

Regular Council Meeting
October 13, 2022

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FRESNO CITY COUNCIL



CITY OF FRESNO
CITY CLERK'S OFFICE

Supplemental Packet

ITEM(S)

5:00 PM Scheduled Hearing (ID 22-1243)

Hearing – To Consider the adoption of the West Area Neighborhoods Specific Plan and Final Environmental Impact Report (FEIR), State Clearinghouse (SCH No. 2019069117), and related actions:

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement

Letter dated October 7, 2022, from Michael Prandini, President/CEO of the Building Industry Association (BIA) of Fresno/Madera Counties, Inc.

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.



October 7, 2022

Via Email to Todd.Stermer@fresno.gov
City Clerk

Council Members
City of Fresno
c/o City Clerk Todd Stermer
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3612

Re: Proposed Change to City's CEQA Farmland Mitigation Requirements
West Neighborhoods Specific Plan/
Final EIR Mitigation Measures 3.2-1 and 3.2-2
Noticed for Hearing on October 13, 2022

Dear Council Members:

I am requesting that Mr. Stermer distribute copies of this letter to all Council Members prior to deliberation of the above referenced matter. I am also requesting that this letter and its attachments and referenced materials be included in the Record of Proceedings for the West Neighborhoods Specific Plan.

On October 13, 2022 your Council is scheduled to consider adopting the West Neighborhoods Specific Plan (WNSP), which has been prepared by committed local citizens for your review and consideration. However, before you take that action, you must be made aware of an important, but seemingly innocuous bureaucratic provision, buried in important CEQA mitigations proposed to support the Specific Plan's approval concerning Farmland mitigation.

More specifically, your Council, as part of approving the City of Fresno General Plan, adopted a policy governing mitigation of the loss of certain types of farmland resulting from the City's development outside of the City's current city limits. That provision, adopted as policy RC-9-C, requires development of a Farmland Preservation Program to mitigate for the loss of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance. It confirms that such mitigations be consistent with the requirements of CEQA. That Program has not yet been

developed but we understand the Council will be evaluating the adoption of such a Program in the near term.

However, the WNSP's EIR includes a proposal to adopt, as Mitigation Measure 3.1-1 and 3.1-2 a requirement that the City's Farmland mitigation policies be extended to include Locally Important Farmland. **Locally Important Farmland is not a category of Farmland required to be included in the Farmland Preservation Program intended by General Plan Policy RC-9-c.** The proposed language for those mitigation measures is detailed as Exhibit D-1.

Locally Important Farmland is also not a category of Farmland required to be mitigated under CEQA standards. Public Resources Code 21060 includes the following definition: "*Agricultural land means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.*" **This definition does not reference Farmland of Local Importance.**

This issue was previously brought to your attention in a letter provided by Granville Homes, one of the members of our organization. A copy of that prior letter is enclosed for your convenience of reference as Exhibit "A", and is incorporated by reference into this letter.

The important policy consequences of adopting WNSP's EIR Mitigation Measure 3.1-1 and 3.1-2 is nowhere referenced in the staff report materials provided to the Planning Commission. This change in the City's Farmland mitigation policies is an entirely unnecessary change which will tremendously impact the cost of land for housing development, directly impact the cost of housing and further worsen housing affordability. Its impacts on the cost of entitling and developing land for housing is starkly illustrated by reference to the maps and data detailed below.

Exhibit B is a map included as Figure 3.2-1 to the West Neighborhoods Specific Plan. The table included in that figure confirms that the Plan Area includes 1,046.5 acres of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, which are the farmland types that are to be mitigated by the terms of your General Plan. If Farmland of Local Importance is added to the intended Farmland mitigation policies (contrary to the current standards of General Plan Policy RC-9-c), 1,288.2 acres of Farmland of Local Importance, which more than doubles the total of the relevant inventoried acreage, all of which, under the proposed mitigation standard changes, must be mitigated using a 1:1 standard regardless of the qualities of such Farmland.

The impact on the cost of housing development is actually greater than doubling of the acreage of Farmland that must be mitigated. That is because General Plan policy RC-9-c does not require that mitigation of Farmland be applied to Farmland that already exists within the City boundaries. **However, Mitigation Measures 3.2-1 and 3.2-2 imposes the mitigation requirements on all lands, whether or not such lands have been previously annexed.** By imposing these mitigation burdens on development of "Locally Important Farmland" within the City limits, you increase the likelihood that such lands remain as undeveloped farmland within the City limits, immediately adjacent to housing projects. You will thereby increase the extent and nature of conflicts in such adjacent land uses within the City. And you will reduce the extent of viable housing development lands within the existing City boundaries.

Mitigation Measures 3.2-1 and 3.2-2 provide that when the City adopts its Farmland Preservation Program, that program can be used to address the requirements of those mitigation measures. However, the Farmland Preservation Program that you intend to later deliberate upon and adopt will need to conform to the standards of the WNSP EIR mitigation standards if it is to be legally compliant with CEQA standards in implementing the WNSP EIR's stated mitigation standards. If you adopt those mitigation standards now you will therefore lose your future discretion over how to implement the standards to be included within your intended Farmland Preservation Program. That is because your future Program will need to instead satisfy the standards of the WNSP EIR mitigations, and it will have severe impacts on the cost of housing in Fresno.

As noted, the consequence of adopting the WNSP EIR mitigation standards is that those policies will ultimately be applied to lands throughout the City. Exhibit C is a map that illustrates Prime Farmland, Unique Farmland, and Farmland of Statewide Importance. Lands within your current Sphere of Influence that meet these criterion total 9,660 acres. Exhibit D illustrates the impact of adding Farmland of Local Importance, as proposed by the WNSP EIR. This results in an addition of 2,741 acres of lands. *Under the WNSP EIR mitigation standards a total of 12,401 acres (48.6% of lands within the City and Sphere of Influence) will have to be mitigated on a 1:1 ratio in order to be developed. These requirements will have devastating impacts on future housing development and homeownership.*

It is also important to understand what actually constitutes Locally Important Farmlands. That designation is one that is adopted by the Board of Supervisors of each County. The Fresno County Board of Supervisors has adopted a very expansive definition for that criteria. In Fresno County this class of Farmland includes "all farmable lands within Fresno County that do not meet the definitions of Prime, Statewide, or Unique. This includes land that is or has been used for irrigated pasture, dryland farming, confined livestock and dairy, poultry facilities, aquaculture and grazing land."

https://www.conservation.ca.gov/dlrp/fmmp/Documents/Farmland_of_Local_Importance_2018.pdf.)

Based on a review of the meeting minutes of the Steering Committee that developed the WNSP, these mitigation policies are not something that was deliberated by your committee members. It appears to be solely the result of recommendations by engaged consultants and City staff, with one further refinement adopted based on the recommendation of a single commenter. That commenter, a member of the Steering Committee, asked that any Farmland that is preserved under the EIR's mitigation policies must be considered as "local" (though that term is not defined).

You could end up having 12,401 acres of lands adjacent to your existing Sphere of Influence being permanently designated as mitigation farmlands, and every such acre will impact your future land use planning and legislative authorities. It is a standard that should not be adopted without extensive evaluation, and certainly not as part of a last minute change in phrase in an EIR mitigation standard.

To avoid these adverse consequences to the home ownership economy, and to satisfy all mitigation requirements for the WSNP impacts on CEQA related agricultural lands, the WSNP could simply incorporate by reference the requirements of the existing policies of the General Plan and delete the existing proposed language. Alternatively, you can insert, in place of the proposal, language that conforms with existing General Plan Policy RC-9-c. That language is included in Exhibit D-2.

Sincerely,

Enc. Exhibit A – Granville Letter of September 6, 2022
Exhibit B – Map of Farmland from WNSP EIR Figure 3.2
Exhibit C – Map of Farmland Within Entire City of Fresno Sphere
(Excluding Locally Important Farmland)
Exhibit D – Map of Farmland Within Entire City of Fresno Sphere
(Including Locally Important Farmland)
Exhibit E-1 Language from WNSP EIR Mitigation Measures
3.1-1 and 3.1-2
Exhibit E-2 Alternative Language from WNSP EIR Mitigation Measures
To Conform With General Plan Policy RC-9-c.

Exhibit A
Granville Letter of September 6, 2022



September 6, 2022

Mayor Jerry Dyer and Members of the Fresno City Council
2600 Fresno Street
Room 2075
Fresno, CA 93721

Subject: City of Fresno Proposal to Single Out West Area with Added Housing Cost

Hon. Mayor Jerry Dyer and City Council Members,

I am writing today to express concern and request your attention to the West Area Neighborhoods Specific Plan (WANSP), its Environmental Impact Report (EIR), and two specific mitigation measures regarding ag land mitigation.

I recommend your staff evaluate the limited conservation impacts of an ag land mitigation policy versus the significant damage such a policy would bring for housing affordability by artificially increasing prices. Implementing this with the WANSP will single out folks living or looking to move to the plan area by adding cost to develop property.

I'll address the specifics momentarily, but first, would like to briefly speak to the merits of ag land mitigation policies in general. It is clear that the greatest threat to agriculture in our community is not development, but drought and water availability. Estimates show that one-fifth, or more, of San Joaquin Valley farmland will need to be fallowed by 2040 to accommodate required reductions in water consumption, including the Sustainable Groundwater Management Act (SGMA). A focus on the impact of development ignores the proverbial "elephant in the room" while simultaneously exacerbating the housing production and affordability crises.

We know these crises are very real; our city and state face serious challenges in building new housing and maintaining affordability. It is also apparent that one of the best opportunities for greater supply and affordability in the Fresno housing market lies west of SR 99, particularly in the area bounded by the proposed WANSP.

The WANSP committee considered that much of the affordable property in the plan area is "ag land" and included a goal addressing agricultural preservation in the plan: Land Use and Housing Goal #2 (LUH Goal 2). This goal establishes that the WANSP will seek to "increase opportunities to retain agricultural uses and promote agritourism within the West Area." None of this goal's, nor any other goals', policies refer to anything resembling an ag land mitigation policy.

However, when the WANSP draft EIR was released, it included two mitigation measures which are unrelated to the proposed LUH Goal 2 and will not serve to implement the proposed WANSP. These are Mitigation Measures 3.2-1 and 3.2-2.

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MM 3.2-1, as written, will require stricter application of ag land mitigation than currently adopted in the citywide Program EIR by limiting options for mitigation methods. MM 3.2-2 expands what is currently adopted in the Program EIR to include not only Prime Farmland, Farmland of Statewide Importance, and Unique Farmland, but also any "land zoned for agricultural use in the Plan Area." These mitigation measures go beyond current citywide policy and will place a unique burden on folks looking to build in, move to, or do business in the WANSP area. This is a regressive approach and will erode affordability in an area that can little manage to bear the increased cost.

In addition to adding disproportionate cost to a specific, disadvantaged segment of the city, which raises legal questions in and of itself, there are also concerns of legality if MMs 3.2-1 and 3.2-2 are implemented in their current form without a nexus study. In its Oct. 17, 2013 decision in the *Sterling Park v. City of Palo Alto* case, the California Supreme Court saw an "inclusionary zoning" requirement as an exaction. The Court ruled that, to impose an exaction, a nexus is required – in this particular case, to show that there is a reasonable relationship between the land conserved by the program and the impact from the proposed development. If a nexus is not established, constitutional issues come into question and the requirement for mitigation could be considered an undue taking.

For these reasons, I ask that you direct staff to prepare findings on MMs 3.2-1 and 3.2-2 that "override" their effects in the interest of housing affordability and equity for homebuyers throughout the city. When bringing the WANSP and its EIR for City Council consideration, staff can present this Statement of Overriding Consideration for approval.

Without this outcome, the potential legal issues are concerning in maintaining the mitigation measures as currently proposed. Not only could it be argued that the required mitigation, without an adopted nexus, constitutes a taking, but the case could also be made that protected classes of residents are negatively impacted with a policy not applied to other, similar residents in other areas of the city.

We, along with others in the homebuilding industry, will be watching this process closely and appreciate your engagement and consideration on the issue. I am happy to discuss the issue further at your convenience.

Sincerely,



Darius Assemi

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Exhibit B
Map of Farmland from WNSP EIR Figure 3.2

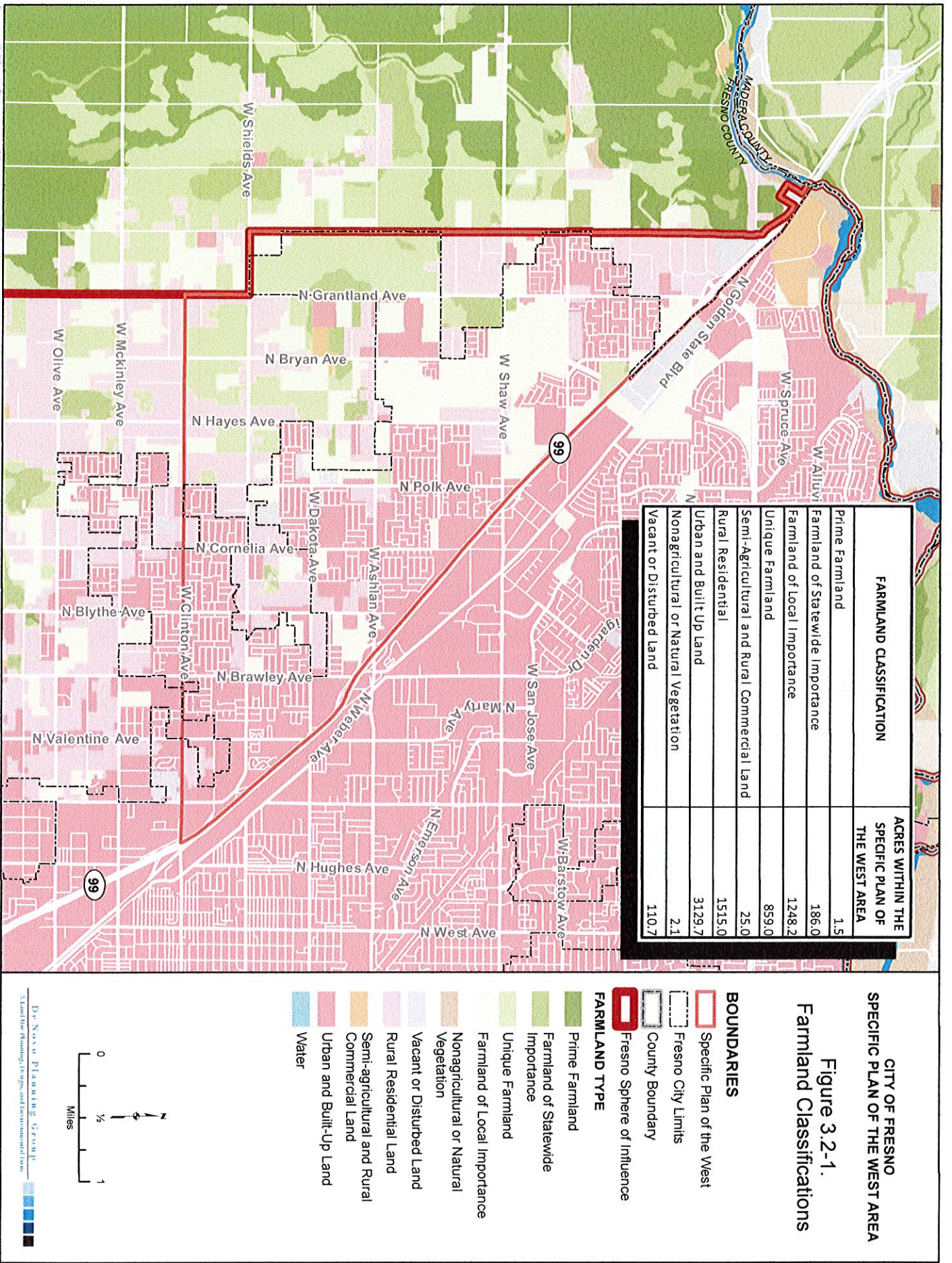


Exhibit C
Map of Farmland Within Entire City of Fresno Sphere
(Excluding Locally Important Farmland)

City of Fresno Department of Conservation Farmland Mapping and Monitoring Program Potential for Mitigation

Farmland Designations

- Prime Farmland
- Farmland of Statewide Importance
- Unique Farmland
- Sphere of Influence
- City Limits

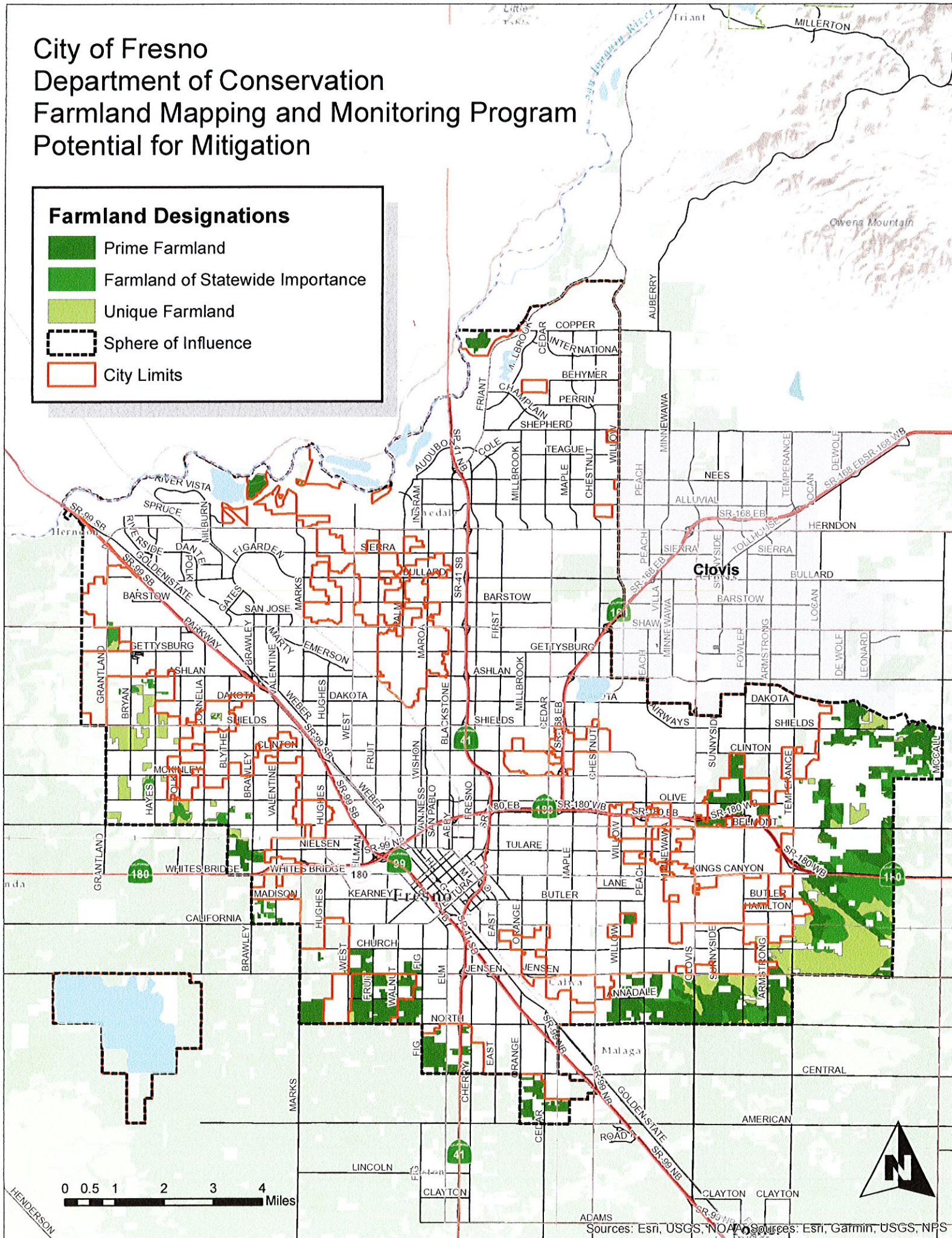







Exhibit D
Map of Farmland Within Entire City of Fresno Sphere
(Including Locally Important Farmland)

-  Sphere of Influence
-  City Limits

Farmland Designations

-  Prime Farmland
-  Farmland of Statewide Importance
-  Unique Farmland

Additional Lands


-  Farmland of Local Importance



Exhibit E-1
Language from WNSP EIR Mitigation Measures
and
Exhibit E-2
Alternative Language from WNSP EIR Mitigation Measures
To Conform With General Plan Policy RC-9-c.

Exhibit E-1. Language from WNSP EIR Mitigation Measures [included at WNSP Final EIR pages 2.0-35 and 36].

Prior to initiation of grading activities, the project proponent shall implement the following measure to mitigate impacts on Important Farmland located on the site: The project proponent shall mitigate the loss of Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance within the Plan Area at a 1:1 ratio. The acreage of lost farmland shall be determined using the Land Evaluation and Site Assessment (LESA) Model. The LESA Model evaluates measures of soil resource quality, a given project's size, water resource availability, surrounding agricultural lands, and surrounding protected resource lands. Once the acreage of farmland converted is determined, one of the following mitigation options shall be utilized to mitigate the loss: Restrictive Covenants or Deeds, In Lieu Fees, Mitigation Banks, Fee Title Acquisition, Conservation Easements, or Land Use Regulation. For mitigation options which would preserve off-site agricultural lands, the lands shall occur locally, and the definition of "locally" shall be determined in consultation with the City of Fresno. Should the City develop a Farmland Preservation Program before future construction within the Plan Area begins, the project proponent shall mitigate for Farmland pursuant to the Program. The mitigation shall be verified by the City of Fresno for each phase of the project during improvement plan review.

Exhibit E-2. Alternative Language from WNSP EIR Mitigation Measures To Conform With General Plan Policy RC-9-c.

The City of Fresno shall, in coordination with regional partners or independently, establish a Farmland Preservation Program. When Prime Farmland, Unique Farmland, or Farmland of State Importance is converted to urban uses outside City limits, this program would require that the developer of such a project mitigate the loss of such farmland consistent with the requirements of CEQA. The Farmland Preservation Program shall provide several mitigation options that may include but are not limited to the following: Restrictive Covenants or Deeds, In Lieu Fees, Mitigating Banks, Fee Title Acquisition, Conservation Easements, Land Use Regulations or any other mitigation method that is in compliance with the requirements of CEQA. The Farmland Preservation Program may be modeled after some or all of the programs described by the California Council of Land Trusts.