



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 4 May 26, 2016

SUBJECT: Variance Application No. 3992

Allow the creation of a 1.5-acre parcel and a 15.5-acre parcel from an existing 17-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District where a 20-acre minimum parcel size is required.

LOCATION: The parcel is located on the south side of Hogan Avenue, approximately one quarter-mile west of its intersection with Navelencia Avenue (SUP. DIST. 4) (APN 185-160-17).

OWNER/APPLICANT: Isabel Ybarra

STAFF CONTACT: Christina Monfette, Planner
(559) 600-4245

Chris Motta, Principal Planner
(559) 600-4227

RECOMMENDATION:

- Deny Variance No. 3992; 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. Proposed Parcel Configuration (Site Plan)
6. Variances within Two Miles
7. 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	17 acres	Parcel A: 1.5 acres Parcel B: 15.5 acres
Project Site	N/A	N/A
Structural Improvements	Single-family residence, barn, shed, house well, agricultural well	Parcel A: Single-family residence, barn, shed, house well Parcel B: Agricultural well
Nearest Residence	180 feet north of existing residence	No change
Surrounding Development	Agricultural/Residential uses	No change
Operational Features	N/A	N/A
Employees	N/A	N/A
Customers	N/A	N/A
Traffic Trips	Residential	No change
Lighting	Residential	No change
Hours of Operation	N/A	N/A

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 14 property owners within 1,320 feet of the subject parcel, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

PROCEDURAL CONSIDERATIONS:

A Variance (VA) 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 VA Application is final, unless appealed to the Board of Supervisors within 15 days of the Commission’s action.

BACKGROUND INFORMATION:

The subject parcel was created as Lot No. 75 (20 acres) of the Navelencia Farms subdivision (Plat Book 7, Pg. 88), which was recorded in 1914. County records indicate that the western 99 feet of the parcel (totaling three acres) was deeded to the property owner to the west before 1971 and has been part of that parcel since. The current 17-acre parcel is currently considered legal and non-conforming. A single-family residence and almond orchard have been developed on the property and current access is from Hogan Ave.

The Applicant is requesting to split the subject parcel such that Parcel A will become a homesite parcel (2.5 acres) for the current owner and Parcel B (15.5 acres) may be sold to someone who will continue to farm it. The current AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District was adopted on August 31, 1976 and the property was purchased by the current owner on December 6, 1977.

In addition to the subject application, there have been five other variance applications within two miles of the subject property, four of which were to allow the creation of lots with substandard sizes. The following table provides a brief summary of the other Variance (VA) applications and final actions.

Application/Request:	Date of Action:	Staff Recommendation:	Final Action:
VA 3870: Allow the creation of two parcels 2.11 and 2.67 acres in size (minimum 20 acres required) from an existing 4.78-acre parcel in the AE-20 (Exclusive Agriculture, 20-acre minimum parcel size) Zone District	September 20, 2007	Denial	Approved by the Planning Commission
VA 3604: Allow the creation of a 2.42-acre parcel (minimum 20 acres required) from a 23.90-acre parcel of land in the AE-20 (Exclusive Agriculture, 20-acre minimum parcel size) Zone District.	February 5, 1998	Denial	Approved by the Planning Commission
VA 3597: Allow a 13.72-acre parcel (minimum 20 acres required) resulting from a property line adjustment between a 19.92-acre parcel and a 39.79-acre parcel of land in the AE-20 (Exclusive Agriculture, 20-acre minimum parcel size) Zone District.	November 20, 1997	Approval	Approved by the Planning Commission

VA 3405: Allow the creation of a 23.92-acre parcel, a 27.17-acre parcel, and a 6.35-acre parcel (minimum 20 acres required) from an existing 57.44-acre parcel.	March 2, 1993	Denial	Approved by the Planning Commission
VA 3143: Allow an 18.5-foot setback (35 feet required) for dwelling under construction	Planning Commission: April 14, 1988 Board of Supervisors: April 24, 1988	Approval	Denied Approved

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

ANALYSIS/DISCUSSION:

Findings 1 and 2: 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

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	Front: 45 feet (house) Side: 10 feet (barn) Rear: 0 feet (barn)	Yes, per section 816.5-E.3 and E.4, accessory buildings more than 100 feet from the front property line may be located along the rear and side property lines
Parking	No Requirement	No Requirement	N/A
Lot Coverage	No Requirement	No Requirement	N/A
Separation Between Buildings	No animal or fowl pen, coop, stable, barn, or corral shall be located within 40 feet of any dwelling or other building used for human habitation.	No change	Yes
Wall Requirements	No Requirement	No Requirement	Yes
Septic Replacement Area	100 percent	No change	Yes

	Current Standard:	Proposed Operation:	Is Standard Met (y/n):
Water Well Separation	Septic tank: 50 feet; Disposal field: 100 feet; Seepage pit: 150 feet	No change	Yes

Reviewing Agencies/Department Comments Regarding Site Adequacy:

Fresno County Department of Agriculture: No comments.

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

Development Engineering Section of the Fresno County Department of Public Works and Planning: Typically, in an Expressway classification, if not already present, on-site turnarounds are required for vehicles leaving the site to enter the expressway in a forward motion. Direct access to an arterial road is usually limited to one common point. No new access points are allowed without prior approval.

If not already present, ten-foot by ten-foot corner cutoffs should be improved for site distance purposes at any exiting driveway onto Hogan Avenue.

According to FEMA, FIRM Panel 2200H, portions of the subject parcel are in Flood Zone A that is subject to flooding from the 1% chance (100-year) storm. If any development is within the area identified as Zone A, it must comply with the County Flood Hazard Ordinance (Title 15.48). According to U.S.G.S. Quad Maps, there are no existing natural drainage channels adjacent to or running through the subject parcel.

Typically, 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 would be required for any grading proposed with this application.

Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: Hogan Avenue is a County-maintained road with 50 feet of existing road right-of-way. Typical County local road standards require a minimum right-of-way of 60 feet, so an additional 5 feet of road right of way may ultimately be needed across the Applicant's frontage. Due to the remoteness of the project site, no dedication is requested at this time.

If any improvements are constructed for the drive approach in the road right-of-way, an encroachment permit is required from this Division.

Environmental Health Division of the Fresno County Department of Public Health: In the case of this application, it appears the 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. 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.

Zoning Section of the Fresno County Department of Public Works and Planning: A mapping procedure is required if the Variance is approved.

Analysis:

In support of Finding 1, the Applicant states that a recent death of a neighbor has triggered the sale of his approximately 233 acres of tree fruit, which borders the subject parcel to the east and south. The granting of this Variance would potentially allow the owner to sell Parcel B to the same buyer and preserve the agricultural use of the land. Additionally, the parcel is already non-conforming and the acreage reduction would have no effect on that status.

In support of Finding 2, the Applicant states that there are many non-conforming parcels in the immediate area that allow other homeowners to create a homesite parcel by right, since they were purchased prior to 1977. The current owner purchased the property in 1977.

With regard to Finding 1 and Finding 2, staff could not identify any unique physical circumstances that apply to the subject property and do not apply to other properties in the area. The non-conforming status is shared by other parcels in the area and approval of this Variance would add an additional non-conforming parcel to the area. There are numerous parcels within two miles of the subject property that have five or fewer acres, several of which were created by variances, as noted above. Six parcels were purchased before the current zoning was adopted and as such qualify for a homesite retention application. However, of those six parcels, none are able to meet the other requirement listed in Ordinance Section 816.5-A.2(b.3) which requires that the agricultural parcel retain at least 15 acres after the removal of the homesite. Staff would like to note that if the owner of the property had owned the land prior to August 31, 1976, this application would meet that limitation and she would be permitted to create a homesite parcel by right.

The subject application does not currently qualify under any of the listed criteria, as discussed under Finding 4 (General Plan Consistency). The presence of other small parcels in the area is not a physical characteristic demonstrating circumstances which merit the requested parcel configuration. Denying this application would not deny the Applicant of any right enjoyed by any other property owners in the AE-20 Zone District, since all property owners in the District are held to the same development standards. The sale of property immediately adjacent to the parcel similarly applies to other neighbors near the project site, since there are several homeowners who are adjacent.

A consideration in addressing variance applications is whether there are alternatives available that would avoid the need for the Variance. In this case, the Applicant could choose to sell the home with the almond orchard and move to a smaller parcel. The Applicant could also choose to enter into a Life Estate agreement with potential buyers of the land, which would allow her to continue to live in the current residence on the property without the responsibility of maintaining the almond orchard.

Recommended Condition of Approval:

See recommended Condition of Approval attached as Exhibit 1.

Conclusion:

Findings 1 and 2 cannot be made.

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:	15.15 acres	Agriculture/Residential	AE-20	180 feet
South:	28.07 acres	Agriculture	AE-20	None
East:	19.7 acres	Agriculture	AE-20	None
West:	20.00 acres	Agriculture/Residential	AE-20	430 feet

Reviewing Agencies/Department Comments:

None.

Analysis:

In support of Finding 3, the Applicant states that the current owner of the subject parcel would like to create a smaller parcel to retain her single-family home, out buildings, and associated improvements. No other development is proposed and the land use on the property will not change. As a result, the granting of the Variance should not have an impact on the public welfare or be injurious to properties and improvements in the area.

In regard to Finding 3, staff notes that of the eleven parcels along Hogan Avenue between Alta and Navelencia Avenues, two are less than 2.5 acres in size and currently developed as homesites. Five others (including the subject parcel) have homes developed near the roadside. If the Variance is approved, Parcel B would have 188 feet of road frontage (165 feet required) and the owner would be permitted by right to build another residence. The undeveloped area directly east of the proposed Parcel A is the most likely site for that residence.

The clustering of homesites along Hogan Avenue is typical of the neighborhood and Staff has determined that the Variance will not have a detrimental effect on property and improvement in the vicinity of the subject property.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 3 can be made.

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

Relevant Policies:	Consistency/Considerations:
<p>Policy LU-A.6: 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, LU-A.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>The subject property is zoned AE-20, with a 20-acre minimum parcel size. The subject property does not qualify for an exception under Policies LU-A.9, LU-A.10, or LU-A.11:</p> <ul style="list-style-type: none"> - LU-A.9: The lot is not for a financing parcel, gift lot, or owned by the property owner prior to the date the policies were implemented. - LU-A.10: The request is not to allow for the development of an agricultural commercial center. - LU-A.11: The request is not to allow the recovery of mineral resources, oil, or gas. <p>The subject proposal is requesting a variance from compliance with this policy and the zoning regulations that support it (Section 816.5, minimum of 20 acres).</p>
<p>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 in the AE-20 Zone District is 20 acres and this application is requesting a variance to allow the creation of a 1.5-acre parcel and a 15.5-acre parcel. The Planning Commission's action on this application will be final unless appealed to the Board of Supervisors. Staff recommends denial of the subject Variance based on the inability to make Findings 1, 2, and 4.</p>
<p>Policy PF-C. 17: The County shall, prior to consideration of any discretionary project related to land use, undertake a water supply evaluation.</p>	<p>The project is in a low-water area; however, no development or change in land use is proposed with this application and so a formal evaluation was not required.</p>

Reviewing Agencies/Department Comments:

Policy Planning Section of the Fresno County Department of Public Works and Planning: The subject parcel is not subject to a Williamson Act Contract.

Water/Geology/Natural Resources Section of the Fresno County Department of Public Works and Planning: While the property is in a low-water area, no new development is proposed and so there are no water comments.

Analysis:

In support of Finding 4, the Applicant states that the objectives of the General Plan would not be affected by this Variance since it will not change the use of the land.

In regard to the Applicant's statements, staff notes that while proposed Parcel B is planned to be farmed to its full extent, it is possible that the owner, or future owner, may take some of the active farmland out of production to create a homesite, removing additional acres from active production. The currently undeveloped "open ground" provides a reasonable site on which to build this residence; however, there is nothing to compel the future owner to build at this location. The General Plan restricts the creation of small parcels in the AE-20 zone district in order to reduce such development and encourage commercial farming operations, and this application is inconsistent with those policies.

Recommended Conditions of Approval:

None.

Conclusion:

Finding 4 cannot be made.

PUBLIC COMMENT:

None.

CONCLUSION:

Staff believes the required Findings 1, 2, and 4 for granting the Variance cannot be made based on the factors cited in the analysis. Staff therefore recommends denial of Variance Application No. 3992.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine the required Findings cannot be made and move to deny Variance Application No. 3992; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (Approval Action)

- Move to determine that the required Findings can be made (state basis for making the Findings) and move to approve Variance Application No. 3992; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Recommended Condition of Approval and Project Notes:

See attached Exhibit 1.

CMM:

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**Variance Application (VA) No. 3992
Condition of Approval and Project Notes**

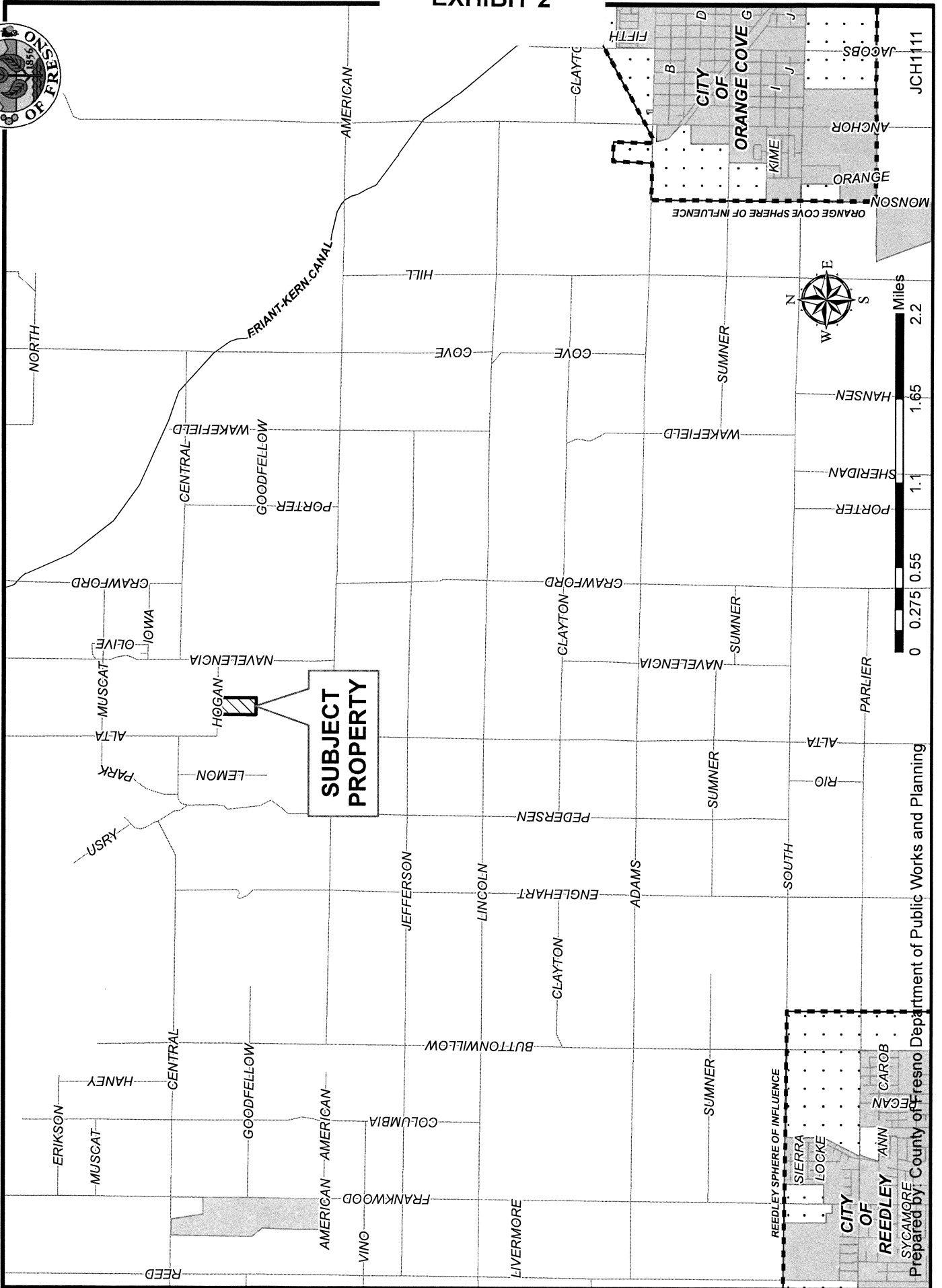
Condition of Approval	
1.	Development shall be in accordance with the Site Plan (Exhibit 5), as approved by the Commission.
Conditions of Approval reference recommended Conditions for the project.	
Notes	
The following Notes reference mandatory requirements of Fresno County or other Agencies and are 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 1.5-acre and a 15.5-acre parcel.
2.	If not already present, on-site turnarounds are required for vehicles leaving the site to enter the Expressway in a forward motion.
3.	Direct access to an arterial road is usually limited to one common point. No new access points are allowed without prior approval.
4.	If any development is within the area identified as Zone A, it must comply with the County Flood Hazard Ordinance (Title 15.48).
5.	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.
6.	A grading permit or voucher is required for any grading proposed with this application.
7.	It is recommended that the Applicant consider having the existing septic tank pumps, 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.



EXHIBIT 2

LOCATION MAP

VA 3992



**SUBJECT
PROPERTY**

REEDLEY SPHERE OF INFLUENCE
SIERRA
LOCKE
ANN
CAROB
EGAN
CITY OF REEDLEY
SYCAMORE
Prepared by: County of Fresno Department of Public Works and Planning

MONSON
ORANGE COVE SPHERE OF INFLUENCE
ORANGE
ANCHOR
JACOBS
CITY OF ORANGE COVE
KIME
SUMMER
HILL
GOVE
GOVE
GLAYTC
FIFTH
D
G
J
J
JCH1111

EXISTING ZONING MAP

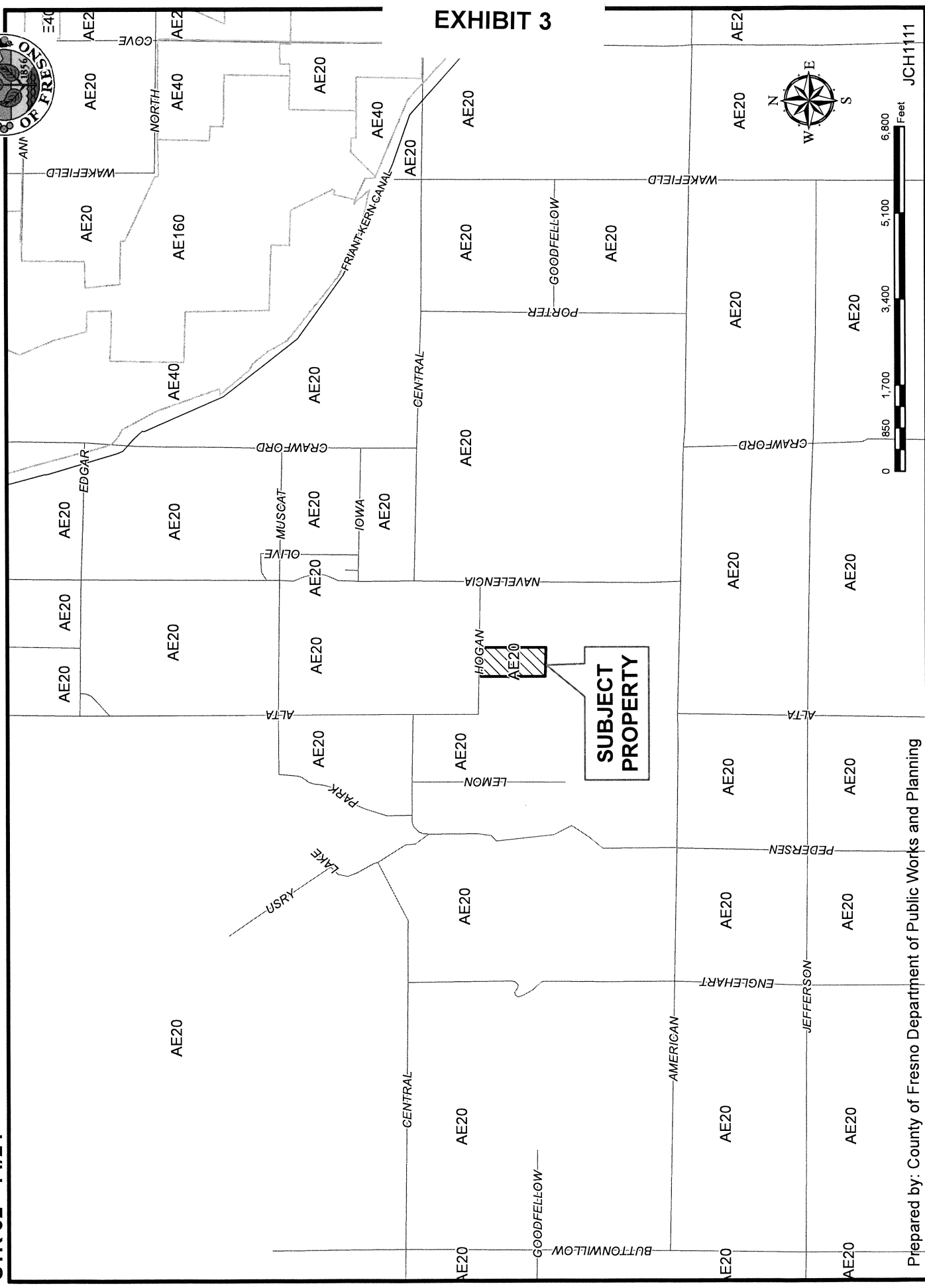


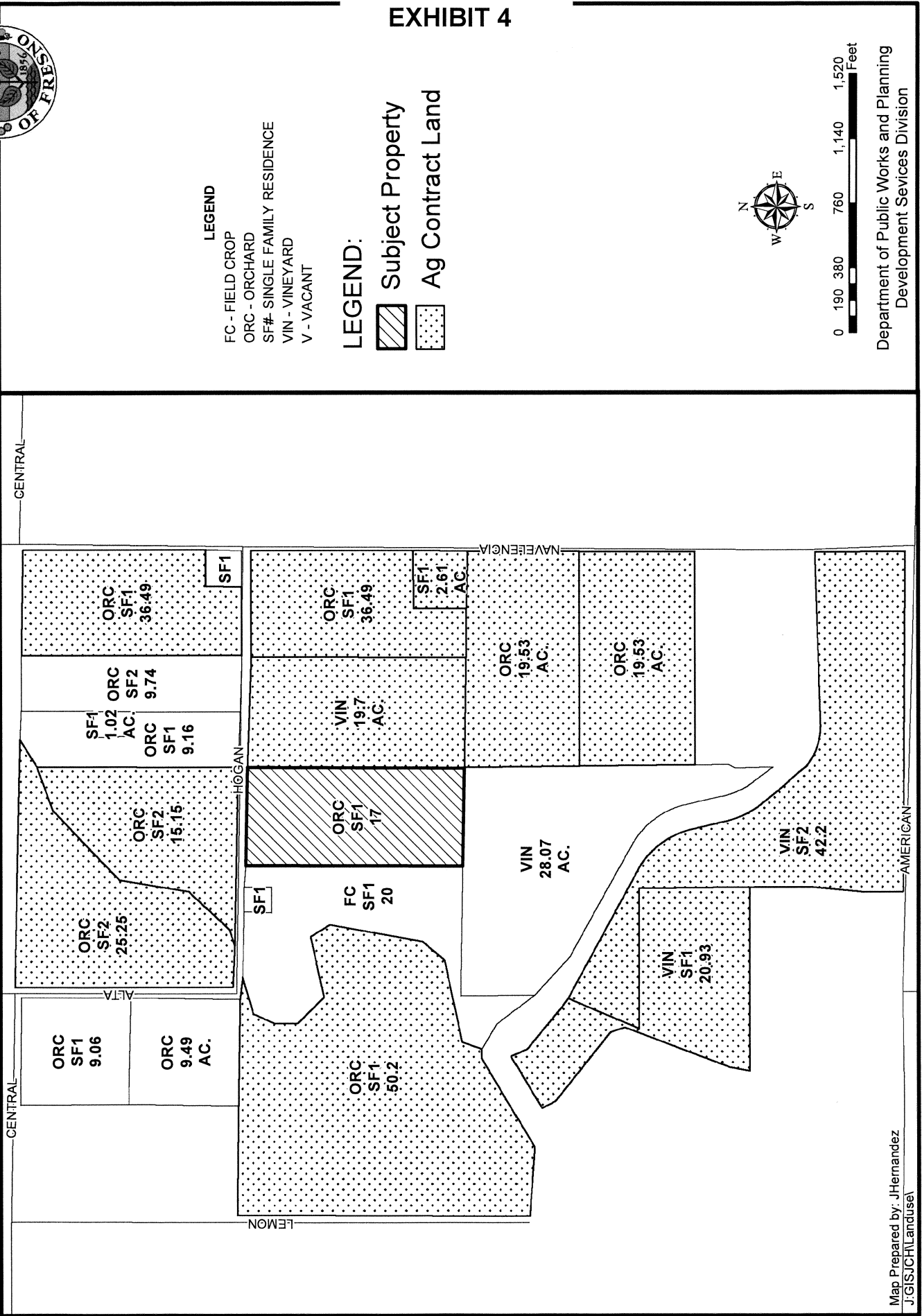
EXHIBIT 3



EXISTING LAND USE MAP

EXHIBIT 4

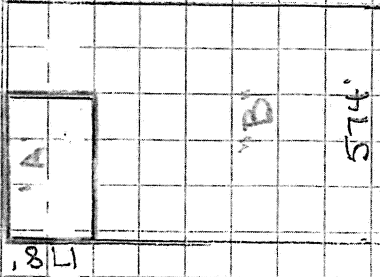
VA 3992



Department of Public Works and Planning
Development Services Division

EXHIBIT 5

Over view

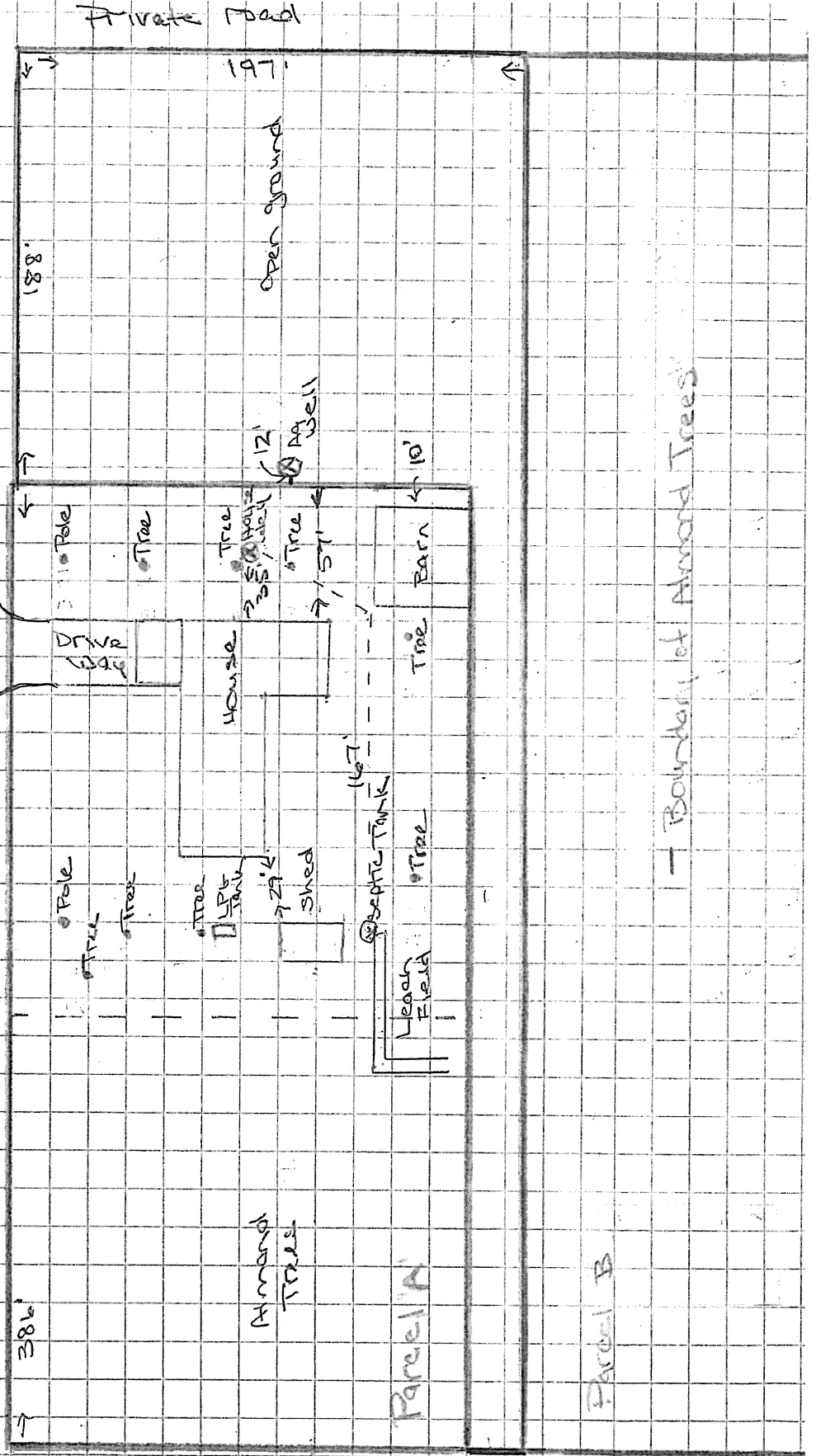


Ybarra Residence
22195 Hogan

↑ North

Proposed Property Line

Hogan Avenue



Private Road

Almond Trees

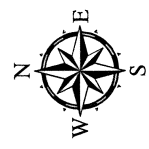
Parcel A

Parcel B

Boundary of Almond Trees



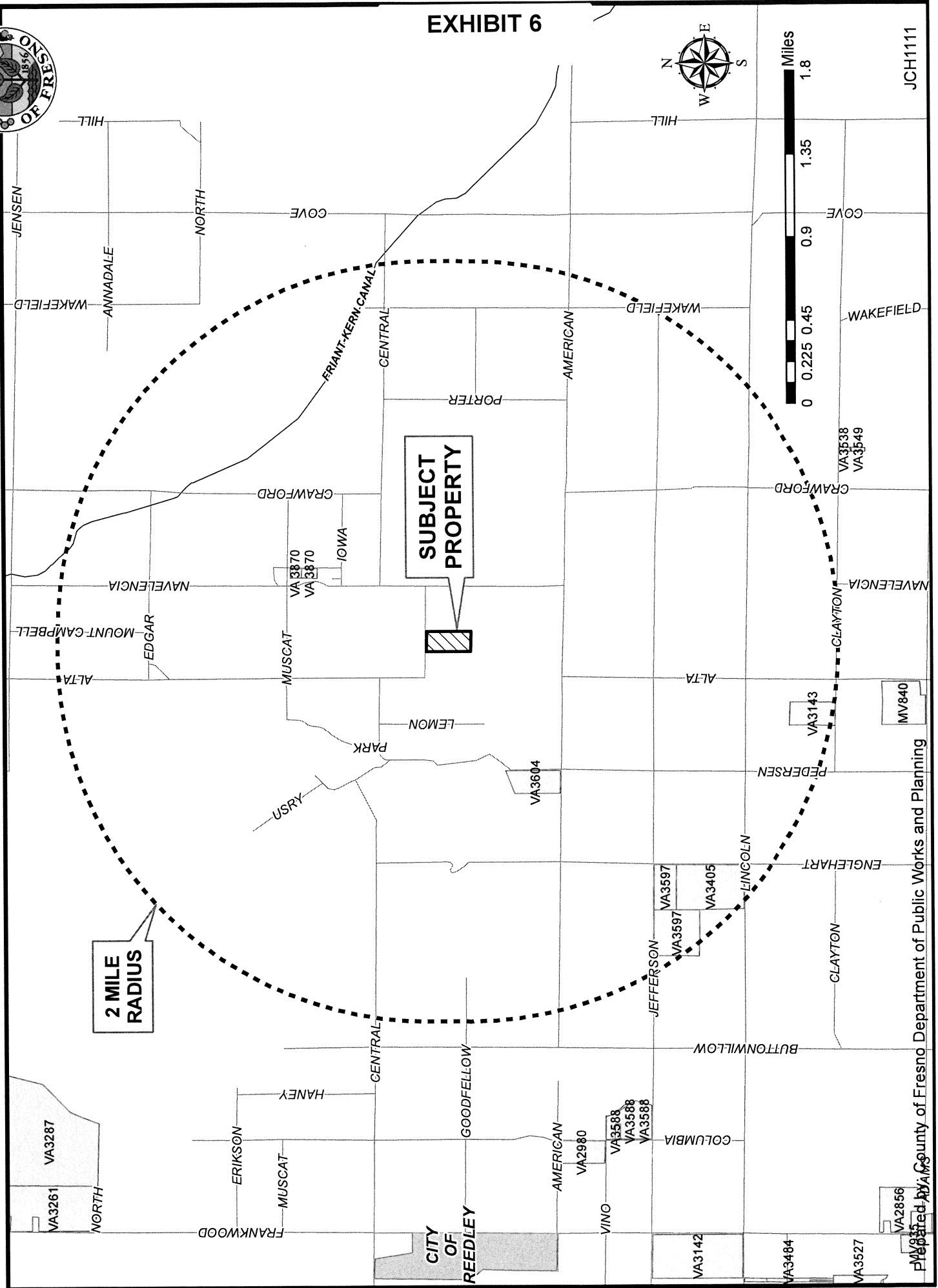
EXHIBIT 6



JCH111

VARIANCES WITHIN TWO MILES

185-160-17



2 MILE RADIUS

SUBJECT PROPERTY

EXHIBIT 7

Required findings necessary for the granting of a variance application as specified in zoning ordinance section 877

- 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.

Our neighbor Gene Anderson passed away recently and his family is currently selling 233+ acres of tree fruit that borders our property on the east boundary line as well as the south boundary line. If we were granted a variance at this time, possibly the 15+ acres of almond trees could be sold to the buyer of the Anderson property making the parcel one contiguous piece owned by the same individual. Thus guaranteeing the preservation of the agricultural land. Another exception would be – the parcel is already non-conforming at 17 acres in an area designated as AE-20. Reducing the parcel size slightly would not change the non-conforming status.

- 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.

The homeowner is requesting a variance that would allow her to create a smaller parcel size in an area designated as AE-20. There are many non-conforming parcels in the area that allow other homeowners this right since they purchased prior to 1977. We purchased our property in 1977 and must seek a variance to enjoy this same luxury. This homeowner should possess the same right as her neighbors to remain in her family home of 39 years without the burden of being an almond farmer at the age of 81.

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

Granting this variance would allow the homeowner to create a separate parcel of land that is currently developed with a single family home, out buildings and associated improvements. No other improvements are being proposed and activity will remain the same. No changes on the site are being proposed as the separate parcel has its own well and access from the road. As a result, granting the variance should not have an impact on the public welfare nor be injurious to properties and improvements in the area.

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

Granting the requested variance will not change the use of the land. Therefore, it would not impact the General Plan for our agricultural community.

March 23, 2015 (updated February 26, 2016)

RE: Property located at 22195 Hogan, Reedley, CA 93654 (Ybarra Residence)

In 1976, my father and mother purchased 20 acres of Thompson grapes (located just east of our current residence). At that time, we lived about 5 miles away and had to drive to the new ranch to do any work. My father and mother wanted to live next to the land they had just purchased so he spoke with the Watsons (previous owners of our current residence) and told them that if they ever wanted to sell, to please let him know, because he might be interested. The Watson's replied that they had just planted the almond trees and had no intention of selling. God works in mysterious ways, because the following year (1977), Mr. Watson received a job offer in Saudi Arabia. Naturally Mrs. Watson did not want to stay, so they approached my father and said they would sell him and my mother the land. My father worked at the local sawmill, my mother was a stay at home mom and they were raising 6 daughters. But with a lot of hard work (family working on the ranch to keep the costs to a minimum) – only hiring out for the laying of the raisins, we were able to make the ranch payment to Mr. Blackburn as well as the almond/house payment to Mr. Watson. Needless to say we had several blue Christmas' as one payment was due in November and the other payment was due in December. Several times, the neighbors were kind and allowed us to make interest payments only. But after MUCH hard work we were able to pay everything off and call this HOME!

We sold the 20 acres of Thompson grapes after all of the daughters graduated college, as my dad no longer had his work crew. But we kept the almonds and the house and have lived at this residence ever since. About 13 years ago, my father passed away from Parkinson's Disease. Before he died, my mother promised him that she would replant the almond orchard as the trees were well over 30 years old and in need of replanting. My mother was working at the local pharmacy as a clerk part-time and with the savings she and my father had managed to sock away, she was able to replant the orchard. But for three years, there were bills to pay and no income was being generated from the land. It has been a struggle for her these past few years – being able to cover all of the expenses. The almond trees may have suffered some as we have not been able to fertilize on a regular basis. My mother turned 81 years old this past November. We are blessed that she is in good health. She would like to continue living in our home of the past 39 years – but is no longer able to maintain the almond orchard.

So we are asking if Fresno County would grant her a "Variance" so that we can separate the almond trees from the house. We could sell the almond orchard so that it can be cared for properly and she could reside in her home without the financial burden of caring for the almonds. Another reason she does not want to move is because about 9 years ago we took out a loan and did a remodel on the house. It was built in the 60's and was in need of some improvements. So she was able to make changes to the house and make it the home she always wanted. I feel it would be a hardship on my mother (at this age) if she had to relocate. She is so comfortable with her surroundings and has developed a routine that works well for her. If you are able to grant her this "Variance", she would be able to live her "Golden Years" on the ranch as she and my father had always planned.

Thank you for your consideration in this matter.

Sincerely,

Irene Ybarra

Irene Ybarra (daughter)