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Notice of Release

Draft Amendments to Administrative Procedures Governing Appeals

The Delta Stewardship Council (Council) announces the availability of draft amendments to its Administrative Procedures Governing Appeals (“Appeals Procedures”) for public review and comment.

The draft amendments to the Appeals Procedures are available on the Council’s website: <https://deltacouncil.ca.gov/delta-plan/regulations>

Background

As required in Water Code Section 85225.30, the Council adopted the Appeals Procedures on September 23, 2010, several years before the first certification of consistency was filed, and eight years before the first appeal of a covered action.¹ Since 2018, four certifications of consistency have been appealed.² The Council’s experience with the appeals proceedings for these covered actions highlighted

¹ The item was first introduced at the June 24-25, 2010 Council meeting. Revised drafts were presented at the July 22-23 and August 26-27, 2010 Council meetings. The final Appeals Procedures were adopted at the September 23, 2010 Council meeting. The staff reports associated with these 2010 agenda items may be requested at archives@deltacouncil.ca.gov.

² The California Department of Water Resources (DWR) filed a certification of consistency for California WaterFix on July 27, 2018. Nine appeals were submitted. The Council conducted a public workshop on November 15-16, 2018 regarding a staff draft Determination prepared in response to appeals. DWR withdrew its certification for the project on December 7, 2018, before the Council issued a final Determination. The San Joaquin Area Flood Control Agency filed a certification of consistency for the Smith Canal Gate Project on November 2, 2018. One appeal was submitted. The Council issued its Determination on March 21, 2018. The Westlands Water District filed a certification of consistency for the Lower Yolo Ranch Restoration Project on April 7, 2020. One appeal was submitted. The appeal was withdrawn on June 12, 2020, before the Council held an initial hearing. Most recently, DWR filed a certification of consistency for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project on February 22, 2021. Four appeals were submitted. The Council issued its Determination on July 16, 2021. Records of these appeals proceedings are available at <https://coveredactions.deltacouncil.ca.gov>.

areas where improvements could be made to the Appeals Procedures that were not foreseen in 2010.

The draft amendments to the Appeals Procedures propose to revise 16 of the 31 rules, and to add one new rule, in order to:

- Align wording used to describe Council authority with the Delta Reform Act;
- Streamline the filing and notification process by clarifying deadlines and requiring the use of the Council's covered actions portal for the filing of certifications and appeals;
- Clarify standards for appeals to be considered timely and complete;
- Set standards for evidentiary requests (under rules 10 and 29), including a requirement that requests include a copy of the document or information item that is the subject of the request;
- Clarify the Council's authority to establish procedures, deadlines, schedules, and timelines related to appeals hearings in applicable notices issues by the council;
- Set standards for written submissions to the council, and clarify the Council's authority to establish procedures, deadlines, schedules, and timelines related to written submissions in applicable notices issues by the Council;
- Clarify the outcomes of appeals proceedings under a variety of potential circumstances; and
- Encourage documents submitted to the Council to meet federal and state document accessibility standards.

As set forth in Water Code section 85225.30, the Council's adoption of the Appeals Procedures is exempt from the Administrative Procedure Act rulemaking process.

90-Day Public Comment Period

The public comment period for the draft amendments is ninety (90) days, from December 10, 2021 to March 7, 2022. Any agency, organization, or member of the public may submit comments relevant to the proposed amendments no later than **March 7, 2022 at 5:00 pm** by the following methods:

- by email to procedures@deltacouncil.ca.gov; or
- by mail to Delta Stewardship Council, 715 P Street, Suite 15-300, Sacramento, CA 95814.

Public Workshop

Staff will review the content of the proposed amendments at a workshop to be scheduled for a future Council meeting to gather public input. At the workshop, the Council may discuss the revisions and receive additional public comment. The Council will not take any action on the proposed amendments at the workshop. Staff will bring the proposed amendments, inclusive of any changes the Council recommends at the workshop, back to the Council at a future public meeting for potential adoption.

No specific date has been set for the workshop on the proposed amendments at this time. The workshop will be separately noticed and posted 10 days prior to the workshop at <https://deltacouncil.ca.gov/council-meetings>.