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October 19, 2023

Brad Henderson
California Department of Fish & Wildlife
Watershed Restoration Grants Branch

Delivered via email: Brad.Henderson@wildlife.ca.gov

RE: Comments regarding Staten Island Wetland Restoration and Carbon Farming for Habitat, Climate and Communities Project

Dear Brad Henderson:

Thank you for the opportunity to provide comments regarding the Staten Island Wetland Restoration and Carbon Farming for Habitat, Climate and Communities Project (Staten Island project). The Delta Stewardship Council (Council) recognizes the objective(s) of the Staten Island project, as described in the Statutory Exemption for Restoration Projects (SERP) concurrence request submitted to the California Department of Fish and Wildlife (CDFW) by the Sacramento-San Joaquin Delta Conservancy (Conservancy), to restore 745.9 acres of wetland habitat, including both managed seasonal and semi-permanent wetlands that will provide fish and wildlife benefits.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River

Delta (Delta) ecosystem. (Water Code, § 85054.) The Delta Reform Act further states that the coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta (covered actions). (Wat. Code, §§ 85210, 85225.30.) A state or local agency that proposes to undertake a covered action is required to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to initiating the implementation of the project. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code (the California Environmental Quality Act [CEQA]) that meets all of the following conditions:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;*
- (2) Will be carried out, approved, or funded by a State or a local public agency;*
- (3) Is covered by one of the provisions of the Delta Plan; and*
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta.*

The State or local agency approving, funding, or carrying out the project must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

CEQA REGULATORY SETTING

The Conservancy, as lead agency for the project, has preliminarily determined that the project is exempt from CEQA under the SERP, and has requested concurrence from CDFW (Senate Bill 155, statutes of 2021; Public Resources Code section 21080.56) under the specific qualifying criteria for the SERP (set forth in Public Resources Code section 21080.56 (a) through (d)). Typically, this type of habitat restoration project would meet the definition of a covered action according to the statutory definitions listed above, and would require a certification of consistency with the Delta Plan. However, the Council's regulations specify that a project that is exempt from CEQA 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." (23 CCR section 5001(dd)(4)).

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 the Delta Conservancy. The Staten Island project implements many Delta Plan recommendations and policies. Through an award from the CDFW Prop 1 Delta Water Quality and Ecosystem Restoration Grant Program, the Staten Island project has been closely coordinated among many federal, State and local agencies through the planning and permitting stages. The project is designed to benefit multiple species, avoiding a single-species mitigation approach, which aligns well with the Delta Plan's ecosystem regulations and recommendations. The project will benefit many native bird and plant species as well as fish and reptile species through the variety of wetlands created. The Council is also encouraged to see a 15-year commitment to monitoring and adaptive management following completion of construction.

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 letter from the Delta Counties Coalition identifies local support for the project and further supports a lack of unusual circumstances in this instance (23 CCR section 5001 (j)(3)). Council staff have discussed this understanding with the Delta Conservancy and CDFW staff. Pursuant to the Council's regulations, the Delta Conservancy has determined that

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the project is not a covered action and does not intend to submit a certification to the Council (23 CCR 5001(j)(1)(E)(3)).

CLOSING COMMENTS

Council staff are available to discuss issues outlined in this letter as the Delta Conservancy proceeds in the next stages of the Staten Island project. Please contact Eva Bush, at (916) 284-1619 or Eva.Bush@deltacouncil.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal flourish extending to the right.

Jeff Henderson, AICP
Deputy Executive Officer