

Administrative Procedures Governing Appeals

Requested Action: Information Only. Provide comments and direction to staff with regard to second draft of document containing I. administrative procedures governing appeals, II. statutory provisions requiring other consistency reviews, and III. other forms of review or evaluation by the Council, with intent to revise and bring back third draft for formal adoption at the August meeting.

Background

The Council's enabling legislation (the Sacramento-San Joaquin Delta Reform Act of 2009) provides for a process to ensure the consistency of state and local public agency actions with the Delta Plan (see Water Code Secs 85225-85225.30). In short, state and local agencies proposing to undertake a project covered by the Delta Plan must prepare and file a consistency determination with the Council. Any person may challenge that consistency determination by bringing an appeal to the Council. The Council, in turn, must hold a hearing on the appeal and issue written findings, either denying the appeal or remanding the matter to the state or local agency for reconsideration of the proposed project based on the finding that the consistency determination is not supported by substantial evidence in the record.

The Delta Reform Act also provides a separate process in which the Council may hear appeals with regard to determinations by the Department of Fish and Game (DFG) that the Bay-Delta Conservation Plan (BDCP) has met the requirements of Water Code Section 85320 (that focus on compliance with the Natural Community Conservation Planning Act and the California Environmental Quality Act) for inclusion in the Delta Plan.

Water Code Section 85225.30 requires the Council to adopt administrative procedures governing appeals, which are exempt from the normal state rulemaking process.

At its June meeting, the Council reviewed a first draft of the appeals procedures and provided direction for issues to be addressed in a second draft for the July meeting.

The attached second draft is recast into three separate parts.

Part I contains the administrative procedures governing appeals reviewed by the Council in June, revised to clarify, among other things:

- the need for an agency to file a full and complete administrative record and a checklist of items to be covered (on a form to be developed and provided by the Council) along with the consistency certification;

- the ability of an appellant, with the approval of the Council or its executive officer, to augment the administrative record submitted by the agency in certain circumstances;
- the ability of the Council, by its own action, to augment the administrative record in certain circumstances;
- the ability of any interested person to testify at the hearing;
- that continuances of hearings on appeal agreed to by the parties must be reasonable and approved by the executive officer, taking into account the circumstances of the matter on appeal and the Council's hearing schedule and associated workload;
- that DFG may revise its BDCP determination (rather than the BDCP, itself) to meet issues of noncompliance raised by the Council, or otherwise respond to the Council's findings in detail;
- that hearings on appeal are subject to the ex parte communication restrictions of the Administrative Procedures Act;
- that the Council may take "official notice" in any hearing it conducts, of any generally accepted technical or scientific matter within the Council's jurisdiction , and of any fact that may be judicially noticed by the courts of this state; and
- that all filings and mailings may be made electronically, if not otherwise required to be made in that form.

Part II contains various statutory provisions found in SB X7 1 requiring other consistency reviews by the Council (after adoption of the Delta Plan), which are outside the scope of the normal procedures covered by Part I. This includes review of the Delta Protection Commission's Economic Sustainability Plan, and certain local and regional transportation planning documents, including sustainable communities strategies and alternative planning strategies.

Part III lists other forms of review or evaluation by the Council, both before and after adoption of the Delta Plan. These include consultation with interested parties regarding the interim plan, and with project proponents regarding potential "covered actions." It also includes, subject to available resources, mediation of relevant disputes upon the request of interested parties, including disputes over whether a project constitutes a "covered action". By providing an alternative, informal forum for dispute resolution, the Council hopes to reduce the expensive and protracted Delta-related litigation that has become all too prevalent in recent years.

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It is the intent that Council direct staff to revise this second draft, as appropriate, and bring back a third draft to the Council in August for formal adoption.

List of Attachments

Attachment 1 – Second Draft Document containing, “I. Administrative Procedures Governing Appeals; II. Statutory Provisions Requiring Other Consistency Reviews; and III. Other Forms of Review or Evaluation by the Council”

Contact

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