



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 3 April 28, 2022

SUBJECT: Variance Application No. 4128

Allow a reduction in the minimum parcel size in order to allow for a mapping procedure in the creation of a 39.65-acre, a 39.35-acre, a 17.95-acre, and an 18.40-acre parcel, from two existing, approximately 57.67-acre parcels totaling 115.30-acres in the RC-40 (Resource Conservation, 40-acre minimum parcel size) Zone District.

LOCATION: The subject parcels are located approximately one-third mile north of the intersection of State Route 180 (Kings Canyon Road) and State Route 245 (Pinehurst Road) and approximately 1.5 miles north of the unincorporated community of Pinehurst (APNs: 195-100-33, 195-100-34, 195-030-62, 195-030-63) (Sup. Dist. 5).

**OWNER/
APPLICANT:** Lawrence P. Zamzok

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

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Deny Variance No. 4128; 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. Site Plan
- 6. Applicant's submitted Findings

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Public Lands and Open Space in the County Adopted Sierra South Regional Plan	No change
Zoning	RC-40	No change
Parcel Size	Two parcels, each containing approximately 57.67-acres	Parcel 1: 39.65 acres Parcel 2: 39.35 acres Parcel 3: 17.95 acres Parcel 4: 18.40 acres
Project Site	See above	No change
Structural Improvements	None	None with this application
Nearest Residence	Approximately 900 feet south	No change

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 12 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 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 consists of two parcels, each containing approximately 57.67 acres created by Tentative Parcel Map Waiver (TPMW) No. 97-10, approved in December of 1997. The current application seeks authorization to divide the subject property into four parcels, two of which will be substandard in size.

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	Is Standard Met (y/n):
Setbacks	RC-40 Zone District <i>(AE-20 standards apply)</i> Front (southeast): 35 feet Rear (west): 20 feet Side east and west: 15 feet	No change	Yes
Parking	Requirements of Section 855-I shall apply	No change	Yes
Lot Coverage	30 percent	No change	Yes
Separation Between Buildings	No requirements	No change	N/A
Wall Requirements	No requirements	No change	N/A

Reviewing Agencies/Department Comments related to Finding 1:

No comments were received relative to this finding.

Finding 1 Analysis:

In support of Finding 1, the Applicant’s Findings state that the property consisted of four separate legal parcels due to the existence of separate legal descriptions in the Deeds, and that one of the parcels had been transferred.

Staff was unable to identify any exceptional circumstance associated with the property, other than the apparent misunderstanding around the number of legal parcels comprising the subject property at issue in this Variance request.

Recommended Conditions of Approval: *None*

Finding 1 Conclusion:

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 the issue of preservation of a substantial property right.

Finding 2 Analysis:

In the Applicants statement on Findings they describe how the way the parcels are described and other lotting patterns made the parcels seem to be separate already. However, the fact is they are not, otherwise this variance would be pointless.

Often the Public does not realize that a separate Assessor Parcel Number (APN) or a parcel described within a deed does not necessarily mean that that they are separate legal lots/parcels.

Assessor parcel numbers are simply identifiers used for the purposes of assigning and collecting taxes. Some legal lots/parcels have separate APNs to identified separate interests for purposes including assigning and paying taxes. Land can only be divided by the various mechanisms and processes allowed for in the State Map Act. As an example, separate zoning, or in this case a variance entitlement, does not divide the property. These things may make it possible for other actions such as Parcel Maps, Map waivers, and Tract Maps to be processed to effectuate the division of the land.

An applicant's lack of understanding of their property's title has no relationship to a substantial property right. As an example, one could record a life estate for a portion of a legal lot at any time by a gift deed and a separate APN could be assigned to it. It would not divide the property and that would not subsequently be a basis to then request a variance to allow a substandard sized lot to be created by a parcel map procedure.

Variances can only be used to provide relief to preserve the "substantial property right" which is the ability to utilize a property for the intended use of the zoning. A substantial property right is only in jeopardy if regulations and/or unique physical attributes prohibit properties from developing use of the property consistent with zoning classification.

Being able to divide your property to a smaller acreage than allowed by the zoning classification to match a misperception of equity and taxation interest of the parcel is not a "substantial Property right". The surrounding properties zoned RC-40 all have the ability to be developed and utilized for agricultural uses and up to two residences. The property enjoys the same significant property right, it can and has been used for the intended use of the zone classification including a residence.

Providing an applicant a variance to relieve them of the burden of their situation solely because it is an inconvenient circumstance, would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated, which is specifically prohibit by Government Code Section 65906.

Recommended Conditions of Approval: *None*

Finding 2 Conclusion:

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	549.48	Recreation	RC-40	None
South	18.54 5.45 5.99 5.99	Recreation Single Family Residential Vacant Vacant	RC-40	None
East	549.48 100.00	Recreation Grazing/Recreation	RC-40	None
West	20.00 41.76	Vacant Vacant	RC-40	None

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

No comments relevant to detrimental effects on surrounding property were received.

Finding 3 Analysis:

In support of Finding 3, the Applicant’s Findings state that the granting of this variance will not result in any significant change to the land use pattern in the area.

The granting of the variance and subsequent mapping procedure would result in the creation of four parcels, and allow the potential for future development with a single-family dwelling on each parcel. Residential land uses while allowed, are not the primary intent of the RC-40 which is to provide for the conservation and protection of natural resources and natural habitat areas. Additionally, new residential uses would create the demand for the provision of service such as water and sewer, police and fire protection, and solid waste hauling.

However, one single-family dwelling per parcel would not have any apparent adverse impacts on surrounding property or be materially detrimental to property and improvement in the vicinity.

Recommended Conditions of Approval: *None*

Finding 3 Conclusion:

Finding 3 can be made, as the Variance, if approved, would not have any identifiable materially 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 or Sierra South Regional Plan Policies were identified.	N/A

Reviewing Agencies/Department Comments regarding General Plan consistency:

No comments relevant to General Plan Consistency were received.

Finding 4 Analysis:

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 because it is consistent with the intent of the RC Zone District which is to conserve natural resources, and its allowed use for a single-family dwelling.

The land use designation of the subject property is Public Lands and Open Space in the Sierra South Regional Plan. According to the Plan, the designation Public Lands and Open Space shall mean land or water areas which are essentially unimproved and planned to remain open in character. These areas are devoted to such activities as the preservation of natural resources, manage production of resources, and parks and recreation, or are subject to flood, fire or geologic hazards. The Open Space designation provides for the conservation and protection of natural resources. Designated Open Space areas are subject to the Open Space Policies in Section 204-05 of the General Plan. According to the General Plan Table LU-1, the Public Lands and Open Space designation has a residential density standard of one dwelling unit per 40 acres. The applicant’s submitted Findings indicate that the intent of the proposed subdivision is to convey the property by sale as separate parcels for subsequent residential development. The RC-40 Zone District does allow for the development of one single-family dwelling per lot, however, the density threshold in the limits that to one dwelling unit per 40 acres, and the two proposed 18 +/- acre parcels would not be able to meet that density standard, or minimum parcel size, therefore the proposal is not consistent with the Zoning Ordinance and the General Plan and County Adopted Sierra South Regional Plan.

Recommended Conditions of Approval: *None.*

Finding 4 Conclusion:

Finding 4 cannot be made as there are General Plan Policies, Sierra South Regional Plan Policies and Zoning Ordinance development standards specifically pertaining to parcel size and residential density.

PUBLIC COMMENT: None.

SUMMARY ANALYSIS / CONCLUSION:

The applicant's submitted findings do not support the conclusion that the variance should be granted. Based on the factors cited in the analysis above, Staff cannot make Findings 1, 2 and 4, necessary for granting the Variance and therefore recommends denial of Variance Application No. 4128.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that required Findings 1, 2 and 4 cannot be made based on the analysis in the Staff Report, and move to deny Variance No. 4128; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (Approval Action)

- Move to determine that required Findings 1, 2 and 4 can be made (state basis for making the Findings) and move to approve Variance No. 4128, 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.

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EXHIBIT 1
Variance Application (VA) No. 4128
Conditions of Approval and Project Notes

Conditions of Approval	
1.	Division of the subject parcel shall be substantial conformance with the site plan (Exhibit 5) as approved by the Planning 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.	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 approved 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 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.

EXHIBIT 1

Notes

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 area shall be preserved in accordance with Section 8771 of the professional Land Surveyors Act and Section 6730.2 of the Professional Engineers Act.
6.	Millwood Road (US Forest Service Route 13S97) is a County maintained road classified as a local road with an unknown existing right-of-way and an ultimate right-of-way of 60 feet as per the Fresno County General Plan; the road has a paved width of 15 feet with dirt shoulders, a pavement condition index of 7.6, and is in poor condition. The road has an annual average daily traffic count of 200 vehicles per day.
7.	It is recommended that the applicant consider having the existing septic tanks pumped and have the tanks and leach lines evaluated by an appropriately licensed contractor if it has 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.
8.	New septic systems shall be installed under permit and inspection by the Department of Public Works and Planning Building and Safety Section.
9.	At such time the applicant or property owner(s) decides to construct a new water well, the water well contractor selected by the applicant will be required to apply for and obtain a Permit to Construct a Water Well from the Fresno County Department of Public Health, Environmental Health Division. Please be advised that only those persons with a valid C-57 contractor's license may construct wells.
10.	The subject property is located in a water short area. Any future development may require a water supply evaluation by the Fresno County Water and Natural Resources Division.
11.	As a measure to protect ground water, all water wells and/or septic systems that exist or have been abandoned within the project area should be properly destroyed by an appropriately licensed contractor.
12.	The subject property is located within the State Responsibility Area (SRA) boundary. Any future development shall be in accordance with the applicable SRA Fire Safe Regulations.
13.	If future development is sought, the project/development will be subject to the requirements of the current Fire Code and Building Code when a building permit or certificate of occupancy is sought. The subject property may be required to annex into Community Facilities District No. 2010-01 of the Fresno County Fire Protection District.
14.	Intermittent streams may be present within the subject property based on the contour lines shown on the U.S.G.S Quad Map. Any future work within or near a stream will require clearance from the California Department of Fish and Wildlife (CDFW). Additionally, Sequoia Lake is adjacent to the subject property. Any future improvements constructed near a lake shall be coordinated with the owners of the lake. The lowest floor of any future structure/building shall be elevated above the high-water level of Sequoia Lake to a minimum of 12 inches, and any associated electrical equipment/electrical system components must be elevated above the finished

Notes

	floor elevation. All sides of any future building(s) shall be sloped 2 percent for a distance of 5 feet to provide positive drainage away from the building.
15.	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.

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LOCATION MAP

VA 4128

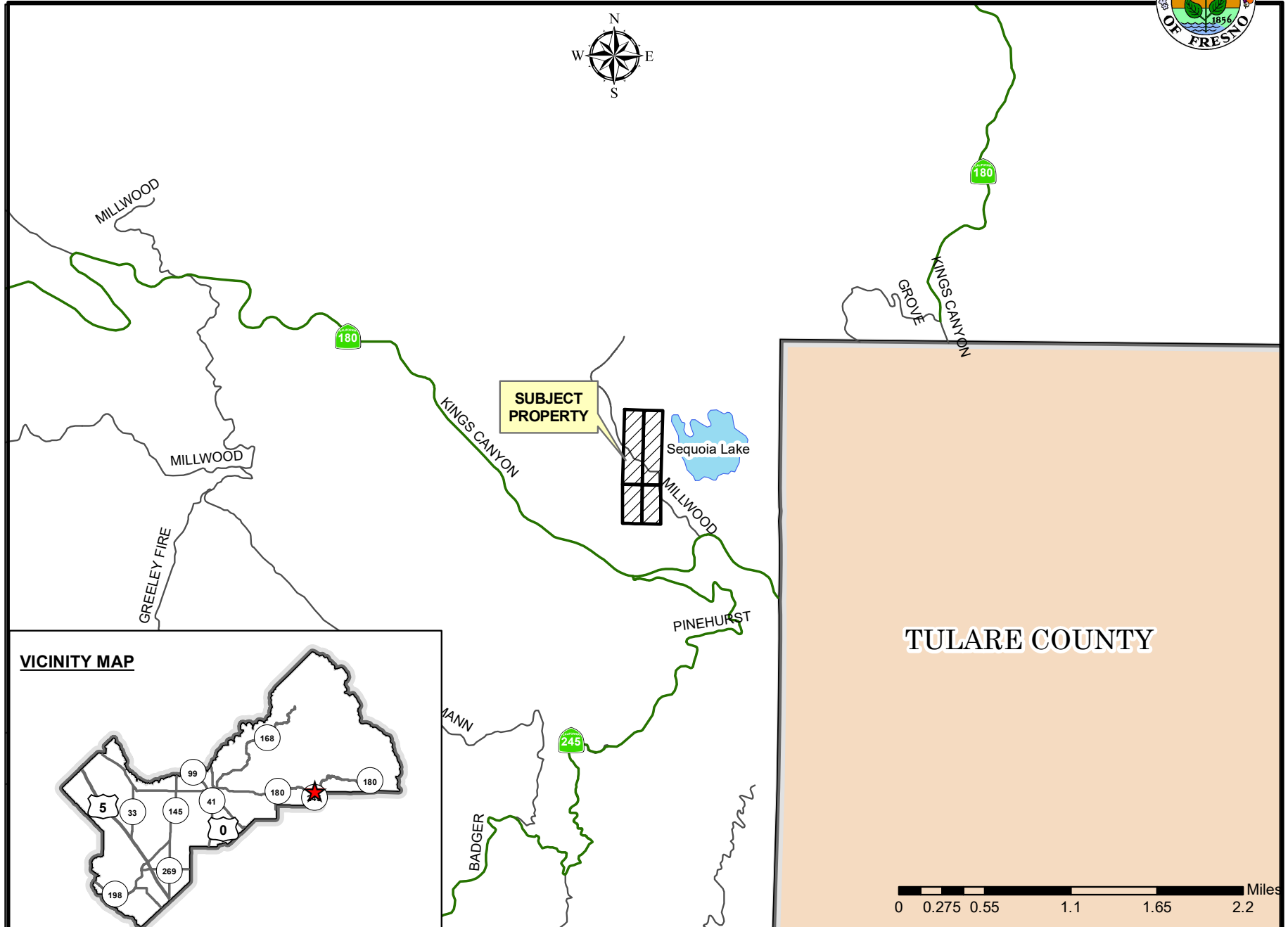


EXHIBIT 2

EXISTING ZONING MAP

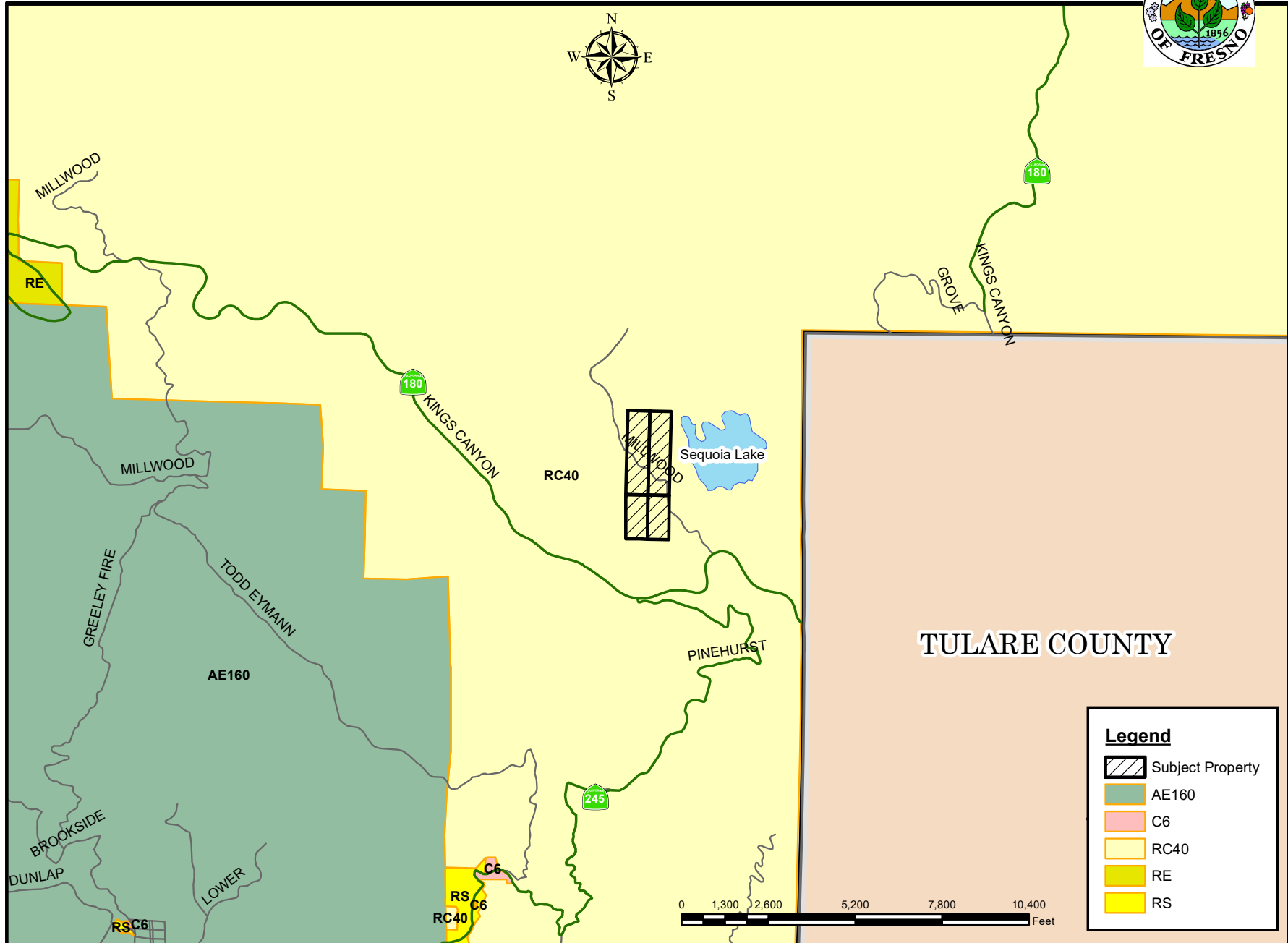






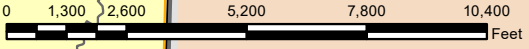


EXHIBIT 3

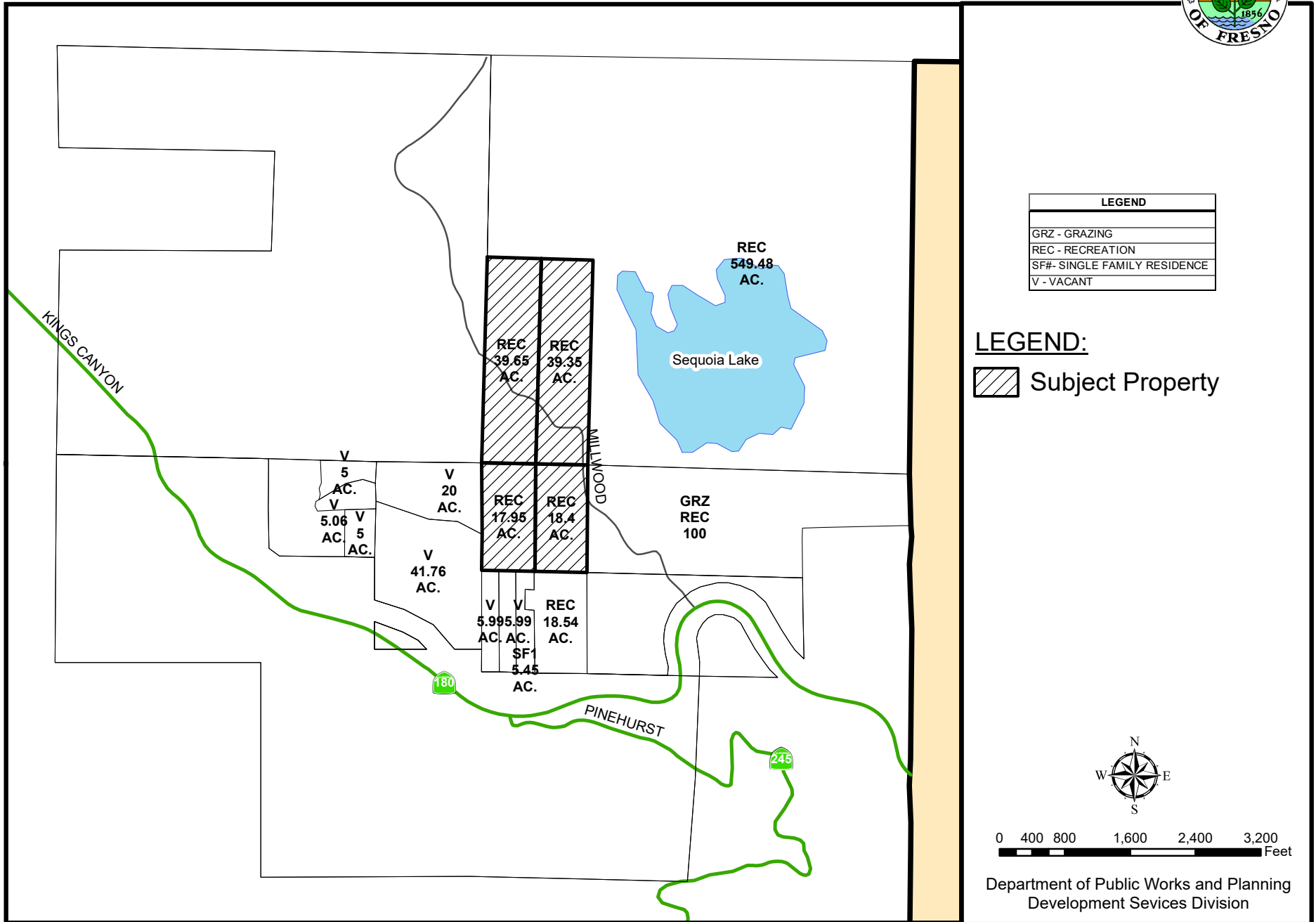
Legend

-  Subject Property
-  AE160
-  C6
-  RC40
-  RE
-  RS



EXISTING LAND USE MAP

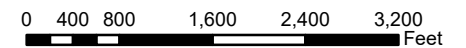
VA 4128



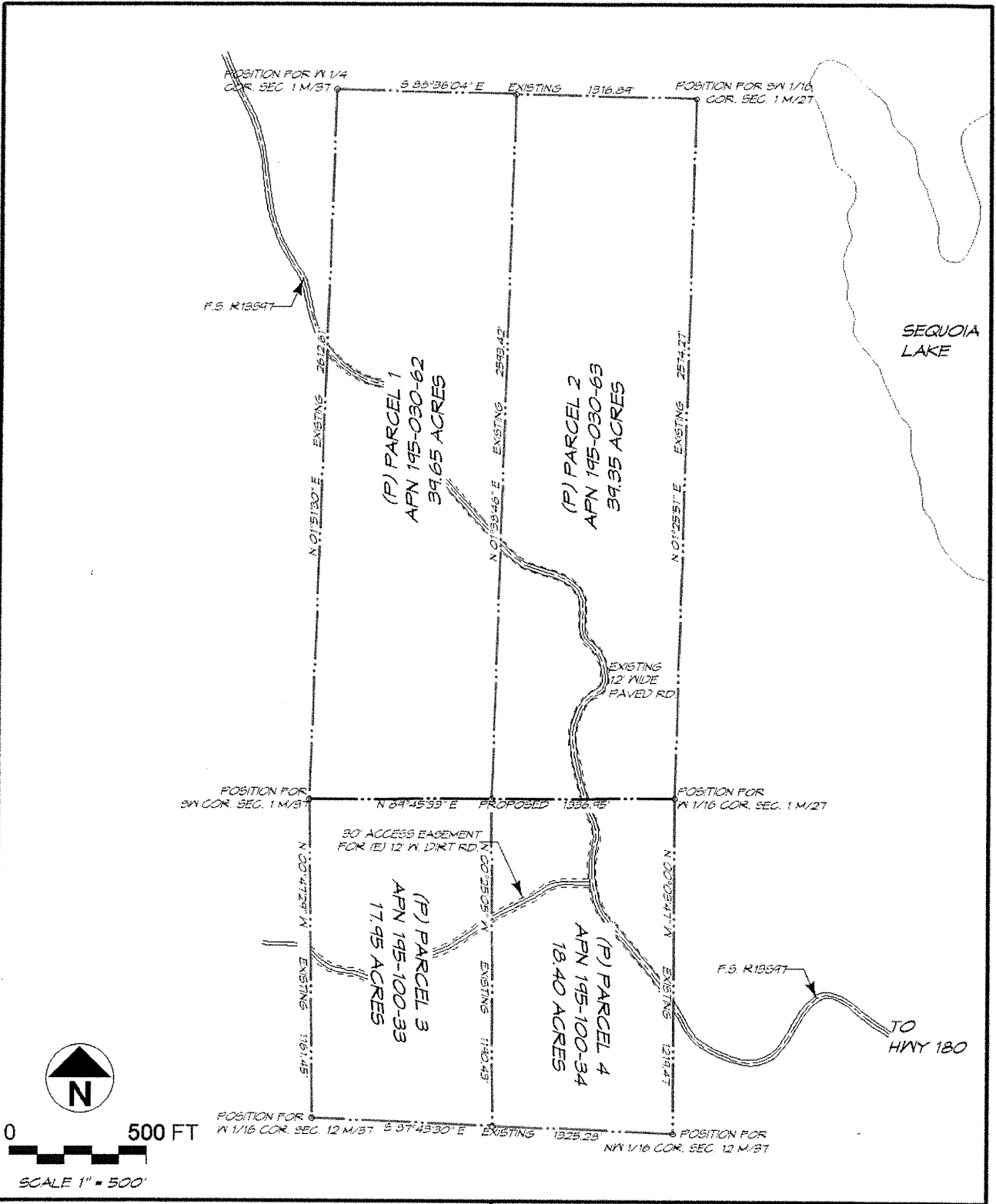
LEGEND	
GRZ - GRAZING	
REC - RECREATION	
SF#- SINGLE FAMILY RESIDENCE	
V - VACANT	

LEGEND:

Subject Property



Department of Public Works and Planning
Development Services Division



SITE PLAN

N. 1/2 OF SW. 1/4 OF SEC. 1, T. 14 S., R. 27 E., M. D. B. & M.
 & NW. 1/4 OF THE NW. 1/4 OF SEC. 12, T. 14 S., R. 27 E.,
 M. D. B. & M., FRESNO COUNTY



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Variance Application of Lawrence P. Zamzok**Pre-application Review # 21-100289**

APN 195-030-62, APN 195-030-63, APN 195-100-33, APN 195-100-34

Variance to allow creation of 4 parcels (39.65ac, 39.35ac, 17.95ac, 18.40ac) in RC-40 zone district

Property History

The subject property was originally acquired by Chauncey Baker, one of the area's original ranchers, in 1920. He held ownership until his death in 1968, at which time it passed to his wife, Ethyl Baker. In 1997, Ethyl Baker passed the property on to her two sons, Donald and Rodney Hall. Rodney Hall received the western half of the property comprising APN 195-030-62 & APN 195-100-33. Donald Hall received APN 195-030-63 & APN 195-100-34. Rodney Hall's interest passed to his sons, Michael and James upon his death. The Sequoia Council of the YMCA acquired Donald Hall's portion in November of 1999 and Michael and James Hall's portion in January of 2000 at which time all of the property was back under one ownership. The history of this property is unusual in that there have only been 3 primary owners in the last 100 years with the vast majority of that being under the ownership of the Baker/Hall family. When ownership of the property passed to the YMCA in late 1999, it did so in two separate sales. The YMCA purchased the property with the intent of making a long term addition to their adjacent properties at Sequoia Lake to the east. Due to the need to settle a lawsuit between two separate factions of the YMCA, it was decided that the best course of action would be to sell the four parcels to raise the funds for the settlement to avoid encumbering the main Sequoia Lake property. The YMCA held ownership until November of 2019 at which time the property was sold to Lawrence Zamzok.

Response to required findings

1) Exceptional circumstances –

When the YMCA acquired the property and when Lawrence Zamzok acquired the property, it was under the understanding that there were 4 separate parcels as evidenced by separate legal descriptions in the deeds. The transactions for the acquisitions by the YMCA and by Lawrence Zamzok were handled by and insured by Chicago Title. The properties at all times were treated as separate parcels. They each have separate access off of US Forest Service Route 13S97 with two of the parcels lying predominantly north of that road and two of the parcels lying south of that road. Each parcel has a separate internal road structure.

In late April of 2021, an escrow was opened with Chicago Title for the sale of APN 195-100-33. During the course of that escrow, the seller, Lawrence Zamzok, was notified in July of 2021 that Fresno County did not consider that APN 195-100-33 to be a separate legal parcel and, further, that none of the 4 APN's were separate legal parcels. This came as a complete surprise to all parties, especially considering that one of the four parcels had just been sold complete with a policy of title insurance.

In terms of parcel size required by the RC-40 zone district, APN 195-030-62 and APN 195-030-63 are in substantial compliance. APN 195-100-33 and APN 195-100-34 are bordered by a 20 acre parcel to the west and by 6 acre parcels and an 18 acre parcel on the south. The remaining bordering properties are either Forest Service land or land owned by the YMCA. The existing ownership pattern, therefore, did not give any indication that there was anything unusual about the four subject properties. Furthermore, the legal description on the grant deed describes 4 separate parcels with descriptions identical to those proposed in this variance application. While it is true that some properties cross the boundaries of adjoining assessor map pages, the legal descriptions of those parcels are singular in nature and not confined to the assessor map page. The result is a single complete legal description for all of the property. In short, to all normal perceptions these were four separate parcels and they were so perceived by the YMCA when they sold the property and by Lawrence Zamzok when he acquired it. This is further evidenced by the fact that these properties are naturally divided by Forest Service Route 13S97 with two of the parcels lying south of that road and two of the parcels lying predominantly north of that road.

2) Necessity of property right –

Lawrence Zamzok acquired the property in good faith as 4 separate parcels. That sale was evidenced by a grant deed containing 4 separate legal descriptions, each of which are identical to those which are proposed by this variance application. There is no aspect of his acquisition process that would indicate that there were not 4 parcels. Mr. Zamzok acquired the property with the intent of selling them individually, thereby creating the opportunity for four new owners to have a large cabin permissible property in a forested setting. There are only 30 privately held properties in this immediate area north of Highway 180. The majority of this property, over 648 acres, is the Sequoia Lake property held by the YMCA. Of the remaining property 3 parcels are roughly 40 acres, 4 are roughly 20 acres, and the remaining 21 parcels are roughly 5 acres. All of these properties are zoned RC-40. In short, there is nothing about the surrounding existing property size and use pattern to indicate that Mr. Zamzok's understanding that there were 4 separate existing parcels when he acquired them and that his intended use is completely compatible with and under similar use conditions as the neighboring properties.

3) No material detriment –

The granting of this variance will not result in any significant change to the land use pattern currently being experienced in the immediate area. All of the private parcels in this area are zoned RC-40. Only 17% of the existing parcels conform in size to the underlying zoning. The majority of those substandard sized parcels have cabins on them. There is no detriment to the public welfare. These are forested properties where the primary use is for recreational cabins. Rather, the granting of this variance will affirm the long term understanding that these are 4 separate legal parcels and provide the necessary mechanism to establish that fact per the requirements of Fresno County.

4) Not contrary to plan objectives –

The property is zoned RC which is a resource conservation district designed to conserve natural resources and habitats but allow for a single family dwelling. The proposed variance does not deter from that objective. Two of the four proposed parcels are in substantial compliance with the zone district requirements while the other two parcels are of sufficient size to substantially comply with the intent of the zone district requirements. All of the proposed parcels are compatible with the objectives of the general plan and are compatible with the established local use patterns of adjacent properties. While the property is in what the county has deemed to be a water shortage area, the creation of four parcels from two existing parcels where the smallest created parcel will be 17.95 acres will not constitute an impact on surrounding properties.

Summary

The intent of this variance application is to establish, in fact, the legal existence of these four proposed parcels. A variety of circumstances over a long period of years created the perception that these properties were separate. That perception was acted upon more than once resulting in the sale of one or more of the parcels, each time under the auspices of a nationally licensed escrow and title company. All of the available paperwork including separate legal descriptions for each of the parcels supported those actions. Mr. Zamzok understands that it appears the county process for creating these separate parcels was not fully complied with. He is fully willing to complete the steps necessary to satisfy Fresno County requirements by obtaining this variance and then completing the parceling process to county standards.