



**Delta  
Stewardship  
Council**

A CALIFORNIA STATE AGENCY

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Posted Date: April 14, 2022

## **Notice of Public Meeting Regarding Appeals**

At its regularly-scheduled meeting on April 28, 2022, the Delta Stewardship Council (Council) will receive comments and consider proposed findings (presented in a revised Staff Draft Determination) regarding appeals of the revised Certification of Consistency Number C202110 (Revised Certification) for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project (Lookout Slough) submitted by the California Department of Water Resources (Department) on December 30, 2021, to address the Council's findings on Appeal Number C20215-A1 in its Determination dated July 16, 2021, for Certification of Consistency Number C20215. Following comments from the parties and the public, The Council will make findings pursuant to Water Code section 85225.25. The Staff Draft Determination will be distributed to the Service List and posted to the Council's covered action web page separately prior to the meeting.

### **Date, Time, and Location**

The Council meeting will take place at the following time, date, and physical location:

**Thursday, April 28, 2022**

**9:00 a.m.**

**California Natural Resources Headquarters**

**715 P Street, Room 221, Sacramento, California 95814**

*Please note that the Council action Item concerning this matter is anticipated to commence at approximately 10:00 a.m. Public comment on the matter is anticipated to commence at approximately 11:00 a.m.*

*For the health and safety of everyone attending this meeting, masks and physical distancing are recommended.*

### **Remote Participation**

In addition to the physical location, an option to observe the meeting remotely and an option for remote participation will also be provided.

To observe this meeting, visit Cal-Span (<https://www.cal-span.org>) and select the Council meeting. The meeting may also be observed via Zoom (<https://us02web.zoom.us/j/82139272349>) or telephone at (669) 900-6833 with webinar ID 821 3927 2349. Attendees will be automatically muted upon joining.

Members of the public interested in providing comments from a remote location should join the meeting via Zoom and contact the Council Clerk at [engage@deltacouncil.ca.gov](mailto:engage@deltacouncil.ca.gov), or call (916) 798-9817, provide their name and remain on the line. When called on by the Council Chair, Zoom attendees and telephone callers will be unmuted and able to provide oral comments.

All written comments will be distributed to the members and posted to the Council's website alongside the meeting materials on the Council meeting web page. Written comments received by mail or email by noon the day before a Council meeting will be distributed to members in advance of the meeting and posted online before the meeting. Written comments received after noon the day before a Council meeting will be distributed to the members and posted online with the meeting materials as soon as possible.

If you need accommodations, have technical issues, or have any questions, please contact the Public Participation Office at [engage@deltacouncil.ca.gov](mailto:engage@deltacouncil.ca.gov) or call (916) 798-9817.

## Background

The Delta Reform Act of 2009 requires that a state or local public agency that proposes to undertake a covered action must, prior to initiating the implementation of that action, submit a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan, and, upon remand in case of appeal, file a revised certification of consistency to address the findings of the Council prior to proceeding with the action. (Wat. Code, §§ 85225 and 85225.25.) On December 30, 2021, the Department submitted the Revised Certification for the Lookout Slough Project to address the Council's findings on Appeal C20215-A1 in its Determination dated July 16, 2021, for Certification of Consistency C20215.

The Delta Reform Act allows any person who claims that a covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on one or both of the coequal goals<sup>1</sup> or

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<sup>1</sup> "Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a

implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal of a certification of consistency submitted to the Council. (Wat. Code § 85225.10, subd. (a); [Administrative Procedures Governing Appeals](#) § 6).

The Department first submitted a certification of consistency (Certification Number 202105) for this covered action to the Council on February 22, 2021. That certification of consistency was appealed by four parties. Following a public hearing on March 25-26, 2021, the Council adopted findings in a Determination dated July 16, 2021, remanding the matter, in part, to the Department for reconsideration on certain issues appealed under Delta Plan Policies G P1(b)(3) (Cal. Code Regs., tit. 23, § 5002(b)(3)) and DP P2 (Cal. Code Regs., tit. 23, § 5011) related to recreation, and denying or dismissing the appeals on all other issues.

To address the Council's findings on appeal of Certification Number C202105, the Department submitted the Revised Certification 202110 on December 30, 2021. The following parties (Appellants) submitted timely appeals of the Revised Certification, which were deemed filed on January 31, 2022 ((Council's [Administrative Procedures Governing Appeals](#) (Administrative Procedures), Section 7):<sup>2</sup>

Appeal Number	Appellant Name	Effective Date
C202110-A1	Solano County Water Agency	January 31, 2022
C202110-A2	Liberty Island Access	January 31, 2022

Upon conclusion of the March 24, 2022, hearing, the Council dismissed certain issues raised by the Appellants and directed Council staff to prepare draft findings on the non-dismissed issues for consideration at the April 28, 2022, Council meeting and to release that draft findings for comment prior to the meeting.

Council staff have prepared draft findings regarding the non-dismissed issues on appeal and made them available for public review and comment on April 14, 2022.<sup>3</sup> Included as attachments to the draft findings prepared by staff are Exhibits A, B, and C, which address items recommended for admission pursuant to Appeals

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manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Wat. Code § 85054)

<sup>2</sup> <http://deltacouncil.ca.gov/docs/covered-actions-delta-plan/appeals-procedures>

<sup>3</sup> The draft findings prepared by staff and Exhibits A, B, and C thereto are available at: <https://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=e10519c2-f364-468f-b3e0-7aac75a3d9e0>

Procedures section 10 and/or 29 or denial (and the reason(s) for denial) of evidence. (See Appeals Procedures § 10 and § 29). The Appellants, the Department, and all other interested persons are invited to submit written comments on the draft findings prepared by staff, including Exhibits A, B, and C, and the parties requesting to admit the evidence identified in Exhibit C are invited to provide the missing documentation/information for their respective items in Exhibit C, and provide any additional reasons/argument as to why the excluded evidence should be admitted. Such materials shall be submitted electronically to:

[lookoutsloughproject@deltacouncil.ca.gov](mailto:lookoutsloughproject@deltacouncil.ca.gov) and copy the Service List.<sup>4</sup> To be considered for the Staff Draft Determination that will be presented to the Council at the April 28, 2022 meeting, written comments on the draft findings prepared by staff on Certification of Consistency C202110 and Exhibits A, B, and C, and any documentation/information for items in Exhibit C, must be received no later than **5:00 p.m. on April 19, 2022.**

### Purpose

The purpose of the meeting in the matter of the appeals will be to receive comments from the parties and from all other interested persons on the proposed findings regarding the appeals in the Staff Draft Determination.<sup>5</sup> Upon conclusion of the public meeting, the Council will deliberate and consider the Staff Draft Determination, and will make findings on the appeals pursuant to Water Code section 85225.25.

### Substantial Evidence Scope of Review

The Council will make specific written findings either denying the appeal or remanding the matter to the Department for reconsideration based on the finding that the certification of consistency is not supported by substantial evidence in the record before the Department at the time it submitted the certification. (Wat. Code § 85225.25.)

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<sup>4</sup> The Service List is available at:

<https://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=cc49ec0e-fcd6-4175-917a-f56994e2858b>

<sup>5</sup> A track-changes version of the Staff Draft Determination showing the changes made to the April 14, 2022 draft findings made by staff will be distributed to the service list and posted to the on the Council's Lookout Slough Project [covered action web page](#) prior to the public meeting.

## Web Page

All Council notices, party submittals, and submittals from the public will be posted online at the Council's Lookout Slough Project [covered action web page](#).

## Comments from the Parties and the Public

Following a staff presentation and questions from the Council, the Council will receive comments from the parties and the public regarding this matter. The Council may ask additional questions after comments are received. The order for comments shall be as follows:

1. Solano County Water Agency (Appellant C202110-A1)
2. California Department of Water Resources regarding SCWA Appeal
3. Liberty Island Access (Appellant C202110-A2)
4. California Department of Water Resources regarding LIA Appeal
5. All Other Interested Persons (Public Comments)

The Appellants will be allowed 10 minutes each for oral comments. The Department will be allowed 10 minutes oral comment on each appeal. All Other Interested Persons (public commenters) will be allowed 3 minutes each for oral comments. The Council anticipates that public comments regarding this matter would commence at approximately 11:00 a.m.

Time will be allowed for questions by the Council members or Council staff after each party's comment and when the comment period is concluded.

If you have questions or need reasonable accommodation due to a disability, please contact the Delta Stewardship Council's Meeting Services office at [engage@deltacouncil.ca.gov](mailto:engage@deltacouncil.ca.gov) or (916) 798-9817.

Any materials to be presented at the meeting, including presentation slides and other visual displays, must be submitted to the Council no later than **Tuesday, April 19, 2022 at 5:00 p.m.** Please submit any presentation materials to: [lookoutsloughproject@deltacouncil.ca.gov](mailto:lookoutsloughproject@deltacouncil.ca.gov), and **copy all parties on the** Service List.<sup>6</sup> Please include "C202110" in the subject line of any email. If electronic submittal is not possible, you may mail or deliver your submittals to the following

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<sup>6</sup> The Service List is available at:

<https://coveredactions.deltacouncil.ca.gov/services/download.ashx?u=cc49ec0e-fcd6-4175-917a-f56994e2858b>

address: Clerk to the Council, ATTN: Lookout Slough Project C202110, Delta Stewardship Council, 715 P Street, Suite 15-300, Sacramento, California 95814.

The Council Clerk requests that the titles of the submitted electronic presentations indicate the party name (e.g., Department, Appellant, other).

**Please be advised** that this is an appellate proceeding based on the record before the Department at the time it submitted the Lookout Slough Project Certification of Consistency Number C202110. The Council will not receive sworn testimony, and the parties shall not conduct cross-examination or provide rebuttal testimony. All presentations and written statements shall be based solely upon evidence and legal argument, and shall address only whether substantial evidence in the record before the Department supports the certification of consistency.<sup>7</sup>

## Record

The Department submitted and certified the record supporting the certification of consistency pursuant to Administrative Procedures Section 4.b. This is the record that must contain substantial evidence to support the Department's findings within the certification of consistency. (See Wat. Code, § 85225.25.)

Record documents are available on the Council's Lookout Slough Project [covered action web page](#). You may also request record documents by emailing [lookoutsloughproject@deltacouncil.ca.gov](mailto:lookoutsloughproject@deltacouncil.ca.gov), or calling (916) 798-9817 and identifying the name(s) of the document(s) you are seeking. If you request the entire record for the Lookout Slough Project, a copy of the record will be provided through a download link.<sup>8</sup>

## Prohibition on Ex Parte Communications

The Council's appellate proceedings are subject to the prohibition on ex parte communications. (Gov. Code § 11430.10 et seq; Administrative Procedures §§ 26-28.) Parties and interested persons, including any employees or representatives, may not communicate directly or indirectly with Council members or Council staff regarding any issue in this proceeding, without notice and opportunity for all parties to participate in the communication. (Gov. Code § 11430.10.) The only exceptions to this prohibition are communications required for disposition of an ex

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<sup>7</sup> "Legal argument" refers to the appellants' submittals pursuant to Section 6 of the Administrative Procedures, and testimony (written and/or oral) pursuant to Section 11 of the Administrative Procedures.

<sup>8</sup> Party requests to augment the record, along with any documents submitted by the parties, are also available on the Council's Lookout Slough Project [covered action web page](#).

parte matter specifically authorized by statute, or communications concerning a matter of procedure or practice that is not in controversy. (Gov. Code § 11430.20.)

Please see the Council's Notice regarding Ex Parte restrictions for this matter, posted on the Council's Lookout Slough Project [covered action web page](#) for more details.

If you have any questions concerning matters of procedure or practice that are not in controversy, please contact [lookoutsloughproject@deltacouncil.ca.gov](mailto:lookoutsloughproject@deltacouncil.ca.gov). Please do not contact Council members directly.