

August 2024

Agenda Item 4 Date:
August 22, 2024

Ecosystem Rulemaking

Council Consideration of Proposed Regulations



**Delta
Stewardship
Council**

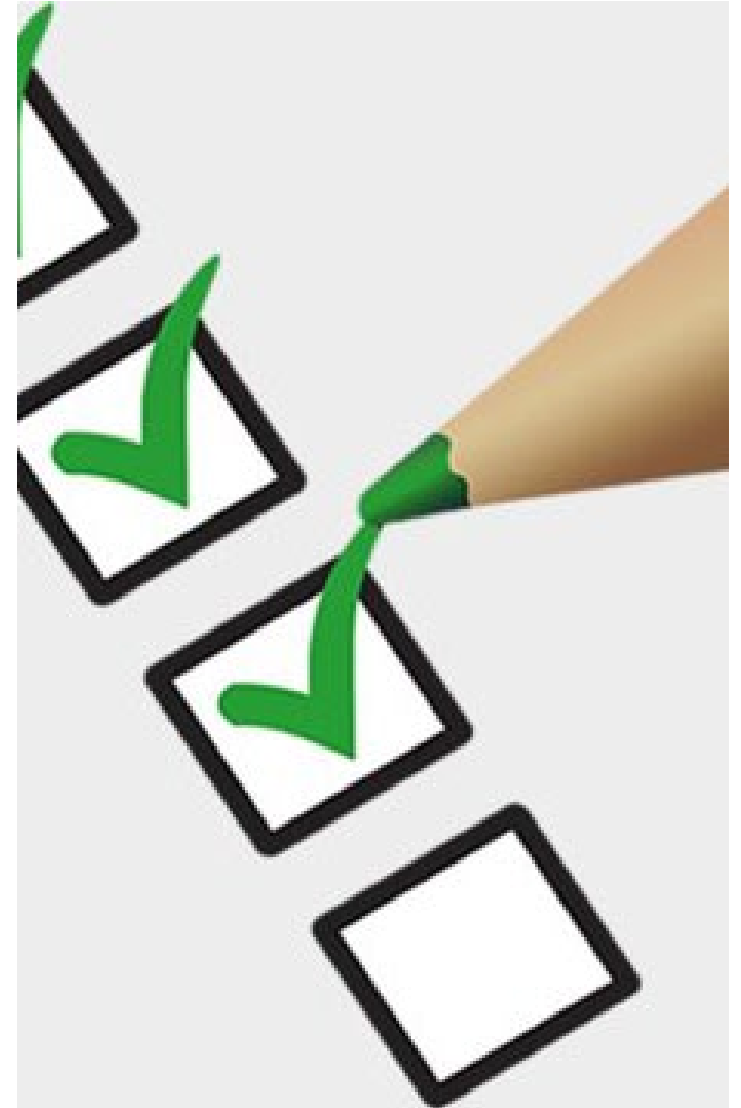
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Agenda

- Ecosystem rulemaking background
- Proposed regulatory amendment
- Rulemaking process and response to comments
- Staff recommendation

Summary of Requested Action

- The purpose of today's meeting is for the Council to **consider the adoption of proposed regulatory amendments** to Sections 5001-5015, inclusive, and the addition of Section 5005.1, Appendix 3A, 4A, and 8A to Title 23 of the California Code of Regulations
- Staff recommends that the Council approve Resolution 2024-06, by which the Council would **adopt proposed regulatory amendments** and **authorize staff to finalize and submit rulemaking documents** to the Department of Finance and Office of Administrative Law



Policy Background

The Delta Plan and BDCP

- Bay Delta Conservation Plan (BDCP) was expected to be incorporated into the Delta Plan
- In 2015 the BDCP was partially replaced by the EcoRestore initiative
- The Council determined an amendment was necessary

Ecosystem Delta Plan Amendment

- Based on three publicly reviewed scientific synthesis papers
- Updated core strategies, policies, recommendations, and performance measures to protect, restore and enhance the Delta ecosystem
- Adopted by the Council in June 2022

Public Engagement

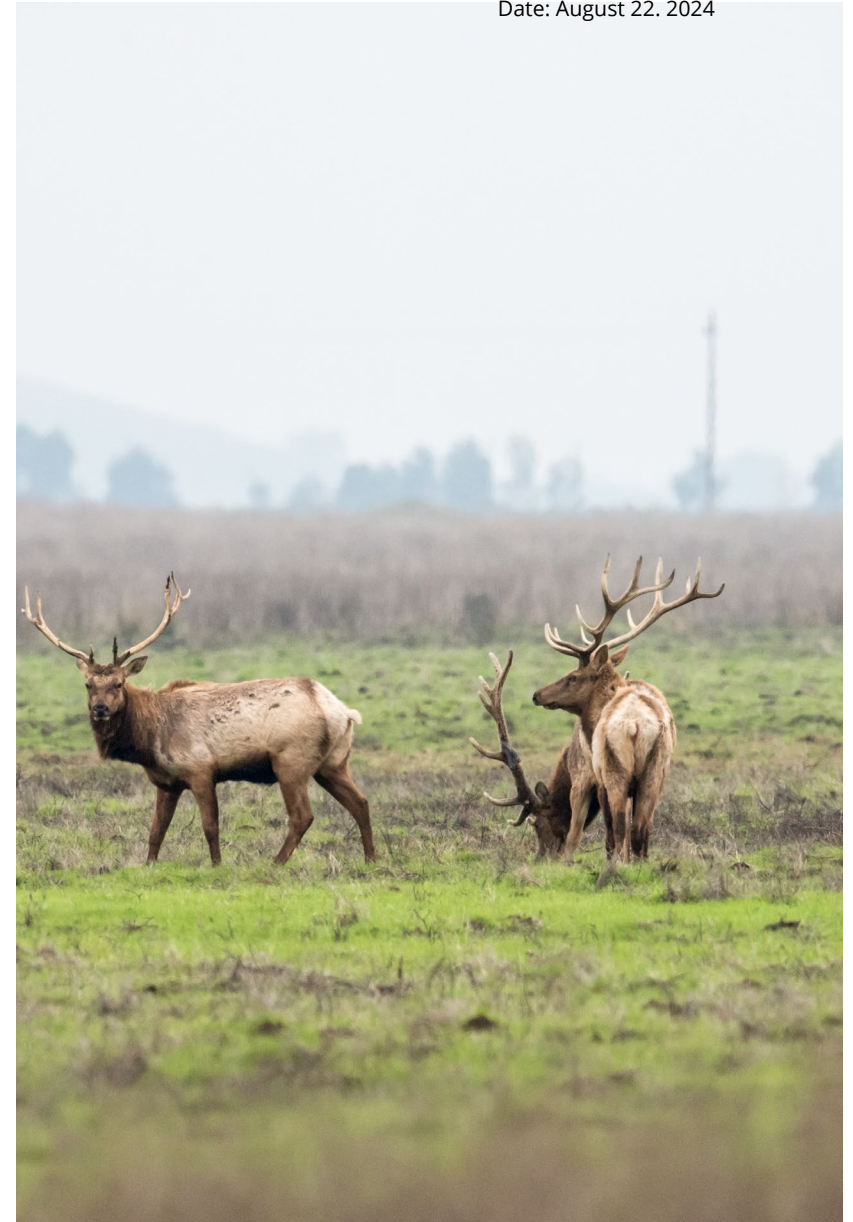
- Public Council and DISB meetings
- Convened interagency committee with State and Federal invitees, including DWR, CDFW, CNRA, CVFPP, DPC, State Parks, USFWS, and NOAA
- 20+ meetings with NGOs, county representatives, agricultural groups, water suppliers, State, Federal, and local agencies

Council Adoption

- Final PEIR certified, and Ecosystem Amendment adopted at June 2022 Council meeting
- The proposed regulations presented today are based on policies approved in the Ecosystem Amendment in June 2022

Rulemaking Process

- On **March 29, 2024**, the Council initiated the formal rulemaking process
 - Notice of Proposed Action, proposed regulatory text, Initial Statement of Reasons and Economic and Fiscal Impact Analysis
 - Opened 45-day public comment period
- On **May 14, 2024**, staff held a duly noticed public hearing at the Natural Resources Building
- An extension of the public comment period to **May 17, 2024**, was requested by an interested party and granted by the Council



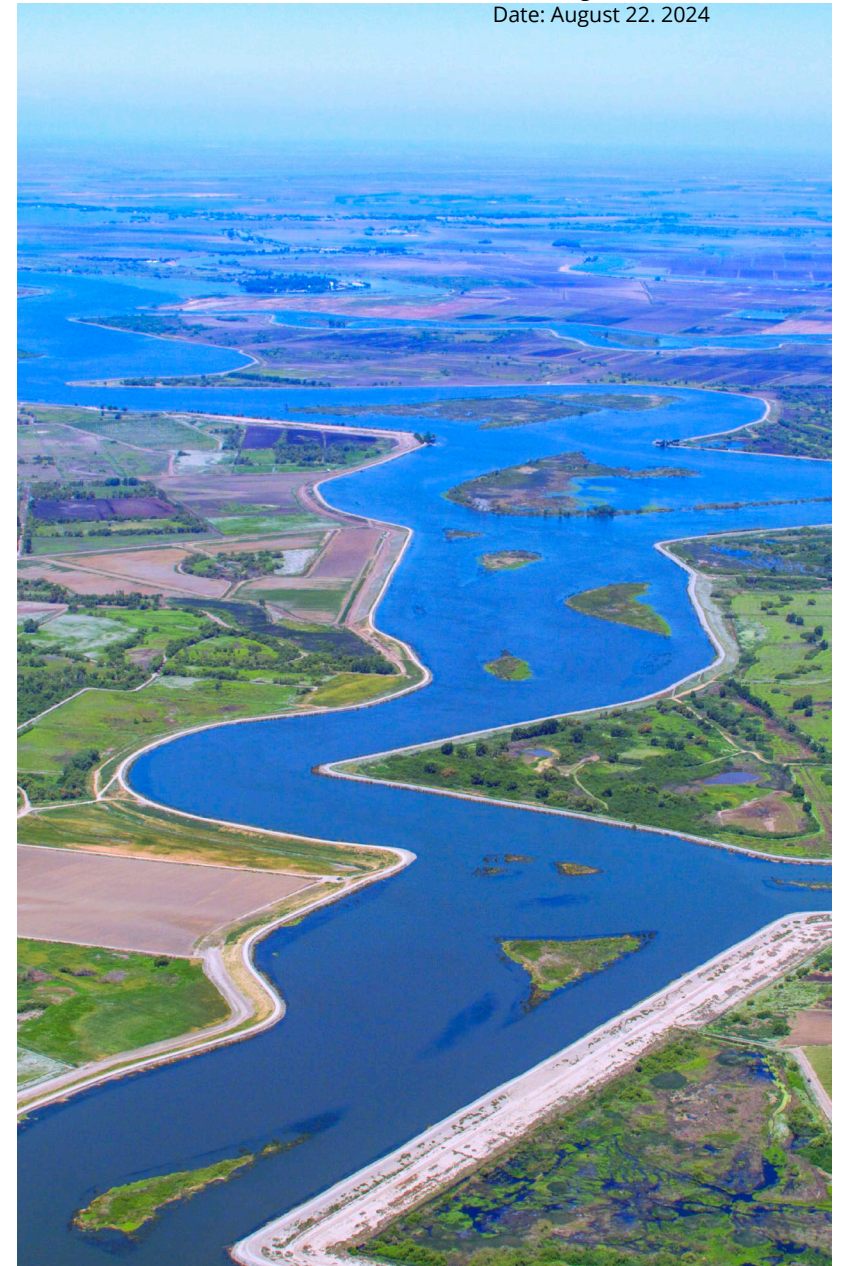
Overview of Proposed Regulation

Proposed changes to California Code of Regulations, title 23, division 6:

- **Add required disclosure** of ecosystem restoration and social benefits;
- Modify requirements for projects at tidal elevations to **accommodate future marsh migration, sea level rise, and tidal inundation**;
- Require projects at subtidal elevations to **safeguard against levee failure**;
- Refine locations of levee projects required to consider **alternatives that improve floodplain values**, and consider a **broader range of alternatives than setback levees**;
- **Add a legacy clause** for covered actions that have already started CEQA;
- **Add new defined terms**;
- **Add Appendices with maps and details** supporting proposed regulations.

Comments Received on ISOR and Proposed Regulations

- The Council received three comment letters and comments from eight attendees at the Public Hearing
- Comment categories:
 - Coordination with Interested Parties
 - Requests for Exemption or Variance
 - Requests for Additional Guidance from the Council
 - Ambiguous Policy Language
 - Economic & Fiscal Impact of the Amended Regulations
 - Feasibility of Setback Levees
- Responses to comments provided in the Final Statement of Reasons
 - No changes to proposed regulations required



Staff Recommendation & Next Steps

- Staff recommends that the Council approve Resolution 2024-06 to adopt proposed regulatory amendments to California Code of Regulations, title 23, sections 5001 to 5015, inclusive and section 5005.1, Appendices 3A, 4A and 8A
- If approved, staff will proceed with the rulemaking process, beginning with a 30-day review by Department of Finance and followed by submission to Office of Administrative Law
- Place language in the Delta Plan and commence implementation



Thank you

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