



Legislation Text

File #: 19-178, **Version:** 1

Receive a verbal update on Delta Water issues, including the proposed California WaterFix and EcoRestore Programs, as well as the status of known planned ecosystem restoration projects; Consider providing direction to staff on moving forward with the development of the General Plan policy and zoning standards concepts described in the report and attachments that could be applied to the Cache Slough area; and Provide direction on the merits of adopting an interim urgency ordinance intended to slow or prevent ecosystem restoration projects in Cache Slough that would convert agricultural land until a management plan or more comprehensive standards/policies are in place

Published Notice Required? Yes ____ No X
Public Hearing Required? Yes ____ No X

DEPARTMENTAL RECOMMENDATION:

The Department of Resource Management recommends that the Board of Supervisors:

1. Receive a general verbal briefing on Delta Water issues, including the proposed California WaterFix and EcoRestore Program, and on the status of known planned ecosystem restoration projects in the Cache Slough region including, but not limited to Lookout Slough and Little Egbert Tract;
2. Receive an update on the status of state legislation to establish a Management Plan for the Cache Slough region;
3. Consider and provide direction to staff on moving forward with the development of specific Cache Slough General Plan policies and zoning standard concepts described in the report and attachments addressing proposed ag conversion ecosystem restoration projects in the Cache Slough region. These include both General Plan policies and zoning standards specifically addressing the Cache Slough area with the intent of providing greater clarity as to how such projects might be considered and the type of mitigation that would be required; and
4. Consider the merits and provide direction to staff on possible establishment of an urgency ordinance designed to insure ecosystem restoration projects in Cache Slough that convert agricultural land have time for evaluation of cumulative impacts and are part of a management plan with comprehensive standards/policies.

SUMMARY:

The focus of this Board item will be the Cache Slough region although staff will verbally brief the Board on recent news reports and related statements on changes to the California WaterFix Tunnels Project and its ramifications. Regardless of what happens with the WaterFix, the state and federal governments will continue developing significant acreages for ecosystem restoration, much of it intended to mitigate existing water project operations. The Cache Slough Complex has been targeted by the state and federal government as well as other agencies for significant land use change from agricultural uses to large-scale habitat restoration and flood risk reduction projects. The Cache Slough area, because of its elevation and location at the confluence point between the Yolo Bypass and the Delta and linkage to the Sacramento River system and Yolo Bypass, has been the focus of many state-funded studies. Reflective of state and federal interest, there

are two large-scale tidal restoration projects in the Cache Slough region of Solano County being planned or under development at this time (Prospect Island and Lookout Slough) and another under consideration (Little Egbert Tract) totaling over 8,000 acres, with state and private third-party exploration of and ongoing work on other projects in the area. Most of these properties are currently in agricultural production and the County has ongoing concerns over the cumulative effects of conversion of agricultural lands on adjacent properties and the long-term viability of agriculture in the region. The County General Plan includes mitigation requirements to protect agriculture and the Board has adopted policies/zoning ordinance provisions requiring a Use Permit and environmental review for creation of habitat projects.

Discussions at the County staff level with state, federal and local partners on how ecosystem projects are developed in the region and consequences of large scale projects on agriculture are continuing. Progress on developing assurances for agricultural sustainability, infrastructure protection and water supply (among others) have been slow, although the 15-member Yolo Bypass/Cache Slough Partnership has become active again after a long hiatus. Staff is encouraged, yet Solano County needs to be as proactive as possible in areas where it has authority, to establish expectations and standards on how restoration activities will be permitted going forward.

The Board has been made aware of current efforts by the County promoting state legislation mandating a Cache Slough Management Plan. There is no guarantee this legislation will pass, therein this report begins to set forth other measures that can be initiated by the County such as expanded General Plan Policies and a Zoning District overlay for Cache Slough, standards for ecosystem restoration and other projects converting agricultural lands, as well as a broader array of agricultural mitigation strategies for this region of the County. This report also discusses possible use of an urgency ordinance as another potential short-term action to protect the County's agricultural interest while the expanded policies and standards are developed or a Cache Slough Management Plan is established.

FINANCIAL IMPACT:

The effort to update General Plan and zoning policies identified in this report would be developed by staff and so additional costs beyond these covered by the County's Delta Water and Planning Division budget would be limited. Future consideration of consultant support with large scale project oversight and development of the Cache Slough Management Plan should be considered in the FY 19/20 budget, as an alternative to a legislative Cache Slough Management Plan process, should legislation not be successful. Staff would pursue grants and funding from other agencies to support the County efforts, which may be limited.

DISCUSSION:

Background on the Cache Slough Complex

The Cache Slough Complex is located in the southeastern portion of Solano County; boundaries are generally described as the unincorporated area of Solano County within the legal Delta boundary as defined by the 1959 Delta Protection Act, except for Ryer Island. Cache Slough is within the Primary Zone of the Delta Protection Commission's Land Use & Resource Management Plan pursuant to the 1992 Delta Protection Act. The Solano County 2008 General Plan designates the area as Agriculture with a Resource Conservation Overlay and a Priority Habitat Area. The Cache Slough area is 65,586 acres (or 102.5 square miles). An area map of the Cache Slough area is provided as an attachment. The existing land uses in the area are predominately cattle ranching or crop production. Several public and privately-owned/funded restoration projects and a hunting preserve are located in the area. A majority of the land is designated as Prime Farmland as identified in the California State Department of Conservation Farmland Mapping and Monitoring Program and much of the land is under Williamson Act contracts. The area is a focus of state and federal agencies and others as an opportunity area for aquatic ecosystem restoration and flood risk reduction due to its strategic location, appropriate elevations for tidal and related upland restoration activities. Located at the bottom of the Yolo

Bypass floodway and at the confluence of several sloughs and the Sacramento River, it is a tidally-influenced area where remnant Delta Smelt and other native species remain and is a high priority area for aquatic restoration activities.

There are a number of known restoration projects under consideration by the state and private party investment companies, in planning stages or being developed in the Cache Slough region (as well as in the Suisun Marsh and other areas). Most of the projects are in response to Biological Opinion mitigation required for state and federal water project operations. Within Cache Slough, the Department of Water Resources' 1600-acre Prospect Island restoration is ongoing, the 3400-acre Lookout Slough Project is in the planning/engineering phase, and an improved flood and ecosystem project is contemplated for the Little Egbert Tract (3,090 acres).

Current County Policy Guidance and Regulatory Requirements

It is important to note up front that restoration projects brought forth directly by the state and federal government are not subject to County review processes. Nonetheless, staff believes establishing expanded policies and zoning standards applicable to the Cache Slough area can provide greater clarity on the County's priorities and concerns with restoration activity in Cache Slough. Furthermore, we are seeing the state and federal government using third party contractors to bring projects forward and under such arrangements these projects are subject to County review pursuant to a use permit process.

One important distinction between Cache Slough and the Yolo Bypass area of Yolo County is restoration projects in Yolo are typically seasonal with agricultural activity possible in seasons beyond the winter/spring. In Cache Slough the restoration projects involve tidal flooding throughout this year and typically have no potential for agricultural activities. This means not only are prime agricultural lands lost but there is less of a presence on the land to prevent nuisances and related issues.

The Cache Slough area is located within the Elmira and Maine Prairie agricultural region described in the General Plan (Plan). The Plan contains a variety of policies addressing agriculture although there is more of a focus on issues surrounding the agricultural/urban interface. Over the past decade or so, since the General Plan was adopted, the magnitude and potential impacts of state and federal ecosystem restoration plans on agriculture have been clearer in the Cache Slough region. With this knowledge, there appears to be a sound basis to consider updates to the General Plan text and policies directly addressing this current dynamic.

The County's Right to Farm Ordinance protects farming operations from nuisances; however, the Zoning Ordinance does not address in a comprehensive way the compatibility between ecosystem restoration and agriculture. General Plan policy I-1 requires compensation for farmland loss at 1:1.5 ratio; however, this may not be appropriate for conversions within the open space designation, when other types of mitigation or compensation for agriculture within Cache Slough may be more relevant, particularly given that there is no threat of urban development in this area.

Lookout Slough and Little Egbert are current examples of restoration projects in the planning stages in Cache Slough that are also third party projects subject to County permitting. As significant project acreages subject to County review have emerged and as we have begun to advise applicants on the requirements it has become clear that there is an opportunity to broaden the General Plan policy framework and Zoning Standards given the unique land use and management issues in Cache Slough. The General Plan contains language acknowledging that as of 2008 there were significant policy initiatives at the state and federal level emerging that might ultimately warrant further consideration and updated General Plan guidance. Today, it is far clearer how much restoration is being contemplated in Cache Slough as well as the impact such restoration activities may have on agriculture and infrastructure in the area. This includes potential direct loss of prime agricultural lands and production of food and fiber, associated property taxes as well as disruptions in agricultural infrastructure, including intakes, remaining levees and access roads that could further erode viability of

agriculture far beyond just the parcels where restoration is proposed. Given what we know today about potential impacts of restoration activities, the time seems right to update the County's General Plan policies in the Land Use, Resources and Agriculture Chapters to directly address impacts of restoration activities on agriculture. Similarly, the Zoning Ordinance should be considered for expanded standards in conjunction with an updated General Plan policy framework. Currently "Conservation and Mitigation Banks" require a use permit in agricultural zoning districts including agricultural zoning in the Cache Slough area. This provides a baseline but can be expanded upon including the scope of the definition as well as the standards that should be applied.

Possible Expanded Policy and Regulatory Framework

County staff has prepared options for Board consideration that could better define impacts of ecosystem projects on agriculture as well as appropriate compensation and/or mitigation at the project and program levels. These include an expanded and more detailed General Plan policies, (Examples in Attachment) development of a zoning overlay district for the Cache Slough area, and development of an agricultural mitigation program specific to Cache Slough that address the unique aspects of the conversion of agricultural land to ecosystem restoration. Planning staff prepared a draft list of possible tools for the Board to consider. The Zoning Ordinance overlay District can set forth more specific standards to be considered when reviewing use permits for restoration projects. Issues to be addressed include buffer zones, infrastructure protections (for agriculture, transportation and intakes) water rights retention, incidental take protection, management of restoration lands including on site presence and management and credits for flood protections. These issues can be addressed in some combination of special use permit findings and standards applicable under an overlay district. Further details are provided in the Attachments.

Urgency Ordinance Option

An urgency ordinance draft addressing ecosystem conservation of agricultural land in Cache Slough is provided for Board consideration. Staff is not recommending adoption of an urgency ordinance at this time but it is provided as a tool in the event that sufficient progress has not been made in negotiations with state and federal agencies to mitigate impacts on the County from restoration activities. The urgency ordinance would preclude approval of ecosystem restoration projects while other regulatory measures resources are under study. The caveat is the ordinance would not be applicable to restoration projects directly initiated by the state and federal government. It would be applicable to third party projects such as those contemplated in Lookout Slough. Staff would like to evaluate progress in the renewed "Partnership" process and the speed we can put in place the policies and standards referenced above before moving forward on an urgency ordinance. It might also be prudent to hold off adopting an urgency ordinance until restoration project applications are formally submitted, to provide a better basis for the required findings for adopting an urgency ordinance and because the maximum term of an urgency ordinance is two years.

The Partnership process: its relationship to program and project considerations in Cache Slough and the Cache Slough Management Plan

The County has been involved with other local agencies, state and federal Government representatives in the Yolo Bypass/Cache Slough Complex, called 'The Partnership' through a Memorandum of Understanding (MOU). Where we believe the Partnership intends to consider programmatic problem areas (which include agricultural sustainability, infrastructure and other assurances), progress has been slower than hoped, especially troubling given the much faster pace and large scale of upcoming projects in the region, which creates a problem for the County in ensuring the broader array of program-level regional impacts are addressed. The Partnership is contemplating implementation of a broad range of multi-objective projects in the lower Yolo Bypass/Cache Slough, which includes the County's Cache Slough Management Plan. The Cache Slough Management Plan is envisioned to be modeled after (and learning from) the Suisun Marsh Preservation Plan. To help address the project/program level disconnect, the County has initiated a legislative

process to mandate the Plan, to help prioritize and focus the effort. The County is currently developing an initial scope of work for the Plan and process. Many basic elements of the Plan need to be collaboratively developed, including governance, cost and scope and as well as a significant degree of outreach activities.

ALTERNATIVES:

The Board may elect not to provide requested direction; however, this is not recommended because General Plan policy, zoning or program tools to guide land use changes specific to Cache Slough would be helpful for guidance when addressing proposals for the conversion of agricultural lands to ecosystem uses. Restoration projects may be constructed without assurances that provide short or long term considerations to agriculture if appropriate standards are not put in place.

OTHER AGENCY INVOLVEMENT:

No other agencies were involved in drafting this staff report.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION