



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 4 July 21, 2022

SUBJECT: Variance Application No. 4129 and Environmental Review No. 8196

Allow the creation of a 2.36-acre parcel and a 4.75-acre parcel from an existing 7.11-acre parcel within the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

LOCATION: The subject parcel is located on the south side of E. Mountain Ave., between Highland Ave (CA-43) and S. Thompson Ave., approximately 0.60-miles south from the community of Selma (APN 393-101-35s) (13100 S. Highland Ave.) (Sup. Dist. 4).

OWNER: Dani, LLC

APPLICANT: Zahir Ahmad

STAFF CONTACT: Elliot Racusin, Planner
(559) 600-4245

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Deny Variance Application No. 4129 based on the analysis in the Staff Report not being able to support making the required findings No.1,2, and 4; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

EXHIBITS:

1. Conditions of Approval and Project Notes
2. Location Map
3. Existing Zoning Map
4. Existing Land Use Map
5. Approved Variances within One-Half Mile Radius

6. Site Plans and Detail Drawings
7. Elevations
8. Applicant's Variance Findings

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agricultural	No change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.	No change
Parcel Size	7.11- acre parcel	2.36-acre parcel 4.75-acre parcel
Project Site	Single Family Residence on the northern section, unused area towards the southern	Bisect the parcel into two from the access road (See Site Plan for details)
Structural Improvements	Single Family Residence	No change
Nearest Residence	279-feet northward	No change
Surrounding Development	Agricultural fields & Single-Family Residences	No change

EXISTING VIOLATION (Y/N) AND NATURE OF VIOLATION: N

ENVIRONMENTAL ANALYSIS:

Section 15061(b)(3): Common Sense Exemption (Ex: It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.)

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 23 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 Application 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 Variance Application is final, unless appealed to the Board of Supervisors within 15 days of the Commission's action.

Government code section 65906 prohibits granting of unqualified variances and states in part "...shall constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated."

The minimum parcel size that may be created in the AE-20 Zone District is 20 acres. A property owner may not create parcels with less than the 20-acre minimum parcel size if they do not qualify under the conditions listed in Section 816.5.

Typical alternatives to a variance application are to either create a homesite parcel or rezone the property to a zone district that allows the project as proposed.

Rezoning, as is most often the case the potential for rezoning of this parcel to higher density Zone which allows smaller parcels would be problematic, as the underlying General Plan Land Use Designation of 3. The present owner owned the property prior to the date these policies were implemented and wishes to retain his/her homesite and sell the remaining acreage for agricultural purposes is not consistent with such zoning and the lotting and land use patterns in the area would not be consistent with a General Plan amendment to the area.

Homesite parcels are allowed per General Plan Policy LU-A.9. In place of a variance the property owners could create a Homesite parcel if one of the three conditions listed below exists. However, the applicants either do not fit the criteria or have elected not to utilize the provision.

1. A lot less than twenty (20) acres is required for financing construction of a residence to be owned and occupied by the owner of abutting property; or
2. The lot or lots to be created are intended for use by persons involved in the farming operation and related to the owner by adoption, blood, or marriage within the second degree of consanguinity, there is only one (1) lot per related person, and there is no more than one (1) gift lot per twenty (20) acres; or
3. The present owner owned the property prior to the date these policies were implemented [1958] and wishes to retain his/her homesite and sell the remaining acreage for agricultural purposes.

BACKGROUND INFORMATION:

According to Fresno County records, the site was previously approved for an existing ten-bed residential care facility for the elderly licensed by the State of California, Department of Social Services and Community Care Licensing.

The facility has been operating on the subject 7.11-acre property since July 1, 2004, providing residential care to elderly residents 24 hours a day, 365 days a year with no caregiver living on-site (CUP 3372 approved January 10th, 2013).

Located along State Route 43, the subject 7.11-acre property is currently developed with a 2,310 square feet single family residence, a 374 square feet mobile office, and a 700 square feet barn. Related facilities include on-site parking, a septic system and water well. The remainder of the property is vacant and undeveloped. Surrounding land uses consist of farmland with sparsely located single family residences. The nearest residence is approximately 350 feet northwest of the subject property.

The current Variance request proposes to allow the creation of a 2.36-acre parcel and a 4.75-acre parcel from an existing 7.11-acre parcel within the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

Every variance application is considered on its own merit, based on unique site conditions and circumstances. The approval of other variances in the vicinity of this project does not create a precedent for approval. However, to dispel any claim of differential treatment we research the records for other Variance applications in the area. Within one half-mile of the subject property there is only one variance on record from 39 years ago for creation of substandard sized parcels. It was denied by the Planning Commission.

Application/Request	Staff Recommendation	Final Action	Date of Action
VA No. 2769: Reduce Public Road frontage lot width/depth and create a 1.99- acre parcel and a 0.38-acre parcel from a 2.37-acre parcel within the AE-20 Zone District.	May 12 th 1983	<u>Denial</u>	PC Denied Appealed to BOS (Application withdrawn)

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	<u>AE-20</u> Front: 35 feet Side: 20 feet Rear: 20 feet	No change	Yes
Parking	N/A	N/A	N/A
Lot Coverage	No requirement	N/A	N/A

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
Separation Between Buildings	No requirement for residential or accessory structures, excepting those used to house animals which must be located a minimum of 40 feet from any human-occupied building	N/A	N/A
Wall Requirements	N/A	N/A	N/A
Septic Replacement Area	100 percent of the existing system	No change	N/A
Water Well Separation	Building sewer/ septic tank: 50 feet Disposal field: 100 feet Seepage pit/cesspool: 150 feet	Any existing or proposed water wells will be required to meet minimum setbacks (separation) from proposed septic systems.	Yes

Reviewing Agency/Department Comments:

No comments specific to extraordinary circumstances or conditions were expressed by reviewing Agencies or Departments.

Finding 1 Analysis:

In support of Finding 1, the Applicant’s findings describe the subject parcel (proposed northern parcel) operating under an Unclassified Conditional Use Permit (CUP 3372) as an assisted senior living facility (currently closed due to Covid, assurances have been made to reopen the facility), and wants to divest themselves from the unused portion of the parcel. They cite the existence of other substandard size lots in the area and the limited acreage as being uneconomical for agricultural purposes as being unique circumstances.

The location or existence of the senior living facilities on the parcel does not create an extraordinary circumstance or physical characteristic. The California Government Code section 65906 prohibits Use Variances:

“A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.”

Hence, the fact that the parcel is developed with a permitted use does not grant it special privileges not available to the other properties with the same zoning in the area.

The existence of other smaller parcels in the area does not create an exceptional or extraordinary circumstance. The existence of substandard sized parcels that were previously

created when development standard required less acreage is common, and not a unique circumstance.

While small acreages are problematic for economic scales of common agricultural endeavors, it is not unique to this site, all the smaller parcels with AE-20 Zoning have the same situation, and General Plan Policy LU-A. 7 states:

“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.”

Recommended Conditions of Approval:

None.

Finding 1 Conclusion:

Finding 1 cannot be made as there are not any extraordinary circumstances relating to the property that does not apply to other properties in the area with the same zone 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.*

No comments specific to substantial property right were expressed by reviewing Agencies or Departments.

Finding 2 Analysis:

In support of Finding 2, the Applicant's findings asserts that Variance will not grant a special privilege because the proposed parcels are consistent in size and shape with surrounding proximate parcel, and that it is within the City of Selma's Sphere of influence and the City of Selma's General Plan designates the site for medium density uses.

While there are some smaller parcels in the area there are also larger parcels in the area, All the parcels large or small have the same property rights relative to division of land, they are all constrained by the minimum acreage requirements. Granting this variance would provide a new privilege not enjoyed by other parcels in the area. No other parcels are allowed to further divide below the minimum acreage.

The fact that the parcel is within the spere of influence for the City of Selma or consistent with their general plan is moot. What Selma does not create a substantial property right. Until the property is within the City's jurisdiction the County's General Plan and Zoning is the standard of measure.

Recommended Conditions of Approval:

None.

Finding 2 Conclusion:

Finding 2 cannot be made as the property enjoys the same substantial property rights as the surrounding properties with the same zoning classification, a valid deficit of a substantial property right enjoyed by other owners in the vicinity with the same zoning classification has not been 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:	2.37 acres	Open land with a single-family residence	AE-20	Approximately 350 feet northwest
South:	2.38 acres	Open land with a single-family residence	AE-20	Approximately 630 feet
East:	19 acres	Field crops with a single-family residence	AE-20	Approximately 460 feet
West:	36 acres	Field crops with a single-family residence	AE-20	Approximately 655 feet

Reviewing Agency/Department Comments:

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

Finding 3 Analysis:

In support of Finding 3, the Applicant's Findings state that the granting of the Variance will not be detrimental to the public welfare or injurious to property or improvements in the vicinity, because although agriculturally zoned, adjacent parcels along Highland Ave. are not actively farmed, and contain residential development.

While the impact of this singular variance may not constitute a materially detrimental impact, staff notes that the creation of two separate legal non-conforming parcels has the potential to increase residential density in the area by allowing an additional single-family residence by right on the new parcel and also a 2nd residence through a Director Review and Approval on the new parcel. Cumulatively this and other such increases in residential density has the potential to conflict with adjacent agricultural operations, The minimum acreage requirement of the AE-20 Zone district is intended to arrest this parcellation pattern and limit the potential conflicts between residential and agricultural activities. However, the limited scale of this individual request by itself is not a significant material detriment to properties in the vicinity.

Recommended Conditions of Approval:

None.

Finding 3 Conclusion:

Finding 3 can be made as granting the 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.

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

Relevant Policies:	Consistency/Considerations:
<p>General Plan Policy: LU-A.6: <i>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.</i></p>	<p>The subject proposal requests to create a parcel under the 20-acre minimum established by the underlying zone district. Per Policy LU-A.6, there are exceptions that can be made if the proposal meets the criteria established in Policy LU-A.9, LU-A.10, or LU.A.11.</p> <p>Policy LU-A.9 establishes criteria for the creation of homesite parcels. Exceptions for creating a substandard homesite parcel include a financing parcel for construction of a residence, gift deed parcels for persons involved in the farming operation and related to the property owner, and/or ownership of the parcel prior to the date of the policies implemented, with the remaining acreage to be sold for agricultural purposes. Not applicable</p> <p>Policy LU-A.10 allows creation of substandard sized lots when necessary to the development of an agricultural commercial center. Not applicable</p> <p>Policy LU-A.11 allows creations of substandard sized lots when such action is deemed necessary to the recovery of mineral resources and the exploration and extraction of oil and gas. Not applicable</p> <p>Review of the proposal and circumstances indicate that the project did not meet the criteria for applying under the identified exceptions to create a substandard sized parcel.</p>

Relevant Policies:	Consistency/Considerations:
<p>General Plan Policy LU-A. 7: <i>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.</i></p>	<p>As noted above, the creation of a parcel less than 20 acres in the AE-20 Zone District would be inconsistent with Policy LU-A.7 and set a precedent for parcellation of farmland into smaller parcels which are economically less viable farming units and could potentially allow additional single-family homes on the proposed parcels. Such increase in the area, as noted by Fresno County Department of Agriculture, may conflict with normal agricultural practices on adjacent properties.</p> <p>Evidence that the parcel is already not an economic farming unit is not a basis for granting an exception.</p>

Reviewing Agency/Department Comments:

No other comments specific to General Plan Policy were expressed by reviewing Agencies or Departments.

Finding 4 Analysis:

In support of Finding 4, the Applicant states the variance would not conflict with farming practices in the area based on the two proposed parcels not being used for agricultural purposes, site inadequacy, and will not conflict with Fresno County’s “Right to Farm” Policy. In addition, the City of Selma’s Community Plan designates the subject parcel as “Agricultural” which “provides for the production of crops and livestock and for the location of necessary agricultural commercial centers, agricultural processing facilities, and certain nonagricultural industries” in the Selma Community Plan.

Staff does not concur with the Applicant’s statement that the project would not be contrary to the objectives of the General Plan.

General Plan Goal LU-A is “to promote the long-term conservation of productive and potentially-productive agricultural lands and to accommodate agricultural support services and agriculturally-related activities that support the viability of agriculture and further the County’s economic development goals.”

Policy LU-A.7 restricts the creation of parcels with less than the required acreage for the zone district. Specifically, the Policy states that evidence that the parcel is already not an economic farming unit is not a basis for granting an exception. This parcel had been previously improved as a home care facility.

The subject parcel is not restricted under a Williamson Act Contract.

Recommended Conditions of Approval:

None.

Finding 4 Conclusion:

Finding 4 cannot be made as the proposed development is inconsistent with the General Plan Policies stated above.

PUBLIC COMMENT:

No public comment was received as of the date of preparation of this report.

CONCLUSION:

Based on the factors cited in the analysis, Staff has concluded that the required Findings 1, 2, & 4 for granting the Variance Application cannot be made as there are no exceptional or extraordinary circumstances or conditions applicable to the property, the variance is not 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, and will be contrary to the objectives of the General Plan. Staff therefore recommends denial of Variance Application No. 4129.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that required Findings No.1, 2, & 4 cannot be made based on the analysis in the staff report and move to deny Variance Application No. 4129; 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 Application No. 4129, subject to the Conditions 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.

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EXHIBIT 1

Variance Application (VA) No. 4129
Conditions of Approval and Project Notes

Conditions of Approval	
1.	Division of the subject parcels shall be in accordance with the site plan (Exhibit 6) as approved by the Planning Commission.

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 the three proposed parcels. The Map shall comply with the requirements of Title 17.72.
2.	The approval of this Variance will expire one year from the date of approval unless the required mapping application to create the parcels is filed in substantial compliance with the Conditions and Project Notes and in accordance with the Parcel Map Ordinance.
3.	Prior to destruction of agricultural wells, a sample of the uppermost fluid in the well column shall be checked for lubricating oil. The presence of oil staining around the well may indicate the use of lubricating oil to maintain the well pump. Should lubricating oil be found in the well, the oil shall be removed from the well prior to placement of fill material for destruction. The oily water removed from the well must be handled in accordance with federal, state, and local government requirements.
4.	Should any underground storage tank(s) be found during development, the Applicant shall apply for and secure an Underground Storage Tank Removal Permit from the Fresno County Department of Public Health, Environmental Health Division.
5.	A Grading Permit or Voucher shall be required for any grading that has been done without a permit and any grading associated with future development of the existing and proposed parcel(s).
6.	Any additional runoff generated by development of the proposed parcels cannot be drained across property lines and must be retained or disposed of per County standards.
7.	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.
8.	If approved, the subdivision will require that a Tentative Parcel Map be prepared in accordance with the Professional Land Surveyors Act, the Subdivision Map Act and County Ordinance. The Tentative Parcel Map application shall expire two years after the approval of said Tentative Parcel Map.
9.	Any structures on the subject property for which there are no available permit records will require the submission of plans and the issuance of permits, or removal, unless verification of construction prior to March 1958 is provided.

EXHIBIT 1

Notes	
10.	The subject parcels are located within the boundaries of Fresno Metropolitan Flood Control District Drainage Area AK. Prior to approval of the Final Parcel Map, any required drainage fees must be resolved through (FMFCD).
11.	Upon approval and acceptance of the Tentative Parcel Map and any Conditions imposed thereon, a Final Parcel Map shall be prepared and 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.
12.	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.
13.	Any new development of less than two acres or secondary dwelling may require a nitrogen loading analysis by a qualified professional, demonstrating to the Department of Public Works and Planning (Department) that the regional characteristics are such that an exception to the septic system density limit can be accommodated. The Department will refer any analysis to the Regional Water Quality Control Board, Central Valley Region for their concurrence and input. Any new sewage disposal systems that are proposed, shall be installed under permit and inspection by the Department of Public Works and Planning Building and Safety Section. Contact Department of Public Works and Planning at (559) 600-4540 for more information.
14.	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 Community Health, Environmental Health Division. Please be advised that only those persons with a valid C-57 contractor's license may construct wells. For more information, contact the Water Surveillance Program at (559) 600-3357.
15.	According to FEMA FIRM Panel 2650H, the parcel is not subject to flooding from the 100-year storm.
16.	Any existing or future access driveway should be set back a minimum of 10 feet from the property line.
17.	Any existing or future entrance gate should be set back a minimum of 20 feet from the road right-of-way line or the length of the longest truck entering the site and shall not swing outward.
18.	Any future work done within the Caltrans state highway right-of-way to construct a new driveway or improve an existing driveway will require an Encroachment Permit/Clearance from Caltrans.

LOCATION MAP

VA 4129

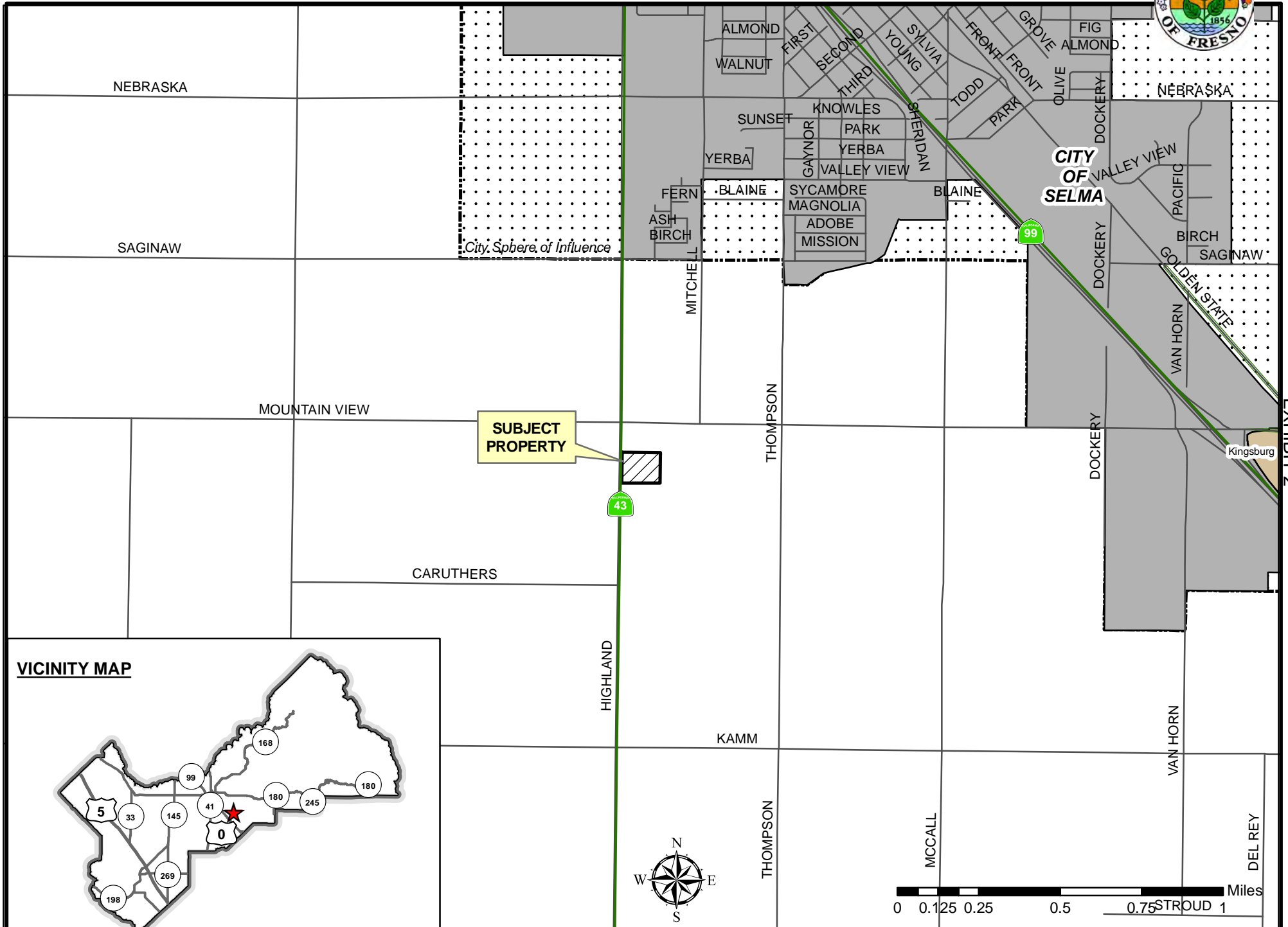


EXHIBIT 2

EXHIBIT 3
EXISTING ZONING MAP

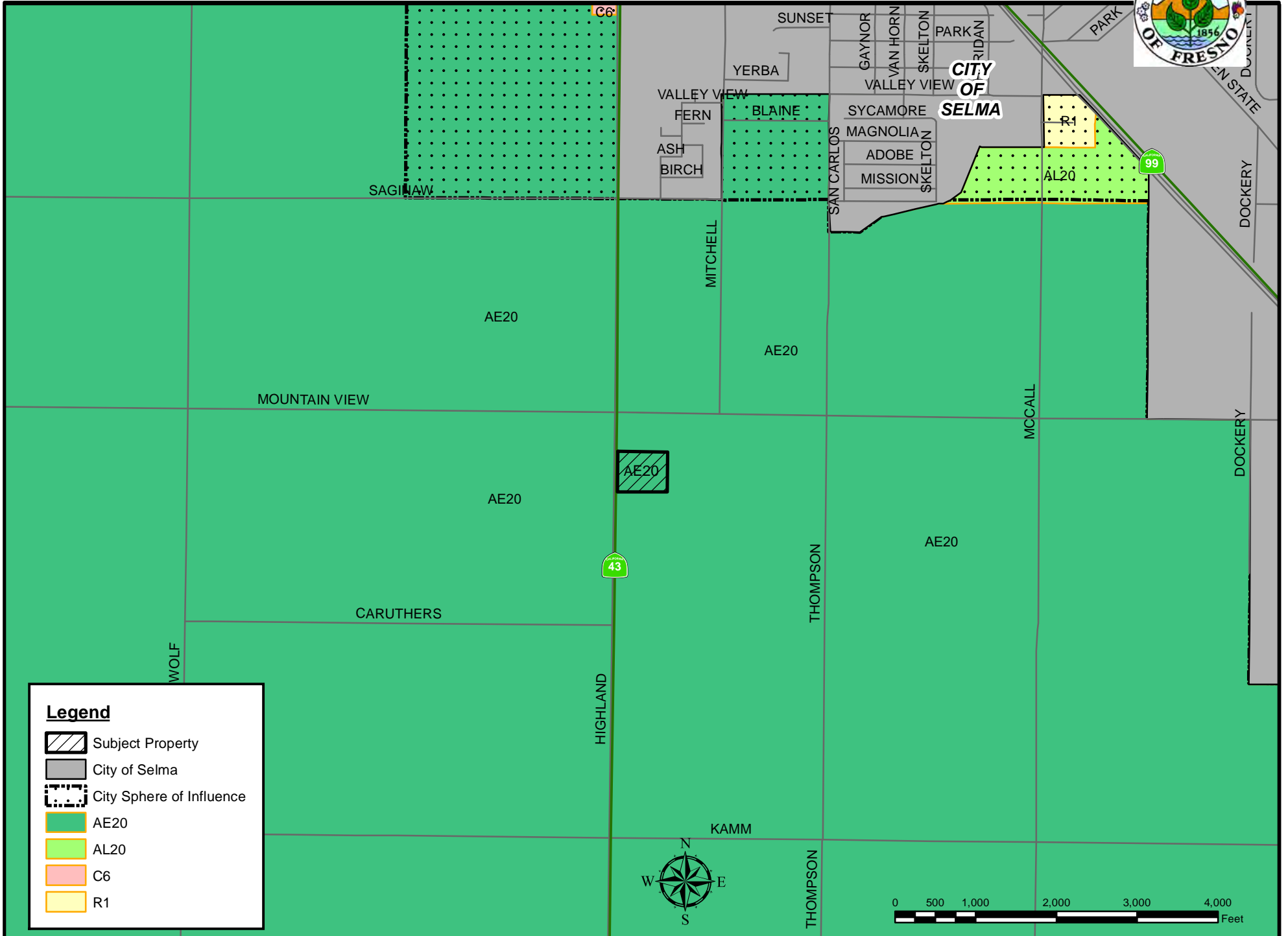
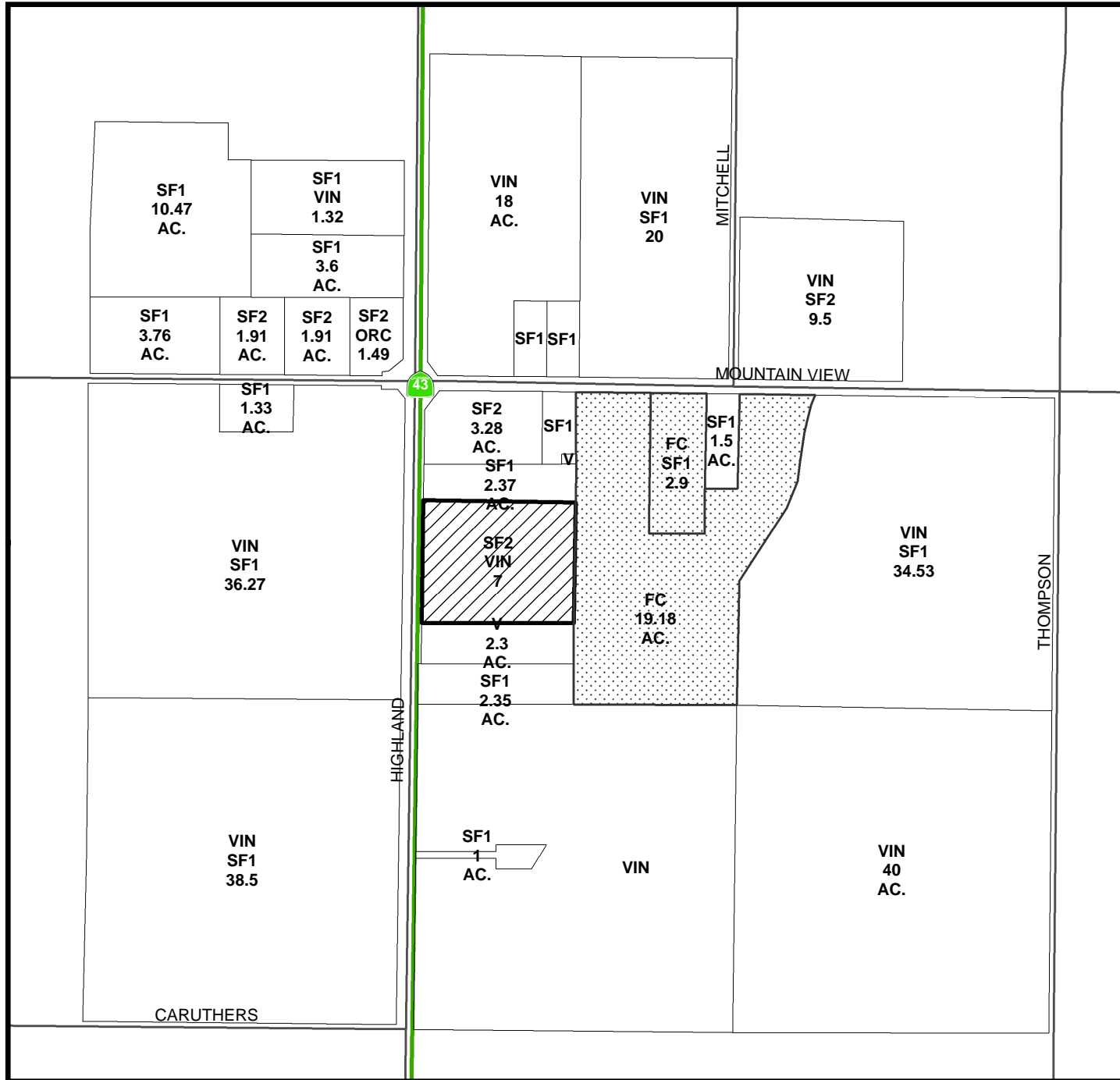


EXHIBIT 3

EXISTING LAND USE MAP

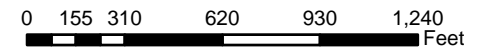
VA 4129



LEGEND	
FC	FIELD CROP
SF#	SINGLE FAMILY RESIDENCE
V	VACANT
VIN	VINEYARD
ORC	ORCHARD

LEGEND:

-  Subject Property
-  Ag Contract Land



Department of Public Works and Planning
Development Services Division

EXHIBIT 4

APPROVED VARIANCES WITHIN A HALF MILE RADIUS

VA 4129

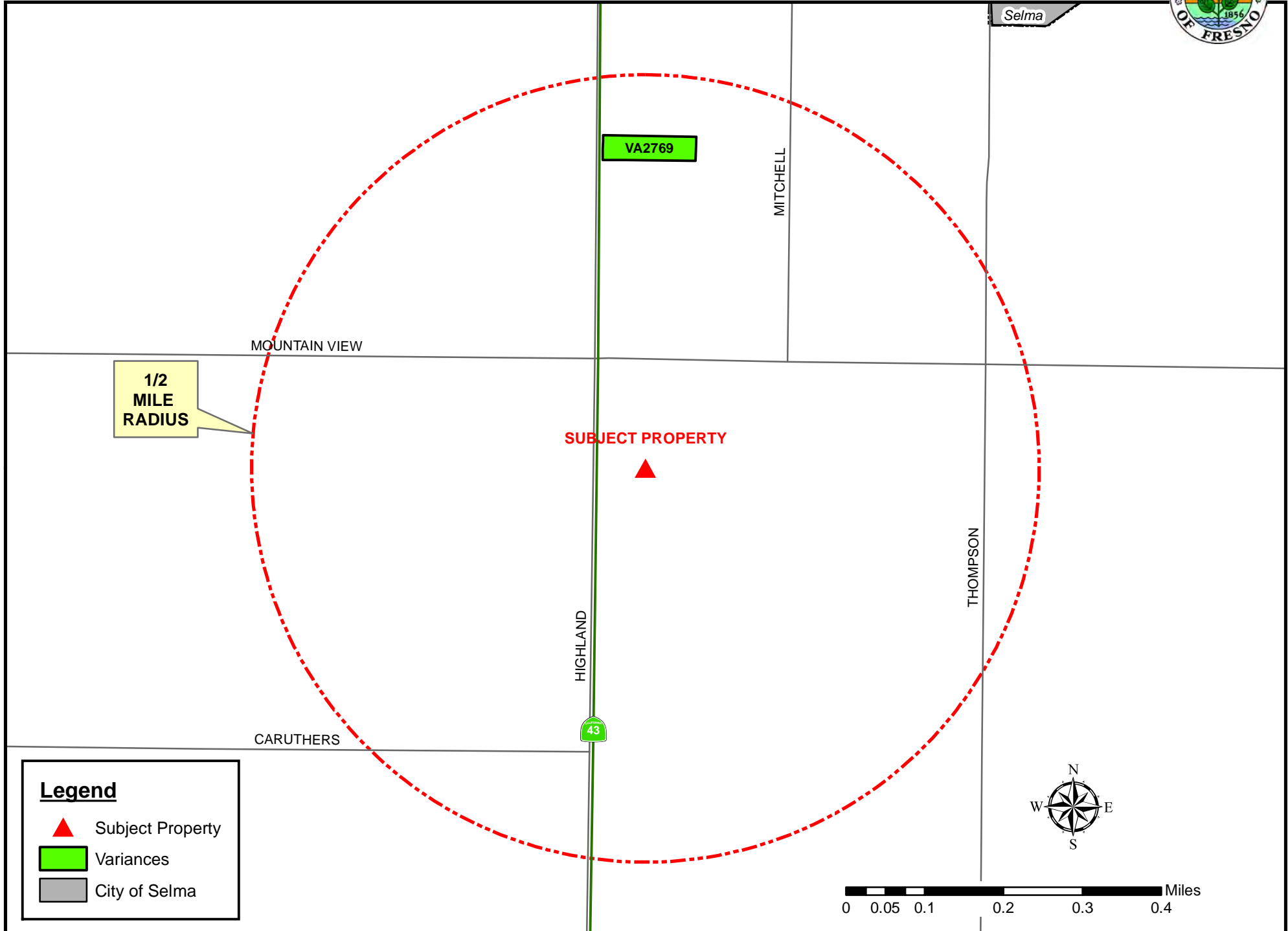
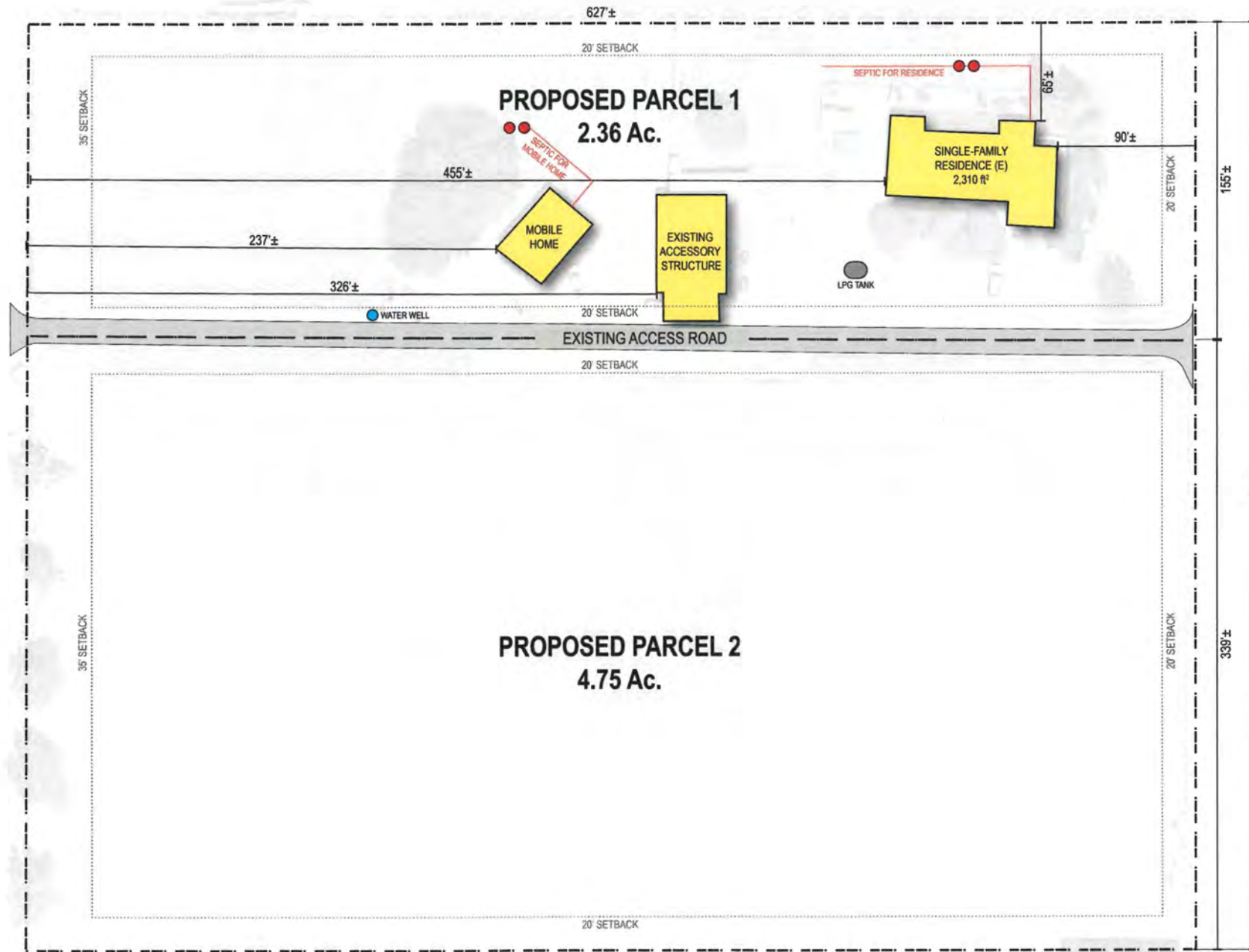


EXHIBIT 5

EXHIBIT 6

S. HIGHLAND AVE. (STATE ROUTE 43)



APN: 393-101-35S
 Address: 13100 S. Highland Ave. Selma, CA 93662
 Site Area: 7.1 Ac. Existing Parcel
 Existing Use: Assisted Residential Care Facility
 General Plan Designation: Agriculture
 Zoning: AE-20 (Exclusive Agricultural, 20 acre min.)
 Source of Water: Existing Well
 Source of Sewer: Existing Septic
 Source of Gas: LPG Tank
 Sources of Electricity: Solar
 Solid Waste: Waste Management Company
 Storm Drainage:
 Site Owner: Zahir Ahmad
 Applicant: Zahir Ahmad
 Applicant Representative:
 Dirk Poeschel
 Land Development Services, Inc.
 923 Van Ness Avenue, Suite 200
 Fresno, CA 93721
 (559) 445-0374

PROPERTY LINE - - - - -
 LOT SPLIT - - - - -



NOTE:
 THIS DRAWING IS FOR ILLUSTRATION PURPOSES ONLY AND IS NOT TO BE USED AS A BUILDING PLAN OR FOR ANY OTHER PURPOSE. DIMENSIONS ARE DERIVED FROM RECORD DATA BASE. ACCURACY IS ASSUMED TO BE CORRECT BUT IS NEITHER EXPRESSED NOR IMPLIED. THIS DRAWING SHALL REMAIN THE PROPERTY OF DIRK POESCHEL LAND DEVELOPMENT SERVICES, INC. AND SHALL NOT BE USED OR DUPLICATED FOR ANY REASON, WITHOUT WRITTEN PERMISSION.



DIRK POESCHEL
 Land Development Services, Inc.
 923 Van Ness Avenue #200, Fresno, California 93721
 559 / 445-0374 Fax: 559 / 445-0551

SITE PLAN
 Zahir Ahmad
 13100 S. Highland Ave.
 Selma, CA 93662

DRAWN BY: M. Spera
 PROJECT NO: 22-02
 DRAWN: 02/03/2022
 REVISED:
 REVISED:

SHEET NO.:
 1
 OF 1 SHEETS

EXHIBIT 6



Project Site looking Southwest



Project Site looking Northeast



Looking Northwest on S. Highland Ave



Looking South on S. Highland Ave.

VARIANCE FINDINGS

Mr. Zahir Ahmad, 13100 S. Highland Ave.

June 23, 2022

Owner:

Dani, LLC, a California Limited Liability Company
P.O. Box 932
Hanford, CA 93232

Applicant:

Mr. Zahir Ahmad
504 Lotus Drive
Hanford, CA 93230

Representative:

Dirk Poeschel Land Development Services, Inc.
923 Van Ness Ave., Suite 200
Fresno, CA 93721
559-445-0374

Property Location:

The project site is located 460 feet south of E. Mountain View Ave., east of S. Highland Ave. The subject site is half a mile south of the city limits of the City of Selma. The site address is 13100 S. Highland Ave.

APN:

393-101-35S

Existing Zone Designation:

AE-20 (Exclusive Agricultural, 20-acre minimum)

Existing General Plan Land Use Designation:

Agriculture

Request:

Grant a Variance to allow the creation of a 2.36-acre parcel and a 4.75-acre parcel from an existing 7.11+/- acre parcel in the AE-20 Zone District. Mapping procedure to follow if approved.

Background:

The project site has an existing single-family residence located on the northeast side of the 7.11 +/- acre parcel that is roughly 2,310 sq. feet. Previously, the single family residential home operated under Unclassified Conditional Use Permit No. 3372 as an assisted senior living facility which temporarily ceased operations at the end of September 2021 due to Covid. The project site has a 700 sq. ft. barn and has an existing 374 sq. ft. mobile home office which was used as a place for residents to talk to health providers, families and other issues in a private setting. The property was later purchased by the applicant who will reopen the assisted living center.

The site is zoned AE-20 Exclusive Agriculture, 20-acre minimum. The AE District is intended to *protect the general welfare of the agricultural community from encroachments of non-related agricultural uses which by their nature would be injurious to the physical and economic well-being of the agricultural district.* The AE District is intended to be an exclusive district for agriculture and for those uses which are necessary and an integral part of the agricultural operation.

The subject property is not within the City of Selma's Sphere of Influence. However, the property is within the City of Selma 2035 General Plan Planning Area Boundary (see attached). The subject property is designated in the City of Selma's General Plan for *medium density residential* uses. A Pre-Application Review No. 21-105227 for the proposed Variance was filed with Fresno County.

According to the Unclassified Conditional Use Permit 3372 Staff Report, finding number 4, Fresno County states '*With regard to Criteria 'b', the subject 7.11-acre project site is not a productive agricultural land. 2008 Fresno County Improvement Farmland Map classifies the site as Rural Residential Land.*' Therefore, the parcels have deficient soils of a quality to support an agricultural use.

Finding 1:

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

The existing residence is on the northeast side of the project site. The two proposed parcels are consistent with the existing assisted living facility and the surrounding neighborhood in size, shape and depth.

There are parcels proximate to the subject site that are smaller than the required 20-acre minimum lot size for the AE-20 zone. To the south of the subject site, there are two parcels that are approximately 2.38 +/- acre. North of the subject site are two parcels one being 2.37 +/- acres and the other being approximately 3.28 +/- acres (Please see attached APN map).

The stated basis for the AE-20 zone is to protect this area for agricultural related uses. A review of the allowed uses in the AE-20 Zone clearly indicates the focus of new uses are *agriculturally* based. Such agricultural uses would be impractical on this property due to its size

and its lack of site area to produce a viable agricultural product. In contrast, agricultural uses on the property could conflict with the residential use of the site and in proximity due to its small size and shape. The existing size and improvements render the site a nonproductive unit due to inefficiencies and land use conflicts while being consistent with size and shape of proximate properties.

The applicant has a right to develop his property consistent with the lot size of similar adjacent properties and the fact that there is no opportunity for an agricultural use of the site. For the reasons stated above, the property has *exceptional and extraordinary circumstances* that support the proposed 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;

The proposed Variance will not grant a special privilege because the proposed parcels are consistent in size and shape with surrounding proximate parcels. Further, the senior living center remains a permitted use on the site.

The subject site is approximately half a mile away from the City of Selma's Sphere of Influence. The Sphere of Influence is a formal plan agreed to by the City of Selma and Fresno County for lands on which urban development will occur.

According to the City of Selma General Plan's Land Use and Circulation map, the subject site is within the city's Planned Area Boundary. Therefore, it is planned that the site will urbanize. The City of Selma's General Plan designates the site for *medium density uses*, meaning that the site will eventually be annexed into the city and developed at 4.5 to 9.0 dwelling units per acre. According to the City of Selma planning staff, the subject site is part of the City of Selma's planned expansion of their Sphere of Influence. Therefore, the planned long term agricultural use of the site will terminate and the property and others in proximity will terminate and convert to residential uses.

Finding 3:

The granting of the 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;

Granting the proposed Variance will not be detrimental to surrounding properties for various reasons. The site will be improved through the creation of two parcels, the 2.36 +/- acre parcel to accommodate the existing single-family residence and the 4.75 +/- acre parcel for the proposed school. However, note that the proposed 4.75 +/- acre parcel is currently an existing vacant lot with no specific use or agricultural production.

The property has frontage on S. Highland Ave. which is a portion of the State Highway 43. The two proposed parcels will each have frontage on State Highway 43 and there is a private paved

access road driveway leading to the facility that leads to the existing single-family residence and separates a portion of the lot from the residence. Note the property has an existing well, existing septic tank, and existing wrought iron fencing that protects the property from vandalism.

The two proposed lots will allow separation between the existing single-family residence and the vacant lot that is protected by the wrought iron fencing.

Finding 4:

The granting of such variance will not be contrary to the objectives of the Fresno County General Plan

If approved, the Variance would not conflict with farming practices in the area based on the two proposed parcels not being used for agricultural production purposes. The property has not been in ag production for decades.

The proposed parcels are inadequate in size for any agricultural productive use. Currently, the parcels have no agricultural productivity and is in an area intended for urban growth. There will be no conflict with the existing agricultural uses that are nearby as the applicant will sign a “Right to Farm” covenant. In contrast, agricultural uses on the property if they were to occur could conflict with the residential use of the site and proximate residential uses due to the small parcel size and shape.

According to the Unclassified Conditional Use Permit 3372 Staff Report, finding number 4, Fresno County states ‘*With regard to Criteria ‘b’, the subject 7.11-acre project site is not a productive agricultural land. 2008 Fresno County Improvement Farmland Map classifies the site as Rural Residential Land.*’ Therefore, the parcels have deficient soils of a quality to support an agricultural use.

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