

PLANNING COMMISSION AGENDA

CHAIRPERSON:

Chris Gomez



VICE CHAIRPERSON:

Marvin Hansen

COMMISSIONERS: Mary Beatie, Chris Gomez, Marvin Hansen, Sarrah Peariso, Adam Peck

MONDAY, NOVEMBER 9, 2020

VISALIA CONVENTION CENTER

LOCATED AT 303 E. ACEQUIA AVE. VISALIA, CA

WORK SESSION MEETING TIME: 6:00 PM

REGULAR MEETING TIME: 7:00 PM

Citizens may appear at the Planning Commission meeting in person and will be asked to maintain appropriate, physical distancing from others and wear a mask or face shield pursuant to the Governor's Executive Orders and public health guidance during the COVID-19 situation.

1. CALL TO ORDER WORK SESSION

WORK SESSION ITEM

- A. Agriculture Mitigation Program and Feasibility Study Kick-Off Presentation and Discussion, City Staff and Consultant (Provost and Pritchard Consulting Group, and VRPA Technologies, Inc.).

ADJOURN TO REGULAR MEETING

2. CALL TO ORDER REGULAR MEETING –

3. THE PLEDGE OF ALLEGIANCE –

4. **CITIZEN'S COMMENTS –** This is the time for citizens to comment on subject matters that are not on the agenda but are within the jurisdiction of the Visalia Planning Commission. You may provide comments to the Planning Commission at this time, but the Planning Commission may only legally discuss those items already on tonight's agenda.

The Commission requests that a five (5) minute time limit be observed for Citizen Comments. You will be notified when your five minutes have expired.

5. CHANGES OR COMMENTS TO THE AGENDA –

6. **CONSENT CALENDAR -** All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda.

- a. Update on the In-Shape Health Club Temporary Conditional Use Permit No. 2020-51 operations and use of outdoor speakers.

7. PUBLIC HEARING – Paul Bernal, City Planner
Conditional Use Permit No. 2020-27: A request by CleVR Escape to allow an escape room and virtual reality arcade in the D-MU (Downtown Mixed Use) zone. The site is located at 205 West Main Street (APN: 094-326-018). The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Environmental Document No. 2020-57.
8. PUBLIC HEARING – Josh Dan, Associate Planner
 - a. Tentative Parcel Map No. 2020-06: A request by Donahue Schriber Realty Group to subdivide two parcels into four parcels within the Orchard Walk Specific Plan area. The project is located in the C-MU (Commercial Mixed-Use) zone. The project is located on the northwest corner of North Dinuba Boulevard and West Riggan Avenue. The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15315 and 15332, Environmental Document No. 2020-59.
 - b. Conditional Use Permit No. 2020-25: A request by Donahue Schriber Realty Group to facilitate Tentative Parcel Map 2020-06 by creating two lots with no public street access, and parcels with less than the minimum five (5) acre size requirement in the C-MU (Commercial Mixed-Use) zone. The project is located on the northwest corner of North Dinuba Boulevard and West Riggan Avenue (APN: 000-013-376). The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15315 and 15332, Environmental Document No. 2020-59.
9. PUBLIC HEARING – Cristobal Carrillo, Associate Planner
Conditional Use Permit No. 2020-23: A request by the Foundation for the Least, Last, & Lost to establish a group counseling facility with ministry and social service coordination services in the D-MU (Downtown Mixed-Use) zone. The project site is located at 400 North Church Street (APN: 094-272-008). The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Environmental Document No. 2020-55.
10. PUBLIC HEARING – Josh Dan, Associate Planner
Variance No. 2020-08: A request by Rebecca Falcone to allow a variance from the standard 30-foot front yard setback required in the R-1-12.5 (Single Family Residential, 12,500 sq. ft. minimum site area) zone. The project is located at 2545 West Border Links Drive (APN: 089-100-010). The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301.
11. CITY PLANNER/ PLANNING COMMISSION DISCUSSION –
 - a. Next Planning Commission Meeting is Monday, December 14, 2020.

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For Hearing Impaired – Call (559) 713-4900 (TTY) 48-hours in advance of the scheduled meeting time to request signing services.

Any written materials relating to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the City Office, 315 E. Acequia Visalia, CA 93291, during normal business hours.

APPEAL PROCEDURE

THE LAST DAY TO FILE AN APPEAL IS THURSDAY, NOVEMBER 19, 2020 BEFORE 5 PM

According to the City of Visalia Zoning Ordinance Section 17.02.145 and Subdivision Ordinance Section 16.04.040, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal form with applicable fees shall be filed with the City Clerk at 220 N. Santa Fe, Visalia, CA 93292. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record. The appeal form can be found on the city's website www.visalia.city or from the City Clerk.

THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, DECEMBER 14, 2020

City of Visalia



To: Planning Commission
From: Paul Bernal, City Planner
Brandon Smith, Senior Planner
Date: November 9, 2020
Re: Work Session Item for Agriculture Mitigation Program and Feasibility Study

BACKGROUND

The adoption of the General Plan in October 2014 included two distinct policies to address impacts to agricultural lands among other issues. Land Use Policy LU-P-21 established a three-tier urban growth boundary, wherein land development could occur within the Tier I boundary at any time. In addition, Land Use Policy LU-P-34 required the creation and adoption of an Agricultural Mitigation Program (AMP) to address the conversion of Prime Farmland and Farmland of Statewide Importance in Tiers II and III while exempting conversion of agricultural lands in Tier I.

Anticipating that the City will reach the threshold for Residential development in Tier I by the end of 2021 (the City has already surpassed the thresholds for Industrial and Commercial development in Tier I), the City Council on January 16, 2020 authorized staff to begin the process of studying and considering adoption of an AMP and studying the efficacy of the program as it relates to housing affordability and the necessity of the program as it relates to current state law. Staff subsequently issued a Request for Proposals to seek a professional consulting firm that would prepare an AMP and feasibility study.

In August 2020, the Visalia City Council authorized the City Manager to award the contract to Provost & Pritchard Consulting Group ("Consultant"). The Consultant is tasked to lead all aspects of the creation of an Agricultural Mitigation Program while maintaining a close working relationship with staff. As proposed by the Consultant, the initial phase of the scope of work is the preparation of a stand-alone feasibility study that will identify options prior to initiating establishment of an AMP. The study will look at recent circumstances that include efforts by the State to address groundwater management and looking at the AMP's impact on the cost of residential construction.

PURPOSE OF TONIGHT'S MEETING

The purpose of the Work Session item is to introduce the project to the Planning Commission and to the public and begin collecting input for the next steps in the plan development process. The Consultant will make a presentation that summarizes the data collected to date, and an opportunity will be provided for public input. The data compiled to date along with relevant observations have been compiled into three separate reports and included as attachments to this memo:

- Regulatory Framework. This report provides a summary of recent changes in state legislation and case law affecting agriculture mitigation programs.
- Farmland Preservation Best Practices and Established Programs Summary. This report summarizes research on best practices, potential for impacts on home prices, and examines examples of six established programs around the Central Valley.
- Data Collection & Mapping. This report provides relevant data including land use, soils, and farmland classifications, collected for the Visalia Planning Area.

At the conclusion of the presentation, there will be an opportunity to ask questions and to provide comments during an open public hearing. As a supplement to the presentation and public hearing, large informational posters will be displayed in the lobby of the Convention Center and comment cards will be made available for the public to complete and submit through Friday, November 20, 2020.

NEXT STEPS

The Consultant and staff will take the data already compiled in the three reports and the comments gathered during the meeting and from the comment cards and will prepare a Draft Feasibility Study. This document will include a range of options for consideration by the City, including establishment of an AMP and viable alternatives. A follow-up Planning Commission Work Session is planned (tentatively scheduled for December 14) to present the options and take a recommendation, and a meeting with the City Council will be conducted (tentatively scheduled for January 2021) for discussion and direction.

If the Council directs staff and the Consultant to prepare an AMP, work will continue and additional public meetings will be scheduled with the Commission and Council through 2021.

Attachments:

- Regulatory Framework report
- Farmland Preservation Best Practices and Established Programs Summary report
- Data Collection & Mapping report



Regulatory Framework

AGRICULTURAL MITIGATION PROGRAM & FEASIBILITY STUDY

OCTOBER 2020

PREPARED FOR:

City of Visalia
707 W. Acequia Ave.
Visalia, CA 93291

PREPARED BY:

Provost & Pritchard Consulting Group

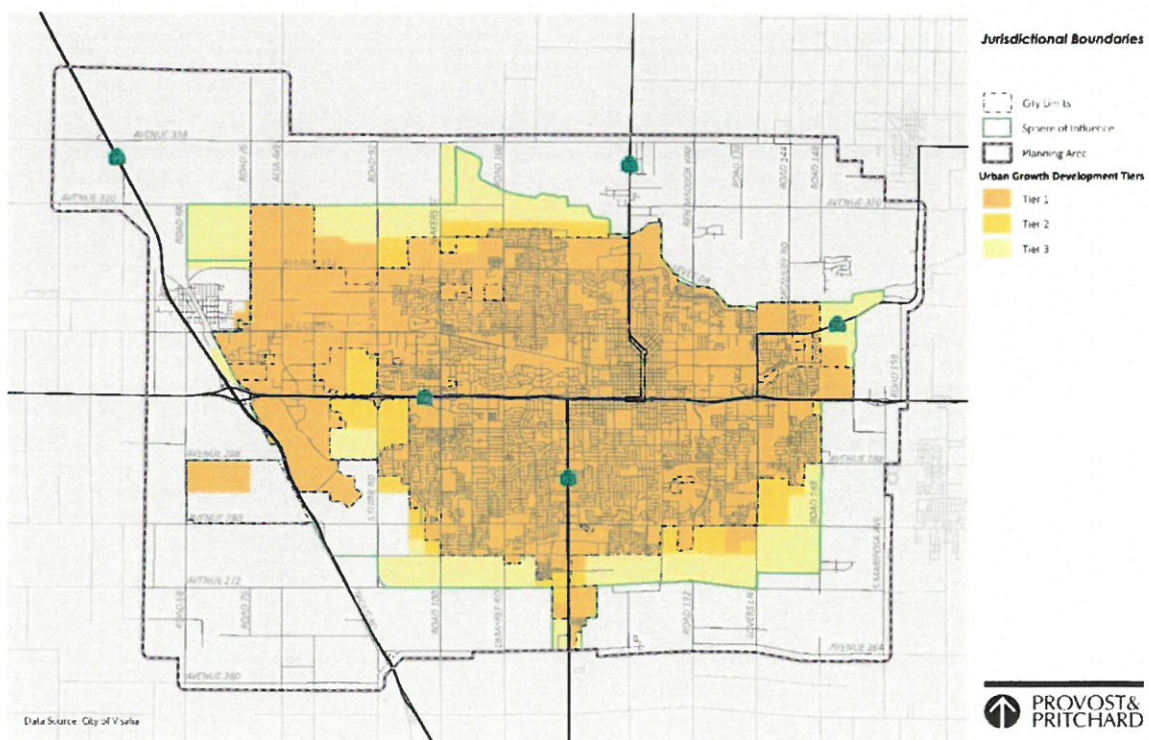


INTRODUCTION AND PURPOSE

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

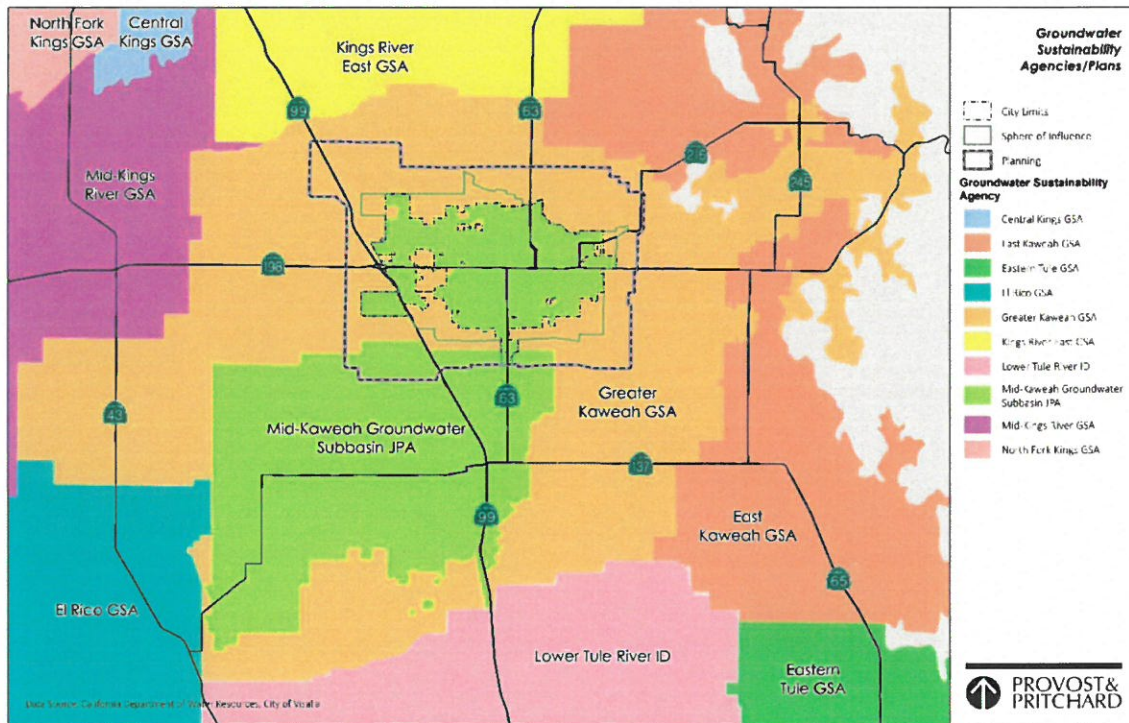
- The City is not allowed to implement or enforce a moratorium or any similar policies that limits the number of permits approved or the population of the City.
- Currently, the City has a tiered development plan where development within Tier I must be completed before development may begin in Tier II 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.



Farmland Preservation Best Practices & Established Programs Summary

AGRICULTURAL MITIGATION PROGRAM & FEASIBILITY STUDY

OCTOBER 2020

PREPARED FOR:

City of Visalia
707 W. Acequia Ave.
Visalia, CA 93291

PREPARED BY:

Provost & Pritchard Consulting Group



In association with:

VRPA Technologies, Inc.



INTRODUCTION AND PURPOSE

This report summarizes research on best practices for farmland preservation, discusses the potential for impacts on home prices, and identifies examples of existing programs within the state, with a focus on established programs within the San Joaquin Valley. The information and observations contained in this report will inform the analysis and recommendations provided in the Feasibility Study, including potential key program features for consideration should the City of Visalia elect to move forward with the establishment of an agricultural mitigation program in Phase II: Implementation.

The Feasibility Study will be prepared as a stand-alone document prior to initiating establishment of an Agricultural Mitigation Program. It will determine the feasibility and necessity of an Agricultural Mitigation Plan and identify potential alternatives for City Council consideration.

APPROACH AND ORGANIZATION

This report first summarizes elements of best practice for farmland preservation programs in California. This section draws on arguments and concepts promoted by the American Farmland Trust and the California Council of Land Trusts. A section specific to the relationship between agricultural conservation easements and their impact on home prices is included and summarizes home pricing and cost burden factors. The discussion then turns to case studies that illustrate certain aspects of actual practice by cities and counties seeking to preserve farmland. The case studies were selected from throughout northern and central California, with an emphasis on relevance to the San Joaquin Valley. The order of presentation is based on geography, i.e., distance from the City of Visalia, with the most proximate cases (the City of Tulare and the County of Tulare) presented last.

FARMLAND PRESERVATION BEST PRACTICES

The best practices compiled here represent past practices for establishing agricultural mitigation programs, also referred to as farmland preservation programs. However, recent case law, in particular the King & Gardner Farms, LLC v. County of Kern case from 2020 will influence how agricultural mitigation programs are structured and implemented moving forward. This summary does not attempt to predict how programs will change to reflect this new precedent, but rather reports what previous practice relative to agricultural conservation has been. A more detailed discussion of the impacts of recent case law can be found in the [Regulatory Framework](#).

Successful farmland preservation programs in California are based on assumptions that:

- Farmland is irreplaceable.
- The loss of farmland to development is irreparable.
- Agriculture is an important component to the local, regional, and statewide economy.

- The loss of agricultural land is consistently a significant impact under the California Environmental Quality Act in development projects.
- Most urban uses adjacent to farmland can affect how an agricultural use can be operated, which can lead to conflict and ultimate conversion of agricultural land to urban uses.
- Every effort should be made to guide development away from agricultural lands and encourage efficient development of existing vacant lands and infill properties within an agency’s boundaries prior to conversion of additional agricultural lands.

Multiple mechanisms are used to protect farmland, in addition to the establishment of farmland preservation programs. Many jurisdictions also employ “Right to Farm Ordinances” that protect agriculture from “nuisance suits” by nearby residents. Robust farmland protection policies for cities, counties, and Local Agency Formation Commissions (LAFCo) that are supported by all agencies also promote farmland preservation. Finally, the California Land Conservation Act of 1965, known as the Williamson Act Program, has helped slow the conversion of farmland in California for more than 50 years¹ by reducing the tax liability of farmland.

A primary distinction between farmland preservation programs and other mechanisms is the establishment of a permanent conservation easement to protect farmland. While policies, ordinances, and tax incentives serve to protect or delay farmland conversion for a period, they are not permanent protections.

GOALS, OBJECTIVES, AND ELEMENTS OF FARMLAND PRESERVATION PROGRAMS

Goals

The goals of a farmland preservation program are threefold: to *avoid* impacts of urban development on farmland; to *minimize* urban development impacts; and to *mitigate* the impacts.

- **Avoidance** consists of anticipating and acting to avoid creating adverse impacts to agricultural lands from the outset, such as steering development away from agricultural lands to prevent their conversion to other uses. This most efficiently occurs at the time a city or county is updating its general plan and the issue can be viewed at a regional level, rather than based on an individual proposal.
- **Minimization** consists of measures to reduce the duration, intensity, and significance of the conversion and/or the extent of adverse impacts to agricultural lands (including direct, indirect and cumulative impacts) that cannot be completely avoided.
- **Mitigation** consists of measurable preservation outcomes, resulting from actions applied to geographic areas typically not impacted by the proposed project, that compensate for a project’s impacts to agricultural lands that cannot be avoided and/or minimized. Permanent preservation of farmland of



¹ Williamson Act Program Summary, Department of Conservation website, https://www.conservation.ca.gov/dlrp/wa/Pages/wa_overview.aspx, Accessed October 8, 2020.

equal or greater quality based on one acre preserved for each acre developed is a typical form of mitigation.²

Objectives

- Avoid the premature conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance.
- Minimize the potential detrimental effects caused by urban development.
- Provide mechanisms for mitigation of farmland conversion.
- Integrate the farmland preservation program into the development entitlement process.
- Efficiently enforce the farmland preservation program using existing law, regulations, and institutions.

Elements

When a landowner wishes to develop an agricultural parcel to serve residential or other nonagricultural uses, a farmland preservation program is intended to offset this loss. Typically, these programs have required the loss of farmland to be offset by acquiring the development potential of another agricultural parcel that is equivalent in size, soil quality, and access to water through a conservation easement. These programs, in effect, make the conversion of farmland more expensive than developing vacant urban land or redeveloping occupied parcels. The acquisition of potential development rights from the preserved farmland protects that land from development and compensates the owner for the loss of development rights. There are certain key elements that are present in most farmland preservation programs, including:

- **Equivalency criteria.** Parcel size, soil quality, access to water, and similar features of both the converted and preserved land is considered in determining the amount of land required for preservation and if conserved land is permissible under the program.
- **Use restrictions.** Farmland preservation programs restrict the use of conserved land, usually through the establishment of conservation easements.
- **Mitigation triggers.** Each program determines triggers for mitigation requirements. Triggers may include the requirement of a zone change or discretionary permit, the amount of land being proposed for conversion, the project or land use type proposed on the agricultural land, or other similar project features.
- **Conservation ratio.** Farmland preservation programs establish a ratio for the required amount of land conserved to the amount of land converted. While a 1:1 mitigation ratio is the minimum, some programs require higher ratios depending on project location, the quality of converted land, and the proposed use.
- **Mitigation methods.** While easements are the primary mitigation method of most case study programs, alternative in-lieu fees may also be appropriate for inclusion in a farmland preservation program. Some programs only allow the payment of in-lieu fees for part of a project's mitigation measures or only in certain situations (i.e., when specific circumstances make conservation easements infeasible).

² Conservation easements placed on existing agricultural land have been held to no longer be effective mitigation to reduce impacts on farmland conversion under the California Environmental Quality Act (CEQA). See the *Regulatory Framework* for a more detailed discussion on recent case law influencing the use of agricultural conservation easements as mitigation under CEQA.

- **Program administration and implementation.** An entity that has the legal and technical ability should hold and administer the agricultural conservation easements and in-lieu fees. This is typically a local land trust.

OBSERVATIONS

- Prioritizing avoidance of farmland conversion and minimizing the effective loss of farmland are best practice strategies to consider, where feasible, prior to mitigating for the loss of agricultural land.
- While other mechanisms are available to protect or delay farmland conversion for a period, they do not offer the same permanency that establishment of an agricultural conservation easement offers.
- Best practices implemented in the past may not be fully applicable moving forward for those programs established with the express purpose of mitigating the loss of farmland under the California Environmental Quality Act (CEQA). *See the [Regulatory Framework](#) for a more detailed discussion on recent case law influencing the use of agricultural conservation easements as mitigation under CEQA.*
- The proximity of conserved land to converted land raises the possibility for a farmland preservation program that does more than just preserve an equivalent amount of farmland. If conserved land is required to be in proximity, it would be possible for a city to develop a partial greenbelt (or farm-belt).
- An entity that has the legal and technical ability to acquire and manage conservation easements should be identified prior to establishing a farmland preservation program. Such trusts complete the legal work of creating and recording the easements. They also have knowledge of property owners willing to sell development rights. The city or county may merely act as broker to the landowner wishing to convert farmland.

FARMLAND PRESERVATION AND HOUSING COSTS

By requiring the acquisition of conservation easements on other agricultural land, additional costs will be incurred by the developers proposing conversion of farmland. It is reasonable to expect that some or all of these costs will be passed on to homebuyers. Understanding these additional costs will provide greater insight into the feasibility of an agricultural mitigation program.

HOME PRICING FACTORS

With limited data available for locationally specific home price information, it is difficult to evaluate what direct impact, if any, establishment of an agricultural mitigation program has on home prices. As part of our due diligence effort to research available data, Multiple Listing Service (MLS) data on median existing home sales prices were obtained for unincorporated Tulare County for two years prior to the adoption of the County's Agricultural Easement Program (ACEP), i.e., 2014 and 2015. Data were also obtained for the year the ACEP was adopted and the following year, i.e. 2016 and 2017. Results are shown in **Table 1**. While

the MLS does not contain home price information on new home sales, there could be some residual effect on existing home prices.

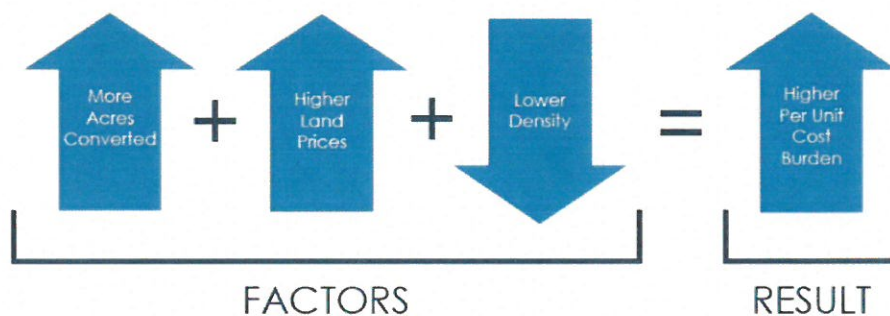
Table 1. Median Existing Home Prices Unincorporated Tulare County

Year	Median Price ³
2014	\$ 170,000
2015	\$ 165,000
2016	\$ 200,000
2017	\$ 177,500

While it is striking that home prices increased by a substantial 18 percent in 2016, the year the ACEP was adopted, this almost certainly had little to do with the ACEP. 2016 saw more sales of larger, higher-priced houses than in prior years. The median price per square foot increased by only 6 percent, indicating that most of the increase was due to the size of homes sold. The following year's (2017) median price of \$177,500 is just 4.4 percent above the 2014 median price of \$170,000, which suggests that 2016 was an unusual year.

Home prices are influenced by many factors: the overall economy, interest rates, the amount of new and existing housing on the market, etc. Examining home prices at any given point in time does not isolate the effect of an agricultural preservation program on the price of homes. Considering the ACEP program has been used only a few times (two projects have used ACEP to date, with a third project in process), the expected impact on overall home prices is minor.

A better approach would be to calculate the cost per acre of obtaining an agricultural conservation easement and dividing this cost by the units per acre proposed for development, to obtain the net additional cost per housing unit. However, these factors will fluctuate for each project at any given time as the number of acres of farmland being converted is locationally specific, the cost per acre of agricultural land at the time of acquisition is market specific, and the number of units proposed is project specific. The relationship of how the various factors relate to one another and would generally impact the per unit cost burden for a specific project indicates that those project with more farmland converted, the higher the price of agricultural land, and the lower number of dwelling units to spread cost over, the higher the cost burden is anticipated to be on a per unit basis (see figure below).



³ Data provided by Gene Vang MLS Operations Director - Tulare County MLS, Tulare County Association of Realtors.

OBSERVATIONS

- The number of factors that influence housing prices, limited use of the established farmland preservation programs, and the limited availability of project specific data relative to home prices don't allow for a detailed understanding of the impact such programs have on housing prices. Anecdotally, establishment of a requirement for agricultural conservation easements, whether through direct purchase or payment of an in-lieu fee, will increase housing costs; however, the specific impact cannot be calculated except on a project-by-project basis.
- Based on the relationship of factors noted above, including number of acres converted, the cost of agricultural land at the time of acquisition, and the number of housing units within a project, it is reasonable to infer that projects located in areas within the Prime and Farmland of Statewide Importance categories and those proposed at lower densities will experience a greater cost burden should a requirement for agricultural easements be established.

ESTABLISHED FARMLAND PRESERVATION PROGRAMS

This section summarizes six established farmland preservation programs in California (see inset for locations). The summaries of each are organized based on geography, i.e., distance from the City of Visalia, with the most proximate cases (the City of Tulare and the County of Tulare) presented last.

In addition to the individual program summaries, a direct comparison of key program features is shown in **Table 3** at the end of this section. Also included are key observations based on the information collected about the farmland preservation programs.



CALIFORNIA FARMLAND PRESERVATION PROGRAMS

Yolo County

Key Program Facts

- **Date of program establishment.** 2008; strengthened in 2016.
- **Ratio of acres conserved versus converted.** Generally, 3:1.
- **Program management and administration.** County Department of Building and Planning; Yolo County Land Trust.
- **Area of applicability.** Unincorporated Yolo County.
- **Amount of in-lieu fee established.** \$10,100 per acre protected.

Program Summary

Agricultural mitigation in Yolo County is required for land changed from an agricultural use to a predominantly non-agricultural use. There is no minimum parcel size. Mitigation is required concurrent

with approval of a zoning change from agricultural to urban zoning, permit, or other discretionary or ministerial approval by the County. With few exceptions (e.g. affordable housing projects) projects that convert prime farmland must preserve a minimum of three (3) acres of agricultural land for each agricultural acre converted, with locations specified by the County. Thus, the County maintains a 3:1 preservation ratio when prime farmland is being converted. For projects that convert non-prime farmland, a minimum of two (2) acres of agricultural land must be preserved, resulting in a 2:1 ratio. Projects that convert a mix of prime and non-prime lands must mitigate at a blended ratio that reflects the percentage mix of converted prime and non-prime lands within project site boundaries.

There are also provisions for reduced ratios for preservation of land in close proximity to a City Sphere of Influence (SOI) or the Urban Growth Boundary (UGB) of the lone unincorporated community, Esparto. A 2:1 ratio is acceptable when all or part of the preserved land is within tow 2 miles of a SOI/UGB; within 0.25 miles a 1:1 ratio is sufficient.

Projects of under 20 acres may pay in-lieu fees per **Table 2**.

Table 2: Yolo County In-lieu Fee (2020)

Cost Component	Per Acre Fee
Easement Acquisition Cost	\$8,400
Transaction Cost	\$420
Monitoring Endowment	\$880
Administrative Costs	\$280
Contingency	\$115
Total (rounded)	\$10,100

Source: Table 7, Yolo County Agricultural Mitigation Fee Analysis, Economic and Planning Systems, August 7, 2007

City of Davis

Key Program Facts

- **Date of program establishment.** 1995; strengthened in 2007.
- **Ratio of acres conserved versus converted.** Generally, 2:1.
- **Program management and administration.** Department of Community Development and Sustainability. Yolo County Land Trust.
- **Area of applicability.** Davis Planning Area.
- **Amount of in-lieu fee established.** Case-by-case based on the appraised value of agricultural land near the city limits.

Program Summary

In 1995, the City of Davis in Yolo County approved the Right to Farm and Farmland Preservation Ordinance (Ordinance 1823). The first municipal ordinance of its kind, it has spawned similar farmland protection efforts in California and in other states. The main goals of the ordinance are to:

- Preserve and encourage agricultural land use and operations within the Davis Planning Area.
- Reduce the occurrence of conflicts between agricultural and non-agricultural land uses.

- Reduce the loss of agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance.

The Farmland Preservation Ordinance mitigation program requires applicants to provide agricultural mitigation for any action that results in the conversion of agricultural land to a nonagricultural use. To achieve the ordinance's objectives, the City Council included two key requirements for developers that are proposing to convert land from agricultural uses to non-agricultural uses if their project is adjacent to agricultural land. These requirements, which were updated by the City Council in 2007, are:

- Required Agricultural Buffer. The developer must provide an agricultural buffer (i.e., an agricultural transition area, greenbelt, or habitat area) that is at least 150 feet wide between their project and the adjacent agricultural uses.
- Required Agricultural Mitigation. Developers must also secure (through fee title or easement) at least two acres of agricultural land elsewhere within the Davis Planning Area to "mitigate" for every acre of agricultural land lost due to their project (excluding the required agricultural buffer mentioned above). Mitigation lands are first directed to the newly created agricultural edge of the development project (i.e., the non-urbanized edge) to create a permanent edge of the City. This non-urbanized edge conservation area must be of a size that is economically viable as farmland (a minimum 1/4 mile in width). If additional mitigation acreage is required after the non-urbanized edge is secured, the developer is incentivized to secure lands that have been prioritized by the City for permanent protection. For example, if a project results in the permanent loss of 100 acres of agricultural land and the establishment of the non-urbanized edge requires 75 acres, the developer has the option to locate the remaining mitigation acreage anywhere in the Davis Planning Area, with credit determined by where the remainder acreage is located. If the remainder acreage is located in a priority acquisition area, less acreage is required; if the remainder acreage is located in a non-priority area, more acreage is required.

The developer is not required to mitigate for the agricultural buffer mentioned above. However, the developer cannot count the agricultural buffer toward the acreage the developer is required to mitigate.

- In-lieu fees: Mitigation can be accomplished by granting a conservation easement to the City on the 2:1 basis described above, or by payment of a fee to the City for the purchase of a conservation easement, also on a 2:1 basis. A developer may satisfy up to 50% of the non-adjacent agricultural land mitigation requirement by paying an in-lieu fee based on the appraised value of agricultural land near the city limits. The in-lieu fee has not been used to date because the only two projects since 2007 subject to mitigation used conservation easements to entirely satisfy their mitigation requirements.

In a case where in-lieu fees were to be used, the City would implement the mitigation measure at the time of development approval. The Yolo County Land Trust would acquire and hold the easements and the City would act as the mitigation bank for in-lieu fees.

Stanislaus County

Key Program Facts

- **Date of program establishment.** 2007.
- **Ratio of acres conserved versus converted.** 1:1.
- **Program management and administration.** Community Development Department; Stanislaus County Land Trust or other Qualified Land Trust.
- **Area of applicability.** Unincorporated Stanislaus County.
- **Amount of in-lieu fee established.** Not established.

Program Summary

In 2007 Stanislaus County updated its Agricultural Element that had been in place since 1992. The new element included a Farmland Mitigation Program (FMP) requiring developers to mitigate the loss of farmland by acquiring agricultural easements of one acre per every acre converted by the project or by paying fees to enable land trusts to do so. For development proposals converting 20 or fewer acres, the mitigation program allows for either direct acquisition of a conservation easement on comparable lands, or the purchase of banked credits. If a developer of a parcel of fewer than 20 acres can demonstrate that no comparable land was available for conservation easement and no credits were available, a fee in lieu of purchase can be paid. For parcels of greater than 20 acres, purchase of a conservation easement on comparable lands is required. The developer is solely responsible for negotiating and settling the easement purchase.

In 2010, the Building Industry Association (BIA) challenged Stanislaus County's mitigation policy. The trial court sided with the BIA, but the Fifth District Court of Appeal ultimately upheld the policy. The California Farm Bureau Federation and others were interveners in support of the County. *See the [Regulatory Framework](#) for a more detailed discussion of this case.*

The County's Local Agency Formation Commission (LAFCo) has also incorporated mitigation into a new policy. The LAFCo policy, adopted in 2012, requires cities to prepare a Plan for Agricultural Preservation before they annex more land or expand their spheres of influence. To get LAFCo approval, plans may propose actions such as reducing the size of spheres, farmland mitigation, and urban growth boundaries. Additionally, cities must demonstrate that they have not allocated more farmland to development than is necessary for the amount and type that is likely to occur. Though similar policies have been adopted in Napa, San Luis Obispo, Santa Clara, Ventura, and Yolo, this is first such LAFCo policy in the San Joaquin Valley.

An in-lieu fee has not been established and the program does not appear to have been used to date. The FMP specifies that an in-lieu fee should be no less than 35% of the average per acre price for five (5) comparable land sales in Stanislaus County.

City of Hughson

Key Program Facts

- **Date of project establishment.** 2013.
- **Ratio of acres conserved versus converted.** 2:1.

- **Program management and administration.** Community Development Department; Qualified Land Trusts.
- **Area of applicability.** City's Sphere of Influence.
- **Amount of in-lieu fee established.** Not established.

Program Summary

In 2013 the City of Hughson's City Council passed a farmland mitigation program requiring permanent preservation of two acres of farmland for every one acre of land converted for residential use. Conversions of land for commercial or industrial development do not have the same requirement as those for residential use.

The express purpose of the FPP is to slow the loss of farmland resulting from urban development and to require the permanent protection of farmland at a 2:1 ratio of agricultural to residential uses. The FPP is designed to utilize agricultural conservation easements or other means granted in perpetuity as a means of minimizing the loss of farmland.

This program establishes standards for the acquisition and long-term oversight of agricultural conservation easements purchased in accordance with the FPP. The preferred location for agricultural easements is within Stanislaus County, one-half mile outside any Sphere of Influence. It is purposely patterned after the Farmland Mitigation Program adopted by Stanislaus County for ease of future coordination between jurisdictions. As of September 2020, Hughson's FPP has not been used.

An in-lieu fee has not been established since the program does not appear to have been used to date. Like Stanislaus County, the FPP specifies that an in-lieu fee should be no less than 35% of the average per acre price for five (5) comparable land sales in Stanislaus County.

City of Tulare

Key Program Facts

- **Date of program establishment.** 2020.
- **Ratio of acres conserved versus converted.** 1:1 minimum.
- **Program management and administration.** Community Development Department.
- **Area of applicability.** Within the city's urban development boundary (UDB) and outside the city limits.
- **Amount of in-lieu fee established.** Not established.

Program Summary

In February 2020, the City of Tulare adopted a Farmland Mitigation Ordinance (FMO). The stated objectives of this ordinance are to:

- (A) Protect agriculture as a crucial component of Tulare's economy and cultural heritage.
- (B) Protect and preserve agricultural lands from the effects of urban encroachment.
- (C) Balance the need for agricultural land conservation with other public goals in Tulare, including the need for housing, commercial, industrial, and infrastructure development.

- (D) Foster coordination and cooperation by the City of Tulare with the County of Tulare, Local Agency Formation Commission, and neighboring cities, including the City of Visalia, to facilitate an integrated and comprehensive regional approach to agricultural land conservation.⁴

The FMO applies to most development of one acre or greater; however, public parks or public recreational facilities, permanent natural open space, and trails and developed open space that are open to the public are exempt. The mitigation land must be located in the San Joaquin Valley, outside of any city's limits or sphere of influence, with preference given to mitigation land within ten miles of the City of Tulare limits.

In-lieu Fees

In-lieu fees are allowed only for conversions of under 20 acres, and then only if the applicant has met with all qualified entities and all such entities have certified in writing to the City of Tulare that they are unable or unwilling to assist with the acquisition of an agricultural conservation easement. The in-lieu fee is not set but, per the ordinance, it must cover all reasonable costs of acquiring a conservation easement and monitoring its implementation. More specifically the ordinance states:⁵

Any in-lieu fee shall include each of the following components:

- (1) The purchase price of an agricultural conservation easement in mitigation land that complies with all the requirements in §10.222.070 "Requirements for mitigation land and agricultural conservation easements". This component shall be adjusted for inflation based on estimate of the time required to acquire mitigation land following payment of the fee.
- (2) All transaction costs associated with acquisition of the agricultural conservation easement.
- (3) An amount sufficient to endow the cost of monitoring, administering, and enforcing the agricultural conservation easement in perpetuity.
- (4) The applicant's pro rata share of the qualified entity's administrative costs in implementing the in-lieu fee program.
- (5) A reasonable amount to cover additional contingencies.

Mitigation Land

The agricultural conservation easement prohibits the landowner from entering into any additional easement, servitude, or other encumbrance that could prevent or impair the potential agricultural use of the mitigation land. It is not clear if a one-year agreement to keep land fallow would represent such an encumbrance.

Projects Using the FMO

City of Tulare staff report that as of October 2020, two annexation projects subject to the FMO are under way:

Fernjo Estates Project: This project involves the development of 80 single-family residential units on approximately 18-20 acres. Since this was an annexation proposing the conversion of Prime Farmland to

⁴ §10.222.030, Farmland Mitigation Ordinance

⁵ §10.222.060, Optional mitigation alternatives.

non-agricultural use, this project was approved with the condition of mitigating the acreage on a 1:1 basis through establishment of an agricultural conservation easement on equivalent land.

The project proponent is a farming family and has chosen to establish an agricultural conservation easement on another property it owns in the area. It has been working with Sequoia Riverlands Trust (SRT), the local land trust, to establish this conservation easement. The SRT acknowledges that when an applicant has other farmland it already owns, it simplifies and reduces the time and cost of processing. One of the family members is a knowledgeable real estate broker and that too is facilitating the conservation easement.

Cartmill Crossings Project: This is a multi-use/mixed-use project made up of commercial development and a mix of residential uses (single-family and multi-family) on approximately 120 acres. Compared to the Fernjo Estates Project, which is much more defined and included a tentative map for a single-family subdivision, this project is less defined and is more of a conceptual long-term development plan.

This project would also be subject to farmland mitigation on a 1:1 ratio for the conversion of farmland. The project proponent has made initial inquiries into SRT.

Tulare County

Key Program Facts

- **Date of program establishment.** 2016.
- **Ratio of acres conserved versus converted.** Generally, 1:1 for similar soil quality.
- **Program management and administration.** Tulare County Resource Management Agency.
- **Area of applicability.** Unincorporated Tulare County, parcels of 5 acres or more of prime or unique farmland, or farmland of statewide importance.
- **Amount of in-lieu fee established.** Not established. In-lieu fees have been discussed in relation to two projects, but no negotiated amounts have determined.

Program Summary

Tulare County established its Agricultural Conservation Easements Program (ACEP) in May 2016 by resolution of the Board of Supervisors. The ACEP was prompted by a lawsuit by the Sierra Club over the 2012 County General Plan. The program requires conservation easements as mitigation for land converted to non-agricultural use. It applied to parcels of five (5) acres or more in the unincorporated areas of the County. Protected land includes Prime Farmland, Unique Farmland, or Farmland of Statewide Importance as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency.

Generally, a 1:1 ratio of conserved land to converted land is used. Adjusted ratios are possible when there are differences in soil quality between the converted and conserved land.

Preferably the easement will be located in Tulare County, but other suitable land may be preserved subject to approval by the Board of Supervisors. The easement may include Prime Farmland, Unique Farmland, or Farmland of Statewide Importance.

The County ACEP has been used three times to date, with one project currently under way. Two other projects have initiated negotiation of in-lieu fees but have not completed the process. The establishing

resolution states that in-lieu fees should be sufficient to purchase a farmland conservation easement, farmland deed restriction, or other farmland conservation mechanism as a condition of approval for conversion of important agricultural land to non-agricultural use

OBSERVATIONS

- Three of the six case study programs require mitigation ratios of 2:1 or higher.
- Most of the case study programs require mitigation for projects of one acre or more, with Tulare County being the exception and requiring mitigation for projects of five acres or more.
- Some of the programs identify exemptions from mitigation requirements based on project type (e.g., affordable housing) or amount of farmland being converted (i.e., project is converting less than five acres of farmland). Other programs identify reduced mitigation requirements for certain project types (e.g., commercial or industrial).
- Most of the case study jurisdictions either require or prefer mitigation land to be acquired in the same county.
- In-lieu fees are currently in the range of one-third to one-half the value of the land. Yolo County's per acre fee of \$10,100 per acre is the only published in-lieu fee that could be identified.
- All programs make use of a qualified entity, generally a non-profit land trust, to play the lead role in creating agricultural conservation easements. The land trust is also responsible for monitoring and enforcing the easements.
- There are a number of land trusts dedicated to acquiring and holding conservation easements on agricultural land.

Table 3: Comparison of Farmland Preservation Programs

Program Attributes	Yolo County	City of Davis	Stanislaus County	City of Hughston	City of Tulare	Tulare County
1 Date Program Established	2008; 2015	1995; 2007	2007	2013	2020	2016
2 Area of Applicability	Unincorporated County Outside City SOI	Urban/Rural Edge	Stanislaus County	Within City's SOI with Annexation	Within the city's urban development boundary (UDB) and outside the city limits	Unincorporated County
3 Program Management and Administration	Department of Community Services	Department of Community Development and Sustainability	Planning and Community Development Department	Planning Department and Planning Commission	Community Development Department	Resource Management Agency (RMA)
4 Qualifying Entity Holding Easements	Yolo Land Trust	Yolo Land Trust; Solano Farm and Open Space Trust. Others subject to City Council approve	Stanislaus County Land Trust	A qualified Land Trust	An entity qualified and approved to hold agricultural conservation easements	A Qualifying Entity
5 Soil Quality	All Farmland	All Farmland	Prime Farmland, Farmland of Statewide Importance, or Unique Farmland	Equal to or better than the farmland proposed for conversion	Equal to that of the critical farmland proposed for conversion	Prime Farmland, Farmland of Statewide Importance, or Unique Farmland
6 Minimum Parcel Size	No minimum	No minimum	No minimum	One acre or greater converted to residential use	One acre or greater	5 acres
7 Implementation Measures	Department of Community Services administers; Monitoring, enforcing, and reporting by the Yolo Land Trust	Since 2007 Projects converting agricultural land must be approved by Davis voters. (ballot measure)	Monitoring, enforcing, and reporting by the Land Trust	Monitoring, enforcing, and reporting by the Land Trust	Monitoring, enforcing, and reporting by the Qualified Entity	Annually the Tulare County Resource Management Agency shall review the reports submitted to it by the Qualifying Entity as well as any other relevant material. The RMA shall prepare an Annual Report that provides an independent assessment of the effectiveness of the ACEP relative to its purpose
8 Farmland Mitigation Ratios: Preserved Land: Converted Land	3:1 prime /2:1 nonprime; preferred locations credited at ratios of 2:1 or 1:1	2:1 generally, depending on location can be from 1:1 to 5:1	1:1	2:1	1:1	1:1
9 Methods of Conservation/Mitigation	Direct Conservation Easement Acquisition (In-Kind Acquisition). Can pay In-Lieu Fees if less than 20 acres	Direct Conservation Easement Acquisition. Projects over 40 acres must do mitigation on adjacent property; in lieu fees can apply to 50% of remainder of mitigation obligation.	Less than 20 acres by direct acquisition of an agricultural conservation easement or purchase of banked mitigation credits. 20 acres or more in size, farmland preservation shall be satisfied by direct acquisition of a farmland conservation easement.	Less than 20 acres by direct acquisition of an agricultural conservation easement or purchase of banked mitigation credits. 20 acres or more in size, farmland preservation shall be satisfied by direct acquisition of a farmland conservation easement.	Direct Conservation Easement Acquisition (In-Kind Acquisition) and In-Lieu Fees if less than 20 acres	The applicant shall pay directly to the Qualifying Entity reasonable administrative fee equal to cover the reasonable real estate transaction costs and costs of administering, monitoring, and enforcing the farmland conservation easement
10 Amount of In-lieu Fee Established / Process for establishing In-lieu Fee	\$10,100 / acre; \$30,300 for triple mitigation	Would be based on ag land at city limit; \$23,000 recent price/acre. Easements valued at \$7,000 to \$10,000 per acre. In-lieu fees not used to date	No less than 35% of the average per acre price for five (5) comparable land sales in Stanislaus County	No less than 35% of the average per acre price for five (5) comparable land sales in Stanislaus County	Shall be sufficient to cover the cost of acquiring, managing, and administering an equivalent easement	The in-lieu fee or other conservation mechanism shall recognize the importance of land value and shall require equivalent mitigation

Farmland Preservation Best Practices & Established Programs Summary

Program Attributes	Yolo County	City of Davis	Stanislaus County	City of Hughson	City of Tulare	Tulare County
11 Location of Agricultural Preservation Lands	Within two miles of a City SOI/Esparto Urban Growth Boundary	Davis Planning Area	Stanislaus County	Stanislaus County	The mitigation land is located in the San Joaquin Valley, outside of any city's limits or sphere of influence, with preference given to mitigation land within ten miles of the City of Tulare limits	Tulare County is the preferred location of mitigation land; land outside Tulare County may be allowed subject to approval by the Board of Supervisors
12 Legal Instruments for Encumbering Agricultural Preservation Land	Held in trust by the Land Trust in perpetuity	Held in trust by the Land Trust in perpetuity	Held in trust by the Land Trust in perpetuity	Held in trust by the Land Trust in perpetuity	Agricultural conservation easements in mitigation land shall be held in perpetuity by a qualified entity	Agricultural conservation easements in mitigation land shall be held in perpetuity by a qualifying entity
13 Monitoring, Enforcing, and Reporting	The Yolo Land Trust shall monitor all lands and easements acquired. Community Services Department makes an annual report delineating the activities undertaken in previous fiscal year	The Yolo Land Trust shall monitor all lands and easements acquired. City will from time to time report delineating activities undertaken	The Land Trust shall monitor all lands and easements acquired, with an annual report delineating the activities undertaken	The Land Trust shall monitor all lands and easements acquired, with an annual report delineating the activities undertaken	The qualified entity shall monitor the use of all mitigation land subject to agricultural conservation easements held by the entity. It shall also enforce compliance with the terms of the conservation easements or other agricultural mitigation instruments	The qualifying entity shall monitor the use of all mitigation land subject to agricultural conservation easements held by the entity. It shall also enforce compliance with the terms of the conservation easements or other agricultural mitigation instruments
14 Stacking of Conservation Easements	Not allowed except for certain habitat easements on no more than 5% of agricultural easement	Not allowed except for certain habitat easements on no more than 5% of agricultural easement	Allowed - Ensure the stacking will not be incompatible with the maintenance and preservation of economically sound and viable agricultural activities and operations	May be allowed if approved by the City Council, provided the habitat needs of the species addressed by the conservation easement shall not restrict the active agricultural use of the land	Stacking of easements not mentioned in Ordinance	Stacking of easements not mentioned in Resolution
15 Properties Eligible for Protection	Within two miles of a City SOI/Esparto Urban Growth Boundary, closer-in credited at 1:2 or 1:1	Davis Planning Area, adjacent to property if 40 acres or more land converted. Land remote from City limit credited at 5:1	Land shall be: (1) located in Stanislaus County; (2) designated agriculture by the land use element of the Stanislaus County general plan; (3) zoned A-2 (general agriculture); and (4) located outside a local agency formation commission (LAFCO) adopted sphere of influence of a city	Land shall be: (1) located in Stanislaus County; (2) designated agriculture by the land use element of the Stanislaus County general plan; (3) zoned A-2 (general agriculture); and (4) located outside a local agency formation commission (LAFCO) adopted sphere of influence of a city	in the San Joaquin Valley, outside of any city's limits or sphere of influence, with preference given to mitigation land within ten miles of the City of Tulare limits	In Tulare County preferred. Board of Supervisors may approve easement on land outside of County



Data Collection & Mapping

AGRICULTURAL MITIGATION PROGRAM & FEASIBILITY STUDY

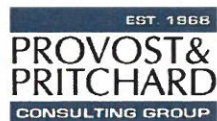
OCTOBER 2020

PREPARED FOR:

City of Visalia
707 W. Acequia Ave.
Visalia, CA 93291

PREPARED BY:

Provost & Pritchard Consulting Group



INTRODUCTION AND PURPOSE

The City of Visalia General Plan establishes a tiered growth strategy for the City. Buildout thresholds have been identified for when growth could begin in Tiers II and III, but the City has also required an agricultural mitigation program be established before expansion into Tier II. As the City approaches the buildout thresholds established for Tier II development, the agricultural mitigation program is being re-evaluated for feasibility and effectiveness. This document provides an inventory of local land uses, farmland categories, soil types, public utilities, and other relevant data mapping. Analysis based on these data sets will occur during the preparation of the Feasibility Study. Additional data sets may be used as part of the analysis as well.

MAPPING

RELEVANT CITY AND SPECIAL DISTRICT BOUNDARIES

Figures 1 through 3 display various jurisdictional and special district boundaries that are relevant to the potential agricultural mitigation program. This includes the City of Visalia jurisdictional boundaries, including the tiered growth boundaries and the adopted Sphere of Influence represented in **Figure 1**, the Groundwater Sustainability Agency boundaries represented in **Figure 2**, and the water district boundaries represented in **Figure 3**. There are approximately 66,640 acres (or just over 104 square miles) in the Visalia Planning Area.

EXISTING AND PLANNED LAND USES

Figures 4 through 8 represent existing and planned land uses within the City. **Figure 4** shows on-the-ground land uses, including agricultural parcels in crop production. Approximately 33,407 acres (or about 50 percent) of the Visalia Planning Area are in agricultural crop production, growing a variety of crops including citrus, tree nuts, and vineyard plants. **Figure 5** shows the adopted City of Visalia General Plan Land Use Diagram. **Figure 6**, **Figure 7**, and **Figure 8** show existing infrastructure for the City, including major roadways, sewer lines, and storm drainage facilities and basins, respectively. Some planned roadway improvements are also included.

AGRICULTURAL LANDS

Figures 9 through 14 show previous and current distribution of agricultural lands and related land contracts in the Visalia Planning Area. Farmland type, according to the Farmland Mapping and Monitoring Program (FMMP), is represented for a series of years in **Figure 9**, **Figure 10**, **Figure 11**, **Figure 12**, and **Figure 13**. Parcels currently under or expired from Williamson Act Contracts are represented in **Figure 14**, which also indicates two existing Sequoia Riverlands Trust conservation easements and one additional agricultural conservation easement identified through the Williamson Act Contract program data.

Farmland Mapping and Monitoring Program Categories

The California Department of Conservation’s Farmland Mapping and Monitoring Program (FMMP) produces maps and statistical data used for analyzing impacts on California’s agricultural resources. As part of this process agricultural land is categorized according to soil quality and irrigation status. These agricultural categories include the following:

Prime Farmland. Farmland with the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.

Farmland of Statewide Importance. Farmland similar to Prime Farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.

Unique Farmland. Farmland of lesser quality soils used to produce the state's leading agricultural crops. This land is usually irrigated but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.

Farmland of Local Importance. Land of importance to the local agricultural economy as determined by each county's board of supervisors and a local advisory committee.

Urban and Built-Up Land. Land occupied by structures with a building density of at least 1 unit to 1.5 acres, or approximately 6 structures to a 10-acre parcel. This land is used for residential, industrial, commercial, institutional, public administrative purposes, railroad and other transportation yards, cemeteries, airports, golf courses, sanitary landfills, sewage treatment, water control structures, and other developed purposes.

Other Land. Land not included in any other mapping category. Common examples include low density rural developments; brush, timber, wetland, and riparian areas not suitable for livestock grazing; confined livestock, poultry or aquaculture facilities; strip mines, borrow pits; and water bodies smaller than 40 acres. Vacant and nonagricultural land surrounded on all sides by urban development and greater than 40 acres is mapped as Other Land.

Table 1. Summary of FMMP Acres by Category, 2000 - 2016

Category	2000	2004	2008	2012	2016
Prime Farmland	39,123	36,745	33,987	31,786	31,405
Farmland of Statewide Importance	7,452	7,365	7,353	7,291	7,212
Unique Farmland	92	129	181	145	115
Farmland of Local Importance	1,713	2,149	1,630	2,224	2,466
Urban and Built-Up Land	15,343	17,300	19,033	20,142	20,734
Other Land	2,918	2,953	4,457	5,052	4,706
Grazing Land	--	--	--	--	1

Each iteration of FMMP maps for the Visalia Planning Area demonstrated a loss of farmland to urban conversion. Between 2000 and 2016, Urban and Built-Up Land and Other Land increased from 18,261 acres to 25,440 acres. During this same period, farmland categories decreased from 48,380 acres to 41,199 acres.

Williamson Act Contracts

The Williamson Act, also known as the California Land Conservation Act of 1965, enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use. Private land within locally designated agricultural preserve areas is eligible for enrollment under contract. The minimum term for contracts is ten years and will automatically renew on each anniversary date of the contract.

Landowners enrolled under Williamson Act contract receive considerably reduced property tax assessments in return for their enrollment. Property tax assessments of Williamson Act contracted land are based upon generated income as opposed to potential market value of the property.

Williamson Act contracts may be exited at the option of the landowner or local government by initiating a non-renewal process, which effectively halts the automatic renewal of the contract term. Once a notice of non-renewal is filed, the remaining contract term is allowed to lapse, with the contract null and void at the end of the term. During the non-renewal process, the annual tax assessment continually increases each year until it is equivalent to current tax rates at the end of the non-renewal period. Under a set of specifically defined circumstances, a contract may be cancelled without completing the process of term non-renewal.

SOIL AND RECHARGE

Figures 15 and 16 show different soil characteristics within the Visalia Planning Area. Soil classifications are represented in **Figure 15**. Relating to soil type, **Figure 16** shows the Soil Agricultural Groundwater Banking Index (SAGBI) ratings for the Visalia Planning Area. The SAGBI is based on five major factors that indicate the effectiveness of the location as a natural groundwater recharge area, including: deep percolation, root zone residence time, topography, chemical limitations, and soil surface condition.

Figure 1: Visalia Jurisdictional Boundaries

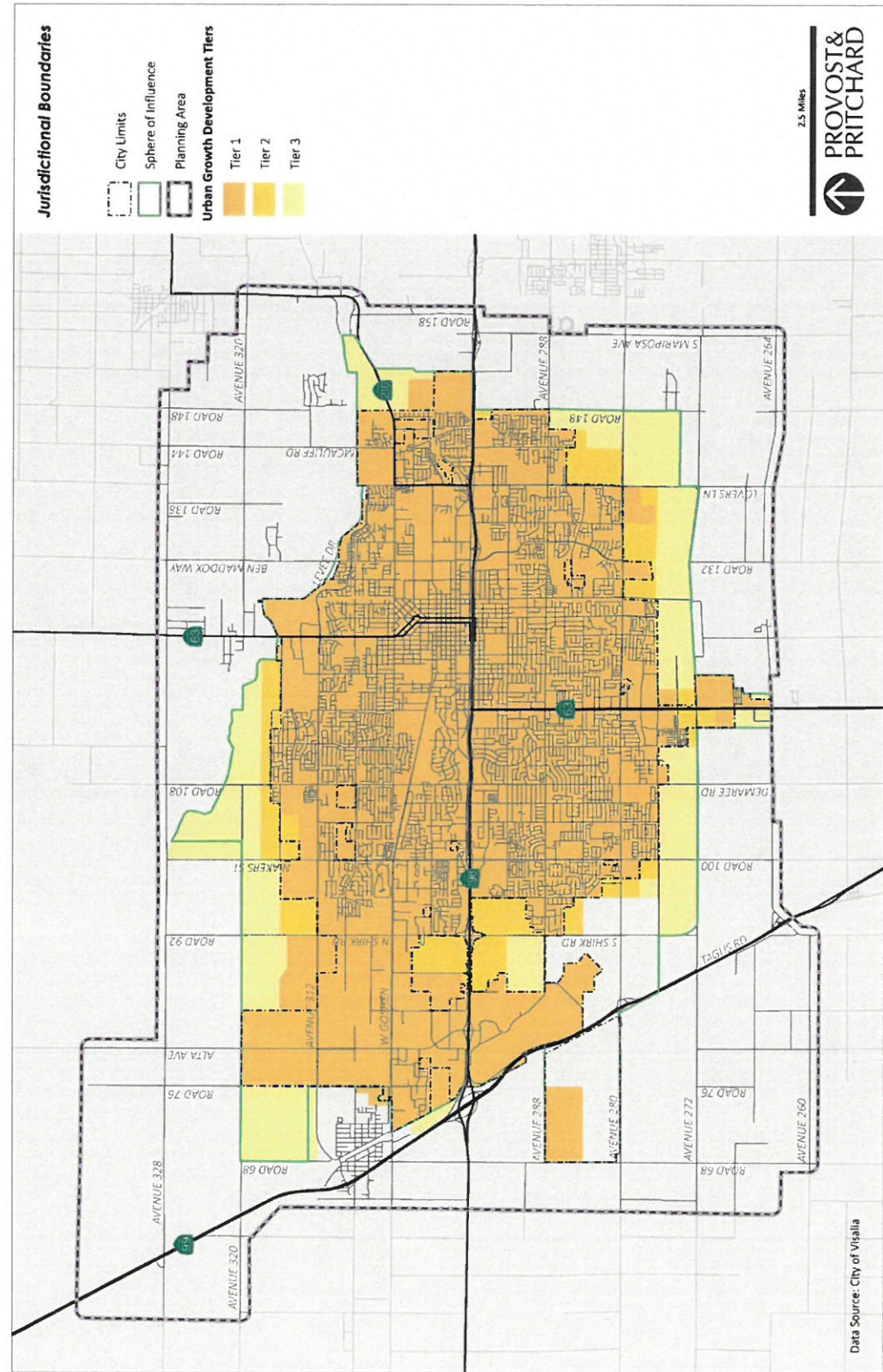


Figure 2: Groundwater Sustainability Agency Boundaries

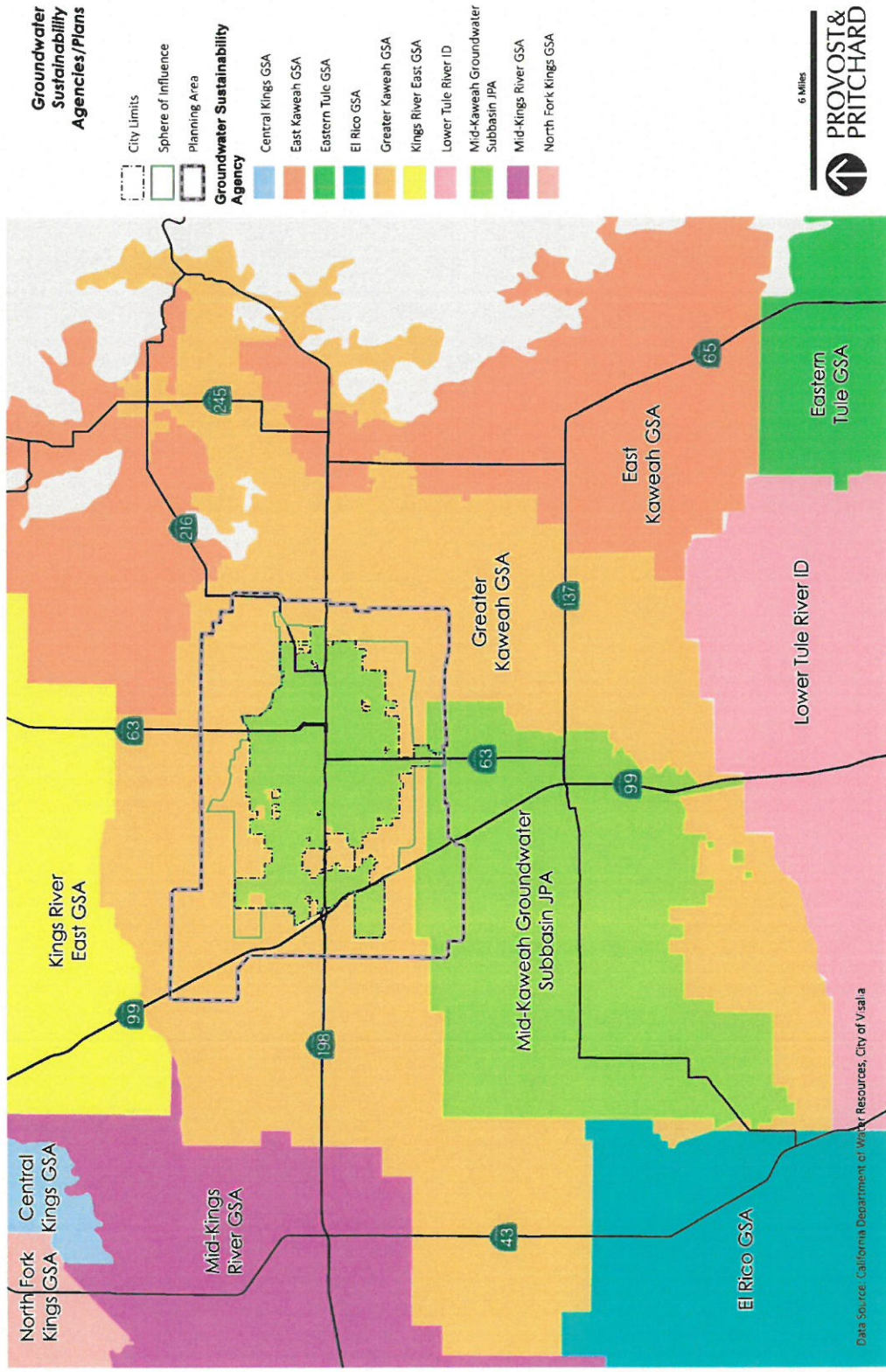


Figure 3: Water District Boundaries

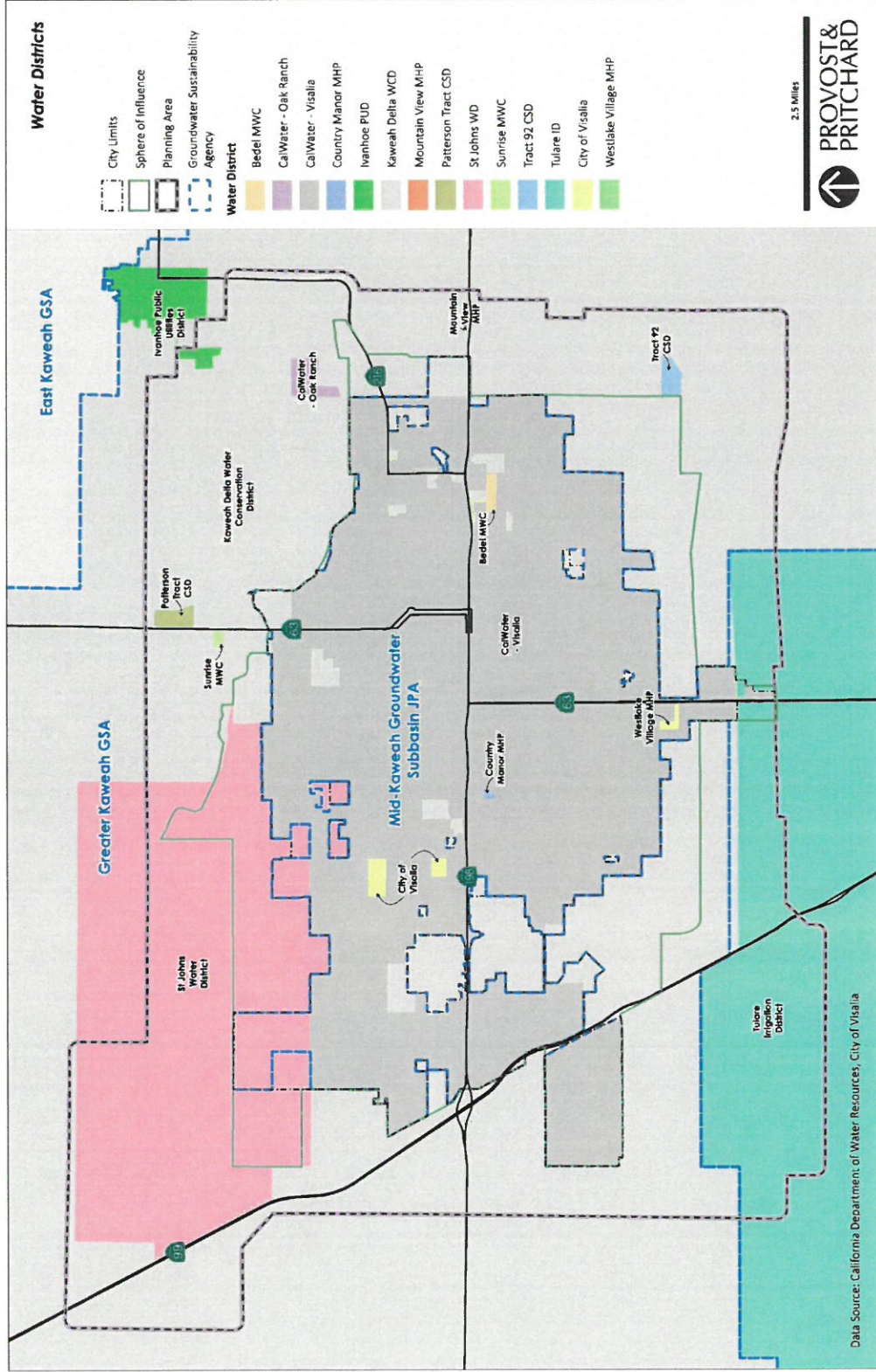


Figure 4: Existing Land Uses

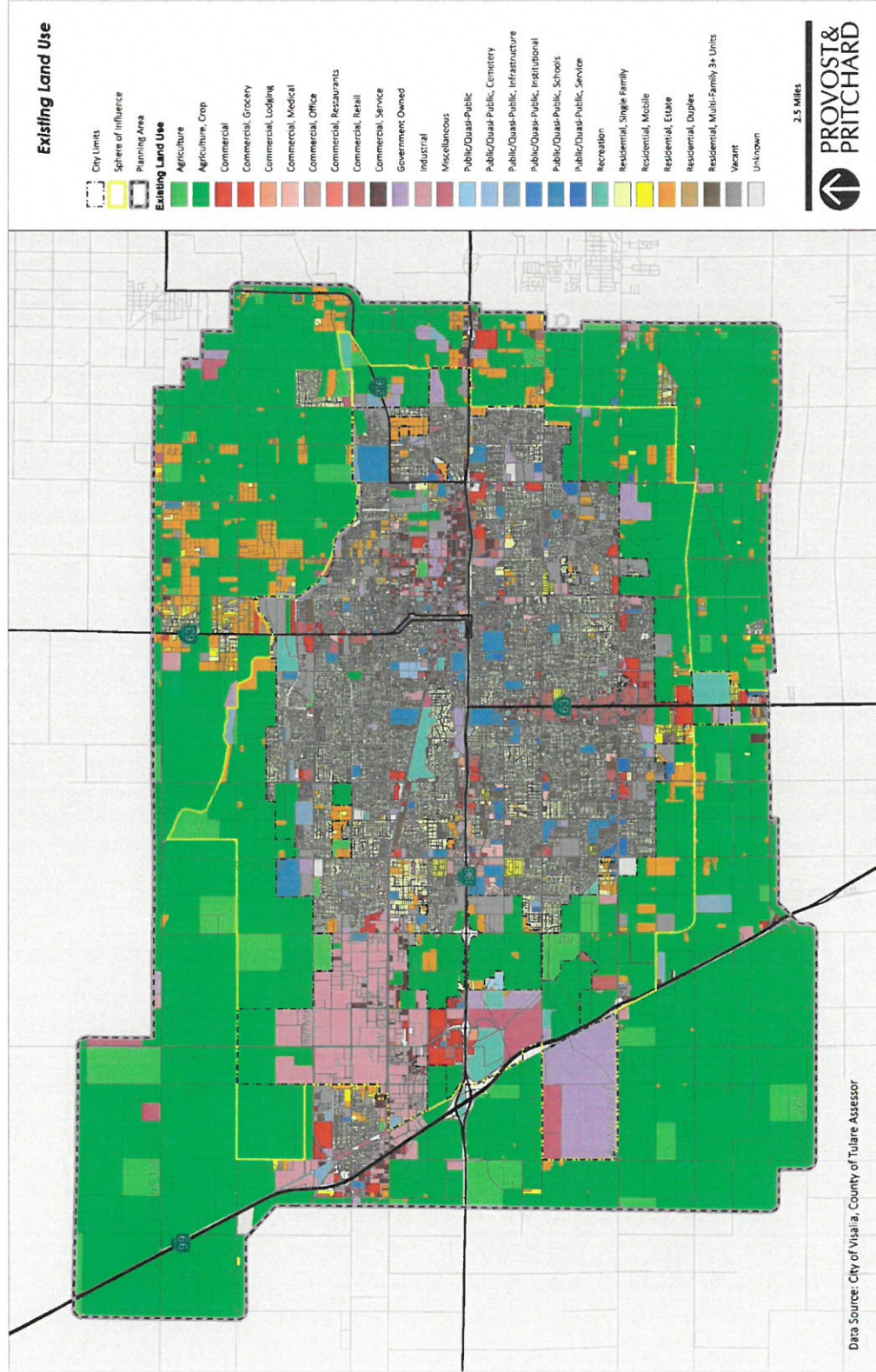


Figure 5: General Plan Land Use Diagram

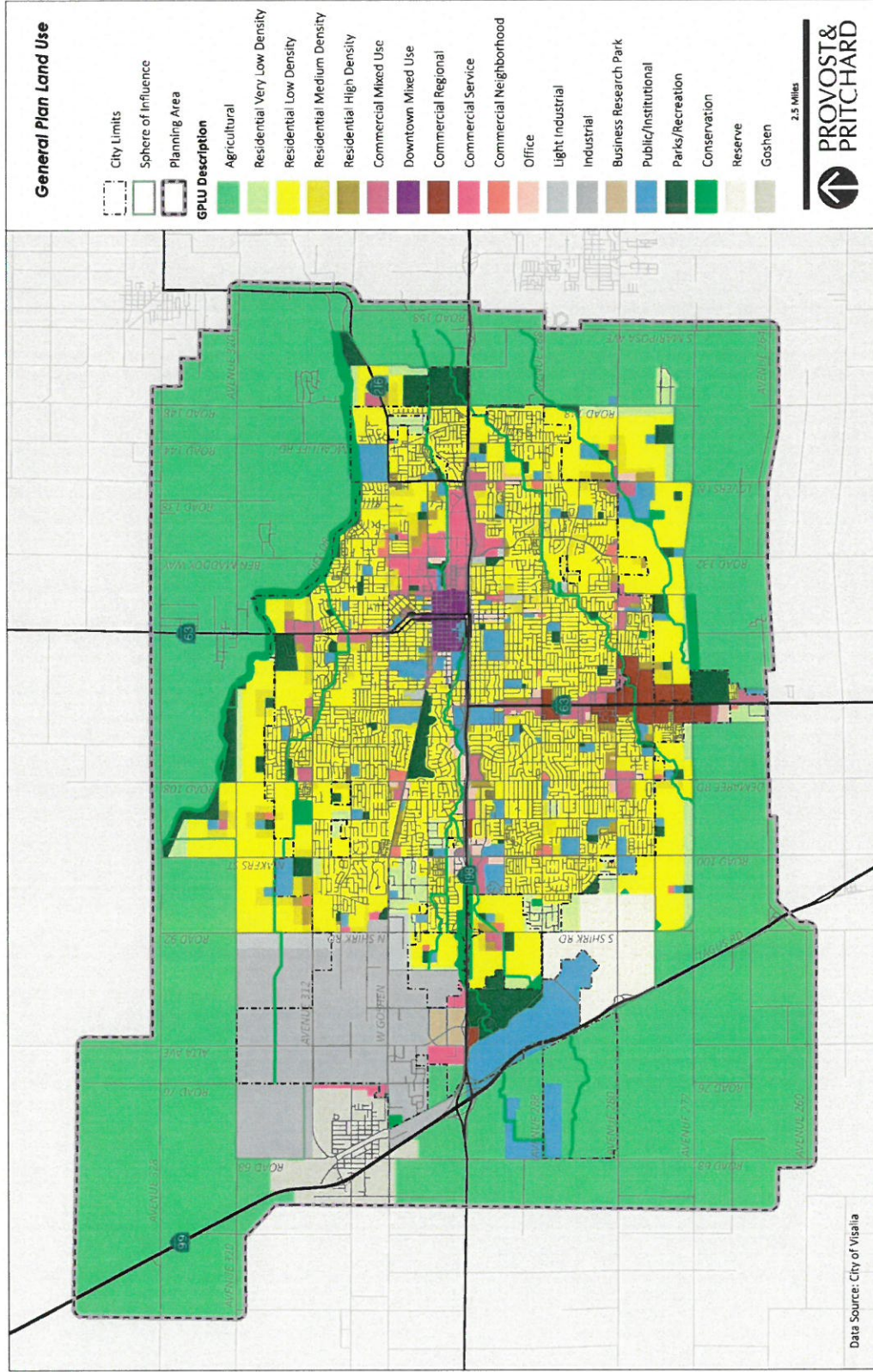


Figure 6: Existing and Planned Roads

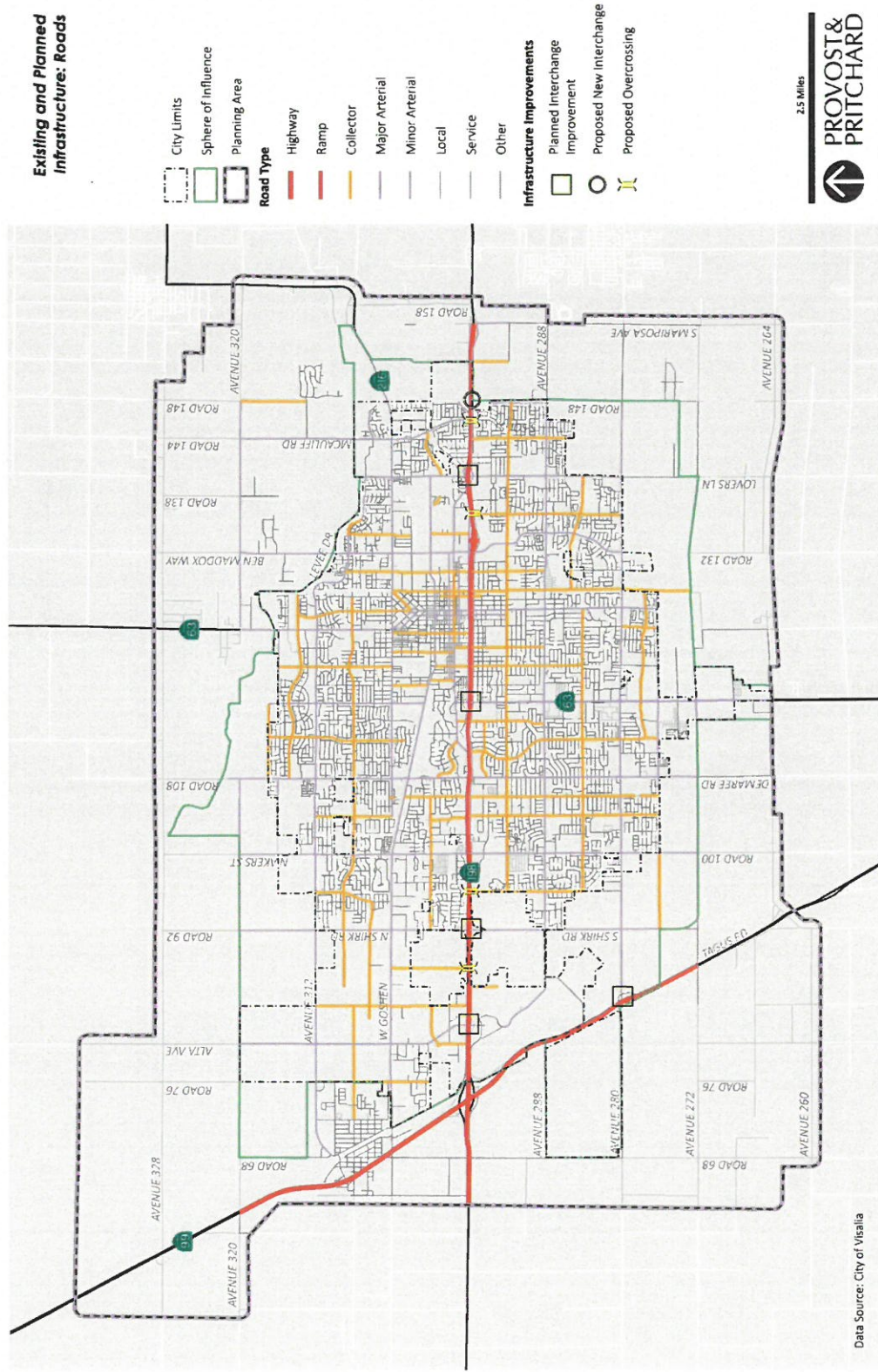


Figure 7: Existing Sewer Infrastructure

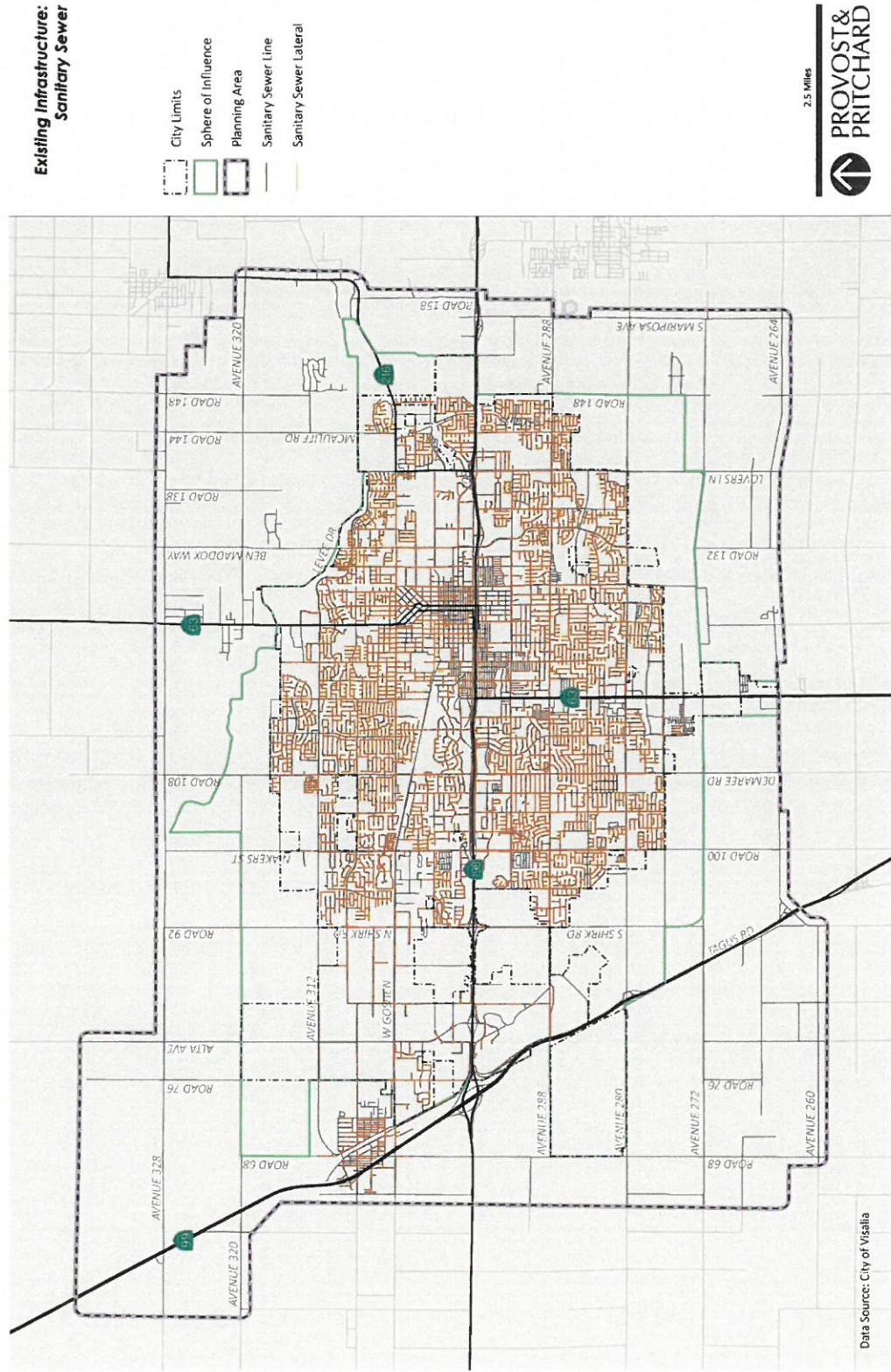


Figure 8: Existing Stormwater Infrastructure

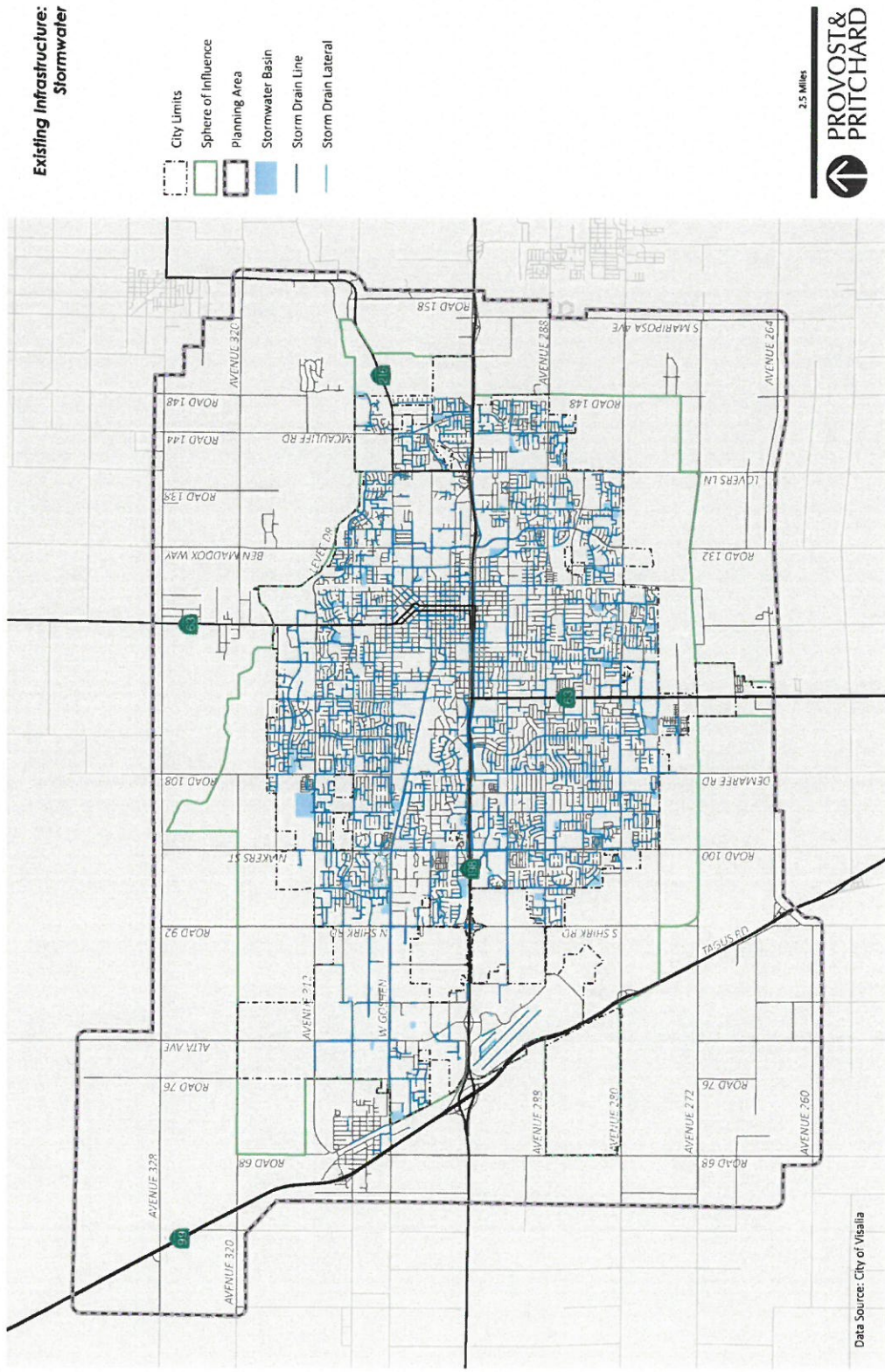


Figure 9: Farmland Mapping and Monitoring Program Categories, 2000

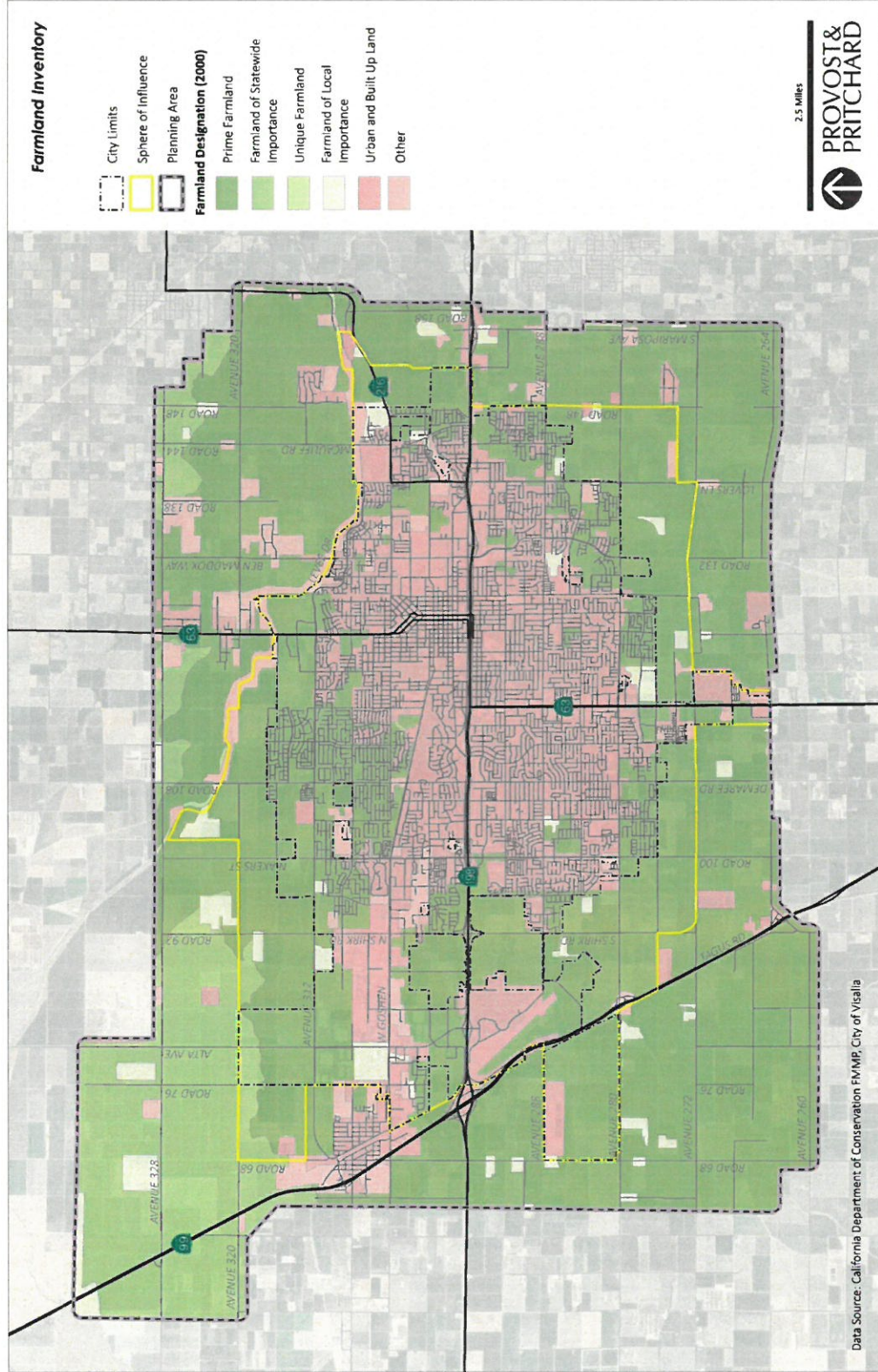


Figure 10: Farmland Mapping and Monitoring Program Categories, 2004

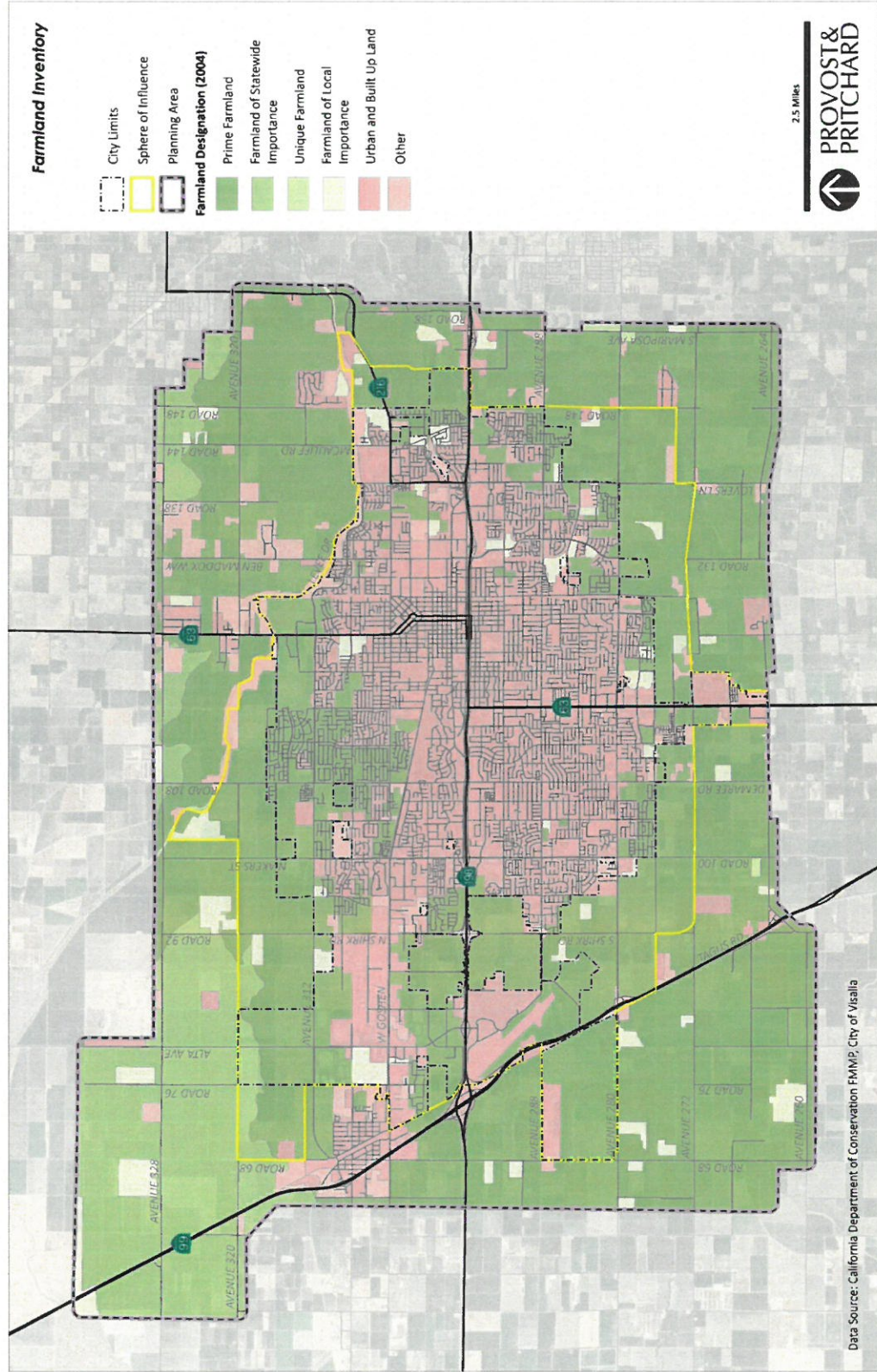


Figure 11: Farmland Mapping and Monitoring Program Categories, 2008

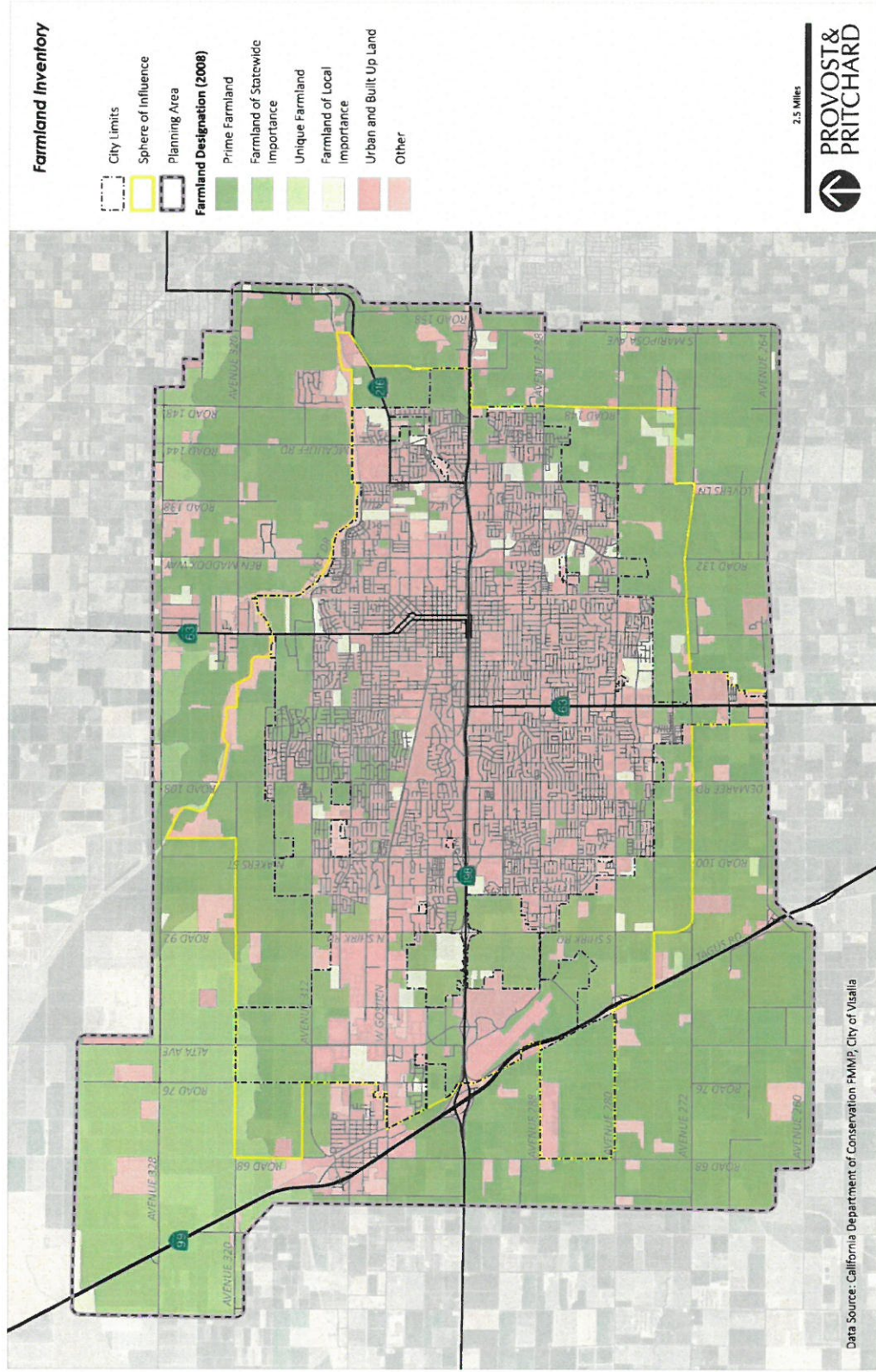


Figure 12: Farmland Mapping and Monitoring Program Categories, 2012

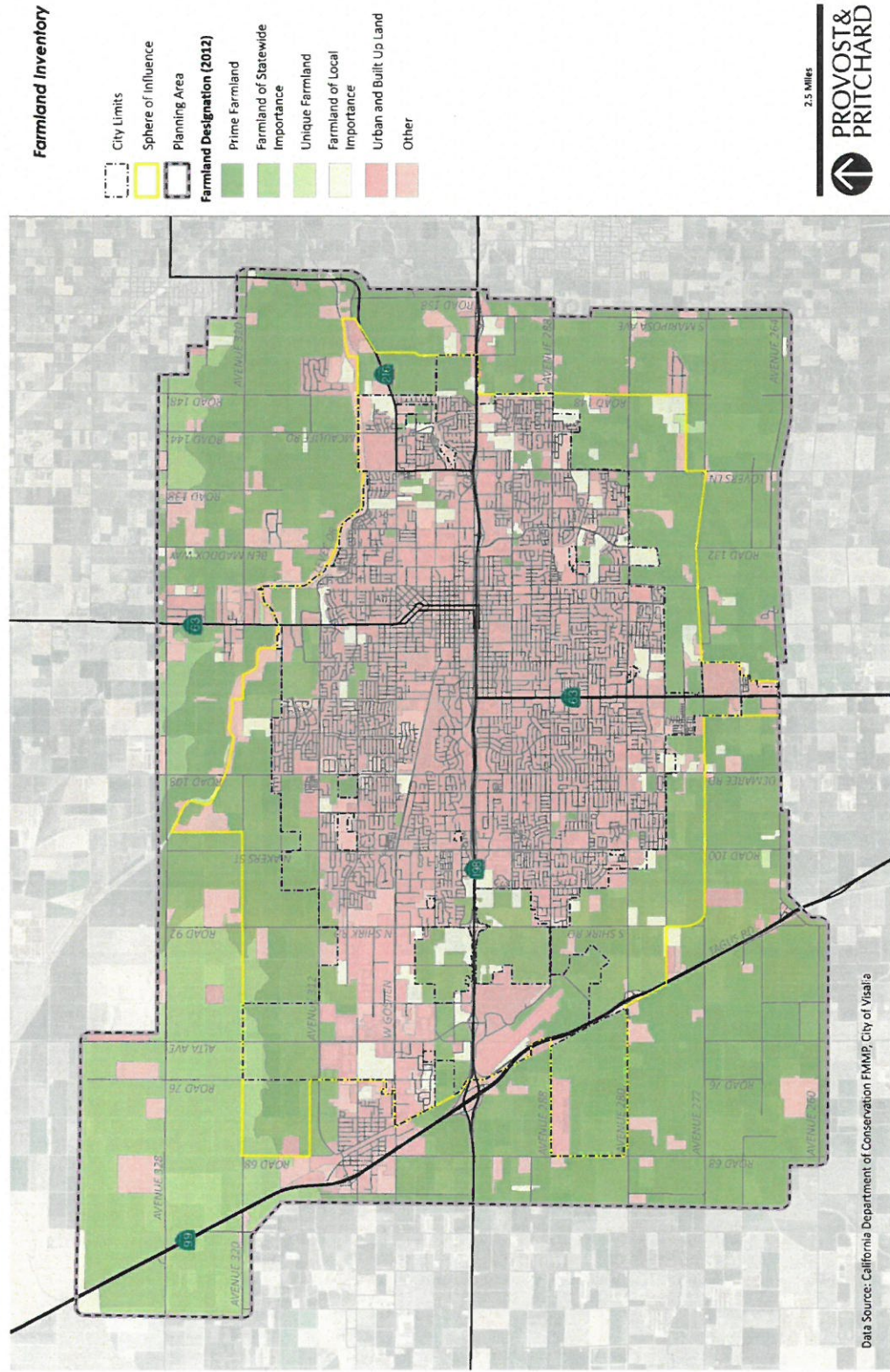


Figure 13: Farmland Mapping and Monitoring Program Categories, 2016

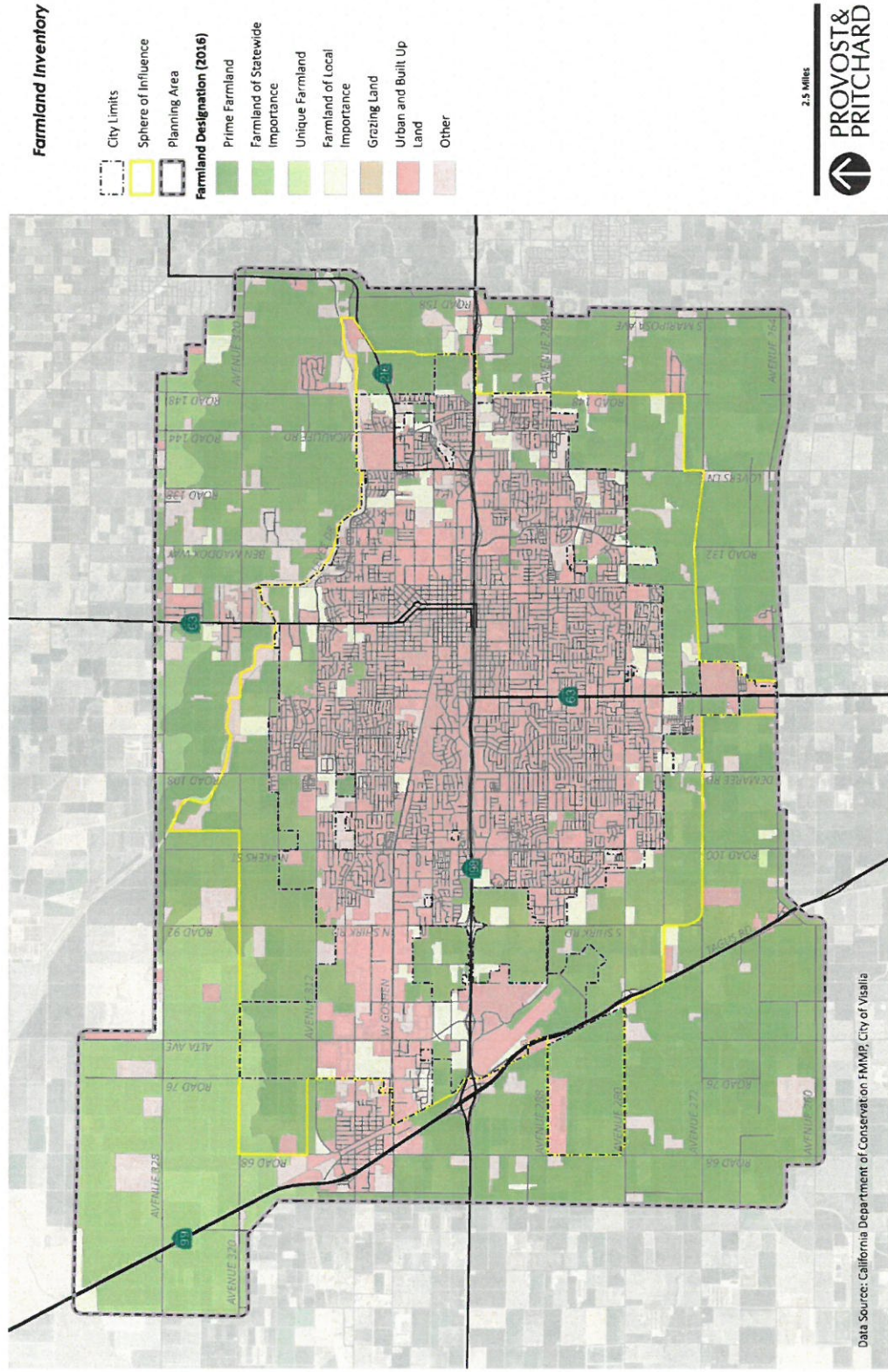


Figure 14: Williamson Act Parcels

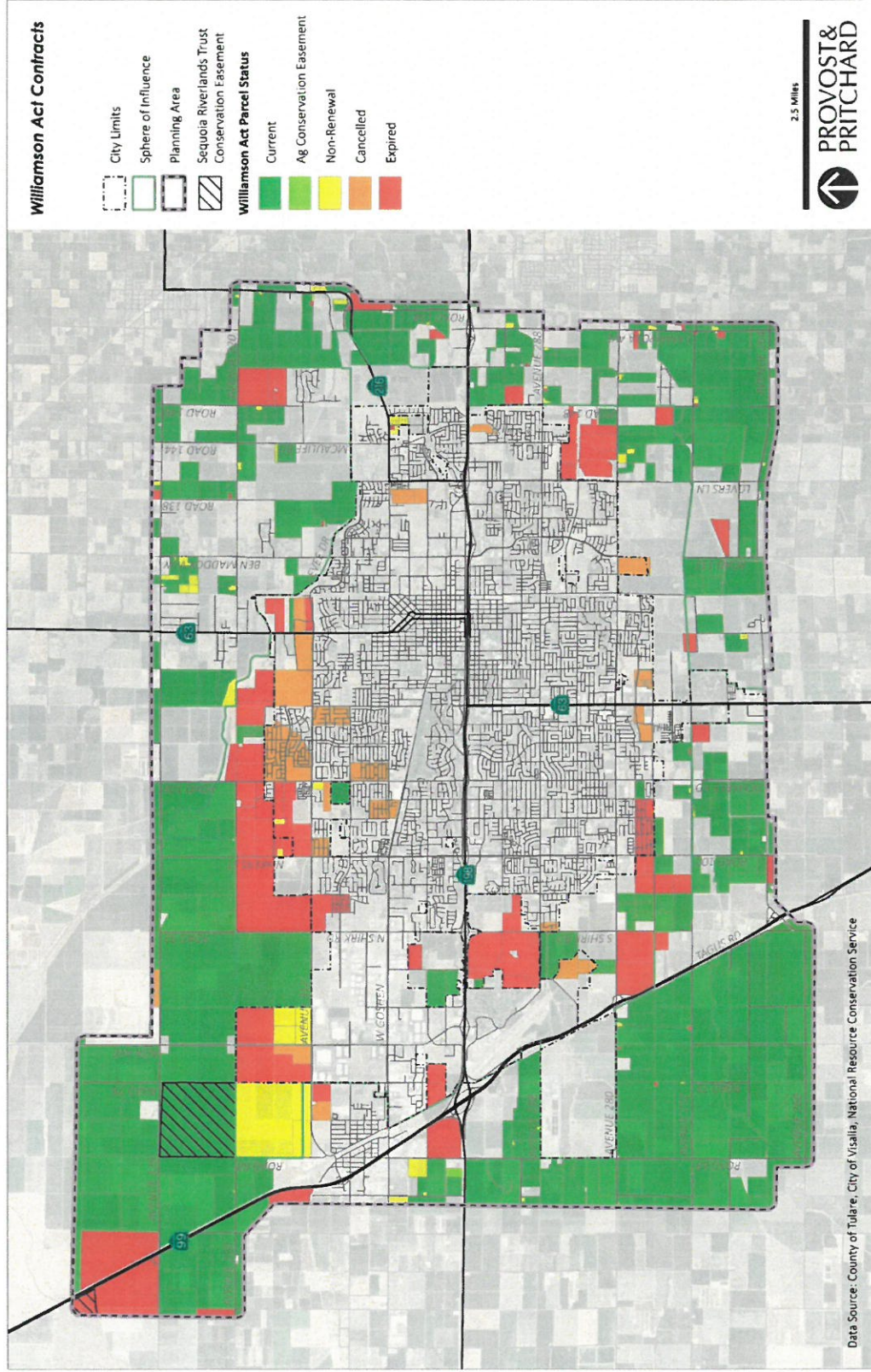


Figure 15: Soil Types

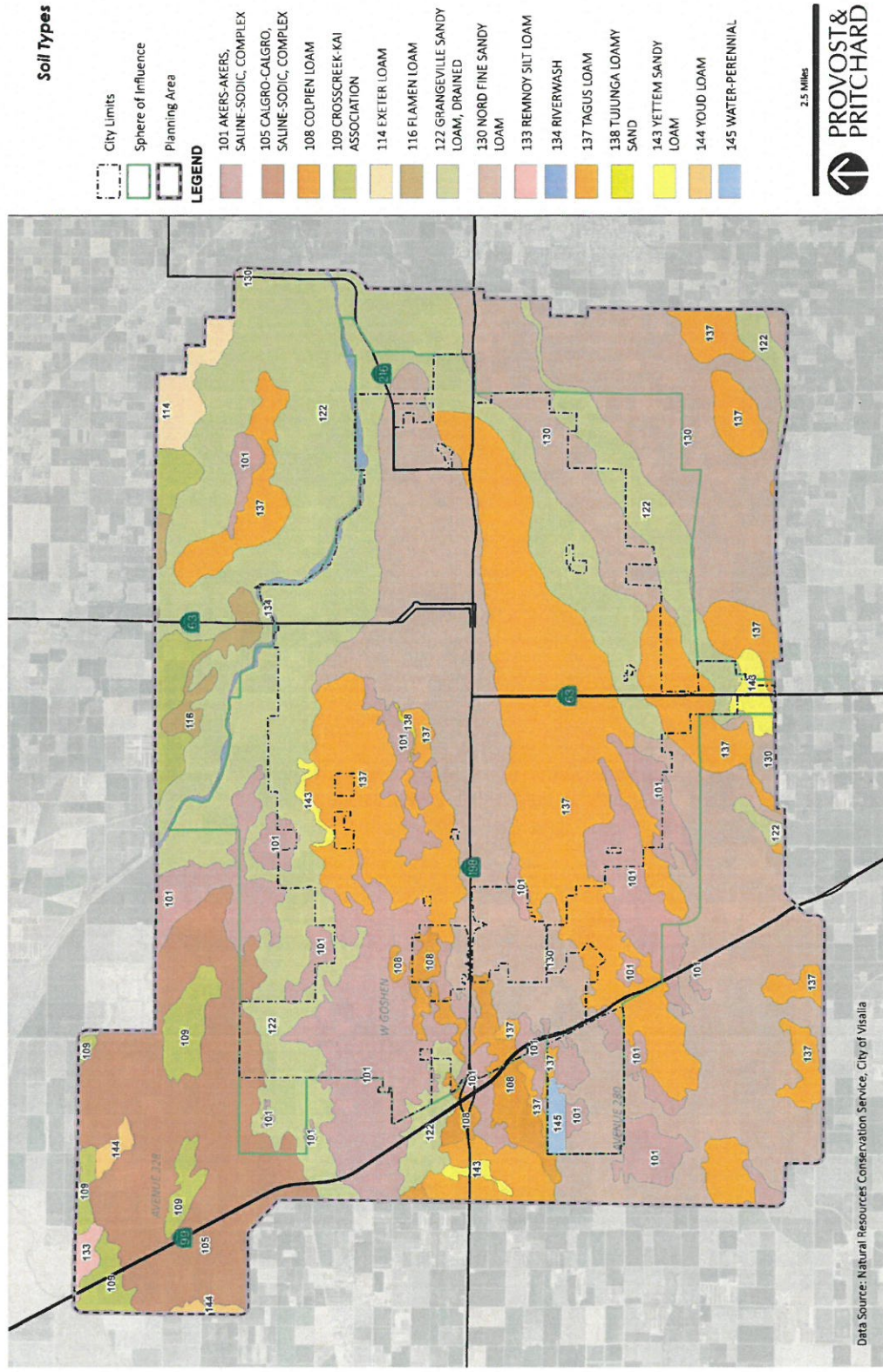


Figure 16: Natural Recharge Areas

