



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 3 April 12, 2018

SUBJECT: Variance Application No. 4040

Allow the division of a 107-acre parcel to create a 96-acre parcel (Parcel A) and an 11-acre parcel (Parcel B), in both the AL-20 (Limited Agricultural, 20-acre minimum parcel size) and O (Open Space) Zone Districts. A Variance is required to allow both parcels to be created with less than five acres of Open Space Zoning, and a Variance is required to allow the creation of Parcel B with less than 20 acres of AL-20 Zoning.

LOCATION: The subject parcel is located east of South Riverbend Avenue and north of the Kings River, approximately two miles east of the nearest limits of the City of Sanger. (SUP. DIST. 5) (APN 333-041-33).

OWNER: Vulcan Lands, Inc.
APPLICANT: Pete Cohrs

STAFF CONTACT: Chrissy Monfette, Planner
(559) 600-4245

Marianne Mollring, Senior Planner
(559) 600-4569

RECOMMENDATION:

- Deny Variance No. 4040; 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. Assessor's Parcel Map
6. Applicant's Submitted Findings
7. Site Plans
8. Approved Variances within a 1-mile radius

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agriculture	No change
Zoning	AL-20 (Limited Agricultural, 20-acre minimum parcel size) and O (Open Space)	No change
Parcel Size	107 acres	Parcel A: 95.74 acres Parcel B: 11.26 acres
Project Site	N/A	N/A
Structural Improvements	Propane tank, grow house, aggregate processing and production equipment, scale houses, offices, maintenance buildings, and storage facilities	Parcel A: No change Parcel B: No structures
Nearest Residence	Approximately 600 feet southwest of the subject parcel.	Parcel A: No change Parcel B: approximately 1,183 feet southeast
Surrounding Development	Vulcan mining operations, agricultural uses	No changes
Operational Features	Mineral Extraction operations as permitted by Conditional Use Permit No. 3103	N/A

Criteria	Existing	Proposed
Employees	Average 44, Maximum 75	Parcel A: No change Parcel B: None
Customers	Approximately 451/day at full production	Parcel A: No change Parcel B: None
Traffic Trips	Approximately 957 truck trips/day at full production, which is approximately 902 product truck trips/day and 55 delivery truck trips/day	Parcel A: No change Parcel B: None
Lighting	Lighting on all buildings and equipment for nighttime operations	Parcel A: No change Parcel B: None
Hours of Operation	Continuous (24 hours/day, 7 days/week)	Parcel A: No change Parcel B: None

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

ENVIRONMENTAL ANALYSIS:

It has been determined pursuant to Section 15061(b)(3): *General Rule* 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. This exemption applies because there are no proposed changes to the existing land uses and, as discussed under the heading for Finding 4, this project will cause no cumulative impacts on agricultural production.

PUBLIC NOTICE:

Notices were sent to 12 property owners within 1,320 feet of the subject parcel, 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 VA, 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 VA is final unless appealed to the Board of Supervisors within 15 days of the Commission’s action.

BACKGROUND INFORMATION:

The earliest record of zoning on the parcel is from June 8, 1960, which shows all parts of the parcel zoned Interim R-A (Single-Family Residential, Agricultural). County-initiated Amendment Application No. 3264 was adopted on November 16, 1984 to rezone parcels in this area in accordance with the Kings River Regional Plan. At that time, the Open Space zoning was adopted on land adjacent to the Kings River and Limited Agricultural Zoning was adopted on the remainder of the parcel. Some other parcels adjacent to the Open Space zoning were rezoned to Resource Conservation (RC-40) or Exclusive Agricultural (AE-20 or AE-40) uses. These Zone Districts allow for use of the land that would not affect the adjacent open space districts and would further the protection of the River.

According to the Applicant’s Findings (attached as Exhibit 6), the subject parcel was originally used for agricultural purposes until it was sold to Vulcan Lands, Inc., who expanded their mineral-extraction operation onto the site. The Board of Supervisors approved this use under Conditional Use Permit (CUP) No. 3103 on August 28, 2007. Environmental Impact Report No. 5191 was prepared for that CUP and is not impacted by the current application. The agreement requiring Vulcan to sell the proposed Parcel B to the previous owner was not made a condition of approval or a Mitigation Measure associated with the approved CUP. Review of the Mitigation Measures and Conditions of CUP No. 3103 show that the subject parcel was excluded from the areas approved for active mining or storage of materials. No part of proposed Parcel B is identified as part of the area required to remain as open space for the protection of habitat for fish and wildlife by Zoning Ordinance Section 858 H.25(c) (*Regulations for Surface Mining and Reclamation in all Districts*).

The proposed Parcel B, or the “Gerawan Parcel,” has no improvements and the vegetation is mainly grass and trees, consistent with the historical use by the Gerawan family to allow access to the River and provide general recreational opportunities as a private park. The Applicant reports that as an agreement of the sale of the parcel, Vulcan is required to reconvey fee title of the proposed Parcel B to the Gerawan family. Due to the proposed parcel’s non-compliance with the required minimum acreage for its two Zone Districts, a variance is required to create the separate parcel necessary to allow the transfer of ownership. A variance is also required to allow Parcel A to be created with less than five acres of open space.

There have been five variances approved within a one-mile radius of the project site:

Application/Request	Date of Action	Staff Recommendation	Final Action
VA No. 2708: Recognize three previously-created parcels as legal building sites in the AE-20 Zone District	6/10/82	None	PC Approved
VA No. 3624: Allow the creation of two 17.60-acre parcels (40 acres required) from a 35.20-acre parcel,	3/11/1999	Denial	PC Approved

Application/Request	Date of Action	Staff Recommendation	Final Action
and allow reduced zoning areas within said parcel			
VA No. 3782: Allow creation of two 4.9-acre parcels and a 5.2-acre parcel from an existing 15-acre parcel in the RC-40 Zone District	7/1/2004	Denial	PC Approved
VA No. 3881: Allow the creation of two 4.9-acre parcels and a 5.2-acre parcel from an existing 15-acre parcel in the RC-40 Zone District	6/10/2010	Denial	PC Approved
VA No. 3883: Allow the creation of two parcels with less than the minimum required parcel size in the RC-40 Zone District	7/17/2008	Denial	PC Approved

Although there is a history of variance requests within proximity of the subject parcel, each variance request must be considered on its own merit, based on unique site conditions and circumstances.

DISCUSSION:

Findings 1 and 2: *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; and*

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	Open Space and AL-20: Front: 35 feet Side: 20 feet Rear: 20 feet	No change	Yes
Parking	Open Space: No requirement AL-20: Not Applicable	No change	Yes

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Lot Coverage	Open Space: 40 percent AL-20: No requirements	No structures on land zoned Open Space, <1% coverage on AL-20	Yes
Space Between Buildings	Six feet minimum (75 feet minimum between human habitations and structures utilized to house animals)	No change	Yes
Wall Requirements	Open Space: Required around areas designated to be dangerous No requirement	No change	Yes
Septic Replacement Area	100 percent	No change	Yes
Water Well Separation	Septic tank: 50 feet; Disposal field: 100 feet; Seepage pit: 150 feet	No change	Yes

Reviewing Agency/Department Comments Regarding Site Adequacy:

Development Engineering Section of the Fresno County Department of Public Works and Planning: According to U.S.G.S. Quad Maps, there are existing drainage channels traversing the subject parcel. Easements may be required by the appropriate agency. A grading permit or voucher may be required for grading that has been done without a permit and any grading proposed with this application.

State Water Resources Control Board and Zoning Section of Fresno County Department of Public Works and Planning: No comments/concerns.

Analysis:

In support of Finding 1, the Variance Findings provided by the Applicant for this proposal assert that the proposed parcel has long been utilized as a discrete area within the approximately 107-acre property; it has been fenced and maintained as an open-space area while the remainder parcel has been used for agricultural uses. No other parcels in the area feature a longstanding use that is distinguishable and isolated from the parcel's other uses. Further, the proposed parcel's location is unique because it is situated nearly equally within two Zone Districts. While the recreational use on the parcel is consistent with both Districts, no other parcels in the vicinity have the unique circumstance of being nearly equally subject to two different sets of zoning regulations. Lastly, the proposed parcel (Parcel B) will have a drastically different use than those of the surrounding properties; mineral extraction is occurring by Vulcan on the property to

the southwest, west, and north and the properties to the south and east are either open space or are used for agriculture. None of the surrounding properties have a dedicated recreational element like the Gerawan Parcel.

With regard to Finding 1, staff does not concur that the split zoning provides a unique circumstance on the subject parcel. Review of other parcels in the area indicate that dual zoning is common, with most parcels located adjacent to the Kings River containing some Open Space designation. To the north, this designation abuts directly to the Limited Agricultural District, while to the south and east, the RC-40 (Resource Conservation, 40-acre minimum parcel size) Zone District provides a buffer between the Open Space and more intensive Agricultural Districts. In general, the banks of the river with the Open Space designation primarily contain native vegetation, such as trees and grass. The parcels directly northeast, east, and south of the subject parcel all contain split zoning, in greater disparity than the subject parcel. Further, the existing 107-acre parcel is currently consistent with both zone districts; there are 6.16 acres of Open Space-zoned land on the subject parcel and more than 100 acres of Limited Agriculture where 5 acres and 20 acres are the minimum requirements.

The existing parcel currently conforms to the shape of the Kings River, resulting in a curved and atypical eastern property line. Approval of this Variance would isolate the part of the parcel adjacent to the River and affected by its course. Staff recognizes that there has been increased development on this parcel such as the installation of a fence. The long-standing separation of function of the proposed Parcel B from the proposed Parcel A is an exceptional circumstance on this parcel.

In support of Finding 2, the Applicant's Findings assert that the Variance is required so that Vulcan and Gerawan may perfect a duly-executed agreement that affects both of their respective property rights. As a condition of the sale of the property, Vulcan was required to reconvey fee title of the Gerawan Parcel so that the original property owner may continue the longstanding use of the parcel for recreational purposes. The Variance is therefore necessary to protect that property owner's right to use the parcel in a non-intensive manner. The location of the parcel between two zone districts further restricts the potential uses of the parcel and a variance will ensure that property owners are able to make a full and efficient use of this parcel.

With regard to Finding 2, the agreement between Vulcan, the current property owner, and Michael Gerawan, the previous property owner, is a civil matter and does not impact the rights of the current or future property owners. The proposed Parcel B has been fenced off from the existing parcel for recreational uses since before Vulcan purchased the property. The granting of a variance to separate this land from the mineral extraction occurring adjacent does not affect the existing or continued recreational use of the parcel. All land which is located adjacent to the Kings River is subject to the Open Space zoning and many of these parcels also include other uses and other zone districts. These nearby property owners must also contend with the restrictions of more than one zone district. Staff could not identify an impacted property right of the Applicant that would be relieved by the granting of this Variance.

As part of the review for Findings 1 and 2, staff considers if any options are available for the Applicant that would relieve the need for a variance. In this case, the Applicant could apply to rezone the existing parcel to be more consistent with the intended use; a change in the zone district from Limited Agricultural to Open Space would allow the proposed parcel to be consistent with the minimum parcel size. The Applicant could also redefine the proposed property line such that Parcel B contains sufficient acreage for both Zone Districts. This would result in a 27-acre Parcel B: 20 acres of AL-20 zoning and the entire 7 acres of Open Space to

negate the need for the Variance on Parcel A. The option to divide the parcel along the existing zoning lines is impractical because there are two discontinuous areas of Open Space zoning. Further, the majority of the historical recreational use has occurred on land which is currently zoned AL-20; therefore, such a division would not serve the Applicant’s stated purpose of maintaining this parcel for its historic use.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 1 can be made. Finding 2 cannot be made.

***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	~120 acres	Vacant, Parcel Map 1776 proposes division into six 20-acre lots	RC-40	None
Northeast	20.32 acres	Sand and Gravel	AL-20	None
	1.57 acres	Orchard		
	19.68 acres	Sand and Gravel		
East	9.96 acres	Field Crops	O/AL-20	None
Southeast	36.4 acres	Orchard	O/RC-40	None
South	67.68 acres	Orchard, Residential	O/AL-20	300 feet
West	200.81 acres	Orchard	AL-20	None

Reviewing Agency/Department Comments:

Development Engineering Section of the Fresno County Department of Public Works and Planning: There are no County-maintained roads on or adjacent to the parcel. According to FEMA, FIRM Panel 6160H, a portion of the subject parcel is in Zone AE and Shaded X, areas of hazardous flooding. If any development is within the area identified as ZONE AE or Shaded X, it must comply with the County Flood Hazard Ordinance (Title 15.48).

Building Inspection Section, Design Division, and Water and Natural Resources Division of the Fresno County Department of Public Works and Planning; Fresno County Department of Public

Health, Environmental Health Division; Fresno County Fire Department: No comments/concerns.

Analysis:

In support of Finding 3, the Findings provided by the Applicant assert that the proposed parcel will not be used in any manner that will be materially detrimental to the public welfare or injurious to neighboring properties. The proposed parcel has been used and maintained and continues to be used as a private family recreational open space area. These uses are fully consistent with the public welfare. The Variance will have no effect on the use of the land and no new land use will occur because of the Variance.

With regard to Finding 3, staff concurs with the Applicant’s determination. The separation of the proposed Parcel B would have no impact on the existing land uses and would not impact surrounding properties or the Kings River. Variances for lot size do not authorize new uses or development. There are no structures near the proposed property line and therefore no concerns that potential setbacks would be encroached upon due to the creation of a new property line.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 3 can be made.

Finding 4: That the proposed development is consistent with the General Plan.

Relevant Policies:	Consistency/Considerations:
Policy LU-C.1: The County shall regulate land use along the Kings River in accordance with the Policies of the Kings River Regional Plan.	The proposed separation of Parcel B from the subject parcel is consistent with the policies of the Kings River Regional Plan. Relevant policies are presented in this table.
General Plan Policy LU-A.6: 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.	Policy LU-A.9 relates to the creation of homesite parcels and therefore this request does not qualify for any of the exemptions identified therein. Policy LU-A.10 relates to the creation of parcels for the development of an agricultural commercial center and LU-A.11 relates to the creation of small parcels to support the extraction of oil and gas. As this parcel is intended for use as a private park, it does not qualify under these exemptions and is therefore inconsistent with this policy.
Policy LU-A.7: The 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	LU-A.7 is intended to protect agricultural uses from increases to residential densities and support commercial agricultural operations. The proposed Parcel B, or the “Gerawan Parcel,”

Relevant Policies:	Consistency/Considerations:
<p>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.</p>	<p>has historically been used for recreational uses consistent with the Open-Space zoning also on the parcel. There are no agricultural operations immediately adjacent to the site and it is consistent with other parcels along the banks of the Kings River. Due to the proposed parcel's distance from active agricultural operations and its proximity to similar recreational uses and zoning, staff has determined that there would be no incremental or cumulative impacts to agriculture as a result of this application and finds the proposal consistent with this policy.</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: A) determination that the water supply is adequate to meet the highest demand that could be permitted on the lands in question; B) determination of the impact that use of the proposed water supply will have on other water users in Fresno County; and C) determination that the proposed water supply is sustainable or that there is an acceptable plan to achieve sustainability.</p>	<p>As there is no change to the proposed water usage at the parcel, the project is considered consistent with this policy. Review by the Water and Natural Resources Division did not identify any concerns.</p>
<p>General Plan Policy OS-H.8: The County shall encourage development of private recreation facilities to reduce demands on public agencies.</p>	<p>This project is consistent with this policy; however, there is no indication that the approval of this Variance will reduce demands on public agencies. The approval of this Variance will not change the current use of the parcel.</p>
<p>General Plan Policy HS-C.6: The County shall promote flood control measures that maintain natural conditions within the 100-year floodplain of rivers and streams and, to the extent possible, combine flood control, recreation, water quality, and open space functions. Existing irrigation canals shall be used to the extent possible to remove excess storm water. Retention-recharge basins should be located to best utilize natural drainage patterns.</p>	<p>The Applicant has not proposed any flood-control measures associated with this policy. Staff finds that Policy HS-C.6 does not apply to this application.</p>

Relevant Policies:	Consistency/Considerations:
General Plan Policy HS-C.11: The County shall encourage open space uses in all flood hazard areas. Land Conservation contracts and open space and scenic easements should be made available to property owners.	A Conservation Contract or any scenic easements do not restrict the subject parcel. The approval of a variance to create a small parcel is not equivalent to the granting of an easement for open space. The County has encouraged open space uses in these flood areas by the application of the Open Space zoning designation.
Kings River Regional Plan Policy 8.02: The County will, through applicable discretionary permit processes, minimize damage to or destruction of significant riparian vegetation, including Valley Oak trees, wildlife habitat, and archaeological or cultural resources.	The separation of proposed Parcel B from the existing mining operation will preserve the existing recreational use of this land, thereby minimizing damage to the adjacent Kings River. The application is consistent with this policy.

Reviewing Agencies/Department Comments:

Water and Natural Resources Division of the Fresno County Department of Public Works and Planning: The proposed project is not within a water-short area of the County; as such, the Division has no comments.

Analysis:

In support of Finding 4, the Applicant’s Findings assert that the granting of the Variance will facilitate uses that further several General Plan Objectives: the County prioritizes “the development and expansion of public and private recreational facilities to serve the needs of residents and visitors” (Goal OS-H). The Variance will formalize the creation of the Gerawan Parcel, a private recreational area that will “reduce demands on public agencies” (OS-H.8). Further, the Gerawan Parcel will continue to be maintained in its natural condition near the Kings River while being used for recreation and open space purposes consistent with Policy HS-C.6. See also Policy HS-C.11, encouragement of open space uses in flood hazard areas. The text of these policies has been included in the table above.

With regard to Finding 4, review of the Applicant-identified policies determined that Policies HS-C.6 and HS-C.11 are not relevant to the current request. Policy OS-H.8 relates to the project in that the intended use of the parcel is to continue its historic use as a private recreational space. There is no indication that approval of this Variance will reduce demands on public agencies. The proposal is inconsistent with Policy LU A.6 because it does not qualify for any of the exemptions that would allow the creation of a parcel with less than 20 acres in areas designated for agriculture. While the zoning for this parcel is divided between Open Space and Limited Agriculture, the Agricultural General Plan Designation carries over the entirety of the parcel. There is also no indication that the Variance is necessary to preserve the existing recreational use, as the parcel is currently separated from the mining operations by a fence.

The creation of Parcel A (96 acres) is consistent with the General Plan because there are no specific policies restricting the creation of parcels with less than 5 acres of Open Space zoning. The creation of Parcel B, the “Gerawan Parcel”, is not consistent with the General Plan due to

its inconsistency with Policy LU-A.6. Therefore, staff is not able to conclude that this project is consistent with the General Plan.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 4 cannot be made.

PUBLIC COMMENT:

None.

CONCLUSION:

Based on the factors cited in the analysis, staff is unable to make Findings 2 or 4. Therefore, staff recommends denial of Variance No. 4040.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that the required Findings cannot be made and move to deny Variance No. 4040; 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 basis for making the Findings) and move to approve Variance No. 4040, subject to the Conditions and Notes attached as 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.

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**Variance Application No. 4040
Conditions of Approval and Project Notes**

Conditions of Approval	
1.	Development of the property shall be in accordance with the Site Plan approved by the Planning Commission.

Conditions of Approval reference recommended Conditions for the project.

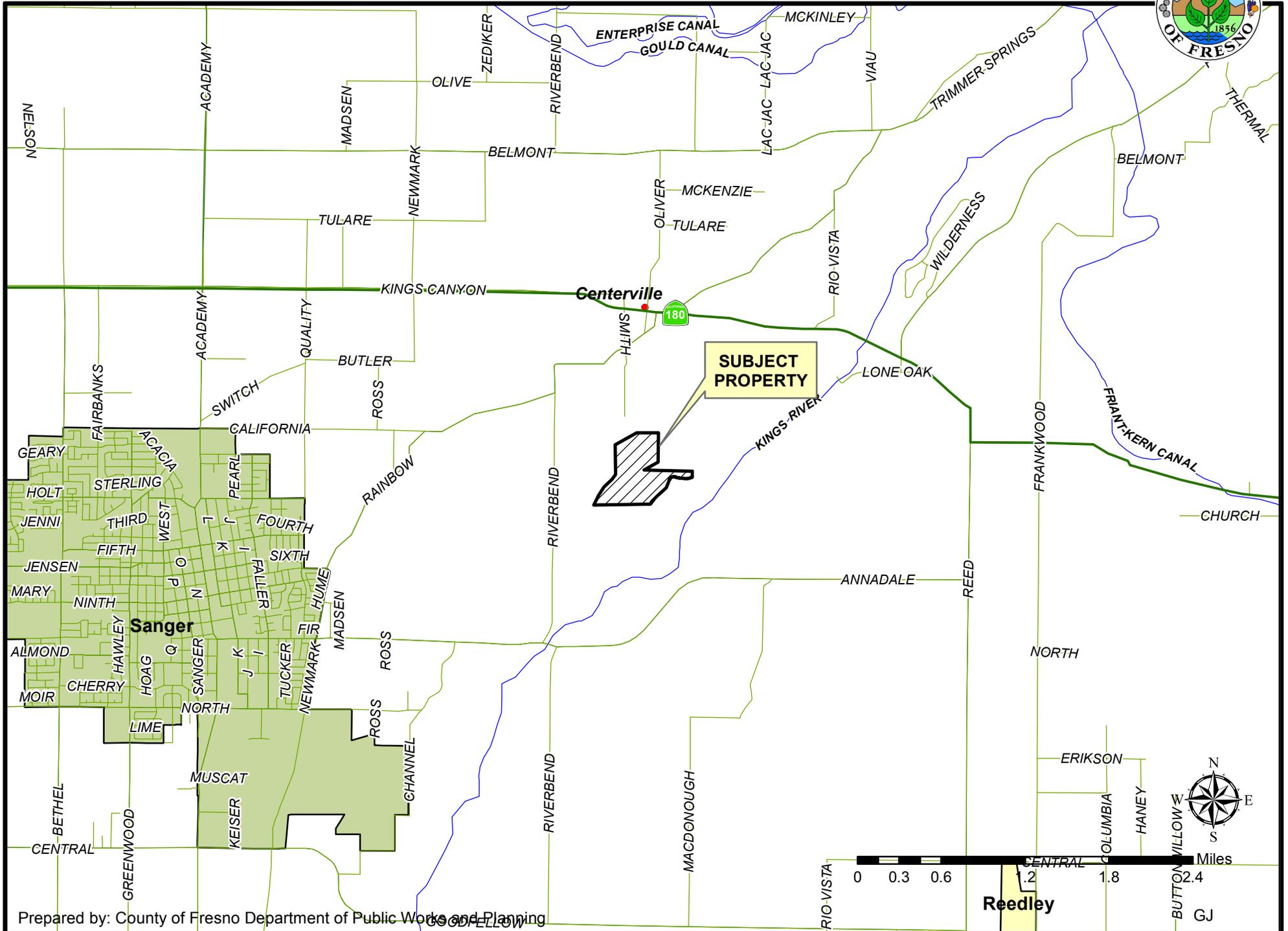
Notes	
The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.	
1.	Division of the subject property is subject to the provisions of the Fresno County Parcel Map Ordinance. A Parcel Map Application shall be filed to create an 11.26-acre parcel and a 95.74-acre parcel.
2.	The approval of this project 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. When circumstances beyond the control of the Applicant do not permit compliance with this time limit, the Commission may grant a maximum one-year extension of time.
3.	Pursuant to Zoning Ordinance Section 858, the extraction of materials or overburden and the stockpiling of materials shall be prohibited within 25 feet of the proposed property line between Parcel A and Parcel B.
4.	According to U.S.G.S Quad maps, there are existing natural drainage channels traversing the subject parcel. Easements may be required by the appropriate agency if development is proposed in the vicinity of these channels.
5.	A grading permit or voucher may be required for any grading that has been done without a permit and any proposed grading.
6.	If future development is sought, the project will annex into Community Facilities District No. 2010-01 of the Fresno County Fire Protection District. The project will also be subject to the requirements of the current Fire Code and Building Code.

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EXHIBIT 1

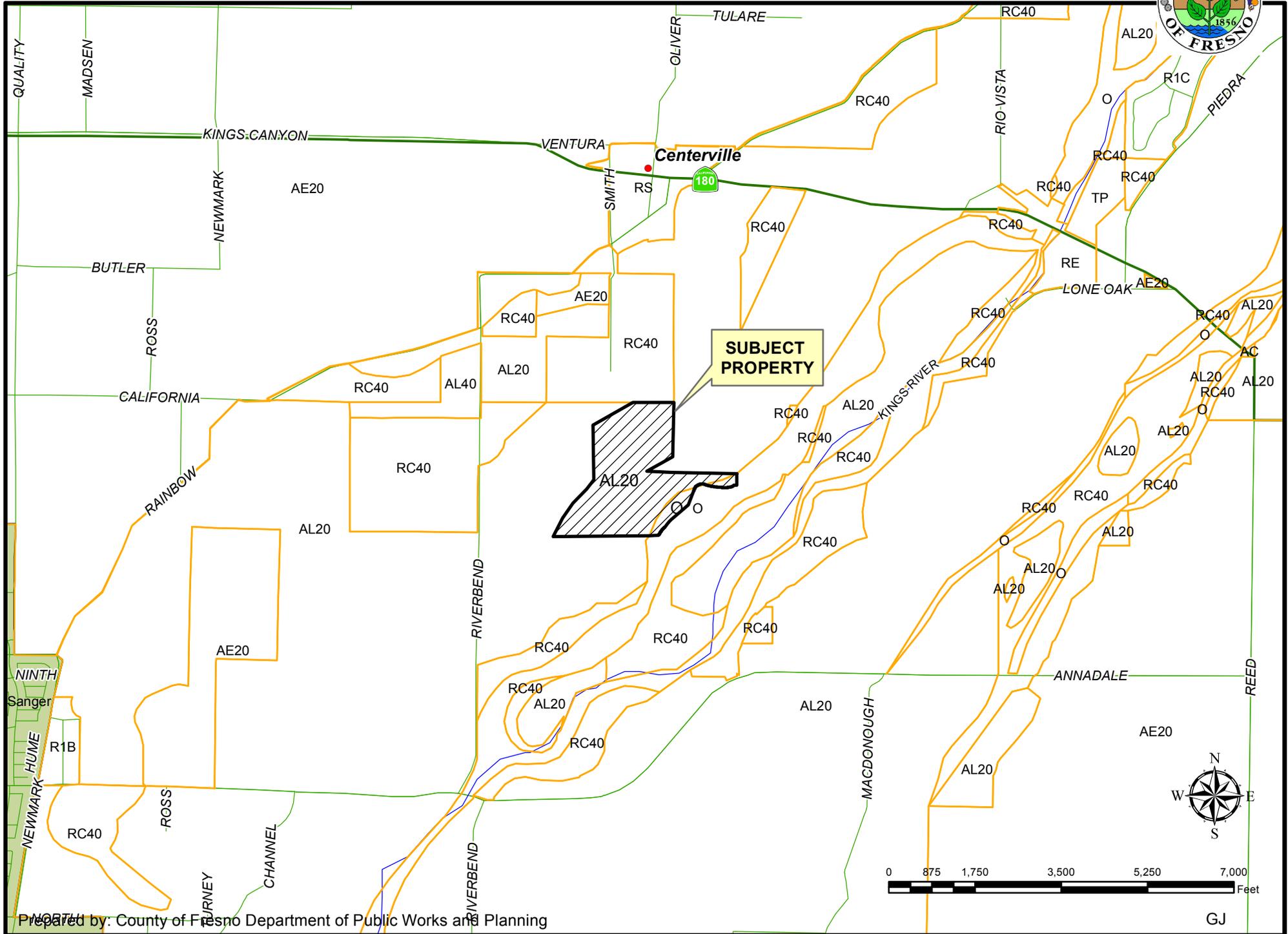
LOCATION MAP



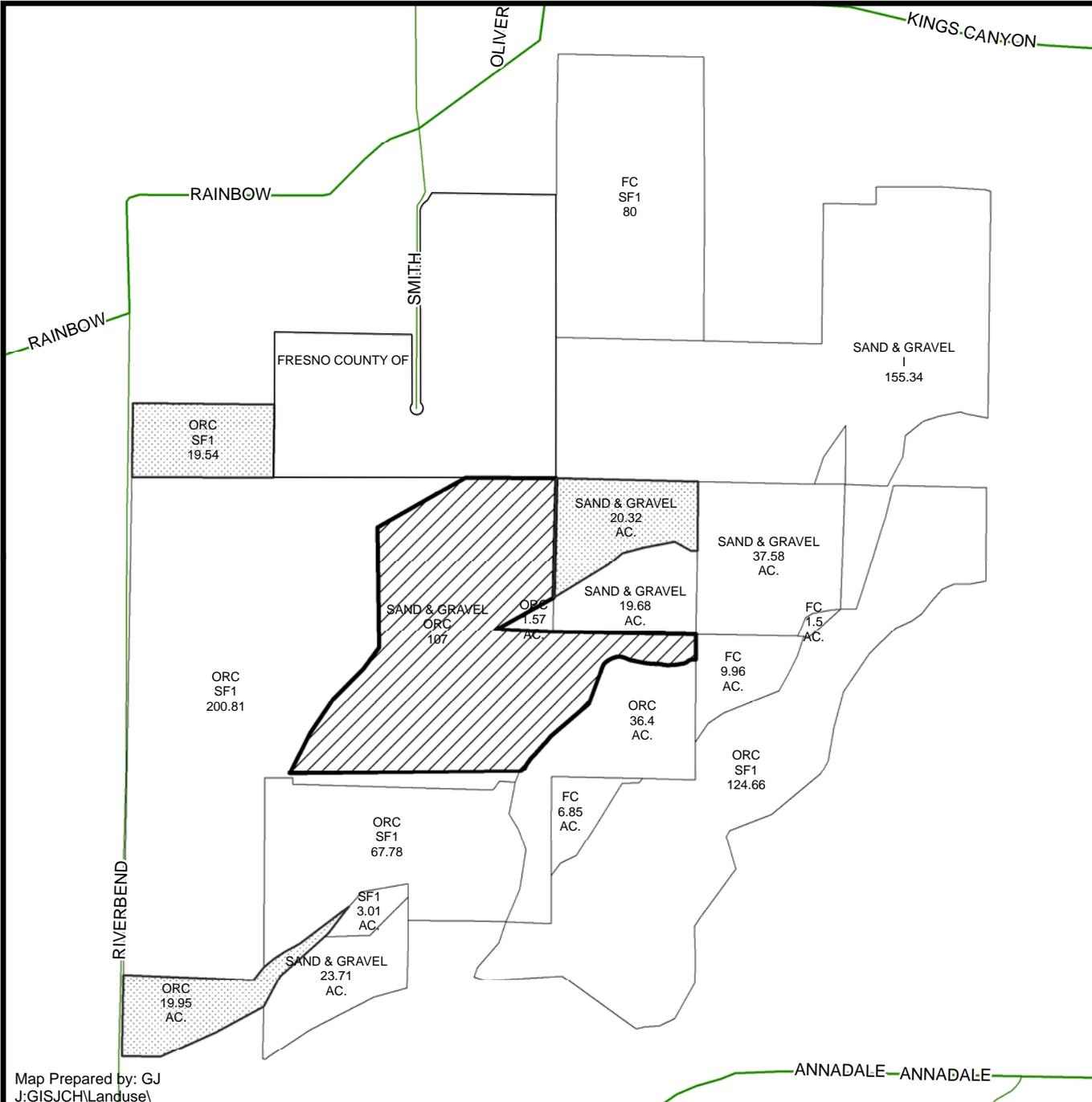
Prepared by: County of Fresno Department of Public Works and Planning



EXISTING ZONING MAP



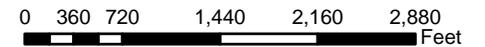
EXISTING LAND USE MAP



LEGEND	
FC	FIELD CROP
I	INDUSTRIAL
ORC	ORCHARD
SF#	SINGLE FAMILY RESIDENCE
V	VACANT

LEGEND:

-  Subject Property
-  Ag Contract Land



Department of Public Works and Planning
Development Services Division



MITCHELL
CHADWICK

VARIANCE FINDINGS

Minimum lot size compliance

(APN 333-041-033)

RECEIVED
COUNTY OF FRESNO

MAR 23 2018

DEPARTMENT OF PUBLIC WORKS
AND PLANNING
DEVELOPMENT SERVICES DIVISION

VA 4040

- 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.**

A variance is justified because the proposed Gerawan Parcel, and the Property as a whole, differs from the surrounding properties in several extraordinary respects.

First, the proposed 14-acre Gerawan Parcel has long been utilized as a discrete area within the approximately 107-acre Property (**Attachment A**). Specifically, the Gerawan Parcel has been fenced, used, and maintained as an open space recreational area. In contrast, the areas surrounding the Gerawan Parcel have been used for agricultural uses, such as farmland and grazing. None of the surrounding properties feature a similar, longstanding use that is readily distinguishable and isolated from the parcel's other uses. The proposed Gerawan Parcel has been treated as a de facto separate parcel for years.

Second, the proposed Gerawan Parcel's location is unique because it is situated nearly equally within two zones – the AL20 District (Limited Agricultural) and the O District (Open Space) – and must comply with the regulations for both zones. The recreational use of the Gerawan Parcel is fully consistent with the restrictions for both zones, including the O District's 5-acre minimum lot size, but is approximately six acres smaller than the AL20's 20-acre minimum lot size. No other parcels in the vicinity have the unique circumstance of being nearly equally subject to two different sets of zoning regulations, and being compliant with both regulations except for one zone's minimum lot size requirement.

Lastly, the Gerawan Parcel will have a drastically different use than those of the surrounding properties. Mineral extraction is occurring by Vulcan on the property to the southwest, west, and north of the proposed Gerawan Parcel. The properties to the south and east are either open space or are used for agriculture. None of the surrounding properties appear to have a dedicated recreational element like the Gerawan Parcel.

In sum, the Property is unique in that it contains a distinct area and use within its boundaries, characteristics not shared by any of the surrounding properties, and is unique given that it is surrounded by mining on more than half of its perimeter.

- 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.**

A variance is required so that Vulcan and Gerawan may perfect a duly-executed agreement that affects both of their respective property rights, and would impact rights of future property

owners. Prior to Gerawan's sale of the Property to Vulcan, Gerawan used the Property for agricultural purposes while continuing to maintain the Gerawan Parcel as a distinct recreational use. As a condition of the sale, Vulcan was later required to reconvey fee title to the Gerawan Parcel so that Gerawan may continue its longstanding use of the parcel for recreational purposes. A variance is thus necessary to protect Gerawan's right to use the Gerawan Parcel in a non-intensive manner (i.e., recreational purposes), and keep this open space property in separate ownership, fully consistent with both O District and AL20 District regulations. (Fresno County Zoning Code §§ 815.1, 817.1.) As discussed in Finding #1, the Property and proposed Gerawan Parcel is uniquely situated nearly equally within two restrictive zones, which severely limits the range of permitted uses. Given these restrictions, a variance will ensure that Gerawan and its successors-in-interest will be able to make a full and efficient use of the Gerawan Parcel. No similarly-situated neighboring property owners are unable to make full and efficient uses of their respective properties in a manner consistent with the County Code. As such, a variance should be granted to ensure that, the applicant (and its successors-in-interest), like its neighbors, will be able to fully enjoy its property. While it could be argued that a zone change could be utilized to accomplish the desired lot split, the zone change process requires that additional findings be made, and it is not guaranteed that those findings could be made. Additionally, the zone change process would take additional time to implement, which would further impact the owners' property rights by delaying their ability to use the property.

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.

The proposed Gerawan Parcel will not be used in any manner that will be materially detrimental to the public welfare or injurious to neighboring properties. The Gerawan Parcel has been used and maintained and continues to be used as a private family recreational open space area. These uses are fully consistent with the public welfare. Indeed, much of the Gerawan Parcel is located within the O District, which "is intended to provide for permanent open spaces in the community and to safeguard the health, safety, and welfare of the people by limiting developments in areas where police and fire protection, protection against flooding by storm water and dangers from excessive erosion are not possible without excessive costs to the community." (Fresno County Zoning Code § 815.) The variance will have no effect at all on the use of the land. No new land use will occur as a result of this variance. Likewise, recreational and open space uses are not injurious to the public interest in limiting intensive uses in agricultural areas; recreation and maintenance of open space at the Gerawan Parcel are non-intensive uses by nature. (Fresno County Zoning Code § 817.) Thus, a variance will not be materially detrimental to the public welfare or injurious to nearby properties.

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

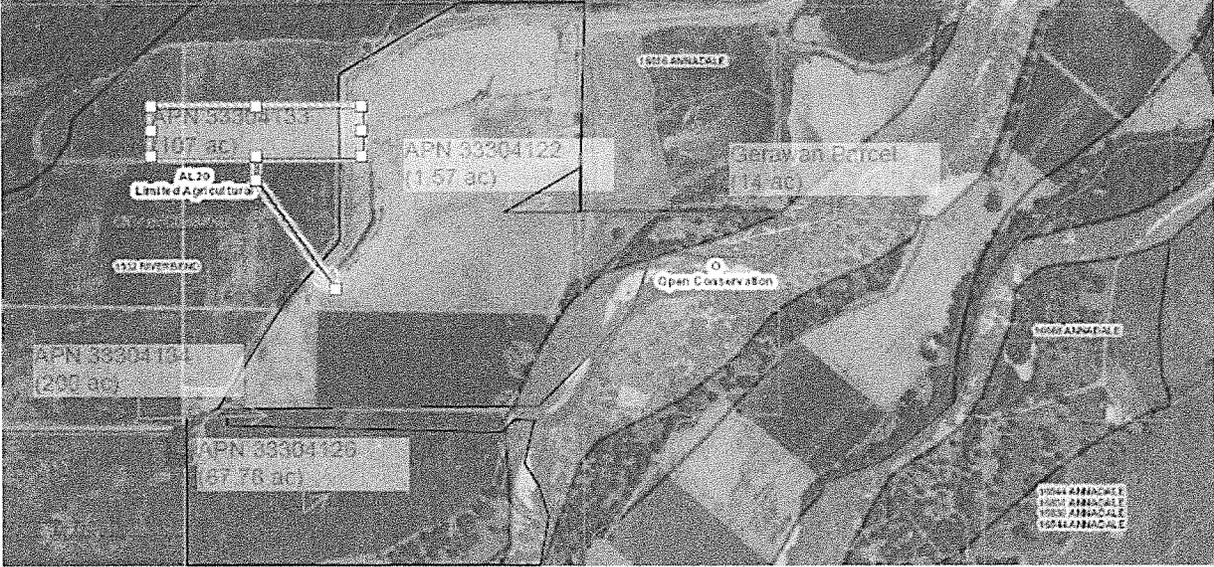
The granting of the variance will not be contrary to the objectives of Fresno County's General Plan. In fact, the granting of the variance will facilitate uses that further several General Plan

Objectives. For instance, the County prioritizes “the development and expansion of public and private recreational facilities to serve the needs of residents and visitors.” (County General Plan, Goal OS-H.) The variance will formalize the creation of the Gerawan Parcel, a private recreational area that will “reduce demands on public agencies” by reducing the Gerawan family’s need to use public parks. (County General Plan, Policy OS-H.8.) Further, the Gerawan Parcel will continue to be maintained in its natural condition near the Kings River while being used for recreational and open space purposes, consistent with Policy HS-C.6. (*See also* County General Plan, Policy HS-C.11 [encouragement of open space uses in flood hazard areas].) Thus, the granting of a variance will further the objectives of the General Plan.

The proposed variance is clearly consistent with General Plan Policies LU-C.1; LU-A.7; PF-C.17; OS-H.8; and Kings River Regional Plan Policy 8.02. The proposed variance is also arguably consistent with General Plan Policy LU-A.6. Thus, the proposed variance is clearly consistent with 5 of 6 applicable General Plan policies.

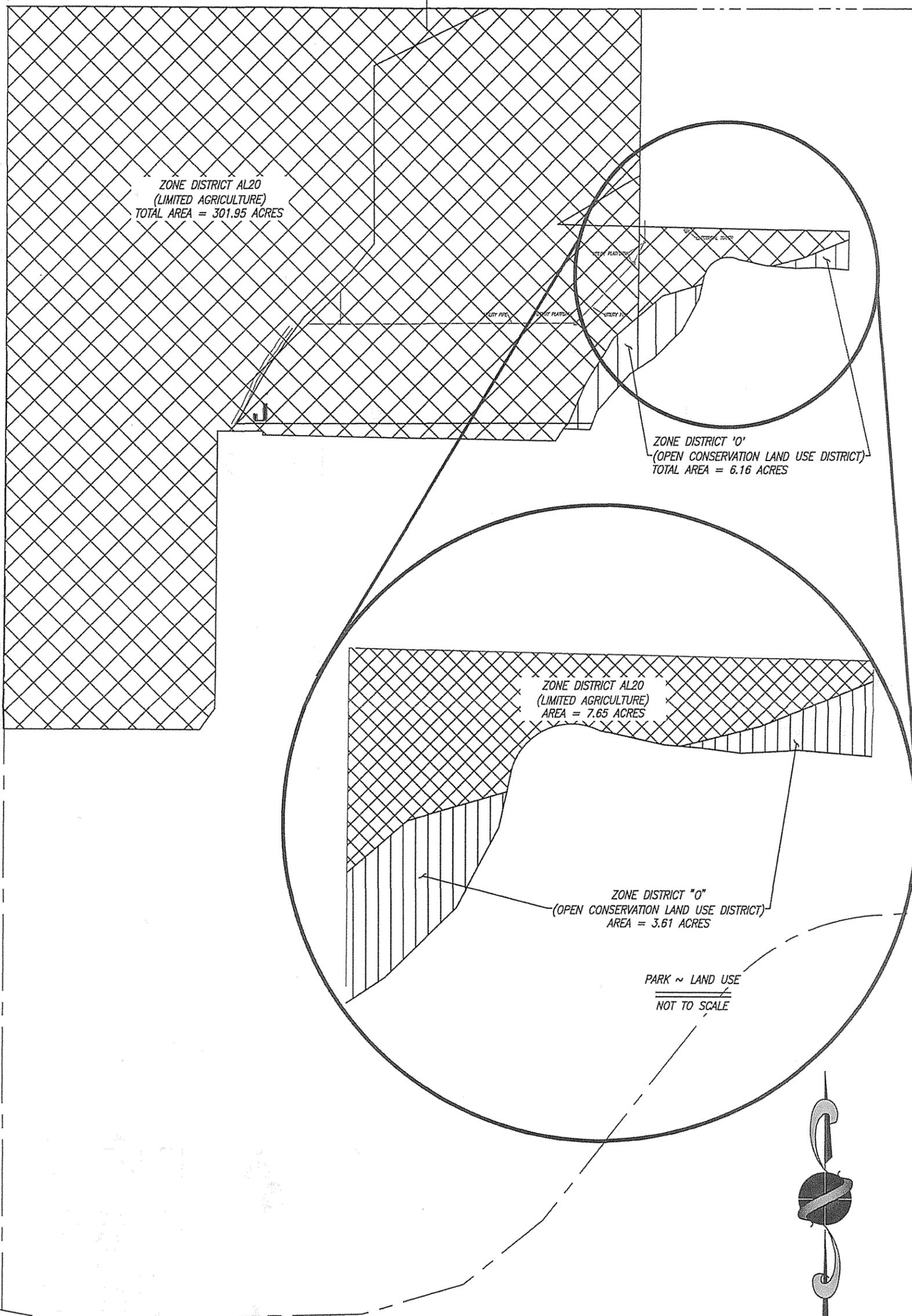
While the creation of an agricultural parcel that is less than 20 acres in size may seem inconsistent with General Plan Policy LU-A.6, this variance (and related lot split) is consistent with the overall goals of the General Plan, and it is the stated purpose of the proposed variance to allow for this smaller lot size due to other considerations. The County has authority and discretion to balance and harmonize competing General Plan objectives and approve a project where it accomplishes important County objectives, despite being somewhat inconsistent with some specific policies. (*Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto* (2016) 1 Cal.App.5th 9, 18). In this case, the proposed variance is in harmony with the overall goals and objectives of the General Plan and is therefore consistent with the General Plan. As such, Finding 4 can be made for this proposed variance.

Attachment A
Identification of the proposed 14-acre Gerawan Parcel



OCT 02 2017

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AND PLANNING
DEVELOPMENT SERVICES DIVISION
VA 4040



ZONE DISTRICT AL20
(LIMITED AGRICULTURE)
TOTAL AREA = 301.95 ACRES

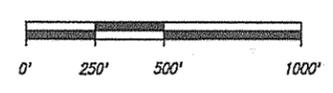
ZONE DISTRICT 'O'
(OPEN CONSERVATION LAND USE DISTRICT)
TOTAL AREA = 6.16 ACRES

ZONE DISTRICT AL20
(LIMITED AGRICULTURE)
AREA = 7.65 ACRES

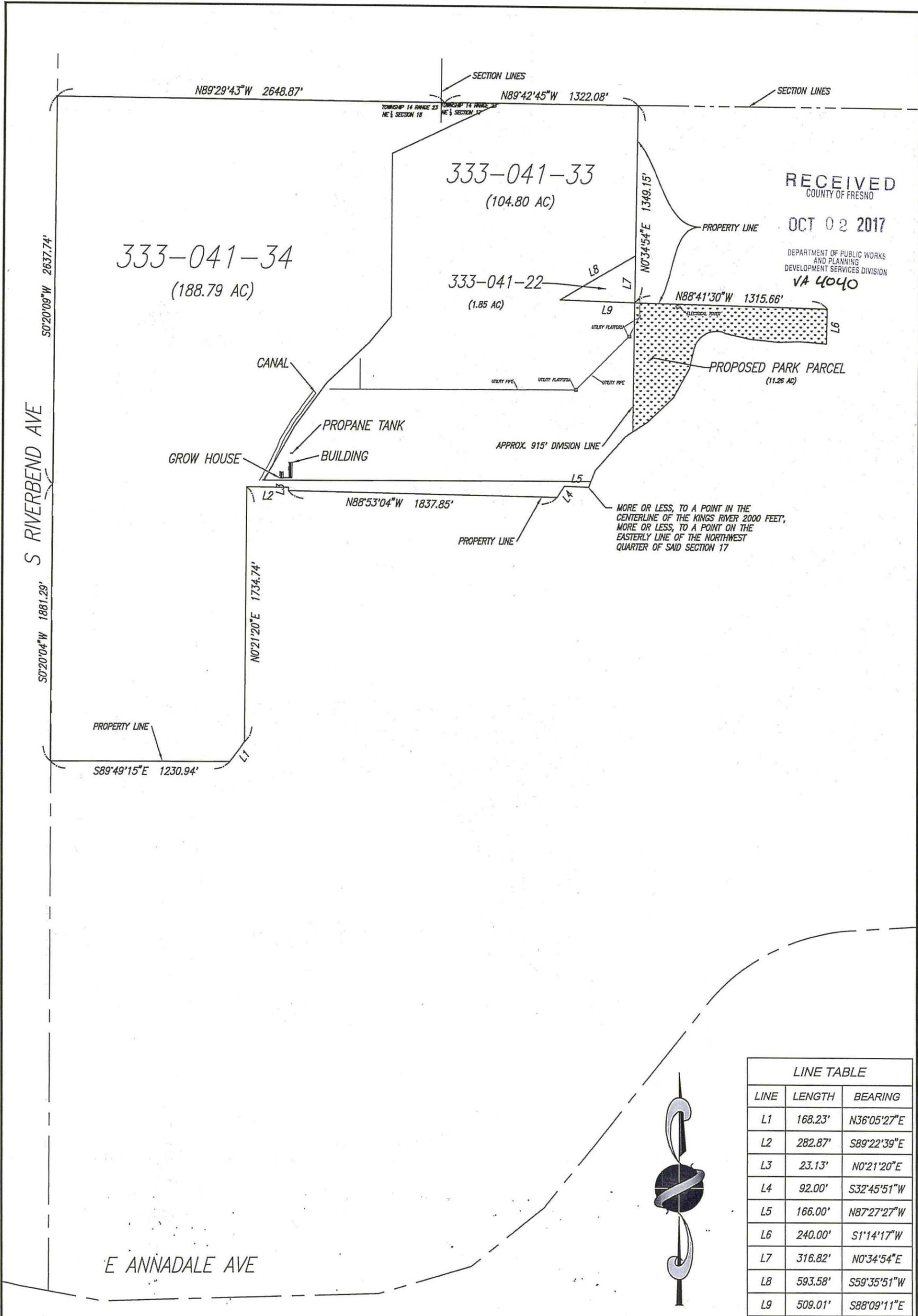
ZONE DISTRICT "O"
(OPEN CONSERVATION LAND USE DISTRICT)
AREA = 3.61 ACRES

PARK ~ LAND USE
NOT TO SCALE

- NOTES:
- 1) NO WELL OR SEPTIC WERE LOCATED
 - 2) NO LPG STORAGE TANK OR WATER STORAGE TANK WERE LOCATED



PROJECT NAME: VULCAN MATERIALS VULCAN - SITE PLAN FOR VARIANCE APP			PLANNING • SURVEYING • CIVIL ENGINEERING 1234 O STREET FRESNO, CA. 93721 PH: (559) 449-4500 FAX (559) 449-4515
SHEET 2 OF 2	DATE: 9/28/17		



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 VA 4040

LINE TABLE		
LINE	LENGTH	BEARING
L1	168.23'	N36°05'27"E
L2	282.87'	S89°22'39"E
L3	23.13'	N0°21'20"E
L4	92.00'	S32°45'51"W
L5	166.00'	N87°27'27"W
L6	240.00'	S1°14'17"W
L7	316.82'	N0°34'54"E
L8	593.58'	S59°35'51"W
L9	509.01'	S88°09'11"E

NOTES:
 TOTAL AREA = 306.7 ACRES
 1) NO WELL OR SEPTIC WERE LOCATED
 2) NO LPG STORAGE TANK OR WATER STORAGE TANK WERE LOCATED



PROJECT NAME: VULCAN MATERIALS VULCAN - SITE PLAN FOR VARIANCE APP		
SHEET 1 OF 2	DATE: 9/28/17	JOB#: 17-024



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APPROVED VARIANCES WITHIN A ONE MILE RADIUS

