

DRAFT ORDINANCE NO. 2019 - _____

**AN INTERIM URGENCY ORDINANCE OF THE SOLANO COUNTY BOARD OF
SUPERVISORS PROHIBITING CONVERSION OF AGRICULTURAL LAND FOR
ECOSYSTEM MITIGATION AND OTHER HABITAT PURPOSES
IN THE CACHE SLOUGH REGION OF UNINCORPORATED SOLANO COUNTY**

The Board of Supervisors of the County of Solano do hereby ordain as follows:

SECTION 1. Findings

The Board of Supervisors hereby finds and determines that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, based upon the following facts:

- A. On December 15, 2008, the Fish & Wildlife Service issued a biological opinion (BO) on the Long-Term Operational Criteria and Plan (OCAP) for coordination of the State and Federal Water Projects. The BO requires approximately 8,000 acres of tidal habitat creation, primarily to protect aquatic fish, specifically Smelt species nearing extinction. The State, either directly, or through third parties is actively engaged in acquiring significant acreages of agricultural land in Solano County for wholesale conversion to tidal and related habitat types, which may have a range of negative economic consequences to existing agriculture in the region and in the County.
- B. The State's EcoRestore program identified approximately 30,000 acres for habitat purposes (including the above-mentioned BO lands). These acreages, in conjunction with a number of other BO's and other state and local programs will have the effect of converting many tens of thousands of acres of lands currently in agriculture.
- C. Because of its location, elevations and availability of open space lands, the Lower Yolo Bypass/Cache Slough Region is a primary focus of land acquisition for large-scale land conversion to tidal and aquatic habitat.
- D. Solano County recognizes the value of habitat projects (particularly those that improve species' health as a public benefit as distinguished from projects that are mitigation-based, with corresponding benefits accrued elsewhere) and supports the preservation and recovery of endangered species in a manner that is protective of existing agricultural and related land uses. The County has made its concerns known to the State and has actively been engaging the State in discussions regarding agricultural sustainability and other necessary assurances over the past several years.
- E. In 2015 the County and other local agencies entered into a Memorandum of Understanding (MOU), with State and Federal agencies for the Yolo Bypass/Cache Slough region, called the Partnership. The Partnership, after a hiatus, met in December 2018 to begin discussions on a 'Program of Projects' which would include a programmatic suite of assurances for the region. Progress has been slow, and very large scale projects are progressing in the County without the benefit of programmatic, regional and cumulative protections for existing land uses.
- F. The County is entering into processes to better define ecosystem restoration and mitigation projects, differentiate restoration projects from agricultural land uses and

identify tools so potentially competing uses can become more compatible. A broad array of options to ensure agricultural sustainability will be developed that could help adjacent and other agricultural lands remain viable and preserve water supply.

- G. Without sufficient regulations, standards, procedures, and thresholds which are enforceable pursuant to an adopted General Plan and Zoning Amendments, there is a current and immediate threat to the public health, safety, and welfare.
- H. Pursuant to Article XI, section 7 of the California Constitution, the County of Solano ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.
- I. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the County may adopt with a four-fifths vote of the board of supervisors an urgency measure adopting an interim ordinance prohibiting potential land uses that the County is studying, considering, or intends to study within a reasonable time that may be in conflict with existing land use regulations and which shall be in effect immediately.
- J. By adopting this interim urgency ordinance, it is the intent of the Board of Supervisors to enact a moratorium that is only temporary in order to provide time for the County to initiate programs (such as adoption of General Plan policies, potential zoning ordinance updates and other ag sustainability options) to better differentiate among open space uses, incorporate a broader suite of appropriate agricultural sustainability tools; and to work with the State of California on a Cache Slough Management Plan and/or other necessary legal assurances, regulatory permits or other programmatic measures to ensure the continued viability of existing and affected agricultural lands. The number and size of agricultural lands under development for other uses and identified for conversion is significant and will have broader impacts beyond any one project, so regional assurances become necessary.

SECTION 2. Definitions

For purposes of this interim ordinance, the following definitions shall apply:

- A. "County." The County of Solano.
- B. "Ecosystem mitigation projects". Projects that convert existing agricultural land acreages to other open space purposes, such as tidal, aquatic, associated wetland and upland, and other habitat types for purposes of mitigating impacts of projects in a region (Solano County) that does not accrue commensurate benefit, and which qualify under the 2008 BO and/or EcoRestore.

- C. "Cache Slough Complex, or region" is defined as along the eastern and southern boundary of Solano County and comprising the legal Delta boundary on its western and northern extent as defined in the 1959 Delta Protection Act, (with the exception of Ryer Island).

SECTION 3. Interim Prohibition on Conversion of Agricultural Land for Ecosystem Restoration Purposes

From and after the date of this ordinance no approval, authorization, use permit, variance, business license, or any other entitlement or license for use shall be approved or issued for the conversion of agricultural lands for ecosystem mitigation and/or restoration habitat purposes as defined in the 2008 Biological Opinion, and/or the State EcoRestore Program, or related programs within the larger Cache Slough Region under the jurisdiction of the County of Solano.

Reference to prohibition of Conservation Banks (Watershed & Conservation District?)
Section 28.50 Solano County Zoning Ordinance

SECTION 4. Effective Period

This interim ordinance shall take effect immediately and expire in 45 days (_____, 2019) in accordance with the provisions set forth in Government Code section 65858.

SECTION 5. Authority

California Government Code section 65858 provides that an urgency measure in the form of an interim zoning ordinance may be adopted, which shall be initially effective for only 45 days following its date of adoption. Such an interim ordinance may be extended by a four-fifths vote of the board of supervisors for an additional period of time, either 10 months and 15 days with the possibility for an additional 12-month extension or for 22 months and 15 days in compliance with Government Code section 65858.

SECTION 6. Penalties

The definitions and penalties for land use violations that are prescribed in Section 28.113 of the Solano County Code shall apply to violations of the provisions of this interim ordinance.

SECTION 7. Severability

If any provision of this interim ordinance or the application of it to any persons or

circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the interim ordinance are declared to be severable.

SECTION 8. Exemption from the California Environmental Quality Act

This interim ordinance is exempt from California Environmental Quality Act (Public Resources Code §21000 *et seq.*; "CEQA") because it will preserve the status quo while the County develops permanent General Plan and Zoning Amendments. Therefore, it can be seen with certainty that there is no possibility that the interim ordinance may have a significant effect on the environment. (CEQA Guidelines, § 15061(b)(3).)

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on _____, 2019 by the following vote:

AYES: Supervisors _____

NOES: Supervisors _____

EXCUSED: Supervisors _____

ERIN HANNIGAN, Chairwoman
Solano County Board of Supervisors

ATTEST:
BIRGITTA E. CORSELLO, Clerk
Solano County Board of Supervisors

By: _____
Jeanette Neiger, Chief Deputy Clerk

Introduced:

Adopted:

Effective:

Operative