



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
STEVEN E. WHITE, DIRECTOR

Planning Commission Staff Report Agenda Item No. 6 March 9, 2023

SUBJECT: Variance Application No. 4147 & Environmental Review No. 8351

Variance to allow for the reduction of required setback (leach field encroachment) and the creation of a 1.68-acre and a 37.3-acre parcel from an existing 38.98-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

LOCATION: The project site is located on the northwest corner of E. Huntsman and S. Porter Avenues approximately one half-mile north of the Tulare County line (APN: 373-151-09) (10401 S. Porter Ave.) (Sup. Dist. 4).

Applicant: Judith Lee
Owner: Sun Pacific
Representative: Dirk Poeschel Land Development Services, Inc.

STAFF CONTACT: Elliot Racusin, Planner
(559) 600-4245

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Deny Variance Application No. 4147 based on the analysis of the required findings in the Staff Report; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

EXHIBITS:

1. Conditions of Approval and Project Notes
2. Location Map
3. Existing Zoning Map
4. Existing Land Use Map
5. Variances within one-mile of subject parcel
6. Site Plans and Detail Drawings
7. Applicant’s Variance Findings
8. Photos
9. Original Staff Report (VA 3969)

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agriculture in the County General Plan	N/A
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size)	N/A
Parcel Size	38.98 acres (net)	<ul style="list-style-type: none"> • 1.68 acres (net) • 37.3 acres (net)
Project Site	<ul style="list-style-type: none"> • 1,456 square-foot single-family residence with on-site sewage disposal system • 1,276 square-foot barn • 738 square-foot barn • 240 square-foot barn • 168 square-foot shed • Water well • Gravel access drive 	Allow the creation of a 1.68-acre parcel from an existing 38.98-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District
Structural Improvements	<ul style="list-style-type: none"> • 1,456 square-foot single-family residence with individual sewage disposal system • 1,276 square-foot barn • 738 square-foot barn • 240 square-foot barn • 168 square-foot shed 	No change
Nearest Residence	Approximately 90 feet to the north	None

Criteria	Existing	Proposed
Surrounding Development	Orchard, field crops, single-family homes	None

EXISTING VIOLATION (Y/N) AND NATURE OF VIOLATION:

None

ENVIRONMENTAL ANALYSIS:

It has been determined that the proposed project will not have a significant effect on the environment and is not subject to further analysis under the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) : Common Sense Exemption (Ex: It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment)

PUBLIC NOTICE:

Notices were sent to 38 property owners within 2640 feet of the subject parcel, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

PUBLIC COMMENT:

No public comment was received as of the date of preparation of this report.

PROCEDURAL CONSIDERATIONS:

A Variance Application may be approved only if four Findings specified in the Fresno County Zoning Ordinance, Section 873-F are made by the Planning Commission.

The decision of the Planning Commission on a Variance Application is final, unless appealed to the Board of Supervisors within 15 days of the Commission’s action.

The minimum parcel size that may be created in the AE-20 Zone District is 20 acres. A property owner may not create parcels with less than the 20-acre minimum parcel size if they do not qualify under the conditions listed in Section 817.5, or unless the substandard-size parcel is approved through the Variance process. The previous residential use and nonconforming status of the subject parcel does not exempt the property from the 20-acre minimum established to protect productive farming units and limit residential density to the standards of the Zone District.

BACKGROUND INFORMATION:

County records indicate that the subject 38.98-acre (net) property was zoned A-1 (Agricultural District, 36,000 square-foot minimum parcel size required) on June 8, 1960. On August 31, 1976, the subject property and several other properties in the area were rezoned (Amendment Application No. 2870) from the A-1 Zone District to the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. The current zoning on the property is AE-20.

The proposed 1.68-acre homesite parcel contains a 1,456 square-foot single-family residence with attached garage, on-site sewage disposal system, a water well, three barns, and one shed.

The residence was constructed in November of 1986. The remainder of the property is in farming operation. The property fronts Porter and Huntsman Avenues. The residence gains access from Porter Avenue.

A Variance Application is required to allow the creation of a 1.68-acre homesite parcel as a separate legal parcel in the AE-20 Zone District. However, the remainder 37.3-acre parcel meets the minimum parcel size requirement of the AE-20 Zone District. Should this Variance be approved, a subsequent Parcel Map Application would be required to create the homesite parcel and the remainder parcel as separate legal parcels for sale, lease or financing.

County records indicate that two Variance Applications pertaining to lot size requirement was filed within one-mile radius of the subject property (Exhibit 5). Variance 3969, which was for the same property was approved on February 12, 2015, but subsequently expired. The following table provides a brief summary of that Variance requests, staff recommendations, and final actions by the Planning Commission:

Application/Request	Date of Action	Staff Recommendation	Final Action
VA 3955 – allow the creation of a 1.43-acre homesite parcel from an existing 38.79-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.	March 13, 2014	Denial	Planning Commission Approved
VA 3969 - Allow the creation of a 1.68-acre homesite parcel from an existing 38.98-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.	February 12, 2015	Denial	Planning Commission Approved

Staff notes that every variance request is considered on its own merit and is based upon the four required Findings and circumstances of the property.

Finding 1: There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the vicinity having the identical zoning classification.

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
Setbacks	AE-20 Front: 35 feet Side: 20 feet Rear: 20 feet	No change	Yes
Parking	N/A	N/A	N/A

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
Lot Coverage	No requirement	N/A	N/A
Separation Between Buildings	No requirement for residential or accessory structures, excepting those used to house animals which must be located a minimum of 40 feet from any human-occupied building.	N/A	N/A
Wall Requirements	N/A	N/A	N/A
Septic Replacement Area	100 percent of the existing system	No change	N/A
Water Well Separation	Building sewer/septic tank: 50 feet Disposal field: 100 feet Seepage pit/cesspool: 150 feet	Any existing or proposed water wells will be required to meet minimum setbacks (separation) from proposed septic systems.	Yes

Reviewing Agency/Department Comments Regarding Site Adequacy:

Zoning Section of the Department of Public Works and Planning: A Nitrogen Loading Analysis is required prior to Permit issuance.

Finding 1 Analysis:

In support of Finding 1, the Applicant states that the subject property is located among other smaller, similar-sized and larger parcels; several parcels in the vicinity are less than 20 acres minimum lot size required by the zone district; and no changes to the character, existing development pattern, nor the intensity of the property will occur from this proposal.

As noted in the “Background Information”, the Applicant has sold the entire 38.98-acre (net) parcel to an agricultural company to maintain the agricultural use of the parcel except for retaining the subject 1.68-acre homesite parcel to keep as her residence (Exhibit 6). Should this Variance be approved, it would result in the creation of a 1.68-acre legal non-conforming parcel (20-acre minimum required) in the AE-20 Zone District. A subsequent Parcel Map Application would be required to create the homesite parcel and the remainder parcel as separate legal parcels for sale.

With regard to Finding 1, staff notes that although the Applicant has cited other properties in the area as being of a smaller or similar size, information indicating shape or topography or other unusual exceptional circumstance in relation to the subject site has not been provided. In regard to the subdivision of other parcels in the area smaller than 20 acres in size and located within a one-mile radius of the subject property, staff notes none of them were found to be created through Variance approvals, The other small parcels appear to have been created either prior to

August 31, 1976 when the A-1 Zone District would allow parcels as small as 2.29 acres in size, or after August 31, 1976 when homesite parcels were allowed in the AE-20 Zone District with a minimum 15-acre parcel size provided they met the requirements of Section 816.5-A.2.b.(3) of the Zoning Ordinance. Homesites created under this Section do not require a Variance.

Upon analyzing the site aerial photo, the proposed parcellation (Site Plan) and comments from reviewing agencies, staff has concluded that there are no physical circumstances or constraints that justify the need for this Variance beyond the circumstances described by the Applicant in the Applicant's Findings (Exhibit 7). There are no elevation changes, rock outcroppings, wetlands, and/or public easements that create significant hardships for the Applicant. The Applicant's reasoning regarding the existence of other smaller parcels in the area and the proposal not changing the existing development pattern on the property is not a physical characteristic demonstrating circumstances which merit the requested parcel configuration proposed with the Variance request, and as such, does not support meeting Finding 1.

Recommended Conditions of Approval:

Setbacks for new construction shall be based on the ultimate right-of-way.

Finding 1 Conclusion:

Finding 1 cannot be made as there are not any extraordinary circumstances relating to the property that could not apply to other properties in the same zone classification.

Finding 2: Such Variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity having the identical zoning classification.

Reviewing Agency/Department Comments:

No comments specific to the preservation of a substantial property right were expressed by reviewing Agencies or Departments.

Finding 2 Analysis:

Variances can only be used to provide relief to preserve the "substantial property right" to be able to utilize a property for the intended use of the zoning. If regulations and unique physical attributes prohibit this property from realizing any reasonable use intended under the zoning, a Variance would be appropriate to preserve the "substantial property right" such as the ability to be able to build a home on the site; and staff and/or applicant was unable to identify any situation that would constrain the property and create a deficit of a property right enjoyed by other owners in the vicinity, under the same zoning.

There is no physical characteristic that prevents the property owners from utilizing the land for the allowed uses in the zoning, hence no substantial property right is in jeopardy and a variance is not warranted. The property owners may add a second residence to the existing property as allowed by the ordinance, but the creation of a parcel smaller than the required size is not consistent with the Zoning Ordinance or General Plan.

Recommended Conditions of Approval:

None.

Finding 2 Conclusion:

Finding 2 cannot be made based on the above analysis as subdividing the parcel in this circumstance would not create a situation where it creates a loss of a substantial property right of the applicant, which right is possessed by other property owners under like conditions.

Finding 3: *The granting of a variance will not be materially detrimental to the public welfare or injurious to property and improvement in the vicinity in which the property is located.*

Surrounding Parcels

	Size:	Use:	Zoning:	Nearest Residence:
North:	18.08 acres 19.03 acres	Vineyard; single-family homes	AE-20	97 feet
South:	19.09 acres	Orchard	AE-20	N/A
East:	1.43 acres 38.79 acres	Orchard; single-family homes	AE-20	220 feet
West:	19.55 acres	Orchard	AE-20	N/A

Reviewing Agency/Department Comments:

No comments specific to land use compatibility were expressed by reviewing Agencies or Departments.

Finding 3 Analysis:

The Applicant’s statement justifying the finding indicates that the variance will not change what is currently occurring on the property, and verifies it is the intention of the Applicant, if this Variance is approved, to divide the existing parcel into two parcels, and the larger parcel will continue to be farmed.

While the impact of this singular variance may not constitute a materially detrimental impact, staff notes that the creation of one separate legal non-conforming parcels has the potential to increase residential density in the area by allowing additional single-family residences by right on the new parcels and a 2nd residence through a Director Review and Approval on the new parcels. Cumulatively this and other such increases in residential density has the potential to conflict with adjacent agricultural operations in the area. The minimum acreage requirement of the AE-20 Zone district is intended to arrest this parcellation pattern and limit the potential conflicts between residential agricultural activities. However, the limited scale of this individual request by itself is not a significant material detriment to properties in the vicinity.

Recommended Conditions of Approval:

Setbacks for new construction shall be based on the ultimate right-of-way.

Finding 3 Conclusion:

Finding 3 can be made, based on the above information and with adherence to the requirements included as project notes and all mitigation measures, the proposal will not have adverse effects upon surrounding properties.

Finding 4: The granting of such a variance will not be contrary to the objectives of the General Plan.

Relevant Policies:	Consistency/Considerations:
<p>General Plan Goal LU-A: <i>To promote the long-term conservation of productive and potentially productive agricultural lands and to accommodate agricultural-support services and agriculturally-related activities that support the viability of agriculture and further the County’s economic development goals.</i></p>	<p>Inconsistent: Substandard parcels that are created for residential purposes will likely interfere with agricultural operations on surrounding parcels that are designated and zoned for production of food and fiber and may potentially result in removal of adjacent or neighboring lands from agricultural use. Moreover, it may set a precedent for other landowners to create similar residential parcels in the area, which will compound the incompatibility between the agricultural and residential use of lands located in an area of the County designated and used for agricultural operations.</p>
<p>General Plan Policy LU-A.6: <i>The County shall maintain twenty (20) acres as the minimum permitted parcel size in areas designated Agriculture, except as provided in policies LU-A.9, LU-A.10, and LU-A.11. the County may require parcel sizes larger than twenty (20) acres based on zoning, local agricultural conditions, and to help ensure the viability of agricultural operations.</i></p>	<p>Inconsistent: The proposed parcel creation is not consistent with this Policy. There are exceptions allowed subject to certain criteria. In this instance, the application either did not meet the criteria or elected not to choose one of the available options for creating a substandard sized parcel.</p>
<p>General Plan Policy LU-A.7: <i>County shall generally deny requests to create parcels less than the minimum size specified in Policy LU-A.6 based on concerns that these parcels are less viable economic farming units, and that the resultant increase in residential density increases the potential for conflict with normal agricultural practices on adjacent parcels. Evidence that the affected parcel may be an uneconomic farming unit due to its current size, soil conditions, or other factors shall not alone be considered a sufficient basis to grant an exception. The decision-making body shall consider the negative incremental and cumulative effects such land divisions have on the agricultural community.</i></p>	<p>Inconsistent: The proposed parcel division is not consistent with Policy LU-A.7 as it would create one substandard sized parcel.</p> <p>The creation of a parcel less than 20 acres in the AE-20 Zone District would be inconsistent with Policy LU-A.7 and set a precedent for parcellation of farmland into smaller parcels which are economically less viable farming units and could potentially allow additional single-family homes on the proposed parcels. Such increase in the area, as noted by Fresno County Department of Agriculture, may conflict with normal agricultural practices on adjacent properties.</p>
<p>General Plan Policy LU-A.12: <i>In adopting land use policies, regulations and programs, the County shall seek to protect</i></p>	<p>Inconsistent: The creation of a parcel less than 20 acres in the AE-20 Zone District would be inconsistent with Policy LU-A. 12 as smaller parcels could potentially allow a</p>

Relevant Policies: <i>agricultural activities from encroachment of incompatible land uses.</i>	Consistency/Considerations: higher density residential area which is inconsistent with the compatibility of the AE-20 zone district.
General Plan Policy LU-A.14: <i>The County shall ensure that the review of discretionary permits includes an assessment of the conversion of productive agriculture land and the mitigation be required were appropriate.</i>	Consistent: In this case, productive agricultural land would not necessarily be converted, rather it would be reallocated between the two subsequent parcels, with the majority of the of the land to be located on proposed parcel B.

Reviewing Agency Comments:

Policy Planning Section of the Development Services Division: The Agriculture and Land Use Element of the General Plan requires 20 acres as the minimum parcel size in areas designated for Agriculture. Policies LU-A.6 and LU-A.7 state that the County shall generally deny requests to create parcels less than the minimum size specified in areas designated Agriculture.

No other comments specific to General Plan Policy were expressed by reviewing Agencies or Departments.

Finding 4 Analysis:

In support of Finding 4, the Applicant states that the proposed Variance seeks to memorialize the ownership wishes of the Applicant’s family and maintain the development pattern and intensity of the subject parcel that has historically existed over time. Further, the proposal will not reduce the current agricultural production on the property.

The subject property is designated Agriculture in the County General Plan and is zoned AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) in the County Ordinance. Policies LU-A.6, LU-A.7, LU-A.15, and PF-C.17 are applicable to this proposal and are discussed above. Staff believes this proposal is inconsistent with the policies listed above.

According to General Plan Policy LU-A.6 and LU-A.7, the creation of parcels less than the minimum size specified by the agriculture designation is discouraged due to a concern that such parcels are less viable economic farming units, and that the resultant increase in residential density may conflict with normal agricultural practices on adjacent properties. Further, the decision-making body shall consider the negative incremental and cumulative effects land divisions have on the agricultural community. The subject Variance request, increased parcellation in the area will potentially create additional inventory of parcels under five acres in size, which could be viewed as *de facto* rural residential parcellation, and is generally not supported by General Plan policy. Finding 4 cannot be made.

Finding 4 Conclusion:

Finding 4 cannot be made as the project would be contrary to General Plan Goal LU-A, Policies LU-A.6, LU-A.7, LU-A.9, and LU-A.12 in the General Plan.

SUMMARY CONCLUSION:

The existence of personal desires and personal circumstance is not a basis for granting a variance. Granting of the variance could be construed as inconsistent with Government code section 65906 which prohibits granting of unqualified variances and states in part “...*shall constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.*”

Based on the factors cited in the analysis, the required Findings for granting the Variance Application cannot be made as there are no exceptional or extraordinary circumstances or conditions applicable to the property, the variance is not necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity, and the application is contrary to the goals and policies of the General Plan.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that required Findings 1, 2, & 4 cannot be made as stated in the staff report and move to deny Variance Application No. 4147; and
- Direct the Secretary to prepare a Resolution documenting the Commission’s action.

Alternative Motion (Approval Action)

- Move to determine the required Findings can be made (state basis for making the Findings) and move to approve Variance Application No. 4147, subject to the Conditions of Approval and Project Notes listed in Exhibit 1; and
- Direct the Secretary to prepare a Resolution documenting the Commission’s action.

Recommended Conditions of Approval and Project Notes:

See attached Exhibit 1.

ER:jp

G:\4360Devs&PIn\PROJSEC\PROJDOCS\VA\4100-4199\4147\Staff Report\VA 4147 Staff Report.docx

EXHIBIT 1

Variance Application (VA) No. 4147
Conditions of Approval and Project Notes

Conditions of Approval	
1.	Division of the subject parcels shall be in substantial accordance with the site plan (Exhibit 6) as approved by the Planning Commission.
2.	Setbacks for new construction shall be based on the ultimate right-of-way.

Conditions of Approval reference recommended Conditions for the project.

Notes	
The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.	
1.	Division of the subject property is subject to the provisions of the Fresno County Parcel Map Ordinance. A Parcel Map Application shall be filed to create the two proposed parcels. The Map shall comply with the requirements of Title 17.72.
2.	The approval of this Variance will expire one year from the date of approval unless the required mapping application to create the parcels is filed in substantial compliance with the Conditions and Project Notes and in accordance with the Parcel Map Ordinance.
3.	It is recommended that the applicant consider having the existing septic tanks pumped and have the tanks and leach lines evaluated by an appropriately licensed contractor if it has not been serviced and/or maintained within the last five years. The evaluation may indicate possible repairs, additions, or require the proper destruction of the system.
4.	Any new development of less than two acres or secondary dwelling may require a nitrogen loading analysis by a qualified professional, demonstrating to the Department of Public Works and Planning (Department) that the regional characteristics are such that an exception to the septic system density limit can be accommodated. The Department will refer any analysis to the Regional Water Quality Control Board, Central Valley Region for their concurrence and input. Any new sewage disposal systems that are proposed, shall be installed under permit and inspection by the Department of Public Works and Planning Building and Safety Section. Contact Department of Public Works and Planning at (559) 600-4540 for more information.
5.	At such time the applicant or property owner(s) decides to construct a new water well, the water well contractor selected by the applicant will be required to apply for and obtain a Permit to Construct a Water Well from the Fresno County Department of Community Health, Environmental Health Division. Please be advised that only those persons with a valid C-57 contractor's license may construct wells. For more information, contact the Water Surveillance Program at (559) 600-3357.

EXHIBIT 1

Notes

6.	As a measure to protect ground water, all water wells and/or septic systems that exist or have been abandoned within the project area should be properly destroyed by an appropriately licensed contractor.
7.	If approved, the subdivision will require that a Tentative Parcel Map be prepared in accordance with the Professional Land Surveyors Act, the Subdivision Map Act and County Ordinance. The Tentative Parcel Map application shall expire two years after the approval of said Tentative Parcel Map.
8.	Upon approval and acceptance of the Tentative Parcel Map and any Conditions imposed thereon, a Final Parcel Map shall be prepared and by a Professional Land Surveyor or Registered Civil Engineer authorized to practice Land Surveying, in accordance with the Professional Land Surveyors Act, the Subdivision Map Act and County Ordinance. Recordation of the Final Parcel Map shall take place within two years of the acceptance of the Tentative Parcel Map unless a Map extension is received prior to the expiration date of the approved Tentative Parcel Map. Failure to record the Final Parcel Map prior to the expiration of said Tentative Parcel Map may void the Parcel Map application.
9.	Prior to site development, all survey monumentation – Property Corners, Centerline Monumentation, Section Corners, County Benchmarks, Federal Benchmarks and Triangulation Stations, etc. - within the subject area shall be preserved in accordance with Section 8771 of the Professional Land Surveyors Act and Section 6730.2 of the Professional Engineers Act.
10.	Any existing or future access driveway should be set back a minimum of 10 feet from the property line.
11.	Any existing or future entrance gate should be set back a minimum of 20 feet from the road right-of-way line or the length of the longest truck entering the site and shall not swing outward.
12.	Any future work done within the Caltrans state highway right-of-way to construct a new driveway or improve an existing driveway will require an Encroachment Permit/Clearance from Caltrans.
13.	A grading permit/voucher is required for any future grading with this application.
14.	If the variance is approved, a parcel map application will have to be filed with Fresno County to affect the property division.
15.	A Nitrogen Loading Analysis is required prior to Permit issuance.

LOCATION MAP

VA 4147

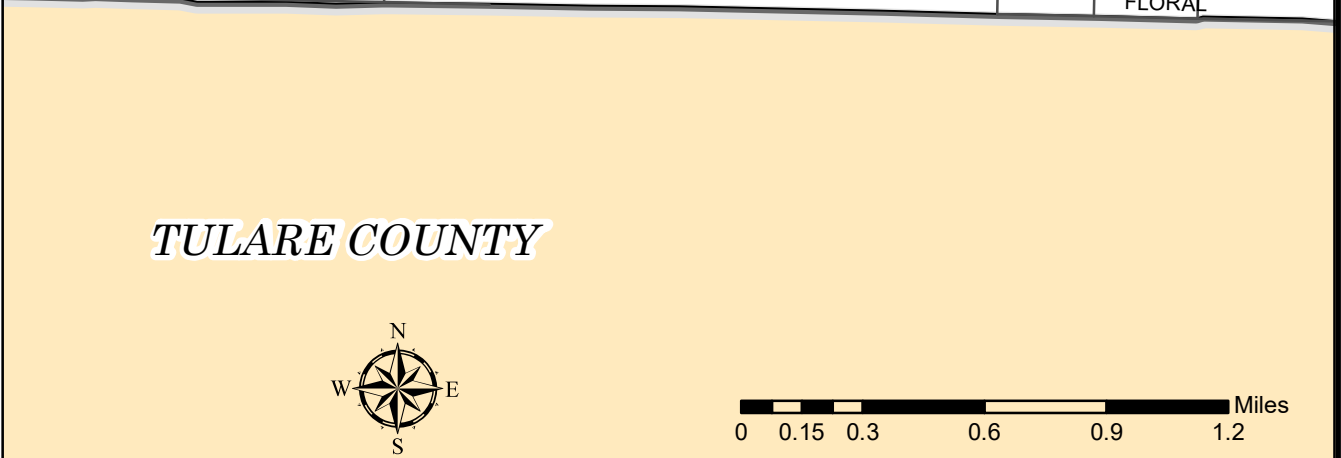
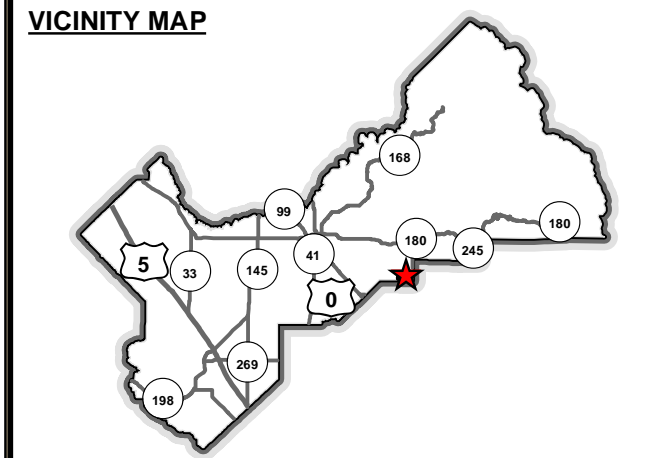
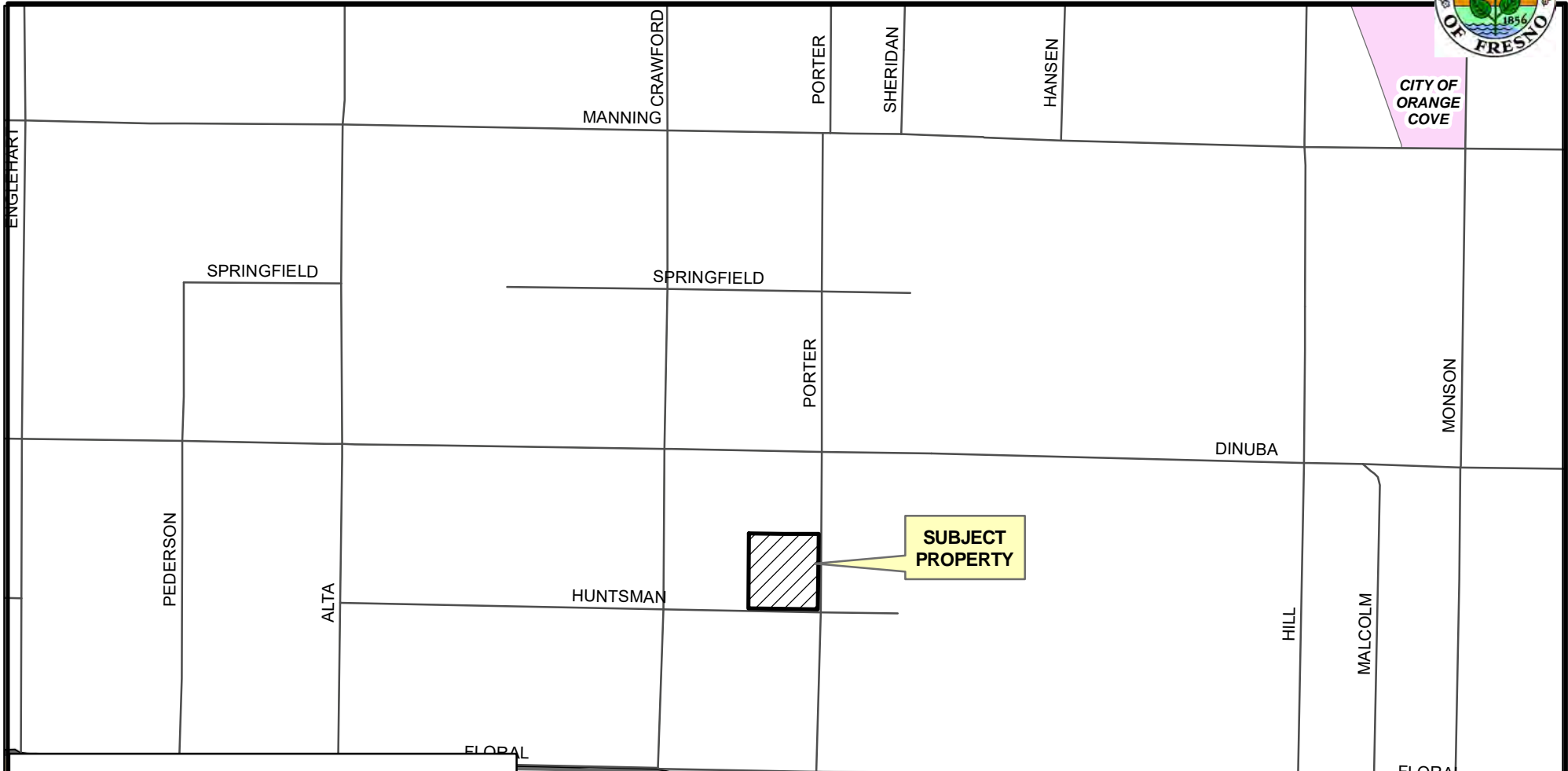


EXHIBIT 2

EXISTING ZONING MAP



CITY OF
ORANGE
COVE

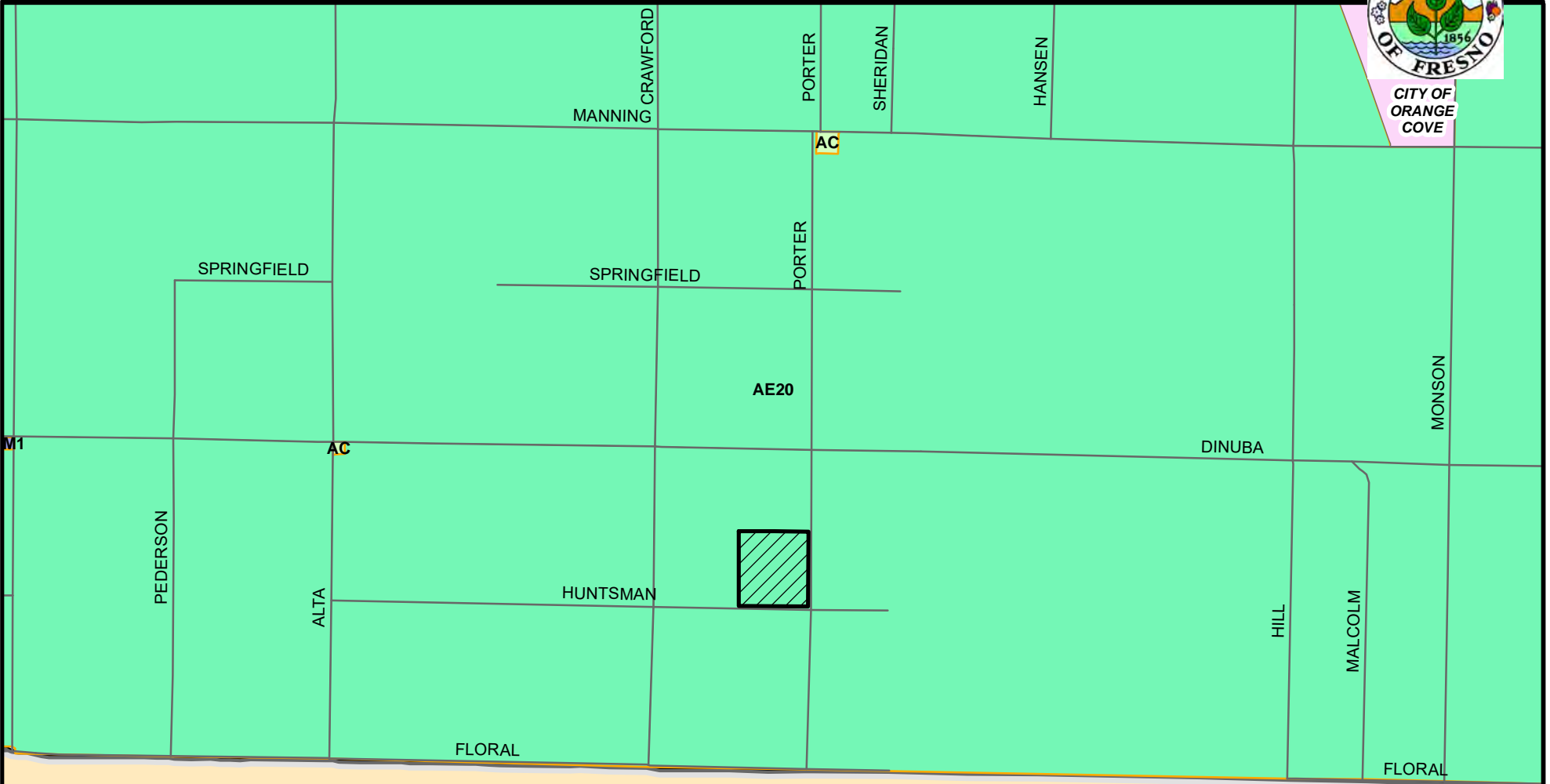






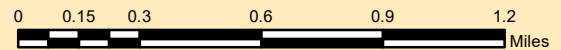


EXHIBIT 3

Legend

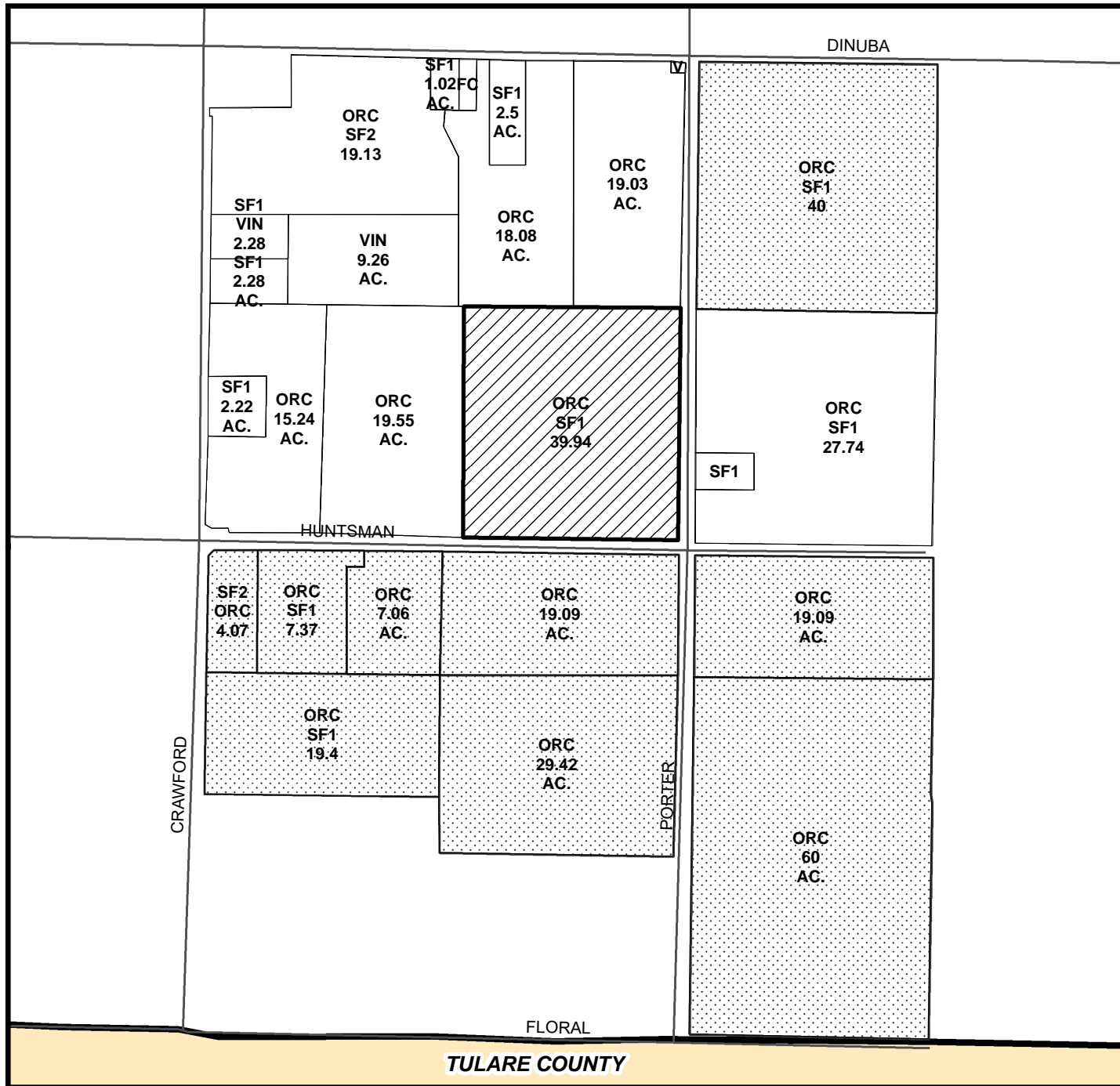
-  Subject Property
-  City of Orange Cove
-  AC
-  AE20
-  M1
-  Tulare County

TULARE COUNTY






EXISTING LAND USE MAP

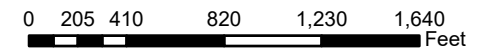
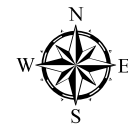
VA 4147



LEGEND	
FC - FIELD CROP	
ORC - ORCHARD	
SF#- SINGLE FAMILY RESIDENCE	
V - VACANT	
VIN - VINEYARD	

LEGEND:

-  Subject Property
-  Ag Contract Land
-  Tulare County



Department of Public Works and Planning
Development Services Division

APPROVED VARIANCES WITHIN A ONE MILE RADIUS

VA 4147

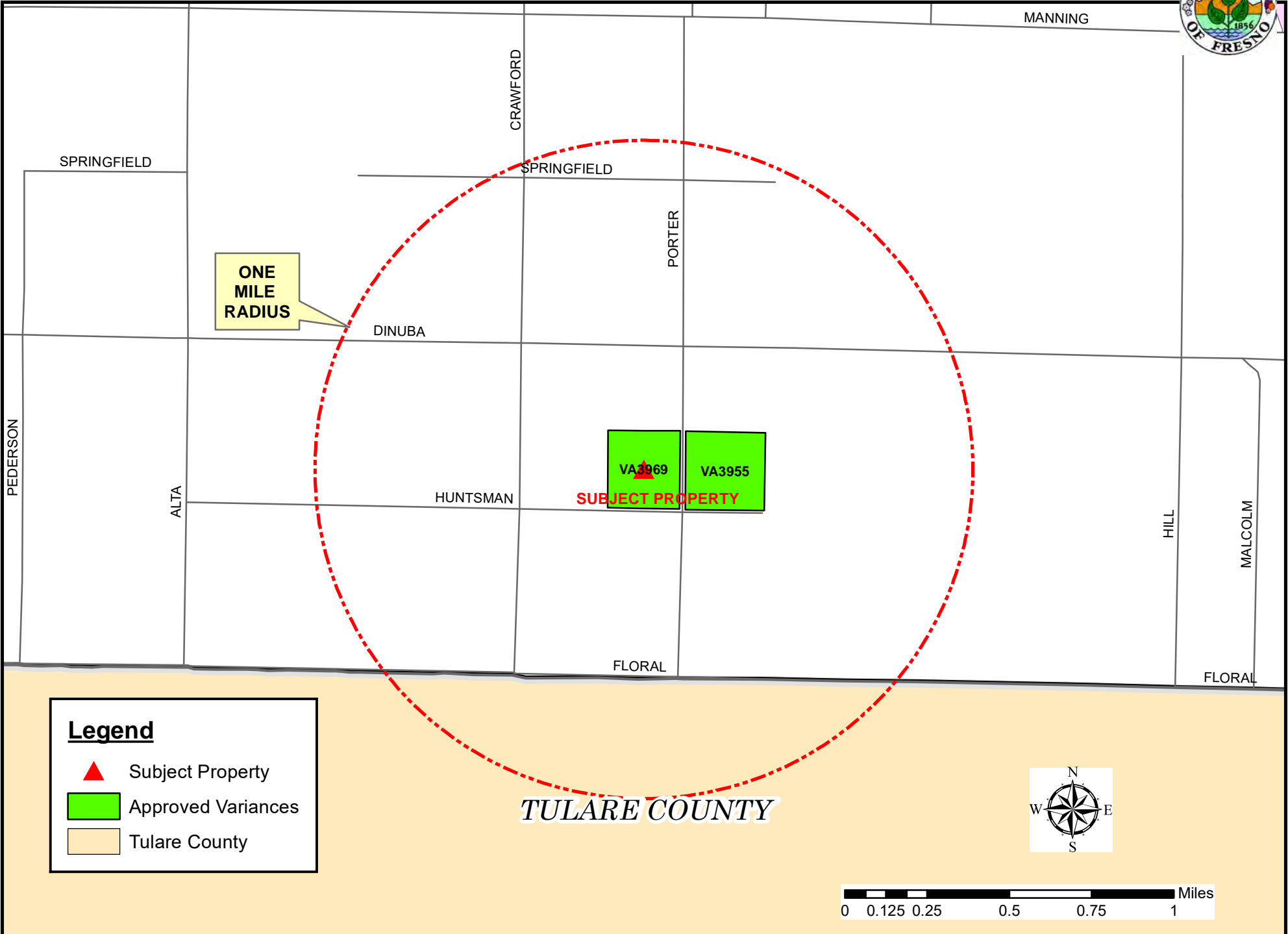



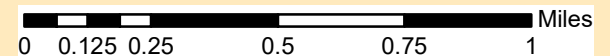


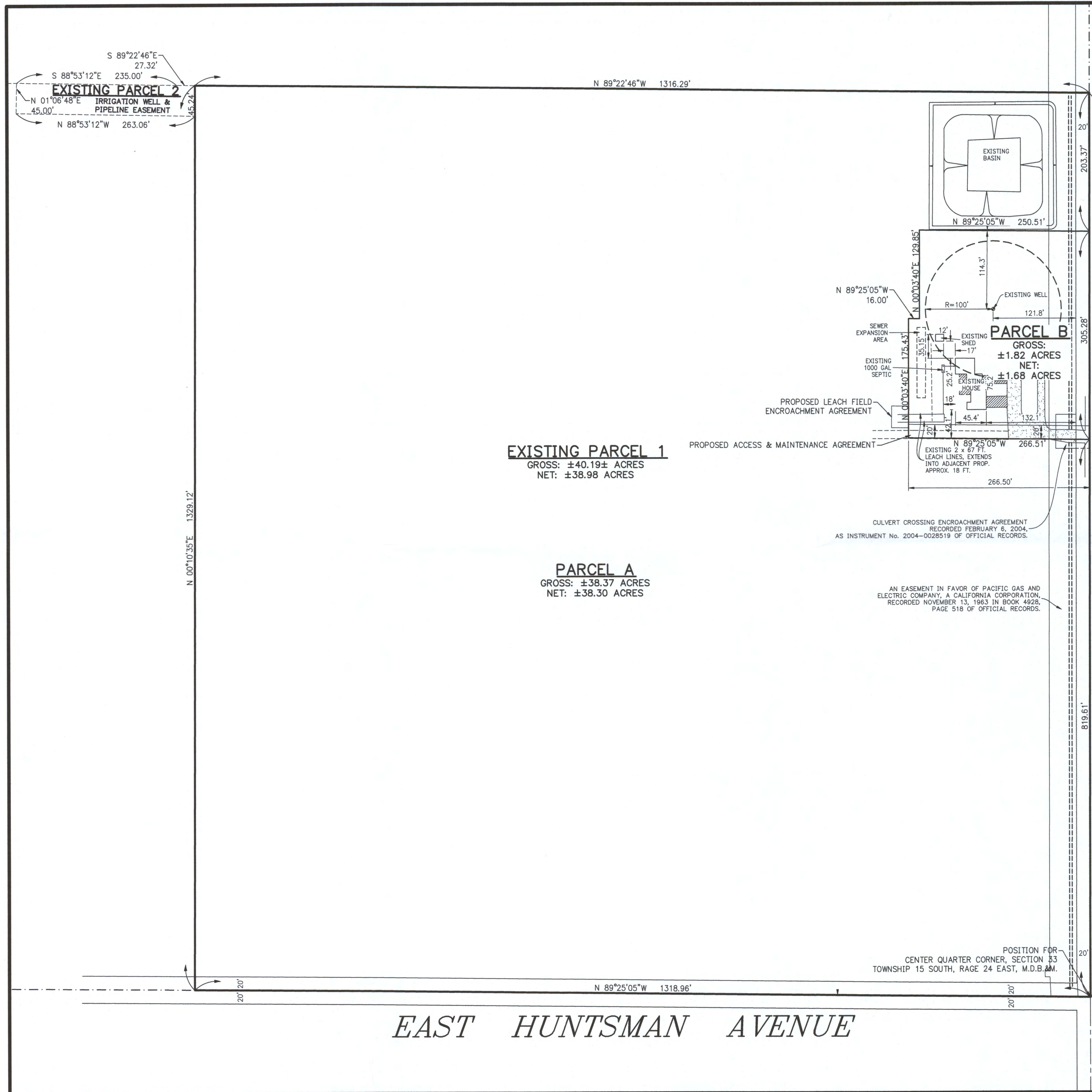
EXHIBIT 5

Legend

-  Subject Property
-  Approved Variances
-  Tulare County



TULARE COUNTY



LEGAL DESCRIPTION

PARCEL 1

THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 15 SOUTH, RANGE 24 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SAID SECTION 33, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 33; THENCE SOUTH 00°17'32" WEST, ALONG THE WEST LINE OF SAID SECTION 33, A DISTANCE OF 1306.80 FEET; THENCE SOUTH 88°53'12" EAST, A DISTANCE OF 1289.08 FEET; THENCE SOUTH 89°22'46" EAST, A DISTANCE OF 1343.62 FEET TO THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 33; THENCE NORTH 00°03'40" EAST, ALONG SAID EAST LINE, A DISTANCE OF 1318.80 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 33; THENCE NORTH 89°23'54" WEST ALONG THE NORTH LINE OF SAID SECTION 33, A DISTANCE OF 2627.27 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SAID SECTION 33, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LIE OF THE NORTHWEST QUARTER OF SAID SECTION 33, SAID POINT BEING SOUTH 00°17'32" WEST, A DISTANCE OF 1306.80 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 33; THENCE SOUTH 88°53'12" EAST, A DISTANCE OF 1289.08 FEET; THENCE SOUTH 89°22'46" EAST, A DISTANCE OF 27.32 FEET; THENCE SOUTH 00°10'35" WEST, A DISTANCE OF 1329.04 FEET, MORE OR LESS TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 33; THENCE NORTH 89°25'04" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 1318.97 FEET TO THE WEST CORNER OF SAID SECTION 33, THENCE NORTH 00°17'32" EAST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 1340.99 MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL 2

AN EASEMENT FOR IRRIGATION WELL AND PIPELINE OVER AND ACROSS THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 15 SOUTH, RANGE 24 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 33; THENCE SOUTH 00°17'32" WEST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 1306.80 FEET; THENCE SOUTH 88°53'12" EAST, A DISTANCE OF 1054.08 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 88°53'12" EAST, A DISTANCE OF 235.00 FEET; THENCE SOUTH 89°22'46" EAST, A DISTANCE OF 27.32 FEET; THENCE SOUTH 00°10'35" WEST A DISTANCE OF 45.24 FEET; THENCE NORTH 88°53'12" WEST, A DISTANCE OF 263.06 FEET; THENCE NORTH 01°06'48" EAST A DISTANCE OF 45.00 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT IS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1, ABOVE REFERRED TO.

APN: 373-151-09
EXISTING ZONE: AE20
EXISTING LAND USE: AGRICULTURE
GROSS AREA: 40.19 ACRES

OWNER

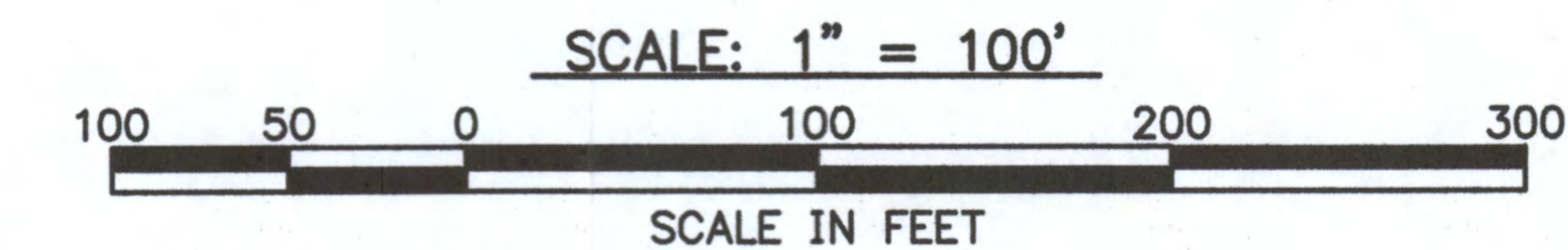
SUN PACIFIC
1095 E. GREEN STREET
PASADENA, CA 91106

APPLICANT

JUDITH ANN LEE
10401 S. PORTER AVENUE
DINUBA, CA 93618
Ph. (559) 591-6592

PREPARED BY

R. W. GREENWOOD ASSOCIATES, INC.
2558 EAST OLIVE AVENUE
FRESNO, CALIFORNIA 93701
Ph. (559) 268-7831



FLOOD ZONE STATUS:

ALL AREAS ARE IN ZONE 'A' PER FEMA PANEL 2705 OF 3525, FRESNO COUNTY, CALIFORNIA, MAP NUMBER 06019C2705H, MAP REVISED FEBRUARY 18, 2009.
NO BASE FLOOD ELEVATIONS DETERMINED.

VARIANCE
No.

IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA

PREPARED FOR

JUDITH ANN LEE

R. W. Greenwood Associates, Inc.
CIVIL ENGINEERING — LAND SURVEYING

2558 EAST OLIVE AVENUE, FRESNO, CALIFORNIA 93701, PH. (559) 268-7831

DATE:	APRIL 08, 2013
JOB No.:	B-13006
DRAWN BY:	PWL
DWG No.:	-D

VARIANCE APPLICATION FINDINGS

Ms. Judith Lee

January 5, 2023

Owner:

Sun Pacific
c/o Mr. Adam Smith
1095 E. Green St.
Pasadena, CA 91106
(213) 627-9544

Applicant:

Ms. Judith Lee
10401 Porter Avenue
Dinuba, CA 93618

Representative:

Dirk Poeschel Land Development Services, Inc.
923 Van Ness Ave., Suite 200
Fresno, CA 93721
559-445-0374

Property Location:

Generally located on the west side of Porter Ave. south of E. Dinuba Ave. at 10401 S. Porter Ave., Dinuba, CA

APN:

APN 373-151-09

Existing Zone Designation:

AE-20

Existing General Plan Land Use Designation:

Agriculture

Request:

Grant resubmitted Variance (3969) that previously expired in order to allow the creation of a 79,304 +/- square foot home site from a 39.94 +/- acre parcel in the AE-20 Zone. The original Variance (No. 3969) has expired so this project represents a resubmittal of the Variance. Variance 3969 was unanimously approved by the Fresno County Planning Commission on February 12, 2015.

Background:

Reference is made to the site plan of the subject property and its improvements prepared by R.W. Greenwood & Associates. After subsequent dedications for Porter Ave., a public street, the Fresno County Assessor considers the site to be 39.94 +/- acres.

The property was purchased by the applicant's parents on May 10, 1984, and placed into trust in May of 2007. At the time the applicant's home was constructed, the Fresno County General Plan allowed two home sites for each 20 acres of lot size. The trust deeded the property to the applicant Ms. Judith Lee on September 28, 2011.

Construction on the home within the proposed 1.82 +/- acre home site began sometime after 1984. The applicant's residence is approximately 1,500 square feet in size. On March 1, 2013, Ms. Lee deeded the 39.94 +/- acre agricultural property and retained the right to obtain a variance to create a 79,304 +/- square foot area for a home site depicted on the site plan prepared by R.W. Greenwood & Associates.

It is noted a real estate broker improperly informed Ms. Lee that she could retain her home site *after* selling the entire 39.94 +/- acre property to Sun Pacific Products, Inc. and retain her 79,304 +/- square foot home site. The proposed Variance is to allow the creation of the aforementioned 79,304 +/- square foot home site which includes the Ms. Lee's existing home.

Review of official county plats indicate numerous home sites exist generally north of the subject site that are similar to the size proposed by the applicant.

Finding 1:

Does the strict application of the Zoning Ordinance deprive this property of privileges enjoyed by other properties in the vicinity and in an identical zoning district due to special circumstances applicable to the property, including its size, shape, topography, location or surroundings?

The project is located on a 39.94 +/- acre parcel among other smaller, larger and similar-sized parcels. Reference is made to the Fresno County Assessor's Book 373, Page 15 that illustrates that various home sites proximate to the subject property exist that are less than the required 20 acre minimum lot size. Other home sites smaller than the required 20 acre minimum lot size exists along Dinuba Ave.

It is noted other variances have been granted in the vicinity of the subject property. As previously noted, Variance 3969 was unanimously approved by the Fresno County Planning Commission on Thursday, February 12, 2015, but subsequently expired. The proposed resubmitted Variance will allow the existing development pattern and intensity of the subject property to remain as it has for many years. As stated above, construction on the home within the proposed 1.82 +/- acre home site began sometime after 1984. The applicant's residence is approximately 1,500 square feet in size and will not change the character of the site whether or not the Variance is granted.

Finding 2:

Would this variance grant a special privilege inconsistent with the limitations upon other properties in the vicinity and zoning district in which the property is located?

The applicant has a right to be granted the same ability to use her property as others have under the same AE-20 zone district in the vicinity of the subject property. As stated above, the applicant's family owned the parcel for many years then placed the property into trust. As noted above, other Variances have been granted in the vicinity of the subject property with lot sizes smaller than the required 20 acre minimum parcel size. The proposed resubmitted Variance will allow the existing development pattern and intensity of the subject property to remain as it has for many years.

The purpose of the resubmitted Variance is to allow the owner to retain her home site after selling the property to Sun Pacific Products, Inc., a regional agricultural company that is very committed to maintaining the agricultural use of the site. No public policy or social good is enhanced by prohibiting the applicant from owning the parcel on which his home is located.

Finding 3:

If granted, would the requested variance be detrimental to the public welfare or injurious to property or improvements in the area to which the property is located?

Granting the proposed resubmitted Variance will not be detrimental to surrounding properties for various reasons. The site is improved with a 1,500 sq. ft. home built sometime after 1984. The existing home has 309 feet of frontage, including its driveway on Porter Ave. which is a public road of adequate width and pavement to serve the proposed home site. No variations in setback development standards are required.

There is one on-site water well for the home. The aforementioned well is located on the attached site plan. The well produces 125+ gpm. Historically, there has been no issue with well production or septic tank leach field capability.

The existing home site is well maintained and would not be in conflict with the continued agricultural operation of the remaining acreage of the property. The remaining 38.12 +/- net acre portion of the property has been sold and will remain in agricultural use as it has historically occurred. No change in the agricultural use of the property, either in size or intensity would be affected by the proposed resubmitted Variance. As noted above, a Sun Pacific Products, Inc. is a

regional agricultural company that is committed to maintaining the agricultural use of the site will farm the remaining acreage.

Finding 4:

If granted, would the requested variance be in conflict with established general and specific plans and policies of the county?

The purpose of the 20-acre minimum lot size is to prohibit the creation of parcels that cannot effectively produce an agricultural product. The proposed resubmitted Variance simply seeks to memorialize the ownership wishes of the applicant's family and maintain the development pattern and intensity of the subject parcel that is historically existed over time.

The proposed Variance will not adversely affect the production of the remaining 38.12 +/- net acres which remains a viable agriculture unit. Further, the proposed Variance will not reduce agricultural production or its intensity.

The owner of the property, Sun Pacific Products, Inc., is committed to farming the subject property. In fact, the company intends to plant kiwi or similar type fruit trees on the remaining portion of the property that is currently fallow. Sun Pacific Products, Inc., has communicated to county staff that based on their experience, the existing home site will not impair the company's ability to conduct farming operations on the remaining portion of the property. As noted above, the company has extensive expertise in farming and working around residences and similar structures.

For these reasons, the proposed resubmitted Variance will not conflict with the policies of the Fresno County General Plan.

m:\current clients\lee 13-39\correspondence\variance findings-lee 1-5-23.docx

EXHIBIT 8







County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
ALAN WEAVER
DIRECTOR

Planning Commission Staff Report Agenda Item No. 3 February 12, 2015

SUBJECT: Variance Application No. 3969

Allow the creation of a 1.68-acre homesite parcel from an existing 38.98-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

LOCATION: The project site is located on the northwest corner of E. Huntsman and S. Porter Avenues approximately one half-mile north of the Tulare County line (10401 S. Porter Ave., Dinuba) (SUP. DIST.: 4) (APN: 373-151-09).

Applicant: Judith Lee
Owner: Sun Pacific
Representative: Dirk Poeschel Land Development Services, Inc.

STAFF CONTACT: Ejaz Ahmad, Planner
(559) 600-4204

Eric VonBerg, Senior Planner
(559) 600-4569

RECOMMENDATION:

- Deny Variance Application No. 3969; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

IMPACTS ON JOB CREATION:

The Commission's action will not have any substantial effect on job creation.

EXHIBITS:

1. Conditions of Approval and Project Notes
2. Location Map
3. Existing Zoning Map
4. Existing Land Use Map
5. Site Plans
6. Applicant's Submitted Findings
7. Other Land Division Variances Filed Within One-Mile Radius

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agriculture in the County General Plan	N/A
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size)	N/A
Parcel Size	38.98 acres (net)	<ul style="list-style-type: none"> • 1.68 acres (net) • 37.3 acres (net)
Project Site	<ul style="list-style-type: none"> • 1,456 square-foot single-family residence with on-site sewage disposal system • 1,276 square-foot barn • 738 square-foot barn • 240 square-foot barn • 168 square-foot shed • Water well • Gravel access drive 	Allow the creation of a 1.68-acre parcel from an existing 38.98-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District
Structural Improvements	<ul style="list-style-type: none"> • 1,456 square-foot single-family residence with individual sewage disposal system • 1,276 square-foot barn • 738 square-foot barn • 240 square-foot barn • 168 square-foot shed 	No change
Nearest Residence	Approximately 90 feet to the north	None

Criteria	Existing	Proposed
Surrounding Development	Orchard, field crops, single-family homes	None
Operational Features	N/A	N/A
Employees	N/A	N/A
Customers	N/A	N/A
Traffic Trips	N/A	N/A
Lighting	N/A	N/A
Hours of Operation	N/A	N/A

EXISTING VIOLATION (Y/N) AND NATURE OF VIOLATION: N

ENVIRONMENTAL DETERMINATION:

It has been determined, pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines that the proposed project will not have a significant effect on the environment and is not subject to CEQA.

PUBLIC NOTICE:

Notices were sent to 17 property owners within 1,320 feet of the subject property, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

PROCEDURAL CONSIDERATIONS:

A Variance Application (VA) may be approved only if four Findings specified in Zoning Ordinance Section 877 are made by the Planning Commission.

Specifically related to a Variance Application, in order to make Findings 1 and 2, a determination must be made that the property is subject to an exceptional or extraordinary physical circumstance that does not apply to other properties in the same Zone District, and a substantial property right held by other property owners of like-zoned parcels in the area must be identified.

The decision of the Planning Commission on a Variance Application is final unless appealed to the Board of Supervisors within 15 days of the Commission's action.

BACKGROUND INFORMATION:

County records indicate that the subject 38.98-acre (net) property was zoned A-1 (Agricultural District, 36,000 square-foot minimum parcel size required) on June 8, 1960. On August 31, 1976, the subject property and several other properties in the area were rezoned (Amendment

Application No. 2870) from the A-1 Zone District to the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. The current zoning on the property is AE-20.

The proposed 1.68-acre homesite parcel contains a 1,456 square-foot single-family residence with attached garage, on-site sewage disposal system, a water well, three barns, and one shed. The residence was constructed in November of 1986. The remainder of the property is in farming operation. The property fronts Porter and Huntsman Avenues. The residence gains access from Porter Avenue.

A Variance Application is required to allow the creation of a 1.68-acre homesite parcel as a separate legal parcel in the AE-20 Zone District. However, the remainder 37.3-acre parcel meets the minimum parcel size requirement of the AE-20 Zone District. Should this Variance be approved, a subsequent Parcel Map Application would be required to create the homesite parcel and the remainder parcel as separate legal parcels for sale, lease or financing.

County records indicate that one Variance Application pertaining to lot size requirement was filed within one-mile radius of the subject property (Exhibit 7). The following table provides a brief summary of that Variance request, staff recommendation, and final action by the Planning Commission:

Application/Request	Date of Action	Staff Recommendation	Final Action
VA 3955 – allow the creation of a 1.43-acre homesite parcel from an existing 38.79-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.	March 13, 2014	Denial	Planning Commission Approved

Staff notes that every variance request is considered on its own merit, and is based upon the four required Findings and circumstances of the property.

ANALYSIS/DISCUSSION:

Finding 1: There are exceptional or Extraordinary Circumstances or conditions applicable to the property involved which do not apply generally to other property in the vicinity having the identical zoning classification.

Finding 2: Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity having the identical zoning classification.

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Setbacks	Front: 35 feet Side: 20 feet Rear: 20 feet	N/A	N/A

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Parking	N/A	N/A	N/A
Lot Coverage	N/A	N/A	N/A
Separation Between Buildings	N/A	N/A	N/A
Wall Requirements	N/A	N/A	N/A
Septic Replacement Area	100 percent	N/A	N/A
Water Well Separation	Building sewer/septic tank: 50 feet; disposal field: 100 feet; seepage pit/cesspool: 150 feet	N/A	N/A

Reviewing Agency/Department Comments:

Zoning Section of the Development Services Division: AE-20 Zone District requires a minimum parcel size of 20 acres. A Variance is required to waive the minimum parcel size requirement in order to create the proposed 1.68-acre homesite parcel.

No other comments specific to the adequacy of the site were expressed by reviewing Agencies or Departments, including the Fresno County Department of Agriculture.

Analysis:

In support of Finding 1, the Applicant states that the subject property is located among other smaller, similar-sized and larger parcels; several parcels in the vicinity are less than 20 acres minimum lot size required by the zone district; and no changes to the character, existing development pattern, nor the intensity of the property will occur from this proposal.

In support of Finding 2, the Applicant states that she has a right to be granted the same ability to use her property as others have under the AE-20 Zone District in the vicinity of the subject proposal; other variances have been granted in the vicinity with a lot size smaller than 20 acres; her parents owned the property for many years before it was trust deeded to her; and no public policy or social good is enhanced by prohibiting her from owning the parcel on which her home is located.

As noted above, in order to make Findings 1 and 2, an extraordinary circumstance relating to the property that does not apply to other properties in the same zone classification and the preservation of a substantial property right must be demonstrated.

As noted in the "Background Information", the Applicant has sold the entire 38.98-acre (net) parcel to an agricultural company to maintain the agricultural use of the parcel except for retaining the subject 1.68-acre homesite parcel to keep as her residence (Exhibit 5). Should this Variance be approved, it would result in the creation of a 1.68-acre legal non-conforming parcel (20-acre minimum required) in the AE-20 Zone District. A subsequent Parcel Map Application would be required to create the homesite parcel and the remainder parcel as separate legal parcels for sale, lease or financing.

With regard to Findings 1 and 2, staff notes that although the Applicant has cited other properties in the area as being of a smaller or similar size, information indicating shape or topography or other unusual exceptional circumstance in relation to the subject site has not been provided. In regard to the subdivision of other parcels in the area smaller than 20 acres in size and located within a one-mile radius of the subject property, staff notes none of them were found to be created through Variance approvals, except for one located east of the subject property (see Background Information). These parcels appear to have been created either prior to August 31, 1976 when the A-1 Zone District would allow parcels as small as 2.29 acres in size, or after August 31, 1976 when homesite parcels were allowed in the AE-20 Zone District with a minimum 15-acre parcel size provided they met the requirements of Section 816.5-A.2.b.(3) of the Zoning Ordinance. Homesites created under this Section do not require a Variance.

Upon analyzing the site aerial photo, the proposed parcelization (Site Plan) and comments from reviewing agencies, staff has concluded that there are no physical circumstances or constraints that justify the need for this Variance beyond the circumstances described by the Applicant in the Applicant's Findings (Exhibit 6). There are no elevation changes, rock outcroppings, wetlands, and/or public easements that create significant hardships for the Applicant. The Applicant's reasoning regarding the existence of other smaller parcels in the area and the proposal not changing the existing development pattern on the property is not a physical characteristic demonstrating circumstances which merit the requested parcel configuration proposed with the Variance request, and as such, does not support meeting Finding 1. Likewise, the proposal does not give validity to the loss of a substantial property right to support meeting Finding 2 in that denial of this Variance request would not necessarily deprive the Applicant of any right enjoyed by other property owners in the AE-20 Zone District, since all property owners in said District are subject to the same development standards.

A consideration in addressing Findings 1 and 2 is whether there are alternatives available that would avoid the need for the Variance. Given the circumstances described by the Applicant in the Applicant's Findings (Exhibit 6), there appears to be no other alternative that would meet the Applicant's desire to create a 1.68-acre parcel to retain (short of sale of the entire 38.98-acre [net] property), and meet the lot size required of the AE-20 Zone District. Pursuant to Section 816.5-A.2.(3) of the County Ordinance, the Applicant could have retained a 1.68-acre homesite without a Variance and sold the remaining 37.3 acres for agricultural purposes without a Variance had she owned the property prior to rezone from the A-1 Zone District to the AE-20 Zone District in August 31, 1976 and prior to selling a portion of the property to the current owner for farming purposes. To staff's understanding, this option was never available to the Applicant. The Applicant's parent purchased the property on May 10, 1984 and trust deeded it to the Applicant on September 22, 2011.

Based on the above analysis, and considering the lack of a physical circumstance warranting the proposed parcel configuration and loss of a substantial property right, staff believes Findings 1 and 2 cannot be made.

Recommended Conditions of Approval:

None

Conclusion:

Findings 1 and 2 cannot be made.

Finding 3: The proposal will not be materially detrimental to the public welfare or injurious to property and improvements in the vicinity in which the property is located.

Surrounding Parcels				
	Size:	Use:	Zoning:	Nearest Residence:
North:	18.08 acres 19.03 acres	Vineyard; single-family homes	AE-20	97 feet
South:	19.09 acres	Orchard	AE-20	N/A
East:	1.43 acres 38.79 acres	Orchard; single-family homes	AE-20	220 feet
West:	19.55 acres	Orchard	AE-20	N/A

Reviewing Agency/Department Comments:

Building and Safety Section of Development Services Division: Prior to submittal of a Mapping Application, the Applicant shall: 1) indicate on a site plan all dimensions from proposed property lines to existing structures and specify the building sizes, construction type and occupancy group, or define how the existing structures are being used; and 2) provide evidence that permits were obtained for the three (3) existing barns north of the residence. This requirement has been included as a Condition of Approval.

Plans, permits and inspections may be required for the existing structures that may be impacted by the Variance, including retaining walls and other site improvements. This requirement has been included as a Project Note.

Fresno County Department of Public Health, Environmental Health Division: The portion of each leach line that crosses the proposed property boundary, and property boundary setback, shall be properly destroyed. A new leach field shall be installed in compliance with current codes and regulations (within the new property boundary, meeting all required setbacks). Permits for the destruction and new construction shall be obtained from the Department of Public Works & Planning, Building and Safety Section. This requirement has been included as a Condition of Approval.

Development Engineering Section of the Development Services Division: According to FEMA FIRM Panel 2705H, the subject parcel is in Flood Zone A, subject to flooding from the 100-year storm. No net import of fill shall be allowed within the flood zone. Any work within the designated Flood Zone shall conform to provisions established in Chapter 15.48 Flood Hazard Areas of the Fresno County Ordinance. A grading permit or voucher shall be required for any grading that has been done without a permit and any grading proposed with this application. A parcel map application to create the proposed 1.68-acre parcel (homesite) shall be filed with the County in order to effect the property division.

Road Maintenance and Operations Division: Porter Avenue is a County-maintained road, is classified as a local road in the General Plan, and requires an ultimate right of way width of 60 feet (30 feet each side of section line). Currently there is 20 feet of right-of-way across the parcel frontage. The Applicant should irrevocably offer an additional ten feet of right-of-way across the proposed homesite parcel. An encroachment permit shall be required for any improvements undertaken in the County right-of-way for the existing (or any proposed) drive approach.

Zoning Section of the Development Services Division: Building permits shall be required for the three existing barns and one shed if built after March 1, 1958.

The aforementioned requirements have been included as Project Notes.

Alta Irrigation District, San Joaquin Valley Air Pollution Control District, Water/Geology/Natural Resources Section of the Development Services Division, County Design Division and Fresno County Fire Protection District, Fresno County Department of Agriculture: No concerns regarding the proposal.

Analysis:

In support of Finding 3, the Applicant states that granting of this Variance will not be detrimental to public welfare or injurious to property in that no variations in setback development standards are required for existing improvements on the property. Likewise, no change in the agricultural use of the property, either in size or intensity, would be affected by this proposal.

Staff notes that the subject 38.98-acre (net) property is located in an agriculture area. The property is surrounded by farmland containing orchards, field crops and single-family residences. No distinctive scenic vista or scenic resources exist in the vicinity of the property. If approved, no change to the existing improvements on the property would result from this proposal. The proposed 1.68-acre homesite parcel with the existing single-family residence will remain in residential use, and the 37.3-acre remainder parcel will remain in farming by the current owner. Furthermore, both parcels will continue to gain access from Porter Avenue. Granting of this Variance may result in the establishment of one additional residence on each parcel through Director Review and Approvals. Such uses are not incompatible with the existing residential uses on farmland in the vicinity of the proposal. Considering that, and with adherence to the recommended Conditions of Approval and mandatory Project Notes, the proposal would not be materially detrimental to the properties and improvements in the area. Finding 3 can be made.

Recommended Conditions of Approval:

See Recommended Conditions of Approval and Project Notes attached as Exhibit 1.

Conclusion:

Finding 3 can be made.

Finding 4: Granting of this variance will not be contrary to the objectives of the General Plan Consistency

Relevant Policies:	Consistency/Considerations:
<p>General Plan Policy LU-A.6: County shall maintain 20 acres as the minimum permitted parcel size in areas designated Agriculture except as provided in Policies LU-A.9.</p> <p>Policy LU-A.9: County may allow creation of homesite parcels smaller than minimum required by Policy LU-A.6, if the parcel involved in the division is at least 20 acres in size, subject to the following criteria:</p> <ol style="list-style-type: none"> a. The minimum lot size shall be 60,000 square feet of gross area but in no event shall the lot be less than one gross acre; and b. One of the following conditions exists: <ol style="list-style-type: none"> 1. A lot less than 20 acres is required for financing construction of a residence to be owned and occupied by the owner of abutting property; or 2. The lot to be created is intended for use by persons involved in the farming operation and related to owner by adoption, blood, or marriage within the second degree of consanguinity. 3. The property owner owned the property prior to the date these policies were implemented and wishes to retain his/her homesite and sell the remaining acreage for agricultural purposes. 	<p>The subject proposal entails the creation of a 1.68-acre parcel less than 20 acres minimum required in the AE-20 Zone District. Staff believes the proposal does not meet Policy LU-A.6 for lot size or the exceptions granted by Policy LU-A.9. The subject homesite parcel is not a financing parcel; is not being created for use by person(s) involved in the farming operation; and the Applicant did not own the parcel prior to the adoption of the Exclusive Agricultural Zone District (August 31, 1976) in order to retain the homesite parcel without a Variance and sell the remaining acreage for agricultural purposes per Section 816.5-A.2.b.(3) of the Zoning Ordinance.</p>
<p>General Plan Policy LU-A.7: County shall generally deny requests to create parcels less than the minimum size specified in Policy LU-A.6 based on concerns that these parcels are less viable economic farming</p>	<p>As noted above, the creation of a 1.68-acre parcel less than 20 acres minimum required in the AE-20 Zone District would be inconsistent with Policy LU-A.6. The subject proposal is likely to set precedent for parcelization of active</p>

Relevant Policies:	Consistency/Considerations:
<p>units, and that resultant increase in residential density increases the potential for conflict with normal agricultural practices on adjacent parcels. The decision-making body shall consider the negative incremental and cumulative effects such land divisions have on the agricultural community.</p>	<p>farmland into smaller size parcels which are economically less viable farming units. Additionally, the proposal will potentially allow one additional residence on each newly created parcel through discretionary approvals which may increase residential density in the area and may conflict with normal agricultural practices on adjacent properties.</p>
<p>General Plan Policy LU-A.15: County shall generally condition discretionary permits for residential development within or adjacent to agricultural areas upon the recording of a Right-to-Farm Notice which is an acknowledgment that residents in the area should be prepared to accept the inconveniences and discomfort associated with normal farming activities and that an established agricultural operation shall not be considered a nuisance due to changes in the surrounding area.</p>	<p>This Policy is met in that a Condition of Approval will require recordation of a Right-to-Farm Notice prior to completion of the mapping procedure to create the subject parcels</p>
<p>General Plan Policy PF-C.17: County shall, prior to consideration of any discretionary project related to land use, undertake a water supply evaluation. The evaluation shall include the following:</p> <p>A determination that the water supply is adequate to meet the highest demand that could be permitted on the lands in question. If surface water is proposed it must come from a reliable source. If groundwater is proposed, a hydrological investigation may be required. If the land in question lies in an area of limited groundwater, a hydrologic investigation shall be required.</p>	<p>The project site is not located in an area of known water deficiency as identified in the Fresno County Zoning Ordinance. The Water/Geology/Natural Resources Unit of the Development Services Division reviewed the proposal and expressed no water-related concerns with the project.</p>

Reviewing Agency/Department Comments:

Policy Planning Section of the Development Services Division: The Agriculture and Land Use Element of the General Plan requires 20 acres as the minimum parcel size in areas designated for Agriculture. Policies LU-A.6 and LU-A.7 state that the County shall generally deny requests to create parcels less than the minimum size specified in areas designated Agriculture. Policy LU-A.15 requires recordation of a right-to-farm notice and Policy PF-C.17 calls for adequate water supply for the proposal.

Analysis:

In support of Finding 4, the Applicant states that the proposed Variance seeks to memorialize the ownership wishes of the Applicant's family and maintain the development pattern and intensity of the subject parcel that has historically existed over time. Further, the proposal will not reduce the current agricultural production on the property.

The subject property is designated Agriculture in the County General Plan and is zoned AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) in the County Ordinance. Policies LU-A.6, LU-A.7, LU-A.15, and PF-C.17 are applicable to this proposal and are discussed above. Staff believes this proposal is inconsistent with Policies LU-A.6 and LU-A.7.

According to General Plan Policy LU-A.6 and LU-A.7, the creation of parcels less than the minimum size specified by the Agriculture designation is discouraged due to a concern that such parcels are less viable economic farming units, and that the resultant increase in residential density may conflict with normal agricultural practices on adjacent properties. Further, the decision-making body shall consider the negative incremental and cumulative effects land divisions have on the agricultural community. In regard to the subject Variance request, increased parcelization in the area will potentially create additional inventory of parcels under five acres in size, which could be viewed as *de facto* rural residential parcelization, and is generally not supported by General Plan policy. Finding 4 cannot be made.

Recommended Conditions of Approval:

None

Conclusion:

Finding 4 cannot be made.

PUBLIC COMMENT:

None

CONCLUSION:

Based on the factors cited in the analyses, staff is unable to make Findings 1, 2, and 4. Therefore, staff recommends denial of Variance Application No. 3969.

PLANNING COMMISSION MOTIONS:

Recommended Motion (denial action)

- Move to determine that the required Findings cannot be made and move to deny Variance Application No. 3969; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (approval action)

- Move to determine that the required Findings can be made (state the basis for making the Findings) and move to approve Variance Application No. 3969, subject to the Conditions and Notes listed below; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Recommended Conditions of Approval and Project Notes:

See attached Exhibit 1.

EA:ksn

G:\4360Devs&PIn\PROJSEC\PROJDOCS\VA\3900-3999\3969\SR\VA 3969 SR.doc

**Variance Application (VA) No. 3969
(Conditions of Approval and Project Notes)**

Conditions of Approval

1.	Development shall be in accordance with the Site Plan (Exhibit 5), as approved by the Commission.
2.	Prior to completion of a mapping procedure, an agreement incorporating the provisions of the "Right-to-Farm" Notice (Ordinance Code Section 17.40.100) shall be entered into with Fresno County.
3.	<p>Prior to submittal of Parcel Map Application, all issues outlined in the Building and Safety Section of the Fresno County Department of Public Works and Planning October 24, 2014 comments shall be rectified. They are as follows:</p> <ul style="list-style-type: none"> • Indicate on a site plan all dimensions from proposed property line to existing structures and specify the building sizes, construction type and occupancy group, or define how the existing structures are being used; • Provide evidence that permits were obtained for the three (3) existing barns north of the residence.
4.	The portion of each leach line that crosses the proposed property boundary, and property boundary setback, shall be properly destroyed. A new leach field shall be installed in compliance with current codes and regulations (within the new property boundary, meeting all required setbacks). Permits for the destruction and new construction shall be obtained from the Department of Public Works & Planning, Building and Safety Section.

*MITIGATION MEASURE – Measure specifically applied to the project to mitigate potential adverse environmental effects identified in the environmental document and Conditions of Approval reference recommended Conditions for the project.

Notes

The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.

1.	Division of the subject property is subject to the provisions of the Fresno County Parcel Map Ordinance. A Parcel Map Application shall be filed to create 1.68-acre and 37.3-acre parcels.
2.	Plans, permits and inspections may be required from the Building and Safety Section of the Fresno County Department of Public Works and Planning for the existing structures that may be impacted by the Variance, including retaining walls and other site improvements.
3.	<p>According to the Development Engineering Section of the Development Services Division:</p> <ul style="list-style-type: none"> • Any work within the designated Flood Zone shall conform to provisions established in Chapter 15.48 Flood Hazard Areas of the Fresno County Ordinance. • A grading permit or voucher shall be required for any grading that has been done without a permit and any grading proposed with this application.

Notes

	<ul style="list-style-type: none">• According to FEMA FIRM Panel 2705H, the subject parcel is in Flood Zone A, subject to flooding from the 100-year storm. No net import of fill shall be allowed within the flood zone.
4.	An encroachment permit shall be obtained from the Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning for any drive approach improvements constructed in the County right-of-way.
5.	According to the Zoning Section of the Fresno County Department of Public Works and Planning, building permits are required for the three existing barns and one shed, if built after March 1, 1958.

EA:

G:\4360Devs&Pln\PROJSEC\PROJDOCS\VA\3900-3999\3969\SR\VA 3969 MMRP (Ex 1).docx

LOCATION MAP

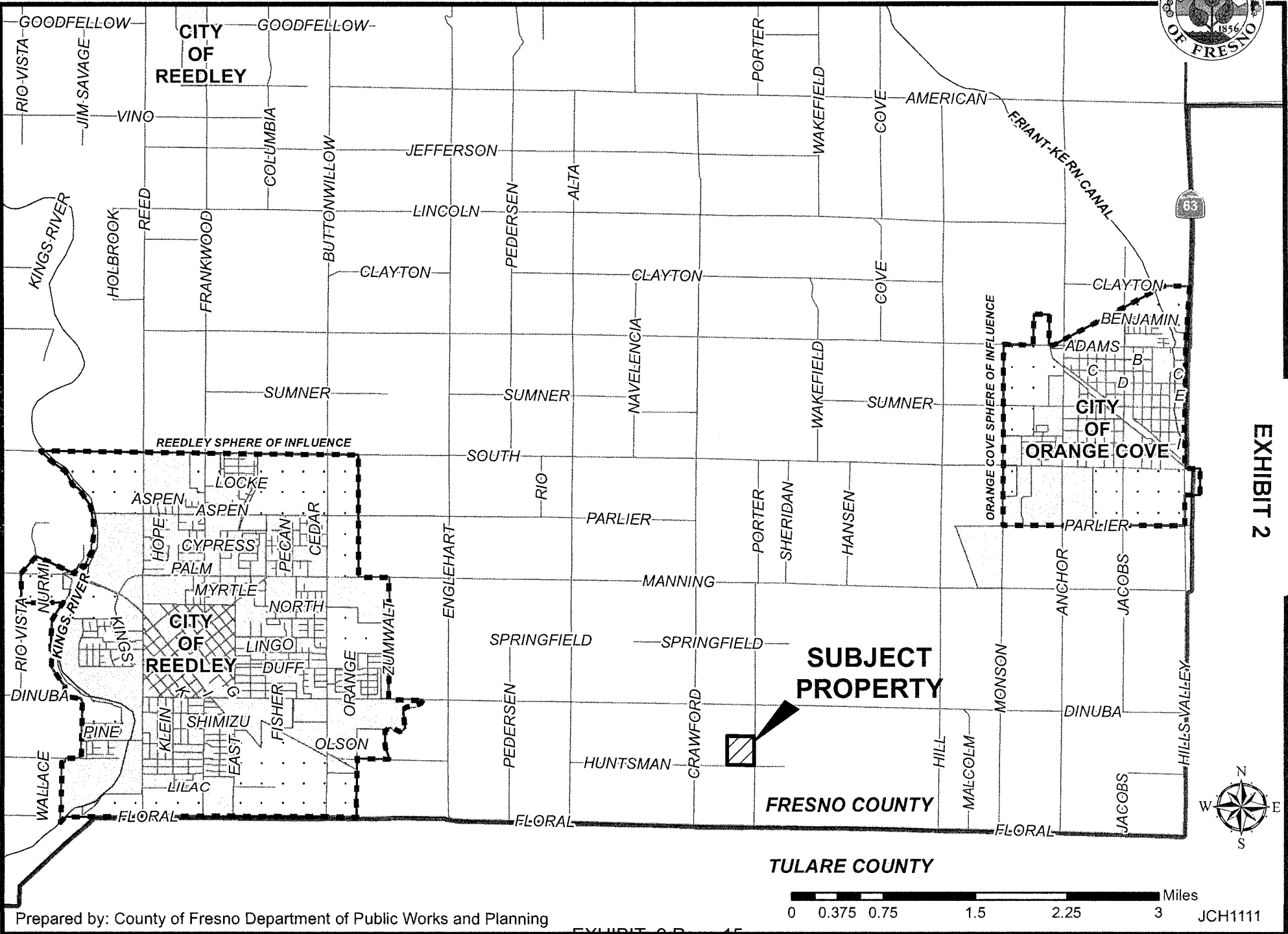


EXHIBIT 2

EXISTING ZONING MAP

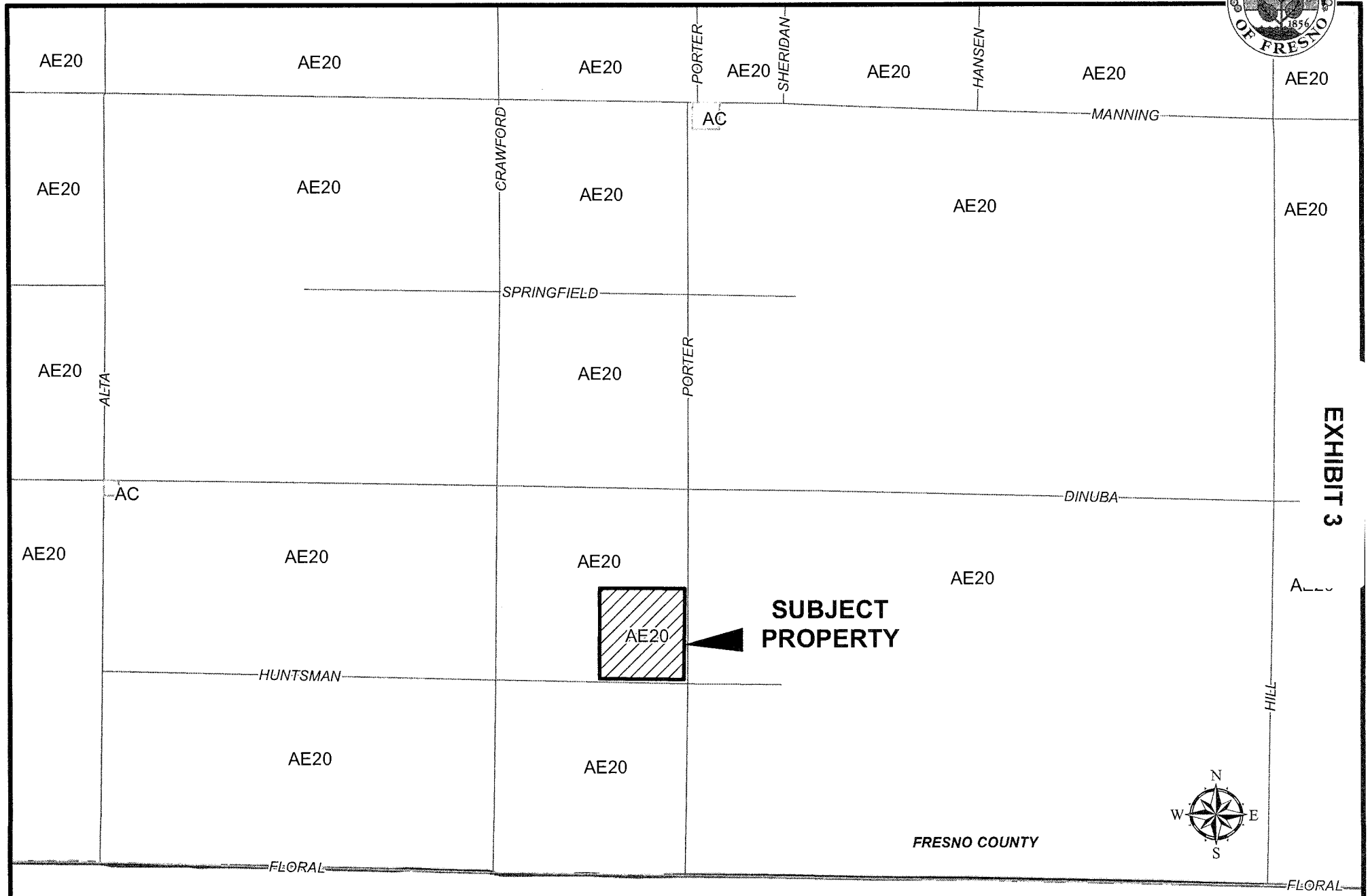
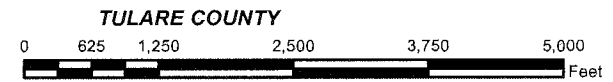


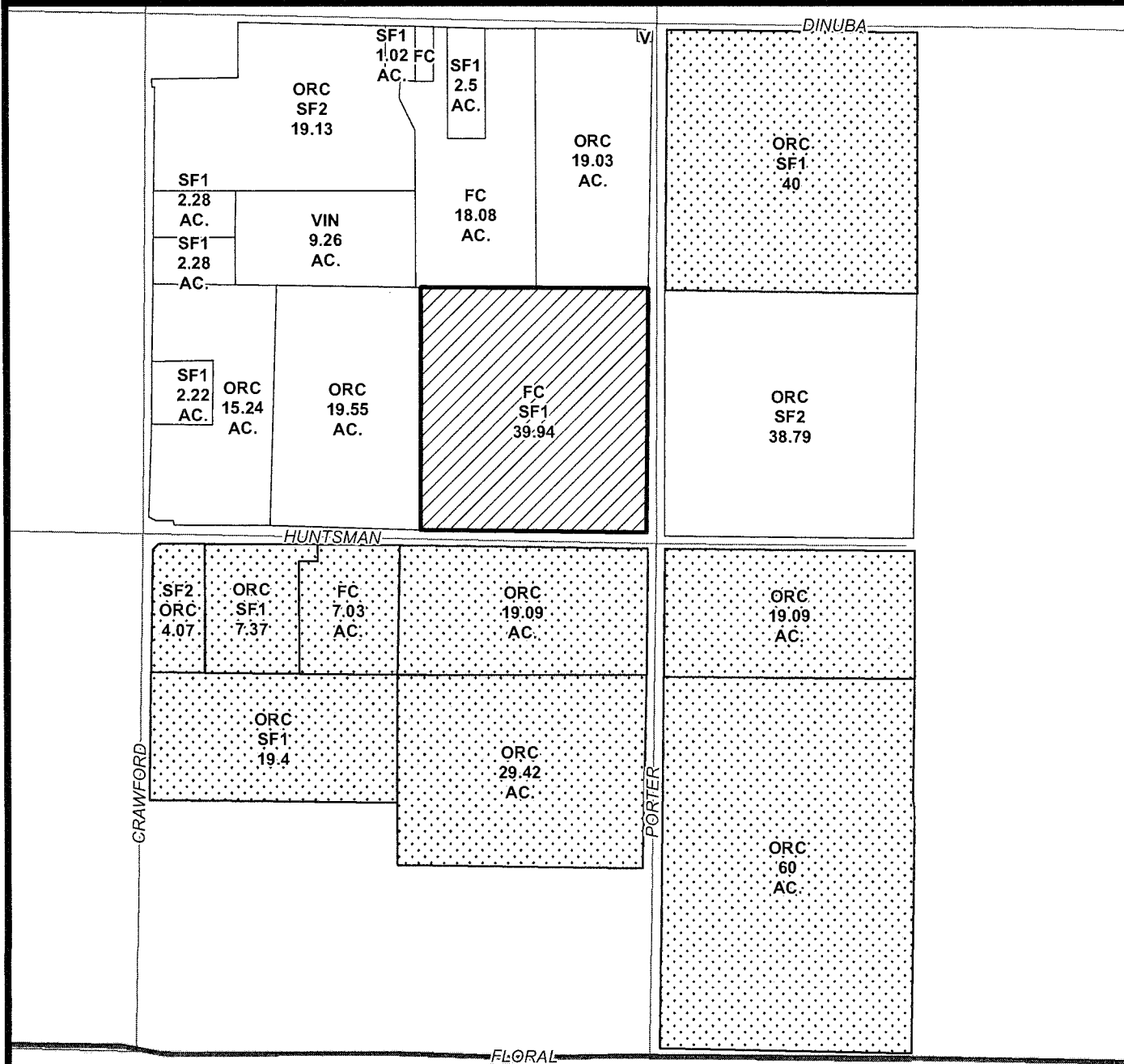
EXHIBIT 3



FRESNO COUNTY



EXISTING LAND USE MAP



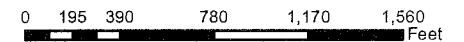
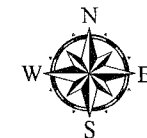
LEGEND

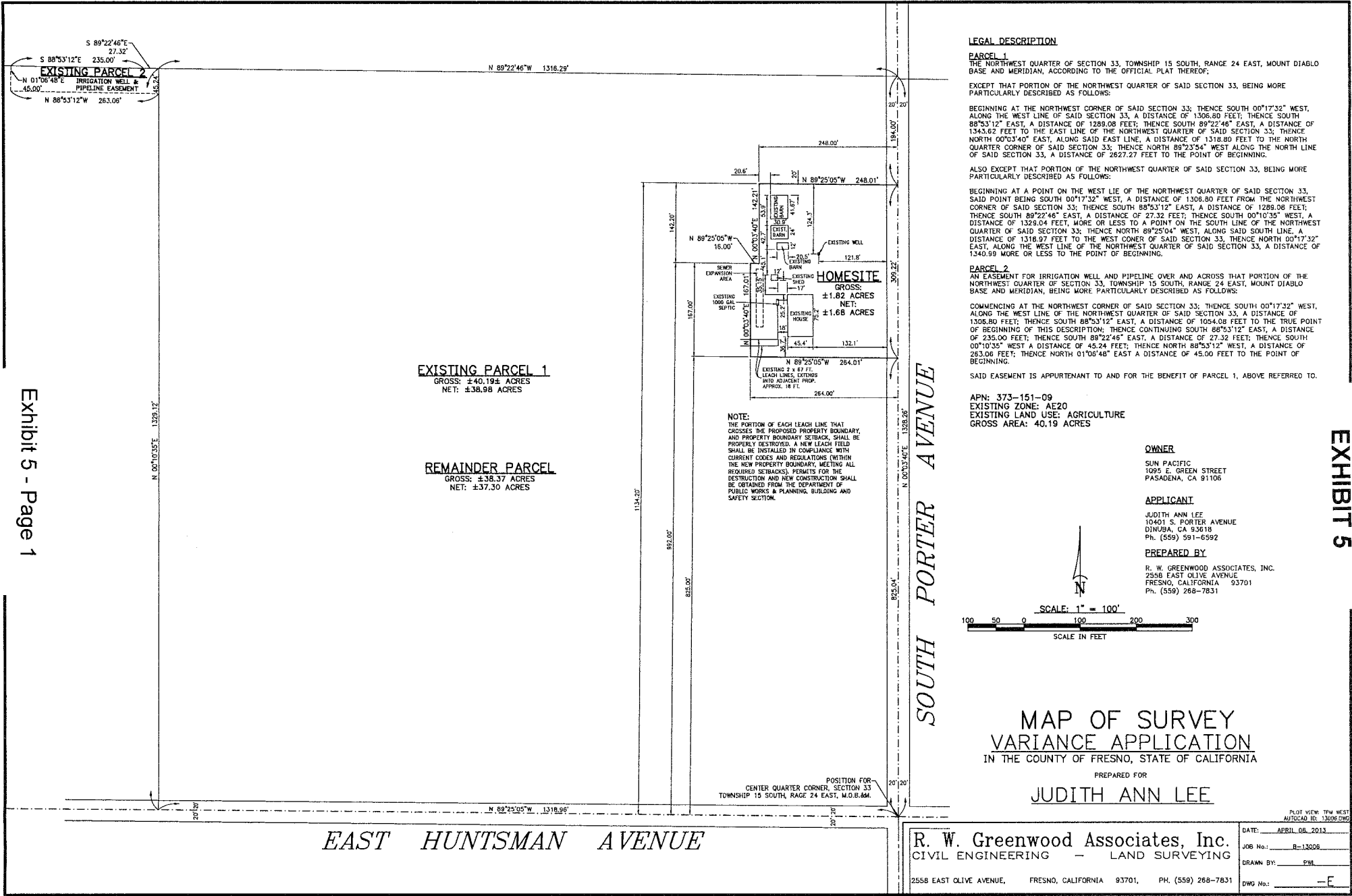
- FC - FIELD CROP
- ORC - ORCHARD
- SF#- SINGLE FAMILY RESIDENCE
- V - VACANT
- VIN - VINEYARD

LEGEND:

- Subject Property
- Ag Contract Land

EXHIBIT 4





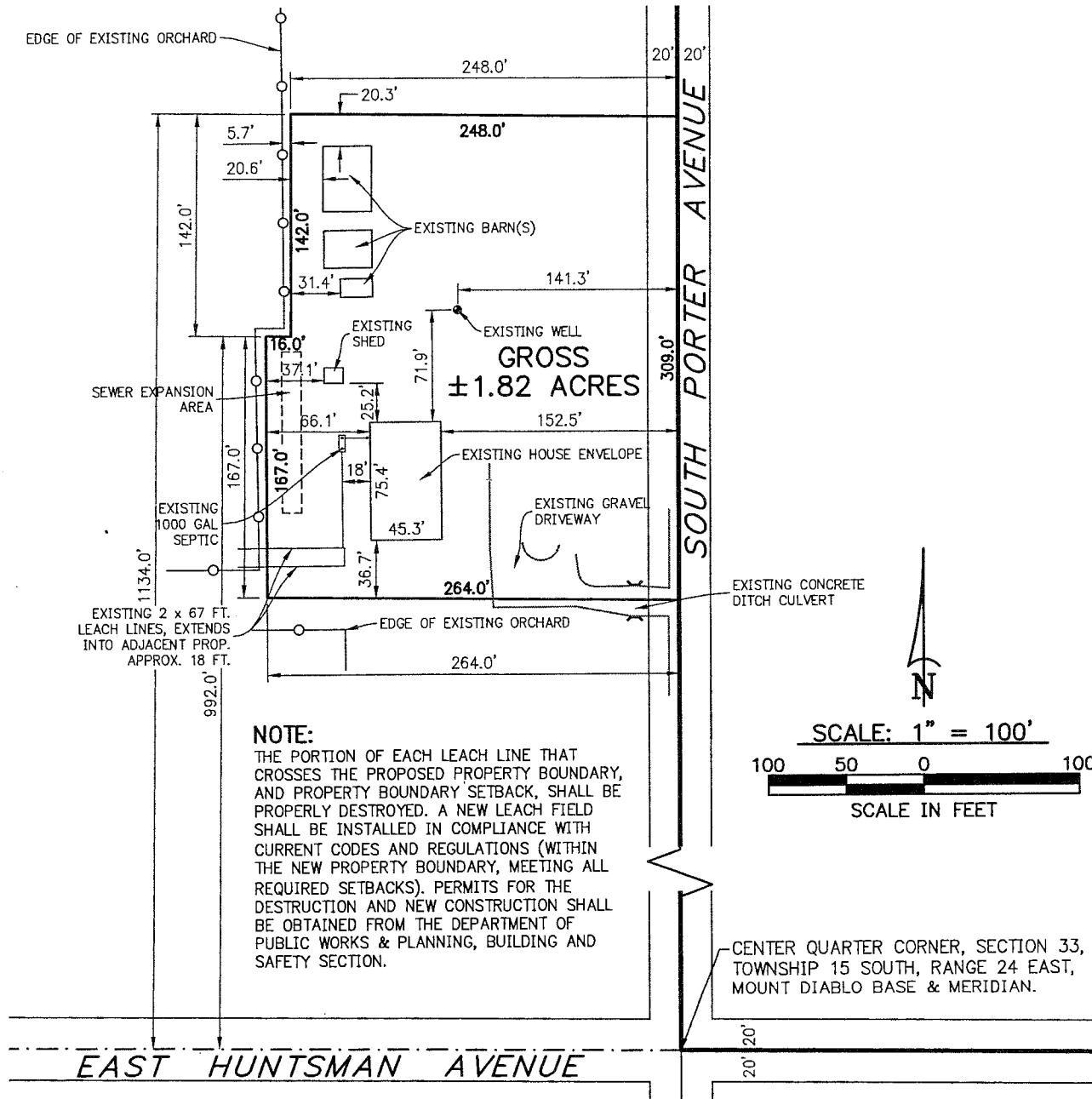


EXHIBIT 6

VARIANCE APPLICATION FINDINGS

Ms. Judith Lee

October 3, 2014

Owner:

Sun Pacific
c/o Mr. Adam Smith
1095 E. Green St.
Pasadena, CA 91106
(213) 627-9544

VA 3969

RECEIVED
COUNTY OF FRESNO

OCT 06 2014

DEPARTMENT OF PUBLIC WORKS
AND PLANNING
DEVELOPMENT SERVICES DIVISION

Applicant:

Ms. Judith Lee
10401 Porter Avenue
Dinuba, CA 93618

Representative:

Dirk Poeschel Land Development Services, Inc.
923 Van Ness Ave., Suite 200
Fresno, CA 93721
559-445-0374

Property Location:

Generally located on the west side of Porter Ave. south of E. Dinuba Ave. at 10401 S. Porter Ave., Dinuba, CA

APN:

APN 373-151-09

Existing Zone Designation:

AE-20

Existing General Plan Land Use Designation:

Agriculture

Request:

Grant a Variance to allow the creation of a 79,304 +/- square foot home site from a 39.94 +/--acre parcel in the AE-20 Zone.

Background:

Reference is made to the site plan of the subject property and its improvements prepared by R.W. Greenwood & Associates. After subsequent dedications for Porter Ave. a public street, the Fresno County Assessor considers the site to be 39.94+/- acres.

The property was purchased by the applicant's parents on May 10, 1984 and placed into trust in May of 2007. At the time the home was constructed, the Fresno County General Plan allowed two home sites for each 20 acres of lot size. The trust deeded the property to the applicant Ms. Judith Lee on September 28, 2011.

Construction on the home within the proposed 1.82 +/- acre home site began sometime after 1984. The residence is approximately 1,500 square feet in size. On March 1, 2013, Ms. Lee deeded the 39.94 +/- acre agricultural property and retained the right to obtain a variance to create a 79,304 +/- square foot area for a home site depicted on the site plan prepared by R.W. Greenwood & Associates.

It is noted a real estate broker improperly informed Ms. Lee that she could retain her home site *after* selling the entire 39.94+/- acre property to Sun Pacific Products, Inc. and retain her 79,304 +/- square foot home site. The proposed Variance is to allow the creation of the aforementioned 79,304 +/- square foot home site which includes the Ms. Lee's existing home.

Review of official county plats indicate numerous home sites exist generally north of the subject site that are similar to the size proposed by the applicant.

Finding 1:

Does the strict application of the Zoning Ordinance deprive this property of privileges enjoyed by other properties in the vicinity and in an identical zoning district due to special circumstances applicable to the property, including its size, shape, topography, location or surroundings?

The project is located on a 39.94 +/- acre parcel among other smaller, larger and similar-sized parcels. Reference is made to the Fresno County Assessor's Book 373, Page 15 that illustrates that various home sites proximate to the subject property exist that are less than the required 20 acre minimum lot size. Other home sites smaller than the required 20 acre minimum lot size exists along Dinuba Ave.

It is noted other variances have been granted in the vicinity of the subject property. The proposed Variance will allow the existing development pattern and intensity of the subject property to remain as it has for many years. As sated above, construction on the home within the proposed 1.82 +/- acre home site began sometime after 1984. The residence is approximately 1,500 square feet in size and will not change the character of the site whether or not the Variance is granted.

Finding 2:

Would this variance grant a special privilege inconsistent with the limitations upon other properties in the vicinity and zoning district in which the property is located?

The applicant has a right to be granted the same ability to use her property as others have under the same AE-20 zone district in the vicinity of the subject property. As stated above, the applicant's family owned the parcel for many years then placed the property into trust. As noted above, other Variances have been granted in the vicinity of the subject property with lot sizes smaller than the required 20 acre minimum parcel size. The proposed Variance will allow the existing development pattern and intensity of the subject property to remain as it has for many years.

The purpose of the Variance is to allow the owner to retain her home site after selling the property to Sun Pacific Products, Inc a regional agricultural company that is very committed to maintaining the agricultural use of the site. No public policy or social good is enhanced by prohibiting the applicant from owning the parcel on which his home is located.

Finding 3:

If granted, would the requested variance be detrimental to the public welfare or injurious to property or improvements in the area to which the property is located?

Granting the proposed Variance will not be detrimental to surrounding properties for various reasons. The site is improved with a 1,500 sq. ft. home built sometime after 1984. The existing home has 309 feet of frontage, including its driveway on Porter Ave. Porter Ave. is a public road of adequate width and pavement to serve the proposed home site. No variations in setback development standards are required.

There is one on-site water wells for the home. The aforementioned well is located on the attached site plan. The well produces 125+ gpm. Historically, there has been no issue with well production or septic tank leach field capability.

The exiting home site is well maintained and would not be in conflict with the continued agricultural operation of the remaining acreage of the property. The remaining 38.12 +/- net acre portion of the property has been sold and will remain in agricultural use as it has historically occurred. No change in the agricultural use of the property, either in size or intensity would be affected by the proposed Variance. As noted above, a Sun Pacific Products, Inc a regional agricultural company that is very committed to maintaining the agricultural use of the site will farm the remaining acreage.

Finding 4:

If granted, would the requested variance be in conflict with established general and specific plans and policies of the county?

The purpose of the 20 acre minimum lot size is to prohibit the creation of parcels that cannot effectively produce an agricultural product. The proposed Variance simply seeks to memorialize the ownership wishes of the applicant's family and maintain the development pattern and intensity of the subject parcel that is historically existed over time.

The proposed Variance will not adversely affect the production of the remaining 38.12 +/- net acres which remains a viable agriculture unit. Further, the proposed Variance will not reduce agricultural production or its intensity.

The owner of the property, Sun Pacific Products, Inc. is committed to farming the subject property. In fact, the company intends to plant kiwi or similar type fruit trees on the remaining portion of the property that is currently fallow. Sun Pacific Products, Inc. has communicated to county staff that based on their experience, the existing home site will not impair the company's ability to conduct farming operations on the remaining portion of the property. As noted above, the company has extensive expertise in farming and working around residences and similar structures.

For these reasons, the proposed Variance will not conflict with the policies of the Fresno County General Plan.

g:\wpdocs\lee 13-39\08-15-13 variance findings-lee.docx

Approved Variance within One Mile Radius

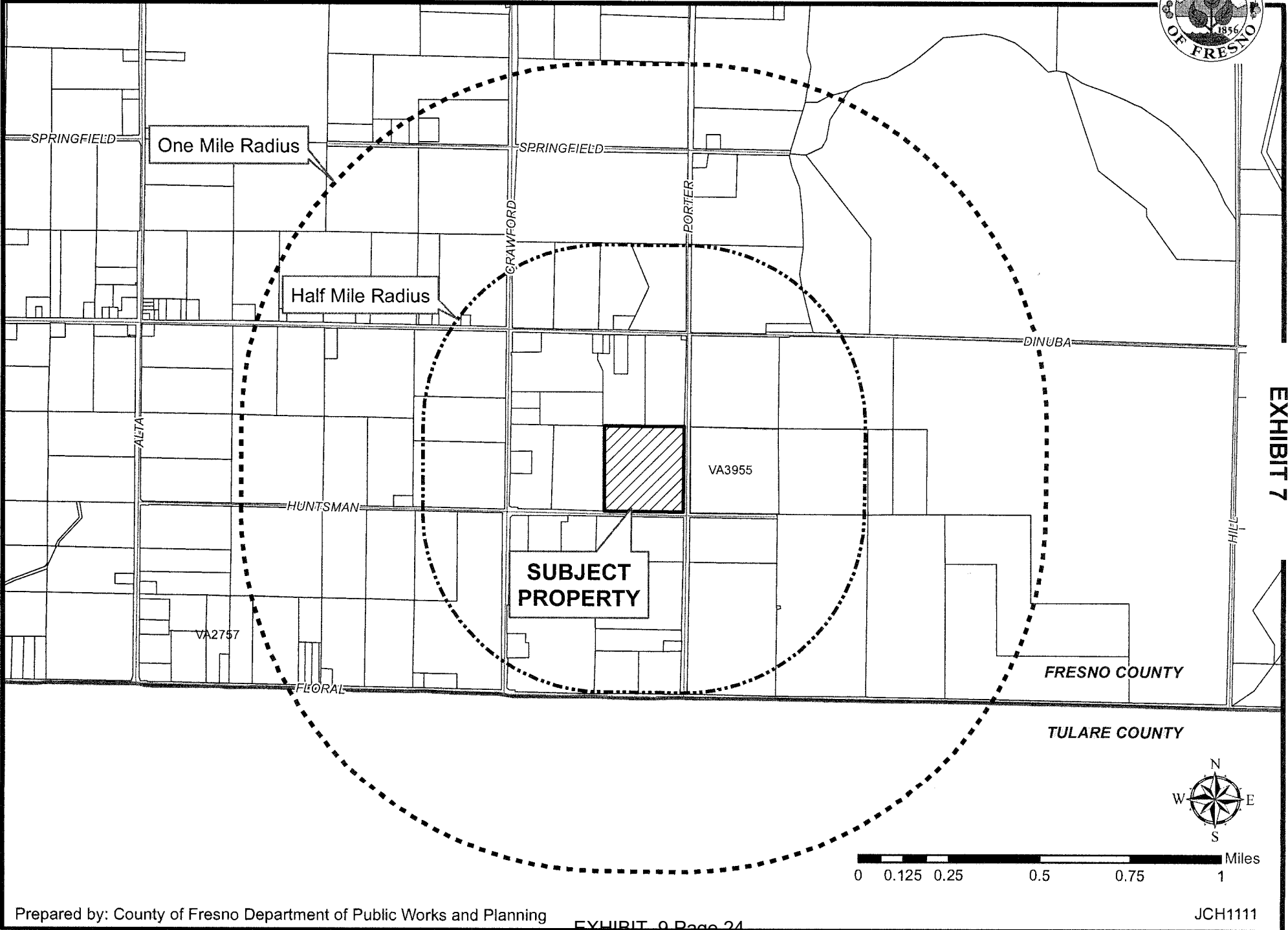


EXHIBIT 7