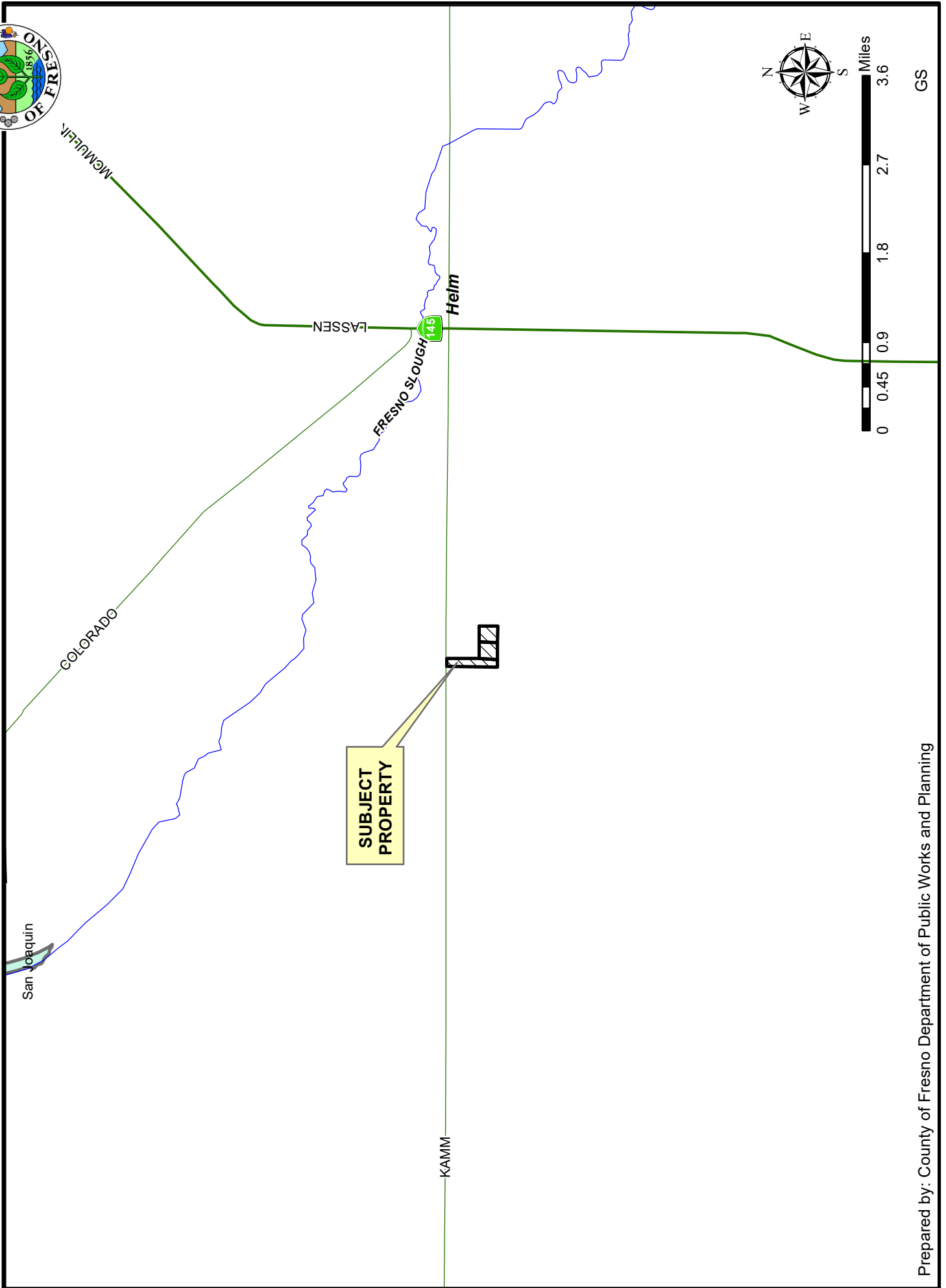




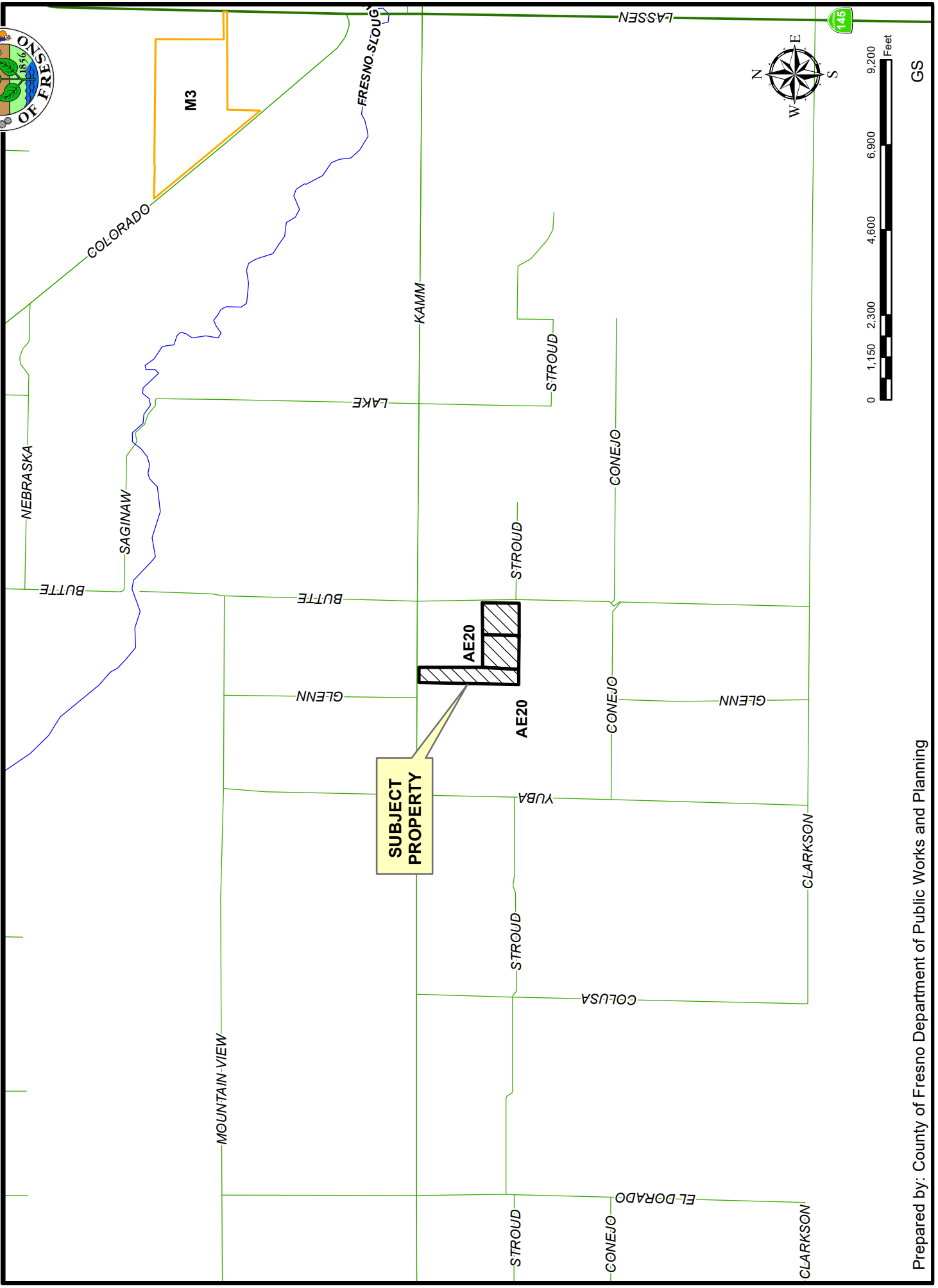
LOCATION MAP

RLCC 1008



RLCC 1008
STR 19-16/17

EXISTING ZONING MAP



GS



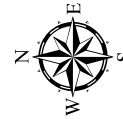
EXISTING LAND USE MAP

RLCC 1008

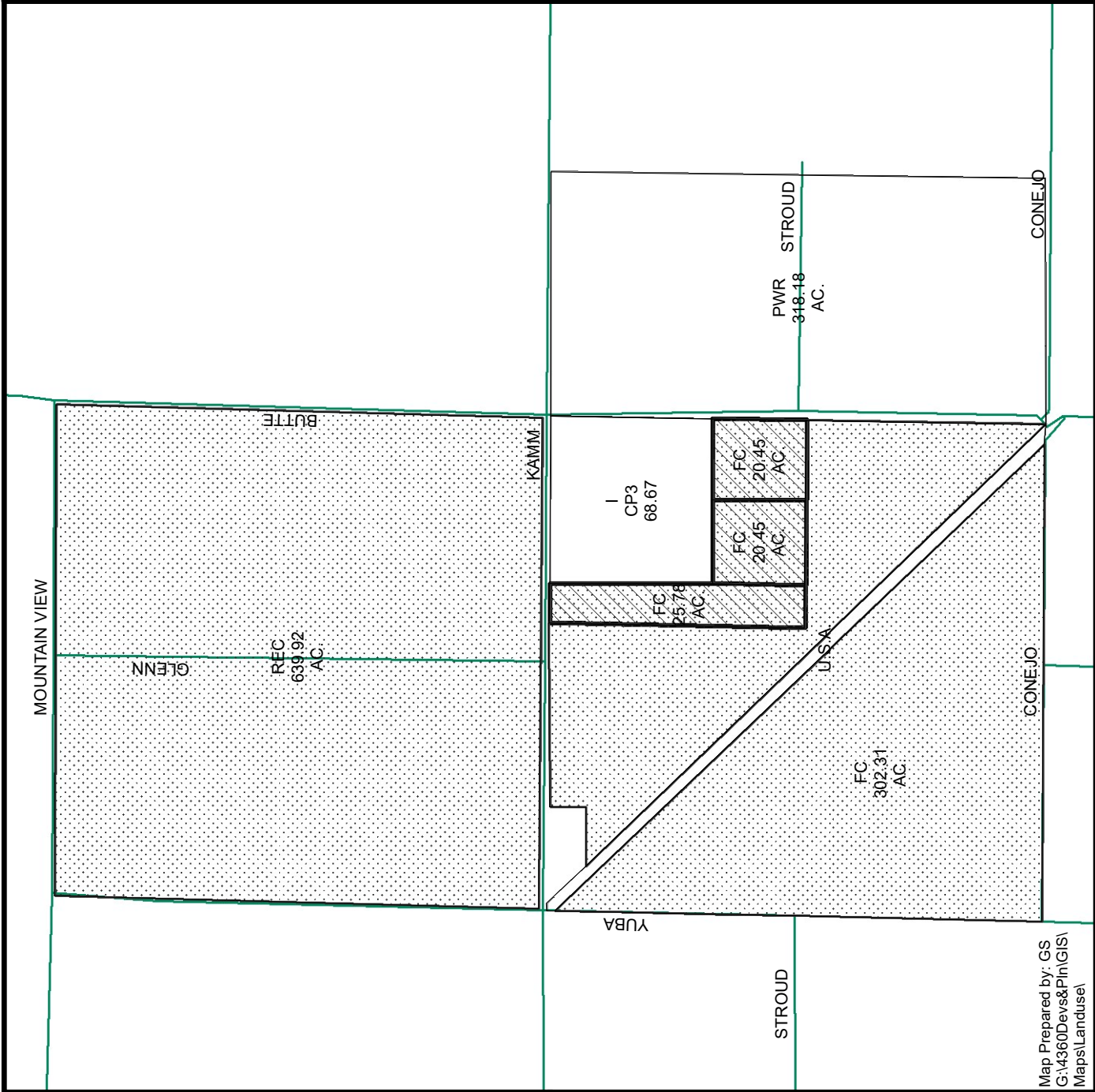
LEGEND	
CP# - OFFICE COMM./PROF	
FC - FIELD CROP	
I - INDUSTRIAL	
PWR - POWER GENERATION SITE	
REC - RECREATION	
V - VACANT	

LEGEND:

-  Subject Property
-  Ag Contract Land

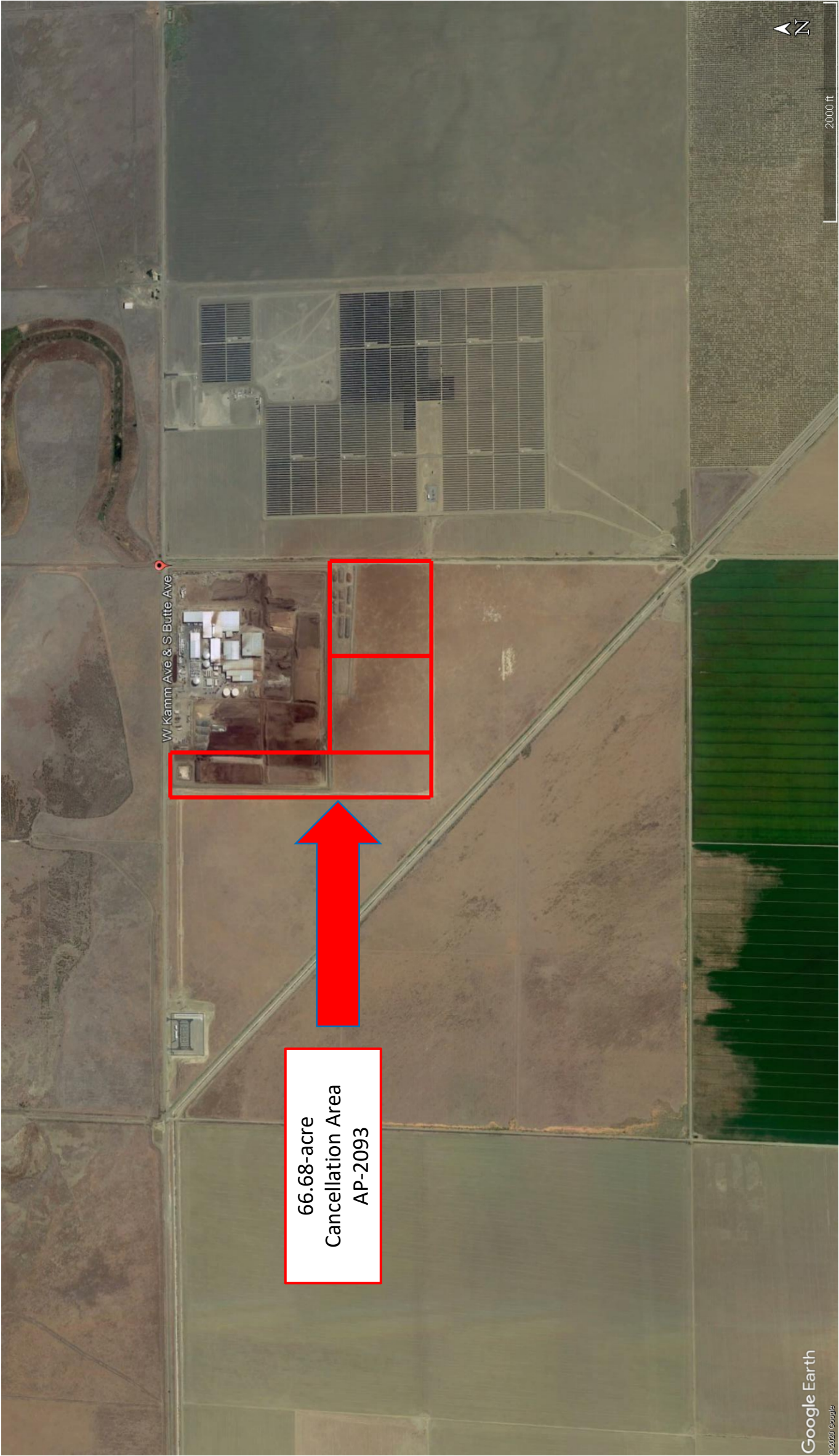


Department of Public Works and Planning
Development Services Division



Map Prepared by: GS
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ATTACHMENT D



66.68-acre
Cancellation Area
AP-2093

W Kamm Ave & S Butte Ave



Agricultural Land Conservation Committee Staff Report Agenda Item No. 2 April 7, 2021

SUBJECT: Review and make recommendation to the Board of Supervisors regarding petition for **PARTIAL CANCELLATION OF AGRICULTURAL LAND CONSERVATION CONTRACT NO. 2093 (RLCC NO. 1008)** to remove a 25.78-acre parcel, a 20.45-acre parcel and a second 20.45-acre parcel totaling 66.68 acres from the Williamson Act Program to expand an existing fertilizer manufacturing and storage facility.

LOCATION: The subject parcels are located on the southwest corner of West Kamm Avenue and the Butte Avenue alignment, approximately three miles west of the unincorporated community of Helm. The subject parcels are identified on the Assessor's plat as Parcel Nos. 040-080-42s, 040-080-43s, 040-080-44s and are located in Supervisorial District 1.

OWNER/APPLICANT: True Organics Products, LLC

REPRESENTATIVE: Dirk Poeschel

STAFF CONTACT: Eyasu Wolde, Planner
(559) 600-4305

Mohammad Khorsand, Senior Planner
(559) 600-4230

RECOMMENDATION:

Staff believes that the required Five Findings under Government Code Section 51282(b) can be made and therefore, recommends that the Agricultural Land Conservation Committee (Committee) recommend that the Board of Supervisors approve the petition for partial cancellation of Agricultural Land Conservation Contract No. 2093.

BACKGROUND:

The Agricultural Land Conservation Committee reviews petitions for cancellation of Agricultural Land Conservation Contracts for consistency of the petition with the purposes of the Williamson Act, pursuant to Section 51282 of the Government Code, and makes a recommendation to the Board of Supervisors to approve or deny the petition.

The subject parcels are located on the southwest corner of West Kamm Avenue and the Butte Avenue alignment, approximately three miles west of the unincorporated community of Helm

[see Location Map (Exhibit "A"), Existing Zoning Map (Exhibit "B"), Existing Land Use Map (Exhibit "C"), and Aerial Photograph (Exhibit "D")].

This Petition for Partial Cancellation was filed in conjunction with Conditional Use Permit (CUP) Application No. 3656 and associated Initial Study (IS) Application No. 7681, which proposes to expand an existing fertilizer manufacturing and storage facility onto three parcels abutting the existing facility totaling 68.67 acres. The parcels are designated as Agriculture and are located in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

The Williamson Act Program limits land uses on contracted parcels to commercial agricultural operations, compatible uses adopted by the Board of Supervisors, and certain qualified open space uses. The proposed expansion of the existing fertilizer manufacturing and storage facility does not qualify as a Permitted or a Conditionally Compatible Use on land that is enrolled in the Williamson Act Program and therefore, the applicant has submitted a petition to remove the parcels involved in the CUP No. 3656 from the Williamson Act Program through the cancellation process.

DISCUSSION:

The Williamson Act program is a voluntary program whereby private landowners enter into contract with local governments for the purpose of restricting the use of specific parcels of land to commercial agricultural uses for production of food or fiber. Certain land uses may be determined compatible on land enrolled in the Williamson Act Program by the local government having jurisdiction over contracted land. In return, landowners receive property tax assessments that are lower than normal because the assessments are based on farming or qualified open space uses rather than the full unrestricted market value of land. The purpose of the Williamson Act is to provide an incentive to preserve agricultural land for production of food or fiber, at least for the duration of the contract, which is 10 or 20 years depending on the type of contract.

Landowners or local governments may exit the contract by filing a Notice of Nonrenewal of the contract. Under this process, the remaining contract term (nine years in the case of an original term of ten years) is allowed to lapse, with the contract expiring at the end of the term. During the Nonrenewal process, the subject land will still be subject to contract restrictions, and the annual tax assessment increases incrementally each year until it is equivalent to unrestricted market value of the land at the end of the Nonrenewal period. This would allow lands that have been placed under contract to continue to be used for production of food and fiber for the nine-year remainder of the contract term and the landowner to benefit from lower property tax assessments.

According to the State Department of Conservation (DOC), cancellation of a contract is reserved for unusual "emergency" situations and the nine-year nonrenewal process has been identified as the legally preferred method for terminating a Williamson Act Contract. To address those unusual "emergency" circumstances, the Statute has provided provisions under which petitions for removal of a contract can be considered by the governing body having jurisdiction over the land. Processing a cancellation petition involves a comprehensive review of the petition to determine if a contract should be cancelled to allow establishment of a proposed alternative use, or if the land should remain in agricultural use for the duration of the contract.

Approval of a cancellation petition is discretionary and requires the payment of a fee by the landowner equal to 12.5 percent of the full market value of the property in question.

The proposed petition is being processed under the provisions of Government Code Section 51282(a)(1), which allows the Board of Supervisors to grant tentative approval for cancellation of a contract if the Board can make all of the findings listed under Government Code Section 51282(b).

Per Government Code Section 51282(b), cancellation of a contract is consistent with the provisions of the Land Conservation Act of 1965 if the Board can make all of the findings listed under said Government Code Section. Staff's evaluation of the proposed petition against the required findings are discussed below:

1. *That the cancellation is for land on which a Notice of Nonrenewal has been served pursuant to Section 51245 of the Government Code.*

An executed Notice of Partial Nonrenewal for Williamson Act Contract No. 2093 was accepted by the County Recorder on April 28, 2020 and was assigned Document No. 2020-0052505. Said Nonrenewal is for the 25.78-acre parcel, the 20.45-acre parcel and the second 20.45-acre parcel associated with this Petition for Partial Cancellation.

Based on the fact stated above, staff believes that Finding No. 1 can be made.

2. *That the cancellation is not likely to result in the removal of adjacent lands from agricultural use.*

This Petition for Partial Cancellation was filed in conjunction with CUP No. 3656 and associated IS No. 7681, which proposes to expand an existing fertilizer manufacturing and storage facility onto three parcels abutting the existing facility totaling 68.67 acres. The parcels are designated as Agriculture and are located in the AE-20 Zone District.

Surrounding parcels are designated as Agricultural in the County's General Plan and are zoned AE-20 (Exclusive Agricultural, 20-acre minimum parcel size). The adjacent parcels to the north, south and west of the subject site are under a Williamson Act contract. However, none of the parcels are being actively farmed. The adjacent parcel to the east, identified as Assessor's Parcel Number 040-080-15s, has been fully developed as a Solar Facility and is not under contract. The current landowner has operated the existing facility since 2010. However, the previous landowner started operating the facility in 1990 and this proposed use is to expand the facility. This proposed use will not result in the removal of the adjacent parcels as they are not being actively farmed.

Based on the above discussion, staff believes the proposed cancellation will not likely result in the removal of adjacent lands from agricultural use and therefore, Finding No. 2 can be made.

3. *That the cancellation is for an alternative use that is consistent with the provisions of the County General Plan.*

This Petition for Partial Cancellation has been filed in conjunction with CUP No. 3656 and associated IS No. 7681, which proposes to expand an existing fertilizer manufacturing and storage facility located in the AE-20 Zone District.

The Agriculture and Land Use Element of the General Plan sets goals and policies promoting long-term conservation of productive agricultural lands. General Plan Policy LU-A.1 states that the County shall maintain agriculturally designated areas for agricultural use and shall direct urban growth to cities and unincorporated communities. General Plan Policy LU-A.3 states that the County may allow by discretionary permit in areas designated Agriculture, special agricultural uses and agriculturally related activities. General Plan Policy LU-A.12 requires protection of agricultural activities from encroachment of incompatible uses. General Plan Policy LU-A.13 states that the County shall protect agricultural operations from conflicts with non-agricultural uses. General Plan Policy LU-A.14 states that the County shall ensure that the review of discretionary permits includes an assessment of the conversion of productive agricultural land and that mitigation be required where appropriate.

The applicant acquired the subject parcels in 2015 and has not utilized the parcels for commercial agricultural purposes. Review of aerial photographs dating back to 2004 show no agricultural use on the subject parcels. Further, according to the applicant, there are no water wells located on the subject parcels, nor do the subject parcels receive any surface water allocation. There is no agricultural well to provide irrigation water to farm the subject parcels.

Regarding Policy LU-A.3, the project entails expansion of an existing fertilizer processing plant which is in an agricultural area and the use provides a service to the surrounding agricultural operations in the area. The project site is not prime farmland and is classified as Farmland of Local Importance and Semi-Agricultural and Rural Commercial Land in the 2016 Fresno County Important Farmland Map. Further, the proposed expansion will not substantially increase water consumption by the facility.

Regarding Policies LU-A.12 and LU-A.13, this proposal entails to expand an existing fertilizer manufacturing and storage facility on agricultural parcels that have been enrolled in the Williamson Act program but have not been used by the applicant for commercial agricultural operation. In addition, the neighboring parcels are also not being farmed. The proposed expansion of the fertilizer manufacturing and storage facility does not appear to be an incompatible use with the adjacent and surrounding land uses. Concerning LU-A.14, this project will result in the loss of 68.67 acres of farmland. However, as stated previously, the parcels have not been actively farmed for years.

Based on the above discussion, staff believes that the proposed alternative use is consistent with the County General Plan and therefore, believes Finding No. 3 can be made.

4. *That the cancellation will not result in discontinuous patterns of urban development.*

The subject parcels are located in a rural area away from any city or unincorporated community, and neighboring parcels are designated as Agricultural in the County

General Plan and therefore, staff believes this proposal does not represent a discontinuous pattern of urban development.

Based on the above discussion, staff believes Finding No. 4 can be made.

5. *That there is no proximate non-contracted land that is both available and suitable for the use to which it is proposed that the contracted land be put, or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.*

County staff generated a map and list of non-contracted parcels between 65-75 acres in size located within a 5-mile radius of the subject parcels and sent letters to the owners of these non-contracted parcels requesting that said owners notify staff if their parcels are for sale. County staff was not contacted by any of the landowners within the five-mile radius about the availability of their parcels for the proposed use.

Based on staff's inquiry, none of the owners of non-contracted parcels of similar size were interested in selling their parcel to be used for the alternative use, and therefore staff believes Finding No. 5 can be made.

OTHER REVIEWING AGENCIES:

As of January 1, 2001, Government Code Section 51284.1(a) requires notification to be provided by the County to the Director of the State Department of Conservation (the Director) once a cancellation petition has been accepted as complete. Under Government Code Section 51284.1(c), the Director's comments, if provided, are required to be considered by the Board of Supervisors before acting on the proposed cancellation.

The cancellation petition was forwarded to the Director on July 29, 2020. Staff allows at least 30 days for the DOC to provide comments. In this case, the DOC has not provided comments regarding the petition.

CONCLUSION:

Based upon staff's analysis of the proposed alternative use against the consistency findings listed under Government Code 51282(b), staff believes all the findings can be made, and therefore, recommends approval of the partial cancellation of Agricultural Land Conservation Contract No. 2093, subject to the conditions listed below:

1. The landowner shall obtain the necessary land use approvals, including CUP No. 3656.
2. The applicant shall pay the Cancellation Fee in the amount of \$34,375 as determined by the County Assessor and certified by the Board of Supervisors for issuance of a Certificate of Cancellation by the Board. The Cancellation Fee shall be paid, and a Certificate of Cancellation issued prior to exercising the CUP 3656 or issuance of any permit associated with the proposed use.

ALCC Agenda Item No. 2

April 7, 2021

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However, if the Committee believes that the required Findings cannot be made, the Committee must recommend that the Board of Supervisors deny the partial cancellation of Agricultural Land Conservation Contract No. 2093.

EW:IM

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ALCC Staff Report.docx

LOCATION MAP



San Joaquin

COLORADO

MC MULLIN

**SUBJECT
PROPERTY**

KAMM



FRESNO SLOUGH

LASSEN

145

Helm

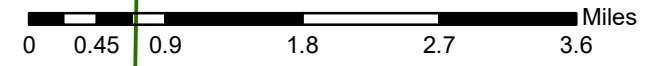


EXHIBIT A

EXISTING ZONING MAP

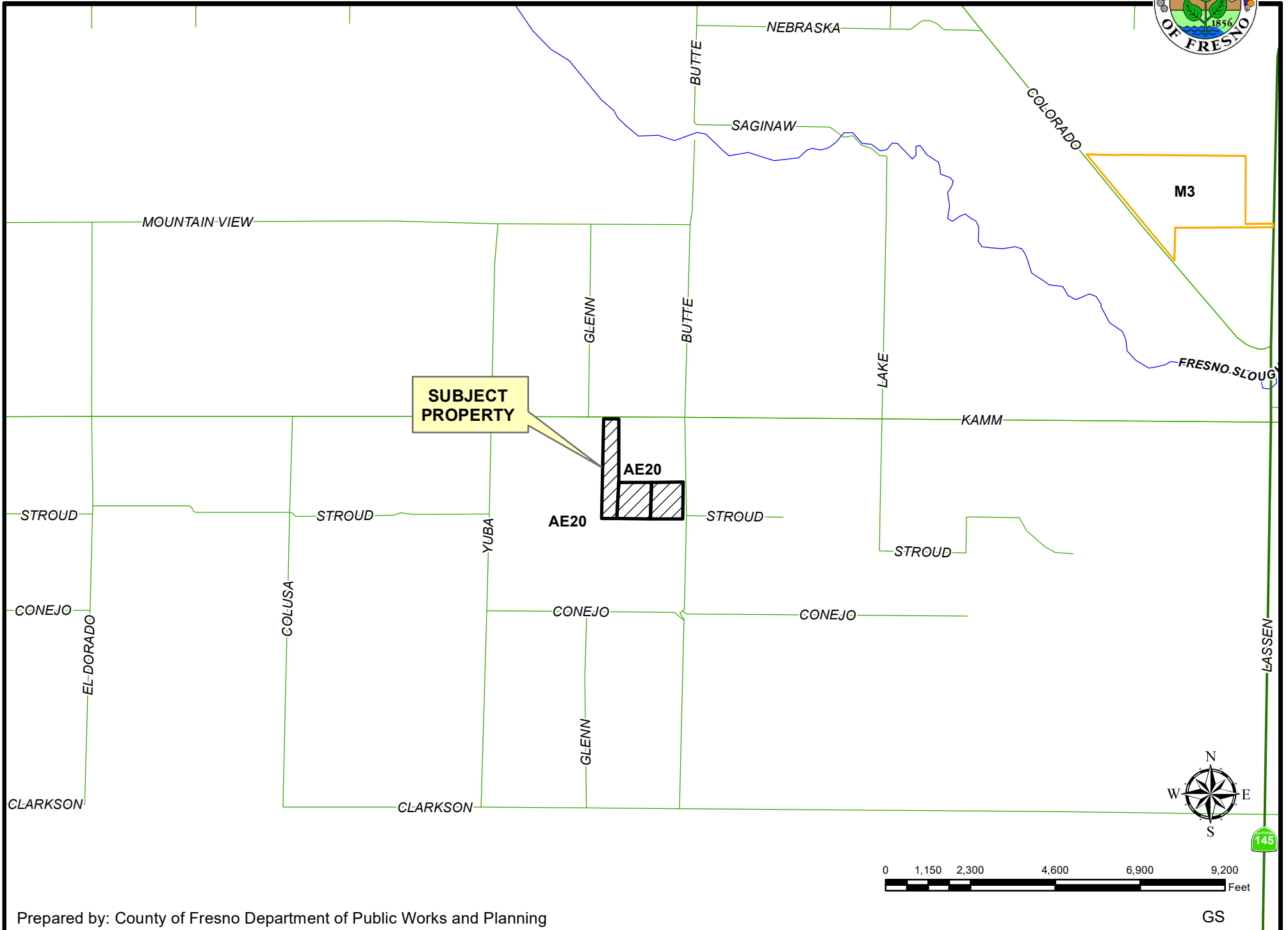
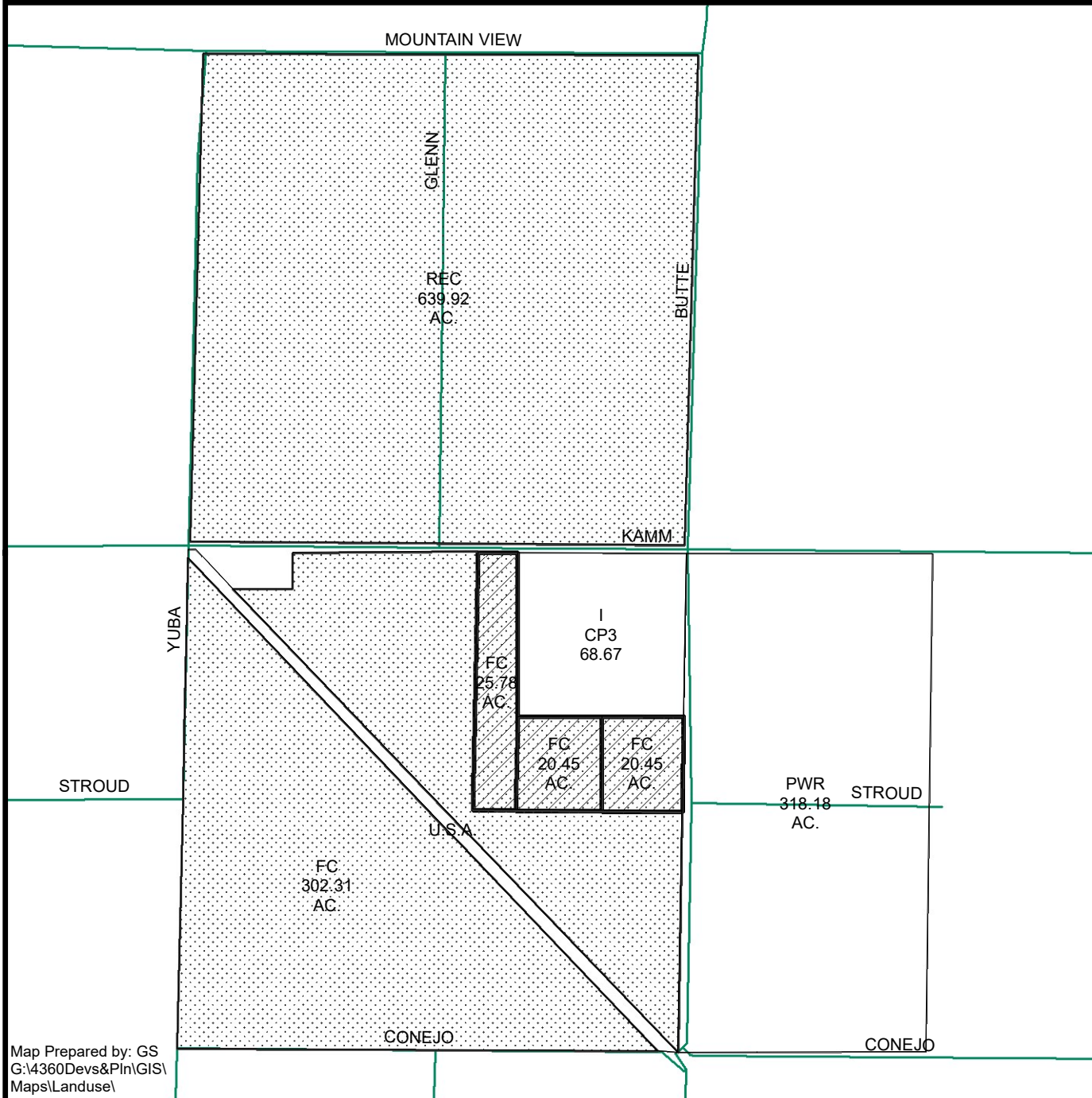




EXHIBIT B

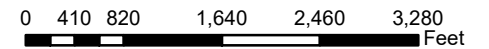
EXISTING LAND USE MAP



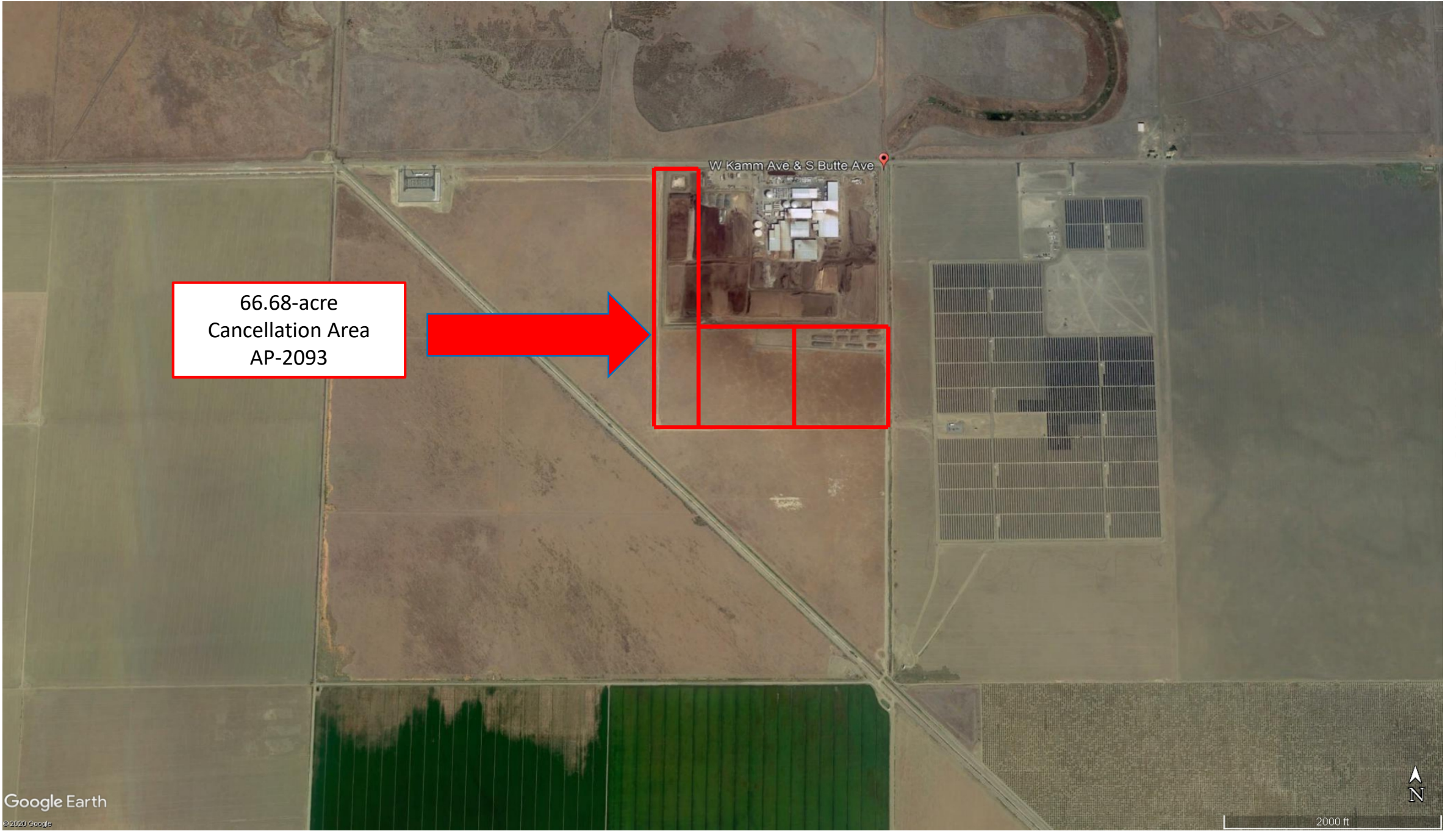
LEGEND	
CP#	OFFICE COMM./PROF
FC	FIELD CROP
I	INDUSTRIAL
PWR	POWER GENERATION SITE
REC	RECREATION
V	VACANT

LEGEND:

-  Subject Property
-  Ag Contract Land



Department of Public Works and Planning
Development Services Division



66.68-acre
Cancellation Area
AP-2093

W Kamm Ave & S Butte Ave

