



# County of Fresno

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

## Planning Commission Staff Report Agenda Item No. 6 January 12, 2017

**SUBJECT:** Variance Application No. 4014

Allow the creation of a 5.0-acre parcel and a 14.68-acre parcel from an existing 19.68-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

**LOCATION:** The subject property is located on the south side of Tulare Avenue between McCall Avenue and Del Rey Avenue, approximately 1.9 miles northwest of the City of Sanger (Address: 10315 E. Tulare Avenue) (Sup. Dist. 3) (APN 314-120-25S).

**OWNER/  
APPLICANT:** Andrew R. Casado

**STAFF CONTACT:** Daniel Brannick, Planner  
(559) 600-4297

Chris Motta, Principal Planner  
(559) 600-4227

**RECOMMENDATION:**

- Deny Variance No. 4014; 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 Plan
6. Site Photographs
7. Applicant's Statement of Variance 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	19.68 acres	Create two parcels measuring approximately 5.0 acres and 14.68 acres
Project Site	19.68 acres developed with a single-family residence and planted with fruit trees	Existing single-family residence to be located on proposed 5.0-acre parcel; 14.68-acre parcel to remain planted with fruit trees
Structural Improvements	Single-family residence	See "Project Site" above
Nearest Residence	100 feet north of northernmost property line	No change
Surrounding Development	Agriculture and rural-density residential development	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 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 25 property owners within one quarter-mile 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 Zoning Ordinance Section 877 are made by the Planning Commission.

Specifically related to a Variance Application, in order to make Findings 1 and 2, a determination must be made that the property is subject to an exceptional or extraordinary physical circumstance that does not apply to other properties in the same Zone District, and a

substantial property right held by other property owners of like-zoned parcels in the area must be identified.

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 proposal entails the creation of a 5.0-acre parcel and a 14.68-acre parcel without public road frontage from an existing 19.68-acre parcel located in the AE-20 Zone District.

The project site is located on the south side of Tulare Avenue between McCall Avenue and Del Rey Avenue, approximately 1.9 miles northwest of the City of Sanger and 3.5 miles east of the City of Fresno. The surrounding area consists primarily of agricultural land uses and also includes some low-density residential uses. The existing parcel is developed with a 3,370 square-foot single-family residence located on the northern five-acre portion of the parcel; the 14.68-acre southern portion of the existing parcel is planted with fruit trees.

On March 8, 1977, the subject parcel and surrounding area were rezoned from the R-A Zone District to the AE-20 Zone District which is currently in effect. Section 816.5.A of the Zoning Ordinance requires a minimum parcel size of 20 acres for properties located in the AE-20 Zone District. The subject proposal would result in creation of two parcels less than 20 acres, thus a Variance is required for the proposal to be granted.

County records indicate there have been at least four previous requests for variances within a one-mile radius of the project site that have involved the creation of substandard-sized parcels. A summary of the variance application history for the area is listed below:

<b>Application No.</b>	<b>Project Description</b>	<b>Status</b>	<b>Date of Action</b>
VA No. 3939	Allow reorganization of a 3.63-acre parcel with 20 feet of road frontage (165 feet required)	PC Approved w/ conditions	3/14/12
VA No. 3222	Allow creation of a 5.56-acre parcel from an existing 163.58-acre parcel	PC Approved w/ conditions	9/21/89
VA No. 2927	Allow creation of a 3.99-acre parcel and a 20.24-acre parcel from an existing 24.23-acre parcel	PC Approved w/ conditions	6/27/85
VA No. 2710	Allow a property line adjustment to create a 2.10-acre parcel, 1.60-acre parcel, and 2.75-acre parcel from an existing 4.55-acre parcel, 0.87-acre parcel, and 1.03-acre parcel	PC Approved	6/10/82

**ANALYSIS/DISCUSSION:**

*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	<u>AE-20 Zone District:</u> Front: 35 feet Side: 20 feet Rear: 20 feet	<u>Parcel 1 (5.0 acres):</u> Front: 35 feet Side: 20 feet Rear: 20 feet  <u>Parcel 2 (14.68 acres):</u> Front: 35 feet Side: 20 feet Rear: 20 feet	<u>Parcel 1:</u> Yes  <u>Parcel 2:</u> Yes
Parking	N/A	N/A	N/A
Lot Coverage	No requirement	N/A	N/A
Separation Between Buildings	N/A	N/A	N/A
Wall Requirements	N/A	N/A	N/A
Septic Replacement Area	100 percent of the existing system	No change	Yes
Water Well Separation	Building sewer/septic tank: 50 feet; disposal field: 100 feet; seepage pit/cesspool: 150 feet	No change	Yes

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

Zoning Section of the Fresno County Department of Public Works and Planning: Access to the 14.68-acre parcel will be required.

Fresno County Department of Public Health, Environmental Health Division: In the case of this application, it appears each parcel can accommodate the sewage disposal systems and expansion areas, meeting the mandatory setback requirements as established in the California Plumbing Code and California Well Standards Ordinance. No building permit records were available for the existing sewage disposal system. 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(s).

Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: Tulare Avenue is classified as a Local in the County's General Plan, requiring an ultimate right-of-way of 60 feet. Currently, Tulare Avenue has 40 feet of road right-of-way, with 20 feet on each side of the section line. If the Variance is approved, an additional 10 feet of right-of-way should be dedicated on the final map across the frontage of the subject property. If any improvements are constructed within the County road right-of-way, an encroachment permit is required from this division.

Staff notes that this segment of Tulare Avenue dead ends at Del Rey Avenue to the east and McCall Avenue to the west, with an entire length of approximately one mile. This segment has not been subject to intensive land use development, and no new development is included with this proposal, nor is it expected to generate any more than a negligible increase in traffic. Based on these factors, staff has not conditioned the Variance to offer additional right-of-way along Tulare Avenue.

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

#### **Analysis:**

In support of Findings 1 and 2, the Applicant's findings state that the Variance would better conform to the existing land uses in the vicinity and would serve to provide a right of quiet enjoyment possessed by other owners in the vicinity. The findings also state that immediately across the street from the northwest corner of the project site are ten contiguous parcels with lot sizes ranging from 1.44 acres to 2.42 acres plus two parcels immediately across the street from the northeast corner of the project site measuring 1.50 acres and 2.28 acres, respectively.

Regarding Finding 1, staff is unable to find an extraordinary physical characteristic affecting the property which would merit the requested parcel configurations. The presence of other undersized parcels in the vicinity does not support a finding of an exceptional circumstance in this instance. A substantial portion of the surrounding area consists of parcels which are 20 acres or more in size and are in use for agricultural purposes. It has not been shown that such smaller parcels are predominate in the area or that the presence of these smaller parcels is hindering the agricultural utility of the subject parcel. While the proposed parcel split would mirror the manner in which the land has been developed (*i.e.*, with the northern 5.0-acre portion used for residential purposes and the remaining southern portion used for agriculture), this condition of the land was created by the property owner as opposed to a circumstance outside of the owner's control. Further, there are no elevation changes, rock outcroppings, wetlands, public easements, or other physical conditions that have been identified as creating significant hardships for the Applicant that the proposed Variance would serve to address.

Regarding Finding 2, it has not been demonstrated to staff that the proposed parcel split is necessary to preserve and enjoy a substantial property right enjoyed by other property owners in the AE-20 Zone District. The requirement of a 20-acre minimum parcel size in the AE-20 Zone District is applied Countywide, and all property owners in the AE-20 Zone District are subject to the same development standards.

Given the above analysis, staff believes that an exceptional circumstance and preservation of substantial property rights do not exist and that 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 proposal will not be materially detrimental to the public welfare or injurious to property and improvements in the vicinity in which the property is located.*

<b>Surrounding Parcels</b>				
	Size:	Use:	Zoning:	Nearest Residence:
North	19.70 acres	Agriculture w/single-family residence	AE-20	100 feet
East	19.73 acres	Agriculture	AE-20	N/A
South	21.51 acres	Nursery with mobile homes (2)	AE-20	495 feet
West	39.38 acres	Agriculture w/single-family residence	AE-40	1,145 feet

**Reviewing Agency/Department Comments:**

Development Engineering Section of the Fresno County Department of Public Works and Planning: Any additional runoff generated by the proposed development of this site cannot be drained across property lines and must be retained or disposed of per County standards. A grading permit or voucher may be required for any grading proposed with this application.

Design Division of the Fresno County Department of the Fresno County Department of Public Works and Planning: No comments.

Water/Geology/Natural Resources Section of the Fresno County Department of Public Works and Planning: No comments.

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

Fresno County Department of Public Health, Environmental Health Division: In the case of this application, it appears each parcel can accommodate the sewage disposal systems and expansion areas, meeting the mandatory setback requirements as established in the California Plumbing Code and California Well Standards Ordinance. As a project note, 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(s).

Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: The Applicant will have to show a private road easement 60 feet in width to the proposed 14.68 acres. The following requirements would apply to the access easement: 1) improved to a standard determined necessary by a registered civil engineer to meet the vehicular needs of the users of the roadway; 2) constructed to provide grading and erosion control to prevent sedimentation or damage to off-site property arising out of the improvement of the easement; and 3) improved as required by the fire district serving the area to be adequate for the passage of fire apparatus.

Fresno County Department of Agriculture: No comments.

Fresno County Fire Protection District: No comments.

Fresno Irrigation District: No comments.

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

**Analysis:**

In support of Finding 3, the Applicant's findings state that granting the proposal will not be detrimental or injurious to other properties or improvements in the vicinity since the use of the two proposed parcels will remain the same as how the land has been used for the last 20 years.

Regarding Finding 3, there will be no change in land use as a result of this Variance request, nor is there any new development directly proposed with this request. Staff notes that granting of this Variance would allow one single-family residence by right on each parcel and one additional residence through Director Review and Approval; however, such uses are not necessarily incompatible with the existing residential use on farmland in the vicinity of the proposal. Further, none of the comments received from reviewing agencies and departments indicated any information suggesting that the proposal would cause harm to surrounding property owners.

Regarding road frontage and access for the proposed parcels, the proposed 5.0-acre parcel meets the minimum road frontage requirement for the AE-20 Zone District and has direct access from Tulare Avenue. The proposed 14.68-acre parcel does not require a minimum road frontage because it exceeds the maximum parcel size for which road frontage is required (5.0 acres), and the parcel is capable of being accessed from Tulare Avenue via easement. As indicated in the comments provided by the Road Maintenance and Operations Division, the Applicant will have to provide a private access easement to the proposed 14.68 acres that meets County standards for a private access roadway. Staff further notes it may be possible for the access requirement for the 14.68-acre parcel to be satisfied if the resulting parcel is subsequently merged with a neighboring parcel having direct access from a public road.

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

**Recommended Conditions of Approval:**

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

**Conclusion:**

Finding 3 can be made.

*Finding 4: Granting of this variance will not be contrary to the objectives of the General Plan Consistency.*

<b>Relevant Policies:</b>	<b>Consistency/Considerations:</b>
<p>General Plan Policy LU-A.6: The County shall maintain 20 acres as the minimum permitted parcel size in areas designated Agriculture; the County may require parcel sizes larger than 20 acres based on zoning, local agricultural conditions, and to help ensure the viability of agricultural operations.</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>LU-A.6 and LU-A.7 are based on concerns that parcels smaller than 20 acres are less viable economic farming units and smaller parcels cause increases in residential density that increase the potential for conflict with normal agricultural practices on adjacent parcels. In this case, although the proposed parcel split would not diminish the economic farming viability of the project site compared to its current state, the creation of the proposed 5.0-acre parcel would effectively remove five acres of land from potential agricultural use and may create a future risk of conflict with normal agricultural practices on adjacent parcels. Thus, the proposal is inconsistent with Policies LU-A.6 and LU-A.7.</p>
<p>General Plan Policy PF-C.17: The County shall, prior to consideration of any discretionary project related to land use, undertake a water supply evaluation. The evaluation shall include a determination of water sustainability and a determination that the use will not have a detrimental impact upon other water users in the County.</p>	<p>This proposal was referred to the Water/Geology/Natural Resources Section of the Fresno County Department of Public Works and Planning for review, who noted that the subject property is not located in a water-short area and expressed no concerns with the proposal.</p>

**Reviewing Agency Comments:**

Policy Planning Section of the Fresno County Department of Public Works and Planning: See *policies identified above*. The subject property is not restricted under an Agricultural Land Conservation (Williamson Act) Contract.

**Analysis:**

In support of Finding 4, the Applicant states that the proposed Variance will abide with the objectives of the Fresno County General Plan and the land involved in the proposal will continue to be used for agricultural purposes.



Regarding Finding 4, the project site is designated Agriculture in the Fresno County General Plan and is subject to General Plan Policies LU-A.6 and LU-A.7, which require a minimum parcel size of 20 acres as a means of encouraging continued agricultural production and minimizing the amount of land converted to non-agricultural uses. The concern with such lot splits is that they effectively remove a parcel from the County's inventory of parcels considered sufficiently large enough (*i.e.*, 20 acres or larger) to promote and protect agricultural uses of land. With this proposal, there are 14.68 acres of land presently being farmed commercially, suggesting that creation of such a parcel is sufficient to support farming activity. However, the proposed 5.0-acre parcel is well below the minimum parcel size for encouraging continued agricultural use, meaning creation of the parcel would effectively remove five acres the inventory of land suitable for agricultural uses and may also increase the future risk of conflict between agricultural uses in the area. For these reasons, staff finds the proposal would be inconsistent with Policies LU-A.6 and LU-A.7.

The proposal is consistent with General Plan Policy PF-C.17 for adequate and sustainable water supply for the use. The proposal is not in a water-short area and will not have significant impact on groundwater resources as expressed by the Water/Geology/Natural Resources Section of the Fresno County Department of Public Works and Planning.

**Recommended Conditions of Approval:**

*None.*

**Conclusion:**

Finding 4 cannot be made.

**PUBLIC COMMENT:**

None.

**CONCLUSION:**

Based on the factors cited in the analysis, staff is unable to make the required findings for approval of this Variance. Staff therefore recommends denial of Variance No. 4014.

In the event that the Commission determines that the required Findings can be made for this proposal and elects to approve the Variance, staff has included recommended Conditions of Approval and Project Notes attached as Exhibit 1.

**PLANNING COMMISSION MOTIONS:**

**Recommended Motion** (Denial Action)

- Move to determine that the required Findings cannot be made based on the analysis in the Staff Report, and move to deny Variance No. 4014; 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 (state basis for making the Findings) and move to approve Variance No. 4014, subject to any Conditions and Notes imposed; 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. 4014  
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 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.	Division of the subject property is subject to the provisions of the Fresno County Parcel Map Ordinance (Ordinance Code Section 17.72) and may include requirements for access, roadway construction, and maintenance. Deviation from standards may be approved through a subdivision exception request during the processing of the required mapping application.
2.	A Grading Permit or Voucher may be required for any grading proposed with this application.
3.	It is recommended that the Applicant consider having the existing septic tank pumped, and have the tank and drain fields 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(s).

EXHIBIT 2



LOCATION MAP

VA 4014

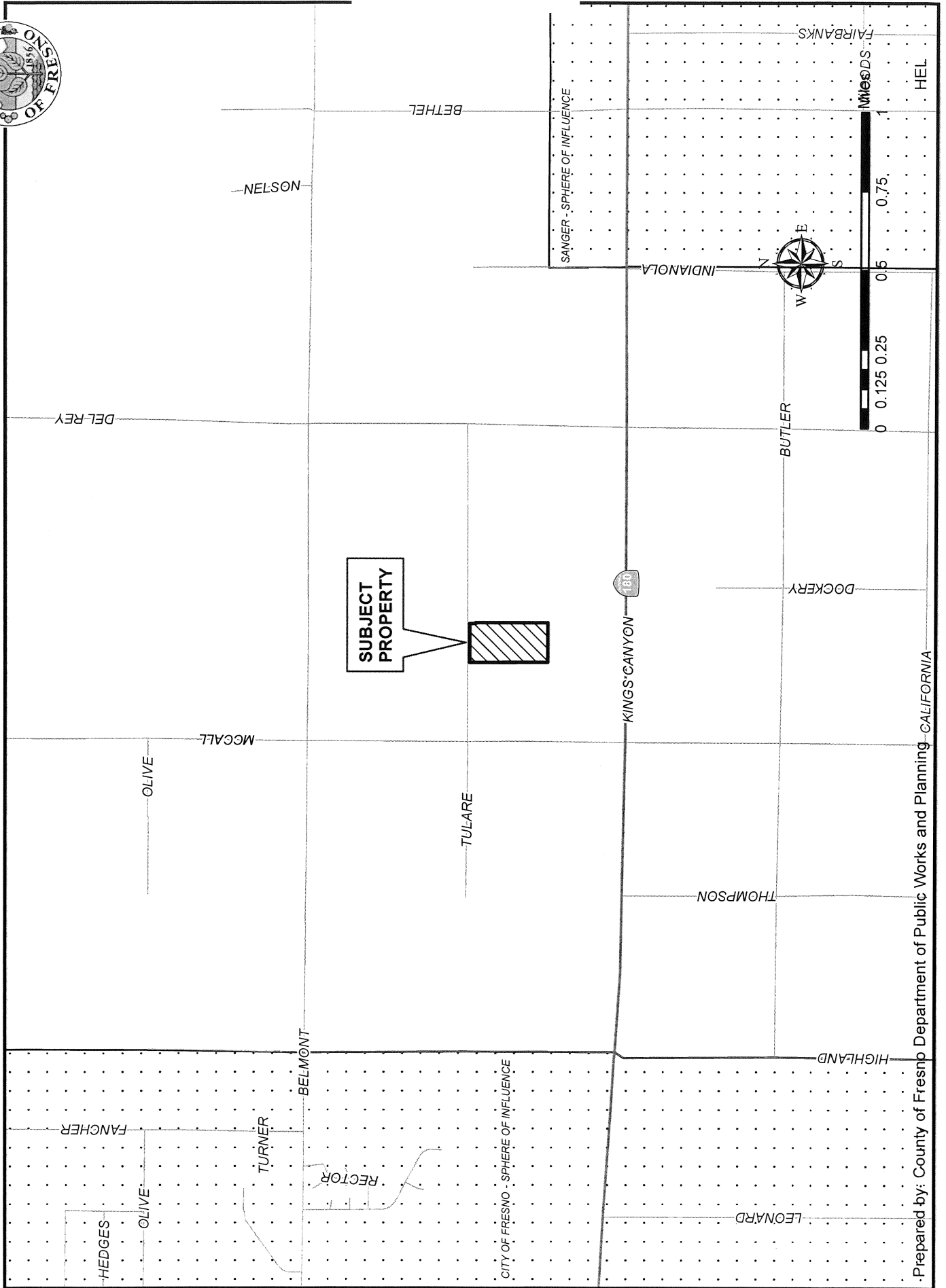
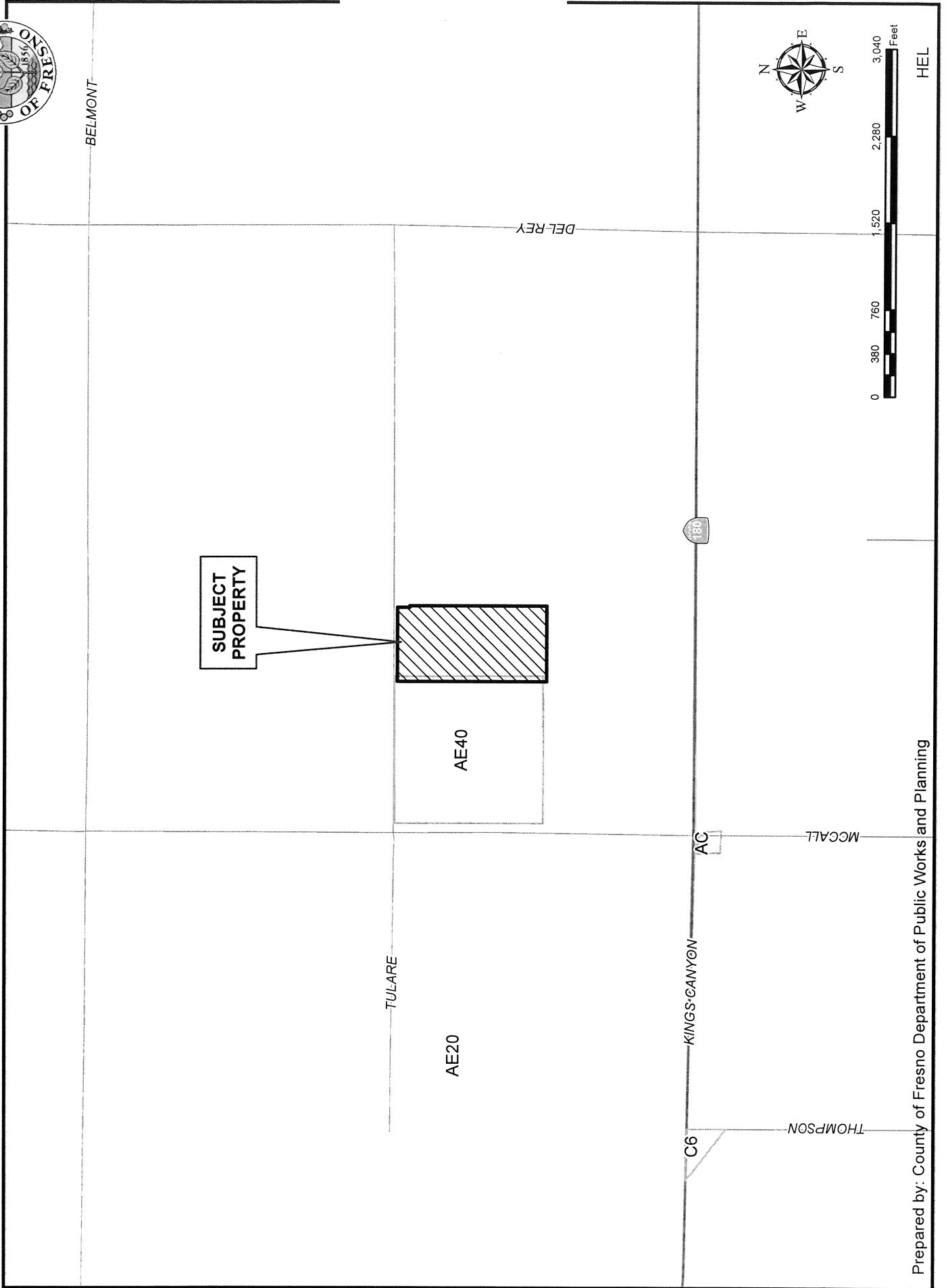


EXHIBIT 3

VA 4014  
STR 5 - 14/22

EXISTING ZONING MAP

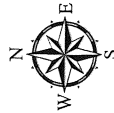
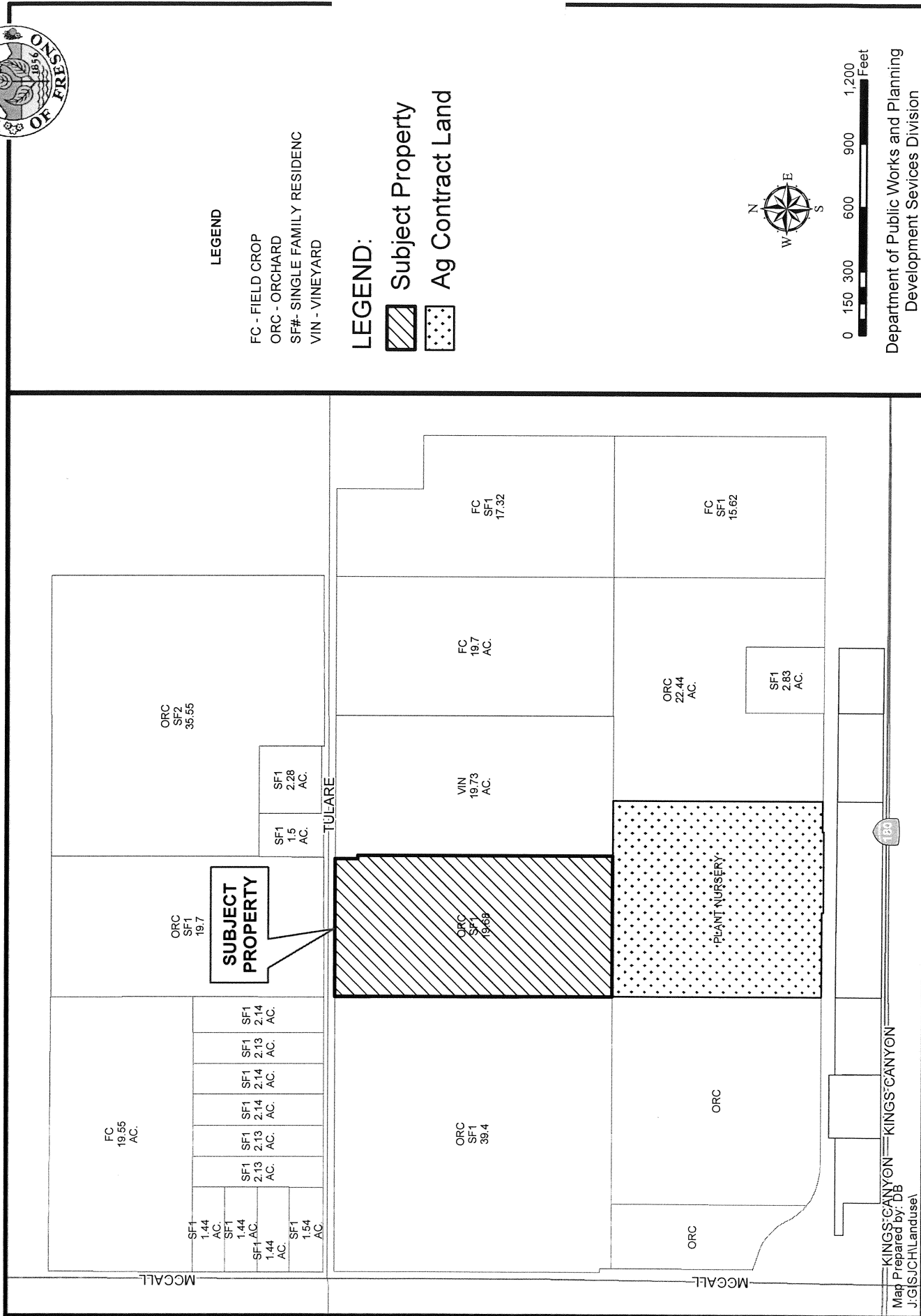




# EXHIBIT 4

## EXISTING LAND USE MAP

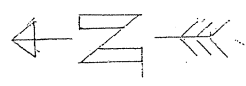
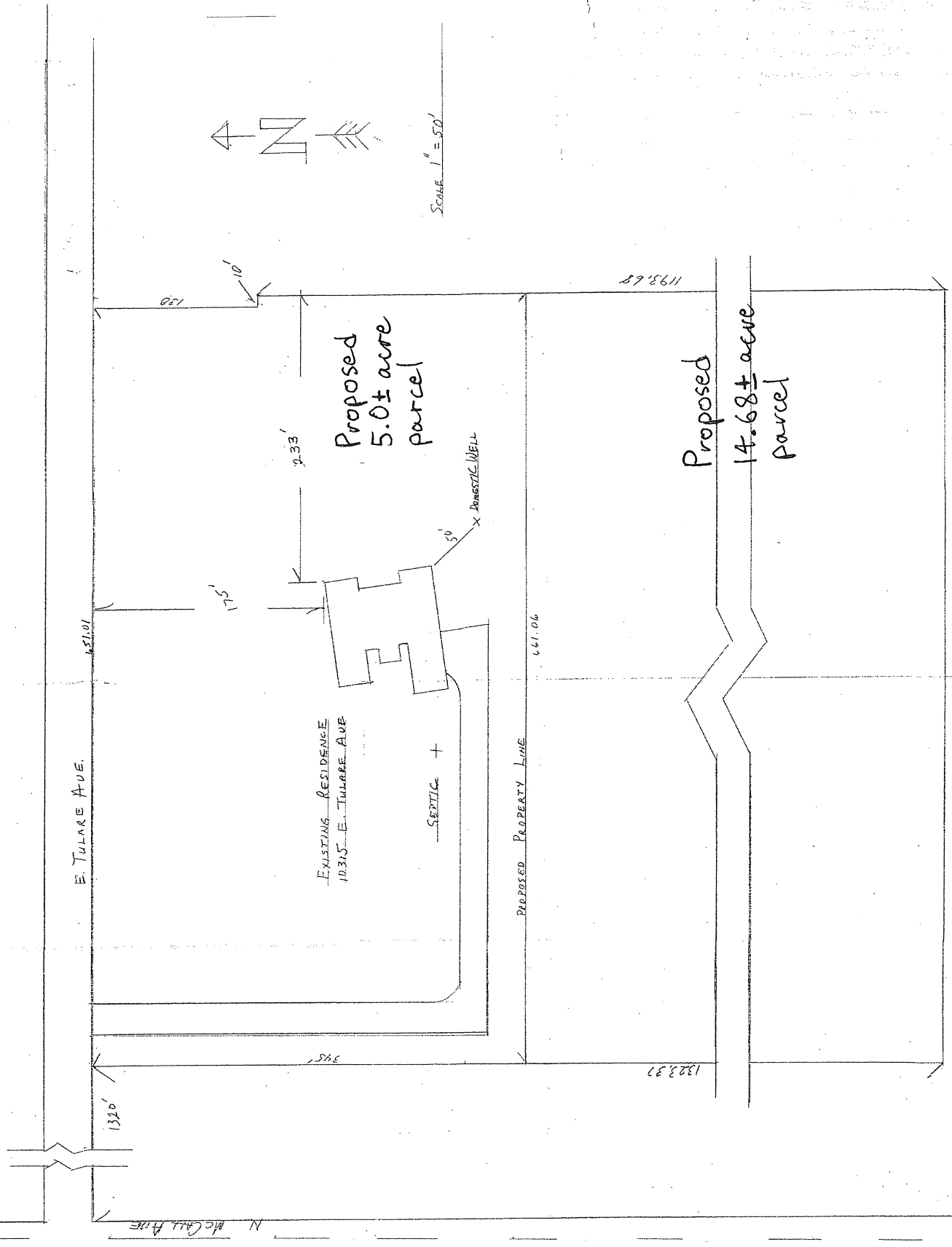
VA 4014



Department of Public Works and Planning  
Development Services Division

KINGS CANYON KINGS CANYON  
Map Prepared by: DB  
Jr:GIS\CH\Landuse\

EXHIBIT 5



SCALE 1" = 50'

EXHIBIT 6



FROM: S/W CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING EAST ALONG PROPOSED SOUTH  
BOUNDARY LINE



FROM: S/E CORNER OF THE ENTIRE 20 ACRES  
LOOKING NORTH TO TULARE AVE





FROM: N/W CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING EAST ALONG TULARE AVE



FROM: S/E CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING WEST ALONG PROPOSED SOUTH BOUNDARY  
LINE



FROM: N/W CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING S/E



FROM: N/E CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING WEST ALONG TULARE AVE.



FROM: N/E CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING SOUTH TO END OF 20 ACRES.



FROM: N/E CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING S/W



FROM: S/E CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING NORTH TO TULARE AVE



FROM: N/W CORNER OF PROPOSED 5 ACRE PARCEL  
LOOKING ACROSS TULARE AVE. IN THE FIRST  
OF TEN RESIDENCES

## EXHIBIT 7

The variance requested will do the following:

Create two parcels. One parcel will be approximately 5.0 acres and is currently occupied as a home site.

The second parcel will be approximately 15 acres and is currently being utilized as “Ag Land” planted to deciduous fruit trees. If the variance is granted the utilization of the subject property will remain identically the same. The Ag portion will remain Ag and the homesite 5 acres portion will continue to remain as a homesite.

Immediately across the street from the N/W corner of the proposed 5 acres homesite, a distance of 40ft, are located 10 residences contiguous to each other whose plot size range from 1:44 acres to 2:42 acres.

Immediately across the street from the N/E corner of the proposed 5 acres homesite, a distance of approximately 40ft., are located 2 parcels ranging in size from 1.50 acres to 2.28 acres

Further east on Tulare Ave are several additional homesites ranging in size from 1.03 acres to 9.64 acres

Allowing this variance would better conform to the existing land uses in the vicinity and would serve the purpose to applicant of the right of quiet enjoyment now possessed by other owners in the vicinity.

The granting of this variance will not be detrimental to the public welfare or injurious to property and improvement in the vicinity for the following reason.

The use for the two parcels will remain as they are and have been since 1996. Ag related.