

To: Solano County Board of Supervisors
From: Ellen Fawl, Esq.
Date: November 9, 2020
Re: Proposed Hemp Ordinance. An Ordinance of the Solano County Board of Supervisors
Regulating the Cultivation of Industrial Hemp (“Ordinance”)

I am writing today to request that Item #7 on the Consent Calendar regarding the adoption of an ordinance regulating hemp cultivation and processing for Board of Supervisor’s Meeting on November 10, 2020 be removed due to failure of the County to provide notice to those persons or organizations who requested notice and its failure to provide notice to real property owners in the areas affected by the proposed Ordinance.

I am a community member who attended the September 16, 2020 Hemp Community Meeting at the Elmira Fire Station (“September Meeting”). At that meeting I, and other attendees specifically requested notice and also requested that the County provide notice to those property owners who reside within the proposed grow area or within an area that would be affected by the growing of Industrial Hemp. We were assured by county officials and staff that we would receive notice. It has come to my attention that the Board of Supervisors discussed and voted on the Ordinance on October 27, 2020 (“October Meeting.”) I did not receive notice of the October Meeting. It has also come to my attention that the Board has placed the Ordinance on its consent calendar for final approval at its meeting on November 10, 2020 (“November Meeting”) I have not received notice from the County regarding the November Meeting. I understand that other individuals from my community who requested notice have not received notice of the October Meeting nor have they received notice of the November Meeting.

It is my understanding that all owners of real property within the Area Eligible for Hemp Cultivation Permits, or within proximity to that area such that they may be directly impacted by the Ordinance, did not receive proper notice regarding the October Meeting nor have they received proper notice of the November Meeting.

Because the County failed to provide proper notice, I am requesting the following:

- That Item #7 (vote to approve Ordinance) be removed from the November 10, 2020 Consent Calendar;
- That public comments be reopened if they are considered to be closed and the time for comments be extended for a reasonable time;
- That any decision or voting on the Ordinance be postponed for at least 30 days; and
- That the County schedule outreach meetings between all stakeholders including, but not limited to any Person¹, Applicants, the Farm Bureau, the Sheriff’s Office, and concerned community members in hopes that a final Ordinance will meet the public health and safety needs of Solano County residents and does not put an undue burden upon our Solano County Sheriff’s Office.

¹ Unless otherwise defined, all defined terms have the meanings given in the Ordinance.

Significant changes, additions, and omissions have been made to the Ordinance since the reading and discussion at the September Meeting; each of which is discussed in turn below. There are several areas of concern that were raised during the September Meeting which have not been addressed in the current version of the Ordinance. The public is legally entitled to review and comment on these changes, additions, or omissions. There are many sections of the Ordinance that require clarification, are ambiguous, misleading, or in direct opposition to the concerns that have been raised by the community regarding public safety, nuisance, and environmental hazards.

DISCUSSION

Section 2 of the Ordinance

2.2-120 Definitions

Item K.

The definition of “Outdoors” has been changed so that it no longer includes Greenhouses and Hoop houses. Removing the terms “Greenhouse” and “Hoop house” results in significant changes to the Ordinance from the version that was reviewed during the September Meeting. The current version of the Ordinance will now allow processing and post-harvest storage of Industrial Hemp in buildings that are not secure from theft and provide no mitigation from the increased stench that occurs during drying and processing times. The terms Greenhouse and Hoop house should be included in the definition of Outdoors.

2.2-130 Limited Areas for Hemp Cultivation

Item A

The geographical boundaries of Hemp Cultivation include the Calhoun Cut Ecological Reserve. This area should be removed from potential grow areas (“Grows”) and appropriate setbacks consistent with 2.2-130 (B) should be enforced. Notice should be given to any stakeholders or Persons concerned with the Calhoun Cut Ecological Reserve including but not limited to the California Department of Fish and Wildlife. (See Directional Map Calhoun Cut Ecological Reserve attached as Exhibit A.)

The geographical boundaries of the Hemp Cultivation area include the Liberty Island Ecological Reserve. This area should be removed from potential Grows and appropriate setbacks consistent with 2.2-130 (B) should be enforced. Notice should be given to any stakeholders or Persons concerned with the Calhoun Cut Ecological Reserve including but not limited to the California Department of Fish and Wildlife. (See Directional Map Liberty Island Ecological Reserve attached as Exhibit B.)

The geographical boundaries of the Hemp Cultivation area appear to include the Miner Slough Wildlife area. This area should be removed from potential Grows and appropriate setbacks consistent with 2.2-130 (B) should be enforced. Notice should be given to any stakeholders or Persons concerned with the Miner Slough Wildlife area including but not limited to the California Department of Fish and Wildlife. (See Directional Map Liberty Island Ecological Reserve attached as Exhibit B.)

The geographical boundaries of the Hemp Cultivation area include parts of Ryers Island. Ryers Island is a remote area of Solano County. Emergency response times can be delayed due to the inconsistency of the Cal Trans ferry system leaving residents vulnerable to crime that is reasonably expected to occur in relation to the Grows. From a public safety standpoint, including Ryers Island in the Hemp Cultivation area places an undue burden on law enforcement and first responders. This area should be removed from potential Grow areas and appropriate setbacks consistent with 2.2-130 (B) should be enforced. Notice should be given to any real property owners, residents, or Persons concerned with Ryers Island. (See Directional Map Liberty Island Ecological Reserve attached as Exhibit B.)

The Hemp Cultivation area will allow Grows within 1/2 to 1 mile from a local high school. Community members have expressed concerns that the stench from the Grows will reach the school and have potential negative health effects on students. There are additional concerns regarding safety concerns if the proximity of the Grows create an attractive nuisance that could attract minors to that area.

Item B(1). Setbacks.

The last sentence of paragraph 1) provides that “. . . Indoor Hemp Cultivation may potentially be located within 2,500 feet of an off-Site occupied legal residence under separate ownership subject to conditions of the Hemp Cultivation Permit, which may include signed written consent of the owner of the off-Site occupied legal residence.” (Emphasis added.)

The word “may” provides too much discretion in light of the history of criminal activity and nuisance problems which have been associated with Industrial Hemp grows and negatively impacted local residents. This wording should be changed to read that under 2.2-130(B)(1) an “Indoor Hemp Cultivation located within 2,500 feet of an off-Site occupied legal residence, under separate ownership subject to conditions of the Hemp Cultivation Permit, must include signed written consent of the owner of the off-Site occupied legal residence.” The language must be mandatory in order to protect the residents who will be potentially impacted by crime and nuisance activities related to the Grows.

2.2-140 Hemp Cultivation Permit

Item C. Application Requirements

Paragraph 2 of this section provides that “[a]pplicants must submit a security plan for review and approval by the Solano County Sheriff’s Office.”

It is unclear whether the Sheriff’s Office has the authority to deny a permit. The Sheriff’s Office must be able to evaluate a security plan based upon individual circumstances of each plan and each proposed Industrial Hemp grow site and deny a security plan based upon substantial concerns for public safety. In an appeal, the burden of proof should fall upon the party submitting the security plan to show that their plan would provide adequate protection for public safety and not place an undue burden on the Sheriff’s Office. Our Sheriff’s Office should not be required to work as public security force for a private party which results when a security plan is inadequate.

Unclear in this Ordinance is whether the Sheriff's Office may perform background checks on security personnel. This was a matter of discussion at the September Meeting. The security forces hired by hemp growers in the prior year were a large part of the criminal activities and intimidation tactics related to the Grows. The Sheriff's Department should have the authority to conduct background checks on any and all security personnel along with any Person applying for a permit to grow Industrial Hemp.

Item G. Required Findings.

Paragraph 2 reads:

"That an adequate security plan has been provided and that odor will not be a significant impact on nearby residences. Approval of a security plan by the Sheriff's Office will be substantial evidence that the standard has been met."

This paragraph conflates the public safety aspect of the ordinance that is the purview of the Sheriff's Office with the public nuisance and environmental hazards associated with the Grows, and which should not be the responsibility or the burden of the Sheriff's Office. Having a security plan used as substantial evidence that a standard is met showing that odor will not be a problem is nonsensical. Furthermore, it is unclear whether an approved security plan will also be used as substantial evidence of the requirements of the preceding paragraph one (1) of this same section. Nowhere in this Ordinance does it explain what studies are required to assure that the Grows do not constitute a nuisance or are detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in or passing through the vicinity of the Grows. Nothing in this Ordinance discusses requirements for water use or disposal of waste water associated with growing or processing the cannabis.

2.2-150 Terms and conditions of Hemp Cultivation Permits

Item F:

Item F of 2.2-150 provides in pertinent part that "[d]rying and trimming of Hemp must be conducted in a Hoop House, in a Greenhouse or Indoors."

The definition of Hoop House provides that these structures may be left open and have readily removable material covering them. Leaving structures open does not provide protection against theft or control of odors. A Greenhouse is not required to be fully enclosed nor are there structural requirements sufficient to deter theft or odor. Drying and trimming be done indoors to reduce the stench which increases once the cannabis is harvested. There is also an increase in criminal activity once the cannabis is harvested. Allowing drying and trimming in structures that are not secure within the definition of "Indoors" increases risk to the safety of the community and law enforcement and does nothing to mitigate nuisance odors. Drying and trimming of hemp must be carried out Indoors.

Item G

This paragraph allows Permit holders to conduct Hemp Processing on the Site.

Community members have been, and continue to be, adamantly opposed to having processing done on Site. Processing of cannabis requires the use of toxic chemicals. This type of processing should be done in industrial zoned areas, not in delicate agricultural lands and protected areas

which make up the entirety of the Industrial Hemp grow area. Regardless of where Processing occurs in our County, there should be stringent requirements for disposal of waste water, chemical residues and run-offs and these requirements are not present in the Ordinance.

2.2-180 Destruction of non-compliant crops

Although this section discusses crop destruction of non-compliant crops it does not provide for safe and healthy destruction of post-harvest plant remains. The current practice has been to allow the plants to lie above ground and rot. This increases the nuisance smells associated with the grows and may have a deleterious effect on ground water and local waterways as it washes into ditches, creeks, and streams and eventually reaches the delta.

Section 3 Termination of Moratorium on Hemp Cultivation and Processing (“Moratorium”)

Substantial concerns for public health, safety, and public and private nuisance related to Industrial Hemp grows remain. The Moratorium should remain in place so that proper studies, including CEQA analysis, and community outreach can occur.

Section 4 CEQA

This section attempts to exempt the Ordinance from the CEQA by claiming that it is not a project under CEQA. This project is a project subject to CEQA because the activity will result in a direct or reasonably foreseeable indirect physical change in the environment. Nothing in this Ordinance assures the protection of the environment.

This Ordinance allows growing a crop that is known to require the heavy use of pesticides and other chemicals and the creation of aerosols that spread for miles outside the grow areas. There must be studies on water run off as the current Grow boundaries include environmentally significant waterways. The geographical boundaries of the Hemp Cultivation area include the Calhoun Cut Ecological Reserve, the Liberty Island Ecological Reserve and the Miner Slough Wildlife area. Environmental studies must be done to determine the impact on these delicate areas.

The Solano County General Plan (“GPU”) provides that the greater portion of the proposed grow area is a “Resource Conservation Overlay” which “[i]dentifies and protects areas of the county with special resource management needs. (See Exhibit “C”) This designation recognizes the presence of certain important natural resources in the county . . .” “Resources to be protected through this overlay are those identified through technical studies as the highest priority areas within the habitat conservation planning process. (See GPU pg. LU-25.) Environmental studies must be performed prior to permitting Industrial Hemp Grows in any area designated as a Resource Conservation Overlay.”

This ordinance fails to provide requirements for the safe and health disposal of post -harvest plant parts which may pose an environmental hazard as they decompose and wash into ground water aquifers and waterways if the current practice of leaving them lying to rot on the ground is continued.

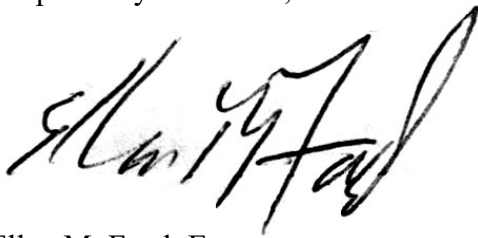
This Ordinance allows for the Processing on Site. Processing of Industrial Hemp uses toxic chemicals and processes which could have a significant environmental impact and require CEQA study prior to approval of the Ordinance.

This Ordinance is subject to CEQA and should not be exempted. Appropriate studies and mitigation must be done prior to approving this Ordinance.

Conclusion

This Ordinance is vague, ambiguous and flawed in its present rendition. There is a moratorium in place and there is no reason to ramrod this Ordinance through when the growing of Industrial Hemp has already had a substantial negative effect on public safety and the safety of our first responders as well as creating a nuisance to Solano County residents. The Ordinance is currently not reflective of the desires of the concerned citizens of Solano County. The Ordinance should be removed from the consent calendar for the November 10, 2020 meeting. Adequate notice to all concerned parties must be given of all future meetings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ellen M. Fawl". The signature is stylized with large, flowing letters and a prominent flourish at the end.

Ellen M. Fawl, Esq.

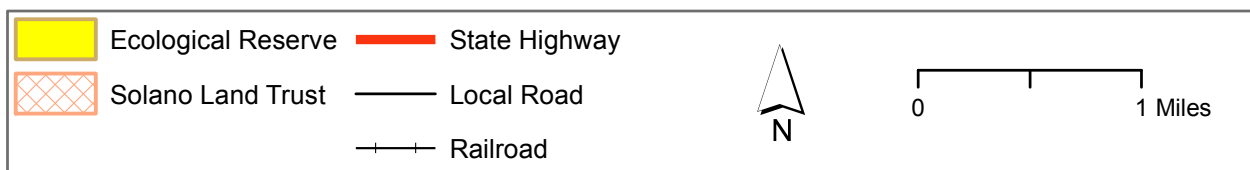
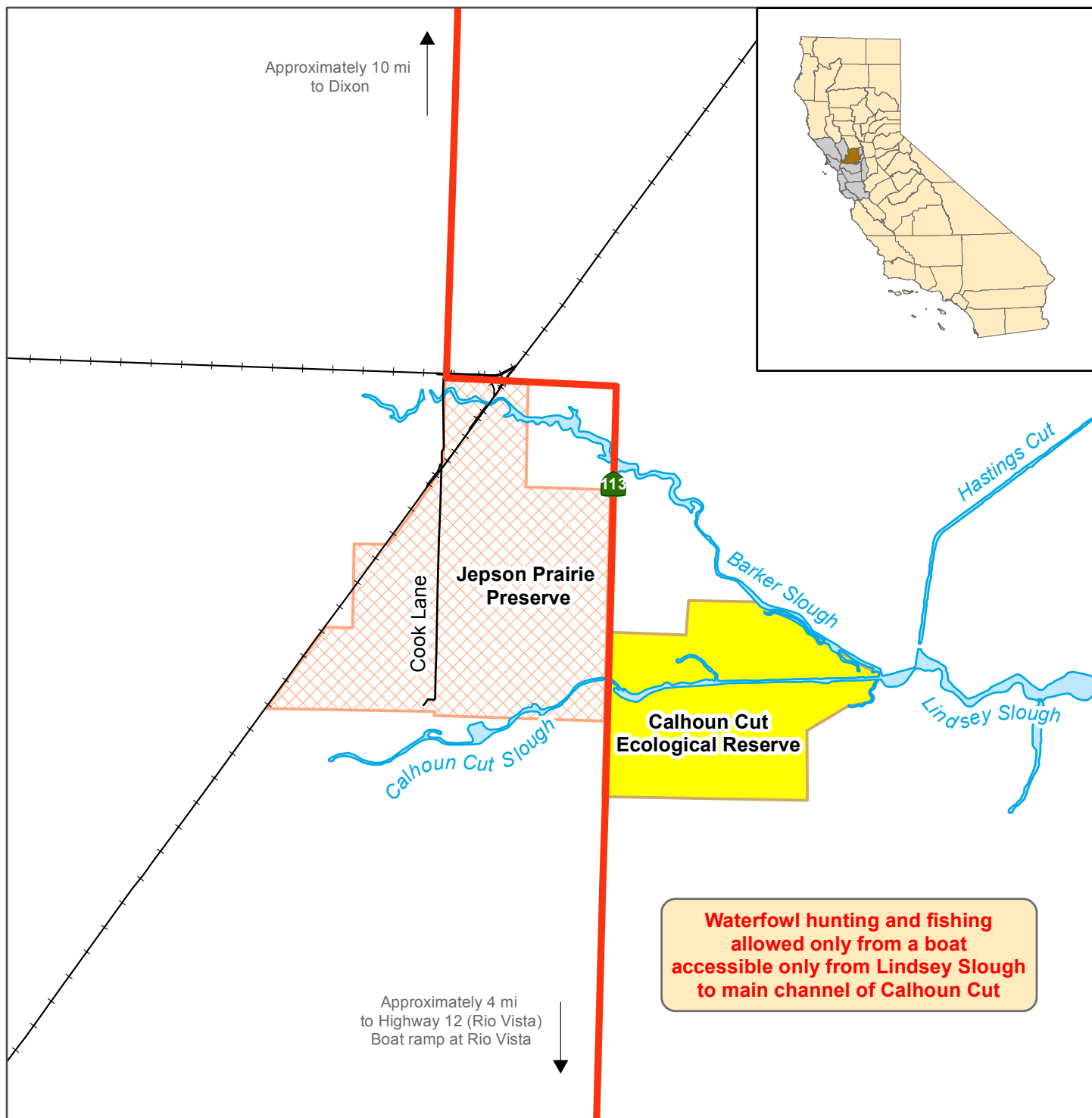
EXHIBIT “A”

California Department of Fish and Wildlife

Bay Delta Region

CALHOUN CUT ECOLOGICAL RESERVE

Solano County



Disclaimer: Boundaries are approximate.
Maps are intended for general purposes only.

November 2014 - Lisa Ohara, WLB

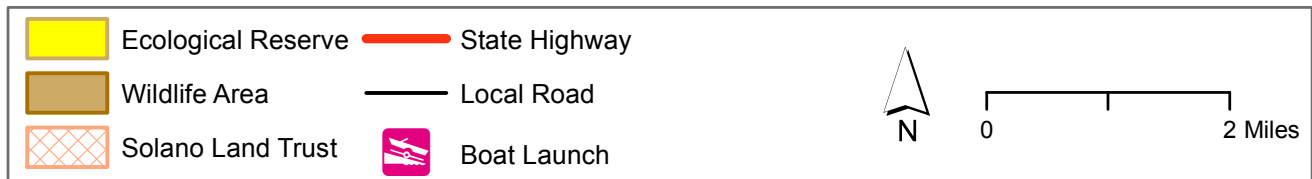
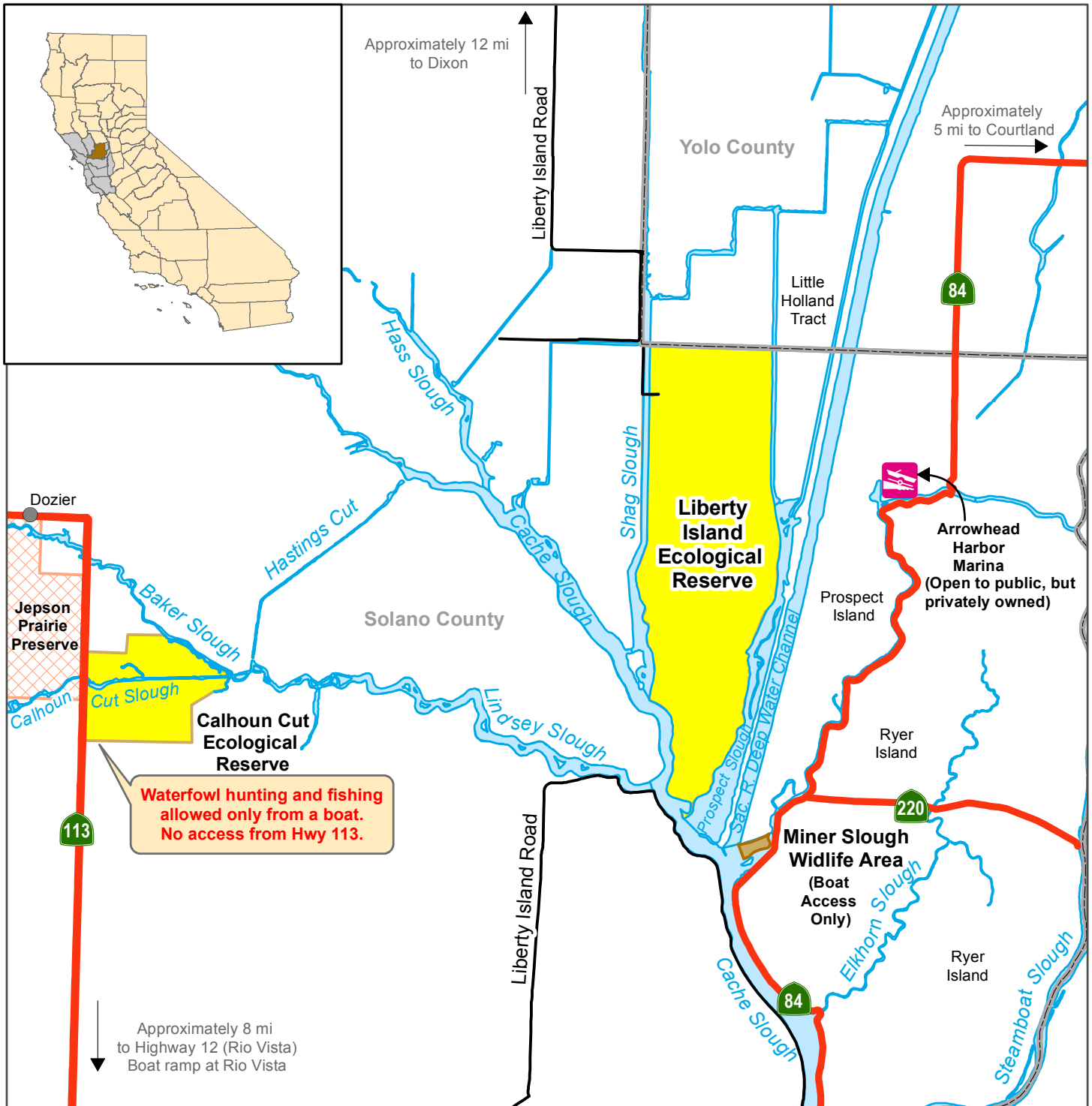
EXHIBIT “B”

California Department of Fish and Wildlife

Bay Delta Region

LIBERTY ISLAND ECOLOGICAL RESERVE

Solano County



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EXHIBIT “C”

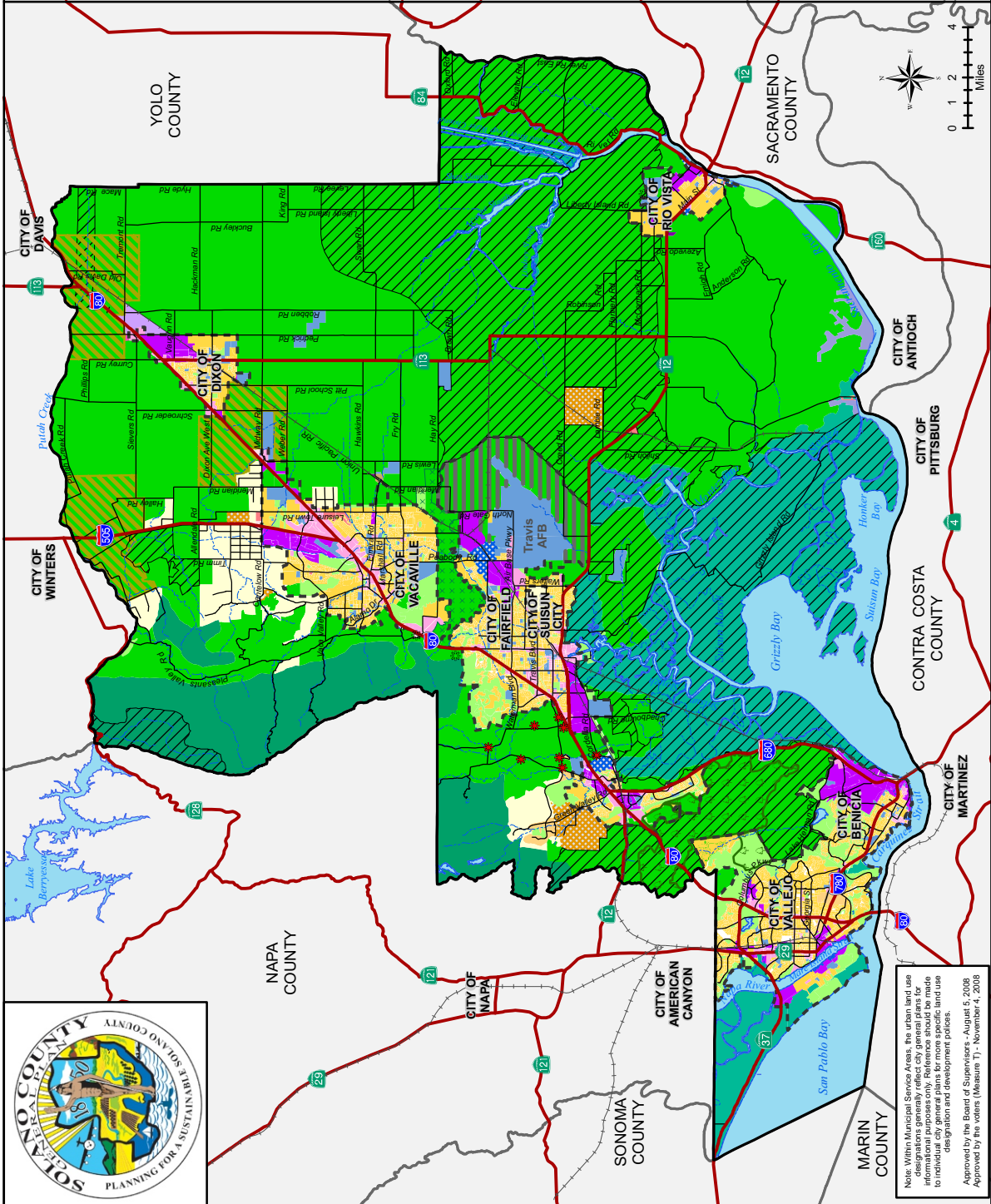


Solano County
General Plan

Figure LU-1

Land Use Diagram

- Legend**
- Municipal Service Areas
 - General Plan Land Use Designations
 - Natural Resource Designations
 - Water Bodies and Courses
 - Park and Recreation
 - Marsh
 - Agricultural Designations
 - Watershed
 - Agriculture
 - Public Designations
 - Public/Quasi-Public
 - Residential Designations
 - Rural Residential
 - Traditional Community - Residential
 - Traditional Community - Mixed Use
 - Urban Residential
 - Commercial Designations
 - Neighborhood Agricultural/Tourist Center
 - Commercial Recreation
 - Service Commercial
 - Highway Commercial
 - Urban Commercial
 - Industrial Designations
 - General Industrial
 - Limited Industrial
 - Water Dependent Industrial
 - Urban Industrial
 - Special Purpose Areas
 - Joint Study Area
 - Specific Project Area
 - Urban Project Area
 - Overlays
 - Vacaville-Fairfield-Solano Greenbelt
 - Travis Reserve Area
 - Agricultural Reserve Overlay
 - Tri-City/County Cooperative Planning Area
 - Resource Conservation Overlay



Note: Within Municipal Service Areas, the urban land use designations generally reflect city general plans for the future. The urban land use designations are subject to change as individual city general plans for more specific land use designation and development policies.

Approved by the Board of Supervisors - August 5, 2008

Approved by the voters (Measure T) - November 4, 2008