

**California Code of Regulations, Title 23. Waters  
Division 6. Delta Stewardship Council  
Chapter 2. Consistency with Regulatory Policies Contained in the  
Delta Plan  
Article 1. Definitions, Section 5001. Definitions  
and  
Article 3. Consistency with the Regulatory Policies Contained in  
the Delta Plan, Section 5012. Prioritization of State Investments in  
Delta Levees and Risk Reduction**

**Notice of Proposed Rulemaking**

NOTICE IS HEREBY GIVEN that the Delta Stewardship Council (Council) proposes to amend California Code of Regulations, Title 23, Section 5012, *Prioritization of State Investments in Delta Levees and Risk Reduction*, to incorporate the Delta Levees Investment Strategy (DLIS). The Council also proposes to amend California Code of Regulations, Title 23, Section 5001 to add definitions for terms used in Delta Plan Policy RR P1.

The Council will conduct a public hearing at the time and place noted below to hear comments, objections, and recommendations. At a separate meeting on a future date, the Council may consider approving for adoption the proposed amendments.

**Opportunity for Public Comment**

- Written Comment Period. Interested members of the public may provide comments by mail or by electronic submittal. **The public comment period for this regulatory action will begin on Friday, August 26, 2022, and close at 11:59 p.m. on Thursday, October 13, 2022. The Council will consider only comments received by the Council by that time.** Any interested person, or her or his authorized representative, may submit written comments relevant to the proposed regulatory action.
- Submit written comments to:  
Erin Mullin  
Delta Stewardship Council 715 P Street, Suite 15-300 Sacramento, CA 95814 (916) 902-6482
- Electronic Submittal of Comments. Any interested person, or her or his authorized representative, may submit comments by electronic submittal at or before 11:59 p.m. on **Thursday, October 13, 2022. The Council will consider only comments received by the Council by that time.** Electronic submittals of comments are

preferred, and must be submitted to the following address to be considered:

[amend.rrp1@deltacouncil.ca.gov](mailto:amend.rrp1@deltacouncil.ca.gov)

- **Public Hearing.** The Council will conduct a public hearing at the time and location set forth below to consider public input, comments, objections, and recommendations to this proposed action. Interested members of the public may present statements, arguments, and comments, verbally or in writing, with respect to the proposed action at the hearing prior to the closing of the hearing. This hearing will be held in accordance with the requirements set forth in Government Code section 11346.8. A remote virtual option to attend the meeting will also be provided.

**Date: October 27, 2022**

**Time:** This item will be considered at a regularly scheduled public meeting of the Council, which is anticipated to commence at **9:00 a.m.** This item may be heard at any time during the regularly scheduled meeting. The public hearing item will remain open as long as attendees are presenting testimony and will conclude after all testimony is given. Please consult the agenda, which will be available at <http://deltacouncil.ca.gov> at least ten (10) days before October 27, 2022, to determine the time at which this item will be heard and to obtain information regarding the remote virtual participation option.

**Location:** California Natural Resources Building, 2<sup>nd</sup> Floor Room 221, 715 P Street, Sacramento, CA 95814. The hearing room is wheelchair accessible.

If you have any questions, please contact:

Erin Mullin

Delta Stewardship Council

715 P Street, Suite 15-300 Sacramento,

CA 95814

(916) 902-6482

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## **Authority and Reference**

Water Code sections 85210(i), 85210(h), and 85306 provide the Council authority for the proposed amendments to California Code of Regulations, Title 23, sections 5001 ("Section 5001") and 5012 ("Section 5012"). Water Code section 85210(i) authorizes the Council to adopt regulations or guidelines as needed to carry out its powers and duties; Water Code section 85210(h) grants the Council the authority "to request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan"; and Water Code section 85306 authorizes the Council, in consultation with the Central Valley Flood Protection Board (CVFPB), to recommend priorities for state investments in levee operation, maintenance, and improvements in the Delta. This action is proposed to implement, interpret, and make specific one or

more of the following: sections 85020, 85022, 85054, 85057.5, 85225, 85300, 85305, 85306, 85307, and 85309 of the Water Code.

## **Informative Digest**

### **Plain English Requirements**

The Council prepared the proposed regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements set forth in Government Code Sections 11342.580 and 11346.2(a)(1). The Council considers the proposed regulations non-technical and drafted to be easily understood by those parties that will use them.

### **Summary of Existing Laws and Regulations Related Directly to the Proposed Rulemaking**

This proposed rulemaking action implements, interprets, and makes specific certain provisions of the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) (Wat. Code, § 85000 *et seq.*). The Delta Reform Act requires the Council to adopt and implement a legally enforceable long-term management plan for the Sacramento-San Joaquin Delta (Delta) to further the “coequal goals” for the Delta of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem” to “be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Wat. Code, §§ 85001(c) and 85300(a); the coequal goals are set forth in Wat. Code, § 85054.) The Delta Plan also furthers the State of California (State) policies specified in Water Code sections 85020 through 85023 of the Delta Reform Act, which include: providing for the sustainable management of the Delta ecosystem, a more reliable water supply for California, and protecting and enhancing the quality of water supply from the Delta, as well as reducing risks to people, property, and State interests through appropriate land use and flood protection. State interests in the Delta include the economic and social well-being of Californians, environmental protection, use and conservation of resources, public access and recreation, habitat restoration and enhancement, water quality, and flood protection.<sup>1</sup>

Pursuant to the Delta Reform Act, in 2013 the Council adopted the Delta Plan as a comprehensive, long-term management plan for the Delta. The Delta Plan provides guidance and recommendations to state and local agencies on actions they may take to further the coequal goals for the Delta and implement the subgoals and strategies for the Delta set forth in the Delta Reform Act. (Wat. Code, §§ 85059 and 85300.) The Delta Plan also includes regulatory policies with which State and local public agencies are required to comply. (Wat. Code, § 85210(i).) The Delta Reform Act grants the Council regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, which are referred to as “covered actions”; State and local agencies are required to demonstrate consistency with applicable regulatory policies (which are incorporated into the Delta Plan) when carrying out, approving, or funding a covered action. (Wat. Code, §§ 85022(a) and 85057.5.)

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<sup>1</sup> Delta Stewardship Council (Council). 2013. The Delta Plan: Ensuring a reliable water supply for California, a healthy Delta ecosystem, and a place of enduring value. May 2013.

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 to recommend priorities for State investment in levee operation, maintenance, and improvements in the Delta, including both project levees (which are a part of the State Plan of Flood Control), and nonproject levees (which are not a part of the State Plan of Flood Control) (Wat. Code, § 85306).

To guide discretionary State investments in Delta flood risk management prior to the completion and adoption of the updated priorities developed pursuant to Water Code section 85306 (which are included in this amendment), the Council adopted Policy RR P1, *Prioritization of State Investments in Delta Levees and Risk Reduction*, included in the 2013 Delta Plan and codified in California Code of Regulations, Title 23, Section 5012 (hereafter Section 5012), which set forth interim priorities for State investments in levee operation, maintenance, and improvements.

The existing Section 5001 defines words and phrases used in the Delta Plan policies and associated regulations and the Delta Reform Act. These definitions are necessary to clarify the meaning of terms used in Section 5012.

The existing Section 5012 outlines a process to prioritize State investments in levee operation, maintenance, and improvements in the Delta and sets forth “interim” priorities for State investment in Delta flood risk management to be followed while longer-term guidelines were being developed pursuant to Water Code section 85306.<sup>2</sup>

### **Summary of the Effect of the Proposed Amendment**

The Council proposes to amend Section 5012 to carry out the legislative requirement that the Council adopt a legally enforceable long-term management plan for the Delta and to carry out the legislative intent of achieving the coequal goals<sup>3</sup> and objectives specified in Water Code sections 85054, 85020 through 85023, and 85306. Specifically, for Water Code section 85306, the Legislative requirement directs the Council, in consultation with the Central Valley Flood Protection Board, to recommend priorities for State investments in levee operation, maintenance, and improvements in the Delta. The Delta Reform Act states that, inherent in the coequal goals for management of the Delta, the policy of the State is to achieve the objective of reducing risks to people, property, and State interests in the Delta through effective emergency preparedness, appropriate land uses, and investments in flood protection (Wat. Code, § 85305).

The proposed amendment to Section 5012 is necessary to ensure that state-funded improvements to Delta levees are based on updated priorities to reduce the likelihood and consequences of levee failures, and to protect people, property, and State interests, while advancing the coequal goals.

In addition, Section 5001 must be amended to include new terms associated with the proposed amendment to Section 5012 in order to assist with interpretation of Section 5012 and provide clarity to the proposed regulations.

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<sup>2</sup> These longer-term guidelines are provided in the proposed amendment to Section 5012.

<sup>3</sup> In addition, the Council adopted Resolution 2018-1 in April 2018, which determined that implementation of the proposed amendment is necessary to achieve the coequal goals as enumerated in the Delta Reform Act and to be consistent with the amended Delta Plan.

## Policy Statement Overview

The Delta is the largest estuary on the west coast of the Americas and is the hub of the State's major water supply systems. The Delta is home to about 500,000 people and comprises approximately 1,300 square miles of low-lying, flood-prone lands bound by 1,100 miles of levees. Before the Delta was modified by levees and other human structures, the natural flows of the San Joaquin River and Sacramento River overflowed the Delta's low-lying islands and floodplains for long periods each spring. Today, flooding of the Delta's complex labyrinth of islands and waterways is prevented by levees.

The Suisun Marsh, located immediately downstream from the Delta and north of Grizzly Bay, is the largest contiguous brackish wetland on the west coast of North America. The Suisun Marsh is a critical part of the San Francisco Bay-Delta estuary ecosystem encompassing 116,000 acres, including 52,000 acres of managed wetlands, 30,000 acres of bays and sloughs, 27,700 acres of uplands, and 6,300 acres of tidal wetlands. Suisun Marsh includes about 230 miles of levees that reduce flood risk and help manage flows for wetlands; about 80 miles of these levees protect Delta water quality and terrestrial and aquatic habitat of statewide importance.<sup>4</sup>

The Delta and Suisun Marsh levees reduce flood risk to people, property, water supply, the Delta ecosystem, and infrastructure of statewide importance. However, levee failure (such as a levee breach) can cause catastrophic flooding, and can potentially cause injury or loss of life, disrupt water supplies, and possibly damage property, infrastructure, and environmental resources of importance to the entire State. Though levee maintenance and improvements over the past three decades have reduced the frequency of levee failures, the State does not have a comprehensive method to prioritize its investments in operations, maintenance, and improvement projects for levees in the Delta and Suisun Marsh. Without a prioritization methodology, the apportionment of public resources into levees may not occur in a manner that reflects a strategic, long-term approach.<sup>5</sup>

A key objective of the Delta Reform Act is to “reduce risks to people, property, and State interests in the [Sacramento – San Joaquin] Delta by promoting effective emergency preparedness, appropriate land use, and strategic levee investments.” (Water Code, § 85305). This must be carried out in a manner that advances the state's coequal goals for the Delta of: “...providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem,” achieved in a manner that protects and enhances the “unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Pub. Resources Code, § 85054.)

The Delta Reform Act explicitly sets State policy for the Delta, including a specific policy in Water Code section 85020 for achieving the following objectives inherent in the coequal goals for the management of the Delta:

- (a) Manage the Delta's water and environmental resources and the water resources of the state over the long term.

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<sup>4</sup> Council. 2017. Delta Levees Investment Strategy. Final Report. July 2017. p. 1.

<sup>5</sup> Council. 2013. The Delta Plan: Ensuring a reliable water supply for California, a healthy Delta ecosystem, and a place of enduring value. May 2013. p. 271.

- (b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.
- (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.
- (d) Promote statewide water conservation, water use efficiency, and sustainable water use.
- (e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.
- (f) Improve the water conveyance system and expand statewide water storage.
- (g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.
- (h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

Public funds currently available for flood management are not sufficient to significantly raise the level of flood protection throughout the Delta to the levels called for by local agencies and prior State plans. The State remains the primary source of funding for flood protection. Spreading inadequate funding thinly throughout the Delta cannot effectively address the serious flood risks to State interests in the Delta. Lacking a strategy to systematically guide strategic levee investments in the Delta toward islands and tracts that represent the greatest risks to people, property, and State interests, California is challenged to meet the risk reduction objectives of the Delta Reform Act in a manner that advances the coequal goals.

**Objective (Goal)** – The broad objectives of this proposed regulatory action are to achieve the requirements of the Delta Reform Act by:

- Setting priorities for strategic Delta levee investments that maximize protection of people, property, and State interests.
- Investing public resources in Delta levees with the greatest potential to protect people, property, and State interests, before investing public resources in Delta levees with lower potential to achieve these objectives; and
- Increasing public awareness of how levee expenditures maximize public safety and protect State interests in the Delta.

**Benefits** – The anticipated benefits, including any nonmonetary benefit to the protection of public health and safety of California residents, worker safety, and the State’s environment, from this proposed regulatory action are:

- Reduced risk of damage to property and infrastructure, including reduced cost to repair failed levees (19 Very-High Priority or High Priority islands and tracts with expected annual damages (EAD) greater than \$900,000 per year (at least 80 percent of Delta-wide EAD).
- Reduced annual risk of fatalities from a levee failure (17 Very-High Priority or

High Priority islands and tracts with an expected annual fatality (EAF) greater than 0.02 lives per year (at least 90 percent of Delta-wide EAF).

- State water supply reliability benefits (23 Very-High Priority or High Priority water supply islands and tracts with a probability of flooding greater than 0.5 percent per year (1-in-200-year probability)).
- “Delta as a Place” benefits from cultural, recreational, and natural resource, and agricultural qualities that distinguish the Delta; and
- Improved transparency and public awareness of State levee funding decisions, provided by annual reports from the California Department of Water Resources (DWR).

### **Substantial Differences from Existing, Comparable Federal Regulations or Statutes**

There are no federal regulations or statutes that address the specific subject addressed by the proposed regulations.

### **Consistency with Existing State Laws and Regulations**

Pursuant to Government Code section 11346.5(a)(3)(D), the Council evaluated the proposed amendment to determine whether it is inconsistent or incompatible with existing State regulations and concluded that the proposed amendments to Sections 5001 and 5012 are neither inconsistent nor incompatible with existing State regulations.

### **Documents Incorporated by Reference**

A map showing the proposed Delta Levees Investment Strategy (DLIS) priority designation for each island and tract in the Delta and Suisun Marsh, which are set forth in proposed Table 1 of proposed Section 5012, is incorporated by reference into Section 5012 as Appendix P [revision date to be filled in when the regulation is approved and filed with the Secretary of State] to the Delta Plan. All other regulatory provisions of Section 5001 and Section 5012 are within the body of the proposed regulations.

### **Mandated by Federal Law or Regulations**

The proposed amendments to Section 5001 and Section 5012 are not mandated by federal law or regulations.

### **Other Statutory Requirements**

None.

### **Local Mandate Determination Regarding the Proposed Regulations**

Pursuant to Government Code 11346.5(a)(5), the Council has made the preliminary determination that the proposed amendments to Sections 5001 and 5012 do not impose a mandate on local agencies or school districts and that no reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 is required.

Pursuant to Government Code 11346.5(a)(6), the Council has made a preliminary determination that the proposed amendments to Sections 5001 and Section 5012 could create costs or savings to any State agency. The Council has determined that the proposed amendment would not create costs to or mandates to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary

cost or savings to State or local agencies. The Council has determined that the proposed amendment would not create costs or savings in federal funding to the State.

## **Fiscal Impact Determination Regarding the Proposed Regulation**

### **Cost or Savings to Local Agencies or Schools Requiring Reimbursement**

There are no non-discretionary costs or savings imposed upon local agencies or schools. The proposed regulations would not require local governments or schools to do anything different or new, and nothing would change with respect to any local subvention programs. Therefore, local agencies would not be directly affected by the DLIS prioritization and would not incur any additional fiscal costs beyond current requirements. This is because the proposed amendments do not place any additional requirements on local agencies. Instead, the proposed regulations impose a reporting requirement on DWR to ensure transparency. Local agencies do not have to report to the Council or justify to the Council why they received levee improvement funding. The proposed regulations do not impose a mandate on local agencies that would cause them to incur additional costs, nor does it create potential for savings.

### **Costs or Savings to Any State Agency**

#### **Fiscal Impact on State Government**

The proposed amendment to Section 5001, which adds definitions for terms used in proposed Section 5012, would not cause any direct or indirect economic or fiscal impacts to state agencies. Any fiscal impacts related to these definitions would be caused by proposed amendments to Section 5012, where these terms are applied.

The Council estimates that that the proposed amendments will create fiscal costs to State agencies of approximately \$405,000 per year. DWR would be required to prepare and submit an annual report to the Council describing Delta levee investments, and if necessary, justifying why funding decisions deviated from the priorities in the proposed amendment. The Council would be required to review the annual report prepared by DWR. The additional cost of preparing an annual report is generally moderate and can be completed by existing staff that are familiar with Delta levee investments and the Delta Plan; thus, it is likely these additional costs would be absorbed within existing DWR and Council budgets<sup>6</sup>

### **Non-Discretionary Costs or Savings Imposed Upon Local Agencies**

The proposed amendment to Section 5001, which adds definitions for terms used in proposed Section 5012, would not cause any direct or indirect economic or fiscal impacts to local agencies. The proposed amendments to Section 5012 would not impose fiscal costs on local governments. The proposed regulations would not require local governments or schools to do anything different or new, and nothing would change with respect to any local subvention programs. Therefore, local agencies would not be directly affected by the DLIS prioritization and would not incur any additional fiscal costs beyond current requirements.

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<sup>6</sup> This estimate is based on analysis in the *Economic and Fiscal Impact Analysis of Proposed Amendments to Prioritization of State Investments in Delta Levees and Risk Reduction (EFIA)* which is included as Attachment 1 to the Initial Statement of Reasons and summarized in the Form 399: *Economic and Fiscal Impact Statement*.



## **Costs or Savings in Federal Funding to the State**

No additional federal funding is required. There are no costs associated with the proposed amendments because there is no reduction in any funding. No direct or indirect fiscal impacts are anticipated to federally funded State agencies or programs as a result of the proposed amendments because the proposed amendments could affect the timing of levee investment but do not change the overall level of funding. Because there is no change to the overall level of funding, there are no savings in federal funding to the State.

## **Housing Costs**

The Council has made an initial determination that the proposed amendments to Sections 5001 and 5012 would not have a significant effect on housing costs. The proposed amendments could shift the distribution of benefits from levee investment within the Delta, indirectly affecting land values either positively or negatively. Any overall effect on housing costs would be insignificant.

## **Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete**

The Council has made an initial determination that the proposed amendments to Sections 5001 and Section 5012 would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

While land is typically an asset and not a separate value-added economic activity, the proposed amendments could result in a net economic cost (higher EAD as a result of reallocation of prospective levee investments) of \$212,700 per year (\$3,900,000 in net present value). Any additional indirect economic effects are likely to be negligible (less than \$232,000 over the analysis period). However, these indirect costs would not eliminate, create, encourage, or restrict expansion of businesses currently doing business within the state and geographic extent of regulations (the Sacramento San-Joaquin Delta and Suisun Marsh). Furthermore, since the proposed amendments would have a negligible effect on businesses, they would not have a significant statewide adverse effect on the ability of those businesses to compete within the State or with businesses in other states.

## **Statement of the Results of the Economic Impact Assessment**

Pursuant to Government Code 11346.3(b), the Council has prepared an economic impact analysis, which is set forth in the Economic and Fiscal Impact Analysis (EFIA), Attachment 1 to the Form 399, of the proposed amendments. Based on the analysis and supporting information provided in the EFIA, the Council makes the following initial determinations:

- Creation or elimination of jobs within California: The proposed amendment would have a minimal effect on the creation or elimination of jobs within California. The proposed regulations may result in a reduction of 2.1 jobs over the analysis period, due to a reduction in real estate commissions. However, the direct economic cost of the proposed amendments to businesses, jobs, and individuals is negligible because while they could change the timing of State investment in Delta levees, they would not change the overall level of investment.

- Creation of new businesses or elimination of existing businesses within California: The proposed amendment would not affect the creation of new businesses or elimination of existing businesses within California. The proposed amendments would not change the overall level of State investment in Delta levee improvements and would be unlikely to have any significant effect on businesses in the State. Any potential effect would only occur at the sale of land and then only indirectly.
- Expansion of businesses currently doing business within the state: The proposed amendment would not affect the expansion of businesses currently doing business within the State. Since the proposed amendments would not change the overall level of State investment in Delta levee improvements and would be unlikely to have any significant effect on businesses in the State. Any potential effect would only occur at the sale of land and then only indirectly and therefore unlikely to affect business expansion.
- Benefits: The benefits of the regulation to the health and welfare of California residents, worker safety, and the State’s environment are as follows:
  - Reduced risk of damage to property and infrastructure, including reduced cost to repair failed levees;
  - Reduced annual risk of fatalities from a levee failure;
  - Improving transparency and public awareness of State levee funding decisions;
  - State water supply reliability benefits;
  - Ecosystem/habitat benefits; and
  - “Delta as a Place” benefits from cultural, recreational, and natural resource, and agricultural qualities that distinguish the Delta <sup>7</sup>.

### **Cost Impact on Representative Private Person or Business**

The requirements of the amended regulations apply to State agencies – they do not apply to representative persons or businesses. The Council is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Business Reporting Requirements**

The proposed amendments to Sections 5001 and 5012 do not have a reporting requirement that applies to businesses. The proposed amendments would establish a new reporting requirement for a State agency (DWR), The proposed amendments would require DWR to prepare an annual report to the Council identifying its decisions to award State funds for Delta levee operation, maintenance, repair, rehabilitation, replacement, and improvement projects and include specific information in the report.

### **Small Business**

The Council makes an initial determination that any potential indirect effects on small businesses would be insignificant. The direct cost of the proposed amendment would fall on State agencies, not on businesses. Therefore, it would have no direct effect on businesses, including small businesses. Businesses could potentially be affected

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<sup>7</sup> For example, legacy communities, recreation, and prime agriculture.

indirectly through changes in landowner expenditures or real estate sales commission, but this effect is negligible. Since the effect on general businesses is negligible, it follows that small businesses (using the consolidated definition of small business set forth in Cal. Gov. Code Section 11346.3(b)(4)(B)) would not be disproportionately affected or overly burdened by the proposed amendments.

## **Consideration of Alternatives**

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

The Council has prepared an Initial Statement of Reasons that contains an analysis of alternatives considered and rejected due to reasons as described. Interested persons may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **Contact Persons**

Inquiries concerning the proposed administrative action may be directed to:

Erin Mullin  
Delta Stewardship Council  
715 P Street, Suite 15-300  
Sacramento, CA 95814  
(916) 902-6482  
[amend.rrp1@deltacouncil.ca.gov](mailto:amend.rrp1@deltacouncil.ca.gov)

The backup contact person to whom inquiries concerning the proposed administrative action may be directed to is:

Eva Bush  
Delta Stewardship Council  
715 P Street, Suite 15-300  
Sacramento, CA 95814  
(916) 284-1619  
[amend.rrp1@deltacouncil.ca.gov](mailto:amend.rrp1@deltacouncil.ca.gov)

All comments must be submitted as set forth in the “Opportunity for Public Comment” section, above.

## **Availability Statements**

The Council will have the entire rulemaking file, including the express terms of the proposed regulations, the Initial Statement of Reasons, and all information that provides the basis for the proposed action, available for inspection and copying throughout the rulemaking process.

As of the date this Notice is published in the Notice Register, the rulemaking file consists of the following materials that are available for public review:

- Text of Proposed Amendment to Existing Regulation Sections 5001 and 5012; proposed Appendix P
- Notice of Proposed Rulemaking
- Initial Statement of Reasons (ISOR)
  - Please note: There is an attachment to the ISOR (see Attachment 1 to ISOR)
- Form 400 (Notice Publications / Regulation Submission)
- Form 399 (Economic and Fiscal Impact Statement)
- Attachment 1 to Form 399 (“EFIA”)
- Information upon which proposed amendment is based, including
  - Addendum to Delta Plan Amendments Program Environmental Impact Report: Delta Levees Investment Strategy Update. Council, 2021.
  - Comparison of PL 84-99 Analyses Delta Levees Investment Strategy (DLIS) Technical memorandum. Delta Stewardship Council (Council), 2017.
  - Cost Analysis for Proposed Delta Plan Regulations in Support of Economic and Fiscal Impact Statement. Council. 2012.
  - Economic Sustainability Plan for the Sacramento-San Joaquin Delta. Delta Protection Commission, 2012.
  - Delta As Place: Agriculture White Paper. Council. 2010.
  - Delta Flood Management Investment Strategy Principles. Council, Approved as Interim Guidance on July 24, and August 27, 2015.
  - Delta Flood Risk Management Assessment District Feasibility Study and Delta Levee Financing Options Report. Delta Protection Commission. 2018.
  - Delta Levees Investment Strategy Issue Paper. Council, 2015.
  - Delta Levees Investment Strategy Final Report, Council, 2017.
  - Delta Levees Investment Strategy Risk Analysis Methodology Report. Council. 2017.
  - Delta Levees Special Flood Control Projects. DWR. 2017
  - DLIS MOU and Joint Implementation Plan. Council, June 22, 2017 Meeting.
  - Delta Memorandum of Understanding (MOU) Working Group Meeting with Delta Stewardship Council (Council) and Central Valley Flood Protection Board (CVFPB). Attendees: Laura Hollender (DWR), Chris Williams (DWR), Erin Mullin (Council), Ryan Stanbra (Council), Meghan Sullivan (CVFPB), and Erica Bishop (GEI). DWR. 2019.
  - Delta Plan: Ensuring a reliable water supply for California, a healthy Delta ecosystem, and a place of enduring value. Council, 2013.
  - Delta Plan Program Environmental Impact Report. Council, 2013.
  - Delta Plan Amendments. Council, April 2018.
  - Delta Plan Ecosystem Amendment: Draft Appendix Q1. Methods Used to Update Ecosystem Restoration Maps Using New Digital Elevation Model and Tidal Data. 2020
  - Delta Plan Amendments Program Environmental Impact Report Addendum and Rulemaking Authorization for Delta Plan Policy RR P1. Council Staff Report. August 2021
  - Delta Plan Executive Summary, Delta Plan Policies and Recommendations. Council, 2013

- DLIS Risk Analysis Methodology Report. Council, Revised June 2017.
- DLIS: Sea Level Rise Methodology. Council, 2015.
- Delta Reclamation District Financing and Budgets. Council, 2015.
- Delta Risk Management Strategy, Phase 1. Risk Report: Section 2. DWR, 2009.
- Discussion Draft of Potential Revisions to Chapter 7 Policies and Recommendations. Council, March 23, 2017. Meeting.
- Draft Report: Earthquakes and High Water as Levee Hazards in the Sacramento-San Joaquin Delta. Delta Independent Science Board (Delta ISB), 2016.
- Economic Sustainability Plan for the Sacramento-San Joaquin Delta. Delta Protection Commission, 2012.
- Final: Levee Related Habitat Review Issue Paper. Council, 2015.
- Impacts for Planning and Analysis Model. <http://www.implan.com/>. 2014 R3 California Counties Database (Delta Counties). MIG Inc. 2014.
- Inspection and Local Maintaining Agency Report of the Central Valley State-Federal Flood Protection System. DWR, 2013.
- Light Detection and Ranging Data. <https://data.cnra.ca.gov/dataset/delta-lidar-2017>. 2019
- Map of the Sacramento-San Joaquin Delta. Council, 2014.
- Map of the Sacramento-San Joaquin Delta and Suisun Marsh prepared by the Flood SAFE Environmental Stewardship and Statewide Resources Office (FESSRO). DWR, 2013.
- Personal communication with Erin Mullin. Senior Engineer. Delta Stewardship Council. January 29, 2019. Updated to 2021 dollars using GDP-IPD. Council. 2019.
- Reclamation District Ability to Pay (ATP) Analysis Technical memorandum. Council, 2017.
- Resolution 2018-1. Certification of the Delta Plan Amendments Program Environmental Impact Report, Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program, and Adoption of the Delta Plan Amendments. Council, April 26, 2018.
- Resolution 2021-02. Approval of the Delta Plan Amendments Program Environmental Impact Report Addendum and Rulemaking Authorization for Delta Plan Policy RR P1. Council, August 26, 2021.
- Review Technical Memoranda from Delta Levee Prioritization Methodology Peer Review Meeting. Council, May 19-20, 2015.
- Revisions to Current DLIS Amendment. Council, March 23, 2017. Meeting.
- Sacramento-San Joaquin Delta Atlas. DWR, 1995.
- Sacramento – San Joaquin Delta Reform Act of 2009
- Staff-Recommended DLIS Prioritization Table and Map; Staff-Recommended Modified Preliminary Draft Regulatory Language for Delta Plan Policy RR P1. Council. 2021.
- State Investments in Delta Levees. Key Issues for Updating Priorities. Council, 2014.
- State Investments in Delta Levees. Key Issues for Updating Priorities. Council, 2015.

- Suisun Marsh Properties Map. Suisun Marsh RCD, 2015.
- U.S. Bureau of Economic Analysis, Gross Domestic Product: Implicit Price Deflator, retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GDPDEF>.
- Final Statement of Reasons (upon completion)
- Final Text of Regulation (upon completion)

To obtain copies or to arrange for an in-person review, copying or inspection of records, please contact Erin Mullin at the address or e-mail or phone number listed above. For more timely access to these materials, and in the interest of waste prevention, interested parties are encouraged to access the Council's Internet webpage at: <https://deltacouncil.ca.gov/dlis/>

### **Availability of Changed or Modified Text**

After holding the hearing and considering all timely and relevant comments received, the Council may adopt the proposed amendment as described in this notice at a subsequently noticed public meeting. If the Council makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Council adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Erin Mullin at the address indicated above. The Council will transmit any modified text to all persons who testify at the public hearing, all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. The Council will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

### **Final Statement of Reasons**

The Final Statement of Reasons will be posted on <https://deltacouncil.ca.gov/dlis/>, and may also be obtained from the individuals listed above once it has been prepared. If the amendment is approved by the Office of Administrative Law, the date the regulation is filed with the Secretary of State and the effective date of the regulations will also be posted on the Council's website.

### **Internet Access**

Copies of this Notice, the Initial Statement of Reasons, the text of the proposed regulations in underline and strikeout, and all materials published or distributed by the Council regarding this proposed action are available at <https://deltacouncil.ca.gov/dlis/>.