

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Dan McKay

REPORT BY: Colleen O'Sullivan

OWNER: Dan McKay

APN: 025-220-15

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from one neighboring residence (APN 025-220-11).

LOCATION: 57 Buckhorn Loop Road, Lewiston.

PROJECT INFORMATION:

- A) Planning Area: Lewiston
- B) Existing General Plan Designation: Resource
- 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:	vacant/residential	UNC/TPZ	Resource
South:	vacant/residential	Unclassified	Resource
East:	vacant	UNC/TPZ	Resource
West:	residential	Unclassified	Resource

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.
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.

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 has contracted the services of Down River Consulting to help him obtain the necessary permits and license to cultivate Cannabis on his property. The parcel is located on Buckhorn Loop Road, which runs parallel to and north of Highway 299, and is east of Fawn Lodge. The parcel is located in the Little Grass Valley Creek watershed, Decomposed granite (DG) permeates this general area and is heavily present on the subject parcel. Figures 1 and 2 show the general location of the parcel and affected dwelling. Figure 3 shows site development.

Field inspection revealed about a 800 foot rise in elevation from the south to the north ends of the parcel. The applicant is using existing pads as cultivation areas (adjacent to his residence and on another existing pad to the north – Figure 3), and has obtained a Decomposed Granite use permit from the county's Department of Transportation to mitigate potential impacts in DG soils. Photos of onsite DG are attached (Figure 4).

There is one residence that is within the 350 foot setback, as specified in the Cannabis Cultivation Ordinance. His letter of support is attached as Figure 5.

Jeff Dickey, Code Compliance Specialist, and Planning staff visited the project site on January 2nd and provided the following comments/observations: Relocating the

cultivation areas to the north in order to remove the one residence to the south from the 350 foot setback would entail substantial earthwork in DG soils, in steep terrain, and with an increased risk of adverse impacts to local infrastructure and water courses.

As of this writing, no other comments have been received.

ENVIRONMENTAL EVALUATION:

The project 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 200 feet from the residence on APN 025-220-11, 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 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. A letter of support was submitted from the affected property owner.
5. New earthwork in DG soils will substantially increase the risk of adverse impacts to surrounding water courses and infrastructure (roads, culverts, etc.). Using existing pads for cultivation sites reduce the likelihood of erosion in DG soils from earth-disturbing activities.

**CONDITIONS OF APPROVAL
MCKAY CANNABIS SETBACK VARIANCE (P-17-50)**

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 MAP
P-17-50 CC Variance Request - McKay

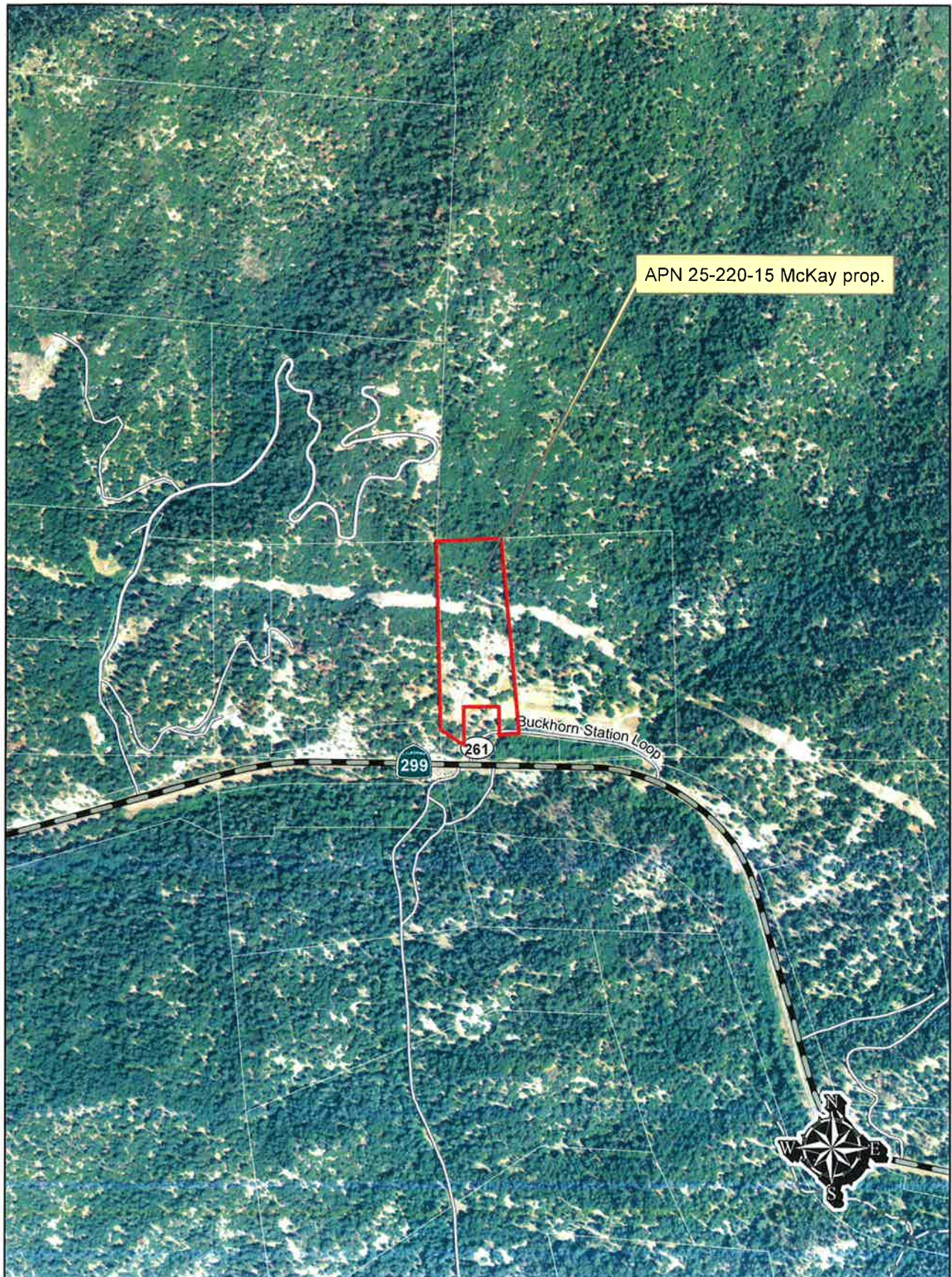


Figure 2 - PROJECT MAP AND AFFECTED DWELLING
P-17-50 CC Variance Request - McKay

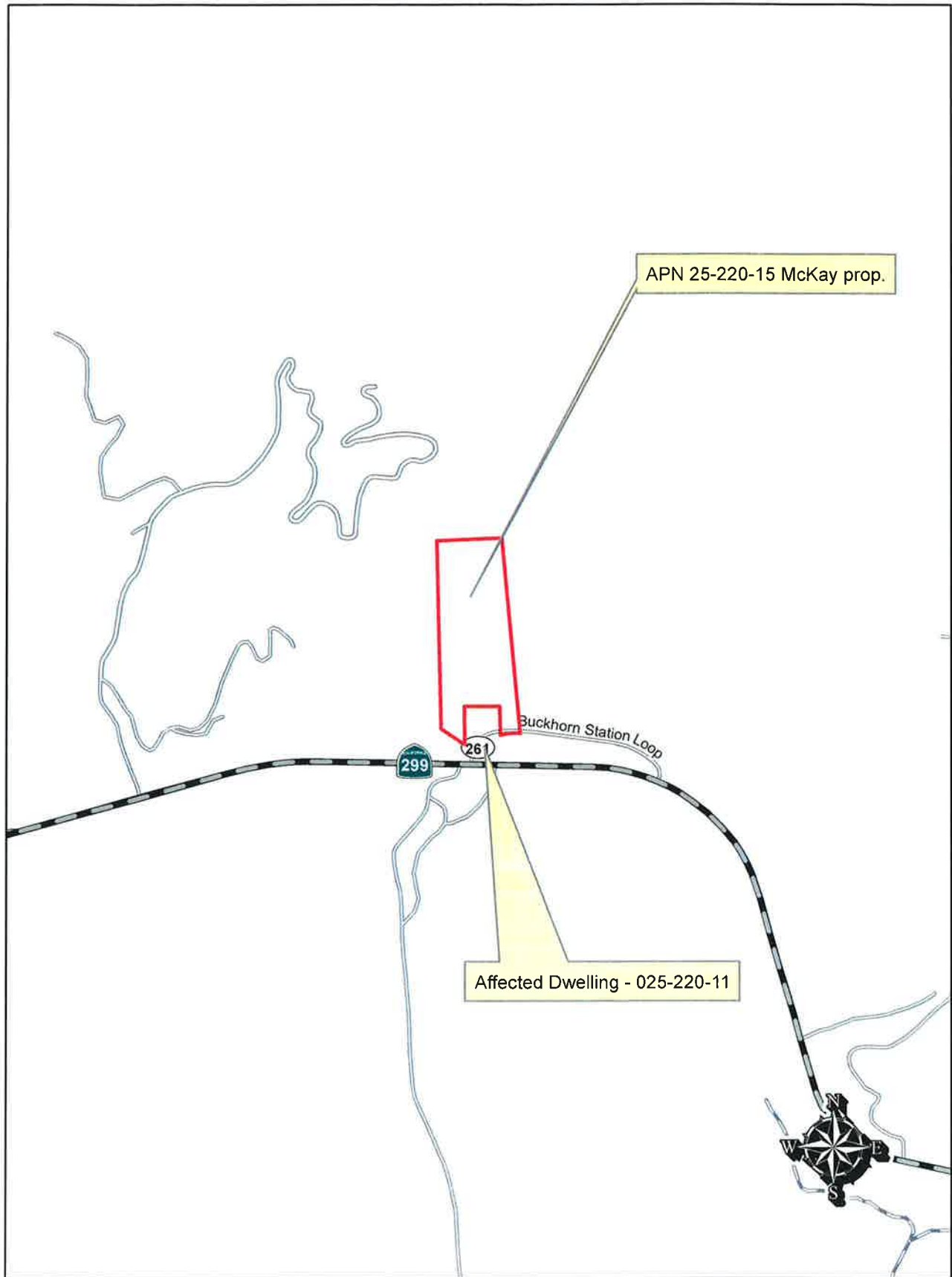


FIGURE 4: MCKAY VARIANCE PHOTOS



1. MCKAY PROPERTY LOOKING NORTHEAST



2. MCKAY PROPERTY WITH EVIDENCE OF DECOMPOSED GRANITE

FIGURE 3 - SITE PLAN



TRINITY COUNTY PLANNING DEPARTMENT

APPLICANT PREPARED SITE PLAN

Application No. _____

Drawn By: H. BAKER APN: 025-220-15-00

Date: 11/15/2017 Zoning: UNC

Scale: 1:1,600 Lot Area: 11 Acres

FIG. 5
LETTER OF SUPPORT

October 23, 2017

Trinity County Planning Department
61 Airport Road
PO Box 2819
Weaverville, CA 96093

Re: Variance for Commercial Cannabis Cultivation – McKay APN 025-220-15

Dear Sir or Madam:

I am writing in support of granting Dan McKay a variance for commercial cannabis cultivation. My home is located within 350' of his garden area, requiring him to obtain a variance before getting a cultivation license. I also am seeking a cannabis cultivation license and will need a variance.

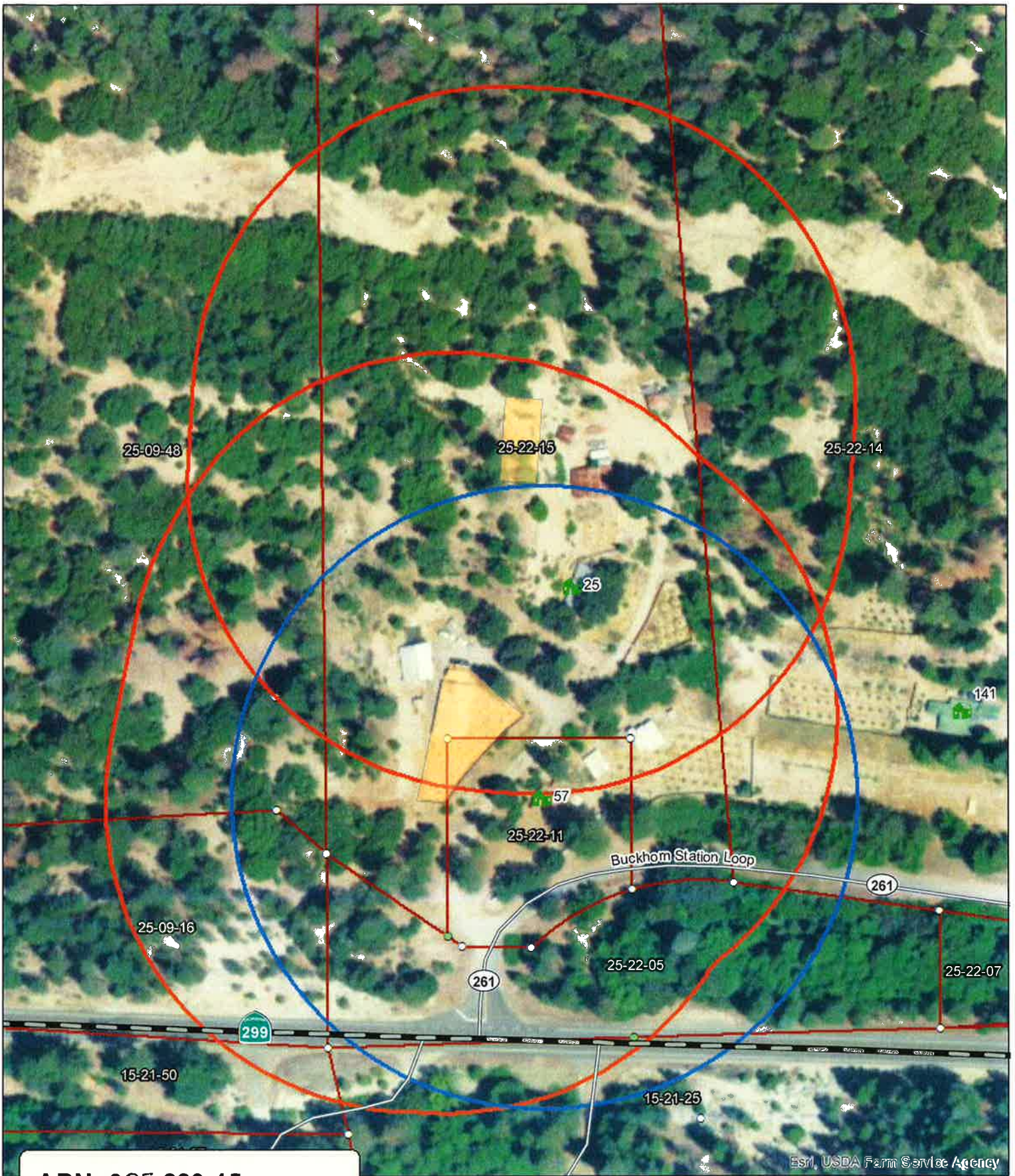
Dan is a good, conscientious neighbor and farmer. Please grant his request for a variance.

Sincerely,

Joda Henry



11/14/17

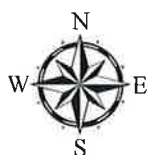


APN: 025-220-15

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

FIG. 6

P-17-50 MCKAY



0 25 50 100 Meters

0 95 190 380 Feet

