



Regulatory Framework

AGRICULTURAL MITIGATION PROGRAM & FEASIBILITY STUDY

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PREPARED FOR:

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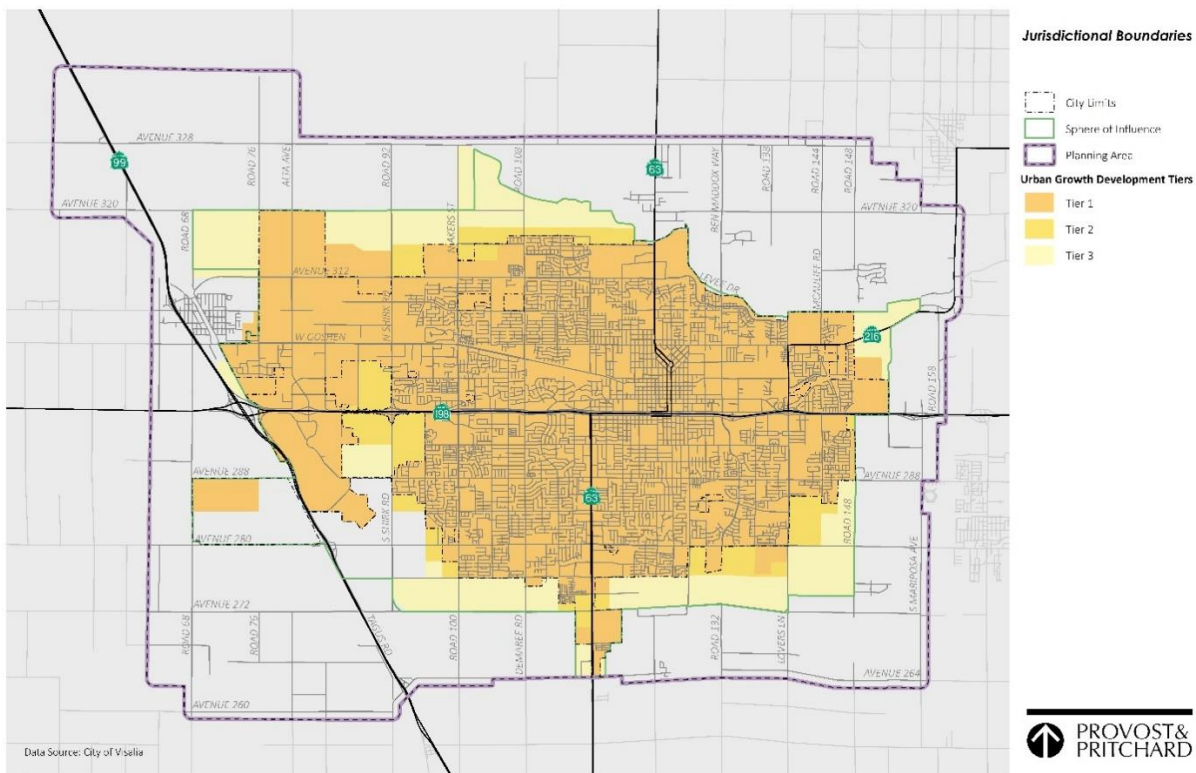


INTRODUCTION AND PURPOSE

The City of Visalia General Plan was adopted in 2014 and established an urban growth strategy that identified three tiers of growth for the community. The growth strategy was intended to “guide sustainable physical and economic growth, while conserving natural and cultural resources and maintaining community character”. The General Plan established criteria, dependent upon land use type, for when development may advance from the first tier (Tier I) to subsequent tiers (Tiers II and III).

General Plan Policy LU-P-21 establishes the thresholds that would allow growth to occur within the Tier II Growth Boundary. Different thresholds were identified for different types of land uses (residential, commercial, industrial). For residential uses, the threshold is the issuance of permits for 5,850 housing units since April 1, 2010. A second General Plan Policy, LU-P-34, contains a supplemental requirement necessary to allow development within the Tier II and Tier III Growth Boundaries: specifically, establishment of an agricultural mitigation program. The program is intended to prevent urban development of agricultural land and address the conversion of Prime Farmland and Farmland of Statewide Importance by requiring a 1:1 ratio of preserved and converted agricultural land. While the General Plan Policy does not specify the need to preserve like-for-like agricultural land, all land conserved through the program must have adequate water supply and the appropriate agricultural zoning.

Figure 1. Growth Tier Boundaries Map



The City is currently over 80 percent toward meeting the residential permit threshold outlined in GP Policy LU-P-21. As the City approaches the permit threshold that would allow Tier II development, the City Council in early 2020 initiated the process of establishing an agricultural mitigation program to ensure this supplemental requirement for Tier II development is satisfied prior to the residential permit threshold being met.

Recognizing that there have been changes in circumstance since adoption of the General Plan in 2014, the City Council also directed staff to research the potential impact of an agricultural mitigation program on the cost of residential construction and how establishment of conservation easements specific to agricultural use would align with State efforts to address groundwater management. The most relevant changes in circumstance over the last several years include focused efforts to address and respond to the housing crisis, adoption of the Sustainable Groundwater Management Act (SGMA), and recent case law and issuance of opinion.

A Feasibility Study will be prepared as a stand-alone document prior to initiating establishment of an agricultural mitigation program. It will determine the necessity and feasibility of an agricultural mitigation program and identify potential alternatives for City Council consideration. This Regulatory Framework summary provides observations on the changing circumstances surrounding the City of Visalia General Plan and agricultural conservation in California. These observations will inform the analysis and recommendations provided in the Feasibility Study.

APPROACH AND ORGANIZATION

The Regulatory Framework summary identifies recent housing legislation, groundwater sustainability efforts, and case law that impacts the appropriateness and feasibility of agricultural conservation easements as mitigation. In each of these areas, the background of the most pertinent changes is discussed, followed by the relationship of these changes to agricultural conservation and observations that will inform how the City of Visalia moves forward with implementation of General Plan Policy LU-P-34.

POLICY AND REGULATORY FRAMEWORK

HOUSING LEGISLATION

Housing affordability continues to be an issue for many Californians, and the State is vigorously encouraging action by local jurisdictions to facilitate residential development to improve housing affordability and increase the housing stock at all levels. These efforts are most evident in the passage of the 2017 California Housing Package and the Housing Crisis Act of 2019. Each of these legislative packages contained several bills intended to reduce barriers to housing and increase production, including Senate Bill 2 (SB 2), the Building Jobs and Homes Act, which is providing funding for the City of Visalia’s Agricultural Mitigation Program and Feasibility Study.

In total, recent State legislation serves to highlight a new focus on housing production, in particular constructing affordable housing. In addition to the Housing Crisis Act of 2019 and other related bills, which have removed many regulatory barriers to housing construction, State objectives have been clear that housing production is a priority. Multiple funding sources have been created to help assist with housing projects and often require compliance with housing objectives for eligibility. While all this recent legislation is pertinent to the City of Visalia, including SB 2 which is providing funding for this project, Senate Bill 330 (SB 330) has the most potential to impact the establishment of an agricultural mitigation program.

SB 330

Document Background

SB 330, also called the Housing Crisis Act of 2019, aims to ensure the feasibility of certain housing types, particularly very low-, low-, and moderate- income housing.¹ To accomplish this goal, SB 330 implemented five primary actions. Of these, the restrictions on growth management policies is relevant to a potential agricultural mitigation program.

According to SB 330, cities may not downzone property to a less intense residential use, impose a growth moratorium, or cap the number of permits approved within a certain timeline. HCD must approve growth management policies and determine that they protect against health and safety threats before they can be enforced.

Key Considerations

SB 330 limits the restrictions cities can put on residential development within their jurisdictions. Effective January 1, 2018, cities may not downzone, that is, reduce the intensity, of residential parcels. There are some exceptions to this, such as a zone switch between parcels that results in no overall loss of residential

HOUSING AFFORDABILITY

Households that spend more than 30% of their income on housing are considered “cost burdened.” While standard practice has been to include only rent and mortgage payments in this calculation, associated costs, such as transportation, could also be considered in housing affordability.

Visalia’s median household income, according to United States Census data, is \$58,820. Households spending more than \$17,646 annually on housing and related costs in Visalia are considered cost burdened.

Average mortgage costs in Visalia total \$18,132 per year, while average rental costs total \$11,976.

¹ The California Department of Housing and Community Development sets maximum incomes for assisted housing eligibility according to area median income (AMI). Extremely low is set at 0-30% of AMI, very low is set at 30-50% of AMI, low is set at 50-80% of AMI, and moderate is set at 80-120% of AMI.

development potential. Additionally, SB 330 restricts the ability of cities to impose a moratorium or growth restriction on housing developments unless there is a demonstrated threat to health and safety as a result of increased development. Moratoriums and similar policies must be submitted to HCD for approval before they may be enforced. Furthermore, SB 330 requires all design standards established and enforced after January 1, 2020 to be objective and prohibits the City from implementing a provision that limits the number of permit approvals allocated, caps the number of housing units that can be approved, or limits the population of the City.

Observations

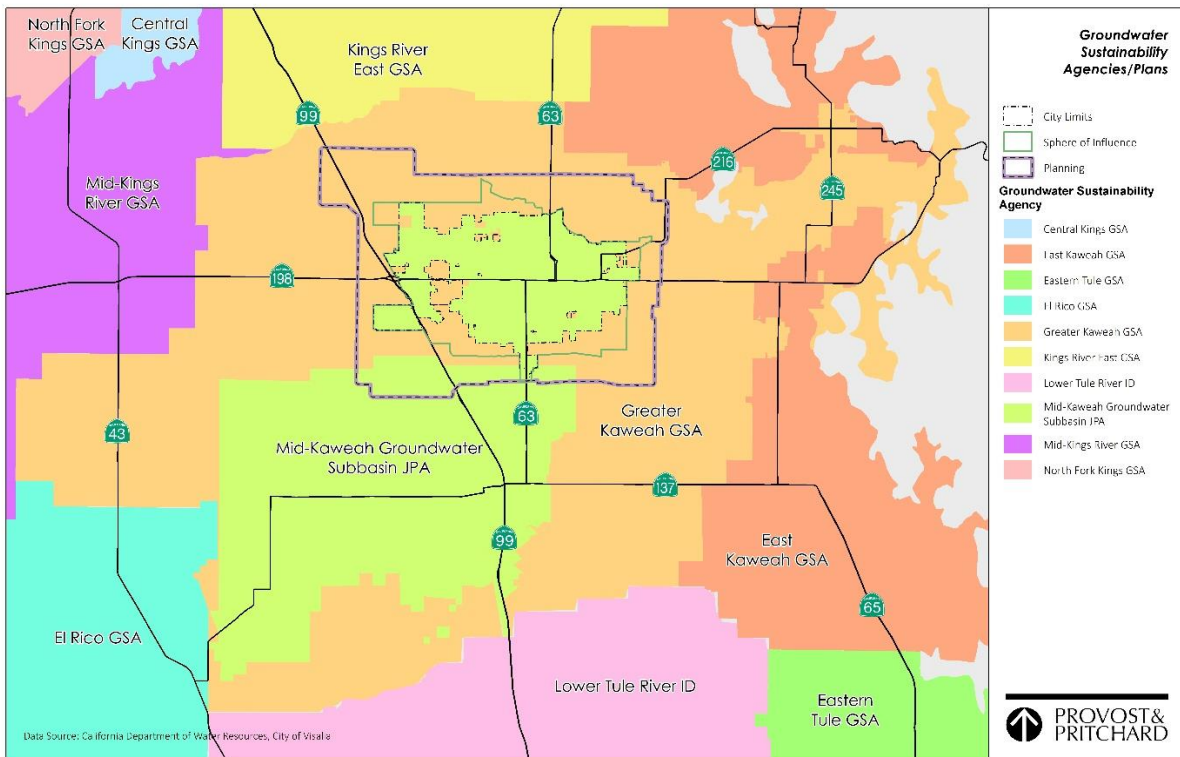
- The City is not allowed to implement or enforce a moratorium or any similar policies that limits the number of permits approved or the population of the City.
- Currently, the City has a tiered development plan where development within Tier I must be completed before development may begin in Tier II and/or Tier III. Requiring that a certain number of permits be issued within one tier prior to proceeding with development in a subsequent tier, as outline in General Plan Policy LU-P-21, is permitted as there is no limit on the number of permits issued.
- General Plan Policy LU-P-34 however does restrict development within the Tier II growth boundary until such time that an agricultural mitigation program is established. If the agricultural mitigation program is not established prior to the City reaching the permits issued thresholds for advancement into the Tier II Growth Boundary, then the City cannot use the absence of an established agricultural mitigation program to prevent residential development from continuing within Tier II. This would be in conflict with the intent of SB 330.

GROUNDWATER SUSTAINABILITY PLANS

The passing of the Sustainable Groundwater Management Act (SGMA) in 2014 requires overdrafted basins of medium and high priority to develop plans that will implement fully sustainable management practices within 20 years of implementation. This is accomplished by Groundwater Sustainability Agencies (GSA), which themselves may consist of Joint Powers Authorities (JPAs), which facilitate the preparation of Groundwater Sustainability Plans (GSP) to ensure the objectives of SGMA are implemented.

The City of Visalia is located within the Kaweah Subbasin, which is considered high priority. The Kaweah Subbasin is situated within the larger San Joaquin Valley Basin and occupies 700 square miles, primarily in Tulare County and a small portion of Kings County. The City and its Planning Area are located within the Mid-Kaweah Groundwater Subbasin JPA, which covers area within city limits, and the Greater Kaweah GSA, which covers the remaining land within the Planning Area, including the areas designated for Tier II and Tier III development. Each entity has prepared its own GSP governing groundwater management practices within their respective territories. See Figure 2 showing Visalia’s jurisdictional boundaries relative to the JPA/GSA boundaries.

Figure 2: GSAs within the Kaweah Subbasin



Mid-Kaweah GSP

Document Background

The Mid-Kaweah Groundwater Subbasin JPAs GSP outlines the pathway to water sustainability for the region covered by the GSP. It was prepared by GEI Consultants under the Kaweah Subbasin Coordination Agreement with the Greater Kaweah GSA and East Kaweah GSA and was adopted by the Mid-Kaweah Groundwater Subbasin JPA in 2019. The GSP considers the policies of general plans of the subject areas, including the City of Visalia, City of Tulare, and County of Tulare General Plans as well as urban water management plan policies within the subject area. The Mid-Kaweah GSP covers approximately 163 square miles, or 25 percent of the Kaweah subbasin.

Key Considerations

The Mid-Kaweah GSP outlines strategies, including projects and programs, aimed at achieving a water balance in the Kaweah Subbasin by 2040. The GSP also outlines a voluntary on-farm recharge program. These types of programs have historically been informally practiced in the San Joaquin Valley with moderate involvement from growers. However, since the passing of SGMA, grower receptivity to these programs has increased. In 2017, 12 growers participated in the pilot program, established and operated by Tulare Irrigation District, which was then expanded and formalized for the winter of 2019. The Mid-Kaweah On-Farm Recharge Program provides targeted incentives to growers and landowners to participate in 4 types of programs:

- **Crop buy-out program.** Planted fields are flooded and growers are compensated for crop damages.

- **Shallow-basin program.** Parcels are deepened for recharge. Growers continue to plant crops and are compensated in the event of flooding.
- **Over-irrigation program.** Growers over-irrigate permanent plantings or open-ground crops on a voluntary basis and receive reduced water costs in return.
- **Mandatory program.** Owners are required to dedicate a percentage of their lands for winter and/or spring recharge in surplus water supply years.

The GSP program currently permits up to 600 acres of farmland from throughout the entire JPA to be enrolled in the voluntary program. The program is expected to be fully developed by 2025, which will include a better understanding of which crops and farmlands provide the best recharge opportunities. Furthermore, total acreage will be adjusted each year. An additional project outlined in the GSP, the Groundwater Recharge Assessment Tool (GRAT), is used to determine high-priority parcels for participation in the On-Farm Recharge Program.

The GRAT is a tool that assesses on-farm recharge, fallowing, and the development of recharge basins to determine the best parcels for use in groundwater recharge activities. It is used to enhance the capabilities of projects and programs. The GRAT is essentially complete, although occasional updates are necessary to maintain the program.

It should also be noted that the GSP includes reservoir, creek, and exchange programs, as well as administrative and reporting activities, that will not impact the feasibility of an agricultural mitigation plan in the City of Visalia.

Greater Kaweah GSP

Document Background

The Greater Kaweah Groundwater Sustainability Agency's GSP outlines the pathway to water sustainability for the region generally covered by the GSP including Tiers II and III of Visalia's General Plan Planning Area. It was prepared by GEI Consultants under the Kaweah Subbasin Coordination Agreement with the Mid-Kaweah GSA and East Kaweah GSA and was adopted by the Greater Kaweah GSA in 2020. The Greater Kaweah GSP covers 340 square miles (roughly one-half) of the Kaweah subbasin.

Key Considerations

The areas identified for Tier II and Tier III development in the City of Visalia Planning Area are located within the Greater Kaweah GSP. As with the Mid-Kaweah GSP, it considers the policies of the general plans and urban water management plans for areas within its purview. The Greater Kaweah GSP outlines strategies, including projects and programs, aimed at achieving a water balance in the Kaweah Subbasin by 2040.

The Greater Kaweah GSP also identifies two agricultural programs run through Kings County Water District (KCWD) and Lakeside Irrigation Water District (LIWD). A fallowing program leases 1,500 acres of agricultural land total, across both districts, in order to reduce the cropped acreage and limit groundwater pumping for irrigation while not permanently changing the land's agricultural land use status. Growers sign up for participation throughout January and February of each year and receive compensation for not planting and

NITRATE FILTRATION

The GSP intends to prioritize the repeated participation of parcels in order to help flush nitrates from the additional groundwater. When the same land is used repeatedly, no nitrates are added from fertilizers, which can assist in reducing nitrates added to the groundwater supply.

irrigating crops on acres designated as part of the program. At present there are no identified criteria for participation, but land use and proximity to delivery systems will likely be key factors for criteria development.

KCWD and LIWD also run an on-farm recharge program, although this program differs slightly from that identified in the Mid-Kaweah GSP. The KCWD and LIWD program compensates growers for developing small, temporary basin facilities that centralize pumped groundwater for improved irrigation distribution. During periods of high surface water flows, conditions which occur every 4-5 years, up to 500 acres total are used to develop these basin facilities which then operate for 60 days.

Observations

- Because many of the on-farm recharge program options limit agricultural productivity or result in damaged crops, land that is enrolled in these programs may not be well-suited for a permanent agricultural conservation easement.
- Although fallowing programs do not change the designation of agricultural land, it does take agricultural land out of production for a period of time. Depending on the criteria established for productivity of agricultural land under a conservation easement, fallowed land may not be well-suited for a permanent agricultural conservation easement.
- While these programs strive to enroll repeat participants, it will be important to understand the most up-to-date enrollment and plans to maintain participation, should an agricultural mitigation plan be pursued.

CASE LAW UPDATES

The California court system consists of three levels. Most cases begin in the superior courts, which are located within each county. Decisions of the superior court may be appealed to one of six Courts of Appeal, each of which has jurisdiction over the superior courts within a specific geographic area of the state. Decisions of the Courts of Appeal may be further appealed to the California Supreme Court. When considering a judgement from a lower court, the Courts of Appeal and the Supreme Court examine whether the lower court properly applied the law(s) in question. As it relates to land use and similar subjects, the Supreme Court reviews cases only at its discretion.

Decisions of a superior court are binding only on the parties to the case. Decisions of the Courts of Appeal are also binding on the parties to the case; however, if the Court “publishes” its opinion, that opinion becomes binding on all superior courts, even those outside its district. All decisions of the Supreme Court are published and are binding on all lower courts. The Supreme Court also has the authority to publish or de-publish opinions of the Courts of Appeal. Published opinions form the body of law referred to as “common law.”

The two cases summarized below are those considered most relevant to the establishment of an agricultural mitigation program.

Building Industry Association of Central California v. County of Stanislaus

Case Background

In 2007, the County of Stanislaus (County) updated its General Plan to include a Farmland Mitigation Program (FMP) intended to help mitigate the loss of farmland that results from residential development. The County also adopted a set of guidelines for implementation of the FMP. The Building Industry Association of Central California (BIA) subsequently challenged the adoption of the FMP. While the trial court ruled in favor of the BIA, the decision was appealed and considered by the Fifth District Court of Appeal in 2010. The rulings of the case and subsequent appeal could have an impact on the feasibility of establishing an agricultural mitigation program.

Key Considerations

The FMP and related guidelines adopted by the County provided that developers would be required to mitigate the loss of farmland at a 1:1 ratio by obtaining a conservation easement or, for projects smaller than 20 acres and with the County's consent, by payment of an in-lieu fee. The BIA facially challenged the FMP. The trial court ruled in the favor of BIA, finding that the FMP conflicted with State law that prohibits requiring a developer to grant a conservation easement as a condition of a land use approval, that there was no reasonable relationship between the adverse effects of residential development and the requirement for an easement, and that the FMP requirements were not within the County's police power. The County and the California Farm Bureau Federation appealed the trial court decision, which was considered by the Fifth District Court of Appeal in 2010.

FACIAL CHALLENGE

A facial challenge is a challenge to a statute in which the plaintiff alleges that the legislation is always unconstitutional, and therefore void. If a facial challenge is successful, it would have the effect of striking down the legislation in its entirety.

The Court of Appeal held that the FMP was facially valid:

- Although State law prohibits requiring a developer to grant a conservation easement in conjunction with a land use approval, the FMP requires that the developer *acquires* an easement, not that it grants one.
- Since the County's adoption of the FMP was a legislative action, it was not the County's burden at trial to demonstrate that there was a reasonable relationship; rather, it was BIA's burden to demonstrate that there was *not*, and that burden was not met. Further, the Court went on to determine via narrative that there was, in fact, a reasonable relationship.
- Since there existed a reasonable relationship, the County did not exceed its police power in adopting the FMP.

Of note is that, while the Court found the FMP to be facially valid, it expressly did not examine how the provisions of the FMP might be applied to any particular proposal for development. When applying the provisions of a similar program, the agency should closely examine the specific facts surrounding a proposed project to ensure that the program is applied properly.

King & Gardiner Farms, LLC v. County of Kern

Case Background

In 2015, Kern County approved an ordinance to streamline the permitting process for new oil and gas wells and certified an Environmental Impact Report (EIR) in accordance with CEQA. King & Gardiner Farms, LLC sued the County of Kern, alleging that the EIR contained multiple CEQA violations. The superior court originally held that the EIR inadequately analyzed impacts to rangeland and impacts from a road paving mitigation measure. However, upon appeal of the superior court's ruling to the Fifth District Court of Appeal, additional CEQA claims were determined to have merit. The rulings of the case and subsequent appeal could have an impact on the necessity of establishing an agricultural mitigation program and the efficacy of using easements to mitigate for the loss of farmland under CEQA.

Key Considerations

This case primarily has implications for CEQA mitigation measures related to water, agricultural land, and noise. The EIR included four mitigation measures to reduce the effects of farmland conversion to a less than significant level, any of which would be the responsibility of the project proponent to implement:

- Funding or purchasing agricultural conservation easements
- Restoration of agricultural lands through removal of legacy oil and gas production equipment
- Purchasing credits in a mitigation bank or equivalent program
- Participation in any agricultural land mitigation program adopted by the County

In its February 2020 ruling, the Court of Appeal reiterated that agricultural easements do not actually mitigate for the loss of agricultural land; they only prevent the future conversion of land that is already in production. The Court found that restoration of agricultural lands through the removal of mechanical equipment would, as a stand-alone method, sufficiently reduce the significance of agricultural loss and was therefore a suitable mitigation measure. It then noted that there was not sufficient evidence related to the efficacy or even the availability of mitigation banks, and that in any case such banks might operate in the same manner as conservation easements. Similarly, there was nothing in the record to support that participation in a future, undetermined County preservation program would have any mitigating effects on loss of agricultural land.

Observations

- Outside the context of CEQA, requiring developers to acquire or obtain conservation easements can be an acceptable method to slow the further conversion of farmland.
- Under CEQA, the establishment of agricultural conservation easements is not adequate mitigation for the loss of farmland.