

DELTA STEWARDSHIP COUNCIL

RESOLUTION 2019-2

PUBLIC HEARING ON PROPOSED RULEMAKING FOR SECTION 5001
(DEFINITIONS) AND SECTION 5012 (DELTA LEVEES INVESTMENT STRATEGY)
(DELTA PLAN RR P1) OF TITLE 23 OF THE CALIFORNIA CODE OF REGULATIONS
(GOVERNMENT CODE §11346.8)

WHEREAS, the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Water Code section 85000 et seq., directs the Delta Stewardship Council (Council) to develop an enforceable, comprehensive, long-term management plan for the Sacramento-San Joaquin Delta and the Suisun Marsh (collectively, the Delta) referred to as the Delta Plan; and

WHEREAS, pursuant to Water Code section 85300(a) the Delta Plan must further the “coequal goals”; and

WHEREAS, the Delta Reform Act defines the coequal goals to mean the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem (Water Code §85054); and

WHEREAS, the Delta Reform Act further directs that the coequal goals must 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 (Water Code §85054); and

WHEREAS, the Delta Reform Act requires the Delta Plan to “attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments” (Water Code §85035(a)); and

WHEREAS, the Delta Reform Act requires the Council, “in consultation with the Central Valley Flood Protection Board,” to “recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees” (Water Code §85036); and

WHEREAS, on May 16, 2013, the Council, as lead agency under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., certified the Final Delta Plan Program Environmental Impact Report (State Clearinghouse No. 2010122028) and approved the Delta Plan; and

WHEREAS, on May 17, 2013, the Council adopted regulations implementing the Delta Reform Act, including California Code of Regulations, title 23, section 5001 (Definitions) (Cal. Code Regs., tit. 23, § 5001) ("Section 5001") and California Code of Regulations, title 23, Section 5012 (Prioritization of State Investments in Delta Levees and Risk Reduction) (Cal. Code Regs., tit. 23, § 5012) (Delta Plan Policy RR P1) ("Section 5012"); and

WHEREAS, the Council had, in consultation with the appropriate federal, state and local agencies as required by Water Code 85300(b), developed the Delta Plan Amendments; and

WHEREAS, on April 26, 2018, the Council adopted Resolution No. 2018-1 ("2018 Resolution") whereby the Council, as lead agency under CEQA, certified the Final Delta Plan Amendments Program Environmental Impact Report (State Clearinghouse No. 2017032048) ("PEIR"), adopted Findings and a Statement of Overriding Considerations, adopted and incorporated into the Delta Plan Amendments all of the new mitigation measures identified in the PEIR and in the Findings, adopted the Mitigation Monitoring and Reporting Program for the Delta Plan Amendments, and adopted the Delta Plan Amendments; and

WHEREAS, the Delta Plan Amendments included "pursuant to section 85305 and 85306 of the Water Code, updated and new Delta Plan recommendations and regulations regarding strategic investment in Delta levees for risk reduction, and emergency preparedness, response and recovery, all based on best available science, including repealing interim Delta Plan policy RR P1 and adopting new Delta Plan policy RR P1, referred to as the Delta Levee Invest[ment] and Risk Reduction Strategy ("DLIS")"; and

WHEREAS, the DLIS priorities adopted in the Delta Plan Amendments and certified in the PEIR are the same as in this proposed amendment, and the proposed amendment is within the scope of the project analyzed in the certified PEIR and approved by the Council in the Resolution, and the PEIR adequately describes the proposed amendment for purposes of CEQA; and

WHEREAS, in the 2018 Resolution, the Council, among other things, directed the Executive Officer to “incorporate the errata; any other non-substantive, technical changes identified and directed by the Council at the April 26, 2018 meeting; and any other non-substantive, technical changes and formatting edits identified subsequent to that meeting”; and

WHEREAS, in the 2018 Resolution, the Council, among other things, also directed the Executive Officer to “initiate rulemaking to repeal Delta Plan policy RR P1 (Cal. Code Regs., tit. 23, § 5012), to adopt Delta Plan policy RR P1 as shown in Attachment 3 hereto (revised Delta Plan Chapter 7), to amend the Delta Plan Glossary (Cal. Code Regs., tit. 23, § 5001) to add the new glossary terms from new Delta Plan policy RR P1, ... and to make any technical changes required by the Office of Administrative Law in order to achieve any of the forgoing”; and

WHEREAS, as directed in the 2018 Resolution, the Executive Officer, with the assistance of staff, incorporated the errata; any other non-substantive, technical changes identified and directed by the Council at the April 26, 2018 meeting; and any other non-substantive, technical changes and formatting edits identified subsequent to that meeting, and the Council has considered such changes; and

WHEREAS, the Council has initiated formal rulemaking under the California Administrative Procedure Act by filing a Notice of Proposed Adoption, published in the California Regulatory Notice Register on July 5, 2019, and received and considered comments from the public during a 45-day public review period that began on July 5, 2019, and ended on August 19, 2019; and

WHEREAS, on August 22, 2019, the Council held a duly noticed public hearing to receive public comments on the proposed amendment, and reviewed and considered the information contained in the staff report pertaining to the proposed amendment, attachments to the staff report, and all other pertinent documents, and all written and oral statements received at or prior to the public hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE DELTA STEWARDSHIP COUNCIL THAT:

1. The Council hereby finds the foregoing recitals to be true and correct and incorporates them herein; and

2. The Council authorizes and directs the Executive Officer, or designee(s), to prepare written responses to the public comments received by the Council on the proposed rulemaking; prepare other pertinent documents, including a Final Statement of Reasons; incorporate any changes identified by the Council at the August 22, 2019 meeting, and any other changes as necessary subsequent to that meeting; present the proposed regulations, including any such changes and the related pertinent documents, to the Council for consideration and possible adoption at a future Council meeting; and to take such actions and steps as are necessary to effect the intent of this Resolution.

CERTIFICATION

On a motion by Council member _____, seconded by Council member _____, and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by a vote of ____ in favor to ____ opposed at a regular meeting of the Delta Stewardship Council on August 22, 2019.

Dated: August 22, 2019

Shalita Brydie

Clerk of the Board of the Delta Stewardship Council