

## Proof of Service by Mail

(Code of Civil Procedure § 1013a)

I, Lisa Craft, declare as follows:

1. I am over 18 years of age and not a party to the matter connected with this proof of service.
2. I am employed by the County of Fresno in the office of the Clerk of the Board of Supervisors, at 2281 Tulare Street, Room 301, in Fresno, California 93721.
3. On January 6, 2021, I served the attached Notice of Hearing before the Board of Supervisors of the County of Fresno for the **INITIAL STUDY APPLICATION NO. 7556** and **UNCLASSIFIED CONDITIONAL USE PERMIT APPLICATION NO. 3626** filed by **JOHN EMMETT**
4. I served the documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelopes were addressed and mailed to each of the owners at their addresses, as shown on the current Fresno County Assessment Roll and on the property list compiled from said rolls, as set forth on the attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 6<sup>th</sup> day of January, 2021 in Fresno, California.

  
\_\_\_\_\_  
Deputy, Clerk of the Board

The original proof of service, including the list of persons and their addresses to whom notice was mailed, is maintained by Public Works staff.



# County of Fresno

## BOARD OF SUPERVISORS

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Clerk

**DUE TO THE CURRENT SHELTER-IN-PLACE ORDER COVERING THE STATE OF CALIFORNIA AND SOCIAL DISTANCE GUIDELINES ISSUED BY FEDERAL STATE AND LOCAL AUTHORITIES, THE COUNTY IS IMPLEMENTING CHANGES FOR ATTENDANCE AND PUBLIC COMMENT AT ALL BOARD OF SUPERVISORS MEETINGS UNTIL FURTHER NOTICE. PLEASE SEE NOTES BELOW FOR MORE INFORMATION ON HOW TO SUBMIT WRITTEN COMMENTS.**

Notice of hearing before the Board of Supervisors of the County of Fresno on **INITIAL STUDY APPLICATION NO. 7556** and **UNCLASSIFIED CONDITIONAL USE PERMIT APPLICATION NO. 3626** filed by **JOHN EMMETT**. Note: On November 19, 2020, the Fresno County Planning Commission denied this application, and on December 4, 2020, an appeal was filed by John Emmett to the Fresno County Board of Supervisors for consideration.

Notice is hereby given that the Board of Supervisors of the County of Fresno has set this hearing for **Tuesday, the 26th day of January, 2021**, at the hour of **10:00 A.M. (or as soon thereafter as possible)**, in the **Board of Supervisors Chambers**, Room 301, Hall of Records, 2281 Tulare St., Fresno, California, as the time and place for holding a public hearing on the following matter:

**INITIAL STUDY APPLICATION NO. 7556** and **UNCLASSIFIED CONDITIONAL USE PERMIT APPLICATION NO. 3626** filed by **JOHN EMMETT**, proposing to allow a solid waste processing facility consisting of an asphalt and concrete crushing operation that will produce recycled baserock, and have the subject materials stored onsite until it is delivered offsite on a 22.44-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. The project site is located on the north side of East Kings Canyon Road approximately 1,980 feet west of its nearest intersection with North Del Rey Avenue and is approximately 1.57 miles northwest of the nearest city limits of the City of Sanger (APN: 314-120-35S) (SUP. DIST. 5). Adopt the Mitigated Negative Declaration prepared for Initial Study Application No. 7556 and take action on Unclassified Conditional Use Permit Application No. 3626 with Findings and Conditions.

Please see attached map

For more information contact **Thomas Kobayashi**, Department of Public Works and Planning, 2220 Tulare Street (corner of Tulare & "M" Streets, Suite A), Fresno, CA 93721, telephone **(559) 600-4224** email **TKobayashi@FresnoCountyCA.gov**.

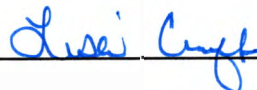
The full text of this Land Use Appeal will be available on the Fresno County website <https://fresnocounty.legistar.com/Calendar.aspx> under the January 26, 2021 meeting at the Meeting Details link by Wednesday, January 20, 2021

NOTES:

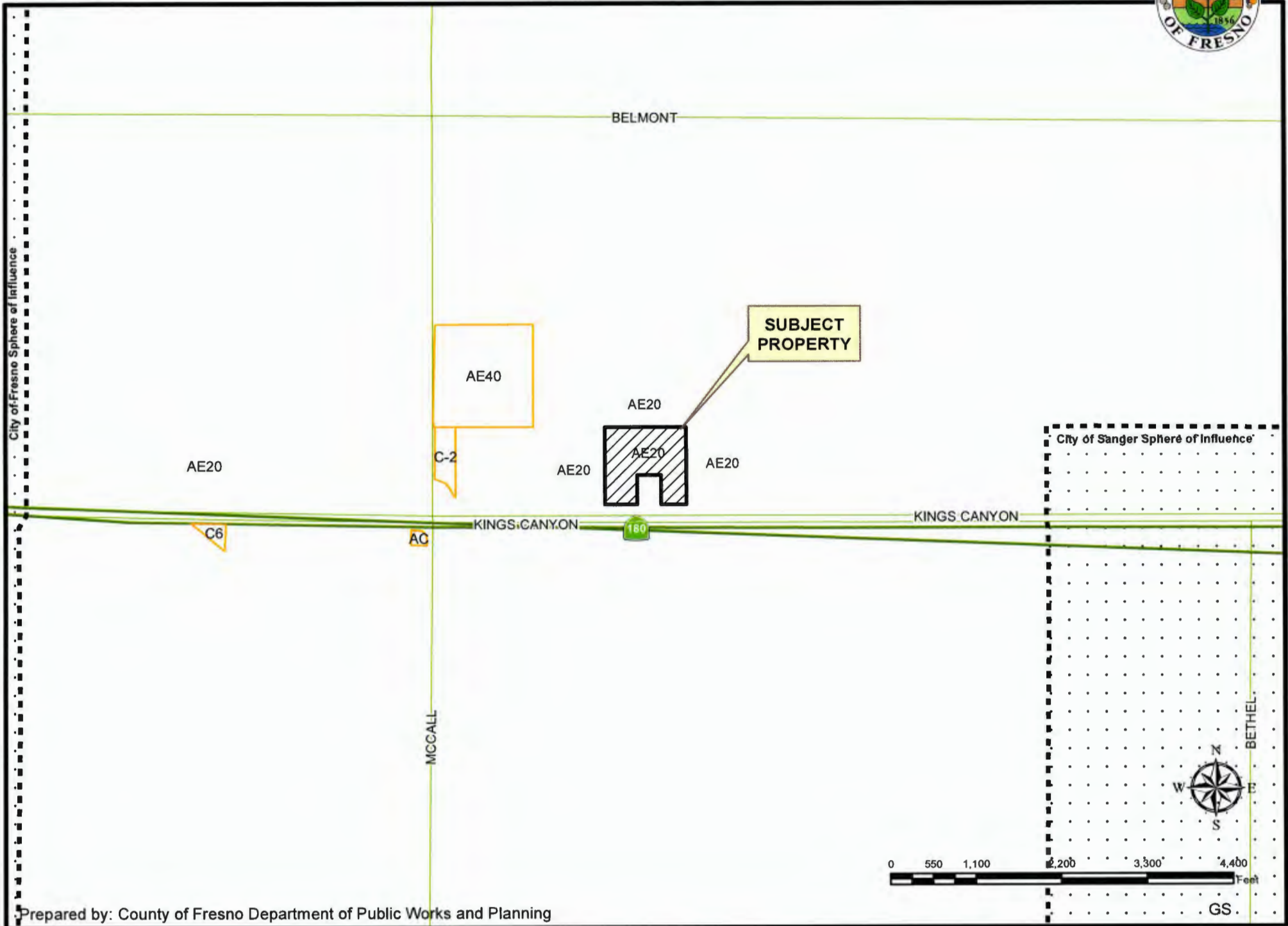
- Anyone may testify, please share this notice with your neighbors or anyone you feel may be interested.
- The Board of Supervisors will also accept written testimony such as letters, petitions, and statements. In order to provide adequate review time for the Board of Supervisors, please submit these documents to the Clerk of the Board prior to the hearing date.
- If at some later date you challenge the final action on this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

DATED: January 6, 2021

BERNICE E. SEIDEL  
Board of Supervisors

By , Deputy

# EXISTING ZONING MAP





**For Office Use Only**

Date received: 12/4/20  
Copied to: W. Ketter, C. Motte, J. Penedel  
Date copy sent: A. Samarin 12/4/20  
Hearing set for: 1/26/21

**NOTICE OF APPEAL OF PLANNING COMMISSION DECISION**Date: December 3, 2020

Appeal Fee: \$508 – Due when filing appeal

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

**Project Site Address**

Not assigned	North side of East Kings Canyon	Fresno County	APN 314-120-35S
Number	Street	City	Zip
Assessor's Parcel Number			

**Appellant's Information**

Name: John Emmett  
Mailing Address: C/O Larry Westerlund, Coleman & Horowitz  
499 W. Shaw Avenue, Suite 116, Fresno, Ca. 93704  
Telephone: (559) 248-4820

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

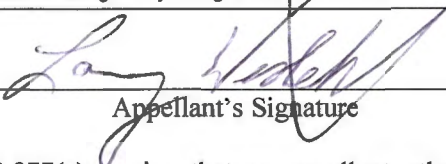
Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**Subject of Appeal**I wish to appeal the Planning Commission's decision to ☐ Approve ☒ Deny

Variance Application No.\* \_\_\_\_\_  
Conditional Use Permit No. CUP 3626  
Director Review and Approval Application No. \_\_\_\_\_  
Tentative Tract Application No. \_\_\_\_\_  
Amendment Application No. \_\_\_\_\_  
Amendment to Text Application No. \_\_\_\_\_  
Other: \_\_\_\_\_

**RECEIVED**  
**DEC 04 2020**  
CLERK. BOARD OF SUPERVISORS

Date of Planning Commission Action November 19, 2020**Reason(s) for Appeal (Attach additional sheets if necessary)**County Staff and subsequently the Planning Commission failed to make the appropriate findings required to approve the conditional use permit.Namely, that the project actually will put non-farmed agricultural land back into an ag use consistent with the general plan and the proposed use willnot have an impact on the neighboring land more than a regular agricultural use would. Additionally, the Fresno County ordinance that requiresfindings of "no impact" on abutting property amounts to a regulatory taking in violation of Federal and State law.

  
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.**

To, Board of Supervisors, County of Fresno  
Dated January 13, 2021

Dear Sir / Madam

I strongly oppose this environmentally unfriendly and polluting business at this wrong location. It is in the middle of potential residential and Commercial establishments both from the City of Fresno and the City of Sanger centering at route 180 and McCall Avenue Intersection. It will destroy the beauty of Route 180 going into foothills and recreational areas such as world famous SquoiaNational Park. It will also drag down the prices of real estate in the vicinity.

Chemicals produced at these hazardous Stone crushing and asphalt facilities are known to cause cancer and chronic pulmonary diseases such as bronchial asthma and interstitial lung diseases. This kind of industrial unit should be located in the designated industrial area away from the residential and Commercial establishments. This facility does not belong at the location as requested by the petitioner. Therefore I strongly disapprove the establishment this kind of business in this particular area. This Corridor between Fresno and Sanger is going to accommodate the residential, Commercial and recreational needs of both cities in future.

  
Mohinder S Poonia  
50 S McCall, Sanger, CA  
Mobile 559 999 9689



# County of Fresno

## BOARD OF SUPERVISORS

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Please see attached map

For more information contact **Thomas Kobayashi**, Department of Public Works and Planning, 2220 Tulare Street (corner of Tulare & "M" Streets, Suite A), Fresno, CA 93721, telephone (559) 600-4224 email [TKobayashi@FresnoCountyCA.gov](mailto:TKobayashi@FresnoCountyCA.gov).

The full text of this Land Use Appeal will be available on the Fresno County website <https://fresnocounty.legistar.com/Calendar.aspx> under the January 26, 2021 meeting at the Meeting Details link by Wednesday, January 20, 2021



# EXISTING ZONING MAP



BELMONT

City of Fresno Sphere of Influence

AE20

C6

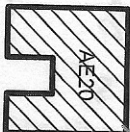
AC

KINGS CANYON

C-2

AE40

AE20



AE20

SUBJECT  
PROPERTY

AE20

180

KINGS CANYON

City of Sanger Sphere of Influence

MCCALL

BETHEL



0 550 1,100

2,200

3,300

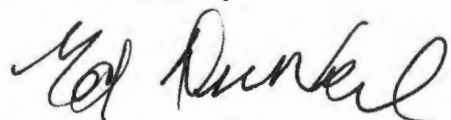
4,400

Feet

January 20, 2021

On August 14, 2019, I was out in my shop working when I heard loud noises and saw a huge cloud of dust heading my way. I jumped in my truck to see where it was coming from. I drove through my organic plum orchard and I saw a machine grinding up what appeared to be concrete. Dust was flying everywhere, covering everything in sight.

If this activity is allowed to continue, I fear the damage that will be done to all the surrounding crops will be massive. The dust is attracting mites and the mites will decimate the crops. This is an ag area, not a construction zone, and we would like to keep it that way.



Ed Dunkel

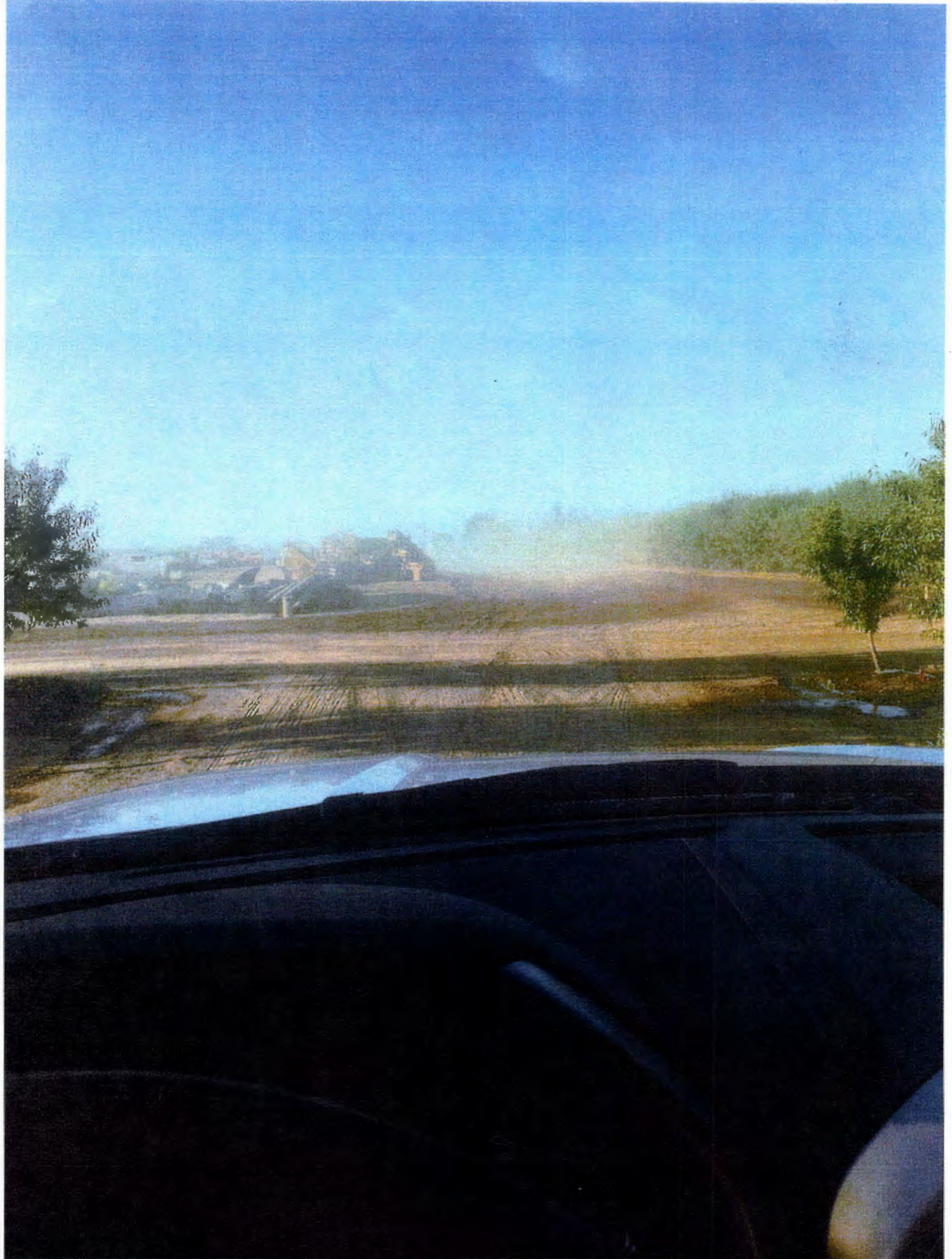
(559) 269-0332

RECEIVED  
JAN 20 2021

CLERK. BOARD OF SUPERVISORS



VIEW LOOKING AT NW CORNER OF SUBJECT PROPERTY



8-14-19

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**From:** Lawrence Westerlund <LWesterlund@ch-law.com>  
**Sent:** Tuesday, January 26, 2021 8:21 AM  
**To:** BOSComments  
**Subject:** FW: Emmett Excavation CUP3626  
**Attachments:** McCall Crushing Facility SITE PLAN 1-13-21.pdf; Dust Control Ltr LSA (003).pdf

**CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK**

Dear Clerk,

Good morning. I hope you are doing well.

In preparation of this morning's hearing I wanted to see if we could get a couple of documents and a video in front of the Board.

Here is a link that shows what the grinder looks like in operation. I would like to show the Board at the meeting. It is 39 seconds long, so it is pretty quick.

<https://youtu.be/WF9-l49hSCU>

Attached you will also find our new site plan. With the feedback from Planning Commission and the neighbor at the hearing we made some changes that I think will help mitigate the sound and dust issues.

I wish we could have reviewed it with you and Mr. Randall but, as you are aware, you don't take more meetings for project on appeal.

Also attached is a letter from the LSA on the dust issue.

I am planning to do a short power point presentation. I will send that shortly.

Finally, I am finishing up a legal letter for the county counsel on some of the legal issues raised by the Zoning Ordinance. I will send that shortly as well.

I would like to get all before the board.

Thanks very much.

Larry

Lawrence E. Westerlund  
Coleman & Horowitz, LLP  
499 W. Shaw Ave. #116  
Fresno, CA 93704  
o: 559-248-4820 f: 559-248-4830 c: 559-799-7991

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IRVINE  
LOS ANGELES  
PALM SPRINGS  
POINT RICHMOND  
RIVERSIDE  
ROSEVILLE  
SAN LUIS OBISPO

January 25, 2021

Mr. Lawrence Westerlund  
Senior Counsel  
Coleman & Horowitz, LLP  
499 W. Shaw Avenue, #116  
Fresno, CA 93704

Subject: Asphalt and Concrete Recycling Facility - Particulate Matter Evaluation

Dear Mr. Westerlund:

LSA has reviewed the development plans for the proposed Asphalt and Concrete Recycling Facility located at 10452 E. Kings Canyon Road in Fresno County. The proposed project would include an asphalt and concrete recycling facility, which would take in asphalt and concrete from various construction projects. Periodically during the accumulation of incoming material, a portable crusher and grinder would be set up to perform processing. Proposed hours of operation for the grinder are 7:00 a.m. to 5:00 p.m., Monday through Friday and it is expected that three employees would run the grinding operation. Access to the project site would be provided via the north access road alongside Highway 180. No additional street improvements or dedications are proposed. The project would include a total of five on-site paved parking spaces for employees.

The proposed project would include a paved driveway of approximately 95 feet, north of Kings Canyon Road. The driveway would continue as an unpaved roadway, consisting of base rock for access to the stockpile area. Approximately 10 to 20 trucks would use the roadway, traveling north for approximately 200 feet before a 180 degree turn, where trucks would then travel southbound. Given the short distance of the roadway, trucks would be traveling at the very slow speed of less than 15 miles per hour (mph).

Fugitive dust emissions contain particulate matter of 10 micron or less ( $PM_{10}$ ). Unpaved roads can generate  $PM_{10}$ , as well as dust particles that are larger than  $PM_{10}$ . The San Joaquin Valley Air Pollution Control District (SJVAPCD) implemented Regulation VIII to require actions to prevent, reduce, and mitigate fugitive dust emissions. SJVAPCD Rule 8061- *Paved and Unpaved Roads* limits fugitive dust emissions from unpaved roads by requiring control measures and establishing a roadway design criteria.

The proposed project is expected to be exempt from Rule 8061 because the project would generate less than 26 vehicles per day. However, the proposed project would be compliant with the control measures and design requirements in order to limit all visible dust emissions (VDE) to 20 percent opacity or less. The proposed project would meet the requirements of a stabilized unpaved road under the rule, with the application of the following control measures: 1) watering and 2) application of a uniform layer of base rock. As a condition of the project approval, the proposed project would use a water tank truck to frequently apply water to the roadway. The water application would increase the soil moisture content and cause particles to conglomerate. Water

application reduces the tendency for particles to become airborne. According to the SJVAPCD, water application reduces up to 93 percent of PM<sub>10</sub> emissions when applied to an unpaved road. The base rock will also be an effective stabilizer in controlling emissions and will provide long-term dust control. The low vehicle speeds anticipated for the roadway also contribute as an effective form of dust control. According to the SJVAPCD, speeds of under 15 mph result in very low fugitive emissions.

The project site plan also indicates that the existing landscaping along the northern property line would remain, while a row of trees would be planted along the eastern property line adjacent to the unpaved roadway. The trees and other vegetation will contribute to a reduction in visible dust emissions in the project vicinity. The project also includes a 6 foot high chain link fence. A wind barrier could easily be attached to the fence which would further limit any dust emissions from the project site to surrounding properties.

In conclusion, the proposed project is not expected to result in any substantial visible dust emissions. Fugitive emissions from the project would be limited to the unpaved roadway, which would be very easily controlled through watering and base rock application. Therefore, the project related fugitive emissions would be extremely limited. Visible emissions from unpaved roads and the handling/transport of bulk materials are regulated by the SJVAPCD. Any noncompliance with Regulation VIII would be subject to enforcement action by SJVAPCD officers. With the proposed project's planned control measures and compliance with the applicable SJVAPCD Regulation VIII requirements, the proposed project would not result in significant dust emissions or impacts to the surrounding properties.

Please contact me at (559) 490-1213 or [amy.fischer@lsa.net](mailto:amy.fischer@lsa.net) if you have any questions related to this analysis.

Sincerely,

**LSA Associates, Inc.**



Amy Fischer  
Principal/Senior Air Quality Specialist



1-26-21  
Item #7

---

**From:** Lawrence Westerlund <LWesterlund@ch-law.com>  
**Sent:** Tuesday, January 26, 2021 9:15 AM  
**To:** BOSComments  
**Cc:** Lisa Turri Zanoni  
**Subject:** Emmetts CUP 3626 #7 (2036.24)  
**Attachments:** Planning Commission Ltr 1-25-21.pdf; CUP Presentation 11-24-20 LW.pptx

**CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK**

Dear Clerk,

Attached is a letter and our Powerpoint Presentation for the hearing today. Thanks very much.

Larry

Lawrence E. Westerlund  
Coleman & Horowitz, LLP  
499 W. Shaw Ave. #116  
Fresno, CA 93704  
o: 559-248-4820 f: 559-248-4830 c: 559-799-7991

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DAVID J. WEILAND  
GREGORY J. NORYS  
ELIOT S. NAHIGIAN\*\*  
SHERYL D. NOEL  
JUDITH M. SASAKI  
STACY H. BOWMAN  
C. FREDRICK MEINE III, APC\*\*\*  
SHERRIE M. FLYNN\*\*\*\*  
MICHAEL P. DOWLING

## COLEMAN & HOROWITT, LLP

### ATTORNEYS AT LAW

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FRESNO, CALIFORNIA 93704  
TELEPHONE: (559) 248-4820  
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WEB: [WWW.CH-LAW.COM](http://WWW.CH-LAW.COM)

JENNIFER T. POOCHIGIAN  
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THOMAS H. ARMSTRONG  
RUSSELL W. REYNOLDS  
LAWRENCE E. WESTERLUND  
GARY S. SHUSTER  
DANIEL L. RUDNICK

January 26, 2021

WRITER'S E-MAIL

[LWESTERLUND@CH-LAW.COM](mailto:LWESTERLUND@CH-LAW.COM)

\*CERTIFIED SPECIALIST: ESTATE PLANNING,  
TRUST AND PROBATE LAW  
\*\*CERTIFIED SPECIALIST: TAXATION LAW,  
ESTATE PLANNING, TRUST AND PROBATE LAW  
\*\*\* A PROFESSIONAL CORPORATION  
LICENSED IN CALIFORNIA AND WASHINGTON  
\*\*\*\*REGISTERED PATENT ATTORNEY

VIA E-MAIL [tkobayashi@fresnocountyca.gov](mailto:tkobayashi@fresnocountyca.gov)

Mr. Thomas Kobayashi, Planner  
Department of Public Works and Planning |  
Development Services and Capital Projects Division  
2220 Tulare Street, 6th Floor  
Fresno, California 93721

Re: CUP 3626 Emmett's Excavation Objection to Application of Fresno County  
Zoning Codes Section 873(F) as Constitutionally Vague and Overbroad

Dear Mr. Kobayashi:

With this letter Emmett's Excavation, Inc. respectfully objects to the application of Fresno County Zoning Ordinance Section 873(F) in the consideration of Conditional Use Permit (CUP) 3626. Our client, Emmett's Excavation, contends that Section 873(F) is so vague and overboard, as it is being considered in this application for the CUP, that if the project is denied it will a result in violation of the United States Constitution and the California State Constitution as potentially a violation of substantive due process and inverse condemnation as a regulatory taking.

### **Fresno County Zoning Ordinance Section 873(F)**

The resolution to be considered by the Board of Supervisors requires that pursuant to County Zoning Ordinance Section 873(F), the Board must make the following findings to approve the CUP:

1. That the Site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features...
2. That the Site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated...
3. That the proposed use will have **no adverse impact** on abutting property and surrounding neighborhood or permitted use thereof;
4. That the proposed development is consistent with the General Plan; and
5. That the conditions stated in the resolution are deemed necessary to protect the public health, safety, and general welfare; and (*emphasis added*).

The language of the Section 873(F)(3) that requires any project that must apply for an Unclassified Conditional Use Permit to have "no adverse impact" is constitutionally vague and overbroad. It is our objection that "no adverse impact" standard is so absolute that it is vague and overly broad such that it provides no meaningful guidance or direction for staff, the Planning Commission or the Board of Supervisors. This standard allows for any project to be denied for capricious or abusive reasons. This standard leaves the executive branch of the local government with unbridled and potentially abusive discretion in denying any project that requires a CUP. Every new land development project has some kind of impact to the environment such that one can, if one so chooses, to find the slightest ever impact on an adjacent parcel which provides the pretense to deny any CUP.

Denying or approving a CUP should be driven by the application of just and reasonable legal standards, not the whim of staff, planning commissioners or supervisors because they could find the tiniest or a bare modicum of an adverse impact of a project that can then be deemed an impact on an adjacent parcel.

Constitutionally legal CUP standards generally have a quantitative modifier written into the CUP ordinance that provides some standard for judging a CUP application. For example, Los Angeles County (Section 22.230.050(b)) requires a finding that before a CUP can be denied that the project must be "materially detrimental" to the use, enjoyment, or valuation of property in the vicinity. Madera County (Section 18.92.030) requires a finding that the project will not cause a "substantial effect upon" the property values of the adjacent properties. The City of Visalia (17.38.110) requires a finding that the project is "materially injurious" to properties in the vicinity. No such standard is found in the Fresno County Ordinance: in a stunning example of vagueness it simply says "no adverse impact."

### **Section 873(F) Amounts to Unconstitutional Taking**

The Fifth Amendment to the *U.S. Constitution* provides: "[N]or shall private property be taken for public use, without just compensation." The clause is generally referred to as either the "takings clause" The California takings clause is found in Article I, §19 of the *California Constitution*.

Regulations that restrict owners' use of their land without requiring physical occupation of private property amount to takings. These include restrictions such as those associated with historic landmarks preservation (*Penn Cent. Transp. Co. v New York City* (1978) 438 US 104), setback ordinances (*Keystone Bituminous Coal Ass'n v DeBenedictis* (1987) 480 US 470, 498), requirements that coal companies leave a portion of coal in the ground to prevent subsidence, density limitations (*Agins v City of Tiburon* (1980) 447 US 255, abrogated on other grounds in *Lingle v Chevron U.S.A. Inc.* (2005) 544 US 528.), among others.

In this case, staff and the Planning Commission has found that the CUP must be denied because the project could have an adverse impact for sound and dust, despite finding that, when properly mitigated, the project will produce sound within the legal required levels of the county sound ordinance and dust, when mitigated, will not be a significant issue.

### **Section 873(F) Violates the Requirements of Substantive Due Process**

Courts have determined that substantive due process is violated when a government action lacks reasonable justification or fails to advance a legitimate governmental objective. To not violate substantive due process a government action must show: (1) it serves a legitimate governmental

Mr. Thomas Kobayashi, Planner  
Department of Public Works and Planning |  
Development Services and Capital Projects Division  
January 26, 2021 / Page 3

objective, (2) use means that are reasonably necessary to achieve that objective, and (3) not be unduly oppressive. See *Lingle v. Chevron U.S.A. Inc.* (2005) 544 US 528.

In the land use context, substantive due process claims typically arise when the plaintiff alleges that a government decision resulting in either a physical deprivation of property or a regulatory deprivation or devaluation of property was arbitrary, irrational, and unreasonable. See for example, in *Kawaoka v City of Arroyo Grande* (9th Cir 1994) 17 F3d 1227.

In this case, based upon the evidence currently on the record, there is no reasonable justification to preclude development of this project. The project meets all of the applicable county ordinances. The only basis in the staff report is that the project might have some effect on adjacent property owners, furthermore, precluding the project is not reasonable to achieve the desired end and it is unduly oppressive to allow the project to be built.

### **Conclusion**

With this letter, it is our intention to reserve all of our clients' state and federal rights to bring legal action if required. We hope the Commission will keep in mind that our clients have rights to develop their property, while considering the approval of this Conditional Use Permit. We are also available for any questions you may have. Thank you very much.

Very truly yours,

COLEMAN & HOROWITT, LLP

*Lawrence E. Westerlund*

LAWRENCE E. WESTERLUND

LNS/ltz  
cc: Clients



# Emmett's Excavation - Asphalt Recycling Project Conditional Use Permit 3626











## Video of Grinder in Operation

- Minimum Dust
- Minimum Noise
- Require recycling
- Only recycling on the eastern side of Fresno County



# Emmetts - Asphalt Recycling Project

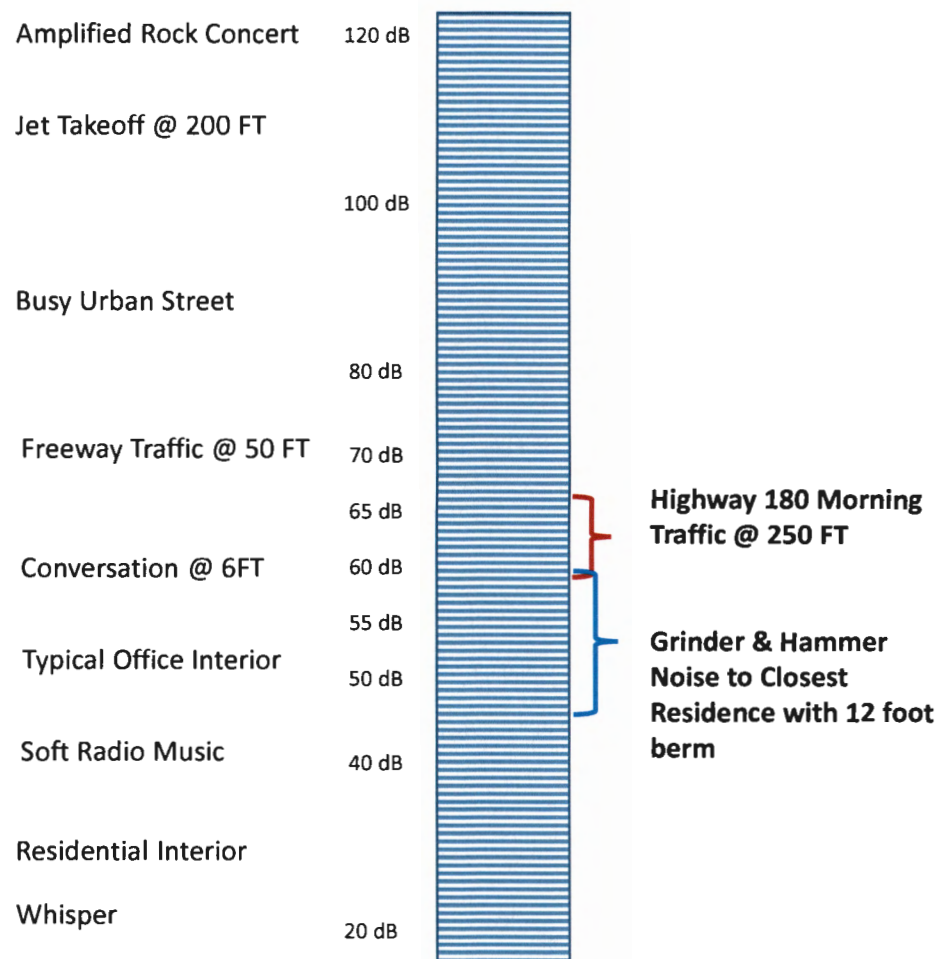
- Unclassified Conditional Use Permit – may be approved with finding in the Fresno County Zoning Ordinance
  - ✓ Site is adequate in size and shape for use – OK
  - ✓ Site has adequate streets and highways for traffic of use – OK
  - ✓ The conditions required by the County will protect the public - OK
  - ☐ The proposed use will have “no adverse effect” on abutting property
    1. Sound study says the project complies with the County Sound Ordinance.  
Staff believes that sound “could have an adverse impact”
    2. Dust, with mitigation, will be “less than significant impact.  
Staff believes dust “is another concern” to consider”
  - ☐ The proposed use is consistent with the General Plan
    - Project is going to plant and farm new almonds on 75% of the property
    - Project is unique and needed service for east Fresno County

# Sound

- Sound Study done – meets County Standards with mitigation
- Less than the Ambient Noise for Highway 180
- Sound wall
- Barn
- No more than several hours a day
- Limited number of days per month



## Acoustical Analysis by WJV Acoustics – March 19, 2020



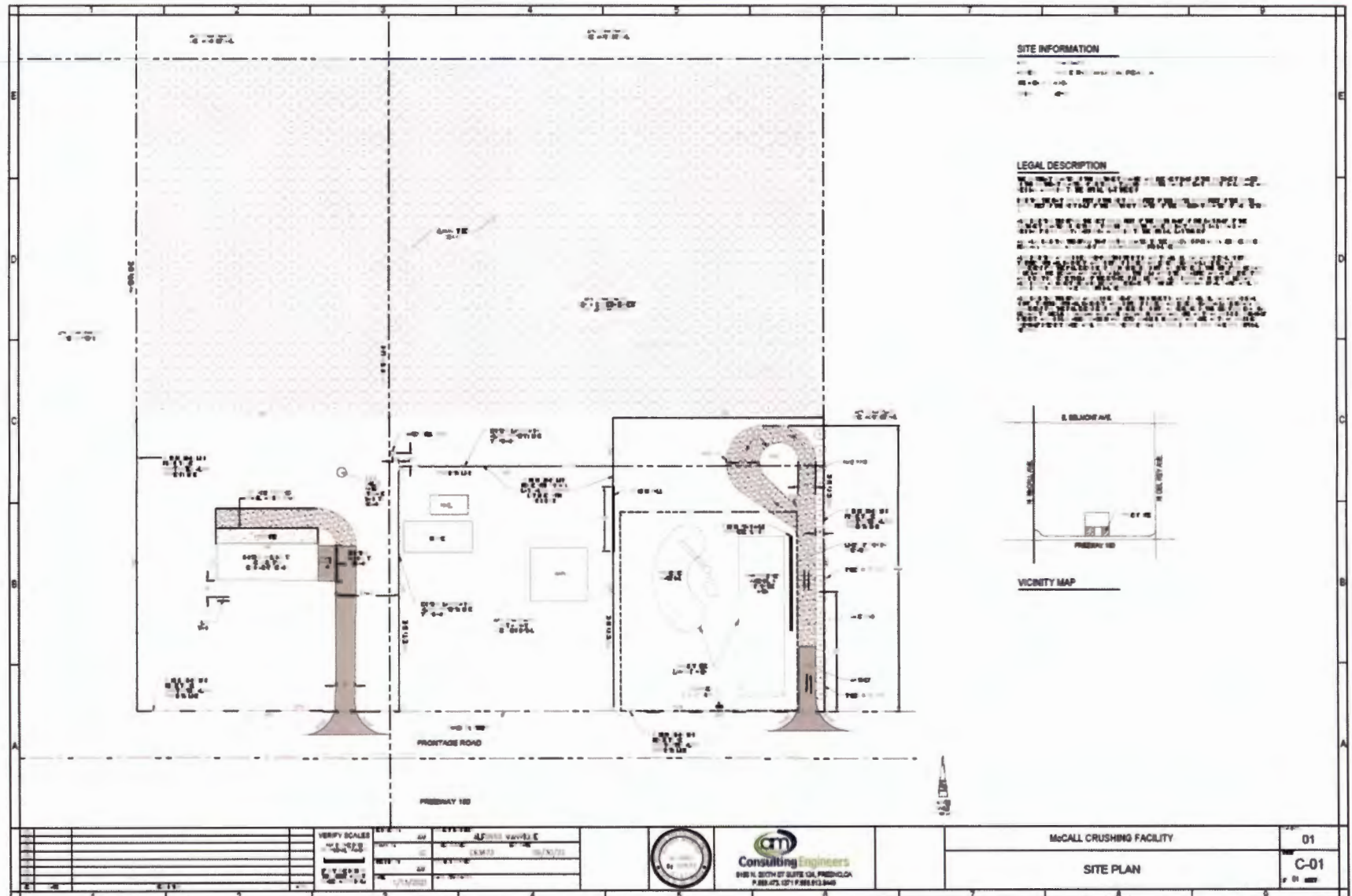


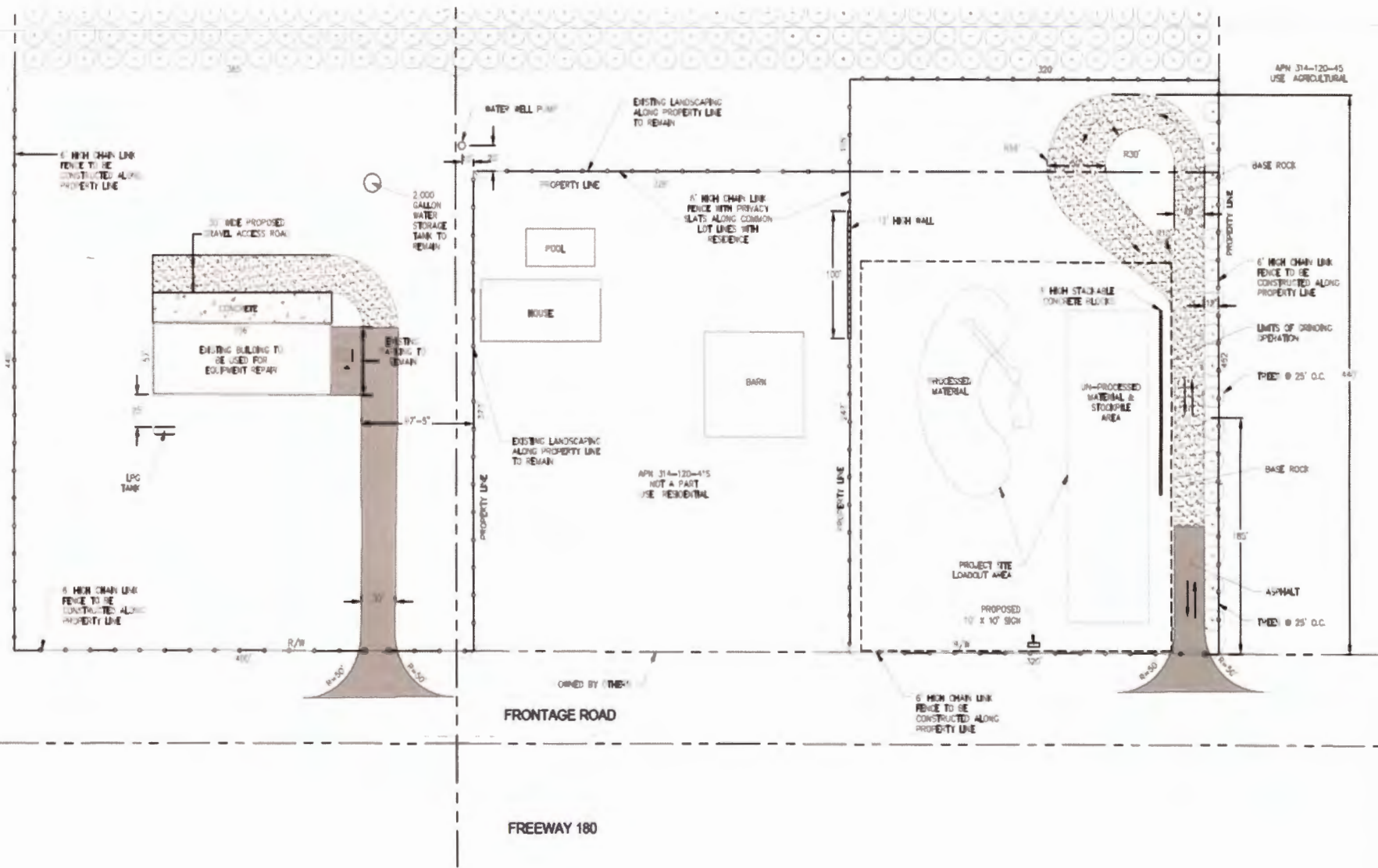
# Dust

- LSA Study
- LSA Letter for dust
- Base rock and gravel for working area
- Water truck
- Willing to apply soil products for dust
- Compare with Ag operation

- 75% of the 22 acres parcel will be planted in almonds
- No road around the residence
- Now only one in and out
- Compare to Ag operations

- No changes to the western area





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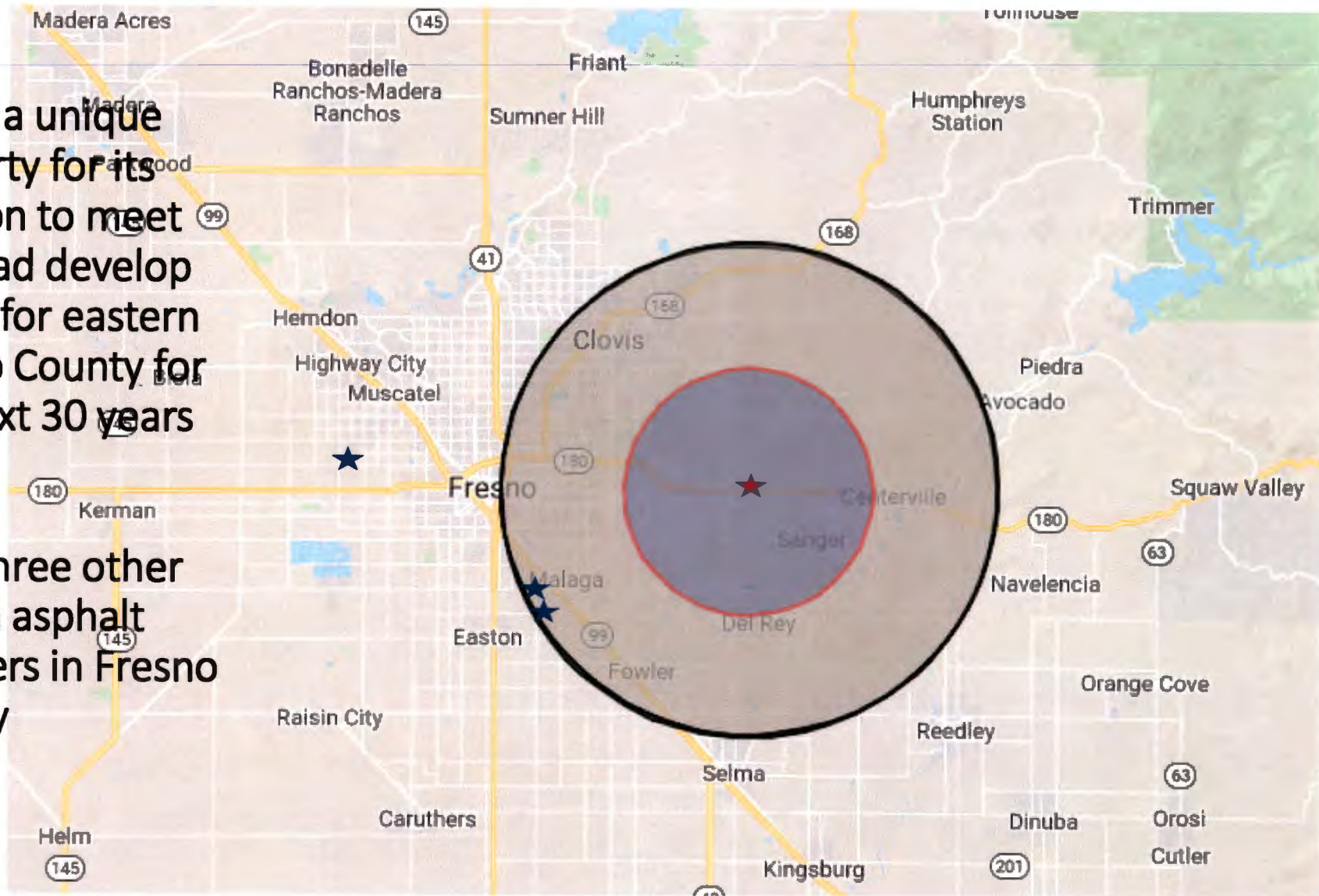
## Consistent with the General Plan

- Put back into Ag production
- 75% of the property in Almonds
- Unique property – transportation for eastern Fresno County
- High Growth Part of County
- No other recyclers on east side of the county
- Same justification for CUP at Belmont and McCall



This is a unique property for its location to meet the road development needs for eastern Fresno County for the next 30 years

Only three other known asphalt recyclers in Fresno County





- Approved CUP 3640
- September 12, 2019
- Retail liquefied petroleum gas distribution and storage on 5.54-acre parcel in the AE-20 Zone District
- In regard to Criteria “a”, the proposed operation will provide a retail liquefied petroleum location to serve the surrounding agricultural community. The Applicant has indicated that there are no other operations similar to the proposal in the vicinity of the project area and that the closest similar operation is located approximately 2.9 miles west of the project site.
- In regard to Criteria “b”, the project site is not being actively farmed. The primary use of the site is residential, with the project located on a vacant portion of the subject parcel. Therefore, the project will not be sited on productive agricultural lands.







s Canyon N

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E Kings Canyon N

E Kings Canyon N

E Kings Canyon N

E Kings Canyon N

E Kings Canyon N

Google

Item #7  
1-26-2021

Jan 26, 2021

This is in regards to the conversation stated in a letter from Antonio "Tony" Simone the Realtor Dated Nov. 17, 2021 for John and Lucretia Emmett . In regards to Unclassified Conditional Use Permit Application No. 3626.

In my first point of contact Tony stated only that they were already in Escrow and that there would be heavy equipment all around us, and increased traffic at the property that is directly to the North, East , and West of our property and if I would I consider selling my home to the Emmetts. My answer was "No this is my Home" There was no discussion of whether I was opposed or even agreed to the intended use of land and no mention whatsoever of the concrete crushing plant.

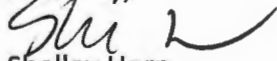
In my second conversation with Tony I called him to ask when they would be moving equipment on the property because we had been planning to remove some trees and the only way to drop them was to the north of our property. There was no mention of the concrete crushing plant or industrial waste.

Tony mentioned in his letter I had no objection as to the intended use of the property. That is false! I deeply objected to this but was given the impression that I had no choice, that the Emmetts where in complete compliance with the county as to use of the land, only to find out over a year later they had no permits and were in violation with the county. I did not have full disclosure of the extent of the operation until seeing the documents provided by the County before the prior meeting with the planning commission, where the conditional use permit was unanimously denied by staff and the Planning Commission.

Mr Emmett is a smart man that knew very well the property is Zoned AE-20 (Exclusive Agriculture, 20-acre minimum parcel size) Zone District.

Tony also said in his letter that I had declined to sell the property and was unwilling to give a price. That is also false! In our first conversation I stated that if Mr Emmett wanted to offer 1.5 Million, I may consider selling. Tony's reply was, you never know he may just do that.

Sincerely,



Shelley Horn

10510 E Kings Canyon Rd  
Sanger CA, 93657

**PARAMOUNT**

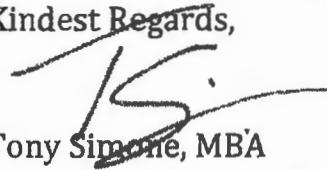
November 17<sup>th</sup>, 2020

To Whom It May Concern:

Hi, my name is Antonio "Tony" Simone. I was the Realtor representing John and Lucretia Emmett on the purchase of property located at 10452 E Kings Canyon Rd., Sanger, CA. As instructed by the Emmetts, I had two conversations with the owners of the property located at 10510 E Kings Canyon Rd., Sanger, CA 93657-9743.

My point of contact was Shelly Horn, wife of Russel Rocca. Originally, the conversation was geared toward the purchase of the property. In the course of the first conversation Shelly was made aware of the Emmetts' intended use of the subject property and had no objection. In the subsequent conversation, she noted that her husband didn't have any issues with the intended usage as well. In both conversations She (with reference to her husband) declined to sell the property at any price and were unwilling to give a price.

Kindest Regards,

  
Tony Simone, MBA  
Senior Vice President  
Paramount Properties  
2350 W Shaw Ave #128  
Fresno, CA 93711  
DRE #01717276