



CITY OF VISALIA **FEASIBILITY STUDY**

AGRICULTURAL MITIGATION PROGRAM
& FEASIBILITY STUDY

*Public Review Draft
December 2020*



Feasibility Study

PUBLIC REVIEW DRAFT

AGRICULTURAL MITIGATION PROGRAM & FEASIBILITY STUDY

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PREPARED FOR:

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

PREPARED BY:

Provost & Pritchard Consulting Group



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INTRODUCTION

The City of Visalia General Plan was adopted in 2014 and established an urban growth strategy that identified three tiers for development in 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. The City is currently over 88 percent toward meeting the residential permit threshold outlined in Policy LU-P-21. A second General Plan Policy, LU-P-34, contains a supplemental requirement for development within the Tier II and Tier III Growth Boundaries: specifically, establishment of an agricultural mitigation program. As the City approaches the permit threshold that would allow Tier II residential development, the City Council in early 2020 initiated the process of establishing an agricultural mitigation program to ensure this supplemental requirement is satisfied prior to the permit threshold being met. While establishment of an agricultural mitigation program is tied to the advancement of residential development into subsequent tiers, it should be clarified that once established, the agricultural mitigation program would apply to residential and non-residential projects alike.

The agricultural mitigation program identified in Policy LU-P-34, included in its entirety below, is intended to support regional efforts to prevent urban development of agricultural land beyond the City’s urban development boundary and address the conversion of Prime Farmland and Farmland of Statewide Importance in Tiers II and III by requiring a 1:1 ratio of conserved to converted agricultural land. The General Plan policy also specifies that the conserved land be equivalent to the converted land and that all land conserved through the program have adequate water supply and the appropriate agricultural zoning.

LU-P-34 Work with Tulare County and other state and regional agencies, neighboring cities, and private land trust entities to prevent urban development of agricultural land outside of the current growth boundaries and to promote the use of agricultural preserves, where they will promote orderly development and preservation of farming operations within Tulare County. Conduct additional investigation of the efficacy of agricultural conservation easements by engaging local, regional, and state agencies and stakeholders in order to further analyze their ongoing efforts and programs that attempt to mitigate impacts from the conversion of agricultural lands through the use of agricultural conservation easements. The City will support regional efforts to prevent urban development of agricultural lands, specifically at the county level. Tulare County’s General Plan 2030 Update Policy contains two policies (AG-1.6 Conservation Easements and AG-1.18 Farmland Trust and Funding Sources) that discuss establishing and implementing an Agricultural Conservation Easement Program (ACEP). The City supports the implementation of these measures by the County, in which the City may then participate. Such a regional program could include a fee

to assist and support agricultural uses, and would be most feasibly and strategically developed on a countywide or other regional basis.

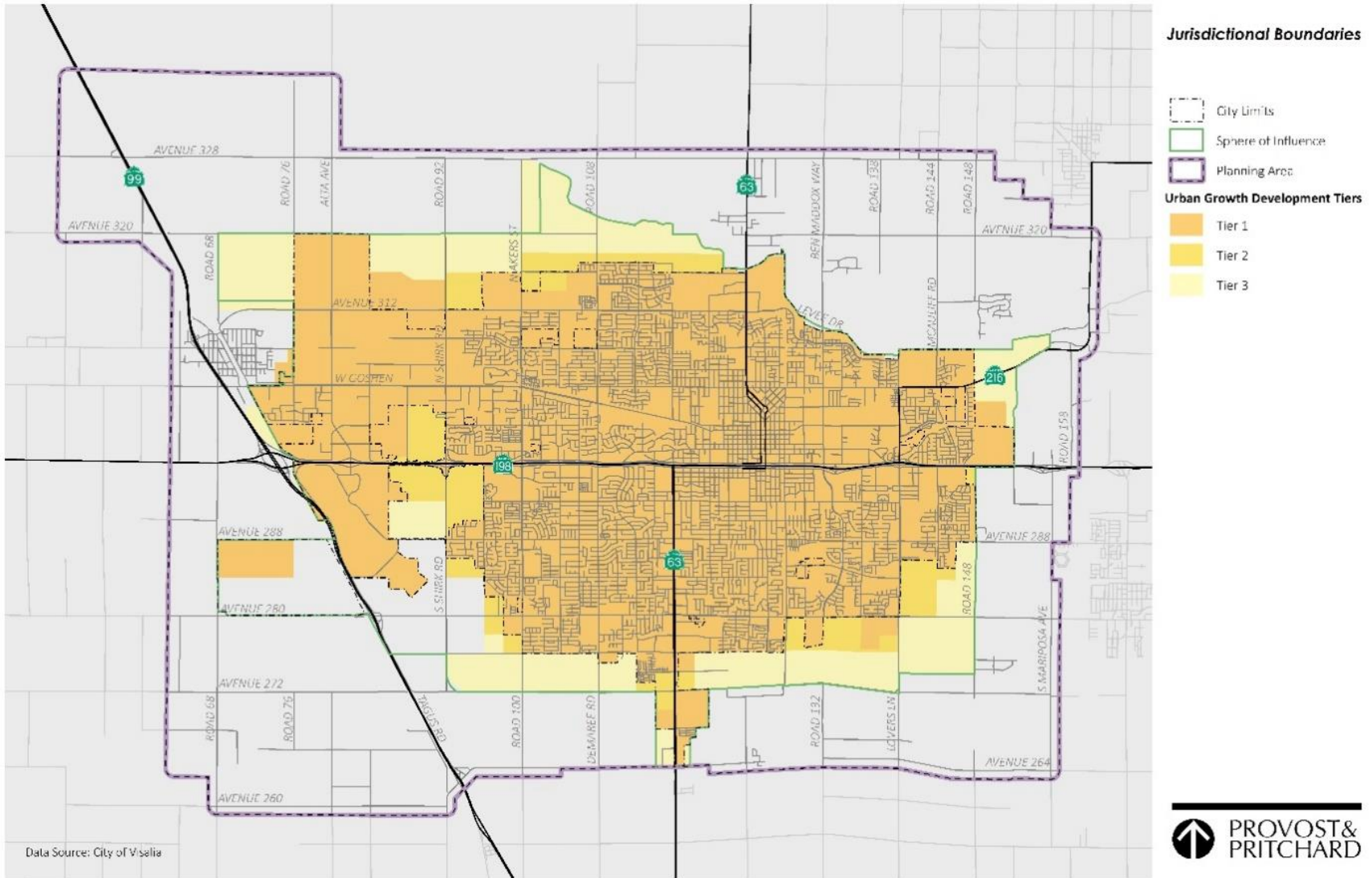
In addition to supporting regional efforts to prevent urban development of agricultural lands, the City shall create and adopt a mitigation program to address conversion of Prime Farmland and Farmland of Statewide Importance in Tiers II and III. This mitigation program shall require a 1:1 ratio of agricultural land preserved to agricultural land converted and require agricultural land preserved to be equivalent to agricultural land converted. The mitigation program shall also require that the agricultural land preserved demonstrate adequate water supply and agricultural zoning, and shall be located outside the City UDB, and within the southern San Joaquin Valley. The mitigation program shall, to the extent feasible and practicable, be integrated with the agricultural easement programs adopted by the County and nearby cities. The City's mitigation program shall allow mitigation to be provided by purchase of conservation easement or payment of fee, but shall indicate a preference for purchase of easements. The mitigation program shall require easements to be held by a qualifying entity, such as a local land trust, and require the submission of annual monitoring reports to the City. The mitigation program shall specifically allow exemptions for conversion of agricultural lands in Tier I, or conversion of agricultural lands for agricultural processing uses, agricultural buffers, public facilities, and roadways.

Recognizing that there have been changes in circumstance since adoption of the General Plan in 2014 and recognizing the intent to “conduct additional investigation of the efficacy of agricultural conservation easements,”¹ the City Council directed staff to research the feasibility of agricultural mitigation programs prior to establishment of a program in Visalia. Changes in circumstances identified include new legislation intended to reduce the housing shortage, case law that changes the appropriateness of conservation easements under the California Environmental Quality Act (CEQA), and new water sustainability efforts. The Council also directed staff to explore the potential impact of an agricultural mitigation program on the cost of residential construction.

This Feasibility Study has been prepared as a stand-alone document prior to initiating establishment of an agricultural mitigation program. It will evaluate the necessity and feasibility of an agricultural mitigation program and identify potential alternatives for City Council consideration. Additionally, the Feasibility Study considers the information contained in documents previously prepared as part of the Feasibility Study effort, including the Regulatory Framework, Farmland Preservation Best Practices & Established Programs Summary, and Data Collection & Mapping, included as appendices.

¹ Per General Plan Policy LU-P-34.

Figure 1. Growth Tier Boundaries Map



PURPOSE & OBJECTIVES

This Feasibility Study assesses whether the General Plan requirement for an agricultural mitigation program is still a viable and effective option for the City of Visalia. The study will primarily answer three questions:

- Have there been any changes that would affect the ability of the City to implement an agricultural mitigation program, particularly as envisioned under Policy LU-P-34?
- What is the anticipated impact to housing costs?
- What options are available to the City to move forward with development in Tier II?

The City Council will then make a decision about which direction to take. The study itself will not attempt to select a path but will instead lay out the feasible options for the City Council to consider prior to taking action.

APPROACH & ORGANIZATION

The Feasibility Study compiles the efforts of documents previously prepared as part of this project, including the Regulatory Framework, Farmland Preservation Best Practices & Established Programs Summary, and Data Collection & Mapping. These documents were presented to the City Planning Commission and the public on November 9th, 2020. Following the presentation, City staff were available to receive comments and answer questions. Feedback and questions gathered from this community outreach effort have also been considered during the preparation of this Feasibility Study.

The **Policy Background** discusses the history of the Visalia General Plan and the decisions that led to the ultimate inclusion of Policy LU-P-34 in the adopted Plan. The **Conservation Strategies** section summarizes what conservation easements are and outlines the process behind establishing and removing conservation easements and the necessary considerations behind easement selection. It also highlights other methods for preserving farmland, as well as which of these strategies are currently enacted in Visalia. The **Key Considerations** section highlights the most important and pertinent topics for consideration from each of the previously prepared documents. Each topic considered includes a brief summary of the topic and examines the potential impacts on implementation of an agricultural mitigation program. Finally, in **Alternatives for Consideration**, potential alternatives in how to move forward with an agricultural mitigation program are presented for City consideration and selection.

POLICY BACKGROUND

Policy LU-P-34 was created as part of the Visalia General Plan Update, which was initiated in 2009 and completed 2014. Policy LU-P-34 evolved during the update process in response to public comment and direction from Planning Commission and City Council. It should be noted that the policy did not always include an agricultural mitigation program (AMP) as a prerequisite for development occurring within the Tier II or Tier III growth boundaries. Key decision points occurring in the summer and fall of 2014 are defining moments in the public participation process that led to the inclusion of Policy LU-P-34 as adopted.

In March 2012, a Proposed Preferred Plan Concept was introduced to the City Council. This Preferred Plan Concept was considered to be the culmination of various public outreach efforts. In April of 2013, the City Council accepted the Preliminary Draft General Plan, including the Land Use Diagrams and designations and the Draft General Plan elements and policies, which did not include a requirement to establish an AMP. It was understood at that time that many issues would still be discussed prior to final action being taken to adopt the General Plan, including an agricultural land mitigation program.

In July 2014, the Planning Commission considered the feasibility of an AMP as a mitigation measure for the impacts to farmland. At that time, planning staff and the Commission agreed that an AMP was infeasible for the following reasons, as cited in the Statement of Overriding Considering for the Final Environmental Impact Report of the Visalia General Plan Update (see **Appendix A**):

- There was evidence suggesting that a local City-wide AMP may result in a patchwork of easements not contiguous enough to sustain economic viability or that the easements could frustrate orderly development in the future;
- That an AMP could only provide a speculative mitigation benefit due to the variability in the cost of conservation easements compared to the in-lieu fees that would be established, thereby rendering the effectiveness of such a program questionable;
- That the cost of purchasing easements would be cost-prohibitive to development; and
- That economic realities tend to guide the purchase of agricultural easements towards properties not subject to development pressures in the first place, thereby again rendering the mitigation benefits speculative at best.

*These considerations continue to resonate today relative to the feasibility and efficacy of an AMP. See the Summary of Considerations discussion of how recent research included in this Feasibility Study relates to these considerations under the **Key Considerations** section of this document.*

In September of 2014, following public review of the Draft General Plan and associated Environmental Impact Report, a City Council hearing was held to consider the adoption of the Visalia General Plan, along with the certification of a Final Environmental Impact Report and adoption of the Visalia Climate Action Plan. During this hearing, several parties submitted correspondence or testified to express their views on the need to establish an AMP to help offset the loss of farmland resulting from future development under the

proposed General Plan. Several parties argued in favor of an AMP as necessary, feasible mitigation, including the American Farmland Trust, Sequoia Riverlands Trust, and Tulare County Citizens for Responsible Growth. Several other parties, including the Tulare/Kings County Building Industry Association, argued against an AMP, stating that it is ineffective and disruptive to both urban and agricultural development patterns.

To allow for additional consideration of the testimony received, the City Council continued the item to October 6, 2014 and directed staff to further analyze and evaluate the City's options for feasible mitigation relative to the loss of farmland. As a result, the Council elected to change Policy LU-P-34 to include the requirement of an AMP to address conversion of Prime Farmland and Farmland of Statewide Importance in Tiers II and III at a 1:1 ratio.

During discussions at the City Council adoption hearing, the Council recognized that AMPs were the topic of dispute in neighboring jurisdictions and the outcome of litigation was still yet to be determined. The current Policy LU-P-34, including the requirement to establish an AMP was adopted, with the understanding that the outcome of these disputes would be known prior to implementation and that actions may be reconsidered if appropriate (see **Appendix B** for additional discussion on the history of the agricultural mitigation program).

ENVIRONMENTAL DETERMINATION

The Final Environmental Impact Report (EIR) certified for the General Plan identified that development resulting from implementation of the Plan would result in a loss of agricultural land that could not be fully mitigated. The establishment of an agricultural mitigation plan as directed by Policy LU-P-34 along with a number of other General Plan policies were identified as mitigation for the loss of agricultural land. However, even with such policies, the EIR acknowledged that the impact would remain significant and unavoidable; therefore, the City adopted a Statement of Overriding Considerations for the impact to agricultural land recognizing that no actions taken by the City could reduce the impacts of development on agricultural land to a less than significant level.

CONSERVATION STRATEGIES

AGRICULTURAL CONSERVATION EASEMENTS

Agricultural conservation easements are permanent easements that preserve land for agricultural use. According to the California Council of Land Trusts:

“A conservation easement is a voluntary, legally binding agreement that limits certain types of uses or prevents development from taking place on a piece of property now and in the future, while protecting the property’s resources such as habitat, open space or, as in the case of agricultural conservation easements, farmland. A conservation easement is recorded in the chain of title of the property and it ‘runs with the land’ so that the restrictions also apply to future owners of that land.”²

Easements require continued monitoring and stewardship to ensure resources are protected and remain in agricultural production. These easements are typically a partnership between the local jurisdiction requiring the mitigation and the project proponent, and often involve a third partner, such as a land trust, to assist in the facilitation of the easement.

Easement Procurement and Removal

The creation of a permanent conservation easement relies on a number of factors, including the availability of appropriate agricultural land within a specified geographic area, the willingness of a landowner to encumber property with a permanent easement, and the agreement of a price for acquiring the conservation easement. Some benefits of conservation easements for the landowner include a reduction in assessed value of the property (based on the restriction in potential use for activities other than agriculture) as well as other potential tax benefits. The proceeds a landowner may receive from the sale of a conservation easement may also provide capital for investing in continued agricultural operations.

However, changing circumstances that may be driven by external factors such as changes in regulations or economic fluctuations, can add a degree of uncertainty for landowners considering whether to sell a permanent conservation easement on their property. While it is possible to terminate an easement should the land no longer be effective for farming due to reasons outside of the landholder and easement holder’s control, the process to do so is intense. Specific termination requirements must be outlined in the terms that establish the



² California Council of Land Trusts. (2014). *Conserving California's Harvest: A Model Mitigation Program and Ordinance for Local Governments*.

easement, including the necessary steps to re-establish mitigation or conservation lands and the requirement for the termination to be approved by a court.³

OTHER PRESERVATION MECHANISMS

This Feasibility Study was commenced to determine the feasibility of the specific agricultural mitigation program identified in the General Plan, that is, establishing a conservation easement program or requiring the payment of an in-lieu fee. However, a variety of other programs and policies may assist with the City's intent to preserve the operation of agricultural land and slow its conversion rate in the City of Visalia. While agricultural mitigation programs and the establishment of conservation easements may be a common strategy employed to address impacts to farmland, there are also several additional tools that could be implemented as part of a program or which are already enacted in the City. Although other methods may not permanently conserve agricultural land, they can be used as effective ways to preserve agricultural uses and slow the conversion of farmland into urban uses within the Planning Area boundary.

Right-to-Farm Ordinance

A Right-To-Farm ordinance protects agricultural uses that have been in operation for at least three years from complaints from nearby non-agricultural uses. The County of Tulare has adopted a Right-To-Farm ordinance (Ordinance Code Part VII, Chapter 29) which protects agricultural uses from conflicts with non-agricultural uses.⁴ Although Visalia does not currently have a Right-To-Farm ordinance in place, the City does permit agricultural uses by right in certain zone districts. Further, General Plan Policy LU-P-35 states the City's intention to adopt the County's ordinance. Right-To-Farm ordinances offer protections to agricultural operations so they may continue as-usual when conflicting uses move into the area, assisting in the preservation of agricultural uses. These are particularly relevant in areas of urban-agricultural interface such as Visalia's Planning Area.

Growth Management Strategies and Related Policies

Growth management strategies encourage the orderly development of land in order to manage extension of services and maintain current levels of service for existing development. Additionally, they generally aim at aligning growth and development with actual demand, in order to maintain a balance between the two. These strategies typically also have the intent of preserving open space or agricultural lands and have the net effect of reducing the premature conversion of farmland.

The General Plan's Land Use Element includes a tiered growth management strategy with the stated goal of preventing the premature conversion of agricultural land. The adopted growth strategy is summarized in the **Introduction** section of this document and outlined in more detail in Sections 2.3 Growth Strategy, 2.5 Urban Boundaries and Growth Management, and 2.6 Rural Buffer and Edge Conditions of the Visalia General Plan Land Use Element (see **Appendix C**).

³ California Council of Land Trusts. (2014). *Conserving California's Harvest: A Model Mitigation Program and Ordinance for Local Governments*.

⁴ County of Tulare. (n.d.). Ordinance Code of Tulare County. Retrieved from <https://tularecounty.ca.gov/rma/index.cfm/rma-documents/planning-documents/portions-of-the-ordinance-code-of-tulare-county/part-vii-chapter-29-right-to-farm/#:~:text=Consistent%20with%20this%20policy%2C%20California,established%20and%20followed%20by%20sim>

Additionally, the Visalia General Plan contains a number of policies that preserve agricultural uses within the Planning Area, as summarized below.

LU-P-14 Recognize the importance of agriculture-related business to the City and region, and support the continuation and development of agriculture and agriculture-related enterprises in and around Visalia by:

- Implementing growth boundaries and cooperating with the County on agricultural preservation efforts;
- Accommodating agriculture-related industries in industrial districts;
- Facilitating successful farmers' markets;
- Helping to promote locally-grown and produced agricultural goods, and the image of Visalia and Tulare County as an agricultural region.

LU-P-19 Ensure that growth occurs in a compact and concentric fashion by implementing the General Plan's phased growth strategy.

The General Plan Land Use Diagram establishes three growth rings to accommodate estimated City population for the years 2020 and 2030. The Urban Development Boundary I (UDB I) shares its boundaries with the 2012 city limits. The Urban Development Boundary II (UDB II) defines the urbanizable area within which a full range of urban services will need to be extended in the first phase of anticipated growth with a target buildout population of 178,000. The Urban Growth Boundary (UGB) defines full buildout of the General Plan with a target buildout population of 210,000. Each growth ring enables the City to expand in all four quadrants, reinforcing a concentric growth pattern.

LU-P-25 Provide planning and technical support for the relocation of agricultural operations currently located in the City to compatible locations in the Planning Area or the County.

LU-P-31 Promote the preservation of permanent agricultural open space around the City by protecting viable agricultural operations and land within the City limits in the airport and wastewater treatment plant environs.

Land around the Airport may be developed with site-appropriate industrial uses during the planning period, providing it conforms to the land use compatibility requirements for the Visalia Municipal Airport environs established by the City.

LU-P-32 Continue to maintain a 20-acre minimum for parcel map proposals in areas designated for Agriculture to encourage viable agricultural operations in the Planning Area.

LU-P-35 Adopt the County's Right-to-Farm ordinance to support continued agricultural operations at appropriate locations within the City limits, with no new provisions. This ordinance should not limit urban development contemplated by the General Plan.

LU-P-36 Adopt an Urban Agriculture Ordinance, reflecting “best practices,” to support community gardens and other activities. This ordinance will be prepared in consultation with the Farm Bureau and other interested organizations and individuals.

LU-P-44 Promote development of vacant, underdeveloped, and/or redevelopable land within the City limits where urban services are available and adopt a bonus/incentive program to promote and facilitate infill development in order to reduce the need for annexation and conversion of prime agricultural land and achieve the objectives of compact development established in this General Plan.

Techniques to be used include designation of infill opportunity zones as part of the implementation process and provision of incentives, such as reduced parking and streamlined review, and residential density bonuses, and floor area bonuses for mixed use and/or higher-density development, subject to design criteria and findings of community benefit.

OSC-P-1 Conduct an annual review of cancelled Williamson Act contracts and development proposals on agricultural land within the Planning Area Boundary to foresee opportunities for acquisition, dedication, easements or other techniques to preserve agricultural open space or for groundwater recharge.

While many of the policies are implemented through the review, comment, and evaluation of development proposals, some have not yet been implemented. Most notably Policy LU-P-35 and Policy LU-P-36, which call for the City to adopt a Right-to-Farm ordinance and an Urban Agriculture ordinance, respectively. While the Right-to-Farm ordinance will offer protections to existing agricultural operations as conflicting uses begin to encroach into the surrounding areas, Urban Agriculture ordinances aim to increase opportunities to implement typically smaller-scale agricultural opportunities more suited to application within the urban context (e.g., community gardens).

Local Agency Formation Commission (LAFCo) Policies and Procedures

Each county in California has a Local Agency Formation Commission (LAFCo), which is a commission established to review and approve various boundary changes, including annexations of land to city jurisdictional boundaries. LAFCo actions are governed by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and a key purpose of LAFCos is to discourage urban sprawl, preserve open space and agricultural land, and encourage the logical and orderly development of cities and special districts, specifically focusing on the adequate provision and efficient delivery of public services. As stated in Government Code Section 56301:

“Among the purposes of a commission are discouraging urban sprawl, preserving open space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances.”

All annexations to the City of Visalia are approved through the Tulare County LAFCo in accordance with the Cortese-Knox-Hertzberg Act of 2000. Tulare County LAFCo has adopted a Policies and Procedures manual

outlining how it implements its functions under the Act. Following are some of the standards and factors that are considered by Tulare County LAFCo in the review of proposals⁵ for annexation to a city:

- The anticipated growth in surrounding areas of the proposed annexation during the next 10 years.
- That the annexation represents a logical and reasonable expansion of the city's limits.
- Consistency with the city's land use plans and policies. For the City of Visalia, consistency with the growth management strategy as adopted in the General Plan would be considered by LAFCo in its evaluation of annexation proposals.
- The need for public services and the ability of the city to provide those services, including the sufficiency of revenues. Such information is provided to LAFCo in a Plan for Services as part of the annexation application. A Plan for Services identifies what public services would be extended into the area of annexation as well as any public improvements required, the level and range of those services, whether those services could be feasibly extended, and information on how those services would be financed.
- The effect of the proposed annexation on adjacent areas, including on mutual social and economic interests.
- The effect of the annexation on maintaining the physical and economic integrity of agricultural lands.⁶

Land Conservation Act (Williamson Act) Program

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. In exchange for participating in the Williamson Act program, participating jurisdictions are eligible for subventions from the State to recoup in part the loss of property tax revenue from those parcels under contract. Tulare County is a participating jurisdiction. However, subvention payments were suspended by the State in Fiscal Year 2009/2010, which also prompted Tulare County to impose a moratorium on initiating new Williamson Act contracts. While subvention payments have not resumed, on July 7, 2020, the Tulare County Board of Supervisors voted to lift the moratorium on the Williamson Act, meaning approximately 5,600 parcels are again eligible for Williamson Act contracts. These contracts can be an effective way to slow the conversion of agricultural land to non-agricultural uses without requiring the creation of a permanent easement on the property.

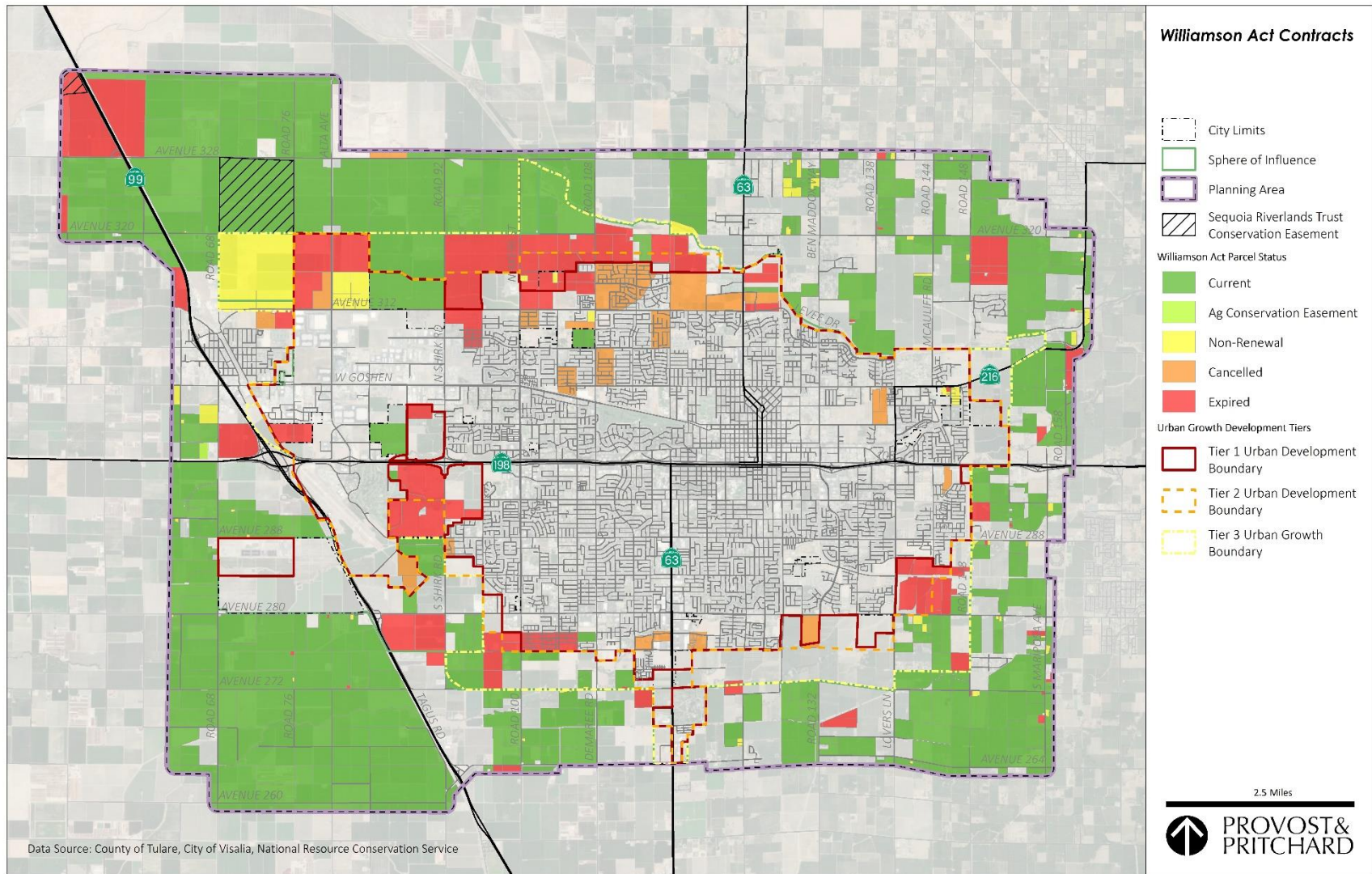
⁵ Tulare County LAFCo. (2002, February 6). Policy C-1, Factors and Standards to be Considered in Review of Proposals.

⁶ In accordance with Government Code Section 56016, "agricultural lands" means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.

While the City of Visalia would not typically have jurisdiction over parcels initiating Williamson Act contracts, properties already under contract are located within the City's jurisdiction. General Plan Policy LU-P-14 directs the City to recognize and support the continuation of agriculture and agriculture-related enterprises in the Planning Area. Supporting the continuation of these contracts provides one way for the City to facilitate continued agricultural activities.

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. Upon cancellation of the contract, General Plan Policy OSC-P-1 directs the City to review cancelled Williamson Act contracts and consider other techniques for agricultural preservation.

Figure 2. Williamson Act Contract Lands (2019) with Growth Tier Boundaries



KEY CONSIDERATIONS

The Regulatory Framework, Farmland Preservation Best Practices & Established Programs Summary, and Data Collection & Mapping deliverables have all been completed and included as appendices to this Feasibility Study. This section compiles the most pertinent topics from each of these deliverables and concludes how those topics may potentially impact implementation of an agricultural mitigation program for the City of Visalia. The discussions contained in this section have informed the alternatives presented under **Alternatives for Consideration** section.

CONSISTENCY WITH STATE HOUSING LEGISLATION

Based on initial research regarding Senate Bill (SB) 330, an observation was made that restricting residential development in Tier II until an agricultural mitigation program could be implemented, even after reaching the identified permit threshold, may be in conflict with the intent of the Bill.

To determine if the restriction of residential development from advancing into Tier II in the absence of an agricultural mitigation program, as required under Policy LU-P-34, is actually in conflict with SB 330, it was necessary to determine if adequate capacity for residential development remains in Tier I. If there is remaining residential development capacity in Tier I, then the City could continue to restrict development from proceeding into Tier II. Should there be no or very limited residential development capacity in Tier I then the City would not be able to restrict development from proceeding into Tier II once the permit-issuance threshold is met (5,850 housing units in Tier I), regardless of whether an AMP has been established.

As of September 2020, permits for 5,169 housing units have been issued within Tier I, which is approximately 88 percent of the threshold. City staff expects that the threshold will be met in late 2021 or early 2022 at the current pace of permit issuance.

SENATE BILL 330

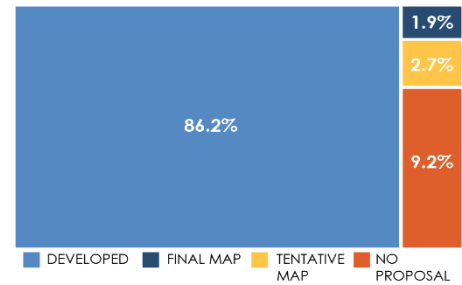
SB 330, also called the Housing Crisis Act of 2019, aims to ensure the feasibility of certain housing types, particularly very low-, low-, and moderate-income housing. One of the primary actions in SB 330 was a restriction on growth management policies. Cities may not downzone property to a less intense residential use, impose a growth moratorium, or cap the number of permits approved within a certain timeline. SB 330 would prevent the City from restricting growth in Tier II if permits for housing development were unable to be issued within Tier I.

*See the **Appendix D: Regulatory Framework, Housing Legislation** discussion for additional information.*

Tier I Residential Development Capacity

A study of remaining residential capacity was completed in April 2020 by the City of Visalia (see *Appendix G: Tier I Residential Capacity Summary*). Tier I includes a total of 10,460 acres designated for residential uses. The inventory identified 1,443.78 acres of undeveloped residential land remaining within Tier I; meaning approximately 13.8 percent of land planned for residential uses is undeveloped. Of the undeveloped 1,443.78 acres, 202.94 acres have final maps approved for development, and 283.40 acres have tentative maps in process with the City. The remaining 957.44 acres, or 9.2 percent, have no active development proposals.

STATUS OF TIER I RESIDENTIAL LAND



Conclusion

At present, the City has available residential development capacity within Tier I. Because the City has available residential development capacity in Tier I, it could continue to restrict Tier II residential development until an AMP has been established without conflicting with SB 330.

AGRICULTURAL CONSERVATION EASEMENT LIMITATIONS

Based on initial research of case law relative to the establishment of agricultural conservation easements and their effectiveness as mitigation, it was concluded that under CEQA, the establishment of agricultural conservation easements is not adequate mitigation for the loss of farmland.⁷ Outside the context of CEQA, jurisdictions can require developers to acquire or obtain conservation easements under an established program.⁸

Potential Easement Program Limitations

While the City may no longer be able to rely on agricultural conservation easements as mitigation to reduce impacts to farmland to a less than significant level under CEQA, the City still has the ability to establish a similar agricultural mitigation program as a policy directive.

In the case *Building Industry Association (BIA) of Central California v. County of Stanislaus*, while initially challenged, the establishment of a Farmland Mitigation Program outside the context of CEQA was upheld by the 5th District Court of Appeal. However, the courts noted that the ruling did not specifically address how such a program could or should

RELEVANT CASE LAW

King & Gardiner Farms, LLC v. County of Kern

This 2015 court case and its subsequent appeal has implications for CEQA mitigation measures related to impacts on agricultural land. The Court of Appeal in 2020 held that agricultural easements do not adequately mitigate for the loss of agricultural land, as they only prevent the future conversion of land that is already in production.

BIA of Central California v. County of Stanislaus

This 2007 court case and its subsequent appeal confirmed the ability of jurisdictions to establish conservation easement programs outside the context of CEQA.

See the *Appendix D: Regulatory Framework, Case Law* discussion for additional information.

⁷ *King & Gardner, LLC v County of Kern* (California Fifth District Court of Appeal 2020).

⁸ *Building Industry Association of Central California v. County of Stanislaus* (California Fifth District Court of Appeal 2010).

be applied to a specific project. Therefore, there may be limitations in how an agricultural mitigation program is established or applied to specific projects. Subsequent case law examining the specific application of such agricultural mitigation programs has not been heard.

Conclusion

Should the City elect to establish an agricultural mitigation program, the City of Visalia should engage legal counsel in the design of the program to ensure that program requirements are consistent with applicable case law and should closely examine the program's criteria for specific project types to ensure that the program is applied properly.

WATER SUSTAINABILITY EFFORTS

Recent water sustainability efforts, including the enactment of the Sustainable Groundwater Management Act (SGMA) and recent adoption of the first Groundwater Sustainability Plans (GSPs), may limit the willing participation of landowners in an agricultural conservation easement program.

Additional consideration should be given to the infancy of SGMA and implementation of the GSPs. With limited experience and understanding of how this recently implemented legislation will impact water sustainability and availability, there is limited understanding of the implications of SGMA's impact on agricultural land practices, which may have an impact on the effective and meaningful implementation of an agricultural easement program.

SGMA

Although the SGMA legislation was adopted in 2014, the program is still in the early stages of implementation. The first GSPs were adopted in January 2020 and the first annual reports were due on April 1, 2020. Annual reports are yearly progress updates on the implementation of the GSP submitted to the Department of Water Resources. The next annual reports for GSPs are due on April 1, 2021, which are expected to cover the water year from October 1, 2019 to September 30, 2020.⁹

SGMA guidelines, originally adopted in 2016, are expected to be updated every five years, so changes to these guidelines based on feedback from the first cycle of GSP adoption and annual reporting is to be expected. However, with GSPs for low priority basins not due until January 2022 it is unlikely that updates to the guidelines would be completed prior to that date. Because of how recently SGMA has been implemented, it will be difficult to draw concrete conclusions about what impacts the legislation will have on the implementation of and participation in an agricultural mitigation program.

GROUNDWATER SUSTAINABILITY PLANS

The passing of the Sustainable Groundwater Management Act (SGMA) in 2014 required overdrafted basins of medium and high priority to develop Groundwater Sustainability Plans (GSPs) that would implement fully sustainable management practices within 20 years of implementation. The land within City of Visalia's Planning Area is subject to two GSPs: Mid-Kaweah and Greater Kaweah.

*See the **Appendix D: Regulatory Framework, Groundwater Sustainability Plans** discussion for additional information.*

⁹ California Department of Water Resources. (n.d.). Groundwater Sustainability Plans. Retrieved 2020, from California Department of Water Resources: <https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainability-Plans>

However, there appears to be a potentially inherent conflict between the objectives of SGMA, as implemented through the adopted GSPs, which are aimed at achieving a sustainable water balance, and the establishment of permanent agricultural easements, which are committing land to productive agricultural use requiring an adequate, continued water supply. The recent adoption of GSPs and the limited understanding of how the various programs, projects, and policies of the GSPs will be implemented and enforced presents a degree of uncertainty in maintaining water availability and continued, productive agricultural uses.

Adopted GSP Programs

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 Joint Powers Authority (JPA),¹⁰ which covers the 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.

Both GSPs identify programs that may impact the appropriateness of certain agricultural land for participation in an agricultural conservation easement, including on-farm recharge programs and fallowing programs. It should be noted that participation in these programs is typically temporary and would not restrict a parcel's availability for agricultural production in the long-term. Further, the acreage initially identified for these programs is less than 1 percent of the total acreage within the GSP boundaries. However, the establishment of the GSPs and related programs, which will likely continue to evolve, adds one more layer of regulation to the management of farmland. The uncertainty associated with SGMA and its implementation may impact the level of willing participation in an agricultural conservation easement program and may potentially impact the land available for permanent conservation, including lands with adequate water supply.

Conclusion

Although SGMA was passed in 2014, the GSPs governing land within the City of Visalia's Planning Area boundary were not drafted and adopted until late 2019 and early 2020. Because the GSPs have only just begun to be implemented, it is difficult to understand its implications on farmland productivity and preservation.

¹⁰ The Mid-Kaweah Groundwater Subbasin JPA functions as the Groundwater Sustainability Agency.

IMPACT ON HOME PRICING

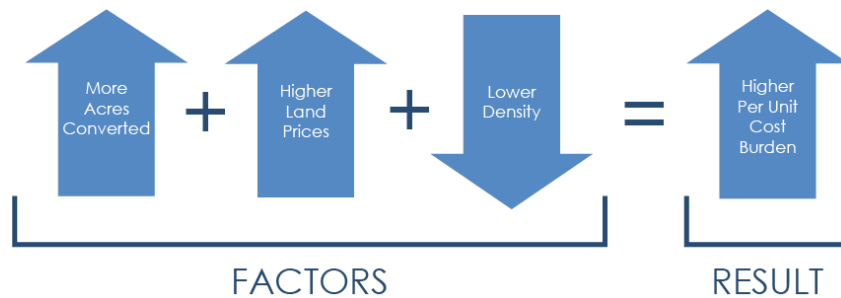
Based on initial research, an observation was made that the cost of purchasing conservation easements would be incurred by developers proposing conversion of farmland with that cost likely being reflected in the home price. However, with limited data for new home pricing available specific to the Visalia area, limited participation in the County’s adopted Agricultural Conservation Easement program, as well as the recognition that home sales prices are influenced by a variety of factors, including the overall economy, land prices, interest rates, and the amount of new and existing housing on the market, it was difficult to determine the level of impact an established agricultural mitigation program had on home prices.

HOME PRICING FACTORS

By requiring the acquisition of conservation easements, 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.

See the *Appendix E: Farmland Preservation Best Practices & Established Programs Summary, Home Pricing Factors* discussion for additional information.

Instead, the following formula was developed based on the relationship of specific project factors to demonstrate what the qualitative impact of conservation easement purchases could be on the per unit cost burden for residential projects.

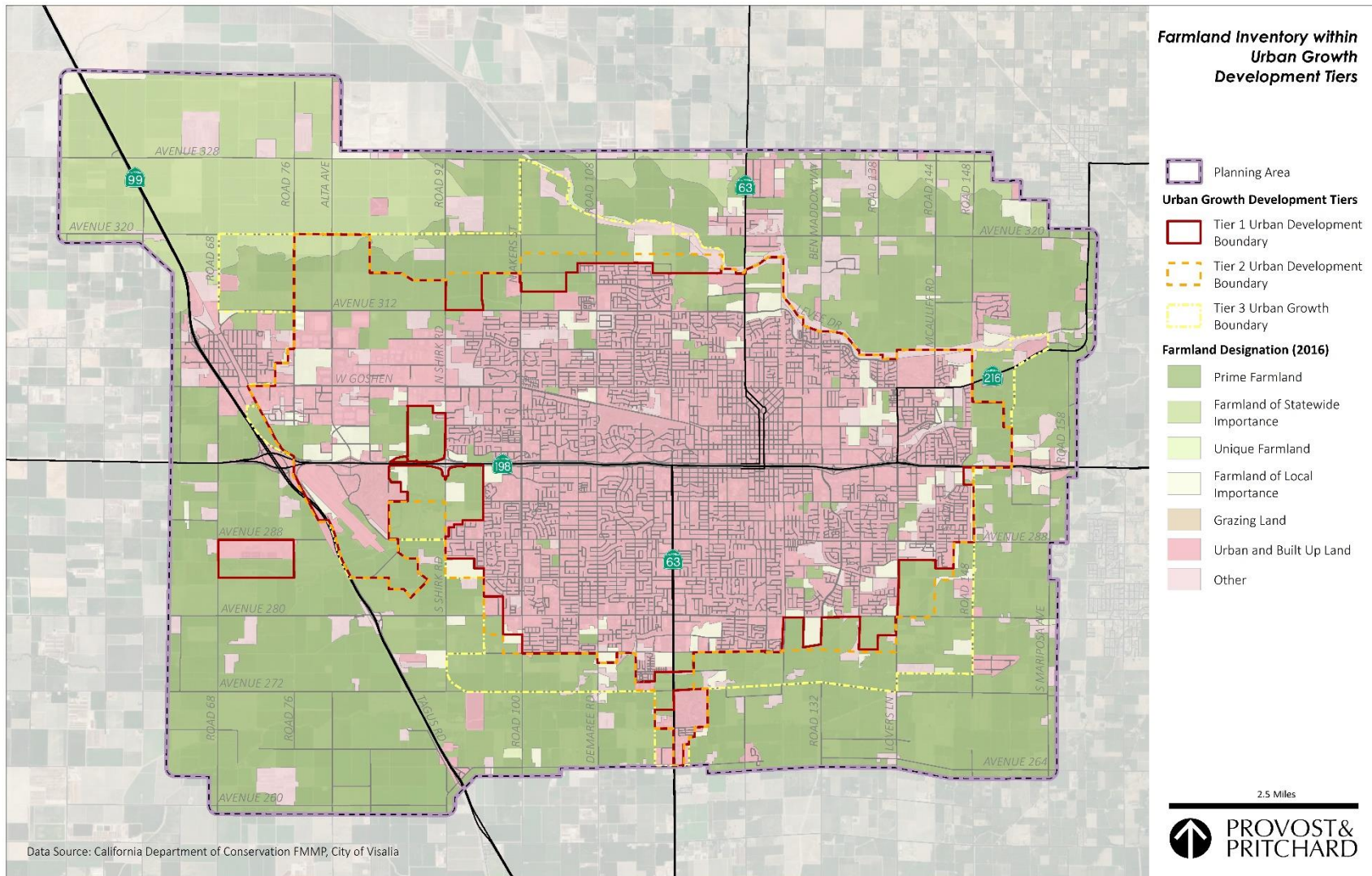


In order to further analyze the potential impact an AMP would have on home pricing it is necessary to establish how much of the land planned for residential uses would be affected by an AMP. Within Tier II and Tier III, there are approximately 7,544 acres of land, with approximately 5,038 acres planned for residential uses. Of that total, 4,339 acres, or 85 percent is currently categorized as either Prime Farmland or Farmland of Statewide Importance.

This percentage is generally consistent with the total amount of farmland slated for urban conversion throughout the Tier II and Tier III boundaries. When accounting for all planned land uses, 6,257 acres, or 83 percent of the total land within Tier II and Tier III, would result in the conversion of Prime Farmland or Farmland of Statewide Importance to urban uses, indicating that an agricultural mitigation program will impact the cost of development across the commercial and industrial sectors as well.

However, while an AMP would apply to multiple types of development, the City of Visalia expressed their specific concern with the potential impact on home pricing. In addition, state legislation focusing on reducing barriers to housing production and improving housing affordability warrants evaluating the impacts an AMP would have on home pricing.

Figure 3. Farmland Inventory Categories (2016) with Growth Tier Boundaries



Home Pricing Impact Analysis

Tables 1 and 2 below summarize potential impacts to the cost of development across all planned residential densities. The calculations shown in these tables rely on a series of assumptions, including:

- An average sales price of \$19,711 per acre of agricultural land, based on a summary of 20 agricultural properties sold in Tulare County between 2017 and 2019. Property sizes ranged from 125 acres to 19.3 acres.¹¹
- An average easement price equal to 35 percent of the cost of agricultural land per acre.¹²
- A 1:1 conservation to conversion ratio, resulting in an assumed conservation rate of 85 percent.¹³
- That residential land will be developed at the assumed development capacity for each designation, as identified in the Visalia General Plan.
- All calculations have been based on a hypothetical development size of 40 acres.

Table 1: Average Additional Costs per Acre

Project Size (Acres)	Average Purchase Price (\$)	Price of Land Per Acre (\$)	Average Easement Cost (% of total)	Cost of Easement Per Acre (\$)	Conservation Rate (%)	Conserved Acres Required (Acres)	Total Cost of Easement Purchase (\$)
40 ac	\$788,440	\$19,711	35%	\$6,898.85	85%	34 ac	\$234,560.90

Table 2: Cost Burden per Unit

General Plan Land Use Designation	Density Range ¹	Assumed Development Capacity ²	Total Acres	Average Unit Count	Average Additional Cost per Unit ³
Very Low Density Residential	0.1-2 du/ac	2 du/ac	40	80	\$2,932.01
Low Density Residential	2-10 du/ac	4 du/ac	40	160	\$1,466.01
Medium Density Residential	10-15	10 du/ac	40	400	\$586.40
High Density Residential	15-35	16.5 du/ac	40	660	\$355.40

(1) City of Visalia General Plan, Table 2-3: Density and Intensity Standards by Land Use Classification

(2) City of Visalia General Plan, Land Use Classifications

(3) Total Cost of Easement Purchase (assumed) / Average Unit Cost

Conclusion

While the actual cost to conserve land (through either direct purchase or payment of an in-lieu fee) will fluctuate based on project specific factors, the AMP will add cost to most projects proposed within both Tier II and Tier III. Based on the assumptions noted above, should the City elect to establish an agricultural preservation program, there will be cost increases to housing production, with the most impactful cost increases likely affecting lower density residential units.

¹¹ Zillow. (2020). Retrieved December 9, 2020, from <https://www.zillow.com/tulare-county-ca/sold/>

¹² Provost & Pritchard. (2020). Farmland Preservation Best Practices & Established Programs Summary.

¹³ Based on the total amount of residential land slated for conversion in Tier II and Tier III.

SUMMARY OF CONSIDERATIONS

During the General Plan update process, the feasibility of an AMP was considered in July 2014 at Planning Commission during the presentation and discussion of the Proposed Preferred Plan Concept. At that time, planning staff and the Commission agreed that an AMP was infeasible for the following reasons:

- There was evidence suggesting that a local City-wide AMP may result in a patchwork of easements not contiguous enough to sustain economic viability or that the easements could frustrate orderly development in the future;
- That an AMP could only provide a speculative mitigation benefit due to the variability in the cost of conservation easements compared to the fees that would be established, thereby rendering the effectiveness of such a program questionable;
- That the cost of purchasing easements would be cost-prohibitive to development; and
- That economic realities tend to guide the purchase of agricultural easements towards properties not subject to development pressures in the first place, thereby again rendering the mitigation benefits speculative at best.

While Policy LU-P-34 was subsequently adopted as part of the General Plan in 2014, requiring the AMP be established, the policy language continued to recognize that additional study of the efficacy of agricultural mitigation programs was still necessary. Specifically, that the City would “conduct additional investigation of the efficacy of agricultural conservation easements by engaging local, regional, and state agencies and stakeholders in order to further analyze their ongoing efforts and programs that attempt to mitigate impacts from the conversion of agricultural lands through the use of agricultural conservation easements.” This Feasibility Study represents that further investigation.

As the original considerations cited in 2014 continue to resonate today relative to the feasibility and efficacy of an AMP, the following summary provides discussion and confirmation of the status of those reasons as informed by this most recent research effort.

Reason 1: *There was evidence suggesting that a local City-wide AMP may result in a patchwork of easements not contiguous enough to sustain economic viability or that the easements could frustrate orderly development in the future.*

Without specific criteria established as part of the AMP directing the location and/or minimum size of agricultural conservation easements then the establishment of those easements may not occur in a contiguous pattern. While the acquisition of easements would be managed and coordinated through a local land trust, which may provide some consistency and coordination in determining where conservation easements are established, easement locations will continue to be driven primarily by the participation of a willing landowner. As noted above under **Water Sustainability Efforts**, the added layer of regulations and uncertainty in how those regulations will impact agricultural operations, specifically water availability, will likely result in lower participation rates from willing landowners interested in encumbering their land, particularly if the AMP restricts the scope of eligible properties within a smaller geographic area (e.g., within Tulare County). Further, should the AMP require a 1:1 ratio of conserved to converted land within Tier II and Tier III, that would result in a need for 4,339 acres to be placed under an agricultural conservation easement.

***Reason 2:** That an AMP could only provide a speculative mitigation benefit due to the variability in the cost of conservation easements compared to the in-lieu fees that would be established, thereby rendering the effectiveness of such a program questionable.*

Based on recent case law (see **Agricultural Conservation Easements Limitations** above), agricultural conservation easements are not effective mitigation for the loss of farmland under CEQA. While agricultural conservation easements would not provide mitigation benefits, a conservation program may still be established as a policy directive. However, if the driving factor behind establishment of the AMP is for mitigation purposes as is indicated by the statement above, then that motivation has been nullified as an AMP would no longer provide such a benefit under CEQA.

***Reason 3:** That the cost of purchasing easements would be cost-prohibitive to development.*

The scope of pricing considerations in this Feasibility Study was focused primarily on the impact of an AMP and the related cost of easement acquisition on home pricing. However, as summarized under **Impact on Home Pricing**, the AMP as directed by Policy LU-P-34 would impact all projects, residential and non-residential, that would convert Prime Farmland or Farmland of Statewide Importance. This would impact 83 percent of all land located within Tier II and Tier III and impact 85 percent of all land planned for residential uses. While the actual cost to conserve land will fluctuate based on project specific factors, the AMP will add cost to most projects proposed within Tier II and Tier III. Whether these additional costs would be cost-prohibitive is difficult to conclude as this determination will also be based on project specific factors.

***Reason 4:** That economic realities tend to guide the purchase of agricultural easements towards properties not subject to development pressures in the first place, thereby again rendering the mitigation benefits speculative at best.*

Recent case law (see **Agricultural Conservation Easement Limitations** above) has held that agricultural conservation easements are not effective mitigation for the loss of farmland under CEQA. Specifically, the courts noted that placing existing farmland into an easement is not replacing farmland lost to development, confirming the concern cited above. Further, unless specifically directed to a geographic area that is experiencing development pressure, the locations of agricultural easements are most likely to be in areas that are not experiencing such pressure from urban development.

ALTERNATIVES FOR CONSIDERATION

The alternatives for consideration identified below are reflective of the research contained in this Feasibility Study and related documents and have been informed by the considerations and conclusions discussed in this document, including: Consistency with State Housing Legislation, Agricultural Conservation Easement Limitations, Water Sustainability Efforts, and Impact on Home Pricing.

For each alternative presented, a summary of the necessary actions for implementation is included. These are high level actions needed to amend or revise adopted documents or adopt new programs or policies, recognizing that any of the alternatives will require additional discussion, research, and decisions to implement.

While this report does not make a specific recommendation, the following summaries are intended to provide relevant information to assist the City in selecting their preferred alternative that mostly closely aligns with or addresses their specific concerns.

ALTERNATIVE 1: IMPLEMENT POLICY LU-P-34 AS ADOPTED

Proceed with the establishment of an AMP as it is currently identified in Policy LU-P-34. The program would include the following components, at a minimum, as directed by Policy LU-P-34:

- All projects located in Tier II and Tier III converting Prime Farmland or Farmland of Statewide Importance shall be subject to the agricultural mitigation program, with the following exceptions:
 - Agricultural processing uses
 - Agricultural buffers
 - Public facilities
 - Roadways
- A 1:1 ratio of conserved to converted farmland shall be required, meaning that one acre of farmland shall be conserved for each applicable acre of Prime Farmland or Farmland of Statewide Importance being converted.
- Farmland to be conserved shall:
 - Be equivalent to the agricultural lands converted
 - Demonstrate adequate water supply
 - Be zoned for agricultural uses
 - Be located outside the City’s Urban Development Boundary but within the southern San Joaquin Valley¹⁴
- Land to be conserved shall be secured through the purchase of a conservation easement or payment of an in-lieu fee with preference given to purchase of a conservation easement. Easements shall be held by a qualifying entity, such as a local land trust, and require the submission of annual monitoring reports to the City.

¹⁴ The City may choose to define a geographic area smaller than the San Joaquin Valley with no amendments to Policy LU-P-34 required.

Anticipated Actions Required

- Establishment of an AMP, requiring City Council action.
- No amendment is required to the General Plan.
- No revision to the General Plan EIR is required.

Estimated Timeline

6 months

ALTERNATIVE 2: IMPLEMENT POLICY LU-P-34 WITH MODIFICATIONS

Proceed with the establishment of an AMP as it is currently identified in LU-P-34 with modifications specifically to address some of the identified considerations and concerns. The program would continue to include the same program components as outlined under Alternative 1: Implement Policy LU-P-34 as Adopted, except as modified.

A potential modification to consider would be to expand the list of exempted projects to include certain residential projects. Specific projects to be exempted would be identified during the design and establishment of the agricultural mitigation program. This modification would provide the opportunity for the City to alleviate anticipated impacts of the AMP on home prices. Potential criteria that may be used to determine which housing projects may be exempted could include:

- Projects converting less than 5 acres of Prime Farmland or Farmland of Statewide Importance
- Projects proposing at least 10% of units as affordable
- Projects that integrate urban agricultural uses¹⁵ into the project design

Other potential modifications could include allowances for collected in-lieu fees to be used for preservation activities other than easement acquisition. Additional options for modification may be discussed and defined as the City proceeds with establishment of an agricultural mitigation program under Alternative 2.

Anticipated Actions Required

- Establishment of a modified AMP, requiring City Council action. Additional discussion would be warranted to determine what modifications should be considered and integrated into the AMP.
- Potential amendment required to the General Plan, depending on the scope of modifications determined during establishment of the AMP.
- Potential revisions to the General Plan EIR, depending on the scope of modifications determined during the establishment of the AMP. It is anticipated that an addendum to the certified General Plan EIR may be an appropriate option for compliance with CEQA.

Estimated Timeline

6 to 9 months

¹⁵ Urban agriculture uses typically refer to smaller-scale agricultural opportunities more suited to application within the urban context (e.g., community gardens).

ALTERNATIVE 3: DELAY ESTABLISHMENT OF THE AMP TO TIER III

Amend Policy LU-P-34 to require the establishment of the AMP prior to Tier III development. This would exempt development occurring within Tier II from being subject to the AMP. Based on recent changes in circumstances, most notably the enactment of SGMA, this alternative will allow additional time for the City to better understand how implementation of SGMA and the related GSPs will impact farmland productivity and availability of land for agricultural conservation easements. The delayed establishment of an AMP may also be an opportunity to understand how the recent Appellate Court opinion that agricultural conservations easements do not act as effective mitigation¹⁶ will be applied in practice.

The AMP would include the same components as directed by Policy LU-P-34 (see Alternative 1), except that Tier II properties would be exempt from participating in the AMP.

Anticipated Actions Required

- Amendment required to the General Plan to revise Policy LU-P-34.
- Revisions required to the General Plan EIR. It is anticipated that an addendum to the certified General Plan EIR may be an appropriate option for compliance with CEQA.

Estimated Timeline

6 to 8 months

ALTERNATIVE 4: REMOVE POLICY LU-P-34

Remove the requirement for an AMP. This may include removing Policy LU-P-34 in its entirety or stripping out the specific requirements related to the establishment of an AMP. Other policies of the General Plan, including those identified in the *Growth Management Strategies and Polices* discussion under the **Conservation Strategies** section would still be required for implementation, including adoption of a Right-to-Farm ordinance and an Urban Agriculture ordinance.

Anticipated Actions Required

- Amendment required to the General Plan to remove or revise Policy LU-P-34. A comprehensive review of the City's growth management strategy and related policies would also be conducted to determine if additional policies should be considered during the amendment process.
- Revisions required to the General Plan EIR. It is anticipated that an addendum to the certified General Plan EIR may be an appropriate option for compliance with CEQA.

Estimated Timeline

6 to 8 months

¹⁶ King & Gardner, LLC v County of Kern (California Fifth District Court of Appeal 2020).

SUMMARY OF ALTERNATIVES

Table 3 provides a direct comparison of the anticipated actions as well as the estimated timelines and budgets for all identified alternatives.

Table 3. Summary Comparison of Alternatives

	Alternative 1: Implement Policy LU-P-34 as Adopted	Alternative 2: Implement Policy LU-P-34 with Modifications	Alternative 3: Delay Establishment of the AMP to Tier III	Alternative 4: Remove Policy LU-P- 34
General Plan Amendment	Not Required	Potential	Required	Required
EIR Revision	Not Required	Potential (Addendum)	Required (Addendum)	Required (Addendum)
Estimated Timeline	6 months	6 to 9 months	6 to 8 months	6 to 8 months