

COASTAL CONSERVANCY

Staff Recommendation
September 22, 2022

Stivers Lagoon Restoration

Project No. 22-014-01
Project Manager: Eryan Borgnis Sloane

RECOMMENDED ACTION: Authorization to disburse up to \$2,160,000 to the Alameda County Flood Control and Water Conservation District to restore and enhance approximately 40 acres of wetland habitat and improve public access at Stivers Lagoon, adjacent to Lake Elizabeth in the City of Fremont, and adoption of findings under the California Environmental Quality Act.

LOCATION: Stivers Lagoon in the City of Fremont, County of Alameda

EXHIBITS

- Exhibit 1: [Project Location Map & Design](#)
 - Exhibit 2: [Lake Elizabeth and Stivers Lagoon Marsh Design and Improvement Program's Environmental Impact Report \(February 1993\)](#)
 - Exhibit 3: [Addendum to Program Environmental Impact Report for the Lake Elizabeth/Stivers Lagoon Design and Improvement Program \(June 2022\)](#)
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RESOLUTION AND FINDINGS

Staff recommends that the State Coastal Conservancy adopt the following resolution and findings.

Resolution:

The State Coastal Conservancy hereby authorizes a grant of an amount not to exceed two million one hundred sixty thousand dollars (\$2,160,000) to the Alameda County Flood Control and Water Conservation District ("the grantee") to restore and enhance approximately 40 acres of wetland habitat and improve public access at Stivers Lagoon, adjacent to Lake Elizabeth in the City of Fremont.

Prior to commencement of the project, the grantee shall submit for the review and written approval of the Executive Officer of the Conservancy (Executive Officer) the following:

1. A detailed work program, schedule, and budget.
2. Names and qualifications of any contractors to be retained in carrying out the project.
3. A plan for acknowledgement of Conservancy funding and Proposition 68 as the source of that funding.
4. Evidence that all permits and approvals required to implement the project have been obtained.
5. Evidence that the grantee has entered into agreements sufficient to enable the grantee to implement, operate, and maintain the project.

Findings:

Based on the accompanying staff recommendation and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed authorization is consistent with Chapter 4.5 of Division 21 of the Public Resources Code, regarding San Francisco Bay Area Conservancy Program.
2. The proposed project is consistent with the current Conservancy Project Selection Criteria.
3. The Conservancy has independently reviewed and considered the Lake Elizabeth and Stivers Lagoon Marsh Design and Improvement Program's Environmental Impact Report (Program Improvement EIR) adopted by the Alameda County Flood Control and Water Conservation District on August 9, 1993 and the Addendum to Program Environmental Impact Report for the Lake Elizabeth/Stivers Lagoon Design and Improvement Program (Addendum) adopted by the Alameda County Flood Control District on July 12, 2022 pursuant to the California Environmental Quality Act ("CEQA") and attached to the accompanying staff recommendation as Exhibits 2 and 3. The Conservancy finds that the proposed project as designed and mitigated avoids, reduces, or mitigates the potentially significant environmental effects to a less-than-significant level, and that there is no substantial evidence based on the record as a whole that the project may have a significant effect on the environment, as defined in 14 Cal. Code Regulations Section 15382.

STAFF RECOMMENDATION

PROJECT SUMMARY:

Staff recommends the Conservancy authorize a grant of two million one hundred sixty thousand dollars (\$2,160,000) to the Alameda County Flood Control and Water Conservation District ("the District") to restore and enhance approximately 40 acres of wetland habitat and improve public access at Stivers Lagoon, adjacent to Lake Elizabeth in the City of Fremont ("City").

The project will include creating an open water pond that hydraulically connects to Mission Creek, constructing a terraced berm on the west side of Mission Creek, restoring riparian corridor habitats, improving existing and creating new pedestrian trails, and building a new

pedestrian bridge over Mission Creek (Exhibit 1). The project will also create a new flashboard weir on Mission Creek within the existing box culvert to retain water in the pond during dry months to further enhance and sustain restored wetland habitat. Excavation and grading are proposed to improve water circulation, restore upland areas to wetland, and create additional open water area. An estimated 6,100 cubic yards of soil will be excavated to create the open water pond with soil excavated placed in the southwest corner of the project area, about 800 feet from the wetland restoration area, to restore upland habitat. Public access improvements include construction of a small pedestrian bridge across Mission Creek, creation of approximately 200 feet of new wooden catwalk to connect to the existing catwalk on the north end to create a circular path, and enhancements on the remaining 1,450 linear feet of trails throughout the project area. The District will develop and implement a vegetation management plan to control non-native species and restore native vegetation.

Stivers Lagoon is one of many natural freshwater wetlands along the east side of the Hayward fault formed as a sag pond due to tectonic movements along the fault. Stivers Lagoon marsh was historically a larger body of open water and marsh which, due in large part to an altered surface and groundwater hydrologic regime, has evolved into an emergent wetland that dries out in the summertime. As the pond and marsh have dried out, non-native upland plants have started to spread throughout the project area. The project will hydraulically reconnect the lagoon to Mission Creek at two locations and to its groundwater source by creating a pond, i.e. deepening the area via excavation. The 1.8-acre open water pond within the tule stands will add structural diversity and enhance habitat for species that depend on open water. The flashboard weir downstream of the pond on Mission Creek will further help retain water when needed during the dry, summer months allowing the pond to sustain wetland vegetation and wildlife species. For riparian habitat restoration, the project will grade a terraced shelf along the west side of Mission Creek that will vary in extent between 20 and 30 feet wide, gently sloping from the pedestrian path down to Mission Creek. New plantings will consist of bare-root or small containerized stock and will be planted according to the vegetation management plan to be developed by the District. Riparian species would include red alder, Fremont cottonwood, California walnut, western sycamore and/or Oregon ash, and box elder with arroyo and polished willow interspersed for rapid growth. The understory would be planted with California blackberry, Mexican elderberry, buttonbush, California rose, and/or California grape. Stivers Lagoon is located in Central Park, which the community considers to be the crown jewel of Fremont's park system. During the development of the City's General Plan and its Parks and Recreation Master Plan, community members repeatedly expressed their appreciation for the active and passive forms of recreation available in the park. The restoration of Stivers Lagoon would further enhance the park by providing additional opportunities for walking and birdwatching. (See Selection Criterion No. 6 below.)

Site Description: Stivers Lagoon encompasses an area of approximately 40 acres to the southeast of Lake Elizabeth in Fremont's Central Park within the project area (Exhibit 1). Mission Creek flows from north to south in the project area, leaving the project area in a culvert under Paseo Padre Parkway. The portion of Mission Creek in the study area is in an earthen channel of fairly uniform width. It averages approximately 15 feet in width.

Central Park is a 440-acre urban park in central Fremont bounded by major thoroughfares, railroads, and residential neighborhoods. Lake Elizabeth is an 88-acre constructed lake, first developed in 1968 and subsequently expanded in 1986. Central Park is a popular park providing a variety of amenities including the Stivers Lagoon, Lake Elizabeth, walking paths, playgrounds, sports fields, picnic areas, lawns, and a water park, among other amenities. The project area is surrounded by residential and commercial development. Bay Area Rapid Transit tracks border the study area to the east, and the Hetch Hetchy Aqueduct right-of-way runs immediately south of the study area.

The District owns and leases the Lake Elizabeth and Stivers Lagoon land to the City.

Grant Applicant Qualifications: Since its establishment, the District has designed, constructed, and annually maintained various flood control improvements, including but not limited to, creek restoration with trails, channel capacity improvements, levee and floodwall improvements, and stormwater pump stations throughout Alameda County. It also protects natural environment through public outreach and enforcement of pollution control regulations governing its waterways. The District has its own Engineering Department, Construction Department, and Maintenance and Operations Department with the adequate staffing expertise and capacity to administer the ongoing management and operation of the project. Construction of the project will be administered by the District, which will be primarily responsible for the maintenance and operations of the inlets and outlets and the pond habitats. With the City already maintaining the project area as required by their Central Park long-term lease, the recreation elements of the project will be included in the on-going maintenance activities. The District will be developing and the City will be implementing a five-year monitoring plan as a part of the restoration project. Monitoring activities will include pre- and post-construction vegetation and wildlife surveys.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA:

The proposed project is consistent with the Conservancy's Project Selection Criteria, last updated on September 23, 2021, in the following respects:

Selection Criteria

1. Extent to which the project helps the Conservancy accomplishes the objectives in the Strategic Plan.

See the "Consistency with Conservancy's Strategic Plan" section below.

2. Project is a good investment of state resources.

The project is a good investment of state resources as it will restore and enhance important freshwater wetland, riparian, and upland coyote brush scrub habitat as well as enhance public access at a popular city park. This multiple benefit project will also improve water quality by restoring hydraulic connections to Mission Creek with water flowing into the restored Stivers Lagoon riparian and wetland habitats.

The District is ready to implement the project with final design and permitting currently ongoing and funded by the District. Permit applications are expected to be submitted in Fall 2022 with full design and permitting expected to be completed by Spring 2023. Given the District's experience in administering similar projects, the project is feasible and will likely be implemented on schedule. The project's budget is reasonable and leverages non-state resources for all the design and permitting work to date. For construction, the District will also be contributing \$200,000 of its own funds.

The District will be developing a 5-year monitoring plan to analyze wetland health and evolution over time and to inform other, similar projects with results and lessons learned.

3. Project includes a serious effort to engage tribes. Examples of tribal engagement include good faith, documented efforts to work with tribes traditionally and culturally affiliated to the project area.

As the 1993 PEIR was approved and certified prior to July 1, 2015, the Lake Elizabeth/Stivers Lagoon Improvements restoration program did not consult with tribes as it was prior to state required consultations (AB 52). However, the District's cultural resources consultant conducted a record search in March 2022 and the result indicated that no known resources are present within the project limits. The District will be confirming the research findings in the field in Fall 2022. Provisions will be included in the construction document regarding contractor's responsibilities if cultural resources are encountered during excavation within project limits.

On June 27, 2022 the State Coastal Conservancy notified local tribes, primarily the Guidiville Rancheria of California, Indian Canyon Mutsun Band of Costanoan, Ohlone Indian Tribe, Amah Mutsun Tribal Band of Mission San Juan Bautista, Muwekma Ohlone Indian Tribe, North Valley Yokuts Tribe, Rumsen Ama Turataj, Tamien Nation, Tule River Indian River Tribe, Wuksache Indian Tribe Eshom Valley Band, and Ohlone/Costanoan Indian Tribe, of the project details.

4. Project benefits will be sustainable or resilient over the project lifespan.

The project benefits, including enhanced habitat and improved water quality, will be sustainable over the project lifespan. The current site condition continues to degrade due to a lack of soil saturation and surface inundation. By excavating the new open water pond and hydrologically connecting the site to Mission Creek, the pond will be continually full of water and the wetland portions of the site will be seasonally inundated. These conditions, when paired with vegetation management and planting of native species, will create a sustainable habitat that improves over time as the soil becomes more saturated and the marsh further establishes.

The hydraulic modeling and biological resources assessment predict that the site will flourish with minimal intervention post-project. The District will ensure that the site is monitored and action is taken to correct any deficiencies in the site conditions that may arise.

5. Project delivers multiple benefits and significant positive impact.

The project will deliver multiple benefits including preserving and enhancing freshwater wetland and riparian habitats, improving habitat values and returning the area to a more fully functioning freshwater marsh, improving water quality, maintaining the marsh as a conservation area with opportunities for environmental education and recreation, and incorporating the marsh into the overall water management system of Lake Elizabeth.

This is a unique site due to its location in the Central Park of Fremont and its prior function as a marsh. A relatively low quantity of excavation will have significant positive impacts by returning the site to a thriving marsh habitat. The relatively low project cost will have disproportionate positive impacts by connecting the site to an extensive and already popular trail system, while the elevated catwalks minimize the intrusion of recreation on the habitat.

6. Project planned with meaningful community engagement and broad community support.

Community outreach for the project occurred in part through the City of Fremont General Plan Update in the greater context of Central Park. In a 2007 on-line survey for the General Plan Update, 84% of respondents rated the quantity and character of Fremont’s parks and open space as a very high or high priority, the highest ranking for any single issue. According to the survey, 87% of responding citizens of Fremont visited Central Park, where Stivers Lagoon is located, at least once in the past year.

More recently, on March 2, 2022, the City adopted the Parks and Recreation Master Plan. The Master Plan planning process involved a robust public outreach campaign including the participation of over 3,000 residents. The effort used a crowdsourcing website, a phone app, a stakeholder interview process with various community leaders and user groups, a series of virtual public input meetings with over 500 participants, an online survey, and a statistically valid survey. In addition, the Community Services Department updated the community regularly at the monthly Recreation Commission meetings and provided the Council with updates in February and September 2021.

Through this Parks and Recreation Master planning effort, stakeholders agreed that Central Park is well loved and a major hub of community activity, with both passive and active forms of recreation available in the park. Increasing trail connectivity emerged as a recurring theme and top priority for the plan. According to the surveys, households’ top five needs include multi-use paved trails (73%), restrooms (73%), large community parks (62%), multi-use unpaved trails (61%) and open space and conservation areas (60%). The top three actions supported by households include developing new walking trails, improving existing park restrooms, and improving existing parks in general. This project is supported by the community because it is in a key park and addresses stakeholder priorities of trails and open space and conservation areas.

PROJECT FINANCING

Coastal Conservancy	\$2,160,000
Alameda County Flood Control and Water Conservation District	\$200,000

Project Total

\$2,360,000

The source of funding for the proposed authorization is a Fiscal Year 2021-22 appropriation from the General Fund specifically for this project. Budget Trailer Bill SB 170 (Skinner, 2021) appropriated \$2,160,000 to the Conservancy for “the Stiver’s Lagoon Marsh restoration.” (Section 110 of SB 170, adding Section 19.56(e)(271) to the Budget Act of 2021.) The proposed project is consistent with the anticipated funding source.

The District will be contributing \$200,000 from its Flood Control District Zone 6 funding source for construction implementation.

Unless specifically identified as “Required Match,” the other sources of funding and in-kind contributions described above are estimates. The Conservancy does not typically require matching funds or in-kind services, nor does it require documentation of expenditures from other funders or of in-kind services. Typical grant conditions require grantees to provide any funds needed to complete a project.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

This project will be undertaken pursuant to Chapter 4.5 of the Conservancy’s enabling legislation, Public Resources Code Sections 31160-31165, to address resource goals in the San Francisco Bay Area. All further citations in this section are to the Public Resources Code.

The Stivers Lagoon Restoration Project is within the nine-county Bay Area as required under Section 31161.

Under Section 31162(b), the Conservancy may act to protect, restore, and enhance natural habitats and connecting corridors, watersheds, scenic areas, and other open-space resources of regional significance. This authorization would specifically restore freshwater marsh, riparian, and upland habitats and enhance the scenic areas within the City’s Central Park.

The project is consistent with Section 31163(a), which directs the Conservancy to cooperate with other counties and districts in the San Francisco Bay Area to identifying and adopting long-term resource and outdoor recreational goals.

Consistent with Section 31163(c), the project meets the following criteria: (1) is multijurisdictional (involves multiple agencies), (2) can be implemented in a timely way, (3) provides opportunities for habitat, flood protection, and public access benefits that could be lost if the project is not quickly implemented, and (4) includes matching funds from other sources of funding as described above in the “Project Financing” section.

CONSISTENCY WITH CONSERVANCY’S [2018-2022 STRATEGIC PLAN](#) GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 12, Objective D** of the Conservancy’s 2018-2022 Strategic Plan, the proposed project will restore and enhance approximately 40 acres of freshwater wetland and riparian habitats within Stivers Lagoon.

Consistent with **Goal 13, Objective B** of the Conservancy's 2018-2022 Strategic Plan, the proposed project will enhance public access and recreation facilities within the City's Central Park including building a new pedestrian bridge across Mission Creek, building a new catwalk to complete a loop trail within Stivers Lagoon, and enhancing the existing 1,450 linear feet of pedestrian trails in the project area.

CEQA COMPLIANCE:

To comply with the California Environmental Quality Act (CEQA), in February 1993 the Alameda Flood Control District prepared the "Lake Elizabeth and Stivers Lagoon Marsh Design and Improvement Program Environmental Impact Report" (Improvement Program EIR; Exhibit 2) to evaluate the impacts of a larger improvement program, which includes the proposed project. The EIR identified potential impacts of the Improvement Program with actions to be taken by the City of Fremont (Lead Agency) and the District (Responsible Agency) and recommended mitigation measures and a monitoring program to reduce potential impacts. The Improvement Program EIR evaluated the following project components:

- Dredging Lake Elizabeth
- Turf Development North of Lake Elizabeth
- Shoreline Rehabilitation of Lake Elizabeth
- Boathouse demolition/removal
- Sailboard beach on Lake Elizabeth
- Dock extension
- Restoration of Stiver's Lagoon

Many of these projects have been implemented, either by the City or the District. However, restoration of the Stivers Lagoon marsh has not been completed. The District prepared the "Addendum to Program Environmental Impact Report for the Lake Elizabeth/Stivers Lagoon Design and Improvement Program" (Addendum; Exhibit 3) in June 2022 to evaluate the potential for changed conditions and any needed project design changes responding to those changed conditions. They found no substantial changes to the project, no changes in circumstances had occurred, and no new information of substantial importance had manifested that would result in new significant or substantially increased adverse impacts as a result of the project. Therefore, the District determined that an addendum to the EIR was appropriate and the Board adopted the Addendum on July 12, 2022. The Addendum was prepared in accordance with Section 15164 of the CEQA Guidelines. Per CEQA Guidelines (15164.c) "an addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration."

The Improvement Program EIR evaluated impacts in the areas of recreation and other land uses; aesthetics; public services and utilities; traffic and parking; hydrology; water quality and public health; geology and seismicity; vegetation and wetlands; wildlife; and noise and energy. The Addendum provided additional analysis of hydrology, biological resources, greenhouse gas

(GHG) emissions, noise, air quality, and cultural resources. These additional analyses required a new biological resource assessment and cultural review (Appendices A & B in Exhibit 3 respectively).

The Addendum found there would be no new significant impacts, nor would there be an increase in the severity of impacts resulting from the proposed minor modifications to the project and there is no information in the record or otherwise available that indicates that there are substantial changes in circumstances that would require major changes to the EIR.

The Improvement Program EIR did not identify cultural resources as a potential environmental impact. The Addendum's updated review of prehistoric and historic resources (Appendix B) revealed no presence of cultural resources of concern at the Stivers project site.

Significant Impacts Reduced to Less than Significant Levels by Mitigation

For water quality and public health, there would be short-term adverse impacts due to construction activities which could include the possible introduction of deleterious substances such as fuel constituents and herbicides, and disruption of the current hydrologic regime. Mitigation Measure 3.6.D to avoid discharge of all materials and fluids into the marsh or Mission Creek and to prepare and implement an erosion control plan will make impacts less than significant.

For geology (in addition to the slumping possibility described below in "Unavoidable Significant Impacts"), long term impacts from liquefaction to the proposed project requires Mitigation Measure 3.7.H to locate structures away from the lake shore to the greatest extent possible. The areas using dredge spoil materials must also specify suitable moisture treatments and compaction methods and avoid high berms and steep slopes.

To minimize impacts to riparian vegetation and wetland habitats, Mitigation Measures 3.8 A & B require construction practices to locate construction/demolition staging areas away from mature forest species (large trees) and to minimize the removal of mature vegetation and wetland species. Construction should generally take place during the dry season. Replacement species should be planted in similar habitat within the Stivers Lagoon wetland habitat and should be monitored for establishment success for a period for five years by a qualified biologist. A monitoring program will be implemented by the City of Fremont to ensure the success of restored areas.

For wildlife, to prevent deleterious substances such as silt and fuel constituents into the water potentially degrading aquatic habitat, Mitigation Measure 3.9.A requires construction practices to minimize erosion or accidental spills into the lake by locating construction/demolition staging areas away from the lake's edge and installing silt fences or barriers at key drainage points.

To reduce impacts from dredging on shorebirds, waterbirds, fish, and other aquatic species, Mitigation Measure 3.9.B will require dredging of the lake to not be undertaken during the height of the breeding season (i.e., March through June) for resident bird populations to not limit food resources within the lake for hatchlings.

To reduce short term loss of riparian woodland habitat, Mitigation Measure 3.9.D requires construction activities to avoid, when feasible, displacing riparian trees. For any native tree removed, three trees of the same species should be planted following construction. Non-native species should be replaced with native species.

Given that restoration work could temporarily remove wetland vegetation, especially tules, potentially providing habitat for the few tricolored blackbirds currently seen within the project site in recent years, Mitigation Measure 3.9.F requires the project to minimize the removal of existing wetland vegetation. Areas with significant wetland vegetation, especially tules, adjacent to areas proposed for improvements should be flagged and avoided during construction

Unavoidable Significant Impacts

The Improvement Program EIR identified potentially significant geologic impacts related to seismically-induced lateral spreading that could affect the Stivers Lagoon Marsh restoration projects. The EIR determined that this seismically induced lateral slumping and slope failure impact could not be feasibly mitigated to a level of less than significant and found the impact to be significant and unavoidable even after implementation of available mitigation. All other geologic and seismic impacts were determined to be less than significant in the EIR (either with or without implementation of mitigation). Since the EIR was certified, CEQA court case law has clarified that impacts of strong ground shaking on a project do not constitute environmental impacts (i.e., CEQA impacts) of a project. The California Supreme Court concluded in the California Building Industry Association vs. Bay Area Air Quality Management District (CBIA v. BAAQMD) decision, that “CEQA generally does not require an analysis of how existing environmental conditions will impact a project’s future users or residents.” Per the CBIA decision, the District did not find impacts to the environment on the project to be significant CEQA impacts based on the results of the environmental review conducted for the Addendum.

Displacement of existing wetland vegetation during construction of shoreline improvements and excavation in Stivers Lagoon Marsh would also result in temporary but potentially significant impacts. This vegetation loss could reduce wildlife use of these and nearby areas in the short-term. In the long-term habitat values for wildlife would significantly increase.

Staff has independently evaluated both the Lake Elizabeth and Stivers Lagoon Marsh Design and Improvement Program Environmental Impact Report and the Addendum to Program Environmental Impact Report for the Lake Elizabeth/Stivers Lagoon Design and Improvement Program, and concurs that there is no substantial evidence that the proposed project will have a significant effect on the environment. Staff therefore recommends that the Conservancy find that the project as mitigated avoids, reduces or mitigates the possible significant environmental effects to a level of less-than-significant and that there is no substantial evidence that the project will have a significant effect on the environment as that term is defined by 14 Cal. Code Regs. §15382.

Upon approval of the project, Conservancy staff will file a Notice of Determination.