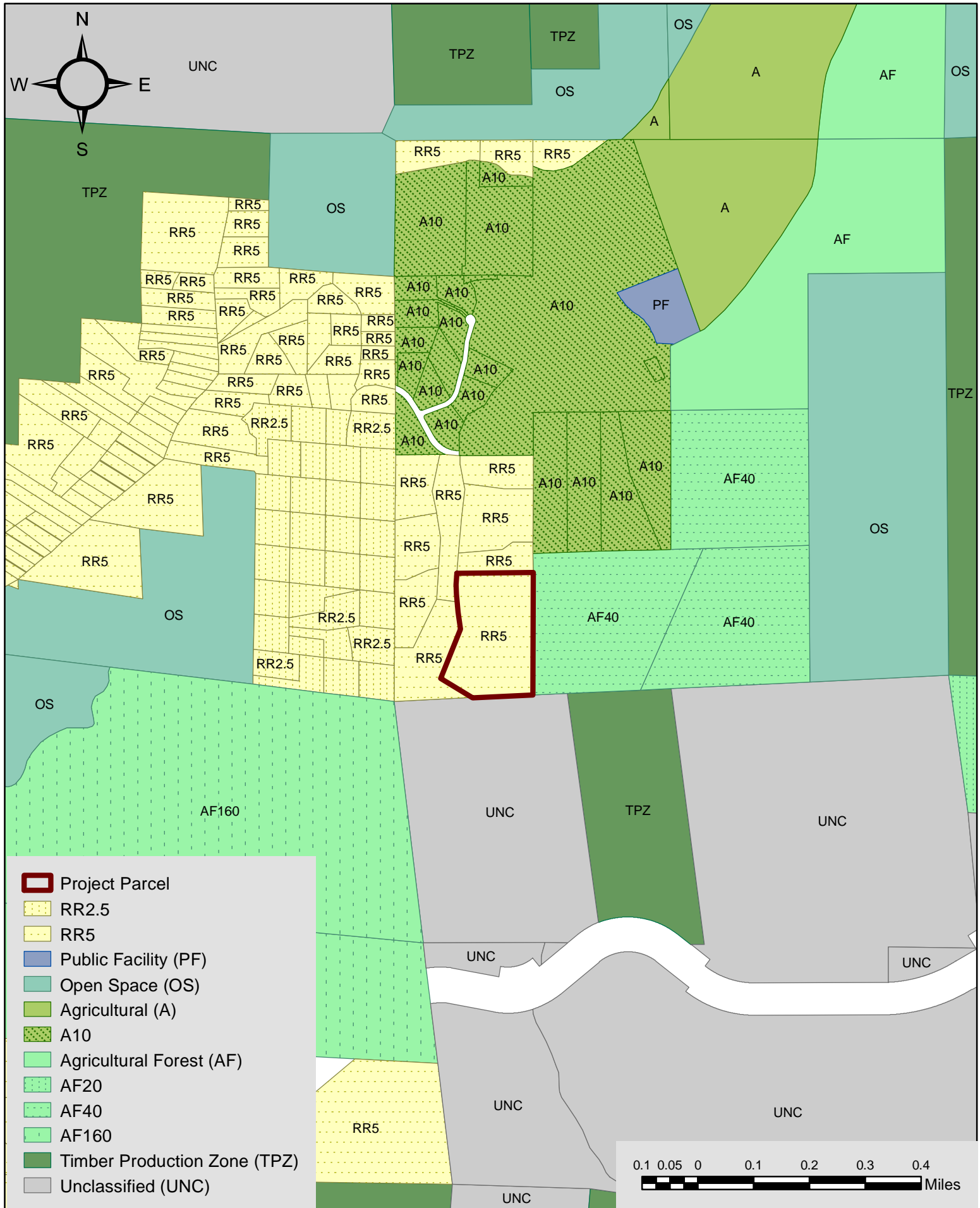


# Attachment 4: Location Map





# Attachment 5: Zoning Districts Map



# Attachment 6: General Plan Designations Map

