

Summary of Delta Protection Commission's Appeal Process

(for complete details see the attached statutory and regulatory provisions)¹

Who May File?

Aggrieved Person Appeal

“Any person” who is “aggrieved by any action taken by a local government or other local agency in implementing the resource management plan” (PRC § 29770(a))²

On What Basis?

“[A]n action, as to land located exclusively within the primary zone, is inconsistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, or [the Delta Protection Act]” (PRC § 29770(a))³

Filing Deadline

The appeal must be filed with the DPC within 10 working days of the local government's final action. (14 CCR § 20001)^{4,5}

DPC-Initiated Appeal

The DPC may review “any action taken by a local government or other local agency in implementing the resource management plan” (PRC § 29770(b))

“[F]or land located exclusively within the primary zone, if the commission believes the action may be inconsistent with the resource management plan, or [the Delta Protection Act].” (PRC § 29770(b))

DPC shall take a vote on whether to appeal no later than next regularly-scheduled meeting that occurs at least 25 working days after the local government's final action. (14 CCR § 20004.1)⁶

Also see “Withdrawal,” below, for DPC options to pursue appeal following an appellant's withdrawal.

Preliminary Actions

Aggrieved Person Appeal

Staff notifies affected local government and project proponent of stay and seeks relevant documents from local government. (14 CCR § 20005)

DPC-Initiated Appeal

Same

Hearing Structure & Timing

2 Step Process:

- 1) Hearing is held at first available regularly-scheduled meeting that occurs at least 15 working days, but not more than 60 calendar days after the filing of the appeal (14 CCR § 20008):
 - a. Staff presents an oral or written recommendation⁷ concerning:
 - i. DPC’s jurisdiction; and
 - ii. presence of an appealable issue
 - b. The DPC, by majority vote, determines whether it has jurisdiction and whether there is an appealable issue.
- 2) If DPC has jurisdiction and the issue is appealable, DPC hears merits at “next available, regularly-scheduled” meeting (14 CCR § 20009)

If any interested person asserts that (i) DPC lacks jurisdiction or (ii) there is no appealable issue, DPC must “hear and resolve” the assertion. (14 CCR § 20009.2.)

If no assertion is made or if DPC determines that there is an appealable issue within DPC jurisdiction, DPC proceeds to merits hearing. DPC may conduct the merits hearing at the same meeting if it has been duly noticed [the regulations do not require that the merits be heard at a subsequent meeting]. (14 CCR § 20009.2)

Withdrawal of Appeal

Aggrieved Person Appeal

Appellant may withdraw appeal at any time before DPC commences roll call for final vote on appeal. (14 CCR § 20009.1.)

Dismissal

If DPC finds either it does not have jurisdiction or the issue is not appealable, it shall dismiss the appeal. (14 CCR § 20008).

Merit Hearing

- 1) Review is de novo (14 CCR § 20006)
- 2) Hearing need not follow technical evidentiary rules (14 CCR § 20010)

DPC-Initiated Appeal

DPC may also determine to appeal following an appellant's withdrawal (14 CCR § 20009.1):

- (i) If withdrawal occurs at a hearing, DPC may vote to review at the same meeting and proceed to hear appeal at next regularly-scheduled meeting.
- (ii) If withdrawal is filed in writing, DPC may vote to review at next available regularly-scheduled meeting at least 15 working days after filing, and proceed to hear appeal at next regularly-scheduled meeting after that.

If DPC finds either it does not have jurisdiction or the issue is not appealable, it shall dismiss the appeal. (14 CCR § 20009.2).

Same

Ex Parte Communication

Aggrieved Person Appeal

- 1) Decision must be based on the hearing record (14 CCR § 20013(a).)
- 2) Prior to voting, commissioners must disclose any oral or written communication they receive outside of the formal hearing process (14 CCR § 20013(b).)

DPC-Initiated Appeal

Same

Commission's Merits Decision

- 1) Deny appeal or remand to local government for reconsideration (PRC § 29771)
- 2) Decision is by majority vote (14 CCR § 20011(a).)
- 3) Final unless DPC directs written findings be prepared, in which case staff prepares findings and presents them at next regularly-scheduled meeting; deadline may be extended by Chair in appropriate circumstances. (14 CCR §§ 20011(b), (c).)
- 4) Staff shall notify affected parties within ten working days of Commission's "formal action." (14 CCR § 20012.)

Same

If Remanded

Aggrieved Person Appeal

Local action is not effective. (PRC § 29771.)

Same

DPC-Initiated Appeal

To become effective, local government must resubmit the matter to the DPC and the DPC must find in writing that the action is consistent with:

- 1) The resource management plan,
- 2) Approved parts of local government general plans that implement the resource management plan, and
- 3) The Delta Protection Act. (PRC § 29771.)

Judicial Review

“An aggrieved person” has 60 days from the Commission’s final decision to seek judicial review (PRC § 29772.)

Same

Footnotes

¹ This summary was prepared by the Attorney General's office in May, 2015 to update a prior summary document prepared for the DPC in March, 2006. To the extent there is any conflict between this summary and the statutory and regulatory provisions, those provisions control.

² All references to the Public Resources Code are listed as "PRC".

³ The statute reserves authority for DPC to "comment on," although not entertain appeals of, projects within the secondary zone that impact the primary zone. (PRC § 29770(d).)

⁴ All references to the California Code of Regulations are listed as "CCR".

⁵ Staff determines if appeal is complete, stamps it "filed" and indicates filing date. (14 CCR § 20002.) Within 5 working days, staff posts and mails specified notices. (14 CCR § 20004.)

⁶ Following a majority vote by the DPC to appeal, staff should follow the 14 CCR § 20004 procedures for noticing affected parties of the DPC's decision.

⁷ If written ("strongly encouraged"), recommendation must be "made available for public inspection at least five working days prior to the hearing." (14 CCR § 20008(c).)