



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 7 December 14, 2017

SUBJECT: Variance Application No. 4034

Allow a 4-foot side-yard setback (10 feet required) for a previously constructed residence in the R-1-B(c) (Single-Family Residential, 12,500 square-foot minimum parcel size) Zone District.

LOCATION: The project site is located on the north end of Rose of Sharon Lane (cul-de-sac), north of its intersection with Brighton Crest Road, within the Brighton Crest Development (21875 Rose of Sharon Lane) (SUP. DIST. 5) (APN 300-470-05S).

**OWNER/
APPLICANT:** Hardip Batth

STAFF CONTACT: Marianne Mollring, Senior Planner
(559) 600-4569

Chris Motta, Principal Planner
(559) 600-4227

RECOMMENDATION:

- Approve Variance No. 4034 with recommended Findings and Conditions; 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. Variance Map
6. Site Plan
7. Applicant's Submitted Findings

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Low-Density Residential within the Sierra North Regional Plan (Brighten Crest Development)	No change
Zoning	R-1-B(c) (Single-Family Residential, 12,500 square-foot minimum parcel size) Zone District	No change
Parcel Size	0.39 Acres	No change
Project Site	APN 300-470-05S (Lot No. 35 of Tract No. 4048)	N/A
Structural Improvements	A single-family residence	No change
Nearest Residence	45 feet south of the subject residence	No change
Surrounding Development	North/East: Residential South: Residential West: Golf Course	No change

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

ENVIRONMENTAL ANALYSIS:

It has been determined pursuant to Section 15305(a) of the California Environmental Quality Act (CEQA) guidelines that the proposed project will not have a significant effect on the environment and is not subject to CEQA.

PUBLIC NOTICE:

Notices were sent to 36 property owners within 600 feet of the subject parcel, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

PROCEDURAL CONSIDERATIONS:

A Variance (VA) may be approved only if four Findings specified in the Fresno County Zoning Ordinance, Section 873-F are made by the Planning Commission. The decision of the Planning Commission on a Variance Application is final, unless appealed to the Board of Supervisors within 15 days of the Commission’s action.

BACKGROUND INFORMATION:

This Variance request proposes to allow a 4-foot side-yard setback, where 10 feet is required per County Zoning Ordinance Section 824.5-E.3, for an existing residence. The residence was initially constructed within the side-yard setback and the issue was discovered by the Applicant after purchasing the residence from the previous owner.

The subject parcel was originally created as Lot No. 35, of Tract No. 4048 on April 6, 1990. In addition to the subject application, there have been two other variance applications relating to setbacks near the subject property. Of those two, both were approved by the Planning Commission as shown in the following table.

Although there have been previous variance requests in the area of the subject property, each variance request is considered on its own merit, based on site conditions and circumstances.

Application/Request	Date of Action	Staff Recommendation	Final Action
VA No. 3373: Allow a four-foot, eight inch rear-yard setback to accommodate existing trees and a single-family residence.	5/21/1992	Approval	Approved by Planning Commission
VA No. 3456: Allow a 50-foot front-yard setback due to steep terrain.	7/28/1994	Approval	Approved by Planning Commission

DISCUSSION:

Findings 1 and 2:

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

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

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Setbacks	Side (west) 10 feet	Side (west) 4 feet (Existing)	No
	Side (east) 10 feet	No change	Yes
	Rear (north) 20 feet	No change	Yes
	Front (south) 25 feet	No change	Yes
Parking	One parking space for each residence	No change	Yes
Lot Coverage	35 percent	No change	Yes
Space Between Buildings	Six feet minimum between main and accessory buildings	No change	Yes
Wall Requirements	No requirement	No requirement	N/A
Septic Replacement Area	100 percent	No change	Yes
Water Well Separation	Septic tank: 50 feet; Disposal field: 100 feet; Seepage pit: 150 feet	No change	Yes

Reviewing Agency/Department Comments Regarding Site Adequacy:

Fresno County Department of Public Health, Environmental Health Division: No comments.

Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: No comments.

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

Analysis:

In support of Findings 1 and 2, the Applicant states that the residence was built within the setback in 1992, and they are the third owner. A structural modification to the residence or a property line adjustment with the adjacent owner would be required to rectify the setback issue. Additionally, there is an easement adjacent to the property line for the enjoyment of the common area.

Staff analysis of the proposal revealed that this is a unique situation where the residence was initially constructed within the setback. Staff recognizes that the initial construction of the residence, within the side-yard setback, does create a circumstance unique to the subject parcel. With the subject parcel abutting a golf course and adjacent to a public easement, plans submitted to and reviewed by the County, may have not clarified the property line in proximity to the easement. With regard to Finding 2, the approval of a variance request is intended to correct the deficit of a

property right of the Applicant. The Applicant proposes no change to the property or residence, but only to correct an existing condition, which could affect the future sale of the property. The property right at issue is the Applicant's inability to rectify the side-yard setback without modifications to the existing residence or a property line adjustment, within an existing easement. Staff recognizes that continued full use of the existing residence could be considered a substantial property right. Allowing the residence to remain unmodified would correct this deficit of a property right.

A consideration in addressing Findings 1 and 2 is whether there are alternatives available that would avoid the need for the Variance. One alternative would be to require a property line adjustment to provide the full side-yard setback of 10 feet. A property line adjustment would encroach into an existing common community area (Brighton Crest). Considering that the adjacent parcel is common open space, there is no impact on neighboring parcels.

Based on the above analysis, and a lack of reasonable alternatives, staff believes that there are exceptional circumstances and conditions applicable to the subject property that do not generally apply to other properties in the vicinity. Staff also concurs that a substantial property right is at issue (the full continued use of the existing residential structure) that would require a variance to be preserved.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 1 and 2 can be made.

Reviewing Agency/Department Comments:

No other comments expressed by reviewing Agencies or Departments.

Finding 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.

Surrounding Parcels				
	Size:	Use:	Zoning:	Nearest Residence:
North/East	0.46 acres	Vacant	R-1-B(c)	None
South	0.23 acres	Single-family residence	R-1-B(c)	45 feet
West	180.60 acres	Golf Course	R-1-B(c)	100 feet

Reviewing Agency/Department Comments:

Fresno County Fire Protection District: No comments.

Building and Safety Section of the Fresno County Department of Public Works and Planning: No comments.

Development Engineering Section of the Fresno County Department of Public Works and Planning: Rose of Sharon Lane is a private road (cul-de-sac) and is not County-maintained. According to FEMA, FIRM Panel 1035H, the parcel is not subject to flooding from the 100-year storm.

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

Analysis:

In support of Finding 3, the Applicant's submitted Findings state that the requested Variance will not have an adverse effect on surrounding properties, as the home abuts an existing a golf course to the west.

In analyzing this proposal, staff considered the intent of restrictions to yard setbacks. A primary purpose of the setback standard is to protect the aesthetic character of an area by providing an offset of structures from the adjacent properties. In this case, the home was built as a model or "showcase" residence for the development and has not been structurally modified. There is an easement and golf course adjacent to the side-yard setback. The location next to an easement and the lack of residences to the rear or side-yard, would further ensure no impacts.

Staff notes that this residence was constructed to showcase the aesthetic character of the Brighton Crest community.

Based on the above information, staff believes the proposal will not have an adverse effect upon surrounding properties.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 3 can be made.

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

Relevant Policies:	Consistency/Considerations:
General Plan Policy LU-F-14a.2: Front-yard setbacks should be staggered with varied roofline treatment and housing. The street pattern should utilize curving streets, cul-de-sacs, and parking bays to improve the appearance of the neighborhood.	No reviewing agencies expressed concerns regarding side-yard setbacks. The location of the existing residence is on a cul-de-sac and its location on the subject parcel is such that it is staggered.

Reviewing Agency Comments:

Policy Planning Section of the Fresno County Department of Public Works and Planning: No comments.

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

Analysis:

In support of Finding 4, the Applicant's submitted Findings state that the proposed Variance would not be contrary to the Sierra North Regional Plan. General Plan Policy LU-F-14a.2 addresses the staggering of front-yard setbacks and the varying of roofline treatments. The existing residence is consistent with this policy with respect to its placement at an angle to the property frontage and on a cul-de-sac. The residence is within character of the Brighton Crest community. The subject property is currently in compliance with the standards of the R-1-B(c) Zone District. Accordingly, approval of this Variance request will not be in conflict with the goals of the Sierra North Regional Plan or the County General Plan.

Based on these factors, staff believes the proposal is consistent with the General Plan and is therefore able to make Finding 4.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 4 can be made.

PUBLIC COMMENT:

None.

CONCLUSION:

Based on the factors cited in the analysis, staff believes the required Findings for granting the Variance can be made. Staff therefore recommends approval of Variance No. 4034 with the Conditions of Approval listed in Exhibit 1.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Approval Action)

- Move to determine the required Findings can be made and move to approve Variance No. 4034, subject to the Conditions of Approval listed in Exhibit 1; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (Denial Action)

- Move to determine that the required Findings cannot be made (state basis for not making the Findings) and move to deny Variance No. 4034; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Recommended Conditions of Approval and Project Notes:

See attached Exhibit 1.

**Variance Application No. 4034
Conditions of Approval and Project Notes**

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

Conditions of Approval reference recommended Conditions for the project.

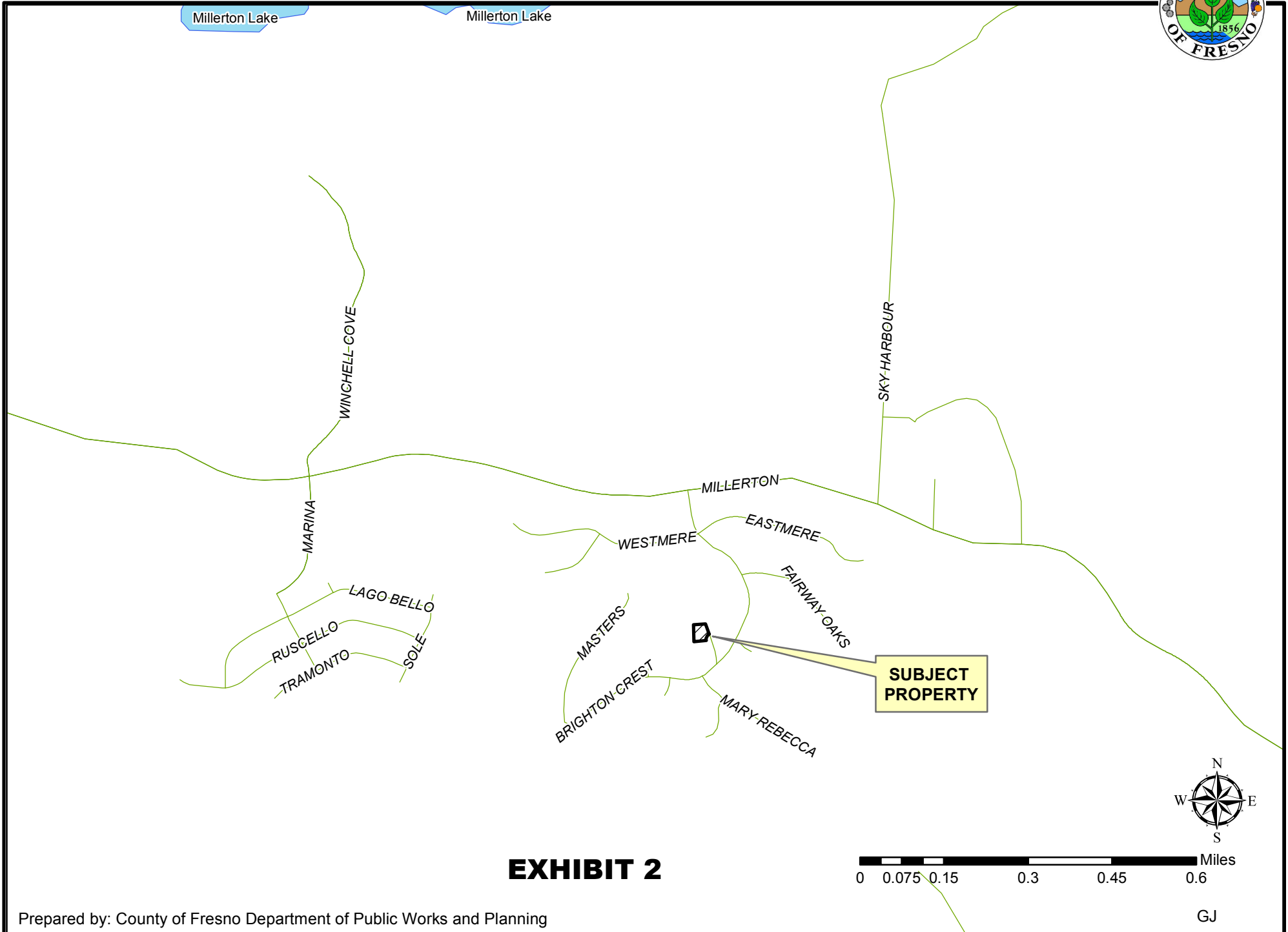
Notes	
The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.	
1.	Rose of Sharon Lane is a private road and is not County maintained
2.	According to FEMA, FIRM Panel 1035H, the parcel is not subject to flooding.
3.	The subject property receives water and sewer service from County Service Area No. 34, Zone "A."

MM:ksn

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EXHIBIT 1

LOCATION MAP



EXISTING ZONING MAP

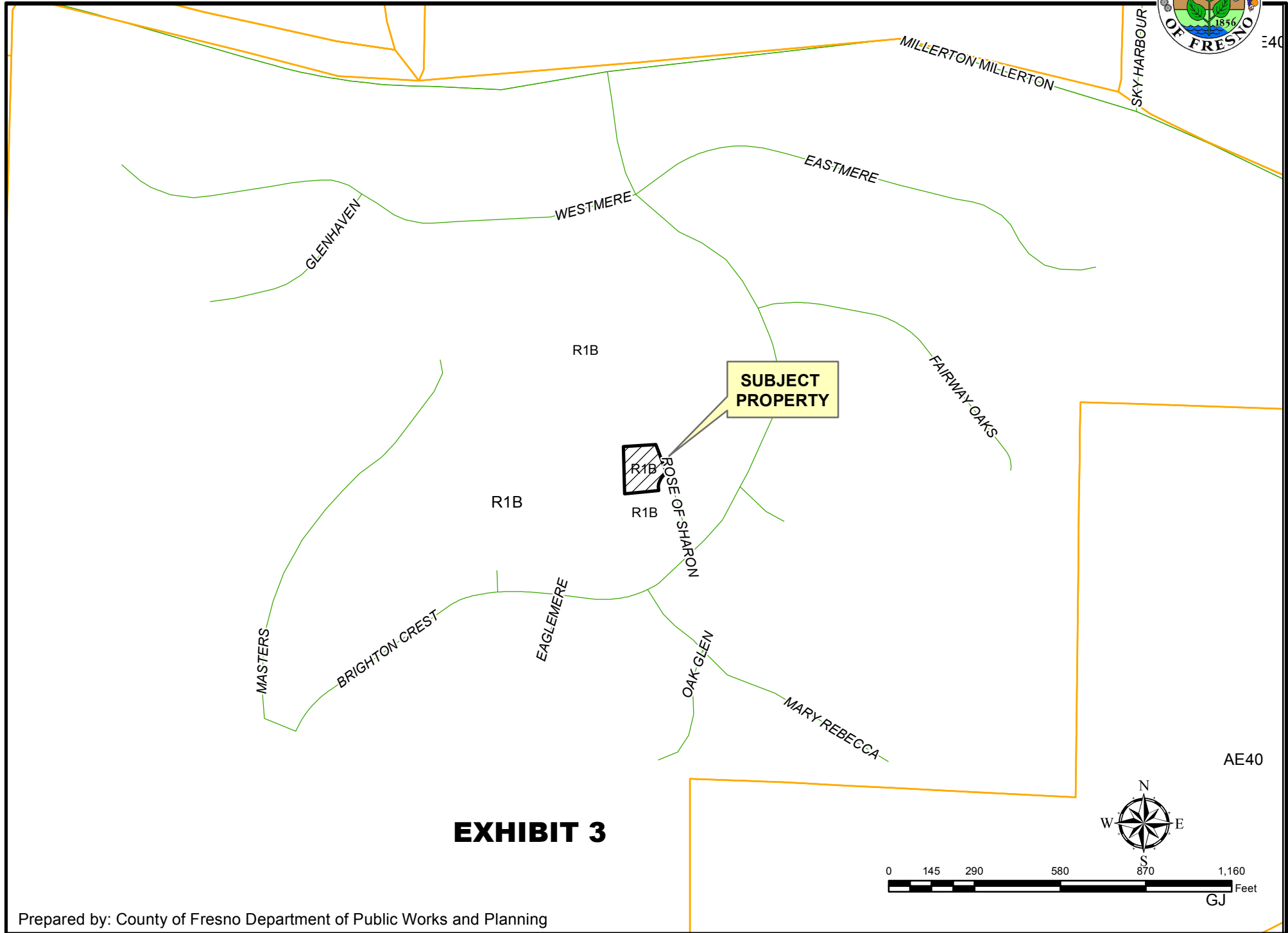
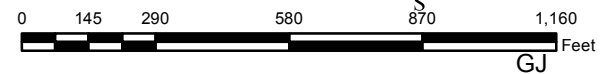
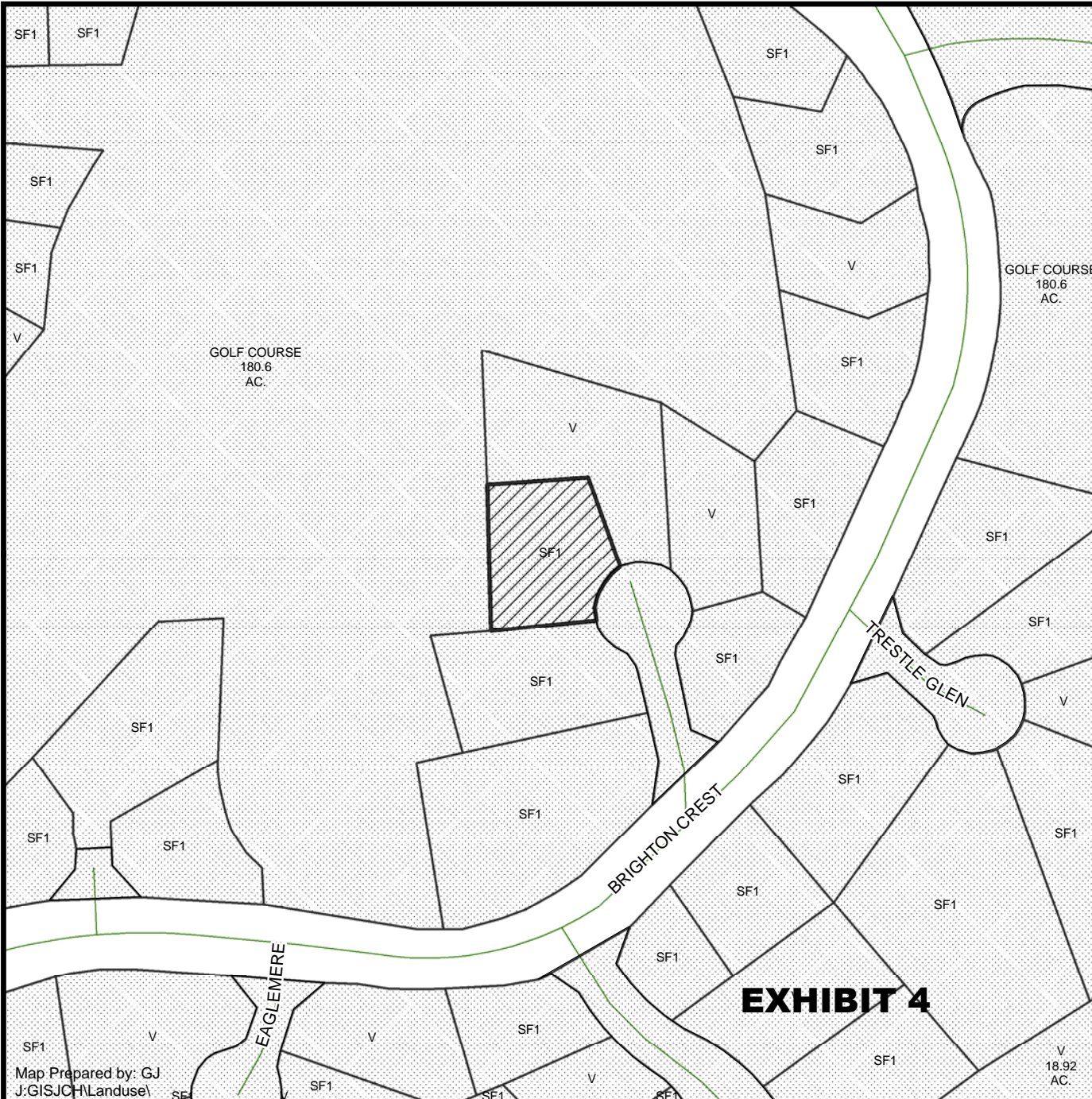


EXHIBIT 3



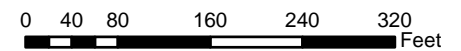
EXISTING LAND USE MAP



LEGEND	
V -	VACANT
SF# -	SINGLE FAMILY RESIDENCE

LEGEND:

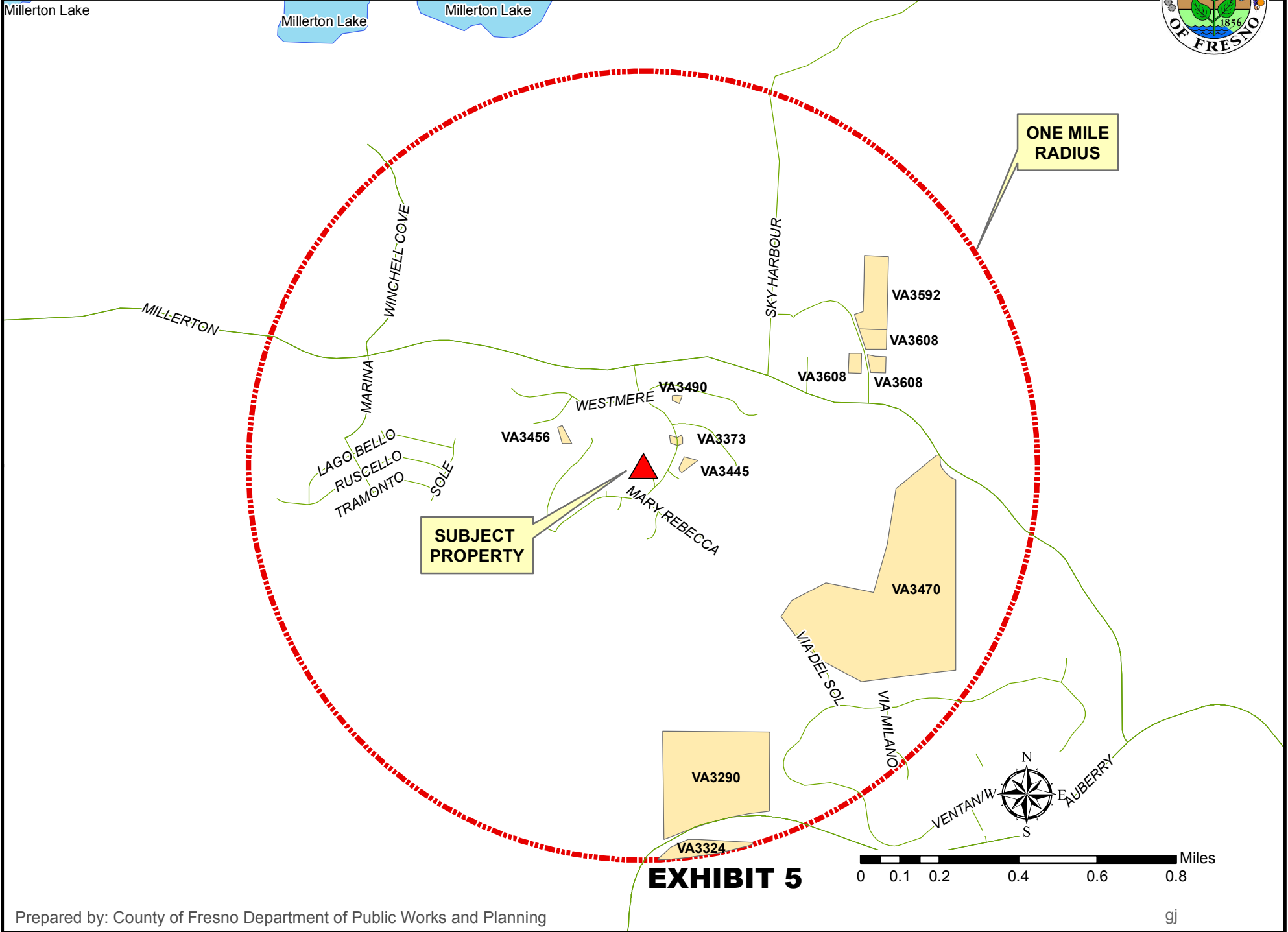
-  Subject Property
-  Ag Contract Land



Department of Public Works and Planning
Development Services Division

EXHIBIT 4

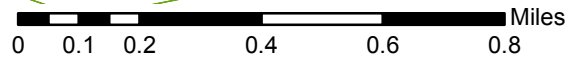
APPROVED VARIANCES WITHIN A ONE MILE RADIUS

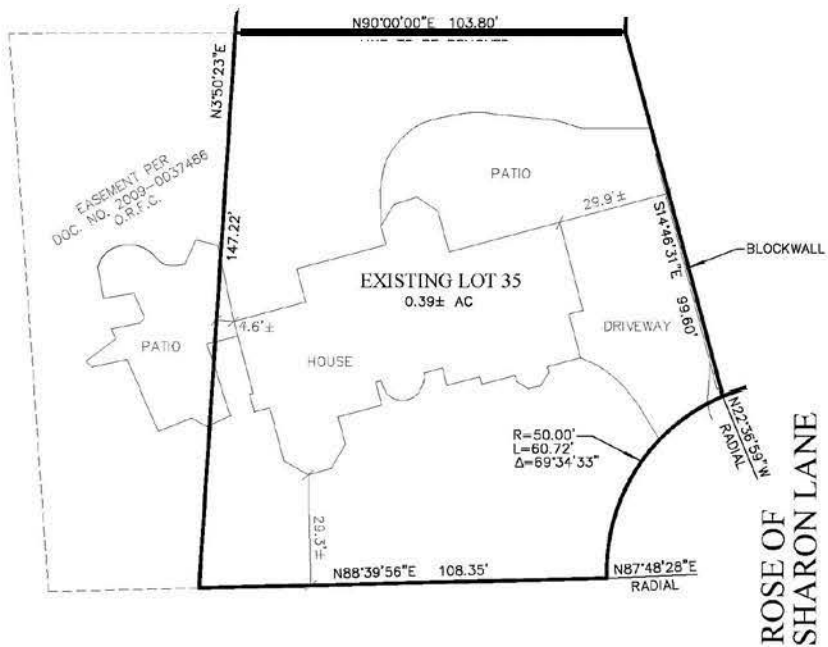


SUBJECT PROPERTY

ONE MILE RADIUS

EXHIBIT 5





 LEGEND
 _____ EXISTING PARCEL LINE

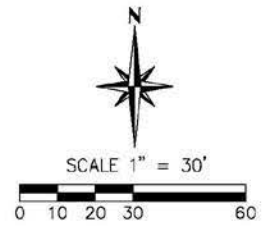


EXHIBIT 6

Batth Home
APN 300-470-05s
August 16th 2017

COUNTY OF FRESNO PLANNING DEPARTMENT VARIANCE APPLICATION
Conditions necessary for the granting of a Variance

This application applies to a side yard asking for a 4.5foot side yard setback where 10 feet is required. We note the flat work portion is on an easement but is not part of this variance and does not involve any structures. This encroachment came to our attention during the process of us buying a vacant adjacent lot. Once we realized the situation, we wanted to correct it and with the advice of Fresno County staff, in short of tearing down the house it would be best to apply for a variance. We would now like to do the right thing by correcting an error that was made decades ago.

This is an existing home, originally built in April 22, 1992. We did not build this home. We are the third owners and this was not discovered in escrow. We were not aware when we purchased the house that there was concrete flat work encroachment. The home meets all other setbacks except the side yard. The side yard is fully landscaped with concrete flat work. This house was one of the first houses built in the Brighton Crest Golf Course community and was presented as the "Showcase" house because upon entering the gate this house is the house one sees first beyond the greens.

This variance is necessary because the home has been in existence for the past 25 years and it would not be feasible to resolve this issue in any other way.

1) Exceptional or Extraordinary Circumstances

I believe this is an exceptional and extraordinary circumstance because the house was built in 1992 and any other options would be limited. Either a structural modification of the existing house would be needed or a property line adjustment with Table Mountain Rancheria would be required. There are no immediate neighbors. On the westside there is a large lot which is the easement of an empty. North of the house, is the golf course and on the eastside of the house is an empty lot which is in escrow to be purchased by myself.

2) Preservation of a Substantial Property Right

If the variance is not approved it would affect the future sale of my house. Having to modify the house to meet these requirements would be a great expense and effect the aesthetics of the house.

Others in the subdivision are able to enjoy their residences without this unpermitted encroachment issues. It would be a piece of mind, and worry free for me knowing that this problem has been rectified in the correct way.

3) Adverse Effect

The home sits on the edge of a cul-de-sac and backs up against the golf course. The west side is a large lot with an easement granted to us with an existing concrete flat work patio. North of the house is the golf course. On the east side of the house is an empty lot which is in escrow to be purchased by myself.

For the reasons above, it does not affect neighbors.

4) General Plan Objectives

The proposed variance would not be contrary to the Sierra North Regional Plan recommendation for low density residential use in this area.