

DELTA STEWARDSHIP
COUNCIL
RESOLUTION 2021-02

APPROVAL OF THE DELTA PLAN AMENDMENTS PROGRAM ENVIRONMENTAL
IMPACT REPORT ADDENDUM AND RULEMAKING AUTHORIZATION FOR DELTA
PLAN POLICY RR P1 (CAL. CODE REGS., TIT. 23, §§ 5001 AND 5012)

WHEREAS: The Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Water Code section 85000 et seq., directs the Delta Stewardship Council (Council) to develop an enforceable, comprehensive, long-term management plan for the Sacramento-San Joaquin Delta and the Suisun Marsh (collectively, the Delta) referred to as the Delta Plan; and

WHEREAS: The Delta Reform Act requires the Delta Plan to “attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments” (Wat. Code, § 85305(a)); and

WHEREAS: The Delta Reform Act requires the Council, “in consultation with the Central Valley Flood Protection Board,” to “recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees” (Wat. Code, § 85306); and

WHEREAS: The Delta Reform Act requires the Delta Plan be “based on the best available scientific information” (Wat.Code, § 85308); and

WHEREAS: On May 16, 2013, the Council, as lead agency under the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., certified the Final Delta Plan Program Environmental Impact Report (State Clearinghouse No. 2010122028) and approved the Delta Plan; and on May 17, 2013, the Council adopted regulations implementing the Delta Reform Act, including California Code of Regulations, title 23, section 5001 (Definitions) (Cal. Code Regs., tit. 23, § 5001) and California Code of Regulations, title 23, Section 5012 (Prioritization of State Investments in Delta Levees and Risk Reduction) (Cal. Code Regs., tit. 23, § 5012) (Delta Plan Policy RR P1); and

WHEREAS: On April 26, 2018, the Council took action to amend the Delta Plan and adopted Resolution No. 2018-1 (“2018 Resolution”) whereby the Council, as lead agency under CEQA, certified the Final Delta Plan Amendments Program Environmental Impact Report (State Clearinghouse No. 2017032048) (“PEIR”), adopted Findings and a Statement of Overriding Considerations; adopted and incorporated into the Delta Plan Amendments all of the new mitigation measures identified in the PEIR and in the Findings; adopted the Mitigation Monitoring and Reporting Program for the Delta Plan Amendments; and adopted the Delta Plan Amendments, including Delta Plan Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta, as amended by the Delta Levees Investment and Risk Reduction Strategy (“Chapter 7”) (See Attachment 1 to this Resolution); and

WHEREAS: The 2018 Delta Plan Chapter 7 Amendment described priorities for state investment in levees and included replacing interim Delta Plan Policy RR P1 with an amended Delta Plan Policy RR P1 (“2018 RR P1 Amendment”) (See Attachment 1 to this Resolution, pp. 26-30, 41-45); and

WHEREAS: In the 2018 Resolution, the Council directed the Executive Officer to initiate rulemaking to amend the existing interim Delta Plan Policy RR P1 (Cal. Code Regs., tit. 23, § 5012) with the 2018 RR P1 Amendment, to amend the Delta Plan Glossary (Cal. Code Regs., tit. 23, § 5001) to add new glossary terms used in the 2018 RR P1 Amendment, and to make any technical changes required by the Office of Administrative Law; and

WHEREAS: The Council initiated formal rulemaking under the California Administrative Procedure Act by filing a Notice of Proposed Adoption, published in the California Regulatory Notice Register on July 5, 2019, and received comments from the public during a 45-day public review period that began on July 5, 2019, and ended on August 19, 2019; and

WHEREAS: On August 22, 2019, the Council held a duly noticed public hearing to receive public comments on the proposed rulemaking, and adopted Resolution 2019-04, which authorized and directed the Executive Officer, or designee(s), to prepare written responses to the public comments received by the Council on the proposed rulemaking; to prepare other pertinent documents; and to take such actions and steps as are necessary to effect the intent of Resolution No. 2019-04; and

WHEREAS: On June 10, 2019, the California Department of Water Resources had published new Light Detection and Ranging (or LiDAR) elevation imaging (“2017 LiDAR imaging”) of the Delta and Suisun Marsh for 2017, which provides updated information about the height of levees and island floors; and

WHEREAS: The 2017 LiDAR imaging presented new information that needed to be further evaluated to inform whether the priorities identified in the 2018 RR P1 Amendment should be modified because of changed levee or island conditions; and

WHEREAS: On March 26, 2020, the Council adopted Resolution 2020-01, to direct staff to evaluate the new 2017 LiDAR imaging information to determine if further modifications to Chapter 7 or the DLIS priorities and modified preliminary language to amend the interim Delta Plan Policy RR P1 (Modified Preliminary Language for RR P1) were needed and report back to the Council at a future date; amend Delta Plan, Chapter 7, to delete part of pages 26-30 and 41-45 describing priorities for state investment in levees and the 2018 RR P1 Amendment; restore the version of Delta Plan Policy RR P1 adopted in 2013; and to submit to the Office of Administrative Law (OAL) a Notice of Decision Not to Proceed which would terminate the rulemaking proceedings initiated on July 5, 2019; and

WHEREAS: On April 7, 2020, the Council issued a Notice of Decision Not to Proceed with rulemaking pursuant to Government Code section 11347 for the 2018 RR P1 Amendment; and

WHEREAS: Following stakeholder input, on May 21, 2021, Council staff reported the results of the evaluation of the 2017 LiDAR imaging and presented proposed revisions to the DLIS priorities and Modified Preliminary Regulatory Language for RR P1 to the Council and committed to return to the Council at a future date for authorization to reinstate rulemaking; and

WHEREAS: Section 15164(a) of the California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit 14, § 15164) ("Section 15164(a)") states that a lead agency or a responsible agency shall prepare an addendum to a previously certified Environmental Impact Report (EIR) if some changes or additions to a project are necessary but none of the following conditions described in section 15162 of the CEQA Guidelines (Cal. Code Regs., tit 14, § 15162) ("Section 15162") requiring preparation of a subsequent EIR have occurred:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration; or
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR; or
 - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the project proponents decline to adopt the mitigation measure or alternative; or

- d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative; and

WHEREAS: Pursuant to Section 15164(a), the Council has prepared an Addendum to the Delta Plan Amendments PEIR (Attachment 2 to this Resolution) which evaluates and concludes that that the proposed revisions to the DLIS priorities and Modified Preliminary Regulatory Language for RR P1 would not trigger any of the conditions listed in Section 15162, and that the preparation of an Addendum therefore is appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE DELTA STEWARDSHIP COUNCIL THAT:

1. The Council hereby finds the foregoing recitals to be true and correct and incorporates them herein; and
2. The Council has considered the Addendum with the final Delta Plan Amendments Program Environmental Impact Report and hereby approves the Addendum to the 2018 Delta Plan Amendments Program Environmental Impact Report (Attachment 2 to this Resolution), which has been completed in compliance with the California Environmental Quality Act, Public Resources Code sections 21000 et seq., and reflects the independent judgment and analysis of the Council; and
3. The Council hereby moves Dutch Slough and McCormick Williamson Tract from Other Priority to Very-High Priority; and moves Pescadero District, Stewart Tract, and Central Stockton from Other Priority to High Priority; and
4. The Council hereby approves the staff-recommended DLIS Prioritization Table and Map (Attachment 3 to this Resolution) for purposes of rulemaking to amend Delta Plan Policy RR P1; and
5. The Council hereby approves the staff-recommended DLIS Modified Preliminary Draft Regulatory Language (Attachment 4 to this Resolution) for purposes of rulemaking to amend Delta Plan Policy RR P1; and
6. The Council hereby directs Council staff to initiate rulemaking to amend: a) Delta Plan Policy RR P1, set forth in 23 CCR section 5012, "Prioritization of State Investments in Delta Levees and Risk Reduction," in accordance with the DLIS Prioritization Table and Map, which are Attachment 3 to this Resolution, and the DLIS Modified Preliminary Draft Regulatory Language in Attachment 4 to this Resolution; and b) the regulation in 23 CCR section 5001 to add new glossary terms set forth in Attachment 4 to this Resolution; and

7. The Council hereby directs and authorizes the Executive Officer, or delegee, to make any non-substantive modifications to the text of Attachment 3 to this Resolution and Attachment 4 to this Resolution deemed necessary in order to complete the rulemaking process, and to inform the Council of any such changes; and
8. The Council hereby directs and authorizes the Executive Officer, or delegee, to correct any errata or make any changes identified by the Council at its August 26, 2021 meeting, and to finalize all elements of the rulemaking package and submit it to the OAL once complete; and
9. The Council hereby directs and authorizes the Executive Officer, or delegee, to take such steps as are necessary to comply with the requirements of the California Environmental Quality Act concerning the Addendum and to effect the intent of this Resolution.

CERTIFICATION

On a motion by Council member _____, seconded by Council member _____, and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by a vote of _____ in favor to _____ opposed at a regular meeting of the Delta Stewardship Council on August 26, 2021.

Ayes: [Listed]

Nos: [Listed]

Absent/Abstain: [Listed]

Dated: August 26, 2021

Beck Barger
Clerk of the Board of the Delta Stewardship Council

Attachments:

1. Delta Plan Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta
2. Delta Plan Amendments Program Environmental Impact Report – Delta Levees Investment Strategy Addendum
3. Staff-Recommended DLIS Prioritization Table and Map
4. Staff-Recommended Modified Preliminary Draft Regulatory Language for Delta Plan Policy RR P1