

Cannabis Policy Questions

Board of Supervisors Meeting, October 3, 2017

During the course of public outreach, policy development, and consideration of regulatory measures, the following policy questions have arisen. Direction from the Board of Supervisors is requested.

- A. **Timing of tax measure and regulatory permitting system:** State law allows for local jurisdictions to implement voter-approved taxes on cannabis activities. However, under state law, the earliest a tax measure may be placed on a Mono County ballot for voter consideration is November 2018. The County has several options regarding the timing of the tax measure and regulatory permitting system:

Options:

1. Enact the regulatory permitting system and tax measure concurrently, meaning planning permits will be available only after the tax measure is passed. From a holistic perspective, this option provides the most complete package to help ensure a well-rounded cannabis program that covers as many known issues as possible for all County departments, as opposed to “piecemealing” by approving only land uses first. In addition, the State’s complete regulations are yet to be released, and could necessitate changes in a variety of County activities. State regulations are anticipated late in 2017.

The drawback to this option is that the first growing season (summer 2018) will not be available for interested cultivators and will result in impacts to those specific individuals. Unfortunately, the tax timeline is driven by state law governing the ballot measure and the County does not have any control over the date.

To provide some certainty under this option for investors, the Board could formally recognize a final, proposed permitting and regulatory package that would be adopted if the tax measure passes.

2. The permitting system could be enacted prior to passage of a tax measure, e.g., by Jan. 1, 2018, on the currently proposed timeline. In this case, fees will be estimated to cover costs without the benefit of knowing whether a tax will apply, and potential taxes on permitted activities will be lost unless and until a tax measure is passed. The County would be in a reactive position, adjusting to the November 2018 ballot results if needed, which is an additional time commitment. During public input, a suggestion was made to accept “donations” in lieu of taxes until a tax passes.

At the Planning Commission meeting, public comment was received that the State intends to stop accepting or processing applications after a July 2018 cut-off date. County Counsel has researched the issue, including the specific citation provided, and could not find information supporting this claim. New regulations are being drafted by the State and could address this date; however, any conclusion prior to the release of those new regulations would be speculative only.

- B. **Designations for manufacturing:** Manufacturing consists of two state license types: “Type 6 – Manufacturer 1” licenses using nonvolatile solvents or no solvents, and “Type 7 – Manufacturer 2” licenses, which allow for volatile solvents.

In response to public comment that the manufacturing of edibles should be permitted in more designations, Type 6 licenses were researched further. Manufacturing activities such as packaging/repackaging and labeling cannabis products, and producing edible products or topical products without conducting extraction are more similar to existing uses in the Commercial and Mixed Use designations. Edible products would be similar to restaurant and food facility uses, and would also require Environmental Health approvals. On the other hand, extraction and

infusion processes, and associated activities, are more similar in use to light manufacturing. These light industrial uses are more similar to existing uses in the Industrial and Industrial Park designations.

Regarding Type 7 licenses, some concern has been expressed by the public and a Board member about the use of volatile solvents in manufacturing. The State prohibits the use of volatile solvents in residential areas, and public input has been received from an industry member that oil and extracts can be manufactured without the use of volatile solvents. The County could choose to ban Type 7 licenses, or limit such uses to Industrial and Industrial Park designations. If volatile solvents are allowed, the California Building Code (including fire code) contain standards and requirements for these facilities and the solvents. Local Fire Protection Districts are likely to be actively involved as well, and Environmental Health will require a Hazardous Materials Business Plan.

Options for Type 6:

1. Permit manufacturing of only edibles and packaging/labeling in the Mixed Use and Commercial land use designations, as well as Industrial, Industrial Park, Service Commercial, and Agriculture (as an accessory use to the main use). Extraction and other light manufacturing (other Type 6 licenses) should be limited to Industrial, Industrial Park, and Service Commercial designations.
2. Limit Type 6 licenses at this time to Industrial, Industrial Park, Service Commercial, and Agricultural (as an accessory use to the main), consistent with the definition of “light” manufacturing uses, and modify when additional guidance is available from state/Environmental Health regulations.

Options for Type 7:

1. Ban Type 7 licenses in Mono County.
2. Allow for Type 7 licenses in Industrial (I) designations only.
3. Other options: allow for Type 7 licenses in more designations such as Industrial Park (IP), and/or implement additional safety standards.

- C. **Interpretation of the Mixed-Use designation in Antelope Valley:** The “main streets” of Walker and Coleville in the Antelope Valley primarily have designations of Mixed Use (MU), with no Commercial (C), Industrial (I) or Industrial Park (IP) lands on main street or elsewhere (see Map #2 below). Based on the cannabis activity consistency analysis, land may not be available in the Antelope Valley for distribution, testing, and manufacturing activities.

The Mixed Use LUD is intended “to provide a wide range of compatible resident- and visitor-oriented residential and commercial uses, including business, professional and retail uses... to provide a transition between intensive commercial uses and residential uses... MU transitional areas can limit the size of business establishments and restrict uses incompatible with residential districts. ... Commercial uses shall conform to strict standards that prohibit obnoxious odors, obtrusive light and glare, and excessive noise.” In addition, past practices in the Antelope Valley have emphasized commercial uses on main street (US 395) frontage and residential uses on other streets. Thus, in Walker, an auto repair business and mini-storage warehouses have been permitted in MU on US 395 frontage.

Options:

1. To clarify and memorialize this interpretation of the MU district, the following area plan language could be added under the existing “Policy 4.A.2. Provide for a mix of residential, commercial, recreational, institutional, and industrial park land uses in a manner consistent with the overall goal for the Antelope Valley”:

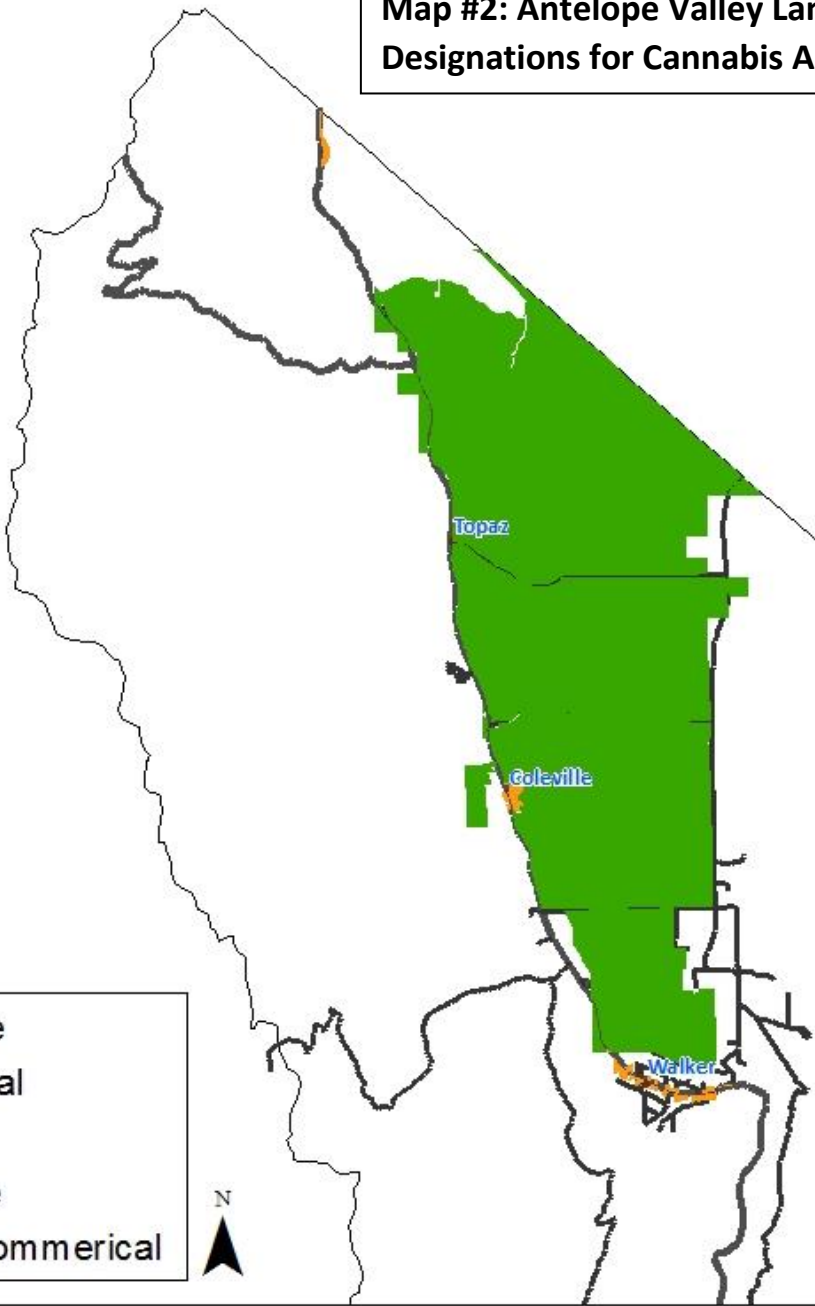
Action 4.A.2.d. To promote main street and economic development as provided by other policies (Objectives 4.D. and 4.E.), emphasize commercial character and uses¹ on US 395/main street frontages in

¹ Commercial uses must be similar and not more obnoxious or detrimental to the public health, safety, and welfare than uses listed in the Mixed Use designation.

the Mixed Use designation, and residential uses along residential side street frontage. (Note: The MU LUD and cannabis regulations would cross-reference this policy for Antelope Valley.)

2. Do not change the Antelope Valley area plan language and provide individual interpretations if applications for such uses are received.
3. Craft language to emphasize cannabis activities but not necessarily other commercial activities.

Map #2: Antelope Valley Land Use Designations for Cannabis Activities



-  Agriculture
-  Commerical
-  Industrial
-  Mixed Use
-  Service Commerical



D. **Commercial cultivation in Rural Residential (RR) designations:** During public input, a request was made to allow cannabis cultivation on parcels with a Rural Residential (RR) designation in Antelope Valley. The County recently responded to a land use violation for a cannabis cultivation operation on RR land in the Tri-Valley, and the final determination was that commercial cannabis cultivation is not permitted in the RR designation. However, the County could choose to allow it, if desired, under a variety of options (see below).

Per the Land Use Element, *“The RR designation is intended to permit larger-lot single-family dwelling units with ancillary rural uses in areas away from developed communities. Small-scale agriculture, including limited commercial agricultural activities, is permitted.”* The “commercial activities” are defined under small-scale agriculture and are limited to the production of food for community use. Cannabis is not defined as a food under state law.

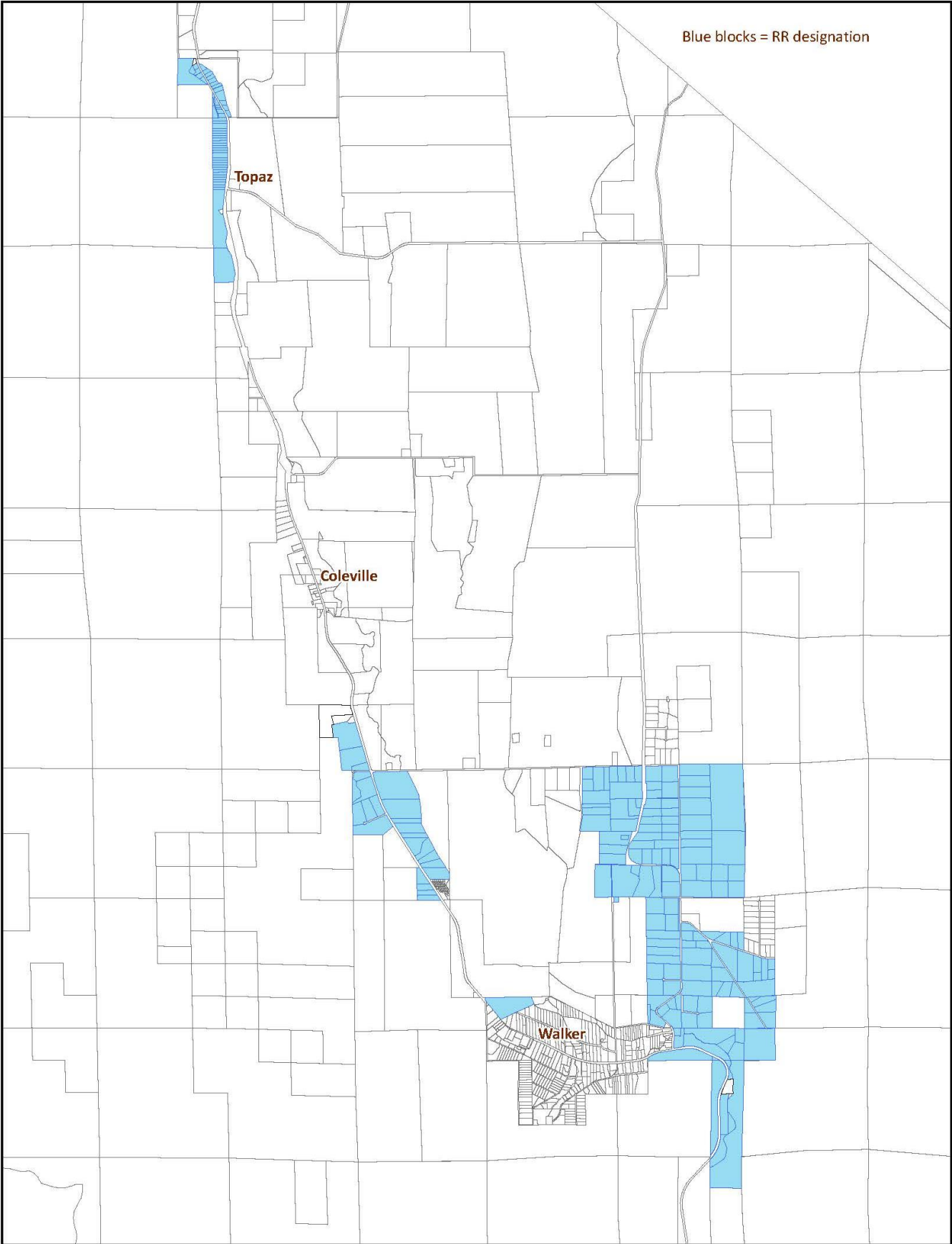
At the most basic level, the planning principle at question is whether a commercial activity should be allowed in a residential land use designation. Under the consistency analysis and supported by the enforcement case, commercial cannabis cultivation would not be allowed in a residential designation, including Rural Residential.

Antelope Valley has a total of 235 RR parcels, of which 75% (177 parcels) are less than 10 acres in size, for a total calculated acreage of 1,884 acres (see Map #3 below). The parcels can be categorized into the following size classes:

<u>Size</u>	<u>#</u>	<u>%</u>
<10 acres	177	75%
10-14.99 acres	24	10%
15-19.99 acres	16	7%
21-39 acres	15	6%
40+ acres	4	2%

The 40+ parcels are primarily adjacent to public lands designated Resource Management (RM), providing a transition from residential to resource lands. Within the 21-39 acre size class, more parcels are adjacent to private lands designated Agriculture (AG).

Map #3: Rural Residential (RR) LUDs in Antelope Valley



In the consistency analysis, commercial cannabis cultivation is compatible with the Agriculture (AG) designation in Antelope Valley. A total of 143 parcels are designated AG, ranging in size from just under 0.5 acres to 649 acres, for a total calculated acreage of 15,963 acres (see Map #2 above). The size class breakdown is as follows:

Size	#	%
<10 acres	30	21%
10-14.99 acres	10	7%
15-19.99 acres	11	8%
21-39 acres	23	16%
40+ acres	60	42%

As the land use data indicate, agriculture has historically occurred on larger parcels due to the necessary land base for economic viability, and the large sizes help mitigate impacts to adjacent properties or uses. The high value of cannabis crops diminishes the need for large parcels for viability, providing an opportunity for cultivation on smaller lots, such as the 21% of AG lots that are smaller than 10 acres.

In addition, the General Plan Land Use Element contains the following policies:

Objective 1.G. Protect open space and agricultural lands from conversion to and encroachment of developed community uses.

Policy 1.G.1. Protect lands currently in agricultural production.

Action 1.G.1.a. Designate large parcels in agricultural use as “Agriculture.”

In the Antelope Valley, the minimum lot size for an AG designation is 10 acres. (The AG designation does not have a minimum district size for redesignation purposes, only a minimum size for an AG parcel which varies by area plan from 2.5 acres to 40 acres.)

At least one Planning Commissioner expressed interest in allowing commercial cannabis cultivation in RR; whether countywide or just in Antelope Valley was unclear. Public comment from Antelope Valley meetings express that uses should not be constrained to land use designations, including commercial cannabis. In other words, as long as there are “no impacts” to neighbors, any use should be allowed anywhere. In addition, investors have purchased RR land in the hope of engaging in commercial cannabis.

Options:

1. Follow the General Plan Land Use Element policies, and process applications for a General Plan Amendment to change land use designations from RR (or any other designation) to AG.²

Following these procedures allows for an evaluation of impacts on adjacent land uses and existing residences, noticing for public input, and consideration of whether the location is appropriate for the use. Given the amount of AG land available in the Antelope Valley for cultivation, this situation is very different from Policy Question E above where commercial and industrial designations are lacking, and the same land use planning rationale does not apply.

The investors mentioned previously purchased a 40-acre RR parcel, bounded on three sides by RR and Resource Management on the fourth side. The minimum parcel (and therefore district) size for AG in the Antelope Valley is 10 acres, and so this parcel could be redesignated AG if, through the process, it was deemed an appropriate land use.

² These General Plan Amendments will need to be completed separately from the adoption of the cannabis regulatory program due to the California Environmental Quality Act (CEQA). The regulatory program is exempt from CEQA, but land use amendments would not be exempt.

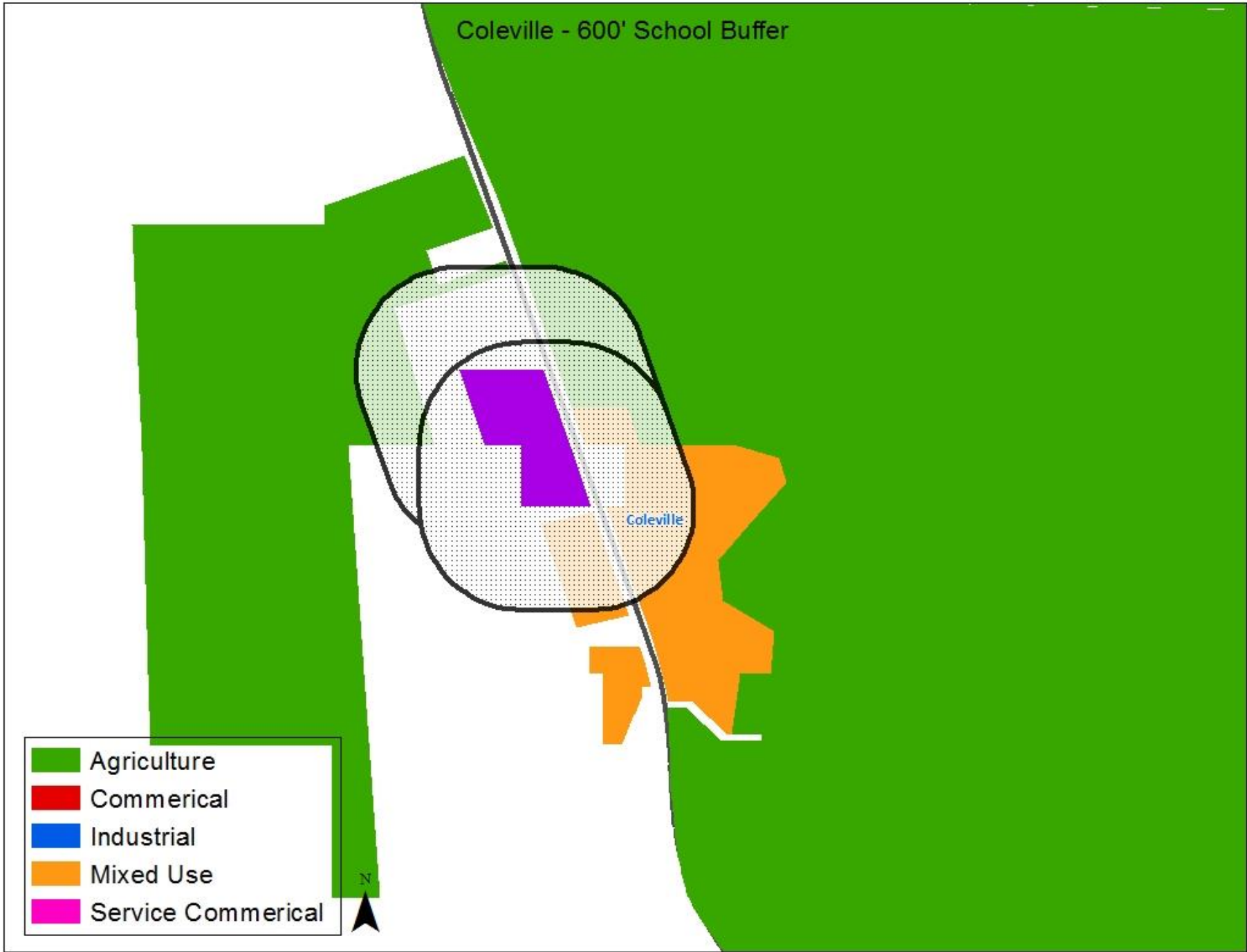
2. Redesignate RR to AG: Some or all of the RR properties could be redesignated to AG. These parcels were once considered “too small to farm and too large to weed,” resulting in a residential use. With the value of cannabis reducing the land base area needed for viability, these parcels could be reconsidered for commercial agricultural production. Either all RR parcels, or some limited number, could be redesignated. Logically, the parcels adjacent to existing AG would have the best land use planning basis for the change. This would not necessarily meet the needs to the investors requesting cannabis cultivation be allowed in RR, as they are not adjacent to existing AG lands.
3. If modifications are desired to allow for commercial agriculture in the RR designation, a number of options/questions apply and Board direction is requested on the following:
 - a. Should all commercial agriculture be permitted in RR, or just cannabis?
 - b. Should the small-scale agriculture definition be changed to accommodate cannabis?
 - c. Should the change be countywide or limited to the Antelope Valley?
 - d. Should a minimum parcel size be required, possibly 20+ acres?
 - e. Are special requirements for setbacks from parcel boundaries or existing structures, odors, visuals, security, and other issues required beyond the standards under consideration?

E. **Buffers from schools and potentially other facilities:** Under State law cannabis businesses may not locate within 600’ feet of any school providing instruction to kindergarten or any grades 1 through 12, day care center or youth center. This minimum standard may be increased by local governments but not decreased. During public meetings throughout the County, the idea of increasing buffers and including additional facilities was discussed, which could result in fewer parcels available for cannabis businesses. The following maps illustrate the impacts of a) 600’ buffer from school facilities per state law, b) expansion to 1000’ feet from school facilities, and c) the addition of parks, libraries, and community centers at 600’ and 1000’ buffers. Other options were also considered, including a 2,000’ buffer, corridors between the expanded facilities, places of religious worship, and facilities normally attractive to children. These additional considerations are not mapped at this time.

Options:

1. Remain with state standards of a 600’ buffer around the specified school/day care facilities.
2. Increase the buffer distance to 1,000’ (such as the Town of Mammoth Lakes).
3. Expand the applicable facilities to include parks, ballfields, playgrounds, or libraries, with either the 600’ or 1,000’ buffer (such as the Town of Mammoth Lakes).
4. Consider any of the following:
 - a. Increase the buffer distance to 2,000’
 - b. Include corridors between applicable facilities
 - c. Include additional facilities, such as places of religious worship, bus stops, or facilities normally attractive to children.

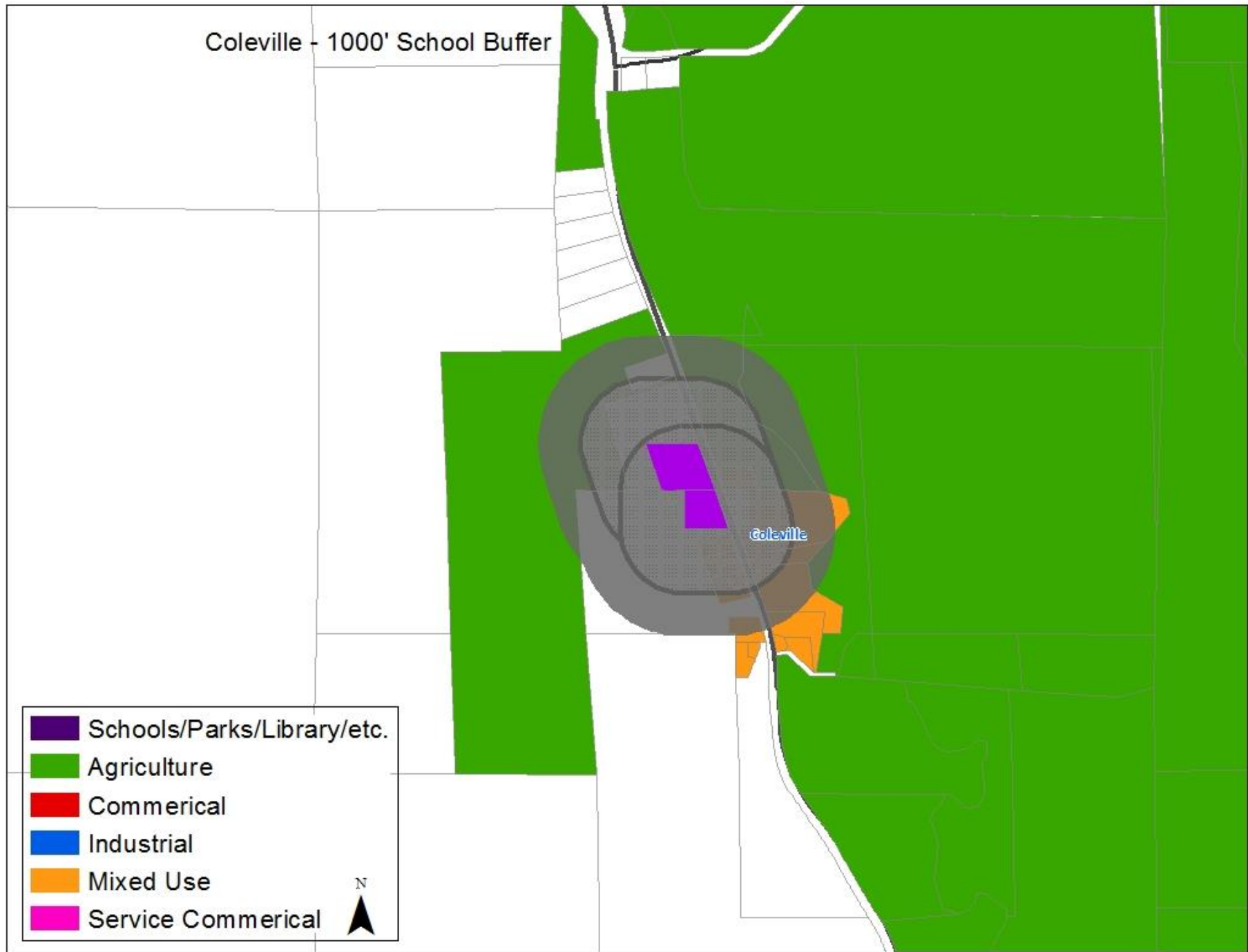
Coleville - 600' School Buffer



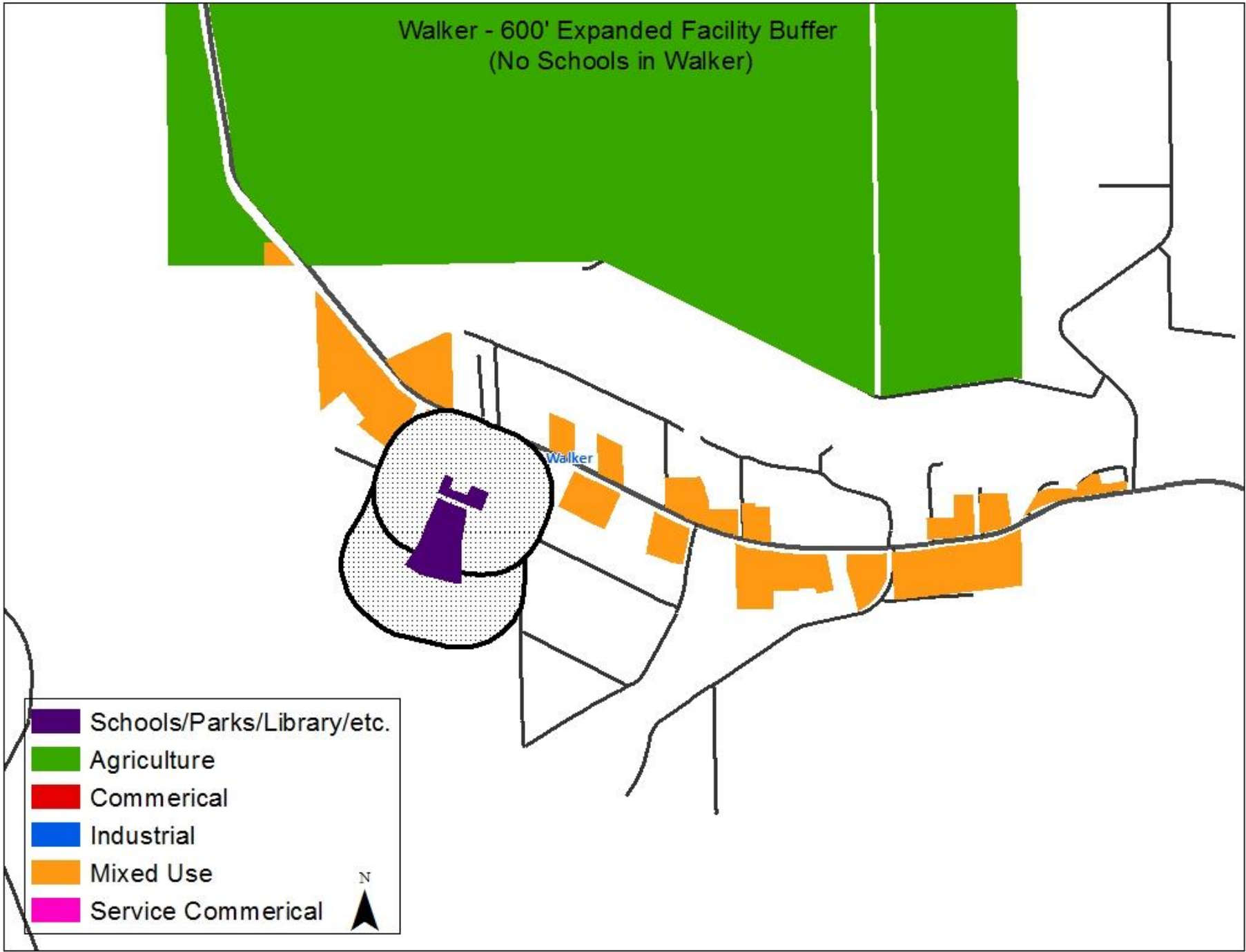
- Agriculture
- Commercial
- Industrial
- Mixed Use
- Service Commercial



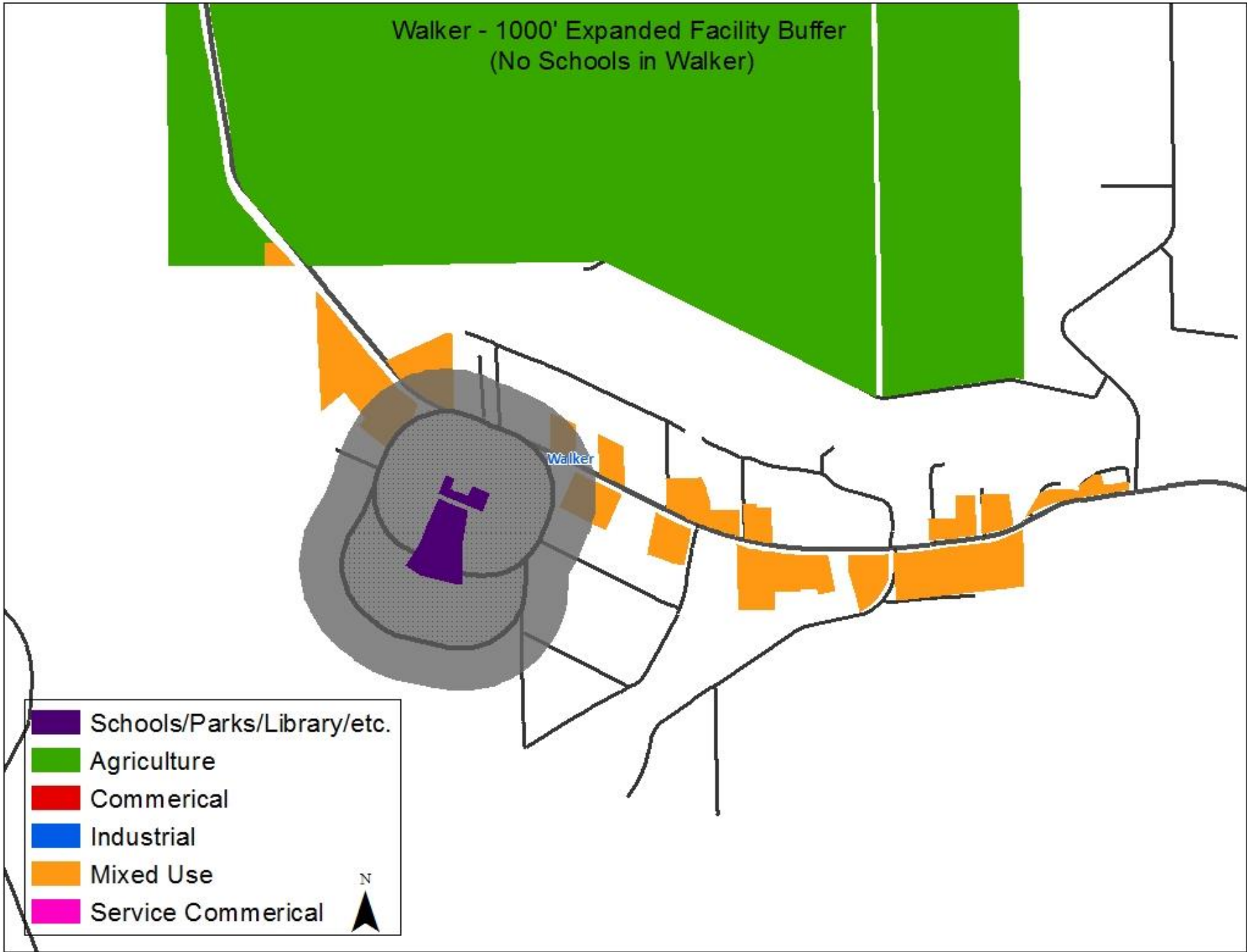
Coleville - 1000' School Buffer



Walker - 600' Expanded Facility Buffer
(No Schools in Walker)



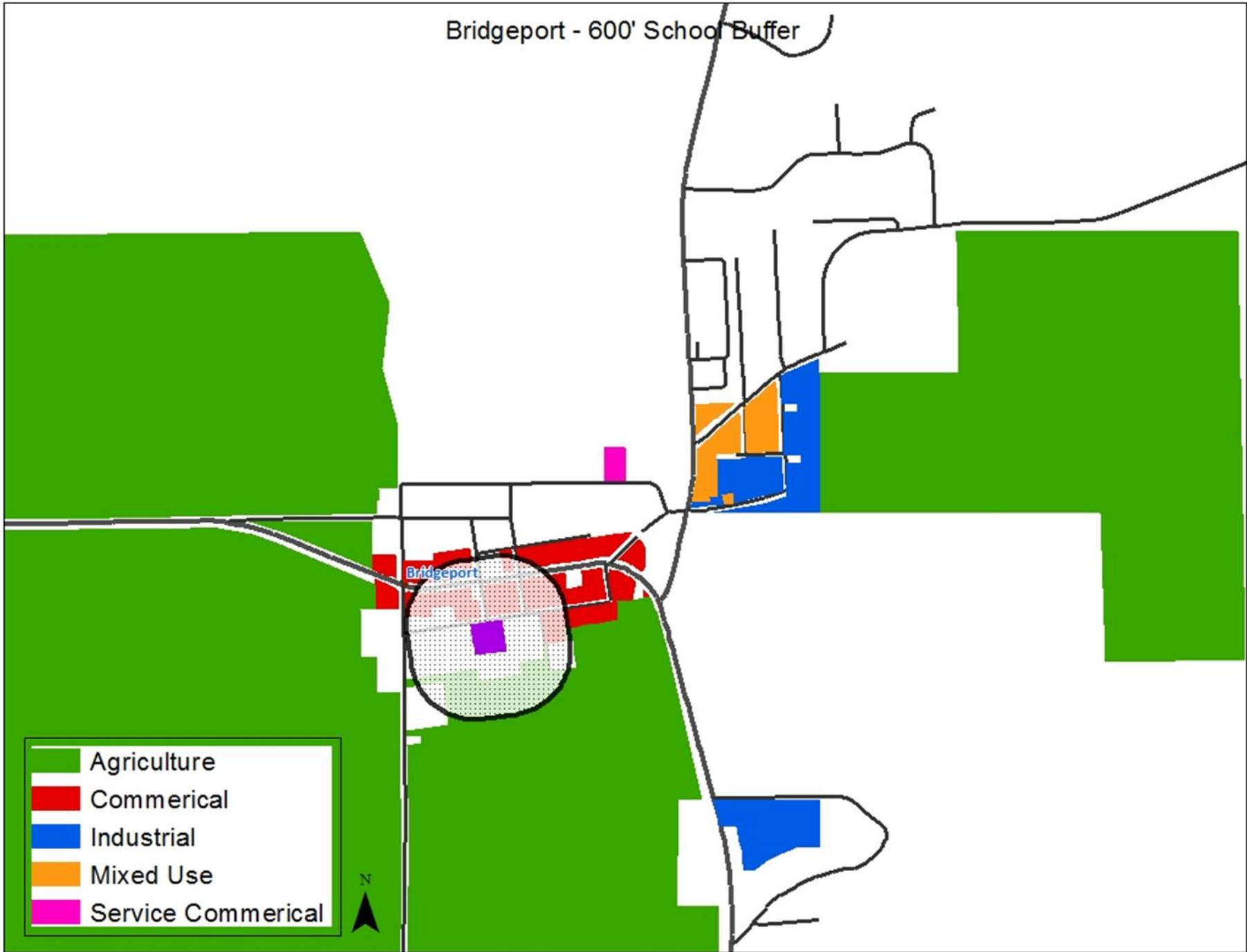
Walker - 1000' Expanded Facility Buffer
(No Schools in Walker)



- Schools/Parks/Library/etc.
- Agriculture
- Commerical
- Industrial
- Mixed Use
- Service Commerical



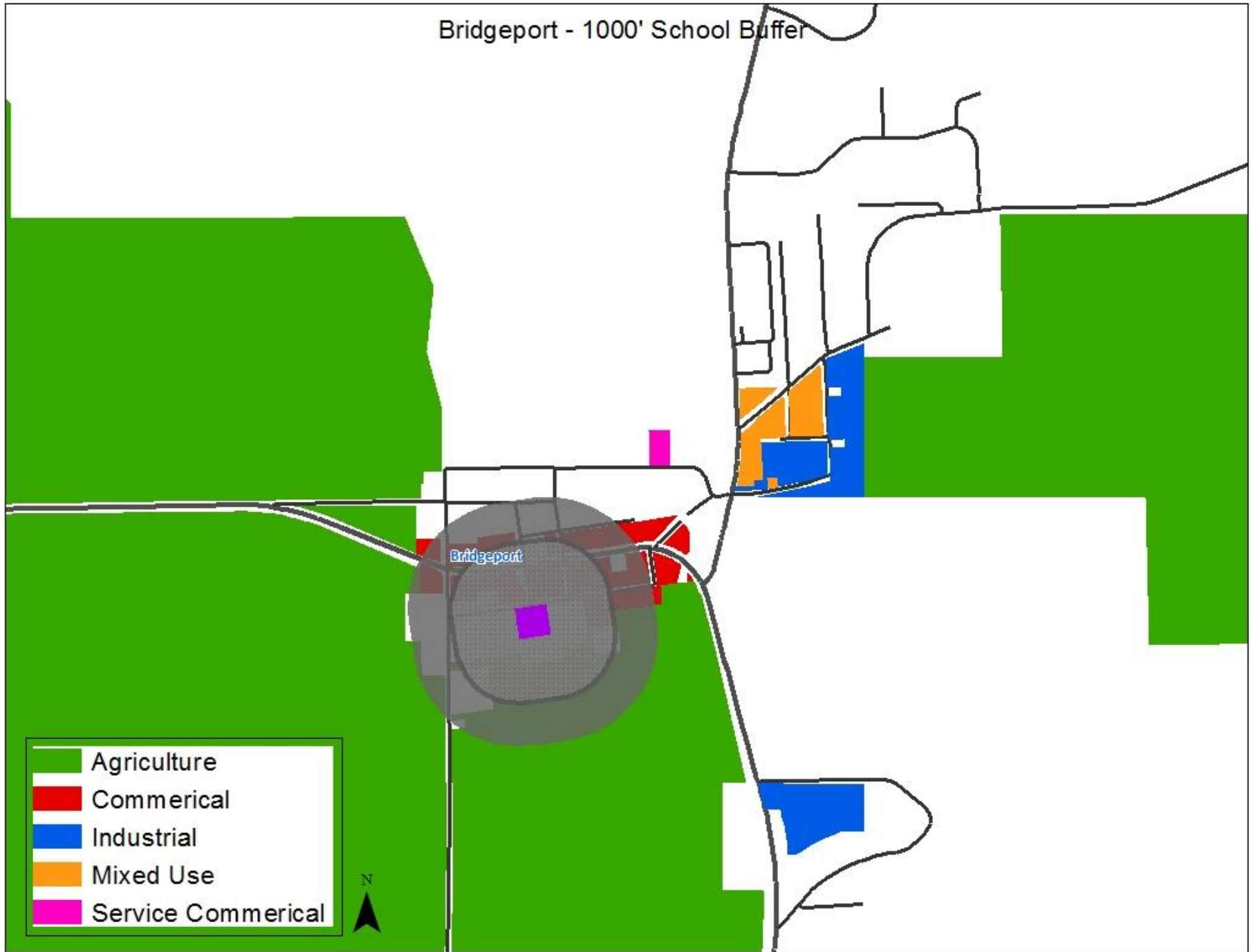
Bridgeport - 600' School Buffer



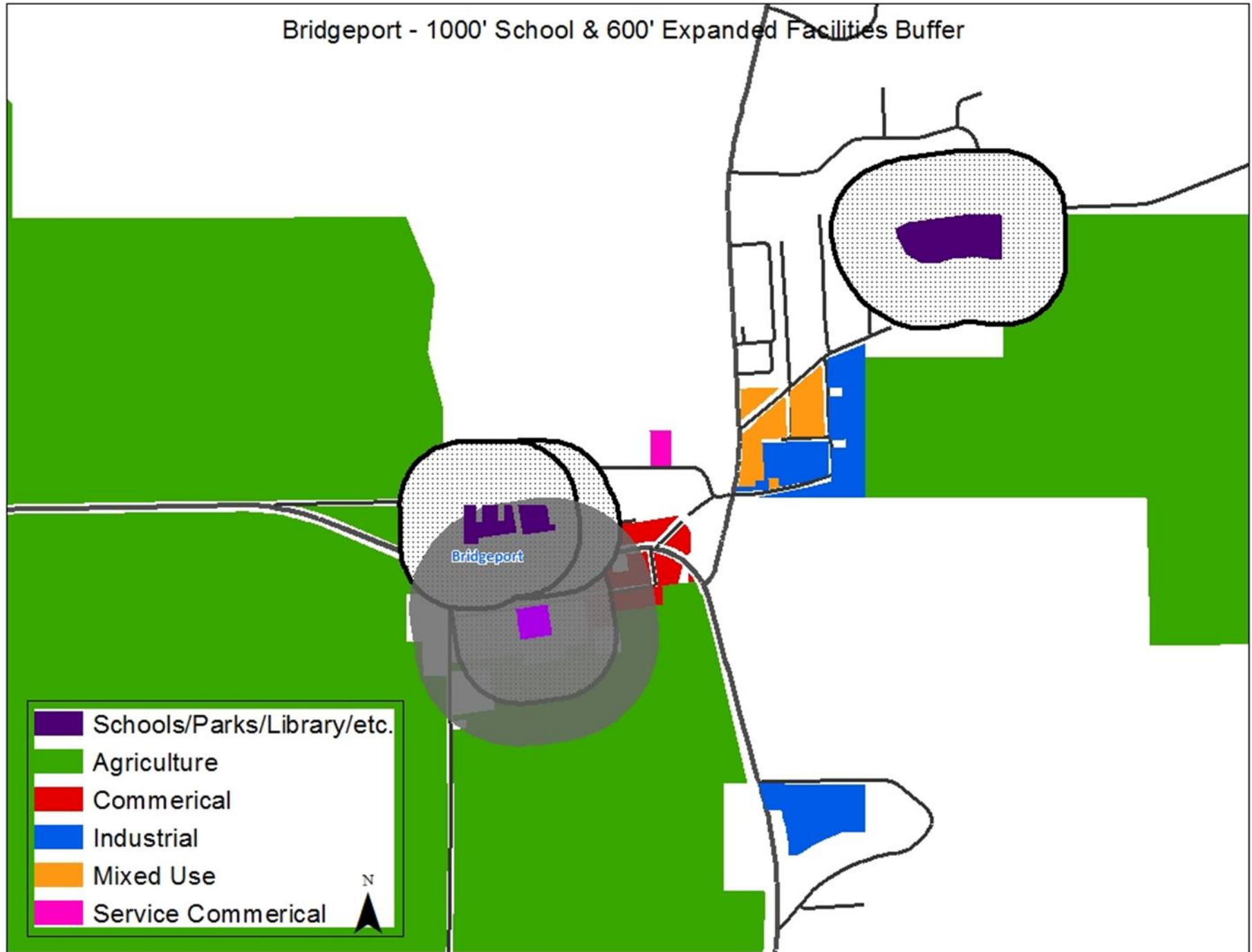
- Agriculture
- Commerical
- Industrial
- Mixed Use
- Service Commerical



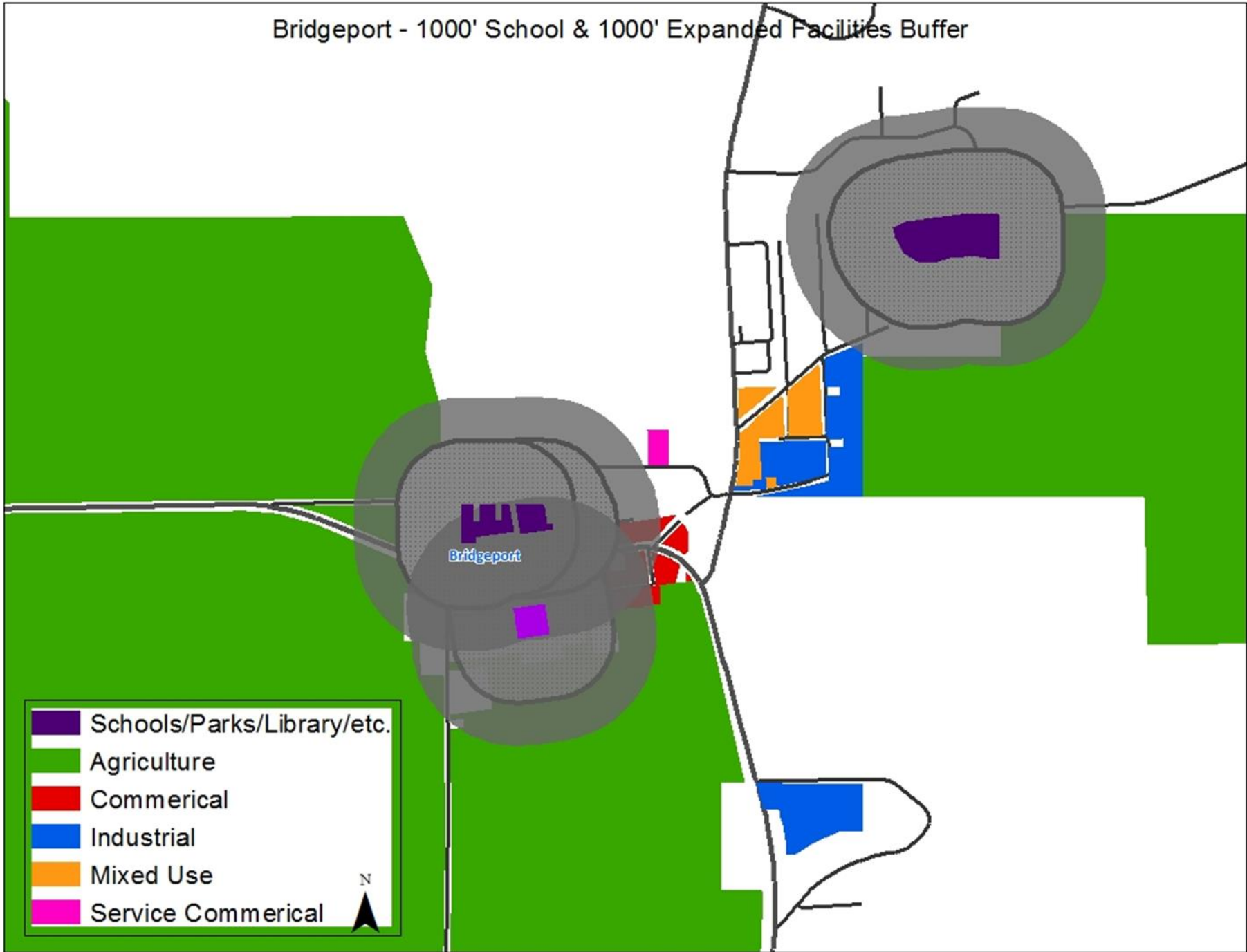
Bridgeport - 1000' School Buffer



Bridgeport - 1000' School & 600' Expanded Facilities Buffer

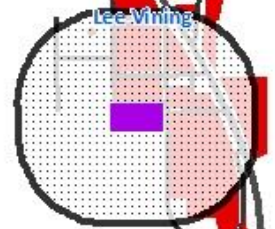
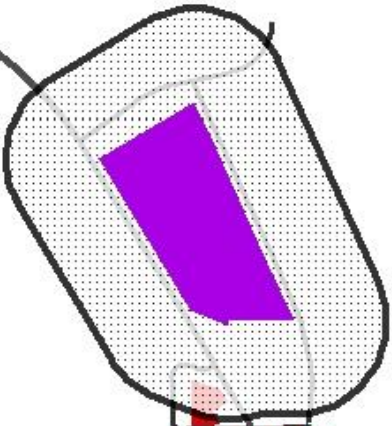


Bridgeport - 1000' School & 1000' Expanded Facilities Buffer

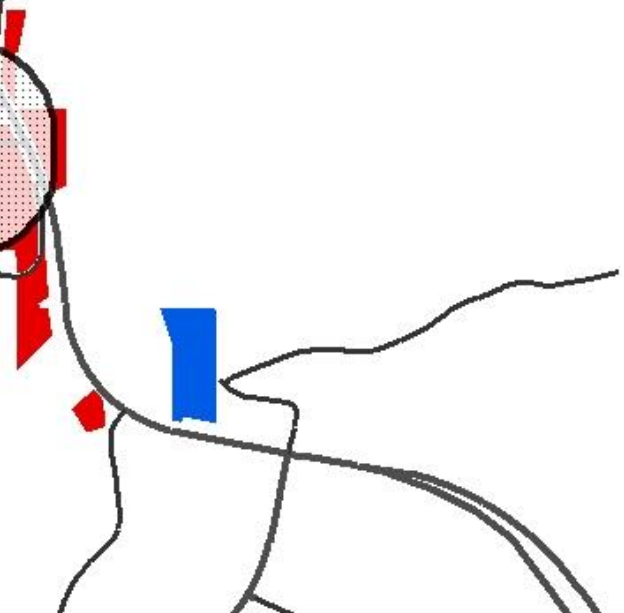


Lee Vining - 600' School Buffer

-  Agriculture
-  Commerical
-  Industrial
-  Mixed Use
-  Service Commerical



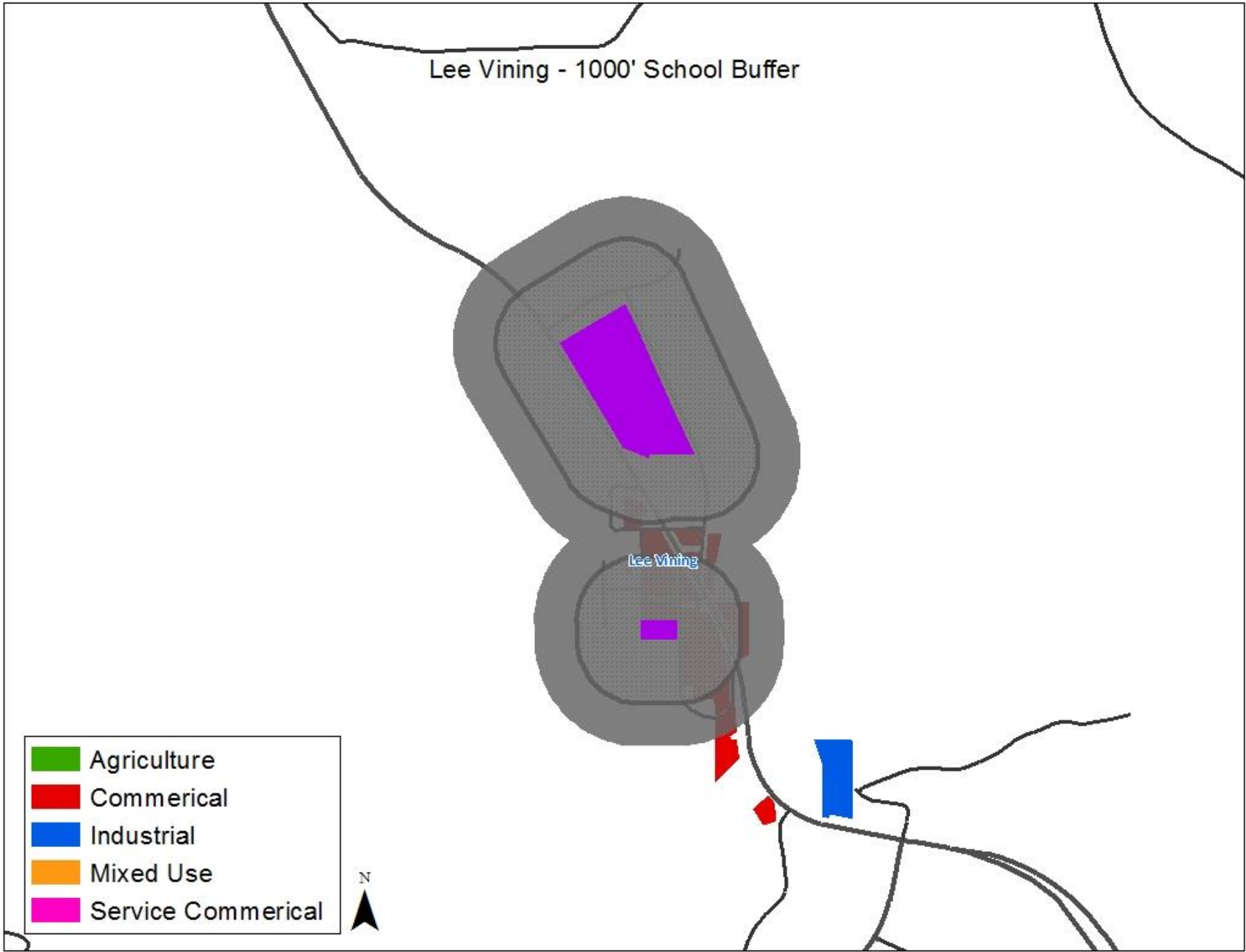
Lee Vining



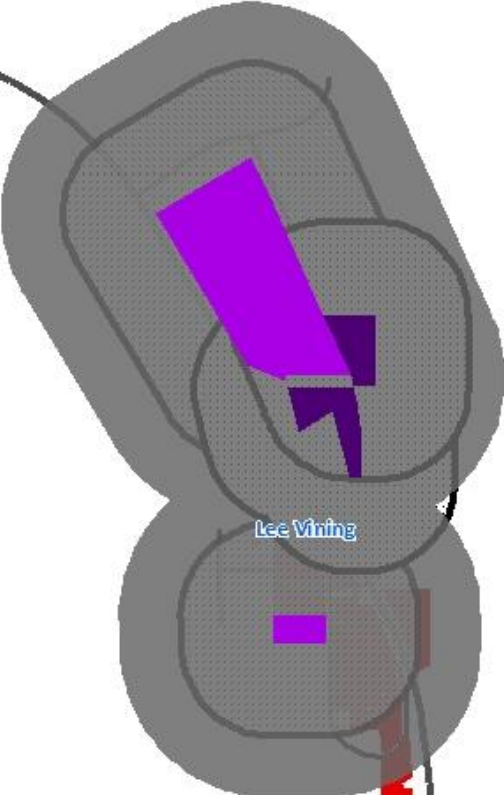
Lee Vining - 1000' School Buffer

Lee Vining

-  Agriculture
-  Commerical
-  Industrial
-  Mixed Use
-  Service Commerical



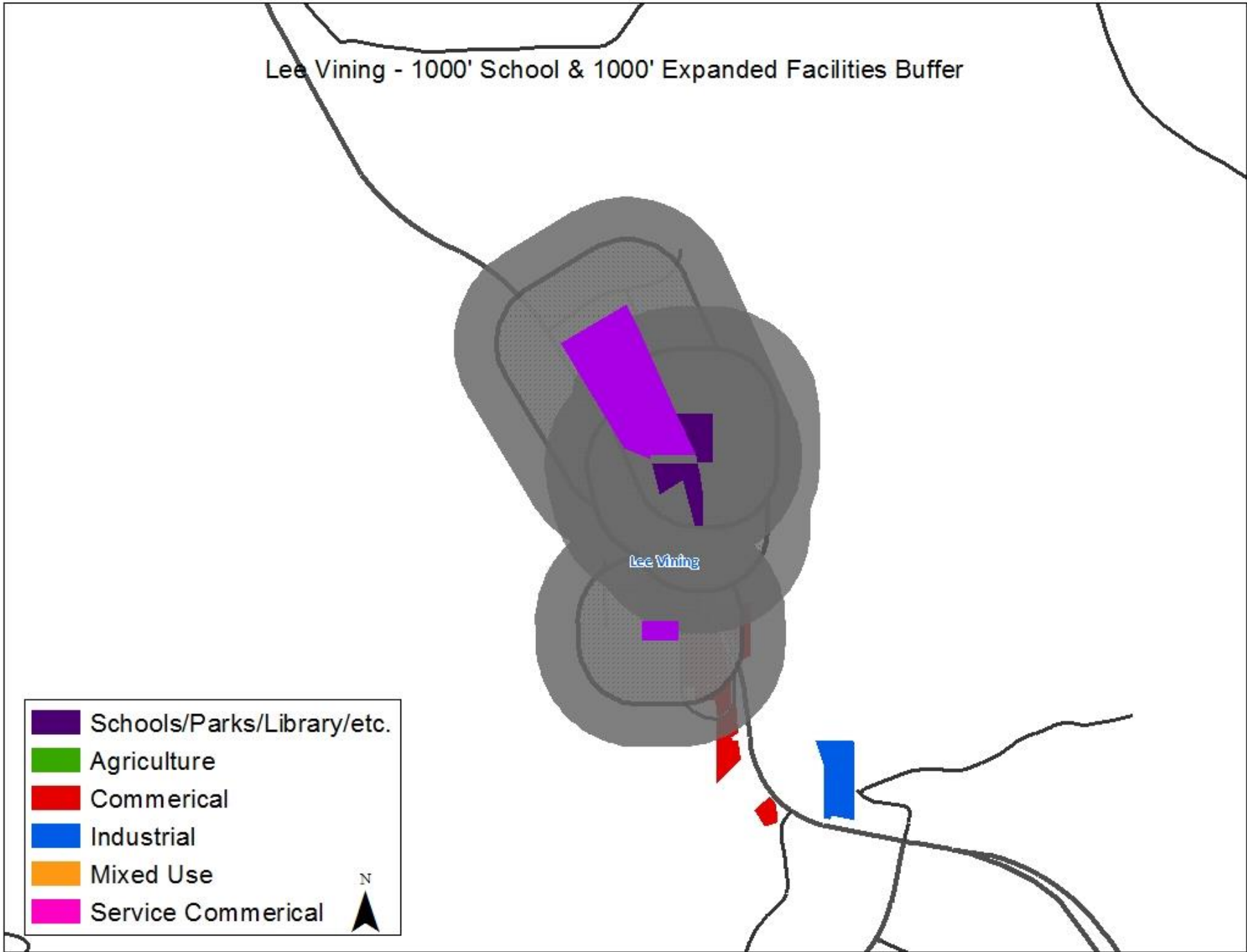
Lee Vining - 1000' School & 600' Expanded Facilities Buffer



- Schools/Parks/Library/etc.
- Agriculture
- Commerical
- Industrial
- Mixed Use
- Service Commerical

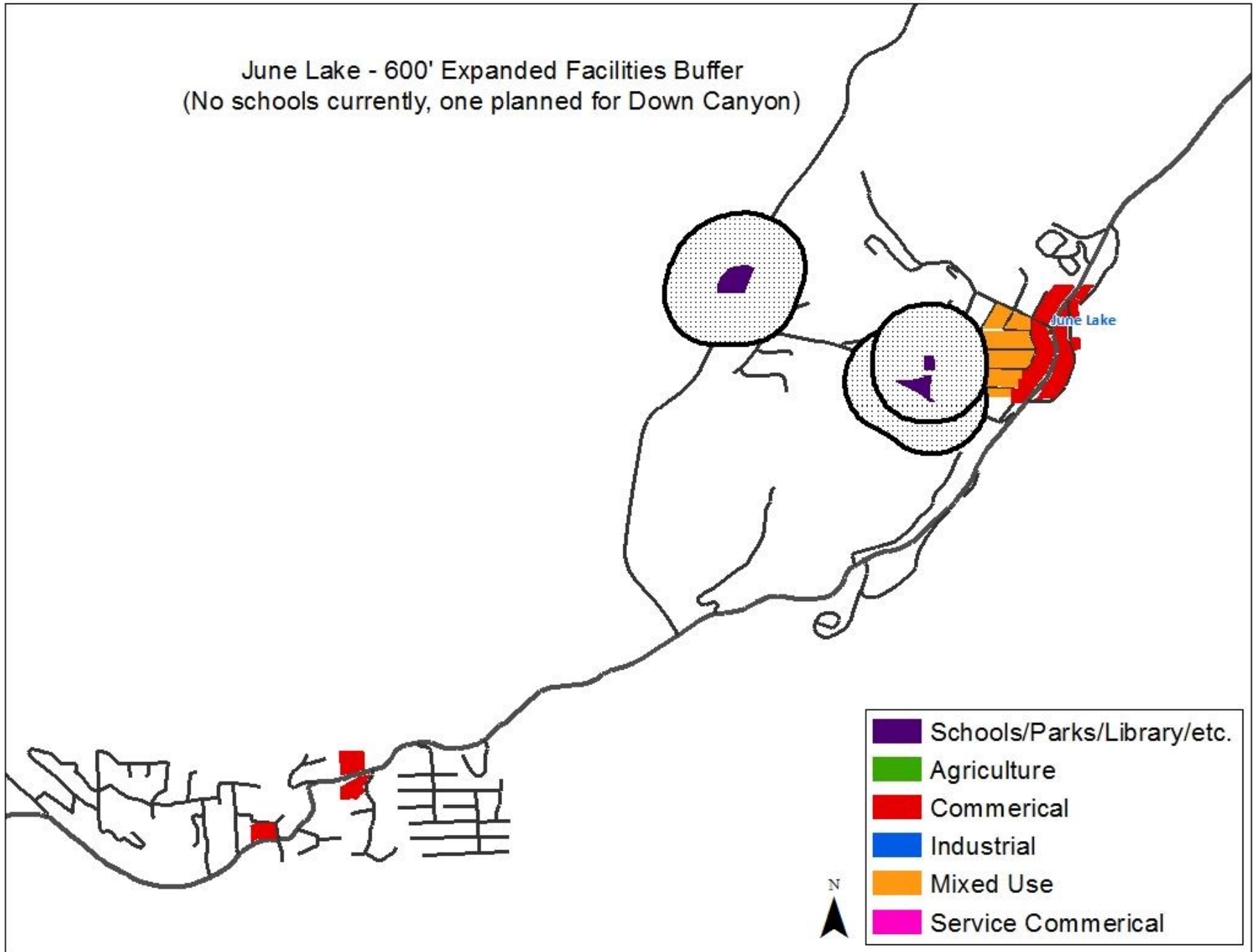


Lee Vining - 1000' School & 1000' Expanded Facilities Buffer

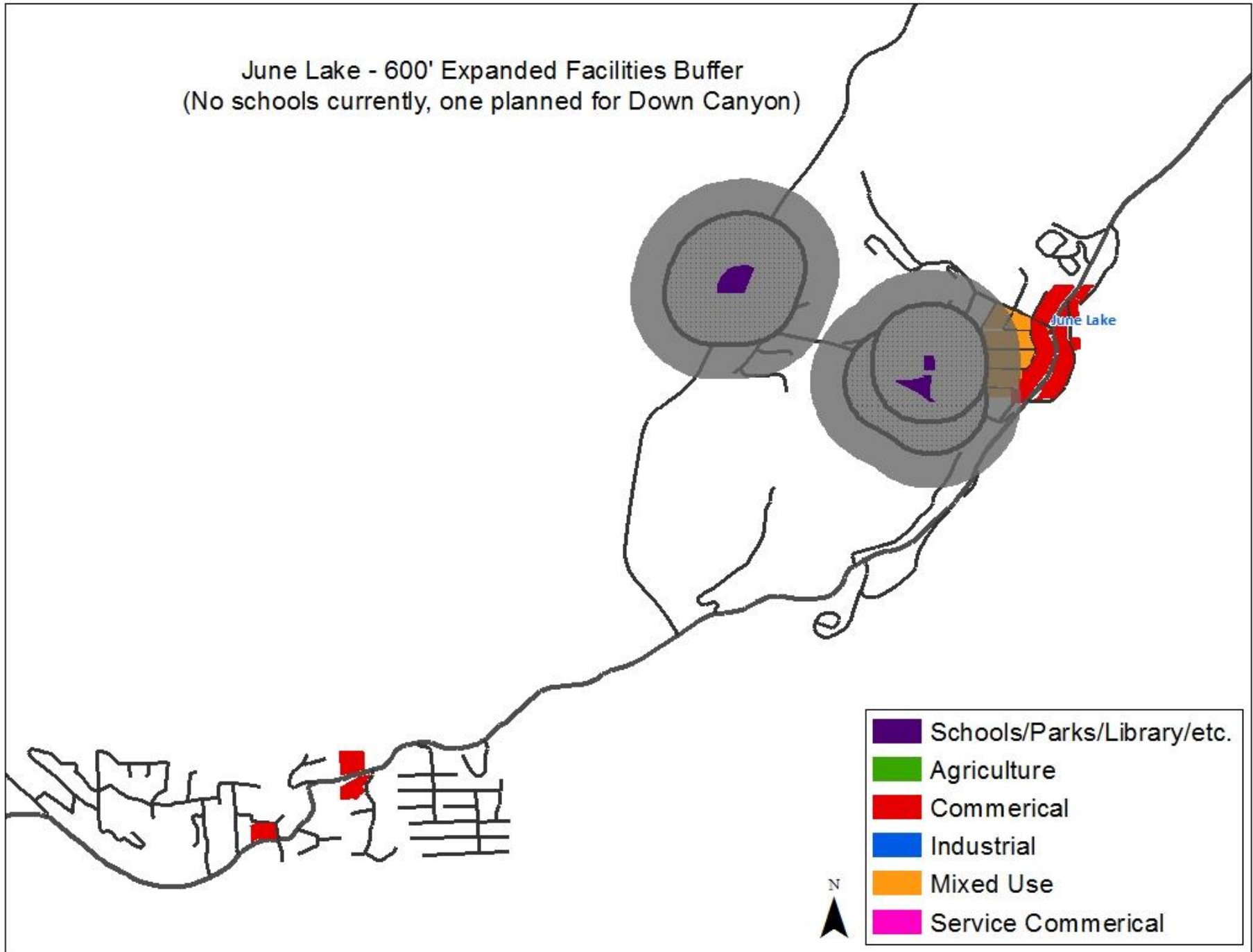


- Schools/Parks/Library/etc.
- Agriculture
- Commerical
- Industrial
- Mixed Use
- Service Commerical

June Lake - 600' Expanded Facilities Buffer
(No schools currently, one planned for Down Canyon)



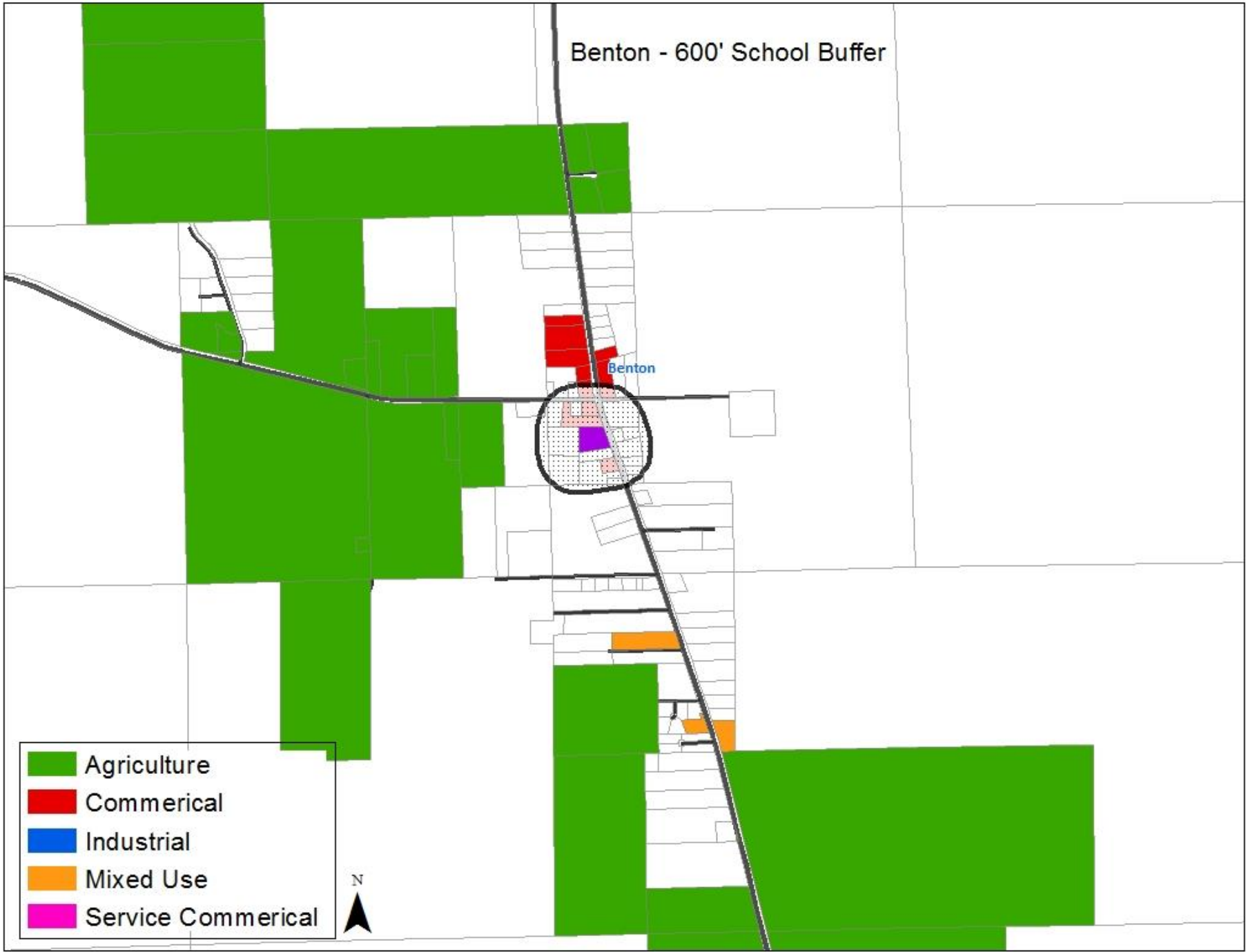
June Lake - 600' Expanded Facilities Buffer
(No schools currently, one planned for Down Canyon)



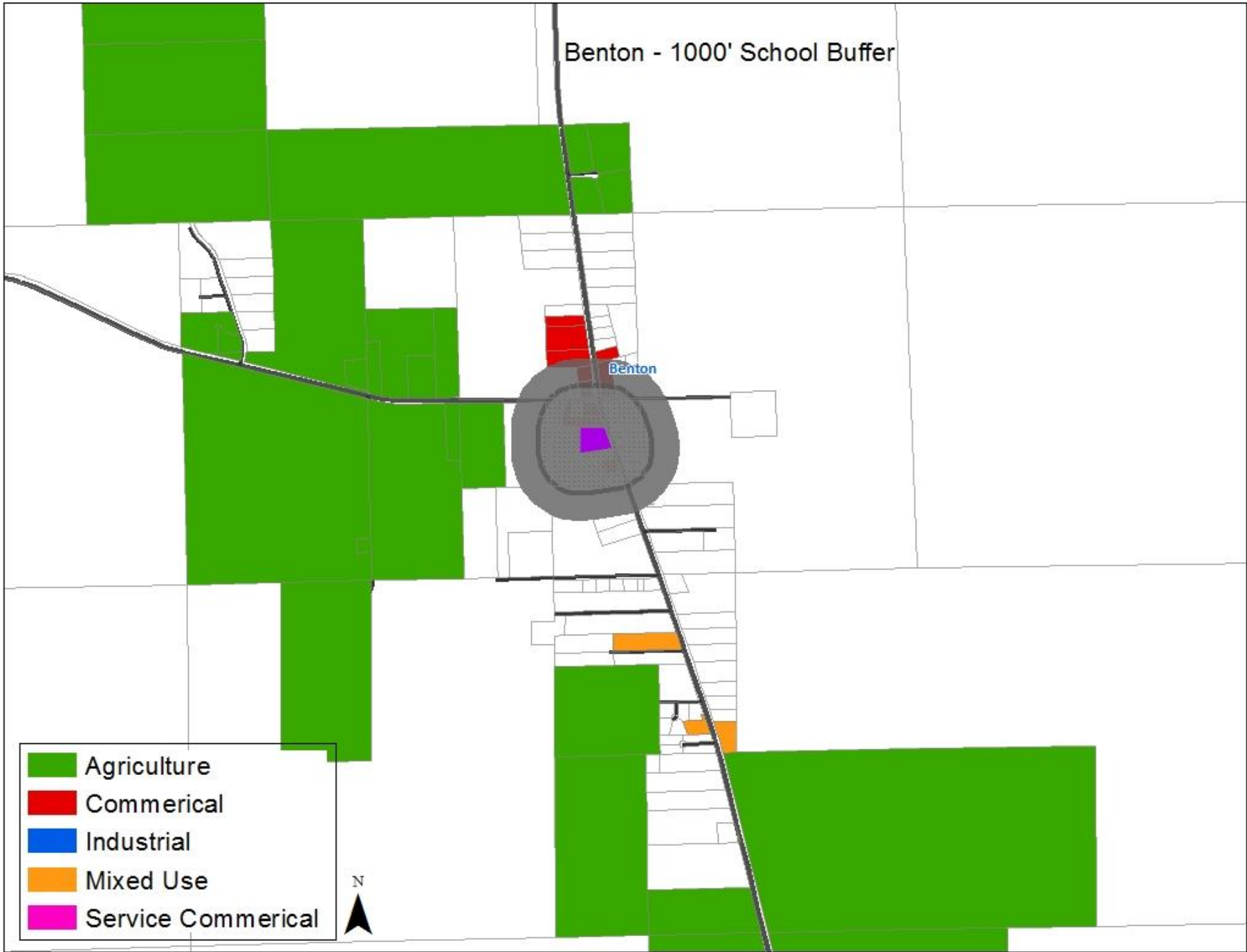
Benton - 600' School Buffer

Benton

- Agriculture
- Commerical
- Industrial
- Mixed Use
- Service Commerical

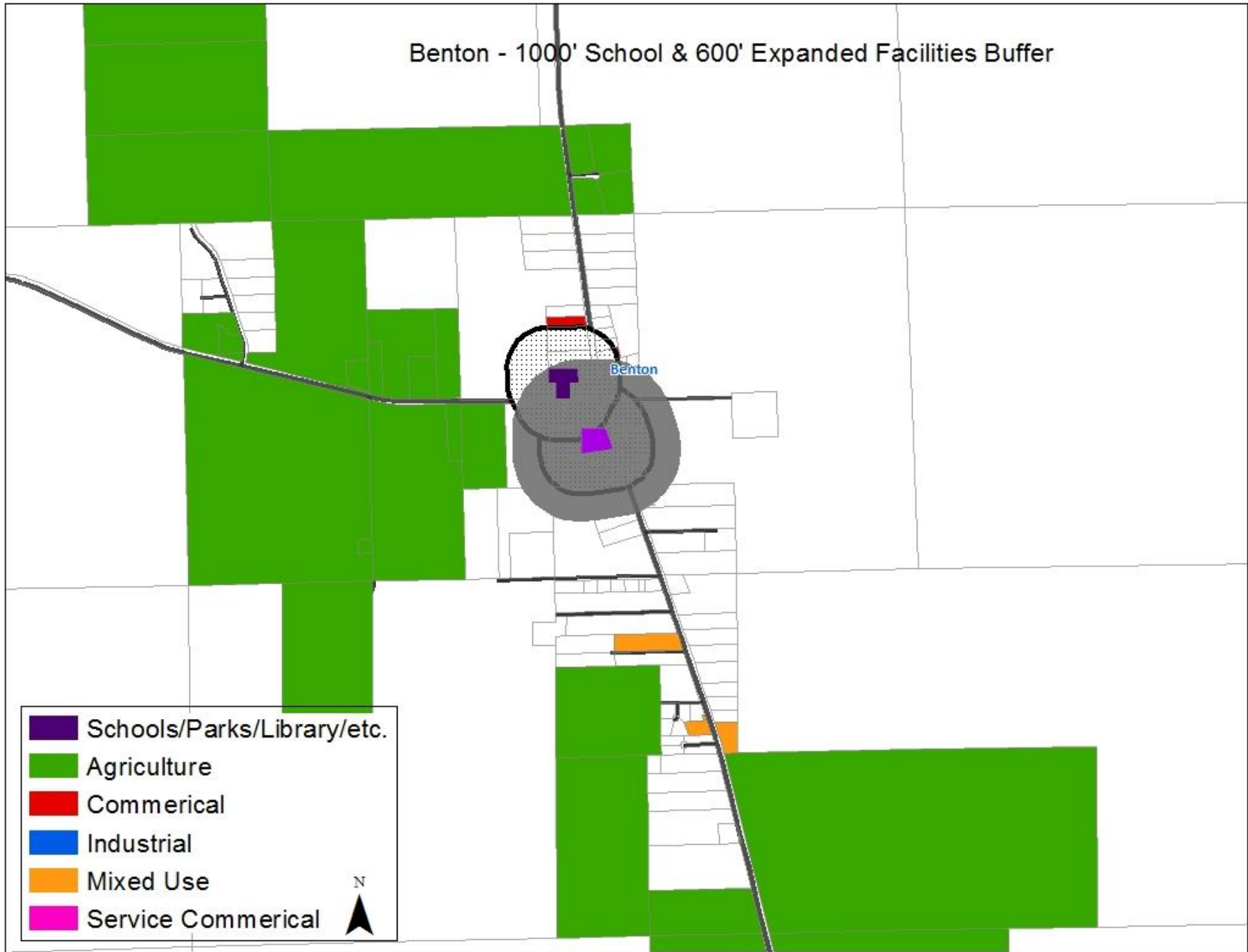


Benton - 1000' School Buffer

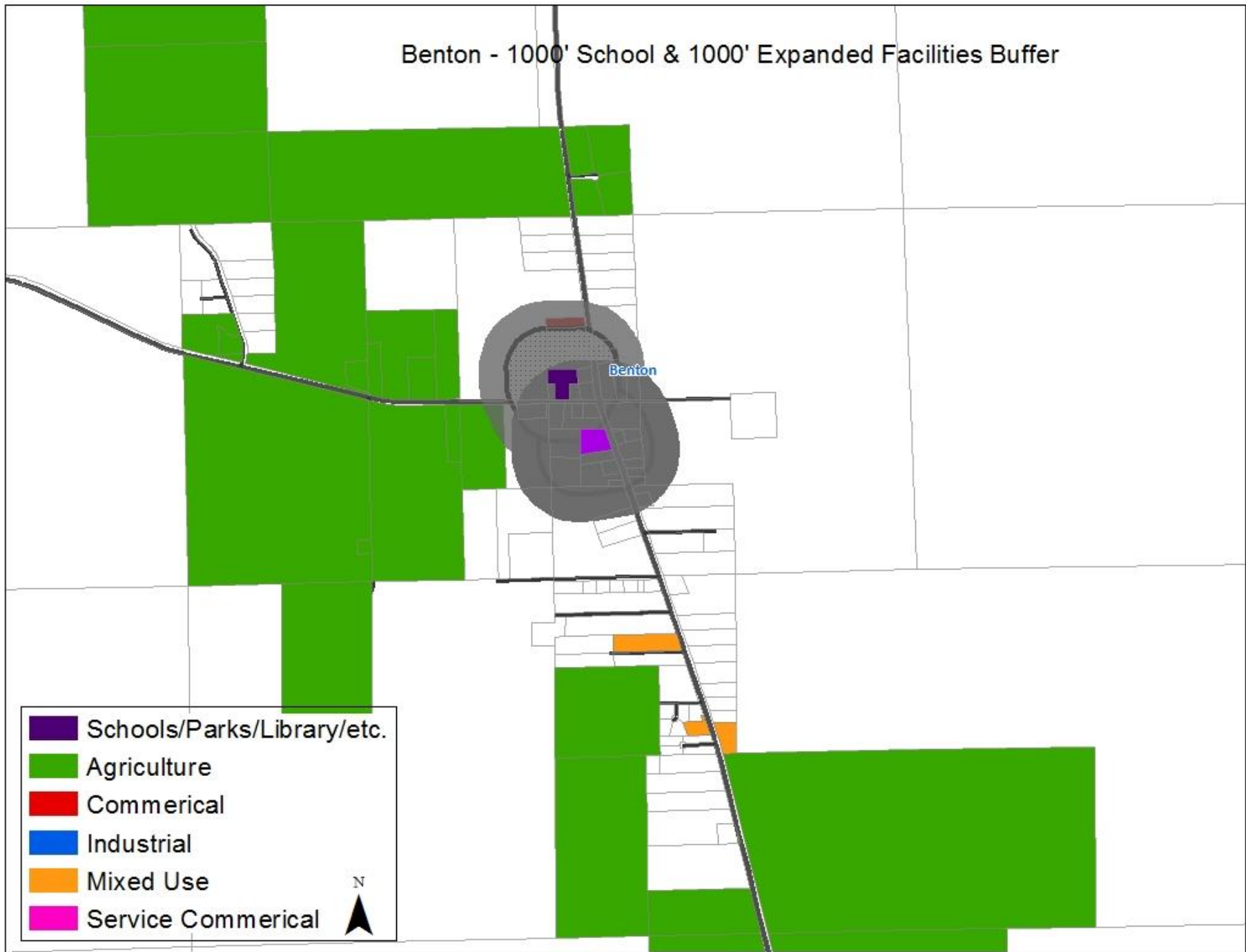


- Agriculture
- Commerical
- Industrial
- Mixed Use
- Service Commerical

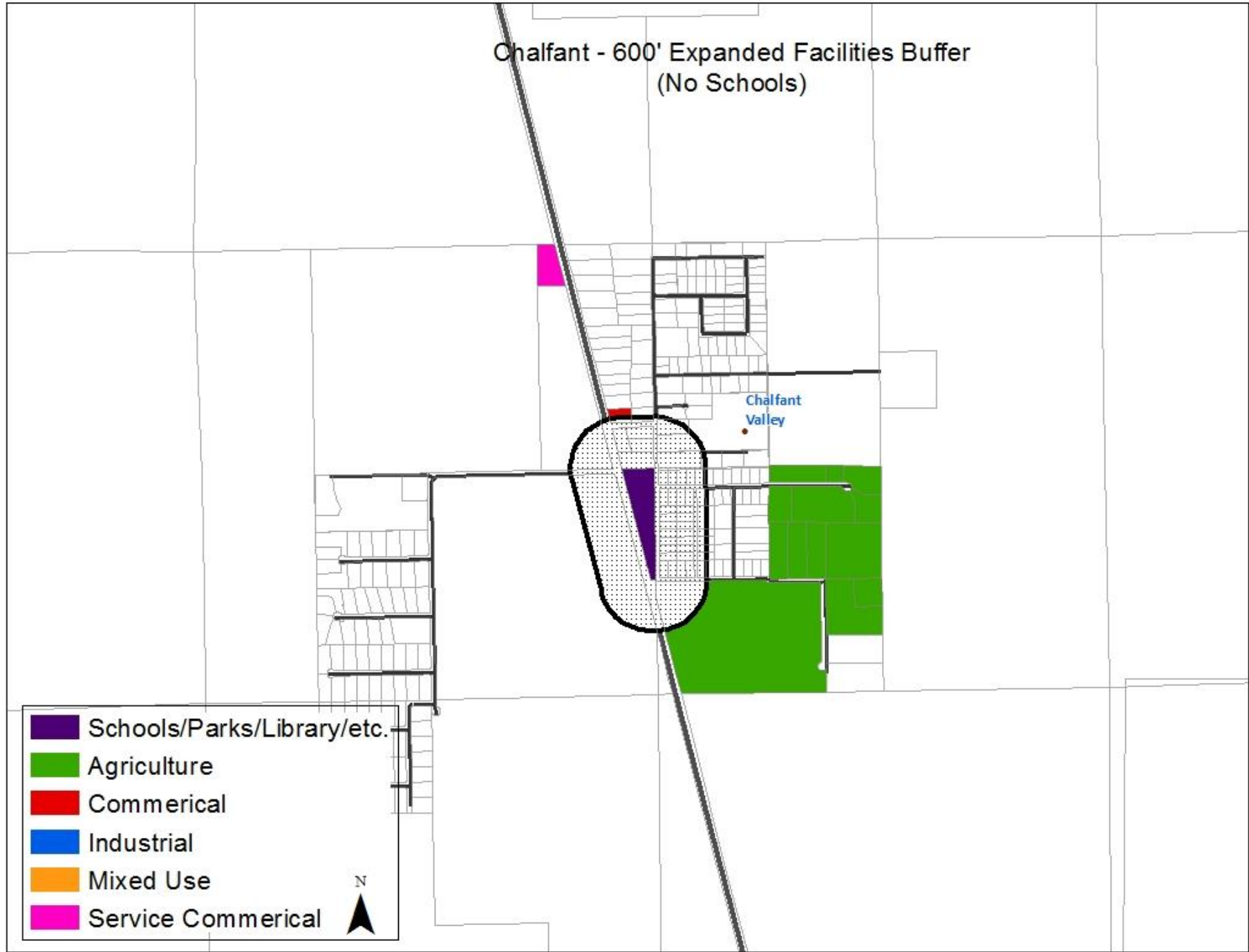
Benton - 1000' School & 600' Expanded Facilities Buffer



Benton - 1000' School & 1000' Expanded Facilities Buffer



Chalfant - 600' Expanded Facilities Buffer
(No Schools)



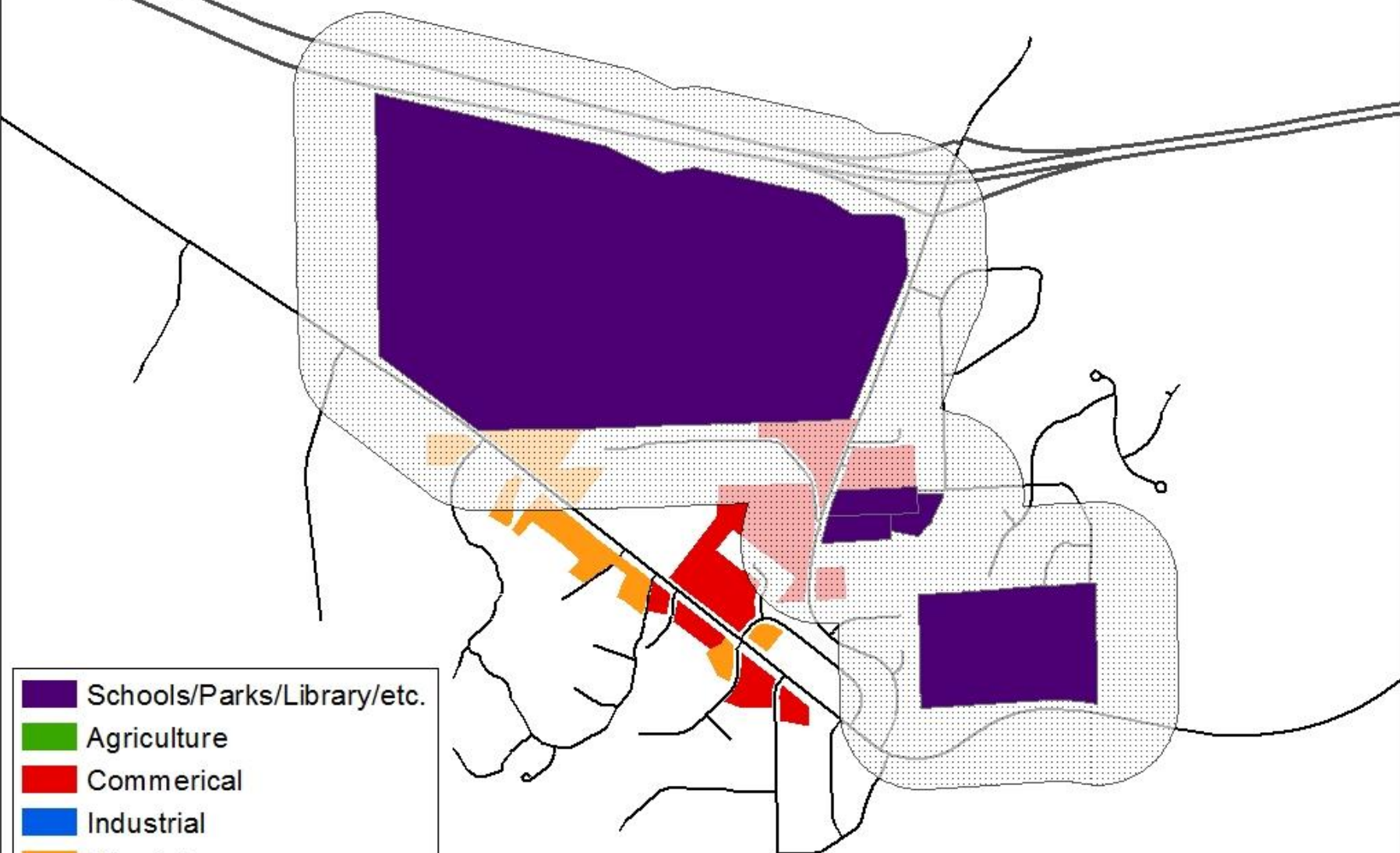
Chalfant - 1000' Expanded Facilities Buffer
(No Schools)



- Schools/Parks/Library/etc.
- Agriculture
- Commerical
- Industrial
- Mixed Use
- Service Commerical



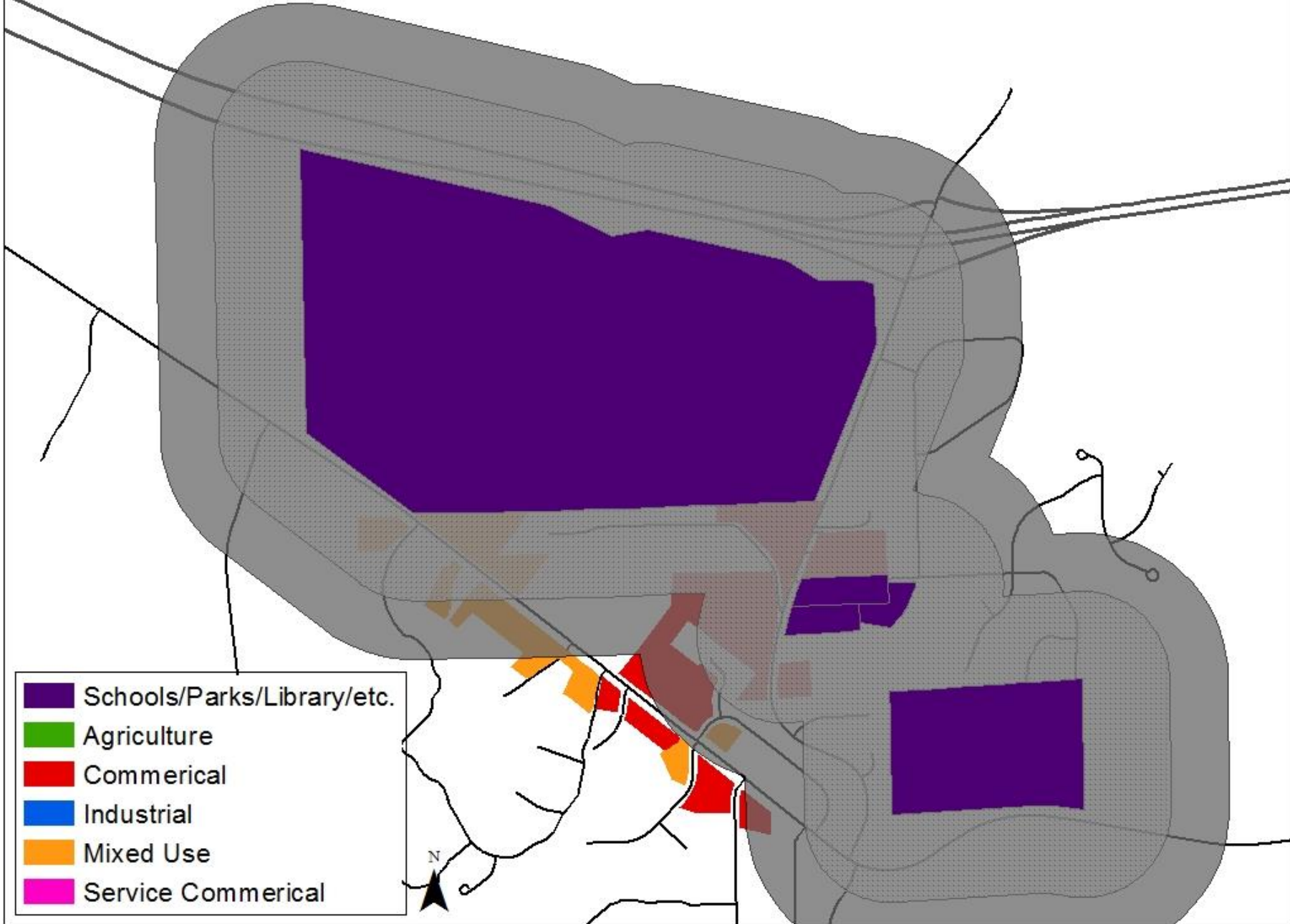
Crowley Lake - 600' Expanded Facilities Buffer



-  Schools/Parks/Library/etc.
-  Agriculture
-  Commercial
-  Industrial
-  Mixed Use
-  Service Commercial



Crowley Lake - 1,000' Expanded Facilities Buffer



-  Schools/Parks/Library/etc.
-  Agriculture
-  Commercial
-  Industrial
-  Mixed Use
-  Service Commercial

- F. **Bi-State sage-grouse mitigation measures:** In an ongoing effort to support Bi-State sage-grouse conservation efforts and support the decision of the US Fish and Wildlife Service not to list the bird under the Endangered Species Act, the existing Conservation/Open Space Element, Action 2.A.3.e., specifies design measures to reduce project impacts. These measures are existing and would be applied to cannabis cultivation.

However, because cannabis cultivation can be economically viable on small plots, this activity raises additional questions regarding sage-grouse conservation. Mono County's agricultural policies generally assume grazing and ranching operations with limited grading and soils disturbance. Row and crop farming, which results in the removal of native vegetation, has usually been focused in areas like the Tri-Valley and Antelope Valley, where the land base and infrastructure for successful operations exist. Sage-grouse habitat has not been a concern in these areas. However, cannabis cultivation can potentially be operated in more remote areas on smaller plots where sage-grouse habitat may be an issue. Based on scientific studies,³ the 2012 Bi-State Action Plan encourages land managers "to regulate surface occupancy of energy development and other anthropogenic structures at up to approximately three miles [from leks] to capture the most amount of year-round use by sage-grouse populations." See Map #1 below indicating a three-mile buffer around active sage-grouse leks, and lands designated agriculture (AG) that would be impacted.

Options:

1. Based on the scientific literature and the 2012 Bi-State Action Plan, add the following requirement to cannabis regulations:
To protect Bi-State sage grouse populations, cannabis cultivation shall not disturb or remove sagebrush habitat within three miles of an active lek, or as determined through an informal consultation process with applicable Bi-State conservation partners.
2. Extend the buffer to all ground-disturbing agricultural activities (not just cannabis) and add it to Action 2.A.3.e. in the Conservation/Open Space Element.
3. Do not add any additional conservation measures; allow the issue to be addressed individually in site-specific environmental documents when applicable.

³ Coates, P.S., M.L. Casazza, I.J. Blomberg, S.C. Gardner, S.P. Espinosa, J.L. Yee, L. Wiechman, and B.J. Halstead. 2013. Evaluating Greater Sage-Grouse Seasonal Space Use Relative to leks: Implications for surface use designations in sagebrush ecosystems. *The Journal of Wildlife Management* 77(8): 1598-1609.

Map #1: Three-Mile Lek Buffer Overlaid on AG Designations

