



**ZONING ADMINISTRATOR
STAFF REPORT- VARIANCE**

**OCTOBER 19, 2018
V_2018-0007**

SUMMARY

OWNER/APPLICANT: CHARLES & PERI DEFAY
PO BOX 499
POINT ARENA, CA 95468

REQUEST: Variance request to reduce side setback requirement from 50' to 30' to allow permitting of existing residence.

LOCATION: 4.5± miles east of Manchester, 0.3± miles north of its intersection with Mountain View Rd. (CR 510), on the east side of Miller Ct. (Private), located at 19851 Miller Ct., Manchester (APN: 133-220-12).

TOTAL ACREAGE: 20.19± acres

GENERAL PLAN: Forest Lands (FL)

ZONING: Timberland Production (TP:160)

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically Exempt; Class 1, Section 15301

RECOMMENDATION: Approve with Conditions

STAFF PLANNER: Sam "Vandy" Vandewater

BACKGROUND

PROJECT DESCRIPTION: The applicant is requesting a variance to reduce the setback requirement, as defined in Mendocino County Code (MCC) Section 20.068, from 50 ft. to 30 ft. to allow permitting of existing structures along the western side yard.

SITE CHARACTERISTICS: The subject parcel is located in a hilly and forested terrain and is surrounded by timberland production lands with a history of timber harvesting. Much of the parcel is sloped with minimal terrain suitable for building. The east side of the parcel is a steep slope and completely vegetated by forest and smaller shrubs. The west side of the parcel contains all existing structures, but is also extremely uneven terrain with the flatter areas hosting the buildings. A logging road runs along the western parcel line which immediately becomes a step 30-40 ft. incline to the existing residence. The other structures are further up the incline and can potentially meet the appropriate 50 ft. setback if measured along the slope as opposed to a horizontal measurement.

RELATED APPLICATIONS: The proposed variance is for an existing residence that is currently in the process of being permitted through the Mendocino County Department of Planning & Building Services. Permits include BF_2018-0307 (dwelling unit), BF_2018-0308 (studio), BF_2018-0309 (yurt), BF_2018-0310 (storage structure), and BF_2018-0311 (storage structure).

SURROUNDING LAND USE AND ZONING:

	GENERAL PLAN	ZONING	LOT SIZES (ACRES)	USES
NORTH	Forestland (FL)	Timberland Production (TP:160)	149±	Timberland
EAST	Forestland (FL)	Timberland Production (TP:160)	423±	Timberland
SOUTH	Forestland (FL)	Timberland Production (TP:160)	20±	Timberland
WEST	Forestland (FL)	Timberland Production (TP:160)	149±	Timberland

PUBLIC SERVICES:

Access: Mountain View Road (CR 510)
 Fire District: CalFire
 Water District: None
 Sewer District: None
 School District: Manchester Union Elementary

AGENCY COMMENTS: On September 5, 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. Any comment that would trigger a project modification or denial are discussed in full as key issues in the following section.

REFERRAL AGENCIES	COMMENT
Planning – Fort Bragg	No Comment
Department of Transportation	No Comment
Environmental Health	No Comment
Building Inspection	No Comment
CalFire	No Response
Assessor	No Response

KEY ISSUES

1. General Plan and Zoning Consistency: The subject parcel has a General Plan Land Use Designation of Forest Lands (FL) and the Project is consistent with the General Plan definition. Furthermore, the proposed variance would help to uphold the intent of the Forest Lands designation by eliminating the need to remove timber resources for the purpose of residential development.

Additionally, the subject parcel lies within the Zoning District of Timberland Production (TP:160) and the Project is consistent with the Zoning District per MCC Section 20.068. The variance is to reduce the 50 foot setback established in MCC Section 20.068.050 for side yards. A number of structures are within the 50 foot setbacks, including the residence, which prevents the approval of their respective building permits. Thus a variance is required to allow the structures to be permitted. Similar to the General Plan designation, the intent of the zoning district is upheld by allowing the existing residence to be permitted instead relocating and impacting timber resources. The Project is also located within the Cluster Combining District (C:B) with which the Project is consistent per MCC 20.116 as there is no intent to develop the parcel beyond the existing structures due to terrain limitations.

2. Environmental Protection: The project is Categorically Exempt from the provisions of CEQA, pursuant to Section 15301, Class 1 of Article 19 of the California Environmental Quality Act Guidelines. The Class 1 exemption applies to “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.” The proposed project meets the criteria of Section 15301 and has been determined to not have a significant effect on the environment and, therefore, be exempt from the provisions of CEQA.

VARIANCE FINDINGS

APPLICANT JUSTIFICATION: The applicant submitted the following information to substantiate the required findings that must be made prior to action by the Zoning Administrator.

(A) That there are special circumstances applicable to the property involved, including size, shape, topography, location, or surrounding;

Super steep and rocky. I only have 1 acre to work with out of 20 acres. I built near cliff to maximize space.

- (B) That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations in the Division;**

I purchased the parcel this way – it is a subdivision of 10 parcels. I am most remote parcel.

- (C) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone and denied to the property in question;**

Other parcels are developed with residential structures.

- (D) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located;**

Absolutely no detrimental affects. No logging in future and no development is possible anymore.

- (E) That the granting of such variance will not adversely affect the General Plan.**

I just want to live and enjoy my property as everyone else. This is a remote property – I cannot even see another house or structures. I am surrounded by forest.

STAFF ANALYSIS: While the applicant attempted to address the required findings, County staff conducted a site visit on September 10, 2018, and determined the proposed variance is able to meet the required findings, which are analyzed and discussed below.

- (A) That there are special circumstances applicable to the property involved, including size, shape, topography, location, or surrounding;**

The subject parcel is located in a former logging area and situated within relatively rough terrain. A majority of the parcel is steeply sloped and unsuitable for building any structures, with the exception of the one acre area that hosts a majority of the existing structures. During a site visit on September 10, 2018, County staff witnessed the intensity of the terrain and was shown, by the applicant, the limited developable land. Furthermore, the subject parcel and surrounding lands are heavily forested, creating an additional obstacle to development. The structure in question, a dwelling unit, is skillfully constructed on a level section of the one acre, but is unable to meet setbacks given the almost non-existent buildable terrain. It is for these reasons that staff concludes: **Finding (A) can be made.**

- (B) That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations in the Division;**

While the applicant did construct a residence without the appropriate building permits, County staff determined that no other site would be suitable for the construction of the residence and that a variance would have been required regardless of actions taken by the applicant. This was confirmed by County staff during a site visit on September 10, 2018. Furthermore, as previously noted, the terrain of the parcel is very unsuitable for construction, thus the location of the residence is appropriate given the terrestrial constraints. The side yard from which the existing residence requires a setback reduction is a very steep, 20-30 foot descent that runs along the property line. County staff determined it would be necessary to construct the residence along the steep slope regardless of the building footprint. It is for these reasons that staff concludes: **Finding (B) can be made.**

- (C) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone and denied to the property in question;**

As stated by the applicant and observed by County staff, the parcel would not be able to host a residence without a variance, thus jeopardizing the preservation and enjoyment of substantial property rights enjoyed by neighboring properties. Without the granting of a variance to the setback requirements, the cost and time to construct a residence would be long and burdensome, requiring substantial investment that would not be necessary on neighboring parcels. While the parcel is

relatively isolated, County staff observed neighboring properties that enjoyed some degree of developable land, unlike the subject parcel which is very limited in terms of land suitable for construction. Additionally, a single family residence is a permitted use within the Timberland Production zoning district per Mendocino County Code 20.068.010(A). It is for these reasons that staff concludes: **Finding (C) can be made.**

(D) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located;

The granting of the variance would not be a detriment to the public welfare or injurious to the property as the structure is already existing. The variance is to allow the existing residence to be permitted in its current footprint, which does not meet the setback requirement of 50 feet from a side yard as defined by Section 20.068.050 of the Mendocino County Code. It is for this reason that staff concludes: **Finding (D) can be made.**

(E) That the granting of such variance will not adversely affect the General Plan.

The proposed variance will not adversely affect the General Plan as the reduction in the setback requirements will allow the applicant to permit an existing residential structure. This will help to preserve the timberland resources on the parcel, an intended use of the Forest Lands General Plan Land Use Designation, and deflect the need for additional development. It is for this reason that staff concludes: **Finding (E) can be made.**

RECOMMENDATION

By resolution, the Zoning Administrator grant Variance V_2018-0007 for the Project, as proposed by the applicant, based on the facts and findings and subject to the Conditions of Approval.

10-4-2018

DATE

Mary Lynn Hunt for

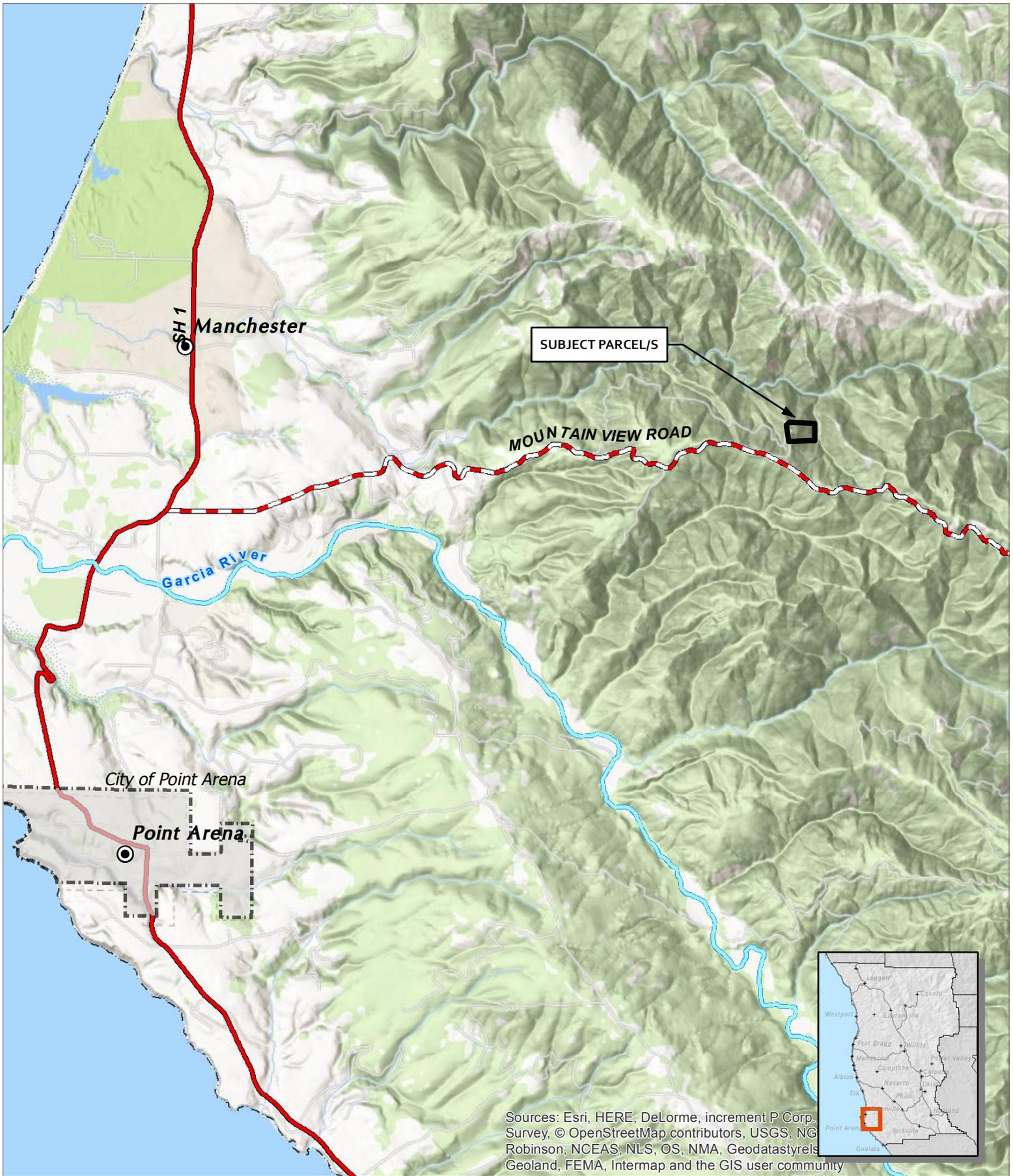
SAM 'VANDY' VANDEWATER
PLANNER II

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

ATTACHMENTS:

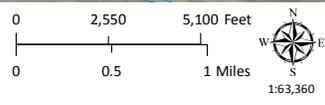
- A. Location Map
- B. Aerial Map (Zoom out)
- C. Aerial Map (Zoom in)
- D. Site Map
- E. Zoning Map
- F. General Plan Map
- G. Adjacent Owner Map
- H. Fire Hazards Map
- I. Soils Map
- J. Timber Production Map

RESOLUTION AND CONDITIONS OF APPROVAL (Exhibit A):



CASE: V 2018-0007
 OWNER: DEFAY, Charles & Peri
 APN: 133-220-12
 APLCT: Charles DeFay
 AGENT:
 ADDRESS: 19851 Miller Court, Manchester

- Major Towns & Places
- ▭ City Limits
- ~ Major Rivers
- Highways
- Major Roads



LOCATION MAP

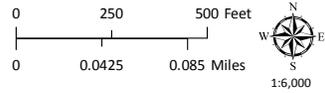
**THIS MAP AND DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.
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Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

CASE: V 2018-0007
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 APN: 133-220-12
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 AGENT:
 ADDRESS: 19851 Miller Court, Manchester

-  Named Rivers
-  Driveways/Unnamed Roads
-  Public Roads
-  Private Roads



AERIAL IMAGERY

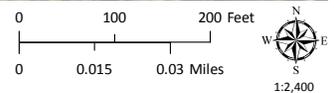
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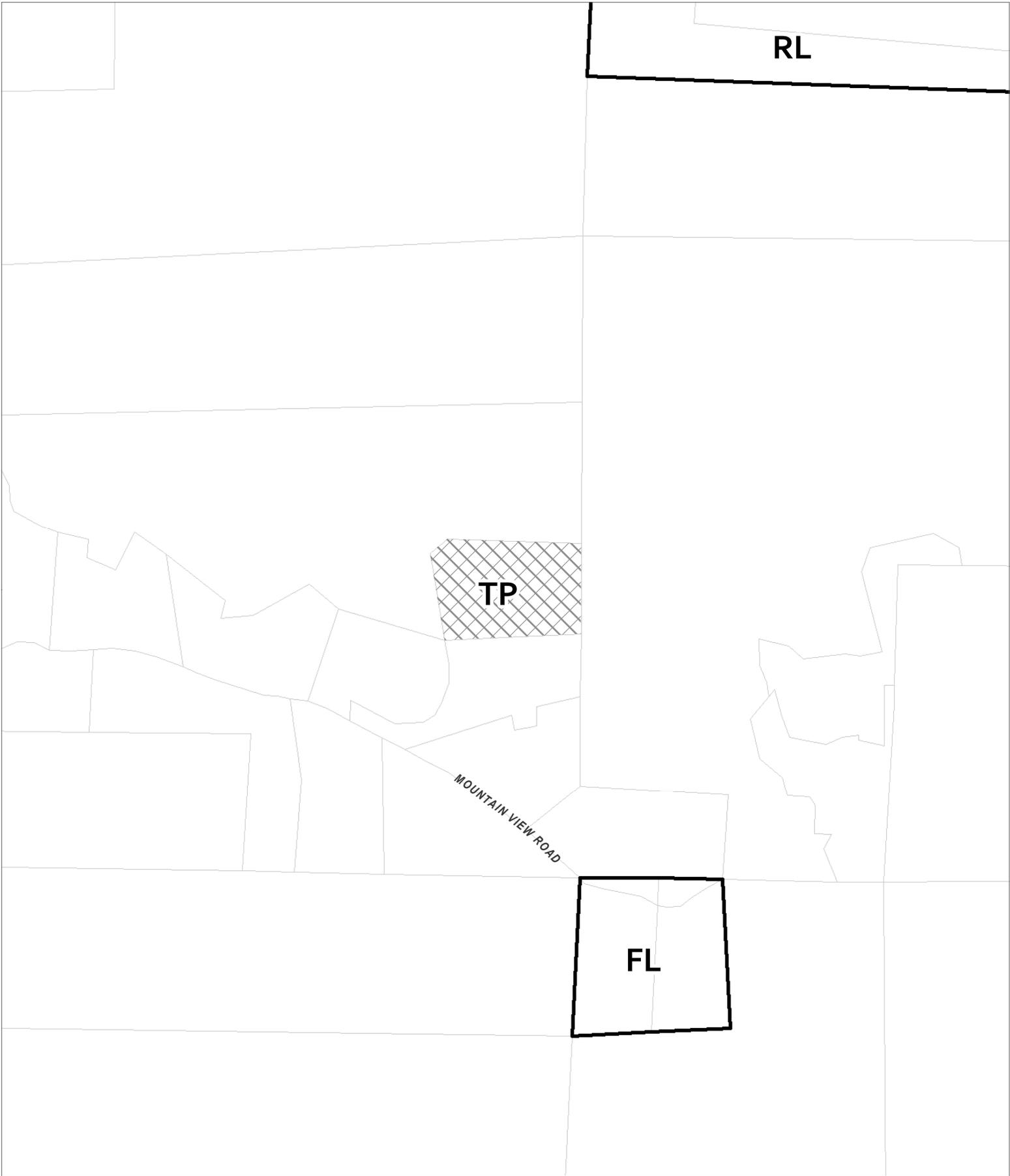
CASE: V 2018-0007
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APLCT: Charles DeFay
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ADDRESS: 19851 Miller Court, Manchester

== Private Roads
--- Driveways/Unnamed Roads



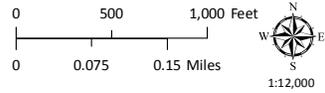
AERIAL IMAGERY

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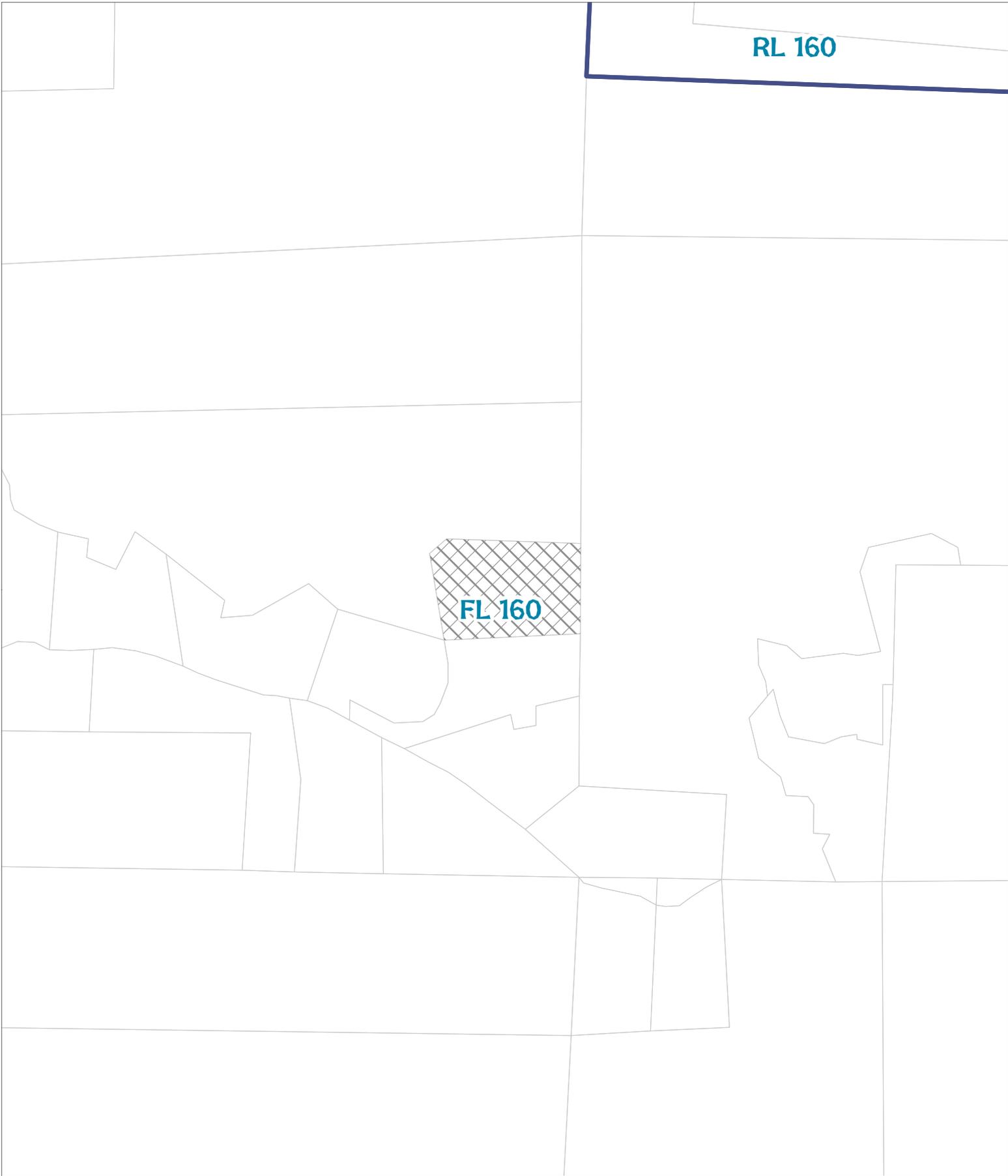
CASE: V 2018-0007
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 Zoning Districts
 Public Roads

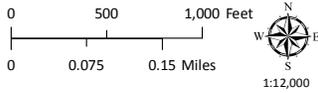


ZONING DISPLAY MAP

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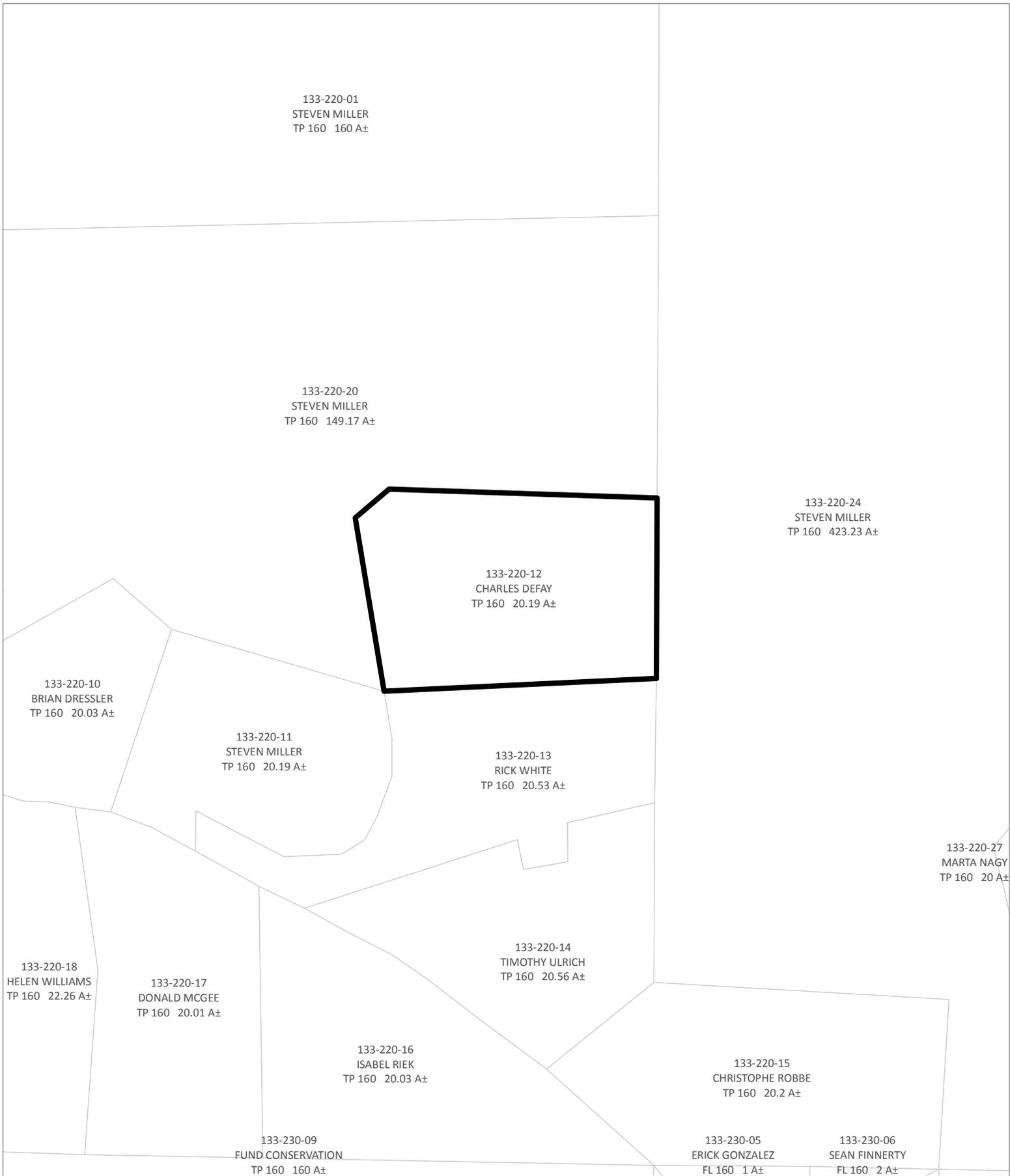


 General Plan Classes

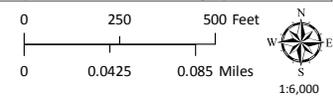
GENERAL PLAN CLASSIFICATIONS

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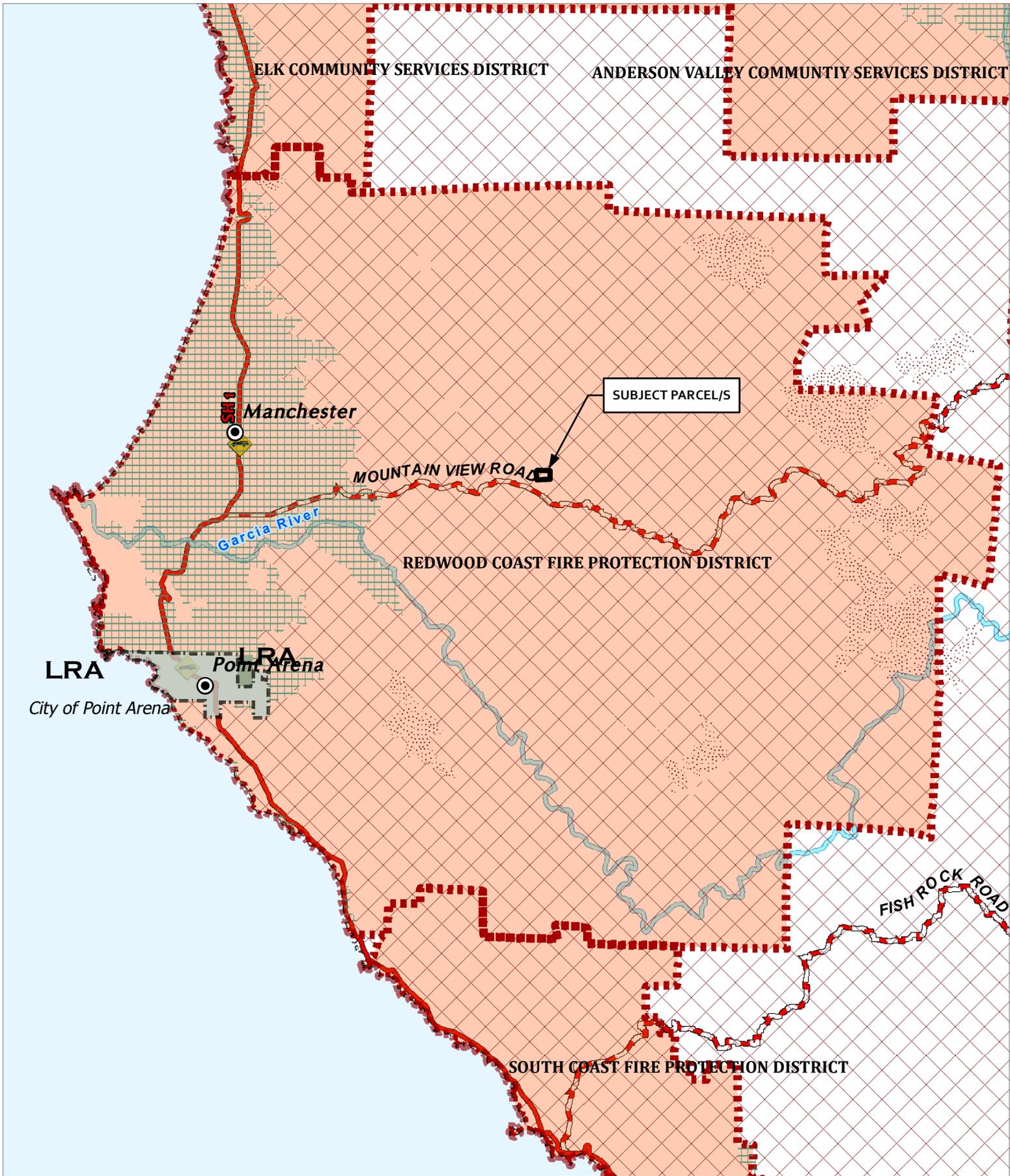


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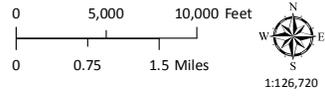
ADJACENT PARCELS

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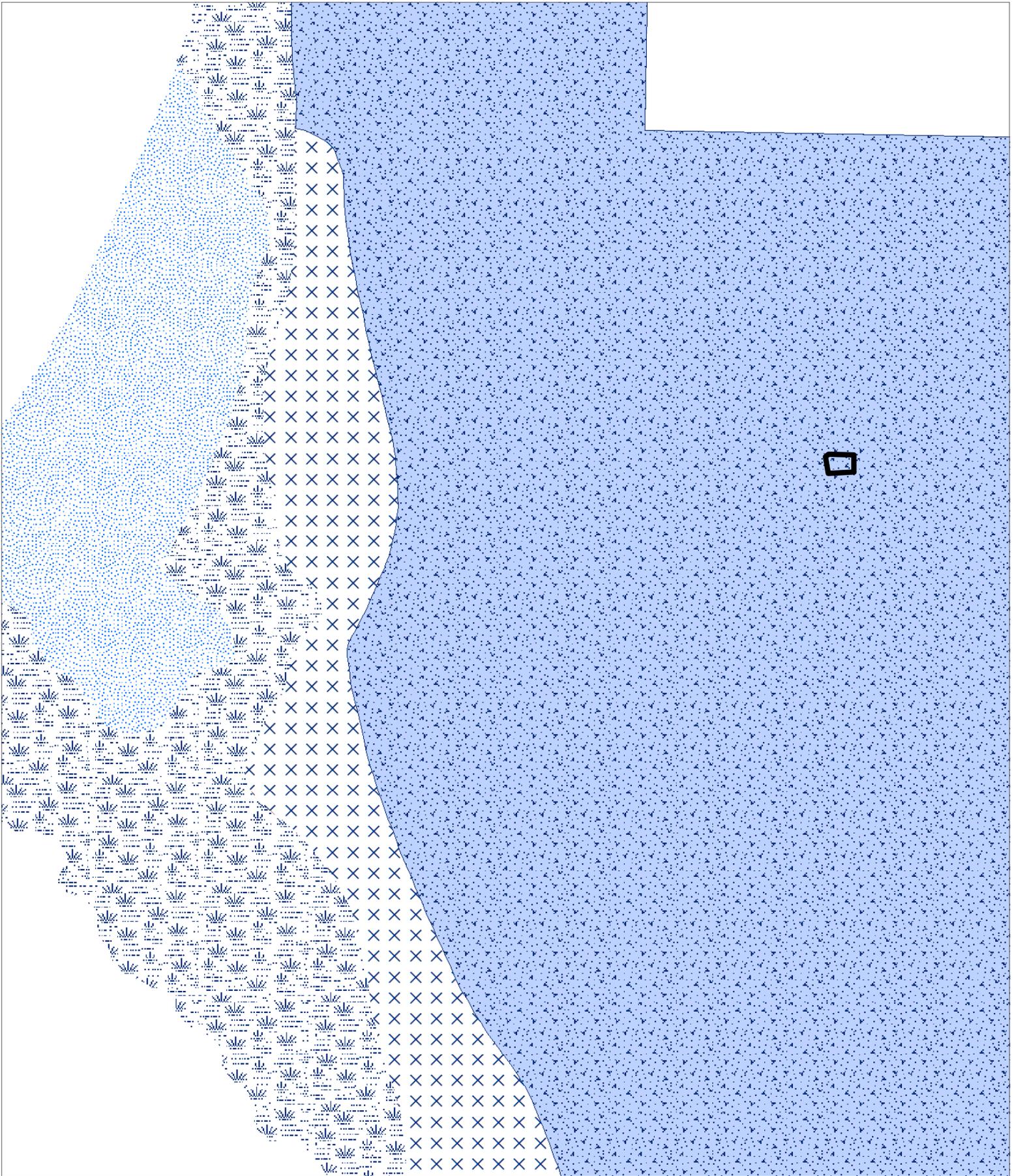
-  Major Towns & Places
-  City Limits



FIRE HAZARD ZONES & RESPONSIBILITY AREAS
STATE RESPONSIBILITY AREA

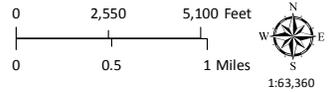
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MENDOCINO COUNTY PLANNING DEPARTMENT - 06/07/2018



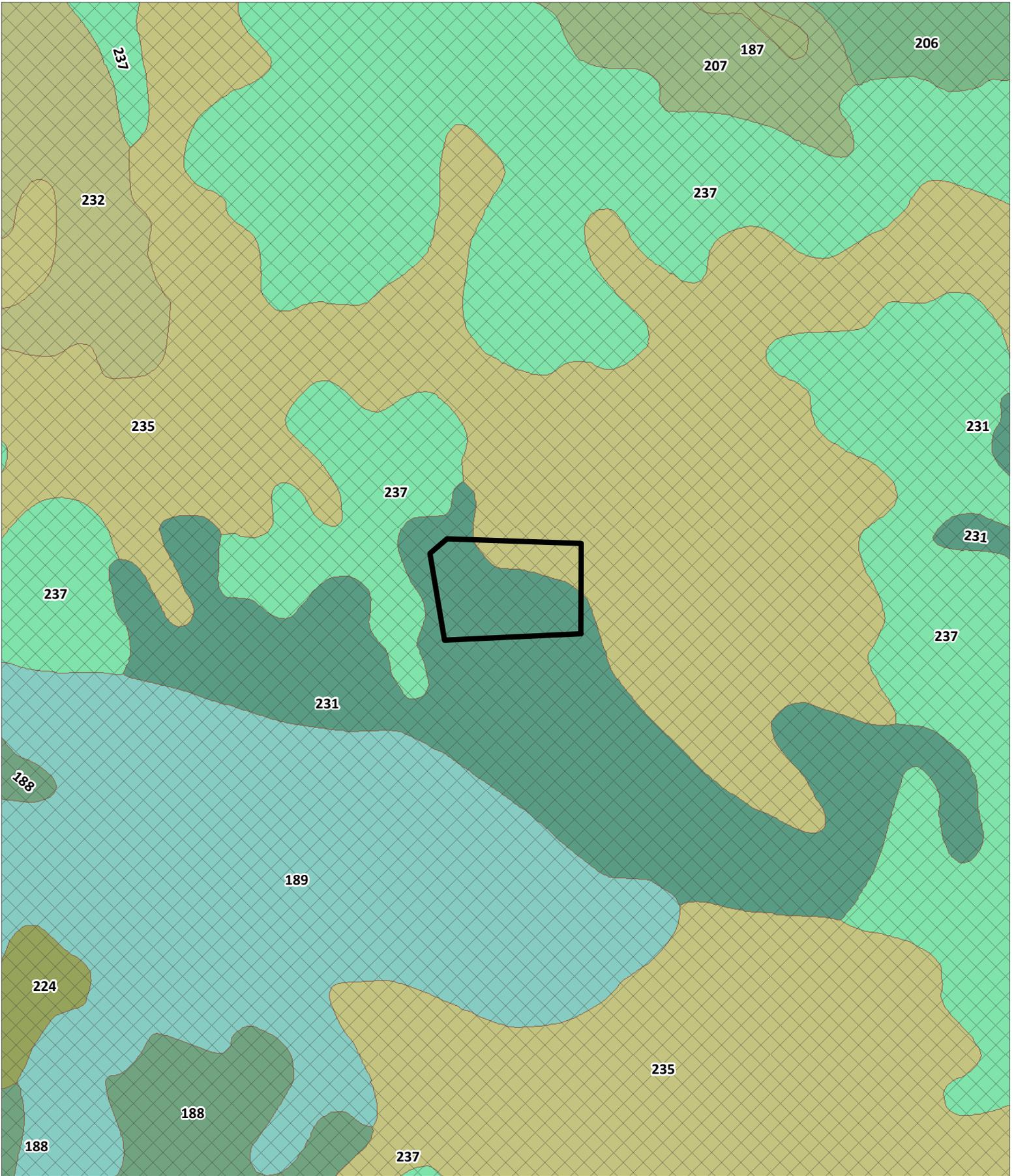
CASE: V 2018-0007
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-  Critical Water Areas
-  Sufficient Water Resources



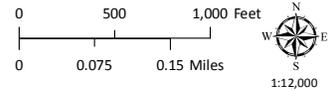
GROUND WATER RESOURCES

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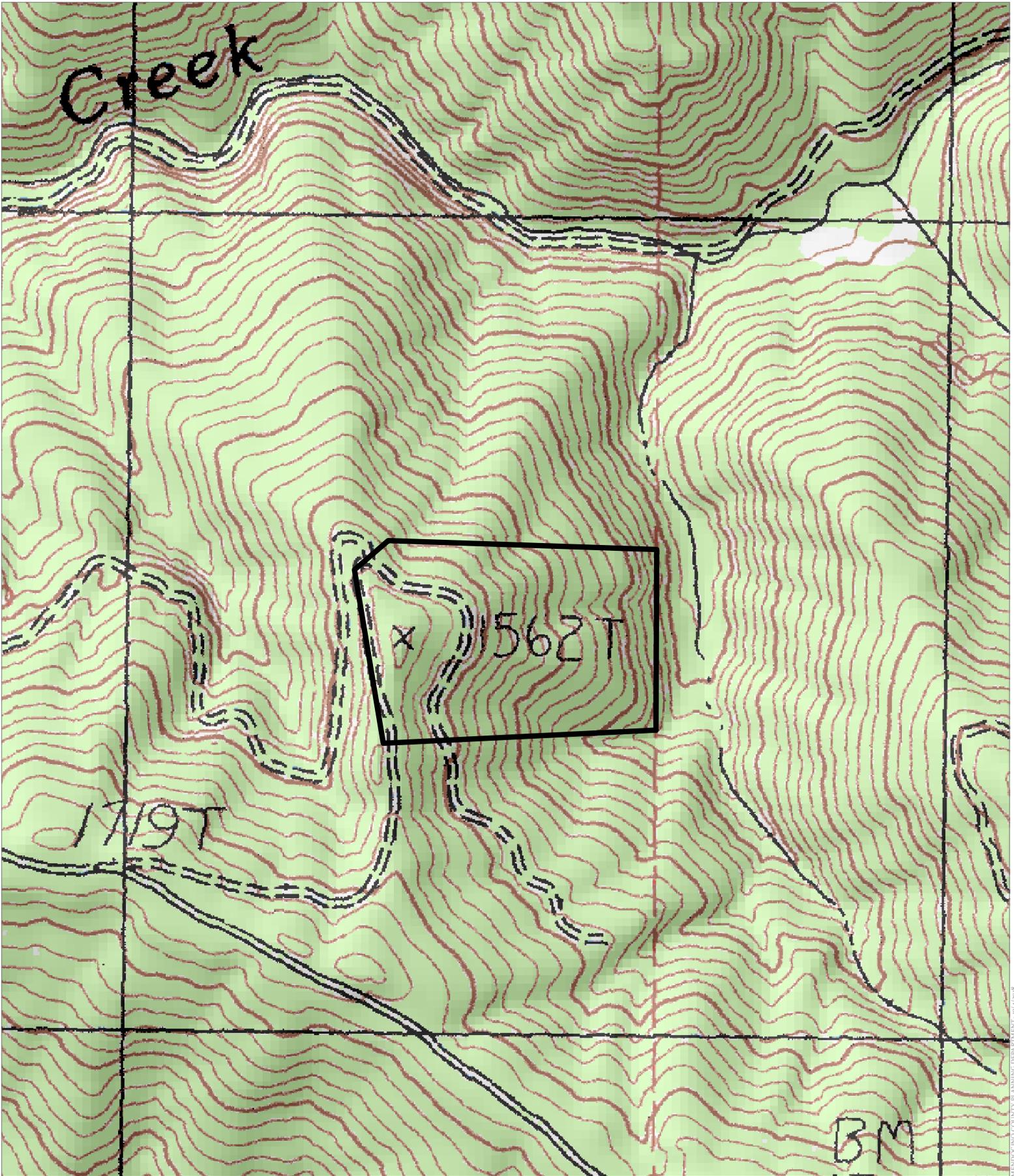
CASE: V 2018-0007
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-  Bishop Pine
-  Western Study Soil Types

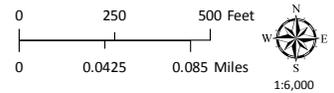


LOCAL SOILS

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TOPOGRAPHIC MAP
CONTOUR INTERVAL IS 40 FEET

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Resolution Number _____

County of Mendocino
Ukiah, California
October 19, 2019

V_2018-0007 - CHARLES S & PERI DEFAY

RESOLUTION OF THE ZONING ADMINISTRATOR, COUNTY OF MENDOCINO, STATE OF CALIFORNIA, GRANTING A VARIANCE TO REDUCE THE SETBACK REQUIREMENT OF MENDOCINO COUNTY CODE SECTION 20.068.050

WHEREAS, the applicant, CHARLES DEFAY, filed an application for a VARIANCE with the Mendocino County Department of Planning and Building Services to reduce the setback requirement of the Mendocino County Code Section 20.068.050, 4.5± miles east of Manchester, 0.3± miles north of its intersection with Mountain View Rd. (CR 510), on the east side of Miller Ct. (Private), located at 19851 Miller Ct., Manchester (APN: 133-220-12); General Plan FL:160; Zoning TP:160/C:B; Supervisorial District 5; (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; and

WHEREAS, in accordance with applicable provisions of law, the Zoning Administrator held a public hearing on, October 19, 2018, at which time the Zoning Administrator heard and received all relevant testimony and evidence presented orally or in writing the Project. All interested persons were given an opportunity to hear and be heard regarding the Project; and

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

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

1. **General Plan & Zoning Findings:** The subject parcel has a General Plan Land Use Designation of Forest Lands (FL) and the Project is consistent with the General Plan definition. Additionally, the subject parcel lies within the Zoning District of Timberland Production (TP:160) and the Project is consistent with the Zoning District per MCC 20.068. The Project is also located within the Cluster Combining District (C:B) with which the Project is consistent per MCC 20.116.
2. **Environmental Protection Findings:** The proposed variance has been determined to be Categorically Exempt from a CEQA Initial Study under a Class 1 exemption.
3. **Variance Findings:** The Zoning Administrator approves V_2018-0007 subject to the Conditions of Approval recommended by staff, and further finding:

(A) That there are special circumstances applicable to the property involved, including size, shape, topography, location, or surrounding;

The subject parcel is located in a former logging area and situated within relatively rough terrain. A majority of the parcel is steeply sloped and unsuitable for building any structures, with the exception of the 1 acre area that hosts a majority of the structures. Furthermore, the subject parcel and surrounding lands are heavily forested, creating another obstacle to development. The

structure in question, the residence, is skillfully constructed on a level section of the one acre, but is unable to meet setbacks given the almost non-existent buildable terrain.

(B) That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in the Division;

While the applicant did construct a residence without the appropriate building permits, county staff determined that no other site would be suitable for the construction of the residence and that a variance would have been required regardless of actions taken by the applicant. Furthermore, as previously noted, the terrain of the parcel is very unsuitable for construction, thus the location of the residence is appropriate given the terrestrial constraints. The side yard from which the existing residence requires a setback reduction is a very steep, 20-30 foot descent that runs along the property line. County staff determined it would be necessary to construct the residence along the steep slope regardless of the building footprint.

(C) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone and denied to the property in question.

As stated by the applicant and observed by county staff, the parcel would not be able to host a residence without a variance, thus jeopardizing the preservation and enjoyment of substantial property rights enjoyed by neighboring properties. Without the granting of a variance to the setback requirements, the cost and time to construct a residence would be long and burdensome, requiring substantial investment that would not be necessary on neighboring parcels. While the parcel is relatively isolated, county staff observed neighboring properties that enjoyed some degree of developable land, unlike the subject parcel which is very limited in terms of land suitable for construction.

(D) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located;

The granting of the variance would not be a detriment to the public welfare or injurious to the property as the structure is already existing. The variance is to allow the existing residence to be permitted in its current footprint, which does not meet the setback requirement of 50 feet from a side yard as defined by Section 20.068.050 of the Mendocino County Code.

(E) That the granting of such variance will not adversely affect the General Plan (including the Ukiah Valley Area Plan).

The proposed variance will not adversely affect the General Plan as the reduction in the setback requirements will allow the applicant to permit an existing residential structure. This will help to preserve the timberland resources on the parcel, an intended use of the Forest Lands General Plan Land Use Designation, and deflect the need for additional development.

BE IT FURTHER RESOLVED that the Zoning Administrator hereby grants the requested Variance, 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 Zoning Administrator 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: _____

IGNACIO GONZALEZ
Zoning Administrator

EXHIBIT A

**CONDITIONS OF APPROVAL
V_2018-0007 - CHARLES S & PERI DEFAY
OCTOBER 19, 2018**

APPROVED PROJECT DESCRIPTION: Variance request to reduce setback requirement from 50' to 30' to allow permitting of existing structures along the western side yard.

CONDITIONS OF APPROVAL:

1. 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.
2. This permit shall be 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.
3. That the application along with supplemental exhibits and related material shall be considered elements of this entitlement and that compliance therewith shall be mandatory, unless a modification has been approved by the Zoning Administrator.