

DEC 2023

Agenda Item: 8
Meeting Date: December 14, 2023

Publishing of Procedures Governing Appeals of Certifications of Consistency



Delta
Stewardship
Council

A CALIFORNIA STATE AGENCY

Overview

- Background
- Proposed Modifications and Additions
- Staff Recommendation



Background

- Council establishes and maintains Administrative Procedures Governing Appeals for Covered Actions (Appeals Procedures).
- Exempt from the Administrative Procedures Act rulemaking process described in the Government Code (section 11340) (Water Code section 85225.30)
- Appeals Procedures first adopted in September 2010 and recently updated by the Council in October 2022 – but not published in California Code of Regulations (CCR)
- Appeals Procedures provide guidelines and requirements pertaining to wide variety of Council activities, including appeals of covered actions.

Background, cont'd

- Staff recommends Council publish the exempt procedures directly concerning Appeals in CCR
 - Find all of Council's enforceable regulations in one place
 - More accessible to public and agency staff
 - More easily citable in appeals determinations
- Proposal includes minor modifications
 - Particular organization and formatting to meet CCR requirements
 - Definitions found in existing procedures, but not defined
- Would update Title 23, Section 5001 (Definitions) and add new Sections 5020 to 5035 (Appeals Procedures)

Proposed Modifications and Additions

(See Resolution 2023-09,
Attachments 1 and 2)

- *Amend Section 5001 to add definitions*
 - Define “certifying agency” and “person”
- *Add Sections 5020-5035 to codify Appeals Procedures*
 - Includes non-substantive technical edits and reorders sequence of rules
- Remaining procedures would be retained in Council’s informal Appeals Procedures



Proposed Modifications and Additions (See Resolution 2023-09, Attachments 1 and 2)

CCR Section	Title	Existing Rule(s)
5020	Scope	1
5021	Filings and Mailings	30
5022	Filing of Appeal	4, 5, 6, 7
5023	Notice of Appeal	8
5024	Ex Parte Communications	26, 27, 28
5025	Additional Information from Appellant	9
5026	Supplemental Record	10
5027	Schedules and Oral Presentations	11

Proposed Modifications and Additions, cont'd (See Resolution 2023-09, Attachments 1 and 2)

CCR Section	Title	Existing Rule(s)
5028	Delta Protection Commission Comments	11.1
5029	Documentation and Written Submissions	12
5030	Hearing	13
5031	Consolidation	31, 32
5032	Official Notice in a Hearing	29
5033	Issuance of Decision	14
5034	Implementation of Covered Action	15
5035	Appeal Following Remand	15.1

Staff Recommendation

- *Adopt Resolution 2023-09 (Staff Report Attachment 1) to:*
 - Approve and adopt proposed minor amendments to the Appeals Procedures
 - Direct and authorize the Executive Officer, or delegee, to complete non-substantive changes to publish the finalized amended Administrative Procedures Governing Appeals with the Secretary of State for inclusion in the CCR and make available on Council website.

Thank you

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