



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
ALAN WEAVER, DIRECTOR

Planning Commission Staff Report Agenda Item No. 3 December 17, 2015

SUBJECT: Variance Application No. 3983

Allow the creation of a 2.50-acre parcel and a 16.12-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District where a 20-acre minimum parcel size is required.

LOCATION: The subject parcel is located at the southwestern corner of West Shaw and North Madera Avenues, approximately 4.6 miles north of the city limits of the City of Kerman (15061 West Shaw Avenue, Kerman, CA 93630 and 4865 N. Madera Avenue, Kerman, CA 93630) (Sup. Dist. 1) (APN 015-340-81).

OWNER: Charlotte E. Salwasser
APPLICANT: Cal West Rain

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

Eric VonBerg, Senior Planner
(559) 600-4569

RECOMMENDATION:

- Deny Variance Application No. 3983; 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
6. Existing Variances Map

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agriculture	No change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size)	No change
Parcel Size	APN 015-340-81: 18.63± net	Parcel A: 16.1± acres Parcel B: 2.50 acres
Project Site	APN 015-340-81: 18.63± net	Parcel A: 16.1± acres Parcel B: 2.50 acres
Structural Improvements	Cal West Rain facilities, including offices, materials storage, a machine shop, and other related improvements; domestic well, agricultural well, single-family residence, pool, tennis court, metal barn	Parcel A: Cal West Rain facilities Parcel B: Single-family residence, pool, tennis court, metal barn
Nearest Residence	100 feet north, measured from the property line	Parcel A: No change Parcel B: 360 feet southeast, measured from the property line
Surrounding Development	Agriculture and Single-Family Residences	No change
Operational Features	Cal West Rain is open from 7 AM to 5 PM Monday through Friday, with emergency services offered.	No change
Employees	109 (including 45 off site)	No change
Customers	20 per day	No change
Traffic Trips	About 96 round trips	No change

Criteria	Existing	Proposed
Lighting	Exterior lighting around Cal West Rain facilities and residential lighting around the existing home	No change
Hours of Operation	7 AM to 5PM and emergencies	No change

EXISTING VIOLATION (Y/N) AND NATURE OF VIOLATION: None

ENVIRONMENTAL ANALYSIS:

It has been determined pursuant to Section 15303 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 19 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 approximately 18.63 acres (net) and was purchased by the current owners in 1977. At that time, the land had been improved with a single-family residence and agricultural crops. In 1989, Cal West Rain, Inc. leased 12.88 acres of the property to operate an agricultural irrigation service and supply facility, which is a use allowed by right in the AE-20 Zone District.

The subject application would allow the existing homesite to be removed from the parcel and sold separately from the existing vineyard and Cal West Rain, Inc. lease area.

County records indicate that one variance application has been previously filed within a one-mile radius of the subject property (Exhibit 6). This variance was located on the subject property and authorized the creation of a parcel for financing purposes that was 2.69 acres, where 2.5 acres was the maximum allowed. The Planning Commission approved this variance request on January 7, 1988.

Although there is a history of a variance on 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.

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Setbacks	Front (east): 35 feet Side (south): 10 feet Street Side (north): 35 feet Rear (west): 20 feet	Parcel A: Front (north): 55 feet Side (west): 500+ feet Street Side (east): 200 feet Rear (south): 175 feet Parcel B: Front (east): 190 feet Side (south): 15 feet Side (north): 30 feet Rear (west): 20 feet	Parcel A: Yes Parcel B: Yes
Parking	At least one parking space in a garage or carport for every dwelling unit; one parking space for each 800 square feet of gross floor area	No change	Yes
Lot Coverage	No requirements	N/A	N/A
Space Between Buildings	N/A	N/A	N/A
Wall Requirements	Swimming pools shall be entirely enclosed by fences or walls, in accordance with the specifications and standards of the Fresno County Ordinance Code, Title 15, Buildings and Construction.	Parcel A: N/A Parcel B: existing wall around property.	Parcel A: N/A Parcel B: Yes
Septic Replacement Area	100 percent	No change	Yes
Water Well Separation	Septic tank: 50 feet; Disposal field: 100 feet; Seepage pit: 150 feet	No change	Yes

Reviewing Agency/Department Comments Regarding Site Adequacy:

Zoning Section of the Fresno County Department of Public Works and Planning: The expired Ag Exempt building for 4865 N. Madera will require plans, permits and inspections. Permits are also required at 15021 W. Shaw Avenue for three shipping containers, one metal storage building, one metal shade cover, office and sales building with canopy, and three commercial coaches/mobile homes.

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 various homesites exist proximate to the subject property and that the creation of homesites is common within Fresno County agricultural zone districts. The existence of the home and agricultural irrigation maintenance operation are special circumstances in support of this finding.

In support of Finding 2, the Applicant's representative states that the Applicant has a right to be granted the same ability to use the subject property as others have under the same AE-20 zone district in the vicinity of the subject property. Other variances have been granted in the vicinity with lot sizes smaller than the required 20-acre minimum parcel size. The proposed Variance will allow the existing development improvements and intensity of the subject property to remain as it has for many years.

In regard to Finding 1, staff notes that there are 18 parcels within one mile of the subject property which are both less than 2.5 acres and not owned by the County of Fresno. (Several small parcels near the County boundary are owned by the County.) However, none of these parcels required a variance at the time of their creation. Additionally, the existence of other small parcels in the area is not considered to be an exceptional circumstance that does not apply to other properties in the area.

In regard to Finding 2, staff has identified no exceptional circumstances on the property that restrict one of the Applicant's property rights. All properties zoned AE-20 must follow the same development standards, which include a limited set of exclusions to the 20-acre minimum parcel size required by the Zoning Ordinance. While the subject property does not qualify for any of the exemptions to allow for a homesite retention, this does not deny them a property right enjoyed by other property owners in the area with identical zoning classifications.

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 sell the property to Cal West Rain without removing the homesite. The Applicant states that this would be less than ideal because Cal West Rain does not wish to enter into the residential landlord business and it would be difficult to convert the building into an office.

Based on the above analysis, 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.

Surrounding Parcels				
	Size:	Use:	Zoning:	Nearest Residence*:
North	19.7 acres 18.37 acres	Residential/Agriculture Residential/Agriculture	AE-20	100 feet 400 feet
South	19.5 acres	Residential/Agriculture	AE-20	None
East	2.07 acres 17.12 acres	Residential/Agriculture	AE-20	None 150 feet
West	17.4 acres	Residential/Agriculture	AE-20	510 feet

*measured from property line

Reviewing Agency/Department Comments:

North Central Fire Protection District: The Fire Department has completed a review of the subject application and has no requirements at this time. Future requirements will be based on plan review of projects at the time of submittal.

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: No comments.

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

For informational purposes:

- FID's Herndon No. 39 runs westerly along the north side of Shaw Avenue and crosses Madera Avenue approximately 70 feet northeast of the subject property.
- FID's H-1 No. 63 runs westerly and crosses Shaw Avenue approximately 50 feet west of the subject property.
- FID's Riverside-Powell No. 62 runs westerly and crosses Madera Avenue approximately 2,200 feet north of the subject property.
- A privately owned pipeline, Briscoe No. 344, runs westerly along the south side of Shaw Avenue. FID does not own, operate or maintain this private pipeline. FID's records indicate that the pipeline is active and will need to be treated as such. FID can supply the County with a list of known users for this private line upon request.

Should this project include any street and/or utility improvements along Shaw Avenue or Madera Avenue, or in the vicinity of the above-noted canal crossings, FID shall review and approve all plans.

Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: The business that fronts on Shaw Avenue has two existing paved drive approaches. If any improvements are constructed for these approaches, an encroachment permit is required from this division.

Development Engineering Section of the Fresno County Department of Public Works and Planning: Any work done within the right-of-way along Madera Avenue to construct a new driveway or improve an existing driveway will require an Encroachment Permit from Caltrans.

If not already present, 10-foot by 10-foot corner cutoffs shall be improved for sight distance purposes at the existing driveway onto Madera Avenue.

According to FEMA, FIRM Panel 1252H, the subject property is located in Flood Zone X, which is area determined to be outside the 0.2% annual chance floodplain. According to the U.S.G.S. Quad Maps, there are no existing drainage channels adjacent or running through the parcel.

A grading permit or voucher is required for any grading proposed with this application.

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

Fresno County Department of Agriculture: The property is currently surrounded by existing agricultural crops. There is always the concern that normal agricultural practices may create dust. There will be scheduled pesticide treatments. Both must be taken into account. The Fresno County "Right to Farm" Ordinance 17.04.100 and 17.72.075 shall be presented to the Applicant so that any necessary mitigation measures can be considered by the facility to minimize any potential discomfort or risk to staff.

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 homesite parcel has been improved with a 4,770 square-foot home built in 1976, which has a driveway on North Madera Avenue of adequate width and pavement to serve the proposed homesite. There is an on-site water well that serves the home which produces approximately 40 gpm. Historically, there has been no issue with well production or septic tank leach field capability on the subject site. The existing home site is well-maintained and would not be in conflict with the continued agricultural operation of the remaining agricultural acreage or conflict with the Cal West Rain, Inc. operations. The remaining acreage consists of leasehold area utilized by Cal West Rain, Inc. of 12.88 acres and a vineyard of 4.08 gross acres that will remain in a related agricultural use. No change in the agricultural use of the property, either in size or intensity, would be affected by the proposed variance.

In regard to Finding 3, staff notes allowing this variance will increase the allowed density in the area. The addition of an additional home in the area is not a significant effect; however, potential future owners of the property may be unfamiliar with living in an agricultural area. With

adherence to the Condition of Approval requiring that the owners of the homesite sign the “Right to Farm” Notice, staff believes that impacts to non-farming residents will be minimized.

Based on the above information and 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.

Relevant Policies:	Consistency/Considerations:
<p>Policy LU-A.6: The County shall maintain twenty (20) acres as the minimum permitted parcel size in areas designated Agriculture, except as provided in Policies LU-A.9, LU-A.10 and LU-A.11. The County may require parcel sizes larger than twenty (20) acres based on zoning, local agricultural conditions, and to help ensure the viability of agricultural operations.</p>	<p>The subject property is zoned AE-20, with a 20-acre minimum parcel size. The subject property does not qualify for an exception under Policies LU-A.9, LU-A.10, or LU-A.11:</p> <ul style="list-style-type: none"> - LU-A.9: The lot is not for a financing parcel, gift lot, or owned by the property owner prior to the date the policies were implemented. - LU-A.10: The request is not to allow for the development of an agricultural commercial center. - LU-A.11: The request is not to allow the recovery of mineral resources, oil, or gas. <p>The subject proposal is requesting a variance from compliance with this policy and the zoning regulations that support it (Section 816.5, minimum of 20 acres).</p>
<p>Policy LU-A.7: The County shall generally deny requests to create parcels less than the minimum size specified in Policy LU-A.6 based on concerns that these parcels are less viable economic farming units, and that the resultant increase in residential density increases the potential for conflict with normal agricultural practices on adjacent parcels. Evidence that the affected parcel may be an uneconomic farming unit due to its current size, soil conditions, or other factors shall not alone be considered a sufficient basis to grant an exception. The decision-making body shall consider the negative incremental and cumulative effects such land divisions have on the agricultural community.</p>	<p>This parcelization would separate existing uses on the property in order for the agricultural-related business to operate more efficiently without a homesite. This parcelization would not affect the size of the existing farming unit; however, it will increase the allowed density in the area and create two parcels less than 20 acres in size.</p>
<p>Policy PF-C.17: The County shall, prior to consideration of any discretionary project related to land use, undertake a water supply evaluation.</p>	<p>The project is not in a low-water area and was reviewed by the Water/Geology/Natural Resources Division which expressed no concerns.</p>

Reviewing Agency Comments:

Policy Planning Section of the Fresno County Department of Public Works and Planning: The subject parcel is not subject to an Agricultural Land Conservation Contract.

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

Analysis:

In support of Finding 4, the Applicant’s representative states that the Fresno County General Plan and related Zoning Ordinance allow for a variety of uses to occur in agriculturally-zoned properties. The aforementioned plan and ordinance acknowledge the ability of home owners to create home sites. The proposed Variance will not change or adversely affect the agricultural production capability of the subject property. The existing home site and related agricultural uses have functioned without conflicts for many years. For these reasons, the proposed Variance is consistent with the policies of the Fresno County General Plan.

The subject parcel is designated Agricultural in the Fresno County General Plan and is zoned AE-20. As noted in the table above, the General Plan allows for the creation of parcels less than 20 acres in size in the AE-20 Zone District under specific circumstances. Goal LU-A of the General Plan 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.” The proposed homesite parcel is currently fully developed with a house and is not in agricultural production. The proposal would allow for the agricultural-related business to continue on property that it is currently approved for. However, approval of the application would allow future owners of the proposed Parcel A to take additional land out of production in order to create a homesite by right, further reducing the amount of land in active agricultural use, and allow the creation of two parcels less than 20 acres in size, thus reducing their viability as economic farming units.

Recommended Conditions of Approval:

None

Conclusion:

Finding 4 cannot be made.

PUBLIC COMMENT:

None

CONCLUSION:

Based on the factors cited in the analysis, staff believes the required Findings 1, 2 and 4 for granting the Variance Application cannot be made. Staff therefore recommends denial of Variance Application No. 3983.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that the required Findings cannot be made and move to deny Variance Application No. 3983; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (Approval Action)

- Move to determine that the required Findings can be made (state basis for making the Findings) and move to approve Variance Application No. 3893, 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.

CMM:ksn

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**Variance Application No. 3983
Conditions of Approval and Project Notes**

Conditions of Approval	
1.	The Applicant shall obtain permits, or provide proof that permits were obtained, for the expired Ag Exempt building at 4865 N. Madera Avenue and for the three shipping containers, one metal storage building, one metal shade cover, office and sales building with canopy and three commercial coaches/mobile homes at 15021 W. Shaw Avenue.
2.	Plans, permits and inspections are required, including site development, based upon the California Codes in effect at the time of plan check submittal.
3.	An agreement incorporating the provisions of the "Right-to-Farm" Notice (Ordinance Code Section 17.40.100) shall be entered into with Fresno County, acknowledging the presence of surrounding agricultural operations and their related activities.

Conditions of Approval reference recommended Conditions for the project.

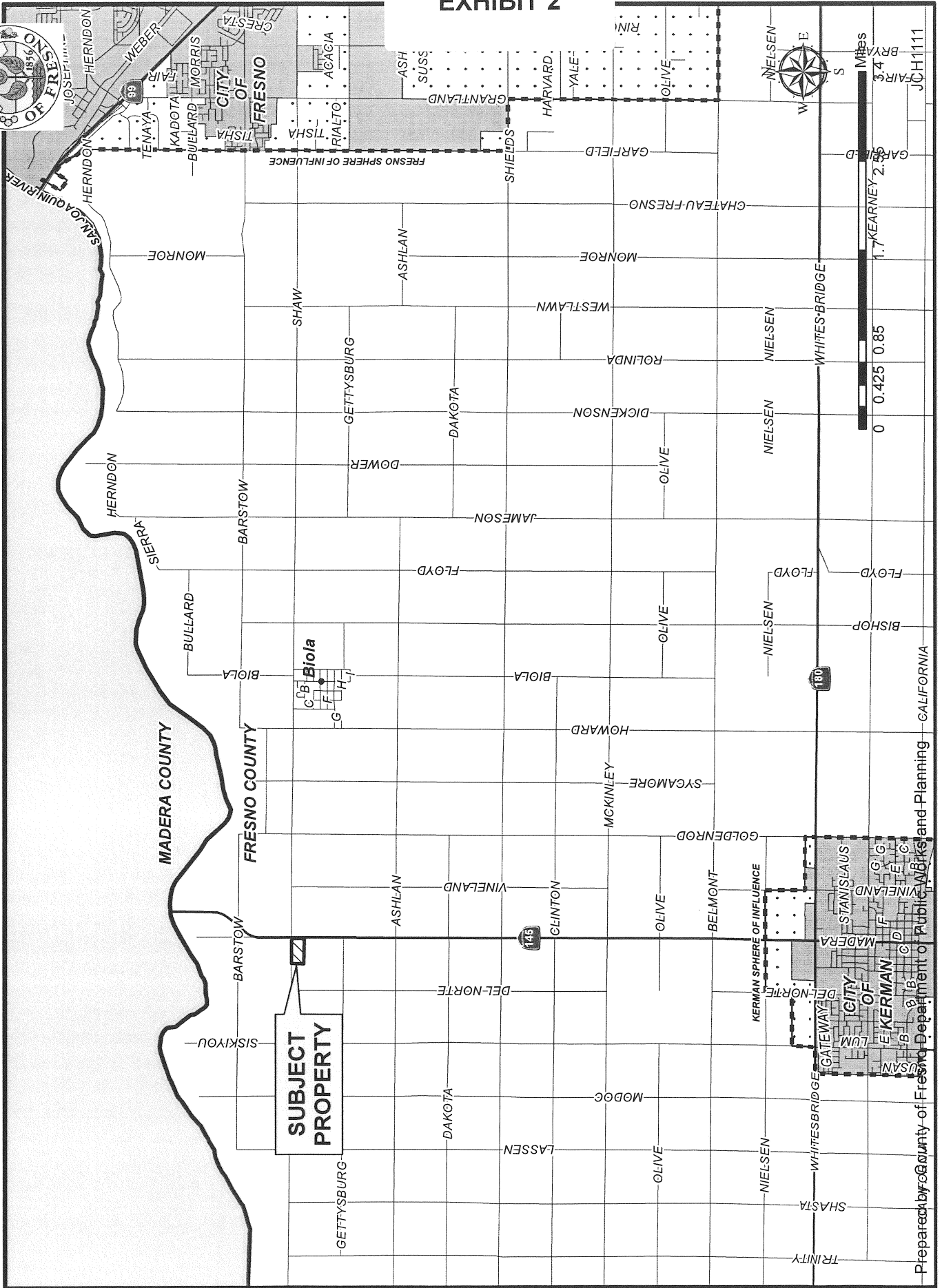
Notes	
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The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.

1.	<p>For informational purposes:</p> <ul style="list-style-type: none"> • FID's Herndon No. 39 runs westerly along the north side of Shaw Avenue and crosses Madera Avenue approximately 70 feet northeast of the subject property. • FID's H-1 No. 63 runs westerly and crosses Shaw Avenue approximately 50 feet west of the subject property. • FID's Riverside-Powell No. 62 runs westerly and crosses Madera Avenue approximately 2,200 feet north of the subject property. • A privately owned pipeline, Briscoe No. 344, runs westerly along the south side of Shaw Avenue. FID does not own, operate or maintain this private pipeline. FID's records indicate that the pipeline is active and will need to be treated as such. FID can supply the County with a list of known users for this private line upon request. <p>Should this project include any street and/or utility improvements along Shaw Avenue or Madera Avenue, or in the vicinity of the above-noted canal crossings, FID shall review and approve all plans.</p>
2.	If any additional improvements are constructed within the County right-of-way, an encroachment permit is required from the Road Maintenance and Operations Section.
3.	If any additional improvements are constructed within Madera Avenue, an encroachment permit is required from Caltrans.
4.	If not already present, 10-foot by 10-foot corner cutoffs shall be improved for sight distance purposes at the existing driveway onto Madera Avenue.
5.	A grading permit or voucher is required for any grading proposed with this application.

LOCATION MAP

EXHIBIT 2



VA 3983

EXISTING ZONING MAP

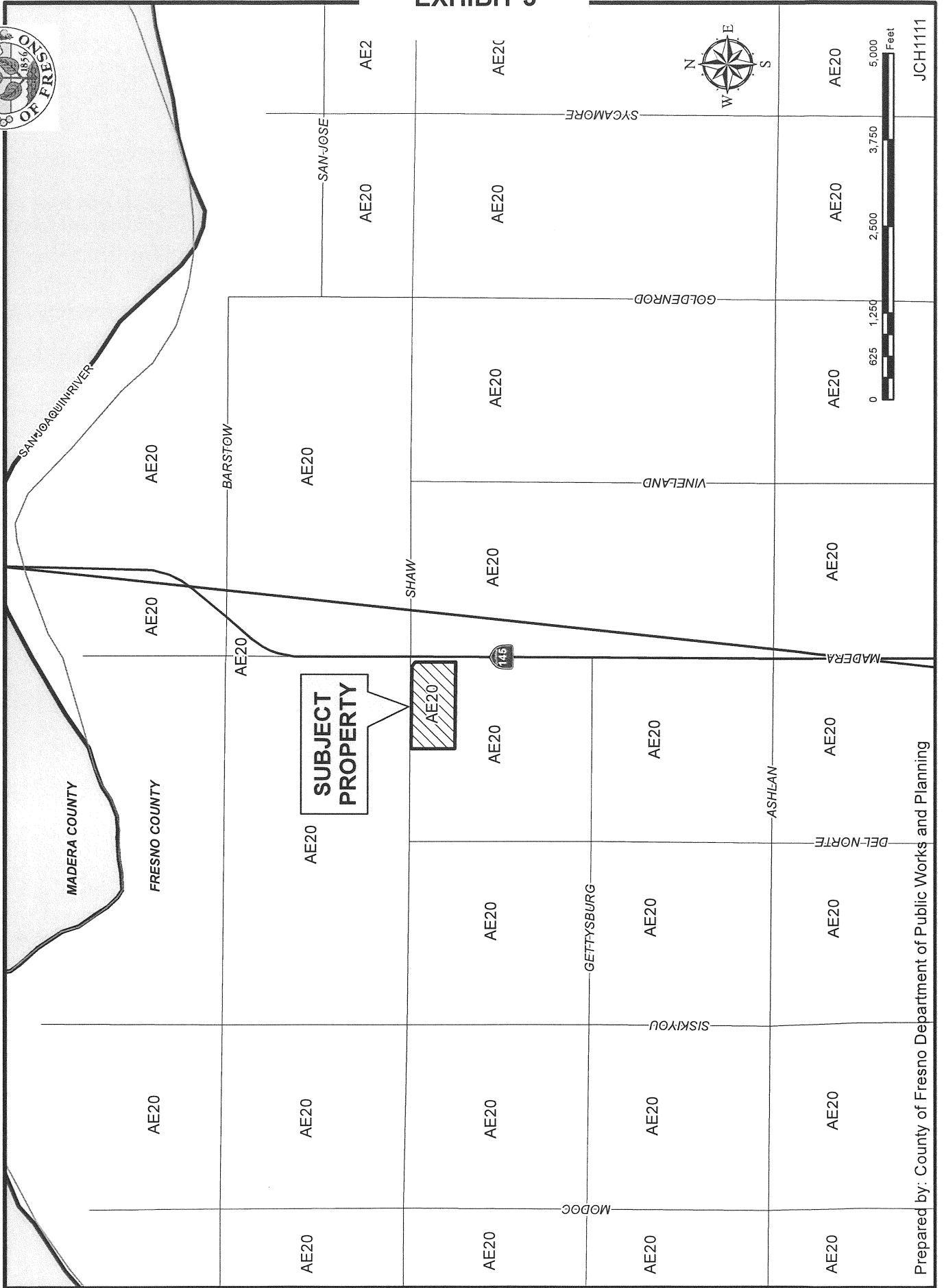


EXHIBIT 3



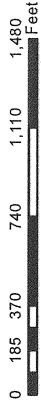
EXISTING LAND USE MAP

VA 3983

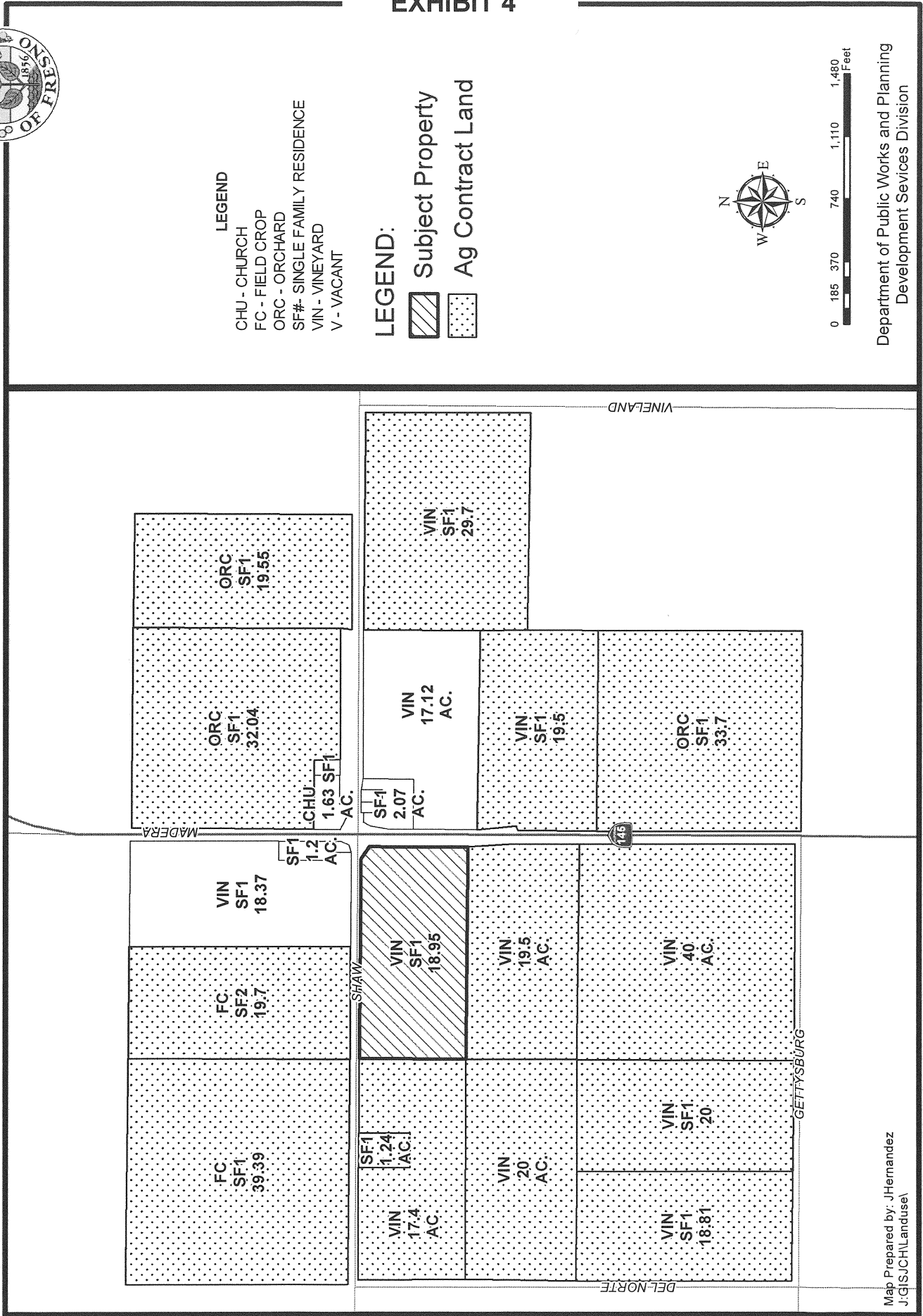
EXHIBIT 4

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

LEGEND:
 Subject Property
 Ag Contract Land

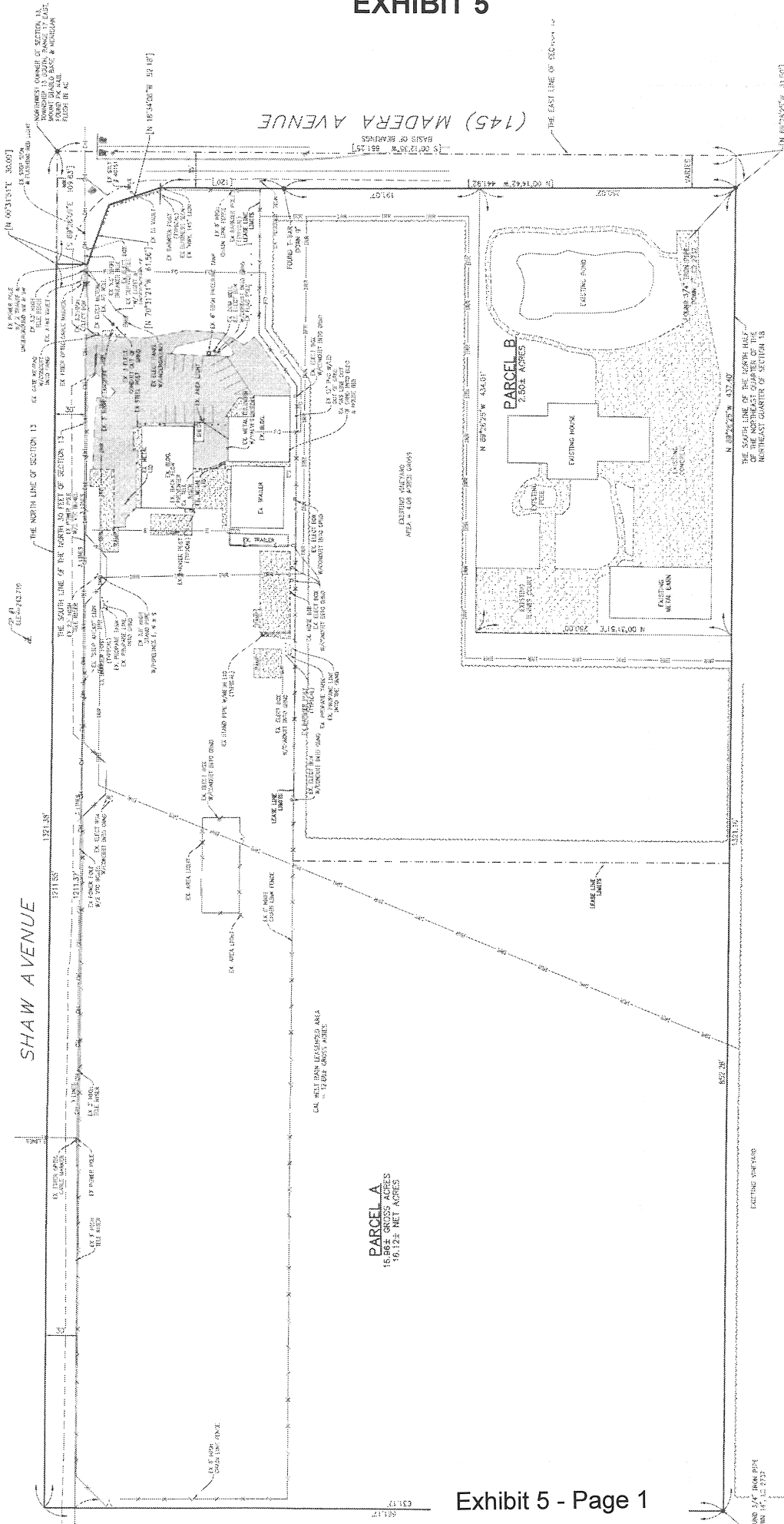


Department of Public Works and Planning
 Development Services Division



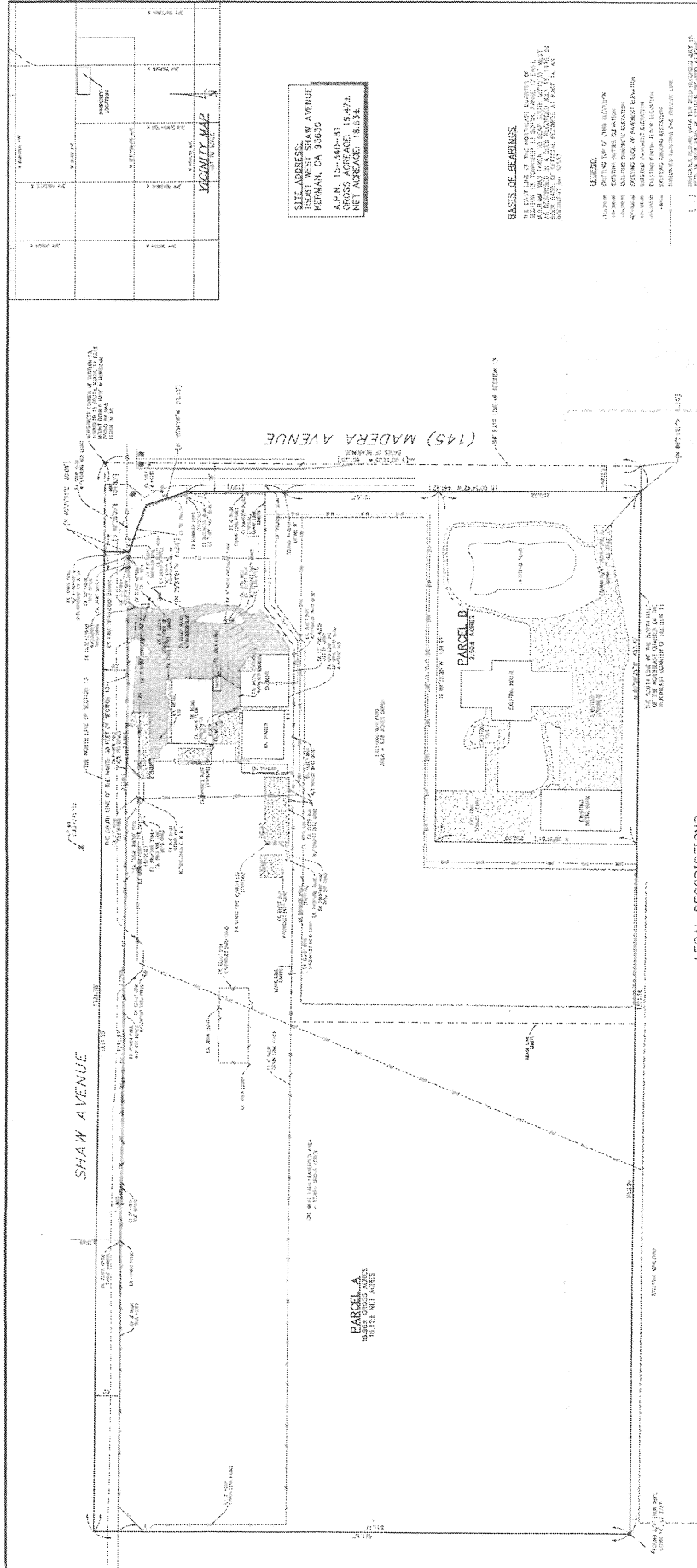
Map Prepared by: JHernandez
 J:GIS\JCH\Landuse\

EXHIBIT 5



LEGAL DESCRIPTIONS

PARCEL A
 16,864 GROSS ACRES
 16,722 NET ACRES



VICINITY MAP
 1527 WEST SHAW AVENUE
 145 MADERA AVENUE

SITE ADDRESS:
 1527 WEST SHAW AVENUE
 KIRWAN, CA 95033

A.P.N. 15-340-0118.072
NET ACRES: 18.034

LEGEND
 SHADING OF LOT LINES
 PROPERTY LINE
 EASEMENT
 ADJACENT PROPERTY
 UTILITIES

BASIS OF BEARINGS
 THE BEARINGS AND DISTANCES SHOWN ON THIS PLAN WERE OBTAINED FROM THE SURVEY OF THE LOTS IN BLOCK 17, LOT 15, OF THE MAP OF A PORTION OF SECTION 35, TOWNSHIP 10 NORTH, RANGE 12 EAST, SAN JOAQUIN COUNTY, CALIFORNIA, AS SHOWN ON THE RECORDS OF THE CLERK OF THE COUNTY OF SAN JOAQUIN, CALIFORNIA, IN BOOK 14, PAGE 10.

LEGAL DESCRIPTIONS

PARCEL A
 THAT PORTION OF THE UNDIVIDED QUARTER OF THE NW CORNER OF SECTION 35, TOWNSHIP 10 NORTH, RANGE 12 EAST, SAN JOAQUIN COUNTY, CALIFORNIA, AS SHOWN ON THE RECORDS OF THE CLERK OF THE COUNTY OF SAN JOAQUIN, CALIFORNIA, IN BOOK 14, PAGE 10.

PARCEL B
 THAT PORTION OF THE UNDIVIDED QUARTER OF THE SE CORNER OF SECTION 35, TOWNSHIP 10 NORTH, RANGE 12 EAST, SAN JOAQUIN COUNTY, CALIFORNIA, AS SHOWN ON THE RECORDS OF THE CLERK OF THE COUNTY OF SAN JOAQUIN, CALIFORNIA, IN BOOK 14, PAGE 10.

SHAW AVENUE
 1527 WEST SHAW AVENUE
 145 MADERA AVENUE

PARCEL A
 1527 WEST SHAW AVENUE
 145 MADERA AVENUE



VARIANCE EXHIBIT
 SHEET ONE OF ONE SHEET
 IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA

FOR PARCEL A
CAL WEST RAIN

R. W. Greenwood Associates, Inc.
 CIVIL ENGINEERS - LAND SURVEYING

FRESNO, CALIFORNIA 93704
 PHONE: (559) 435-1400
 FAX: (559) 435-1401
 WWW: WWW.RWGEO.COM
 LICENSE NO. 7277
 LICENSE NO. 7277
 LICENSE NO. 7277



APPROVED VARIANCE MAP

015-340-18

EXHIBIT 6

