



**Board of Supervisors Staff
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One
PETE VANDER POEL
District Two
AMY SHUKLIAN
District Three
EDDIE VALERO
District Four
DENNIS TOWNSEND
District Five

AGENDA DATE: September 10, 2019

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
CONTACT PERSON: Denise England PHONE: 559-636-5000		

SUBJECT: Memorandum of Understanding with the Delano Earlimart Irrigation District Groundwater Sustainability Agency

REQUEST(S):
That the Board of Supervisors:

1. Approve the Memorandum of Understanding with the Delano Earlimart Irrigation District Groundwater Sustainability Agency for Groundwater Sustainability Plan coverage in the Tule Sub-basin; and
2. Authorize the Chairman to sign two copies of the MOU.

SUMMARY:
On January 1, 2015 the Sustainable Groundwater Management Act (SGMA) went into effect. The SGMA required public agencies overlying a high priority groundwater basin or sub-basin form Groundwater Sustainability Agencies by June 30, 2017. On June 6, 2017 your Board approved Resolution No. 2017-0394 electing to become a Groundwater Sustainability Agency (GSA) in portions of Tulare County where no other eligible public agency exists. SGMA requires that GSAs adopt Groundwater Sustainability Plans (GSPs) no later than January 30, 2020.

In mid-2015, a group of landowners in an area immediately west of the western boundary of the Delano-Earlimart Irrigation District (DEID) approached the District with a request to be annexed into DEID. The lands proposed for annexation had historically been dependent on groundwater as its sole source of irrigation water. Lands such as these, outside a water or irrigation district and having groundwater as their only source of water supply, are typically referred to “white areas”.

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DATE: September 10, 2019

The landowners proposing annexation had one request of the District: help them with their compliance with SGMA rules and implementation. It was also noted in their request for assistance/annexation, that the vast majority of the landowners in the proposed annexation were also current landowners in DEID.

The DEID board of directors moved forward on the annexation and adopted a resolution on February 11, 2016 approving a request to LAFCO for annexation of the lands. The District and the landowners executed an annexation agreement on July 20, 2016. The Tulare County LAFCO approved the annexation at its August 3, 2016 meeting. The annexed lands were not given any surface water right and were only annexed for the purposes of SGMA implementation.

Since that time, the annexed landowners brought various requests to the DEID board. In the course of these discussions, it became obvious that the landowners in the annexed area want to adopt an aggressive water procurement program in response to the projected impacts of SGMA, which would otherwise require land fallowing. The District supports the right and desire of these landowners to pursue supplemental water for their benefit as aggressively as they want. However, DEID is not able to do so.

DEID does not have the staffing to implement an aggressive approach to finding water supplies and developing projects for the benefit of the white area growers. DEID also has a major concern with potential conflicts that could, and probably would, occur if DEID staff were tasked with pursuing projects and water supplies for two different sets of growers (those in the original service area of DEID and those in the white area).

Due to the conflict described above, DEID initiated a detachment to remove the white area lands from the DEID service area. However, DEID and the affected landowners desire to maintain GSP coverage for the lands under the DEID GSA. LAFCo approved the detachment at their September 4, 2019 meeting. This detachment effectively removed the affected parcels from the DEID service area and the DEID GSA. Tulare County GSA is the default GSA for all white areas in Tulare County. As such, the detachment also placed the affected parcels in the Tulare County GSA.

Your Board approved two MOUs with adjacent GSAs to obtain GSP coverage for the parcels contained in the Tulare County GSA. These MOUs are Tulare County Agreement Numbers 28895 and 29110 with the Lower Tule Irrigation District GSA and the Tri County Water Authority GSA, respectively. To accomplish the goal of the DEID GSA and the affected landowners, Tulare County was approached to execute a similar MOU.

Including these parcels in the DEID GSA's GSP generates a cost-savings to the landowners. To that end, the parties crafted a Memorandum of Understanding to detail the relationship between the Tulare County GSA and the DEID GSA. The

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DEID GSA will include the area outlined in Exhibit A within their GSP. The DEID GSA has adopted nominal fees to fund the GSA formation, administration, and GSP preparation through January 31, 2020. The landowners are paying and will continue to pay the fees for the covered parcels. At such time the DEID GSA explores long-term funding options, the GSA will include these parcels in that assessment.

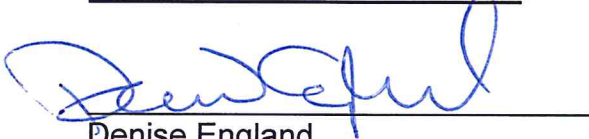
FISCAL IMPACT/FINANCING:

The landowners fund the costs associated with participation in the GSA.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's Strategic Plan includes an initiative to provide for the safety and security of the public, which includes the goal of providing an adequate and safe water supply.

ADMINISTRATIVE SIGN-OFF:



Denise England
Water Resources Director

cc: County Administrative Office

Attachment(s)
MOU
Exhibit A

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF MEMORANDUM OF)
UNDERSTANDING WITH THE DELANO) Resolution No. _____
EARLIMART IRRIGATION DISTRICT) Agreement No. _____
GROUNDWATER SUSTAINABILITY)
AGENCY)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Approved the Memorandum of Understanding with the Delano Earlimart Irrigation District Groundwater Sustainability Agency for Groundwater Sustainability Plan coverage in the Tule Sub-basin; and
2. Authorized the Chairman to sign two copies of the MOU.

**MEMORANDUM OF
UNDERSTANDING BETWEEN
DELANO-EARLIMART IRRIGATION DISTRICT GROUNDWATER
SUSTAINABILITY AGENCY AND THE COUNTY OF TULARE
WITH RESPECT TO IMPLEMENTATION OF
THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is entered into this ___ day of _____, 2019 (the "Effective Date"), by and between DELANO-EARLIMART IRRIGATION DISTRICT GROUNDWATER SUSTAINABILITY AGENCY ("DEID GSA") and the COUNTY OF TULARE, (the "County"). DEID GSA and the County may be referred to herein collectively as the "Parties," or individually as a "Party," or by their respective names.

RECITALS

A. WHEREAS, on September 16, 2014, the Governor of the State of California signed into law Senate Bills 1168 and 1319, and Assembly Bill 1739 collectively, the Sustainable Groundwater Management Act ("SGMA"), which is codified at Water Code Sections 10720 *et seq.*; and

B. WHEREAS, SGMA requires that California groundwater basins and subbasins be managed by a Groundwater Sustainability Agency ("GSA") or multiple GSAs, and that such management be implemented pursuant to an approved Groundwater Sustainability Plan ("GSP") or multiple coordinated GSPs; and

C. WHEREAS, Delano-Earlimart Irrigation District ("DEID") has elected to serve as a GSA for its service area in the Tule Subbasin of the San Joaquin Valley Groundwater Basin and, through separate agreements, provides GSP coverage for the unincorporated communities of Earlimart and Richgrove, as separate management areas within the DEID GSA that are not within the boundary of DEID; and

D. WHEREAS, there is an area within the County's boundaries, hereafter referred to as the "Management Area," which is adjacent to but outside of DEID's service area, and which is identified in Exhibit "A", attached hereto and incorporated herein by this, for which the County is the de facto GSA; and

E. WHEREAS, pursuant to California Water Code Section 10724, the County is presumed to be the GSA for any area that is not within the management area of a groundwater sustainability agency; and

F. WHEREAS, the County and DEID GSA want to ensure SGMA compliance for the Management Area and as such, the County desire to manage the Management Area in coordination with DEID GSA and to include the Management Area within DEID GSA's proposed GSP; and

G. WHEREAS, the County desires , under the terms and conditions of DEID GSA's GSP; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein and these Recitals, which are hereby incorporated herein by this reference, it is agreed by and among the Parties hereto as follows:

1. **Objectives.** The objectives of DEID GSA and the County in entering into this MOU are as follows:

(a) To achieve sustainable groundwater management pursuant to SGMA in those portions of the Tule Subbasin that are in the Management Area, over which the County currently serves as the GSA, and which the Parties intend to manage pursuant to and in compliance with DEID GSA's GSP.

(b) To work cooperatively with other GSAs within the Tule Subbasin to achieve sustainable groundwater management in the Tule Subbasin.

(c) To work together to establish a GSP that covers the Management Area while acknowledging the County's land use planning authority and the powers and authority of the DEID GSA. The County acknowledges that the DEID GSA will be responsible for drafting the GSP and that under the terms of this MOU, the DEID GSA's GSP shall apply to and cover the Management Area for the purposes of SGMA.

(d) To establish a process to ensure there are no conflicts between DEID GSA's GSP and the County's exercise of its land use planning authority and police powers.

2. **Precedence of County's Land Use Planning Authority.** DEID GSA agrees that its operations as a GSA, and any GSP adopted by DEID GSA, will not abrogate the County's General Plan or conflict with the County's exercise of its land use planning authority; provided, that the County's General Plan and the County's exercise of its land use planning authority comply with all applicable laws, statutes, and regulations. The County agrees that it will assist, as necessary and as allowed by law, the DEID GSA in the required enforcement of the GSP and SGMA requirements over the Management Area. The County acknowledges Water Code section 10726.4 and the ability of the GSP to require regulation of groundwater extractions in the Management Area if there is insufficient sustainable yield in the subbasin.

3. **Coordination Framework.** The Parties agree that they shall cooperate in the implementation of SGMA requirements over the Management Area. The Management Area shall be required to comply with the rules and regulations of DEID GSA, including any legally approved assessments. DEID GSA agrees, in developing

and implementing its GSP, to consider the interests of the County, specifically including the County's General Plan.

In order to prevent conflicts between the GSP and the County's General Plan and between DEID GSA's operations as a GSA and the County's exercise of its land use planning authority, the County shall have opportunities to provide, and DEID GSA shall consider, advisory input in the development and implementation of DEID GSA's GSP. The County shall designate a contact person ("Designated Contact Person") to whom DEID GSA shall provide written notices of opportunities to participate in SGMA implementation.

No fewer than 90 days before adopting or modifying the GSP or policies or procedures for the exercise of GSA powers, DEID GSA shall provide written notice to the Designated Contact Person. Within 30 days of receiving such notice, the Designated Contact Person may request consultation with DEID GSA's representative. Prior to the adoption or modification of the GSP or policies or procedures for the exercise of GSA powers, DEID GSA shall consider any comments or recommendations provided by the Designated Contact Person for the County, to achieve the goals of this MOU.

No fewer than 90 days prior to issuing, adopting, modifying, or approving any ordinance, policy, plan, or permit, or taking any other action related to groundwater resources within the Tule Subbasin, the County shall provide written notice to DEID GSA. Within 30 days of receiving such notice, DEID GSA may request a mandatory consultation with the County. Prior to taking any groundwater-related action, the County shall consider any comments or recommendations provided by DEID GSA.

4. Finances. Each of the Parties to this MOU shall bear its own costs of implementing SGMA, except as follows:

(a) The County shall provide assistance and support in applying for grant funding related to SGMA implementation when so requested by DEID GSA.

(b) To the extent that DEID GSA incurs costs in either the development or implementation of a GSP applicable to, or in implementing SGMA within, the Management Area, the County shall provide proportional financial reimbursement to DEID GSA until such time as fees are studied, adopted and implemented to cover the Management Area. DEID GSA and the County agree to cooperate in the preparation and voting process to implement and enforce any required fees.

(c) If DEID GSA is required to file a boundary adjustment with any government agency, including but not limited to the California Department of Water Resources, to include the Management Area, then County agrees to be responsible for

copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

7. **Compliance with Laws.** In any action taken pursuant to this MOU, DEID GSA and the County shall comply with all applicable statutes, laws, and regulations, specifically including, but not limited to, SGMA and its implementing regulations, as they now exist or as they may be amended or promulgated from time to time.

To the extent that this MOU conflicts with or does not accurately reflect any applicable statutes, laws, or regulations now existing or as amended or promulgated from time to time, the laws, statutes, and regulations shall govern.

To the extent that any applicable statutes, laws, or regulations are amended or newly promulgated in such a manner that causes this MOU to conflict with or no longer accurately reflect such statutes, laws, or regulations, this MOU shall be modified, in writing, by all Parties, in order to comport with the newly amended or promulgated statutes, laws, or regulations.

8. **Termination.** The Parties agree that this MOU may be terminated by either Parties upon 30 days written notice to the other Party, but such termination shall not be effective until applicable GSA boundaries are modified to maintain SGMA compliance.

9. **Entire Agreement.** This MOU and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

10. **Amendments.** No provisions of this MOU may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized by representatives of all Parties.

11. **No Assignment.** The rights and obligations of the Parties to this MOU may not be assigned or delegated, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void.

12. **Binding Effect.** This MOU shall apply to and bind successors, assignees, contractors, subcontractors, transferees, agents, employees, and representatives of the respective Parties hereto.

13. **Governing Law.** This MOU and all documents provided for herein and the rights and obligations of the Parties hereto shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California (without giving effect to any choice of law principles).

14. **Waiver.** The failure of any Party to insist on strict compliance with any

provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by any Party of either performance or payment shall not be considered to be a waiver of any preceding breach of the MOU by any other Party.

15. **Severability.** If any term or provision of this MOU is, to any extent, held invalid or unenforceable, the remainder of this MOU shall not be affected.

16. **Headings.** The subject headings of the sections of this MOU are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein.

17. **Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

18. **Joint Powers Agreement Not Required.** It is understood and agreed by the Parties that the development and implementation of a GSP does not require the formation of a joint powers agency between their respective organizations.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the day and year first above written.

DELANO-EARLIMART
IRRIGATION DISTRICT
GROUNDWATER
SUSTAINABILITY AGENCY

COUNTY OF TULARE

By: _____

By: _____

Name: _____

Name: _____

Title: _____



Title: _____

DETACHMENT #1543

DELANO-EARLIMART IRRIGATION DISTRICT

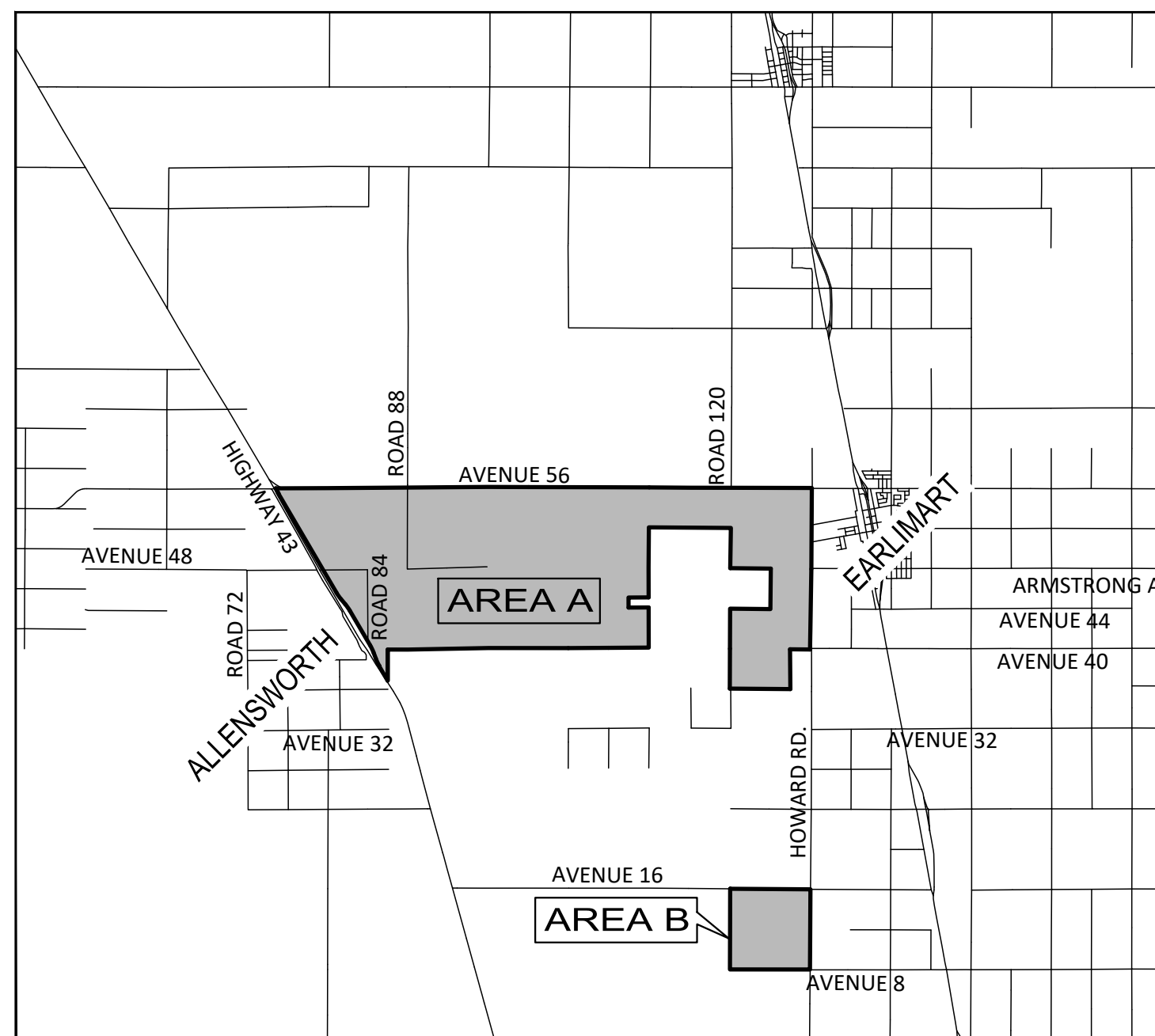
THE BOUNDARY OF THE DETACHMENT IS THE SAME AS THE BOUNDARY OF ANNEXATION #1524b, RECORDED AS DOCUMENT NO. 2016-0053279, NOTICE OF COMPLETION, OFFICIAL RECORDS, COUNTY OF TULARE, STATE OF CALIFORNIA

LEGEND

-  PROPOSED DISTRICT LIMITS/BOUNDARY
-  EXISTING DISTRICT LIMITS/BOUNDARY

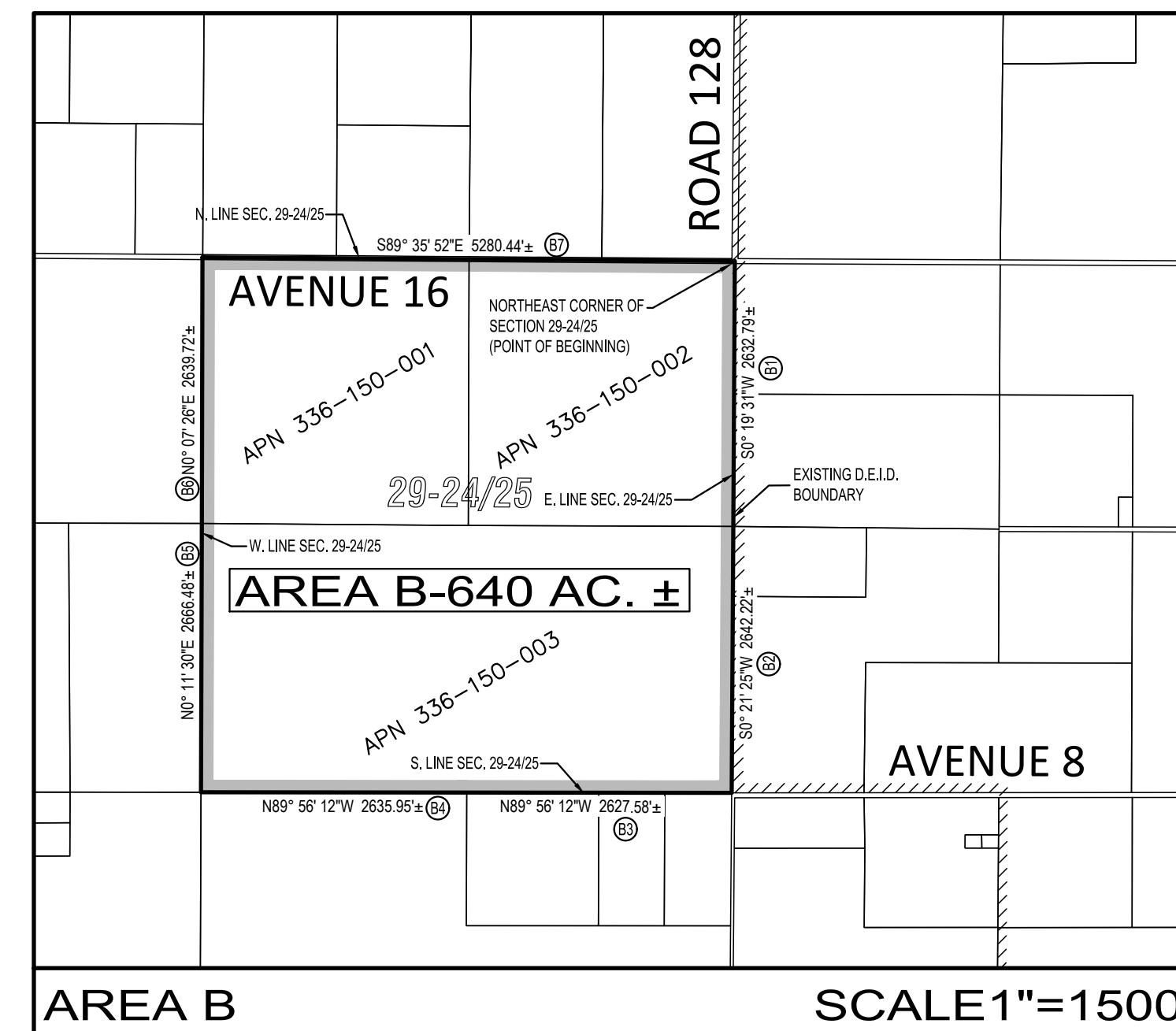
DISCLAIMER

"FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS THE BASIS FOR AN OFFER FOR SALE OF THE LAND DESCRIBED."



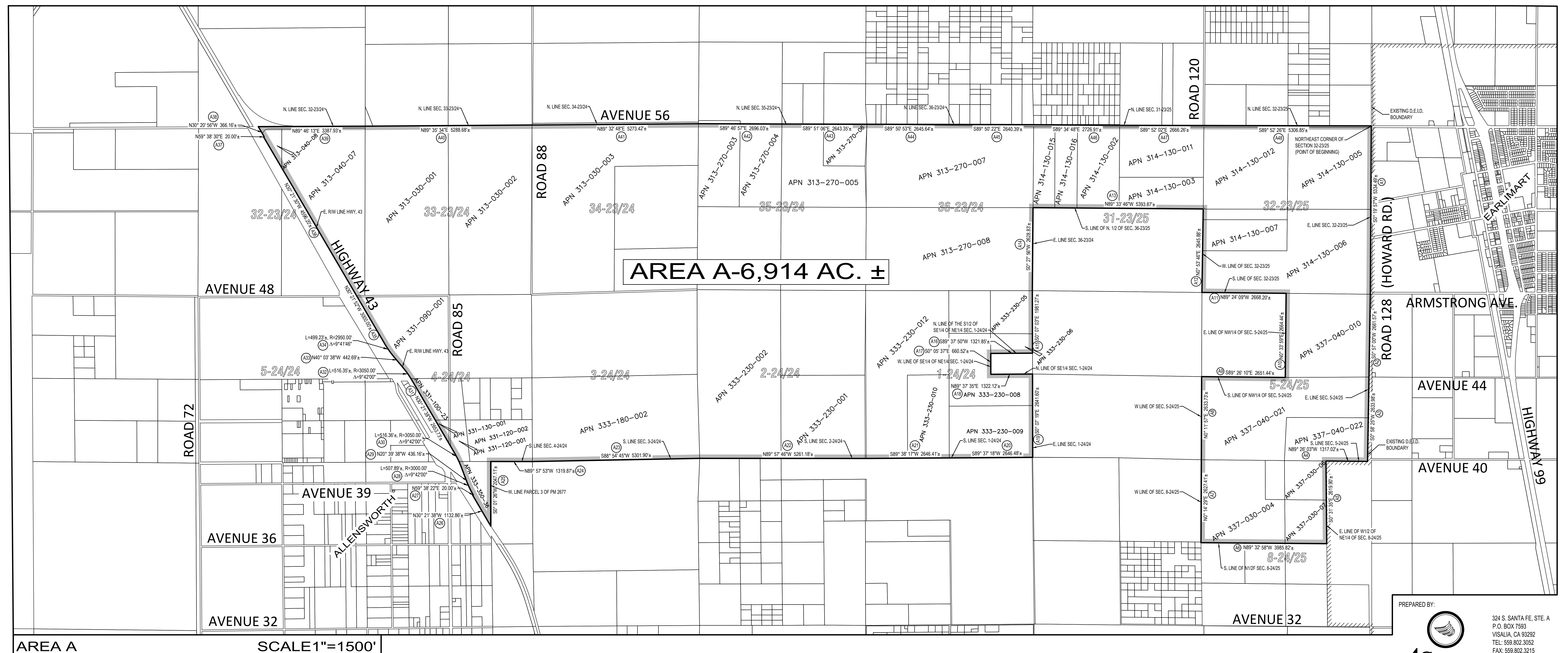
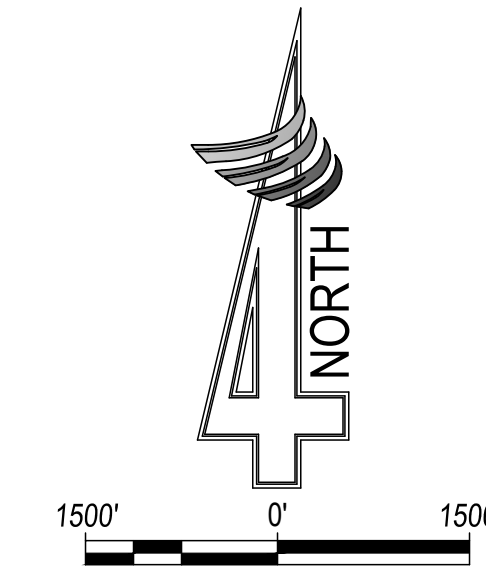
VICINITY MAP

NOT TO SCALE



AREA B

SCALE 1"=1500'



AREA A-6,914 AC. ±

AREA A

SCALE 1"=1500'

PREPARED BY:



4CREEKS

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