



# County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING  
ALAN WEAVER, DIRECTOR

## Planning Commission Staff Report Agenda Item No. 2 October 22, 2015

**SUBJECT:** Variance Application No. 3981

Allow an entrance gate and fencing exceeding three feet in height within the front-yard setback within the R-1-EH (Single-Family Residential Estate, 37,500 square-foot minimum parcel size) Zone District.

**LOCATION:** The project site is located on the south side of West Dovewood Lane between North Van Ness Boulevard and a dead end/cul-de-sac, 265 feet east of the city limits of the City of Fresno (2331 West Dovewood Lane) (Sup. Dist. 2) (APN 415-350-32).

**OWNER:** Dr. Peter Nassar  
**APPLICANT:** Michael Bernhardt

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

Eric VonBerg, Senior Planner  
(559) 600-4569

**RECOMMENDATION:**

- Deny Variance Application No. 3981; 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. Site Plan and Detail Drawing
6. Elevations
7. Existing Variances Map

**SITE DEVELOPMENT AND OPERATIONAL INFORMATION:**

<b>Criteria</b>	<b>Existing</b>	<b>Proposed</b>
General Plan Designation	Low Density Residential	No change
Zoning	R-1-EH (Single-Family Residential Estate)	No change
Parcel Size	1.01 acres	No change
Project Site	1.01 acres	No change
Structural Improvements	Single-Family Residence, Concrete Drive	Single-Family Residence, Concrete Drive, and six-foot fence
Nearest Residence	150 feet west of existing residence	No change
Surrounding Development	The surrounding area is rural residential with single-family residences.	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: None**

**ENVIRONMENTAL ANALYSIS:**

It has been determined pursuant to Section 15305 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 208 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) 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 VA Application is final, unless appealed to the Board of Supervisors within 15 days of the Commission’s action.

**BACKGROUND INFORMATION:**

The subject parcel is part of Tract No. 5172 which was recorded in 2005. The size and shapes of the parcels within the tract are similar to those in the surrounding area. Three homes have been fully developed on parcels within the tract, with two others, including the subject property, currently under construction. Section 823.5.H (b) of the Fresno County Zoning Ordinance allows a three-foot maximum building height for fences located within the 50-foot front yard setback of parcels located in the R-1-EH Zone District.

County records indicate that 32 variance applications have been previously filed within a one-mile radius of the subject property (Exhibit 7). Of those applications, 14 involved requests to exceed allowed fence height, 12 of which were approved. A summary of variance application history for the area is listed below.

<b>VA Number</b>	<b>Project Description</b>	<b>PC Action</b>
2709	Split parcel into two lots without frontage	approved
2783	Allow two family residences	denied
2807	Allow a 22-foot front yard setback for garage	approved
2817	Allow a tennis court with lights within the front yard setback	denied
2823	Allow a four-foot side-yard setback for the rear corner of proposed garage	approved
2849	Allow a three-car garage within the front yard setbacks	approved
2865	Allow a zero-foot side-yard setback for a two-story building	denied

2869	Allow the creation of lots deficient in size and dimensions and allow a six-foot fence in the front yard setbacks	approved
2919	Allow a six-foot fence within the front yard setbacks	approved
2926	Allow a 25-foot front yard setback for garage	approved
3013	Allow the storage of a boat in a building within the side-yard setbacks	approved
3030	Allow a substandard size lot and a six-foot fence within the front yard setback	approved
3073	Allow a swimming pool within the side-yard setbacks and a five-foot side fence	approved
3107	Allow a three-foot side-yard setback	denied
3121	Allow the creation of lots deficient in size	denied
3129	Allow a 30-foot front yard setback	approved
3134	Allow the creation of lots substandard in size and dimension	approved
3207	Allow a three-foot side yard setback	approved
3340	Allow a tennis court, a six-foot fence and a plot line adjustment to create a lot of substandard size	approved
3355	Subdivide a parcel and allow seven-foot masonry walls	denied
3390	Allow a 29-foot front yard setback for carport and garage extension	approved
3427	Allow a five-foot fence within the front yard setbacks	approved
3480	Allow the creation of a 17,304 square-foot parcel and a 34,096 square-foot parcel (37,500 square feet required)	denied
3497	Waive the public road frontage (W. Robinwood Lane, N. Sequoia Drive, N. Parish Way, and W. Dovewood Lane within Tract 2473) to allow for a gated community with a six-foot-high gate and fence.	approved
3523	Allow a six-foot-high fence within the front yard setback (three feet maximum allowed) and allow a fence and entry gate with a maximum height of 12.5 feet (six feet maximum allowed)	approved
3544	Allow a five-foot fence within the front yard setbacks	approved

3643	Allow a 28-foot front yard setback for an in-ground swimming pool and allow a six-foot, eight-inch-high masonry wall within the front yard setback	approved
3714	Waive the public road frontage requirement (minimum 110 feet required) for all lots within Tract No. 1302 which front on W. Morris Avenue (nine parcels total) and allow a six-foot-high gate and fence (maximum three feet allowed) within the required front and street side-yard setback areas for two lots in said tract. The purpose of the variance is to restrict public access to W. Morris Avenue.	denied
3721	Allow a 11.5-foot front yard setback (40 feet required) for an in-ground swimming pool, and allow a six-foot-high masonry wall (three feet maximum allowed) within the required 35-foot front yard setback area	approved
3843	Allow a five-foot street side-yard setback (ten-foot minimum required) for a proposed addition to an existing single-family residence to include an additional garage/workshop, a guest room, a home office, an art studio, and a storage unit on a 0.35-acre parcel	approved (cancelled at applicant's request)
3852	Allow a five-foot, eight-inch-high fence (stucco wall) within the required 35-foot street side-yard setback area adjacent to N. Forkner Avenue	approved

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

*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.*

	<b>Current Standard:</b>	<b>Proposed Operation:</b>	<b>Is Standard Met (y/n)</b>
Setbacks	Front: 50 feet Side: 15 feet Rear: 20 feet	Proposed front: Six-foot building height for fence	No. Proposal is to allow a fence which exceeds the maximum allowed height within the front yard setbacks. All other setbacks can be met.

	<b>Current Standard:</b>	<b>Proposed Operation:</b>	<b>Is Standard Met (y/n)</b>
Parking	At least one parking space in a garage or carport for every dwelling unit	No change	Yes
Lot Coverage	30 percent of the total lot area	Approximately 25 percent (House, Garage, Porch/Patio)	Yes
Space Between Buildings	Accessory Buildings: six-foot minimum from main building	N/A	N/A
Wall Requirements	N/A	N/A	N/A
Septic Replacement Area	N/A (community sewer)	N/A	N/A
Water Well Separation	N/A (community water)	N/A	N/A

**Reviewing Agency/Department Comments Regarding Site Adequacy:**

Zoning Section of the Fresno County Department of Public Works and Planning: The construction of the gate will require permits before construction. No building or structure shall be built which may be in conflict with an easement. The subject property has a ten-foot Public Utilities Easement along the front property line.

No other comments specific to the adequacy of the site were expressed by reviewing Agencies or Departments.

**Analysis:**

In support of Finding 1, the Applicant’s representative states that the home being built on the subject property has design elements which are unlike other houses on the street.

In support of Finding 2, the Applicant’s representative states that the subject property’s site plan includes two vehicular gates and one pedestrian entry gate and fencing that is over three feet in height within the front yard setback area. The gates are a mechanical sliding type and will include exterior lighting and masonry columns.

In regard to Finding 1, staff acknowledges that the houses which have been built within the subdivision each have unique design elements which contribute to the character of the neighborhood; however, none of the other homes have applied for a Variance for encroachments. A Minor Variance was approved with the creation of the subdivision, allowing some lots to be slightly substandard in lot width and/or lot depth, but the subject property meets all property development standards. There are no extraordinary physical conditions on the site (hindering a substantial property right) that would be alleviated by the granting of this Variance.

In regard to Finding 2, two of the homes within the subdivision have built fences, one of which is similar in design to the subject proposal, without the need for a Variance. Historical photos from Google Earth show that the site was flat and devoid of rocks or mature trees that might affect the design of the home.

A consideration in addressing a Variance Application is whether there are alternatives that would avoid the need for the Variance. In this case, the Applicant could build the fence to be three feet in height. This option would provide less safety for the Applicant than the proposed six-foot fence, but it would align his fence with the developed home two lots east of the Applicant's property (2293/2295 W. Dovewood Lane). The lot between is currently undeveloped. Additionally, the Applicant could move the fence back to meet the 50-foot setback standard or could have applied for a Minor Variance, which would have allowed the Applicant to build the fence with a 45-foot setback. These options would locate the fence between the semi-circle drive and the house. The resulting distance between the fence and the front door would then be less than ideal, with both the front yard and drive excluded from the protected area behind the fence. Since the house is already under construction, re-siting of the house is no longer practical. Earlier consideration when designing the house to include a six-foot fence could have precluded a need for this Variance, as demonstrated by the house northeast and across the street from the subject property at 2312 W. Dovewood Lane.

Based on the above analysis and considering the plausible alternatives to this Variance request, staff believes Findings 1 and 2 cannot be made.

**Recommended Conditions of Approval:**

*See recommended Conditions 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.*

<b>Surrounding Parcels</b>				
	Size:	Use:	Zoning:	Nearest Residence:
North	0.92 acres	Residential	R-1-EH	190 feet
South	1.15 acres 0.86 acres	Residential	R-1-EH	180 feet
East	0.88 acres	Residential	R-1-EH	160 feet
West	0.79 acres 0.86 acres	Residential Residential	R-1-EH	420 feet

**Reviewing Agency/Department Comments:**

North Central Fire Protection District: The proposed gates shall be provided with an approved police/fire bypass lock ("Best" padlock model 21B700 series or electric cylinder switch model 1W7B2) on both drive access gates for fire emergency access.

This project was reviewed by the City of Fresno Fire Department only for requirements related to water supply, fire hydrants, and fire apparatus access to the buildings on site.

City of Fresno, Public Works Department: No Comments.

Current Planning Section of the Fresno County Department of Public Works and Planning: No comments.

Building and Safety Section of the Fresno County Department of Public Works and Planning: If approved, plans, permits, and inspections are required for all structures based upon the California Codes in effect at the time of plan check submittal.

Fresno Irrigation District (FID): FID does not own, operate or maintain any facilities located on the subject property.

Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: Normally, gates are required to be set back 20 feet from the property line to preclude vehicles from having to stage in the right-of-way while they are stopped to open the gate. However, as long as the gate is motorized and equipped with a bypass lock for emergency vehicles and the fence is a tubular steel construction with openings as shown on the plan, the Road Maintenance and Operations Division has no objection to the Variance request.

Development Engineering Section of the Fresno County Department of Public Works and Planning: No comments.

Water/Geology/Natural Resources Section of the Fresno County Department of Public Works and Planning: No comments.

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

**Analysis:**

In support of Finding 3, the Applicant's representative states that the design of the entry gates and fencing will increase the property value of the completed project and that it will be constructed according to all current building codes and deemed safe to the general public.

In regard to Finding 3, the primary purpose of setback standards is to protect the aesthetic character of an area by providing an offset of structures from the adjacent properties. Without these standards, extreme setback variations can occur between buildings on adjacent properties, which can negatively affect the appearance along streets. Setbacks also provide for adequate distances for fire safety purposes.

In the case of this application, the parcels on either side of the subject property have not yet been improved, so variation between adjacent fences cannot be determined. Existing fences on other homes in the subdivision currently meet the required 50-foot setback standard or the



three-foot limitation on fences which are constructed within that setback, so this fence may be misaligned along either distance from the road and/or height from other fences along Dovewood Lane. However, there already exists an inconsistency in the fences on the improved lots in the area, and staff does not believe that the granting of this Variance will be detrimental to the character of the neighborhood. With compliance to the Condition of Approval requiring that the gate is equipped with locks for fire and police, staff believes that the Variance will not have a detrimental effect on safety.

A ten-foot public utilities easement runs along the front of the property. The original designs for the fence called for a five-foot setback, which would have placed some of the fence within this easement. Given concerns that the fence would interfere with access to utilities in the case of an emergency, the Applicant opted to redesign the fence to meet the ten-foot utility easement currently shown in the site plan.

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

**Recommended Conditions of Approval:**

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

**Conclusion:**

Finding 3 can be made.

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

**Reviewing Agency Comments:**

Policy Planning Section of the Fresno County Department of Public Works and Planning: No comments: there are no General Plan or ALCC issues.

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

**Analysis:**

The subject parcel is designated Low Density Residential in the County-adopted Bullard Community Plan and is zoned R-1-EH. The Bullard Community Plan does not address setbacks; therefore, staff believes this proposal is consistent with the General Plan.

**Recommended Conditions of Approval:**

*None*

**Conclusion:**

Finding 4 can be made.

**PUBLIC COMMENT:**

*None*

**CONCLUSION:**

Based on the factors cited in the analysis, staff believes the required Findings 1 and 2 for granting the Variance Application cannot be made. Staff therefore recommends denial of Variance Application No. 3981.

**PLANNING COMMISSION MOTIONS:**

**Recommended Motion** (Denial Action)

- Move to determine that the required Findings cannot be made and move to deny Variance Application No. 3981; 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) 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.

**Mitigation Measures, Recommended Conditions of Approval and Project Notes:**

See attached Exhibit 1.

CMM:ksn

G:\4360Devs&PIn\PROJSEC\PROJDOCS\VA\3900-3999\3981\SR\VA3981 SR.docx

**Variance Application No. 3981  
Conditions of Approval and Project Notes**

<b>Conditions of Approval</b>	
1.	Construction of the fence shall conform to the site plan and elevations approved by the Commission.
2.	No building or structure shall be constructed which may be in conflict with an easement.
3.	The proposed gates shall be provided with an approved police/fire bypass lock ("Best" padlock model 21B700 series or electric cylinder switch model 1W7B2) on both drive access gates for fire emergency access.
4.	Plans, permits, and inspections are required for all structures based upon the California Codes in effect at the time of plan check submittal.
5.	The gate must be motorized, equipped with a bypass lock for emergency vehicles, and built in conformance with the tubular steel construction with openings as shown on the site plan.

Conditions of Approval reference recommended Conditions for the project.

<b>Notes</b>	
<b>The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.</b>	
1.	The project was reviewed by the City of Fresno Fire Department only for requirements related to water supply, fire hydrants, and fire apparatus access to the building(s) on site.
2.	Fresno Irrigation District does not own, operate or maintain any facilities located on the subject property.

CMM:ksn

G:\4360Devs&Pln\PROJSEC\PROJDOCS\VA\3900-3999\3981\SR\VA3981 Conditions & PN (Ex 1).docx

**EXHIBIT 1**

# LOCATION MAP

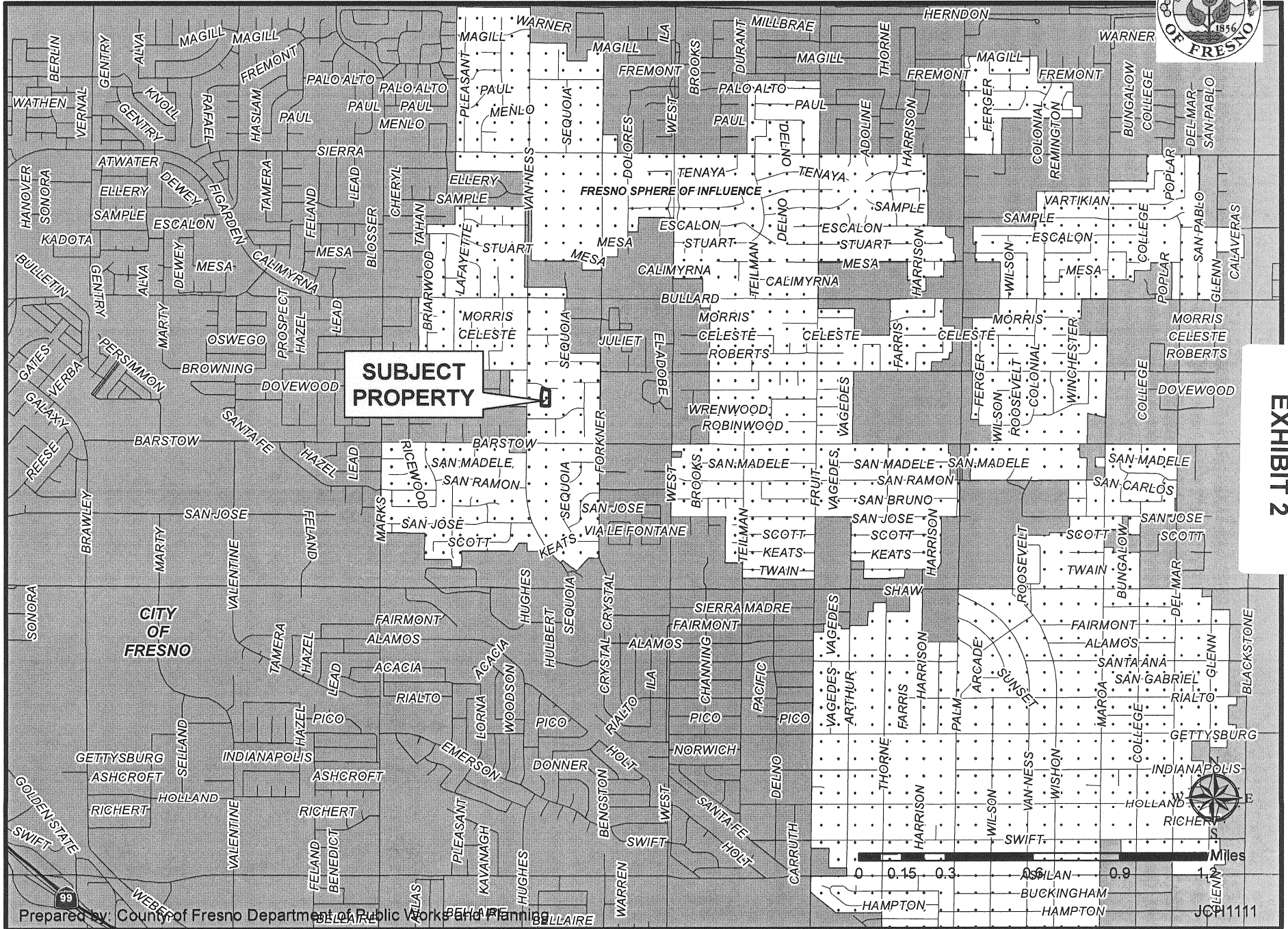
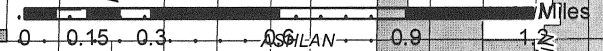


EXHIBIT 2



# EXISTING ZONING MAP

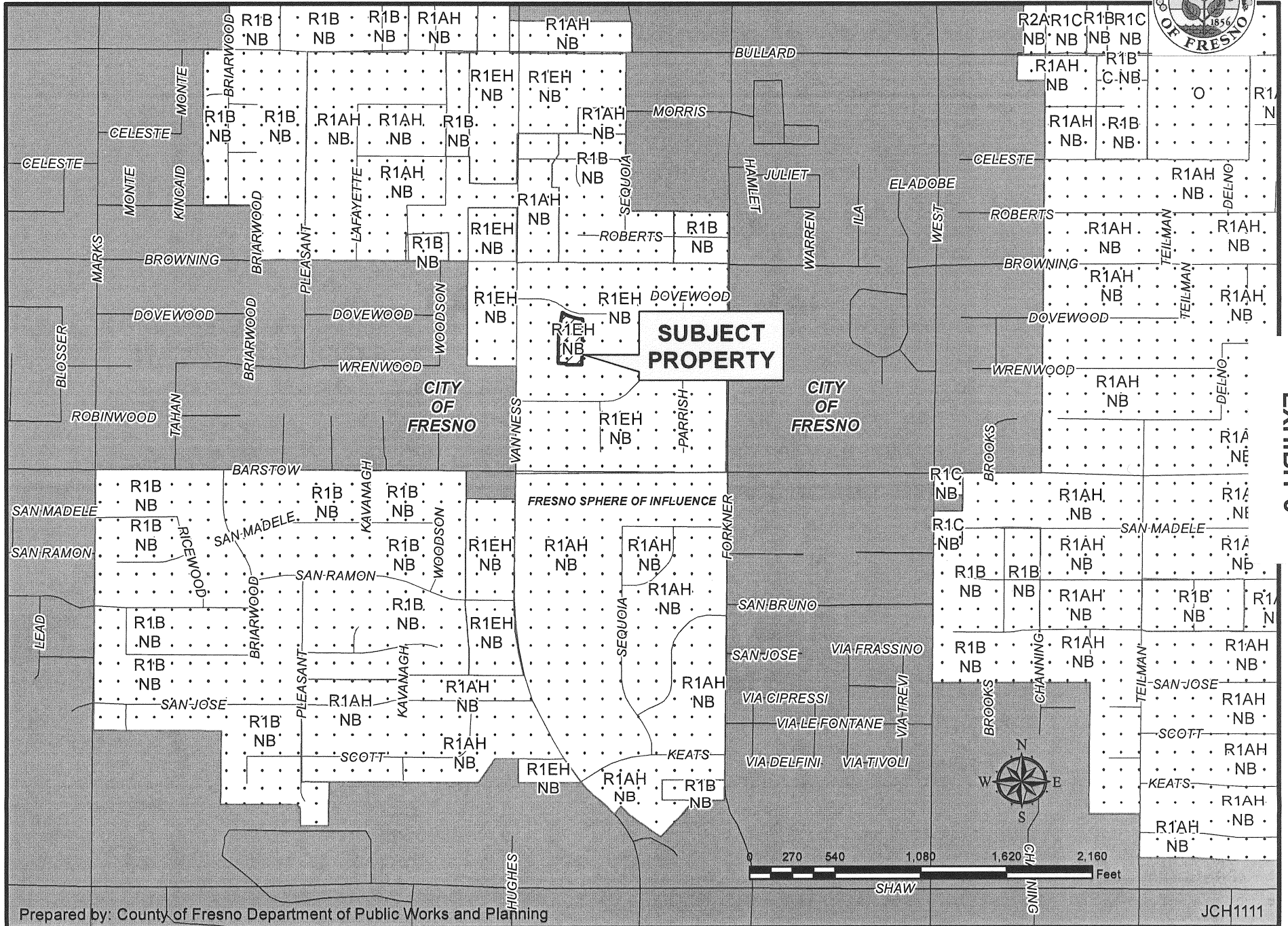
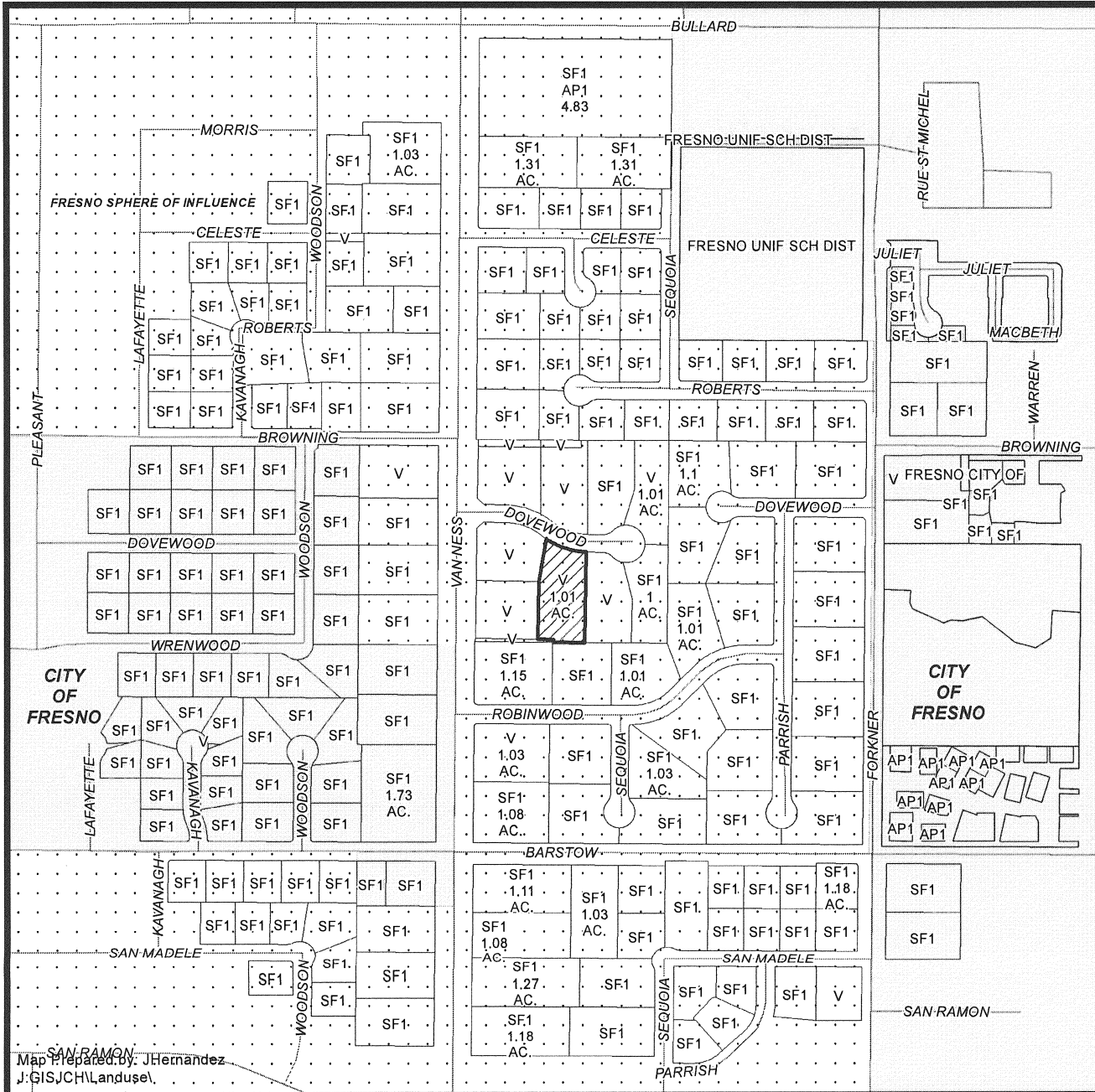


EXHIBIT 3

# EXISTING LAND USE MAP



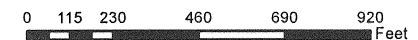
### LEGEND

- AP1 - APARTMENT
- SF#- SINGLE FAMILY RESIDENCE
- V - VACANT

### LEGEND:

Subject Property

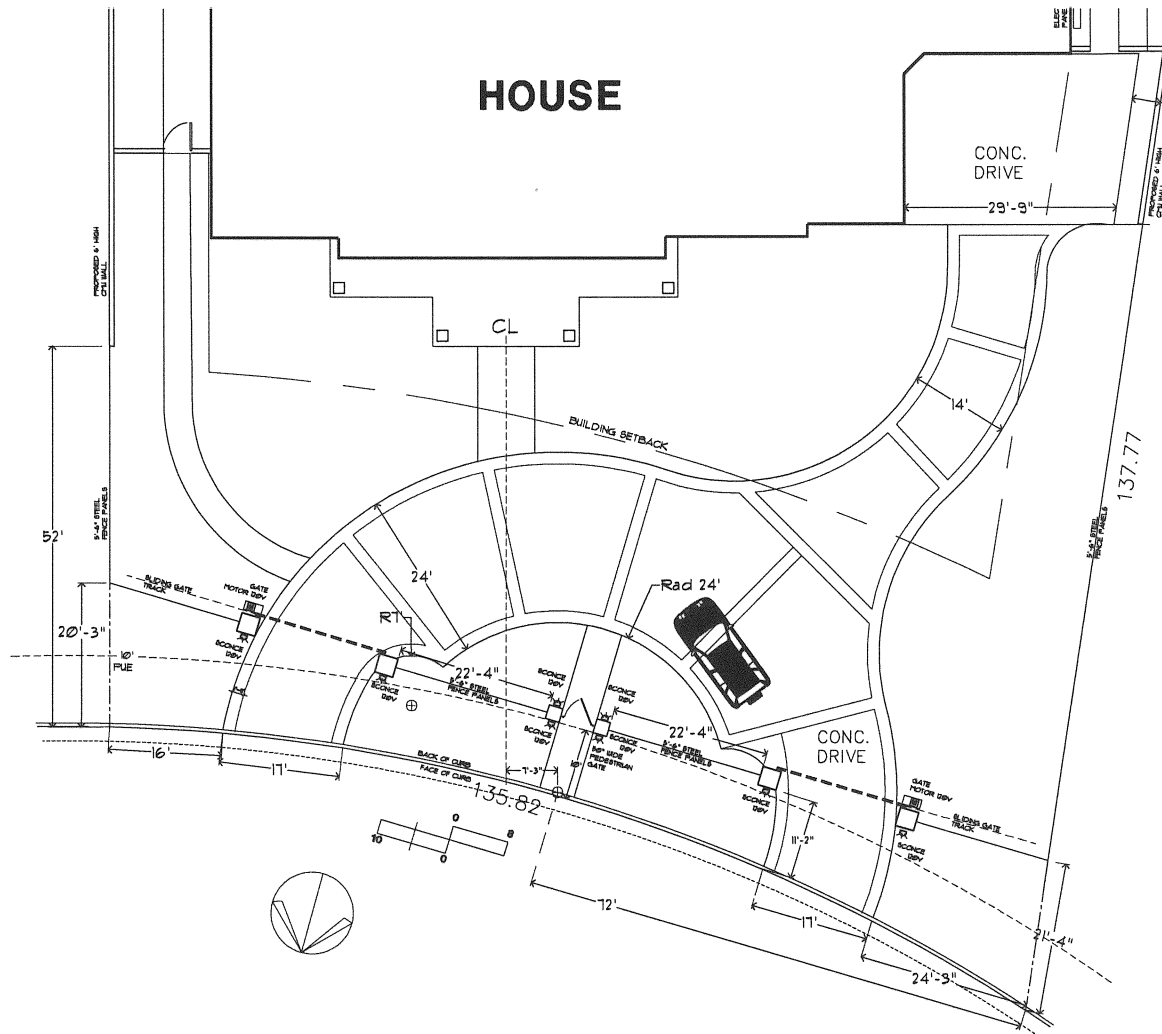
EXHIBIT 4



Department of Public Works and Planning  
Development Services Division

**NOTES**

Written dimensions shall take precedence over scaled dimensions. Shop drawings shall be submitted to the Architect and Owner for approval before proceeding with any fabrication and/or assembly. The Contractor shall be held responsible to field verify all dimensions and on-site conditions before starting any work on the project. The Contractor shall notify the Architect and Owner immediately when any discrepancies or variations from the information shown by these drawings and on-site conditions occur. The Contractor is solely responsible for replacement and/or removal of work performed when discrepancies exist and a resolution has not yet been made.



**EXHIBIT 5**

**CITY OF FRESNO  
FIRE DEPARTMENT  
NOTES:**

PROVIDE APPROVED POLICE/FIRE BYPASS LOCK ON ACCESS GATES. (BEST PADLOCK MODEL 718100) OR ELECTRIC CYLINDER SWITCH (BEST MODEL 14792)

FIRE DEPARTMENT ACCESS:  
SINGLE ENTRY GATE (ONE WAY TRAFFIC) SHALL PROVIDE A MINIMUM OF 15 FEET CLEARANCE WHEN THE GATES ARE IN THE OPEN POSITION.

DOUBLE ENTRY GATE (TWO WAY TRAFFIC) SHALL PROVIDE 20 FEET CLEARANCE WHEN THE GATE IS IN THE OPEN POSITION.

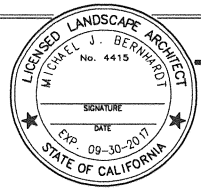
**MICHAEL BERNHARDT LANDSCAPE ARCHITECT**

2654 WEST STUART AVENUE, FRESNO, CA 93711 559-260-1700 mb.la@comcast.net

**ENTRY GATES VARIANCE**

APN 41535032

PREPARED FOR:  
**PETER NASSAR**  
2331 W. DOVEWOOD AVENUE, FRESNO, CA 93711



**REVISIONS**

Δ	2015 09.28	-
Δ		-
Δ		-

**FRESNO COUNTY**

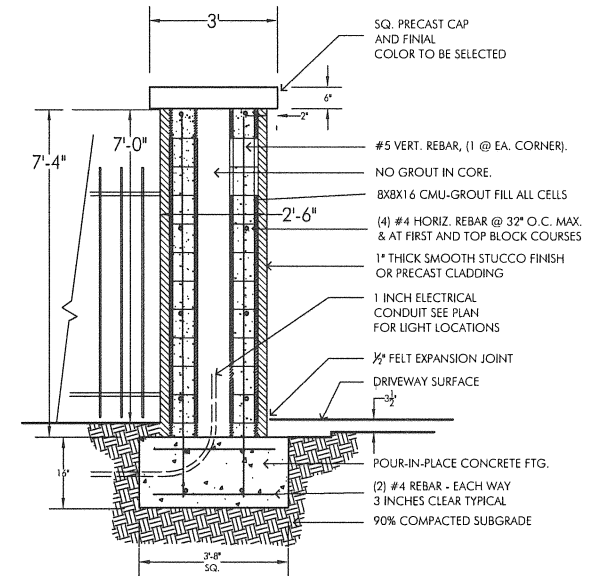
DRAWN BY	MJB
CHECKED BY	MJB
DATE	2015 06.13
SCALE	1" = 10'



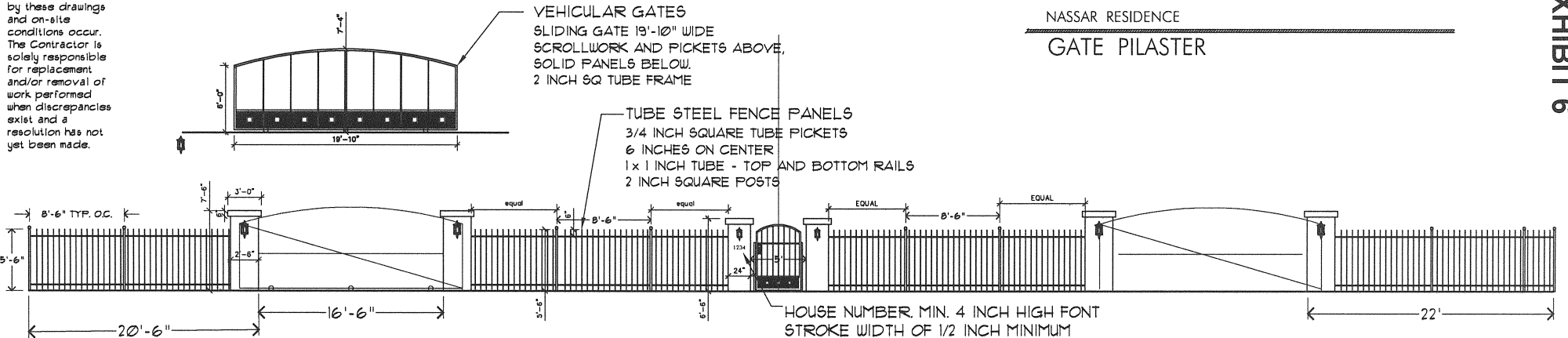
**NOTES**

Written dimensions shall take precedence over scaled dimensions. Shop drawings shall be submitted to the Architect and Owner for approval before proceeding with any fabrication and/or assembly. The Contractor shall be held responsible to field verify all dimensions and on-site conditions before starting any work on the project. The Contractor shall notify the Architect and Owner immediately when any discrepancies or variations from the information shown by these drawings and on-site conditions occur. The Contractor is solely responsible for replacement and/or removal of work performed when discrepancies exist and a resolution has not yet been made.

PANEL SCHEDULE - PANEL 'A1'											
SERVICE: 120/240V 1Ø 3Ø				BUS: 120 AMP				TRM: SURFACE			
TYPE: SPLIT HAMMER METER MAIN				MAIN BREAKER				MISC: NEMA 3R			
QTY.	SIZE	DESCRIPTION	LOAD TYPE	MOT.	QTY. WATTAGE	QTY. WATTAGE	MOT.	LOAD TYPE	QTY.	DESCRIPTION	QTY.
NO.	AMP.		LTV	REC	FLA	FLA	REC	LTV	NO.		AMP.
1	20	1 GATE MOTOR		*	1200				1	20	2
3	20	1 COLUMN LIGHT (Ø) ROW		*	400				1	18	4
9	15	1 LANDSCAPE LIGHTS - FRONT TY		*	300				1	5	
7	15	1 SPACE							1	8	
9	1	1 SPACE							1	10	
11	1	1 SPACE							1	12	
13	1	1 SPACE							1	14	
15	1	1 SPACE							1	16	
17	1	1 SPACE							1	18	
TOTAL LOAD				CONDUIT SIZE: 3/4"				NOTES:			
WATTS		AMPS						1 - FOR SITE LIGHT LAYOUT/LOCATIONS, PLEASE REFER TO L.A. DRAWINGS			
BA	1850	13.78						2 - (2) 300 w TRANSFORMERS FOR 12 VOLT LIGHTING			
DB	1400	11.7		WIRE SIZE: (2) #12 CU							

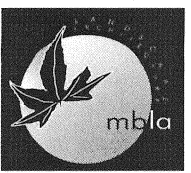


NASSAR RESIDENCE  
GATE PILASTER



NASSAR RESIDENCE - ENTRY ELEVATION - 3221 WEST DOVEWOOD AVENUE FRESNO

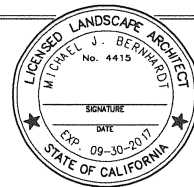
EXHIBIT 6



**ENTRY GATES VARIANCE**

PREPARED FOR:  
**PETER NASSAR**  
2331 W. DOVEWOOD AVENUE, FRESNO, CA 93711

APN 41535032



**MICHAEL BERNHARDT LANDSCAPE ARCHITECT**

2654 WEST STUART AVENUE, FRESNO, CA 93711 559-260-1700 mb.la@comcast.net

**REVISIONS**

Δ	2015 09.28	-
Δ		-
Δ		-

**FRESNO COUNTY**

DRAWN BY	MJB
CHECKED BY	MJB
DATE	2015 06.13
SCALE	1" = 10'

2 OF 2



# LOCATION MAP

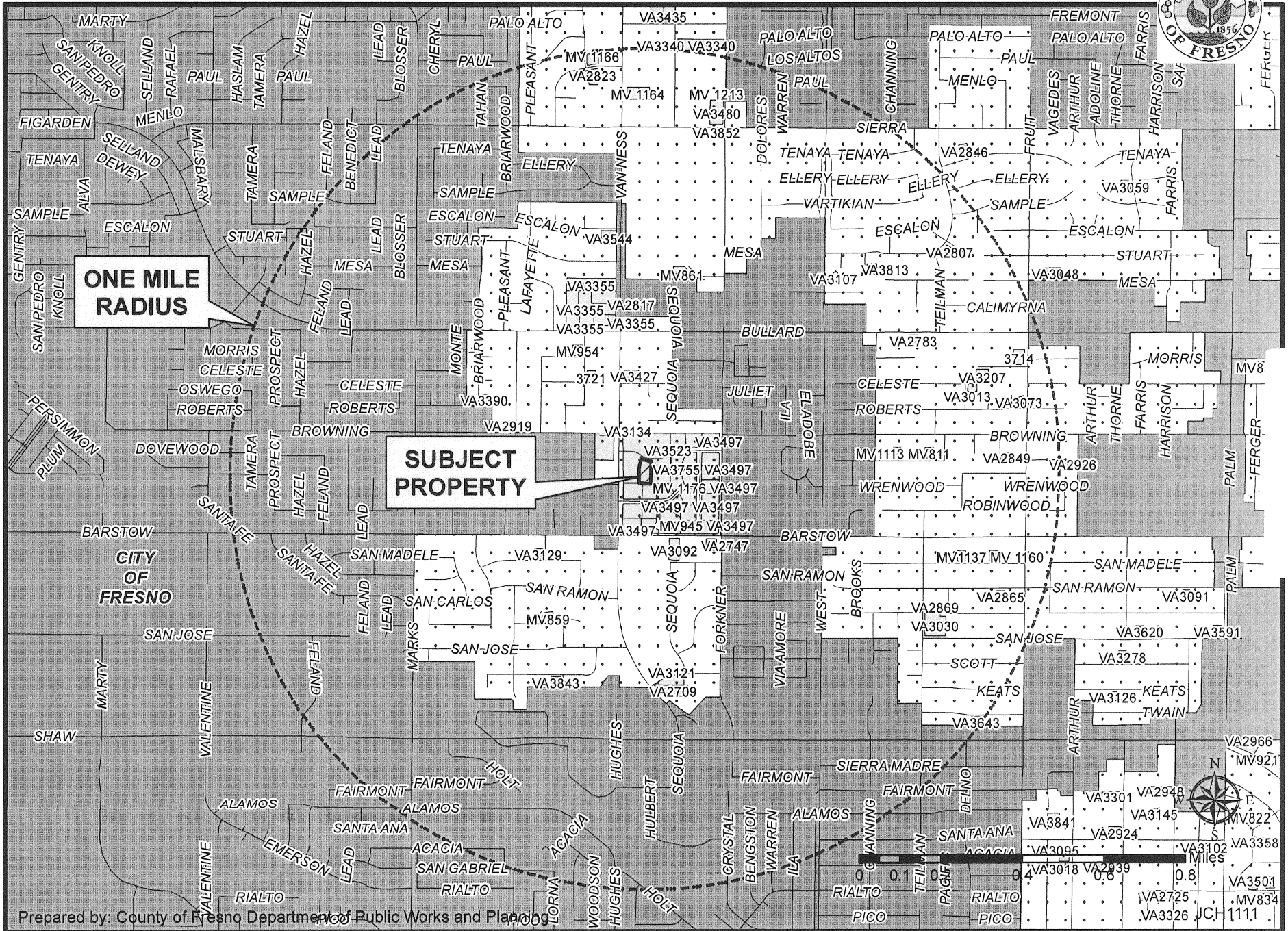


EXHIBIT 7