



WORKSHOP ITEM

Public Hearing on the Proposed Ecosystem Amendment Draft Program Environmental Impact Report

Summary: Staff will present an overview of the proposed amendment to Chapter 4 of the Delta Plan, *Protect, Restore, and Enhance the Delta Ecosystem*, (“Ecosystem Amendment”) and the California Environmental Quality Act (CEQA) Draft Program Environmental Impact Report (PEIR) prepared for the Ecosystem Amendment. Following the presentation, the Council will conduct a workshop to solicit oral comments on the Draft PEIR. Written comments on the Draft PEIR are due November 30, 2021. The Council will not take action to adopt the proposed Ecosystem Amendment at this meeting. Following the close of the comment period, staff will respond to comments received on the Draft PEIR and prepare a Final PEIR. Staff will present the Final PEIR and proposed Ecosystem Amendment to the Council for consideration in Spring 2022.

BACKGROUND

The Sacramento-San Joaquin Delta Reform Act of 2009, California Water Code sections 85000-85350, (Delta Reform Act) charges the Council with furthering California’s coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta and Suisun Marsh (Delta) ecosystem, to be achieved in a manner that protects and enhances the unique characteristics of the Delta as an evolving place (Cal. Wat. Code § 85054). To that end, the Council adopted the Delta Plan in 2013. The regulatory portions of the Delta Plan (Delta Plan policies) are set forth in Title 23 of the California Code of Regulations, sections 5001-5016.

In accordance with Water Code section 85320(e), Chapter 4 of the Delta Plan was originally developed with the expectation that the Bay Delta Conservation Plan (BDCP) would be incorporated into the Delta Plan if the BDCP met specific statutory requirements. However, in May 2015, State and federal agencies shifted from the BDCP to a portfolio of mitigation projects known as the EcoRestore initiative. Following this shift, the Council assessed the need to amend Chapter 4.

The Council began initial consideration of the need for the Ecosystem Amendment in 2015 and 2016. Throughout 2017 and 2018, Council staff conducted listening sessions with a range of stakeholders, local agencies, Delta residents, Councilmembers, and Delta Independent Science Board (Delta ISB) members. Based on these listening sessions and staff research, staff developed the proposed

Ecosystem Amendment to include a portfolio of actions that protect existing ecosystems, restore ecosystems, and enhance working or urban landscapes that provide habitat resources to species. These approaches can reestablish ecological processes in natural communities to make them more resilient to land conversion and climate change. The proposed Ecosystem Amendment leverages decades of research, lessons learned in recovery planning, and increased coordination among agencies and partners working toward a common vision for a restored Delta ecosystem.

Staff presented preliminary proposed revisions to Chapter 4 to Council for feedback at the April 2019 and June 2019 Council meetings. Staff released a subsequent Preliminary Public Review Draft in November 2019 and solicited agency, public, and Delta Independent Science Board (Delta ISB) comments. These comments were incorporated into the May 2020 Draft of the Ecosystem Amendment. The Council authorized the May 2020 Draft as the proposed project for environmental review under CEQA at its May 1, 2020, meeting. The Council issued a Notice of Availability (see Attachment 1) of a Draft PEIR (see Attachment 2) and appendices (see Attachment 3) on September 27, 2021.

The proposed project consists of:

- New and revised Delta Plan policies, recommendations, and performance measures related to ecosystem protection, restoration, and enhancement in the Delta;
- An updated Chapter 4 narrative;
- Three regulatory appendices;
- Four technical appendices; and
- An updated appendix containing new and revised ecosystem performance measures.

The Ecosystem Amendment presents five core strategies to achieve the coequal goal of protecting, restoring, and enhancing the Delta ecosystem that forms the basis for the policies, recommendations, and performance measures in the proposed Amendment.

These core strategies are listed below, along with key approaches that the Ecosystem Amendment proposes to achieve each strategy. Included for each core strategy and element is a notation describing whether there is a proposed change relative to the existing Delta Plan:

1. Create more natural, functional flows (revised in part)

...by requiring covered actions to be consistent with the State Water Resources Control Board's Bay-Delta Water Quality Control Plan flow objectives **(no change)**

...by working with the State Water Resources Control Board to ensure best available science informs its regulatory decisions regarding stream flows and water quality **(revised)**

2. Restore ecosystem function (revised)

...by requiring covered actions to consider and disclose how they would improve ecosystem function and provide social benefits, and by requiring consideration of expanded floodplains and creation of riparian habitat in levee projects **(revised)**

...by recommending increased public funding, recommending "good neighbor" strategies to coordinate restoration with adjacent uses, and exempting Delta levees from the U.S. Army Corps of Engineers' policy prohibiting vegetation on levees **(new and revised)**

3. Protect land for restoration and safeguard against land loss (new)

...by requiring habitats to be restored at appropriate elevations for current and future conditions and protecting land with the best habitat restoration opportunities from incompatible uses **(revised)**

...by recommending enhanced working landscapes, developing or updating management plans for public lands to halt or reverse land subsidence, and recommending funding to reverse land subsidence **(new)**

4. Protect native species and reduce the impact of nonnative species (revised)

...by requiring covered actions to avoid introducing or expanding habitat supporting nonnative invasive species **(no change)**

...by recommending actions to control nonnative invasive species including predatory fish, improving fish migration within the Delta and upper watersheds, funding projects that help juvenile salmon avoid predation and being trapped by

water intakes in the South Delta, managing hatcheries to reduce genetic risk and improve the resilience of native species, and coordinating remote fish tracking programs **(new and revised)**

5. Improve institutional coordination to support implementation (new)

...by recommending support for the implementation of ecosystem restoration programs/projects and by aligning state restoration plans and conservation strategies with the Delta Plan **(new)**

ENVIRONMENTAL REVIEW OF THE ECOSYSTEM AMENDMENT

Consistent with CEQA Guidelines section 15206, the proposed Ecosystem Amendment is considered a project of statewide and regional significance. Council staff prepared a Draft PEIR, which includes a conservative analysis of potential environmental impacts that could occur from construction, operation, and implementation of different types of projects and activities that the Ecosystem Amendment would promote in the Primary Planning Area (the Delta as defined in Water Code section 12220 and the Suisun Marsh as defined in Public Resources Code section 29101) and Extended Planning Area (the watersheds that contribute flows to the Delta and areas of California outside the Delta watershed with places of use receiving water from or conveyed through the Delta).

Impacts were analyzed at a broad program level in the Program EIR because the multiple actions encouraged by the proposed Ecosystem Amendment could affect a large geographic area, would be proposed and implemented by entities other than the Council, and direct authorization or construction of site-specific projects are not proposed by the Council. The Council itself does not implement or directly authorize construction or operation of any physical activities; these future actions would be under the jurisdiction and authority of other public agencies. Rather, through the Delta Plan, the Council seeks to influence the actions, activities, and/or projects of other entities—the details of which are under the jurisdiction and/or authority of entities that will propose, authorize, and/or implement them in the future. The number and location of all potential projects that would be proposed, authorized, or implemented are not known at this time. The general types of actions considered in the PEIR are described in Table 1.

Table 1 Summary of Project Category by Planning Area

Project Category	Planning Area
Changes in Water Flows	Primary and Extended Planning Areas
Improve Function and Connectivity of Floodplain Habitat	Primary Planning Area
Restoration, Protection, and Enhancement of Wetland, Stream, Riparian Habitat, Upslope Watershed Sites	Primary Planning Area
Subsidence Reversal Activities	Primary Planning Area
Nonnative Terrestrial and Aquatic Invasive Species Removal and Native Plant Revegetation	Primary Planning Area
Fish Passage Improvements	Primary and Delta Watershed Planning Areas
Hatchery Management	Primary and Delta Watershed Planning Areas
Improving Efficiency and Effectiveness of Regulatory Oversight, Project Implementation, and Long-Term Monitoring and Management	Primary and Extended Planning Areas

The impacts of specific projects will be evaluated in future project-level CEQA documents by the lead agencies for those proposed projects.

PEIR Scoping Process

The Council issued a Notice of Preparation (NOP) on May 11, 2020, to seek input from agencies, organizations, and the public on the scope of the PEIR. In addition, a public scoping meeting was conducted on May 28, 2020. In May 2020, the Council also sent notices pursuant to Assembly Bill 52 (AB 52) to seven Native American tribes that requested notification of all Council activities and non-AB 52 notices to other 175 tribal contacts.

The Council received 18 comments from tribes, agencies, non-governmental organizations, private entities, and individuals on the NOP for the PEIR. Comments received addressed issues, including requesting changes to the proposed Ecosystem Amendment language, protecting tribal water resources, ensuring that the PEIR analysis included the other Delta Plan chapters, climate change, cumulative impacts, state and federal water operations, potential impacts to agriculture and other non-ecosystem projects, and the public trust doctrine, among other issues. The issues raised in these comments were addressed in some cases as revisions to the draft project description (the proposed Ecosystem Amendment) as well as informing the scope of the Draft PEIR.

Approach to the Draft PEIR

The Draft PEIR assumes that the Delta Plan and the proposed Ecosystem Amendment are implemented and achieve their desired outcomes, regardless of whether they are expressed as policies, recommendations, or performance measures.

The Draft PEIR identifies potentially significant impacts in the resource areas of aesthetics; agriculture and forestry resources; air quality; biological resources (aquatic and terrestrial); cultural resources; geology, soils, and mineral resources; greenhouse gas emissions; hazards and hazardous materials; hydrology and water quality; land use and planning; noise; recreation; transportation; tribal cultural resources; utilities and public services; and wildfire. Many impacts in the Draft PEIR are identified as significant and unavoidable because the site-specific details of projects to be implemented by other entities are not known at this time and because proposed mitigation measures may not reduce impacts to a less than significant level. Additionally, the implementation of mitigation measures would be within the responsibility of other agencies.

The Draft PEIR includes many of the same mitigation measures as the 2013 Delta Plan PEIR. Minor revisions to some of the previously adopted measures are proposed to reduce or avoid the significant impacts of the proposed Ecosystem Amendment or to reflect updated best management practices. The revised mitigation measures are equally effective as the 2013 mitigation measures and would not result in any new or substantially more severe impacts.

As required by CEQA, a reasonable range of alternatives to the proposed project were evaluated in the PEIR:

- the required *No Project Alternative*, consists of the existing conditions at the time the NOP was published, as well as what would be reasonably expected to occur in the foreseeable future. Thus, the No Project Alternative consists of the continued implementation of the Delta Plan as it stands today.
- *Alternative 1, Agricultural Working Lands Protection Emphasis*, assumes new ecosystem restoration projects would not occur on existing agricultural working lands or on lands suitable for farming (lands designated as Prime Farmland, Farmland of Statewide and Local importance, and Unique Farmland in the Department of Conservation's Farmland Mapping and Monitoring Program). As a result, Alternative 1 would reduce impacts to agricultural resources on about 50 percent of land in the Delta.
- *Alternative 2, Reduced Waterside Restoration*, would not promote channel widening and levee setback projects. Levee-related construction activities would mostly occur along existing levee footprints and would be less likely to include expanded or restored floodplains or improved waterside riparian habitat.
- *Alternative 3, Reduced Restoration Footprint Emphasis*, would reduce the proposed project footprint by reducing target restoration acreages. As a result, the number of restoration acres would be less when compared to the

proposed project which would lead to reduced construction impacts across multiple resource issues and reduced agricultural land conversion due to less agricultural land being converted to restoration.

CEQA requires the identification of the environmentally superior alternative, which is the alternative that has the least significant impacts on the environment. Alternatives 1, 2, and 3 would reduce the magnitude of construction impacts across multiple resource issues and would reduce the amount of agricultural land conversion because the number, size, and location of restoration projects would be reduced compared to the proposed Ecosystem Amendment. Alternative 3 would be the environmentally superior alternative because it would result in 50 percent fewer total acres restored compared to the proposed project which would reduce construction and agricultural conversion impacts to a degree greater than that offered under Alternatives 1 and 2. Alternative 3 would result in similar significant and unavoidable construction and agricultural conversion impacts that are reduced in magnitude when compared to the proposed Ecosystem Amendment. All alternatives would only partially achieve the project objectives, and none would achieve the project objectives as well as the proposed Ecosystem Amendment.

Draft PEIR Workshop and Comment Period

Written comments on the Draft PEIR environmental analyses are requested and invited from responsible agencies, organizations, and interested parties. A 64-day public review period for this Draft PEIR extends from Monday, September 27, 2021, through 5:00 p.m. on Tuesday, November 30, 2021. Written comments should be postmarked by Tuesday, November 30, 2021, and mailed or emailed to:

Harriet Lai Ross
Assistant Planning Director
Delta Stewardship Council
715 P Street, 15-300
Sacramento, CA 95814
Email Address: ecosystemamendment@deltacouncil.ca.gov

Today the Council will hold a workshop to receive oral comments on the Draft PEIR. These comments, along with written comments submitted by November 30, 2021, will be considered in the preparation of the Final PEIR.

NEXT STEPS

Council staff will prepare a Final PEIR, which will include responses to comments. Staff plans to present the Final PEIR to the Council for consideration and potential certification before considering approval of the proposed Ecosystem Amendment in Spring 2022. At the same meeting, subject to the Council's certification of the

Final PEIR and approval of the Ecosystem Amendment, staff will request authorization to initiate the rulemaking process for the regulatory portion of the Ecosystem Amendment. If the Council certifies the Final EIR, approves the Ecosystem Amendment, and authorizes the initiation of rulemaking, Council staff will initiate an Administrative Procedures Act (APA) rulemaking process for the new and revised regulations proposed in the Ecosystem Amendment. Opportunities for public involvement will be provided throughout these processes.

FISCAL INFORMATION

Not applicable.

LIST OF ATTACHMENTS

- Attachment 1: Notice Of Availability (available at <https://deltacouncil.ca.gov/pdf/delta-plan/2021-09-27-noa-draft-peir-eco-amendment.pdf>)
- Attachment 2: Draft PEIR (available at <https://deltacouncil.ca.gov/pdf/delta-plan/2021-09-27-draft-peir-eco-amendment.pdf>)
- Attachment 3: Draft PEIR Appendices A through E (available at <https://deltacouncil.box.com/s/u574p1rc558xbbkxjsbnobz2ihl6gtaa>)

CONTACT

Jeff Henderson
Deputy Executive Officer, Planning and Performance Division
Phone: (916) 902-6490

Harriet Lai Ross
Assistant Planning Director
Phone: (916) 838-9731