

Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County

"Working together on water and Delta issues"

October 8, 2021

Mr. Wade Crowfoot, Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 96814

Re: SB 155 Statutory Exemption for Certain Types of Restoration Projects

Dear Secretary Crowfoot,

The Delta Counties Coalition (DCC) writes to express our concerns and suggestions related to the statutory exemption from the California Environmental Quality Act (CEQA) included in Section 23 of SB 155 for certain types of restoration projects, some of which are likely to occur in the Sacramento-San Joaquin Delta. We understand that Senator Dodd wrote to you regarding his concerns, and we support his position. We would also like to meet with you to further explain the concerns of local government with the exemption from the CEQA process, and to suggest a productive pathway forward.

The DCC supports well-planned restoration projects, but the impacts on the environment and local adjacent land and water uses should be understood, disclosed and addressed before a project is built. Without evaluation under CEQA, and compliance with the Delta Plan consistency process created in the Delta Reform Act of 2009, the DCC is concerned that restoration projects – especially very large ones – may have long-lasting and negative impacts on local agencies, infrastructure and communities in the Delta. Tidal marsh and open water restoration, for instance, can affect nearby drainage, irrigation, and flood control systems (e.g., levees), among other impacts.

The CEQA process provides important information to decision-makers and the public concerning the environmental effects of projects, leading to design changes and mitigation to avoid or reduce these impacts. Often restoration planners are not aware of potential offsite impacts, as they are focused on planning for restoration benefits. The Delta is also a very unique place, from both hydrologic and geologic perspectives. Even when well-intended, restoration project designers may lack pertinent information about local conditions on the ground. In addition to CEQA, the Delta Plan consistency review process typically helps ensure that these environmental impacts and land use incompatibilities are addressed.

Without these processes in place for this new category of projects, there is no opportunity to provide a forum for locals to share information during conceptual design, and before substantive resources have been spent on the project. It may be appropriate for the Resources Agency to provide this forum which could lead to certain voluntary commitments regarding the way restoration planning and implementation projects are developed in the Delta under the new CEQA exemption.

For instance, restoration projects could voluntarily follow the Good Neighbor Checklist developed in collaboration with the Department of Water Resources, Delta Protection Commission, Delta Conservancy and county staff. This checklist was recently included as an exhibit in the proposed Delta Plan Chapter 4 Ecosystem Amendments.¹ While none of the items in the checklist are mandatory, early consideration of these issues can help ensure that restoration projects take local and offsite impacts into account early enough in the planning process that changes can be made. When these incompatibilities only come to light late in the process, it can be much more arduous to address them, or they may not be addressed at all. Restoration projects should ideally have local benefits, and at the least should not be detrimental to project neighbors. Voluntarily following the Good Neighbor Checklist (or a similar approach) could help avoid conflicts to neighboring land uses as part of an early consultation process.

Further, restoration project proponents (public and private) should hold voluntary informational meetings with the affected local agencies and communities to discuss the conceptual project proposal early in the planning process. These discussions should describe how the project would be built and operated in the long term within the context of the local area. Opportunities to provide local public benefits could also be discussed where relevant. This voluntary early community consultation with stakeholders and local agencies should also include receiving local feedback to help improve the project design. We suggest that the Good Neighbor Checklist approach and meetings occur prior to the Director of Fish and Wildlife making the determination allowed by subdivision (g) in section 21080.56 of the Public Resources Code (as amended by SB 155).

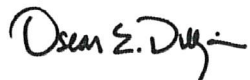
We understand the desire to promote habitat restoration in the Sacramento/San Joaquin Delta. Some very rural areas of the Delta may have very few neighbors. Without close attention to conditions on the ground, detrimental impacts on local agencies, essential infrastructure and landowners may be overlooked. With leadership from Resources, we can ensure restoration projects statutorily exempt from CEQA under SB 155 can be a success.

We hope you find these suggestions helpful and would appreciate an opportunity to discuss them in more detail and hear your feedback on them prior to moving forward with SB 155 statutorily exempt restoration projects. Feel free to contact the DCC Coordinator Natasha Drane at dranen@saccounty.net.

Sincerely,



Don Nottoli
Supervisor, Sacramento County



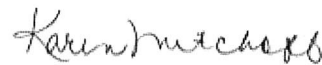
Oscar Villegas
Supervisor, Yolo County



Mitch Mashburn
Supervisor, Solano County



Chuck Winn
Supervisor, San Joaquin
County



Karen Mitchoff
Supervisor, Contra Costa County

Attachment: Good Neighbor Checklist for Restoration Projects

¹ Available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2021-09-27-draft-peir-eco-amendment-appendix-c-proposed-eco-amendment.pdf>, pdf pp. 244-247, also attached as Exhibit A. The 2013 Delta Plan referenced an earlier version of the checklist included in DWR's Agriculture and Land Stewardship Framework.

Good Neighbor Checklist for Restoration Projects

Habitat restoration projects have many benefits, but can also affect neighboring properties, agriculture, infrastructure and water resources. Inclusion of Good Neighbor considerations into habitat restoration project planning can support agricultural communities, reinforce the benefits of conservation partnerships, reduce conflict and project delays, and help achieve sustainable conservation. Habitat restoration project planners and managers can use the following checklist to help ensure that restoration projects are planned and designed to avoid or reduce conflicts with existing neighboring land uses.

Some of the checklist items are also considered in California Environmental Quality Act (CEQA) and regulatory review processes. The purpose of the checklist is to encourage early conversations and coordination with neighboring interests, and it does not substitute for any other process.

Good Neighbor Restoration Projects:

Siting and Planning

- Is the project sited on public or conservation-entity owned lands, or where private property is required, has there been engagement to find willing sellers?
- If there are existing agricultural or conservation easements, has thought been given to how to incorporate or avoid conflicts with them?
- Is the project sited to avoid fragmenting existing farms?
- Have neighbors and stakeholders been included in the early planning stage?
- Will the project potentially disturb utilities, roads, bridges, or other infrastructure that serve local uses? If so, are those uses taken into account during project planning?
- Is the project designed to avoid interfering with other beneficial water uses (e.g., existing water diversions, boating, fishing, and recreation)?
- Will the project design avoid or reduce damage to nearby drainage, irrigation, and flood control facilities (e.g., levees) during construction and operation and avoid conflicting management practices?
- Has the project considered buffers where restoration lands could potentially interfere with surrounding agricultural lands or where agricultural lands could potentially interfere with restoration lands?
- As a result of the project, are special status species on the project site expected to increase markedly in abundance, and potentially move from the site to neighboring lands or waterways? If so, has coordination on safe harbor or other protections for neighboring land and water uses been considered?
- Is the project designed so that any new public access is compatible with, would benefit, and would avoid or reduce conflict with, local businesses, landowners and residents?

Good Neighbor Checklist for Restoration Projects

Construction, Operation and Maintenance

- Is the project designed to avoid or reduce project dust, traffic, vibration, noise, and lighting impacts?
- Is the project designed to minimize project traffic during commute and harvest periods?
- Has the project considered utilizing invasive species protection plans, including potential long-term commitments or funding to:
 - Protect against proliferation of mosquitos to protect against arboviruses, which can lead to injury and mortality of wildlife and humans?
 - Monitor and treat terrestrial and aquatic weeds and set specific triggers for action?
- Has the project considered monitoring and mitigating project-related changes to local water quality and quantity to:
 - Protect beneficial water uses from harmful algal blooms, nitrates, phosphorous, and methylmercury?
 - Avoid drainage, seepage or changes in the water table that impair neighboring agricultural or other activities?
- Does the project consider, as applicable, mitigation for conversion of productive agricultural land in the form of conservation easements, or other measures to enhance local agricultural productivity?
- Does the project have an operation and maintenance plan that includes, as applicable, the ability to maintain site security, prevent trespass, manage any publicly accessible areas, and control flooding and weeds?

Accessible Community Interface

- Does the project provide for an Ombudsman Office or other means to:
 - Facilitate stakeholders and affected landowners and local agency discussions regarding offsite impacts and options to address them?
 - Provide a way to discuss resolution of disputes prior to resorting to the Government Claims Act or other legal claims processes?
 - Provide regular project updates to the affected public?

Good Neighbor Checklist for Restoration Projects

Background and References for Proposed Good Neighbor Checklist

In 2020, a small group of Delta stakeholders representing reclamation districts, landowners and Delta counties approached the Department of Water Resources (DWR) to request that DWR work with them to update the Good Neighbor Checklist prepared in 2014 as part of the Agriculture and Land Stewardship Framework. Over the course of a few meetings, this updated draft checklist was created and later submitted to the Delta Stewardship Council for inclusion as an exhibit to proposed ER Recommendation B in the update to Delta Plan Chapter 4 - Protect, Restore, and Enhance the Delta Ecosystem. Representatives from Solano and Yolo Counties, the Delta Protection Commission, Delta Conservancy and DWR commented on the updated checklist, which built on the work of the key references listed below.

Department of Water Resources 2014, Agricultural and Land Stewardship Strategies.

<https://water.ca.gov/programs/california-water-plan/water-resource-management-strategies/agriculture-and-land-stewardship-framework>

Delta Conservancy 2019, Delta Public Lands Strategy

http://deltaconservancy.ca.gov/wp-content/uploads/2019/01/Delta_Public_Lands_Strategy_Final_1-22-19.pdf

Department of Fish and Wildlife 2018, Delta Conservation Framework 2018-2050

<https://www.wildlife.ca.gov/Conservation/Watersheds/DCF>

Delta Stewardship Council 2019, Delta Plan Chapter 4 - Protect, Restore, and Enhance the Delta Ecosystem

<https://deltacouncil.ca.gov/pdf/delta-plan/2020-04-15-draft-ch-04.pdf>