



# County of Fresno

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

## Planning Commission Staff Report Agenda Item No. 5 July 18, 2019

**SUBJECT:** Variance Application No. 4063

Allow a 3.5-foot front-yard setback (minimum 35 feet required) and a 14-foot side-yard setback (minimum 20 feet required) for a 14-foot by 32-foot detached storage building and an 8-foot by 12-foot shed on 1.04-acre parcel in the AE-20(nb) (Exclusive Agricultural, 20-acre minimum parcel size, Neighborhood Beautification Overlay) Zone District.

**LOCATION:** The subject parcel is located approximately 415 feet north of East Floradora Avenue and approximately 650 feet northwest of the intersection of East Floradora Avenue and North Temperance Avenue, approximately 800 feet southwest of the nearest city limits of the City of Fresno, and within the City of Fresno Sphere of Influence (6850 East Floradora Avenue) (SUP. DIST. 5) (APN 310-081-01).

**OWNER/  
APPLICANT:** Ron and Alexis Masson

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

Marianne Mollring, Senior Planner  
(559) 600-4569

**RECOMMENDATION:**

- Deny Variance No. 4063; 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. Approved Variances Map
6. Site Plan
7. Applicant's Findings

**SITE DEVELOPMENT AND OPERATIONAL INFORMATION:**

<b>Criteria</b>	<b>Existing</b>	<b>Proposed</b>
General Plan Designation	Agriculture in the County-Adopted McLane Community Plan	No Change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size, Neighborhood Beautification Overlay) Zone District	No Change
Parcel Size	1.04 acres	No Change
Project Site	Single-family residence	No Change
Structural Improvements	A 3,990 square-foot Single-Family dwelling with attached garage, 1,716 square-foot second dwelling unit, 448 square-foot detached storage building, and a 96 square-foot shed	No Change
Nearest Residence	Single-family residence 30 feet to the east Single-family residence 20 feet to the south	No Change
Surrounding Development	Single-family residences	No Change
Traffic Trips	Residential	No Change
Lighting	Residential	N/A

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

Violation No. 109662 – Fresno County Ordinance Code, Title 15, Section 15.04.080.  
Construction of a storage building without a permit.

**ENVIRONMENTAL ANALYSIS:**

It has been determined pursuant to Section 15305 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 61 property owners within 1,320 feet of the subject parcel, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

**PROCEDURAL CONSIDERATIONS:**

A Variance (VA) may be approved only if four Findings specified in the Fresno County Zoning Ordinance, Section 877-A 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:**

The subject 1.04-acre parcel in its current configuration was created as Lot No. 1 of Parcel Map No. 8082, recorded August 17, 2011, and is improved with a 3,990 square-foot single-family residence with an attached garage, a 1,716 square-foot second residence, an unpermitted 448 square-foot detached storage building, and a 96 square-foot shed. The current Variance Application requests a 3-foot 6-inch front-yard setback where a 35-foot minimum is required and a 14-foot side-yard setback where a minimum of 20 feet is required, for two existing storage structures, one located within the front-yard setback, and the other located within both the front- and side-yard setbacks.

It should be noted that the reduced setback, if granted, would place two existing structures 3 feet 6 inches from the edge of a 20-foot-wide non-exclusive access easement traversing the south end of the property. The 20-foot-wide easement provides access to the subject parcel and the parcel easterly adjacent. The easement intersects another 25-foot-wide non-exclusive easement, which provides access to the subject parcel from East Floradora Avenue to the south. This easement was intended to be 20 feet wide; however, it was mistakenly recorded as being 25 feet wide on Parcel Map No. 8082. Accordingly, a Certificate of Correction for said Parcel Map will be recorded subsequent to action being taken on this Variance.

A Notice of Violation was issued on December 5, 2018 for the construction of a storage building without permits. The unpermitted structure was noted on a site plan for a septic system inspection for a leach line replacement. At that time, it was determined that the unpermitted storage building and a small shed adjacent to the storage building were within the front-yard setback area approximately 3.5 feet from a 20-foot-wide access easement traversing the south side of the property, which created the need for the current Variance request. Upon review of the Applicant's submitted site plan, it was determined that the existing storage building was also

encroaching into the side-yard setback area on the east side of the property. If this Variance request is granted, the two encroaching structures will be allowed to remain within the front-yard and side-yard setback areas, respectively. If the Variance is denied, and a timely appeal is not made, or the denial upheld on appeal, the structures would have to be relocated or removed.

According to available records, there have been 12 variance requests processed within a half-mile radius of the subject property, all of which related to parcel divisions. Two of those approved variances pertained to the subject property itself, and none involved a reduction of required setbacks specifically:

<b>Application/Request</b>	<b>Date of Action</b>	<b>Staff Recommendation</b>	<b>Final Action</b>
VA No. 2786 – Allow the creation of three parcels with a width to depth ratio greater than 4 to 1.	July 28, 1983	Deferred to Planning Commission	Planning Commission Approved
VA No. 2923 – Allow the creation of a five-acre parcel and an eight-acre parcel with a depth to width ratio greater than 4 to 1.	July 11, 1985	Approval	Planning Commission Approved
VA No. 2930 – Allow the creation of two 2.30-acre parcels from a 4.61-acre parcel in the AE-20 Zone District.	July 25, 1985	Approval	Planning Commission Approved
VA No. 2975 – Allow the creation of an 8.40-acre parcel and a 10.00-acre parcel from an 18.40-acre parcel in the AE-20 Zone District.	February 13, 1986	Denial	Planning Commission Approved
VA No. 3098 – Allow the creation of two one-acre parcels, each having a width and road frontage of 157 feet, where a minimum 165 feet is required, from a 2.02-acre parcel in the AE-20 Zone District.	September 24, 1987	Approval	Planning Commission Approved
VA No. 3181 – Allow the creation of two 2.5-acre parcels from a 5-acre parcel in the AE-20 Zone District.	January 5, 1989	Approval	Planning Commission Approved

VA No. 3271 – Allow the creation of three parcels, one of which is 1.67 acres, with a width of 110 feet.	March 28, 1991  May 7, 1991	Deferred to Planning Commission	Planning Commission Denied  Board of Supervisors Approved
VA No. 3486 – Allow the rezone of a 40.25-acre parcel from AE-20 to R-R and allow the division of said parcel into 14 lots with no public road frontage, reduced width, and a greater than 4 to 1 depth to width ratio.  Related applications – AA No.3643, EA No. 4116	April 6, 1995  April 18, 1995	Approval	Planning Commission Approved  Board of Supervisors Approved
VA No. 3767 – Allow the creation of a 2.07-acre parcel and a 3.09-acre parcel from a 5.15-acre parcel in the AE-20 Zone District.	September 11, 2003	Denial	Planning Commission Approved
VA No. 3833 – Allow the creation of two 1.35-acre parcels from a 2.70-acre parcel in the AE-20 Zone District.	February 16, 2006	Denial	Planning Commission Approved
VA No. 3916 – Allow the creation of two 1.04-acre parcels without public road frontage (minimum 165 feet required) from a 2.08-acre parcel in the AE-20 Zone District.	March 10, 2011	Denial	Planning Commission Approved
VA No. 4038 – Allow the creation of a 2.50-acre homesite parcel from an existing 39.10-acre parcel in the AE-20 Zone District.	N/A	N/A	Currently in process

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

**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.*

**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.*

	<b>Current Standard:</b>	<b>Proposed Operation:</b>	<b>Is Standard Met (y/n)</b>
Setbacks	Front: 35 feet when abutting a residential district	Front: 3.5 feet	N
	Side: 20 feet when abutting a residential district	Side (east): 14 feet Side (west): 133 feet	N Y
	Rear: 20 feet when abutting a residential district	Rear: 222.5 feet	Y
Parking	N/A	No change	Y
Lot Coverage	No requirement	N/A	Y
Space Between Buildings	No requirement	N/A	Y
Wall Requirements	N/A	N/A	N
Septic Replacement Area	N/A	N/A	Y
Water Well Separation	N/A	N/A	Y

**Reviewing Agency/Department Comments Regarding Site Adequacy:**

Zoning Section of the Fresno County Department of Public Works and Planning: Plans, permits, and inspections are required for any unpermitted structures.

Fresno Irrigation District (FID): FID does not own, operate, or maintain any facilities located on the subject property.

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

**Analysis:**

In support of Finding 1, the Applicant states that the subject property is located more than 400 feet from the nearest County road right-of-way on East Floradora Avenue, and that the required 35-foot front-yard setback from the access easement is not warranted, as it only provides access to the subject property and one other lot, easterly adjacent to the subject parcel.

With regard to Finding 1, staff acknowledges that there are no potential public road right-of-way issues, as the subject property is located more than 400 feet from East Floradora Avenue and has no direct access to a public road. Therefore, there would be no conflict with future widening of this section of East Floradora Avenue. However, the Zoning Ordinance provides that an easement be treated as a street for purposes of applying setbacks, or required yards. In this case, the setback pertains to an access easement and not a public road; however, the same standards apply and there is no provision in the Zoning Ordinance which allows for a 3.5-foot front-yard setback in the AE-20 Zone District.

There is a provision in the Zoning Ordinance which would allow for a reduced yard setback for Nonconforming Single-Family Residential lots having either a substandard width or depth, allowing qualifying lots to utilize the front- or side-yard requirement of another single-family residential zone district where the substandard width or depth is permitted. In this case, the front-yard requirements would not be reduced substantially enough to allow the encroaching storage building to remain without a Variance.

Staff does not believe that Finding 1 can be made due to the lack of exceptional circumstances.

In support of Finding 2, the Applicant states that other properties in the vicinity have sheds and/or barns or other accessory buildings, and that some of those structures are located on property lines, and therefore have a greater aesthetic impact on neighboring properties than does the encroaching accessory storage building.

Staff does not agree with the Applicant's finding that the Variance is necessary to preserve a property right that other property owners have under like conditions and similar zoning classifications due to the fact that other property owners are limited to the same setback requirements of the zone district.

Therefore, staff does not believe that Finding 2 can be made.

**Recommended Conditions of Approval:**

*None.*

**Conclusion:**

Finding 1 and 2 cannot be made.

*Finding 3:* *The granting of such 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.*

<b>Surrounding Parcels</b>				
	Size:	Use:	Zoning:	Nearest Residence:
North	2.87 acres	Single-Family Residential	AE-20	230 feet
South	3.5 acres	Single-Family Residence	AE-20	20 feet
East	1.04 acres	Single-Family Residential	AE-20	30 feet
West	8.00 acres	Vacant	AE-20	N/A

**Reviewing Agency/Department Comments:**

Fresno County Department of Public Health, Environmental Health Division:

- In an effort to protect groundwater, all abandoned water wells and septic systems on the parcel shall be properly destroyed by an appropriately-licensed contractor (permits required).
- Prior to destruction of agricultural wells, a sample of the upper most fluid in the well column should be checked for lubricating oil. The presence of oil staining around the well may indicate the use of lubricating oil to maintain the well pump. Should lubricating oil be found in the well, the oil should be removed from the well prior to placement of fill material for destruction. The "oily water" removed from the well must be handled in accordance with federal, state and local government requirements. Contact the Water Surveillance Program at (559) 600-3357 for more information.
- It is recommended that the Applicant consider having the existing septic tank pumped, and have the tank and drain field evaluated by an appropriately-licensed contractor if they have 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

Fresno Metropolitan Flood Control District: The property owner is required to grant a drainage covenant for APN 310-081-02 to allow surface runoff to reach future Master Plan facilities located on Temperance Avenue.

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

**Analysis:**

In support of Finding 3, the Applicant states that there would be no detrimental impacts on surrounding properties should the storage structures be allowed to remain within the front-yard setback.

As the access easement in question only serves one other parcel to the east of the subject property, staff concurs that the reduced setbacks for the shed and storage building, if allowed, would not have a detrimental impact on surrounding properties.

Therefore, staff believes that Finding 3 can be made.



**Recommended Conditions of Approval:**

None.

**Conclusion:**

Finding 3 can be made.

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

<b>Relevant Policies:</b>	<b>Consistency/Considerations:</b>
LU-G.1: The County acknowledges that the cities have primary responsibility for planning within their LAFCo-adopted spheres of influence and are responsible for urban development and the provision of urban services within their spheres of influence.	The subject parcel is located within the City of Fresno Sphere of Influence, and the City was notified and offered the opportunity to comment on the project. No response was received from the City of Fresno.

**Reviewing Agency Comments:**

Policy Planning Unit of the Fresno County Department of Public Works and Planning: The subject parcel is designated as Agriculture in the County-adopted McLane Community Plan.

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

**Analysis:**

In support of Finding 4, the Applicant states that the proposed setback reduction does not conflict with the General Plan, and the existence of the storage building is consistent with other properties in the area.

With regard to Finding 4, there are no policies specifically relating to setbacks in agricultural districts in the Fresno County General Plan or the County-Adopted McLane Community Plan.

Staff concurs with the Applicant’s findings that approval of this Variance would not conflict with the General Plan.

Two important considerations to note when evaluating a Variance request are 1) is the situation or conditions creating the need for the Variance self-imposed, and 2) are there alternatives which would avoid the need for the Variance. In this case, the construction of the 448 square-foot storage building was done without permits, and placed along with the 96 square-foot shed inside the setback areas. The alternative to the Variance would be to relocate the structures outside of the front and side yard. In consideration of the Applicant, the structures were existing when the Applicant purchased the property.

Because the subject property is located within the City of Fresno Sphere of Influence, the application was routed to the City for comment. To date, no response was received from the City of Fresno with regard to this application.

Based on these factors, staff believes that Finding 4 can be made.

**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 that required Findings 1 and 2 for granting the Variance cannot be made. Staff therefore recommends denial of Variance No. 4063.

**PLANNING COMMISSION MOTIONS:**

**Recommended Motion** (Denial Action)

- Move to determine that the required Findings cannot be made and move to deny Variance No. 4063; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

**Alternative Motion** (Approval Action)

- Move to determine that the required Findings can be made (state basis for making the Findings) and move to approve Variance No. 4063; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

**Recommended Conditions of Approval and Project Notes:**

See attached Exhibit 1.

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**Variance Application (VA) No. 4063  
Conditions of Approval and Project Notes**

<b>Conditions of Approval</b>	
1.	Development shall be in accordance with the site plan as approved by the Planning Commission.

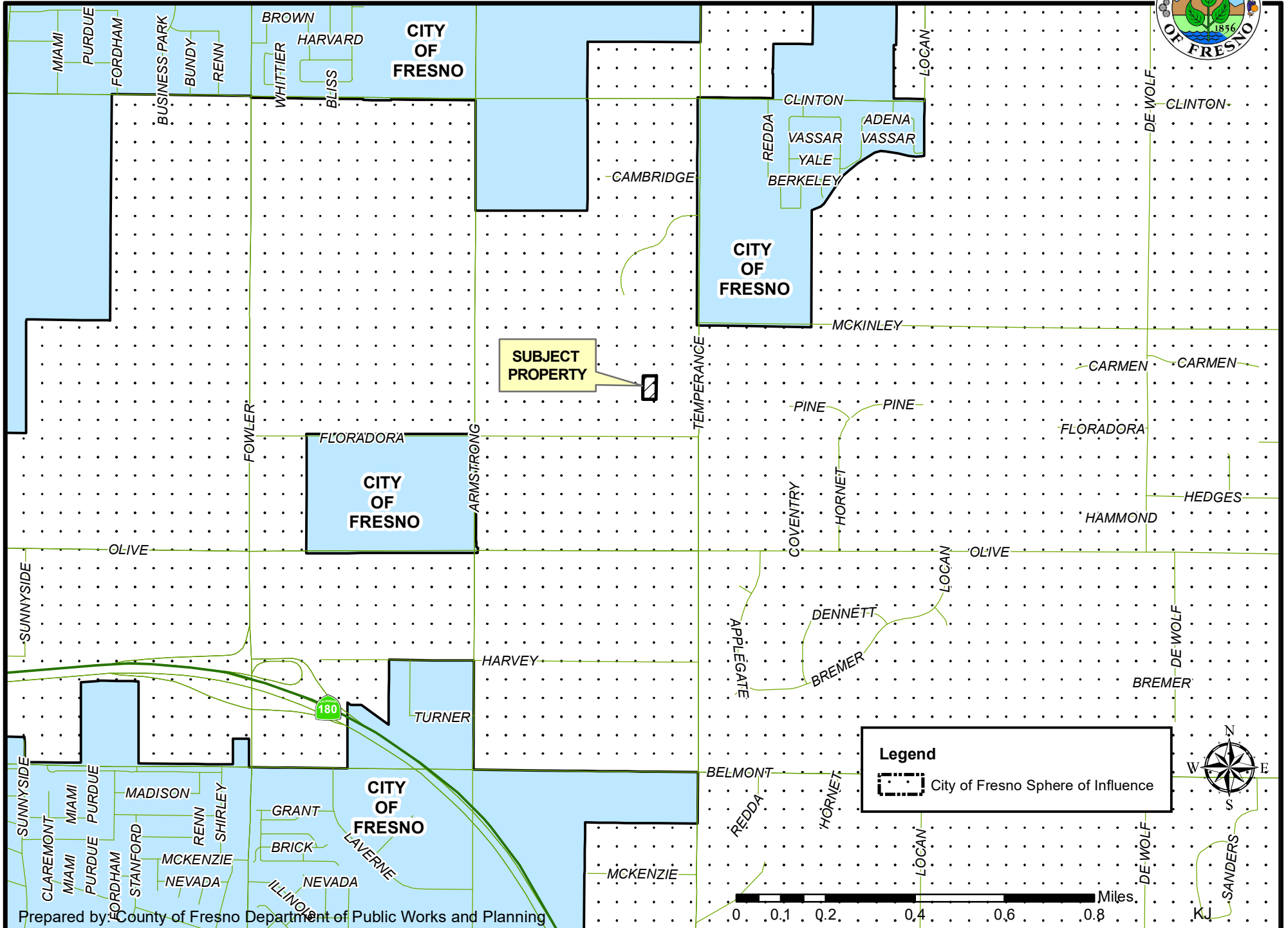
Conditions of Approval reference recommended Conditions for the project.

<b>Notes</b>	
<b>The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.</b>	
1.	In an effort to protect groundwater, all abandoned water wells and septic systems on the parcel shall be properly destroyed by an appropriately-licensed contractor (permits required). Prior to destruction of agricultural wells, a sample of the upper most fluid in the well column should be checked for lubricating oil. The presence of oil staining around the well may indicate the use of lubricating oil to maintain the well pump. Should lubricating oil be found in the well, the oil should be removed from the well prior to placement of fill material for destruction. The "oily water" removed from the well must be handled in accordance with federal, state and local government requirements. Contact the Water Surveillance Program at (559) 600-3357 for more information.
2.	It is recommended that the Applicant consider having the existing septic tank pumped, and have the tank and drain field evaluated by an appropriately-licensed contractor if they have not been serviced and/or maintained within the last five years. The evaluation may indicate the need for possible repairs, additions, or require the proper destruction of the system.
3.	This project is located within the sphere of influence of the City of Fresno. Accordingly, any new construction on the property shall be required to connect to public water and sewer services.
4.	Subsequent to the approval of this Variance, a Certificate of Correction shall be recorded for Parcel Map No. 8082, correcting the width of the non-exclusive easement to 20 feet.
5.	Plans, permits, and inspections are required for any unpermitted structures (Violation No. 109662).
6.	Fresno Metropolitan Flood Control District (FMFCD) requires the owner of the subject parcel to grant a drainage covenant to allow surface runoff to reach future Master Plan facilities located on Temperance Avenue.

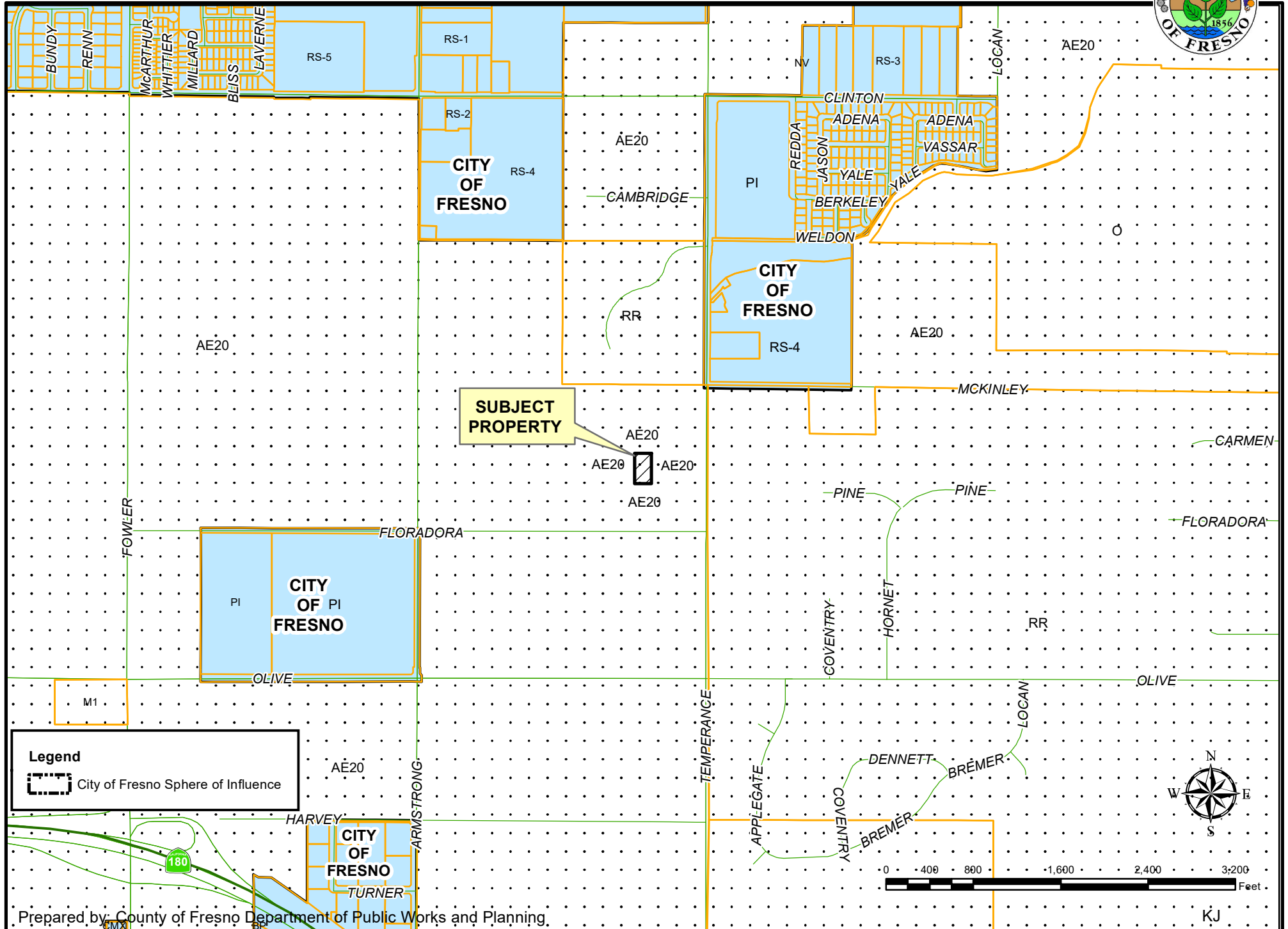
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**EXHIBIT 1**

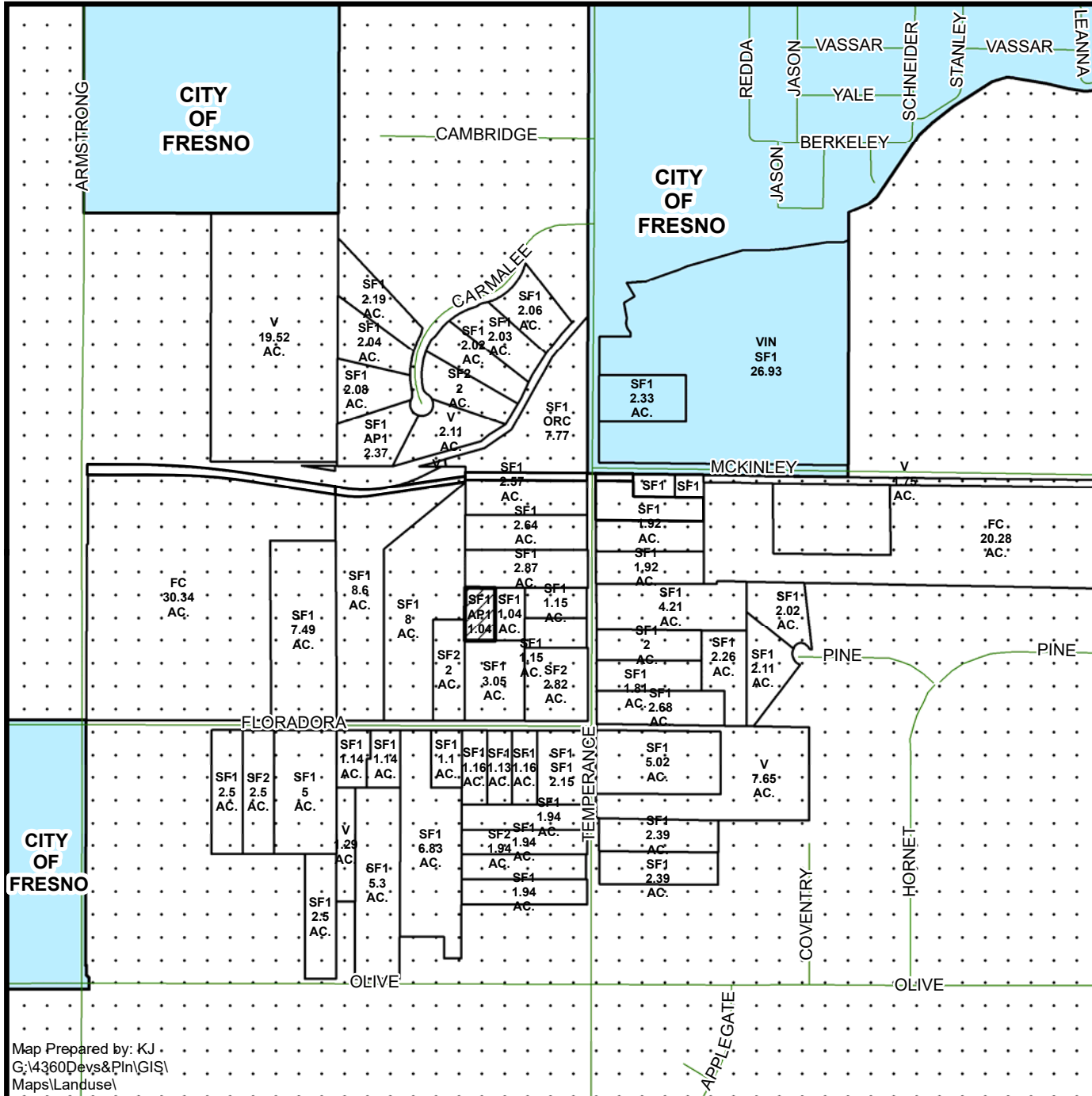
# LOCATION MAP



# EXISTING ZONING MAP





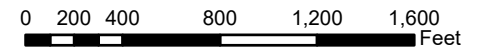
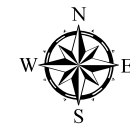
# EXISTING LAND USE MAP



LEGEND
FC - FIELD CROP
SF#- SINGLE FAMILY RESIDENCE
V - VACANT
VIN - VINEYARD
AP1 - APARTMENT
ORC - ORCHARD

### LEGEND:

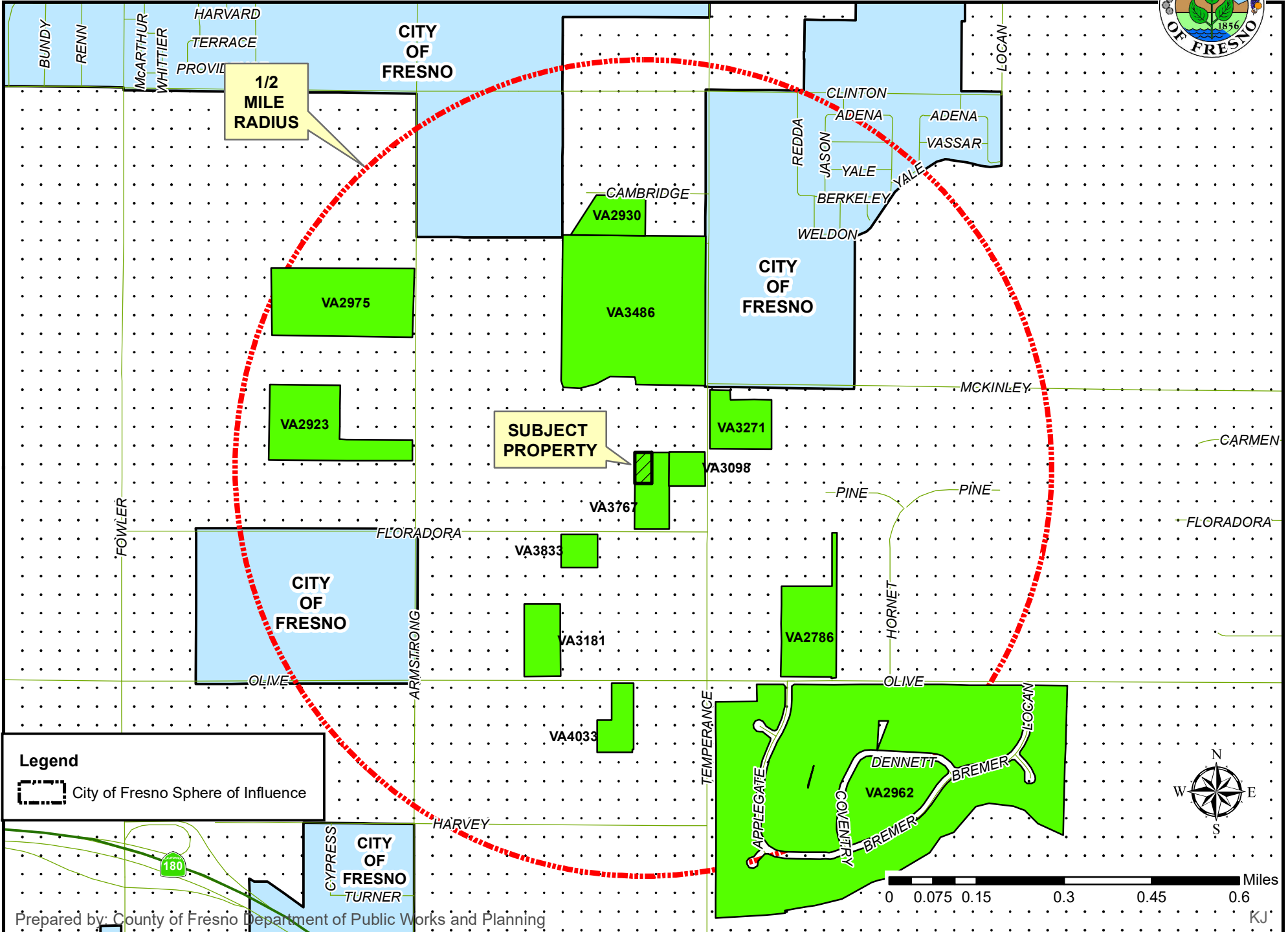
-  Subject Property
-  City of Fresno Sphere of Influence



Map Prepared by: KJ  
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Department of Public Works and Planning  
 Development Services Division

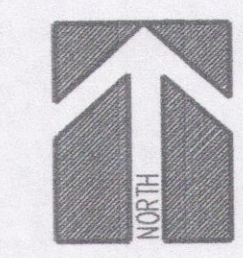
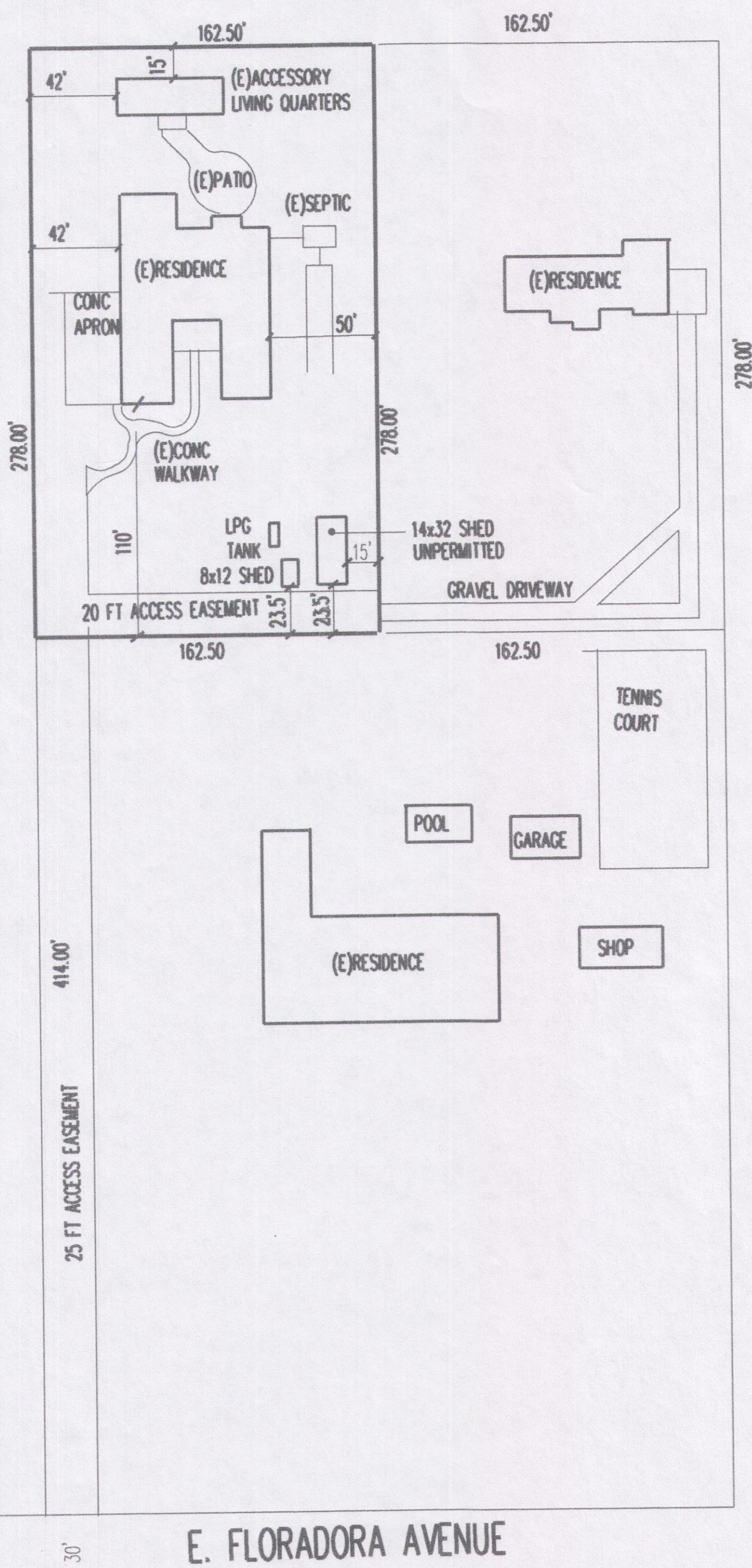
# APPROVED VARIANCES WITHIN A 1/2 MILE RADIUS



### EXHIBIT 5

RECEIVED  
 COUNTY OF FRESNO  
 APR 08 2019  
 DEPARTMENT OF PUBLIC WORKS  
 AND PLANNING  
 DEVELOPMENT SERVICES DIVISION

6850 E. FLORADORA AVENUE  
 A.P.N. 310-081-01



SITE PLAN  
 SCALE: 1"=50'-0"

N. TEMPERANCE AVENUE

E. FLORADORA AVENUE

REVISIONS	BY

A | MEMBER OF  
 B | AMERICAN INSTITUTE  
 OF BUILDING DESIGN  
 CA | MEMBER OF  
 B | CALIFORNIA INSTITUTE  
 OF BUILDING DESIGN

RESIDENTIAL DESIGN  
 TITLE 24 CALCULATIONS  
 REMODELS AND ADDITIONS  
 TENANT IMPROVEMENTS

PROJECT  
 MASSON VARIANCE PLAN

DESCRIPTION  
 SITE PLAN

john ford drafting and design  
 certified professional building designer american institute of building design  
 635 BARSTOW AVENUE, STE 20, CLOVIS, CA 93612  
 PHONE (559)323-4375 EMAIL JFDRAW@AOL.COM

FILE
DRAWN JF
DATE
SCALE AS NOTED
SHEET NO.

A1



## Variance for 6850 E. Floradora, Fresno, Ca 93727

### **Background**

We bought 6850 E. Floradora in November of 2018. This property is 1.04 acres and sits 414 feet off of Floradora. An easement services my property and one other property to our east side. There is a 20' easement along the front of our property that acts as a driveway to 6852 E. Floradora. Both properties are secluded in that we are hundreds of feet from any public road. The seller disclosed that the 14' X 32' storage shed on the property we purchased was unpermitted. When the Fresno County inspectors reviewed the property for a new leach line, they stated that the shed needed to be permitted. The seller offered to help with the permitting process and followed instructions from the county. During the permit process, the zoning staff noticed that the shed was not 35 feet away from the easement that services one house on our east side. The staff stated that since the shed did not meet the 35' setback required by zoning for an easement, the shed would need to be torn down or a variance must be approved. We chose to apply for a variance in the hopes that we can keep the storage shed.

1. We believe that this shed meets criteria #1 for exceptional and extraordinary circumstances. As mentioned before, our two properties (6850 and 6852) sit 414 feet off of Floradora. We are secluded. Therefore, the 35' set back requirement from an easement has no rational reason to exist for our shed. There is no danger with traffic, the

easement in front of the shed services only one house. The owners of 6852 have no concerns regarding the shed. Pictures show that the neighbors have a cement driveway that sits far from the easement. Also, there is no electrical, plumbing or any other services to the shed that could impact the access to our neighbor at 6852.

On Floadora, there are power poles, ditch stands, structures, fences and so forth very close to the public road. The shed is 414' plus another 23.5' from a public road and therefore far less likely to have any impact on anything.

2. We believe that this shed meets criteria #2 in that almost all homes in this area have sheds and barns. We are still zoned AE20. Many barns and sheds are built right on property lines and have a much greater impact on neighbors than this shed. The shed is very well built and we need it for storage. We would hate to tear it down when it has no negative impact on anyone or anything.
3. The granting of this variance will not be detrimental to the public welfare or injurious to property and improvement. I asked county staff if they could think of any detrimental impact the shed would have by not having the 35' set-back. I could not find anyone who could communicate the rationality of the 35' set-back or how the shed might negatively impact anyone or anything.
4. This shed being 3.5' or 35' from the easement/driveway does not impact the Fresno County General Plan. This shed is consistent with properties in our area. As mentioned before, almost all homes in our area have a

shed or a barn. Our shed only has eight-foot walls and a 4/12 pitch roof. I doubt any neighbors even know it exists except the neighbor who uses the easement and the neighbor to our south.

Thank you for considering this request for approval of a variance for this shed.

Ron and Alexis Masson