

# Covered Actions Certification of Consistency and Appeals Training



DELTA STEWARDSHIP COUNCIL

# Agenda

1. Welcome
2. Overview of the Delta Plan
3. What is a Covered Action – what kinds of projects are regulated?
4. What does it mean to be consistent with the Delta Plan?
5. What should I do if I disagree?
6. How does all this relate to the Bay Delta Conservation Plan (BDCP)?
7. Concluding Remarks

# Overview of the Delta Plan

-  2009 Delta Reform Act created Council and required comprehensive, long-term management plan for the Delta
-  Law provided specific direction for what Plan should include
-  Enforceable regulatory authority, requires state and local agencies to be consistent with the Delta Plan (covered actions)
-  The Delta Stewardship Council unanimously adopted the Delta Plan on May 16, 2013
-  Office of Administrative Law subsequently approved the Delta Plan's 14 regulatory policies becoming legally-enforceable regulations on September 1, 2013

# What is a Covered Action? What kinds of projects qualify and who determines that?



# A Covered Action



Defined by Water Code section 85057.5

1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
2. Will be carried out, approved, or funded by the state or a local public agency.
3. Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.
4. Is covered by one or more provisions of the Delta Plan



Water Code provides broad and specific statutory exemptions; Council provides some specific definitions for what actions won't have a significant impact.

# Provisions of the Delta Plan

- 🌊 14 regulatory policies of the Delta Plan
  - 13 technical policies used to determine if an activity is a covered action.
  - 1 general policy that applies to all covered actions.
- 🌊 Technical policies have consistent structure identifying targeted activities:
  - (b) For purposes of the Water Code section 85057.5(a)(3) and Section 5001(j)(1)(E) of this Chapter, this policy covers *a proposed action to export water from, transfer water through, or use water in the Delta but does not cover any such action unless one or more water suppliers would receive water as a result of the proposed action.*

# *Covered Action Determination*

-  Is made by the state or local agency undertaking, approving or funding the proposed activity
-  Is not appealable to the Council, but may be subject to judicial review

# Consistency – It's a self certification



# *Covered Action Consistency*

-  State and local agencies responsible for covered actions must file a certification of consistency with Council.
-  It is a self-certification process.
-  Certifications of consistency must include detailed findings for the regulatory policies implicated by the activity.
-  Council will post certifications, upon receipt, for a 30 day public review period.

# Appeals



# *The Public's role in Covered Actions*

## *Water Code section 85225 (et. seq.)*

-  Review the certification of consistency and the detailed findings within 30 days.
-  Consider if the covered action is consistent with the regulatory policies of the Delta Plan.
-  If there is an inconsistency, will the covered action have a **significant adverse** impact on either of the coequal goals or a government-sponsored flood control program?
-  Should you file an appeal?
-  The Council will hold a hearing and determine if the action is consistent with the Delta Plan.

# *Appeal of a Covered Action*

## *-There is a formal process-*

-  Council has developed administrative procedures governing appeals.
-  Appeals must be complete and must be submitted electronically.
-  Council has developed web page to assist.
-  Appeals can be dismissed without a hearing if incomplete or based on issue(s) outside Council's purview.

# Walk through Online Forms

The screenshot shows a web browser window displaying the Delta Stewardship Council website. The address bar shows the URL <http://coveredactions.deltacouncil.ca.gov/>. The page features the Delta Stewardship Council logo and a navigation menu with items like Home, The Council, Delta Plan, Science Program, Science Board, Get Involved, The Delta, Library, and News. A secondary navigation bar includes DELTA PLAN, P-EIR, DELTA PLAN REGULATIONS, PRGM PERFORMANCE, COVERED ACTIONS (which is underlined), and LITIGATION. The main content area has a sub-navigation bar with Home, Submitting a Certification of Consistency, Filing an Appeal, and Login. The text on the page explains that state or local agencies must submit a written certification to the Council before undertaking a covered action, and that a table for tracking these actions is available to the public. A box at the bottom of the content area states: "There are no certifications at this time."

[Home](#)   [Submitting a Certification of Consistency](#)   [Filing an Appeal](#)   [Login](#)

A state or local agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, are required to submit a written certification to the Council, with detailed findings demonstrating that the covered action is consistent with the Delta Plan. ([Water Code Section 85225](#)).

The table below is available to the general public for transparent tracking of a covered action certification or appeal. In addition, the on-line forms are available to assist state and local agencies in preparing the required certification and also assists the general public in the appeal process.

**There are no certifications at this time.**

# Walk through Online Forms

Home Submitting a Certification of Consistency **Filing an Appeal** Login

## Appeals Process

Per [Water Code Section 85225.3](#), the Council developed and adopted Administrative Procedures Governing Appeals, which can be found in [Appendix D](#) of the Delta Plan.

Any person, including any member of the Council or its Executive Officer, who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, that action will have a significant adverse impact on the achievement of one or both of the coequal goals or the Act or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the Council no later than 30 calendar days after that submittal. (Water Code Section [85225.10\(a\)](#), [85225.15](#), [85225.30](#)) In order to submit an on-line appeal with the Council, the appellant must first register for a user account with this system (Select the login tab above to register). If you are having trouble registering for a user account, please contact the Council at (916) 445-0513.

If you have already registered, please login above to review, create, and submit an appeal.

It is recommended that the appellant collect all the documentation related to the appeal in advance of using the on-line form. The appeal shall clearly and specifically set forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan. (Water Code Section [85225.10\(b\)](#)).

Once the on-line appeal form has been initiated, the user may save the work in progress without having to complete and submit the form. The user may return at another time to make edits to the form, complete the form or submit the completed appeal to the Council. PLEASE NOTE: Once the user has clicked the submit button – the user will not have the option of making additional edits, but if necessary, the user will have the option of withdrawing the submitted appeal.

If an appeal is submitted within the 30 calendar days (as determined by the Council) of the submission of a certification of consistency, but Council staff has not yet determined the appeal to be valid, nor has Council staff stamped the appeal as "Filed" within the 30 calendar days, then the appeal is deemed "submitted", but not "filed". ALL APPEALS SHOULD BE SUBMITTED IN THE SYSTEM WITH SUFFICIENT AMOUNT OF TIME TO ALLOW FOR STAFF VALIDATION PROCESS.

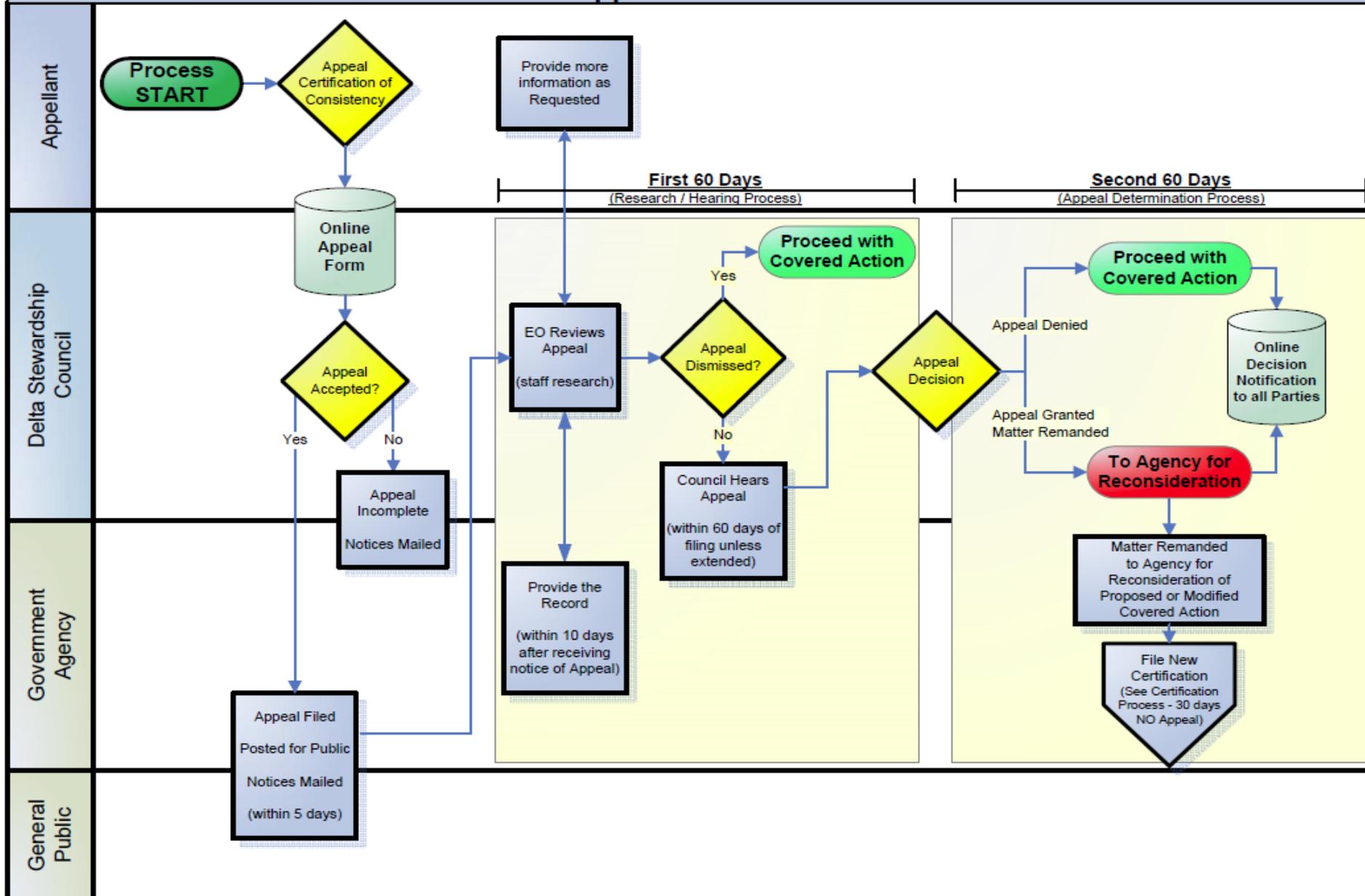
Please [click here](#) to review the [Appeals process flow chart](#) for further details about the steps involved with submitting an appeal.

When you have logged in, please follow these steps to begin:

1. Go to the home tab above
2. Click on the specific covered action title for appeal
3. Click on "Submit an Appeal" button. (Only available within 30 calendar days of Certification of Consistency submission)



## Appeals Process



# The BDCP



# *BDCP and the Delta Plan*

-  If the BDCP is successful, it will be incorporated into the Delta Plan per Water Code section 85320 (e).
-  The BDCP cannot be appealed to the Council as inconsistent with the Delta Plan.
-  The determination by Fish and Wildlife that the BDCP met the requirements of Water Code Section 85320 may be appealed to the Council.

# Questions?

[www.deltacouncil.ca.gov](http://www.deltacouncil.ca.gov)



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