

DELTA STEWARDSHIP COUNCIL
RESOLUTION 2022-07
AMENDMENTS TO
ADMINISTRATIVE PROCEDURES
GOVERNING APPEALS

WHEREAS, the Delta Stewardship Council is an independent entity of the State of California created by the Sacramento-San Joaquin Delta Reform Act, Water Code sections 85000, et seq. (Delta Reform Act); and

WHEREAS, as required by the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive, long-term management plan for the Delta (Water Code section 85059); and

WHEREAS, a state or local public agency that proposes to undertake a covered action, as defined in Water Code section 85057.5, must prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to initiating the implementation of that covered action (Water Code section 85225); and

WHEREAS, any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the Council (Water Code section 85225.10(a)); and

WHEREAS, the Council has quasi-judicial authority over such appeals (Chapter 3, Part 3, Sections 85225, et seq.); and

WHEREAS, the Delta Reform Act requires the Council to adopt administrative procedures governing appeals (Water Code section 85225.30); and

WHEREAS, on September 23, 2010, the Council adopted Administrative Procedures Governing Appeals (Appeals Procedures or 2010 Administrative Procedures Governing Appeals) as required by Water Code section 85225.30; and

WHEREAS, the Council's Appeals Procedures, including amendments, are exempt from the rulemaking process under the Administrative Procedure Act (Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) (Water Code section 85225.30); and

WHEREAS, since 2018, four certifications of consistency and one revised certification of consistency have been appealed; and

WHEREAS, conducting appeals proceedings since the adoption of the Appeals Procedures has highlighted areas where the Appeals Procedures could be revised to address issues not foreseen in 2010; and

WHEREAS, the Council's 2019 Five-Year Review of the Delta Plan also highlighted areas for potential amendments to the Appeals Procedures; and

WHEREAS, on December 10, 2021, the Council released an underline/strike-out version of proposed draft amendments to the Appeals Procedures (December 2021 Draft) for a 90-day public review period, which concluded on March 7, 2022; and

WHEREAS, at its September 22, 2022, meeting, the Council conducted a public workshop on the December 2021 Draft and received additional public comments; and

WHEREAS, at the conclusion of the September 22, 2022, public workshop, the Council directed staff to bring the proposed amended Appeals Procedures addressing comments and input on the December 2021 Draft back to the Council for possible adoption at a future public meeting; and

WHEREAS, at the October 27, 2022, public Council meeting, staff presented revised draft amendments to the Appeals Procedures (October 2022 Draft), which is Attachment A to this Resolution, and which shows revisions in underline/strikeout made to the December 2021 Draft after the September 22, 2022, workshop; and
WHEREAS, the Council has received and considered public comments on the October 22 Draft; and

WHEREAS, the Council has reviewed and considered the amendments to the Appeals Procedures set forth in the October 2022 Draft.

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

1. The Council hereby finds the foregoing recitals to be true and correct and incorporates them herein.

2. The Council hereby approves and adopts amendments to the 2010 Administrative Procedures Governing Appeals set forth in Attachment A to this Resolution, which are incorporated herein as if fully set forth, to be effective as of November 1, 2022.

3. The Council hereby directs and authorizes the Executive Officer, or her delegee, to take such steps and to complete such actions as are necessary to finalize the amendments to the 2010 Administrative Procedures Governing Appeals set forth in Attachment A, including non-substantive changes and headings, formatting and correcting any typographical errors, and to make the finalized amended Administrative Procedures Governing Appeals available on the Council's website.

LIST OF ATTACHMENTS

Attachment A: Proposed Amendments to the Council's Administrative Procedures Governing Appeals - October 13, 2022 (October 2022 Draft)

CERTIFICATION

On a motion by Councilmember _____, seconded by Councilmember _____, and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by the following vote at a regular meeting of the Delta Stewardship Council on October 27, 2022.

Madueño _____
Damrell _____
Lee _____
Nottoli _____
Smith _____
Zingale _____

Dated: October 27, 2022

Rebecca Barger
Clerk of the Board of the Delta Stewardship Council