



## **ACTION ITEM**

Consideration and Possible Adoption of Regulations Relating to the Delta Ecosystem Restoration Management (Cal. Code Regs., tit. 23, § 5001 et seq.)

### Summary

Council staff proposes modifications to the proposed regulatory amendments to California Code of Regulations, title 23, sections 5001 to 5015, inclusive, and the addition of section 5005.1, Appendix 3A, Appendix 4A, and Appendix 8A (Office of Administrative Law File No. Z-2024-0318-02) considered and approved by the Council on August 22, 2024. These substantially related changes are proposed in response to comments received from the Office of Administrative Law (OAL) pursuant to the Administrative Procedure Act (Gov. Code, § 11340 et seq.) and were recently circulated for a required 15-day public comment period. Council staff recommends the Council adopt Resolution 2025-02, which would authorize Council staff to submit the proposed revisions as part of the rulemaking package to OAL.

### Background

On August 22, 2024, the Council adopted Resolution 2024-06, directing staff to finalize a rulemaking package for the Ecosystem Regulations and giving staff authority to make nonsubstantive changes to the adopted Ecosystem Regulations rulemaking package as were necessary to implement the resolution. Subsequently, Council staff submitted the rulemaking package to the Department of Finance (DOF) in August 2024, and following DOF's approval, submitted the rulemaking package to OAL on September 24, 2024.

Staff received comments from OAL on the rulemaking package on October 29, 2024, including, among other technical, nonsubstantive changes, comments recommending clarifying changes to the proposed regulatory language that are considered substantially related substantive changes requiring an additional 15-day

public comment period. The 15-day public comment period ran from December 24, 2024, through January 7, 2025.

The substantive changes to the proposed regulatory language include the changes to (1) the applicable feasible mitigation measures adopted by the Council on June 23, 2022, as the Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program of Appendix O and (2) adding definitions for “Deep Subtidal Elevation Band,” “Intertidal Elevation Band,” “Sea Level Rise Accommodation Band,” and “Shallow Subtidal Elevation Band” for the purposes of a state or local agency determining the appropriate elevations for ecosystem restoration projects.

The entire proposed regulatory text, including the additional nonsubstantive and substantive changes noticed in the 15-day public comment period, is contained in Attachment 1 to Resolution 2025-02:

**California Code of Regulations, title 23, sections 5001, 5003, 5004, 5005.1, 5007, 5008, 5009, 5010, 5012, 5013, 5014, and 5015, and Appendix 4A**

Proposed technical, nonsubstantive changes were added to conform with current regulatory language, update a cross reference to the definition of a “Covered Action,” insert boilerplate language for the effective date for some of the amended regulations, and make more clear a strikeout previously removing a cross reference.

**California Code of Regulations, title 23, section 5002**

Existing law, section 5002, incorporates by reference all applicable feasible mitigation measures adopted and incorporated into the Delta Plan. The mockup of those mitigation measures that were adopted and incorporated into the Delta Plan by the Council on June 23, 2022, was included.

**California Code of Regulations, title 23, section 5006**

Proposed definitions of “Deep Subtidal Elevation Band,” “Intertidal Elevation Band,” “Sea Level Rise Accommodation Band,” and “Shallow Subtidal Elevation Band” for this section were added for the purposes of a state or local agency determining the appropriate elevations for ecosystem restoration projects.

### Public Comments and Responses

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.

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.

### Requested Action

Council staff recommends the Council adopt Resolution 2025-02, which would adopt the proposed amendments to sections 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013, 5014, 5015, and the addition of section 5005.1, Appendix 3A, Appendix 4A, and Appendix 8A.

If the Council adopts the resolution, staff anticipates the proposed regulations would take effect on April 1, 2025, following OAL review.

### List of Attachments

Attachment 1: Comment letter received during the 15-day public comment period

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