

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Pai Xiong

REPORT BY: Colleen O'Sullivan

OWNER: Pai Xiong

APN: 014-200-32

PROJECT DESCRIPTION:

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

LOCATION: 1438 Morgan Hill Road, Hayfork, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Rural Residential, 1 acre minimum (RR-1)
- 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	RR-1/MHP	Rural Residential
South:	residential	RR-1	Rural Residential
East:	residential	RR-1	Rural Residential
West:	residential	RR-1	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 and to become compliant with both State and county standards. The parcel is located on Morgan Hill Road, which heads east from Highway 3 in south Hayfork. Morgan Hill Road is a county-maintained road. The site plan prepared by the consultant (Figure 3) identifies on-site development and its relationship (two cultivation sites) to several residences, which lie in all directions. The outdoor cultivation site at the south end of the property is seasonal due to a FEMA flood zone (Figure 2).

Jeff Dickey, Code Compliance Specialist, stated that "[T]here is no possible solution to avoid the necessity for a variance from several neighboring dwellings". The consultant has indicated to staff that distances to nearby dwellings/structures are approximate. Staff is unable to determine how many residences encroach into the 350 foot radius of the two cultivation sites.

As of this writing, one letter of support has been received (attached).

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:

Denial of the variance to allow reduction of the Cannabis cultivation setback from 350 feet to various distances for up to 12 structures, subject to the following conditions of denial and based on the following findings of fact:

Findings of Fact for Denial of the Variance:

According to County Code 8.60.100, applications for variance shall contain evidence showing that:

1. The granting of the variance will not be contrary to the intent of this chapter or to the public health, safety and welfare; and
2. In light of the variance request including variances from at least nine neighboring dwellings, staff does not consider the applicant's request to meet the intent of Ordinance 315-823 to avoid Cannabis cultivation in high density neighborhoods.
3. Pursuant to Ordinance 315-823, the applicant has the right to appeal to the Planning Commission regarding staff's decision:
 - (a) Applicant shall have the right to appeal any denials to the Planning Director. Any person dissatisfied with a decision of the Planning Director may appeal therefrom to the Planning Commission at any time within ten (10) working days after notice of the decision is given. Such appeal is taken by filing a notice of appeal with the Planning Director and paying the required appeal fee. Upon filing of a notice of appeal, the Planning Director shall within ten (10) days transmit to the Secretary of the Planning Commission all papers and documents on file with the Planning Director relating to the appeal and schedule the appeal for the Commission hearing.

Figure 1
CCV-2018-002- PROJECT LOCATION & ZONING MAP
Pai Xiong (LGM)

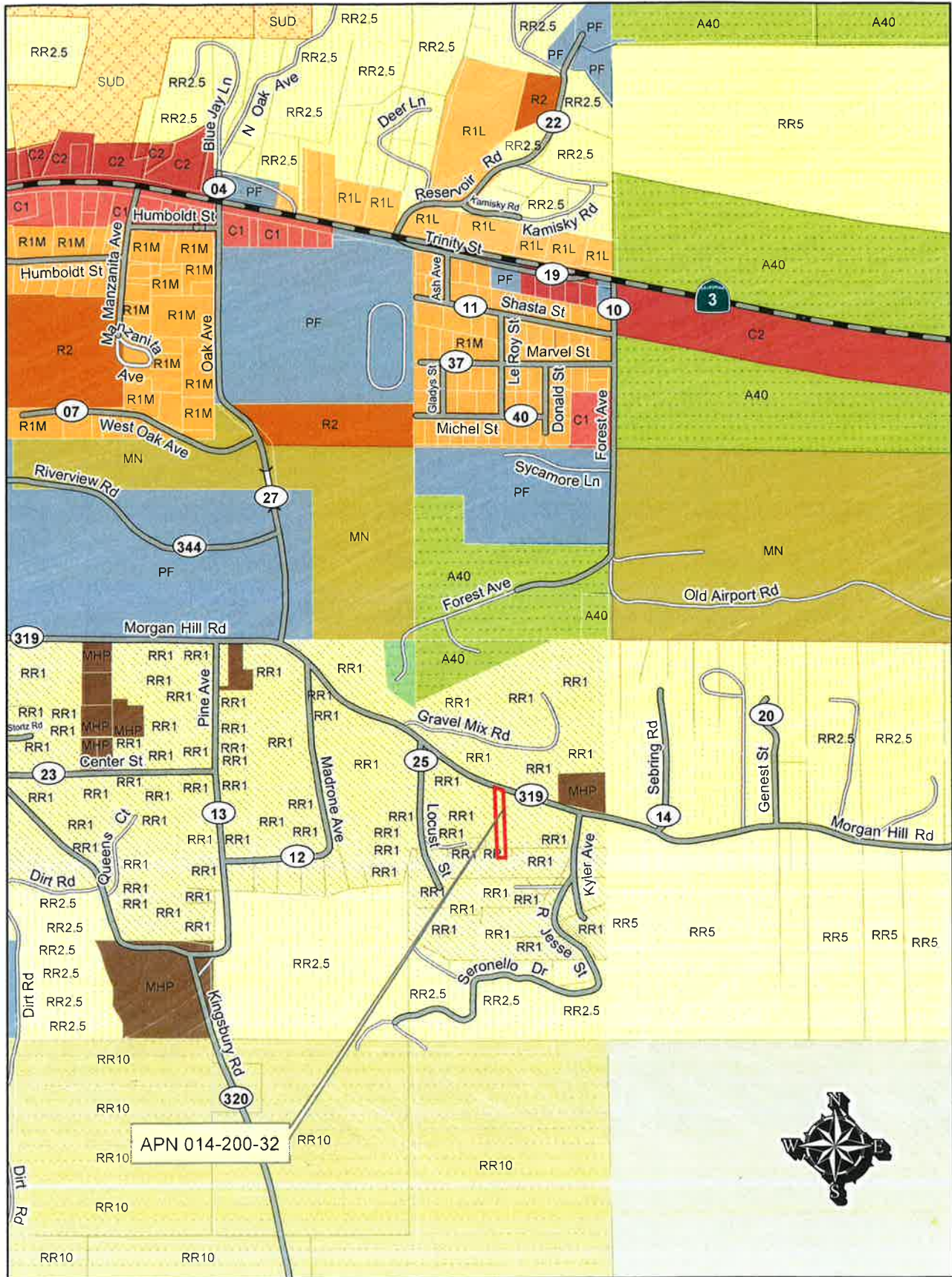


Figure 2
CCV-2018-002- PROJECT LOCATION & FLOODPLAIN MAP
Pai Xiong (LGM)

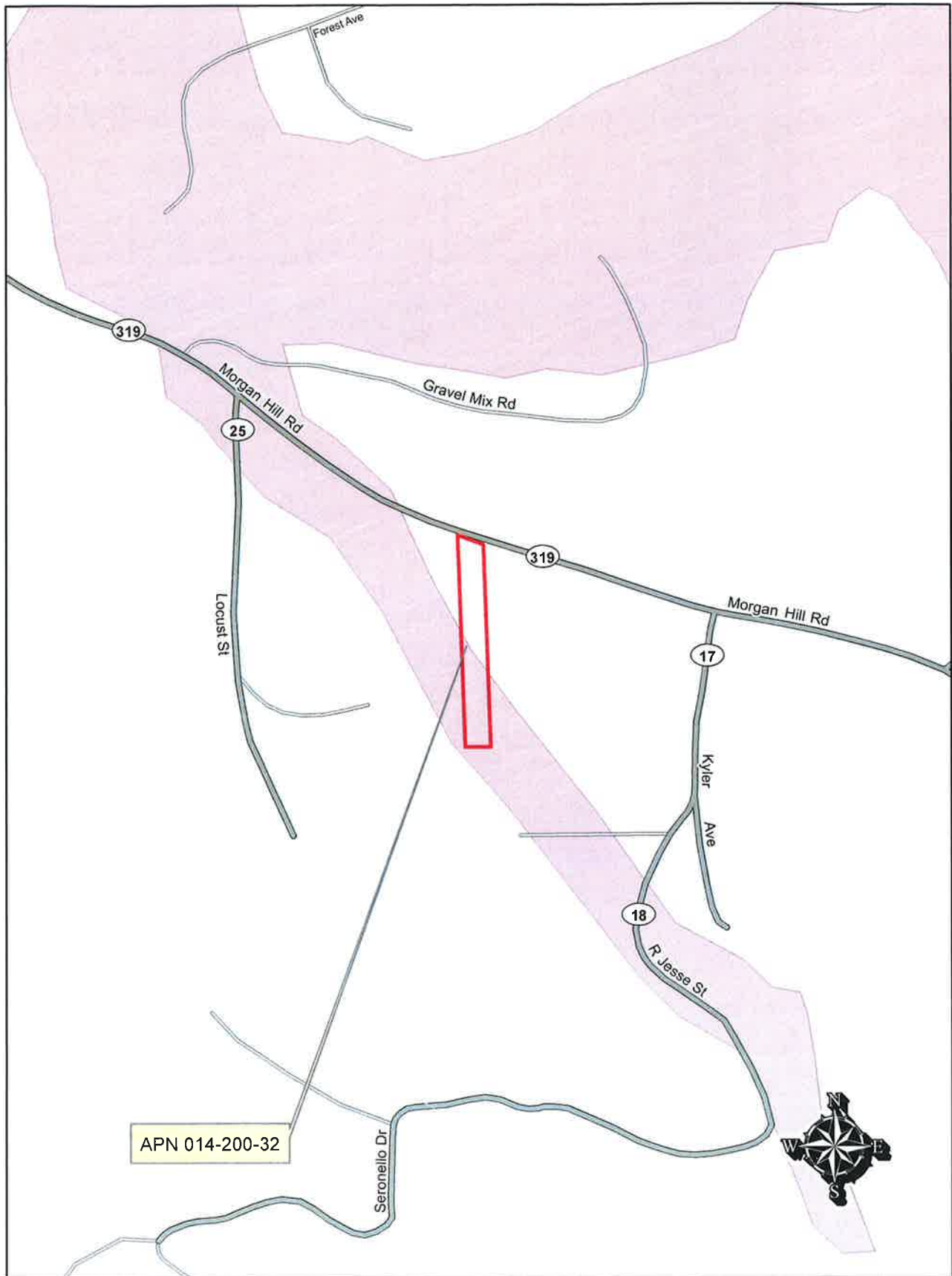


FIGURE 3

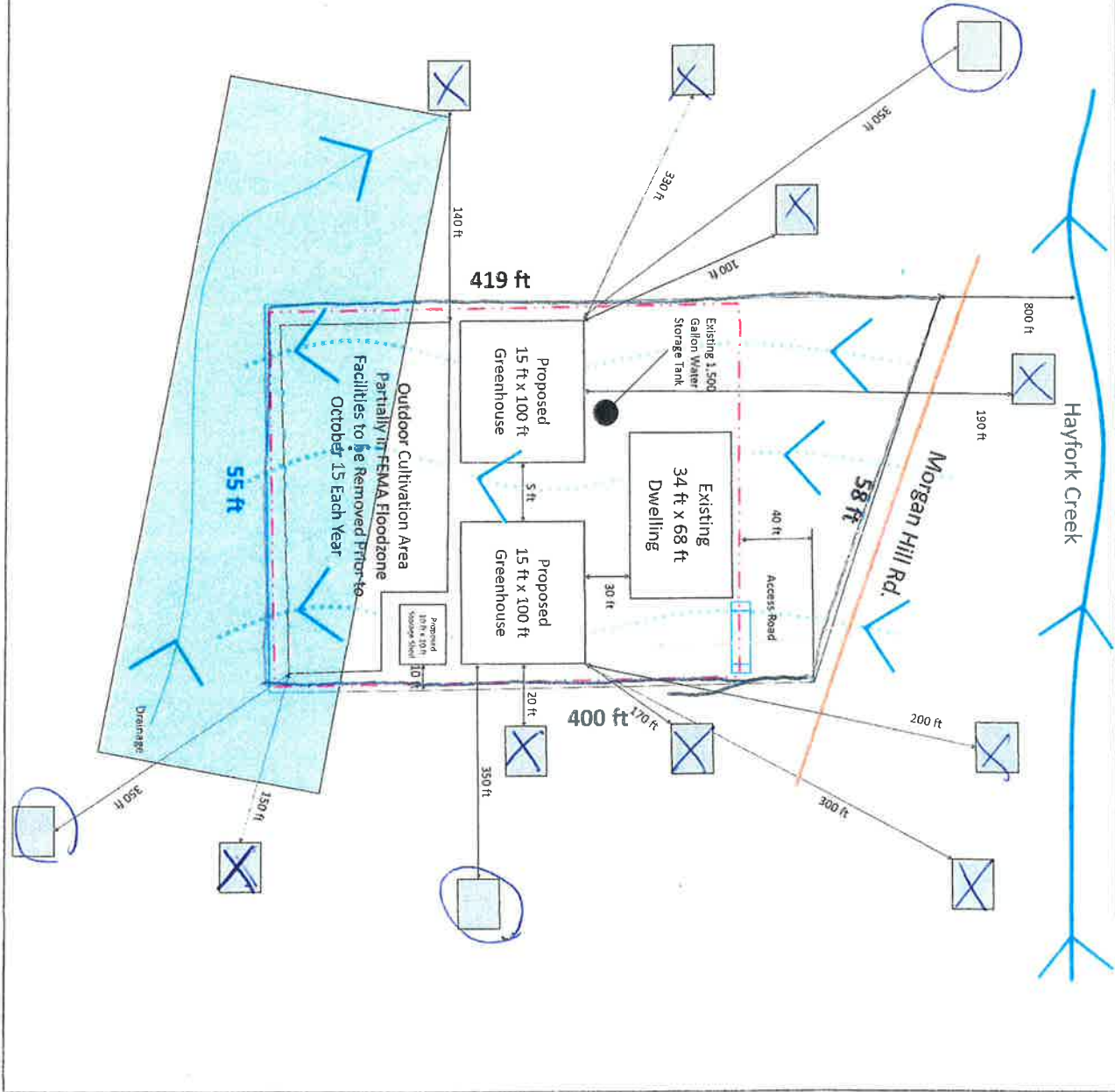
FIGURE 3 SITE PLAN AND AFFECTED RESIDENCES



Legend

- Locked Gate
- Percolation Test Location
- Animal Fencing
- Pre-Development Surface flow Regime
- FEMA 2015 Flood Zone
- Neighboring Dwelling

Owner Name: Dang Xiong
 Prepared by Laythen Martines
 APN: 014-200-32-00
 Property Size: 0.52 Acres
 Not Affected By FEMA Floodzone
 Zoning District: Rural Residential 1 Acre Min (RR1)
 General Plan Designation: Rural Residential
 No Wetland Areas/Water Diversion/Natural Waterways
 Not to Scale
 No Youth Oriented Facility within 1000 ft
 No school bus stop within 500 ft
 No Graded Flats
 All Measurements Taken from Trinity County Parcel Viewer Website and Google Earth
 No Easements
 No Slopes Greater than 4:1 near growing area
 Total Cultivation Area = 8,400 sq ft (35 ft x 240 ft)



<p>(707) 298-8105 7261 Highway 3 Hayfork, CA 96041</p>	<p>Dang Xiong Commercial Cannabis Application 1438 Morgan Hill Hayfork, CA 96041</p>	<p>DRAWN: MJ</p>	<p>PROJECT #: 583</p>
	<p>Site Map</p>	<p>DATE: 3/2/2017</p>	<p>FIGURE: Figure 1</p>

Dang/Pai Xiong

RECEIVED

January 29, 2018

JAN 31 2018

TRINITY COUNTY
PLANNING DEPARTMENT

To Whom it may concern

I, MARK TREANOR Live at 1410 MORGAN
Hill Rd. HAYFORK CA 96041

I understand that my neighbor Pai Xiong
who Live at 1438 Morgan hill Rd is trying
To obtain her commercial License to grow
on her Property and I am ok with this.

Thank you.

