

DELTA STEWARDSHIP COUNCIL

RESOLUTION 2020-01

TO AUTHORIZE THE EXECUTIVE OFFICER TO ISSUE A NOTICE OF DECISION NOT TO PROCEED ON PROPOSED RULEMAKING FOR SECTION 5001 (DEFINITIONS) AND SECTION 5012 (DELTA LEVEES INVESTMENT STRATEGY) OF TITLE 23 OF THE CALIFORNIA CODE OF REGULATIONS (GOVERNMENT CODE, § 11347)

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: 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” (Wat. Code, § 85305(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” (Wat. Code, § 85306); and

WHEREAS: The Delta Reform Act requires the Delta Plan be “based on the best available scientific information” (Wat.Code, § 85308); 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 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) 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); and

WHEREAS: The Council has undertaken a proceeding to amend the Delta Plan and applicable regulations as follows:

a. 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, including Delta Plan, Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta, as amended by the Delta Levees Investment and Risk Reduction Strategy (“Chapter 7”) (See Attachment 1); and

b. Chapter 7 describes priorities for state investment in levees and includes replacing interim Delta Plan Policy RR P1 with a new Delta Plan Policy RR P1 (See Attachment 2, Chapter 7, pp. 26-30, 41-45); and

c. In the 2018 Resolution, the Council, among other things, directed the Executive Officer to initiate rulemaking to repeal existing Delta Plan Policy RR P1 (Cal. Code Regs., tit. 23, § 5012), to adopt amended Delta Plan Policy RR P1, to amend the Delta Plan Glossary 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; and

d. The Council 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 comments from the public during a 45-day public review period that began on July 5, 2019, and ended on August 19, 2019; and

e. On August 22, 2019, the Council held a duly noticed public hearing to receive public comments on the proposed regulation, and authorized and directed the Executive Officer, or designee(s), to prepare written responses to the public comments received by the Council on the proposed rulemaking; to prepare other pertinent documents; and to take such actions and steps as are necessary to effect the intent of Resolution No. 2019-04 (Resolution No. 2019-04) (Attachment 3).

WHEREAS: On June 10, 2019, the California Department of Water Resources published new Light Detection and Ranging (or LiDAR) elevation imaging of the Delta and Suisun Marsh for 2017, which provides updated information about the height of levees and island floors; and

WHEREAS: The 2017 LIDAR imaging presents new information that must be further

evaluated to inform whether the priorities identified in Delta Plan Policy RR P1, and proposed regulation, need to be modified because of changed levee or island conditions; and

WHEREAS: Because evaluation of new information is needed to better inform Delta Plan Policy RR P1 and the proposed regulation, the Council will not complete the rulemaking within one year of filing the Notice of Proposed Adoption, published in the California Regulatory Notice Register on July 5, 2019; therefore, the Council needs to issue a Notice of Decision Not to Proceed pursuant to Government Code section 11347; and to amend Delta Plan, Chapter 7, to delete part of pages 26-30 and 41-45 of Chapter 7 describing priorities for state investment in levees and Delta Plan Policy RR P1, as amended in 2018, and to restore the version of Delta Plan Policy RR P1 adopted in 2013; and

WHEREAS: The proposed Notice of Decision Not to Proceed and rescinding Chapter 7 discussion of Delta Plan Policy RR P1 as amended in 2018, and a return to Delta Plan Policy RR P1 as adopted in 2013 until new information can be evaluated is exempt from environmental review pursuant to CEQA Guidelines section 16061(b)(3) because “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The 2013 text for policy RR P1 that will be restored to the Delta Plan is the same as the existing regulation in California Code Regulations, title 23, section 5012; therefore, there will be no change in the regulations applicable to covered actions at this time and no potential to have a significant effect on the environment. In addition, planning and feasibility studies for possible future actions are exempt from environmental review pursuant to CEQA Guidelines section 15262.

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 exercises its independent judgment and determines that the proposed Notice of Decision Not to Proceed and rescinding Delta Plan Policy RR P1 as amended in 2018, and a return to Delta Plan Policy RR P1 as adopted in 2013 until new information can be evaluated is exempt from environmental review pursuant to CEQA Guidelines sections 15061(b)(3) and 15262; and
3. To allow for further evaluation, the Council hereby amends Chapter 7, of the Delta Plan, to delete part of pages 26-30 and 41-45 and restore text previously adopted in 2013 but removed from the Delta Plan in 2018 (Attachment 4); and
4. The Council authorizes the Executive Officer, or its designee, to prepare

and submit to Office of Administrative Law a Notice of Decision Not to Proceed (Attachment 5), which would terminate the rulemaking proceedings called for in paragraph 9 of 2018 Resolution, pursuant to Government Code section 11347; and

5. Directs Council staff to evaluate the new information to determine if further modifications to Chapter 7 are needed, and report back to the Council at a future date.

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 March 26, 2020.

Dated: March 26, 2020

Shalita Brydie

Clerk of the Board of the Delta Stewardship Council

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