



## Summary and Responses to Comments Received During the 15 Day Public Comment Period

After the conclusion of the initial 50-day comment period, the Council initiated a 15-day comment period to solicit public comments on proposed changes to specific amendments that were determined to need further consideration. During the 15-day comment period, only one written comment was received. The Council has summarized the comment and provided a response to the comment below.

**Table 1. Commenters Who Provided Written Comments During the Comment Period from December 24, 2024, through January 7, 2025.**

<b>Number</b>	<b>Name</b>	<b>Affiliation</b>
01	Bruce Blodgett	Delta Protection Commission

### Response to Written Comments

#### *Summary of Comment Received*

The Council received one written public comment by the close of the 15-day public comment period from the Delta Protection Commission. A copy of the letter is provided in Attachment 1 to this staff report.

#### *Response to Comment Received*

The comments offered by the Delta Protection Commission do not touch upon the additional language addressed within the 15-day public comment period, and, thus, are out of scope. No response from the Council is required under the Administrative Procedure Act.

## DELTA PROTECTION COMMISSION

Diane Burgis, Chair (Contra Costa County Board of Supervisors)  
2101 Stone Blvd., Suite 200, West Sacramento, CA 95691  
(916) 375-4800 | [delta.ca.gov](http://delta.ca.gov)

---



January 7, 2025

Eva Bush, Environmental Program Manager  
Delta Stewardship Council  
715 P Street, 15-300  
Sacramento, CA 95814

Transmitted electronically via email to: [ecosystemrulemaking@deltacouncil.ca.gov](mailto:ecosystemrulemaking@deltacouncil.ca.gov)

Dear Ms. Bush,

I am providing comments on the proposed rulemaking the Delta Stewardship Council (Council) is conducting to amend their regulations that govern certifications of consistency with the Delta Plan. The following comments represent my views and the views of my staff and have not been formally endorsed by the Delta Protection Commission itself.

The Delta Protection Commission (Commission) is a California state agency created by the Delta Protection Act of 1992, which declared “the Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources, and it is the policy of the state to recognize, preserve and protect those resources of the Delta for the use and enjoyment of current and future generations” (California Public Resources Code (PRC) Section 29701). My comments reflect the role of our agency in pursuing that policy directive.

### Concerns Regarding Setback Levees

The existing regulations prioritize the consideration of setback levees to increase floodplains and riparian habitat (Cal. Code Regs., Title 23, Section 5008). The proposed change in the rulemaking goes further than the existing regulatory text. The amended regulation for the same section reads as follows: “A certification of consistency for a project subject to this section that is located in the setback levee evaluation areas depicted in Appendix 8A shall evaluate, and the levee project **where feasible shall incorporate**, alternatives that would increase floodplains and riparian habitats” (emphasis added).

We are concerned with this regulation for a variety of reasons. First, considered in the context of the goal of increasing floodplain and riparian habitat, this requirement will diminish

landside agriculture, where it is implemented. Preservation of agriculture is a co-equal goal of the Delta Reform Act (Water Code Section 85020(b)). Preservation of agriculture is also a priority under the Delta Protection Act (PRC Section 28702(b)). To the extent that setback levees will encroach on agricultural land uses and diminish that acreage, this policy will result in the reduction of agricultural land use. We believe this is inconsistent with the policy goal of protection of agriculture while also restoring habitat adopted by the State of California. Agriculture is an important driver of the Delta economy, and the Delta Protection Act also directs the Delta Protection Commission to work to enhance the sustainability of that economy (PRC Section 29759). In addition, the reduction of agricultural land use will diminish the revenues generated from agriculture. This has several associated consequences. First, it reduces the revenues available to local landowners that are subject to special benefit assessments required by reclamation districts and also reduces the tax base of the region. This means the reduction in acreage by necessity diminishes funds available for levee maintenance and other public services that depend on taxes. Second, the reduction in agricultural land use has an adverse impact on the sustainability of the Delta economy. A dollar of agricultural crop revenue generates three to five times greater regional income than other leading revenue sources such as recreation or tourism (Delta Protection Commission 2012:274). Thus, the proposed regulation would contribute to the incremental loss of agricultural land and the reduction of economic sustainability in the Delta.

In stating that the project “*where feasible shall incorporate*” alternatives using setback levees, the Council may be imposing a substantive duty on covered actions subject to this section to either use setback levees or demonstrate infeasibility. Levee maintenance and upgrade work is already a highly regulated activity that requires a significant level of expenditure for permitting and environmental review above and beyond capital costs that go directly to physical improvements. A typical levee project in the Delta may be subject to other alternatives analysis requirements such as the duty to consider alternatives under the California Environmental Quality Act (Cal. Code Regs., Title 14, Section 15126.6). In addition, where an individual permit is needed for fill of Waters of the United States, the U.S. Army Corps of Engineers also conducts a rigorous screening of alternatives (40 C.F.R. Section 230.10). These processes are, in turn, only a small fraction of the total regulatory burden required for levee maintenance or upgrade projects. The levee maintaining agency thus faces a formidable burden of compliance with a range of laws that may require different and conflicting substantive decisions. Because levee work is typically funded in large part via special benefit assessments imposed by reclamation districts, the cost of the additional regulatory burden of compliance will primarily be borne by local landowners subject to those assessments. Finally, this policy may require reclamation districts or other levee maintaining agencies to acquire relatively expensive landside real estate to accommodate a shift in the levee footprint to the landside to comply with your regulations.

### Concerns Regarding Urban Levee Projects

The proposed rulemaking also amends the requirements for certain urban levees (Cal. Code Regs., Title 23, Section 5008). The amended text reads *“a certification of consistency for a project subject to this section that is an urban levee improvement project in the cities of Sacramento or West Sacramento shall evaluate alternatives that would modify all or a portion of the original levee prism to physically expand the width of the channel.”* For similar reasons, we are concerned with the imposition of additional layers of regulation upon levee maintenance. The regulatory burden faced by levee maintaining agencies is already complex and formidable. In addition, levee projects that increase channel width may require acquisition of relatively expensive landside real estate that imposes additional costs beyond capital expenditures that go directly to the primary goal of providing flood protection.

Thank you for the opportunity to comment. We look forward to providing future input.

Sincerely,



Bruce Blodgett,  
Executive Director

CC: Diane Burgis, Chair  
Commissioners

**References Cited**

Delta Protection Commission. *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*. 2012. West Sacramento, California.