



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 4 January 28, 2021

SUBJECT: Variance Application No. 4096

Waive lot size requirements to create a 5-acre parcel and a 13-acre parcel from an existing 18-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

LOCATION: The subject parcel is located on the west side of South Highland Avenue, approximately 3-miles southwest of the city limits of the City of Sanger (Address: 4219 S. Highland Avenue) (Sup. Dist. 4) (APN 331-061-72).

**OWNER/
APPLICANT:** Susan & Tom Hardin

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

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Approve Variance Application No. 4096 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 Plans and Detail Drawings
7. 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	17.61-acre	Parcel A: 11.5-acre Parcel B: 6-acre
Project Site	17.61-acre parcel improved with a single-family residence, an event barn and a horse corral.	See above Parcel Size
Structural Improvements	The subject parcel is improved with a single-family residence and an event center (Grace Barn).	If the Variance is approved, subsequent development would include on addition single family home on proposed parcel B.
Nearest Residence	Approximately 75 feet of the southeast boundary.	No Change
Operational Features	Event Center and Single-Family residence	Parcel A: Event Center Parcel B: Proposing a Single-Family Residence

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 22 property owners within 1320 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:

The Variance, submitted, October 15, 2020, proposes to allow the division of the subject 17.5-acre parcel into a 11.5-acre parcel and a 6-acre parcel, Parcel A and Parcel B.

At least 2 variance requests have been processed within one half mile of the subject property. Those variances are detailed in the table below.

Application/Request	Staff Recommendation	Final Action	Date of Action
VA No. 3488	Approval	PC Approved	September 21, 1987
VA No. 3100	Approval	PC Approved	September 19, 1995

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	Parcel A: Front: 35 feet Side: 20 feet Rear: 20 feet Parcel B: Front: 35 feet Side: 20 feet Rear: 20 feet	Parcel A: Yes Parcel B: Yes
Parking	N/A	N/A	N/A
Lot Coverage	No requirement	N/A	N/A
Space Between Buildings	No requirement for residential or accessory structures, excepting those used to house animals, which must be located a minimum of 40 feet from any human-occupied building.	N/A	N/A
Wall Requirements	N/A	N/A	N/A
Septic Replacement Area	100 percent of the existing system	No Change	N/A

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Water Well Separation	Building sewer/ septic tank: 50 feet; disposal field: 100 feet; seepage pit/cesspool: 150 feet	There is currently a septic system on proposed parcel "A". There is also a domestic well on parcel "A". No Additional wells or septic systems are proposed with this application.	Yes

Reviewing Agency/Department Comments:

Zoning and Permit Review Section of the Fresno County Department of Public Works and Planning: If this Variance is approved, a subsequent mapping procedure will be required. Any new septic system or expansion of an existing system will be subject to the provisions of the Fresno County Local Area Management Program (LAMP).

Development Engineering Section of the Fresno County Department of Public Works and Planning:

- Highland Avenue is classified as a Local road with a 20-foot right-of-way west of the centerline per Plat Book. The minimum right-of-way width west of the centerline for a local road is 30'.
- A grading permit or voucher is required for any future grading proposed with this application.
- A 10'x10' corner cut-off should be improved for sight distance purposes at any existing driveway accessing Highland Avenue if not already present.
- Any work done within the right-of-way to construct a new driveway or improve an existing driveway will require an Encroachment Permit from the Road Maintenance and Operations Division.

Road Maintenance and Operations: If any new access points are proposed an encroachment permit will be required from the Fresno County Road and Operations Division.

Finding 1 Analysis:

In support of Finding 1, the applicants findings state that the northeast portion of the property is significantly lower in elevation than the western 11.5 acres. The applicant states that the proposed split of the 17.5-acre parcel into a 11.5-acre parcel and a 6-acre parcel have different characteristics and potential uses. The applicant states that the proposed 6-acre parcel is significantly lower than the proposed 11.5-acre parcel, ranging from 4 feet -12 feet through the proposed 6-acre parcel.

Regarding Finding 1, staff feels that while there is considerable physical characteristics particular to the subject property that are unique to the subject parcel the physical characteristics don't prevent the usage of the property as all portions of the property can be accessed from the same point.

Recommended Conditions of Approval:

See recommended Conditions of Approval attached as Exhibit 1.

Conclusion Finding 1:

Finding 1 cannot 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 separating the two proposed parcels are different in elevation and request separating the parcels to sell of the 11.5-acre parcel and to put a new home on the 6-acre parcel. The applicants have lived in the area for years and would like to retire from their business which is an event center on the 11.5-acre parcel. The applicants wish to split the parcel so that they can retire and remain close to their family who live on the adjacent parcel. The applicant states that the 6-acre parcel is not suitable for farming due to the soils being mostly sand but is suitable for their current use housing livestock.

Separating the parcels will not resolve any substantial property right issues with the land. Splitting the parcel would allow the owners to further enjoy the property however it would increase residential density in the area going against the goals of the AE-20 zoning. All areas of the parcel can be accessed from the same entry point and similarly to other parcels in the area the land can be used for various agricultural land uses without splitting the parcel.

Recommended Conditions of Approval:

None.

Conclusion Finding 2:

Finding 2 can't be made, as there is no substantial property right loss that is similar to the other properties in the area.

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	17.72-acres	Agricultural	AE-20	Approximately 800 feet
South	80.00- acres	Agricultural	AE-20	Approximately 1,700 feet
East	34.15-acres	Agriculture	AE-20	Approximately 2,200 feet
	2.05-acre	Home Site	AE-20	Approximately 600 feet
West	16.92-acres	Single Family Residence/Agricultural	AE-20	Approximately 1,080 feet

Reviewing Agency/Department Comments:

Fresno County Department of Public Health, Environmental Health Division: If approved the applicant will be required to obtain permits for proposed wells or septic systems.

Water/Natural Resource Section of the Development Services Division: No water related concerns regarding the proposal or future development on the parcels.

Analysis finding 3:

In support of Finding 3, the Applicant’s Findings state that the granting of the Variance will not impact other properties in the vicinity because the division of the parcel will result in two parcels of similar size to surrounding properties.

Concerning Finding 3, it is the intention of the Applicant, if this Variance is approved, to divide the existing parcel into two parcels, the second of which will develop with a single-family dwelling. As such, there would be an increase in residential density, necessitating the installation of an additional domestic well and septic system to serve the future development. Staff also 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, e.g., no more than one dwelling unit on a parcel that is less than 5 acres in the AE-5 Zone District, or less than 20 acres 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 a second residence, if so desired, subject to a Director Review and Approval, which could result in up to four (4) residences on the two proposed parcels.

If approved, the granting of the Variance could result in the establishment of up to three additional homes and accessory structures. Such uses could increase conflicts between agricultural residential land uses. Given the nature of the potential future residential development and the surrounding land uses, staff recommends a condition of approval that would limit the 11-acre parcel to no further residential development and the 6-acre parcel to only allow a single residence. Staff believes with this condition there will be no adverse effects or aesthetic concerns to surrounding properties if this Variance request is granted.

Recommended Conditions of Approval:

If the Commission were to approve the Variance, staff would recommend a condition of approval That the Applicant record a covenant on the parcels restricting any further secondary residential units or further subdivision of the land.

Conclusion:

Finding 3 cannot be made, the proposed variance could intensify residential development in an agricultural zone district.

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

Relevant Policies:	Consistency/Considerations:
General Plan Policy: LU-A.6:	The applicant is requesting a Variance from the 20-acre minimum parcel size required

Relevant Policies:	Consistency/Considerations:
<p>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, LUA.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>and does not qualify under Policy LU-A.9, See Analysis below.</p>
<p>General Plan Policy: LU-A.7: 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.</p>	<p>The minimum parcel size for the subject parcel is 20-acres. The creation of two smaller parcels is inconsistent with this policy.</p>
<p>General Plan Policy LU-A.9: The County may allow the creation of homesite 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"> 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 waste disposal, but in no event shall the lot be less than one (1) gross acre; and b. One of the following conditions exists: 	<p>Policy LU-A.9 provides for an exception from the requirements of the minimum parcel size designation where those specific criteria are met. In the case of this application, the subject parcel does not meet the required criteria listed under Policy LU-A.9 to allow creation of a substandard size lot or homesite parcel.</p>

Relevant Policies:	Consistency/Considerations:
<ol style="list-style-type: none"> 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 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 3. The present owner owned the property prior to the date these policies were implemented and wishes to retain his/her homesite and sell the remaining acreage for agricultural purposes. <p>Each homesite 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>	

Reviewing Agency Comments:

Policy Planning Section of the Fresno County Department of Public Works and Planning: Reiterated that the project is not consistent with the policies as described in the table above.

Analysis Finding 4:

In support of Finding 4, the Applicant states that the subject parcels already non-conforming with the underlying zoning, and the area around the subject property is also non-conforming to the underlying zoning. The applicant states that the soils on the 6-acre portion are not substantial for a farming operation and is more suited for livestock.

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 Farmland of Statewide Importance, which is described as Farmland similar to Prime Farmland, but with minor shortcomings, such as greater slopes or less ability to store soil moisture.

Staff does not concur with the Applicant’s statement that the project would not be contrary to the objectives of the General Plan. The General Plan contains certain policy provisions which allow

for the creation of substandard-sized lots for the creation of homesite parcels, subject to certain specific criteria listed in the preceding table.

The applicant has already created a homesite parcel from the existing parcel, therefore can no longer create an additional homesite parcel subject to Policy LU-A.9. Additionally, Policy LU-A.7 states that evidence that the parcel is already not an economic farming unit is not a basis for granting an exception (see discussion under Finding 2). Lastly, the proposal to split the parcel is not consistent with General Plan Goal LU-A, as noted above.

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, 3 and 4, required for granting the Variance, cannot be made. Staff therefore recommends denial in Variance No. 4096.

PLANNING COMMISSION MOTIONS:

Recommended 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 Application No. 4096; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (Approval Action)

- Move to determine the required Findings can be made and move to approve Variance Application No. 4096 (state basis for making the findings), subject to the Conditions of Approval and Project Notes listed in Exhibit 1; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Recommended Conditions of Approval and Project Notes:

See attached Exhibit 1.

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**Variance Application (VA) No. 4096
Conditions of Approval and Project Notes**

Conditions of Approval

- | | |
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| 1. | Division of the property shall be in accordance with the site plan (Exhibit 6) as approved by the Planning Commission. |
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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. | <p>Division of the subject property is subject to the provisions of the Fresno County Parcel Map Ordinance. A Parcel Map Application shall be filed to create the two proposed parcels. The Map shall comply with the requirements of Title 17.72.</p> <p>The Fresno County Parcel Map Ordinance (County Ordinance Code, Title 17- Divisions of Land) provides that "Property access improvements associated with the division of the subject property are subject to the provisions of the Fresno County Parcel Map Ordinance, including dedication, acquisition of access easement, roadway improvements, and roadway maintenance." These requirements will be satisfied through recordation of a parcel map to create the subject parcels, subsequent to the approval of the Variance. The Applicant(s) may apply for an exception request from the road standards through the parcel map process.</p> |
| 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 Ordinance. |
| 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). |

Notes

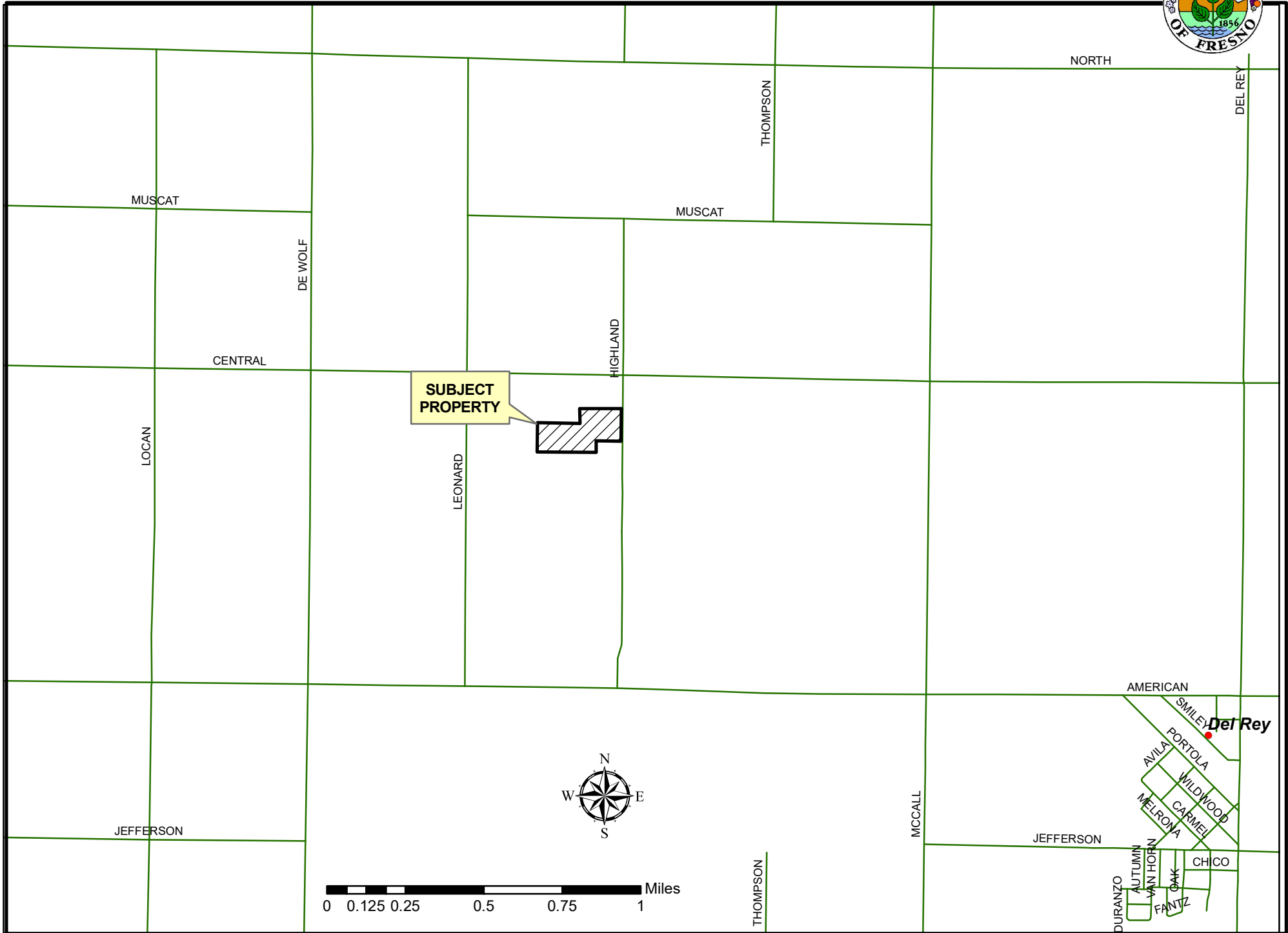
7.	Any additional runoff generated by development of the proposed parcels cannot be drained across property lines and must be retained or disposed of per County standards.
8.	An encroachment permit from the Fresno County Road Maintenance and Operations Division will be required for any work proposed within the County road right-of-way.

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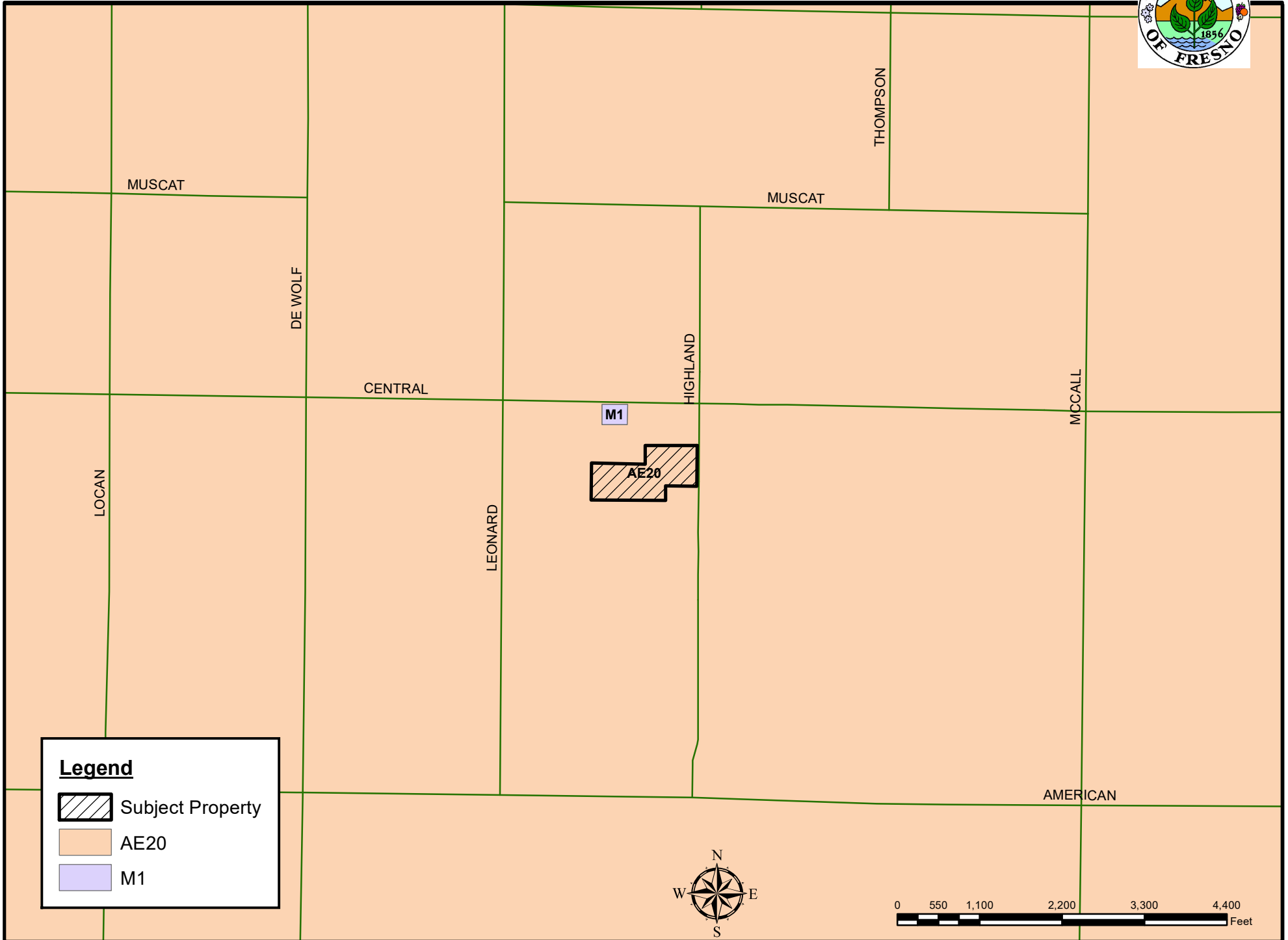
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LOCATION MAP




VA 4096

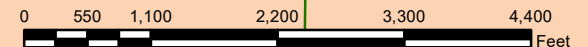


EXISTING ZONING MAP



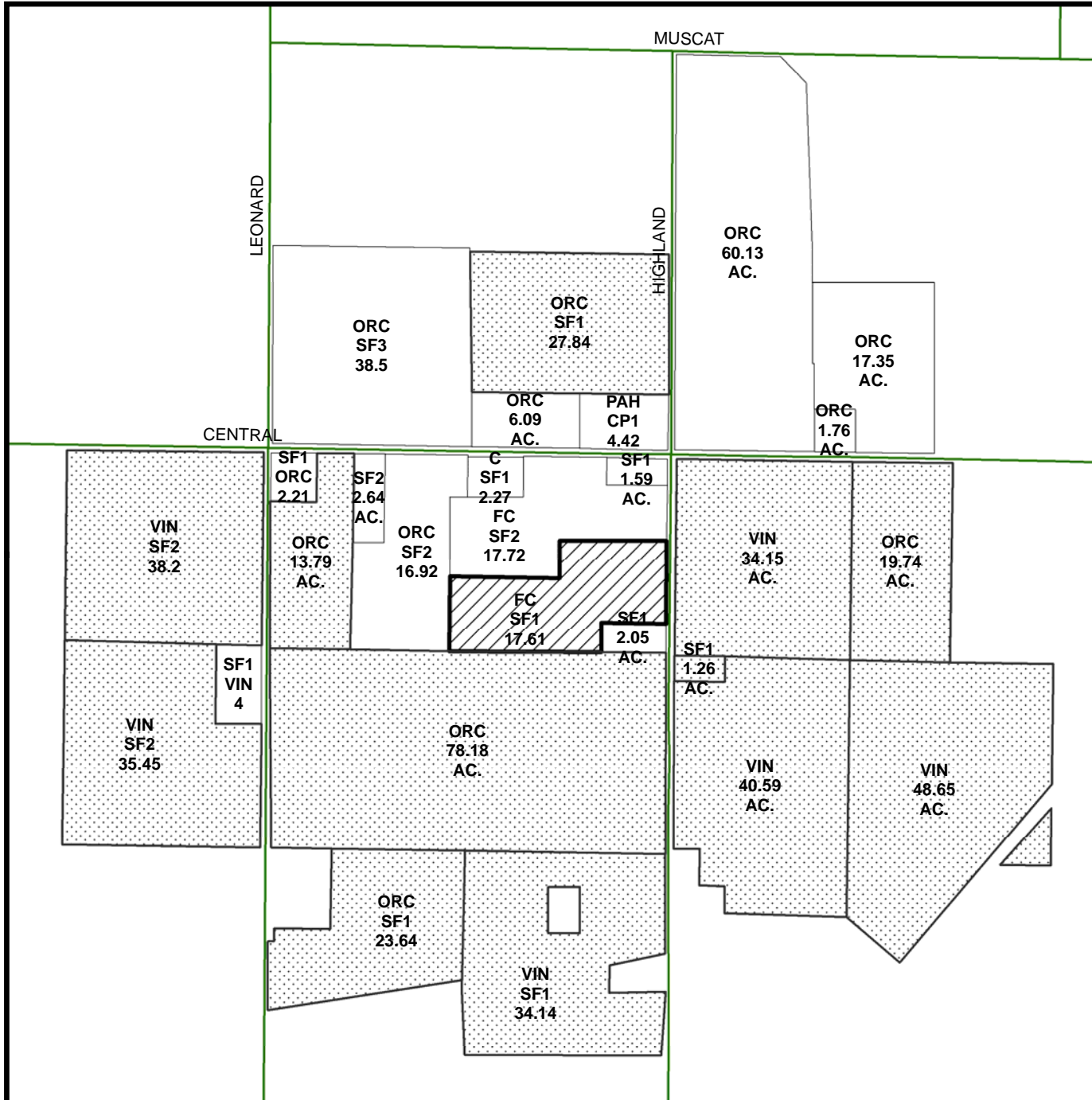
Legend

-  Subject Property
-  AE20
-  M1



EXISTING LAND USE MAP

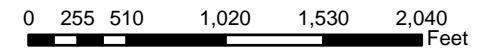
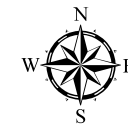
VA 4096



LEGEND	
C	COMMERCIAL
FC	FIELD CROP
ORC	ORCHARD
PAH	PACKING HOUSE
SF#	SINGLE FAMILY RESIDENCE
VIN	VINEYARD
CP#	OFFICE COMM./PROF
V	VACANT

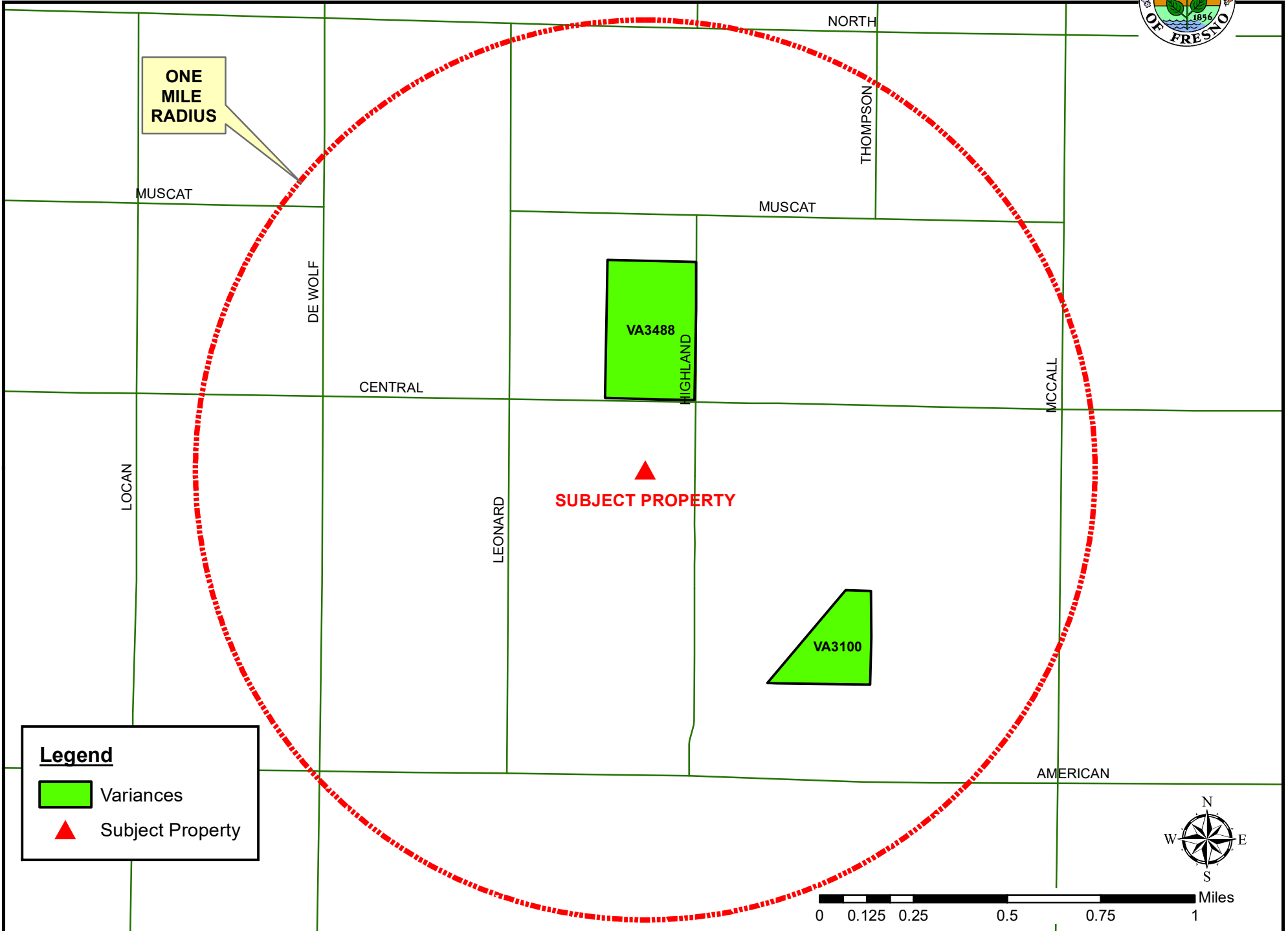
LEGEND:

- Subject Property
- Ag Contract Land



Department of Public Works and Planning
Development Services Division

APPROVED VARIANCES WITHIN A ONE-MILE RADIUS



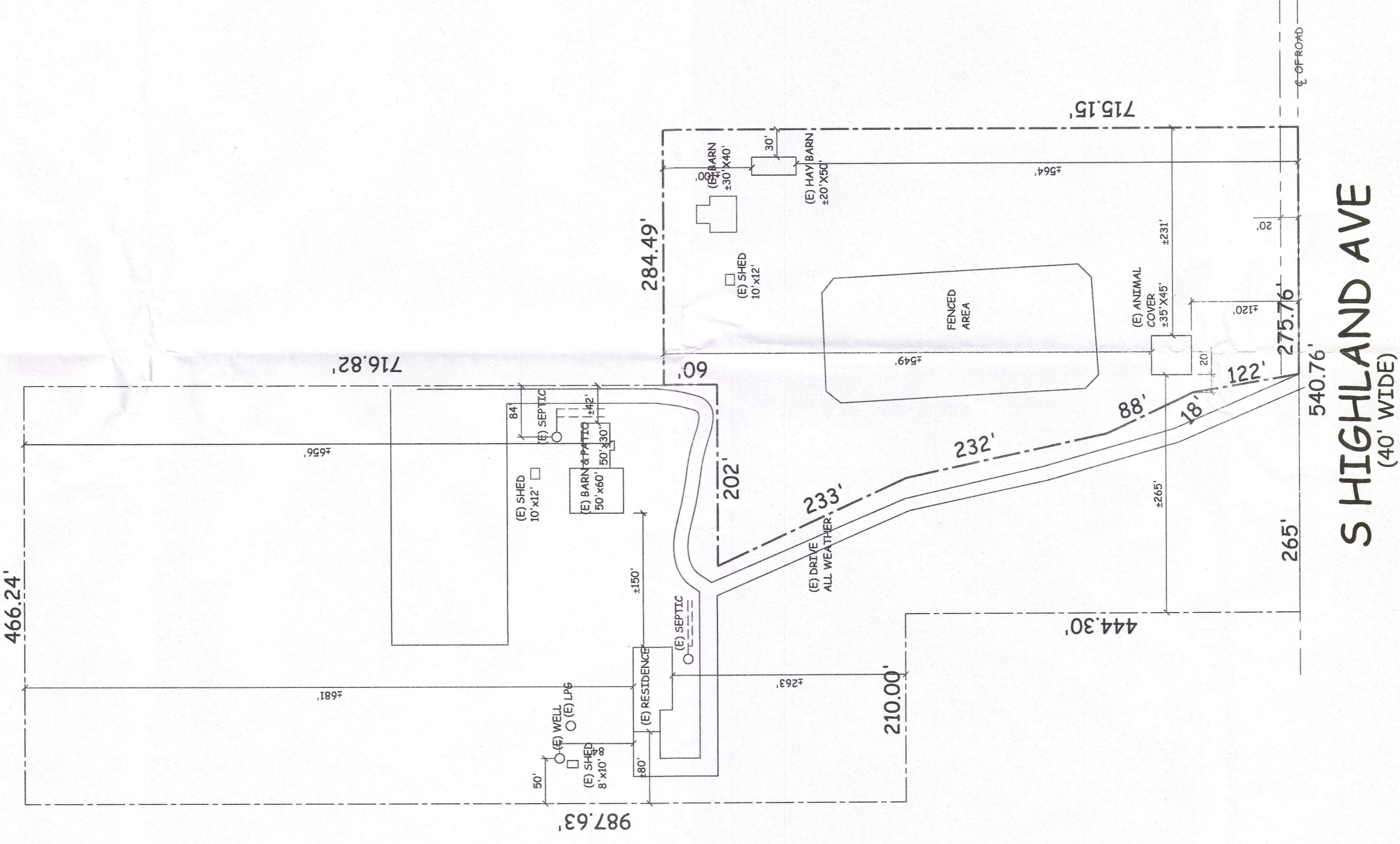
BY	REVISIONS

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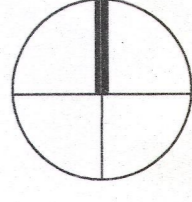
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4217 S HIGHLAND
 DEL REY, CALIFORNIA
 FRESNO COUNTY
 CALIFORNIA
 APN 331-061-72



NORTH

SITE PLAN

SCALE 1" = 100'-0"

Variance 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.

The Northeast portion of the property (approximately 6-acres) is depressed land. This depression from the other portion of land varies from 4-feet to 12-feet lower than the rest of the property.

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.

We presently have a high intensity park permit. Our plan is to sell our existing house, wedding venue and 11.5 acres. We would like a variance for 6 acres so we can retire. Our daughter lives next door adjacent to the six acres in question. We would like to build a small home to retire in and still remain close to family. 11.5 acres is flat, and 6-acres is depressed land. The 6 acres sets between my daughters property and the remaining 11.5 acres. There is a small flat elevated piece of ground that is suitable for a dwelling. There are smaller or like properties in the surrounding area.

3. The granting of a Variance will not be materially detrimental to the public welfare of injurious to property and improvement in the vicinity in which the property is located.

The splitting of the property will have no effect on the surrounding properties.

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

In support of Finding 4, the Applicant states that the subject parcel is already non-conforming with the underlying zoning, and the area around the subject property has been developed over time with the addition of substandard-sized parcels improved with single-family dwellings. These parcels are more consistent with rural residential development than with the underlying agricultural zoning, and development in the area has not been in conformance with the Zoning Ordinance regarding restrictions on the creation of substandard-size parcels. Additionally, the proposal is consistent with the General Plan, which promotes conservation of productive and potentially-agricultural lands, as the subject parcel has limited agricultural potential, and would be better suited

Tom Hardin Sr.