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MEMORANDUM

To: Board of Directors, Tahoe-Truckee Sanitation Agency

From: Andrew Ramos, Agency Counsel

Date: June 21, 2023

Re: Legal Process and Requirements Regarding Disposition of Potential TTSA Surplus Real Property

SUMMARY

At the February 15, 2023 meeting, the Board of Directors received an initial update on the status of TTSA-owned real property. The staff presentation from that meeting is attached as Attachment A. I received direction from the Board to analyze any restrictions on TTSA's disposition of surplus real property should the Board decide to dispose of any surplus real property in the future.

The memorandum should not be interpreted as presupposing or recommending that the TTSA Board of Directors should declare any TTSA-owned real property to be surplus or otherwise dispose of any real property. Rather, this memorandum is intended to provide process guidance to the Board on legal issues to consider if the Board of Directors considers these issues in the future.¹

The Background section of this memorandum provides summary information on TTSA's creation and its acquisition of real property in Martis Valley. The Discussion section describes the legal restrictions and process for potential disposition of TTSA real property. The Conclusion section provides summary guidance if the Board considers these issues in the future. The outline attached as Attachment B describes a potential process for complying with the legal requirements described in this memorandum if the Board considers these issues in the future.

This memorandum concludes that, while there are significant process requirements that TTSA must follow, it appears to be legally feasible for the TTSA Board of Directors to authorize disposition of any real property that the Board determines to be surplus. Because the existing wastewater reclamation facility conducts sensitive operations, the disposition of real property may include imposing restrictions on future use of the real property by third parties to appropriately protect TTSA operations.

¹ This memorandum uses the term "dispose" to mean all forms of sale, transfer, exchange, or other disposition of TTSA-owned real property.

There are at least two additional issues that are beyond the scope of the current memorandum. First, we have not yet been able to obtain title reports showing any restrictions on title to TTSA-owned real property. We determined that having title reports prepared for TTSA's more than 900 acres of real property would be a significant undertaking. The title company retained to prepare the reports stated that it will take a few additional months for the reports to be prepared and that work is currently underway. Second, we have not undertaken any analysis of potential incompatibility between present and future TTSA operational needs and the disposition of any specific TTSA real property. That analysis would need to be undertaken by TTSA staff and consultants as appropriate and considered by the TTSA Board should there be an interest in potentially disposing of any surplus real property.

BACKGROUND

The California Legislature formed TTSA in 1972 by an act known as the Tahoe-Truckee Sanitation Agency Act ("Agency Act"). TTSA was formed for the purpose of treating and disposing of wastewater throughout the north and west shores of Lake Tahoe, the Truckee River corridor, and Truckee to protect public health and the environment and comply with the Porter Cologne Water Quality Control Act.

In 1975, TTSA purchased approximately 214 acres by grant deed from Bertha Joerger Woolverton, et al. These lands include the site of the current wastewater reclamation facility.

The same year, the newly-formed agency received a \$24 million grant from the United States Environmental Protection Agency ("EPA") for design and construction of the initial wastewater treatment facilities. The EPA grant included certain continuing obligations concerning real property that TTSA would acquire using federal funds. These obligations are discussed further in section 3.A of the Discussion. However, the EPA grant did not include a line item for real property acquisition, and it appears unlikely that TTSA used EPA grant funds acquire any real property that TTSA may consider surplus real property in the future.

In 1982, TTSA purchased approximately 540 acres by grant deed from Gladys Joerger Gray, et al., for \$1.5 million. The purchase and sale agreement for these lands states the purchase would be funded through bond proceeds. These lands include most of the property that TTSA now treats as buffer zone or reserved for future facilities.

In 2001, TTSA entered into a long-term lease of TTSA property with Tahoe Truckee Unified School District ("TTUSD") for bus facilities. The TTUSD lease contains a term limiting TTSA's ability to transfer the leased property without TTUSD consent. This obligation is discussed further in section 3.B of the Discussion.

TTSA acquired additional real property over time and today owns approximately 937 acres in Martis Valley. Most of these lands are within the Town of Truckee and most or all of the lands are currently zoned for public facility use. The facts concerning TTSA's acquisition of real property after 1982 were not readily available and will need to be evaluated once TTSA receives the title report discussed above.

DISCUSSION

1. General Requirements for TTSA's Disposition of Surplus Real Property

The uncodified act that created TTSA in 1972 is Chapter 114 of the California Water Code Appendix and known as the Tahoe-Truckee Sanitation Agency Act or "Agency Act." The Agency Act provides broad authority for TTSA to obtain and dispose of real property as its governing board deems appropriate. (Agency Act, § 140.) The Agency Act contains no specific requirements or limitations on TTSA's authority to dispose of its real property.

Although the Agency Act provides TTSA broad authority to dispose of its real property, the California Constitution requires the disposition of any TTSA property to be for adequate consideration to avoid the prohibition on gifts of public property. (Cal. Const., Art. XIII, § 25; *Cty. of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745.) In determining whether a disposition of TTSA real property would be an invalid gift, the primary question is whether the disposition serves an authorized public purpose. If there is an authorized public purpose served by the disposition, and a commensurate benefit to TTSA, then there is no prohibited gift of public property even though private persons may also receive benefits from the transfer. (*Kizziah v. Dept. of Trans.* (1981) 121 Cal.App.3d 11, 22.) Because TTSA is not a general law entity like a city or county, general benefit to the public from a real property transfer would not qualify. Instead, TTSA would need to evaluate whether the transfer provides value specific to TTSA's mission to provide wastewater service to its member entities. Providing necessary funds for agency operations or providing specific operational benefits to TTSA would likely qualify as adequate consideration.

Another general rule is that purchase and sale of public property may trigger the need for compliance with the California Environmental Quality Act or "CEQA." (See Cal. Code Regs., tit. 14, § 15004, subd. (b).) Whether TTSA would need to take any actions to comply with CEQA before approving disposition of real property depends on the facts of the proposed disposition and would need to be further evaluated at the time.

2. Surplus Land Act Requirements for Disposition of Surplus Real Property

The state Surplus Land Act ("Act") requires local agencies to complete certain procedures before disposing of surplus real property by sale or long-term lease. (Gov. Code, §§ 54220-54234.) The stated purpose of the Act is to make surplus public property available for affordable housing and open space purposes before it is made available for other uses. The Act applies to all special districts, including TTSA. (Gov. Code, § 54221, subd. (a)(1)-(2) (defining "local agenc[ies]" subject to the Act to include all sewer districts of any class or kind).) Under the Act, surplus land must be declared either "exempt surplus land" or "surplus land" before TTSA may take any action to dispose of it, including entering into negotiations with potential buyers. (Gov. Code, § 54221, subd. (b)(1).)

"Exempt surplus land" is land that is exempt from the Act and its disposition procedures. (Gov. Code, § 54221, subd. (f).) The Act contains a number of express exemptions and it is possible that one or more would apply to TTSA's potential disposition of surplus real property.

First, the Act exempts surplus land that is disposed of in a manner that furthers the express purpose of a special district's work or operations, including disposition of real property used as a buffer site near a sensitive governmental. (Gov. Code, § 54221, subd.

(c)(1), (c)(2)(B)(i); Act Guidelines, § 103, subd. (b)(3)(J).) This exemption is intended to allow special districts to dispose of real property outside of the Act when there is a legitimate reason to restrict the future uses of the real property. The statute expressly mentions that the exemption applies to surplus real property used as a buffer site around wastewater reclamation facilities. Therefore, this exemption could apply to TTSA's disposition of surplus real property to the extent that TTSA determines that the real property's future use by third parties must be restricted to preserve an appropriate buffer around the wastewater reclamation facilities or to otherwise prohibit incompatible land uses.

Second, the Act exempts land that a local agency is exchanging for other property necessary for the local agency's use. (Gov. Code, § 54221, subd. (f)(1)(C).) This exemption would apply if TTSA undertakes a land exchange in its disposition of surplus real property.

Third, the Act exempts land that a local agency is transferring to another local, state, or federal agency for the other agency's use, or to a federally recognized California Indian tribe. (Gov. Code, § 54221, subd. (f)(1)(D).) This exemption would apply if TTSA proposes to dispose of surplus real property and the transferee is a qualifying government or tribal entity.

Fourth, the Act exempts land for which it would be legally infeasible to use the property for housing. Specifically, the Act exempts surplus land that is subject to a valid legal restriction that is not imposed by TTSA and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site. (Gov. Code, § 54221, subd. (f)(1)(G).) An existing nonresidential land use designation does not qualify as a legal restriction triggering this exemption. (*Ibid.*) This exemption could apply to the extent that there are property-specific restrictions that would prohibit development of housing on a given piece of TTSA property.

If one or more of these exemptions applies to TTSA real property, TTSA's governing board may declare the real property to be exempt surplus land at a regular public meeting. (Gov. Code, § 54221, subd. (b)(1).) The declaration must be supported by written findings supporting the exemption. (*Ibid.*) TTSA must forward the declaration to the California Department of Housing and Community Development ("HCD") no less than 30 days before the agency takes action to dispose of the real property. (Act Guidelines, § 400, subd. (e).)

If land is not exempt from the Act and not needed for TTSA use, then the land may be declared "surplus land" by the TTSA Board of Directors at a regular public meeting. (Gov. Code, § 54221, subd. (b).) Before TTSA may dispose of surplus land or participate in negotiations to dispose of the property with a prospective transferee, TTSA must follow certain procedures required by the Act. Principally, TTSA must do the following:

- Provide written notice of availability of the surplus land to certain entities interested in development of affordable housing and open-space lands (Gov. Code, § 54222);
- Upon receipt of a timely response to the notice, enter into good faith negotiations for sale of the property for a period of at least 90 days (Gov. Code, § 54223); and,
- Notify HCD regarding the local agency's compliance with the Act.

It is important to note that, if the TTSA Board of Directors does not find the surplus land to be exempt from the Act, there is an unresolved question whether TTSA could still impose a restriction prohibiting future use of the surplus land for housing. Because the restriction would appear to be contrary to the Act's purpose of making land available for housing, the conservative approach would be to conclude that TTSA could not impose this restriction on surplus land that is not exempt from the Act.

If the good faith negotiations do not result in an agreement to dispose of the property, then the Act's requirements have been satisfied and TTSA may dispose of the surplus land outside of the Act as it deems appropriate.

3. Property-Specific Restrictions

Beyond the general law requirements described in the preceding section, this section discusses several property-specific restrictions affecting the disposition of some TTSA real property.

A. Restrictions on Real Property Acquired with Federal Funds from the 1975 EPA Grant

As mentioned above in the Background, TTSA received \$24 million in grant funds from the EPA for design and construction of the initial wastewater reclamation facilities. The EPA grant included terms restricting TTSA's future disposition of any real property it acquired with federal funds. (2 C.F.R. § 200.345, subd. (a)(5).) Specifically, the EPA grant requires TTSA to obtain instructions from EPA before it disposes of any TTSA real property that it originally acquired with federal funds. (2 C.F.R., § 200.311, subds. (b)-(c).) The instructions from EPA may require repayment to EPA or transfer of the property to EPA or a third-party designated by EPA. (*Id.* at subd. (c).) Although TTSA received the EPA grant in 1975, the obligations described above are continuing obligations that survived closeout of the grant when the initial wastewater reclamation facility was completed in the 1970's.

It is not clear whether these limitations would actually impact TTSA's ability to dispose of surplus real property. First, the EPA grant award was intended to fund design and construction of the wastewater reclamation facility and did not include a line item for real property acquisition. This suggests EPA grant funds were not used to acquire TTSA real property. Second, the only real property that TTSA is known to have acquired around the time of the grant award in 1975 was the property that is the current site of the wastewater reclamation facility. It would be infeasible for TTSA to consider disposing of these lands. TTSA acquired the additional lands that are considered the buffer zone around the wastewater reclamation facility years later apparently through bond proceeds. The disposition of this real property would not be subject to the EPA grant limitations on transfer because federal funds were not used in their acquisition.

B. TTUSD Bus Barn Lease

The long-term lease between TTSA and TTUSD for the bus facility property contains two restrictions on TTSA's transfer of the leased property. Section 37 states TTSA may not transfer or otherwise convey that property without TTUSD's written consent. Section 39 provides TTUSD a right of first refusal should TTSA decide to dispose of the leased

property in the future. TTSA would need to evaluate these terms if it considers declaring that property to be surplus real property.

C. Evaluation of Other Potential Restrictions

It is possible that additional property-specific restrictions will be revealed by the title reports that are being prepared. These restrictions may affect the feasibility of disposing of the real property or impact whether the disposition is exempt from the Surplus Land Act. TTSA would need to review and evaluate these restrictions should it decide to potentially dispose of this property in the future.

CONCLUSION

While there are significant process requirements that TTSA must follow, it appears to be legally feasible for the TTSA Board of Directors to authorize disposition of real property that the Board determines to be surplus. The disposition of surplus real property may include a decision to impose appropriate restrictions on future use of the real property by third parties to protect TTSA operations. The outline in Attachment B provides one possible path forward should the Board of Directors decide to continue this discussion in the future or provide direction to TTSA staff on next steps.

Attachments

- Attachment A – Staff presentation on TTSA real property from February 15, 2023
- Attachment B – Process Outline for Disposition of TTSA Surplus Real Property

Attachment A

Staff Presentation on TTSA Real Property from February 15, 2023



TAHOE-TRUCKEE SANITATION AGENCY

MEMORANDUM

Date: February 15, 2023
To: Board of Directors
From: Jay Parker, Engineering Manager
Item: IV-8
Subject: Review and discussion of Agency owned property for current and future use.

Background

The Agency owns approximately 937 acres in Martis Valley. The attached presentation will be given at the Board of Directors meeting describing current and future uses of this property. The information has been organized into a series of map overlays to provide better clarity as to the large number of current, planned and potential uses of the land.

Fiscal Impact

None.


Attachments


Presentation of Agency property maps with overlays.

Recommendation

None.







Review Tracking

Submitted By: 
Jay Parker
Engineering Manager

Approved By: 
Richard Pallante
General Manager

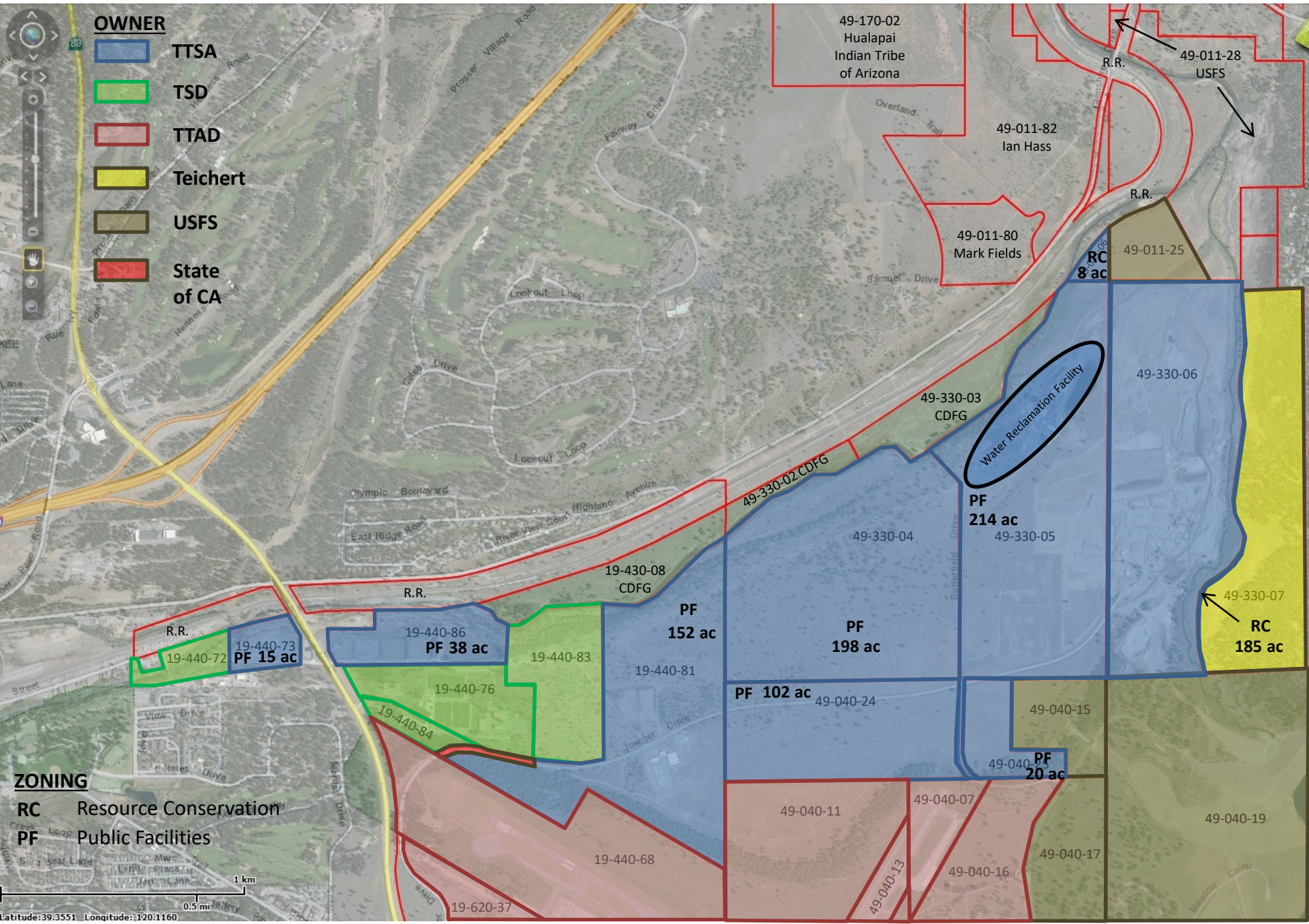
LAND OWNERSHIP

OWNER

-  TTSA
-  TSD
-  TTAD
-  Teichert
-  USFS
-  State of CA

ZONING

- RC** Resource Conservation
- PF** Public Facilities



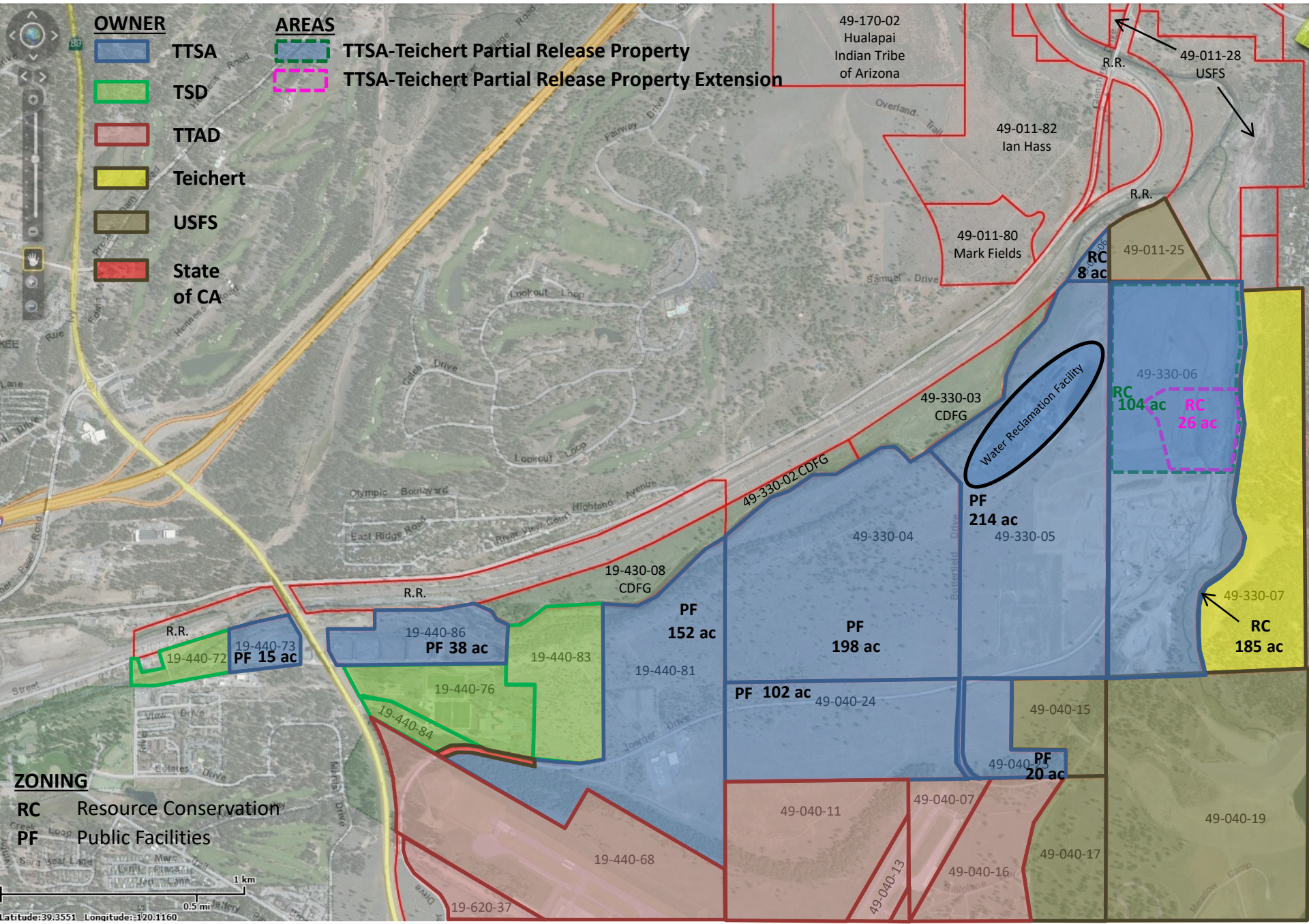
RECLAIMED PROPERTY

OWNER

- TTSA
- TSD
- TTAD
- Teichert
- USFS
- State of CA

AREAS

- TTSA-Teichert Partial Release Property
- TTSA-Teichert Partial Release Property Extension



ZONING

- RC** Resource Conservation
- PF** Public Facilities

1 km

0.5 mi

Latitude: 39.3551 Longitude: 120.1160

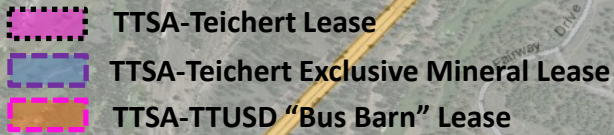
LEASES

OWNER



TTSA
TSD
TTAD
Teichert
USFS
State of CA

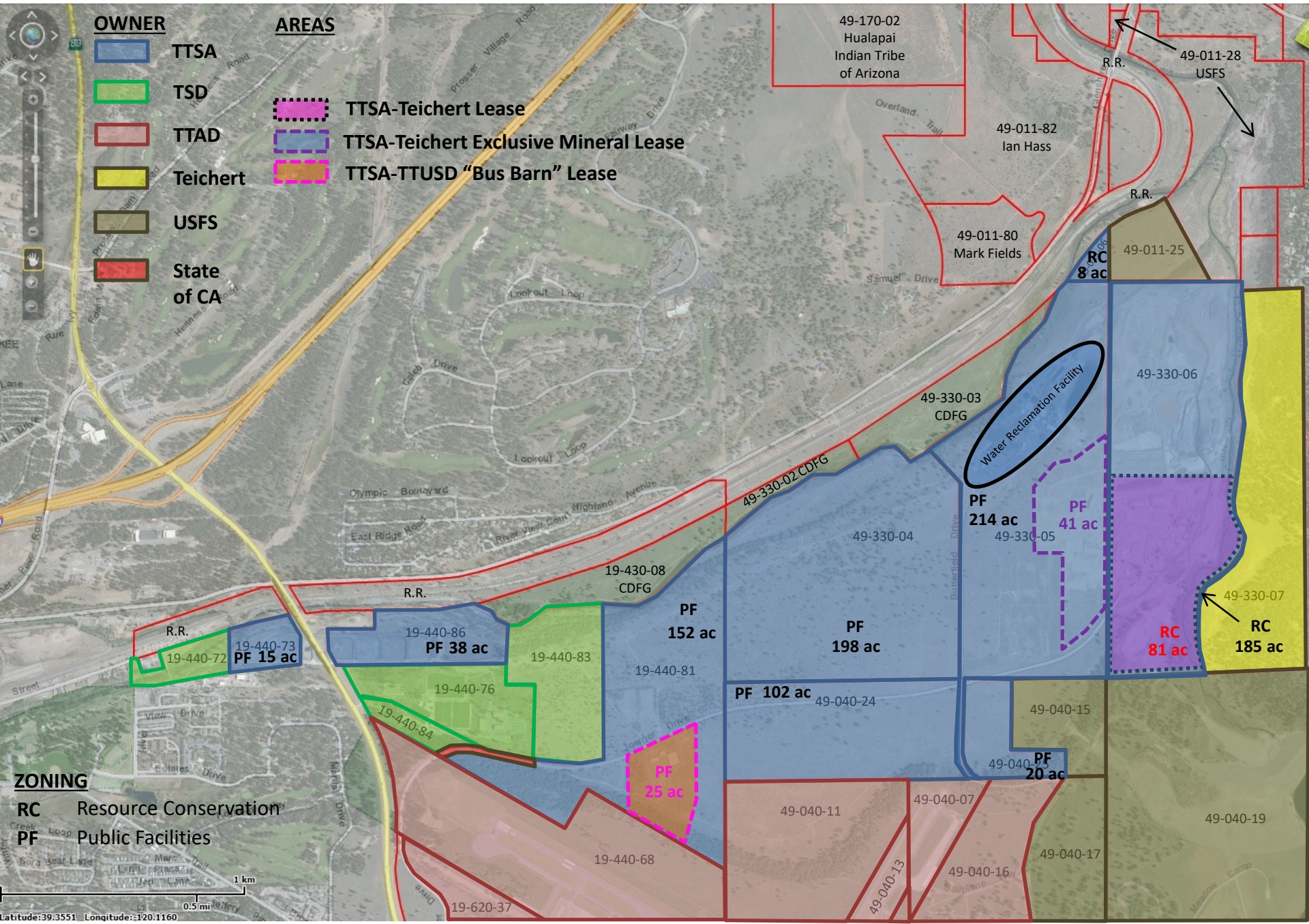
AREAS



TTSA-Teichert Lease
TTSA-Teichert Exclusive Mineral Lease
TTSA-TTUSD "Bus Barn" Lease

ZONING

RC Resource Conservation
PF Public Facilities

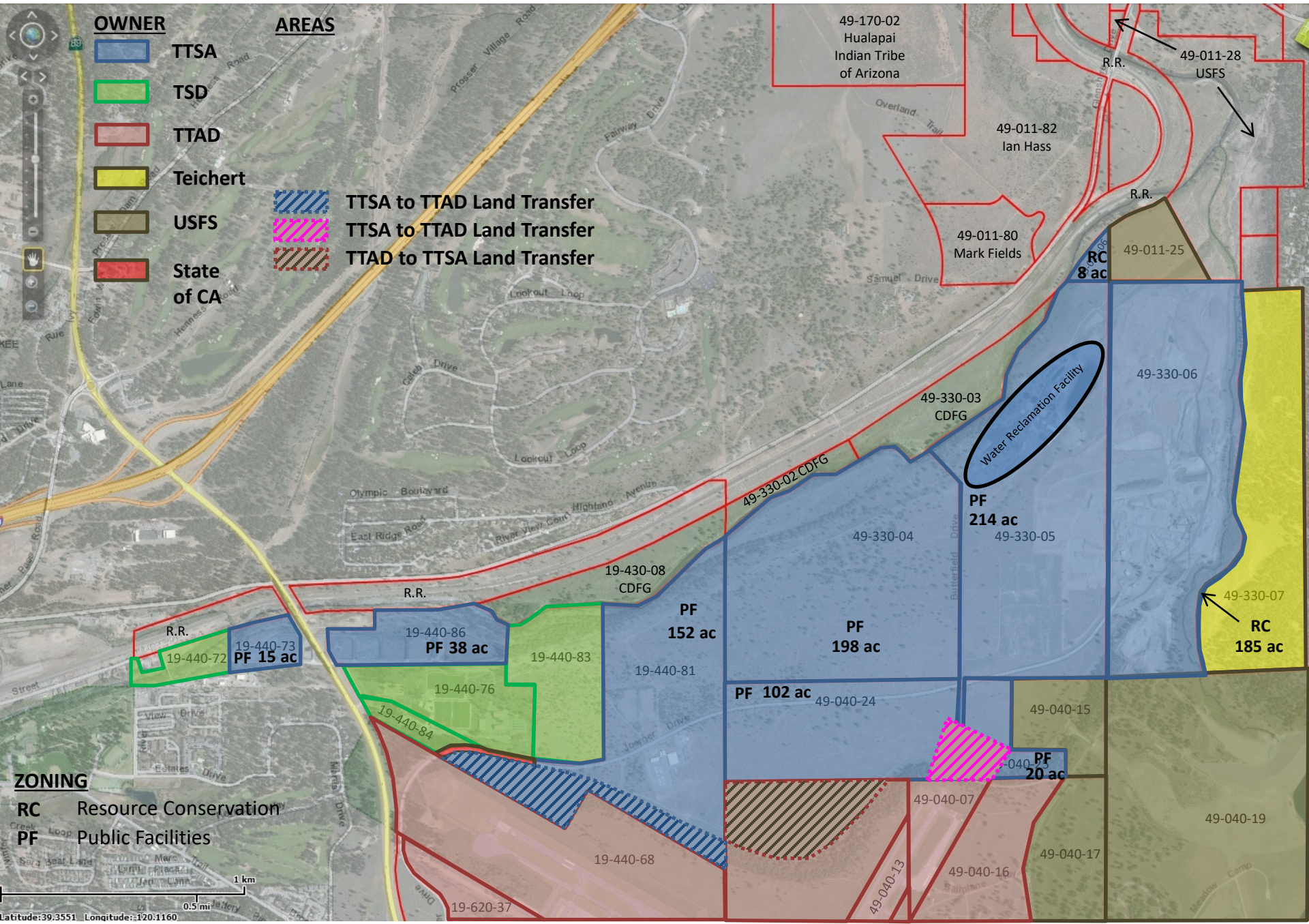


1 km

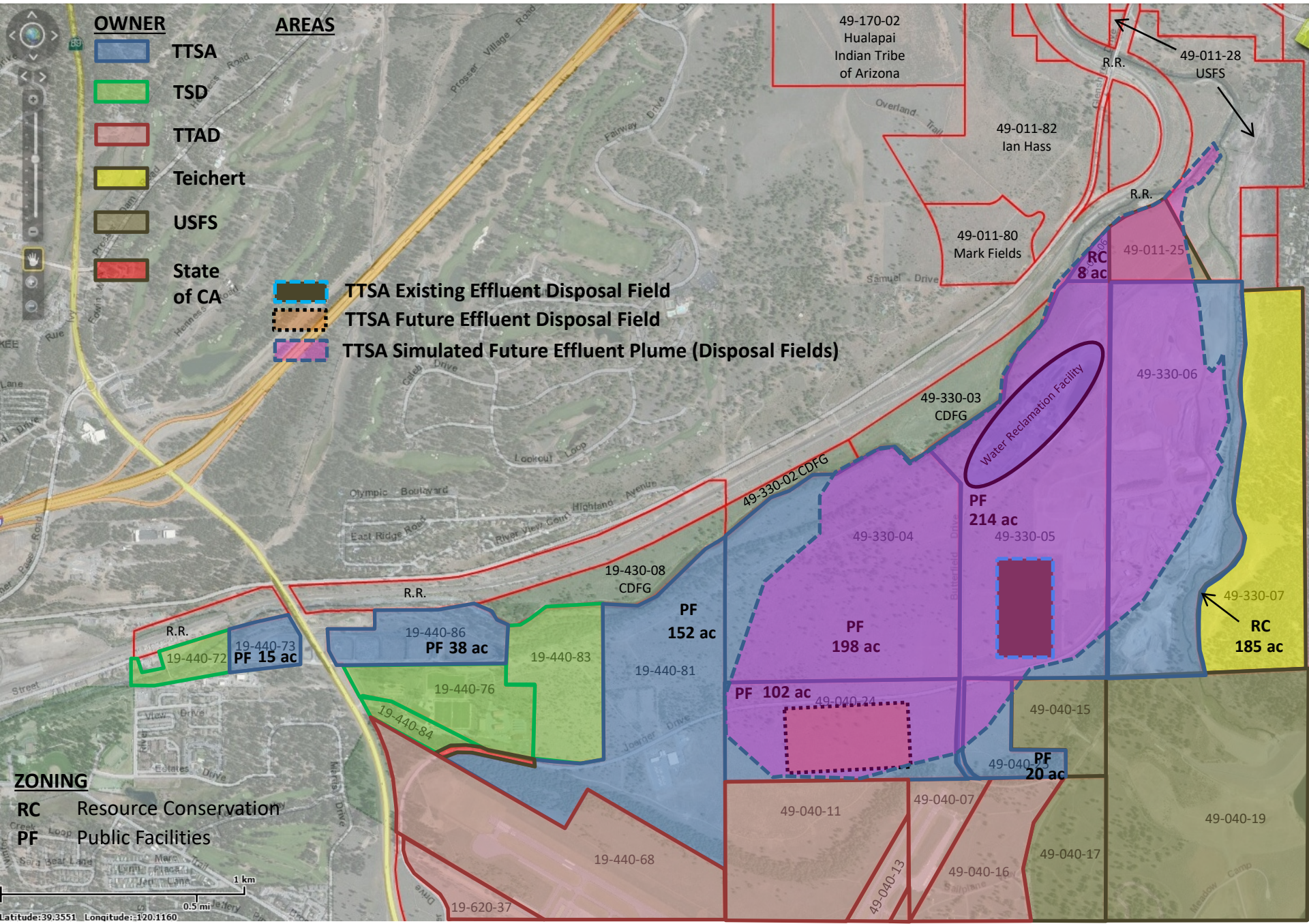
0.5 mi

Latitude: 39.3551 Longitude: 120.1160

AIRPORT LAND TRANSFERS



EFFLUENT DISPOSAL



OWNER

- TTSA
- TSD
- TTAD
- Teichert
- USFS
- State of CA

AREAS

- TTSA Existing Effluent Disposal Field
- TTSA Future Effluent Disposal Field
- TTSA Simulated Future Effluent Plume (Disposal Fields)

ZONING

- RC** Resource Conservation
- PF** Public Facilities

1 km

0.5 mi

Latitude: 39.3551 Longitude: 120.1160

49-170-02 Hualapai Indian Tribe of Arizona

49-011-82 Ian Hass

49-011-80 Mark Fields

49-011-28 USFS

49-011-25 RC 8 ac

49-330-03 CDFG

Water Reclamation Facility

49-330-06

49-330-04

49-330-05

49-330-07 RC 185 ac

19-430-08 CDFG

PF 152 ac

19-440-86 PF 38 ac

19-440-83

19-440-81

PF 198 ac

PF 102 ac

49-040-15

49-040-11

49-040-07

49-040-16

49-040-17

49-040-19

19-440-76

19-440-84

19-440-87

19-440-73 PF 15 ac

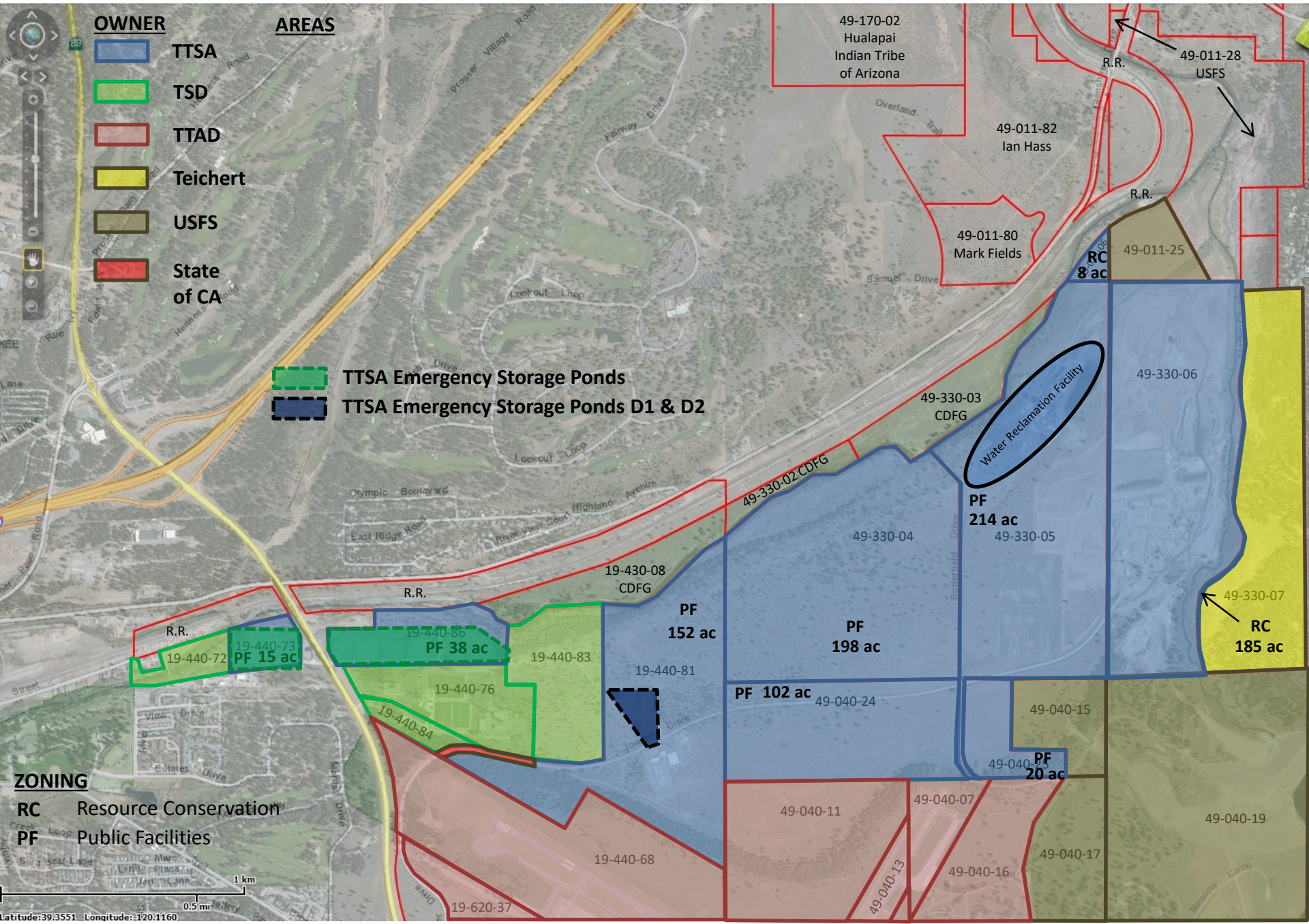
19-440-72

49-040-24

49-040-20 ac

19-620-37

EMERGENCY STORAGE



OWNER

- TTSA
- TSD
- TTAD
- Teichert
- USFS
- State of CA

AREAS

- TTSA Emergency Storage Ponds
- TTSA Emergency Storage Ponds D1 & D2

ZONING

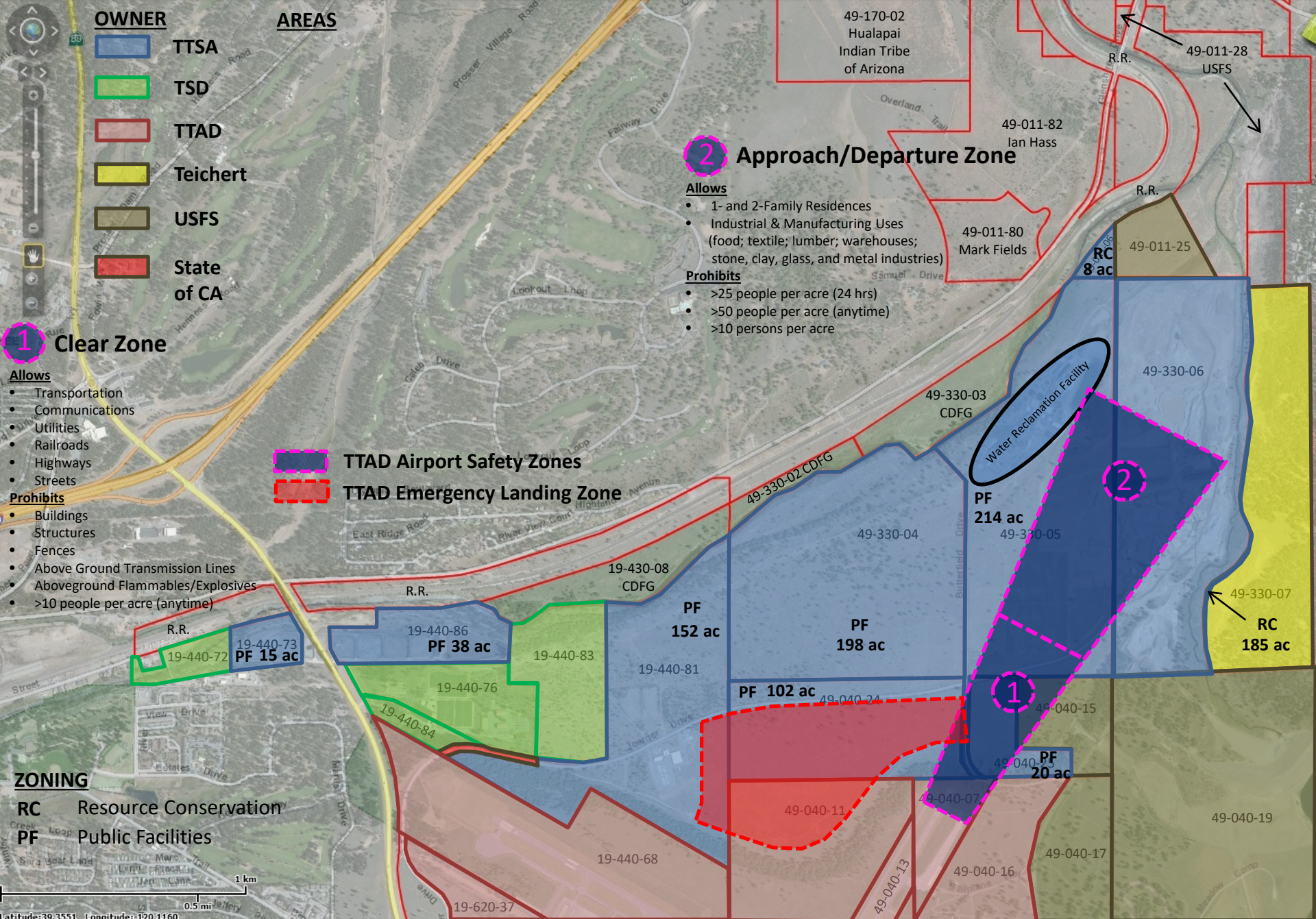
- RC** Resource Conservation
- PF** Public Facilities

1 km

0.5 mi

Latitude: 39.3551 Longitude: 120.1160

AIRPORT SAFETY



OWNER

- TTSA
- TSD
- TTAD
- Teichert
- USFS
- State of CA

AREAS

1 Clear Zone

Allows

- Transportation
- Communications
- Utilities
- Railroads
- Highways
- Streets

Prohibits

- Buildings
- Structures
- Fences
- Above Ground Transmission Lines
- Aboveground Flammables/Explosives
- >10 people per acre (anytime)

2 Approach/Departure Zone

Allows

- 1- and 2-Family Residences
- Industrial & Manufacturing Uses (food; textile; lumber; warehouses; stone, clay, glass, and metal industries)

Prohibits

- >25 people per acre (24 hrs)
- >50 people per acre (anytime)
- >10 persons per acre

 TTAD Airport Safety Zones

 TTAD Emergency Landing Zone

ZONING

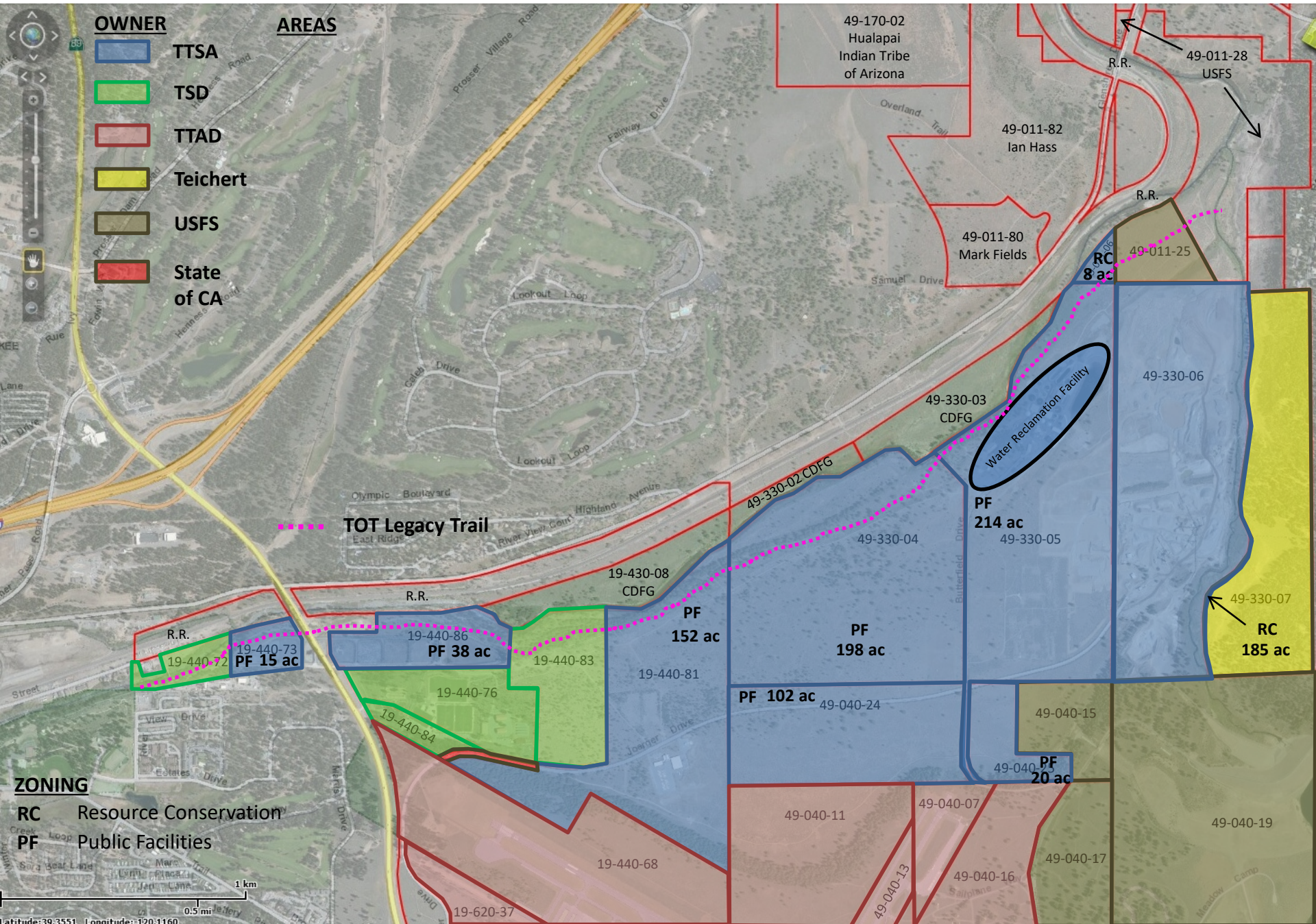
- RC Resource Conservation
- PF Public Facilities

1 km

0.5 mi

Latitude: 39.3551 Longitude: 120.1160

LEGACY TRAIL



OWNER

- TTSA
- TSD
- TTAD
- Teichert
- USFS
- State of CA

AREAS

⋯⋯⋯ TOT Legacy Trail

Water Reclamation Facility

ZONING

- RC** Resource Conservation
- PF** Public Facilities

1 km

0.5 mi

Latitude: 39.3551 Longitude: 120.1160

49-170-02
Hualapai
Indian Tribe
of Arizona

49-011-28
USFS

49-011-82
Ian Hass

49-011-80
Mark Fields

49-011-25

49-330-06

49-330-03
CDFG

Water Reclamation Facility

PF
214 ac

49-330-07

RC
185 ac

49-330-02 CDFG

49-330-04

49-330-05

19-430-08
CDFG

PF
152 ac

PF
198 ac

19-440-72
PF 15 ac

19-440-73
PF 15 ac

19-440-86
PF 38 ac

19-440-83

19-440-81

PF 102 ac

49-040-24

49-040-15
PF 20 ac

49-040-11

49-040-07

49-040-19

19-440-68

49-040-13

49-040-16

49-040-17

19-620-37

49-040-13

49-040-16

49-040-17

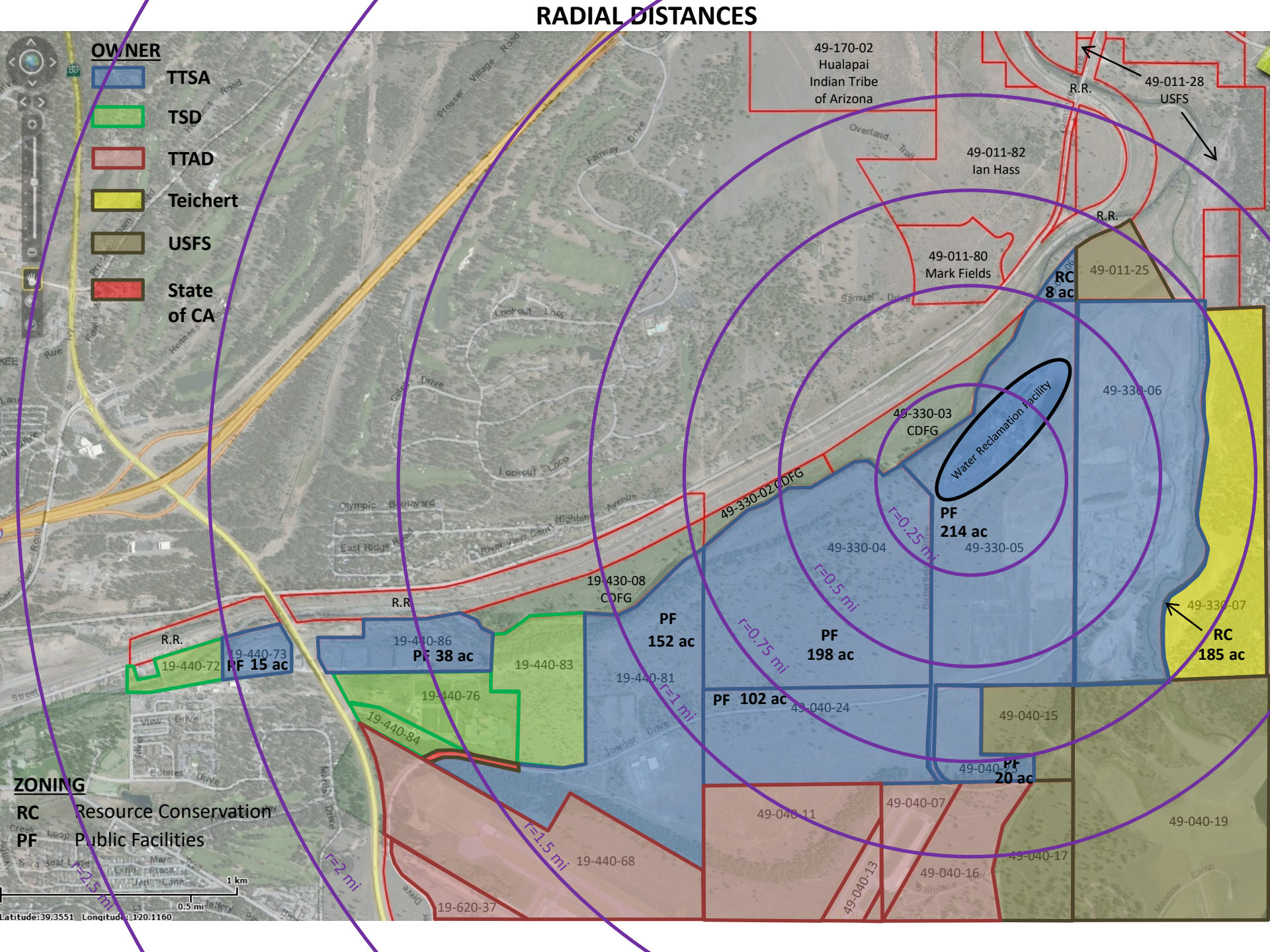
RADIAL DISTANCES

OWNER

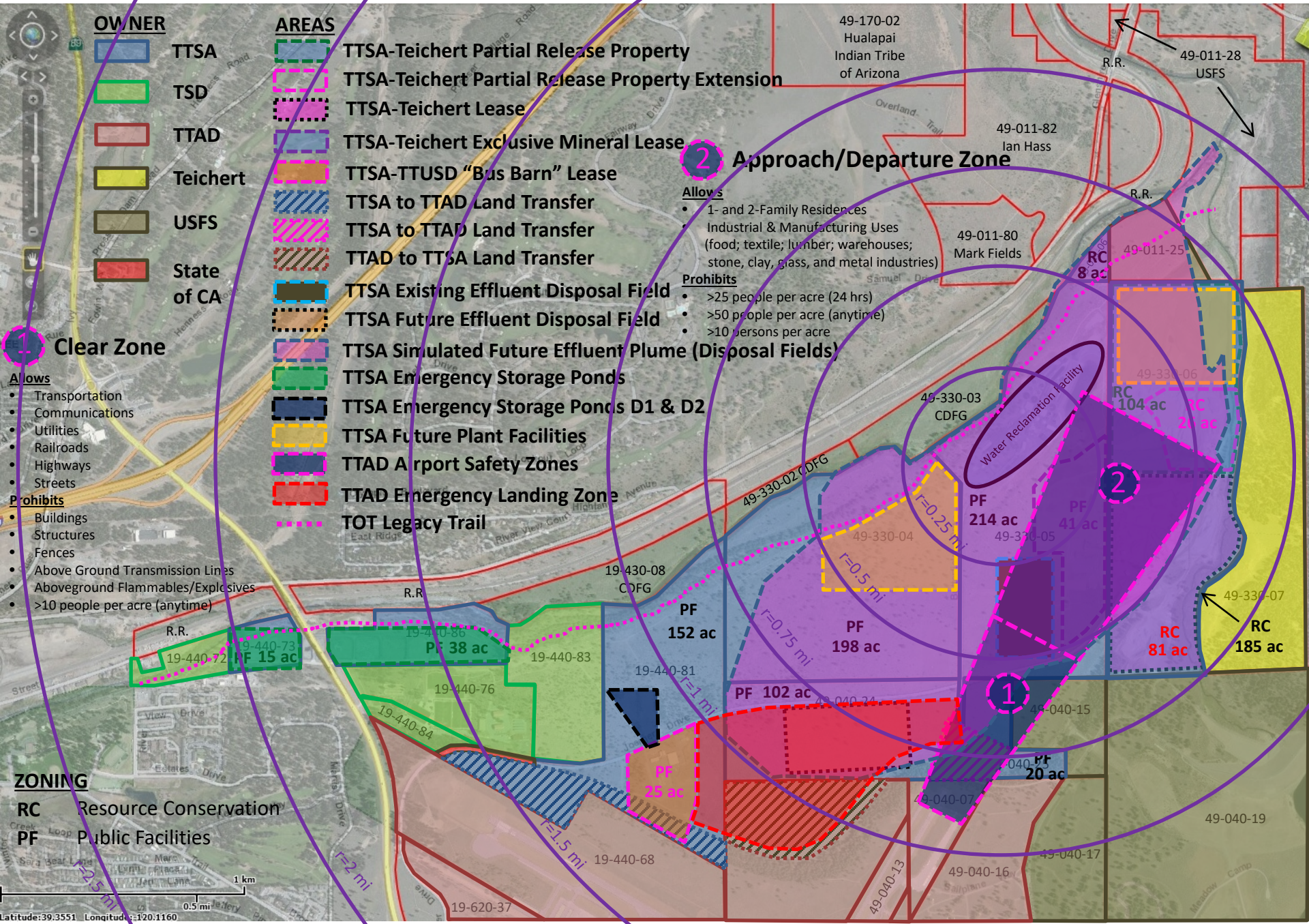
- TTSA
- TSD
- TTAD
- Teichert
- USFS
- State of CA

ZONING

- RC** Resource Conservation
- PF** Public Facilities



PUTTING IT ALL TOGETHER



OWNER

- TTSA
- TSD
- TTAD
- Teichert
- USFS
- State of CA

AREAS

- TTSA-Teichert Partial Release Property
- TTSA-Teichert Partial Release Property Extension
- TTSA-Teichert Lease
- TTSA-Teichert Exclusive Mineral Lease
- TTSA-TTUSD "Bus Barn" Lease
- TTSA to TTAD Land Transfer
- TTSA to TTAD Land Transfer
- TTAD to TTSA Land Transfer
- TTSA Existing Effluent Disposal Field
- TTSA Future Effluent Disposal Field
- TTSA Simulated Future Effluent Plume (Disposal Fields)
- TTSA Emergency Storage Ponds
- TTSA Emergency Storage Ponds D1 & D2
- TTSA Future Plant Facilities
- TTAD Airport Safety Zones
- TTAD Emergency Landing Zone
- TOT Legacy Trail

Approach/Departure Zone

- Allows**
- 1- and 2-Family Residences
 - Industrial & Manufacturing Uses (food; textile; lumber; warehouses; stone, clay, glass, and metal industries)
- Prohibits**
- >25 people per acre (24 hrs)
 - >50 people per acre (anytime)
 - >10 persons per acre

Clear Zone

- Allows**
- Transportation
 - Communications
 - Utilities
 - Railroads
 - Highways
 - Streets
- Prohibits**
- Buildings
 - Structures
 - Fences
 - Above Ground Transmission Lines
 - Aboveground Flammables/Explosives
 - >10 people per acre (anytime)

ZONING

- RC** Resource Conservation
- PF** Public Facilities

Attachment B

Process Outline for Disposition of TTSA Surplus Real Property

1. Identification of Potential Surplus Property and Potential Transferees

- 1.1. **Board Direction to Move Ahead.** The TTSA Board of Directors would need to consider whether it is desirable to move forward with identifying any surplus real property and an appropriate process for doing so.
- 1.2. **Identification of Potential Transferees.** As an optional step, the TTSA Board of Directors should consider whether to conduct a process to identify interested potential transferees. Identification of interested potential transferees would assist the agency in the pre-negotiation evaluation and Surplus Land Act compliance steps that follow.

2. Pre-Negotiation Property Evaluation

- 2.1. **Title Reports.** Once a parcel is identified as potential surplus real property, TTSA staff and counsel would obtain and review an updated title report to determine if there are any property-specific limitations on transfer or use of the identified property.
- 2.2. **Appropriate Use Restrictions.** TTSA staff and counsel would evaluate whether future third-party uses of the identified property should be restricted for TTSA operational reasons.
- 2.3. **Surplus Land Act Exemption Evaluation.** TTSA staff and counsel would evaluate whether the identified property potentially qualifies for an exemption from the Surplus Land Act. Potential exemptions would include (a) appropriate restrictions for future use of the property to further a legitimate TTSA purpose, (b) real property exchange, (c) potential transfer to a qualifying government or tribal entity, or (d) property-specific restrictions not imposed by TTSA prohibit future use of the identified property for housing.
- 2.4. **Expert Consultants.** The TTSA Board of Directors may wish to retain one or more expert consultants, including brokers and appraisers, to evaluate the potential disposition and assist in pre-negotiation preparation.

3. Surplus Land Act Compliance

- 3.1. **Consider Declaring Property to be Exempt Surplus Land.** The TTSA Board of Directors would consider at a regular public meeting whether one or more exemptions from the Surplus Land Act would apply to the real property. If so, the TTSA Board would need to adopt a resolution declaring the property to be exempt surplus land and making findings in support of the declaration. TTSA staff and

counsel would transmit the resolution to HCD to start the 30-day waiting period for disposition of the real property.

- 3.2. **Alternatively, Consider Declaring Real Property to be Surplus Land.** If the real property is not exempt surplus land, or an earlier-adopted exemption no longer qualifies (e.g., a potential transfer to a qualifying government or tribal entity falls through), then TTSA staff and counsel would prepare and transmit the required notices to qualifying housing and open-space entities. If TTSA receives one or more responses to the notice, it would be required to undergo good faith negotiations with the respondent or respondents for at least 90 days.

4. Conduct Negotiations

- 4.1. **Real Property Negotiators.** The TTSA Board of Directors may (a) designate one or more real property negotiators to conduct negotiations on its behalf, and (b) meet in closed session with the negotiators to receive updates, consider offers, and provide direction to the negotiators.
- 4.2. **Term Sheet Preparation.** The TTSA real property negotiators would work with each potential transferee to prepare a term sheet detailing the significant deal points for the TTSA Board of Directors to consider. TTSA counsel would evaluate the term sheet's deal points to ensure the proposed disposition meets the requirement that it serve a public purpose of TTSA. If the parties reach agreement on a term sheet, they would move into the next phase.

5. Purchase and Sale

- 5.1. **Draft Purchase and Sale Agreement.** TTSA staff and counsel would prepare (a) a draft purchase and sale agreement reflecting the approved term sheet, and (b) a grant deed or deeds reflecting any restrictions to be placed on future use of the surplus real property.
- 5.2. **CEQA Compliance.** TTSA staff and counsel would evaluate whether the proposed transfer triggers a requirement to comply with CEQA and advise the Board of Directors.
- 5.3. **Consider Approval of Disposition.** The TTSA Board of Directors would receive and review the draft purchase and sale agreement and related documents and consider whether to approve the disposition.