



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 4 March 24, 2022

SUBJECT: Variance Application No. 4126

Allow the creation of two, approximately one-half-acre parcels from an existing approximately one-acre parcel, allow 97 feet of width for each parcel where a minimum of 130 feet are required, and allow 5-foot side yard setbacks for both proposed parcels, where a minimum of 15 feet is required, in the R-A (Residential Agricultural, 36,000 square-foot minimum parcel size) Zone District.

LOCATION: The subject parcel is located on the north side of De Woody 125 feet east of Veranda Avenue, within the unincorporated community of Laton (APN: 057-070-17) (6718 De Woody Avenue) (Sup. Dist. 4).

**OWNER/
APPLICANT:** Stacey Minter

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

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Deny Variance No. 4126; 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. Zoning Map
4. Land Use Map
5. Variance Map

- 6. Site Plan
- 7. Applicant's submitted Findings

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Medium Density Residential in the County adopted Laton Community Plan	No change
Zoning	R-A (Single Family Residential Agricultural, 36,000 square foot minimum parcel size) Zone District.	No change
Parcel Size	One acre (approximate)	Two parcels, each approximately one half-acre (21,780 square feet).
Project Site	See above	No change
Structural Improvements	1,308 square-foot Single Family Dwelling; Detached Garage and shed	All existing structures will be removed and replaced with one new single-family dwelling on each of the two proposed parcels
Nearest Residence	Approximately 12 feet west	Proposed Parcel 1: No change Proposed Parcel 2: Approximately 93 feet east

ENVIRONMENTAL ANALYSIS:

It has been determined pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) guidelines: *Review for Exemption*, the project is covered by the *Common-Sense Exemption*, that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity (proposed project) is not subject to CEQA.

PUBLIC NOTICE:

Notices were sent to 62 property owners within 600 feet of the subject parcel, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

PROCEDURAL CONSIDERATIONS:

A Variance (VA) may be approved only if four Findings specified in the Fresno County Zoning Ordinance, Section 877 are made by the Planning Commission.

The decision of the Planning Commission on a Variance Application is final, unless appealed to the Board of Supervisors within 15 days of the Commission’s action.

BACKGROUND INFORMATION:

The subject property was created as Lot 15 of the Laguna De Tache Grant Record of Survey recorded April 16, 1903. The property is currently improved with an approximately 1,308 square-foot single-family dwelling, a detached garage and shed. If this Variance is approved, the Applicant proposes to remove all of the existing structures, and develop the two proposed parcels with new single-family dwellings.

While over 25 years ago, according to available records there have been four previous Variances processed within one half-mile of the subject property, related to reduced parcels sizes and development standards, which are detailed in the following table:

Application/Request	Date of Action	Staff Recommendation	Final Action
VA No. 2864: Allow the creation of a 1.5-acre parcel in the AE-20 Zone District (APN 057-030-63) (7032 E. De Woody Ave.).	October 18, 1984	Approval	Planning Commission Approved
VA No. 2954: Allow reduced frontage of 94 feet where 110 feet are required on a 0.17-acre parcel in the R-1 AH Zone District (APN 057-216-01S) (6685 Murphy Street).	October 10, 1985	Approval	Planning Commission Approved
VA No. 2985: Recognize a 0.67-acre parcel created illegally, from a one-acre parcel in the R-A Zone District (APN 057-223-43) (6614 E. Latonia Ave.).	February 27, 1986	Approval	Planning Commission Approved
VA No. 3541: Allow modified development standards related to height and setbacks, in the RE Zone District (APN 057-090-34) (6345 Nares Ave.).	August 22, 1996	Approval	Planning Commission Approved

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.*

	Current Standard:	Proposed Configuration (both proposed parcel no's 1 & 2):	Is Standard Met (y/n):
Setbacks	R-A Zone District Front (southeast): 35 feet Rear (west): 20 feet Side east and west: 15 feet	Front (southeast): 35 feet Rear (west): 20 feet Side east and west: 5 feet	No: The Variance includes a request to allow 5-foot side yard setbacks where a minimum of 15 feet are required for both side property lines of both of the proposed parcels, to allow for construction of a new single-family dwelling on each parcel.
Parking	For residential use: One parking space for every dwelling unit. on the same lot with the main building which they serve and located to the rear of the required front yard, except for hillside lots.	No change	Yes
Lot Coverage	30 percent	No change	Yes
Separation Between Buildings	Accessory buildings: minimum 6 feet from the main building. Accessory buildings connected to the main building by a breezeway roof shall also maintain a 6-foot separation.	No change	N/A

Wall Requirements	Fences, hedges and walls, not greater than six (6) feet in height, shall be permitted on or within all rear and side property lines on interior lots and on or to the rear of all front yard setback lines; No fence, hedge or wall over three (3) feet in height, shall be permitted in any required front yard, or in the required side yard on the street side of a reversed corner lot, except on parcels of five (5) acres or more.	No change	N/A
-------------------	--	-----------	-----

Reviewing Agencies/Department Comments related to Finding 1:

No comments were received relative to this finding.

Analysis Finding 1:

In support of Finding 1, the Applicant's Findings state that the existing Zoning (R-A) of the subject parcel does not allow for the creation of a smaller parcel even though the subject parcel is bounded by R-1 Zoning to the north, south and west; and similar parcels under the R-A Zoning have been allowed to be of smaller size than the minimum 36,000 square-feet required, and that other parcels in the R-A have been allowed reduced road frontage and side yard setbacks.

The subject parcel at approximately one-acre in size is slightly larger than the minimum parcel size required for the R-A Zone District, which is approximately 0.82-acres. Available County records show only one parcel which is smaller than the minimum parcel size at 0.67 acres, in the vicinity under the R-A Zone District, which was created illegally and allowed by Variance No. 2985, which is located southwest of the subject property as shown on the Variances Map included as Exhibit 5 of the Staff Report. Other parcels under R-A Zoning may appear to be less than the minimum of 36,000 square-feet, however those parcels may not be considered separate legal parcels, or the parcels may have been created prior to the implementation of the Subdivision Map Act, where a parcel map was not required. Staff was unable to find any other examples of parcels in the R-A Zone District which were allowed by Variance to be below the minimum size required. Hence, this situation does not meet the criteria of an exceptional or extraordinary circumstances that does not apply generally to other property with the same zoning.

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

Conclusion Finding 1:

Based on the analysis Finding 1 cannot be made. Staff was unable to identify any exceptional or extraordinary features or circumstances particular to the subject parcel warranting the granting of the variance.

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.*

Reviewing Agencies/Department Comments related to Finding 2:

No comments were received relative to this finding.

Analysis Finding 2:

In support of Finding 2, the Applicant's justification states that the existing R-A Zoning requires a minimum parcel width of 130 feet and a minimum area of 36,000 square feet; however, other parcels in the immediate vicinity, to the southwest, also do not meet the minimum area.

Creation of a new parcel containing less than the minimum size required for the Zone District is not a substantial property right, enjoyed by other properties in the vicinity under the same zoning. All properties with the same zoning are subject to the same minimum standard for creation of new parcels.

Variances can only be used to provide relief to preserve the "substantial property right" to be able to utilize a property for the intended use of the zoning. If regulations and unique physical attributes prohibit this property from developing any residential development, a Variance would be appropriate to preserve the "substantial property right" to be able to build a home in the Zone District. However, in this case there is nothing that precludes the utilization of the property for the uses allowed in the Zone District including adding an additional home on the parcel. The site has an existing developed home which demonstrates that the parcel does enjoy the substantial property rights for the zoning. Therefore, staff was unable to identify the deficit of a substantial property right enjoyed by other owners in the vicinity.

Staff acknowledges that in this case the subject property's zoning is not prevalent in the vicinity of the subject parcel, nor in the community at large, as much of the surrounding area is Zoned R-1 and R-1-AH Zone District which has a 20,000 square-foot minimum parcel size, and that the underlying land use designation for the subject parcel is Medium Density Residential in the County adopted Laton Community Plan (Plan). Hence, the appropriate means to allow the proposed development is to have the property rezoned to R-1 or R-1-AH to allow for the smaller parcel size. Fortunately, the Medium Density Residential designation in the Laton Community Plan is compatible with the R-1 or R-1-C Zone District, and conditionally compatible with the R-1-B Zone District, or R-1-AH. This path was recommended to the Applicant at the time of application, and he was informed that Staff would not likely be able to recommend making the findings for a variance.

However, the current zoning of the subject parcel does not provide for the creation of smaller parcels; and staff was unable to identify the deficit of a property right enjoyed by other owners in

the vicinity, under the same zoning. The majority of the parcel under the R-A Zoning within the Laton Community Plan area, meet the minimum parcel size.

Conclusion Finding 2:

Finding 2 cannot be made, as no deficit of a substantial property right enjoyed by others in the area with the same zoning was identified.

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

Surrounding Parcels				
	Size:	Use:	Zoning:	Nearest Residence*:
North	0.93 acre	Single-Family Residential	R-A	80 feet
South	0.55 acre 0.23 acre	Single-Family Residential	R-1	75 feet
East	1.34 acres	Single-Family Residential	R-1AH	92 feet
West	0.17 acre 0.17 acre 0.17 acre	Single-Family Residential	R-1	12 feet

*Distances are approximate and measured from the subject parcel boundaries using a web based aerial imagery application.

Reviewing Agencies/Department Comments regarding detrimental effects on surrounding property:

Road Maintenance and Operations Division: De Woody Avenue is classified as an Arterial Road, with a current right-of-way of 60 feet, and an ultimate right-of-way of 106 feet in the County’s General Plan.

An additional 23 feet of road right-of-way along the subject parcel frontage must be dedicated to meet the ultimate road right of way for De Woody Avenue. Any setbacks for new construction must be based on the ultimate right-of-way for De Woody Avenue.

Due to the Arterial Classification of De Woody Avenue, each new proposed parcel shall be limited to one drive approach, consistent with the requirements of the General Plan Transportation and Circulation Element. Any work performed within the County road right-of-way will require an encroachment permit from the County.

Development Engineering Section, Development Services and Capital Projects Division: The subject property is located within the Laton Community Services District. For any future development, Laton Community Services District should be consulted for any drainage requirements.

According to FEMA, FIRM Panel 2925J, the subject parcel is not at risk of flooding from the 100-year (one-percent chance) storm event.

Fresno County Department of Public Health, Environmental Health Division: Future construction projects have the potential to expose nearby residents to elevated noise levels. Consideration should be given to the County of Fresno noise ordinance.

Should any underground storage tank(s) be found during the project, the applicant shall apply for and secure an Underground Storage Tank Removal Permit from the Fresno County Department of Public Health, Environmental Health Division.

The following comments pertain to the demolition of any existing structure(s):

Should the structure(s) have an active rodent or insect infestation, the infestation should be abated prior to demolition of the structure(s) in order to prevent the spread of vectors to adjacent properties.

In the process of demolishing the existing structure(s), the contractor may encounter asbestos containing construction materials and materials coated with lead-based paints.

If asbestos containing materials are encountered, contact the San Joaquin Valley Air Pollution Control District at (559) 230-6000 for more information.

If the structure(s) were constructed prior to 1979 or if lead-based paint is suspected to have been used in these structure(s), then prior to demolition work the contractor should contact the following agencies for current regulations and requirements: California Department of Public Health, Childhood Lead Poisoning Prevention Branch; United States Environmental Protection Agency, Region 9; State of California, Industrial Relations Department, Division of Occupational Safety and Health, Consultation Service (CAL-OSHA).

Analysis Finding 3:

In support of Finding 3, the Applicant's Findings state that the granting of the Variance would not have detrimental impacts on the public or property in the vicinity, because the proposed parcel split would result in the creation of two parcels over 20,000 square-feet in area, which would be developed with single-family dwellings, and would not have detrimental impact to property and improvement in the vicinity under the same zoning.

The granting of the variance and subsequent mapping procedure would result in the creation of two parcels of approximately 21,780 square-feet in area, commensurate with R-1-AH Zoning, which exists on the easterly abutting property and in several other areas to the north and northwest of the subject parcel. Given the variety of zone districts in the vicinity, staff does not believe that the granting of this Variance would necessarily have any detrimental effects on surrounding property. The two proposed parcels, and the subsequent development with single family dwellings would be generally consistent with the type and density of development in the vicinity.

Staff concurs with the Applicant's Finding that the granting of the Variance to allow reduced parcel sized and side yard setbacks will not have a detrimental impact on surrounding property.

Recommended Conditions of Approval: *None*

Conclusion Finding 3:

Finding 3 can be made, as the Variance, if approved, would not have any identifiable detrimental impacts to surrounding property.

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

Relevant Policies:	Consistency/Considerations:
No applicable General Plan Policies were identified.	N/A

Reviewing Agencies/Department Comments regarding General Plan consistency:

Analysis Finding 4:

In support of Finding 4, the Applicant’s findings assert that the granting of this Variance is not contrary to the objectives of the General Plan.

Staff concurs that the Variance would not be contrary to the objectives of the General Plan, or conflict with any policies of the County adopted Laton Community Plan.

Recommended Conditions of Approval: *None.*

Conclusion Finding 4:

Finding 4 can be made as there are no General Plan Policies, or Laton Community Plan Policies or Objectives specifically pertaining to parcel size.

PUBLIC COMMENT: None.

SUMMARY ANALYSIS / CONCLUSION:

As discussed under Finding 2 above, a rezone of the parcel to a district which allows for smaller parcels would be the recommended course in this case, as the land use designation of the parcel in the Laton Community Plan would be consistent with that approach, although subject to a similar discretionary review and approval process.

Based on the factors cited in the analysis above, Staff cannot make Findings 1 and 2 necessary for granting the Variance and therefore recommends denial of Variance Application No. 4126.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine in accordance with Staff’s recommendation that required Findings 1 and 2 cannot be made, and move to deny Variance No. 4126; and
- Direct the Secretary to prepare a Resolution documenting the Commission’s action.

Alternative Motion (Approval Action)

- Move to determine that required Findings 1 and 2 can be made (state basis for making the Findings) and move to approve Variance No. 4126, subject to the Conditions and Project Notes attached as Exhibit 1; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Recommended Conditions of Approval and Project Notes:

See attached Exhibit 1.

JS:jp

G:\4360Devs&PIn\PROJSEC\PROJDOCS\VA\4100-4199\4126\STAFF REPORT\VA 4126 Staff Report.docx

EXHIBIT 1

**Variance Application (VA) No. 4126
Conditions of Approval and Project Notes**

Conditions of Approval	
1.	Division of the subject parcel shall be substantial conformance with the site plan (Exhibit 6) as approved by the Planning Commission
2.	De Woody Avenue is classified as an arterial road in the County's General Plan, with a current right-of-way of 60 feet. The ultimate right-of-way for De Woody Avenue is 106 feet. Prior to approval of the final parcel map, an additional 23 feet of road right-of-way along the parcel frontage shall be dedicated to the County.

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.	The approval of this Variance will expire one year from the date of approval unless the parcels authorized by said Variance are not created within one (1) year after the granting of said Variance or an application for a tentative map is not filed within the one (1) year. However, in the case of a Variance for which a tentative or vesting map has been timely filed, expiration of said Variance shall be concurrent with the expiration date of the tentative or vesting map and may be extended in the same manner as said map.
2.	Where circumstances beyond the control of the applicant cause delays, which do not permit compliance with the time limitation established in Section 877-D.2 (one year), the Commission may grant an extension of time for a period not to exceed an additional one (1) year period. Application for such extension of time must be set forth in writing the reasons for the extension and must be filed with the Department of Public Works and Planning, Development Services and Capital Projects Division before the expiration of the Variance.
3.	Division of the subject property is subject to the provisions of the Fresno County Parcel Map Ordinance and other applicable State regulation. A Tentative Parcel Map Application shall be filed to create the two proposed parcels. The Map shall comply with the requirements of Title 17.72 of the Fresno County Ordinance Code. 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.
4.	The subdivision will require that a Tentative Parcel Map be prepared in accordance with the Professional Land Surveyors Act, the State Subdivision Map Act and County Ordinance. The Tentative Parcel Map application shall expire two years after the approval of said Tentative Parcel Map. Upon approval and acceptance of the Tentative Parcel Map and any Conditions imposed thereon, a Final Parcel Map shall be prepared by a Professional Land Surveyor or Registered Civil Engineer authorized to practice Land Surveying in accordance with the Professional Land Surveyors Act, the Subdivision Map Act and County Ordinance. Recordation of the Final

EXHIBIT 1

Notes

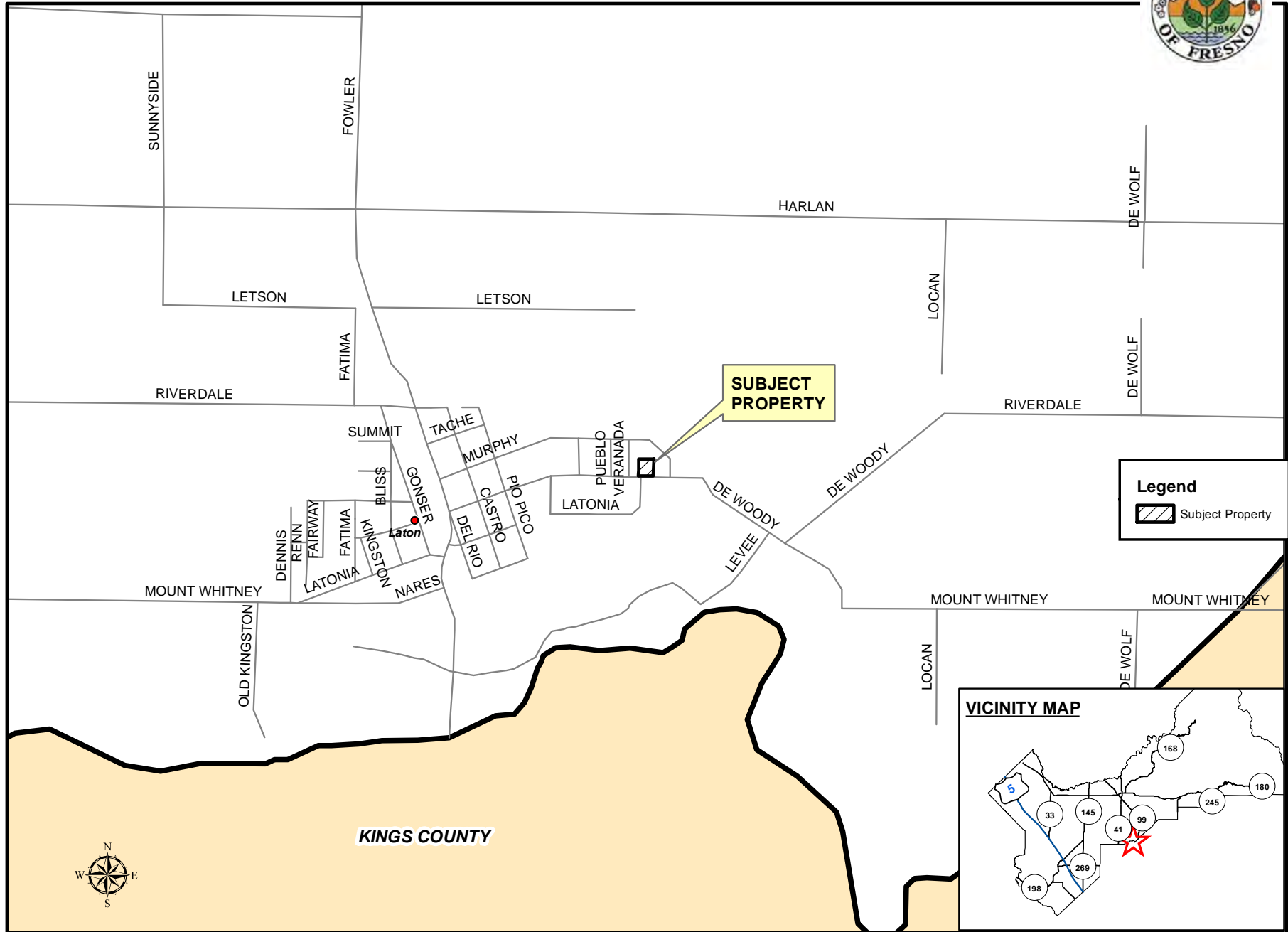
	Parcel Map shall take place within two years of the acceptance of the Tentative Parcel Map unless a Map extension is received prior to the expiration date of the approved Tentative Parcel Map. Failure to record the Final Parcel Map prior to the expiration of said Tentative Parcel Map may void the Parcel Map application.
5.	Prior to site development, all survey monumentation; property corners, centerline monumentation, section corners, county benchmarks federal benchmarks and triangulation stations, etc. within the subject property shall be preserved in accordance with Section 8771 of the Professional Land Surveyors Act and Section 6730.2 of the Professional Engineers Act.
6.	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.

JS:jp

G:\4360Devs&PIn\PROJSEC\PROJDOCS\VA\4100-4199\4126\STAFF REPORT\VA 4126 Conditions & PN (Ex 1).docx

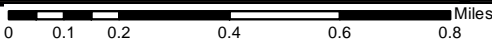
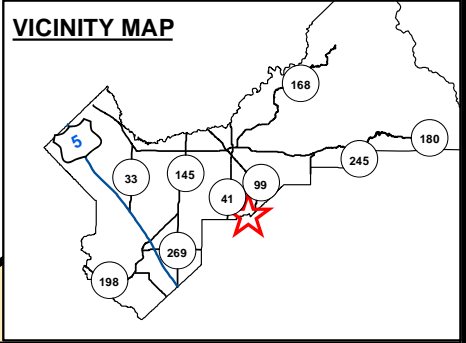
LOCATION MAP

VA 4126



Legend

 Subject Property



EXISTING ZONING MAP

VA 4126
STR 22-17/21

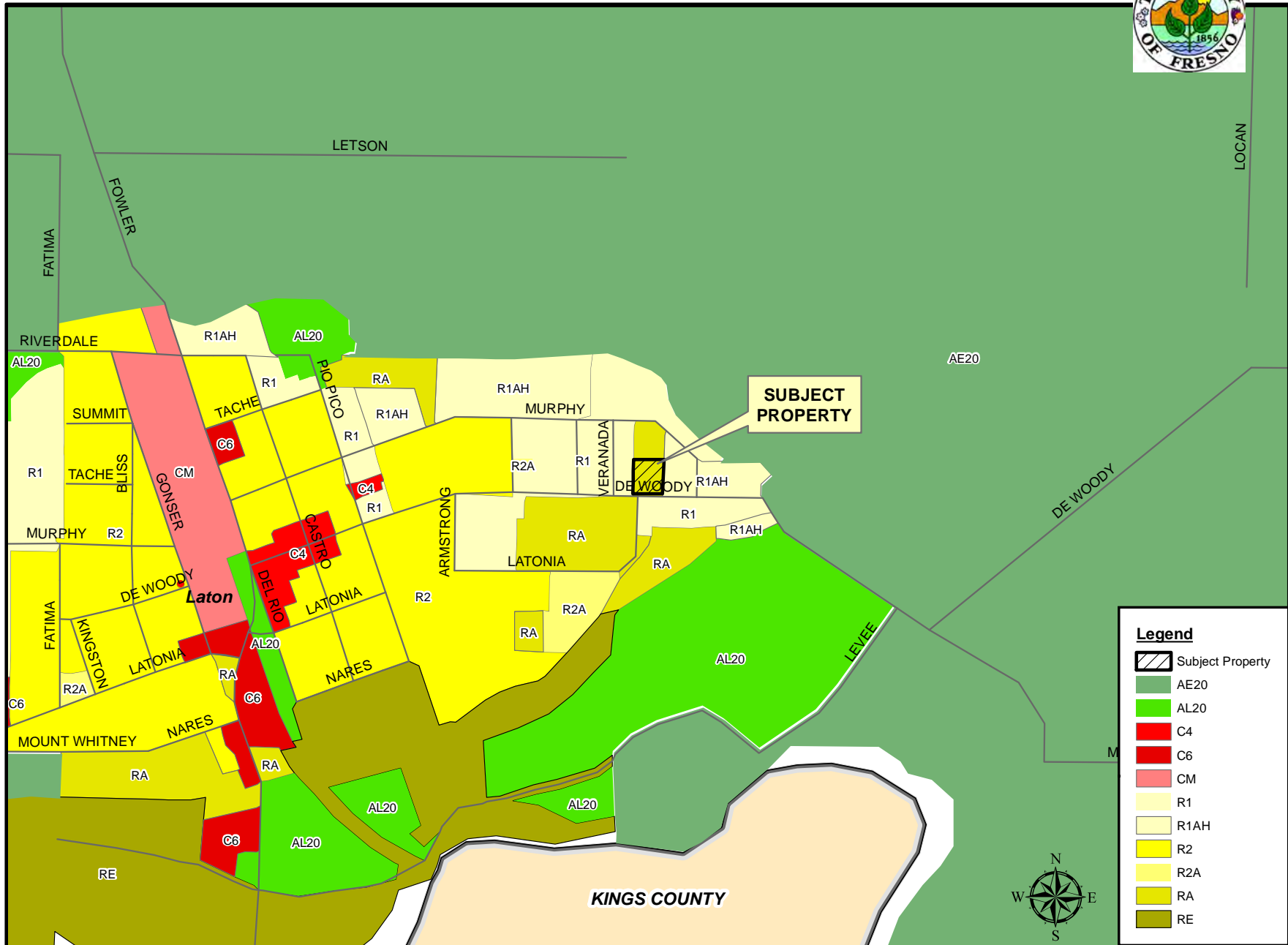


EXHIBIT 3

Legend

- Subject Property
- AE20
- AL20
- C4
- C6
- CM
- R1
- R1AH
- R2
- R2A
- RA
- RE





EXISTING LAND USE MAP

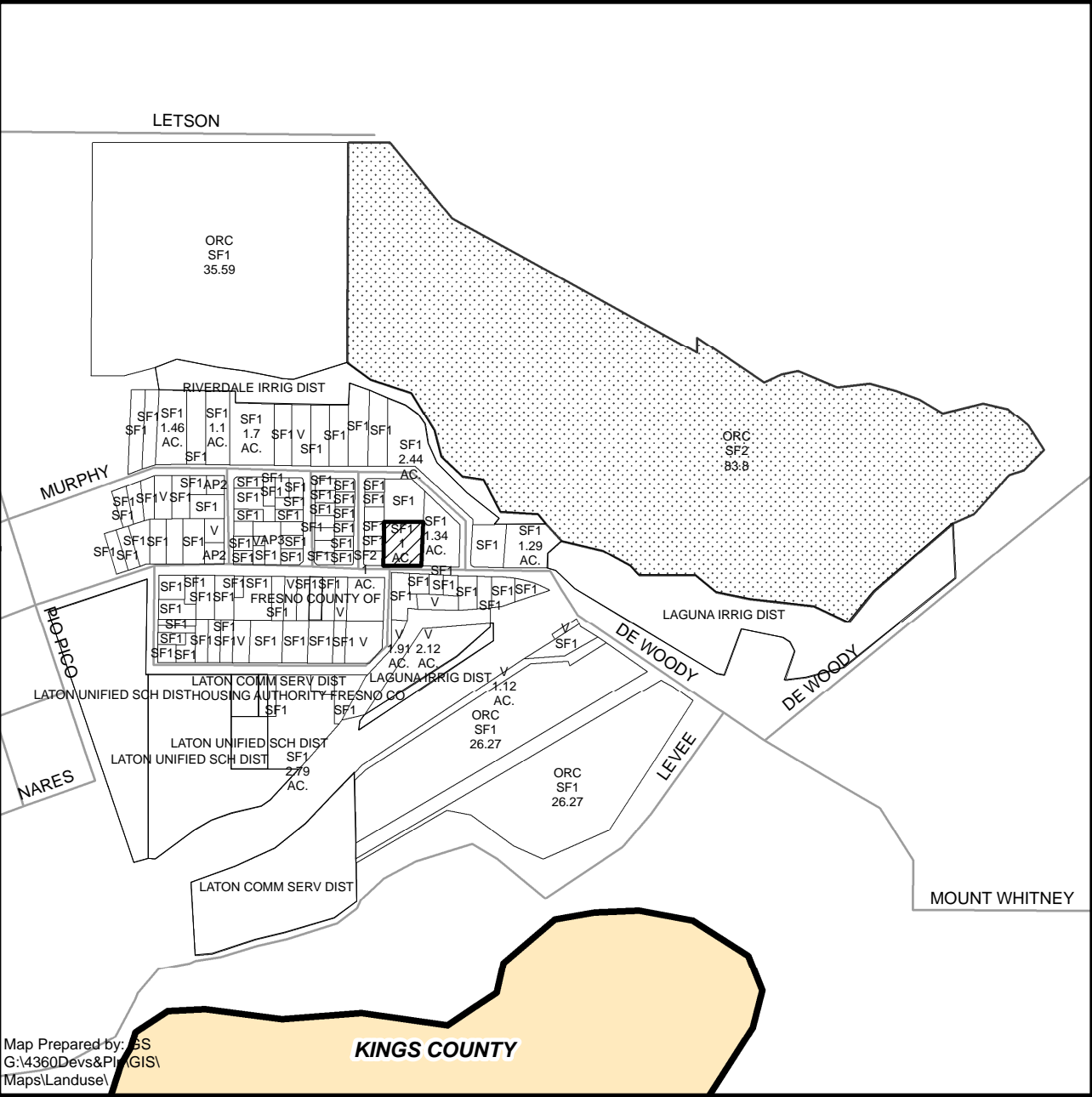
VA 4126



LEGEND	
AP1	- APARTMENT
ORC	- ORCHARD
SF#	- SINGLE FAMILY RESIDENCE
V	- VACANT

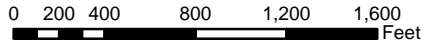
LEGEND:

-  Subject Property
-  Ag Contract Land



Map Prepared by: JES
 G:\4360Devs&Plan\GIS\Maps\Landuse\

KINGS COUNTY



Department of Public Works and Planning
 Development Services Division

EXHIBIT 4

VAs IN A 1/2-MILE RADIUS

VA 4126

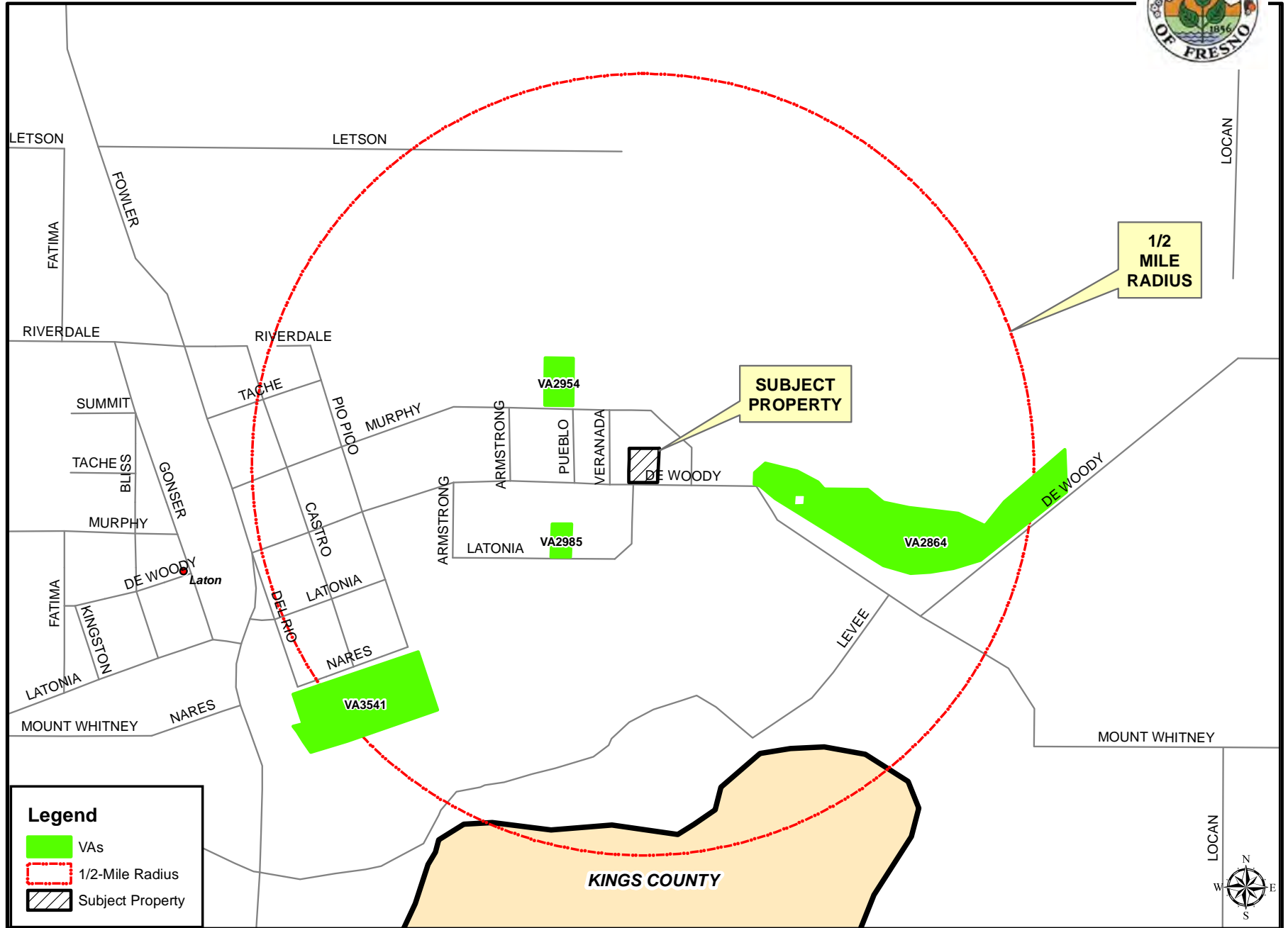


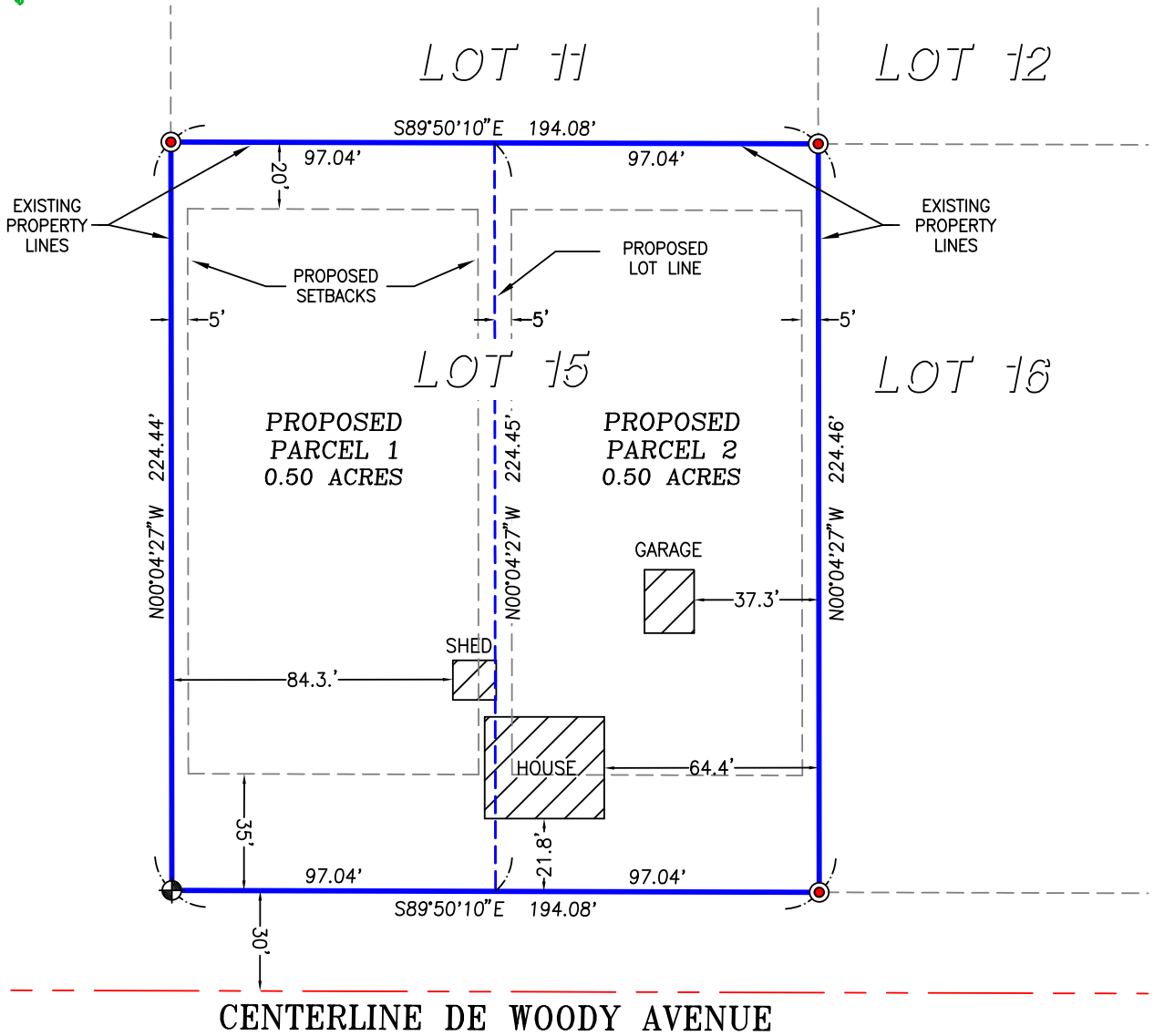
EXHIBIT 5

SITE PLAN



NOTE:

ALL STRUCTURES ARE TO BE REMOVED. EXISTING WATER AND SEWER ARE PROVIDED BY THE CITY. ONE NEW HOME WILL BE BUILT ON NEW PARCELS 5 FOOT FROM PROPERTY LINE.



M & L
LAND SURVEYING
 3949 N. CONDOR CT.
 SANGER, CA 93657
 Tel. (559) 531-9673
 Email:
 MLWEYANT@ICLOUD.COM

LOT 15 ACCORDING TO THE MAP OF LAGUNA DE TACHE GRANT RECORDED IN BOOK 2, PAGE 61 OF RECORD OF SURVEYS. BEING LOCATED IN THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 17 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, FRESNO COUNTY. APN: 057-070-17

JOB NO. 2104MINTER
 DRAWN BY: M.R.WEYANT
 START DATE:
 REVISE DATE:
 SCALE: 1" = 50'

Variance Findings

The purpose of this variance is to subdivide an existing 1 acre parcel into two 0.5 acre parcels for the purpose of constructing 2 new homes. Each new parcel would have 1 home built on each parcel with a 5 foot sideline setback requirements from the property line whereas the front setback will be 35 feet and rear setback will be 20 feet. The lot size for each lot is roughly 97 feet by 224 feet, with each lot having 97 feet of road frontage (see Site Plan) instead of the 130 foot minimum. All existing structures will be demolished upon approval of the variance.

- 1.) There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the vicinity having the identical zoning classification.

The existing zoning for this parcel does not allow for the creation of a smaller parcel even though the existing parcel is bound by R-1 zoning to the North of Murphy Avenue, South of DeWoody Avenue and directly West. Similar parcels with the same zoning have been allowed to be smaller than the 1 acre requirement. The same parcels have been also allowed to have a smaller road frontage and sideline setback requirements than is allowed for the zone (see APNs 057-223-06 to 11).

- 2.) Such Variance is necessary for the preservation and enjoyment of a substantial property right of applicant, which right is possessed by other property owners under like condition in the vicinity having the identical zoning classification.

Existing zoning of RA require that the width of the parcels be 130 feet with a minimum area of 36,000 square feet; however other parcels Southwest of the subject parcel (located on De Woody Avenue) do not meet the width requirement or minimum area for the same zoning.

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

No, the variance will allow for the creation of a two new parcels with an area of over 20,000 square ft, subsequently developed with two new single family dwellings, would not have a detrimental impact to the property and improvement in the vicinity under the same zoning.

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

The creation of a new parcel will be in line with the objectives of the General Plan.