

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

APPLICANT: Cameron McCall

REPORT BY: Colleen O’Sullivan

OWNER: Shayron Snider

APN: 019-290-17

PROJECT DESCRIPTION:

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

LOCATION: 375 Whispering Pines Drive, Trinity Pines, Hayfork

PROJECT INFORMATION:

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Unclassified
- 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	Unclassified	Rural Residential
South:	residential	Unclassified	Rural Residential
East:	residential	Unclassified	Rural Residential
West:	residential	Unclassified	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 (CCL-2017-307). The parcel is located on Whispering Pines Road (which appears to terminate on this property), with Post Creek roughly bisecting it from east to west. Whispering Pines Road is an east-west road originating from Rattlesnake Creek Road to the west (Figure 1). The site plan prepared by Down River Consulting (Figure 2) identifies on-site development and its relationship to the residence (APN 019-290-25), which lies west of the subject parcel, and other features.

The parcels to the east (019-310-14, 15, 16, 17 and 18) are listed as vacant by the county's Assessor's Office. No other permitted residences are located within the 350 foot radius around the cultivation area (Figure 3).

The applicant is working with the county Commercial Cannabis License program to become compliant with both State and county standards.

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "The applicant cannot move the cultivation area and meet setback requirements." Down River Consulting has provided the following comments: "If the garden was moved to the southern portion of the property, it would be too close to surface water on a neighboring parcel, trees would need to be removed and a variance

would still be required in much of the southern portion. The northern portion of the parcel also does not work for a garden because of setbacks required from Post Creek. In addition, trees would need to be removed and the land would need to be graded. Mr. McCall has already greatly reduced the area of his garden to be in compliance with surface water setbacks required by the North Coast Regional Water Quality Control Board. There is only one neighboring residence within 350 feet of the garden.”

Because of watercourse and surface water features to the north and south of the applicant’s property, he has located and reduced the size of his cultivation area to meet these setbacks, which has resulted in locating the garden in the center of the property. A variance of 157 feet is needed from the residence located to the west (Figures 2 and 3).

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:

Approval of the variance to allow reduction of the Cannabis cultivation setback from 350 feet to 157 feet from the residence on APN 019-290-39, subject to the following conditions of approval and based on the following findings of fact:

Findings of Fact for the Use Permit

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 cannabis cultivation.
2. The variance is not a grant of special privilege to the applicant because relocation would result in additional grading in an area that has been extensively cleared already, and removal of trees that could promote site instability and discharge of sediment to nearby watercourses. The applicant has reduced his cultivation area to meet setbacks from Post Creek to the north and a neighbor’s surface water feature to the south, which has resulted in locating his cultivation area in the center of his property. Because of this, his garden is now within 350 feet of the neighboring residence to the west.
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
MCCALL CANNABIS SETBACK VARIANCE (P-17-56)**

1. The variance is approved for a period of one year from **April 1, 2017** through **March 31, 2018**; provided, however, that the variance may be renewed annually.
 - a. Application for renewal shall be made 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.

FIGURE 1

PROJECT LOCATION & ZONING MAP P-17-56 MCCALL CCL VARIANCE REQUEST

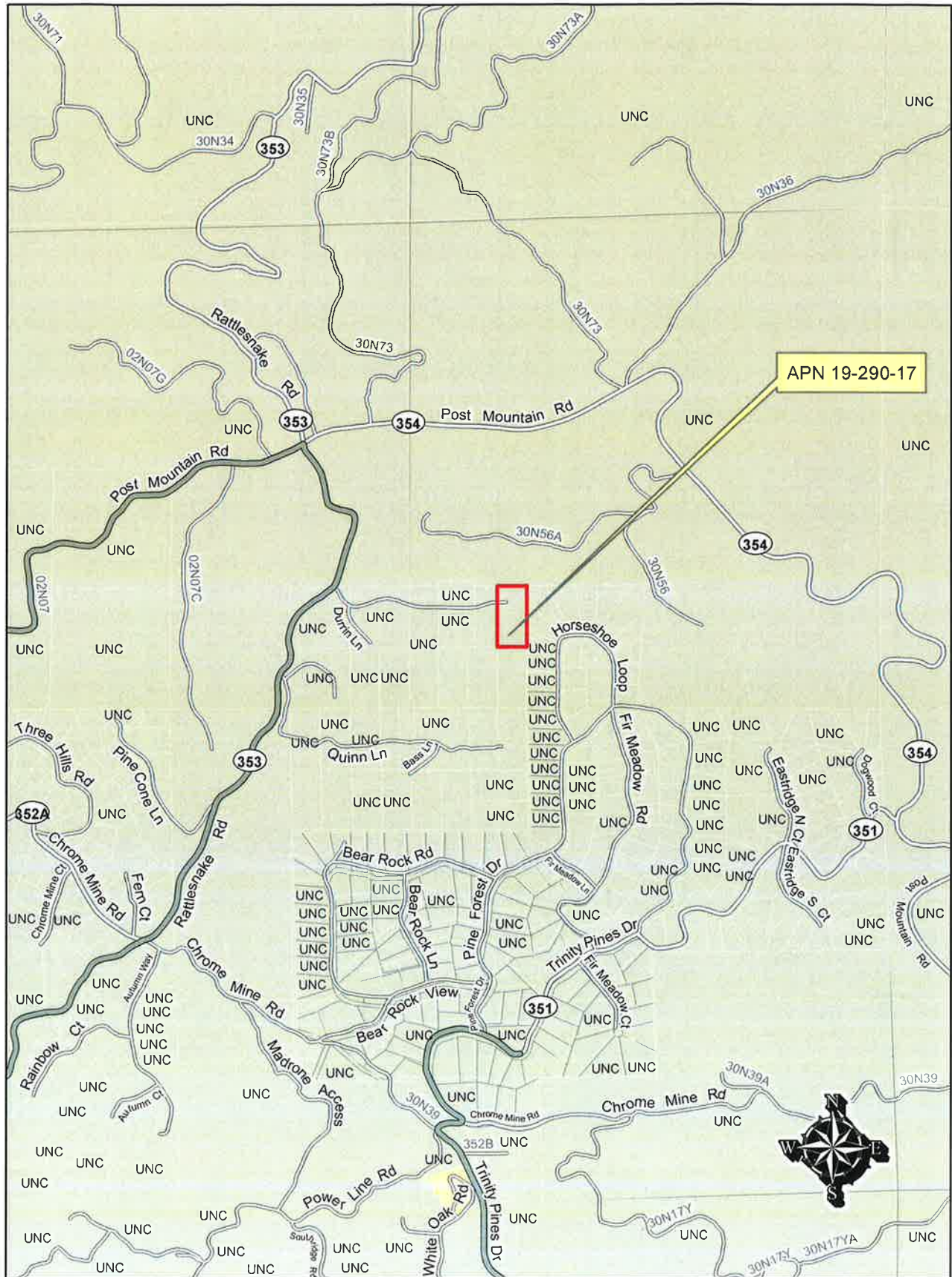


FIGURE 1

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FIGURE 2

SITE PLAN



- Legend**
- Property Line
 - Cultivation Area
 - 350' Residence Setback
 - Barn
 - Chicken Coop
 - Fertilizer Storage
 - Garage
 - Residence
 - Shed
 - Shop
 - Woodshed
 - Gates
 - Fences
 - Well
 - Water Storage
 - Culvert
- Roads**
- Roads
 - Driveway
- Streams**
- Intermittent

0 20 40 80 120 160 200 Feet

2016 NAIP Aerial Imagery
 Coordinate System: NAD 1983 UTM Zone 10N
 Projection: Transverse Mercator



*Positions, scales and dimensions approximate

TRINITY COUNTY PLANNING DEPARTMENT

APPLICANT PREPARED SITE PLAN

Application No. _____

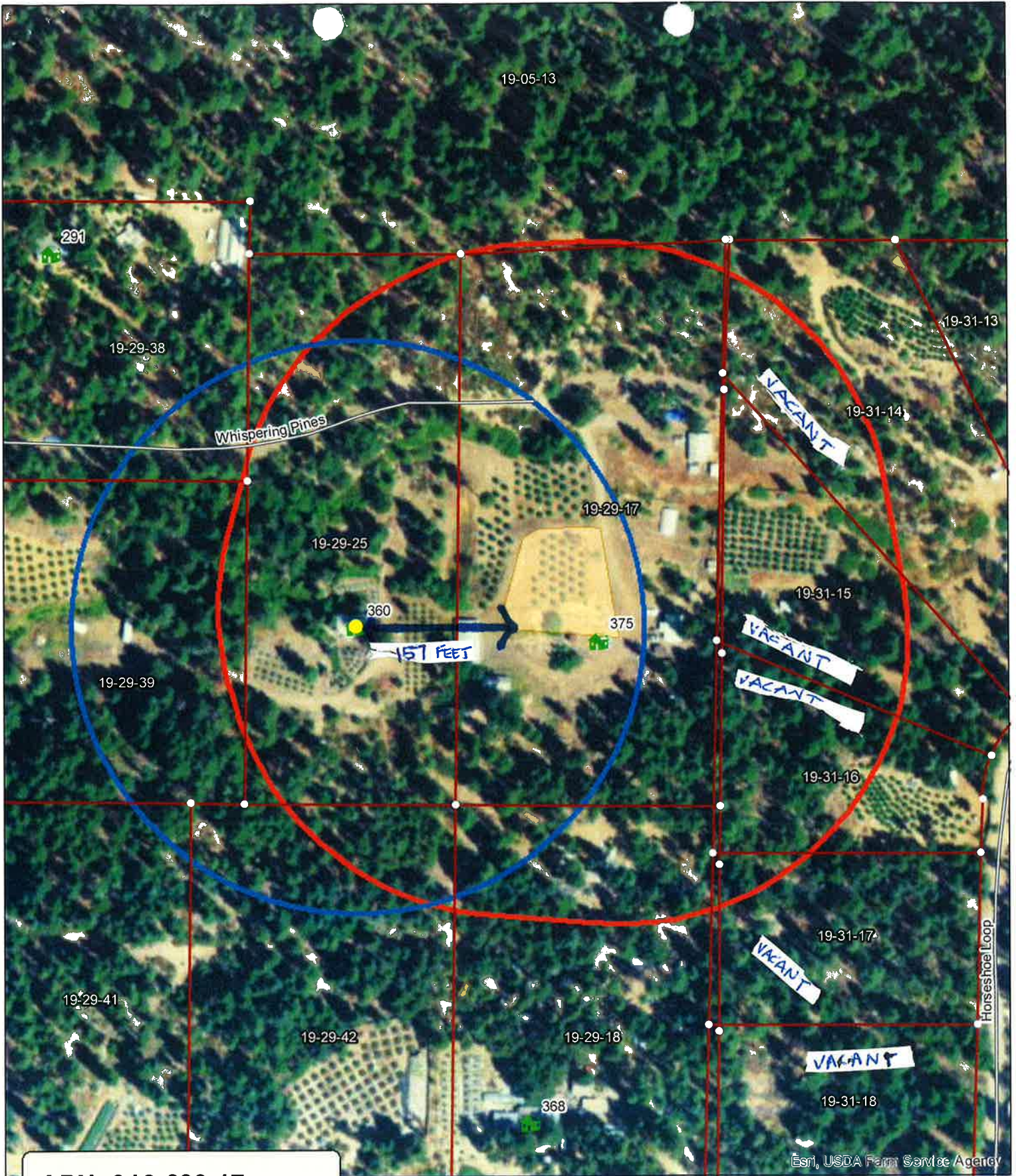
Drawn By: H. BAKER APN: 019-290-17-00

Date: 12/27/2017 Zoning: UNC

Scale: 1:1,000 Lot Area: 5 Acres

FIGURE 2 - SITE PLAN

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APN: 019-290-17




-  Cultivation Site
-  Structure Buffers - 350'
-  Cultivation Site Buffer - 350'

FIGURE 3 - AFFECTED RESIDENCE (19-29-25)



0 30 60 120 Meters

0 105 210 420 Feet



Handwritten signature or initials.