



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 5 December 14, 2023

SUBJECT: Variance Application No. 4136

Allow for the reduction of the minimum parcel size requirement in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District to allow creation of an 2.24-acre parcel, a 2.79 acre parcel, a 13.53-acre parcel, a 1.0-acre parcel and a 2.39-acre parcel from an existing 21.95-acre parcel; and waive the required 165 foot wide road frontage requirement for the 2.39 acre parcel, and the one-acre parcel in the AE-20 (Exclusive Agricultural) Zone District for parcels less than 5 acres in size.

LOCATION: The subject parcel is located at the north side of McKinley Avenue, approximately 2.25 miles from the City of Fresno (APN: 309-210-48 and 309-210-47) (9522 and 9520 E. McKinley Avenue) (Sup. Dist. 5).

**OWNER/
APPLICANT:** Neng Vang, Blia Vue

STAFF CONTACT: Jeremy Shaw, Planner
(559) 600-4207

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Move to determine that the required Findings cannot be made (state basis for not making the Findings) and move to deny Variance Application No. 4136; 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. Zoning Map
4. Land Use Map
5. Variance Map
6. Site Plan
7. Applicant's Variance Findings

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agricultural	No change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.	No change
Parcel Size	21.95 acres (approximately)	Parcel 1: 2.24 acres Parcel 2: 2.79 acres Parcel 3: 13.53 acres Parcel 4: 1.0 acre Remainder: 2.39 acres
Project Site	See above.	See above.
Structural Improvements	Two Single family dwellings, with one detached garage and several accessory buildings.	The proposed one-acre parcel will contain one dwelling unit and a shed; and the proposed 2.39-acre remainder with contain one dwelling unit, a detached garage and several accessory buildings including a shed and warehouse.
Nearest Residence	75 feet east of the subject property boundary.	No change
Surrounding Development	Agricultural/Low density residential and public facilities.	No change

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

ENVIRONMENTAL ANALYSIS:

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. 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 29 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.

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 Section 877 of the Fresno County Zoning Ordinance, Section 873-F are made by the Planning Commission.

Alternatives to a variance application to allow creation of a substandard size parcel, are to either create a homesite parcel or rezone the property to a zone district that allows for smaller parcel sizes and greater density.

Homesite parcels are allowed by General Plan Policy LU-A.9 where if certain criteria are met property owners could create a Homesite parcel if one of the three conditions listed below exists. However, in the case of this application, the applicants do not meet the criteria for either 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 potential for rezoning of this parcel to higher density Zone District that allows smaller parcels would be inconsistent with County General Plan policies and goals, as the underlying General Plan land use designation of Agriculture is not consistent with higher densities and smaller parcel sizes.

As a point of discussion, the subject property is located within the City of Fresno Sphere of Influence, and after review of the application, the City commented that the property is designated for medium density residential development in the City's General Plan, which is generally defined as 5-12 dwelling units per acre; In addition, the property lies within the City's

Southeast Development Area (SEDA) which designates the property for Neighborhood Residential uses, which includes single-family development, townhouses, and duplexes. The City states that all of the proposed parcel sizes associated with this variance are not consistent with the City's future development plans.

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:

The subject single legal lot contains approximately 21.95-acres and is comprised of two assessor's parcels (APNs 309-210-48 & 47), containing approximately 20.95-acres and 1.0-acre respectively; each assessor's parcel is developed with a single-family dwelling, and several accessory buildings associated with the residences. If the variance is approved, the residences and their associated accessory buildings will be located on the one-acre parcel, and the 2.39-acre remainder. The balance of the subject property is either vacant, or utilized for cultivation of row crops, with the exception of an approximately five-acre portion in the southern portion of the property fronting E. McKinley Avenue, which contains a eucalyptus grove. This area will be divided into a 2.24-acre and a 2.79-acre parcel, and each will presumably be developed with single-family dwellings. The proposed 13.53-acre parcel will remain in agricultural production, according to the applicant's submitted findings. The existing one-acre assessors' parcel identified as APN 309-210-47 was created by recording a deed, without a mapping procedure, and subsequently conveyed to a family member of the previous owners.

Variance No. 2816 was approved by the Planning Commission on January 5, 1984 to allow the creation of the one-acre parcel without public road frontage. A 15-foot-wide easement along the eastern property boundary for access to the one-acre parcel was recorded October 2, 1984. Also in October of 1984, a water use agreement between the one-acre assessor's parcel and the 20.95-acre parcel allowing well water to be supplied to the one-acre assessor's parcel. Both of these easements were required as conditions of approval for Variance 2816. However, the required mapping procedure was not completed by the property's previous owners and no time extension was requested; thus, the approval of VA 2816 expired and the proposed one-acre parcel was not created legally, but was instead conveyed to a family member as a tax parcel. The one-acre assessor's parcel, which is not a legal parcel, was conveyed to its current owners in 2018. The proposed one-acre parcel (APN 309-210-47) is under separate ownership from the 20.95-acre assessors parcel (APN 309-210-48).

The current request proposes to allow the division of the property into four parcels and a remainder, all containing less than the minimum 20-acres required of the AE-20 Zone District, and to allow the 2.39-acre remainder a reduced lot width of 60 feet where a minimum of 165 feet are required, without public road frontage, and the proposed one-acre parcel without public road frontage.

Both the proposed one-acre parcel and the 2.39-acre remainder are developed, the balance of the property appears to be vacant of any development, based on web based aerial imagery and property photos, and is currently utilized for various types of row crop agriculture. The subject parcel is not subject to a Williamson Act Contract.

According to available records, there have been four variances (including the previous Variance for the one-acre parcel) approved within one half-mile of the subject property, involving a request to create substandard parcels. Those variances are detailed in the table below:

Application/Request	Staff Recommendation	Final Action	Date of Action
*VA No. 2816: create a one-acre parcel and waive public road frontage requirement for a one-acre parcel, in the AE-20 Zone District.	Approval	PC approved.	January 5, 1984
VA No. 3397: Allow the creation of a 1.22-acre and a 3.57-acre parcel (20-acres required) from an existing 4.79-acre parcel of land in the AE-20 Zone District.	Denial	PC approved	February 18, 1993
VA No. 3500: Allow two parcels without public street frontage in the AE-20 Zone District. (Concurrent applications: AA 3651, EA 4179).	Denial of Variance but approval of concurrent applications	PC approved. BOS approved.	October 19, 1995 December 5, 1995
VA No. 4001: Allow the creation of two 2.39-acre parcels (20-acres required) from an existing 4.78-acre in the AE-20 Zone District.	Denial	PC Approved	February 16, 2017

* VA No. 2816 is related to the subject parcel.

Although there is a history of approved variance requests in proximity to the subject parcel, each variance application should be 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 of this application.

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	Front: 35 feet Side: 20 feet Rear: 20 feet	Yes

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
Parking	No requirements Access: There shall be vehicular access from a dedicated road, street or highway to off-street parking facilities on the property requiring the off-street parking.	A 60-foot-wide access easement from E. McKinley Avenue is proposed for access to the proposed parcels: 45 feet in addition to the existing 15-foot-wide easement.	Yes
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:

Development Engineering Section: According to FEMA FIRM Panel 1615H, effective date October 13, 2011, with LOMR Case No.10-09-3948P, part of the southern portion of the subject property is found to be under Flood Zone AE, subject to flooding from the 100-year storm. Any future development within the special flood hazard zone shall conform to the provisions of Title 15, Chapter 15.48 Flood Hazard Areas, of the Fresno County Ordinance

Code. A FEMA Elevation Certificate is required for any future structure(s) within the special flood hazard area.

According to the U.S.G.S. Quad Map, an intermittent stream may be present within the subject parcel. Any future work within or near a stream will require clearance from the California Department of Fish and Wildlife.

Blasingame Ditch is located near the western and northern property lines of the subject parcel. Any future development should be coordinated with the owners of the ditch or appropriate agency.

Zoning Section of the Department of Public Works and Planning: The site plan shows a detached garage adjacent to the residence on the proposed 2.39-acre remainder for which there are no permit records. In addition, the site plan shows additional unpermitted buildings. Prior to approval of the mapping procedure, all unpermitted structures on the subject parcel or subsequent parcels shall be permitted or removed.

Finding 1 Analysis:

The Applicant's findings state that the reason for the requested variance is to be able to divide the property into four separate parcels, to provide family members with the opportunity to develop the separate parcels with single-family residences, and have close proximity to each other to maintain farming activities, and manage care of elderly family members. The proposed configuration of the subdivision is a one-acre parcel, currently developed with a single-family dwelling and under separate ownership, a 2.24-acre parcel, a 2.79-acre parcel, a 13.53-acre parcel for farming purposes, and the remainder of 2.39 acres which is also currently developed with a single-family dwelling.

In support of Finding 1 the Applicant's findings assert that County staff have taken the position that exceptional or extraordinary circumstances or conditions refers only to physical attributes of the property, but that this is not the standard established by the wording of the required Finding.

Staff disagrees with the applicant's assertion that the standard established by the wording of Finding 1 does not imply a physical attribute; rather, the exceptional or extraordinary circumstance or condition, when one is demonstrated, typically but not always, does involve a physical attribute, because the wording of the finding provides that the extraordinary circumstance or condition would create a practical difficulty or unnecessary hardship on the owner, as a result of a literal enforcement of the applicable ordinance standards, which are development standards, and attributes such as size, shape, topography, location or surroundings of a property can cause development of the property to come into conflict with those standards. When this occurs, a variance is often sought to remedy the situation. However, a variance should not be seen as a way to circumvent the applicable standards for other reasons.

The applicant's findings do not clearly identify an exceptionally circumstance or condition on the property which would justify the proposed subdivision of the property into four separate parcels and a remainder. The findings do assert that the existence of the one-acre assessor's parcel is an exceptional circumstance. Staff does not agree that the existence of the one-acre assessor's parcel itself is an exceptional circumstance, rather it is the fact of the one-acre assessors parcel being under separate ownership interest that is an exceptional circumstance. Moreover, staff communicated to the applicant and representative that the proposed four lot and a remainder variance proposal would likely not be recommended for approval, but that staff could potentially

support a variance request solely for the purpose of creating a legal one-acre parcel to remedy the situation of the separate ownership interest, provided that all of the required findings could be made.

Additionally in support of Finding 1, the applicant's findings state that Variance 2816 was previously approved to create a one-acre parcel without road frontage, and that there is no evidence of any such variance having been granted on any other property in the area, and that the abutting parcels along E. McKinley to the east and west of the subject parcel both contain less than the minimum required acreage, and that there are other parcels in the area that are smaller than the parcel sizes being requested with this variance.

Staff confirms that Variance 2816 was approved, and that one of the conditions of approval was that an access easement be recorded to provide access to the proposed one-acre parcel. Another condition was that if the property is not subdivided by the required mapping procedure within one year of the date of approval, the approval of the variance would expire, unless a time extension was requested and granted. Staff was unable to locate any record of a mapping application being filed, or a variance time extension being requested.

With regard to Finding 1, staff does not find that the location or topography of the subject property creates any extraordinary physical characteristic or circumstance which would provide a basis for the requested Variance. The creation of smaller parcels and subsequent residential development have the potential to increase residential density beyond what is allowed in the AE-20 Zone District.

Recommended Conditions of Approval:

None

Finding 1 Conclusion:

Based on the analysis, Finding 1 cannot be made as staff was unable to identify any exceptional or extraordinary circumstances or conditions, relating to the property, with the exception of the one-acre assessor's parcel, that do not apply generally to other properties in the vicinity under the same zoning classification that would warrant the granting of this variance.

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.**

Finding 2 Analysis:

In support of Finding 2, the Applicant's findings state that the current owners of the property acquired their respective interest in the property in good faith, and that County staff has opined that the parcels were not legally created. Further the applicant's findings assert that approval of the requested variance and recordation of a map would appear to rectify this situation.

Staff disagrees with the assertion that the approval of the current variance would be justified in order to rectify the stated situation; alternatively, staff would agree that a separate variance request to allow the creation of the one-acre parcel could rectify the situation. However, the request to create additional substandard parcels, is not justified by the existence of the one-acre assessor's parcel.

The applicant's findings further assert that there are a high percentage of properties within one half-mile of the subject property that contain 20 acres or less, and that this entitles the applicant's to create additional substandard parcels, and that not granting this variance request deprives the owners of the rights retained by other owners in the area; and further that the existence of these other substandard parcels is an indication that those other owners have been granted the right to own and develop such substandard parcels, which is comparable to this variance request.

In response, staff asserts that the existence of other parcels in the area that contain less than the minimum acreage, regardless of when and how they came to be, does not provide a justification for the granting of this variance.

The existence of other sub-standard sized parcels in the area which are similar in size to those proposed with this Variance should not to be considered the realization of a substantial property right of those respective property owners, nor should it be considered precedent or justification for the approval of this or subsequent variance requests in the vicinity. Each Variance request must be considered on its own merit. The Applicant's findings also state that the soil type underlying the subject property and surrounding area is not ideal for agricultural uses.

California Government Code Section 65906 states that variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning. Accordingly, approval of this variance could be construed as the granting of a special privilege not enjoyed by surrounding properties in the vicinity under the same zoning, as per the above referenced Government Code, which states in part that,

"the granting of a variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated".

The AE-20 Zone District allows for a residential density of not more than one single-family dwelling per 20-acres, and one additional residence opportunity subject to discretionary approval and certain other criteria; if this Variance is approved, the owner(s) of each resultant parcel would be allowed to construct a primary dwelling, and the opportunity to apply for a second residence, subject to discretionary approval through a Director Review and Approval application.

With regard to Finding 2, the Applicant must demonstrate that they are denied a property right by virtue of the strict application of the development standards of the zone district, which right is enjoyed by other parcels in the vicinity under the same zoning classification. In this case, no deficit of a property right was identified which would warrant the granting of the Variance.

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 identifiable property 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 creating substandard sized parcels, or further dividing parcels that are already less than 20 acres in size.

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	10.73 acres	Orchard/Single-Family Residential	AE-20	87 feet
South	103.48 acres	Flood control facility	Open Conservation	None
East	30.04 acres	Field Crops/Single-Family Residential	AE-20	575 feet
	1.36 acres	Single-Family Residential	AE 20	100 feet
West	22.52 acres	Grazing/Single Family Residential	AE-20	1,000 feet
	16.52 acres			None
	2.50 acres			35 feet

Reviewing Agency/Department Comments:

Department of Public Health, Environmental Health Division: It is recommended that the Applicant consider having the existing septic tanks pumped and have the tank 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.

New sewage disposal system proposals shall be installed under permit and inspection by the Department of Public Works and Planning Building and Safety Section. 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.

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

Finding 3 Analysis:

In support of Finding 3, the Applicant’s Findings state that the granting of the Variance will not be detrimental to the public welfare or injurious to property or improvements in the vicinity, due to the fact that the majority of the property would be residentially developed consistent with other properties in the vicinity.

In regard to Finding 3, it is the intention of the Applicant, if this Variance is approved, to divide the existing parcel into four smaller parcels, which would likely be developed separately with single-family dwellings, as stated in the applicant’s findings. The proposed remainder is already developed with a single-family residence; as such, there would be an increase in residential

density, necessitating the installation of additional domestic wells and septic systems to serve the future development.

While the impact of this singular variance may not constitute a materially detrimental impact, staff notes that substandard size parcel creation has the potential to increase residential density in the area by allowing a primary residence by right and one secondary residence through the Director Review and Approval process, on each parcel. Cumulatively this and other such increases in residential density has the potential to conflict with adjacent agricultural operations. 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. To address this potential, the following Condition of Approval has been included:

Recommended Conditions of Approval:

Prior to map approval, the Applicant/subdivider shall record a document on the subject property incorporating the provisions of the County Right-of-to-Farm Notice (Ordinance Code Section 17.40.100).

Fresno County Right-to-Farm Notice: “It is the declared policy of Fresno County to preserve, protect, and encourage development of its agricultural land and industries for the production of food and other agricultural products. Residents of property in or near agricultural districts should be prepared to accept the inconveniences and discomfort associated with normal farm activities.

Consistent with this policy, California Civil Code 3482.5 (right to farm law) provides that an agricultural pursuit, as defined, maintained for commercial uses shall not become a nuisance due to a changed condition in a locality after such agricultural pursuit has been operation s of three years.”

Finding 3 Conclusion:

Finding 3 can be made due to the limited scale of this individual request, the application does not present a significant material detriment to properties in the vicinity. Therefore Finding 3 can be made.

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

Relevant Policies:	Consistency/Considerations:
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 Policy LU-A.9.</i>	The subject property is zoned AE-20 which requires 20-acre minimum parcel size. The subject Variance requests to allow the creation of four substandard sized parcels and a remainder which are less than 20 acres in the AE-20 Zone District, which is inconsistent with this policy. The proposal does not qualify for an exception under Policy LU-A.9.
General Plan Policy LU-A. 7: <i>The County shall generally deny requests to create parcels less than the minimum size specified</i>	As noted above, the creation of a parcel less than 20 acres in the AE-20 Zone District would be inconsistent with Policy LU-A.7 and

Relevant Policies:	Consistency/Considerations:
<p><i>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>set a precedent for the division 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 increased residential density in the area, as noted by the Fresno County Department of Agriculture, may conflict with normal agricultural practices on adjacent properties.</p>
<p>General Plan Policy LU-A.9: <i>General Plan Policy LU-A.9: The County may allow the creation of home site parcels smaller than the minimum parcel size required by Policy LU-A.6 if the parcel involved in the division is at least twenty (20) acres in size, subject to the following criteria:</i></p> <ul style="list-style-type: none"> a. <i>The minimum lot size shall be sixty thousand (60,000) square feet of gross area, except that a lesser area shall be permitted when the owner submits evidence satisfactory to the Health Officer that the soils meet the Water Quality Control Board Guidelines for liquid waste disposal, but in no event shall the lot be less than one (1) gross acre; and</i> b. <i>One of the following conditions exists:</i> <ul style="list-style-type: none"> 1. <i>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</i> 2. <i>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, and there is only one (1) gift lot per twenty (20) acres; or</i> 3. <i>The present owner owned the property prior to the date these</i> 	<p>Policy LU-A.9 provides for an exception from the requirements of the minimum parcel size designation where specific criteria and conditions are met; in this case the applicant either did not meet the required criteria or elected not to avail themselves of the option, perhaps because of the limitations imposed therein on the parcels to be created.</p>

Relevant Policies:	Consistency/Considerations:
<p><i>policies were implemented and wishes to retain his/her home site and sell the remaining acreage for agricultural purposes.</i></p> <p><i>Each home site created pursuant to this policy shall reduce by one (1), the number of residential units otherwise authorized on the remainder parcel created from the original parcel. The remainder parcel shall be entitled to no less than one residential unit.</i></p>	
<p>General Plan Policy LU-A.13: <i>The County shall protect agricultural operations from conflicts with non-agricultural uses by requiring buffers between proposed non-agricultural uses and adjacent agricultural operations.</i></p>	<p>If the variance is approved, any development on the subsequently created parcels will be required to observe standard setback distances from property lines required by the AE Zone District.</p>
<p>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 agricultural land and that mitigation be required where appropriate.</i></p>	<p>If approved, the creation of the four new parcels will include an approximately 13.53-acre parcel, which is in an area of the parcel that is currently farmed. According to the applicant's findings, acres (proposed parcel 3) will remain in production, although there would be no inherent requirement for the parcel to be farmed should the variance be approved and the property subdivided. See condition of approval requiring recordation of a right-to-farm covenant.</p>
<p>General Plan Policy PF-C.17: <i>The County shall, prior to consideration of any discretionary project related to land use, undertake a water supply evaluation.</i></p>	<p>This proposal was reviewed by the Water and Natural Resources Division, which did not express concerns related to water supply, as there is no development proposed with this application.</p>

Reviewing Agency Comments:

Policy Planning Section of the Fresno County Department of Public Works and Planning indicated: The Agriculture and Land Use Element of the General Plan maintains 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.

City of Fresno indicated: the City of Fresno, Planning and Development Department does not support this variance request. The subject parcel is within the City's Sphere of Influence, and is designated for medium density residential use (5-12 dwelling units per acre) in the City's General Plan. Additionally, the property is within the City's Southeast Development Area (SEDA) for which a Specific Plan is being prepared by the City. The SEDA Specific

Plan currently designates the property for Neighborhood Residential uses, which allows for various uses including single-family residential, townhomes and duplexes. The larger parcels proposed with this application are no consistent with the SEDA Specific Plan density, and design provisions.

Road Maintenance and Operations Division: McKinley Avenue currently has 60-feet of prescriptive right-of-way and an ultimate right-of-way of 60-feet, according to the Fresno County General Plan. The road right-of-way must be perfected to 60 feet across the parcel frontage.

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's findings acknowledge and reference County General Plan Policy LU-A.7 which provides that "the County shall generally deny requests to create parcels less than the minimum size specified in Policy LU-A.6 based on concerns the these parcels are less viable economic farming units, and the resultant increase in residential density increases the potential for conflict with normal agricultural practices on adjacent parcels", and that the proposed lot configuration being requested by this variance will no result in the creation of a parcel that is a "less viable economic farming unit" because two of the proposed parcels will be located where there is now a poorly maintained eucalyptus grove, which is not part of the existing farming operation, and will therefore not impact the viability of the farming operation, and that the other proposed parcels will also not impact the existing farming operation. Additionally, the applicant's findings assert that the proposed creation of substandard sized parcels is consistent with Goal1 of the Fresno County General Plan Housing Element, which encourage and facilitate the provision of a range of housing types to meet the diverse needs of residents, and that the approval of this variance would create a range of housing intended for use by extended family members and thus be consistent with this goal.

The proposed 13.53-acre parcel may be intended for continued agricultural use, as described in the applicant's findings, however there is no requirement that it be farmed now or in the future, nor are the current owner(s) or future owner(s) precluded from applying for another variance to further divide it. Conversely, the proposal to divide the property into four smaller parcels and a remainder, is in no way supportive of the protection of agricultural land nor a compatible land use in an agricultural area. Additionally, the Goals of the Housing Element of the General Plan do not supersede the Goals and Policies of the Agriculture and Land Use Element, but rather the elements must be internally consistent.

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." Staff notes that the subject parcel is designated as Agriculture in the Fresno County General Plan, and as Farmland of Local Importance in the 2016 Fresno County Important Farmland Map, however, this designation is reflective of its historic agricultural use. Farmland of Local Importance is described as all farmable lands within Fresno County that do not meet the definitions of Prime, Statewide, or Unique Farmland, which includes land that is or has been used for irrigated pasture, dryland farming, confined livestock and dairy, poultry facilities, aquaculture and grazing land.

Staff does not concur with the Applicant's statement that the project would not be contrary to the objectives of the General Plan. The General Plan contains certain policy provisions which allow for the creation of substandard-sized lots for the creation of home site parcels, subject to specific criteria; specifically, Policy LU-A.9, which provides for an exception from the requirements of the minimum parcel size designation where those specific criteria are met. The relevant policies and criteria are listed in the preceding table. In the case of this application, the subject parcel does not meet the required criteria listed under Policy LU-A.9 to allow creation of a substandard size lot.

The subject parcel is improved with two single-family dwellings, and review of publicly available historic aerial imagery dating from 1998 to present suggests that the majority of the property has been used for agricultural purposes (row crops) recently, with the exception of a mature eucalyptus grove encompassing approximately five-acres along the parcel's southern portion along its McKinley Avenue frontage.

The minimum parcel size that may be created in the AE-20 Zone District is 20 acres, therefore a property owner may not create parcels with less than the 20-acre minimum parcel size if they do not qualify under one of the criteria listed in Section 816.5 of the Zoning Ordinance, or unless the substandard-size parcel to be created is allowed through approval of a variance.

Recommended Conditions of Approval:

Prior to final map approval, the Applicant/subdivider shall record a document on the subject property incorporating the provisions of the County Right-of-to-Farm Notice (Ordinance Code Section 17.40.100).

Based on the above analysis, staff finds that the proposal is not consistent with the goals and objectives of the County's General Plan, which seek to protect agriculture from the encroachment of non-agricultural uses. Finding 4 cannot be made.

Finding 4 Conclusion:

Finding 4 cannot be made because the proposal to subdivide the property and increase residential density, is contrary to General Plan Goal LU-A, and General Plan Policies LU-A.6, LU-A.7 and LU-A.9.

SUMMARY CONCLUSION:

Based on the factors cited in the analysis, Staff has concluded that the required Findings 1, 2, & 4 for granting the Variance Application cannot be made as there are no exceptional or extraordinary circumstances or conditions applicable to the property, with the noted exception of the existence of the one acre assessor's parcel being under separate ownership interest than the balance of the property, as discussed; furthermore, no deficit of a property right was identified that would require a variance to correct, other than the aforementioned one-acre assessors parcel; and, the proposed subdivision and proposed residential development would be contrary to the objectives of the General Plan, which seek to protect agricultural land from the encroachment of non-agricultural uses. Staff therefore recommends denial of Variance Application No. 4136.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that required Findings 1, 2, & 4 cannot be made as stipulated in the staff report and move to deny Variance Application No. 4136; 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. 4136, subject to the Conditions 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.

JS:jp

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EXHIBIT 1

**Variance Application (VA) No. 4136
Conditions of Approval and Project
Notes**

Conditions of Approval	
1.	Division of the subject parcel shall be substantial conformance with the site plan (Exhibit 6) as approved by the Planning Commission.
2.	<p>Prior to approval of the required mapping procedure, the Applicant(s)/subdivider(s) shall record a document on the subject property incorporating the provisions of the County Right-of-to-Farm Notice (Ordinance Code Section 17.40.100).</p> <p><i>Fresno County Right-to-Farm Notice: "It is the declared policy of Fresno County to preserve, protect, and encourage development of its agricultural land and industries for the production of food and other agricultural products. Residents of property in or near agricultural districts should be prepared to accept the inconveniences and discomfort associated with normal farm activities. Consistent with this policy, California Civil Code 3482.5 (right to farm law) provides that an agricultural pursuit, as defined, maintained for commercial uses shall not become a nuisance due to a changed condition in a locality after such agricultural pursuit has been operations of three years."</i></p>
3.	McKinley Avenue currently has 60 feet of prescriptive right-of-way and an ultimate right-of-way of 60-feet, as per the Fresno County General Plan. Prior to approval of the final parcel map, the road right-of-way for McKinley Avenue must be perfected to 60 feet across the parcel frontage. Accordingly, the subdivider shall dedicate of 30 feet of road right-of-way across the subject parcel frontage as part of the required mapping process.
4.	A 60-foot-wide easement, as shown shall be recorded on the map for access to the proposed parcels including the remainder, from McKinley Avenue, as shown on the approved site plan.
5.	Prior to approval of the mapping procedure, all unpermitted structures on the subsequent parcels shall be permitted or removed, including the detached garage and any accessory structures, on the proposed 2.39-acre parcel.

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.	Variance 4136 shall become void if the parcels authorized by said Variance are not created within one (1) year after the granting of said Variance, or an application for the mapping procedure is not filed within one (1) year. However, in the case of a Variance for which a tentative or vesting map has been timely filed, expiration of said Variance shall be concurrent with the expiration date of the tentative or vesting map and may be extended in the same manner as said

EXHIBIT 1

Notes	
	map.
2.	Where circumstances beyond the control of the applicant cause delays, which do not permit compliance with the time limitation established in Section 877-D.2 (one year), the Commission may grant an extension of time for a period not to exceed an additional one (1) year period. Application for such extension of time must be set forth in writing the reasons for the extension and must be filed with the Department of Public Works and Planning, Development Services and Capital Projects Division before the expiration of the Variance.
3.	Division of the subject property shall be subject to the provisions of the Fresno County Parcel Map Ordinance and other applicable State regulation. The required mapping procedure shall be filed to create the proposed parcels. The subdivision shall comply with the requirements of Title 17.72 of the Fresno County Ordinance Code. The Fresno Subdivision Ordinance (County Ordinance Code, Title 17- Divisions of Land) provides that "Property access improvements associated with the division of the subject property are subject to the provisions of the Fresno County Subdivision Ordinance, including dedication, acquisition of access easement, roadway improvements, and roadway maintenance.
4.	Prior to site development, all survey monumentation; property corners, centerline monumentation, section corners, county benchmarks federal benchmarks and triangulation stations, etc. within the subject property shall be preserved in accordance with Section 8771 of the Professional Land Surveyors Act and Section 6730.2 of the Professional Engineers Act.
5.	An encroachment permit from the Fresno County Road Maintenance and Operations Division shall be required for any work proposed within the County Road right-of-way.
6.	Setbacks for new construction shall be based on the ultimate road right-of-way for McKinley Avenue, of 60-feet.

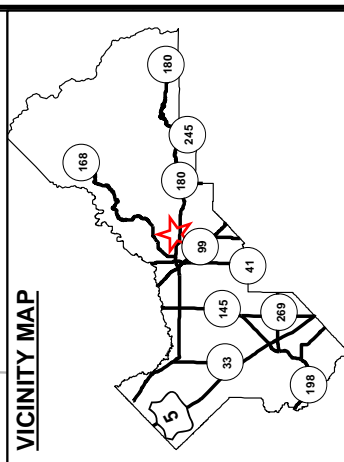
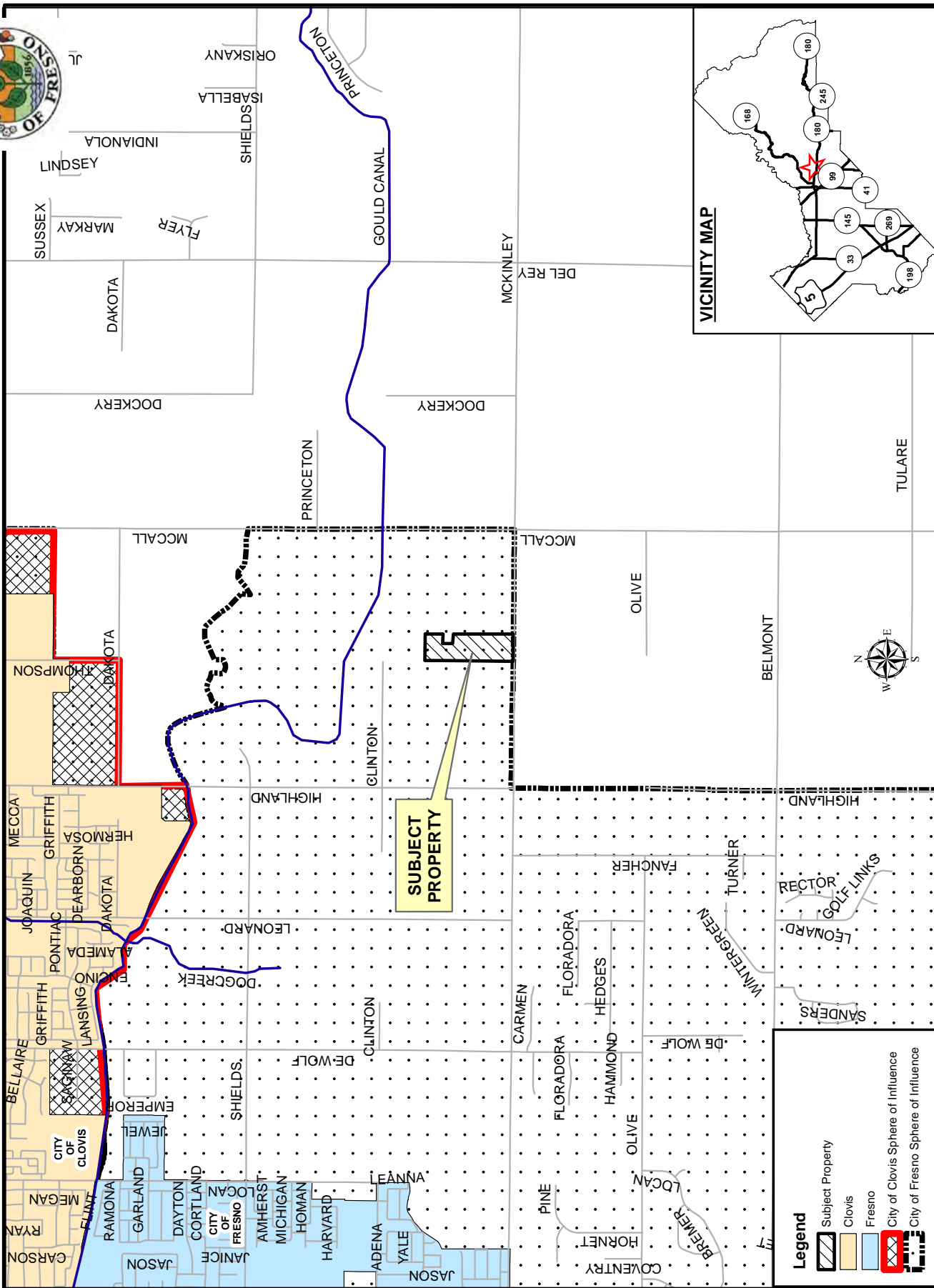
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LOCATION MAP

EXHIBIT 2

VA 4136



Legend






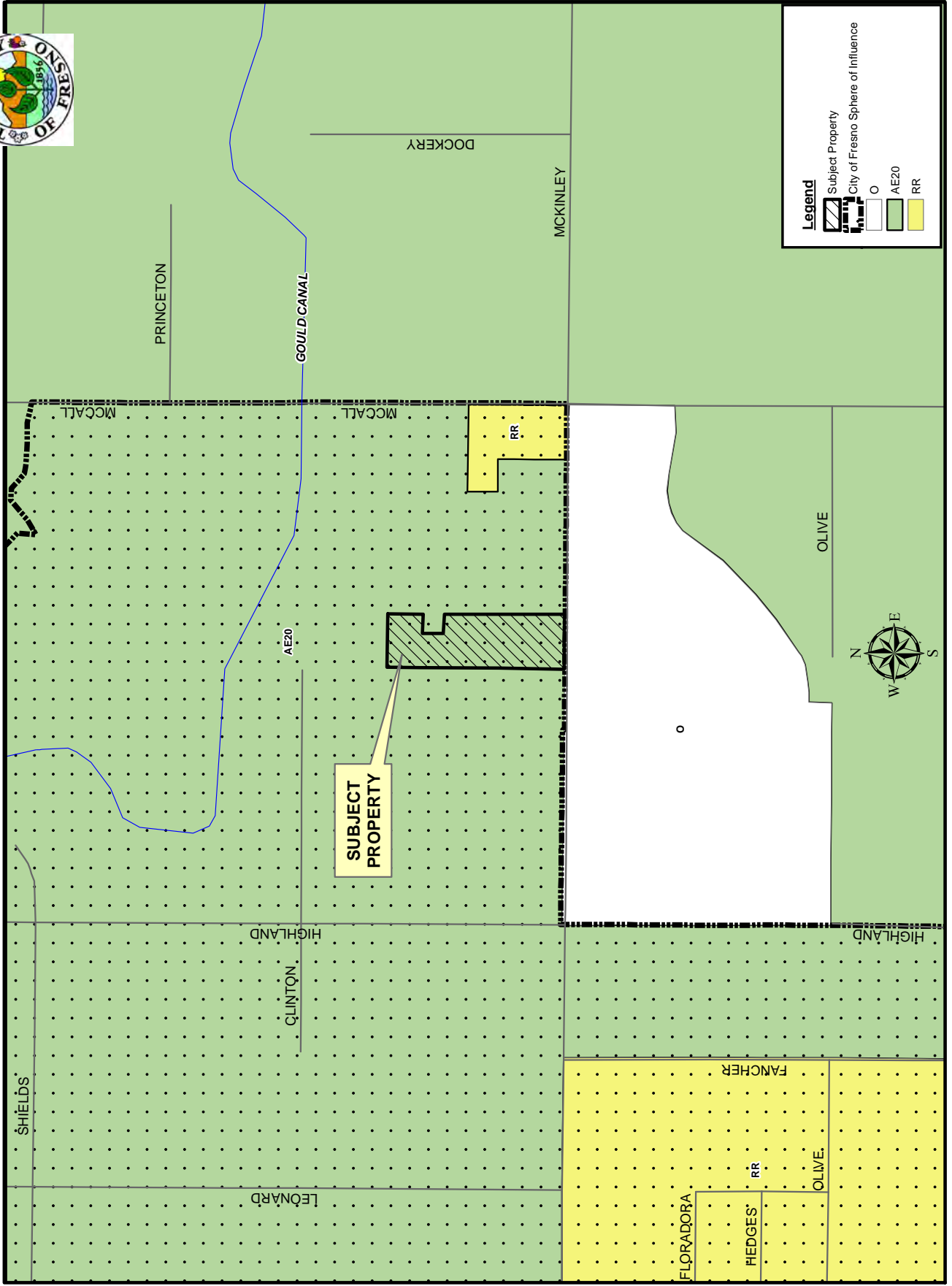
-  Subject Property
-  Clovis
-  Fresno
-  City of Clovis Sphere of Influence
-  City of Fresno Sphere of Influence

EXHIBIT 3

EXISTING ZONING MAP

VA 4136
STR 30-13/22



EXISTING LAND USE MAP

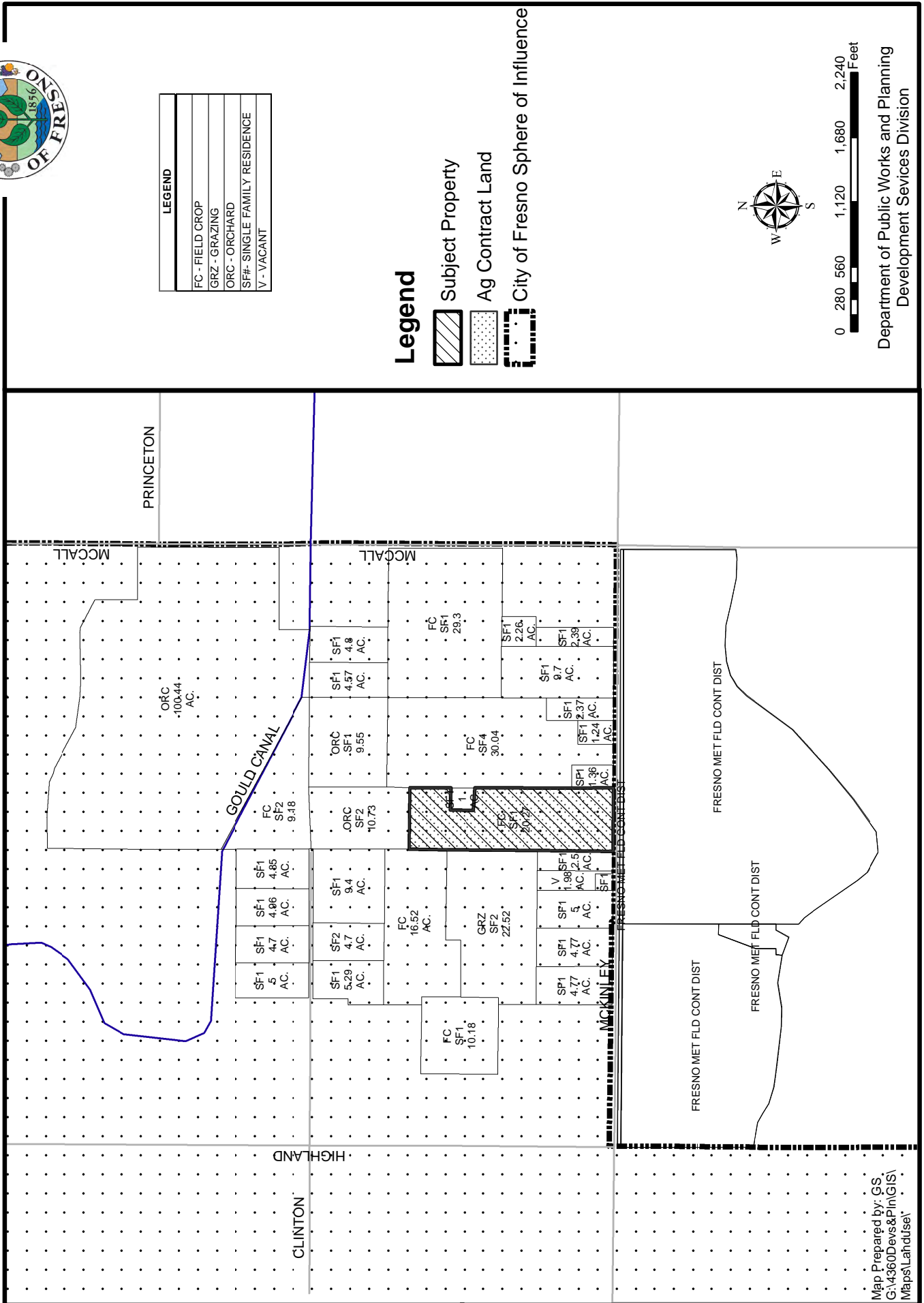
VA 4136



LEGEND	
FC	FIELD CROP
GRZ	GRAZING
ORC	ORCHARD
SF#	SINGLE FAMILY RESIDENCE
V	VACANT

Legend

-  Subject Property
-  Ag Contract Land
-  City of Fresno Sphere of Influence

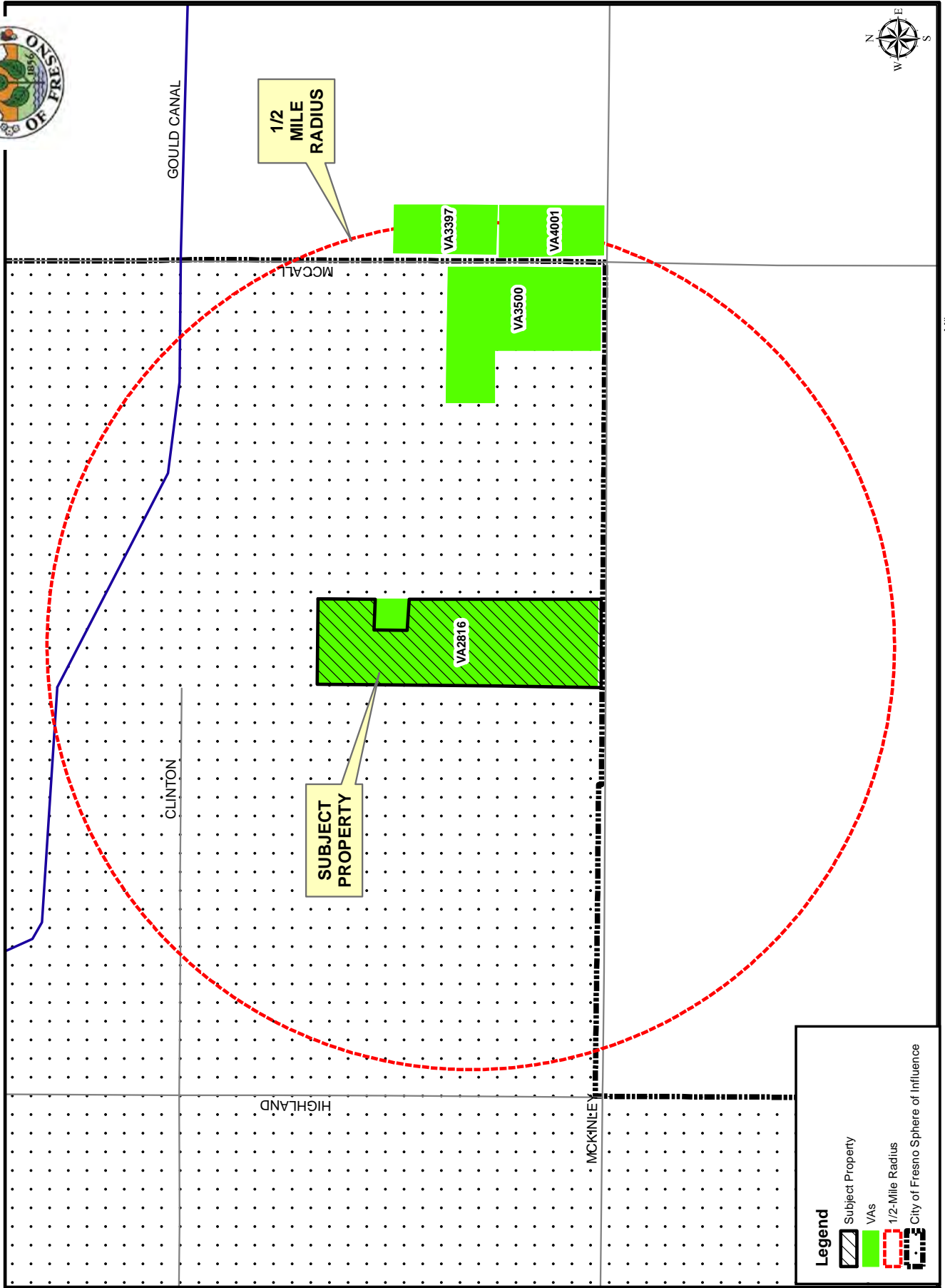


Department of Public Works and Planning
Development Services Division

VAS IN A HALF-MILE RADIUS



VA 4136

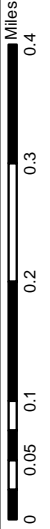


1/2 MILE RADIUS

SUBJECT PROPERTY

Legend

- Subject Property
- VAs
- 1/2-Mile Radius
- City of Fresno Sphere of Influence



GS

TENTATIVE PARCEL MAP NO. XXXX-XX

A.P.N. 309-210-47 (9520 E. MCKINLE AVENUE)
 A.P.N. 309-210-48 (9522 E. MCKINLE AVENUE)

LEGEND:

- SECTION LINE
- CITY LIMITS
- RIGHT-OF-WAY LINE
- STREET CENTERLINE
- PROJECT SITE
- PARCEL (EXISTING)
- PARCEL (PROPOSED)
- EASEMENT
- SIDEWALK, CURB, GUTTER
- WATER (EXISTING)
- SEWER (EXISTING)
- ELECTRICAL OVERHEAD (EXISTING)
- CHAIN LINK FENCE (EXISTING)
- CONTOUR

- SSMH TELEPHONE RISER
- SDMH GUY WIRE
- WATER VALVE
- FIRE HYDRANT
- WATER METER
- OBACKFLOW PREVENTER
- TELEPHONE RISER
- GUY WIRE
- SIGN
- POWER POLE
- LIGHT POLE

OWNER INFO

BLIA VUE & NENG VANG
 9520 EAST MCKINLEY AVE
 FRESNO, CA 93737
 559-313-4413
 touleechang_tlc@yahoo.com

PREPARED BY

PETER PAO MOUA, PE/LS
 5699 N. 7TH STREET
 FRESNO, CA 93710
 (559) 288-3217
 PMOUA02@YAHOO.COM

LEGAL DESCRIPTION:

THE LAND REFERRED TO IS SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:
 ALL THAT PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 13 SOUTH, RANGE 22 EAST, M.D.B.M., ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLATS, LYING WEST OF A LINE DESCRIBED AS FOLLOWS:
 COMMENCING AT A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 30, 2107 FEET WEST OF THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 30, AND RUNNING THENCE IN A NORTHERLY DIRECTION TO A POINT ON THE NORTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 30, 2100 FEET WEST FOR THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 30.
 EXCEPTING THEREFROM THAT PORTION THEREOF LYING NORTH AND WEST OF THE DITCH AS NOW LOCATED THEREON, AS SAID DITCH EXISTED AS OF APRIL 5, 1951.
 ALSO EXCEPTING THEREFROM THE SOUTH 217 FEET OF THE NORTH 567 FEET OF THE EAST 201 FEET OF SAID LAND.

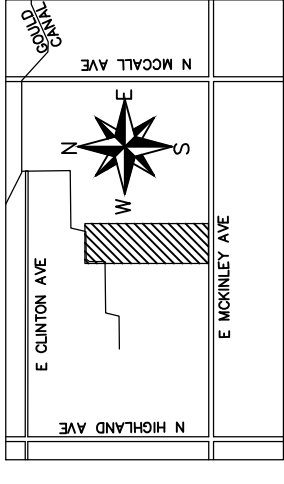
OWNER'S STATEMENT:

I HEREBY APPLY FOR THE APPROVAL OF A DIVISION OF REAL PROPERTY ON THIS MAP AND CERTIFY THAT I AM THE LEGAL OWNER OF SAID PROPERTY AND THAT THE INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NENG VANG _____ DATE _____

REFERENCE MAPS

- RECORD OF SURVEY, FRESNO COUNTY, CA S30T13R22
 DOC. 200136755 MARCH 19, 2001 BOOK 45



VICINITY MAP
 N.T.S.

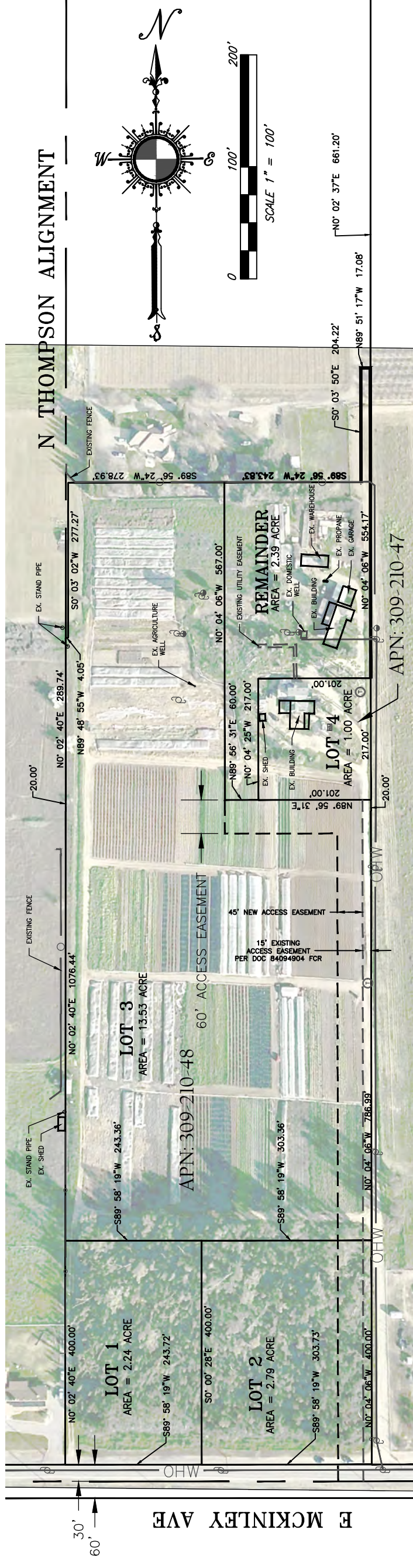


EXHIBIT 7

SUPPORTING
INFORMATION
PROPOSED VARIANCE REQUEST

Neng Vang and Blia Vue
9520 E. McKinley
Fresno, CA 93737
(APN 309-210-48 &
APN 309-210-47
August 2023

OWNER/APPLICANT Mr. Neng Vang Ms. Blia Vue 4635 East Cortland Avenue Fresno, CA 93726	REPRESENTATIVE Charlie Brown C.C. Planning & Permit Services Fresno, CA 559-720-8638 charlieb@ccplanningservices.com
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PROPERTY LOCATION

The subject properties are generally located on the North side of East McKinley Avenue between N. McCall Avenue and N. Highland Avenue and are commonly referred to as 9520 E. McKinley (APN 309-210-47) and 9522 E. McKinley (APN 309-210-48). The properties are approximately 2.1 miles east of the city limits of the City of Fresno.

BACKGROUND

Per Fresno County Assessor records, combined area of the two subject parcels is 21.27 +/- acres.

General Plan Designation

Agricultural

Zoning

AE-20 (Exclusive Agriculture-20-acre minimum parcel size)

In 1984 the property that currently comprises APNs 309-210-47 and 48 was a single property with a single APN. The property owners at that time, and the Fresno County Board of Supervisors approved Variance Application VA 2816 (VA 2816). This variance was submitted in support of the previous owner's desire to gift a parcel of property to a family member. The variance requested the creation of a 1-acre parcel (20 acre minimum required) and without public road frontage. The 1-acre parcel identified in the VA2816 corresponds in size, location and dimensions to existing APN 309-210-47.

Variance Supporting Information

Neng Vang

Blia Vue

August 2023

Page 2

As noted above, the Fresno County Board of Supervisors approved VA 2816 subject to the provision of an access easement and water well easement. The previous property owner prepared and executed the required easements and, subsequently through a gift deed, transferred ownership of the 1 +/- acre parcel to their family member. As a result of this action, two APNs were created, APN 309-210-47 which reflects the 1 +/- acre parcel and APN 309-210-48 which generally reflects the 20.72 +/- acre parcel.

As noted above, the property transfer was done through a gift deed and, apparently, without the creation of a parcel through the Subdivision Map act process.

In May of 2018, the applicants, Mr. Neng Vang and Ms. Blia Vue, purchased the 20.72 +/- property commonly referred to as APN 309-210-48. In 2019, the 1 +/- acre parcel (APN 309-210-47) was acquired by Mr. Julian Robles and Ms. Ahinoam Hernandez from a separate owner.

Mr. Vang and Ms. Vue's property (APN 309-210-48) is a rectangular shape and is developed with a single-family residence, various out buildings used for housing poultry. The single-family residence on Mr. Vang's and Ms. Vue's property is occupied by family members of the applicants. The balance of the property is either farmed with specialty row crops or is undeveloped. There is a recorded irrigation easement that affects the northwestern portion of the property.

As noted above, Mr. Vang and Ms. Vue's property surrounds the existing 1.0 +/- acre parcel (APN 309-210-47) which was created through variance (VA 2816). This property has an access easement across Mr. Vang and Ms. Vue's property and has a shared water well service agreement with that subject property. Both the easement and water well service agreement have been reviewed and approved by the Fresno County Planning Department.

There are currently two (2) water wells on the subject property. One well provides domestic water to the subject property, and through the above referenced agreement, to the existing house on the 1.0 +/- acre parcel (APN 309-210-47). The second well provides irrigation water to the agricultural activities on the site.

The McKinley Avenue frontage of the subject property consists of a poorly maintained eucalyptus grove that extends approximately 380 north from the frontage. The south side of East McKinley is owned by the Fresno Metropolitan Flood Control District (FMFCD) and there is no development on it.

The surrounding area is made of parcels of varying sizes and some agricultural activities. However, many of the parcels are "ranchettes" with little or no commercial agricultural activities taking place on them. The table below provides a summary of the privately owned parcels within ½ mile of the subject property.

Table 1
 Summary of Assessor Parcel Map Pages
 Within 1/2 Mile Radius

APN Page #	Number of Privately Owned Parcels Within 1/2 Mile Radius of Site	Number of Privately Owned Parcels Less Than 20 Acres	% of Parcels Less Than 20 Acres	Average Parcel Size (Acres)
309-051	1	1	100%	17.97
309-081	2	2	100%	7.22
309-200	10	6	60%	23.52
309-210	36	31	86%	7.88
309-220	10	10	100%	5.93
309-230	6	6	100%	3.20
309-330	8	8	100%	6.85
310-320	4	4	100%	7.75
Total	77	68	88%	9.26

HISTORY OF VARIANCE APPLICATION

October 14, 2020

Pre-Application 20-108162 was filed with Fresno County Department of Public Works and Planning. During the review of the Pre-Application, Ms. Heather McGill from the Department of Public Works and Planning, raised several questions relating to the creation of the one-acre parcel identified as APN 309-210-47 which, while not a part of the proposed variance, could still have an impact on the application. Over several weeks and months, the applicant’s representatives provided Ms. McGill representatives with copies of documents relating to the creation of that one-acre parcel. These included, but are not limited to:

- Copies of the Fresno County Planning Commission and Fresno County Board of Supervisor’s approval of VA 2816
- Copies of various resolutions by the Fresno County Board of Supervisors relating to the status of the Williamson Act contract on the property
- Copies of the easements for water use and access

August 24, 2021

Fresno County provided the applicants with the requisite information to file a variance application for the creation of 4 parcels (excluding APN 309-210-48) and a remainder parcel of less than 20 acres.

October 21, 2021

Ms. McGill sent an e-mail to the Applicant's representative (in which Mr. Jeremy Shaw was copied) stating:
"I have reviewed the documentation submitted and **I have made a determination that both parcels are legal. I spoke with Jeremy Shaw who is the planner assigned to the variance and he stated to go ahead and submit the application and we can proceed with the new proposal...**" (emphasis added)

April 7, 2022

Variance Application VA 4136 filed with Fresno County.

October 10, 2022

Mr. Jeremy Shaw requested corrections to the information that was submitted in support of VA 4136.

October 11, 2022

The corrected information and exhibits were provided to Mr. Jeremy Shaw. At approximately 4:50 PM on that date, Mr. Shaw contacted one of the Applicant's representatives by phone with concerns regarding the creation of the one-acre parcel and the potential impact it may have on the Variance application. In response to his concerns, the representative sent (via e-mail) a detailed summary of the information previously provided to the County as part of the Pre-Application process.

October 12, 2022

Mr. Shaw contacted a representative of the Applicants, with concerns regarding the creation of the one-acre parcel but did not identify a specific issue relating to the question only a "feeling" that the gift parcel process was not completed properly and stated that he would be speaking with county staff to discuss the matter further. The representative requested that Mr. Shaw review the Pre-Application file, to which Mr. Shaw responded that he already had and the file was essentially empty and incomplete.

In addition, Mr. Shaw stated that if the parcel was not created correctly it could potentially be grounds for a civil case between the property owners. Further, based on his concerns, he had removed the Variance application from consideration at the October 27, 2022 Planning Commission hearing.

At the conclusion of that call, the Applicant's representative requested that Mr. Shaw provide a written response identifying the specific concerns he had. Mr. Shaw stated that he would not provide any written comments or responses.

REQUEST

It is the Applicant's desire to create opportunities for their family members to have homes proximate to one another so that familial ties can be maintained, the farming activities can be actively managed, and caregiving of elder family members can be provided. In addition, if approved and a subsequent parcel map is approved, APN 309-210-47 (which County Planning Staff claims is not a legal parcel) would become a legal parcel.

With that in mind, the Applicants are requesting a variance to allow the following:

1. Creation of four (4) parcels (and a remainder) less than 20 acres in size within the AE-20 Zone District (See Exhibit "A").

Lot 1 is proposed as a 2.24 +/- acre parcel

Lot 2 is proposed as a 2.79 +/- acre parcel

Both proposed Lot 1 and Lot 2 would have frontage on, and access to, E. McKinley Avenue.

These proposed parcels would be located in the area of the existing eucalyptus grove. If approved, each of these parcels would each be served by a new domestic water well and septic system.

Parcel 3 is proposed to be approximately 13.53 +/- acres in size and would be located in the center portion of the property and generally consists of the portion of the property that is currently being farmed. The property would be accessed by the proposed 60' access easement, as well as the existing 15' access easement.

Lot 4 would be approximately 1.00 +/- acres in size and is consistent with the boundaries of existing APN 309-210-47.

The remainder parcel would be approximately 2.39 acres in size and would generally be located in the northeast corner of the property and includes an existing single-family residence and various outbuildings. The property is currently served by an existing water well and septic system. Access the property would be from the proposed 60' access easement.

2. Creation of three (3) parcels without public road frontage within the AE-20 Zone District

As shown on Exhibit “A”, proposed Lots 3, 4 and the remainder would be located towards the rear of the subject property without frontage on East McKinley Avenue. As was the case with VA 2816 to not have road frontage, but be served by an easement, the Applicants are prepared to execute access easements to serve the proposed parcels 3, 4 and remainder.

JUSTIFICATION

In order to grant a variance four findings must be made:

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

While the planning staff has consistently taken the position that “...exceptional or extraordinary circumstances or conditions...” refers to physical attributes of the property under consideration for a variance, that is not the standard established in the wording of the required finding. With that in mind, the following are the exceptional and extraordinary circumstances that apply to the subject property:

- a. The county has previously approved a variance (VA 2816) to provide access to a 1-acre parcel in the middle of the property.
 - i. There is no evidence of any such variance having been granted on any other property in the area.
 - b. The adjoining parcels on East McKinley Avenue are both less than the required minimum of the zone district.
 - i. There is only 1 other property in the area (APN 309-210-57) that has a similar situation.
 - ii. In fact, the adjoining parcels are both smaller than the parcels being requested by the variance.
 - c. The parcel configuration of the subject property is such that it is not possible to provide frontage access to parcels at the rear of the property.
 - d. Through not fault of their own the Applicants and the owners of APN 309-210-48 have acquired ownership interests in parcels that Fresno County has opined were not legally created.
 - e. Approval of the requested variance and recordation of the associated parcel map would appear to rectify this situation.
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.*

Variance Supporting Information

Neng Vang

Blia Vue

August 2023

Page 7

As noted above, the Applicants and the owners of APN 309-210-48 acquired their respective properties in good faith. However, the Fresno County Department of Public Works and Planning have opined that these parcels were not legally created. Approval of the requested variance and recordation of a parcel map would appear to rectify this situation.

As noted in Table 1, 77 of the privately owned properties (88%) within ½ mile of the subject property are less than 20 acres in size. It is not relevant when these parcels were created, they currently have the same zoning and have less than the required 20 acre minimum parcel size. As such, the applicant should have the same right as these other property owners.

It is clear that the majority of property owners in the area have been given the right to own and develop properties of less than 20 acres and of a size comparable to the request. Not granting the requested variance definitely deprives the property owner of the rights that are retained by other property owners in the area.

In addition, there are at least 7 parcels in the immediate area that are less than the required 20 acre parcel size and do not have public road frontage. These are shown on Exhibit “B”. Again, the applicant should be allowed the “...*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.*”

3. *The granting of the 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.*

Granting the requested variance will not have a material impact to the public welfare or injurious to properties and improvements in the area. In fact, if approved, the development of the requested parcels on East McKinley Avenue will result in the elimination of the existing eucalyptus grove and the development of housing that would be consistent with the balance of development in the area.

The requested parcels are consistent with other properties in the other area and the requested variance to the road frontage requirements can easily be addressed through the use of easements. In addition, by providing additional “eyes on” the property through the development of the properties there are reduced opportunities for theft and vandalism. In addition, the creation of the home sites will provide opportunities for increased family bonding, as well as increased monitoring of the property to reduce incidences of vandalism which is a benefit to the entire community.

4. *The granting of such variance will not be contrary to the objectives of the Fresno County General Plan.*

Fresno County General Plan Policy LU-A.15 Right-to-Farm Notice

The applicants are prepared to execute a Right to Farm Notice if the variance is approved. Therefore, granting the variance will not be contrary to this policy.

Fresno County General Plan Policy LU-A.7 (Exceptions to Minimum Agricultural Parcel Size) states, “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 normal agricultural practices on adjacent parcels....”. (emphasis added)

The proposed lot configuration being requested by this variance application will not result in the creation of a parcel that is a “...less viable economic farming unit...” for the following reasons:

- a. As shown on Exhibit “A”, two of the parcels requested (Parcels 1 and 2) will be located within the boundaries of an existing, poorly maintained eucalyptus grove. This is not currently part of the ongoing farming operation. Therefore, there will not be an impact on the economic viability of the farming operation.
- b. As shown on proposed Parcel Map exhibits the remainder parcel will encompass the area surrounding an existing single-family home. Again, this is not part of the ongoing farming operation.
- d. The proposed Lot 3 “13.53+ /- acres in size. Given the nature of the farming operation (highly specialized row crops) this is of sufficient size to continue as a viable farming operation.
- e. Goal 1 of the Fresno County Housing Element is “Facilitate and encourage the provision of a range of housing types to meet the diverse needs of residents.”
 - i. Approval of the requested variance will create a range of housing intended for use by extended family members. The provision of this housing will facilitate the continued farming operation of the property, continuing care for elderly family members and the reinforcement of familial ties. Therefore, approval of the variance would be consistent with this goal.

CONCLUSION

Approval of the requested variance will allow the creation of parcels that are consistent with the existing pattern of development in the area, create an avenue for the “legalization” of a parcel that was (in the opinion of staff within the Fresno County Public Works and Planning Department) was not created legally, while still maintaining a viable agricultural operation.