

**State of California  
Delta Stewardship Council  
715 P Street  
Sacramento, CA 95814**

**Title 23, California Code of Regulations  
Division 6, Delta Stewardship Council  
Ecosystem Regulations: Amendment of Sections 5001, 5002,  
5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013,  
5014, and 5015; Addition of Section 5005.1 and Appendix 3A,  
Appendix 4A, and Appendix 8A**

**NOTICE IS HEREBY GIVEN** that the Delta Stewardship Council (Council) proposes to adopt changes to the California Code of Regulations, title 23, division 6, chapter 2, sections 5001 to 5015, inclusive, and appendices after considering all comments, objections, and recommendations regarding the proposed action. The proposed regulations implement provisions of the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.) relating to ecosystem protection and management.

**I. PROPOSED REGULATORY ACTION**

The Council proposes to amend California Code of Regulations, title 23 division 6, sections 5001 to 5015, inclusive, and appendices. By proposing these regulatory amendments, the Council intends to (1) make technical, conforming amendments to section 5001 to 5015, inclusive; (2) make substantive amendments to 5001, 5006, 5007, and 5008; and (3) add section 5005.1, Appendix 3A, Appendix 4A, and Appendix 8A.

**II. WRITTEN COMMENT PERIOD (Gov. Code, §§ 11340.85, subd. (b); 11346.5, subds. (a)(1), (a)(15))**

No later than close of business on May 14, 2024, an interested person or authorized representative may submit written comments regarding this proposed regulation to the Council by postal or electronic mail, addressed as follows:

Electronic Mail

Comments may be submitted electronically to:  
[deltacouncil.ecosystemrulemaking@deltacouncil.ca.gov](mailto:deltacouncil.ecosystemrulemaking@deltacouncil.ca.gov)

U.S. Mail

Delta Stewardship Council  
Attn: Eva Bush  
715 P Street, 15-300  
Sacramento, CA 95814

**III. PUBLIC HEARING (Gov. Code, §§ 11346.5, subd. (a)(1); 11346.8 subd. (a))**

A public hearing is scheduled for May 14, 2024, 4 p.m. to 6 p.m. on the second floor of the California Natural Resources Building at 715 P Street, Sacramento.

The hearing room will be accessible to persons with mobility impairment, and the room can be made accessible to persons with hearing or visual impairments upon advance request to [engage@deltacouncil.ca.gov](mailto:engage@deltacouncil.ca.gov).

**IV. AUTHORITY AND REFERENCE (Gov. Code, § 11346.5, subd. (a)(2))**

The scope of the proposed changes is in California Code of Regulations, title 23, division 6, chapter 2. Pursuant to Water Code sections 85020, 85021, 85210(i), 85211, 85300, 85302, 85308.

**INFORMATIVE DIGEST (Gov. Code, § 11346.5, subd. (a)(3))**

**a. Summary of Existing Laws and Effects of Proposed Action**

The Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.; the Act) establishes the Delta Stewardship Council (Council), which is required to develop, adopt, and commence implementation of a comprehensive management plan, known as the Delta Plan, for the Sacramento-San Joaquin Delta (Delta). The Act declares it is the intent of the Legislature to provide for the sustainable management of the Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of the water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

The Act, among other things, requires a state or local public agency that proposes to undertake a covered action, and before initiating the implementation of that covered action, to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and to submit that certification to the Council, as specified.

Current regulations implementing the Delta Plan (Cal. Code Regs., tit. 23, § 5001 et seq.) define various terms and detail habitat restoration requirements. Chapter 4 of the Delta Plan, Protect, Restore, and Enhance the Delta Ecosystem, and corresponding regulations were originally developed with the expectation that the Bay Delta Conservation Plan (BDCP) would be incorporated into the Delta Plan. In May 2015, State and federal agencies shifted from the BDCP to a portfolio of mitigation projects known as the EcoRestore initiative. This changed the focus of restoration to a single species mitigation approach. Following this shift, the Council amended Chapter 4 of the Delta Plan and adopted policies that form the basis for the proposed regulations amendments governing the ecosystem of the Delta and Suisun Marsh.

These proposed regulations amendments would more specifically do all of the following:

- Require State and local public agencies to disclose contributions for ecosystem function restoration and social benefits provided in the Delta.
- Require the disclosure of cultural, recreational, agricultural, and natural resources benefits anticipated from the completion of a covered action.
- Require State and local public agencies who are proposing a covered action in the Intertidal Elevation Bank and Sea Level Rise Accommodation Band to explain how the covered action will accommodate future marsh migration, anticipated sea level rise, and tidal inundation. If that accommodation is not possible, require an explanation for the exception provided.
- Require State and local public agencies, based on best available science, to explain how the covered action is designed to safeguard against levee failure should it take place in the Shallow Subtidal Elevation Band or the Deep Subtidal Elevation Band, focusing on accounting for future impacts with an added safeguard to reduce flood risk in the Delta.
- Redefine the range of levee projects that are required to be identified and if feasible implement alternatives that expand the floodplain to incorporate the Stanislaus River, Cosumnes River, Middle River, Old River, and Elk Slough while updating and clarifying the language for new flood control work permanent structural changes, or improvements in flood control functions, allowing for future adaptations depending on Delta needs and climate changes.
- Include new defined terms.
- Make technical, conforming changes.

**b. Existing Federal Regulations or Statutes**

These proposed regulations do not unnecessarily duplicate or conflict with any federal regulations contained in the Code of Federal Regulations.

**c. Policy Statement and Anticipated Benefits**

The Council proposes to add section 5005.1, Appendix 3A, Appendix 4A, and Appendix 8A and amend sections 5006, 5007 and 5008 based on updated best available

restoration science, providing a more systematic approach to planning and adaptive management of activities and investments in the Delta. With these revisions and additions, the Council will be better positioned to fulfill the legislatively required objective of restoring the Delta ecosystem.

The added section 5005.1 would require certifying agencies to complete a new Appendix 3A, to disclose contributions for ecosystem function restoration and social benefits provided in the Delta and the disclosure of cultural, recreational, agricultural, and natural resource benefits anticipated from completion of the covered action. The benefits are greater transparency for the use of public funds while simultaneously allowing other agencies to make decisions regarding the greatest impact of restoration funding.

The revision to section 5006 would require agencies who are implementing a covered action in the Intertidal Elevation Band and Sea Level Rise Accommodation Band to complete a new Appendix 4A and to explain how they will accommodate future marsh migration, anticipated sea level rise and tidal inundation. If the accommodation is not possible, an explanation for the exception would be required. The revisions also would require agencies to explain how the covered action is designed to safeguard against levee failure should the project take place in the Shallow Subtidal Elevation Band or the Deep Subtidal Elevation Band. This revision focuses on regulating future impacts with an added safeguard to reduce flood risk in the Delta.

Section 5007 states that, within priority habitat restoration areas, significant adverse impacts to the opportunity to restore habitat would be required to be mitigated or avoided.

Section 5008 revisions would redefine the range of levees included in the regulation, depicted in a new Appendix 8A, while simultaneously updating and clarifying the language for new flood control work, permanent structural changes, or improvements in flood control functions, which would allow for future adaptations depending on Delta needs and climate changes.

**d. Existing State Regulations**

The Council has determined this proposed regulation is not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to the subject of this notice, the Council has concluded that these are the only regulations that concerns the amendment and adoption of regulations relating to the ecosystem protection and management of the Sacramento-San Joaquin Delta Reform Act of 2009.

**V. EFFECT ON SMALL BUSINESS (Cal. Code Regs, tit. 1, § 4)**

The proposed regulatory action does not affect small business because the proposed regulations would not affect the ability of businesses in the state to

compete by making it more costly to produce goods or services. The proposed regulations do not require additional business reports or the use of specific technologies or equipment and may encourage the expansion of businesses in the state.

**VI. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION (Gov. Code, §§ 11346.5, subds. (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12); 11346.3 subds. (b), (d))**

- a. **Mandate on Local Agencies and School Districts:** None.
- b. **Costs or Savings to Any State Agency:** None beyond those budgeted or expected to be budgeted by the Council.
- c. **Costs to Any Local Agency or School District:** None.
- d. **Nondiscretionary Costs or Savings Imposed on Local Agencies:** None.
- e. **Costs of Savings in Federal Funding to the State:** None.
- f. **Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:** None.
- g. **Cost Impact on Representative Private Persons or Businesses:** None. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- h. **Results of the Economic Impact Analysis:**
  - i. **Creation or Elimination of Jobs Within the State:** The increase in State and local agency costs would result in an increase of 1.2 full-time equivalent (FTE) jobs in the state. The decrease in State and local agency costs would result in a decrease of 0.6 FTE jobs in the state. Therefore, the net employment impact would be an increase of 0.6 FTE jobs.
  - ii. **Creations of New Businesses or the Elimination of Existing Businesses Within the State:** The economic impact of the proposed regulations would be an increase in spending on professional services for environmental consulting of \$8,000 per covered action per year, an increase in spending on professional services for engineering of \$200,000 for two covered actions per year, and a decrease in spending on professional services for engineering of \$200,000 for two covered actions per year. These impacts are not expected to be substantial enough to result in the creation or elimination of businesses.
  - iii. **Expansion of Businesses Currently Doing Business Within the State:** The net direct impact on businesses providing environmental consulting services would be an increase in revenue of \$100,000

annually. The net direct impact on businesses providing professional services for engineering is \$0.

**iv. Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:**

The proposed regulations would benefit the health and welfare of California residents and protect the environment because they encourage actions that protect existing ecosystems, restore ecosystems and enhance working or urban landscapes that provide habitat resources to species. These approaches can reestablish ecological processes in natural communities to make them more resilient to land conversion and climate change. This proposed regulatory action will not affect worker safety.

- i. **Effect on Housing Costs:** None.
- j. **Costs to Any Local Agency or School District That Must be Reimbursed in Accordance with Government Code sections 17500 through 17630, inclusive:** None.
- k. **Business Report:** None.

**VII. CONSIDERATION OF ALTERNATIVES (Gov. Code, § 11346.5, subd. (a)(13))**

The Council is required to determine that no reasonable alternative it considered or has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the regulatory action is proposed, would be effective and less burdensome to affected private persons that the regulatory action or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**VIII. CONTACT PERSON (Gov. Code, § 11346.5, subd. (a)(14))**

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations or other information upon which the rulemaking is based, should be directed to:

Delta Stewardship Council  
Attn: Eva Bush  
715 P Street, 15-300  
Sacramento, CA 95814  
[ecosystemrulemaking@deltacouncil.ca.gov](mailto:ecosystemrulemaking@deltacouncil.ca.gov)  
(916) 445-5511

Alternate contact:  
Bree Montague  
[Bree.montague@deltacouncil.ca.gov](mailto:Bree.montague@deltacouncil.ca.gov)

**IX. AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE (Gov. Code, § 11346.5, subd. (a)(16))**

The entire rulemaking file is available for public inspection on the Council's website or by contacting the contact person listed above. To date, the rulemaking file consists of this notice, the initial statement of reasons, the economic and fiscal impact analysis, and the proposed text of the regulations. A copy of the proposed text and initial statement of reasons are available at no charge by written request to the contact person listed above. The final statement of reasons will be available once it has been prepared.

**X. AVAILABILITY OF CHANGED OR MODIFIED TEXT (Gov. Code, § 11346.5, subd. (a)(18))**

The Council, on its own motions or at the recommendation of any interested person, may amend the proposed text of the regulation after the public comment ends.

If the Council amends its regulatory action, a comparison of the original proposed text and the amendments will be prepared for an additional public comment period of not less than 15 days prior to the date on which the Council adopts, amends, or repeals the existing regulations. A copy of the comparison will be emailed to all persons who submitted written comments or asked to be kept informed of the results of this regulatory action.

**XI. AVAILABILITY OF THE FINAL STATEMENT OF REASONS (Gov. Code, § 11346.5, subd. (a)(19))**

Upon completion, copies of the final statement of reasons may be obtained by contacting the contact person listed above.

**XII. Internet Website for Electronic Publication and Distribution (Gov. Code, § 11346.5, subd. (a)(20))**

Copies of this notice, the initial statement of reasons, the text of the proposed regulations, and all materials published or distributed by the Council on this regulatory action made be found at the Council's website:  
[www.deltacouncil.ca.gov](http://www.deltacouncil.ca.gov).