



# County of Fresno

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

## Planning Commission Staff Report Agenda Item No. 2 March 12, 2020

**SUBJECT:** Variance Application No. 4075

Allow waiver of the minimum lot size requirement and the maximum lot depth to width ratio to allow the creation of four, 4.87-acre (net) parcels (20-acre minimum required) with a lot depth to width ratio of approximately 8:1 (4:1 maximum allowed) from an existing 19.48-acre (net) parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

**LOCATION:** The subject parcel is located on the east side of North Garfield Avenue approximately one quarter-mile north of its intersection with West McKinley Avenue and approximately 0.6 mile south of the nearest city limits of the City of Fresno (2264 and 2252 North Garfield Avenue) (SUP. DIST. 1) (APN 312-330-19).

**OWNERS** Vang Xiong, Chia Vang, Ge Xiong, Pa Vang

**APPLICANT:** Vang Xiong

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

Marianne Mollring, Senior Planner  
(559) 600-4569

**RECOMMENDATION:**

- Deny Variance No. 4075; 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 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	No change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size)	No change
Parcel Size	19.48 acres (net)	Parcel 1: 4.87 acres (net) Parcel 2: 4.87 acres (net) Parcel 3: 4.87 acres (net) Parcel 4: 4.87 acres (net)
Project Site	See above Parcel Size	See above Parcel Size
Structural Improvements	The subject parcel is improved with an unoccupied single-family dwelling and several accessory structures including a mobile home (also unoccupied), an approximately 2,959 square-foot storage building, carport, barn and several other structures labeled as corrals.	There are no new structures proposed with the approval of this Variance; any structures that cross the proposed property boundaries shall be removed prior to approval of the final map.
Nearest Residence	Approximately 220 feet north of the northern boundary of the subject property	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: *Review for Exemption* 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 44 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 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:**

According to available records, the subject parcel was originally zoned A-2 General Agricultural, then rezoned to interim AE-20 by Ordinance 490-T-35, adopted September 14, 1971; later it was rezoned to AE-5 by Amendment Application No. 2277, adopted April 4, 1972; next rezoned to Interim AE-20 by ordinance; and subsequently designated as AE-20 (current designation) as part of Amendment Application No. 2870 adopted by the Board of Supervisors on August 31, 1976, in order to make certain agricultural areas consistent with the Zoning Ordinance and the agricultural policies of the County General Plan.

The current Variance application, submitted on July 1, 2019, requests a waiver of the minimum parcel size to allow the creation of four parcels, each containing approximately 4.87 acres (net), and with a depth to width ratio of approximately 8:1 (4:1 maximum allowed), from an existing 19.48-acre (net) parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. If this Variance request is granted, a mapping procedure will be required to create the proposed parcels.

According to available records, eight (8) variance requests have been processed within one mile of the subject property. Those variances are detailed in the following table:

<b>Application/Request</b>	<b>Staff Recommendation</b>	<b>Final Action</b>	<b>Date of Action</b>
VA No. 2770 – Allow the creation of two parcels with a lot width to depth ratio greater than 4 to 1 in the Rural Residential Zone District.	Approval	Planning Commission Approved	May 12, 1983
VA No. 2797 – Allow the creation of a 9.42-acre and a 0.46-acre parcel in the AE-20 Zone District.	Denial	Planning Commission Approved	September 22, 1983

VA No. 2881 – Allow the creation of two 2.44-acre parcels from a 4.89-acre parcel, and a side-yard setback of 13 feet 6 inches in the AE-20 Zone District.	Defer to Planning Commission	Planning Commission Approved	December 20, 1984
VA No. 3046 – Allow a group care facility and modify the population density requirements for the use in the AE-20 Zone District.  Related Applications: Unclassified Conditional Use Permit No. 2247 and Environmental Assessment (EA) No. 3189	Denial	Planning Commission Denied  Board of Supervisors Denied (on appeal)	November 20, 1986  January 13, 1987
VA No. 3217 – Allow a 12-foot side-yard setback for an accessory building, in conjunction with DRA No. 2512 for a Class II Home Occupation in the Rural Residential Zone District.	Approval	Planning Commission Approved	September 7, 1989
VA No. 3599 – Allow the creation of two five-acre parcels with a lot width to depth ratio of 8:1 (4:1 max. allowed), and a lot frontage of 161 feet 6 inches where a minimum of 165 feet is required in the Rural Residential Zone District.	Denial	Planning Commission Approved	December 18, 1997
VA No. 3658 – Allow the creation of a 9.62-acre parcel in the AE-20 Zone District.  Related Applications: Amendment Application No. 3693 and Conditional Use Permit No. 2921	Approval	Planning Commission Approved  Board of Supervisors Approved	February 17, 2000  March 28, 2000
VA No. 3745 – Allow an 11-foot 6-inch side-yard setback for an existing structure on a 28,050 square-foot lot in the AE-20 Zone District.	Denial	Planning Commission Approved	January 9, 2003

**ANALYSIS/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 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 Configuration:</b>	<b>Is Standard Met (y/n):</b>
Setbacks	AE-20: Front: 35 feet Side: 20 feet Rear: 20 feet	<u>Parcel 1: 4.87 acres</u> Front: 35 feet Side: 20 feet Rear: 20 feet  <u>Parcel 2: 4.87 acres</u> Front: 35 feet Side: 20 feet Rear: 20 feet  <u>Parcel 3: 4.87 acres</u> Front: 35 feet Side: 20 feet Rear: 20 feet  <u>Parcel 4: 4.87 acres</u> Front: 35 feet Side: 20 feet Rear: 20 feet	Parcel 1: Yes    Parcel 2: Yes    Parcel 3: Yes    Parcel 4: Yes
Parking	The provisions of the General Standards, Section 855-I of the Zoning Ordinance shall apply	No change	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 dwelling or other building used for human habitation	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: 100 feet; disposal field: 100 feet; seepage pit/cesspool: 150 feet	<p>There are currently two septic systems on the property, located on proposed Parcel No. 4. There is also a domestic water well located on proposed Parcel No. 2 and proposed Parcel No. 4. The septic systems currently meet minimum setback requirements from the water wells.</p> <p>Any existing or proposed water wells will be required to meet minimum setbacks (separation) from existing or proposed septic systems.</p> <p>Proposed Parcel No.4 contains two septic systems which do not meet the minimum 50-foot setback required from a property line bordering private property.</p> <p>The septic systems shall be properly abandoned under permit and inspection prior to approval of the final map.</p>	<p>Yes</p> <p>No</p>

**Reviewing Agencies/Department Comments:**

Zoning and Permit Review Section of the Fresno County Department of Public Works and Planning: Demolition Permits are required for the existing carport and barn that are to be removed prior to the mapping procedure. The Applicant must submit a ten-day written notification to the San Joaquin Valley Air Pollution Control District (SJVAPCD) for all projects as to whether asbestos is present or not.

A septic abandonment permit will be required for the existing septic system shown on the southern part of proposed Parcel 4 if the septic system is no longer in use.

There are no building permit records for the 16-foot by 14-foot structure located behind the building labeled Storage Building on the site plan on proposed Parcel 3. This structure must be permitted or removed prior to the mapping procedure.

According to available Assessor's records, the dwelling unit and storage building showed in proposed site plan on proposed Parcel 4 were built prior to March 4, 1958. As such, no building permits were required.

No other comments specific to Findings 1 and 2 were expressed by reviewing Agencies or Departments.

**Analysis:**

In support of Finding 1, the Applicant's findings state that the subject parcel is currently owned by multiple partners, and that allowing the proposed parcel division would allow the partners to be able to convey their share of the property to their heirs; and that although the proposed parcels would be non-conforming, they would be consistent with others to the east.

Regarding Finding 1, review of available aerial imagery indicates that the subject property has been utilized for the cultivation of various field crops since at least 1998. The parcel is currently conforming as to size, meeting the minimum acreage requirement of the Agricultural Zone District and Agricultural land use designation, and is consistent with other agricultural parcels in the vicinity. As such, staff was unable to identify an unusual or extraordinary circumstance, condition, or physical attribute particular to the subject parcel, which is not true of other conforming parcels in the AE-20 Zone District. Additionally, staff does not agree that the existence of other parcels of smaller size than the minimum 20 acres required in the vicinity creates an unusual circumstance applicable to the subject parcel nor provides justification for granting a Variance to create additional substandard-size parcels. Available records pertaining to property history indicate that the subject parcel has been conforming in size for the underlying zone district since the zone district was first adopted, as discussed under Background Information above. The subject parcel is currently conforming, and, should the Variance be granted, each resultant parcel would be nonconforming, even if similar in size to some others in the vicinity. The Applicant's findings did not provide any supportable justification for why the Variance should be granted based on the physical attributes of the subject parcel.

Based on the above analysis, staff is unable to make Finding 1.

In support of Finding 2, the Applicant's findings state again that the undivided parcel is owned by multiple property owners, and one or more of the owners wish to be able to convey their share (portion) of the property to family members. The findings also state that there are a substantial number of other parcels (40) in the vicinity (within a half mile) that contain five acres or less.

Regarding Finding 2, staff acknowledges that there are a number of other parcels in the vicinity which contain five acres or less; however, staff was able to identify only four that were the result of a variance. According to available records, the other parcels adjacent to the east were created under the previous AE-5 zoning, and eight parcels westerly adjacent were created under A-2 zoning at such time the minimum lot size was one acre. Staff also acknowledges that to have separate legal parcels to convey to one's heirs would be a more convenient arrangement than to simply convey the interest in the whole parcel; however, staff does not agree that the ability to create a substandard parcel containing less than the minimum acreage required by the zone district constitutes a substantial property right enjoyed by other owners in the vicinity under the same zoning classification, or that the perceived deficit of such right warrants the granting of the Variance to rectify.

There are conditions under which a property owner may create a substandard parcel (for example a homesite parcel) for certain purposes, and meeting certain requirements specified in the County Zoning Ordinance, which the owner must meet in order to create a homesite parcel. In this case, the owners do not meet those conditions, and the intent is not to create one homesite parcel, but to divide the property into four roughly equal-sized parcels for the express

purpose of allowing the owners to have undivided interest in separate parcels. Staff was unable to identify the deficit of a substantial property right at issue requiring the granting of the Variance to fulfill.

A consideration in addressing variance requests is whether there are alternatives available that would avoid the need for the variance. In this case, there are no other feasible options that would allow the owners to create separate legal parcels in order to convey their interest in the property separately or otherwise dispose of it. If this Variance is approved allowing the creation of the four 4.87-acre (net) parcels, each of those resulting parcels has the potential to be developed with two residences, with the appropriate discretionary approval, which would increase residential density, thereby conflicting with General Plan Policy as previously discussed.

Therefore, based on the preceding analysis, staff was unable to identify any unique or exceptional circumstances, or conditions particular to the subject property, nor the deficit of a substantial property right at issue. Findings 1 and 2 cannot be made.

**Recommended Conditions of Approval:**

*See recommended Conditions of Approval attached as Exhibit 1.*

**Conclusion:**

Findings 1 and 2 cannot be made.

*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.*

<b>Surrounding Parcels</b>				
	Size:	Use:	Zoning:	Nearest Residence*:
North	19.55 acres	Vacant	AE-20	Approx. 890 feet
South	18.78 acres	Field Crops	AE-20	None
	1.0 acre	Single-Family Residential		Approx. 205 feet
East	4.84 acres	Single-Family Residential	AE-20	Approx. 1,000 feet
	4.84 acres	Single-Family Residential		Approx. 1,170 feet
	4.84 acres	Nursery		None
	8.75 acres	Nursery		Approx. 1,120 feet (on westerly adjacent 1.00-acre parcel)
West	5.91 acres	Single-Family Residential	AE-20	Approx. 125 feet
	1.00 acre	Single-Family Residential		Approx. 75 feet



Surrounding Parcels				
	1.00	Single-Family Residential		None
	1.00	Single-Family Residential		Approx. 60 feet
	1.00	Single-Family Residential		Approx. 170 feet
	1.00	Single-Family Residential		Approx. 70 feet

\*Measured from the existing property lines

**Reviewing Agencies/Department Comments:**

Fresno County Department of Agriculture, Agricultural Commissioner: The site is rural residential and will have minimal effect to agriculture. Surrounding properties to the west and east are divided into smaller parcels. However, there are agricultural interests to the south, southwest and northwest that need to be respected.

The Fresno County “Right to Farm” Ordinance 17.04.100 and 17.72.075 shall be presented to the Applicant so that any necessary Mitigation Measures can be considered to minimize any potential discomfort or risk.

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 in operation for three years.”

Fresno County Department of Public Health, Environmental Health Division: If any underground storage tank(s) are found during construction, the Applicant shall apply for and secure an Underground Storage Tank Removal Permit from the 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.

Development Engineering Section of the Fresno County Department of Public Works and Planning: Garfield Avenue is classified as a Local road with an existing 30-foot right-of-way width east of the section line, per the Plat Book. The minimum width for a Local road right-of-way east of the section line is 30 feet. Garfield is a County-maintained road and records indicate that this section of Garfield Avenue, from Shields Avenue to McKinley Avenue, has an Average

Daily Traffic (ADT) count of 400, a paved width of 17.7 feet, a structural section of .16 feet RMS and is in good condition.

Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: Garfield Avenue is a County-maintained road classified as a Local road with an existing 60-foot right-of-way, a paved width of 19.9 feet, an Average Daily Traffic (ADT) count of 400 Vehicles Per Day (VPD), a Pavement Condition Index (PCI) of 14.3 and is in poor condition. A Local road requires 60 feet of right-of-way; no additional right-of-way is required.

The site plan depicts a driveway that crosses a proposed property boundary; a driveway cannot be shared by two parcels.

An encroachment permit from the Road Maintenance and Operations Division is required for any work in the County right-of-way.

North Central Fire Protection District: No comment.

Fresno Irrigation District: No comment.

### **Analysis:**

In support of Finding 3, the Applicant's findings state that the granting of the requested Variance will not be materially detrimental to surrounding properties because the owners will continue to farm the resultant parcels, the smaller parcel sizes will not impact surrounding property use, the subject property is not in an area designated as being water short, no additional traffic will be created, and that granting the Variance to divide the subject parcel facilitates the improvement of the properties because the owners will remove dilapidated structures, dwellings and abandoned vehicles.

Staff notes that the AE-20 Zone District allows for a residential density of not more than one single-family dwelling per unit of acreage designation, which in this case would limit residential development to no more than one dwelling unit on a parcel that is 20 acres or less in the AE-20 Zone District, except that a second dwelling unit may be allowed subject to discretionary approval per Section 816.2 of the Zoning Ordinance. Therefore, if this Variance were approved, the owner(s) of each resultant parcel could be allowed one dwelling unit by right, and a second residence, if so desired, subject to the approval of a Director Review and Approval, which could result in up to eight (8) dwelling units on the four proposed parcels.

Staff recognizes that the subject parcel is in an area with residential and minor commercial development and is near an area of rural residential zoning approximately one quarter-mile to the east. Staff also notes that there are a number of parcels immediately adjacent to the subject parcel, to the west, south and east, that are substandard in size and similar to the size the Applicant is proposing; however, records indicate that the majority of these were not created by variance, but done by parcel map prior to the adoption of the Subdivision Map Act.

The existence of these other parcels should not be considered precedent to the approval of any variance seeking to create substandard size parcels, as each variance request should be considered on its own merit. No reviewing agencies expressed concern about increased traffic or water use resulting from the parcel division; however, the Agricultural Commissioner did note that the Applicant/sub-divider should be required to enter into an agreement with the County acknowledging the County's Right-To-Farm Notice. Staff does not believe the division of the subject parcel into four smaller 4.87-acre parcels would necessarily have an adverse effect

upon surrounding property or the use thereof, including agricultural production. The proposed parcels would be consistent with other adjacent parcels to the east and west. No concerns were raised by reviewing agencies or departments that the parcel division would result in a substantial increase in traffic trips on surrounding roads.

Staff believes that there will be no adverse impacts on neighboring properties; therefore, Finding 3 can be made.

**Recommended Conditions of Approval:**

*See recommended Conditions attached as Exhibit 1.*

**Conclusion:**

Finding 3 can be made.

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

<b>Relevant Policies:</b>	<b>Consistency/Considerations:</b>
<p>General Plan Policy LU-A.6: 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.</p>	<p>The Applicant is requesting a Variance from the 20-acre minimum parcel size requirement and does not qualify under Policies LU-A.9, LU-A.10, and LU-A.11. See Analysis below.</p>
<p>General Plan Policy LU-A.7: 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 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.</p>	<p>The minimum parcel size for the subject parcel is 20 acres. The creation of four smaller parcels is inconsistent with this policy. See Analysis below.</p>
<p>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:</p> <ul style="list-style-type: none"> <li>a. 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</li> </ul>	<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.</p> <p>In the case of this application, the required criteria listed under Policy LU-A.9 to allow creation of a substandard-size</p>

<b>Relevant Policies:</b>	<b>Consistency/Considerations:</b>
<p>waste disposal, but in no event shall the lot be less than one (1) gross acre; and</p> <p>b. One of the following conditions exists:</p> <ol style="list-style-type: none"> <li>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</li> <li>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, and there is only one (1) gift lot per twenty (20) acres; or</li> <li>3. The present owner owned the property prior to the date these policies were implemented and wishes to retain his/her home site and sell the remaining acreage for agricultural purposes.</li> </ol> <p>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.</p>	<p>lot or homesite parcel are not met.</p>

**Reviewing Agencies/Department Comments:**

Policy Planning Section of the Fresno County Department of Public Works and Planning: Variance (VA) Application No. 4075 proposes to allow the creation of four 4.87-acre (net) parcels with lot depth to lot width greater than four (4) to one (1) from an existing 19.48-acre (net) parcel located in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. The AE-20 Zone District does not allow a lot depth to lot width ratio greater than four (4) to one (1) and requires new parcels to be at least 20 acres in size. The existing parcel is not enrolled in the Williamson Act Program and is designated as Agricultural in the General Plan.

Water and Natural Resources Division of the Fresno County Department of Public Works and Planning: The subject property is not located within an area defined as being water short.

**Analysis:**

In support of Finding 4, the Applicant states that the granting of this Variance request will not be contrary to the objectives of the General Plan because there will be no change of use since the new (proposed) parcels will continue to be used for agriculture purposes, thus no negative incremental effects on the adjacent agricultural community would result. However, as noted previously in the analysis under Finding 3, the potential increase in residential density with the creation of four new parcels is contrary to the intent of the Agricultural designation, which is to protect the general welfare of the agricultural community from encroachments of non-related uses which by their nature would be injurious to the physical and economic well-being of the

agricultural district, and the Agricultural Zoning which establishes a minimum parcel size for agriculturally-designated areas.

Staff notes that 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.”

The subject parcel is designated as Unique Farmland according to the 2016 California Important Farmlands Map published by the California Department of Conservation, Farmland Mapping and Monitoring Program (FMMP). Unique Farmland is defined as land consisting of lesser quality soils used for the production of the State’s leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.

Staff does not concur with the Applicant’s statement that the proposed creation of four parcels less than five-acres in size would not be contrary to the objectives of the General Plan. The General Plan does contain certain policy provisions which allow for the creation of substandard-sized lots, specifically for the creation of homesite parcels which are subject to certain specific criteria. Those policies are not relevant in this case, as the creation of a homesite parcel is not the Applicant’s stated intent.

As previously noted under Relevant Policies above, General Plan Policy LU-A.7 states that 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. 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. The Applicant’s findings do state the proposed parcels would continue to be used for agriculture, presumably for growing field crops along with the possibility of residential development. No specific information was provided regarding the specific type of crops that would be cultivated.

With regard to Policies LU-A.6 and LU-A.7, Variance (VA) Application No. 4075, if approved, would result in the division of a 19.48-acre (net) parcel into four substandard-sized parcels, each containing approximately 4.87 net acres. Creation of the proposed substandard-sized parcels would allow for potential residential uses on each parcel, resulting in increased density, and the potential for conflict with agricultural uses in the surrounding area which is designated for and zoned to accommodate agricultural uses. Even though there are other parcels of a similar size to the proposed which contain residential development, the predominant land use in the area is agriculture, therefore, the proposed Variance application is inconsistent with the intent of the Agricultural Zone District and Policies LU-A.6 and LU-A.7 of the General Plan.

This proposal to create four substandard parcels is inconsistent with the General Plan Policies discussed above, particularly LU-A.6 and LU-A.7 which designate 20 acres as the minimum permitted parcel size in agriculturally-designated areas, and which discourage the creation of parcels less than this minimum because they are considered less viable for commercial farming. The creation of such parcels may result in increased residential density and be viewed as *de*

*facto* rural residential parcelization, and have the potential for removal of land from agricultural production, which is not supported by General Plan Policies.

Based on the above analysis, Finding 4 cannot be made.

**Recommended Conditions of Approval:**

*None.*

**Conclusion:**

Finding 4 cannot be made.

**PUBLIC COMMENT:**

*None.*

**CONCLUSION:**

Based on the factors cited in the analysis, staff does not believe Findings 1, 2, and 4, required for granting the Variance, can be made; staff therefore recommends denial of Variance No. 4075.

**PLANNING COMMISSION MOTIONS:**

**Recommended Motion** (Denial Action)

- Move to determine the required Findings cannot be made and move to deny Variance No. 4075; 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. 4075, subject to the Conditions and Project Notes attached as 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.

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**Variance Application No. 4075  
Conditions of Approval and Project Notes**

<b>Conditions of Approval</b>	
1.	Division of the subject parcels shall be in accordance with the site plan (Exhibit 6) approved by the Planning Commission.
2.	<p>Prior to final map approval, any structures which cross proposed parcel boundaries shall be removed under permit and inspection. A demolition permit is required for the removal of any structures.</p> <p>Prior to removal or demolition of any structures, the Applicant shall submit a ten-day written notification to the San Joaquin Valley Air Pollution Control District for all projects whether asbestos is present or not.</p>
3.	Prior to final map approval, the Applicant shall remove or obtain permits for any structures over 120 square feet on the site which do not have permits unless evidence can be provided that the structures were built prior to March 1958.
4.	<p>Prior to final map approval, the applicant/sub-divider shall be required to remove the existing septic system shown on the site plan as being located 27 feet one inch from the southern boundary(side property line) of proposed Parcel No. 4 under permit and inspection.</p> <p>The additional septic system shown on the site plan as being located 34 feet from the north side property line of proposed Parcel No. 4 shall be property abandoned under permit and inspection if no longer in use (special inspections will be required to verify).</p>
5.	<p>Prior to final map approval, the applicant/sub-divider shall enter into an agreement with Fresno County incorporating the provisions of the County Right-To-Farm Notice (Fresno County Ordinance Code Section 17.04.100).</p> <p>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 in operation for three years."</p>

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.	Division of the subject parcels is subject to the provisions of the Fresno County Parcel Map Ordinance. A Parcel Map Application shall be filed to create the proposed parcels. The Map shall comply with the requirements of Title 17.72 of the Fresno County Ordinance Code.
2.	The approval of this Variance will expire one year from the date of approval unless the required mapping application to create the parcels is filed in substantial compliance with the Conditions and Project Notes and in accordance with the Parcel Map

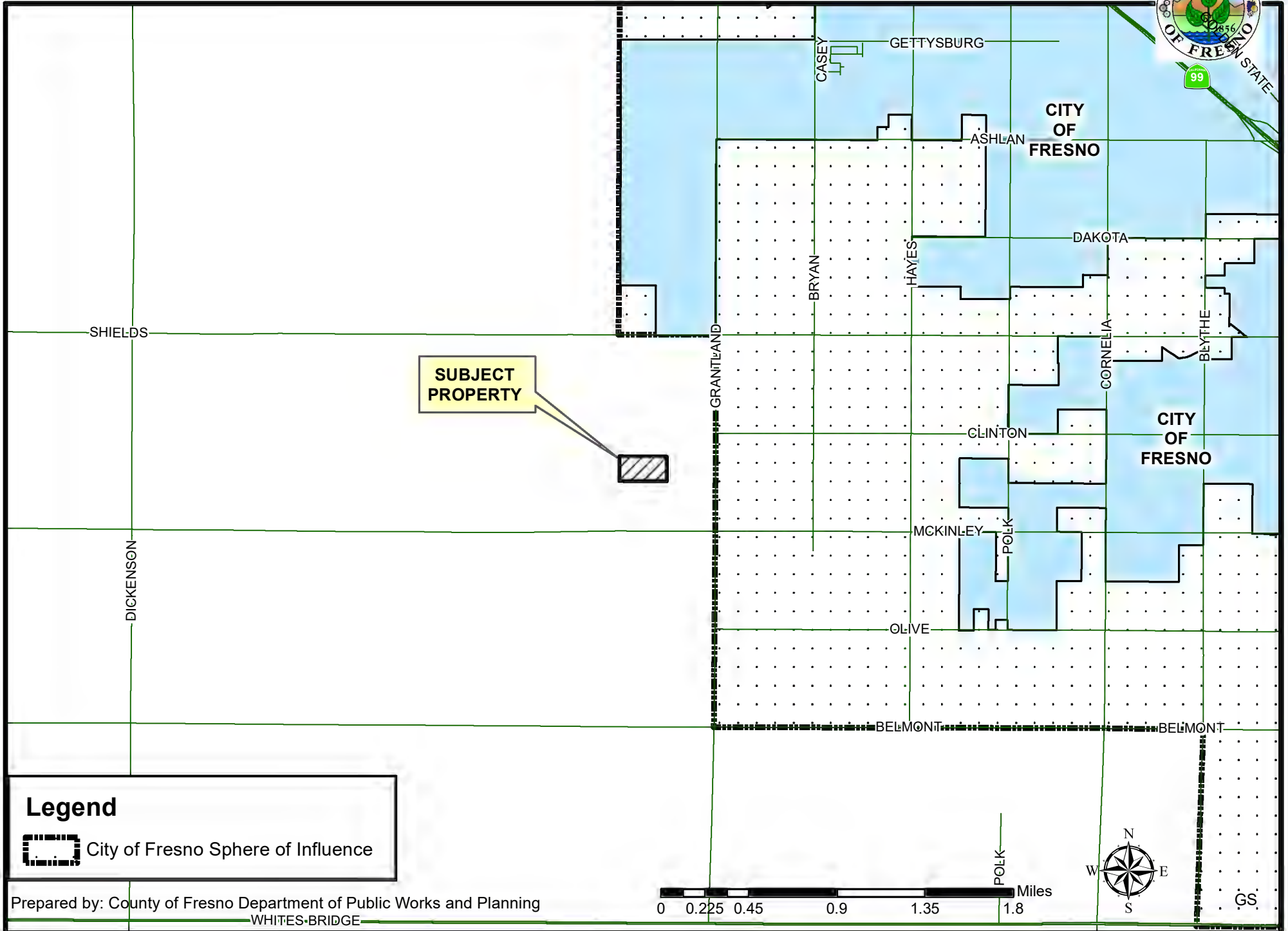
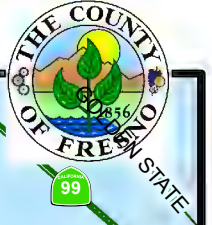
<b>Notes</b>	
	Ordinance.
3.	If any underground storage tank(s) are found during construction, the Applicant shall apply for and secure an Underground Storage Tank Removal Permit from the Fresno County Department of Public Health, Environmental Health Division.
4.	In an effort to protect groundwater, all abandoned water wells and septic systems on the parcel shall be properly destroyed by an appropriately-licensed contractor (permits required).
5.	Prior to destruction of agricultural wells, a sample of the uppermost 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.
6.	Any work within the County road right-of-way, such as construction of new driveways to serve the proposed parcels, will require an Encroachment Permit from the Fresno County Department of Public Works and Planning, Road Maintenance Division.

JS:ksn

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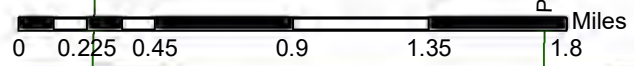
# LOCATION MAP



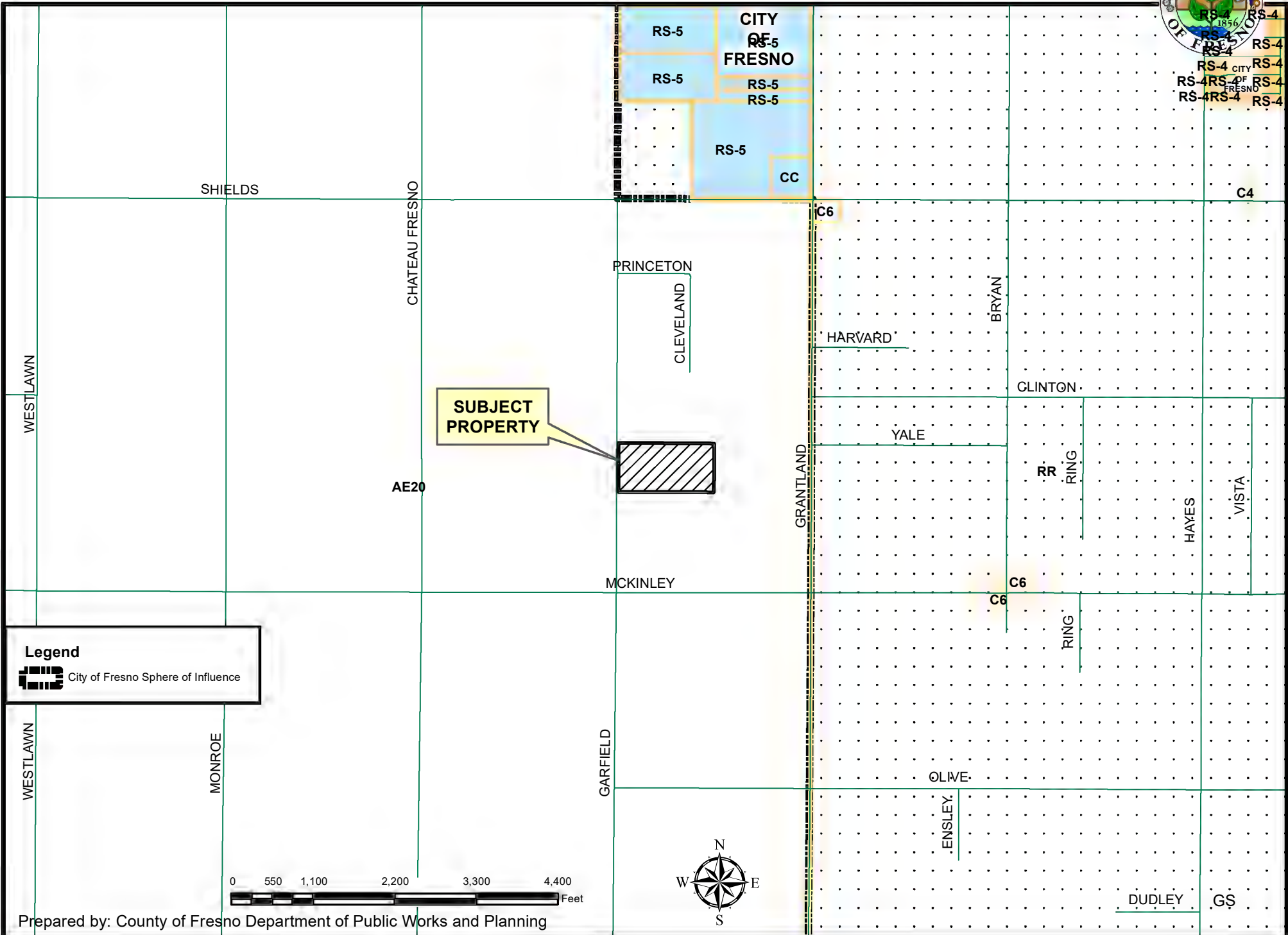
**SUBJECT PROPERTY**

**Legend**


 City of Fresno Sphere of Influence



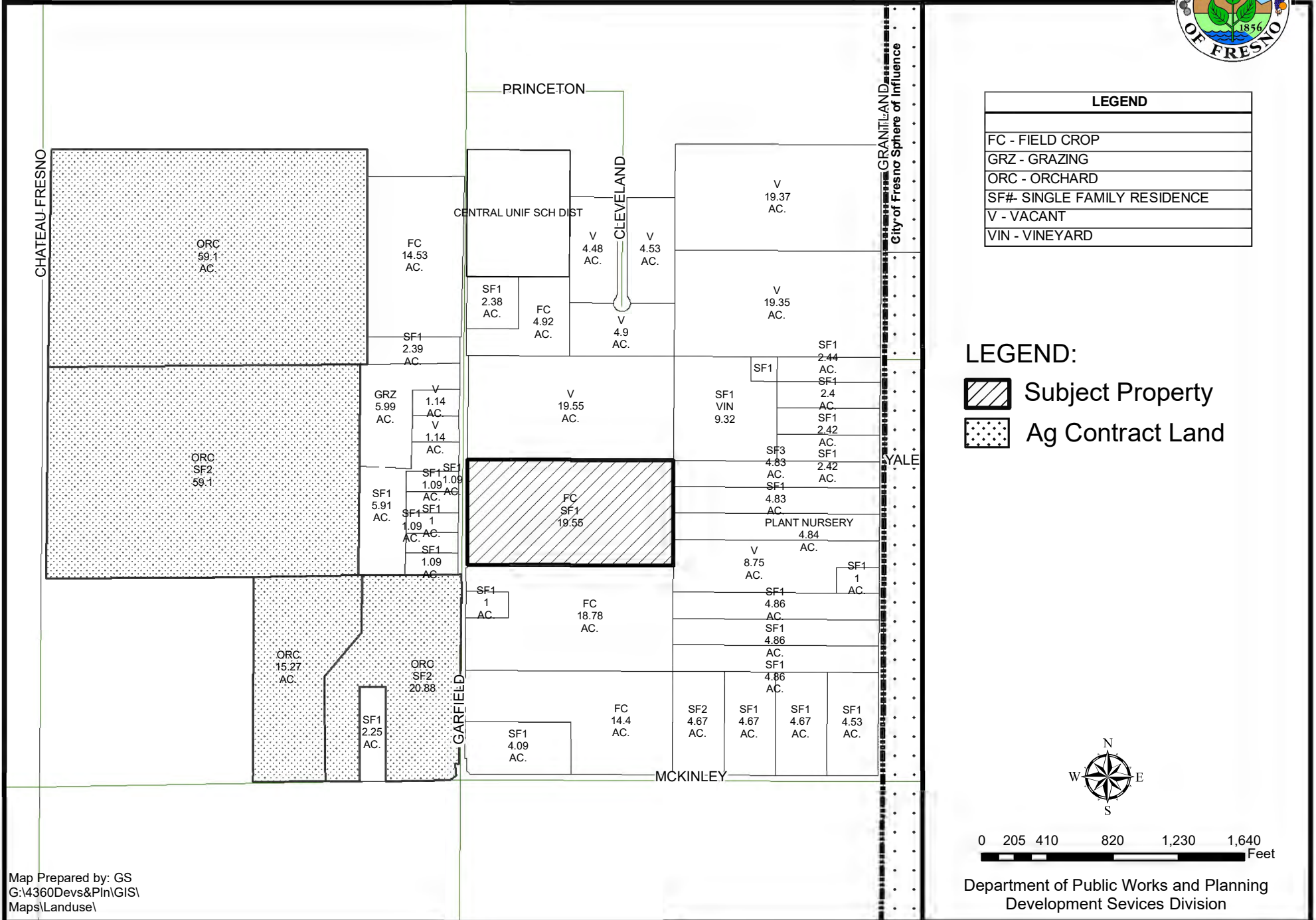
# EXISTING ZONING MAP



**SUBJECT  
PROPERTY**


**Legend**  
 City of Fresno Sphere of Influence


# EXISTING LAND USE MAP



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

**LEGEND:**

 Subject Property

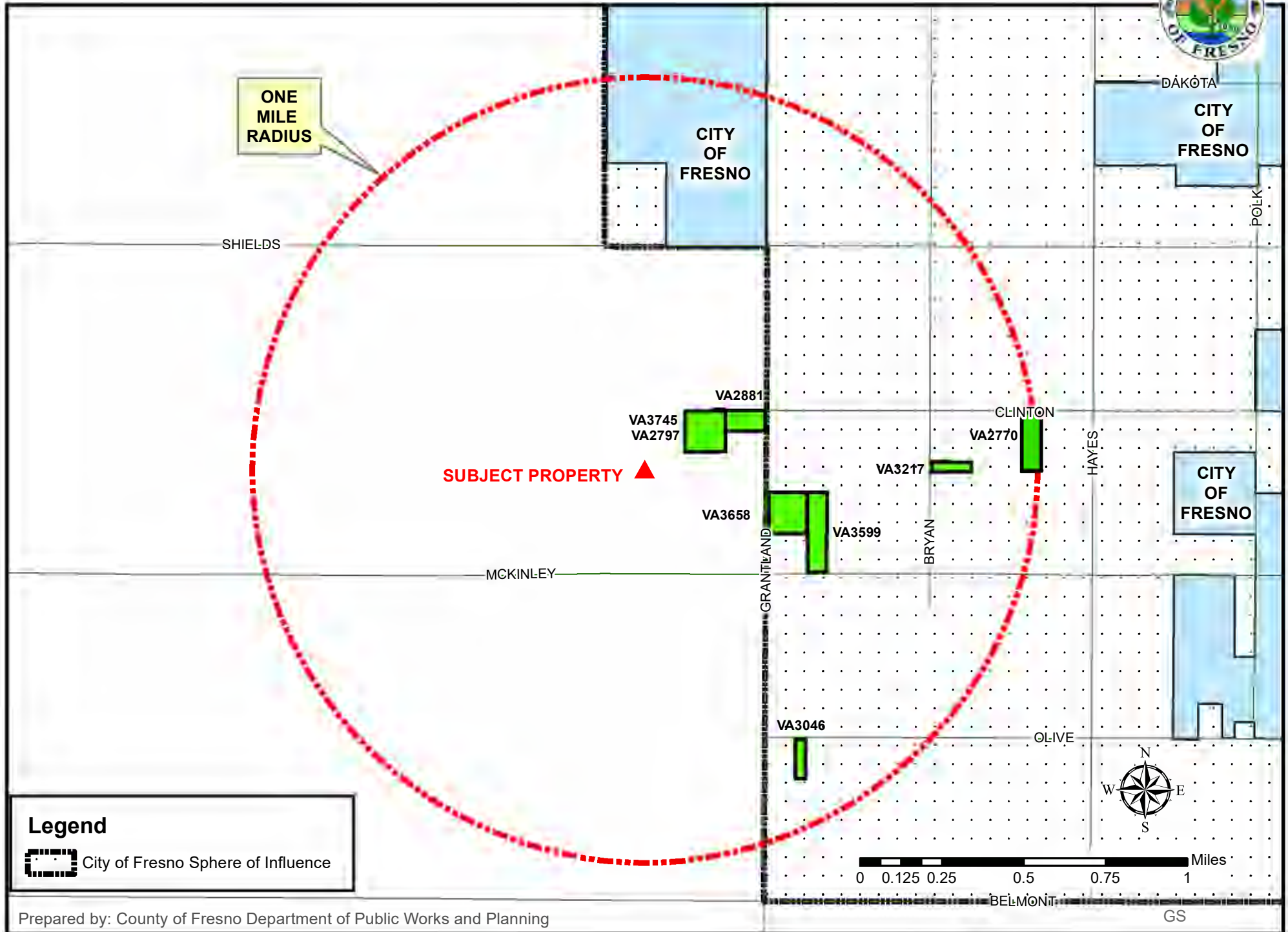
 Ag Contract Land









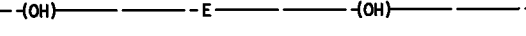

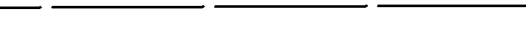
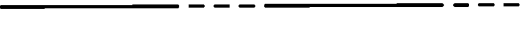
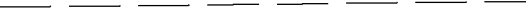
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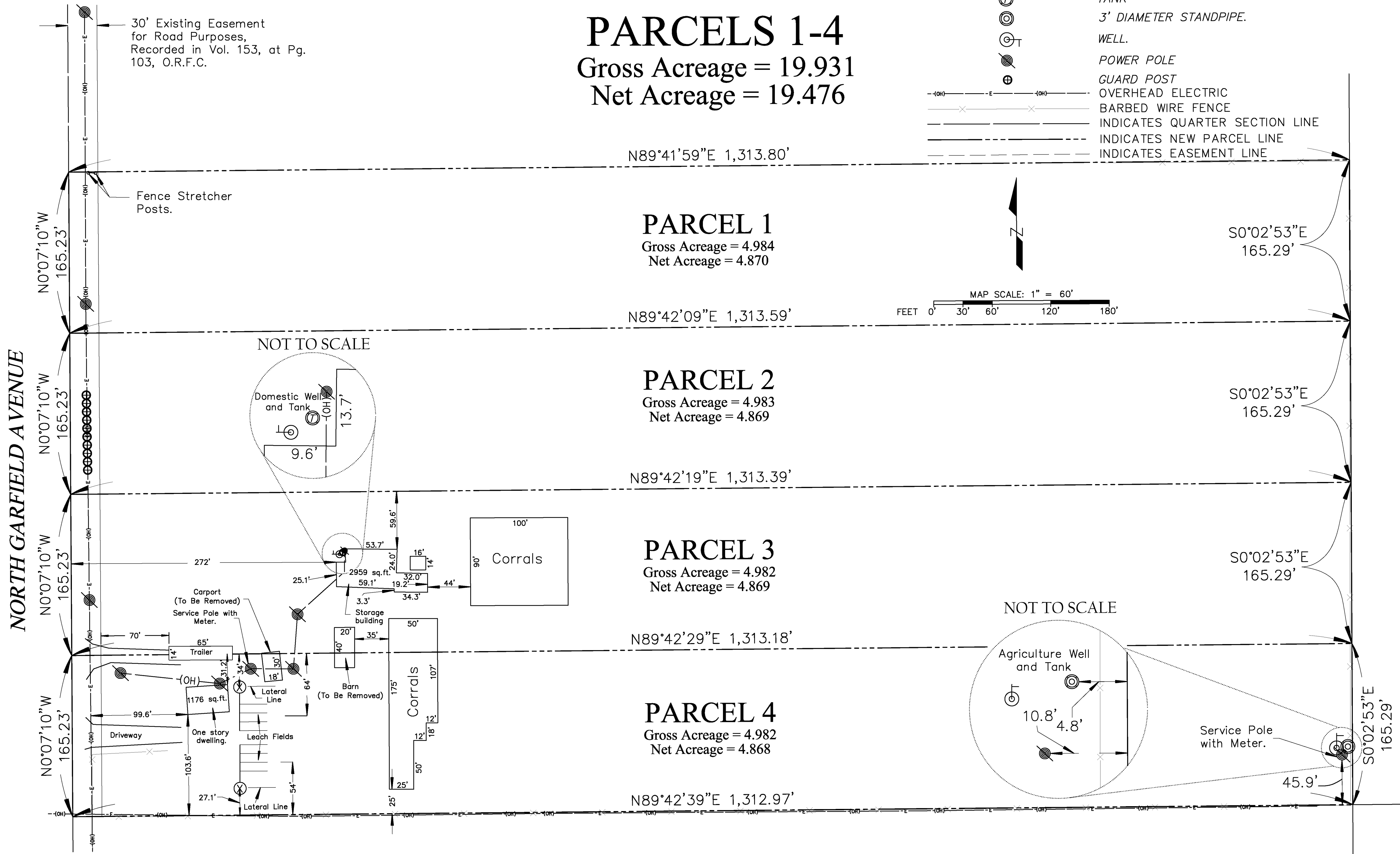
Department of Public Works and Planning  
 Development Services Division

# APPROVED VARIANCES WITHIN A ONE MILE RADIUS



**PARCELS 1-4**  
 Gross Acreage = 19.931  
 Net Acreage = 19.476

-  UNDERGROUND SEPTIC TANK
-  TANK
-  3' DIAMETER STANDPIPE.
-  WELL.
-  POWER POLE
-  GUARD POST
-  OVERHEAD ELECTRIC
-  BARBED WIRE FENCE
-  INDICATES QUARTER SECTION LINE
-  INDICATES NEW PARCEL LINE
-  INDICATES EASEMENT LINE



## Findings for Variance

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.
  - a) The undivided parcel is currently owned by multiple partners. The partners like to have their own parcel so they can eventually pass on to their family members.
  - b) All parcels will continue to be used for agricultural purposes.
  - c) The parcel is presently approximately 19.93 acres.
  - d) Parcel 1 consisting of gross area of 4.98 acres
  - e) Parcel 2 consisting of gross area of 4.98 acres
  - f) Parcel 3 consisting of gross area of 4.98 acres
  - g) Parcel 4 consisting of gross area of 4.98 acres
  - h) The proposed lots are non-conforming but are consistent to the surrounding parcels to the east.
  
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.
  - a) The undivided parcel is currently owned by multiple partners. One partner is in his late 80's and want to be able to pass his share to his family members.
  - b) There are approximately 40 parcels under 5 acres within a ½ mile radius.
  
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.
  - a) The owners will continue to farm the new parcels.
  - b) The parcel sizes will have no effect on property and improvement in the vicinity of the property.
  - c) The site is not within a water shortage area.
  - d) Granting of the variance will not change the existing conditions, nor will it result in an increase in the amount of traffic on the existing roads.
  - e) Granting of the variance will improve the property and the vicinity by requiring the partners to work together and adhere to the requirements anticipated for Parcel Map Approval including but not limited to removing former dwellings, dilapidated structures, abandoned vehicles, etc.

4. The granting of this Variance will not be contrary to the objectives of the General Plan.
  - a) There will be no change of use since the new parcels will continue to be used for agricultural purposes.
  - b) Therefore, no negative incremental cumulative effects would result from granting the variance request.
  - c) It will adhere to the plan by allowing for fair and equal opportunities for all residents