

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

**Title 23, California Code of Regulations
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**

Initial Statement of Reasons

Informative Digest

The Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.; 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 Sacramento-San Joaquin 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, including, among others, covered action, protection, and restoration. Existing regulations, among other actions, require habitat restoration to be carried out at appropriate elevations, protect opportunities to restore habitat, expand floodplains and riparian habitats in levee projects, and avoid introductions of and habitat improvements for invasive nonnative species.

The proposed regulations amendments implement five core strategies to achieve the coequal goals of protecting, restoring, and enhancing the Delta ecosystem (Wat. Code, § 85054) that form the basis for the policies, recommendations, and performance measures in the Delta Plan. The five core strategies are (1) create more natural, functional flows; (2) restore ecosystem function; (3) protect land for restoration and safeguard against land loss; (4) protect native species and reduce the impact of

nonnative invasive species; and (5) improve institutional coordination to support the implementation of ecosystem protection, restoration, and enhancement.

The 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 the 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 project.
- Require state and local public agencies that are proposing a project in the Intertidal Elevation Bank and Sea Level Rise Accommodation Band to explain how the project will accommodate future marsh migration, anticipated sea level rise, and tidal inundation. If that accommodation is not possible, it would require an explanation for the exception provided.
- Require state and local public agencies, based on best available science, to explain how the project is designed to safeguard against levee failure should the project 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 levees included and incorporate the Stanislaus River, Cosumnes River, Middle River, Old River, and Elk Slough while updating and clarifying the language for new flood control work that includes permanent structural changes or improvements in flood control functions, while allowing for future adaptations depending on Delta needs and climate changes.
- Include new defined terms.
- Make technical, conforming changes.
- Incorporate Appendices 3A, 4A and 8A.

Problem Statement

Water Code section 85320, subdivision (e), requires the Council to incorporate the Bay Delta Conservation Plan (BDCP) into the Delta Plan if specified approval conditions are met. Chapter 4 of the Delta Plan was originally developed with the expectation that the BDCP would be incorporated into the Delta Plan. However, in May 2015, state and federal agencies shifted from the BDCP to a portfolio of mitigation projects known as the EcoRestore initiative.

The Council began considering the need for an amendment to Chapter 4 of the Delta Plan in 2015 and 2016, called the Ecosystem Amendment. Throughout 2017 and 2018, Council staff conducted listening sessions with stakeholders, local agencies, and Delta residents, in addition to public meetings with the Council and Delta Independent Science Board (Delta ISB) members. Based on these listening sessions and additional research, Council staff proposed the Ecosystem Amendment to the Council to include a portfolio of actions that protect existing ecosystems, restore ecosystems, and enhance working or urban landscapes that provide habitat resources to species. These approaches can establish ecological processes in natural communities to make them

more resilient to land conversion and climate change. The Council adopted the Ecosystem Amendment to Chapter 4 of the Delta Plan on June 23, 2022, and directed Council staff to initiate this rulemaking process to codify new and updated Delta Plan policies as proposed regulations.

Anticipated Benefits

The proposed regulations amendments would benefit the health and welfare of California residents and protect the environment because the amendments include a portfolio of 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. The proposed Ecosystem Amendment leverages decades of research, lessons learned in recovery planning, and increased coordination among agencies and partners working toward a common vision for a restored Delta ecosystem.

Statement of Specific Purpose and Necessity

The added definitions made re-lettering of existing definitions necessary. These technical and conforming changes are in the proposed regulatory text but are not individually listed in this ISOR section.

Section 5001(f)

Purpose

To define the term “BDCP” as an acronym for the Bay Delta Conservation Plan.

Necessity

To clarify the meaning of the acronym as used in the regulation, to make the regulations more readable and easier to understand.

Section 5001(i)

Purpose

To define the term “CEQA” as an acronym for California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

Necessity

To clarify the meaning of the acronym as used in the regulation, to make the regulations more readable and easier to understand.

Section 5001(j)

Purpose

To clearly define the term “Certification of consistency” to mean a written statement submitted to the Delta Stewardship Council by the lead agency of a covered action as described in in Water Code section 85225.

Necessity

To provide clarity and readability to the regulations, making it easier for the public to understand the Delta Stewardship Council processes.

Section 5001(n)

Purpose

To clearly define “Council” to mean the Delta Stewardship Council, as created by the 2009 Delta Reform Act (Wat. Code 85000-85350).

Necessity

To provide clarity and readability to the regulations, making it easier for the public to understand as there are many State agencies with authority in the Delta.

Section 5001(p)

Purpose

To define the term CVP as an acronym for the Central Valley Project.

Necessity

To clarify the meaning of the acronym as used in the regulation, to make the regulation more readable and easier to understand.

Section 5001(t)

Purpose

To be consistent with Health and Safety Code section 39711 terminology.

Necessity

To harmonize with current state codes and regulations.

Section 5001(w)

Purpose

To be consistent with existing state codes and regulations “Environmental justice” has the same meaning as in Government Code section 65040.12(e).

Necessity

To harmonize with current state codes and regulations.

Section 5001(gg)

Purpose

Revising structure, syntax, grammar, and punctuation.

Necessity

To clarify what categorically falls under the term of nonnative invasive species in the context of this regulation.

Section 5001(ii)

Purpose

To be consistent with state codes and regulations “oak woodland” has the same meaning as in Fish and Game Code section 1361.

Necessity

To harmonize with existing codes and regulations.

Section 5001(mm)

Purpose

To clarify the term recreational benefits to enable certifying agencies to accurately gather the information required in Appendix 3A.

Necessity

Not previously defined in statute and regulations.

Section 5001(tt)

Purpose

To be consistent with existing state codes and regulations “Special Status Species” has the same meaning as California Department of Fish and Wildlife California Code of Regulations, title 14, section 15380.

Necessity

To harmonize with existing codes and regulations.

Section 5001(uu)

Purpose

To define the term SWP as an acronym for the State Water Project.

Necessity

To clarify the meaning of the acronym as used in the regulation, to make them more readable and easier to understand.

Section 5002(b)(2)

Purpose

The Delta Plan is a defined term in section 5001. The reference to “as amended April 26, 2018, which is here by [sic] incorporated by reference,” is unnecessary.

Necessity

The reference to “as amended April 26, 2018, which is here by [sic] incorporated by reference,” is unnecessary.

Section 5003(b)

Purpose

The purpose is to update a cross reference referring to Covered Action in section 5001.

Necessity

The necessity is to update a cross reference referring to Covered Action in section 5001.

Section 5004(b)

Purpose

The purpose is to update a cross reference referring to Covered Action in section 5001.

Necessity

The necessity is to update a cross reference referring to Covered Action in section 5001.

Section 5005(b)

Purpose

The purpose is to update a cross reference referring to Covered Action in section 5001.

Necessity

The necessity is to update a cross reference referring to Covered Action in section 5001.

Section 5005.1

Purpose

Achieving the Delta Reform Act vision for the Delta ecosystem requires the reestablishment of tens of thousands of acres of functional, diverse, and interconnected habitat. The magnitude of the need dictates a change in existing approaches to restoration in the Delta. The loss of over 90 percent of wetlands greatly impacted the Delta ecosystem and continues to severely stress the Delta ecosystem. Currently, many restoration actions in the Delta are limited to single-species conservation, recovery, or mitigation projects. State agencies charged with stewardship and restoration of the Delta ecosystem have limited ability to change these practices due to permitting requirements and restrictions on the amount and use of public funds. Restoration projects should also be compatible with adjacent land uses and support the cultural, recreational, agricultural, and natural resource values of the Delta as an evolving place. Information gaps prevent more systematic planning and adaptive management of these activities and investments.

The purpose of the new Section 5005.1 is to require State and local agencies to disclose contributions to restoring ecosystem function and providing social benefits, such as cultural benefits, recreational benefits, agricultural benefits, and natural resource benefits. To date there has been no comprehensive accounting of these benefits. This regulation aims to gather this data to support the tracking of Delta Plan Performance Measures and track progress on the Council's website, as well as make it available to other agencies to support their work.

Necessity

As part of the Delta Reform Act, Water Code section 85300 requires the council to develop, adopt, and commence implementation of the Delta Plan to further the coequal goals. Additionally, Water Code section 85302 requires the implementation of the Delta Plan to further the restoration of the Delta ecosystem and a reliable water supply, which includes the geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan.

Water Code section 85320, subdivision (e), requires the Council to incorporate the Bay Delta Conservation Plan (BDCP) into the Delta Plan if specified approval conditions are met.

Water Code section 85210 authorizes the Council to adopt regulations or guidelines as needed to carry out the powers and duties identified in the Delta Reform Act.

The Delta Plan was originally developed with the expectation that the Bay Delta Conservation Plan (BDCP) would be incorporated into the Delta Plan and thus address more holistic ecosystem metrics. However, in May 2015, state and federal agencies shifted from the BDCP to a portfolio of mitigation projects known as the EcoRestore initiative.

This new regulation section will replace the implementation of the BDCP by furthering ecosystem restoration in the Delta, which is one of the coequal goals. The data collected through this new regulation is necessary to support the improvement necessary to fulfill the requirements of restoration projects in the Delta, as set forth in the Delta Reform Act. The new regulation will also provide data for the Council's Performance Measures that track implementation of the Delta Plan and advancement of its objectives.

Section 5006(a)

Purpose

Consistent with State law, local and regional plans in the Delta must consider sea level rise as well as the loss of lands suitable for ecosystem restoration and the need to accommodate these landscape changes. State agencies must take action to reduce, halt, or reverse subsidence; and incentivize agricultural land management practices that support native wildlife and counter subsidence. As sea levels rise and subsidence continues, opportunities for intertidal and floodplain restoration are shifting inland, toward the upland edges of the Delta. Restoration of tidal wetlands needs to focus on opportunities to create interconnected habitats, where elevations will support intertidal habitats into the future. Lands at elevations suitable for current and future restoration must be protected from development, and restoration projects must be designed and located with rising sea levels in mind. Anticipating sea level rise and planning for how expected changes in the tidal range will affect restored habitats in the future is necessary for ecosystem restoration projects to provide maximum benefits.

The amendments to Section 5006 expand focus beyond habitat restoration actions to a broader array of actions including ecosystem protection and enhancement. The revisions remove an elevation map from the existing regulation and instead provides guidance on appropriate elevation bands for the protection, restoration, and enhancement of different natural communities and other activities that support native species recovery and the recovery of critical ecosystem processes. Further, the revisions add to the criteria State and local agencies are required to disclose to the Council in a certification of consistency with the Delta Plan for Covered Actions. This new criterion includes new consideration for the selection of the geographical location of restoration sites at appropriate elevations, considering updated sea-level rise estimates.

A cross reference referring to Covered Action in section 5001 also needs to be updated.

Necessity

As part of the Delta Reform Act, Water Code section 85300 requires the Council to develop, adopt, and commence implementation of the Delta Plan that furthers the

coequal goals. Additionally, Water Code section 85302 requires the implementation of the Delta Plan to further the restoration of the Delta ecosystem and a reliable water supply, which includes the geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan.

Water Code section 85210 authorizes the Council to adopt regulations or guidelines as needed to carry out the powers and duties identified in the Delta Reform Act.

The amendments to this regulation section will better enable the Council to ensure that restoration monies and efforts are invested in restoration projects that provide lasting long-term value.

Section 5006(b)(1)

Purpose

The purpose is to update a cross reference referring to Covered Action in section 5001.

Necessity

The necessity is to update a cross reference referring to Covered Action in section 5001.

Section 5006(b)(2)

Purpose

To establish an effective date for the changes made to this section specific to a covered action where specified CEQA documents have already been published.

Necessity

CEQA is often a multi-year process and requiring a re-initiation of a covered action would be overly burdensome with minimal long-term ecological benefits.

Section 5007(a)(1) and 5007(a)(2).

Purpose

Technical, conforming changes for clarity.

Necessity

To enable a layperson to better follow what is required by section 5007(a)

Section 5007(a)(3)

Purpose

The purpose of this section is to clarify standards for mitigating significant adverse impacts by resolving duplicative provisions internal to section 5007, mitigation measures referenced in section 5002, and removing the requirement of consultation with the California Department of Fish and Wildlife on mitigation measures.

Necessity

There are varied standards for mitigation measures required by different State and local public agencies. The amendment to this regulation section is needed to clarify which mitigation measures are required for a State or Local agency to be consistent with Delta Plan policies for a certification of consistency. Additionally, this amendment clarifies the interaction between this section and section 5002.

Section 5007(b)(1)

Purpose

The purpose is to update a cross reference referring to Covered Action in section 5001.

Necessity

The necessity is to update a cross reference referring to Covered Action in section 5001.

Section 5007(b)(2)

Purpose

To establish an effective date for the changes made to this section specific to a covered action where specified CEQA documents have already been published.

Necessity

CEQA is often a multi-year process and requiring re-initiation of a covered action would be overly burdensome with minimal long-term ecological benefits.

Section 5008(a)(1).

Purpose

Technical, conforming changes for clarity.

Necessity

To enable a layperson to better follow what is required by section 5008(a)(1).

Section 5008(a)(2)

Purpose

To adjust the geographical boundary for the setback levee evaluation area.

Necessity

As levee modifications have been completed in some areas and new, more accurate data has been collected on land elevation and sea level rise, adjustments of the geographical boundary are needed. This new geographical boundary reflects the changes that have occurred since the original section 5008 was published in 2013 and where alternatives to traditional levees are currently possible.

Section 5008(b)

Purpose

Currently urban levee improvement projects are required to evaluate, and where feasible incorporate alternatives, including setback levees, to increase floodplains and riparian habitats.

Necessity

Higher accuracy land elevation and sea level data has become available, and the map referred to in the regulation (Appendix 8A) has been updated to incorporate this data. These updates to Appendix 8A include a map showing changes to the locations where alternatives that would physically expand the channel width must be evaluated.

Section 5008(c)(1)

Purpose

The purpose is to update a cross reference referring to Covered Action in section 5001.

Necessity

The necessity is to update a cross reference referring to Covered Action in section 5001.

Section 5008(c)(1)(A) through (c)(1)(D), inclusive

Purpose

The amendment to this section specifies which proposed covered actions are subject to the detailed findings needed for a certification of consistency required by this section.

Necessity

The amendment clarifies the types of alternatives that must be evaluated, and the types of alternatives that must be evaluated, to increase levee waterside habitat and to clarify that such alternatives must be evaluated for applicable flood control projects throughout the Delta.

Section 5008(c)(2)

Purpose

To establish an effective date for the changes made to this section specific to a covered action where specified CEQA documents have already been published.

Necessity

CEQA is often a multi-year process and requiring re-initiation of a covered action would be overly burdensome with minimal long-term ecological benefits.

Sections 5009, 5010, 5011, 5012, 5013, 5014, 5015.

Purpose

The purpose is to update a cross reference referring to Covered Action in section 5001.

Necessity

The necessity is to update a cross reference referring to Covered Action in section 5001.

Appendix 3A

Purpose

The purpose of the new section 5005.1 is to require State and local agencies to disclose contributions to restoring ecosystem function and providing social benefit, such as cultural benefits, recreational benefits, agricultural benefits, and natural resource benefits. To date there has been no comprehensive accounting of these benefits.

Necessity

Appendix 3A is necessary to gather this data which the new regulation section 5005.1 requires. This data supports the Delta Plan Performance Measures which track

progress toward Delta Plan implementation on the Council's website and makes it available to other agencies to support their work.

Appendix 4A

Purpose

The purpose is to provide an updated map for projects subject to regulation section 5006.

Necessity

The necessity is to provide current information based on updated land elevation, tidal datum, and projected sea level rise data, described in technical Appendix Q1. This data was compiled by the Council as part of the amendment and is necessary to incorporate best available science. The last maps were created for the original regulations adopted in 2013.

Appendix 8A

Purpose

The purpose is to provide an updated map for projects subject to regulation section 5008(b).

Necessity

The necessity is to provide current information as some areas in the original 2013 regulatory map are no longer relevant. The update reflects completed construction, stakeholder input on feasibility of setback levees in areas of the Central Delta, and areas that have immediately adjacent development.

Technical, Theoretical, or Empirical Studies, Reports or Similar Documents Relied Upon – Government Code Section 11346.2(b)(3)

The Council relied on input from various interested parties, subject matter experts, and interested parties that provided information, feedback, and subject matter expertise from operational and technical perspectives.

Some of the groups and organizations that participated include:

- Agricultural Commissioners for Alameda, Contra Costa, Sacramento, San Joaquin, and Solano Counties
- American Rivers
- California Audubon Society
- California Trout
- California Department of Fish and Wildlife
- Central Delta Water Agency
- Central Valley Flood Protection Board
- Central Valley Joint Venture
- Buena Vista Rancheria of Me-Wuk Indians

- Delta As Place Interagency Workgroup
- Delta Counties Coalition
- Delta Independent Science Board
- Delta Levees Habitat Advisory Committee
- Delta Plan Interagency Implementation Committee
- Delta Protection Commission
- Delta Restoration Network
- Department of Water Resources
- Interagency Adaptive Management Integration Team
- North Delta CARES Action Committee
- Public Policy Institute of California
- Sacramento-San Joaquin Delta Conservancy
- Solano County Airport Land Use Commission
- State Water Contractors
- State Water Resources Control Board
- Suisun Marsh Adaptive Management Advisory Team
- United Auburn Indian Community
- Yocha Dehe Wintun Nation
- Yolo Basin Foundation

The Council relied upon the following documents:

1. Delta Plan Draft Program Environmental Impact Report 2021
2. Notice of Availability. 2021.
3. Appendix A: Delta Plan Ecosystem Amendment NOP and Scoping Meeting Materials. 2021.
4. Appendix B: Revised Delta Plan Mitigation Measures. 2021.
5. Appendix C: Text of Proposed Delta Plan Ecosystem Amendment. 2021.
6. Appendix D: Biological Resources – Aquatic. 2021.
7. Appendix E: Biological Resources – Terrestrial. 2021.
8. Delta Plan Final Program Environmental Impact Report 2022
9. Notice of Determination. 2022.
10. Findings and Statement of Overriding Considerations. 2022
11. Appendix O. Mitigation Monitoring and Reporting Program. 2022.
12. Resolution 2022-05

13. Delta Plan Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem. 2022.
14. Appendix Q1. Methods Used to Update Ecosystem Restoration Maps Using New Digital Elevation Model and Tidal Data. 2022.
15. Appendix Q2. Key Considerations and Best Available Science for Protecting, Restoring, and Enhancing the Delta Ecosystem. 2022.
16. Appendix Q3. Identifying, Mapping, and Quantifying Opportunities for Landscape-Scale Restoration in the Sacramento-San Joaquin Delta. 2022.
17. Appendix Q4. Conservation and Recovery Plan Target Species. 2022.
18. Climate Change and the Delta: A Synthesis. 2018.
19. Delta Ecosystem Stressors: A Synthesis. 2018.
20. Towards the Protection Restoration and Enhancement of the Delta Ecosystem: A Synthesis. 2018.
21. Appendix A: Summary of Existing Habitat and Species-Specific Plans, Strategies and Management Approaches. 2018.
22. Delta Plan Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem. 2013.
23. Appendix 3. Habitat Restoration. 2013
24. Appendix 4. Elevation Map Priority Habitat Restoration Areas. 2013.
25. Appendix 5. Priority Habitat Restoration Areas. 2013.
26. Appendix 8. Setback Levee Evaluation Areas. 2013.

Consideration of Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impact on Small Business – Government Code Section 11346.2(b)(4)

No reasonable alternatives to the proposed regulations have been proposed that would lessen any adverse impact on small businesses or that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that achieves the purposes of the statute being implemented.

As part of the CEQA process, the Delta Plan Ecosystem Amendment Program Environmental Impact Report (PEIR), certified in June 2022, considered a range of alternatives to the proposed amendment to Chapter 4 of the Delta Plan, Protect, Restore, and Enhance the Delta Ecosystem (proposed Ecosystem Amendment or Proposed Project), which included policies that would be implemented by the proposed regulations. The alternatives to the proposed regulation discussed below are based upon the alternatives considered in the Delta Plan Ecosystem Amendment PEIR (see section “Technical, Theoretical, or Empirical Studies, Reports or Similar Documents Relied Upon” for more information regarding the Delta Plan Ecosystem Amendment PEIR).

Overview of Alternatives to the Proposed Policy Actions Considered

In the Findings of Fact and Statement of Overriding Considerations prepared to support certification of the Delta Plan Ecosystem Amendment PEIR, the Council considered and rejected alternatives to the proposed regulations,¹ including:

- **No Action Alternative – Retain Existing Regulations.** Under the No Action Alternative, the Council would take no action to amend sections 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013, 5014, and 5015; and would not add Section 5005.1. The existing Delta Plan Regulations, as last amended in 2024 to include the updated Delta Levees Investment Strategy, would continue to be in effect and implemented (i.e., the new and revised policies included in the amendment to Chapter 4 of the Delta Plan (Ecosystem Amendment), as adopted in June 2022, would not be implemented).

The proposed regulations address a fundamental shift in how conservation is being planned and implemented in the Delta and provide a more comprehensive approach to ecosystem protection, restoration, and enhancement in the Delta, as required to achieve the goals and strategies described in the Delta Reform Act. The proposed regulations require reporting and disclosure of the development of projects that provide environmental, social, economic, and habitat benefits to California. Under the No Action Alternative, the Council would take no action to amend the Delta Plan for further protection, restoration, and enhancement of the Delta ecosystem. The No Action Alternative would not be as comprehensive an approach to ecosystem protection, restoration, and enhancement in the Delta compared to the proposed regulations. Therefore, the No Action Alternative would not be as effective at meeting the core strategies that form the basis for the proposed regulations, as outlined above in the Informative Digest. Specifically, the No Action Alternative would not be as effective as the proposed regulations in: creating more natural, functional flows; restoring ecosystem function; protecting land for restoration and safeguarding against land loss; and protecting native species and reducing the impact of nonnative invasive species. Therefore, the No Action Alternative was eliminated from consideration.

- **Alternative 1 – Agricultural Working Lands Protection Emphasis.** Under Alternative 1, the Council would modify policies to reduce the occurrence of new ecosystem restoration projects on existing agricultural working lands or on lands suitable for farming (lands designated as Prime Farmland, Farmland of Statewide and Local importance, and Unique Farmland). This alternative would reduce the impacts of ecosystem restoration projects to agricultural working lands in the Delta compared to the proposed regulations. Specifically, Alternative 1 would differ from the proposed regulations in that it would change the following proposed regulations:
 - **Amend Section 5005.1 –** Alternative 1 would revise Section 5005.1 and Appendix

¹ The Findings of Fact and Statement of Overriding Considerations prepared to support certification of the Delta Plan Ecosystem Amendment PEIR included four alternatives to the proposed regulations, three of which are discussed here. While Alternative 3 would differ from the proposed regulation by reducing (non-regulatory) target restoration acreages, the proposed policies under Alternative 3 would not differ from the proposed regulations. Therefore, Alternative 3 is not evaluated in this discussion.

3A to specifically exclude covered actions that would restore ecosystems on existing agricultural working lands in the Delta from the Ecosystem Restoration tier requirements specified in proposed Section 5005.1.

- Amend Section 5007 – Alternative 1 would revise Section 5007 to clarify the standards for mitigating significant adverse impacts to the opportunity to restore habitat in the six Priority Habitat Restoration Areas (PHRAs) shown in Appendix 5; and would use different criteria to identify the PHRAs by excluding lands suitable for farming (Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance) from the PHRAs identified in proposed Section 5007.
- Amend Section 5008 – Alternative 1 would revise Section 5008, which requires levee covered actions to consider alternatives to increase floodplains and riparian habitat, to exclude consideration of setback levees that would impact or encroach upon existing agricultural working lands. Setback levees would not be precluded elsewhere.
- Add new Section 5008.1 – Alternative 1 would change Delta Plan recommendation ER RB to create a new regulation requiring use of a “Good Neighbor Checklist” to coordinate restoration projects with adjacent landowners.

Because the majority of land in the Delta is either in agricultural production or designated as suitable for agriculture, reducing restoration on a large portion of Delta lands under Alternative 1 would significantly limit the number, size, type, and location of restoration projects contributing to a comprehensive approach to ecosystem protection, restoration, and enhancement in the Delta as compared to the proposed regulations. By limiting the occurrence of new ecosystem restoration projects on agricultural working lands and lands suitable for farming, there would be few opportunities for large-scale restoration, such as restoration of large tracts of land and connection of restored areas to provide habitat continuity, compared to the proposed regulations. Additionally, eliminating the requirement to evaluate channel widening and levee setbacks on agricultural lands would reduce opportunities to reconnect Delta river channels to their historic floodplains compared to the proposed regulations. Reconnection is required to establish natural processes associated with tidal wetlands and floodplain rearing habitat for fish, and to restore the complex, functioning ecosystems described in the Delta Reform Act. Therefore, Alternative 1 would not be as effective at meeting the core strategies that form the basis for the proposed regulations. Specifically, Alternative 1 would not be as effective as the proposed regulations in: creating more natural, functional flows; restoring ecosystem function; protecting land for restoration and safeguarding against land loss; and protecting native species and reducing the impact of nonnative invasive species. Consequently, Alternative 1 was eliminated from consideration.

- Alternative 2 – Reduced Waterside Restoration Emphasis. Under Alternative 2, the Council would revise a policy to disincentivize restoration associated with channel widening and other flood management (levee projects) activities. Specifically, Alternative 2 would differ from the proposed regulations in that it would update the following proposed regulation:

- Remove Section 5008 – Alternative 2 would remove section 5008 (Delta Plan policy ER P4), which requires levee projects to consider alternatives to increase floodplains and riparian habitat. This Alternative would not require levee projects undergoing the Delta Plan consistency review process to provide an evaluation of, and where feasible incorporate, alternatives to increase floodplains and riparian habitats.

Since Alternative 2 would not promote channel widening or levee setbacks, Alternative 2 would afford significantly fewer opportunities to restore waterside riparian channel margin habitat or to reconnect Delta river channels to their historic floodplains when compared to the proposed regulations. Reconnecting floodplains is critical to establishing the natural ecosystem functions described in the Delta Reform Act. While actions upstream from the Delta could contribute to more natural flow conditions entering the Delta and its channels, this alternative would be limited in promoting in-Delta wetlands, waterside riparian areas, rearing habitat for fish, and other water-dependent habitats. Levee improvement projects in the Delta would likely be restricted to current levee footprints.

Alternative 2 would not be as effective at meeting the core strategies that form the basis for the proposed regulations, as it would limit the number, size, and type of restoration projects contributing to a comprehensive approach to ecosystem protection, restoration, and enhancement in the Delta. Therefore, Alternative 2 would not be as effective as the proposed regulations in: creating more natural, functional flows; restoring ecosystem function; protecting land for restoration and safeguarding against land loss; and protecting native species and reducing the impact of nonnative invasive species. Consequently, Alternative 2 was eliminated from consideration.

Economic Impact of Alternatives to the Proposed Policy Actions

The analysis of economic impacts of alternatives to the proposed regulations, as described in Attachment 1, Economic and Fiscal Impact Assessment, is summarized below:

- The No Action Alternative would result in no economic impacts because it would not require any change in reporting or evaluation of project alternatives for covered actions. Therefore, the No Action Alternative would not lessen any adverse impact on businesses, including small businesses. The No Action Alternative would result in no new fiscal costs.
- Alternative 1 could result in fewer covered actions occurring due to the potential reduction in new ecosystem restoration projects on existing agricultural working lands or on lands suitable for farming. This would result in less spending on professional services for environmental consulting and engineering, some of which are performed by small businesses. This would result in decreased revenue for these businesses relative to the proposed regulations. Alternative 1, therefore, would not lessen any adverse impact on small businesses. Alternative 1 could create long-term benefits for the agricultural sector by allowing more farmland to stay in production. Alternative 1 could result in a decrease in fiscal costs as a result of fewer covered actions occurring.

- Alternative 2 would result in a decrease in spending on professional services for engineering for covered actions because the removal of section 5008 would require less consideration of levee alternatives. Alternative 2, therefore, would not lessen any adverse impact on small businesses. Alternative 2 would also result in a decrease in fiscal costs because agencies would spend less on professional services. Alternative 2 would result in less benefits to the professional services sector as a result of this decreased spending.

Economic Impact Analysis/Assessment –Government Code Sections 11346.2(b)(2)(A); 11346.3(b)

The Creation or Elimination of Jobs within the State of California

The Council has determined the proposed regulations would result in an estimated net increase of 0.6 full-time equivalent (FTE) jobs. These include employment effects associated with the direct, indirect, and induced economic impacts of the proposed regulations, and therefore the 0.6 FTE jobs would be spread across various sectors.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed regulations would result in a small change in spending on professional services for environmental consulting and engineering, with the net total increase estimated to be approximately \$100,000. This modest change in expenditures would not lead to the creation or elimination of businesses in the state because additional services would be completed by the same existing firms. Therefore, the Council has determined the proposed regulations are unlikely to cause the creation or elimination of businesses currently doing business in California.

The Expansion of Businesses Currently Operating within the State of California

The Council has determined the proposed regulations may encourage modestly increased revenues for select businesses providing professional services for environmental consulting and engineering in the state. This small increase in spending on professional services would lead to modest expansion of these businesses currently operating within the state. The estimated impact on employment of the proposed regulations equals an increase of 0.6 FTE jobs. This includes direct, indirect, and induced impacts and therefore the 0.6 FTE jobs would be spread across various sectors.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The Council has determined that the proposed regulations would benefit the health and welfare of California residents and protect the environment because they encourage covered 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.

Results of the Economic Impact Assessment/Analysis

The Council concludes that (1) the proposal will add 0.6 FTE jobs within California, (2) it is unlikely that the proposal will eliminate jobs within California, (3) it is unlikely the proposal will create new businesses in California, (4) it is unlikely the proposal will eliminate existing businesses within California, (5) the proposal could result in some expansion of businesses currently doing business within the state, and (6) the proposal will benefit the health and welfare of California residents, worker safety, or the state's environment.

Facts, Evidence, Documents, Testimony, or Other Evidence Supporting Finding of No Significant Adverse Economic Impact Affecting Business – Government Code Section 11346.2(b)(5)

The Council relied upon:

- ERA Economics, LLC. Economic and Fiscal Impact Analysis, Delta Plan Ecosystem Amendment (March 2024).

Duplication or Conflicts with Federal Regulations – Government Code Section 11346.2(b)(6)-(c)

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

For Further Information

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 the following:

Electronic Mail

Comments may be submitted electronically to deltacouncil.ecosystemrulemaking@deltacouncil.ca.gov

U.S. Mail

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