

ITEM NO. 14

MEETING DATE 05/24/2018

APPLICATION NO. CCV-18-030

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Lor Chang

REPORT BY: Scott Watkins

OWNER: Lor Chang

APN: 019-340-08 (1.5 acres)

Opt-Out: None

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from three (3) neighboring residences.

LOCATION: 680 Bear Rock Road, Post Mountain, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Post Mountain
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Unclassified
- D) Existing Land Use: 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:	Cannabis Cultivation	Unclassified	Rural Residential
East:	Cannabis Cultivation	Unclassified	Rural Residential
West:	Cannabis Cultivation	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 in the process of obtaining a Commercial Cannabis License under the county licensing program. The parcel is located on Bear Rock Road, 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, 680 Bear Rock Road, Post Mountain, is 1.5 acres but is limited in the commercial Cannabis cultivation site can be located because the property is covered by the 350 ft. residential dwelling setbacks from APN: 019-340-10 to the south and APN: 019-360-55 to the west.

The applicant may be able to adjust their cultivation area by removing a section of their cultivation area to the north, outside the 350 ft. setback from APN: 019-340-02, which does not appear to be currently cultivating. This relocation of cultivation area could shift the impact towards APN:019-340-10 the neighbor to the south who does appear to be cultivating, though is not currently enrolled in Trinity County's Cannabis program.

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "There is no way to relocate cultivation area without needing a variance."

The adjacent impacted properties have provided letters of support for the granting of these variances, see attached letters of support.

The neighbor to the north, APN: 019-340-02, has provided a letter of concern.

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:

Approve of the variance to allow reduction of the Cannabis cultivation setback;

- from 350 feet to 330 feet from the residence on APN 019-340-02,
- from 350 feet to 200 feet from the residence on APN 019-340-10,
- from 350 feet to 250 feet from the residence on APN 019-340-55,

subject to the following conditions of approval and based on the following findings of fact:

Findings of Fact for the Variance

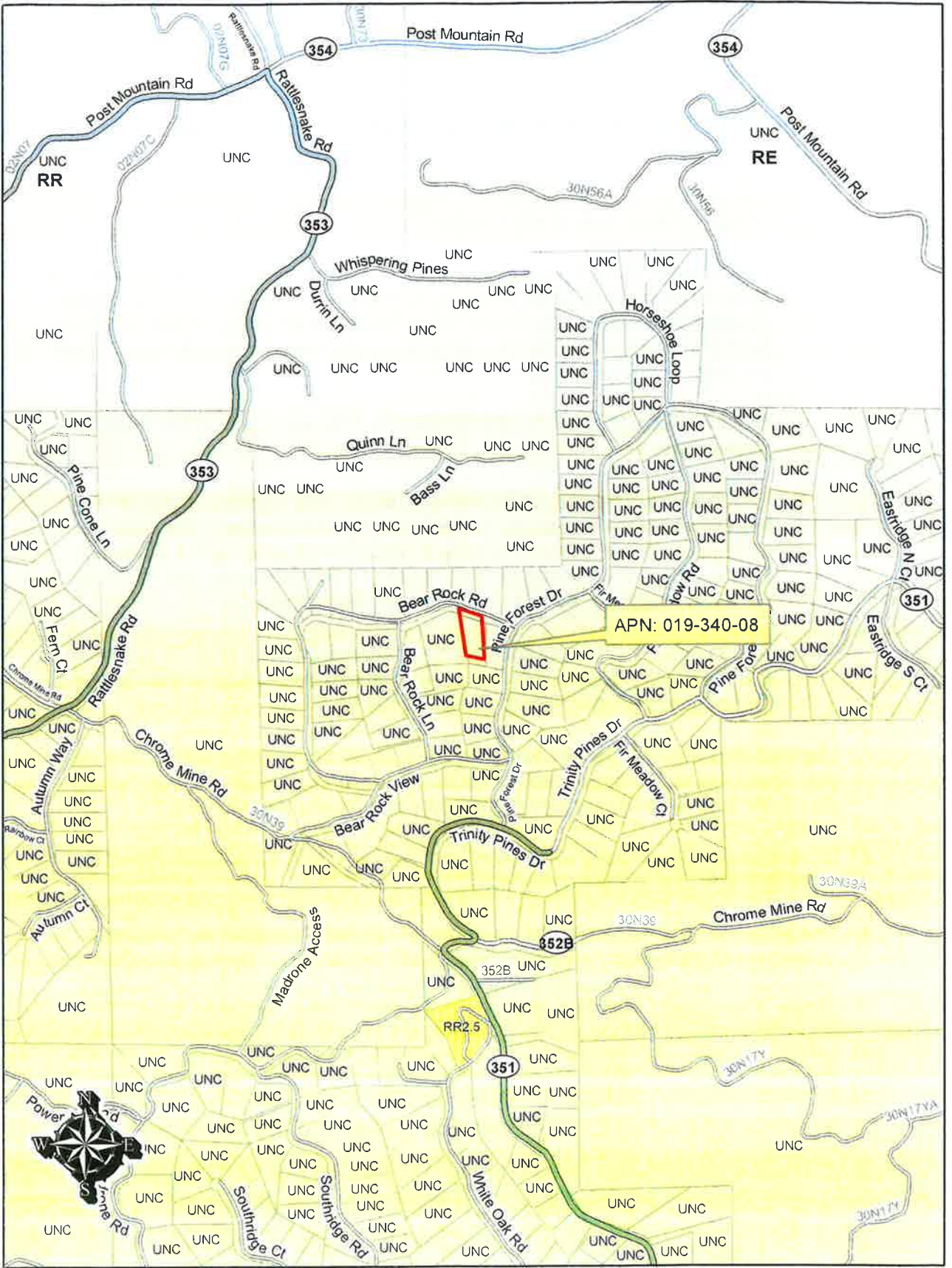
1. There are special circumstances applicable to the property that, with strict application of the zoning ordinance, deprives it of privileges available to other properties with similar zoning in the vicinity that plan to establish Type II, Cannabis cultivation, up to 10,000 square feet of canopy.
2. 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.
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
LOR CHANG CANNABIS SETBACK VARIANCE (CCV-18-030)**

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.

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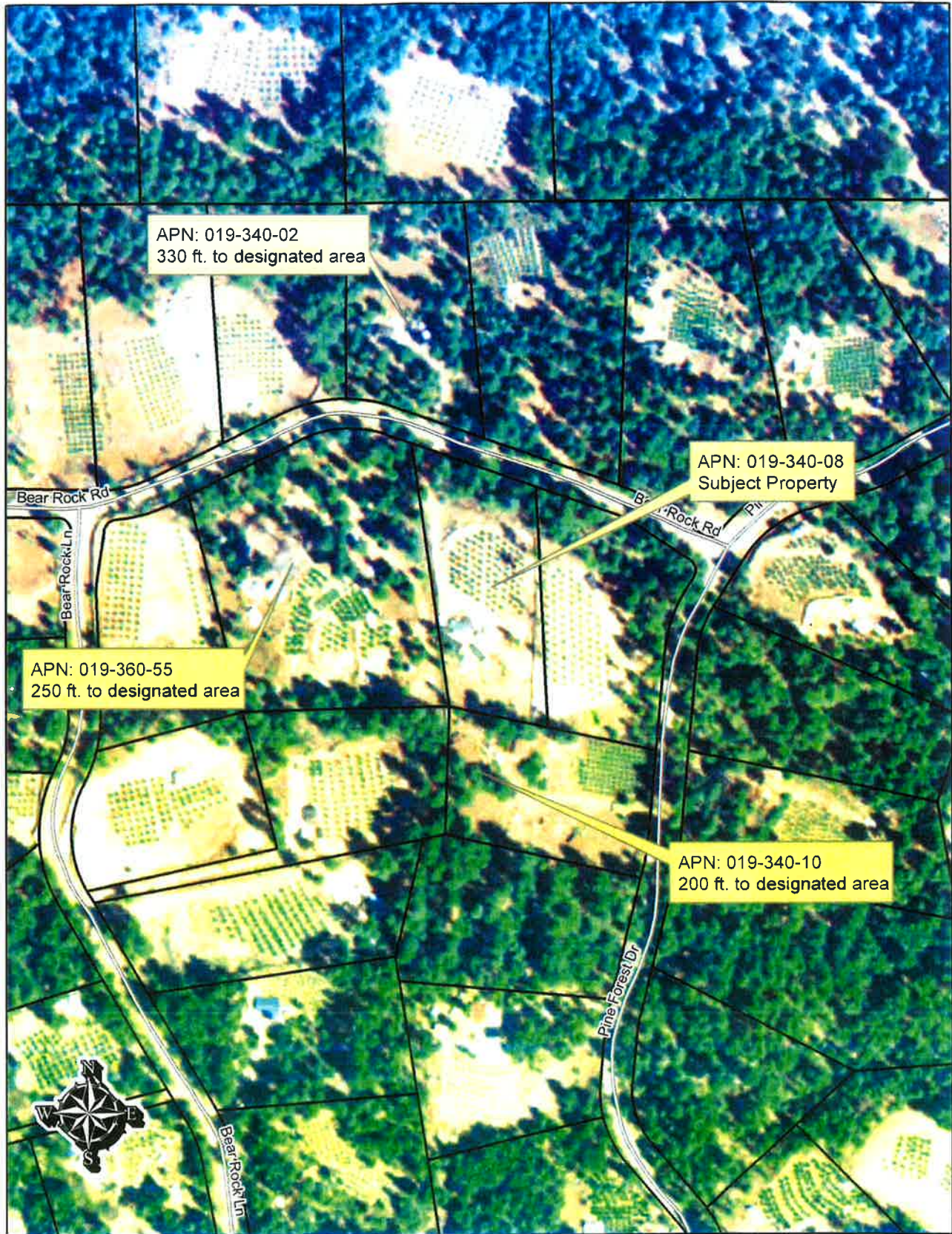
Figure 1 - Project Location and Zoning



0 280 560 1,120 1,680 2,240 Feet

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Figure 2 - Site Map and Affected Neighbors



APN: 019-340-02
330 ft. to designated area

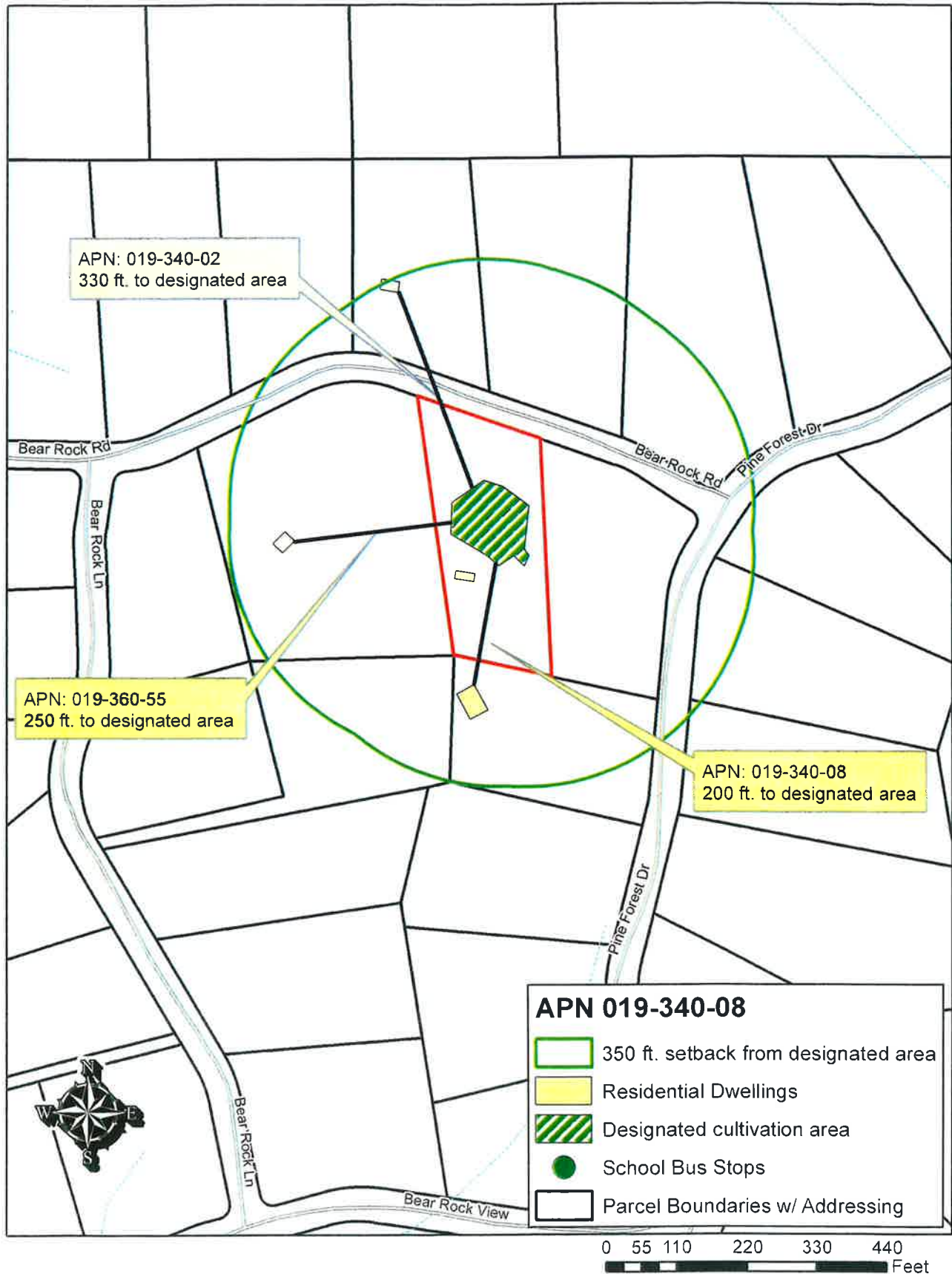
APN: 019-340-08
Subject Property

APN: 019-360-55
250 ft. to designated area

APN: 019-340-10
200 ft. to designated area



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Figure 3 - Buffer Map and Affected Dwelling



-----Original Message-----

From: Philip J Kearney <pjkearney@fastmail.fm>

Sent: Thursday, May 17, 2018 11:56 AM

To: Leslie Hubbard <lhubbard@trinitycounty.org>; Ruth Hanover <ruhanover@trinitycounty.org>

Cc: John Fenley <jfenley@trinitycounty.org>

Subject: Comment on variance : Chang(CCV-18-30)

To: Dr. Richard Kuhns, CAO: Leslie Hubbard, Interim Planning Director:

I am in receipt of your Notice of Public Hearing regarding a request for "annual variance from required 350' cannabis cultivation setback for a nearby neighbor, Mr Lor Chang, APN 019-340-08. I did not receive your notice in the mail until late afternoon of May 16, and I wish to reply in this regard. I have a residence across the road from Mr Chang at 671 Bear Rock Road, Post Mountain. I had an opportunity to discuss this matter with Supervisor Fenley on Saturday, May 12, and he advised me to contact you.

Mr. Chang is a good neighbor, and we have spoken together a few times . On Friday, May 11, I found his variance request published in the Trinity Journal. I posted a request for a meeting with him in this regard on his driveway gate, and also invited his son, Paul, with whom he is in partnership at the cannabis grow site. I included a copy of a Google Earth map showing his grow site. However, Mr Chang was out-of-town for the weekend and we did not meet until Monday, May 14. I had found on Google Earth that the Chang grow site has TEN CANNABIS PLANTS within 350 feet of my residence and about another 90 plants beyond that distance. I saw Mr. Chang when he returned , and he had to park his vehicle and would be right back. However, Mr. Chang then had a visit from a county representative, so he was diverted to that matter while I explained my concern with Paul. Paul seemed to agree with me, but deferred to his father. After the county photographer departed, I explained to Mr. Chang my concern, and requested that it may be advantageous to both of us that he move those 10 plants to another location. Mr. Chang replied that his parcel is small, and there is no place on his parcel to which he can move those plants. My reply was that I would prefer that they were moved, but the matter is to be decided by the Planning Commission.

When I purchased this parcel, I did so because it was my understanding that this area was classified as Rural Residential. I began to develop the parcel as a home-site, with all necessary permits. My house building was completed in December 2006, when I received a Certificate of Occupancy from the county. House painting and other small items were completed in late spring 2007, and the building inspection was signed-off. At that time, I had not considered that this area would become commercial cannabis agricultural. That is my issue with this situation; I am now surrounded with cannabis sites, and the growers are not willing to comply with my requests regarding their operations, which affects my property value and my hope that I can live in a peaceful forested area.

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Philip J Kearney

PO Box 1222, Hayfork, CA 96041

(530)628-5270

pjkearney@fastmail.fm



CCV-18-030 Lor Chang Figure 4 – Site Pictures



Picture 1: facing south-east toward subject property from Bear Rock road, natural tree screening



Picture 2: facing south near subject property driveway, non-compliant plastic screening to be removed



CCV-18-030 Lor Chang Figure 4 – Site Pictures



Picture 3: facing north showing designated cultivation area



Picture 4: facing north-west showing designated cultivation area