



**ZONING ADMINISTRATOR
USE PERMIT – MINOR USE PERMIT**

**JULY 12, 2018
U_2017-0039**

SUMMARY

OWNER: KYLE & LIA KOHLER
PO BOX 134
FORT BRAGG, CA 95431

APPLICANT: LIA KOHLER
PO BOX 134
FORT BRAGG, CA 95431

REQUEST: A Use Permit for a Type C-A Cottage-Size Indoor Cultivation Permit (AG_2017-0248) for cannabis cultivation of no more than 2,500 square feet of canopy within two structures per Mendocino County Code Section 20.242.040 (C)(1)(c).

LOCATION: 1.8± miles from Fort Bragg city center, lying on the east side of State Highway 1, 1± miles east of its intersection with Pudding Creek Road (CR 421), located at 21401 South Petaluma Avenue, Fort Bragg (APN: 020-050-29).

TOTAL ACREAGE: 5± acres

GENERAL PLAN: Rural Residential, 5 acre minimum parcel size (RR-5)

ZONING: Rural Residential, 5 acre minimum parcel size (RR-5)

SUPERVISORIAL DISTRICT: 4

ENVIRONMENTAL DETERMINATION: Categorically Exempt – Section 15301, Class 1 (Existing Facilities), Section 15303, Class 3 (New Construction or Conversion of Small Structures)

RECOMMENDATION: Approve with Conditions

STAFF PLANNER: Jesse Davis

BACKGROUND

PROJECT DESCRIPTION: A Minor Use Permit request for a cottage-sized indoor (Type C-A; AG_2017-0248) cannabis cultivation of no more than 2,500 square feet within two structures. The indoor cannabis cultivation is comprised of two indoor spaces, including a portion of a permitted garage (12.5 sq. ft. x 18 sq. ft.), that has been converted into a six light indoor cultivation site, as well as within a prefabricated shed (10 sq. ft. x 10 sq. ft., 100 sq. ft.) utilized for immature plants. An additional structure, and a shipping container (8 sq. ft. x 20 sq. ft., 160 sq. ft.), are utilized for processing activities, including drying and trimming. No alterations to the property are proposed under the project.

SITE CHARACTERISTICS: The approximately 5± acre project site is located 1.8± miles from the Fort Bragg city center, lying on the east side of Highway 1, 1± miles east of its intersection with Pudding Creek Road (CR 421), taking direct access off of South Petaluma Avenue (APN: 020-050-29). Half of the parcel is predominately forested with open meadows used for native restoration and currently contains limited development. The parcel is currently developed with an existing, approximately 2,100 ft² single-family residence; a 414 ft² (23 sq. ft. x 18 sq. ft.) garage, a portion of which has been converted into a six light indoor cultivation space; a 10 sq. ft. x 10 sq. ft. (100 ft²) pre-fabricated shed used as a veg or baby plant

room; an 8 sq. ft. x 20 sq. ft. (160 ft²) shipping container utilized for processing activities, including drying and trimming, and a well house. The parcel is currently served by an existing well located in the center of the property and septic system located south of the single family residence. Electricity and gas on the site is provided by Pacific Gas and Electric Company (PG&E). Access to the site is via a private driveway with gate off of Pudding Creek Road (CR 421).

Elevations at the site range from 136± feet above mean sea level (amsl) in the northeast corner of the site to 124± feet amsl in the site's southwestern corner, with an average slope of approximately two percent. The northern portion of the project site is designated as "Grazing Land," with the southern portion of the site designated as "Urban & Built-Up Land".¹ The site is located within a mapped "Marginal Water Resources"² area and mapped "Moderate Fire Hazard"³ area.

RELATED APPLICATIONS:

- AG_2017-0248 (Type C: Small Indoor Cannabis Cultivation)
- BF_2014-0702 (Replace 200 AMP Meter/Combo)
- BF_2012-0274 (Reroof w/ plywood, SFR 30 sq. ft.; Garage 5 sq. ft.)

PUBLIC SERVICES:

ACCESS: PUDDING CREEK ROAD (CR 421)
FIRE DISTRICT: CALFIRE AND FORT BRAGG RURAL FIRE PROTECTION DEPARTMENT
WATER DISTRICT: N/A
SEWER DISTRICT: N/A
SCHOOL DISTRICT: FORT BRAGG UNIFIED

ENVIRONMENTAL REVIEW: The project has been determined to be categorically exempt from CEQA per Section 15301, Class 1 (Existing Facilities); Section 15303, Class 3 (New Construction or Conversion of Small Structures)

AGENCY COMMENTS: On January 26, 2018 project referrals were sent to the following responsible or trustee agencies with jurisdiction over the Project. Their submitted recommended Conditions of Approval are contained in Exhibit A of the attached resolution. A summary of the submitted agency comments are listed below. Any comment that would trigger a project modification or denial is discussed in full as key issues in the following section:

REFERRAL AGENCIES	COMMENT
Department of Transportation	Response
Environmental Health	Response
Building Inspection	No Response
CalFire	No Comment
Fort Bragg Rural Fire District	No Response
California Department of Fish and Wildlife	No Response
Potter Valley Tribe	No Response
Sonoma State University	Response
Sherwood Valley Rancheria	No Response
Cloverdale Rancheria	No Response
Redwood Valley Rancheria	No Response

¹ Mendocino County Department of Planning & Building Services. 1991. *Important Farmland* [map].

² Mendocino County Department of Planning & Building Services. 1991. *Ground Water Resources* [map].

³ Mendocino County Department of Planning & Building Services. 1991. *Fire Hazard Zones & Responsibility Areas* [map].

KEY ISSUES:

1. **General Plan and Zoning Consistency:** The subject parcel is located within the Rural Residential [5 acre minimum] (RR5) General Plan Land Use Classification. The RR Land Use Classification *“is intended to encourage local small scale food production (farming) in areas which are not well suited for large scale commercial agriculture, defined by present or potential use, location, mini-climate, slope, exposure, etc. The Rural Residential classification is not intended to be a growth area, and residences should be located as to create minimal impact on agricultural viability.”*

While the proposed project does not entail the farming of food, the scale of the proposed indoor cannabis cultivation is small and thus conforms to the intended use of the RR Land Use Classification. Additionally, the proposed project is consistent with the intended uses of the RR Land Use Classification, which allows for agricultural uses and cottage industries, such as what is proposed under the project.

The site of the proposed cannabis cultivation is zoned as Rural Residential with a 5 acre minimum parcel size (RR5) under the Mendocino County Code. The proposed project is consistent with the intent of the RR District, which is *“intended to create and enhance residential areas where agricultural use compatible with a permanent residential use is desired. Typically the “RR” District would be applied to rural or semi-rural areas where urban levels of service are not available and where large lots are desired”*, as described in Chapter 20.248.005 of the Mendocino County Code. Additionally, given the subject parcel’s size it is not subject to the Sunset Provision for Residential Districts.

2. **Use Permit Findings:** The proposed use permit is required to meet the use permit findings set forth in the Mendocino County Code (MCC 20.196.020). Below is the discussion of each finding and how the use permit appropriately meets those requirements.

- A. That the establishment, maintenance or operation of a use or building applied for is in conformity to the General Plan;

As shown in the previous section, the proposed project is in conformity with the General Plan.

- B. That adequate utilities, access roads, drainage and other necessary facilities have been and are being provided;

The proposed project has connections to existing water and septic systems that will be used for the operation. Conditions to the use permit require the applicant to work with the Mendocino County Department of Environmental Health. Additionally, in response from the Mendocino County Department of Transportation, the proposed project will require a standard private road approach onto Pudding Creek Road (CR 421) to ensure adequate access.

- C. That such use will not, under the circumstances of that particular case, constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county; provided, that if any proposed building or use in necessary of the public health, safety or general welfare, the finding shall be to that effect;

The project has been determined to be categorically exempt from CEQA per Section 15301 (Existing Facilities) and Section 15303 (New Construction or Conversion of Small Structures). As such, there are no aspects of the proposed project that would have a potentially significant impact on the environment.

- D. That such use preserves the integrity of the zoning district.

Similarity to the General Plan conformity compliance with the Mendocino County Code zoning district is discussed in the previous section, which determined the proposed project is in conformity with the RR5 zoning district.

3. **Environmental Protection:** The project has been determined to be categorically exempt from CEQA per Section 15301 (Existing Facilities); Section 15303, Class 3 (New Construction or Conversion of Small Structures).
4. **Cultural Resources:** The project was referred to the Northwest Information Center (NWIC) at Sonoma State University for review and comment and a response was provided on February 8, 2018. Based on NWIC's record, there has not been any previous cultural resource studies conducted within the propose project area. The project was also referred to four local tribes for review and comment, including the Cloverdale Rancheria, Sherwood Valley Band of Pomo Indians, Redwood Valley Little River Band of Pomo Indians, and Potter Valley Tribe. As of April 13, 2018, no responses have been received from any of the four local tribes.

Given that no new development is proposed, and that cultivation will take place within existing structures, staff recommends only that a standard condition advises the applicant of the Discovery Clause, which prescribes the procedures subsequent to the discovery of any cultural resources during construction of the project.

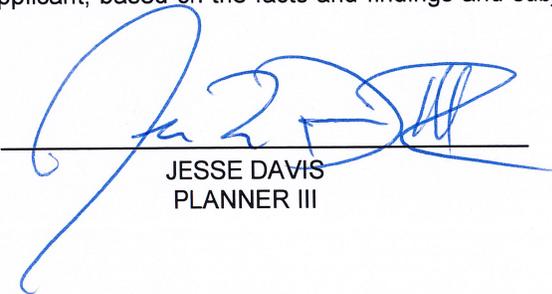
5. **Habitat and Natural Resources:** Based on review of the California Natural Diversity Database (version 9/2017), several special status species are known to occur within and adjacent project site. If new development related to cannabis cultivation is proposed a botanical survey may be required after determination by the California Department of Fish and Wildlife (CDFW).

RECOMMENDATION

By resolution, the Zoning Administrator adopt a Categorical Exemption and grant the Use Permit U_2017-0039 for the Project, as proposed by the Applicant, based on the facts and findings and subject to the Conditions Of Approval.

06-28-2018

DATE

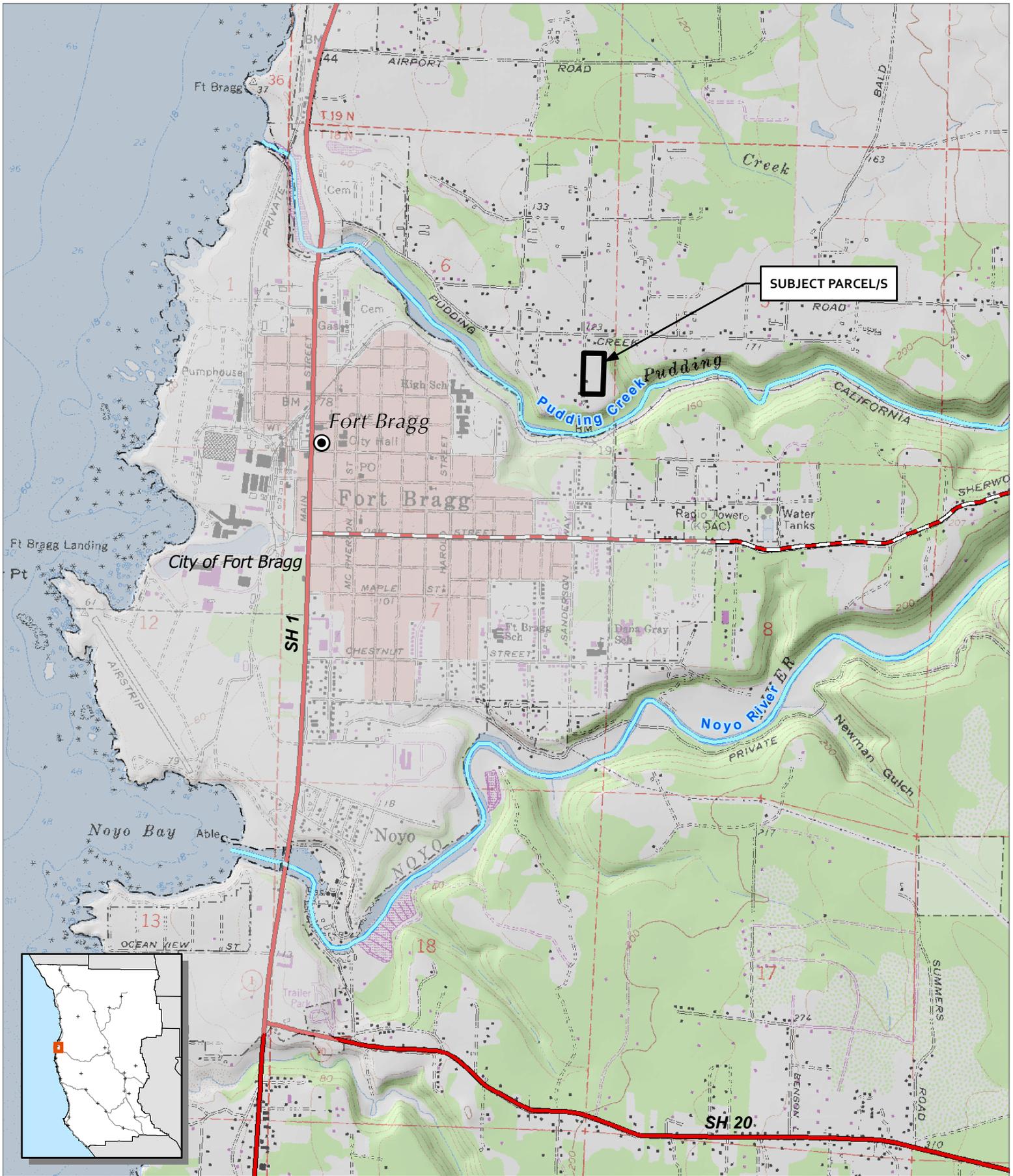

JESSE DAVIS
PLANNER III

Appeal Period: 10 Days
Appeal Fee: \$1,616.00

ATTACHMENTS:

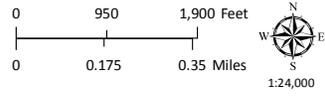
- A. Location Map
- B. Topographic Map
- C. Aerial Imagery Map
- D. Site Plan
- E. Zoning Display Map
- F. General Plan Classification Map
- G. Fire Hazard Zones & Responsibility Areas Map
- H. Ground Water Resources Map
- I. Local Soils Map
- J. Important Farmland Map

RESOLUTION AND CONDITIONS OF APPROVAL (Exhibit A):



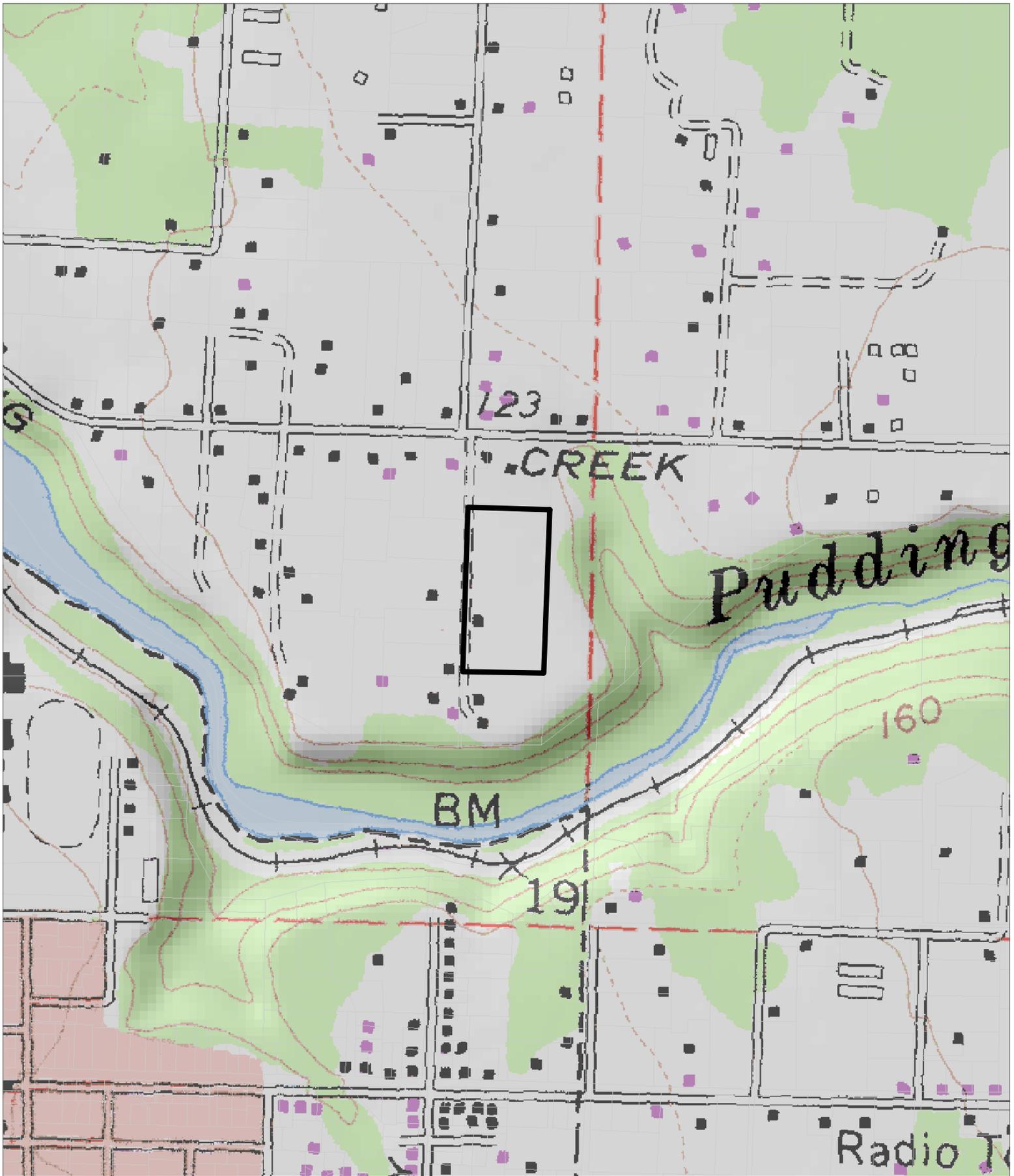
CASE: U 2017-0039
 OWNER: KOHLER, Kyle & Lia
 APN: 020-050-29
 APLCT: Lia Kohler
 AGENT:
 ADDRESS: 21401 Petaluma Avenue, Fort Bragg

-  Major Towns & Places
-  Highways
-  Incorporated City Limits
-  Major Roads
-  Major Rivers

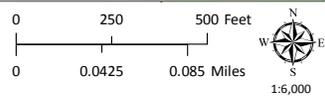


LOCATION MAP

THIS MAP AND DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.
 DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES



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TOPOGRAPHIC MAP
CONTOUR INTERVAL IS 40 FEET

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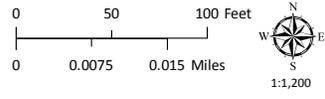
SOUTH PETALUMA AVENUE

AG 2017-0248
C

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

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=== Private Roads



AERIAL IMAGERY

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NORTH

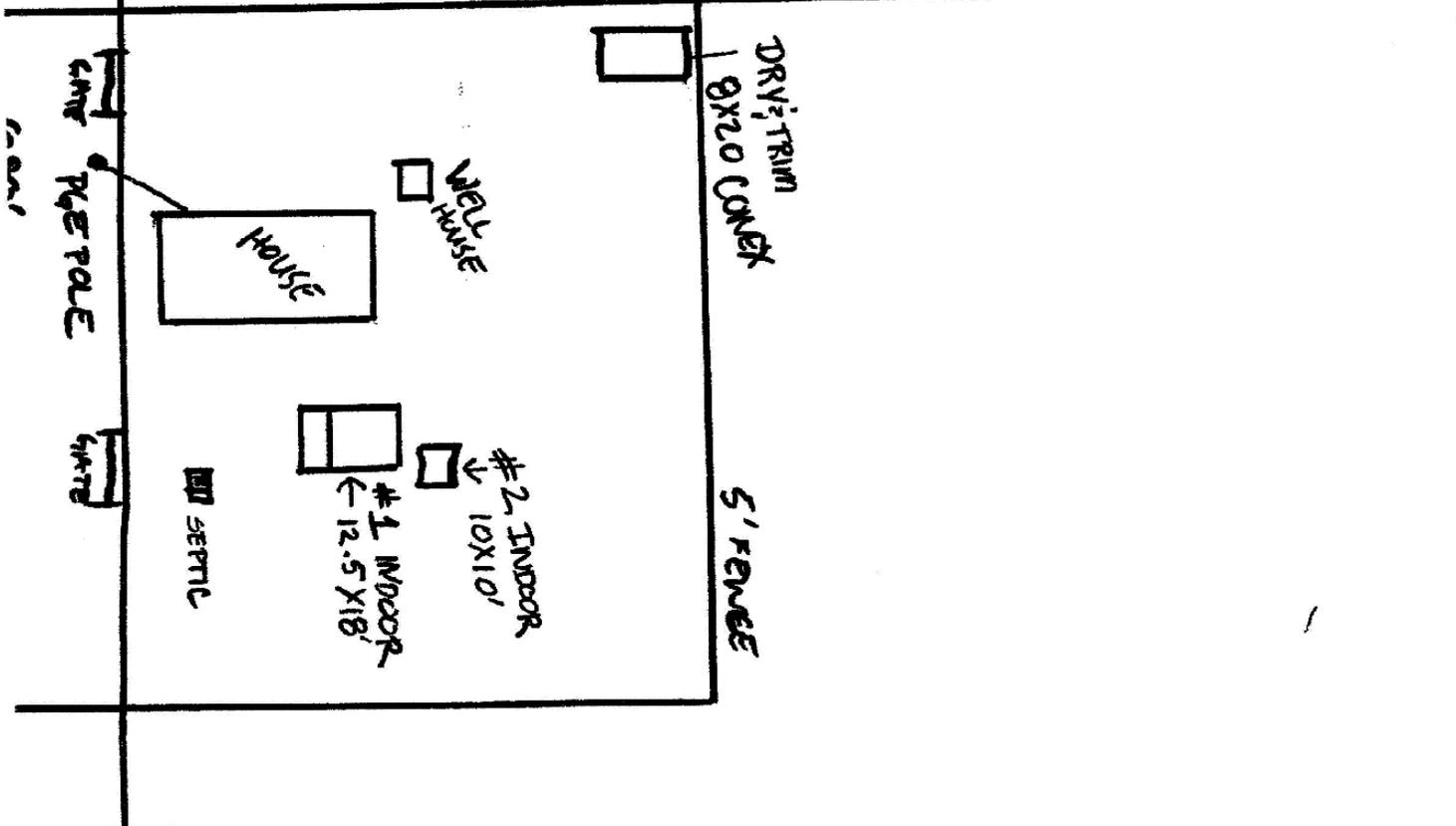
NATIVE RESTORATION
OPEN, MEADOWS
FOREST 2.78 ACRES

#1 INDOOR
104' FROM E. BOUNDARY
145' FROM S. BOUNDARY
216' FROM W. BOUNDARY
535' FROM N. BOUNDARY

5' FENCE

KOHLER
21 S. PETALUMA
BRASS, CA
020 050 2900
SACER
2017-0248

S. PETALUMA AVE.

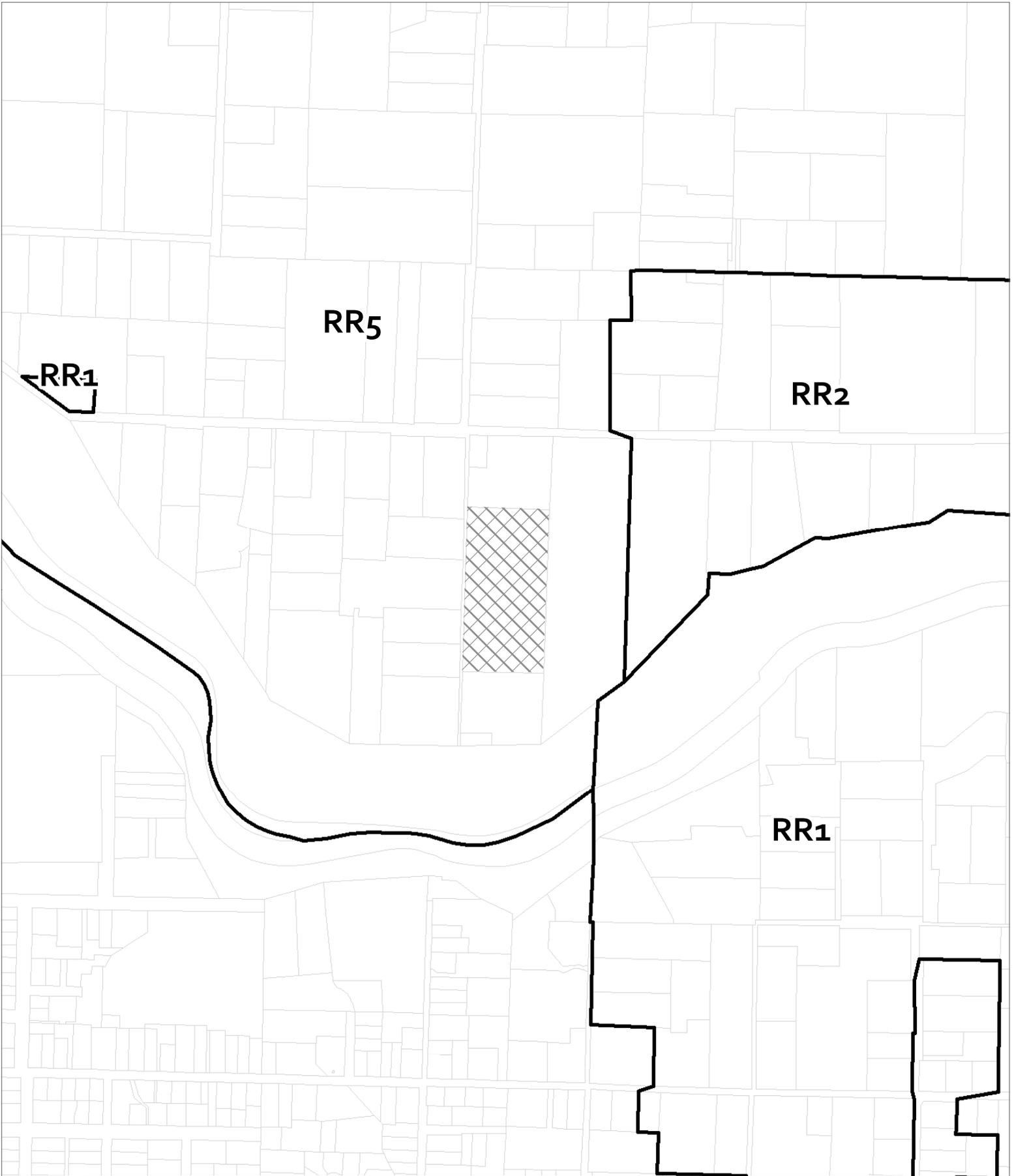


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NO SCALE

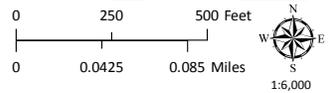
SITE PLAN

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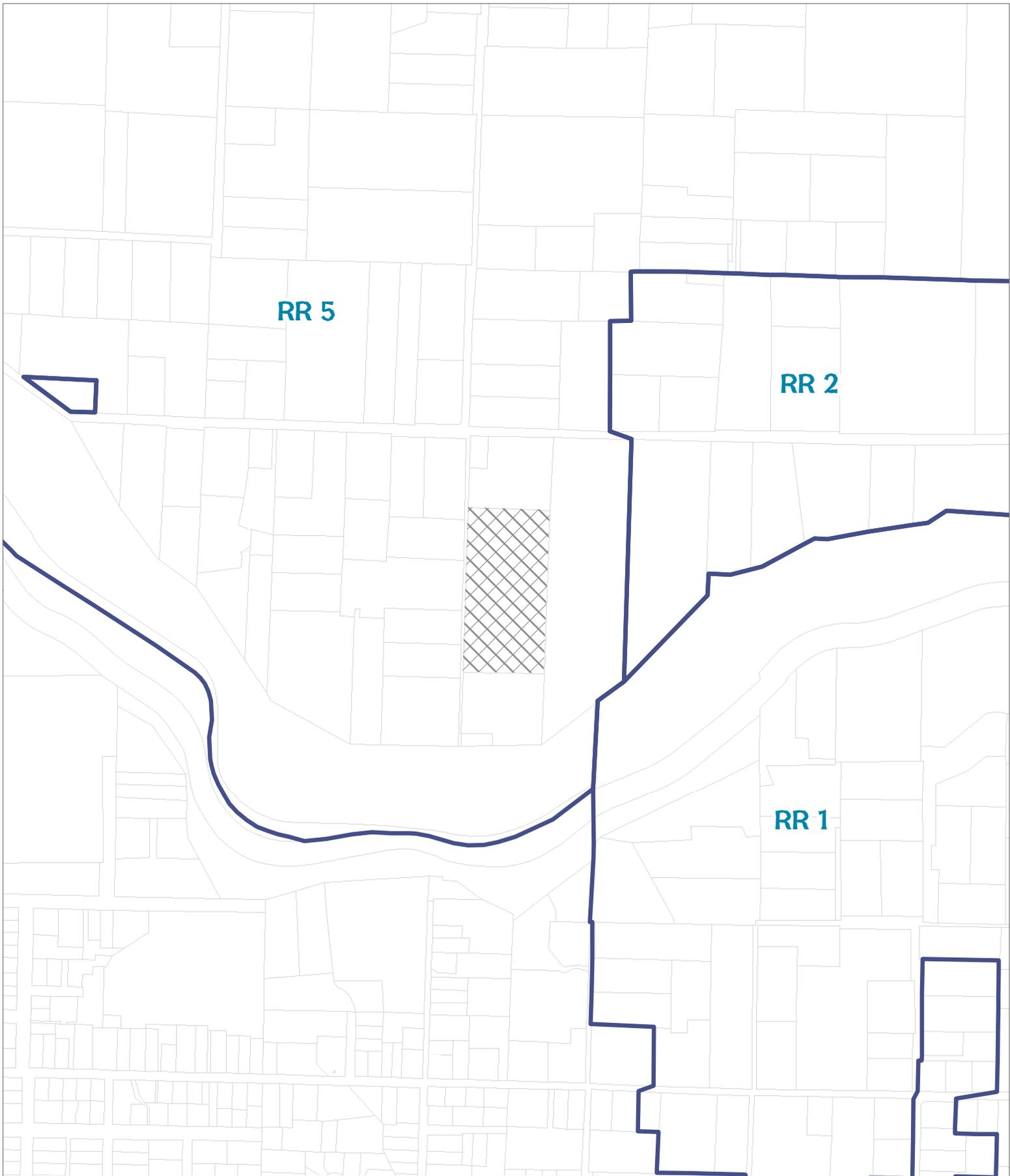
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 Zoning Districts



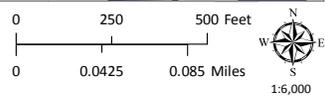
ZONING DISPLAY MAP

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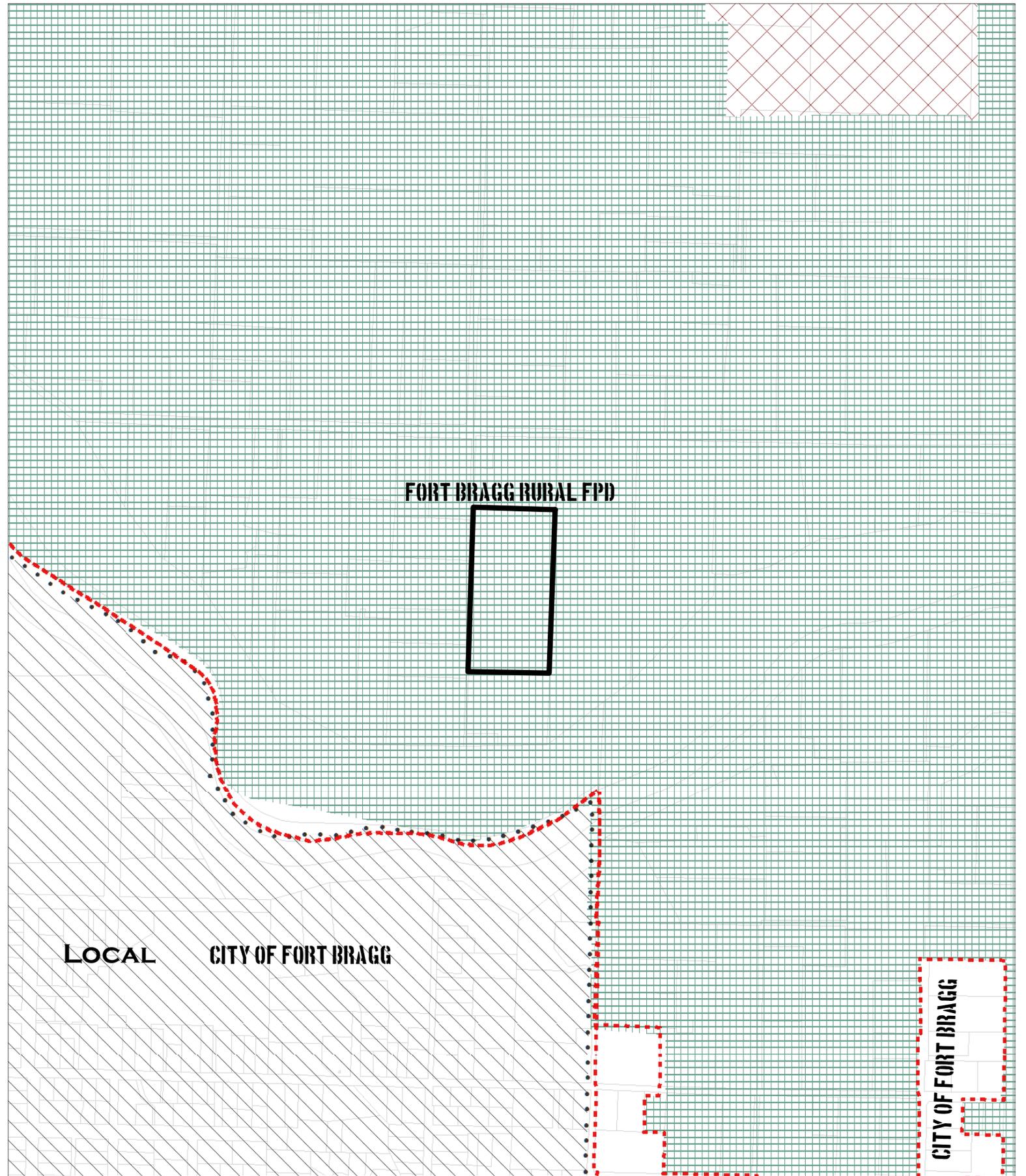
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 General Plan Classes



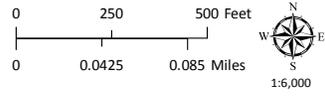
GENERAL PLAN CLASSIFICATIONS

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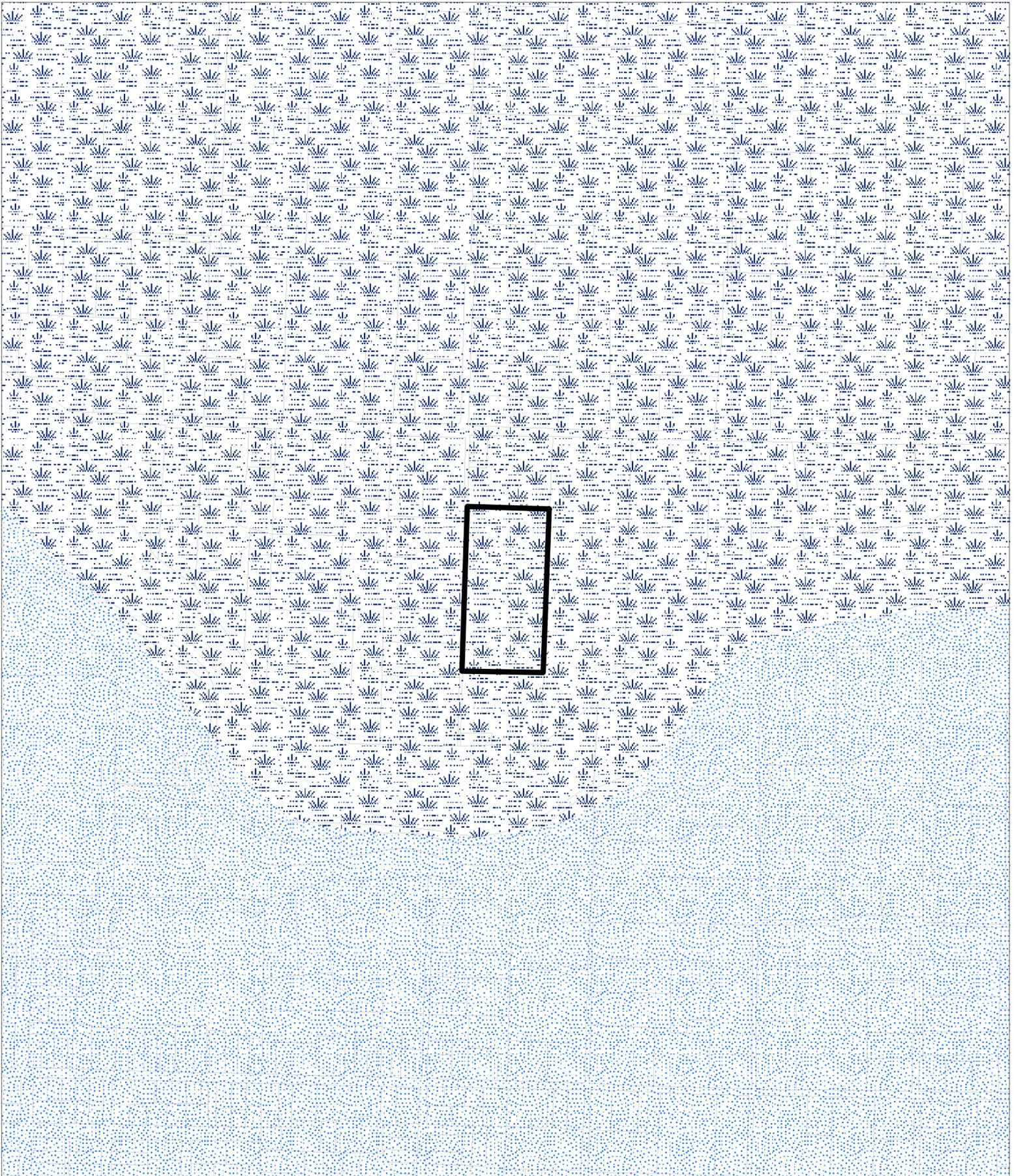
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-  County Fire Districts
-  Local Responsibility Areas
-  High Fire Hazard
-  Moderate Fire Hazard



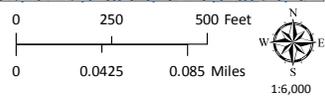
FIRE HAZARD ZONES & RESPONSIBILITY AREAS
STATE RESPONSIBILITY AREA

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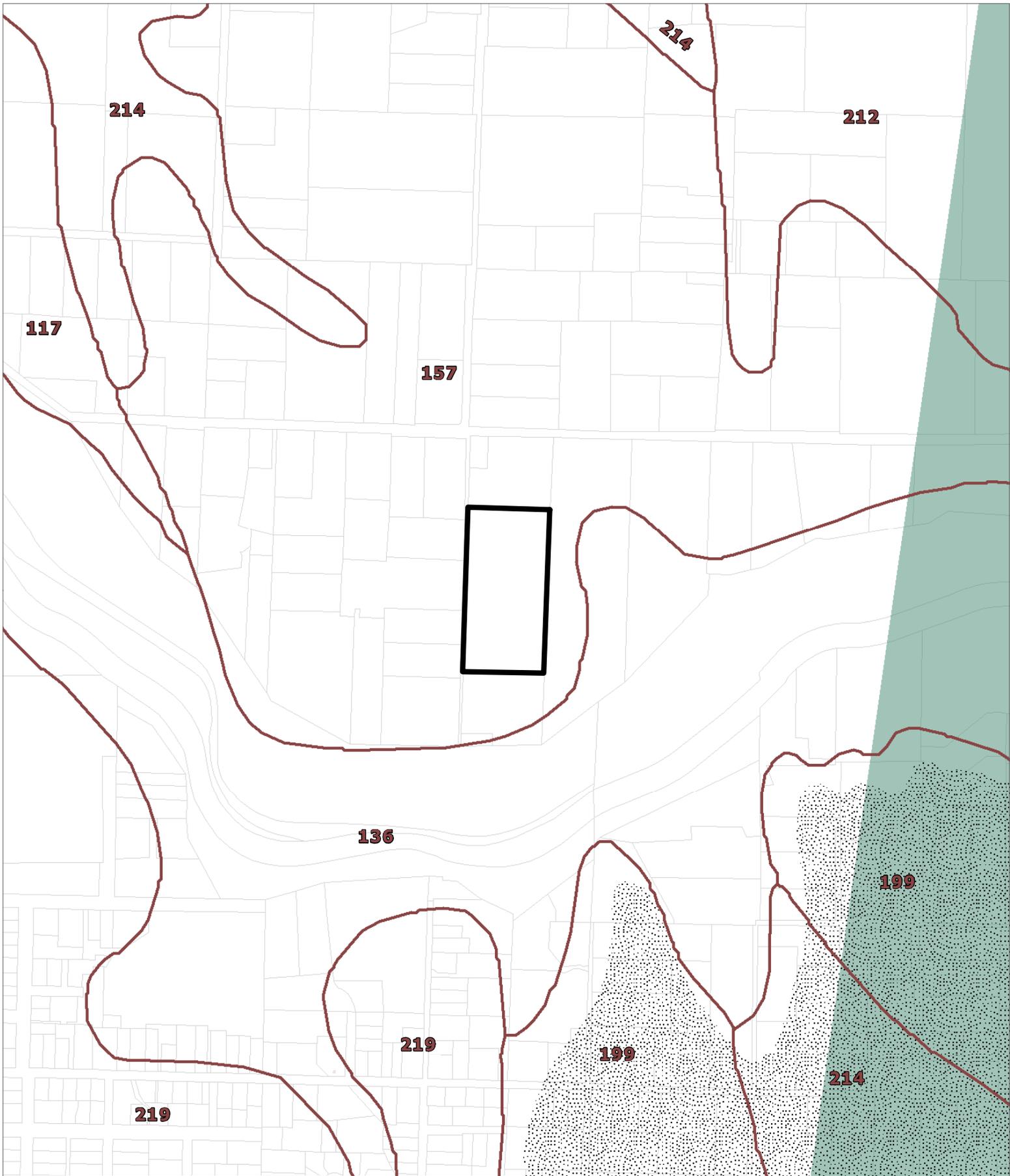
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 Sufficient Water Resources
 Marginal Water Resources



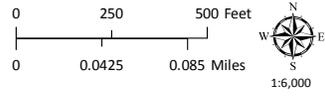
GROUND WATER RESOURCES

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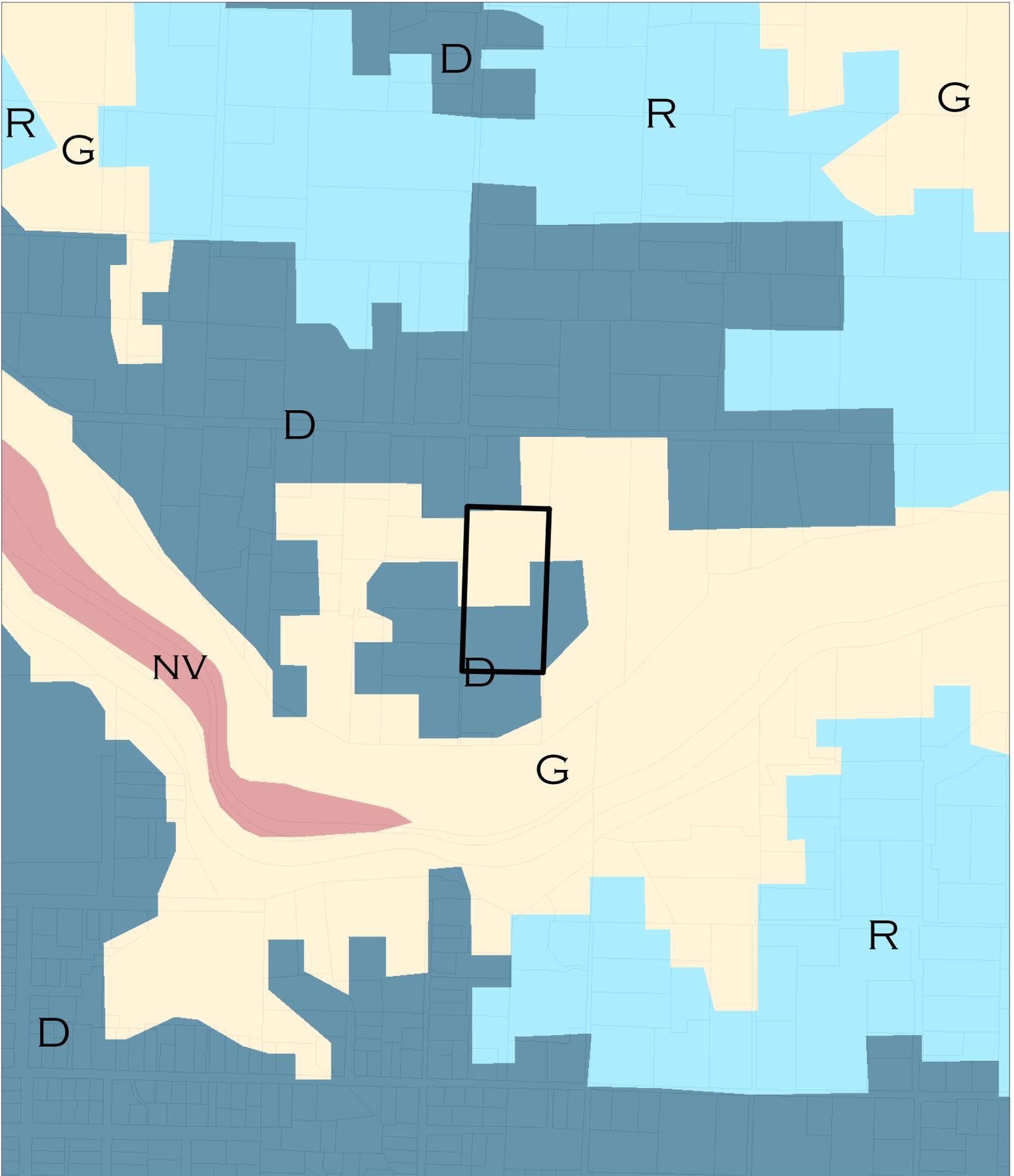
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-  Western Soil Classes
-  Shinglemill-Gibney Complex
-  Bishop Pine



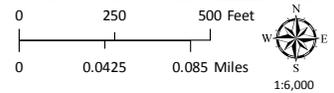
LOCAL SOILS

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 Urban & Built-Up Land (D)
 Grazing Land (G)



IMPORTANT FARMLAND

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Resolution Number _____

County of Mendocino
Ukiah, California
July 12, 2018

U_2017-0039 - LIA KOHLER

RESOLUTION OF THE ZONING ADMINISTRATOR, COUNTY OF MENDOCINO, STATE OF CALIFORNIA, ADOPTING A CATEGORICAL EXEMPTION AND GRANTING A MINOR USE PERMIT U_2017-0039 FOR CANNABIS CULTIVATION.

WHEREAS, the Applicant, LIA KOHLER, filed an application for a USE PERMIT with the Mendocino County Department of Planning and Building Services to establish an indoor, cottage-size cannabis cultivation site for up to 2,500 square feet of cannabis cultivation, 1.8± miles from Fort Bragg city center, lying on the east side of State Highway 1, 1± miles east of its intersection with Pudding Creek Road (CR 421), located at 21401 South Petaluma Avenue, Fort Bragg (APN: 020-050-29); General Plan RR5; Zoning RR5; Supervisorial District 4; hereto referred as (the "Project"); and

WHEREAS, the Secretary for Resources has found that certain classes of projects have been determined not to have a significant effect on the environment and are therefore exempt from the requirement for the preparation of environmental documents, and the Project was determined to meet the criteria for a CATEGORICAL EXEMPTION from the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities); Section 15303, Class 3 (New Construction or Conversion of Small Structures); and

WHEREAS, in accordance with applicable provisions of law, the Zoning Administrator held a public hearing on July 12, 2018 at which time the Zoning Administrator heard and received all relevant testimony and evidence presented orally or in writing regarding the CATEGORICAL EXEMPTION and the Project. All interested persons were given an opportunity to hear and be heard regarding the CATEGORICAL EXEMPTION and the Project; and

WHEREAS, the Zoning Administrator has had an opportunity to review this Resolution and finds that it accurately sets for the intentions of the Zoning Administrator regarding the CATEGORICAL EXEMPTION and the Project.

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Administrator makes the following findings;

1. **General Plan and Zoning Findings:** The subject parcel is classified Rural Residential with a 5 acre minimum parcel size (RR5) under the Mendocino County General and the Project is consistent with the intent of the designation. Although the Project does not entail the farming of food, the scale of the proposed cannabis cultivation is small and thus conforms to the intent of the RR5 land use designation. Additionally, the subject parcel is zoned Rural Residential with a 5 acre minimum parcel size (RR5) and the Project is consistent with the intent of the zoning district and the uses subject to a use permit per Section 20.048.015(D) of the Mendocino County Code; and
2. **Use Permit Findings:** The Project satisfies the Use Permit required findings per Section 20.196.020 of the Mendocino County Code; and
3. **Environmental Protection:** The Project has been determined to be Categorically Exempt from the provisions of CEQA under a Class 1 (Existing Facilities) exemption and Section 15303, Class 3 (New Construction or Conversion of Small Structures).

BE IT FURTHER RESOLVED that the Zoning Administrator hereby adopts the CATEGORICAL EXEMPTION and the Conditions of Approval. The Zoning Administrator certifies that the CATEGORICAL

EXEMPTION has been completed, reviewed, and considered, together with the comments received during the public review process, in compliance with CEQA and State and County CEQA Guidelines, and finds that the CATEGORICAL EXEMPTION reflects the independent judgment and analysis of the Zoning Administrator.

BE IT FURTHER RESOLVED that the Zoning Administrator hereby grants the requested USE PERMIT subject to the Conditions of Approval in Exhibit "A", attached hereto.

BE IT FURTHER RESOLVED that the Zoning Administrator designates the Secretary as the custodian of the document and other material which constitutes the record of proceedings upon which the decision herein is based. These documents may be found at the office of the County of Mendocino Planning and Building Services, 860 North Bush Street, Ukiah, CA 95482.

BE IT FURTHER RESOLVED that the Zoning Administrator action shall be final on the 11th day after the date of the Resolution unless an appeal is taken.

I hereby certify that according to the Provisions of Government Code Section 25103 delivery of this document has been made.

ATTEST: VICTORIA DAVIS
Commission Services Supervisor

By: _____

BY: IGNACIO GONZALEZ
Zoning Administrator

EXHIBIT A

CONDITIONS OF APPROVAL U_2017-0039 - LIA KOHLER JULY 12, 2018

APPROVED PROJECT DESCRIPTION: Use Permit for an indoor, cottage-sized (C-A) cannabis cultivation of no more than 2,500 square feet.

CONDITIONS OF APPROVAL:

General:

1. If Mendocino County Code should be amended to allow for continued use as requested, the use permit shall continue if in compliance with the required conditions. In the event that the use as defined within this use permit should cease operation for a period exceeding one year or more, the use shall be deemed invalid and a new use permit will be required if applicable. **The applicant has sole responsibility for renewing this permit before the expiration date of this permit.** Per, MCC Section 20.242.070 (D)(5), the Use Permit granted for the cannabis cultivation site shall be limited to a period not to exceed 10 year. Therefore, this Use Permit will expire on **July 12, 2028. The County will not provide a notice prior to expiration date.**
2. The use of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
3. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and that compliance therewith be mandatory, unless a modification has been approved by the Zoning Administrator.
4. This permit shall be subject to revocation or modification by the Zoning Administrator upon a finding of any 1 or more of the following grounds:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.

Any such revocation shall proceed as specified in Title 20 of the Mendocino County Code.

5. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
6. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
7. It shall be the responsibility of the Applicant to ensure that contractors engaged to perform work on the site are aware of the conditions of this permit and that all work performed is in compliance with applicable conditions.
8. Prior to any construction, the Applicant shall adhere to Cal Fire 4290 – Fire Safe Regulations and provide the Mendocino County Department of Planning and Building Services with an approved State Fire Safe Regulation Application Form. The applicant shall comply with those recommendations of

the California Department of Forestry (Cal Fire) or other alternatives as acceptable to Cal Fire. A Final Clearance letter from Cal Fire shall be submitted to the Department of Planning and Building Services stating that compliance with their requirements have been met to their satisfaction.

Aesthetics:

9. All external lighting shall be shielded and downcast to prohibit light from being cast beyond the property boundaries. Outdoor lighting shall be turned off at 7:00 p.m. in the evenings and not be turned back on until the following day after 6:00 a.m. in the morning. (Twenty-four hour security lighting would be exempt from this time requirement; however any exterior security lighting installed on the property shall utilize motion-sensored activation.) All lighting along the property boundaries shall be setback a minimum of 20 feet from all property lines.
10. The Applicant shall provide a lighting plan demonstrating that that proposed cultivation area would not deliver or have the potential to deliver light pollution, during the hours of sunset to sunrise, which may affect fish and/or wildlife directly, or from a distance.
11. No signage shall be allowed for the operation.

Air Quality:

12. Any buildings, including greenhouses, used for the cultivation of cannabis shall be equipped with filtered ventilation systems, permitted by the Mendocino County Air Quality Management District (MCAQMD).
13. The access road and interior circulation routes shall be treated with a dust suppressant and maintained in such a manner as to insure minimum dust generation subject to the Air Quality Management District's dust regulations.
14. Secure any required permits from the Mendocino County Air Quality Management District.

Biological Resources:

15. Removal of any commercial tree species, as defined by California Code of Regulations section 895.1 (Commercial Species for the Coast Forest District and Northern Forest District), and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing the cannabis cultivation site shall be prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to safety or disease concerns.
16. If at any time, expansion or other project activities are proposed beyond the development footprint as it existed on the date of the site assessment, botanical surveys should be conducted, during the blooming season, to identify any special status plant species that may occur. Botanical surveys should follow CDFW's 2018 "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" or any updated version of that protocol.

Cultural Resources:

17. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

Hydrology:

18. A Lake or Streambed Alteration Agreement (LSAA) may be required from the California Department of Fish and Wildlife (CDFW) for the project, including, but not limited to: diversion and use of water from a river, and potentially water use from springs. The pond may also be utilized as a source of water in case of emergency. Surface water sources (streams, springs, and hydrologically connected

wells and ponds) are generally jurisdictional for CDFW, and their use, for domestic purposes or otherwise, generally requires notification pursuant to Fish and Game Code 1602. More information, including Notification forms and instructions, are available at: www.wildlife.ca.gov/conservation/lisa. Please note that existing jurisdictional projects or infrastructure that do not have a valid or current LSAA will likely require notification (e.g. existing stream crossings on roads). Please contact the local regional CDFW office to determine if a LSAA is necessary for the proposed project.

19. Since a well is identified as the water source for the project, the Applicant shall provide adequate information to allow CDFW staff to determine whether the well is hydrologically connected to nearby surface water (e.g., a well completion report). Surface water sources (streams, springs, and hydrologically connected wells and ponds) are generally jurisdictional for CDFW, and their use, for domestic purposes or otherwise, generally requires notification pursuant to Fish and Game Code Section 1602.

Transportation

20. The Applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation and construct a standard private road approach onto Pudding Creek Road (CR 421), to be surfaced with asphalt concrete, with a minimum width of 18 feet and length of 20 feet from the edge of the County road, per County of Mendocino Road and Development Standard No. A51B.