



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 2 August 11, 2016

SUBJECT: Variance Application No. 3986

Allow the creation of a 4.16-acre parcel, a 1.93-acre parcel, and a 2.25-acre parcel from an existing 6.09-acre parcel and 2.25-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

LOCATION: The subject parcels are located on the west side of Rainbow Route, approximately one-quarter mile east of the nearest city limits of the City of Sanger (1559 S. Rainbow Route) (Sup. Dist. 5) (APN 315-030-72; 315-030-71).

**OWNER/
APPLICANT:** Rose Lopez

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

Chris Motta, Principal Planner
(559) 600-4227

RECOMMENDATION:

- Deny Variance No. 3986; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

EXHIBITS:

1. Condition of Approval and Project Notes
2. Location Map
3. Existing Zoning Map
4. Existing Land Use Map
5. Assessor's Parcel Map
6. Site Plan
7. Photographs of Project Area
8. Applicant's Statement of 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	<ul style="list-style-type: none"> • 6.09-acre parcel • 2.25-acre parcel (created by gift deed) 	<ul style="list-style-type: none"> • 4.16-acre parcel • 1.93-acre parcel • 2.25-acre parcel
Project Site	<p>APN 315-030-72 (6.09 acres): 2,366 square-foot single-family residence, 1,854 square-foot single-family residence</p> <p>APN 315-030-71 (2.25 acres): 1,000 square-foot single-family residence</p>	<p>4.16-acre parcel: 1,854 square-foot single-family residence</p> <p>1.93-acre parcel: 2,366 square-foot single-family residence</p> <p>2.25-acre parcel: 1,000 square-foot single-family residence</p> <p>[No new structures directly proposed with subject application]</p>
Structural Improvements	See Project Site above	See Project Site above
Nearest Residence	70 feet south	No change

Criteria	Existing	Proposed
Surrounding Development	Agriculture, single-family residences, vacant land	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 33 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 Applicant is requesting a Variance to divide an existing 6.09-acre parcel and 2.25-acre gift deed parcel located in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District into three separate parcels, which would measure 4.16 acres, 1.93 acres, and 2.25 acres, respectively.

The two existing parcels are currently occupied by the Applicant and members of her family. There are two residences located on APN 315-030-72, and there is one residence located on APN 315-030-71, which is a gift-deed parcel that was created in 1992. On the west side of the project site is a PG&E lattice tower with co-located wireless communication facilities (permitted by CUP 3394 in 2011) and an 80-foot access easement. The Applicant has indicated that the purpose of this proposal is to provide each of her children with an individual parcel of land, and the proposed property lines are based on the location of the existing structures and water wells on the property.

The Applicant's original application for a Variance sought only to create two parcels from the existing 6.09-acre parcel. During review of the application, however, it was discovered that a Declaration of Intent for Unlawful Conveyance was included when the 2.25-acre gift deed parcel

was created, which prohibits the gift deed parcel from being conveyed separately from its parent parcel. Subsequently, the Applicant's proposal was revised to include the gift deed parcel as part of the requested Variance.

The project site is located in an area of mixed agricultural and residential land uses. The areas to the west and south of the project site are located within the City of Sanger's Sphere of Influence and are developed primarily with single-family residences. The areas to the north and east of the project site are comprised of larger parcels with agricultural uses. The project site is located approximately one quarter-mile to the east of the nearest city limits of the City of Sanger, and the westernmost boundary of the project site abuts the City of Sanger's Sphere of Influence boundary (see Exhibit 4).

Section 816.5.A.1 of the Fresno County Zoning Ordinance requires that parcels in the AE-20 Zone District have a minimum size of 20 acres. The Applicant's proposal would result in the creation of three parcels with less than 20 acres, thus requiring a Variance. Staff notes that a mapping procedure will be required if the Variance is approved.

County records indicate that nine variance applications involving the creation of substandard-sized parcels have previously been filed within a one-mile radius of the subject property. Out of these nine applications, six were approved. A summary of the variance application history for the area is listed below:

Application No.	Project Description (with Location)	Status	Date of Approval
VA 3883	Create a 20-acre parcel and a 27.5-acre parcel from two existing parcels where 40 acres is required (Rainbow/Turney)	PC Approved w/conditions	July 2008
VA 3739	Create a 12.5-acre parcel and a 2.5-acre parcel (Church/Indianola)	PC Approved w/conditions	October 2002
VA 3703	Create 2.5-acre gift deed parcel without road frontage (Rainbow/Newmark)	PC Approved w/conditions	July 2001
VA 3315	Create a 2.5-acre parcel without road frontage (Rainbow/Turney)	PC Approved w/conditions	March 1991
VA 2875	Create a 2.09-acre gift deed parcel without public road frontage and a 6.91-acre parcel (Quality/Butler)	PC Denied, BOS Upheld Denial	January 1985
VA 2695	Create a 14-acre parcel from a 30-acre parcel (California/Academy)	PC Approved w/conditions	April 1982
VA 2568	Create a 5.5-acre parcel and a 5.6-acre parcel (Channel/Annadale)	PC Denied	April 1980
VA 2486	Create a 2.0-acre parcel from a 32.64-acre parcel (Jensen/Newmark)	PC Approved, BOS Upheld Approval	June 1979

VA 2312	Create three 5.0-acre parcels and one 7.5-acre parcel (Church/Quality)	PC Denied, BOS Upheld Denial	September 1977
VA 1189	Create a 11.5-acre parcel, 3.5-acre parcel, 3.0-acre parcel, and 2.0-acre parcel (Rainbow/Newmark)	BOS Approved	January 1966

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

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.

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Setbacks	Front: 35 feet Side: 20 feet Rear: 20 feet	<u>Parcel 1 (4.16 acres):</u> Front: 35 feet Side: 20 feet Rear: 20 feet <u>Parcel 2 (1.93 acres):</u> Front: 35 feet Side: 20 feet Rear: 20 feet <u>Parcel 3 (2.25 acres):</u> Front: 35 feet Side: 20 feet Rear: 20 feet	<u>Parcel 1:</u> Front: Yes Side: Yes Rear: Yes <u>Parcel 2:</u> Front: Yes Side: Yes Rear: Yes <u>Parcel 3:</u> Front: Yes Side: Yes Rear: Yes
Parking	N/A	N/A	N/A
Lot Coverage	No requirement	No requirement	N/A
Separation Between Buildings	N/A	N/A	N/A
Wall Requirements	N/A	N/A	N/A
Septic Replacement Area	100 percent	No change	Yes

	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	Parcel 1: 50 feet Parcel 2: 50 feet Parcel 3: 50 feet	Yes

Reviewing Agency/Department Comments:

Zoning Section of the Fresno County Department of Public Works and Planning: A Declaration of Intent for Unlawful Conveyance was recorded as a condition of PCOC 2877. The remainder parcel cannot be conveyed separately. APN 315-030-71 is required to be part of the Variance application in order to legally divide the gift parcel and the remainder parcel. A mapping procedure (Tentative Parcel Map) will be required if the variance is approved.

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 required to allow the creation of parcels with less than the required acreage for the AE-20 Zone District, the Applicant states that the property's proximity to the City of Sanger and its Sphere of Influence boundary is an exceptional condition affecting the property. Additionally, the Applicant states that the resulting parcels would be consistent with other already-existing parcels in the immediate vicinity of the project site. The Applicant also provided copies of maps and photographs to support these points, which are included as part of Exhibit 8.

Regarding Findings 1 and 2, an inference from the Applicant's findings is that the property's proximity to existing and potential development within the City of Sanger's city limits will hinder the property's use for agricultural purposes, thus creating an exceptional physical circumstance affecting the property. As noted elsewhere in the Staff Report, the proposed parcels are adjacent to the City of Sanger's Sphere of Influence. Aerial photos of the vicinity show that the development occurring within the City of Sanger has been almost entirely residential, and the Applicant states that an additional area located northwest of the subject property has been pre-designated for planned urban residential development. While noting that there are parcels in the project site's vicinity that are of similar size to the existing 6.09-acre parcel and appear to be actively farmed, it would be reasonable to suggest based on the pattern of development in the area that the subject parcels are more likely to be affected by further encroachment. Further, while not identified in the Applicant's Variance findings, staff notes there are additional factors present, including that the parcels are already undersized and the presence of electrical transmission and communication facilities, which may affect the viability of the project site for agricultural purposes.

Regarding Finding 2, it has not been demonstrated to staff that the parcel split proposed here is necessary to preserve and enjoy a substantial property right enjoyed by other property owners in the AE-20 Zone District. The requirement for a twenty-acre minimum parcel size in the AE District is applied Countywide. Staff is unable to find that the Applicant's desire to have three independent parcels constitutes a substantial property right issue.

A consideration in addressing Findings 1 and 2 is whether there are alternatives available that would avoid the need for the Variance. One available option would be to rezone the project area to a zone district that allows for parcels the size of which the Applicant is seeking to create with this application. In this instance, the project area's General Plan designation is Agriculture and the zoning districts that are compatible with land designated Agriculture generally require a minimum of 20 acres per parcel, so a rezoning would need to be accompanied by a General Plan Amendment.

Another option would be to wait for the City of Sanger to annex the subject property and then file an application with the City of Sanger to divide the land as proposed here. While the proposal did not require referral to the City of Sanger since the project site is not actually located within the Sphere of Influence, County staff contacted the City of Sanger during review of the application and there was no indication that the project site would be considered for annexation at this time.

Based on the above information, staff finds while there are unique circumstances pertaining to the physical situation of the project site, staff is unable to find that the Variance is necessary as a matter of preserving a commonly-held property right.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 1 can be made, but Finding 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.

Surrounding Parcels				
	Size:	Use:	Zoning:	Nearest Residence:
North	8.61 acres	Single-family residence	AE-20	400 feet
East	25.2 acres	Agriculture w/ single-family residence	AE-20	1,290 feet
South	2.0 acres	Single-family residence	AE-20	70 feet
West	5.23 acres	Vacant	AE-20	None

Reviewing Agency/Department Comments:

Development Engineering Section of the Fresno County Department of Public Works and Planning: Rainbow Route is classified as a Collector with an existing 20-foot right-of-way west of the center line along the parcel frontage. The minimum width for a Collector right-of-way west of center line is 42 feet. Any additional right-of-way needed would have to come from the parcels on the west side of Rainbow Route. 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. Additionally, a grading permit or voucher is required for grading proposed with this application. These requirements have been included as Project Notes.

Road Maintenance and Operations Division 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: There are no concerns with the proposal, as the subject parcels are not located in a water-short area.

Fresno County Department of Public Health, Environmental Health Division: It appears the parcels 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 tanks pumped and have the tanks 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).

Alta 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 states that granting the Variance will not cause any harm to surrounding properties, as no new buildings or structures are included with the proposal and there is already housing and residential development present in the vicinity.

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. Staff notes that a requirement for additional road right-of-way is not necessary for this proposal, as the parcels are already developed. Overall, none of the comments received from reviewing agencies and departments indicated any information suggesting that the proposal would cause harm to surrounding property owners.

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

Recommended Conditions of Approval:

See Condition of Approval and Project Notes listed in 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.

Relevant Policies:	Consistency/Considerations:
<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>As this Variance request proposes to create a parcel smaller than 20 acres in an area designated Agriculture and zoned AE-20, staff believes this proposal is inconsistent with the General Plan.</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>As this Variance request proposes to create a parcel smaller than 20 acres in an area designated Agriculture and zoned AE-20, staff believes this proposal is inconsistent with the General Plan.</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, which expressed no concerns with the proposal. Further, the subject property is not located in a water-short area.</p>

Reviewing Agency/Department Comments:

Policy Planning Section: The Agriculture and Land Use Element of the General Plan maintains 20 acres as the minimum parcel size in the areas designated for Agriculture. Policies LU-A.6 and LU-A.7 state that the County shall generally deny requests to create parcels less than the minimum size specified in areas designated Agriculture. Policy PF-C.17 refers to a water supply evaluation. The subject parcel is not subject to an Agricultural Land Conservation Contract.

Analysis:

In support of Finding 4, the Applicant states that the proposal will not change the existing development on the project site and not conflict with the objectives of the General Plan.

Regarding Finding 4, the project site is designated Agriculture in the Fresno County General Plan. Although the two existing parcels that make up the project area are not currently being utilized for agricultural purposes, the subject proposal is inconsistent with 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 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.

Based on this information, staff finds that the granting of this Variance would be contrary to the objectives of General Plan.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 4 cannot be made.

PUBLIC COMMENT:

None.

CONCLUSION:

Based on the factors cited in the analysis, staff believes the required Findings for granting the Variance cannot be made. Staff therefore recommends denial of Variance No. 3986.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that the required Findings cannot be made and move to deny Variance No. 3986; 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. 3986, subject to the Condition 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.

DB:
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**Variance Application (VA) No. 3986
Condition of Approval and Project Notes**

Conditions of Approval	
1.	Development shall be in accordance with the Site Plan as approved by the Commission.

Conditions of Approval reference recommended Conditions for the project.

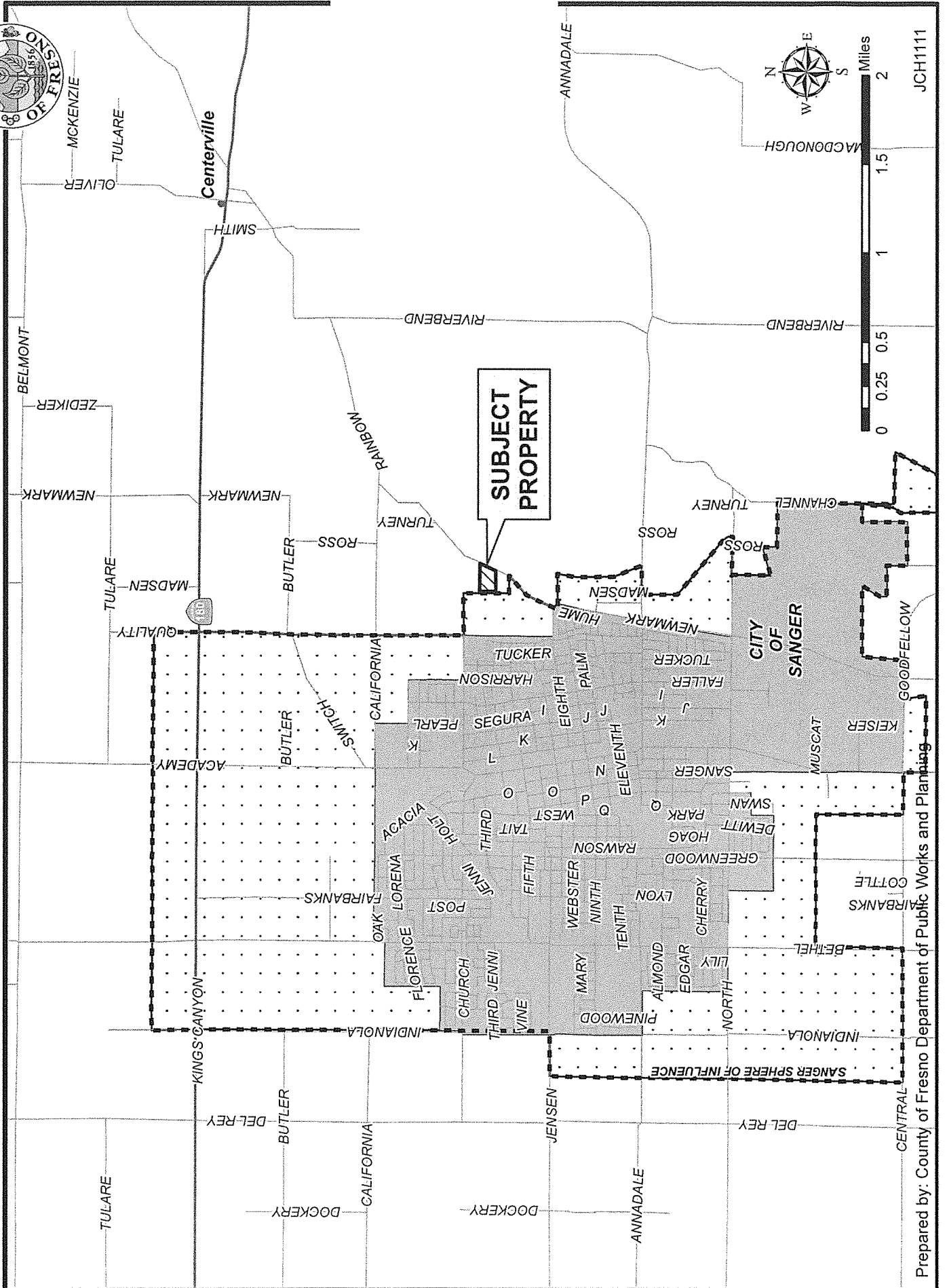
Notes	
The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.	
1.	Division of the subject property is subject to the provisions of the Fresno County Parcel Map Ordinance. A Parcel Map Application shall be filed to create a 4.16-acre parcel, a 1.93-acre parcel, and a 2.25-acre parcel. The Map shall comply with the requirements of Title 17.72.
2.	If not already present, 30-foot by 30-foot corner cutoffs should be improved for site distance purposes at the exiting driveway onto Rainbow Route.
3.	Any work done within the right-of-way along Rainbow Route to construct a new driveway or improve an existing driveway will require an encroachment permit from the Road Maintenance and Operations Division.
4.	A Grading Permit or Voucher shall be required for any grading proposed with this application.
5.	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 3986



EXISTING ZONING MAP



EXHIBIT 3

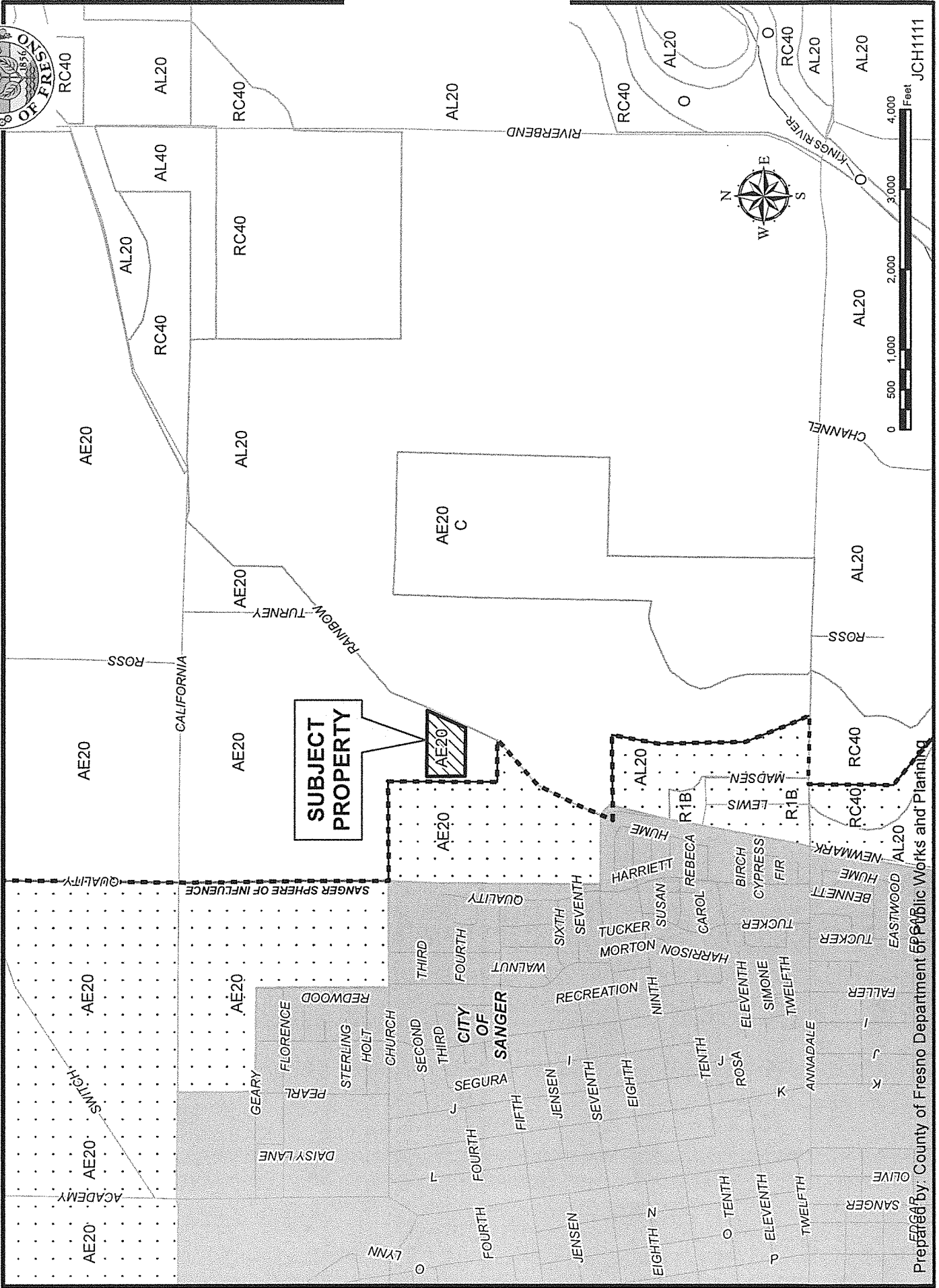
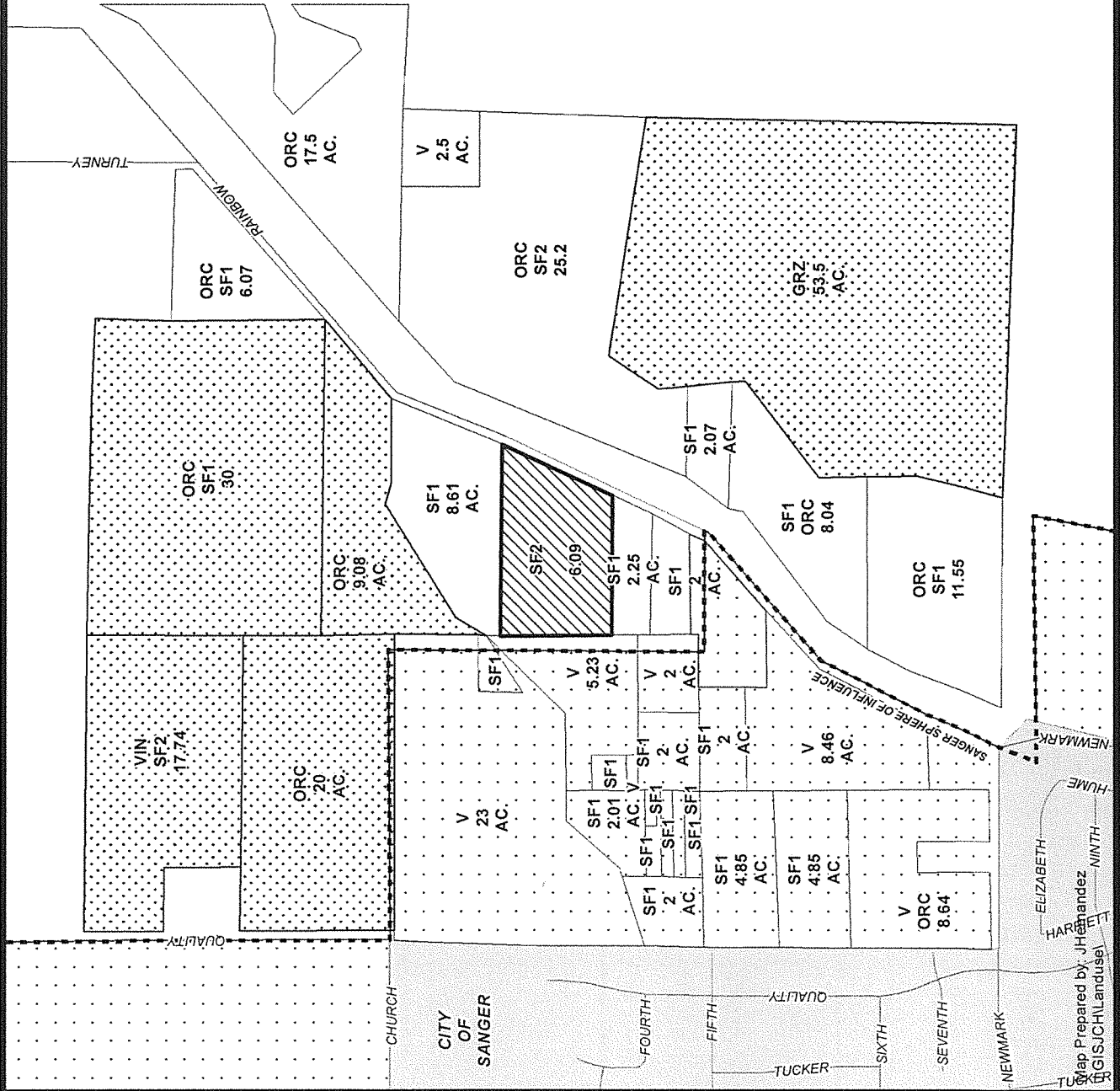


EXHIBIT 4



EXISTING LAND USE MAP

VA 3986

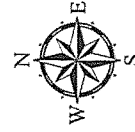


LEGEND

- GRZ - GRAZING
- 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

Map Prepared by JH Hernandez
GIS/JCH/Landuse

SUBDIVIDED LAND IN POR. SEC'S 13 & 14, T. 14S., R. 22E., M.D.B.&M.

NOTE ---
This map is for Assessment purposes only.
It is not to be construed as portraying
legal ownership or divisions of land for
purposes of zoning or subdivision law.

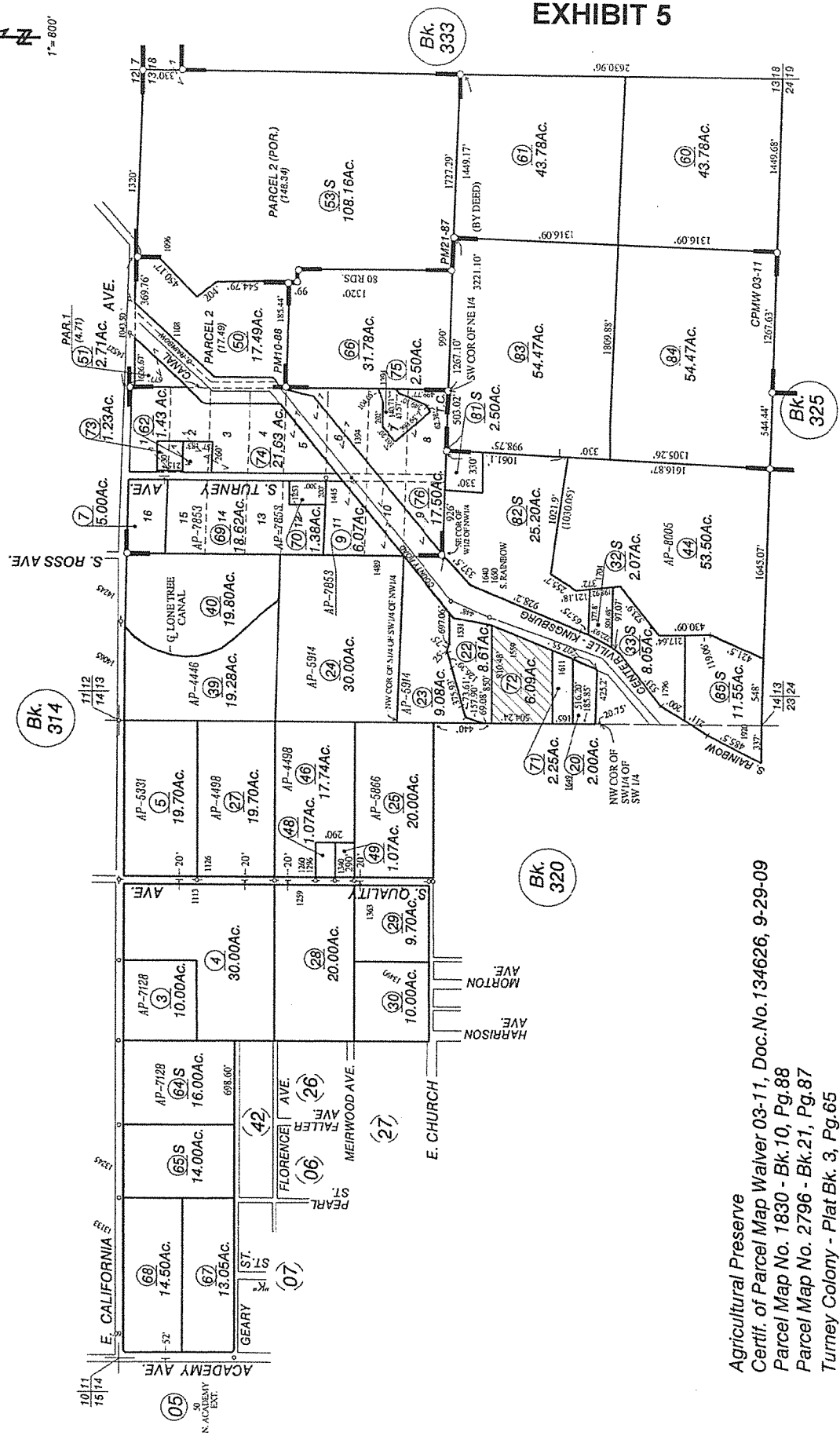
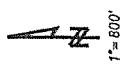


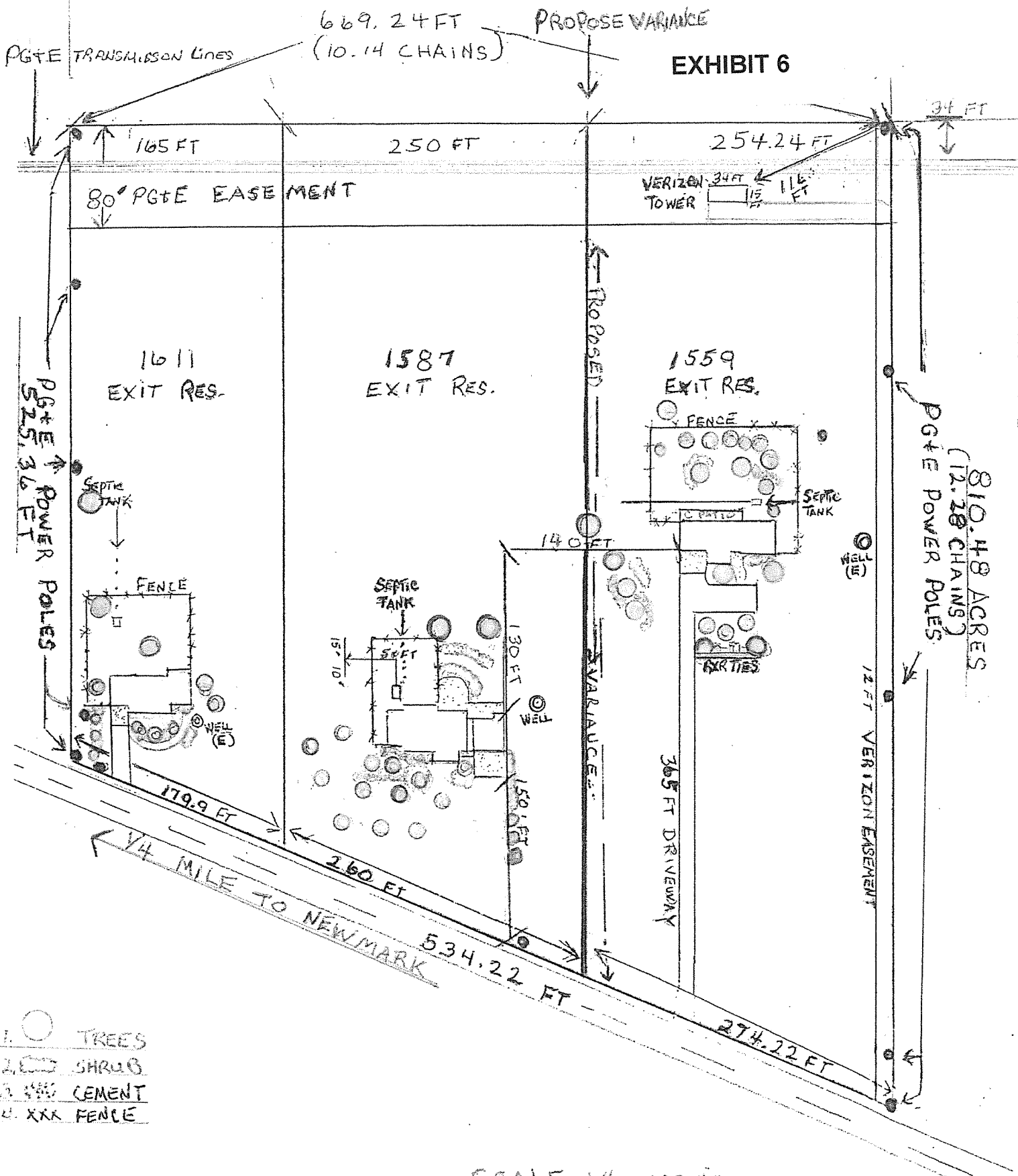
EXHIBIT 5

Agricultural Preserve
Certif. of Parcel Map Waiver 03-11, Doc.No. 134626, 9-29-09
Parcel Map No. 1830 - Bk.10, Pg.88
Parcel Map No. 2796 - Bk.21, Pg.87
Turney Colony - Plat Bk. 3, Pg.65

Assessor's Map Bk.315 - Pg. 03
County of Fresno, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

EXHIBIT 6



- 1. ○ TREES
- 2. □ SHRUB
- 3. ■ CEMENT
- 4. XXX FENCE

SCALE 1" = 100 FT

PARCEL # 315-030-72
6.09 ACRES

810.48 ACRES
(12.28 CHAINS)
PG&E POWER POLES

669.24 FT
(10.14 CHAINS)
PROPOSED VARIANCE

PG&E TRANSMISSION LINES

80' PG&E EASEMENT

VERIZON TOWER
34 FT
15 FT
11 FT

1611
EXIT RES.

1587
EXIT RES.

1559
EXIT RES.

PG&E POWER POLES
525.36 FT

12 FT VERIZON EASEMENT

365 FT DRIVEWAY

179.9 FT

2.60 FT

534.22 FT

274.22 FT

1/4 MILE TO NEWMARK

140 FT

130 FT

150 FT

165 FT

250 FT

254.24 FT

34 FT

FENCE

FENCE

PARTIES

SEPTIC TANK

SEPTIC TANK

SEPTIC TANK

WELL

WELL

PG&E TRANSMISSION LINES

PROPOSED VARIANCE

PG&E POWER POLES

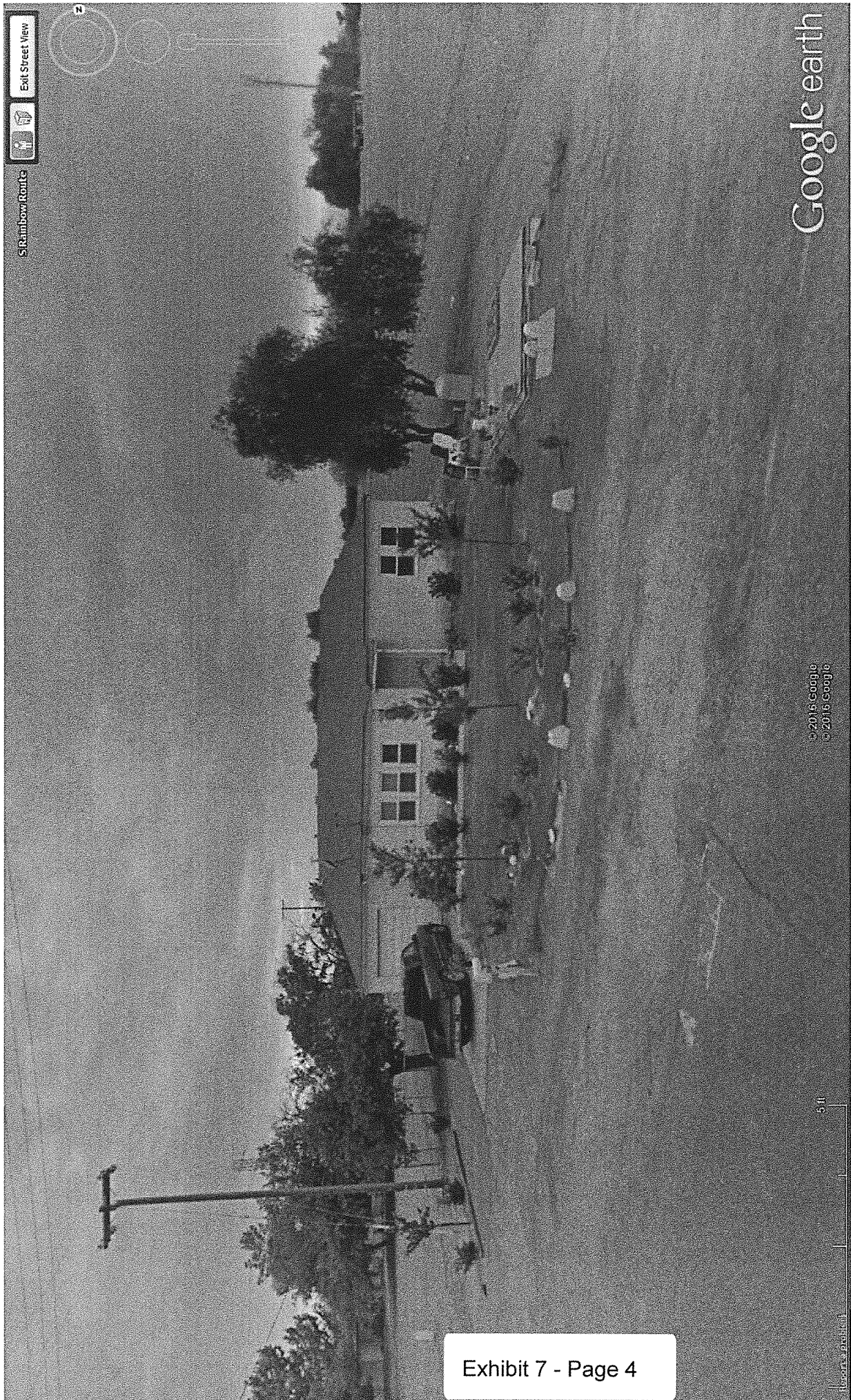
EXHIBIT 7

1559 S. Rainbow





1587 S. Rainbow



Google earth

1611 S. Rainbow

EXHIBIT 8

TO: FRESNO COUNTY DEVELOPMENT SERVICES DIVISION

UPDATE VARIANCE NO. 3986

APN: 315-030-72

- (1) WE ARE ASKING TO DIVIDE AN EXISTING 6.09 ACRE PARCEL IN THE AE-20 ZONE DISTRICT INTO 2 PARCELS.
EXCEPTIONAL OR EXTRAORDINARY :
BECAUSE THE CITY OF SANGER SPHERE OF INFLUENCE IS ADJACENT TO PROPERTY AND IS CLOSER THAN OTHER AGRICULTURAL ZONE PROPERTIES.
- (2) PLEASE SEE ATTACHED MAP THE PROPERTY + ADJACENT NEIGHBORING PROPERTIES.
- (3) PROPERTY IS CLOSE TO HOUSING AND RESIDENTIAL DEVELOPMENT.
- (4) NO. WILL REMAIN UNCHANGED.

NOTE : ADDITIONAL PHOTOS .

QUALITY
↑
N



