



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 3 January 28, 2021

SUBJECT: Variance Application No. 4092

DESCRIPTION: Waive the building height requirements to permit a 75-foot tall “super stack” loading bucket elevator for an existing agricultural chemical operation in the AE 20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

LOCATION: The subject parcel is located on the south side of Central Avenue between Sunnyside Avenue and Clovis Avenue (Sup. Dist.: 4) (APN: 331-050-03) (5427 E. Central Avenue, Fresno, CA 93725).

**OWNER/
APPLICANT:** Tessengerlo Kerley

STAFF CONTACT: Ethan Davis, Planner
(559) 600-9669

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Approve Variance Application No. 4092 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. Site Plans and Detail Drawings

6. Applicant's Variance Findings

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agriculture	No Change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size)	No Change
Parcel Size	20.00-acres	No Change
Project Site		See above Parcel Size
Structural Improvements	Tank farms, production equipment, hazardous waste storage areas, scale house/office, loading docks, water tank, water well, pipe racks, cooling towers, parking, storm drainage basin	Addition of a 75-foot super stack, 1,200 square foot canopy and relocation of existing equipment
Nearest Residence	728 feet to the northeast of the property	No Change
Operational Features	Agricultural chemical processing, storage, and distribution facility.	No Change
Employees	38 employees	No Change
Traffic Trips	Deliveries vary by time of the year, February to June Averages 19-25 trips and July to January averages 5-10 deliveries per day.	No Change
Lighting	Outdoor Lighting for the existing facility	No Change
Hours of Operation	24-hours	No Change

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

ENVIRONMENTAL ANALYSIS:

It has been determined pursuant to Section 15061(b) 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 12 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 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:

In 1988, Moyer Products, Inc. purchased the subject property and was subsequently granted approval of Conditional Use Permit No. 2341, 2638, 2828 and 3274 to establish an agricultural chemical and fertilizer storage, processing, and sales operation.

Findings 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; and*

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Setbacks	AE-20 Zone District: Front: 35 feet Side: 20 feet Rear: 20 feet	No Change	Y
Parking	One parking space for every two permanent employees, each company salesperson, and each company vehicle	No change	N/A
Lot Coverage	No requirement	N/A	N/A
Space Between Buildings	N/A	N/A	N/A
Wall Requirements	Per Section 855-H.2 of the County Ordinance.	No change, no walls proposed	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	No Change	N/A

Reviewing Agency/Department Comments:

There were no comments from reviewing agencies or County Departments regarding the project other than advisory statements about required regulations that have been noted under the Projects Notes section of Exhibit 1.

Finding 1 Analysis:

In support of Finding 1, the applicants findings state that the project will consist of the addition of a 75-foot-tall superstack loading bucket and the relocation of several pieces of equipment on

site to increase productivity of the existing operation. The Variance is requested for the maximum height exceedance of the superstack loading bucket.

The situation is exceptional in that the existing over height structures that need to be served by the equipment were previously approved by CUP No. 3274 which allowed for the relocation and expansion of the existing fertilizer operation with processing equipment that exceeded the height limit. The need to be able to load the existing structures from above necessitates the equipment to exceed the height limit as the existing structures are already over the allowed height.

Recommended Conditions of Approval:

See recommended Conditions of Approval attached as Exhibit 1.

Conclusion Finding 1:

Based on the above analysis that the situation is exceptional, Finding 1 can be made.

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.*

Analysis Finding 2:

In support of Finding 2, the applicants state that to meet market demands the relocation and addition of equipment is needed. The addition of the super stack exceeds the allowed 35-foot limit within the AE20 zone district. The operation was previously permitted under CUP’s, SPR’s and building permits for the current use, the addition of the super stack would improve on the existing permits and use of the parcel.

Staff feels the addition of the super stack and relocation of equipment is a substantial property right to maintain the operation efficiency of the existing facility with modern methods utilized by many other similar operations.

Conclusion Finding 2:

Finding 2 can be made as it allows the applicant to preserve the rights to the previously approved and developed structures via maintenance and modernization.

Finding 3: *That the proposed use will have no adverse effect on abutting property and surrounding neighborhood or the permitted use thereof*

Surrounding Parcels				
	Size:	Use:	Zoning:	Nearest Residence:
North	39.09-acres	Orange Orchard	AE-20	728 feet northeast of the property
South	36.77-acres	Orange Orchard / Single Family Residence	AE-20	1,120 feet from south property line
East	102.04-acres	Orange Orchard	AE-20	1,530 feet from the east property line

Surrounding Parcels				
West	20-acres	Orange Orchard	AE-20	1,320 feet from the west property line

Reviewing Agency/Department Comments:

Fresno Irrigation District (FID): District’s Briggs – Central Avenue Branch No. 10 pipeline runs along the north side of the Central Avenue at the intersection of Sunnyside Avenue. Any street improvements in the vicinity of pipeline crossing would require FID approval.

There were no other comments from reviewing agencies or County Departments regarding the project other than advisory statements about required regulations that have been noted under the Projects Notes section of Exhibit 1.

Analysis finding 3:

In support of Finding 3, the Applicant’s Findings state that the facility has been in operation since 1988, and it has not been materially detrimental to the public welfare or injurious to property and improvement in the vicinity of the project site. The addition of the 75-foot tall superstack will not change the ingredients of the products currently made on site. As the site is already developed and the surrounding parcels are orchards the addition of the 75-foot super stack will not be detrimental to the surrounding uses.

Staff notes that the scope and of the proposed additions will not change the nature of the existing operation. The existing use already contains manufacturing related equipment for the production of fertilizer. The nearest home is approximately 800 feet east of the project site and approximately 2,000 feet from the nearest arterial road (Clovis Avenue). Staff believes due to the distance between the nearest home and arterial road there are no aesthetic issues as the tower will not obscure any scenic vistas.

This Variance request, if granted, would allow for the addition of the 75-foot tall super stack to exceed the 35-foot maximum height limit within the AE-20 Zone District.

Staff believes that there will be no adverse impacts on neighboring properties because the subject parcel already consists of manufacturing facility; therefore, finding 3 can be made.

Recommended Conditions of Approval:

None.

Conclusion Finding 3:

Staff believes that there will be no adverse impacts on neighboring properties because the subject parcel already consists of manufacturing facility and the proposed improvements will not have any appreciable impacts, therefore, Finding 3 can be made.

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

Reviewing Agency Comments:

The Policy Planning Section of Public Works and Planning determined there are no General Plan issue with the proposed height variance.

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

Analysis Finding 4:

In support of Finding 4, the Applicant states that the proposed addition is not contrary to the objectives of the Fresno County general plan as the project enables the company to continue to operate according to the previous use granted through the CUP process. The Applicant states that the granting of this Variance would be in accordance with the objectives of the General Plan.

Staff notes that there are no General Plan policies specifically pertinent to the proposed project. The project proposed to improve an existing value-added agriculturally related activity which is in line with the General Plan.

Recommended Conditions of Approval:

None.

Conclusion Finding 4:

Based on the above analysis, Finding 4 can be made.

PUBLIC COMMENT:

None.

SUMMARY CONCLUSION:

Based on the factors cited in the analysis, staff believes Findings 1,2,3 and 4, required for granting the Variance, can be made. Staff therefore recommends approval of Variance No. 4092.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Approval Action)

- Move to determine that the required Findings can be made (state basis for not making the Findings) and move to approve Variance Application No. 4092 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.

Alternative Motion (Denial Action)

- Move to determine the required Findings cannot be made (Stating reasons) and move to deny Variance Application No. 4092; 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. 4092
Conditions of Approval and Project Notes**

Conditions of Approval	
1.	A site Plan Review application shall be submitted for approval by the Director of the Department of Public Works and Planning, in accordance with Section 874 of the Fresno County Zoning Ordinance. Items to be addressed under the site plan review may include, but are limited to, design of parking and circulation, driveway, access, grading, drainage, fire protection and lighting.
2.	Development and operation of the use shall be conducted in accordance with the site plan, elevation drawing and operational statement approved by the Commission.
3.	All Conditional Use Permits Nos. 2828, 2638, 2341 and 3274 shall remain in full force and effect.
4.	All outdoor lighting shall be hooded and directed as to not shine towards adjacent properties and public streets.

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.	
2.	The approval will become void, unless there has been substantial development within one year of the effective date of this approval.
3.	All abandoned water wells and septic systems on the subject parcel or resultant parcels shall be properly destroyed by an appropriately licensed contractor, subject to permits and inspections by the Fresno County Department of Public Works and Planning and the Fresno County Department of Public Health.
4.	Prior to destruction of agricultural wells, a sample of the uppermost fluid in the well column shall 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 shall 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.
5.	Should any underground storage tank(s) be found during development, the Applicant shall apply for and secure an Underground Storage Tank Removal Permit from the Fresno County Department of Public Health, Environmental Health Division. Contact the Certified Unified Program Agency at (559) 600-3271 for more information.
6.	A Grading Permit or Voucher shall be required for any grading that has been done without a permit and any grading associated with future development of the existing and proposed parcel(s).
7.	Any additional runoff generated by development of the proposed parcels cannot be drained across property lines and must be retained or disposed of per County standards.

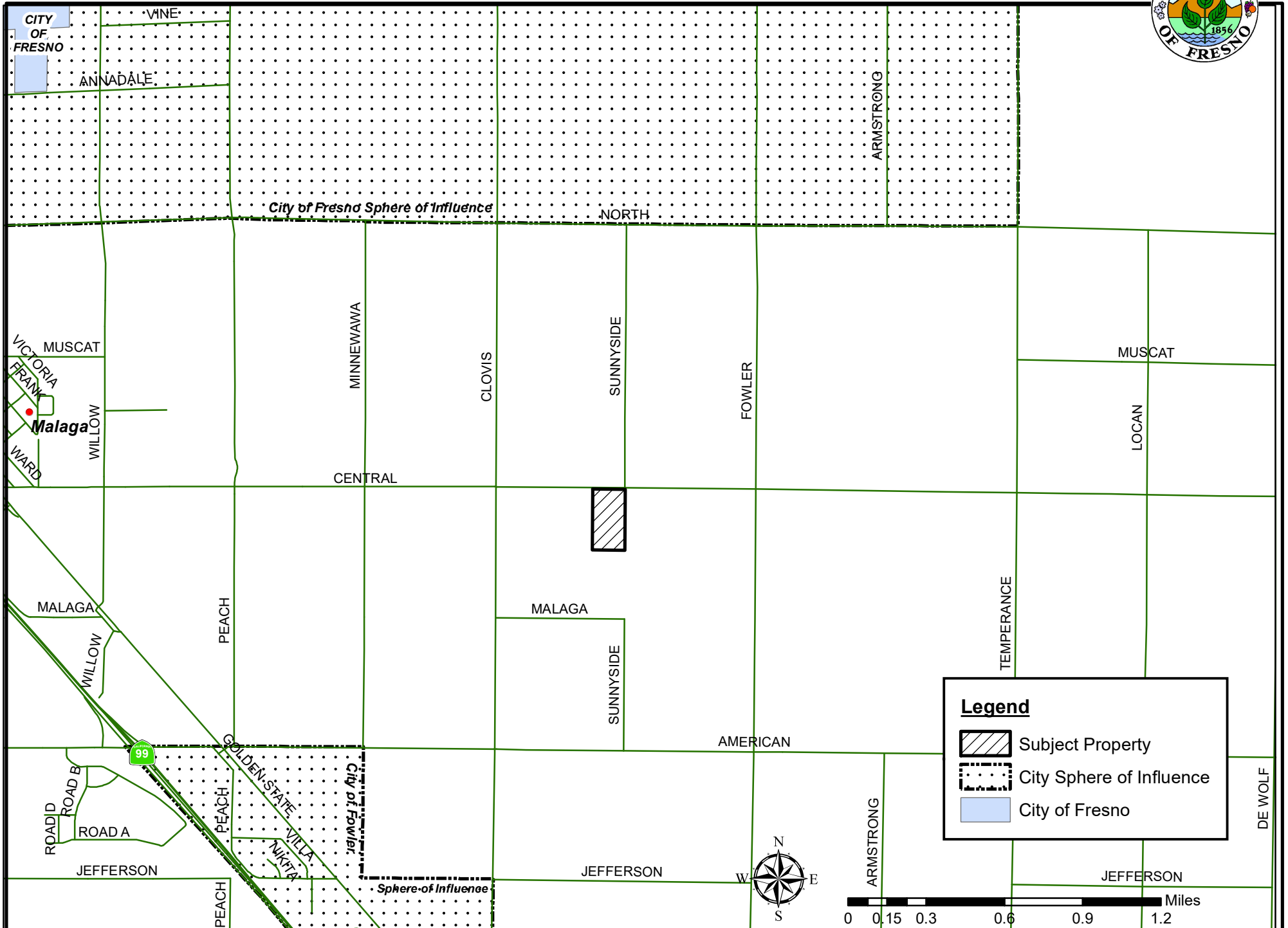
Notes	
8.	An encroachment permit from the Fresno County Road Maintenance and Operations Division will be required for any work proposed within the County road right-of-way.
9.	Fresno Irrigation District: District Briggs – Ventral Avenue Branch No. 10 pipelines runs along the north side of the Central Avenue at the intersection of Sunnyside Avenue. Any street improvements in the vicinity of pipeline crossing would require FID approval.
10.	The applicant shall contact San Joaquin Valley Air Pollution Control District (Air District) to identify and District Rules, regulations, or permits applicable to this proposal.

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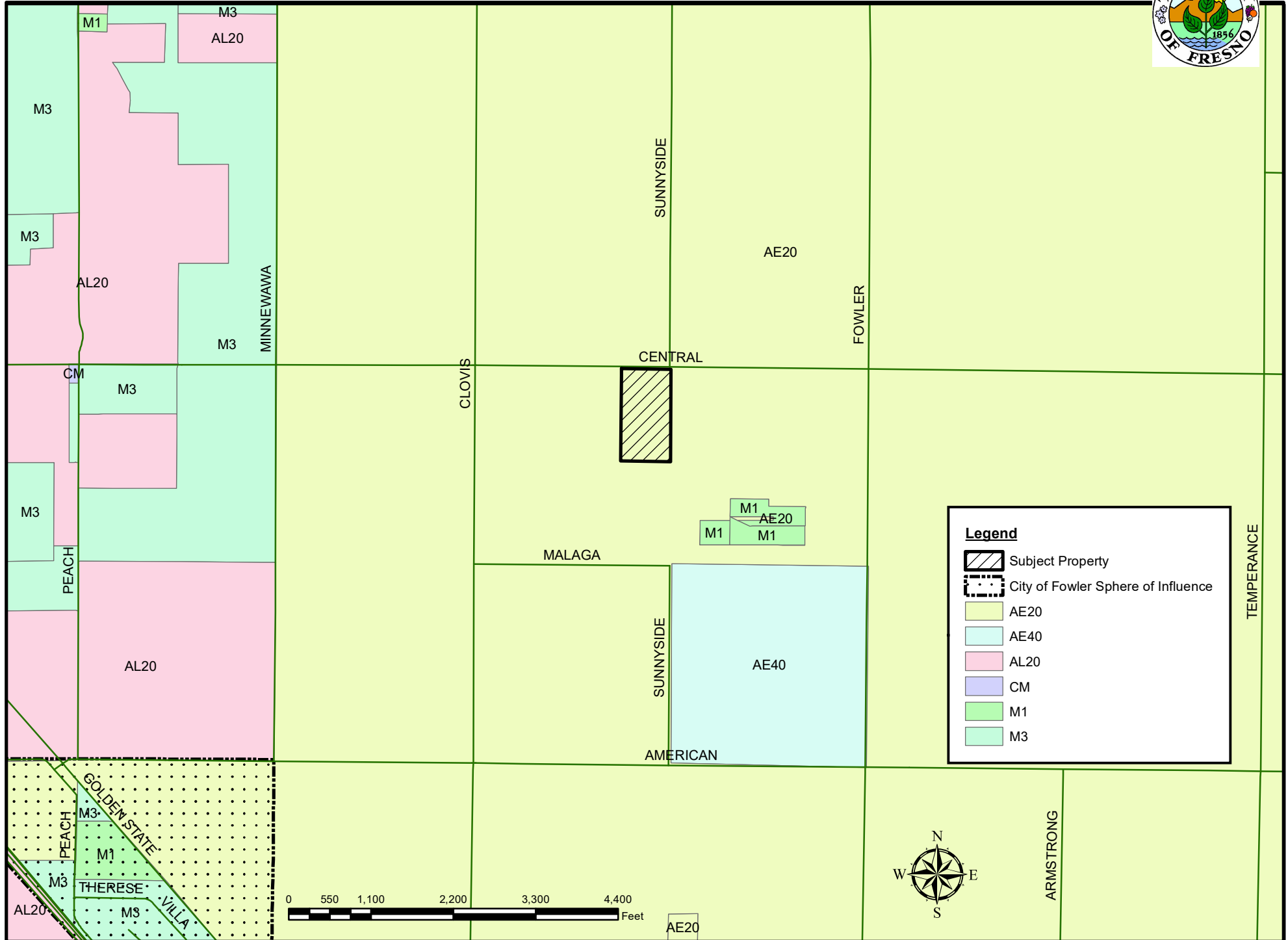
LOCATION MAP

VA 4092



VA 4092
STR 33- 14/21

EXISTING ZONING MAP

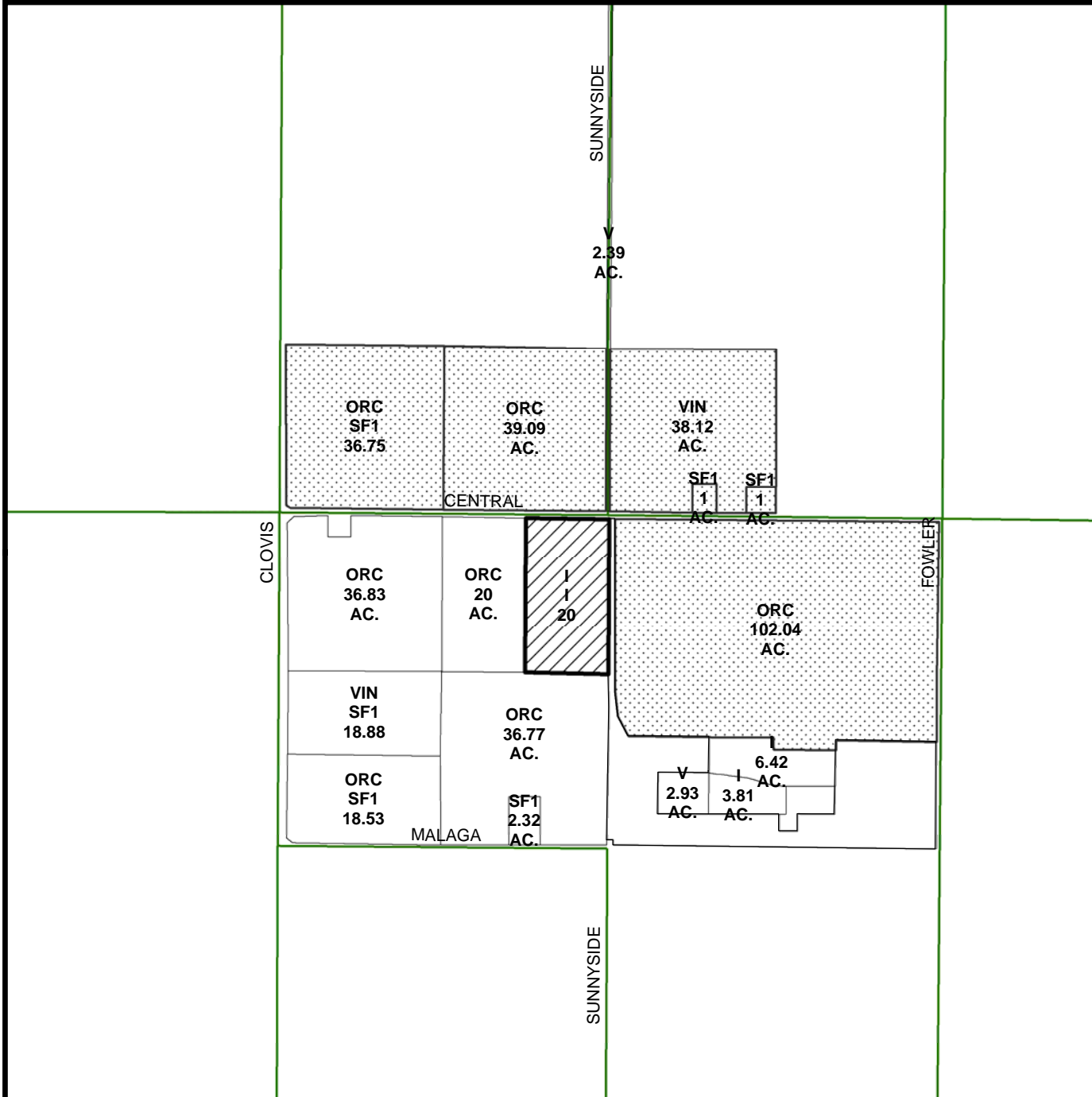


Legend

- Subject Property
- City of Fowler Sphere of Influence
- AE20
- AE40
- AL20
- CM
- M1
- M3

EXISTING LAND USE MAP

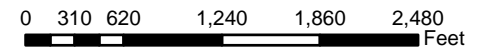
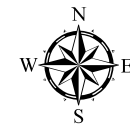
VA 4092



LEGEND
I - INDUSTRIAL
ORC - ORCHARD
SF# - SINGLE FAMILY RESIDENCE
V - VACANT
VIN - VINEYARD

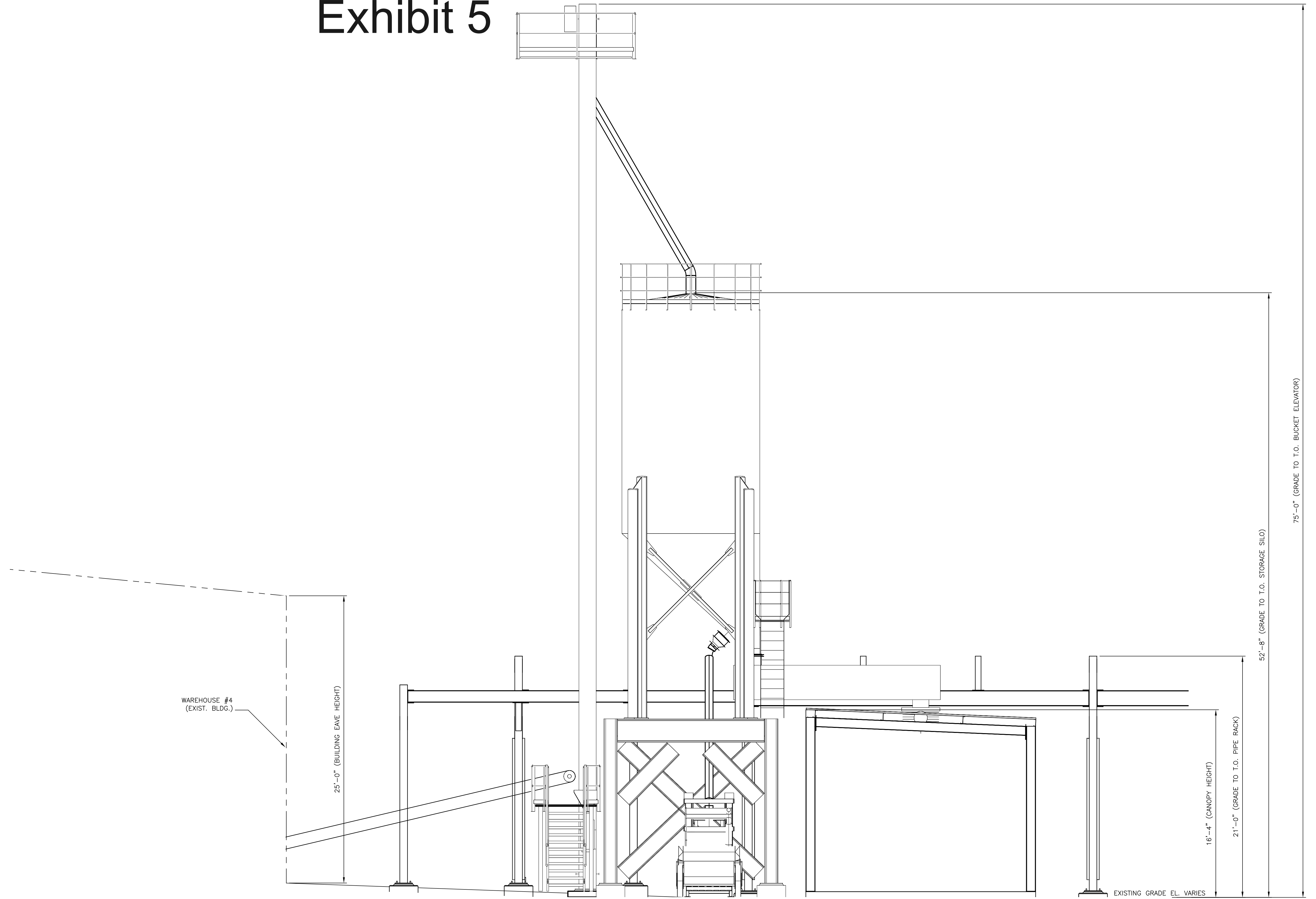
LEGEND:

- Subject Property
- Ag Contract Land



Department of Public Works and Planning
Development Services Division

Exhibit 5



ELEVATION
SCALE: 1/4"=1'-0"

COMPANY PRIVATE DATA
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B	ISSUE FOR PERMIT USE		TW		
№	REVISION	DATE	BY	P.M.	E.M.



TESSENDERLO KERLEY, INC.
FRESNO, CA

ENG. RECORD	DATE
DRAWN BY TW	8/20/20
CHECKED	
PROJ.MGR	
ENG.MGR	
SCALE	AS NOTED

FRESNO PLANT SULFUR BENTONITE UNIT EQUIPMENT ELEVATIONS	
JOB №	19069
DRAWING NO.	069SKL01
INITIATION SCALE	1
REV.	B

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County of Fresno
Planning Department
2220 Tulare St.
Fresno, CA 93721

Tessengerlo Kerley, Inc. sulfur fertilizer project
Statement of variance findings

To whom it may concern,

The project will be located at 5427 East Central Avenue, Fresno, CA 93725 on the lot with the Assessor's Parcel Number of 331-050-03. The parcel has a current zoning of AE-20 – Exclusive Agricultural. The project will consist of the installation of several pieces of equipment inside of existing warehouse 4 as well as a few pieces of equipment to the north of that warehouse, including a 75 foot tall superstack loading bucket elevator, relocating one silo on the site, and the construction of a 1,275 sq. ft. load out canopy as an addition to the company's existing agricultural chemical manufacturing plant.

In order to secure continued use of all of the company's rights of ownership to the aforementioned property, it understands that a variance is required. As such, the required four findings for the approval of a variance are as follows:

1. Finding number one: The company is an existing agricultural chemical manufacturing facility that has been in operation on the site for over two decades. Given the nature of their operations, they need to utilize equipment that is not required for the operations of the surrounding farmlands. Therefore, there are extraordinary circumstances applicable to the property in question.

2 Finding number two: In order to compete with market demands and to meet their client needs, the company needs to add processes that require the relocation of an existing silo and installation the other equipment in this proposal that exceeds the 35' maximum height for structures allowed within the zoning ordinance. Also, company has numerous tanks and other pieces of equipment which were previously approved under other CUP's, SPR's and building permits that exceed the maximum allowed height, yet the County never required a variance before. Therefore, in order to properly comply with the County's zoning ordinance that they might preserve the their enjoyment of their property rights, which are available to all such entities who obtain the proper CUP's from the County, the company seeks the requested variance.

3. Finding number three: As previously mentioned, the company's agricultural chemical manufacturing facility has been in operation on the site for more than two decades, and has not been materially detrimental to the public welfare or injurious to property and improvement in the vicinity of the project site. As the new processes that require the new equipment involve using the same types of ingredients for the products they currently make, there should be no change in that fact. Also, given the existing previously approved equipment and tanks that are on the site, the addition of the equipment with this current submittal, including that equipment that would prompt the need of the requested variance, would not cause a drastic change in the appearance of the site. The company also is subject to and has obtained or is obtaining permits from the Air Control District, the State Water Board, and all other regulator agencies that work to ensure that the company will not cause any issues that this finding would address.

Finding number four: The granting of the requested variance would not be contrary to the objectives of the Fresno County general plan as the project enables the company to continue

to operate according to the previously approved use granted through the CUP process. The nature of the company and the proposed equipment additions is a supporting use to the agricultural base on which the economy of the County heavily depends, and granting the variance will help to ensure the long term viability of the company, which also will bolster the strength of the County's economy and help to ensure the jobs of several of the county's residents.

The company hereby asks that this variance be granted.

Respectfully submitted,

Sean Odom
Gerald Mele & Associates, Inc.