

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

APPLICANT: Mai and Peter Vue

REPORT BY: Colleen O’Sullivan

OWNER: same

APN: 016-200-04

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from three neighboring residences.

LOCATION: 311 North Salt Creek Road, Hayfork, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Resource
- C) Existing Zoning: Agriculture, 10 acre minimum/Critical Water Resource Overlay
- 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	A-10/AP	Resource/AG
South:	residential	A-10	Resource
East:	residential	A-10	Resource
West:	agriculture (ranch)	AP/AF-40	Agriculture/RE

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.
The Cannabis cultivation site cannot be located elsewhere on the property due to the narrowness of the subject parcel and of surrounding parcels. The cultivation site is screened by vegetation from neighboring parcels. The cultivation site has resulted in the least amount of ground disturbance on the property.
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 often straightforward and will be performed by the Planning Director or his/her designee at the request of the applicant. Some factors that would be included in the decision making for renewal are 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 applicant is working with the county Commercial Cannabis License program to become compliant with both State and County standards.

The parcel is located on North Salt Creek Road (a privately maintained road), which heads north from Salt Creek Bridge Road south of Hayfork. The site plan prepared by the consultant (Figures 2) identifies on-site development and their relationship to three offsite residences, which lie north and south of the subject parcel.

A variance of 98.6 feet is needed from the residence on APN 016-200-03.

A variance of 333.48 feet is needed from the residence on APN 016-200-02.

A variance of 192.19 feet is needed from the residence on APN 16-200-05 (Figure 2).

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "Due to site and slope of the parcel it is not feasible to move the cultivation site."

It also appears that between setbacks from Salt Creek (to the east) and the 30 foot setback from property lines for cultivation that there are no other locations on the property for these two cultivation sites. Eliminating the smaller cultivation site (3300 square feet) on the western part of the property would eliminate one variance request. Reducing the size of the larger cultivation site on the south side by 16.52 feet would eliminate a second variance request.

As of this writing, no other comments have been received. Due to a combination of inclement weather and staffing constraints, staff was not able to visit this site.

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 three alternatives:

1. Approval of the variance to allow reduction of the Cannabis cultivation setback from 350 feet to 98.6 feet from the residence on APN 016-200-03, from 350 feet to 333.48 feet from the residence on APN 016-200-02, and a variance from 350 feet to 192.19 feet from the residence on APN 16-200-05, subject to the following conditions of approval and based on the following findings of fact:

Alternative 1: Findings of Fact for the Variance from Three Residences:

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 of or reduction in the cultivation size would result in the need for other variances and the loss of economic value. Setbacks constrain the parcel so that the cultivation areas are in the most optimal location.
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

Staff recommends the following:

2. Approval of the variance to allow reduction of the Cannabis cultivation setback from 350 feet to 192.19 feet from the residence on APN 016-200-05, and a variance from 350 feet to 98.6 feet from the residence on APN 016-200-03, subject to the following conditions of approval and based on the following findings of fact:

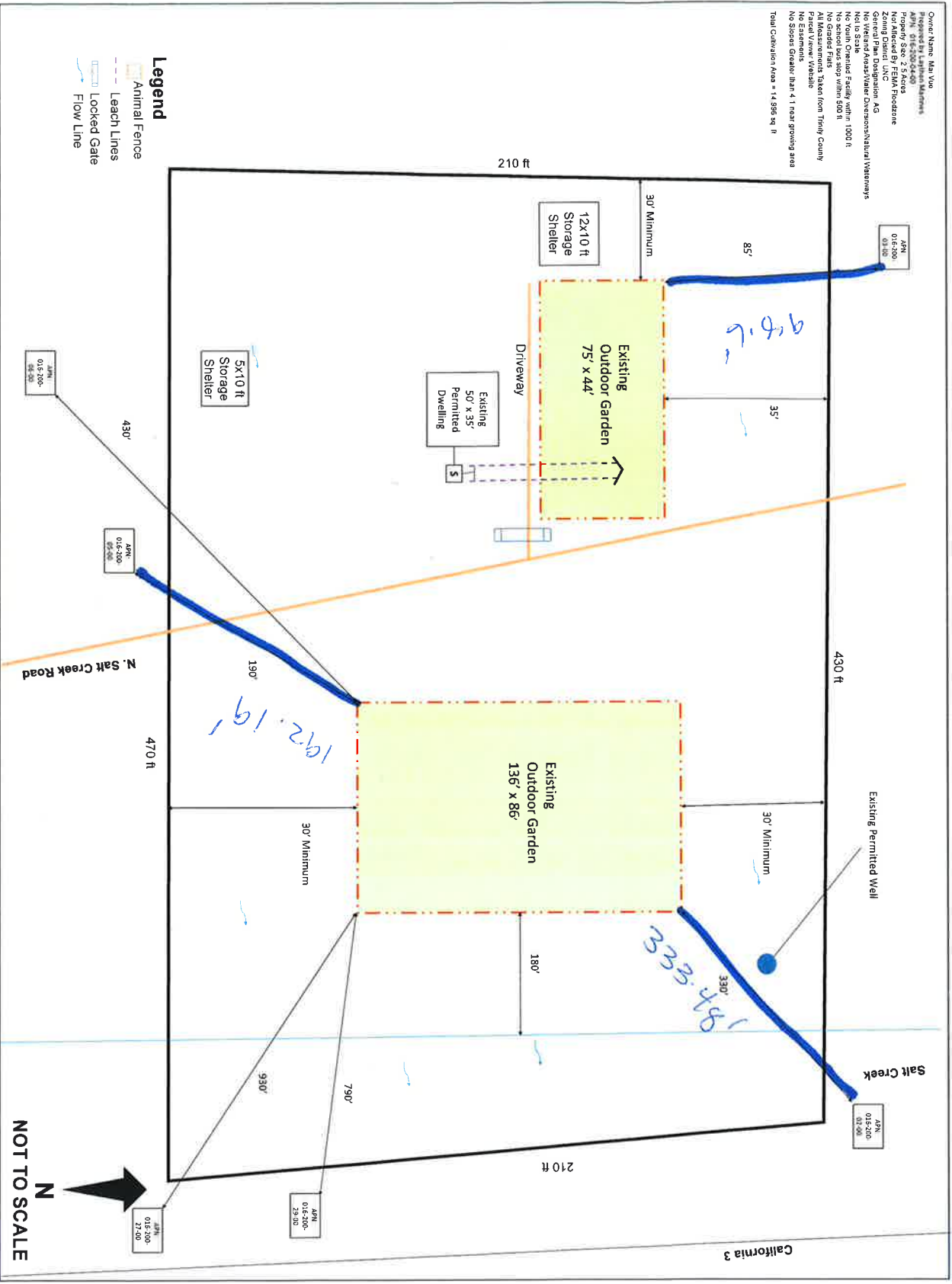
Alternative 2: Findings of Fact for a Variance from One Residence (APN 016-200-02):


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. However, reducing the larger cultivation site on its east side by 16.57 feet would eliminate the need for a variance from the residence on APN 016-200-02 (333.58 feet). Variances are still needed for residences on APNs 016-200-03 and 05.
2. The variance is not a grant of special privilege to the applicant because reduction in the cultivation size would result in the elimination of one less variance requirement.
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
MAI & PETER CANNABIS SETBACK VARIANCE (CCV-18-004)**

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.

Owner: Mai Vue
 Prepared by: Lighthouse
 APN: 016-200-04-00
 Property Size: 2.3 Acres
 Parcel Count: 1
 Zoning District: LNC
 General Plan Designation: AG
 No Wetlands/Asbestos/Drinking Water/Waterways
 No Youth Center/Facility within 1000 ft
 No School Bus Stop within 500 ft
 No Graded Flats
 No Flood Hazard
 No Flood from Trinity County
 No Easements
 No Spikes Greater than 4' 1" rear growing area
 Total Cultivation Area = 14,995 sq. ft.



 LGM INVESTING, LLC. (707) 298-8105 7261 Highway 3 Hayfork, CA 96041	MAI VUE CANNABIS APP. 311 N. Salt Creek Road, Hayfork, CA 96041	DRAWN: BMW	PROJECT #: 668.00
	FIGURE 2 SITE MAP	DATE: 3/19/2017	FIGURE: 1

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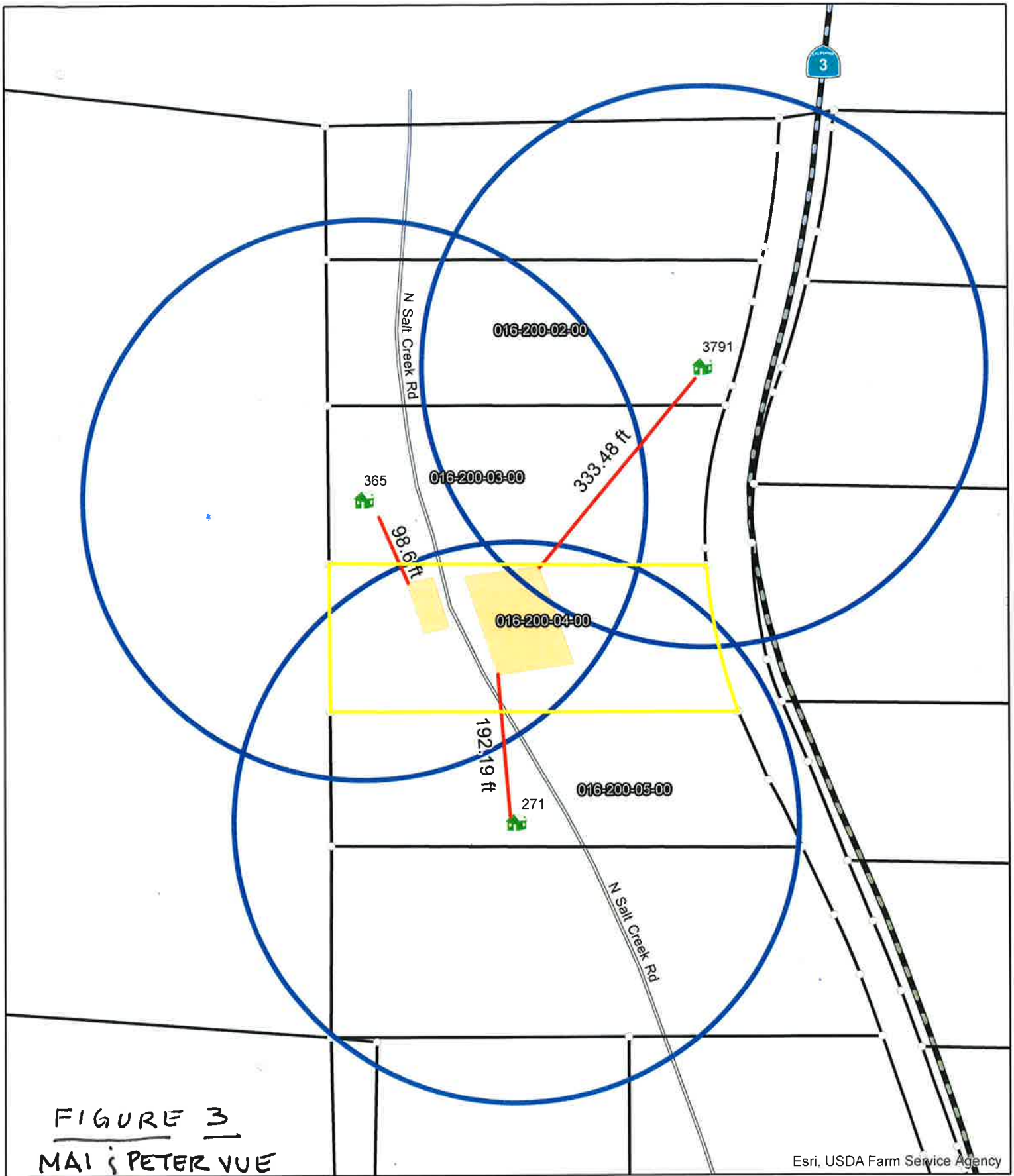


FIGURE 3
 MAI & PETER VUE

APN: 016-200-04

 Structure Buffer - 380'

 Cultivation Site

