

<p><b>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</b></p>
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**APPLICANT:** Matthew Wyatt

**REPORT BY:** Scott Watkins

**OWNER:** Layne Smith

**APN:** 015-430-12

**PROJECT DESCRIPTION:**

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

**LOCATION:** 921 B Bar K Rd. Douglas City, CA (Figure 1)

**PROJECT INFORMATION:**

- A) Planning Area: Douglas City
- B) Existing General Plan Designation: Agriculture (A)
- C) Existing Zoning: Agriculture 10, 10 acre minimum (A-20)
- D) Existing Land Use: residence, commercial cannabis cultivation
- E) Adjacent Land Use Information:

	<b><u>Land Use</u></b>	<b><u>Zoning</u></b>	<b><u>General Plan Des.</u></b>
North:	Resource	AF-80	Agriculture Forrest
South:	Agriculture	A-10	Agriculture
East:	Agriculture	A-10	Agriculture
West:	Agriculture	A-10	Agriculture

**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 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 B Bar K Rd., which heads north east off CA-3 outside Douglas City. B Bar K Road is a county-maintained road. The site plan prepared by staff (Figure 2) identifies on-site development and its relationship to the residence (APN 015-430-13), which lies west of the subject parcel.

The subject property, 921 B Bar K Rd. Douglas City, is 22.97 acres but confined by steep slopes to the North East, on the other side of B Bar K Road, and Browns Creek to the South West. Based on a satellite review, the site could be relocated to two alternative locations on the property but after a site visit, staff identified physical barriers with each alternative location.

The current Cannabis Cultivation area is located within the Browns Creek 150' buffer. The applicant, with the approval of this variance, has stated that his current plan is to relocate the area of the current cultivation site that is within the buffer, away from the neighboring property to the South, towards the middle of his property North of the current site. This relocation plan is consistent with Code Compliance Specialist, Jeff Dickey's recommendations. Existing permitted structures prevent the current cultivation

site from shifting the entire cultivation site outside of the 350' buffer from the neighbor to the South.

The first alternative location is adjacent to the current location along B Bar-K Rd. This location consists of an area that is confined by the Browns Creek watershed. Unfortunately, the available land that would be suited for Cannabis Cultivation is sandwiched within the 150' class 1 watershed buffer and a 30' buffer from the property line. The remaining land is confined by a natural gulley, with a steep drop-off, and is not viable for Commercial Cannabis Cultivation.

The second alternative location is North East of the current Cannabis Cultivation site on the side of the hill, across the street from the current location, up a steep slope in a wooded area. A naturally clear and flat area exists but will need a road cut into the hill creating additional grading and environmental impact due to site topography.

If the applicant pursues this alternative, a 3-acre conversion permit issued by the CalFire before the site is viable for Cannabis Cultivation. The applicant has expressed interest in relocating the cultivation site to this alternative location. The applicant's future plan, over the next year or two, includes relocating his Commercial Cannabis Cultivation area to this alternative location.

The applicant is working with the county Commercial Cannabis License program to become compliant with both State and county standards.

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "Due to the size of the parcel, cultivation area could possibly be relocated. This would also reduce possible impact to the creek."

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 120 feet from the residence on APN 015-430-13, 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. Applicant has agreed to reconfigure his cultivation area outside of the FEMA flood zone.
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  
WYATT CANNABIS SETBACK VARIANCE (CCV-18-009)**

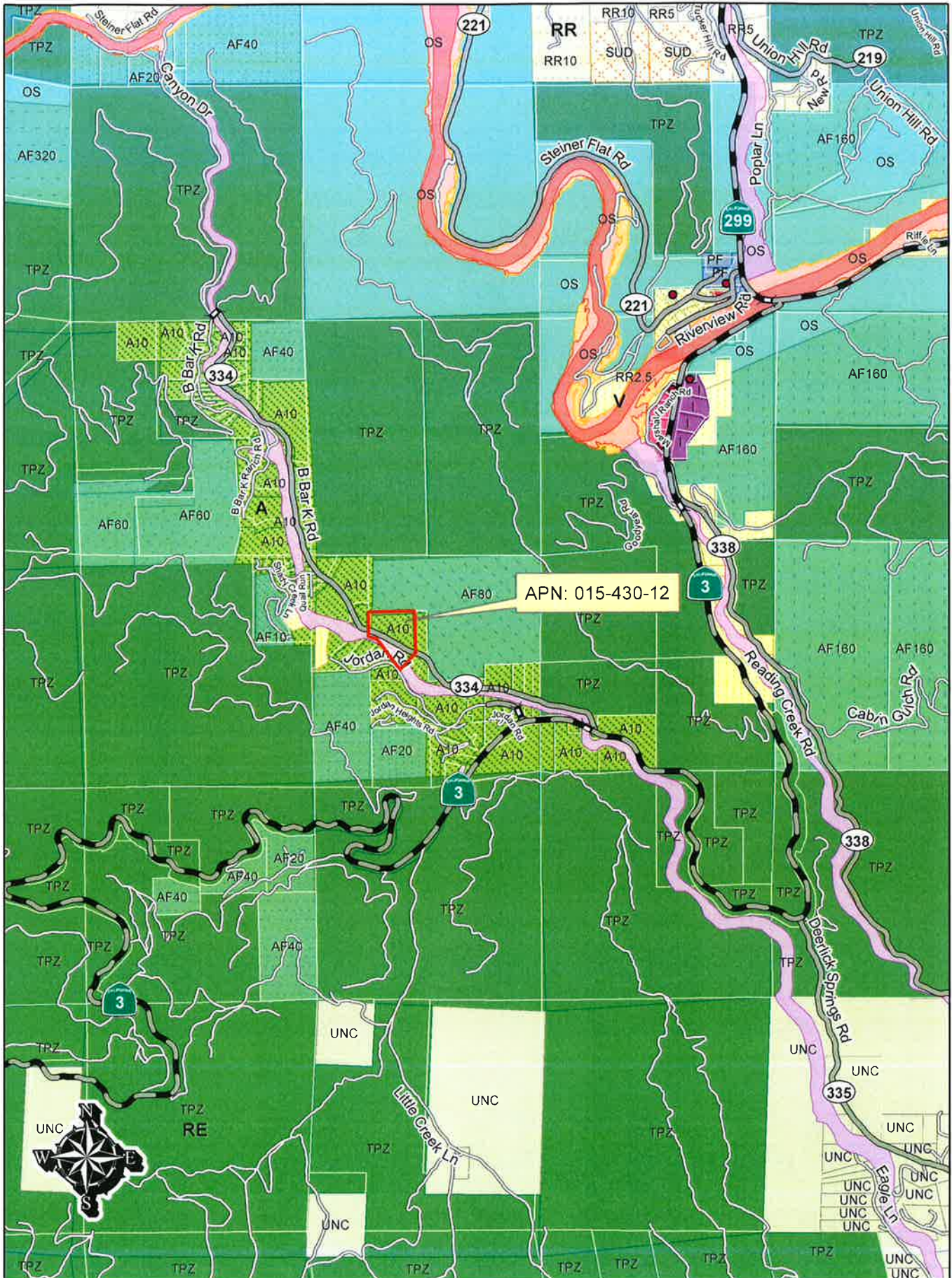
1. The variance is approved for a period of one year from **April 27, 2018** through **March 31, 2019**; provided, however, that the variance may be renewed annually.
  - a. Application for renewal shall be made by the applicant prior to expiration of the variance, preferably at least 30 days in advance;
  - 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.



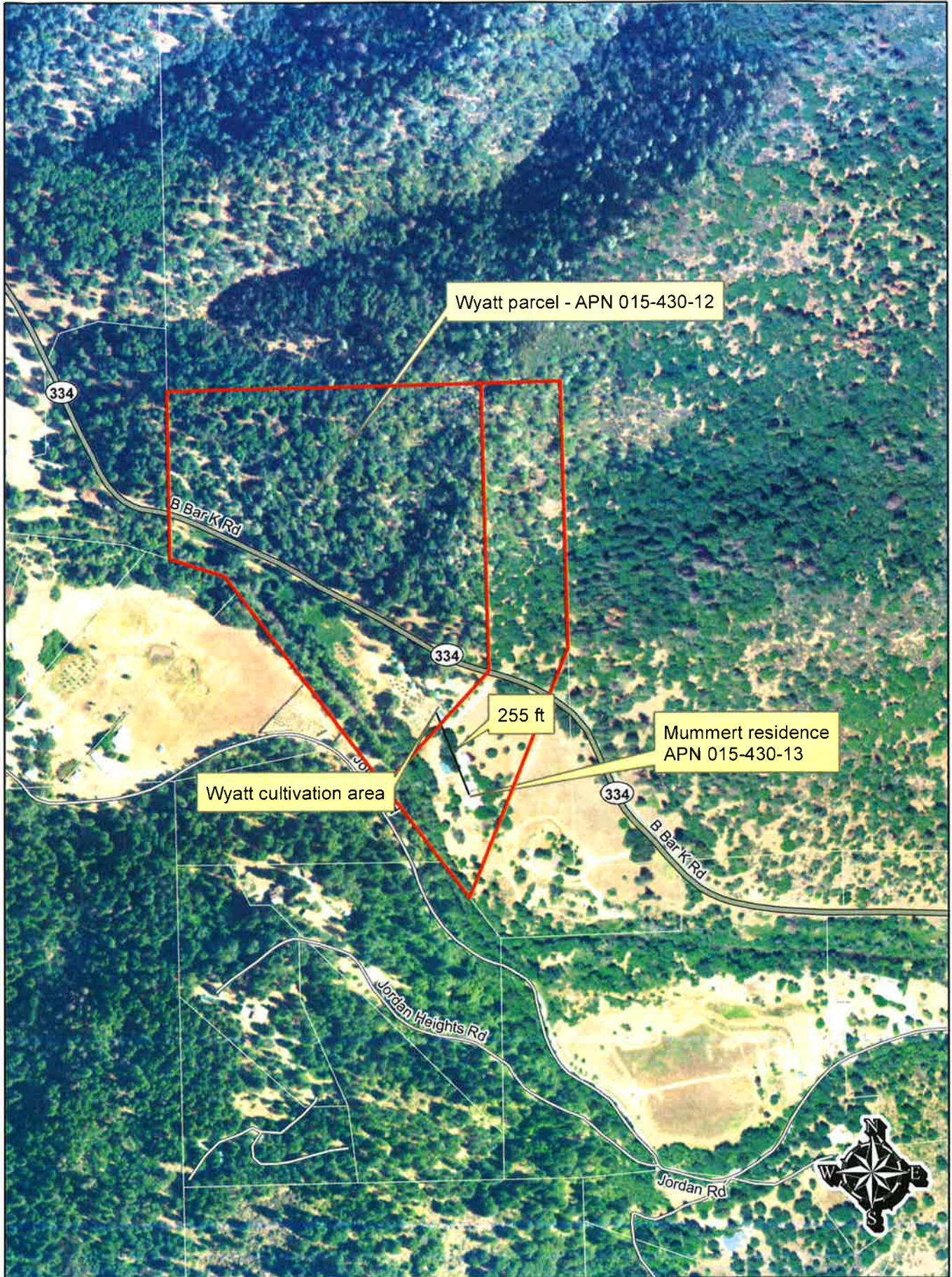
# CCV-18-009 Wyatt CCL Variance Request

## Figure 1 - Project Location and Zoning Map



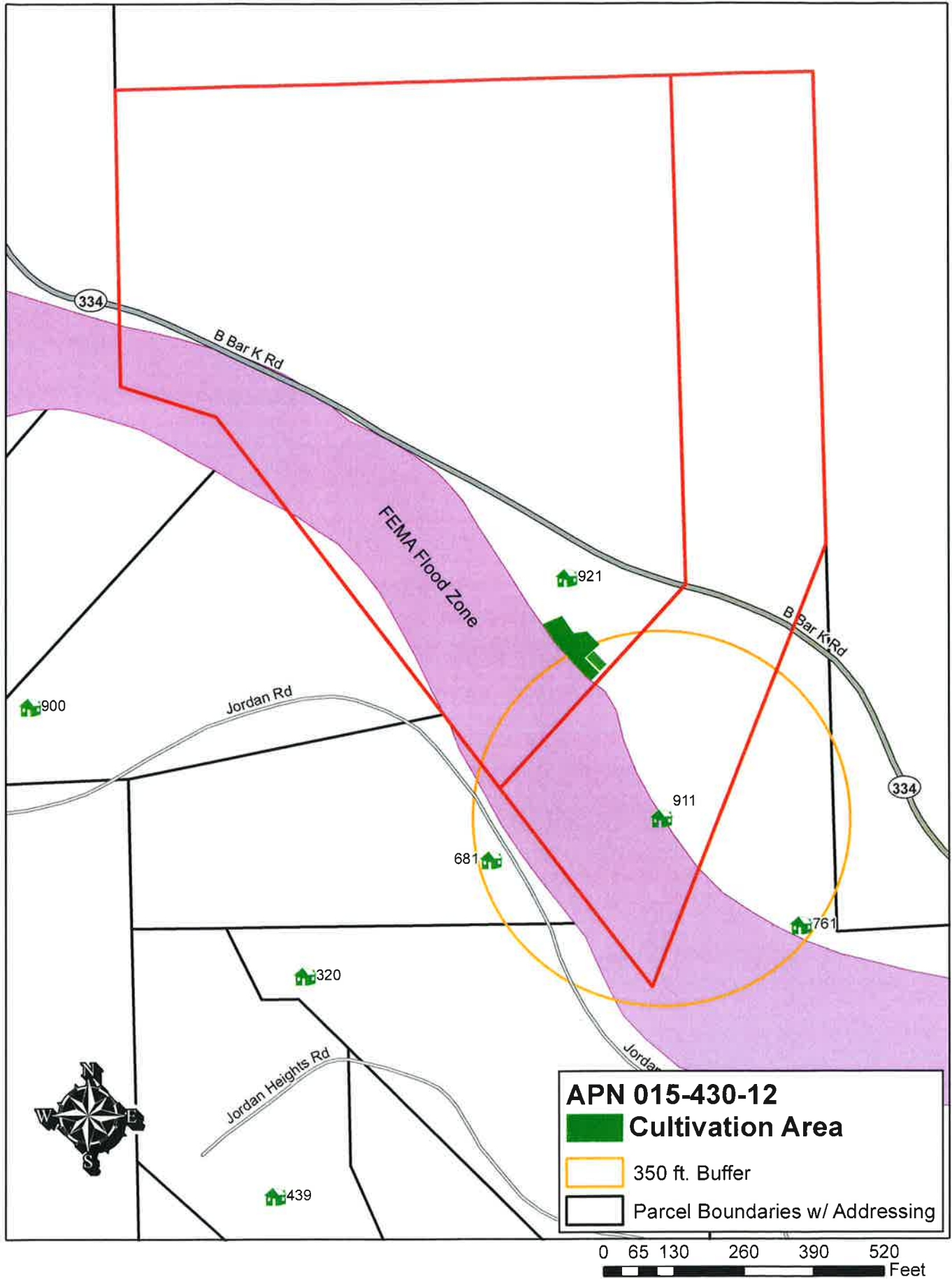


**CCV-18-009 Wyatt (CCL-217-253)**  
**Figure 2 - Site Map and affected dwelling**





**CCV-18-009 Wyatt (CCL-2018-253)**  
**Figure 3 - Buffer Map and Affected Dwelling**



CCV-18-009 Wyatt CCL Variance Request  
Figure 3 – FEMA Flood zone & Relocated Cultivation Area



Cartographer: Scott Watkins, Trinity County Planning Department