

County of Fresno

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

Planning Commission Staff Report Agenda Item No. 3 August 11, 2022

SUBJECT: Variance Application No. 4132 and Initial Study No. 8213

PROPOSAL: Allow the creation of a 2.53-acre and a 29.67-acre parcel from an

existing 32.20-acre parcel in the AE-20 (Exclusive Agricultural, 20-

acre minimum parcel size) Zone District.

LOCATION: The subject parcel is located on the south side of E. Fantz Ave.,

0.27-miles east of S. Newmark Ave. The parcel is approximately 0.32-miles northeast from the community of Sanger (APN Nos: 350-170-34 & 350-170-28s) (14293. E Fantz Ave.) (Sup. Dist. 4).

OWNER/

APPLICANT: Jamie & Arlene Madrid

STAFF CONTACT: Elliot Racusin, Planner

(559) 600-4245

David Randall, Senior Planner

(559) 600-4052

RECOMMENDATION:

- Deny Variance Application No. 4132; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

EXHIBITS:

- Conditions of Approval and Project Notes
- Location Map
- 3. Existing Zoning Map
- 4. Existing Land Use Map
- 5. Approved Variances within a one-mile radius
- 6. Proposed Certificate of Compliance

- 7. Applicant's Variance Findings
- 8. Site Photos

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agricultural	No change
Zoning	AE-20 (Limited Agricultural, 20- acre minimum parcel size) Zone District.	No change
Parcel Size	32.20-acre	2.53-acre parcel creation
Project Site	Vacant lot	No change
Structural Improvements	Single Family Residence	No change
Nearest Residence	56-feet east of property	No change
Surrounding Development	Agricultural fields & Single-Family Residences	No change

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

ENVIRONMENTAL ANALYSIS:

It has been determined, pursuant to California Environmental Quality Act (CEQA) guidelines Section 15061(b)(3) Common Sense Exemption, that 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 17 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 may be approved only if four Findings specified in the Fresno County Zoning Ordinance, Section 877-A are made by the Planning Commission.

Typical alternatives to a variance application are to either crate a homesite parcel or rezone the property to a zone district that allows the project as proposed.

<u>Rezoning</u>, to a higher density Zone which allows smaller parcels would be problematic, as the underling General Plan Land Use Designation of Agriculture would also have to be amended.

<u>Homesite parcels</u> are allowed per General Plan Policy LU-A.9. In place of a variance the property owners could create a Homesite parcel if one of the three conditions listed below exists. However, the applicants either do not fit the criteria or have elected not to utilize the provision.

- 1. A lot less than twenty (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 or lots to be created are intended for use by persons involved in the farming operation and related to the owner by adoption, blood, or marriage within the second degree of consanguinity, there is only one (1) lot per related person, and there is no more than one (1) gift lot per twenty (20) acres; or
- 3. The present owner owned the property prior to the date these policies were implemented [1958] and wishes to retain his/her homesite and sell the remaining acreage for agricultural purposes.

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.

If approved, the variance will expire one year from the date of the Commission approval unless a mapping application is filed in accordance with the County Ordinance. When circumstances beyond the control of the applicant do not permit compliance with the time limit, the Commission may grant an extension not to exceed one additional year. Extension applications must be filed with the Department of Public Works and Planning before the expiration of the Variance.

BACKGROUND INFORMATION:

Every variance application is considered on its own merit, based on unique site conditions and circumstances. The approval of other variances in the vicinity of this project does not create a precedent for approval. However, to dispel any claim of differential treatment, we research the records for other Variance applications in the area. There were no relevant variance requests processed within one mile of the subject property.

Located along E. Fantz Ave., the subject parcel is currently undeveloped. Surrounding land uses consist of farmland with sparsely located single family residences. The nearest residence is approximately 56-feet east of the subject property.

The 32.2-acre parcel has two Assessor Parcel Numbers (APNs) which delineates separate tax rate areas, but is still only one legal title.

<u>Finding 1:</u>
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	No change	Yes
	Front: 35 feet Side: 20 feet Rear: 20 feet		

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
Parking	N/A	N/A	N/A
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:

No comments specific to the adequacy of the site were expressed by reviewing Agencies or Departments.

Finding 1 Analysis:

In support of Finding 1, the Applicant's findings describe the subject parcel as undeveloped and is physically divided by the Highland Canal without sewer and water connections. They assert this classifies as an extraordinary circumstance relating to the property that does not apply to other properties in the same zone classification.

There is an apparent feature of the Canal which traverses the parcel and delineates the area that they desire to divide. However, the location of a canal through the parcel does not constitute an extraordinary physical characteristic or circumstance which would require a parcel to be split in which an approval of the requested Variance is needed to correct. Other parcels in the area also are divided by the canal. Access to the parcel is readily available VIA the street frontage.

Recommended Conditions of Approval:

None.

Finding 1 Conclusion:

Finding 1 cannot be made as there are no extraordinary circumstances relating to the property that do not apply to other properties in the same zone classification.

<u>Finding 2:</u>
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 Agencies/Department Comments:

No comments specific to the substantial property rights were expressed by reviewing Agencies or Departments.

Finding 2 Analysis:

In support of Finding 2, the Applicant asserts they have a substantial property right to sell this parcel as a vacant lot with no general plan is necessary due to an economical hardship and residing 200 miles away.

Economic hardships nor the applicant's primary place of residence does not relate to a substantial property right enjoyed by the other properties in the area with the same zoning that they are denied.

Recommended Conditions of Approval:

None.

Finding 2 Conclusion:

Finding 2 cannot be made as denial of this Variance would not deprive the Applicant of any right enjoyed by other property owners in the AE-20 Zone District, since all property owners are subject to the same development standards and are restricted from reducing or further developing parcels less than 20 acres in size. Granting of the appeal could be construed as granting of a special privilege not enjoyed by surrounding properties with the same zoning.

<u>Finding 3:</u> 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:	28.3 acres	Resource Conservation Single-family residence Single-family residence Single-family residence Field crops	RC-40 AL-20 AL-20 AL-20 AL-20	N/A Approximately 87 feet Approximately 87 feet Approximately 50 feet N/A
South/ West:	30.98- acres	Field crops	AE-20	Approximately 560 feet

	Size:	Use:	Zoning:	Nearest Residence:
East:	1.66-acres	Field crops with a single- family residence	AE-20	Approximately 45 feet

Reviewing Agency/Department Comments:

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

Finding 3 Analysis:

In reviewing a proposal to create small parcels within agricultural areas, the potential impact on nearby agricultural parcels needs to be considered since any increase in population density in an agricultural area increases the likelihood of conflict with normal farming operations.

Changing the residential density could conflict with the nearby farming operations. However, given the limited scale, the impacts would not be materially detrimental.

Recommended Conditions of Approval:

None.

Finding 3 Conclusion:

Finding 3 can be made as the granting of a Variance is not materially detrimental to public welfare or injurious to property and improvement in the vicinity in which the property is located due to the project's limited scope.

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

Relevant Policies:	Consistency/Considerations:
Policy LU-A: 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.	Inconsistent-Parcel creation does not allow for 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. Agricultural commercial centers, agricultural processing facilities, and certain nonagricultural industries.
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 less viable economic farming units, and that the resultant increase in residential density increases the potential for conflict with	Inconsistent-Any consideration that the parcel is not an economic farming unit due to its size is not a basis for granting an exception.

Relevant Policies:	Consistency/Considerations:
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.	

Reviewing Agency Comments:

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 the variance would not be contrary to the objectives of the General Plan as there are no General Plans for this property. It is the owner's intent to sell the vacant 2.53-acre parcel.

Staff does not concur with the Applicant's statement that the project would not be contrary to the objectives of the General Plan, and in fact, there is a General Plan designation for the use of the land.

General Plan Goal LU-A is "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."

Policy LU-A.7 restricts the creation of parcels with less than the required acreage for the zone district. Specifically, the Policy states that evidence that the parcel is already not an economic farming unit is not a basis for granting an exception.

The subject parcel is not restricted under a Williamson Act Contract.

Recommended Conditions of Approval:

None.

Finding 4 Conclusion:

Finding 4 cannot made as the proposed Variance is inconsistent with the General Plan.

PUBLIC COMMENT:

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

SUMMARY CONCLUSION:

The existence of other small parcels in the area 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 Staff cannot recommend making the findings 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 stipulated by the staff report and move to deny Variance Application No. 4132; 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. 4132, 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&Pln\PROJSEC\PROJDOCS\VA\4100-4199\4132\Staff Reports\VA 4132 SR.docx

Variance Application No. 4132 Conditions of Approval and Project Notes

	Conditions of Approval			
1.	Development shall be in accordance with the site plan as approved by the Planning Commission.			
2.	The applicant shall dedicate 10 feet of additional road right-of-way across the parcel frontage on E. Fantz Avenue to comply with the General Plan.			
3.	If the Well that Severs the (E) SFR is located on a different parcel, then a covenant and agreement regarding joint use of a domestic water well shall be required.			

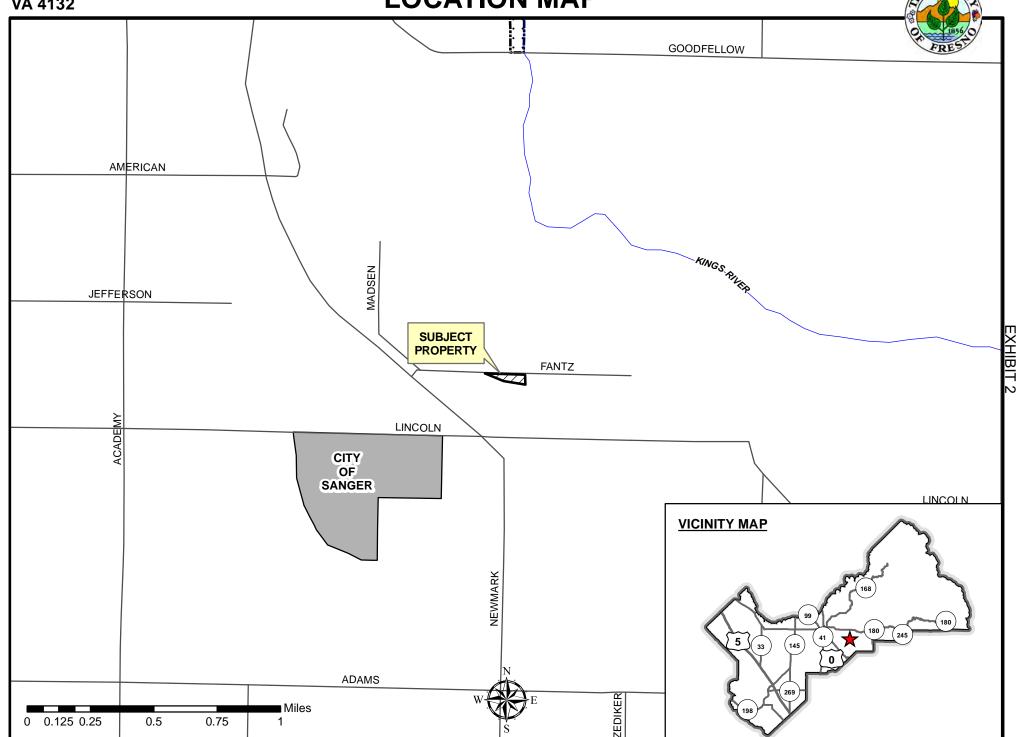
	Notes The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.				
The follow					
1.	If approved, the subdivision will require that a Tentative Parcel Map be prepared in accordance with the Professional Land Surveyors 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.				
2.	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.				
3.	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.				
4.	According to FEMA FIRM Panel 2170H, the parcel is not subject to flooding from the 100-year storm.				
5.	According to the U.S.G.S. Quad Map, Highland Canal is near the southern property line of the subject parcel. Any future improvements constructed within or near a canal should be coordinated with the owners of the canal/appropriate agency.				
6.	Any existing or future access driveway should be set back a minimum of 10 feet from the property line.				

	Notes				
7.	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.				
8.	Any future work done within the County Road right-of-way to construct a new driveway or improve an existing driveway will require an Encroachment Permit from the Road Maintenance and Operations Division.				
9.	A grading permit/voucher is required for any future grading with this application.				
10.	If the variance is approved, a parcel map application will have to be filed with Fresno County to affect the property division.				
11.	An encroachment permit is needed from the Road Maintenance and Operations Division for any work done within the road right-of-way of County of Fresno.				

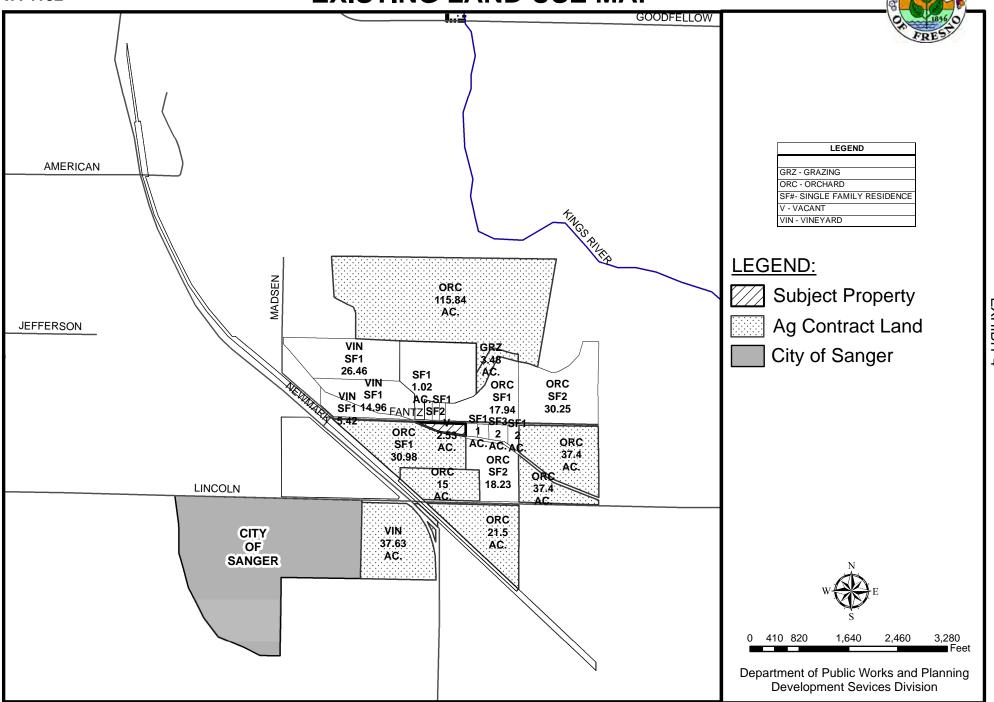
ER:jp
G:\4360Devs&PIn\PROJSEC\PROJDOCS\VA\4100-4199\4132\Staff Reports\VA 4132 Conditions and Notes.docx

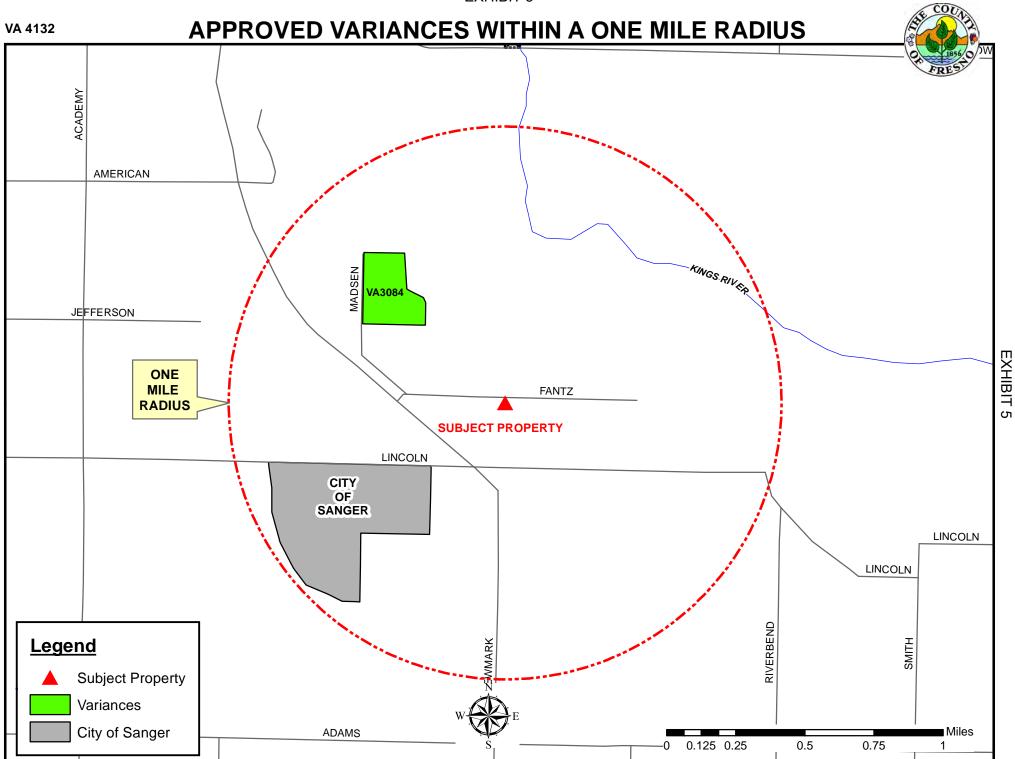


LOCATION MAP



EXISTING LAND USE MAP





January 13, 2022

RE: Variance Findings for APN #350-170-28s

Fresno County Planning Department,

Hello, my name is Jamie Madrid. Myself and my daughter, Arlene Madrid, inherited lot #305-170-28s (2.53 acres) from my father Jaime Fuentes in 2020. We would like to sell this lot and are currently in escrow. We were asked by Chicago Title Company to provide a Certificate of Compliance for our vacant lot. We are submitting this letter along with the proper documents to make this lot legal for sale and to be able to provide the requested Certificate of Compliance to Chicago Title Company.

I spoke to Ober Ramirez in your Public Works and Planning Department and was told this lot was not properly separated from lot #350-170-18s, which was once lot #350-170-30s and is now known today as #350-170-34s.

My father and his brother Antonio Fuentes were equal partners on a number of parcels on this street. When Antonio passed away in 2000, my father gave a portion of parcel #350-170-18s to Antonio's daughters Teresa and Martha Fuentes as their inheritance. I'm not sure if this is when this lot became #350-170-30s. Teresa and Martha sold this lot to Helen Karask / Running Luck Ranch, at this time I believe this lot became #350-170-34s.

Variance Finding #1

Our lot #350-170-28s (2.53 acres) is on the same side of the street as lot #350-170-34s but is divided by the Highland Canal and has no electricity, water or sewage. This is a sole standing vacant lot. I have attached the deeds in Teresa Fuentes and Running Luck Ranch's name that state:

"Excepting therefrom that portion of lot 11 and 12 in Fantz Colony lying north of Highland Canal and west of the line which extends north from the intersection of the Hudson Lateral and the Highland Canal to the north line of lot 11 all in said Fantz Colony, according to the map thereof recorded in Book 2, page 75 record of survey, records of said County"

The above description is the recorded location of our APN 350-170-28s lot.

Variance #2

We feel our substantial property right to sell this parcel as a vacant lot with no general plan is necessary due to my hardship of being unemployed and residing 200 miles away.

Variance #3

By granting a Variance for 350-170-28s, it will not be materially detrimental to the public welfare or injurious to property and improvement in the vicinity in which the property is located. Our only intent is to sell this property as is.

Variance #4

The granting of such a Variance will not be contrary to the objectives of the General Plan as there are no General Plans for this property. Our only intent is to sell this vacant 2.53 acre land.

n

I have attached documents and recorded maps that I hope will help with the processing of our request described in the beginning of this letter. Also, until the day my father passed, he has maintained and paid all property taxed on lot #350-170-28s and since my daughter and I have inherited the property, we also have maintained and paid property taxes through December 2021 thus far. Running Luck Ranch does NOT and has never paid any of the property taxes or has had any involvement, as they are not the owners to this 2.53 acre lot.

Thank you for your time and I hope to resolve this issue as soon as possible as I mentioned earlier we are currently in escrow.

If you have any questions or need any other documents, please don't hesitate to contact me by email, jayz1116@yahoo.com or by phone at (559)393-6679.

Sincerely,

Jamie Madrid Arlene Madrid





EXHIBIT 8 Page 3

EXHIBIT 8 Page 4