



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 2 January 11, 2024

SUBJECT: Variance Application No. 4154

Allow a reduction of the minimum acreage requirements to allow the creation of a 1.37-acre parcel from an existing 38.52-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

LOCATION: The subject parcel is located on the west side of South Indianola Ave, approximately 1,884 feet north of the intersection with East Manning Ave., approximately 1 mile west from the City of Parlier (APN: 353-061-80S & 81S) (8603 S. Indianola Ave.) (Sup. Dist. 4).

OWNER: Gurkirat S. Toor & Yvonne Kelly

APPLICANT: Dirk Poeschel, Land Development Services, Inc.

STAFF CONTACT: Alyce Alvarez, Planner
(559) 600-9669

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Deny Variance Application No. 4154 based on the analysis of the required findings in the Staff Report; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

EXHIBITS:

1. Conditions of Approval and Project Notes
2. Location Map
3. Existing Zoning Map
4. Existing Land Use Map
5. Variances within 1-mile of subject parcel
6. Site Plans and Detail Drawings
7. Applicant's Variance Findings
8. Photos

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	38.52-acre parcel	Parcel A: 1.37-acres Parcel B: 37.15-acres
Project Site	Single Family Residence and Ag shop on the east section of property, orchard on remaining.	Split the parcel into two parcels.
Structural Improvements	Single Family Residence	No change
Nearest Residence	450-feet north of the subject parcel	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 Article 5: Review for Exemption, Section 15061(b)(3) of the California Environmental Quality Act (CEQA) guidelines: The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

PUBLIC NOTICE:

Notices were sent to 25 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 comments were received as of the date of preparation of this report.

PROCEDURAL CONSIDERATIONS:

A Variance Application may be approved only if all four Findings specified in the Fresno County Zoning Ordinance, Section 873-F are made by the Planning Commission. If approved a separate mapping procedure to legally create the two proposed lots would be required. Staff notes that every variance request is considered on its own merit and is based upon the four required Findings and circumstances of the property.

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 38.52-acre property is currently developed with a single-family residence, an Ag. shop, a septic system and a water well. The remainder of the property is an orchard. Surrounding land uses consist of farmland with sparsely located single family residences.

The property was sold to Gurkirat S. Toor and a life estate agreement was created for the 1.37 parcel, which is reflected in the assessor’s roles. The Applicants are now seeking to have the 1.37 life estate area created as a separate legal parcel and are requesting a variance that would allow the certation of the substandard sized lot through a mapping procedure.

There were no records of variances related to parcel creations proposed within one mile of the subject parcel. Below in general information regarding he project site.

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

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
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	The existing septic system will be utilized.	Yes (Conditionally)

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.**

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 assert that the property has exceptional and extraordinary circumstances due to the property being purchased by a new property owner who intends to maintain the agricultural portion of the land and the existing property owners desire to convert the Life Estate to a legal separate parcel.

The stated intention of the new owner to continue to farm on the remaining 37.15-acres of the parcel and for the original owner to be able to continue to own and live on the 1.37-acre parcel is not an extraordinary physical characteristic or circumstance which is unique to the property.

The applicant's proposal seeking relief from the development standards to accommodate their personal circumstances is not unique to this property, there is not a physical feature or situation that is not common to other properties in the area that causes an unequitable constraint compared to other properties in the area with the same zoning. Granting this variance would be providing the applicant a special right not enjoyed by their neighbors with the same zoning.

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 relating to the property that do not apply to other properties in the area with the same zoning classification.

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

Reviewing Agency/Department Comments:

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

Finding 2 Analysis:

In support of Finding 2, the applicant states they have the right to optimize and retain the value of the existing home and were wrongfully informed by their realtor of the process to create the 1.37-acre homesite. The applicants state they have a vesting interest in the aforementioned since the 2,562 sq. ft. residence exists. Per Section 816 of the Fresno County zoning ordinance, one residence may be constructed upon a parcel of land in the AE-20 zone district. The applicants are voluntarily prohibiting the construction of a second residence on the proposed 1.37-acre parcel homesite.

With regard to Finding 2, There are no statutes or case law that creates a property right to be immune from Zoning standards in order to optimize and retain the value of an existing home. Variances can only be used to provide relief to preserve the “substantial property right” to be able to utilize a property for the intended use of the zoning. If regulations and/or unique physical attributes prohibit this property from realizing any reasonable use intended under the zoning, a Variance would be appropriate to preserve the “substantial property right” such as the ability to be able to build a home on the site.

There is no physical characteristic that prevents the property owners from utilizing the land for the allowed uses in the zoning, in fact they have exercised such right in building their home, hence no substantial property right is in jeopardy and a variance is not warranted. The creation of a new separate parcel smaller than the required minimum size is not a property right enjoyed by other properties in the area, all the surrounding parcels have the same requirement to meet the minimum parcel size for their zone district.

The assertion of the applicant that they will voluntarily prohibit the development of a second dwelling on the properties is not enforceable. State law prohibits the imposition of such conditions. The only way this could be accomplished is if the applicant were to rezone the property with conditional zoning that prohibited any additional residences.

Recommended Conditions of Approval:

None.

Finding 2 Conclusion:

Finding 2 cannot be made, as no deficit of a substantial property right enjoyed by others in the area with the same zoning was identified.

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:	39.4 acre	Open land with a single-family residence.	AE-20	Approximately 700 feet

	Size:	Use:	Zoning:	Nearest Residence:
South:	38.5 acres	Open land with a single-family residence.	AE-20	Approximately 1,135 feet
East:	14.58 acres	Field crops	AE-20	N/A
West:	34.39-acres	Field crops	AE-20	N/A

Reviewing Agency/Department Comments Regarding Site Adequacy:

Road Maintenance and Operations Division: An additional 10 feet of road right-of-way along the subject parcel must be dedicated or irrevocably offered to meet the ultimate right-of-way for Indianola Ave. Any setbacks for new construction must be based on the ultimate road right-of-way for Indianola Ave.

The above comments are reflected as proposed Conditions of Approval for the project. 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 states “no adverse impacts to adjacent properties will occur as a result of the proposed variance. Granting the proposed variance to create a 1.37 +/- acre homesite from an existing 38.52 +/- acre parcel will have no adverse impacts on the public or surrounding property owners. No new improvements will be made to accommodate the lot creation. The existing residence and related improvements are served by an adequate domestic well and septic system. Granting the proposed Variance will not be detrimental to the public welfare of surrounding properties for the following reasons: The proposed homesite, on which a home exists, would not conflict with the continued agricultural operation on the remaining 37.15 +/- agricultural acreage. The applicant also proposes to voluntarily prohibit the creation of a second residence on the proposed 1.37 +/- acre homesite. No new well, septic tank, roads or other improvements are necessary as the proposed homesite exists. The voluntary condition will eliminate any possibility that the proposal will result in the removal of adjacent land from an agricultural use or create other adverse impacts on agriculture.”

Regarding Finding 3, it is the intention of the Applicant, if this Variance is approved, to divide the existing parcel into two smaller parcels, which could allow the development of single-family dwellings; 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.

As the subject parcel is not within a water-short area, the potential for impacts to neighboring wells is minimal.

While the impact of this singular variance may not constitute a materially detrimental impact, staff notes that the creation of two separate legal parcels, one being non-conforming, has the potential to increase residential density in the area by allowing additional single-family residences by right on the 37.15-acre parcel and a 2nd residence through a Director Review and Approval on the 1.37-acre parcel. 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 residences and agricultural activities. However, the limited scale of this individual request by itself is not a significant material detriment to properties in the vicinity.

Recommended Conditions of Approval:

- 10-foot irrevocable offer of right-of-way along Indianola Ave.
- New construction setbacks to be based on the ultimate road right-of-way.

Finding 3 Conclusion:

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

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

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

Relevant Policies:	Consistency/Considerations:
<p><i>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>parcellation of farmland into smaller parcels which are economically less viable farming units and could potentially allow additional single-family homes on the proposed parcels. Such increase in the area, as noted by Fresno County Department of Agriculture, may conflict with normal agricultural practices on adjacent properties.</p>
<p>General Plan Policy LU-A.12: <i>In adopting land use policies, regulations and programs, the County shall seek to protect agricultural activities from encroachment of incompatible land uses.</i></p>	<p>Inconsistent: The creation of a parcel less than 20 acres in the AE-20 Zone District would be inconsistent with Policy LU-A.12 as smaller parcels could potentially allow a higher density residential area which is inconsistent with the compatibility of the AE-20 zone district.</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>Inconsistent: The creation of a parcel less than 20 acres in the AE-20 Zone District would be inconsistent with Policy LU-A.13 as smaller parcels could potentially allow a higher density residential area which is inconsistent with the compatibility of the AE-20 zone district.</p>

Reviewing Agency Comments:

Policy Planning Section of the Fresno County Department of Public Works and Planning indicated: Regarding Policies LU-A.6 and LU-A.7, approval of VA Application No. 4154 would result in the creation of a 1.37-acre substandard parcel that will be used as a homesite parcel in an area of the County designated and zoned for agricultural uses which are not compatible with residential uses. Substandard parcels created for residential purposes in areas of the County designated and zoned for agricultural uses creates conflict with agricultural uses in the surrounding area. Therefore, the proposed Variance application is not consistent with General Plan Policies LU-A.6 and LU-A.7.

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 granting of the proposed variance will not contradict the objective of the Fresno County General Plan to protect agricultural land. The granting of the proposed variance does not require removing any of the site’s almond trees as the home already exists.”

The Applicant's assertion that no trees will be removed and that the house exists does not address the policies that prohibit the development of small parcels. The project would be contrary to the Goals and Policies of the General Plan. The General Plan Policy LU-A.9 does contain provisions which allow for the creation of substandard-sized lots for the creation of home site parcels, subject to certain specific criteria. This application does not meet the required criteria listed under Policy LU-A.9 to allow creation of a substandard size lot.

Finding 4 Conclusion:

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

SUMMARY CONCLUSION:

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

While it is unfortunate that the owner was given incorrect information by their realtor, it is not a basis for granting them a special privilege not enjoyed by surrounding property owners.

Based on the factors cited in the analysis, the required Findings 1, 2, and 4 for granting the Variance Application cannot be made as there are no exceptional or extraordinary circumstances or conditions applicable to the property, the variance is not necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity, and the application is contrary to the goals and policies of the General Plan.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that required Findings 1, 2, and 4 cannot be made as stated in the Staff Report and move to deny Variance Application No. 4154; 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. 4154, 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.

AA:jp
G:\4360Devs&Pln\PROJSEC\PROJDOCS\VA\4100-4199\4154\Staff Report\VA 4154 Staff Report.docx

EXHIBIT 1

**Variance Application (VA) No. 4154
Conditions of Approval and Project Notes**

Conditions of Approval	
1.	Development shall be in substantial compliance with the site plan, floor plan and elevations, as approved by the Planning Commission.
2.	An additional 10 feet of road right-of-way along the subject parcel must be dedicated or irrevocably offered to meet the ultimate right-of-way for Indianola Ave.
3.	New construction must be based on the ultimate road right-of-way for Indianola Ave.

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.	The end of curbed/taper edge of any existing or future access driveway approach should be set back a minimum of 5 feet from the property line.
2.	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.
3.	A minimum of 10 foot x 10 foot corner cut-off should be improved for sight distance purposes at any existing or future driveway accessing Indianola Avenue if not already present.
4.	A mapping procedure will have to be filed with Fresno County in order to affect the property division.
5.	Septic system density will be limited to one system per two acres. Any new development of less than two acres or secondary dwelling may require a nitrogen loading analysis.

AA:jp

G:\4360Devs&PIn\PROJSEC\PROJDOCS\VA\4100-4199\4154\Staff Report\exhibits\VA 4154 - Conditions of Approval.docx

EXHIBIT 1

Legend

 Subject Property

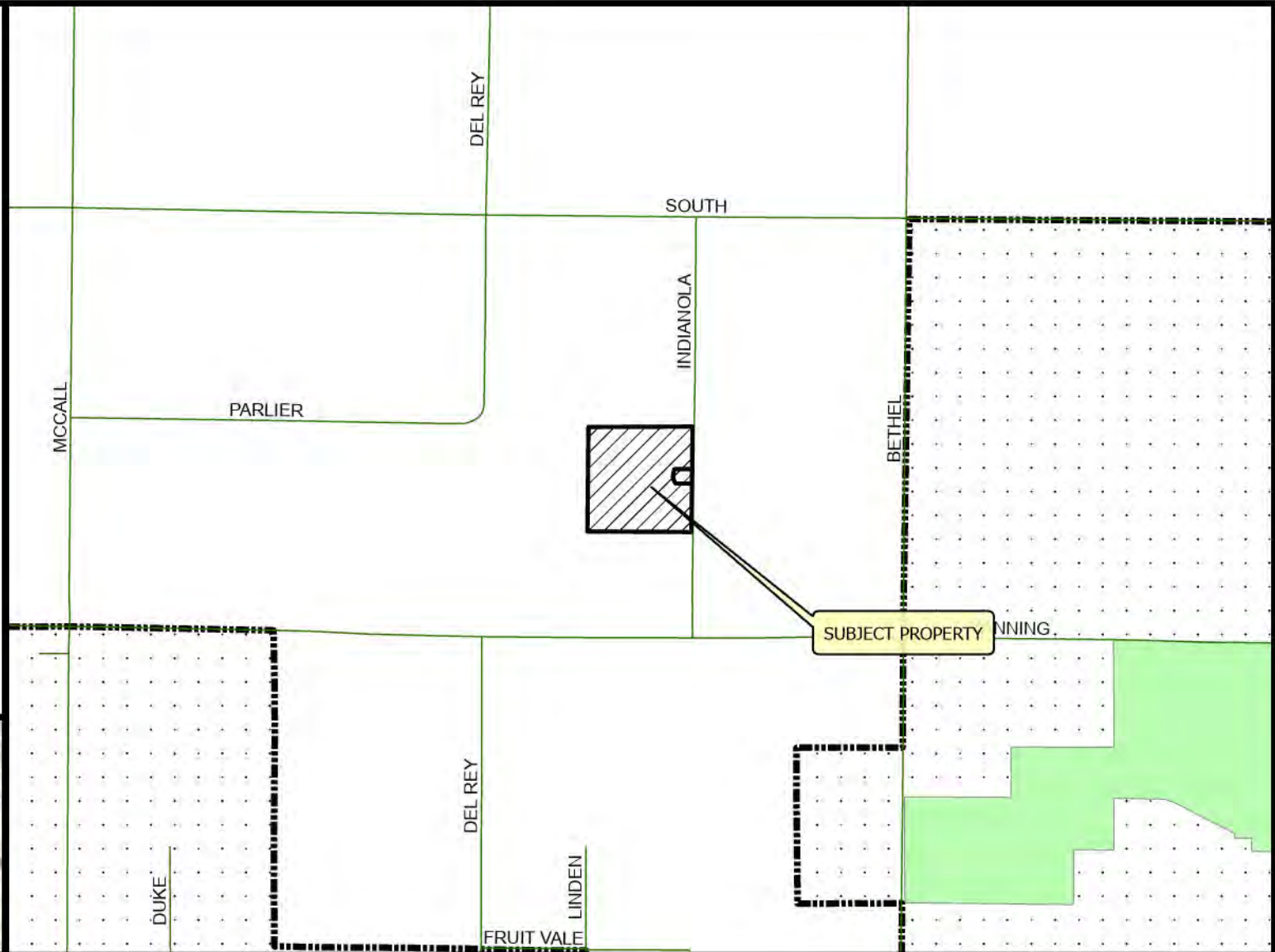
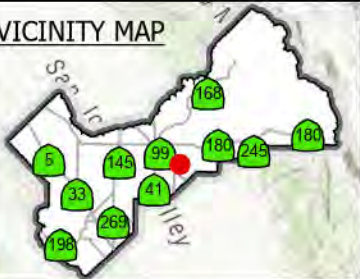


EXHIBIT 2

VICINITY MAP

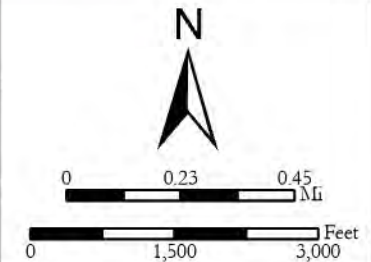


LOCATION MAP

VA4154

2023

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division
 Person Prepared by : jocervantes
 On Date : 8/7/2023



Legend

-  Subject Property
-  Parlier
-  City Sphere of Influence
-  C6
-  A1
-  AC
-  AE20
-  M2

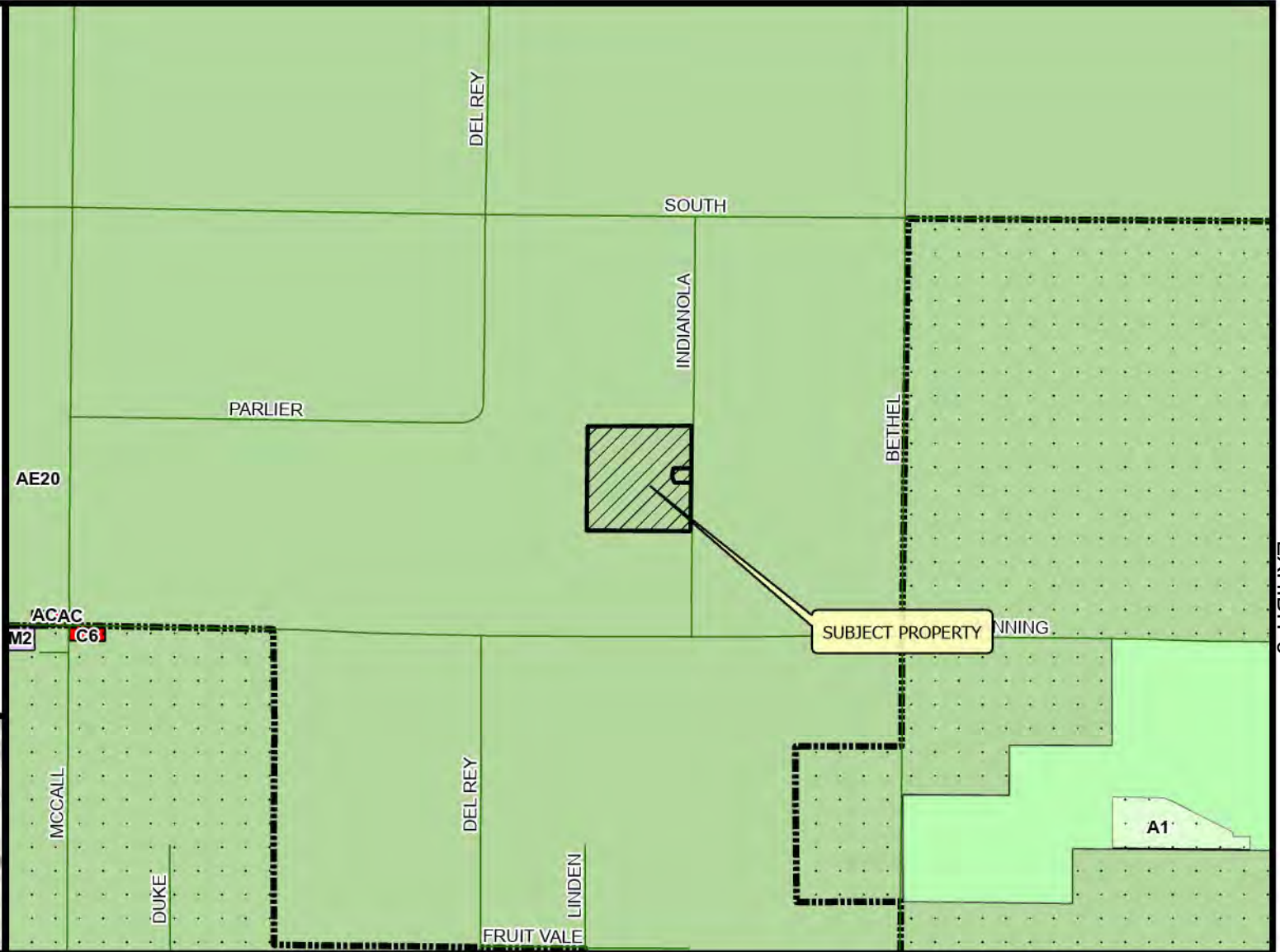
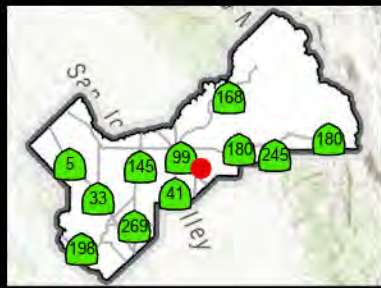


EXHIBIT 3



Existing Zoning Map

VA4154

STR 21 - 15S / 22E

2023

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division

Person Prepared by : jocervantes

On Date : 8/7/2023

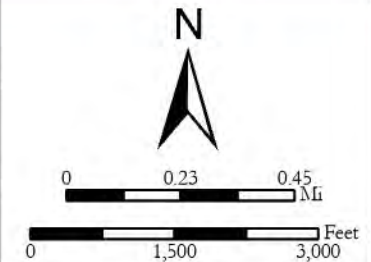


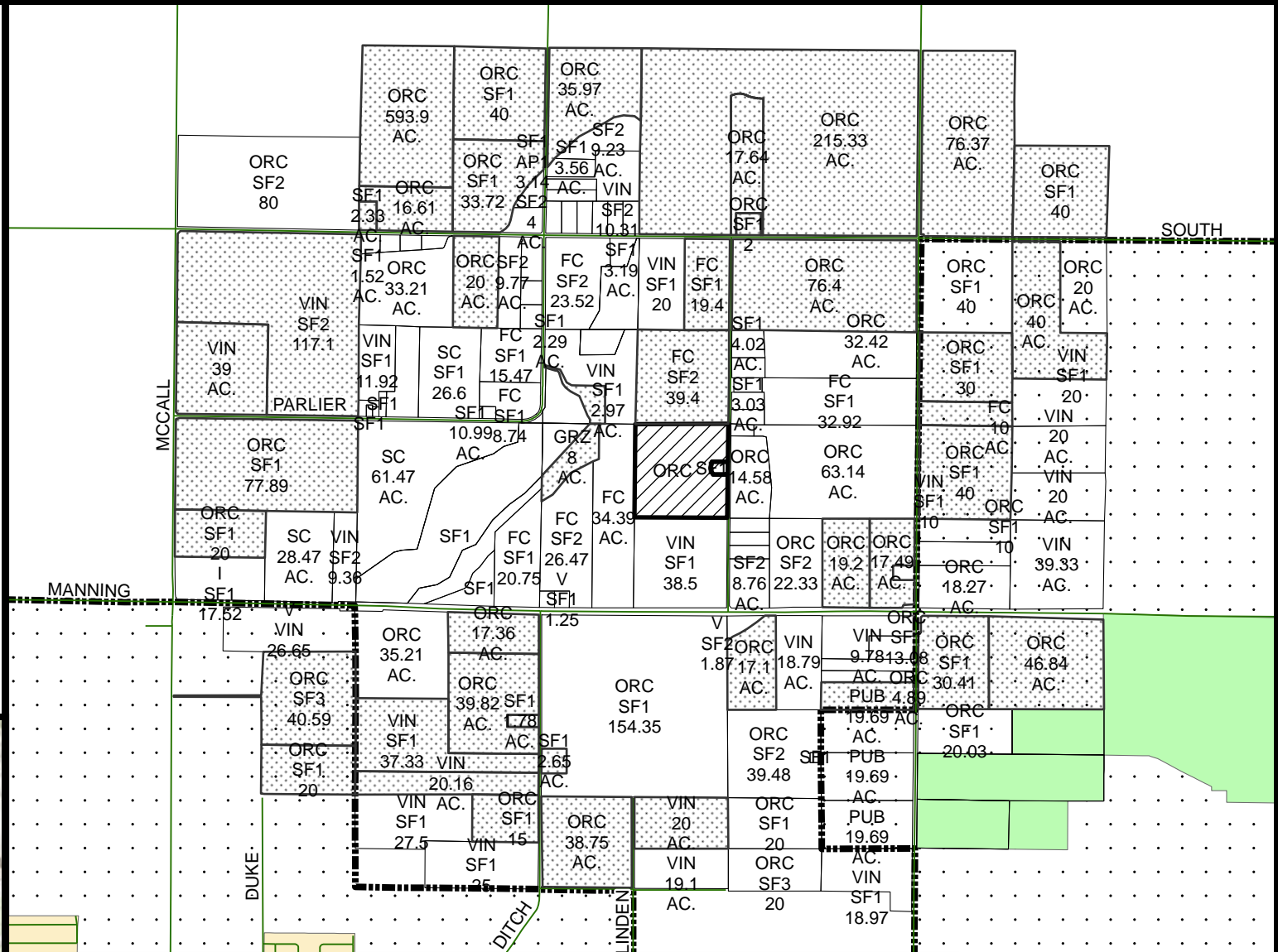
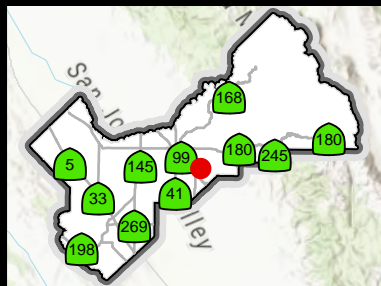


EXHIBIT 4

LEGEND:

-  Subject Property
-  Ag Contract Land

Legend
AP1 - APARTMENT
FC - FIELD CROP
GRZ - GRAZING
I - INDUSTRIAL
ORC - ORCHARD
PUB - PUBLICLY OWNED
SC - SEASONAL CROP
SF# - SINGLE FAMILY RESIDENCE
V - VACANT
VIN - VINEYARD



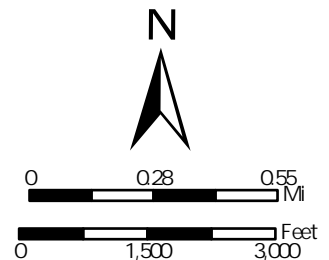
Existing Land Use Map

VA4154

2023



Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division
 Person Prepared by : jocervantes
 On Date : 8/7/2023



Legend

-  1 Mile Buffer
-  Subject Property
-  Parlier
-  City Sphere of Influence

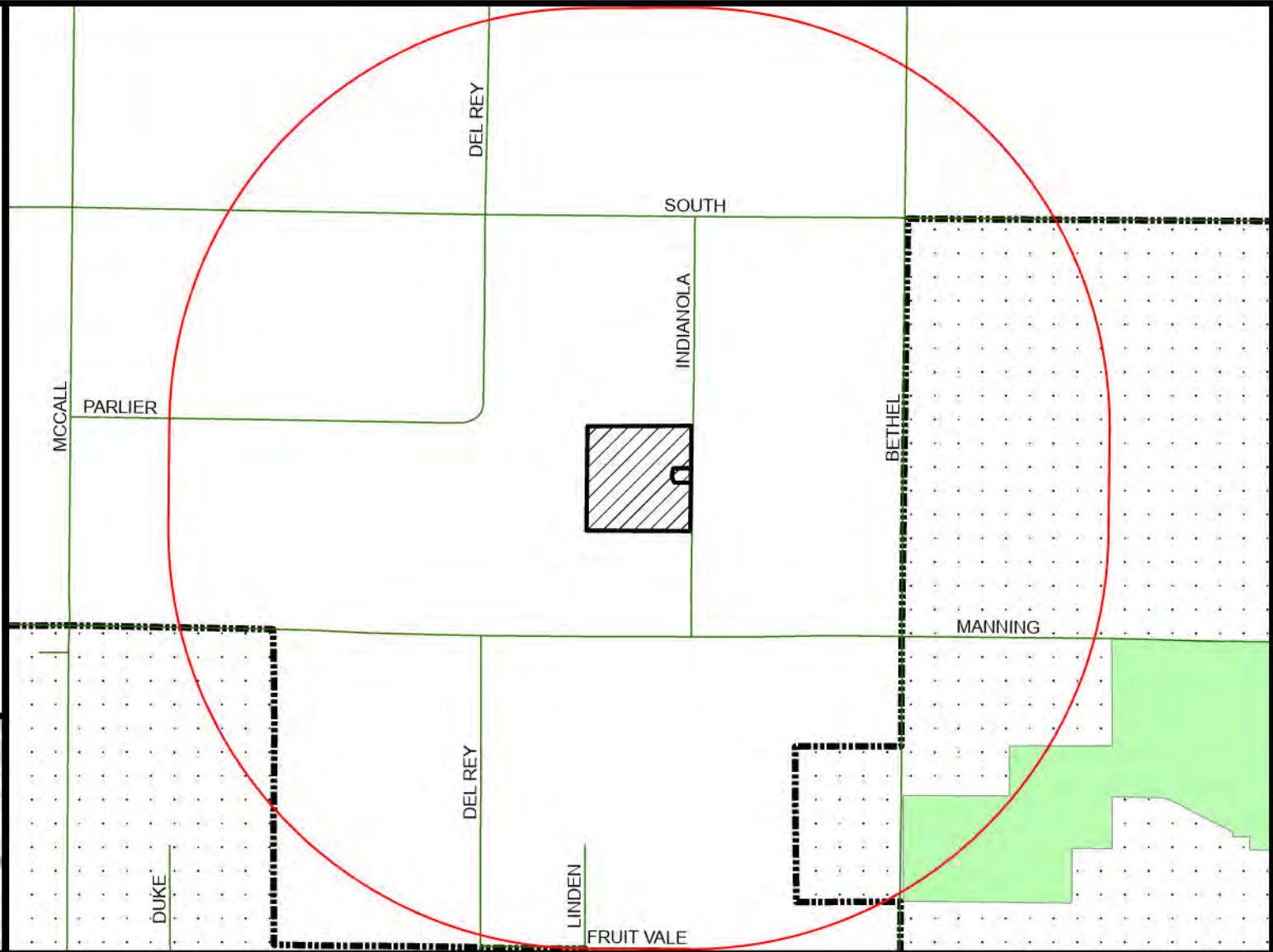
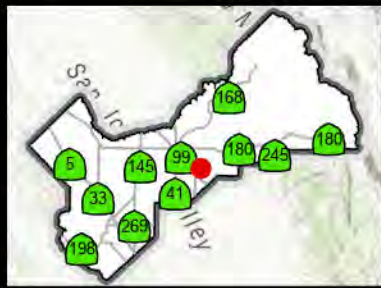


EXHIBIT 5



Proximity Map

VA4154

2023

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division
 Person Prepared by : jocervantes
 On Date : 8/7/2023

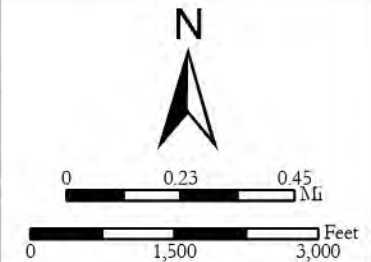
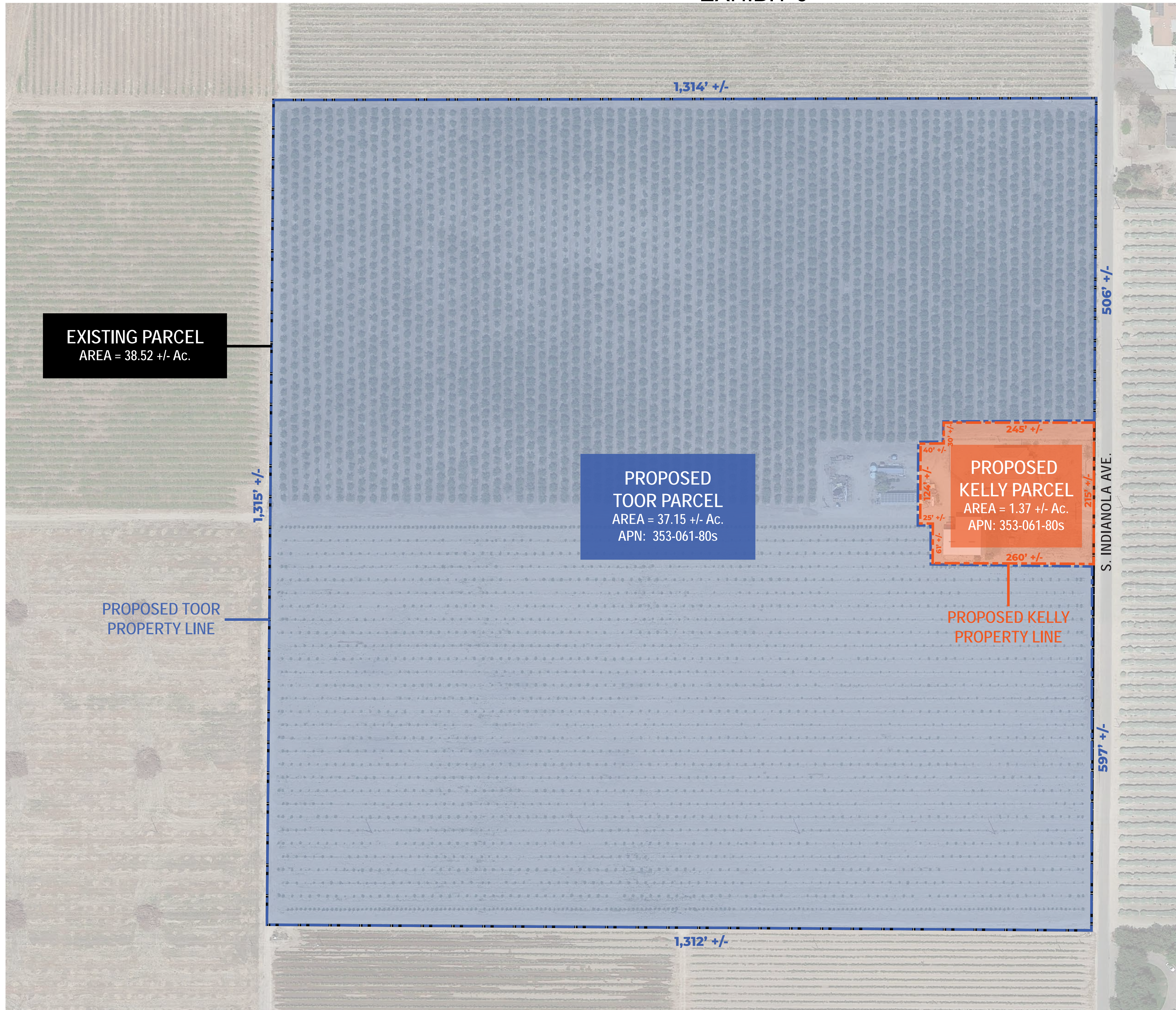


EXHIBIT 6



EXISTING PARCEL
AREA = 38.52 +/- Ac.

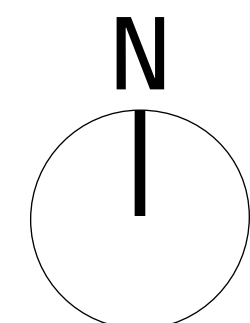
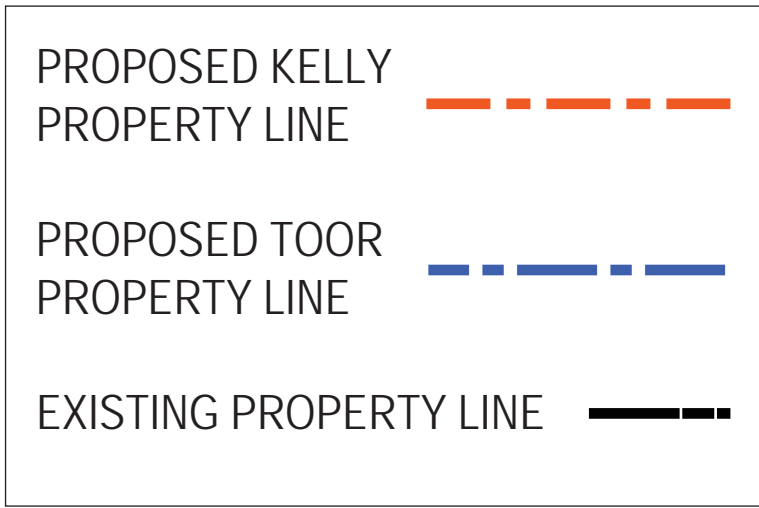
PROPOSED TOOR PARCEL
AREA = 37.15 +/- Ac.
APN: 353-061-80s

PROPOSED KELLY PARCEL
AREA = 1.37 +/- Ac.
APN: 353-061-80s

PROPOSED TOOR
PROPERTY LINE

PROPOSED KELLY
PROPERTY LINE

APN: 353-061-80s
Address: 8603 S. Indianola Ave. Selma, CA 93662
Site Area: 38.52 ± Ac. Existing Parcel
Proposed Parcel Area: 1.37 ± Ac.
Existing Use: Residential/Agriculture
General Plan Designation: Agriculture
Zoning: AE-20 (Exclusive Agricultural, 20 acre min.)
Source of Water: Existing Well
Source of Sewer: Existing Septic
Source of Gas: Propane Tank
Sources of Electricity: PG&E
Solid Waste: Waste Management Company
Storm Drainage:
Site Owner: James & Yvonne Kelly
Applicant: James & Yvonne Kelly
Applicant Representative:
Dirk Poeschel
Land Development Services, Inc.
923 Van Ness Avenue, Suite 200
Fresno, CA 93721
(559) 445-0374



SCALE: 1" = 20'

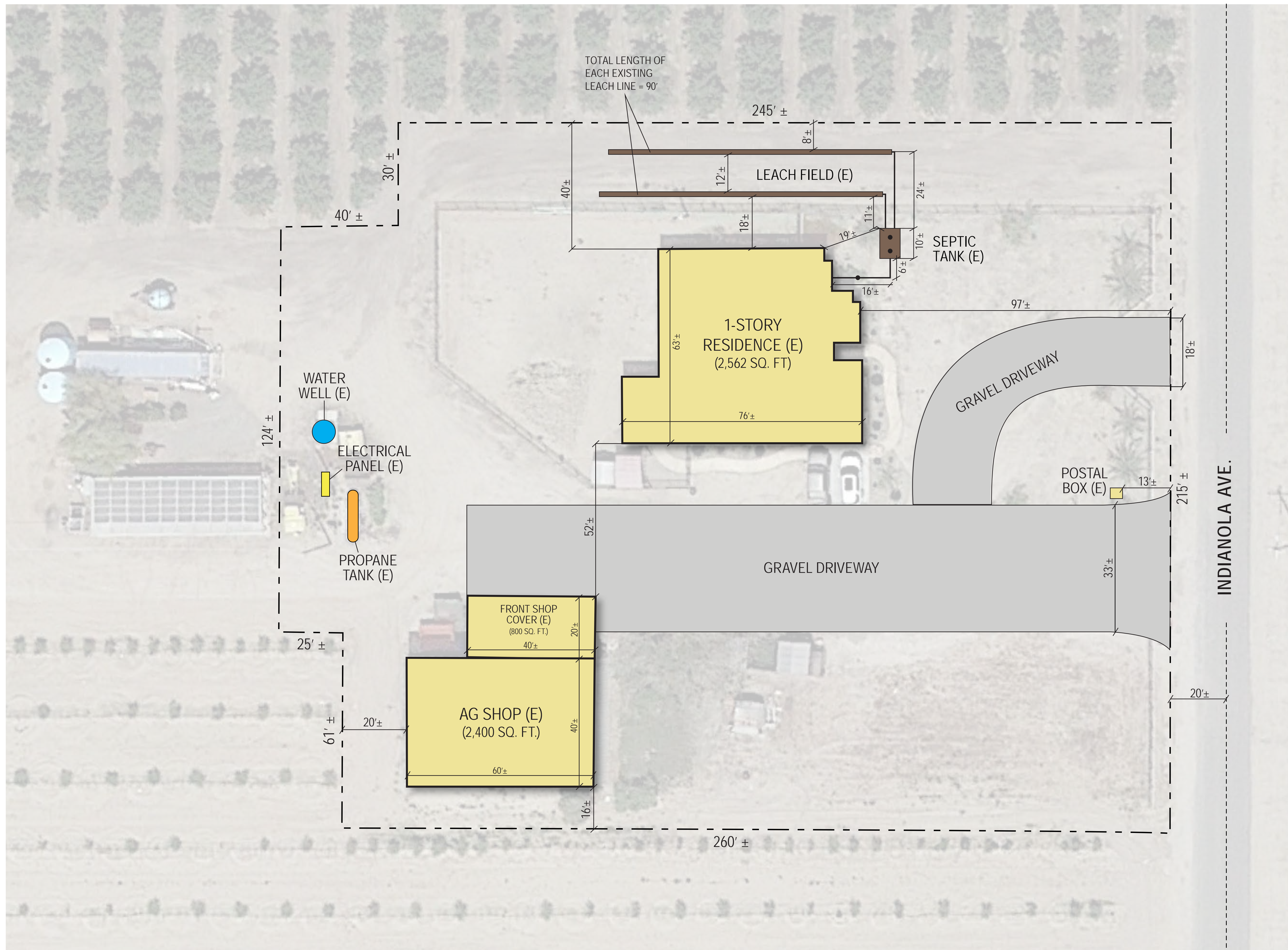
NOTE:
THIS DRAWING IS FOR ILLUSTRATION PURPOSES ONLY AND IS NOT TO BE USED AS A BUILDING PLAN OR FOR ANY OTHER PURPOSE. DIMENSIONS ARE DERIVED FROM RECORD DATA BASE. ACCURACY IS ASSUMED TO BE CORRECT BUT IS NEITHER EXPRESSED NOR IMPLIED. THIS DRAWING SHALL REMAIN THE PROPERTY OF DIRK POESCHEL LAND DEVELOPMENT SERVICES, INC. AND SHALL NOT BE USED OR DUPLICATED FOR ANY REASON, WITHOUT WRITTEN PERMISSION.

DIRK POESCHEL
Land Development Services, Inc.
923 Van Ness Avenue #200, Fresno, California 93721
559 / 445-0374 Fax: 559 / 445-0551

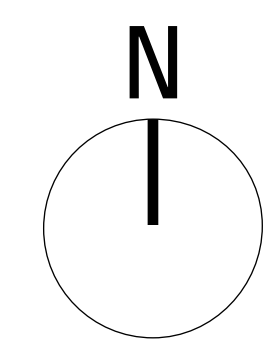
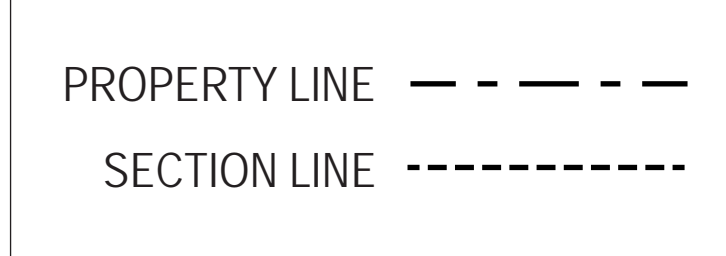
VARIANCE - SITE PLAN
James & Yvonne Kelly
8603 S. Indianola Ave.
Selma, CA 93662

DRAWN BY: M. Spera
PROJECT NO: 23-10
DRAWN: 7/12/2023
REVISED: 8/3/2023
REVISED:
REVISED:

SHEET NO.:
2
OF 2 SHEETS



APN: 353-061-80s
 Address: 8603 S. Indianola Ave. Selma, CA 93662
 Site Area: 38.52 ± Ac. Existing Parcel
 Proposed Parcel Area: 1.37 ± Ac.
 Existing Use: Residential/Agriculture
 General Plan Designation: Agriculture
 Zoning: AE-20 (Exclusive Agricultural, 20 acre min.)
 Source of Water: Existing Well
 Source of Sewer: Existing Septic
 Source of Gas: Propane Tank
 Sources of Electricity: PG&E
 Solid Waste: Waste Management Company
 Storm Drainage:
 Site Owner: James & Yvonne Kelly
 Applicant: James & Yvonne Kelly
 Applicant Representative:
 Dirk Poeschel
 Land Development Services, Inc.
 923 Van Ness Avenue, Suite 200
 Fresno, CA 93721
 (559) 445-0374



SCALE: 1" = 20'

NOTE:
 THIS DRAWING IS FOR ILLUSTRATION PURPOSES ONLY AND IS NOT TO BE USED AS A BUILDING PLAN OR FOR ANY OTHER PURPOSE. DIMENSIONS ARE DERIVED FROM RECORD DATA BASE. ACCURACY IS ASSUMED TO BE CORRECT BUT IS NEITHER EXPRESSED NOR IMPLIED. THIS DRAWING SHALL REMAIN THE PROPERTY OF DIRK POESCHEL LAND DEVELOPMENT SERVICES, INC. AND SHALL NOT BE USED OR DUPLICATED FOR ANY REASON, WITHOUT WRITTEN PERMISSION.



DIRK POESCHEL
 Land Development Services, Inc.
 923 Van Ness Avenue #200, Fresno, California 93721
 559 / 445-0374 Fax: 559 / 445-0551

VARIANCE - SITE PLAN
 James & Yvonne Kelly
 8603 S. Indianola Ave.
 Selma, CA 93662

DRAWN BY:	M. Spera
PROJECT NO:	23-10
DRAWN:	3/24/2023
REVISED:	4/11/2023
REVISED:	9/15/2023
REVISED:	
SHEET NO.:	1
OF 1 SHEETS	

VARIANCE FINDINGS

James & Yvonne Kelly

June 15, 2023

Owner:

Mr. James & Mrs. Yvonne Kelly
8603 S. Indianola Ave.
Selma, CA 93662

Applicant:

Mr. James & Mrs. Yvonne Kelly
8603 S. Indianola Ave.
Selma, CA 93662

Mr. Gurkirat S. Toor
6880 E. Carmalee Lane
Fresno, CA 93727

Representative:

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

Property Location:

The project site is located on the west side of S. Indianola Ave., between E. South and Manning Avenues. 8603 S. Indianola Ave, Selma CA 93662

APN:

353-061-80s

Existing General Plan Land Use Designation:

Exclusive Agriculture

Existing Zone Designation:

AE-20 (Fresno County land use designation)

Request:

Grant a variance to allow the creation of a 1.37 +/- acre parcel from an existing 38.52 +/- acre parcel within the AE-20 Zone District. Mapping procedure to follow.

Background:

The applicants, Mr. and Mrs. Kelly, purchased the 38.52 +/- acre parcel with the existing almond orchard in 2004. In 2016, the applicant constructed a 2,562 sq. ft. single-family residence, 3,200 sq. ft. ag shop and front shop cover, and related improvements. Currently, the applicants occupy the existing single-family residence.

In 2019, the applicants decided to sell 37.15 +/- acres of agricultural land, with the intention of keeping the existing homesite with related improvements under their ownership. At the time of the sale, the applicants were advised by their realtor that by creating a *life estate agreement* for the 1.37 +/- acre parcel with existing home would facilitate the creation of a parcel at a later date. The applicants continued as advised and proceeded to record the *life estate agreement* which assigned APN 353-061-80s to the 1.37 +/- acres. For reference, see Attachment “B” - Life Estate Agreement.

In January 2023, the applicants submitted a Pre-Application Review to receive comments on how to create a legal parcel under their ownership, at which time the applicants were informed that a Variance was required for their request. Pre-Application Review No. 23-000047 for the proposed Variance was filed with Fresno County.

Finding 1:

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

The applicants propose to create a 1.37 +/- acre parcel which will encompass the existing 2,562 sq. ft. home with accessory structures and related improvements. The remaining 37.15 +/- acres will be owned and operated by the new property owner, Mr. Gurkirat S. Toor, who is the co-applicant to this request. Mr. Toor will continue the agricultural production of almonds on the site.

As previously mentioned, the 1.37 +/- acre homesite and accessory structures exist. For the reasons stated above, the property has *exceptional and extraordinary circumstances* that support the proposed 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.

The applicants have the right to optimize and retain the value of the existing home. As previously mentioned, the applicants were wrongfully informed by their realtor of the process to create the 1.37 +/- acre homesite, which has led them to this variance request. The applicants have vesting interest in the aforementioned since the 2,562 sq. ft. residence with related improvements exists.

Per Section 816 of the Fresno County zoning ordinance, one residence may be constructed upon a parcel of land in the AE-20 zone district. As previously mentioned, a single-family residence is existing on a 38.52 +/- acre parcel. The applicants are voluntarily prohibiting the construction of a second residence on the proposed homesite. This voluntary prohibition of a second residence will ensure no other residences are constructed on the subject site. Also, said condition creates no more homesite than allowed by law.

Finding 3:

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

No adverse impacts to adjacent properties will occur as a result of the proposed variance. Granting the proposed variance to create a 1.37 +/- acre homesite from an existing 38.52 +/- acre parcel will have no adverse impacts on the public or surrounding property owners. No new improvements will be made to accommodate the lot creation. The existing residence and related improvements are served by an adequate domestic well and leach field.

Granting the proposed Variance will not be detrimental to the public welfare of surrounding properties for the following reasons:

- a) The proposed homesite, on which a home exists, would not conflict with the continued agricultural operation on the remaining 37.15 +/- agricultural acreage.
- b) The applicant also proposes to voluntarily prohibit the creation of a second residence (granny house) voluntarily on the proposed 1.37 +/- acre homesite.
- c) No new well, septic tank, roads or other improvements are necessary as the proposed homesite exists.
- d) The voluntary condition will eliminate any possibility that the proposal will result in the removal of adjacent land from agricultural use or create other adverse impacts on agriculture.

Finding 4:

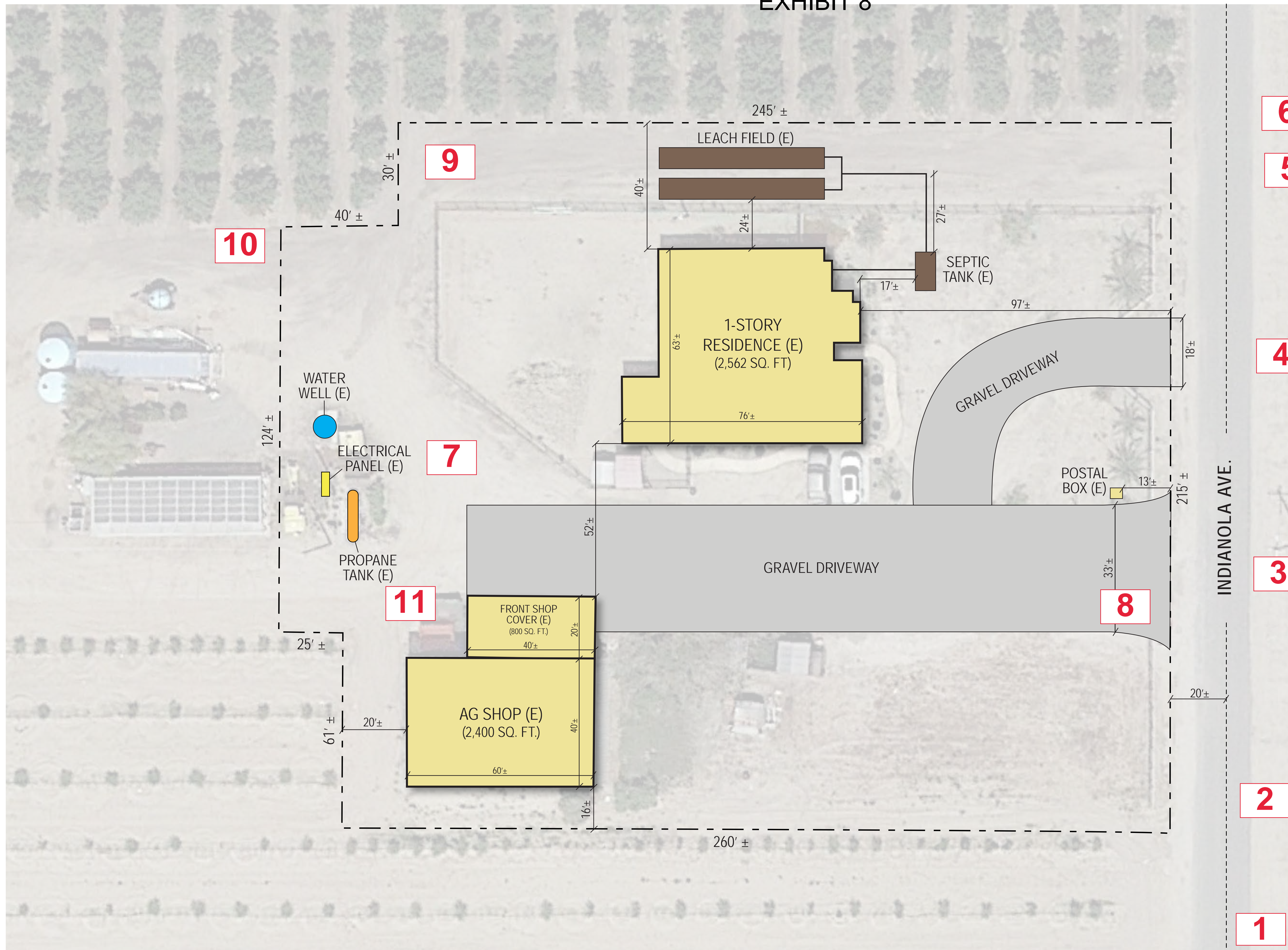
The granting of such a Variance will not be contrary to the objective of the General Plan.

The granting of the proposed variance will not contradict the objective of the Fresno County General Plan to protect agricultural land. The granting of the proposed variance does not require removing any of the site's almond trees as the home already exists. Therefore, the creation of the 1.37 +/- acre homesite will result in no net loss to agriculture.

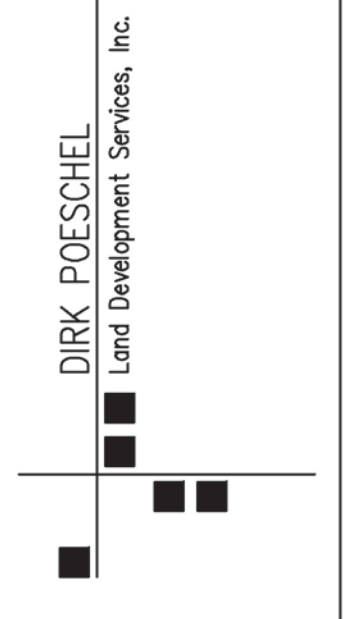
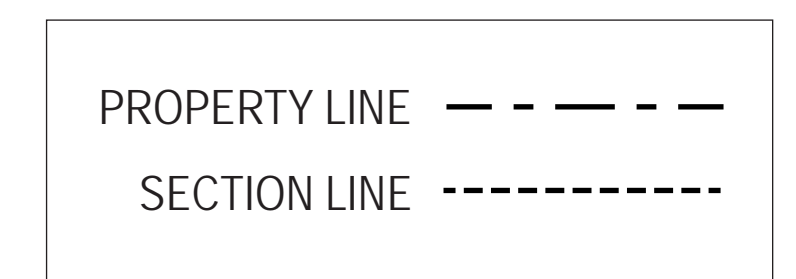
The remaining 37.15 +/- acre parcel is a viable farming unit, and its productivity is not diminished by the creation of the proposed homesite.

m:\current clients\kelly, yvonne - life estate 23-10\correspondence\kelly - variance findings.docx

EXHIBIT 8



APN: 353-061-80s
 Address: 8603 S. Indianola Ave. Selma, CA 93662
 Site Area: 38.52 ± Ac. Existing Parcel
 Proposed Parcel Area: 1.37 ± Ac.
 Existing Use: Residential/Agriculture
 General Plan Designation: Agriculture
 Zoning: AE-20 (Exclusive Agricultural, 20 acre min.)
 Source of Water: Existing Well
 Source of Sewer: Existing Septic
 Source of Gas: Propane Tank
 Sources of Electricity: PG&E
 Solid Waste: Waste Management Company
 Storm Drainage:
 Site Owner: James & Yvonne Kelly
 Applicant: James & Yvonne Kelly
 Applicant Representative:
 Dirk Poeschel
 Land Development Services, Inc.
 923 Van Ness Avenue #200, Fresno, California 93721
 Fresno, CA 93721
 (559) 445-0374

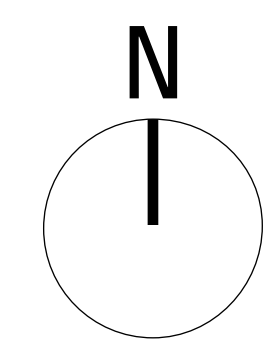


DIRK POESCHEL
 Land Development Services, Inc.
 923 Van Ness Avenue #200, Fresno, California 93721
 559 / 445-0374 Fax: 559 / 445-0551

VARIANCE - SITE PLAN
 James & Yvonne Kelly
 8603 S. Indianola Ave.
 Selma, CA 93662

DRAWN BY:	M. Spera
PROJECT NO:	23-10
DRAWN:	3/24/2023
REVISED:	4/11/2023
REVISED:	
REVISED:	
SHEET NO.:	1
OF	1 SHEETS

PHOTO MAP



SCALE: 1" = 20'

NOTE:
 THIS DRAWING IS FOR ILLUSTRATION PURPOSES ONLY AND IS NOT TO BE USED AS A BUILDING PLAN OR FOR ANY OTHER PURPOSE. DIMENSIONS ARE DERIVED FROM RECORD DATA BASE. ACCURACY IS ASSUMED TO BE CORRECT BUT IS NEITHER EXPRESSED NOR IMPLIED. THIS DRAWING SHALL REMAIN THE PROPERTY OF DIRK POESCHEL LAND DEVELOPMENT SERVICES, INC. AND SHALL NOT BE USED OR DUPLICATED FOR ANY REASON, WITHOUT WRITTEN PERMISSION.









7



8





10



11