

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

APPLICANT: Xong Vang

REPORT BY: Scott Watkins

OWNER: James F. Wright

APN: 025-140-25 (4.25 acres)

Opt-Out: None

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from one (1) neighboring residence.

LOCATION: 526 Top of the Grade, Douglas City, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Douglas City
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Rural Residential, 5 acre minimum
- 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 (RR5)	Rural Residential
South:	Resource	Timber Production Zone	Resource
East:	Residential	Rural Residential (RR5)	Rural Residential
West:	Residential	Rural Residential (RR5)	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. The parcel is located on Top of the Grade, 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 property, 526 Top of the Grade, Douglas City, is 4.25 acres but confined by site topography. Based on a satellite and in-person review, the site appears confined by a 50 ft. setback from McIntyre Gulch a class III watercourse to the east of the current designated cultivation area and steep slopes to the south and east. This creates physical barriers and prevents the designated cultivation area from being relocated outside of the 350 residential setback.

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "Very limited area due to terrain. Moving cultivation area would not be logical and probably would not avoid a variance."

The adjacent impacted property owner of APN 015-140-26 has provided a letter of support in granting the variance.

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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 123 feet from the residence on APN 025-140-26, 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 and potential impact to a class III watercourse setback.
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
XONG VANG CANNABIS SETBACK VARIANCE (CCV-18-025)**

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.

April 4th, 2018

Trinity County Officials,

My neighbor, Xong Vang, wishes to cultivate cannabis on the property at 526 Top of the Grade. He is required to receive my permission before the appropriate permits can be supplied. As the owner of 532 Top of the Grade, I hereby state I have no objection to his cultivation.

A handwritten signature in cursive script, appearing to read "Adam Lee".

Adam Lee
651-329-6088

January, 6,2018

Trinity County Officials,

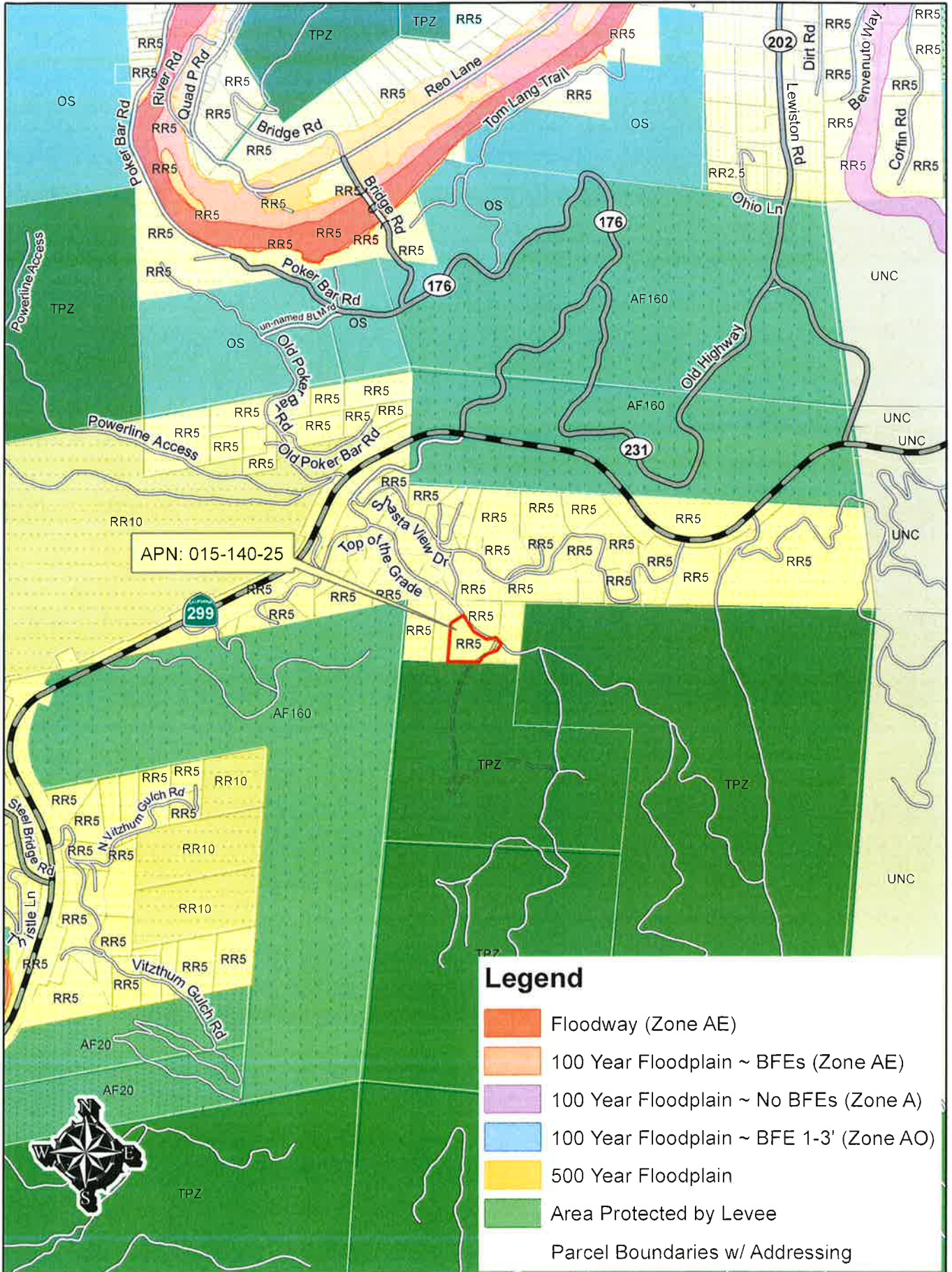
My neighbor, Xong Vang wishes to cultivate cannabis on the property at 526 Top of the Grade. He is required to receive my permission before the appropriate permits can be supplied. As the owner of 520 Top of the Grade, I hereby state I have no objection to his cultivation.



Philip Bandy
925-808-8138

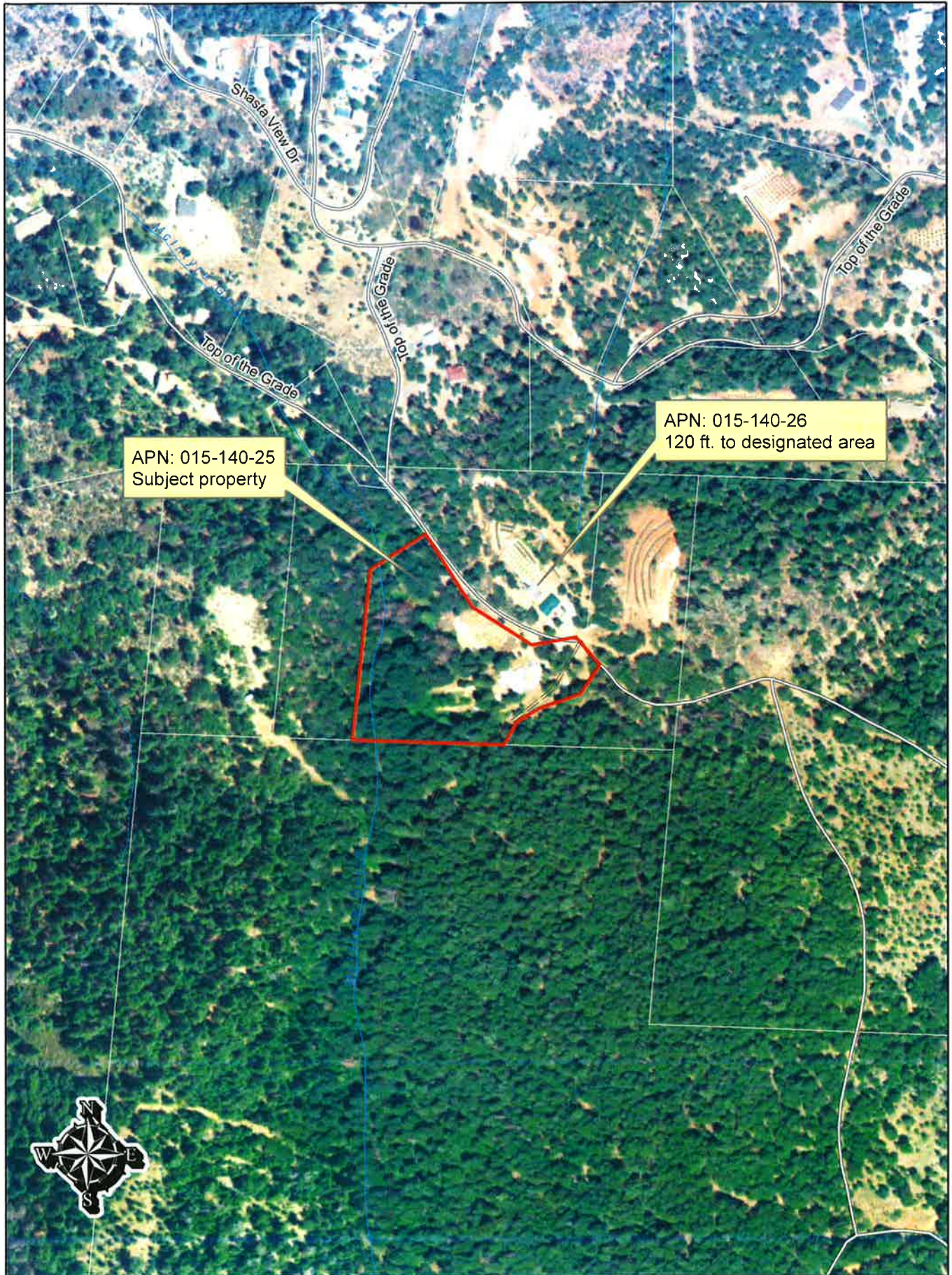
CCV-18-025 Xong Vang

Figure 1 - Project Location and Zoning



0 370740 1,480 2,220 2,960 Feet

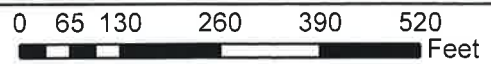
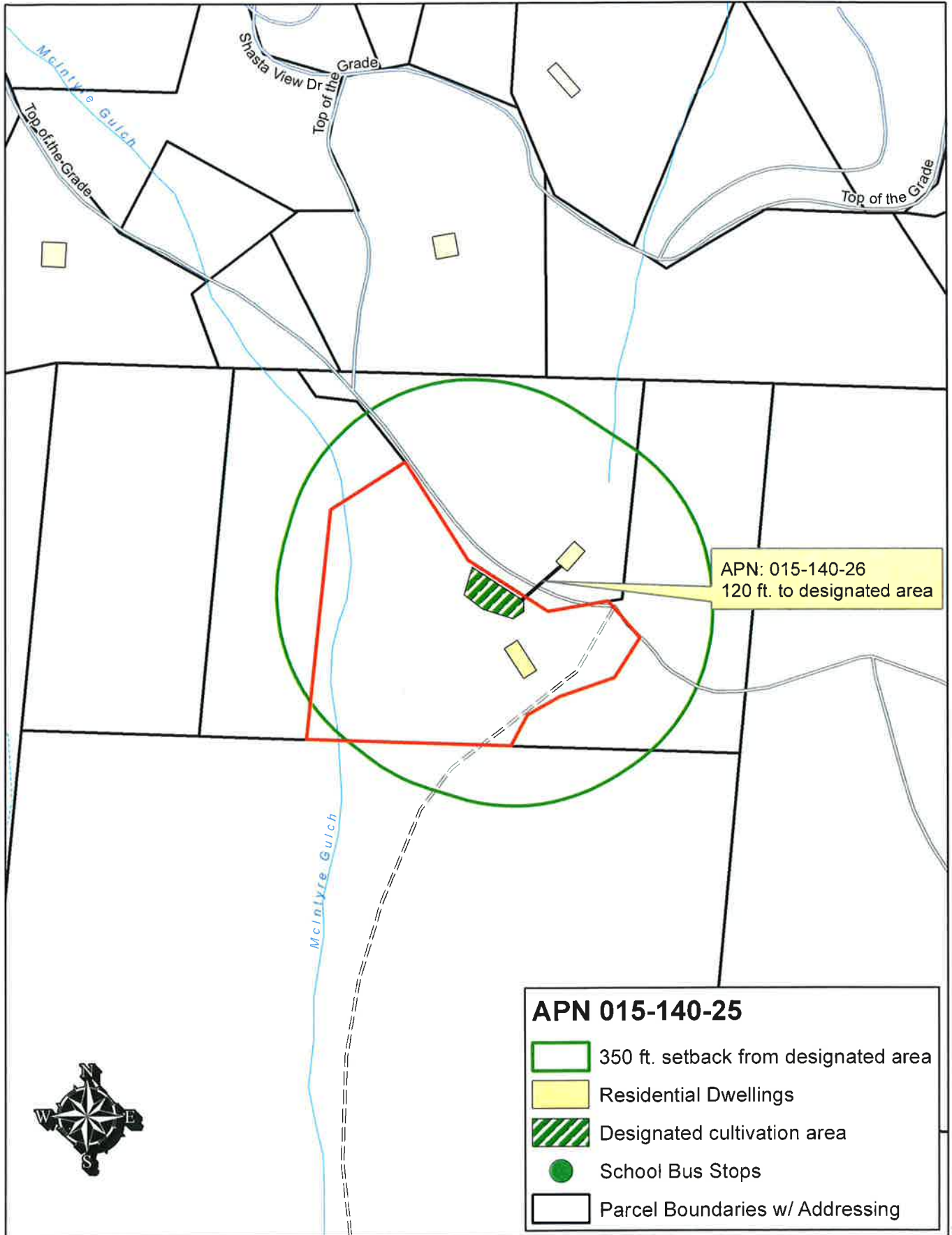
CCV-18-025 Xong Vang
Figure 2 - Site Map and Affected Neighbors



0 80 160 320 480 640 Feet

CCV-18-025 Xong Vang

Figure 3 - Buffer Map and Affected Dwelling





CCV-18-025 Xong Vang Figure 4 – Site Pictures



Picture 1: facing north-west towards Top of the Grade, designated cultivation area



Picture 2: facing west towards designated cultivation area



CCV-18-025 Xong Vang Figure 4 – Site Pictures



Picture 3: facing east towards designated cultivation area access road



Picture 4: facing south-east towards upper designated cultivation area