



INFORMATION ITEM

Staten Island Wetland Restoration and Carbon Farming for Habitat, Climate, and Communities

Summary

The Sacramento-San Joaquin Delta Conservancy (Delta Conservancy) provided grant funding to implement projects supporting ecological restoration and community or economic enhancement in the Sacramento-San Joaquin Delta (Delta). This included the funding of the Staten Island Wetland Restoration and Carbon Farming for Habitat, Climate, and Communities (“Staten Island Project” or “project”), a multi-objective effort led by The Nature Conservancy to create a mosaic of seasonal and semi-permanent managed wetlands on Staten Island in the Delta. The wetlands include habitat islands, deep water ponds, swales (ditches), and water control infrastructure.

The Delta Conservancy filed a Notice of Exemption for the Staten Island Project on October 31, 2023, under the recently established California Environmental Quality Act (CEQA) Statutory Exemption for Restoration Projects (SERP) (Pub. Resources Code, § 21080.56), finding that the project aligned with California’s “Cutting the Green Tape” (CGT) initiative and did not meet the Council’s regulatory definition of a covered action. At today’s meeting, Delta Conservancy staff and The Nature Conservancy staff will describe the Staten Island Project. California Department of Fish and Wildlife (CDFW) staff will describe the SERP process, and Council staff will summarize why the project does not meet the definition of a covered action. No Council action is required at this time.

Background

The Delta Conservancy project funding will support land where farming has been hindered by subsidence, which is caused by the drainage of wetlands and oxidation of peat soil, resulting in the release of carbon. Staten Island is a 9,200-acre island primarily used for wildlife-friendly agriculture. The project consists of approximately 746 acres previously used for the cultivation of corn and other row

crops. It will include wetted landscapes that provide fish and wildlife benefits. The southeastern area of Staten Island, where the project is located, is the most deeply subsided portion of the island, consisting of mostly organic soils and is currently too wet for conventional agriculture use. The project will feature two different habitat types, approximately 241 acres of managed seasonal wetlands (i.e., areas flooded for at least six months annually for migrating birds), and approximately 505 acres of semi-permanent wetlands (i.e., areas drained only as needed for management and flooded for at least 10 months annually as habitat for breeding shorebirds, waterfowl, and listed species). The restored wetlands will rely primarily on recycled water from farm fields on Staten Island that support rice and row crops, in addition to rainwater, non-agricultural surface water, and groundwater seepage. Restored aquatic habitat in the project area may also enhance phytoplankton production.

Staten Island landowners may benefit from the project. It will be registered as a voluntary carbon project with the American Carbon Registry, creating credits that may be sold on the voluntary carbon market. Project design plans are still in draft form and are currently being reviewed CDFW.

Statutory Exemption for Restoration Projects (SERP)

For this project, the Delta Conservancy used a recently established CEQA statutory SERP exemption administered by CDFW (Senate Bill 155, Stats. 2021, ch. 258, § 23). The SERP process begins with consultation between the applicant (CEQA lead agency) and CDFW regarding the suitability of the project for the exemption. For a project to qualify, the lead agency must first make its own independent determination that the statutory exemption applies. Once the lead agency has done so, it must then seek concurrence from the CDFW Director that the project meets the specific qualifying criteria for the SERP (set forth in Pub. Resources Code, § 21080.56, subds. (a)-(d)). The CDFW Director's concurrence must be based on substantial evidence and best available science, two standards that also apply to the Council's covered action certifications process and appeals.

CDFW staff works in tandem with CEQA lead agencies seeking efficient methods for restoration project approvals without compromising the integrity of existing regulations and requirements. Prior to the CGT initiative, permitting processes were

designed to respond to impacts associated with development and not on creating new tools that would better serve restoration projects. After completing several technical studies, the Delta Conservancy reached out to CDFW for a SERP consultation and submitted a SERP concurrence request for the Staten Island Project. The Delta Conservancy received a letter of concurrence from CDFW in October 2023. (A copy of the concurrence is located online at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=216685&inline>.) The Delta Conservancy completed the “Good Neighbor Checklist” for restoration projects identified in Delta Plan Recommendation **ER RB**, and obtained nearly a dozen letters of support, including from Delta Counties Coalition and the California Farm Bureau.

Relevance to the Council

A covered action is: 1) a project as defined under CEQA in Public Resources Code section 21065; 2) that will occur in whole, or in part, in the boundaries of the Delta or Suisun Marsh; 3) will be carried out, approved, or funded by a public agency; 4) will have a significant impact on the coequal goals or implementation of a flood control program; and 5) is covered by a Delta Plan regulatory policy (Cal. Code Regs., tit. 23, § 5001, subd. (k)(1)). Typically, this type of habitat restoration and flood protection project would meet the definition of a covered action, requiring a certification of consistency with the Delta Plan. However, when a project is exempt from CEQA, it is not a covered action unless there are “unusual circumstances indicating a reasonable possibility that the project would have a substantial positive or negative impact on the achievement of one or both of the coequal goals for the Delta or the implementation of a government-sponsored flood control program.” (Cal. Code Regs., tit. 23, § 5001, subd. (jj)(4)). As discussed above, the Delta Conservancy, in concurrence with CDFW, has determined that the project is exempt from CEQA.

The Staten Island Project’s objectives and the use of the “Good Neighbor Checklist” align with the Delta Plan and many of its primary objectives. Council staff have reviewed the project documentation and consulted with Delta Conservancy and CDFW; staff has not found unusual circumstances that would indicate the project would have a substantial impact on either of the coequal goals or the implementation of a government sponsored flood control program. The many

letters of support received further reinforce a lack of unusual circumstances in this instance. Council staff have discussed this understanding with CDFW and Delta Conservancy staff. Consistent with the Council's regulations, the Delta Conservancy has determined that the project is not a covered action and does not intend to submit a certification to the Council (Cal. Code Regs., tit. 23, § 5001, subd. (k)(3)). No Council action is required at this time.

Council staff is aware of additional habitat restoration projects in the Delta that intend to use the SERP exemption in a similar manner as the Staten Island Project. Council staff will carefully consider the circumstances of each individual SERP for each future project before determining the applicability of "unusual circumstances" under California Code of Regulations, title 23, section 5001 (jj)(4) to future projects. Council staff is also actively participating in CDFW's early consultation process for SERP projects in the Delta and will use that process to advise potential SERP applicants regarding Delta Plan certification of consistency requirements. In so doing, staff seeks to both support the State's objectives to accomplish restoration at scale by supporting the Cutting the Green Tape initiative, while also ensuring that exempted projects nonetheless advance the objectives of the Delta Plan and align with the coequal goals.

Fiscal Information

Not applicable.

List of Attachments

Attachment 1: Map of the Staten Island Staten Island Wetland Restoration and Carbon Farming Area

Attachment 2: Letters of Support for the Staten Island Wetland Restoration and Carbon Farming Area

Contact

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