

DELTA STEWARDSHIP COUNCIL

RESOLUTION

2022-08

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 sections 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, on April 26, 2018, the Council adopted Resolution 2018-1 to amend the Delta Plan (2018 Delta Plan Amendments) at a duly noticed public meeting; and

WHEREAS, the 2018 Delta Plan Amendments included 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, which describes priorities for state investment in levees and includes replacing interim Delta Plan Policy RR P1 with a new Delta Plan Policy RR P1 to implement the Delta Levees Investment Strategy (DLIS); and

WHEREAS, by adopting Resolution 2018-1, 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, and adopted the Mitigation Monitoring and Reporting Program for the Delta Plan Amendments, and

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

WHEREAS, the 2017 LiDAR imaging presented new information that needed to be further evaluated to inform whether the priorities identified in the 2018 DLIS should be modified because of changed levee or island conditions; and

WHEREAS, on March 26, 2020, the Council adopted Resolution 2020-01, to direct staff to evaluate the new 2017 LiDAR imaging information to determine if further modifications to Chapter 7 or the DLIS priorities and modified preliminary language to amend the interim Delta Plan Policy RR P1 (Modified Preliminary Language for RR P1) were needed and report back to the Council at a future date; and

WHEREAS, on March 26, 2020, the Council amended Delta Plan, Chapter 7, to, among other things, delete part of pages 26-30 and 41-45 describing priorities for state investment in levees and the 2018 DLIS; and

WHEREAS, following stakeholder input, on May 21, 2021, Council staff reported the results of the evaluation of the 2017 LiDAR imaging and presented proposed revisions to the DLIS priorities and Modified Preliminary Regulatory Language for RR P1 to the Council and committed to return to the Council at a future date for authorization to reinitiate rulemaking; and

WHEREAS, staff presented proposed revisions to the DLIS priorities and Modified Preliminary Regulatory Language for RR P1 to the Council at the regularly scheduled Council meeting on August 26, 2021; and

WHEREAS, at the August 26, 2021, meeting, the Council adopted Resolution 2021-02 which, among other things, approved the Addendum to the 2018 Delta Plan Amendments Program Environmental Impact Report for the staff-recommended DLIS prioritization and approved the staff-recommended DLIS Modified Preliminary Draft Regulatory Language for purposes of rulemaking to amend Delta Plan Policy RR P1, and directed staff to initiate rulemaking to amend Delta Plan Policy RR P1, set forth in 23 CCR section 5012 (Prioritization of State Investments in Delta Levees and Risk Reduction) and the regulation in 23 CCR section 5001 (Definitions); and

WHEREAS, the Council filed a Notice of Determination for the PEIR Addendum with the Governor's Office of Planning and Research State Clearinghouse on August 27, 2021 and a 30-day statute of limitations expired without challenge; and

WHEREAS, 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 August 26, 2022 (Office of Administrative Law File No. Z2022-0816-07), commencing the public comment period; and

WHEREAS, on September 23, 2022, the Council published in the California Regulatory Notice Register a Notice of Extension of Written Comment Period and Rescheduled Hearing due to corrected regulatory text (Office of Administrative Law File No. Z2022-0909-01), which consists of the proposed regulatory language that is Attachment A to this Resolution and Appendix P that is Attachment B to this Resolution, and which is collectively referred to herein the "Proposed DLIS Rulemaking" and is incorporated herein as if fully set forth, extending the public comment period through November 16, 2022 ; and

WHEREAS, on November 17, 2022, the Council held a duly noticed public hearing to receive additional public comments on the Proposed DLIS Rulemaking) and considered the comments received.

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 has considered the public comments received on the Proposed DLIS Rulemaking to amend Section 5001 and Section 5012 of Title 23 of the California Code of Regulations as set forth in Attachment A (proposed regulatory language) and Attachment B (Appendix P) to this Resolution, which are incorporated herein as if fully set forth; and
3. The Council authorizes the Executive Officer, or designee(s), to:
 - a. prepare written responses to the public comments received by the Council on the Proposed DLIS Rulemaking; and
 - b. prepare other pertinent documents, including a Final Statement of Reasons (FSOR); and
 - c. incorporate changes to the Proposed DLIS Rulemaking identified by the Council at the November 17, 2022, public hearing and that Council staff recommend or may be in response to public comments received on the Proposed DLIS Rulemaking; and
 - d. make such non-substantive changes to the Proposed DLIS Rulemaking as are necessary to effect the intent of this Resolution; and
 - e. return to the Council at a future meeting to present the Proposed DLIS Rulemaking, including any such changes, and the related pertinent documents, including the FSOR, to the Council for consideration and possible adoption.
4. The Council further authorizes and directs the Executive Officer, or designee(s), to take such actions and steps as are necessary to effect the intent of this Resolution.

LIST OF ATTACHMENTS:

Attachment A: Proposed Amendment to Existing Regulation 23 CCR sections 5001, and 5012

Attachment B: Proposed Delta Plan Appendix P

CERTIFICATION

On a motion by Councilmember _____, seconded by Councilmember _____ and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by the following vote at a regular meeting of the Delta Stewardship Council on November 17, 2022.

Madueño _____

Damrell _____

Lee _____

Nottoli _____

Smith _____

Zingale _____

Dated: November 17, 2022

Rebecca Barger

Clerk of the Board of the Delta Stewardship Council