



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 3 June 27, 2024

- SUBJECT:** Variance No. 4167 and Environmental Review No. 8549
- Waive road frontage (165 foot minimum) to create a gated community consisting of five parcels: (Parcel 1: 2.15-acre, Parcel 2: 2.15-acre, Parcel 3: 2.25-acre, Parcel 4: 2.25-acre, Remainder Parcel: +/-11.86-acres) on a 20.66-acre parcel located within the R-R (Rural Residential, two-acre minimum parcel size) Zone District.
- LOCATION:** The subject parcel is located on the south side of E. Herndon Ave., 580-foot west of N. McCall Ave., approximately 1.15-miles northeast from the city limits of the City of Clovis (APN: 308-280-42) (Section 6 Township 13s Range 22e) (Sup. Dist. 5).
- OWNER:** Dustin Hamel
- REPRESENTATIVE:** Dale Mell & Associates
- STAFF CONTACT:** Elliot Racusin, Planner
(559) 600-4245
- David Randall, Senior Planner
(559) 600-4052
- RECOMMENDATION:**
- Deny Variance Application No. 4167 based on the analysis of the required findings in the Staff Report; 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. Variances within one-mile of subject parcel
6. Site Plans and Detail Drawings
7. Applicant's Variance Findings
8. Site Photos
9. Community Correspondence

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	R-R within the Northeast Rural Residential Area.	No change
Zoning	R-R (Rural Residential, two-acre minimum parcel size)	No change
Parcel Size	20.66 acres	Parcel 1: 2.15-acre Parcel 2: 2.15-acre Parcel 3: 2.25-acre Parcel 4: 2.25-acre Remaining Parcel: +/-11.86-acres
Project Site	Vacant	No structures or improvements proposed.
Structural Improvements	None	No change
Nearest Residence	Approximately 500 feet to the east.	None
Surrounding Development	Orchard, field crops, single-family homes.	None

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

ENVIRONMENTAL ANALYSIS:

It has been determined that the proposed project will not have a significant effect on the environment and is not subject to further analysis under the California Environmental Quality Act (CEQA) pursuant to 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).

PUBLIC NOTICE:

Notices were sent to 29 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.

PUBLIC COMMENT:

One letter in opposition to the proposal related to water and traffic were received as of the date of preparation of this report (Exhibit 9).

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.

BACKGROUND INFORMATION:

County records indicate that the subject property was zoned A-1 (Agricultural District, 36,000 square-foot minimum parcel size required) on June 8, 1960. On March 7, 1977, the subject property and several other properties in the area were rezoned (Amendment Application No. 2898) from the A-1 Zone District to the R-R Zone District. The current zoning on the property is R-R and is located within the Northeast Rural Residential Area.

While Exhibit 5 shows variance applications within a one-mile radius of the subject property, none of them pertain to road frontage waivers in the Rural Residential Zone District.

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
Setbacks	<u>RR-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
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

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
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

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.**

Reviewing Agency/Department Comments Regarding Site Adequacy:

Fresno County Roads Department: An additional 23 feet of road right-of-way along the subject parcel must be dedicated or irrevocably offered to meet the ultimate right-of-way for Herndon Ave.

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

Finding 1 Analysis:

In support of Finding 1, the Applicant indicates the original parcel length to width ratio is disproportionate to other parcels in the RR Zone District requiring parcels to be created accessing from a private easement without public road frontage as required in RR Zoning development standards. In addition, the public road frontage is blocked by Dog Creek which creates a physical barrier preventing adequate road frontage to be realized.

The applicant proposes a gated private road for access to the parcels that will end in a cul-de-sac. The road being gated would prevent the proposed parcels to meet the road frontage requirements. Staff acknowledges that Dog Creek does impact 60% of the frontage of the property but it does not prohibit its development as proposed and hence not relevant to the Variance requested.

The variance's only function is to waive the road frontage requirement so a private gate to the development can be installed to restrict public access. It is a request for a privilege not enjoyed by other properties in the area with the same zoning.

Based on the above discussion, staff believes the physical circumstances to waive road frontage requirements with a placement of a private gate enclosing the proposed private road and parcels is not an exceptional or extraordinary circumstance.

Recommended Conditions of Approval:

Fresno County Roads Department: An additional 23 feet of road right-of-way along the subject parcel must be dedicated or irrevocably offered to meet the ultimate right-of-way for Herndon Ave.

Finding 1 Conclusion:

Finding 1 cannot be made as this request is not an extraordinary circumstance relating to the property that does not apply to other properties in 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.**

Reviewing Agency/Department Comments:

No comments specific to the preservation of a substantial property right were expressed by reviewing Agencies or Departments.

Finding 2 Analysis:

Variances can only be used to provide relief to preserve the “substantial property right” to be able to utilize a property for the intended use of the zoning. If regulations and unique physical attributes prohibit this property from realizing any reasonable use intended under the zoning, a Variance would be appropriate to preserve the “substantial property right” such as the ability to be able to build a home on the site; and staff and/or applicant was unable to identify any situation that would constrain the property and create a deficit of a property right enjoyed by other owners in the vicinity, under the same zoning.

The applicant states in support of Finding 2 that the property owner has a right to subdivide his parcels into two-acre parcels as is allowed per the zone district is not relevant. The variance is for frontage requirement not lot size. The proposed parcel map could be submitted without the Variance if the gated private road was not being proposed.

Recommended Conditions of Approval:

None.

Finding 2 Conclusion:

Finding 2 cannot be made as the addition of a gate for safety reasons is not a property right allowed for similarly zoned parcels.

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 (acres):	Use:	Zoning:	Nearest Residence:
North:	44.40	Agricultural	AE-20	N/A
South:	5.00	Single Family Residential	AE-20	500-feet
East:	6.92 2.30 2.30 2.30 2.30	Rural Residential (et. al.)	R-R (et. al.)	742-feet 627-feet 470-feet 581-feet 635-feet
West:	155.00	Agricultural	AE-20	N/A

Reviewing Agency/Department Comments:

Water and Natural Resources Division: A hydrogeological study shall be conducted for the proposed parcels.

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

Finding 3 Analysis:

The applicant’s statement justifying the finding indicates that the variance would not have any detrimental impact towards the public welfare.

A hydrogeological study was conducted in January 2024 and confirmed by Fresno County Water and Natural Resources Division verifying adequate water supply to meet the highest demand that could be proposed for the proposed parcels. Other potential impacts related to noise and traffic generated have been deemed negligible.

Recommended Conditions of Approval:

None.

Finding 3 Conclusion:

Finding 3 can be made, based on the above information, the proposal will not have a material adverse effect upon surrounding properties.

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 HS. B.15: <i>The County shall ensure that any new development will have adequate fire protection, including proximity to adequate emergency services, adequate provisions for fire flow and emergency vehicle access and fire hardened communication, including high speed internet service.</i></p>	<p>Consistent: The applicant shall provide a knox box for emergency vehicle access based on the site plan (Exhibit 6).</p>

Reviewing Agency Comments:

Policy Planning Section of the Development Services Division: General Plan Policy HS. B.5- See above

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 that the proposed Variance will not be contrary to the objectives of the General Plan. Fresno County Roads Department has not accepted offers of dedication of new street right of ways into the existing public-maintained roads system for more than 20 years, resulting in the variance request to create two-acre parcels fronting on a private access easement.

Fresno County General Plan policies do not specifically address requirements for public road frontage. However, General Plan Policy HS. B.15 will be followed based on the applicant providing a knox box to allow for emergency vehicle access to enter the proposed lots.

Finding 4 Conclusion:

Finding 4 can be made as the project would not be contrary to General Plan.

SUMMARY CONCLUSION:

Based on the factors cited in the analysis, the required Findings for granting the Variance Application cannot be made as there are no exceptional or extraordinary circumstances or conditions applicable to the property and 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.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that required Findings one and two cannot be made as stated in the staff report and move to deny Variance No. 4167; 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 and move to approve Variance No. 4167, 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.

ER:ec:jp

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EXHIBIT 1
Variance Application (VA) No. 4167
Conditions of Approval and Project Notes

Conditions of Approval	
1.	Division of the subject parcels shall be in substantial accordance with the site plan (Exhibit 6) as approved by the Planning Commission.
2.	An additional 23 feet of road right-of-way along the subject parcel must be dedicated or irrevocably offered to meet the ultimate right-of-way for Herndon Ave.

Conditions of Approval reference recommended Conditions for the project.

Notes	
The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.	
1.	Division of the subject property is subject to the provisions of the Fresno County Ordinance. A mapping procedure shall be filed to create the four proposed parcels if the variance is approved. 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 Subdivision Map Act and County Ordinance.
3.	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.
4.	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.
5.	Any new well shall have a minimum depth of 300 feet.
6.	The proposed parcels are located within an area defined as a low water area of the county; as such, prior to the issuance of a permit for the construction of a new residence, the owner of the property shall conduct a water well yield test to demonstrate that the well is capable of adequately serving the proposed use as defined in County Ordinance Code Section 15.04.190. The water well yield test must be reviewed and approved adequate by the Water and Natural Resources Division of the Department of Public Works and Planning.


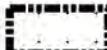

EXHIBIT 1

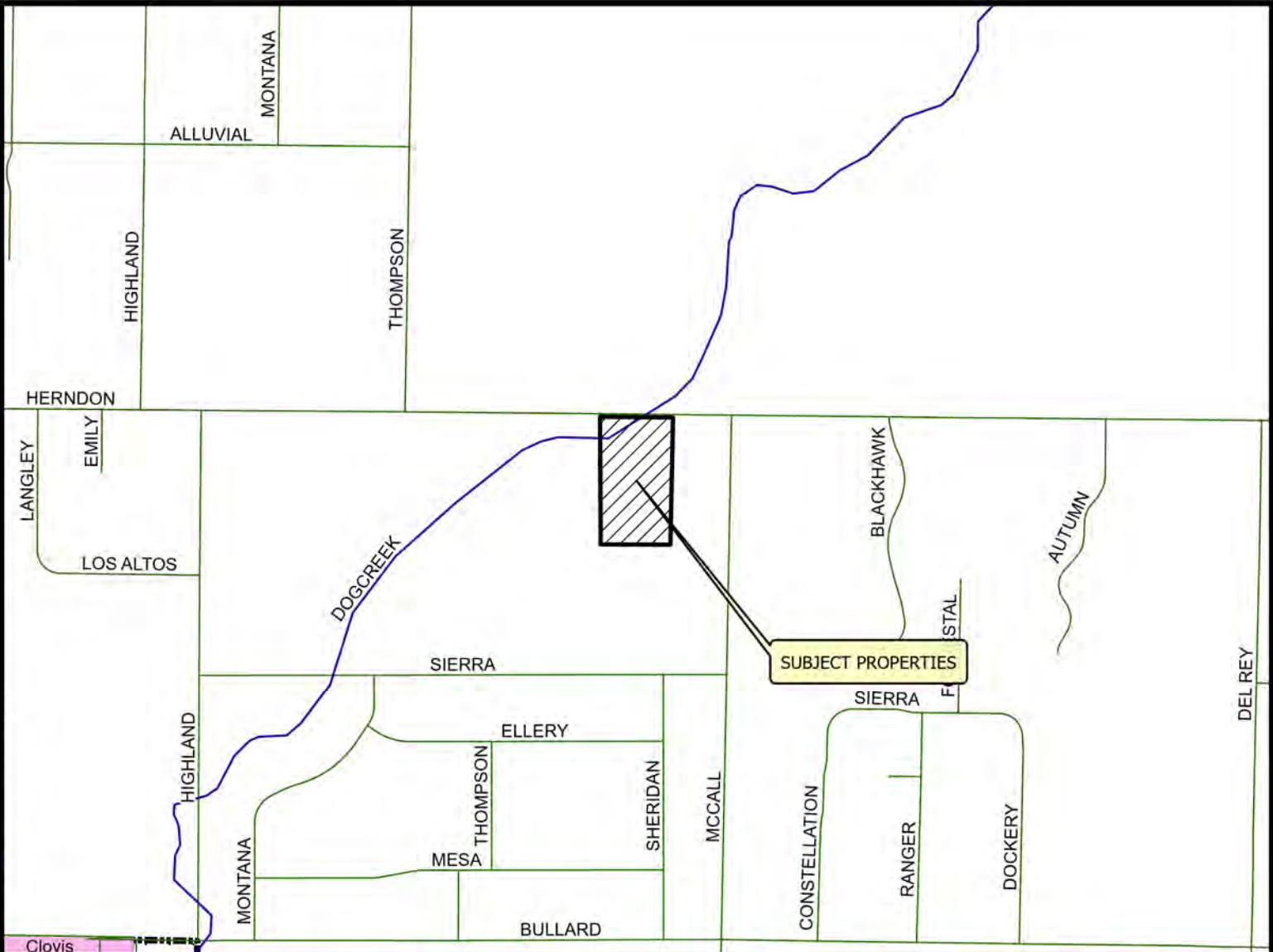
Notes

7.	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.
8.	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.
9.	No new roads shall be taken into County maintained mileage. Applicant should enter into a covenant running with the land whereby they agree to maintain their proportionate share of the access road serving the proposed parcels.
10.	Proposed entrance gates must be set back a minimum of 20 feet from the road right-of-way, or the length of the longest vehicle entering the site, to eliminate the vehicles from idling in the road when stopped to open the gate.
11.	Turn-around facilities outside the proposed entrance gate shall be large enough to accommodate the largest expected vehicle to turn around without backing out on to Herndon Ave.
12.	Access points to proposed private road shall be kept clear from any obstructions for visibility purposes with a 10 foot X 10 foot corner cutoff.

EXHIBIT 1 PAGE 2

Legend

-  Clovis
-  City Sphere of Influence
-  Subject Property

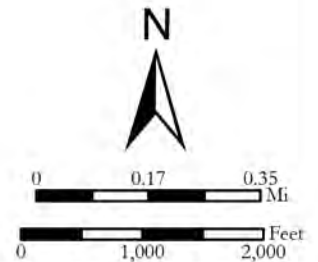


LOCATION MAP


APN: 348-030-07 AND 348-030-45S

2024

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division
 Person Prepared by : jocervantes
 On Date : 2/16/2024



LEGEND:

 Subject Property

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

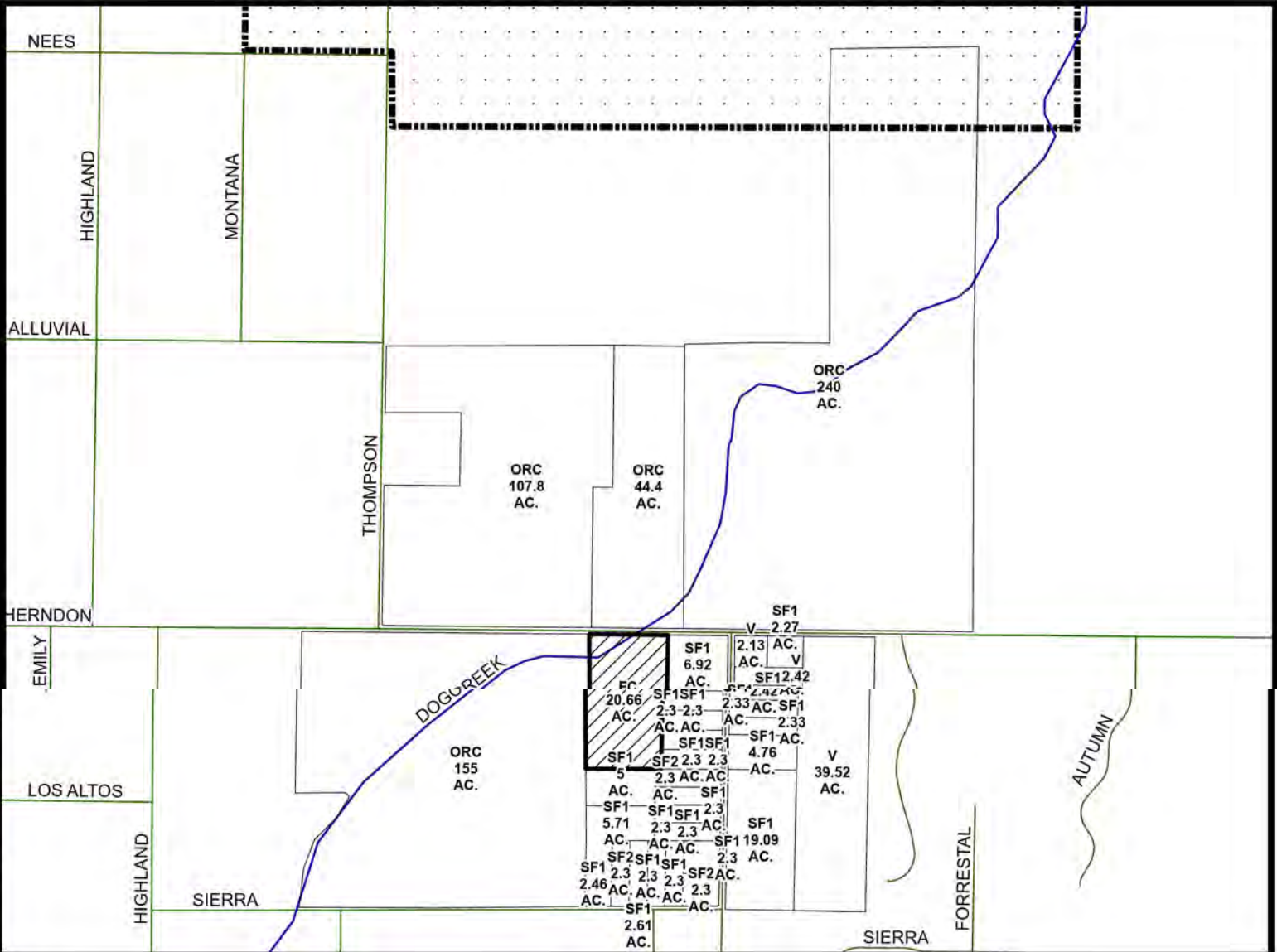


EXHIBIT 4

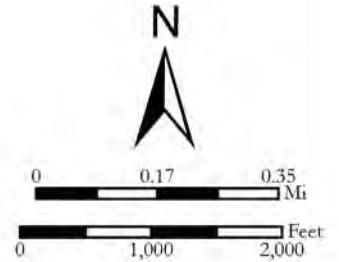


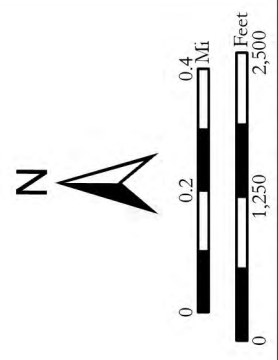
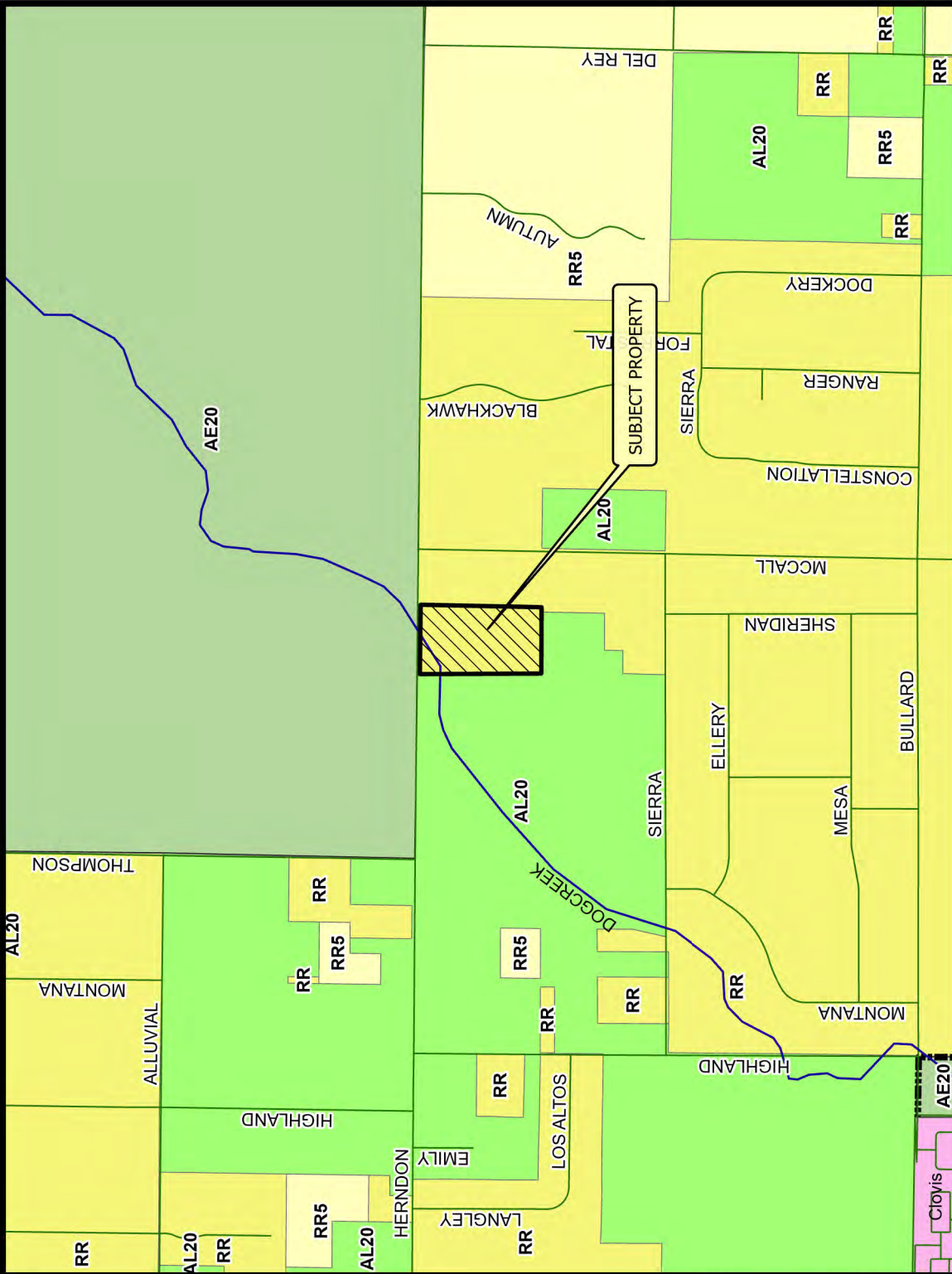
Existing Land Use Map

VA4167

2024

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division
 Person Prepared by : jocervantes
 On Date : 2/16/2024











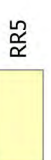
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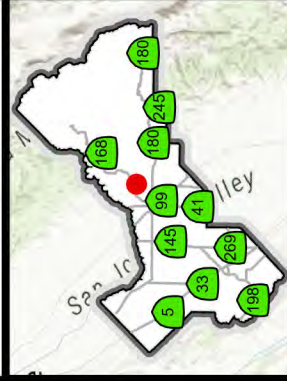
2024

VA4167
STR 6 - 13S / 22E

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division
 Person Prepared by : jocervantes
 On Date : 2/16/2024

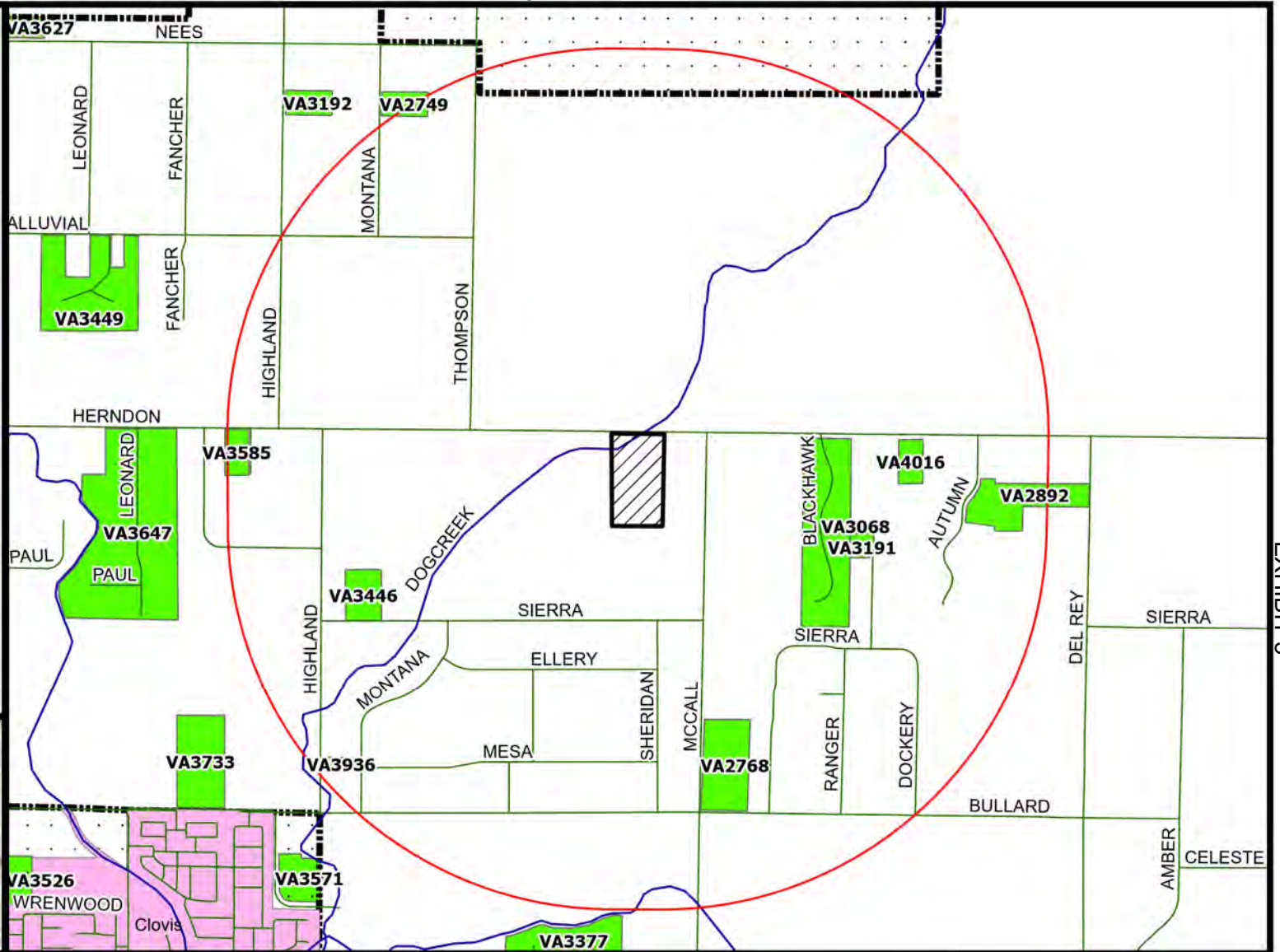
Legend

-  Subject Property
-  Clovis
-  City Sphere of Influence
-  AE20
-  AL20
-  RR
-  RR5



Legend

-  1 Mile Radius
-  Subject Property
-  Clovis
-  City Sphere of Influence
-  LU Permits



Proximity Map

VA4167

2024

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division
 Person Prepared by : jocervantes
 On Date : 2/16/2024

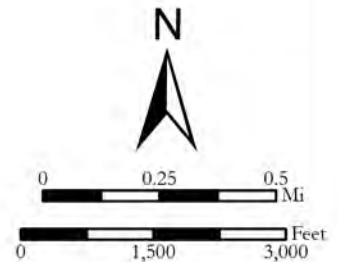
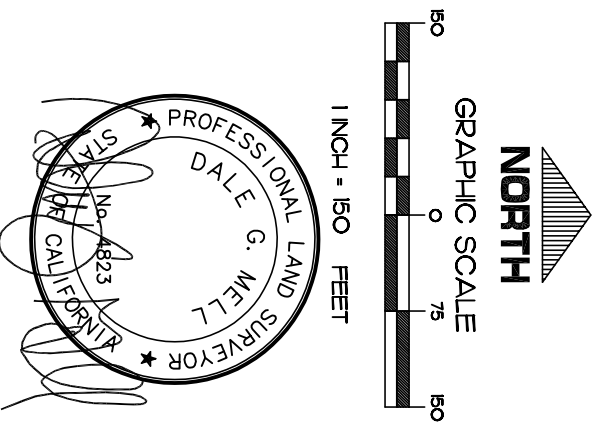


EXHIBIT 5



EXHIBIT 6



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CHECKED BY: DGM
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DATE OF SURVEY: 12/12/23
REV: 03/05/2024
SHEET 1 OF 2

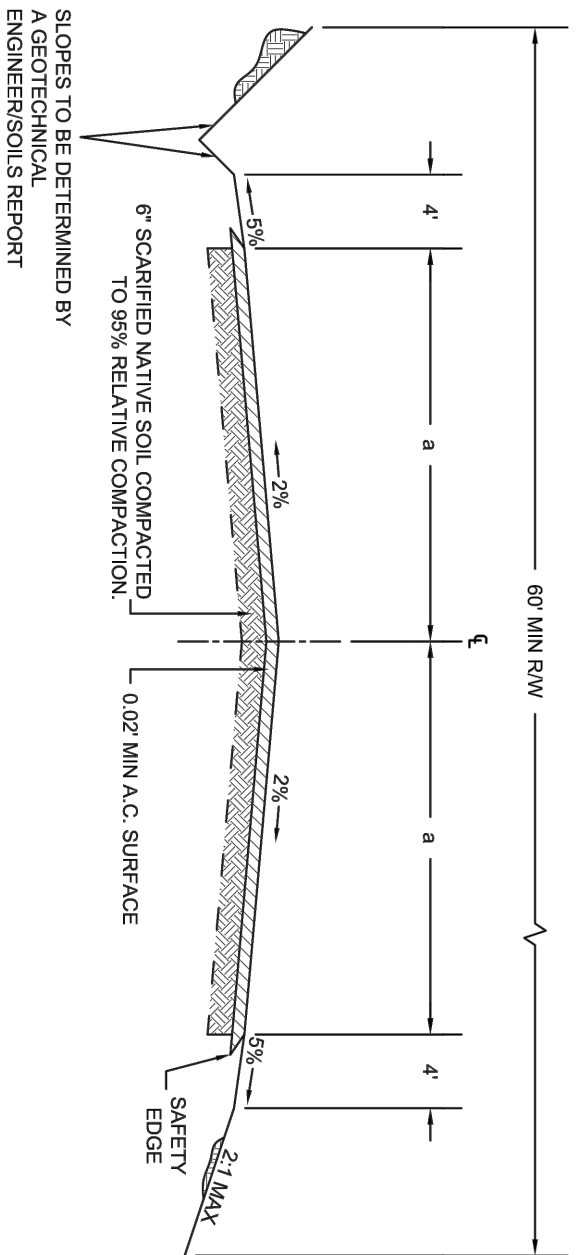
PREPARED BY:
DALE G. MELL & ASSOCIATES
ENGINEERING & SURVEYING SERVICES
2090 NORTH WINERY AVENUE, FRESNO, CALIFORNIA 93703
(559) 292-4046 * FAX 251-9220 * EMAIL: DMSUBMITTALS@DALEMELL.COM

VARIANCE EXHIBIT

SITE LOCATION:
30/S HERNDON AVENUE W/O McCALL AVENUE

ASSESSOR'S PARCEL NO(S):
308-280-42

BEING A PORTION OF SECTION 06,
TOWNSHIP 13 SOUTH, RANGE 22 EAST,
MOUNT DIABLO BASE & MERIDIAN



a DETERMINATION	
ULTIMATE LOTS SERVED	a (feet)
< 11	9
11 - 60	10
> 60	12

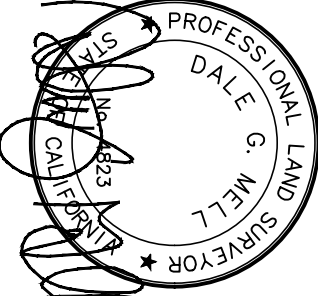
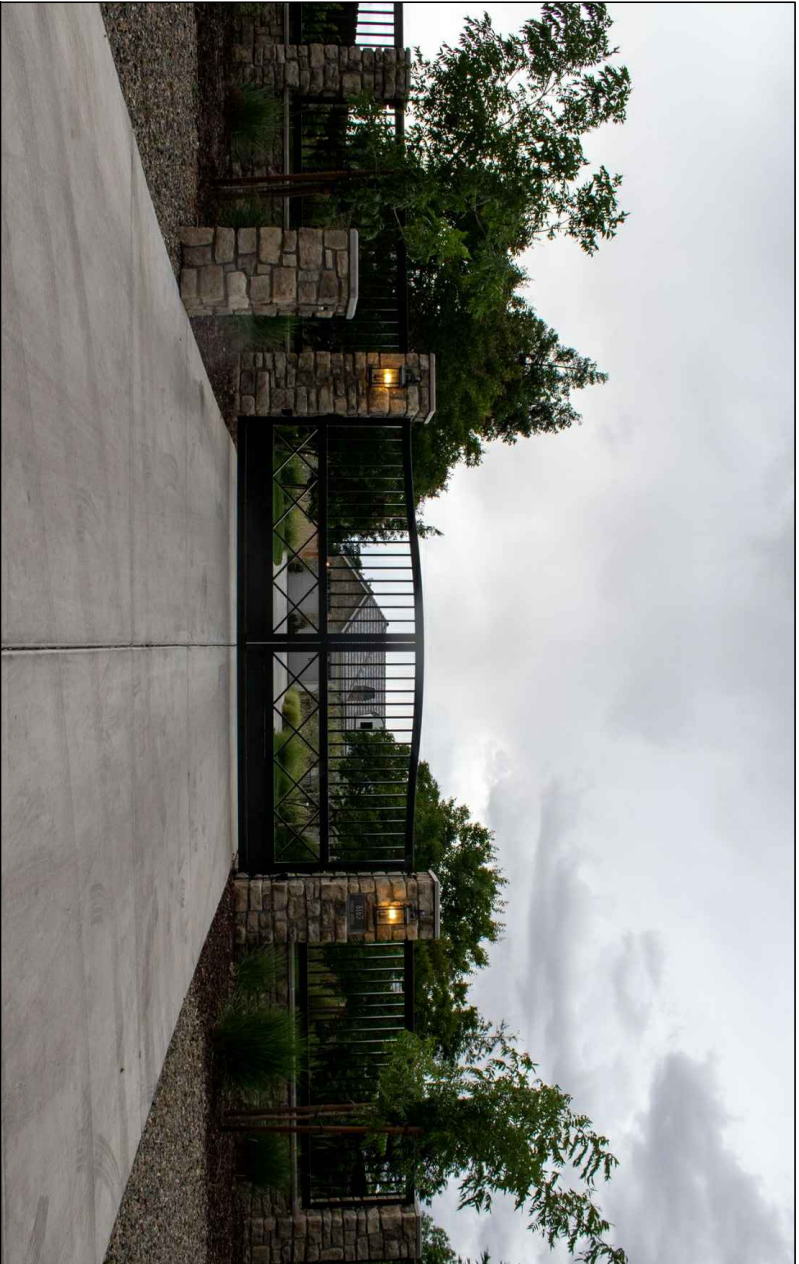
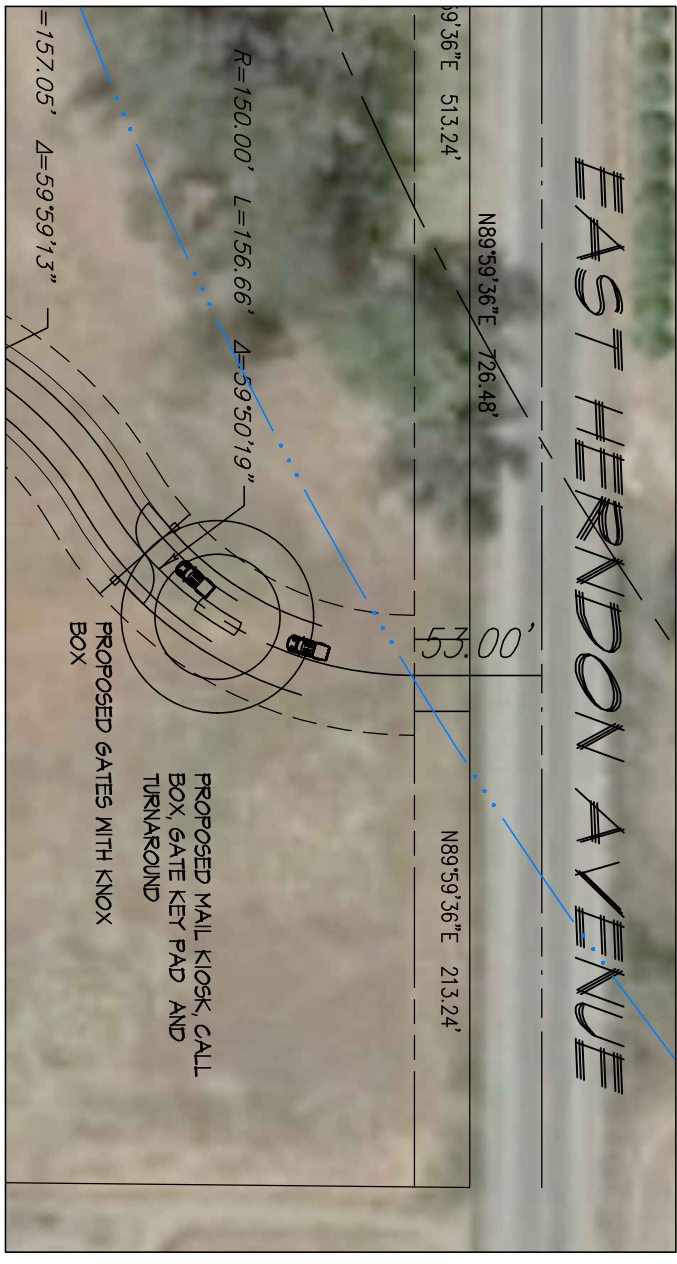
- NOTES:
1. WHEN AGGREGATE BASE IS DETERMINED NECESSARY, IT MAY BE CLASS 3, MEETING THE REQUIREMENTS INDICATED ON STANDARD DRAWING ST16.
 2. FROM THE TOTAL GRAVEL EQUIVALENT STRUCTURAL SECTION DETERMINED ABOVE, A GRAVEL EQUIVALENT OF 0.13' FOR ASPHALT CONCRETE MAY BE DEDUCTED FOR THE REQUIRED STRUCTURAL SECTION. THIS STRUCTURAL SECTION SHALL NOT BE LESS THAN WHAT IS SHOWN ON THE ABOVE DRAWING. THE 0.13' ASPHALT CONCRETE PAVEMENT WILL BE ADDED AS A SECOND STAGE OF CONSTRUCTION IN THE FUTURE BY THE MAINTAINING AGENCY WHEN TRAFFIC AND ROAD CONDITIONS WARRANT.
 3. ALTERNATE ENGINEERED DESIGN AND MATERIAL SPECIFICATIONS MAY BE APPROVED BY THE DIRECTOR OF PUBLIC WORKS AND PLANNING.
 4. THE COUNTY WILL REVIEW THE PLANS FOR PRIVATE ROADS BUILT TO THIS STANDARD AND WILL INSPECT THEIR CONSTRUCTION.
 5. PRIVATE ROADS SHALL MEET ALL OF THE COUNTY'S IMPROVEMENT STANDARDS EXCEPT AS MODIFIED BY THIS STANDARD.
 6. ALL WORK SHALL COMPLY WITH SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT RULES AND REGULATIONS.
 7. MATERIALS SPECIFICATIONS FOR PRIVATE ROADS CAN BE FOUND ON STANDARD DRAWING ST16.

COUNTY OF FRESNO
DEPARTMENT OF PUBLIC WORKS AND PLANNING

REVISION	DATE	DESCRIPTION	
DRAWN BY: L. TAYLOR REVIEWED BY: A. RAMIREZ APPROVED BY: A. WEAVER			
		DATE	SCALE: NTS
		12/8/2015	1/21/2016

**PRIVATE ROAD
GEOMETRIC SECTION
CASE A-15**

ST15



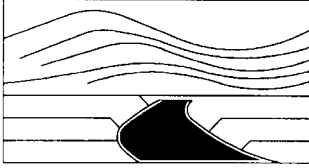
VARIANCE EXHIBIT

SITE LOCATION:
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ASSESSOR'S PARCEL NO(S):
308-280-42

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MOUNT DIABLO BASE & MERIDIAN

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JOB # 23-097
DRAWN BY: DGM
CHECKED BY: DGM
SCALE: 1" = 150'
DATE: 12/27/23
DWG # 23-097EX01
FIELD BOOK: XXX
DATE OF SURV: N/A/N/A
REV: 03/05/2024
SHEET 2 OF 2



DALE G. MELL & ASSOCIATES

ENGINEERING & SURVEYING SERVICES

2090 N. WINERY AVENUE · FRESNO, CALIFORNIA 93703 · PH (559) 292-4046 · FAX (559) 251-9220

Supplemental Application Findings for Variance

1. **Exceptional or extraordinary circumstances or conditions applicable to the property which do not apply generally to other property in the vicinity having the identical zoning classification as follows:**

The original parcel length (1320' depth) to width (660' road frontage) ratio is disproportionate to other parcels in the RR Zone District.. approximately 60% of the public road frontage is blocked by Dog Creek, a substantial natural drainage channel over grown with large eucalyptus trees requiring parcels to be created with access from a private road easement not from a public road frontage. Preserving the natural setting, trees and substantial drainage channel it is necessary to construct a private road with cul-de-sac providing access to the proposed 2 ~ ac parcels as permitted by RR Zoning Development standards. The proposed 60 ft private road easement width is per County development standards A-15. The 60 ft private road easement will provide net 2 acre parcels with a near 1 to 1 width to depth proportional dimensions.

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.**

This 20.66 ac parcel is one of a few remaining in the Fresno County RR-2 zone district. the property right to sub-divide and create 2 ac home sites has been enjoyed by others as evidenced by an estimated 410~ developed parcels within a 1 mile radius of the project site.

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.**

Deviation from the development standards from a public road to a private road easement will have no effect on the public welfare or injurious to property and improvements in the vicinity. Construction of the proposed private access road easement per Fresno County Std. ST15, Case A-15, will conform to Fresno County Development Stds: MC 15.600.305, 15.60.310 and 15.60.315.

4. **The granting of this variance will not be contrary to the objectives of the General Plan.**

Granting of the variance will not change the density or development objectives of Fresno County General Plan for a Rural Residential setting for single-family homes on 2-acre parcels. Fresno County Roads Department has not accepted offers of dedication of new street right of ways into the existing public-maintained roads system for more than 20 years, resulting in our request for approval of this variance to create 2-acre parcels fronting on a private road access easement.

EXHIBIT 8









Joe Beamon

6739 N. McCall Ave.
Phone: 559-298-6990

▶ **Nathan Magsig**

2281 Tulare St.
Room 300
Phone: 559-600-5000


Dear Sir

I am contacting you regarding an application for TENTATIVE PARCEL MAP APPLICATION NO. 8272. As a homeowner who will be impacted by the approval of this proposed division, I am asking for your support in not approving the application.

The current underground water levels are being reduced each year. My original water well depth was 160 feet, four years ago it became necessary to replace that well due to the water table falling below my well's depth. The new well was placed at depth of 340 feet due to the drop in the water table.

I would also point out that entrance to this parcel being requested to be subdivided would have to be entered from Herndon Ave., a very busy thorough fare.

Thank you for your consideration and support.


Joe Beamon
