



# Inter Office Memo

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**ATTENTION: FOR FINAL ACTION OR MODIFICATION TO OR ADDITION OF CONDITIONS, SEE FINAL BOARD OF SUPERVISORS' ACTION SUMMARY MINUTES**

DATE: December 14, 2023  
TO: Board of Supervisors  
FROM: Planning Commission  
SUBJECT: RESOLUTION NO. 13018 — VARIANCE NO. 4153

APPLICANT: James Maxey

OWNER: Dumax Properties, LLC.

REQUEST: Allow for the creation of two substandard parcels, a 7.64-acre parcel, and a 13.87-acre parcel from an existing 21.51-acre parcel and waive development standards to allow for 12 foot side yard setbacks where 20 foot side yard setbacks are required within the AE-20 (Exclusive Agricultural, 20-acre minimum) Zone District.

LOCATION: The subject parcel is located on the north side of King Canyon Road, approximately 1.7-miles from the City of Sanger (APN: 314-120-52) (10386 E. Kings Canyon Road) (Sup. Dist. 5).

**PLANNING COMMISSION ACTION:**

At its hearing on December 14, 2023, the Commission considered the Staff Report and testimony (summarized in Exhibit A).

A motion was made by Commissioner Carver and seconded by Commissioner Quist to deny variance application 4153 on the grounds that Finding Nos. 1, 2 and 4 could not be made.

This motion passed on the following vote:

VOTING:      Yes:            Commissioners Carver, Quist, Abrahamian, Hill, and Zante  
                  No:            None  
                  Absent:        Commissioners Arabian, Chatha, and Woolf  
                  Abstain:       None

STEVEN E. WHITE, DIRECTOR  
Department of Public Works and Planning  
Secretary-Fresno County Planning Commission

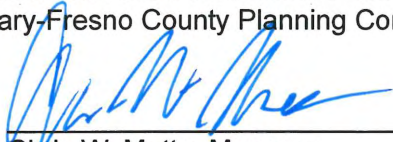
By:   
TM. Chris W. Motta, Manager  
Development Services and Capital Projects Division

EXHIBIT A

Variance Application No. 4153

- Staff: The Fresno County Planning Commission considered the Staff Report dated December 14, 2023, and heard a summary presentation by staff.
- Representative: The applicants disagreed with the staff's recommendation. They stated the variance findings could be made and offered the following information to clarify the intended use:
- Variance is not intended to facilitate the selling of the property.
  - The parcel already has two separate agricultural businesses being operated and the partners that own the parcel want to operate them separately, dividing the land between the two would be an extraordinary circumstance.
  - A rezone was approved for a commercial gas station less than half a mile away which sets a precedent for this type of entitlement.
  - There will be no impact to the surrounding neighborhood because the uses will remain the same.
  - The variance can be made for Finding No. 4 because the uses on the parcel will still be agricultural related.
  - When the partners acquired the land, it was fallow, and they have restored agricultural activities on the land.
  - The partners have had difficulty leasing the nursery, and they are unable to receive their production credits with the nursery attached to their almond orchard.
- Others: No individuals presented information in support of or in opposition to the proposal.
- Correspondence: No letters were presented to the Planning Commission in support of or in opposition to the application.

EXHIBIT "B"

ATTACHMENT  
TO  
AGENDA ITEM

FISCAL IMPACT STATEMENT

Variance Application No. 4153

Listed below are the fees collected for the land use applications involved in this Agenda Item:

Variance Application:	\$ 6,049.00 <sup>1</sup>
Environmental Review:	259.00 <sup>2</sup>
Pre- Application Credit	(247.00) <sup>3</sup>
Agricultural Review	34.00 <sup>4</sup>
Health Department Review:	<u>365.00<sup>5</sup></u>
<b>Total Fees Collected</b>	<b><u>\$ 6,460.00</u></b>

<sup>1</sup> Includes project routing, coordination with reviewing agencies, preparation and incorporation of analysis into Staff Report.
<sup>2</sup> Review proposal to provide appropriate California Environmental Quality Act (CEQA) evaluation.
<sup>3</sup> Pre-Application Credit granted if application filed within 6-month timeframe
<sup>4</sup> Review of proposal by the Department of Agricultural Land Use.
<sup>5</sup> Review of proposal by the Department of Public Health, Environmental Health Division to provide comments.



# County of Fresno

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

## Planning Commission Staff Report Agenda Item No. 3 December 14, 2023

**SUBJECT:** Variance Application No. 4153 & Environmental Review No. 8430

Allow for the creation of two substandard parcels, a 7.64-acre parcel, and a 13.87-acre parcel from an existing 21.51-acre parcel and waive development standards to allow for 12 foot side yard setbacks where 20 foot side yard setbacks is required within the AE-20 (Exclusive Agricultural, 20-acre minimum) Zone District. The Property owner is pursuing the subdivision of land with the intention of selling the resulting newly created parcels of land for business purposes. If approved, mapping procedure to follow.

**LOCATION:** The subject parcel is located on the north side of King Canyon Road, approximately 1.7-miles from the City of Sanger. (APN: 314-120-52) (10386 E. Kings Canyon Road) (Sup. Dist. 5).

**OWNER** Dumax Properties, LLC

**APPLICANT:** James Maxey, CEO

**STAFF CONTACT:** Reymundo Peraza, Planner  
(559) 600-4224

David Randall, Senior Planner  
(559) 600-4052

**RECOMMENDATION:**

- Deny Variance Application No. 4153 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. Zoning Map
4. Land Use Map
5. Variance Map
6. Site Plans
7. Applicant's Variance Findings
8. Photos

**SITE DEVELOPMENT AND OPERATIONAL INFORMATION:**

<b>Criteria</b>	<b>Existing</b>	<b>Proposed</b>
General Plan Designation	Agricultural	No change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.	No change
Parcel Size	21.51 acres	Parcel A: 7.64-acres Parcel B: 13.87-acres
Project Site	Plant Nursery on the southeast section of the parcel, and an Almond Orchard covering the remainder of the parcel.	Split the parcel into two parcels – one legal parcel for the Plant Nursery and the other legal parcel for the Almond Orchard.
Structural Improvements	Mobile Home, Metal Storage Building, Green House Structures, and Shade Structures.	No change
Nearest Residence	500 feet east of the subject parcel.	No Change
Surrounding Development	Agricultural	No change

**EXISTING VIOLATION (Y/N) AND NATURE OF VIOLATION: N****ENVIRONMENTAL ANALYSIS:**

It has been determined pursuant to Article 5: Review for Exemption, Section 15061(b)(3) of the California Environmental Quality Act (CEQA) guidelines: The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA

**PUBLIC NOTICE:**

Notices were sent to 12 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:**

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

**PROCEDURAL CONSIDERATIONS:**

A Variance Application may be approved only if four Findings specified in the Fresno County Zoning Ordinance, Section 877-A are made by the Planning Commission. If approved a separate mapping procedure to legally create the two proposed lots would be required.

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:**

The subject parcel is a legal parcel currently owned by Dumax Properties, LLC approximately 21.51-acres in size and has been developed with the following physical improvements, a mobile home, metal storage building, three shade structures, three green houses, two water wells - one for agriculture and the other for domestic water, and a septic system. The remainder of the property is planted with almond orchards. The parcel is also operating a plant nursery for growing plants and trees to sell for landscaping distribution.

The current Variance request proposes to allow the division of the parcel containing approximately 21.51-acres, into two parcels a 7.64-acre parcel (which will operate the plant nursery) and a 13.87-acre parcel (which will operate the almond orchard), both parcels would be less than the required minimum 20-acre parcel in the AE-20 Zone District. In addition, the Variance is requesting to reduce the required 20 foot side yard setback to 12 feet would also be required to accommodate an existing metal building. If this Variance is approved, it is the intention of the property owner to operate each business separately under different ownerships.

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

According to available records there have been two variance requests within one mile of the subject property for substandard size lots.

Application/Request	Staff Recommendation	Final Action	Date of Action
VA 4014 – Creation of a five-acre parcel from an existing 19.68-acre parcel	Denial	Planning Commission Approved	January 12, 2017
VA 4106 – Allow a 75-foot-tall sign, 300 square feet in area	Denial	Planning Commission Denied	August 12, 2021

	<b>Current Standard:</b>	<b>Proposed Configuration:</b>	<b>Is Standard Met (y/n):</b>
Setbacks	<u>AE-20</u> Front: 35 feet Side: 20 feet Rear: 20 feet	Parcel A Front: 5.9 feet Side: 12 feet Rear: 20 feet  Parcel B Front: 35 feet Side: 20 feet Rear: 20 feet	No - Front yard setback is legal nonconforming as a result of the installation of Highway 180  Yes
Parking	As per Zoning Ordinance Section 855.1	No changes	Yes
Lot Coverage	No requirement	No changes	Yes
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.	No changes	Yes
Wall Requirements	No requirement	No changes	Yes
Septic Replacement Area	100 percent of the existing system.	No change	Yes
Water Well Separation	Building sewer/ septic tank: 100 feet  Disposal Field: 100 feet	No change	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 related to Finding 1:**

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

### **Finding 1 Analysis:**

In support of Finding 1, the Applicant's findings state that the property has exceptional or extraordinary circumstances due to the owners of the limited liability corporation (Dumax Properties) wanting to split the operations currently being used on the parcel, which requires the separation of the parcel.

Finding 1 states that a variance is applicable where there are exceptional or extraordinary circumstances/conditions applicable to the property. However, the applicants financial business interest, personal, social, or financial advantages are not valid justifications for granting a variance. To grant a variance based on a person's circumstances rather than the property's features/circumstances is to grant a special privilege to the person, which is against state law.

### **Recommended Conditions of Approval:**

None.

### **Finding 1 Conclusion:**

Based on the analysis Finding 1 cannot be made. Staff was unable to identify any exceptional or extraordinary physical features or circumstances particular to the subject parcel warranting the granting of the variance.

**Finding 2:** **Such Variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity having the identical zoning classification.**

### **Reviewing Agencies/Department Comments related to Finding 2:**

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

### **Finding 2 Analysis:**

In support of Finding 2, the Applicant's findings state the creation of the two parcels are necessary to maintain the enjoyment of the two existing businesses.

Finding 2 states that a variance is necessary for the preservation and enjoyment of a substantial property right of the applicant. However, the applicant does not provide any evidence to suggest that the land is prohibiting the intended use, or that the variance would resolve this issue. There is no right to divide the existing parcel that overrides the development standards. The ability to divide the parcel to meet the applicants business needs, regardless of development standards, is not a substantial property right enjoyed by other property owners in the vicinity. Other property owners in the vicinity are subject to the same requirements and restrictions with respect to the creation of substandard-size lots.

Variances can only be used to provide relief to preserve the "substantial property rights" allowed by the zone district 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. Staff nor the applicant were unable to identify any situation pertaining to this variance request, that would constrain the use of property as allowed by the zoning and create a deficit of a property right enjoyed by other owners in the vicinity, under the same zoning.

**Recommended Conditions of Approval:**

None.

**Finding 2 Conclusion:**

Finding 2 cannot be made, as denial of this Variance would not deprive the Applicant of any right enjoyed by other property owners in the AL-20 Zone District, since all property owners are subject to the same development standards and are restricted from reducing or further developing parcels less than 20 acres in size. Granting of this Variance could be construed as granting of a special privilege not enjoyed by surrounding properties with the same zoning.

**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**

	<b>Size:</b>	<b>Use:</b>	<b>Zoning:</b>	<b>Nearest Residence:</b>
North	34.68 acres	Orchard	AE-20	N/A
South	139.62 acres	Orchard	AE-20	N/A
East	22.44 acres	Field Crops	AE-20	N/A
West	22.30 acres	Orchard	AE-20	N/A

**Reviewing Agency/Department Comments:**

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

**Finding 3 Analysis:**

In support of Finding 3, the Applicant’s Findings state that the granting of the Variance will not be detrimental to the public welfare or injurious to property or improvements in the vicinity.

In regard to Finding 3, it is the intention of the Applicant, if this Variance is approved, to divide the existing parcel into two smaller parcels, which would be allowed, as a by-right, to have one single family residence on each parcel with the option to apply for a Director Review & Approval to allow a second residence developed separately with single-family dwellings; as such, there would be an increase in residential density, necessitating the installation of additional domestic wells and septic systems to serve the future development.

As the subject parcel is not within a water-short area, the potential for impacts to neighboring wells is minimal.

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

**Recommended Conditions of Approval:**

None.

**Finding 3 Conclusion:**

Finding 3 can be made due to the limited scale of this individual request, the application does not present a significant material detriment to properties in the vicinity.

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

<b>Relevant Policies:</b>	<b>Consistency/Considerations:</b>
<p><b>General Plan Goal LU-A:</b> <i>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.</i></p>	<p><b>Inconsistent:</b> Substandard parcels that are created for residential purposes will likely interfere with agricultural operations on surrounding parcels that are designated and zoned for production of food and fiber and may potentially result in removal of adjacent or neighboring lands from agricultural use. Moreover, it may set a precedent for other landowners to create similar residential parcels in the area, which will compound the incompatibility between the agricultural and residential use of lands located in an area of the County designated and used for agricultural operations.</p>
<p><b>General Plan Policy LU-A.6:</b> <i>The County shall maintain twenty (20) acres as the minimum permitted parcel size in areas designated Agriculture, except as provided in policies LU-A.9, LU-A.10, and LU-A.11. the County may require parcel sizes larger than twenty (20) acres based on zoning, local agricultural conditions, and to help ensure the viability of agricultural operations.</i></p>	<p><b>Inconsistent:</b> The proposed parcel creation is not consistent with this Policy. There are exceptions allowed subject to certain criteria. In this instance, the application either did not meet the criteria or elected not to choose one of the available options for creating a substandard sized parcel.</p>
<p><b>General Plan Policy LU-A.7:</b> <i>County shall generally deny requests to create parcels less than the minimum size specified in Policy LU-A.6 based on concerns that these</i></p>	<p><b>Inconsistent:</b> The proposed parcel division is not consistent with Policy LU-A.7 as it would create one substandard sized parcel.</p>

<b>Relevant Policies:</b>	<b>Consistency/Considerations:</b>
<p><i>parcels are less viable economic farming units, and that the resultant increase in residential density increases the potential for conflict with normal agricultural practices on adjacent parcels. Evidence that the affected parcel may be an uneconomic farming unit due to its current size, soil conditions, or other factors shall not alone be considered a sufficient basis to grant an exception. The decision-making body shall consider the negative incremental and cumulative effects such land divisions have on the agricultural community.</i></p>	<p>The creation of a parcel less than 20 acres in the AE-20 Zone District would be inconsistent with Policy LU-A.7 and set a precedent for parcellation of farmland into smaller parcels which are economically less viable farming units and could potentially allow additional single-family homes on the proposed parcels. Such increase in the area, as noted by Fresno County Department of Agriculture, may conflict with normal agricultural practices on adjacent properties.</p>
<p><b>General Plan Policy LU-A.12:</b> <i>In adopting land use policies, regulations and programs, the County shall seek to protect agricultural activities from encroachment of incompatible land uses.</i></p>	<p><b>Inconsistent:</b> The creation of a parcel less than 20 acres in the AE-20 Zone District would be inconsistent with Policy LU-A.12 as smaller parcels could potentially allow a higher density residential area which is inconsistent with the compatibility of the AE-20 zone district.</p>
<p><b>General Plan Policy LU-A.14:</b> <i>The County shall ensure that the review of discretionary permits includes an assessment of the conversion of productive agriculture land and the mitigation be required were appropriate.</i></p>	<p><b>Consistent:</b> In this case, productive agricultural land would not necessarily be converted, rather it would be reallocated between the two subsequent parcels, with the majority of the of the land to be located on proposed parcel B.</p>

**Reviewing Agency Comments:**

Policy Planning Section of the Fresno County Department of Public Works and Planning indicated:

**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, 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.

**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.

Regarding Policies LU-A.6 and LU-A.7, approval of VA Application No. 4153 and associated ER Application No. 8430 would result in the creation of two substandard parcels. The proposed 7.00-acre substandard parcel would be used for a landscaping business and the 14.51-acre parcel as an orchard. The proposed zone variance application will result in creation of two substandard parcels in an area of the County that is designated as Agricultural and Zoned AE-20, Exclusive Agricultural with 20-acre minimum parcel size.

Therefore, the proposed Variance application is not consistent with General Plan Policies LU-A.6 and LU-A.7.

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

#### **Finding 4 Analysis:**

In support of Finding 4, the Applicant states "The proposed adjustment is allowable under the current county code (which requires a variance). The proposed adjustment will not affect the existing use of the site, which is already consistent with the General Plan."

The Applicant's assertion that a Variance in itself makes the project consistent with the General Plan is incorrect. The table above details how the proposal is inconsistent with the General Plan Policies.

The project would be contrary to the Goals and Policies of the General Plan. The General Plan Policy LU-A.9 does contain provisions which allow for the creation of substandard-sized lots for the creation of home site parcels, subject to certain specific criteria. This application does not meet the required criteria listed under Policy LU-A.9 to allow creation of a substandard size lot.

#### **Finding 4 Conclusion:**

Finding 4 cannot be made as the project would be contrary to General Plan Goal LU-A, Policies LU-A.6, LU-A.7, LU-A.12, and LU-A.14 in the General Plan.

#### **Summary:**

The existence of personal desires and personal circumstance is not a basis for granting a variance. Granting of the variance could be construed as inconsistent with Government code section 65906 and County Code Section 19.040.030-B which prohibits granting of unqualified variances and states in part "...shall constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity of the affected property."

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, the variance is not necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity, and the application is contrary to the goals and policies of the General Plan.

## **PLANNING COMMISSION MOTIONS:**

### **Recommended Motion** (Denial Action)

- Move to determine that required Findings 1, 2, & 4 cannot be made as stipulated in the staff report and move to deny Variance Application No. 4153 and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

### **Alternative Motion** (Approval Action)

- Move to determine the required Findings can be made (state basis for making the Findings) and move to approve Variance Application No. 4153, 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.

RP:jp

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**Variance Application (VA) No. 4153 & Environmental Review No. 8430  
Conditions of Approval and Project Notes**

Conditions of Approval	
1.	Development shall be substantially consistent with the site plan (Exhibit 6) as approved by the Planning Commission.
2.	Existing Farm Metal Storage Building and Existing Shade Structures must be permitted or removed before approval of Variance can be considered valid.
3.	A special inspection is required to verify removal and proper abandonment of an existing septic system, before approval of Variance can be considered valid.

Conditions of Approval reference recommended Conditions for the project.

Notes	
<b>The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.</b>	
1.	Any work performed within the County road right-of-way will require an encroachment permit.
2.	The end of curbed/taper edge of any existing or future access driveway approach should be set back a minimum of 5 feet from the property line
3.	Any existing or future entrance gate should be set back a minimum of 20 feet from the road right-of-way line or the length of the longest truck entering the site and shall not swing outward.
4.	A 10 foot x 10 foot corner cut-off should be improved for sight distance purposes at any existing driveway accessing Kings Canyon Road if not already present.
5.	A grading permit or voucher is required for any future grading proposed with this application.
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.	If approved, the subdivision will require a that a Tentative Parcel Map be prepared in accordance with the Professional Land Surveyors Act, the Subdivision Map Act and County Ordinance. The Tentative Parcel Map application shall expire two years after the approval of said Tentative Parcel Map.


**Notes**

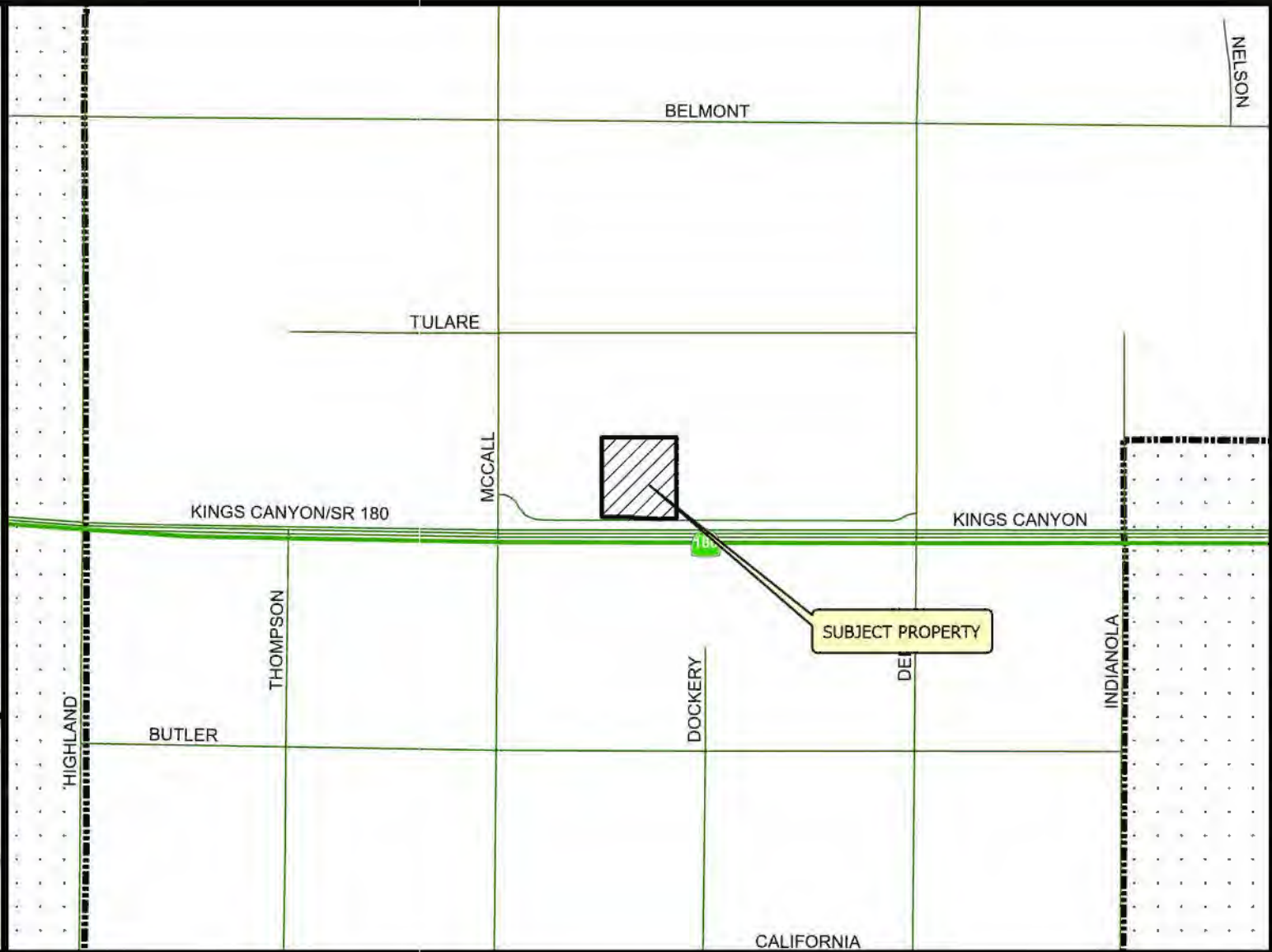
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|----|---|
| 9. | Upon approval and acceptance of the Tentative Parcel Map and any Conditions imposed thereon, a Final Parcel Map shall be prepared and by a Professional Land Surveyor or Registered Civil Engineer authorized to practice Land Surveying 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. |
|----|---|

RP:jp

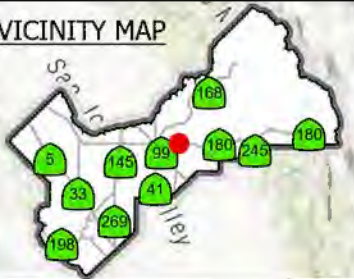
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**Legend**

 Subject Property



**VICINITY MAP**

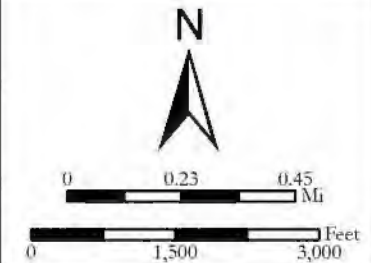


**LOCATION MAP**

**VA4153**

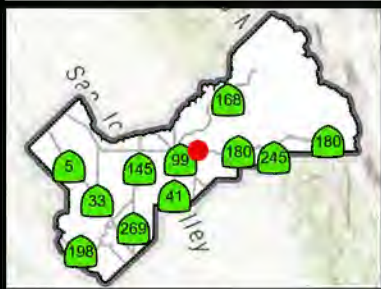
**2023**

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division  
Person Prepared by : chuang  
On Date : 7/20/2023



**Legend**

-  Subject Property
-  City Sphere of Influence
-  C6
-  AC
-  AE20
-  AE40
-  C2

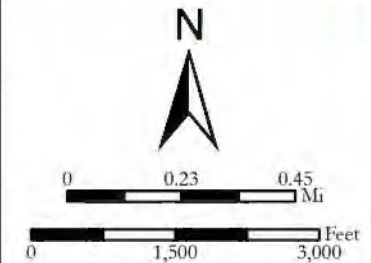


# Existing Zoning Map



VA4153  
STR 5 - 14S / 22E

2023

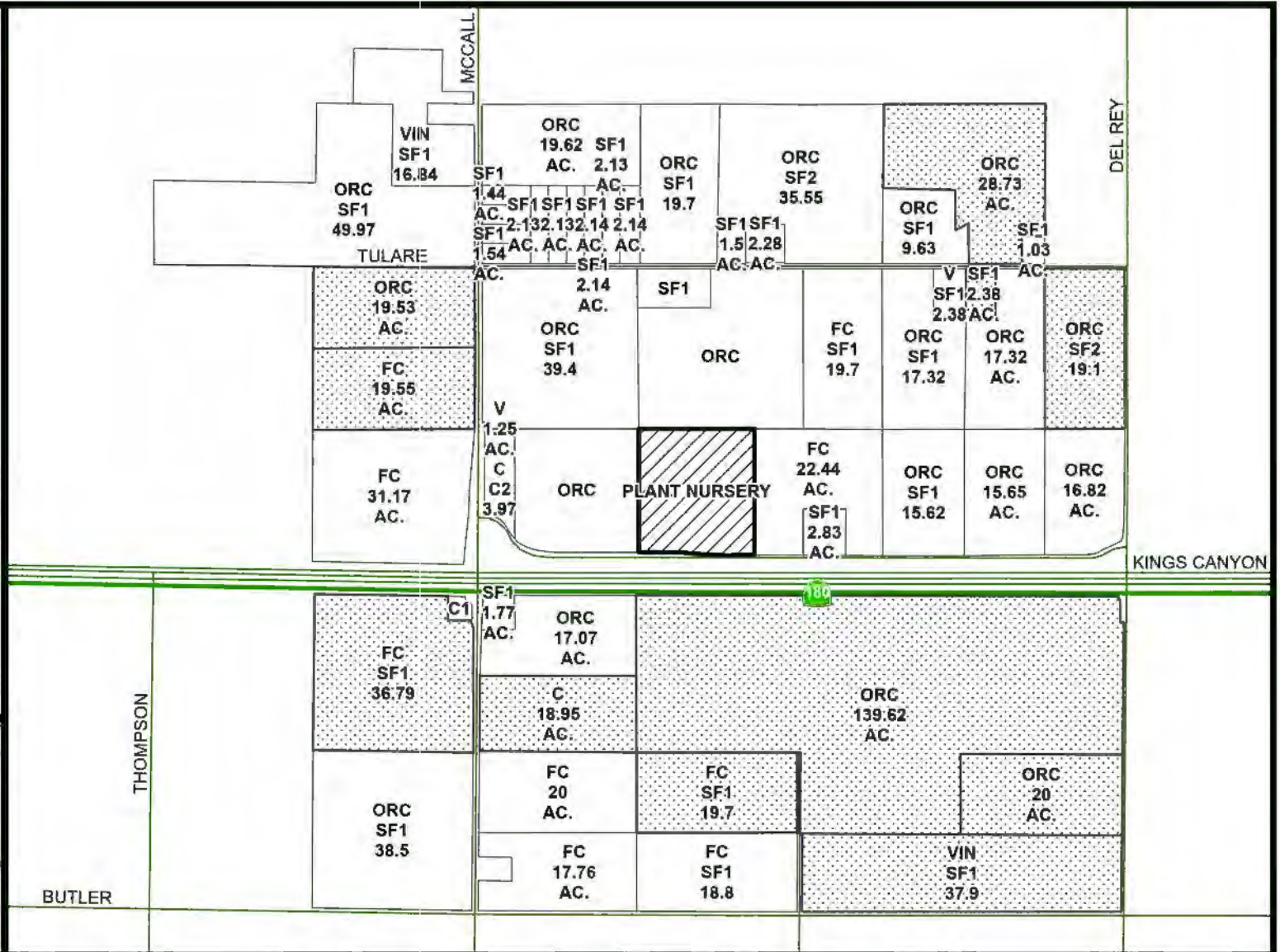
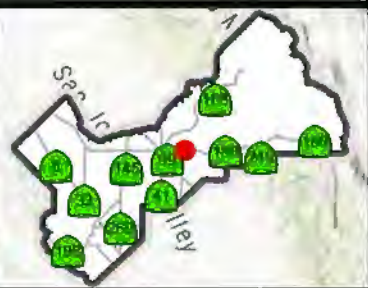
Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division  
 Person Prepared by : chuang  
 On Date : 7/20/2023



**LEGEND:**

-  Subject Property
-  Ag Contract Land

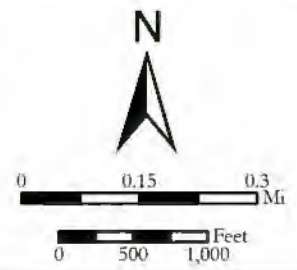
LEGEND
C - COMMERCIAL
C# - COMMERCIAL
FC - FIELD CROP
ORC - ORCHARD
SF# - SINGLE FAMILY RESIDENCE
V - VACANT
VIN - VINEYARD





# Existing Land Use Map

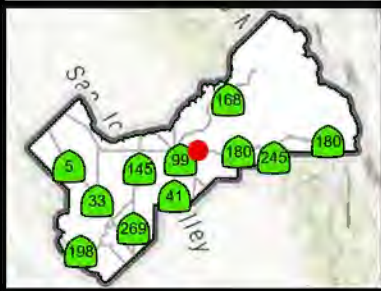
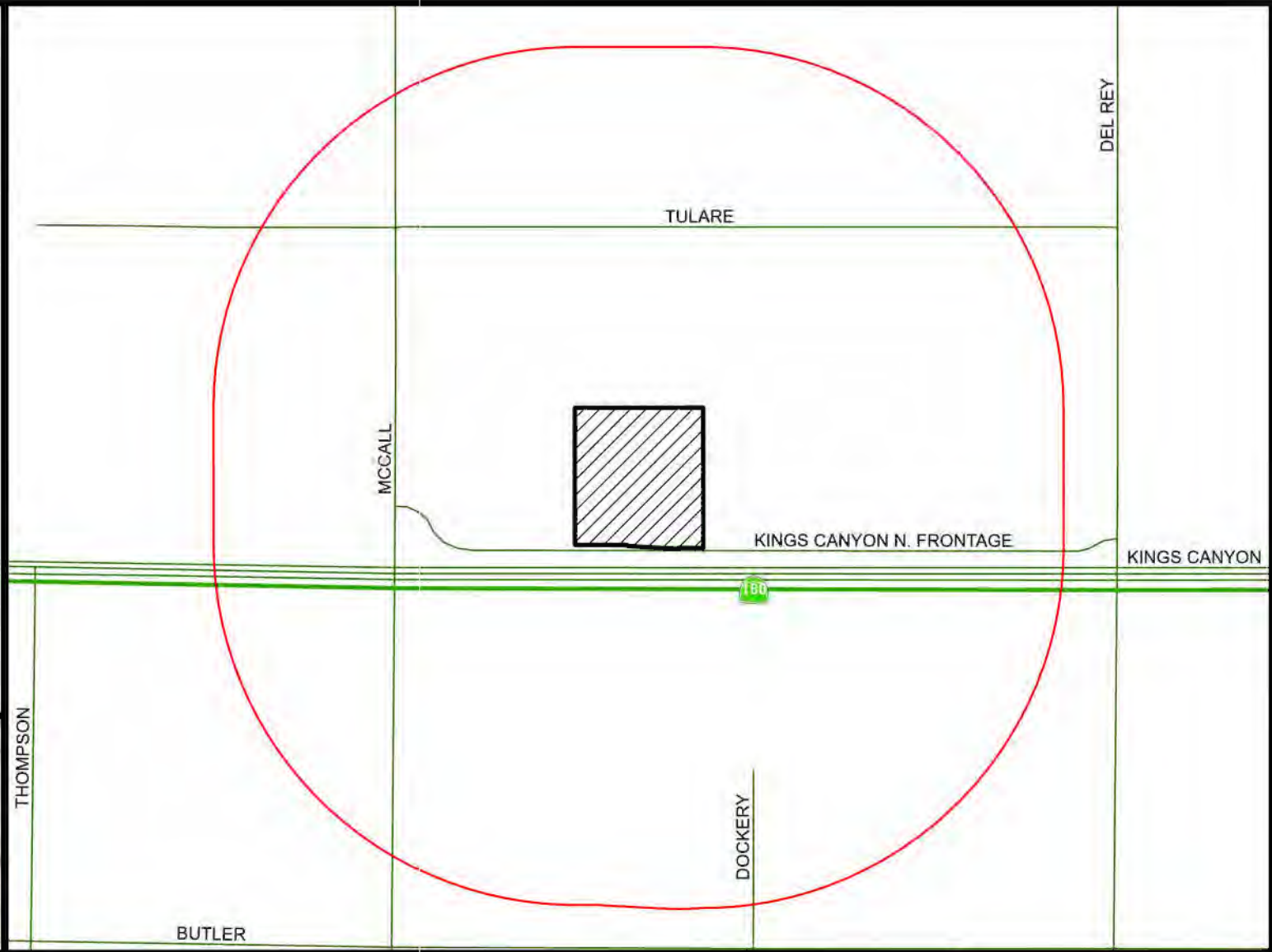
## VA4153 | 2023

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division  
 Person Prepared by : chuang  
 On Date : 7/20/2023



**Legend**

-  Half Mile Buffer
-  Subject Property

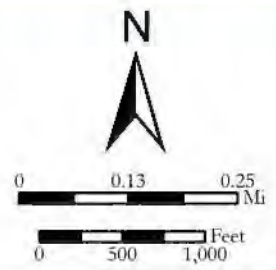


**Proximity Map**

**VA4153**

**2023**

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division  
Person Prepared by : chuang  
On Date : 7/20/2023







# Harbison International Inc.

Engineers - Surveyors - Planners

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## STATEMENT OF VARIANCE FINDINGS FOR TPM TO SPLIT EXISTING PARCEL INTO TWO PARCELS

May 30, 2023

Jeremy Shaw, Planner

Department of Public Works and Planning

Development Services and Capital Project Division

2220 Tulare St., 6th Fl.

Fresno, CA 93721

RE: 10386 E. Kings Canyon Rd., Sanger, for Jimmy Maxey, Dumax Properties LLC; 2555 E. Perrin, Ste, 109, Fresno, CA 93720, Phone: (559) 445-1123

APN: 314-120-525

Dear Jeremy,

Please find this letter as a request of variance on behalf of Mr. Jimmy Maxey. The owner/partners of this property are farming an almond grove, and operating a landscaping business for growing plants and trees to sell for landscape distribution. The owners are planning to operate each business separately, under different ownership, which requires the splitting of property into two parcels to be under separate ownership. Our findings are as follows:

**1. Exceptional or Extraordinary circumstance:**

- A. The use of the will remains the same; two owners are splitting their operations which requires separate parcels.
- B. The proposed landscape business's new parcel will be 7.63 acres with existing office building, greenhouses, shade structures, farm metal storage building, domestic water well, electrical services and septic system.
- C. The remainder parcel will remain in use as an almond grove with its own water well.

**2. Necessary Preservation:**

- A. The creation of the two parcels is necessary to maintain the enjoyment of the two existing businesses; a greenhouse and landscape business will be operated by a different firm.
- B. The original owner and partners will maintain farming of the almond orchard business.

2755 E. Shaw Ave., Suite 101 • Fresno, CA 93710, USA

Tel: 559-294-7485 • Fax: 559-294-7481

E-mail: [mike@harbisonint.com](mailto:mike@harbisonint.com)

Website: [www.harbisonint.com](http://www.harbisonint.com)



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Page 2 of 2  
May 30, 2023

**3. Variance will not affect public welfare:**

- A. The creation of the two parcels will not affect the neighborhood area and it will not impact any additional County services such as fire and police nor will it be a public safety hazard.
- B. It will not impact the adjacent property.
- C. It will not affect any existing traffic.

**4. Variance consistent with County General plan:**

- A. The proposed parcel sizing is consistent with surrounding properties.
- B. Existing zoning will not be affected by allowing the subdivision of this parcel.
- C. It has been used as two separate businesses by the original owner and partners but the partners are splitting their business into two separate companies.
- D. The variance will be consistent with the County zoning plan and General plan.

Please do not hesitate to contact me with any questions.

Sincerely,

Mike Hamzy  
Principal



s Canyon N

E Kings Canyon N

E Kings Canyon N

E Kings Canyon





ENTRANCE









Exhibit 6



















Agri-  
Valley  
Irrigation  
Irrigation Specialists  
(800) 35...



For Office Use Only	
Date received:	12/21/23
Copied to:	W. Ketter, C. Mott, D. Rowell
Date copy sent:	12/21/23
Hearing set for:	

**NOTICE OF APPEAL OF PLANNING COMMISSION DECISION**

Date: 12-18-2023

Appeal Fee: \$508 – Due when filing appeal

APPELLANT FILL IN BELOW THIS LINE, THIS SIDE ONLY – PLEASE PRINT OR TYPE

**Project Site Address**

10386	EAST KINGS CANYON RD.	SANGER	93657	314-120-528
Number	Street	City	Zip	Assessor's Parcel Number

**Appellant's Information**

Name: DURMAX PROPERTIES LLC

Mailing Address: 2555 E. PERRIN, STE 109  
FRESNO CA 93720

Telephone: 559-281-1271

**Applicant's Information**  (check if same as Appellant)

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**Subject of Appeal**

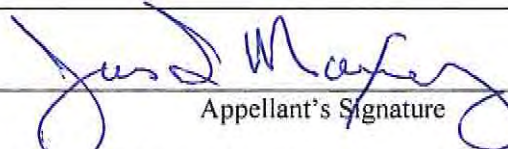
I wish to appeal the Planning Commission's decision to  Approve  Deny

- Variance Application No.\* 4153
- Conditional Use Permit No. \_\_\_\_\_
- Director Review and Approval Application No. \_\_\_\_\_
- Tentative Tract Application No. \_\_\_\_\_
- Amendment Application No. \_\_\_\_\_
- Amendment to Text Application No. \_\_\_\_\_
- Other: ENVIROMENTAL REVIEW No. 6430

Date of Planning Commission Action 12-14-2023

Reason(s) for Appeal (Attach additional sheets if necessary)

SEE ATTACHED

  
 \_\_\_\_\_  
 Appellant's Signature

\* Fresno County Zoning Ordinance § 877(c) requires that any appellant, other than the applicant, County Department Director, or Board of Supervisors member, must be a property owner within a certain distance from the Variance Application property. The Department of Public Works and Planning will verify that the ordinance requirements are met. If the requirements are not met, the appeal fee will be returned and no date for appeal hearing before the Board of Supervisors will be set.

Please return completed form to Clerk of the Board, 2281 Tulare Street, Room 301, Fresno, CA 93721.

Dumax Properties LLC

2555 E Perrin Ste 109

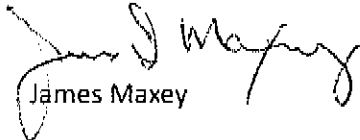
Fresno, CA 93720

Re: Variance Application No. 4153

Owner statement about appeal,

Dividing the property at 10386 E. Kings Canyon Road, is important in order to retain each parcel and each business as a viable family farm. We have tried leasing the area with the green houses several times and for a number of years and it has proven unsuccessful. We need a committed owner operator to make this viable. Leasing it has also created a problem with getting our production credit to finance our crop.

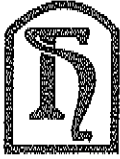
We do not want to change the zoning from agricultural use. There are already many parcels in the area that are smaller than what we want and the three adjacent properties all show to have been split with smaller than 20 acre pieces.

A handwritten signature in black ink, appearing to read "James Maxey", written over a printed name.

James Maxey

Phone 559 281-1271

Email [jmaxey@jdfood.com](mailto:jmaxey@jdfood.com)



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## REASON FOR APPEAL

WE ARE APPEALING THE PLANNING COMMISSION DENIAL FOR THIS VARIANCE BECAUSE THE FINDING THAT WAS SUBMITTED TO THE PLANNING DEPARTMENT BY THE STAFF WAS NOT COMPLETE AND ACCURATE. WE FIND THE RESULTS OF THE FINDINGS TO BE INCONSISTENT WITH THE EXISTING ADJACENT PROPERTIES

### **FINDING NUMBER 1: EXCEPTIONAL OR EXTRAORDINARY PHYSICAL FEATURES OR CIRCUMSTANCES**

OUR CLIENT PURCHASED THIS PROPERTY, WHICH CONSISTED OF GREENHOUSES AND OPEN LAND. OUR CLIENT AND HIS PARTNER TOOK OVER THE GREENHOUSES AND SPENT THE MONEY TO UPDATE THE PROPERTY AND TURNED IT INTO A NURSERY TO SUPPLY PLANTS, TREES, AND LANDSCAPING TO THE ADJACENT PROPERTIES.

ALSO, SPEND MONEY AND PLANTED ALMOND TREES IN THE PEN SPACE AREA. THEREFORE, THEY WANTED TO SPLIT THE PROPERTY ALONG THE EXISTING DEVELOPED ALMOND TREES WILL ALLOW EACH PROPERTY TO CONTINUE OPERATING UNDER AG UNDER SEPARATE OWNERSHIP, AND TO MAINTAIN THE EXISTING USE OF THIS PROPERTY.

### **FINDING NUMBER 2: PRESERVATION AND ENJOYMENT OF A SUBSTANTIAL PROPERTY RIGHT OF THE APPLICANT**

THE EXISTING PROPERTY CONSISTS OF ALMOND TREES AND A PLANT NURSERY FACILITY. TO KEEP BOTH BUSINESSES IN OPERATION UNDER SEPARATE OWNERSHIPS AND FINANCING WILL REQUIRE THIS PROPERTY TO BE SPLIT INTO TWO PARCELS AS PER EXISTING CONDITION, THEREFORE SPLITTING THIS PROPERTY WILL ALLOW BOTH FARMING OPERATIONS TO CONTINUE AS IS.

### **FINDING NUMBER 3: THE GRANTING OF A VARIANCE WILL NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE OR INJURIOUS TO THE PROPERTY AND IMPROVEMENT IN THE VICINITY IN WHICH THE PROPERTY IS LOCATED**

THE COUNTY STAFF AGREED WITH OUR FINDING

### **FINDING NUMBER 4: THE GRANTING OF SUCH A VARIANCE WILL NOT BE CONTRARY TO THE OBJECTIVES OF THE GENERAL PLAN**

THE GENERAL PLAN CALLS FOR A MINIMUM OF 20 ACRE PARCELS FOR THIS AREA. THE STAFF RECOMMENDATION STATED THAT NO SMALLER PARCELS EXIST IN THIS AREA LESS THEN 20 ACRES, AND THEREFORE RECOMMEND DENIAL TO THE PLANNING COMMISSION.

HOWEVER, AFTER WE REVIEWED THE EXISTING PARCELS WITHIN 2 MILE RADIUS OF THIS PROJECT, WE DISCOVERED THAT THERE ARE AT LEAST 40 PARCELS WHICH ARE LESS THAN 20 ACRES. ALSO, ONE PARCEL ADJACENT TO THIS SITE WAS APPROVED RECENTLY AS A GAS STATION, WHICH IS NOT CONSISTENT WITH THE AG ZONING. OUR CLIENT IS NOT PLANNING TO SELL THIS PROPERTY BETWEEN HIM AND HIS PARTNER AND WILL OPERATING THIS PROPERTY UNDER THE SAME USE AS FARMING

2755 E. Shaw Ave., Suite 101 • Fresno, CA 93710, USA

Tel: 559-294-7485 • Fax: 559-294-7481

E-mail: [mike@harbisonint.com](mailto:mike@harbisonint.com)

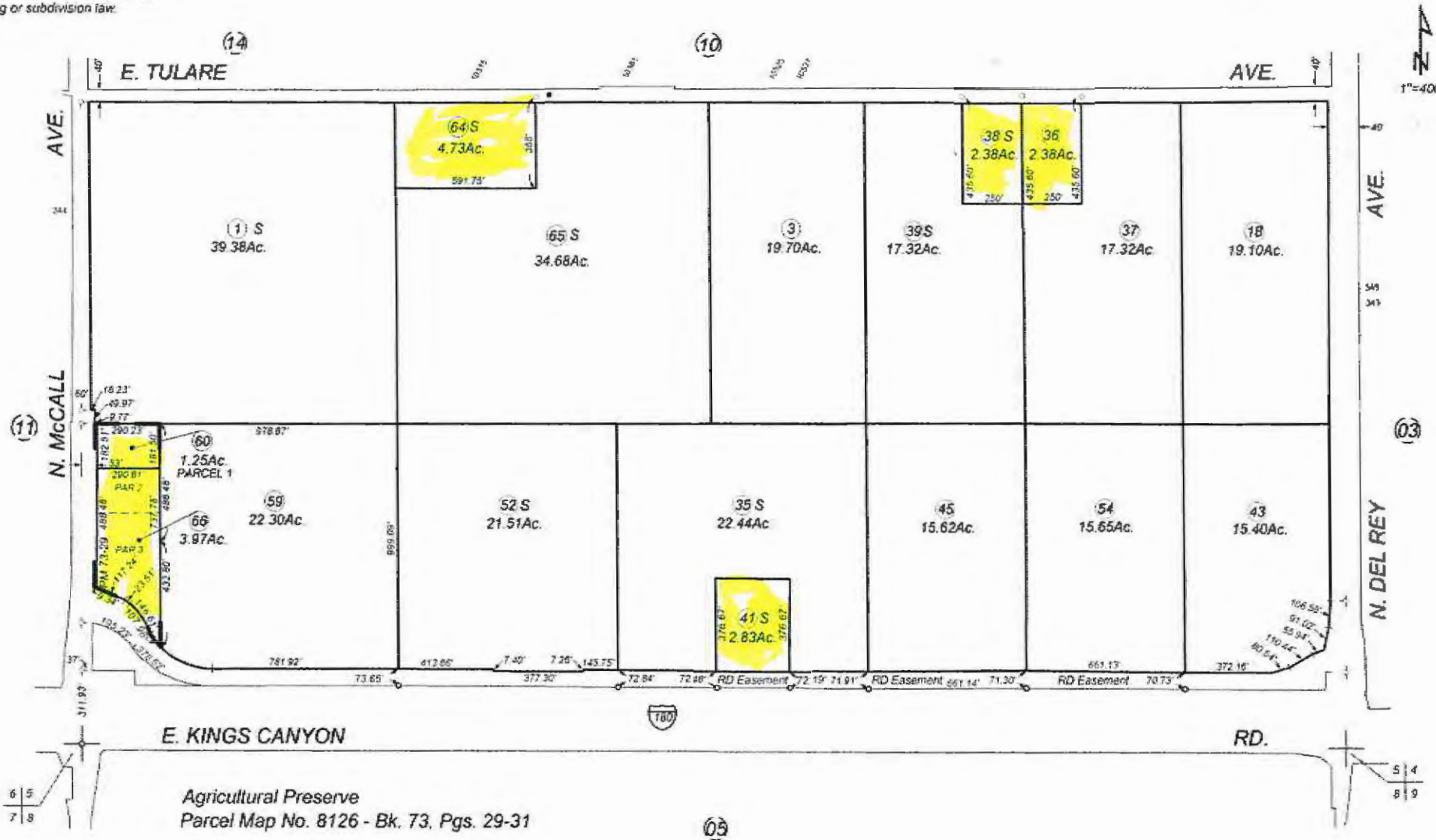
Website: [www.harbisonint.com](http://www.harbisonint.com)

**-NOTE-**  
 This map is for Assessment purposes only.  
 It is not to be construed as portraying legal  
 ownership or divisions of land for purposes  
 of zoning or subdivision law.

POR. SEC. 5, T.14S., R.22E., M.D.B.&M.

Tax Rate Area  
 71-000

**314-12**

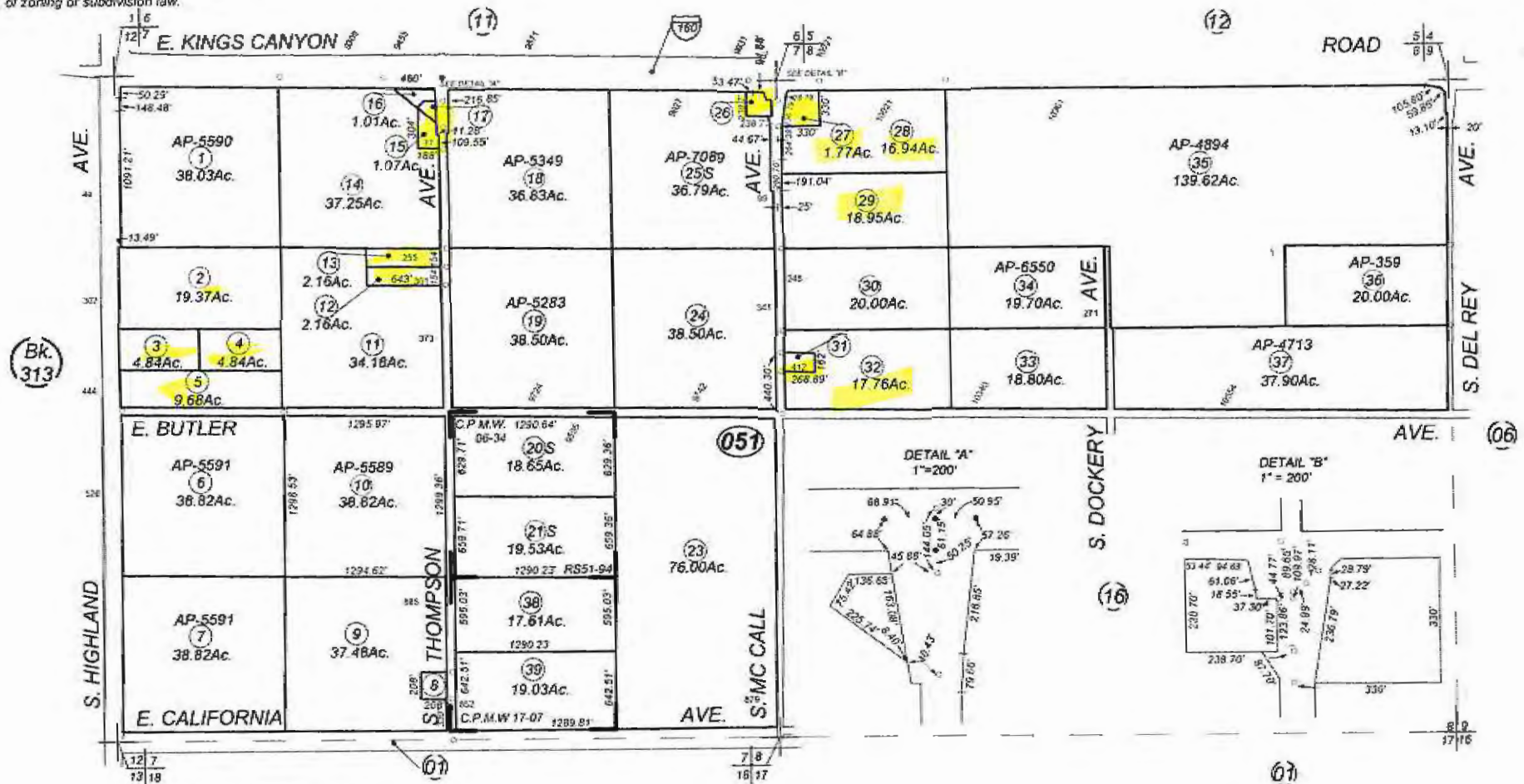


SEC'S. 7 & 8, T. 14 S., R. 22 E., M.D.B. & M.

Tax Rate Area  
71-000  
71-012  
71-013

314-05

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Agricultural Preserve  
Record of Survey - Bk.51, Pg.94  
Certificate of Waiver of Parcel Map No.06-34, Doc.#079127, 04-19-2007  
Certificate of Waiver of Parcel Map No.17-07, Doc.#0099075, 08-13-2018

Assessor's Map Bk.314 - Pg.05  
County of Fresno, Calif.

Note - Assessor's Block Numbers Shown in Ellipses  
Assessor's Parcel Numbers Shown in Circles

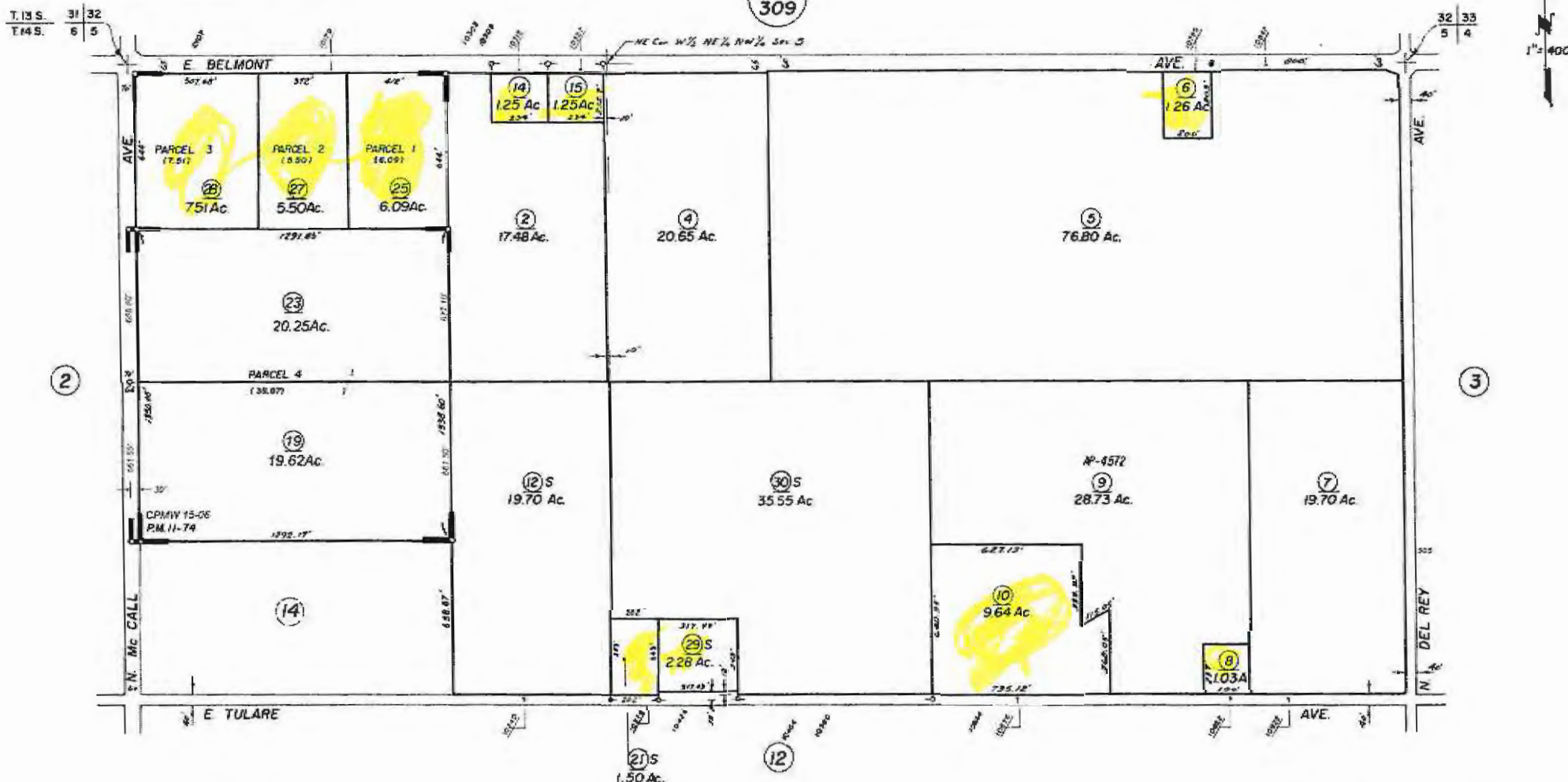
POR. SEC. 5, T.14S, R.22E. M.D.B. & M.

Tax Area  
71-006  
76-082

314-10

— NOTE —

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Agricultural Preserve  
Parcel Map No. 1931 - Bk. 11, Pg. 74  
Certificate of parcel Map Waiver, No. 15-06, Doc. 154727, 12-8-15

Assessor's Map Bk. 314 - Pg. 10  
County of Fresno, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.  
Assessor's Parcel Numbers Shown in Circles.

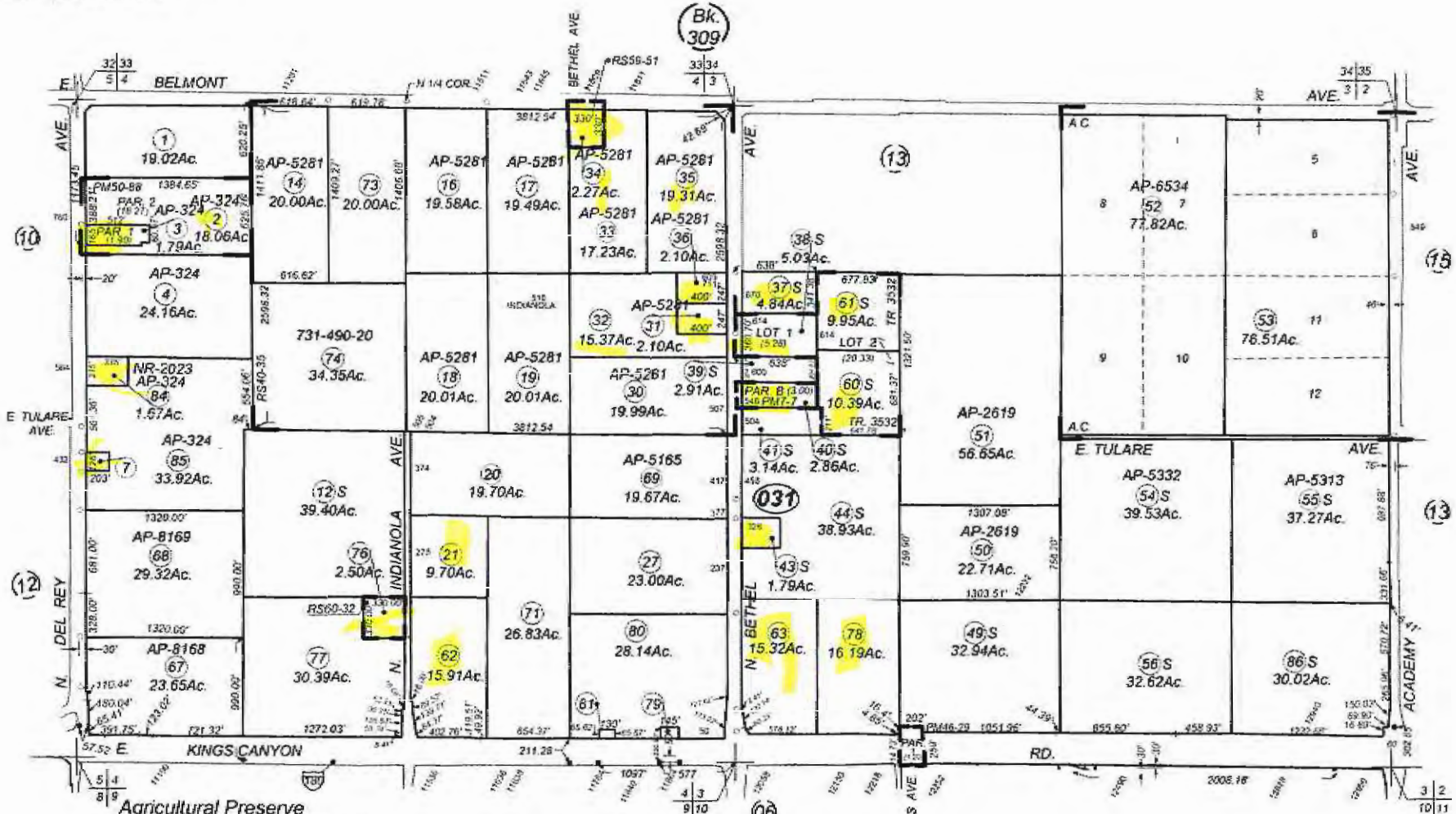
37 PARCEL

-NOTE-  
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of zoning or subdivision law.

SUBDIVIDED LAND & POR. SEC'S. 3 & 4, T. 14 S., R. 22 E., M.D.B. & M.

Tax Rate Area  
71-000

314-03



Agricultural Preserve  
Alta Colony - Plat Bk.04, Pg.67  
Tract No. 3532 - Plat Bk.40, Pg.62  
Parcel Map No. 1223 - Bk. 07, Pg. 07  
Parcel Map No. 7029 - Bk. 46, Pg. 29  
Parcel Map No. 7367 - Bk. 50, Pg. 88  
Record of Survey - Bk. 40, Pg. 35

Record of Survey - Bk. 59, Pg. 51  
Record of Survey - Bk. 60, Pg. 32

Assessor's Map Bk.314 - Pg.03  
County of Fresno, Calif.

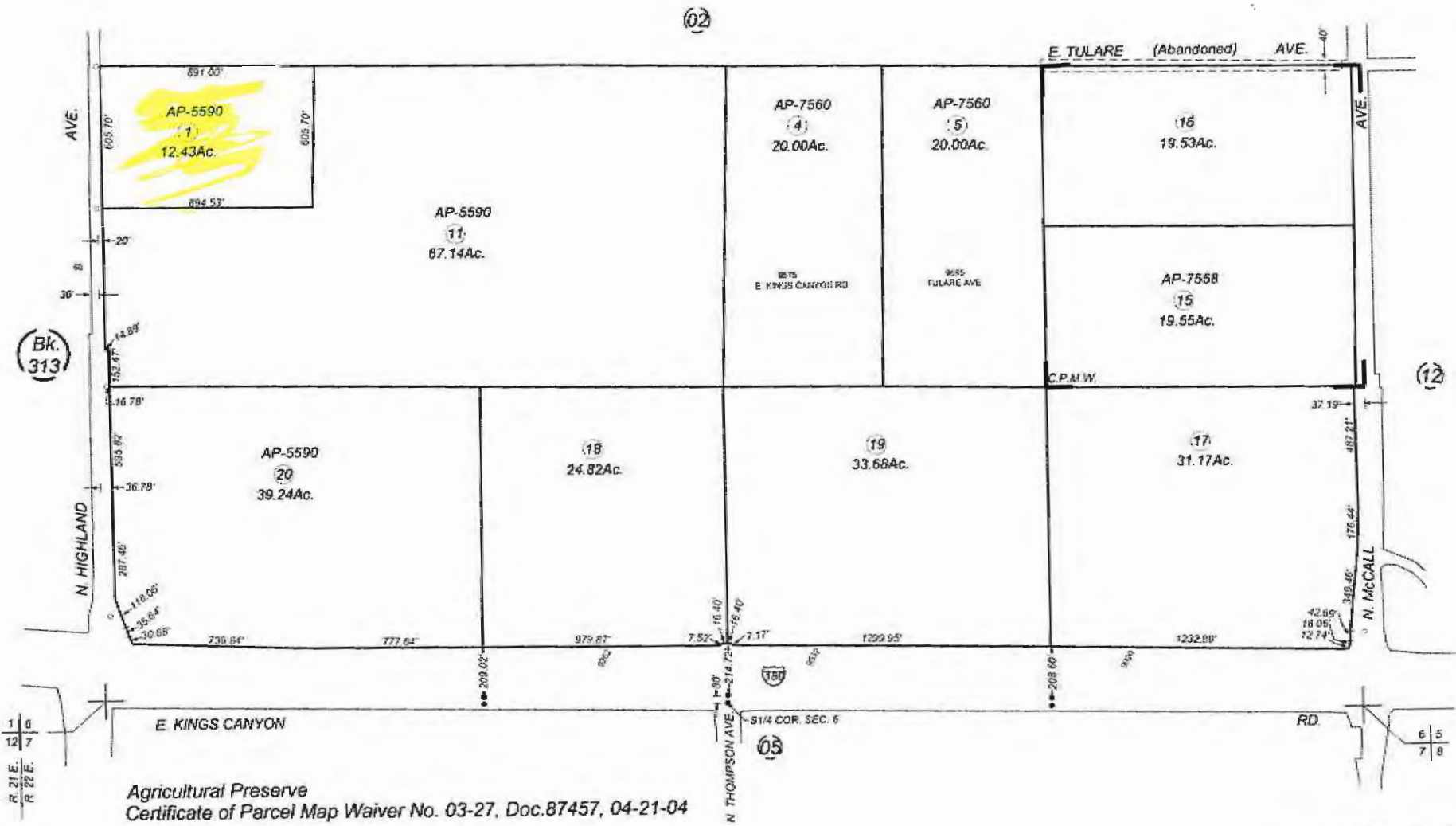
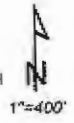
Note - Assessor's Block Numbers Shown in Ellipses  
Assessor's Parcel Numbers Shown in Circles

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POR. SEC. 6, T.14S., R.22E., M.D.B.&M.

Tax Rate Area  
 71-000  
 71-013

314-11



Agricultural Preserve  
 Certificate of Parcel Map Waiver No. 03-27, Doc.87457, 04-21-04

Assessor's Map Bk.314 - Pg.11  
 County of Fresno, Calif.

Note - Assessor's Block Numbers Shown in Ellipses  
 Assessor's Parcel Numbers Shown in Circles

ATTACHMENT D

**Variance Application (VA) No. 4153 & Environmental Review No. 8430  
Conditions of Approval and Project Notes**

<b>Conditions of Approval</b>	
1.	Development shall be substantially consistent with the site plan (Exhibit 6) as approved by the Planning Commission.
2.	Existing Farm Metal Storage Building and Existing Shade Structures must be permitted or removed before approval of Variance can be considered valid.
3.	A special inspection is required to verify removal and proper abandonment of an existing septic system, before approval of Variance can be considered valid.

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.	Any work performed within the County road right-of-way will require an encroachment permit.
2.	The end of curbed/taper edge of any existing or future access driveway approach should be set back a minimum of 5 feet from the property line
3.	Any existing or future entrance gate should be set back a minimum of 20 feet from the road right-of-way line or the length of the longest truck entering the site and shall not swing outward.
4.	A 10 foot x 10 foot corner cut-off should be improved for sight distance purposes at any existing driveway accessing Kings Canyon Road if not already present.
5.	A grading permit or voucher is required for any future grading proposed with this application.
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.	If approved, the subdivision will require a that a Tentative Parcel Map be prepared in accordance with the Professional Land Surveyors Act, the Subdivision Map Act and County Ordinance. The Tentative Parcel Map application shall expire two years after the approval of said Tentative Parcel Map.

**Notes**

- |    |   |
|----|---|
| 9. | 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. |
|----|---|

RP:jp

G:\4360Devs&Pln\PROJSEC\PROJDOCS\VA\4100-4199\4153\Staff Report\Conditions for Variance.docx