



FLOODPLAN PLANNING GUIDANCE



American Planning Association
California Chapter

Making Great Communities Happen



American Planning Association – California

Chapter Floodplain Planning Guidance

I. Introduction

When it comes to disasters, a good flood is right up there with a nice earthquake. We never know when an earthquake might strike. But many people assume that we know when floods will occur. If you're within a 100-year floodplain, you can expect a major flood every 100 years, right? Wrong. Floods have a way of ignoring our attempts to classify their risks.

The damage wrought on the Gulf Coast by Hurricanes Katrina in late August of 2005 brought home to everyone the incredible personal and economic costs that result from catastrophic flooding. California is thankfully free of hurricane danger, but it is not free of flood hazards. Heavy winter storms regularly cause flooding along the coast. Inland, the burgeoning Central Valley has had its share of close calls that highlight the shortcomings of our aging levee system.

Hurricane Katrina's devastation of New Orleans, a city that was supposed to have greater than 100-year flood protection, raised serious questions about the flood protection standard that has long guided planning in California. California's first responses to Katrina's lessons were to fund repairs to the weakest of the levees and begin an evaluation of existing Central Valley levees under its control. Post-Katrina studies of the structural integrity of the levees, including their resistance to seepage from below, are showing that many of them are less stable than previously believed and do not even provide minimal 100-year protection.

In 2007, the Legislature passed and Governor Schwarzenegger signed important new legislation that will push California to improve its long-term flood protection by better understanding the capacity of the Central Valley's levees, developing plans to better manage the flood protection system, and mandating that local planning efforts recognize the risks of flooding.

The Legislature expressed its intent as follows:

- (a) The Central Valley of California is experiencing unprecedented development, resulting in the conversion of historically agricultural lands and communities to densely populated residential and urban centers.
- (b) The Legislature recognizes that by their nature, levees, which are earthen embankments typically founded on fluvial deposits, cannot offer complete protection from flooding, but can decrease its frequency.

(c) The Legislature recognizes that the level of flood protection afforded rural and agricultural lands by the original flood control system would not be adequate to protect those lands if they are developed for urban uses, and that a dichotomous system of flood protection for urban and rural lands has developed through many years of practice.

(d) The Legislature further recognizes that levees built to reclaim and protect agricultural land may be inadequate to protect urban development unless those levees are significantly improved.

(e) Cities and counties rely upon federal flood plain information when approving developments, but the information available is often out of date and the flood risk may be greater than that indicated using available federal information.

(f) The Legislature recognizes that the current federal flood standard is not sufficient in protecting urban and urbanizing areas within flood prone areas throughout the Central Valley.

(g) Linking land use decisions to flood risk and flood protection estimates comprises only one element of improving lives and property in the Central Valley. Federal, state, and local agencies may construct and operate flood protection facilities to reduce flood risks, but flood risks will nevertheless remain for those who choose to reside in Central Valley flood plains. Making those flood risks more apparent will help ensure that Californians make careful choices when deciding whether to build homes or live in Central Valley floodplains, and if so, whether to prepare for flooding or maintain flood insurance.

(Water Code Section 9601)

This guidance document is intended to provide city and county planners, particularly those in the Central Valley, with information about these new state requirements for floodplain planning. The following paper provides background information on the key 2007 legislation, describes the requirements that apply to state agencies, cities, and counties, and briefly discusses methods of implementing these requirements. For further reference, a timeline for compliance and copies of the pertinent legislation, as well as excerpts from the applicable codes, are included as appendices.

This document is not intended to be a detailed cookbook for revising city and county general plans to comply with the new statutes. Each city and each county faces its own unique circumstances and challenges. This guidance offers a basic road map: it is up to cities and counties to find their destinations.

II. Legislation

With the memory of Hurricane Katrina and visions of the destructive flooding on the Gulf Coast fresh in their minds, the California Legislature in 2006 began considering legislation to protect the Central Valley from disastrous floods. Although no legislation was passed that year, it set the stage for serious discussions at the beginning of the next legislative session in 2007. On October 10, 2007, after much work by the Legislature, the Department of Water Resources (DWR), local governments, flood control agencies,

and others, Governor Schwarzenegger put his signature on a package of six bills aimed at strengthening flood protection in California. As he signed the bills, the Governor stated:

“I have always said public safety is my number one priority, and the package of bills I am signing today will tremendously strengthen flood protection in California. California’s Central Valley has thousands of miles of levees protecting millions of residents and we expect millions more in the coming decades. We want to make sure the tragedies of Hurricane Katrina do not happen here if there is an earthquake or other natural disaster. That is why we will establish 200-year flood protection as the standard for urban developments in the Central Valley so our growth will be safe growth.”

The six bills, in order of signing, are described briefly below:

- SB 5 (Machado) – Enacts the Central Valley Flood Protection Act of 2008. Requires the Department of Water Resources and the Central Valley Flood Protection Board (previously known as the State Reclamation Board) to prepare and adopt a Central Valley Flood Protection Plan by 2012. Establishes that 200-year protection is to be the minimum urban level of flood protection. Sets deadlines for cities and counties in the Central Valley to amend their general plans and their zoning ordinances to conform to the Plan within 24 months and 36 months, respectively, of its adoption. Restricts approval of development agreements and subdivision maps in flood hazard zones, once the general plan and zoning ordinance amendments have been enacted, unless certain findings are made. Obligates Central Valley counties to develop flood emergency plans within 24 months of adoption of the Plan. Its legislative intent is also found in AB 5 and AB 156.
- SB 17 (Florez) – sets compensation for the members of the Central Valley Flood Protection Board. Establishes the duties of the Board. Its provisions were also enacted by AB 5.
- AB 5 (Wolk) – Establishes the Central Valley Flood Protection Board and its duties. Sets out requirements and deadlines for reports on the flood control system to be prepared by DWR and the Board, including levee flood zone protection maps to be prepared by DWR. These are the same requirements also enacted by AB 156.
- AB 70 (Jones) – Provides that cities and counties will share liability with the state in the case of litigation over unreasonably approved new development on agricultural lands. This would not apply where the city or county has amended its general plan and zoning, and otherwise makes land use decisions consistent with the Central Valley Flood Protection Plan. “Unreasonably approving” is defined as approval without appropriate consideration of known significant risks of flooding.
- AB 156 (Laird) – Requires DWR and the Board to adopt a schedule for mapping flood risk areas within the Central Valley. Sets out requirements for reports on the flood control system to be prepared by DWR and the Board, including levee flood zone protection maps to be prepared by DWR by December 31, 2008. DWR is to provide yearly notices to owners of property within a levee protection zone, beginning September 1, 2010. These are the same requirements also enacted by AB 5.
- AB 162 (Wolk) - Requires cities and counties to amend the land use, conservation, safety, and housing elements of their general plans to address flood-related matters. These amendments are required to be made by the next scheduled revision of the housing element after January 1, 2009.

Together these bills establish a comprehensive approach to floodplain planning and management at the state, regional, and local levels. However, as noted in the brief summaries above, there is a good deal of overlap between the bills.

This paper attempts to organize these requirements into a more digestible form. The first step is to spend no more time discussing the individual bills. There is so much duplication among them that continuing to refer to them by number only adds to the confusion. For more information, the reader is directed to the Legislature’s bill information website < <http://www.leginfo.ca.gov/bilinfo.html> > where the texts of these bills can be found.

From this point, the paper will discuss the requirements by level of government or agency, with an emphasis on the new planning requirements established for cities and counties. Where pertinent, citations are to the California codes. Excerpts from the codes that are most pertinent to local government responsibilities are included in the appendix.

III. The State

The 2007 statutes create new responsibilities for state agencies, particularly DWR and the newly reorganized Central Valley Flood Protection Board (CVFPB). There are also new parts for the Department of Fish and Game (DFG) and Department of Housing and Community Development (HCD). We’ll briefly review their responsibilities in order.

Department of Water Resources

Statutory Deadlines and Responsibilities

July 1, 2008	Develop preliminary maps of areas within 100- and 200-year floodplains protected by project levees (Water Code 9610)
	Provide information to cities located outside areas protected by project levees of flood information available from FEMA and other sources (Water Code 9610)
December 31, 2008	Prepare schedule for mapping areas at risk within the Central Valley (Water Code 8612)
	Prepare maps for levee protection zones, including those lands where flood levels would be more than three feet deep in the event of a project levee failure, and distribute them to other agencies (Water Code 9130)
January 1, 2009	Propose updated requirements for adoption by the Building Standards Commission for construction within areas protected by the CVFPP where flood levels are expected to exceed three feet in a 200-year flood (Health and Safety Code 50465)
January 1, 2010	Develop cost-sharing formulas with local agencies for State flood protection bonds (Water Code 9625)
September 1, 2010	Send the first of the notices to property owners whose land is in

	whole or in part within a levee protection zone (Water Code 9120)
December 31, 2010	Prepare a status report on the progress of the Central Valley Flood Protection Plan (Water Code 9610)
January 1, 2012	Complete preparation of the Central Valley Flood Protection Plan (Water Code 9612)

DWR has been given extensive new responsibilities under the Central Valley Flood Protection Act of 2008 (Water Code 9600 et seq.) and related statutes.

In the short term, the Department is to prepare flood hazard maps for areas protected by project levees. “Project levees” are those levees that are part of the facilities of the State Plan of Flood Control. Generally, these are levees for which the Department or CVFPB are responsible for ensuring that they provide flood protection.

The preliminary maps will identify the 100-year and 200-year floodplains within the levee flood protection zones. DWR will also inform cities located outside of the areas that are protected by project levees of sources of flood hazard information. (Water Code Section 9610) This early mapping is intended to provide the basis for city and county planning activities, particularly the annual Land Use Element updates required by Government Code Section 65302(a). By the end of 2008, DWR is to distribute maps of levee protection zones, including areas where water levels would be three feet deep or more in the event of a project levee failure. (Water Code Section 9130)

Beginning in September 2010, and every September afterwards, DWR will send notices to the owners of property that is either completely or partially within levee flood protection zones. These notices will advise property owners that they are behind levees, the level of potential risk of flooding, recommend that they obtain flood insurance, and provide information about flooding and flood insurance. (Water Code Section 9120) DWR will depend upon County assessor’s records to build and maintain the property owners list.

Over the longer term, DWR is responsible for developing the Central Valley Flood Protection Plan, in cooperation with the U.S. Corps of Engineers, the CVFPB, and local flood control agencies. Pursuant to Water Code Sections 9614 and 9615, his plan is to describe the following:

- The Sacramento-San Joaquin Rivers flood management system;
- The current operations of the system;
- The various facilities to be included in the Plan, in detail;
- Existing dams that might be utilized for flood control;
- Existing levees not currently part of the system that could offer flood control;
- Climate change considerations;
- Improvements and repairs needed in order to bring facilities to design standards;

- Facilities proposed for removal from the system;
- Structural and non-structural means of providing 200-year flood protection to current urban areas;
- Structural and non-structural means of improving riverine ecosystems functions; and
- A prioritized list of recommended options.

The intent of this planning is to eventually provide 200-year flood protection to urban and urbanizing areas within the Central Valley. In keeping with this, beginning July 1, 2008 State allocation or expenditure of funds for the upgrade of project levees that protect more than 1,000 residents will require adoption of a local safety plan. (Water Code Section 9650). The local agency responsible for operations and maintenance of the project levee and any city or county protected by the levee will be required to enter into an agreement to prepare this plan within two years. Water Code Section 9650(b) describes the contents of a local safety plan. Separately, in situations where the local flood agency is not able to operate or maintain project levees to acceptable standards, DWR is authorized to form a “maintenance area” and take responsibility for the levee when “in the best interest of the state.” (Water Code Section 12878.21)

Central Valley Flood Protection Board

Statutory Deadlines and Responsibilities

December 31, 2008	Adopt a schedule for mapping areas at risk (Water Code 8612)
	Advise the Legislature of implementation schedule for preparation of the periodic flood control system status report for the State Plan of Flood Control (Water Code 9120)
July 1, 2012	Adopt the Central Valley Flood Protection Plan (Water Code 9612)

The State Reclamation Board has been renamed the Central Valley Flood Protection Board (CVFPB) and reorganized under the 2007 amendments to Part 4 (beginning with Section 8521) of Division 5 of the California Water Code. As part of this reorganization, the Board is expressly permitted to act independently of DWR. The Board retains its traditional regulatory oversight for project levees. In the planning realm, the CVFPB is responsible for adopting the Central Valley Flood Protection Plan. The plan is to be drafted by DWR, in cooperation with the CVFPB. As DWR prepares its schedule for mapping areas at risk of flooding in the Sacramento River and San Joaquin River drainage, CVFPB will be responsible for adopting that schedule.

When a city or county within the Central Valley is updating its safety element, it is required to consult with the CVFPB to solicit useful information. The city or county is required to submit the draft safety element to the CVFPB for review at least 90 days prior

to adopting the element. The CVFPB is required to respond with its written recommendations within 60 days. The Board is authorized to address the uses of land in areas subject to flooding that would offer protection from unreasonable flood risks and to recommend methods/strategies for reducing flood risk and protecting flood areas. (Government Code 65302.7)

Department of Fish and Game

DWR or the CVFPB, as appropriate, along with the Department of Fish and Game may develop site design and planning policies to assist local agencies that request help in implementing the General Plan Guidelines relative to flood control and other land management needs. (Government Code Section 65303.4)

Housing and Community Development Department

Under the General Plan law, HCD determine the Regional Housing Needs Allocation for some cities and counties in California. This assigns the “fair share” of housing units that the jurisdiction will be expected to plan for over the term of its Housing Element. One consideration in determining the allocation is the availability of urban land for future housing development. Lands that are not adequately protected by flood management infrastructure, as indicated by FEMA or DWR, may be excluded from consideration. (Government Code Section 65584.06(b))

IV. Regional Agencies

Councils of Government

Under the General Plan law, regional councils of government (COGs) determine the Regional Housing Needs Allocation for the cities and counties within their regions. This assigns the “fair share” of housing units that the jurisdiction will be expected to plan for over the term of its Housing Element. One consideration in determining the allocation is the availability of urban land for future housing development. Lands that are not adequately protected by flood management infrastructure, as indicated by FEMA or DWR, may be excluded from consideration. (Government Code Section 65584.04(d)(2)(B))

V. Local Agencies

Cities and Counties

Statutory Deadlines and Responsibilities

Annually	Update the Land Use Element to incorporate available information from DWR and FEMA (Government Code 65302(a))
After January 1, 2009	Amend the Conservation and Safety Elements (Government Code Section 65302(d) and (g))
January 1, 2010 (For jurisdictions in the Central Valley only)	Cities and counties must complete their collaboration with State and local flood management agencies to develop funding mechanisms to finance local flood protection responsibilities (Water Code 9623) [This requires consistency with the Central Valley Flood Protection Plan that isn't scheduled for adoption until 2012]
July 1, 2014 (For jurisdictions in the Central Valley only)	Adopt amendments to the General Plan to conform to the Central Valley Flood Protection Plan (Government Code 65302.9) County must adopt flood emergency plans, in cooperation with its cities, consistent with the Central Valley Flood Protection Plan (Water Code 9621)
July 1, 2015 (For jurisdictions in the Central Valley only)	Adopt revisions to the zoning ordinance to make it consistent with the amended General Plan (Government Code 65860.1)

California Planning Law has long required that city and county general plans identify flood prone areas and limit development within those areas. The Office of Planning and Research's 2003 *General Plan Guidelines* in Chapter 6, Optional Elements includes a detailed discussion of the types of analyses that may be undertaken to address flood hazards in the General Plan.

The 2007 flood bills revised the requirements for the Land Use, Conservation, and Safety elements of city and county General Plans. As mentioned under the discussion of HCD's responsibilities, the housing element requirements were also revised. These requirements apply to all cities and counties statewide. However, those jurisdictions within the Central Valley will be subject to additional scrutiny to ensure that their General Plans conform to the Central Valley Flood Control Plan. Also, as discussed later, the Central Valley jurisdictions will have additional restrictions on development approvals tied to flood hazards.

While these new statutes mandate extensive planning analysis, they are tempered by Government Code Sections 65300.7 and 65300.9 that allow cities and counties to

implement the General Plan requirements in ways that recognize their “local conditions and circumstances.” Keep in mind that these mandated revisions to city and county General Plans are subject to the internal consistency requirement of Government Code Section 65300.5 (“the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies”).

General Plans Everywhere

The amendments to California’s General Plan statutes include provisions that apply statewide, as well as those that are specific to the Central Valley. The following discussion is about those changes that apply to all cities and counties. In the short term, the Conservation and Safety elements must be amended by the time of the city’s or county’s first amendment of their Housing element after January 1, 2009. A new schedule for regular reviews and updates of the Safety element will be linked to the Housing element update schedule. (Government Code Sections 65302(d) and (g))

Land Use

In the near term, the Land Use element must now be reviewed annually to identify those areas that are subject to flooding, as identified by FEMA and DWR. Because maps are changing at a quicker rate in the Central Valley, that region of the state will find the greatest need for revisions. At first, most changes will reflect the Central Valley levee protection zones identified on preliminary maps that DWR is to release in mid-2008. As time goes by, more cities and counties will be expected to annually update the Land Use element to incorporate new floodplain information.

Conservation

The amended Conservation element must “identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management” (Government Code Section 65302(d)). The 2003 *General Plan Guidelines* suggests an extensive array of considerations in its discussion of flood management in the Conservation Element section of Chapter 4, Required Elements of the General Plan. It appears that this requirement may be no more than identifying floodplains.

Safety

The Safety element provisions contain the most changes over prior statute. This element has always addressed flood hazard and floodplain management. As amended, Government Code Section 65302(g) will now require the Safety element to do much more. Paraphrasing the statute, the amended Safety element must:

Identify information regarding flood hazards, including, but not limited to, the following:

- (a) Flood hazard zones. As used here, "flood hazard zone" means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the

Federal Emergency Management Agency. The identification of a flood hazard zone does not imply that areas outside the flood hazard zones or uses permitted within flood hazard zones will be free from flooding or flood damage.

(b) National Flood Insurance Program maps published by FEMA.

(c) Information about flood hazards that is available from the United States Army Corps of Engineers.

(d) Designated floodway maps that are available from the Central Valley Flood Protection Board.

(e) Dam failure inundation maps prepared pursuant to Section 8589.5 that are available from the Office of Emergency Services.

(f) Awareness Floodplain Mapping Program maps and 200-year floodplain maps that are or may be available from, or accepted by, the Department of Water Resources.

(g) Maps of levee protection zones.

(h) Areas subject to inundation in the event of the failure of project or nonproject levees or floodwalls.

(i) Historical data on flooding, including locally prepared maps of areas that are subject to flooding, areas that are vulnerable to flooding after wildfires, and sites that have been repeatedly damaged by flooding.

(j) Existing and planned development in flood hazard zones, including structures, roads, utilities, and essential public facilities.

(k) Local, state, and federal agencies with responsibility for flood protection, including special districts and local offices of emergency services.

Establish a set of comprehensive goals, policies, and objectives based on the information identified above, for the protection of the community from the unreasonable risks of flooding, including, but not limited to:

(a) Avoiding or minimizing the risks of flooding to new development.

(b) Evaluating whether new development should be located in flood hazard zones, and identifying construction methods or other methods to minimize damage if new development is located in flood hazard zones.

(c) Maintaining the structural and operational integrity of essential public facilities during flooding.

(d) Locating, when feasible, new essential public facilities outside of flood hazard zones, including hospitals and health care facilities, emergency shelters, fire stations, emergency command centers, and emergency communications facilities or identifying construction methods or other methods to minimize damage if these facilities are located in flood hazard zones.

(e) Establishing cooperative working relationships among public agencies with responsibility for flood protection.

Establish a set of feasible implementation measures designed to carry out the goals, policies, and objectives established above.

As mentioned above, Chapter 6 of the 2003 *General Plan Guidelines* contains an extensive discussion of flood management. Taken together with the requirements listed

here, it provides a surplus of ideas for complying with the new Section 65302(g) requirements.

The Legislature wanted to give those jurisdictions that are already complying with FEMA requirements some credit for their foresight. Accordingly, Government Code Section 65302(g) provides that “cities and counties with floodplain management ordinances that have been approved by FEMA that substantially comply with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by reference into the safety element the other general plan provisions or the flood plain ordinance, specifically showing how each requirement of this subdivision has been met.” This provision will probably not offer Central Valley cities and counties much of a break. FEMA floodplain management ordinances are typically based on 100-year floodplain maps. This won’t comply with the 200-year “levee protection zones” that form the basis for floodplain management under the flood bills.

The floodplain information from the Land Use and other elements should be used to advise the COG or HCD of areas that are not suitable for new residential development. This should be taken into account by the COG or HCD when they determine the city’s or county’s regional housing need allocation.

CEQA Everywhere

CEQA’s primary purpose is to inform the public, decision-makers, and other agencies of a project’s potential significant environmental impacts and to identify alternatives or mitigation measures to reduce or avoid those impacts. As flood hazard information becomes available from DWR and other agencies, CEQA documents will be expected to incorporate the most recently available floodplain and flood risk information. To the extent that this new information expands the flood zones or identifies areas with inadequate flood protection, the information will constitute “substantial evidence” that may trigger preparation of an EIR. As information becomes available about 200-year floodplains, they will become the standard by which flood hazard is determined under CEQA.

The amendments to the Land Use, Conservation, and Safety elements required by the revisions to Government Code Section 65302 will be subject to CEQA. The Safety element revisions may be quite extensive, depending upon the community and the comprehensiveness of their current Safety element’s floodplain provisions. As a result, the Safety element amendments may have the best chance of triggering the need to prepare an EIR.

General Plans in the Central Valley

Although many Central Valley cities and counties are faced with the need to substantially update their Safety Elements by 2009, the major requirements particular to the Central Valley will take effect in 2012. Cities and counties within the Central Valley will be required to update their General Plans within 24 months of the CVFPB’s adoption of the

Central Valley Flood Control Plan. Pursuant to Government Code 65302.9(a), the update must contain all of the following:

- (1) The data and analysis contained in the Central Valley Flood Protection Plan, including, but not limited to, the locations of the facilities of the State Plan of Flood Control, the locations of other flood management facilities, the locations of the real property protected by those facilities, and the locations of flood hazard zones.
- (2) Goals, policies, and objectives, based on the data and analysis identified pursuant to paragraph (1), for the protection of lives and property that will reduce the risk of flood damage.
- (3) Feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to paragraph (2).

Whenever a city or county within the Central Valley is amending or adopting a new safety element, it is required to consult with the CVFPB to solicit useful information. Additionally, the city or county is required to submit the draft safety element to the CVFPB and every local agency that provides flood protection within the city or county for review at least 90 days prior to adopting the element. The CVFPB is required to respond with its written recommendations within 60 days. If the city or county decides not to accept the recommendations of the CVFPB, then it must make written findings that state its reasons for rejecting the recommendations. The city or county must provide those findings to the CVFPB and the local flood protection agency. (Government Code 65302.7)

Other Plans in the Central Valley

Water Code Section 9621 requires that each county collaborate with its cities to develop “flood emergency plans” within 24 months of the adoption of the Central Valley Flood Protection Plan. The statutes do not describe the contents of these plans. This is expected to be fleshed out in advance of the 2012 deadline for adoption of the Central Valley Flood Protection Plan.

Although not a plan, per se, Water Code 9622 requires each city and county to collaborate with State and local flood management agencies to provide relocation assistance or other strategies “for reducing flood risk to existing economically disadvantaged communities located in nonurbanized areas.” This would be required to conform to the Central Valley Flood Protection Plan’s provisions. “Urban area” means any contiguous area in which more than 10,000 residents are protected by project levees (Public Resources Code 5096.805), so a nonurbanized area presumably consists of lands outside urban areas.

Zoning and Subdivisions in the Central Valley

The provisions of the 2007 flood protection bills will not directly apply to zoning and other permit requirements for several years. Once the CVFPB adopts the Central Valley Flood Control Plan in 2012, cities (including charter cities) and counties within the

Central Valley will be required to update their zoning ordinances within 36 months to make their zoning consistent with the General Plan. If the city or county completes its related General Plan amendments in less than 24 months, then the zoning must be made consistent within the next 12 months. (Government Code 65860.1) Because most charter cities do not currently maintain consistency between their General Plan and their zoning ordinance, this requirement will be a major break from long-standing policy and will probably require extensive, agency-sponsored rezonings. Central Valley charter cities should begin the process of rezoning sufficiently in advance to meet these deadlines.

Once the General Plan and zoning ordinance have been amended, no subdivisions, development agreements, or permits that would place development within a flood hazard zone can be approved unless the city or county makes explicit findings that either existing flood management facilities provide an adequate level of protection from flooding, the city or county has conditioned the project to provide an adequate level of protection, or the local flood management agency has made adequate progress on the construction of a flood protection system that will provide adequate protection. The detailed provisions for findings are in the following Government Code Sections:

- development agreements -- Section 65860.1;
- discretionary and ministerial permits -- Section 65962; and
- tentative and parcel map subdivisions -- Section 66474.5.

City and County Liability in the Central Valley

Water Code Section 8307 provides that in the case of litigation against the State over property damage resulting from a flood, a city or county may be required to contribute its fair share of the damages to the extent that the jurisdiction “has increased the state’s exposure to liability for property damage by unreasonably approving new development in a previously undeveloped area that is protected by a state flood control project.” Prior to enactment of this statute, caselaw had placed liability for flooding resulting from failure of a state flood control project solely on the state.

This statute puts Central Valley cities and counties on notice that they are now expected to responsibly review and mitigate known flood risks when approving Greenfield development projects. Although not explicitly stated in Section 8307, the city or county should make detailed findings, supported by substantial evidence in the administrative record, that show they are in compliance with this section. A jurisdiction that does not do so places itself in jeopardy should there be future litigation over damages.

Cities and counties must take particular care to review the latest information available from DWR and other sources regarding the levee protection zones and other flood hazard areas. As DWR produces new maps and new data for the Central Valley, that information will need to be taken into consideration before approving any greenfield project involving land that was in agricultural or open space use on January 1, 2008.

The new information will be important to the jurisdiction's CEQA analysis as well. Under the "fair argument" standard, an EIR must be prepared whenever it can be fairly argued on the basis of factual evidence that a project may have a significant effect. The new flood maps and data can provide just that sort of evidence. As a result of knowing more about flood risks, more EIRs may be necessary. As a corollary, initial studies and EIRs will be expected to include the latest information available from DWR and other sources and recommend feasible mitigation measures where possible. While a city or county may still approve developments at risk with a "statement of overriding considerations," that will not avoid the potential for shared liability should there be litigation over flood damages relating to failure of a state flood control facility.

As defined in Section 8307, "a state flood control project" refers to state flood control facilities in the Sacramento and San Joaquin River watersheds. So, this shared liability statute applies only to Central Valley communities.

The section defines "previously undeveloped area" as land devoted to agricultural use (use of land, including but not limited to greenhouses, for the purpose of producing an agricultural commodity for commercial purposes [Government Code 51201]) or open space use (any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan [Government Code 65560]). Pursuant to Section 8307, land that was designated for development in a general or specific plan, or in a local zoning ordinance, as of January 1, 2008 is not considered a "previously undeveloped area."

"Unreasonably approving" is defined as "approving a new development project without appropriately considering significant risks of flooding made known to the approving agency as of the time of approval and without taking reasonable and feasible action to mitigate the potential property damage to the new development resulting from a flood."

Once the city or county has amended its general plan and zoning ordinance to conform to the Central Valley Flood Protection Plan sometime after 2012, and complies with the requirements for approval of discretionary and ministerial projects (Government Code Section 65962), subdivision projects (Government Code Section 66474.5), and development agreements (Government Code 65865.5), it will not be subject to shared liability. This is a strong incentive for these communities to comply with the statutes as quickly as possible.

CEQA in the Central Valley

The 200-year floodplain will become the minimum standard by which flood risk is measured. CEQA documents will be expected to reflect the most recently available information from DWR and other agencies. Jurisdictions will need to keep abreast of the information being generated by state and federal agencies so that their CEQA documents can incorporate that information.

VI. More Information

The Office of Planning and Research's 2003 *General Plan Guidelines* are available online at < <http://opr.ca.gov/>> on its Publications and Forms page. The drafters of the 2007 flood package relied heavily on the *Guidelines*' list of suggested Safety element contents.

DWR is preparing a guide for compliance with the 2007 flood management legislation. As time passes, DWR will have more information on flood zones available on its website. Currently, the Floodsafe California < <http://www.floodsafe.water.ca.gov/> > and floodplain mapping < http://www.fpm.water.ca.gov/mapping/new_mapping.cfm> websites have pertinent information.

The California Government Code, Health and Safety Code, and Water Code can be accessed online from the website maintained by the Office of Legislative Counsel. Go to: < <http://www.leginfo.ca.gov/calaw.html> >.

The texts of the six bills in the 2007 flood package can be found online at the Legislative Counsel's website for legislation. Go to < <http://www.leginfo.ca.gov/bilinfo.html>> select the 2007-2008 legislative session, and search for the bills by number.

Appendix -- Excerpts from the California Codes

Planning and Zoning Law

(from the Title 7 of the California Government Code)

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals.

The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land for public and private uses shall consider the identification of land and natural resources pursuant to paragraph (3) of subdivision (d). The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify and annually review those areas covered by the plan that are subject to flooding identified by flood plain mapping prepared by the Federal Emergency Management Agency (FEMA) or the Department of Water Resources. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) "Military readiness activities" mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) ...

(c) ...

(d) (1) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies, including flood management, water conservation, or groundwater agencies that have developed, served, controlled, managed, or conserved water of any type for any purpose in the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county.

(2) The conservation element may also cover all of the following:

(A) The reclamation of land and waters.

(B) Prevention and control of the pollution of streams and other waters.

(C) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(D) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(E) Protection of watersheds.

(F) The location, quantity and quality of the rock, sand and gravel resources.

(3) Upon the next revision of the housing element on or after January 1, 2009, the conservation element shall identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management.

(e) ...

(f) ...

(g) (1) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction, and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of Division 2 of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(2) The safety element, upon the next revision of the housing element on or after January 1, 2009, shall also do the following:

(A) Identify information regarding flood hazards, including, but not limited to, the following:

(i) Flood hazard zones. As used in this subdivision, "flood hazard zone" means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency. The identification of a flood hazard zone does not imply that areas outside the flood hazard zones or uses permitted within flood hazard zones will be free from flooding or flood damage.

(ii) National Flood Insurance Program maps published by FEMA.

(iii) Information about flood hazards that is available from the United States Army Corps of Engineers.

(iv) Designated floodway maps that are available from the Central Valley Flood Protection Board.

(v) Dam failure inundation maps prepared pursuant to Section 8589.5 that are available from the Office of Emergency Services.

(vi) Awareness Floodplain Mapping Program maps and 200-year flood plain maps that are or may be available from, or accepted by, the Department of Water Resources.

(vii) Maps of levee protection zones.

(viii) Areas subject to inundation in the event of the failure of project or nonproject levees or floodwalls.

(ix) Historical data on flooding, including locally prepared maps of areas that are subject to flooding, areas that are vulnerable to flooding after wildfires, and sites that have been repeatedly damaged by flooding.

(x) Existing and planned development in flood hazard zones, including structures, roads, utilities, and essential public facilities.

(xi) Local, state, and federal agencies with responsibility for flood protection, including special districts and local offices of emergency services.

(B) Establish a set of comprehensive goals, policies, and objectives based on the information identified pursuant to subparagraph (A), for the protection of the community from the unreasonable risks of flooding, including, but not limited to:

(i) Avoiding or minimizing the risks of flooding to new development.

(ii) Evaluating whether new development should be located in flood hazard zones, and identifying construction methods or other methods to minimize damage if new development is located in flood hazard zones.

(iii) Maintaining the structural and operational integrity of essential public facilities during flooding.

(iv) Locating, when feasible, new essential public facilities outside of flood hazard zones, including hospitals and health care facilities, emergency shelters, fire stations, emergency command centers, and emergency communications facilities or identifying construction methods or other methods to minimize damage if these facilities are located in flood hazard zones.

(v) Establishing cooperative working relationships among public agencies with responsibility for flood protection.

(C) Establish a set of feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to subparagraph (B).

(3) After the initial revision of the safety element pursuant to paragraph (2), upon each revision of the housing element, the planning agency shall review and, if necessary, revise the safety element to identify new information that was not available during the previous revision of the safety element.

(4) Cities and counties that have flood plain management ordinances that have been approved by FEMA that substantially comply with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by reference into the safety element the other general plan provisions or the flood plain ordinance, specifically showing how each requirement of this subdivision has been met.

(5) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the California Geological Survey of the Department of Conservation, the Central Valley Flood Protection Board, if the city or county is located within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code, and the Office of Emergency Services for the purpose of including information known by and available to the department, the office, and the board required by this subdivision.

(6) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

65302.7. (a) For the purposes of complying with Section 65302.5, each county or city located within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code, shall submit the draft element of, or draft amendment to, the safety element to the Central Valley Flood Protection Board and to every local agency that provides flood protection to territory in the city or county at least 90 days prior to the adoption of, or amendment to, the safety element of its general plan.

(b) The Central Valley Flood Protection Board and each local agency described in paragraph (1) shall review the draft or an existing safety element and report their respective written recommendations to the planning agency within 60 days of the receipt of the draft or existing safety element. The Central Valley Flood Protection Board and each local agency shall review the draft or existing safety element and may offer written recommendations for changes to the draft or existing safety element regarding both of the following:

(1) Uses of land and policies in areas subjected to flooding that will protect life, property, and natural resources from unreasonable risks associated with flooding.

(2) Methods and strategies for flood risk reduction and protection within areas subjected to flooding.

(c) Prior to the adoption of its draft element or draft amendments to the safety element, the board of supervisors of the county or the city council of a city shall consider the recommendations made by the Central Valley Flood Protection Board and any local agency that provides flood protection to territory in the city or county. If the board of

supervisors or the city council determines not to accept all or some of the recommendations, if any, made by the Central Valley Flood Protection Board or the local agency, the board of supervisors or the city council shall make findings that state its reasons for not accepting a recommendation and shall communicate those findings in writing to the Central Valley Flood Protection Board or to the local agency.

(d) If the Central Valley Flood Protection Board's or the local agency's recommendations are not available within the time limits required by this section, the board of supervisors or the city council may act without those recommendations. The board of supervisors or city council shall consider the recommendations at the next time it considers amendments to its safety element.

65302.9. (a) Within 24 months of the adoption of the Central Valley Flood Protection Plan by the Central Valley Flood Protection Board pursuant to Section 9612 of the Water Code, each city and county within the Sacramento-San Joaquin Valley, shall amend its general plan to contain all of the following:

(1) The data and analysis contained in the Central Valley Flood Protection Plan, including, but not limited to, the locations of the facilities of the State Plan of Flood Control, the locations of other flood management facilities, the locations of the real property protected by those facilities, and the locations of flood hazard zones.

(2) Goals, policies, and objectives, based on the data and analysis identified pursuant to paragraph (1), for the protection of lives and property that will reduce the risk of flood damage.

(3) Feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to paragraph (2).

(b) To assist each city or county in complying with this section, the Central Valley Flood Protection Board, the Department of Water Resources, and local flood agencies shall collaborate with cities or counties by providing them with information and other technical assistance.

(c) In implementing this section, each city and county, both general law and charter, within the Sacramento-San Joaquin Valley, shall comply with this article, including, but not limited to, Sections 65300.5, 65300.7, 65300.9, and 65301.

(d) Notwithstanding any other provision of law, this section applies to all cities, including charter cities, and counties within the Sacramento-San Joaquin Valley. The Legislature finds and declares that flood protection in the Sacramento and San Joaquin Rivers drainage areas is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution.

65860.1. (a) Within 36 months of the adoption Central Valley Flood Protection Plan by the Central Valley Flood Protection Board pursuant to Section 9612 of the Water Code, but not more than 12 months after the amendment of its general plan pursuant to Section 65302.9, each city and county within the Sacramento-San Joaquin Valley shall amend its zoning ordinance so that it is consistent with the general plan, as amended.

(b) Notwithstanding any other provision of law, this section applies to all cities, including charter cities, and counties within the Sacramento-San Joaquin Valley. The Legislature finds and declares that flood protection in the Sacramento and San Joaquin

Rivers drainage areas is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution.

65865.5. (a) Notwithstanding any other provision of law, after the amendments required by Section 65302.9 and 65860.1 have become effective, the legislative body of a city or county within the Sacramento-San Joaquin Valley shall not enter into a development agreement for any property that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the development agreement that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency has made adequate progress on the construction of a flood protection system which will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments and any associated environmental documents are challenged in court, the validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) Nothing in this section shall be construed to change or diminish existing requirements of local floodplain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

65962. (a) Notwithstanding any other provision of law, after the amendments required by Sections 65302.9 and 65860.1 have become effective, each city and county within the Sacramento-San Joaquin Valley shall not approve any discretionary permit or other discretionary entitlement, or any ministerial permit that would result in the construction of a new residence, for a project that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the project to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the permit or discretionary entitlement that will protect the project to the urban level of flood protection in urban and

urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency has made adequate progress on the construction of a flood protection system which will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments and any associated environmental documents are challenged in court, the validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) Nothing in this section shall be construed to change or diminish existing requirements of local floodplain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

66474.5. (a) Notwithstanding any other provision of law, after the amendments required by Sections 65302.9 and 65860.1 have become effective, the legislative body of each city and county within the Sacramento-San Joaquin Valley shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, for any subdivision that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the subdivision to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the subdivision that will protect the project to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency has made adequate progress on the construction of a flood protection system which will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments and any associated environmental documents are challenged in court, the validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) Nothing in this section shall be construed to change or diminish existing requirements of local floodplain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

City and County Liability

(from Division 5 of Part 2 of the California Water Code)

8307. (a) A city or county may be required to contribute its fair and reasonable share of the property damage caused by a flood to the extent that the city or county has increased the state's exposure to liability for property damage by unreasonably approving new development in a previously undeveloped area that is protected by a state flood control project. However, a city or county shall not be required to contribute if, after the amendments required by Sections 65302.9 and 65860.1 of the Government Code have become effective, the city or county complies with Sections 65865.5, 65962, and 66474.5 of the Government Code as applicable with respect to that development. This section shall not be construed to extend or toll the statute of limitations for challenging the approval of any new development.

(b) A city or county is not required to contribute unless an action has been filed against the state asserting liability for property damage caused by a flood and the provisions of subdivision (a) providing for contribution have been satisfied. A city or county is not required to contribute if the state settles the claims against it without providing the city or county with an opportunity to participate in settlement negotiations.

(c) For the purposes of this section:

(1) "State flood control project" means any flood control works within the Sacramento River Flood Control Project described in Section 8350, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6.

(2) "Undeveloped area" means an area devoted to "agricultural use," as defined in Section 51201 of the Government Code, or "open space land," as defined in Section 65560 of the Government Code, that, as of January 1, 2008, is not already designated for development in a general or specific plan or by a local zoning ordinance.

(3) "Unreasonably approving" means approving a new development project without appropriately considering significant risks of flooding made known to the approving agency as of the time of approval and without taking reasonable and feasible action to mitigate the potential property damage to the new development resulting from a flood.

(4) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(d) This section shall not apply to any land or projects for which an application for development has been submitted to the city or county prior to January 1, 2008.

Central Valley Flood Protection Board

(from Part 4 of Division 6 of the California Water Code)

CHAPTER 9. REPORTS

Article 1. Definitions

9110. Unless the context requires otherwise, the definitions set forth in this article govern the construction of this chapter.

(a) "Fiscal year" has the same meaning as that set forth in Section 13290 of the Government Code.

(b) "Levee flood protection zone" means the area, as determined by the board or the department, that is protected by a project levee.

(c) "Local agency" means a local agency responsible for the maintenance of a project levee.

(d) "Maintenance" has the same meaning as that set forth in subdivision (f) of Section 12878.

(e) "Project levee" means any levee that is part of the facilities of the State Plan of Flood Control.

(f) "State Plan of Flood Control" means the state and federal flood control works, lands, programs, plans, policies, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 for which the board or the department has provided the assurances of nonfederal cooperation to the United States, and those facilities identified in Section 8361.

Article 2. State Reports

9120. (a) The department shall prepare and the board shall adopt a flood control system status report for the State Plan of Flood Control. This status report shall be updated periodically, as determined by the board. For the purposes of preparing the report, the department shall inspect the project levees and review available information to ascertain whether there are evident deficiencies.

(b) The status report shall include identification and description of each facility, an estimate of the risk of levee failure, a discussion of the inspection and review undertaken pursuant to subdivision (a), and appropriate recommendations regarding the levees and future work activities.

(c) On or before December 31, 2008, the board shall advise the Legislature, in writing, as to the board's schedule of implementation of this section.

9121. (a) On or before September 1, 2010, and on or before September 1 of each year thereafter, the department shall provide written notice to each landowner whose property is determined to be entirely or partially within a levee flood protection zone.

(b) The notice shall include statements regarding all of the following:

(1) The property is located behind a levee.

(2) Levees reduce, but do not eliminate, the risk of flooding and are subject to catastrophic failure.

(3) If available, the level of flood risk as described in the flood control system status report described in Section 9120 and a levee flood protection zone map prepared in accordance with Section 9130.

(4) The state recommends that property owners in a levee flood protection zone obtain flood insurance, such as insurance provided by the Federal Emergency Management Agency through the National Flood Insurance Program.

(5) Information about purchasing federal flood insurance.

(6) The Internet address of the Web site that contains the information required by the flood management report described in Section 9141.

(7) Any other information determined by the department to be relevant.

(c) A county, with assistance from the department, shall annually provide to the department, by electronic means, lists of names and addresses of property owners in a levee flood protection zone located in that county.

(d) Notwithstanding any other provision of the law, the department may enter into contracts with private companies to provide the notices required by this section.

9122. The board shall determine the areas benefited by facilities of the State Plan of Flood Control based on information developed by the department.

Article 3. Levee Flood Protection Zone Maps

9130. (a) The department shall prepare and maintain maps for levee flood protection zones. The department shall prepare the maps by December 31, 2008, and shall include in the maps a designation of those lands where flood levels would be more than three feet deep if a project levee were to fail, using the best available information.

The maps shall include other flood depth contours if that information is available.

(b) The department shall distribute the levee flood protection zone maps to appropriate governmental agencies, as determined by the department.

(c) The department shall make the maps readily available to the public. The department may charge a fee for the cost of reproducing the maps. To the extent feasible, maps shall be made available on the Internet Web site of the department.

(d) The department may periodically revise the maps to include updated information when that information becomes available.

Article 4. Local Reports

9140. (a) On or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee shall prepare and submit to the department, in a format specified by the department, a report of information for inclusion in periodic flood management reports prepared by the department relating to the project levee. The information submitted to the department shall include all of the following:

(1) Information known to the local agency that is relevant to the condition or performance of the project levee.

(2) Information identifying known conditions that might impair or compromise the level of flood protection provided by the project levee.

(3) A summary of the maintenance performed by the local agency during the previous fiscal year.

(4) A statement of work and estimated cost for operation and maintenance of the project levee for the current fiscal year, as approved by the local agency.

(5) Any other readily available information contained in the records of the local agency relevant to the condition or performance of the project levee, as determined by the board or the department.

(b) A local agency described in subdivision (a) that operates and maintains a nonproject levee that also benefits land within the boundaries of the area benefited by the project levee shall include information pursuant to subdivision (a) with regard to the nonproject levee.

(c) A local agency that incurs costs for the maintenance or improvement of a project or nonproject levee under the delta levee maintenance subventions program established pursuant to Part 9 (commencing with Section 12980) of Division 6 may submit information submitted to satisfy the requirements of that program to meet the requirements of paragraph (3) of subdivision (a), but may do so only for that reach of the levee included in that program.

(d) (1) A local agency responsible for the operation and maintenance of a levee not otherwise subject to this section may voluntarily prepare and submit to the department or the board a flood management report for posting on the Internet Web site of the department or the board.

(2) A flood management report submitted pursuant to paragraph (1) shall be made available on the Internet Web site of the board if the local agency is partially or wholly within the geographical boundaries of the board's jurisdiction. Otherwise, the report shall be made available on the Internet Web site of the department.

9141. (a) The department shall prepare and transmit to the board a report on the project levees operated and maintained by each local agency, using information provided by the local agency pursuant to Section 9140 and information from relevant portions of any of the following documents, as determined by the department:

(1) Annual inspection reports on local agency maintenance prepared by the department or the board.

(2) The State Plan of Flood Control.

(3) The flood control system status report described in Section 9120.

(4) The schedule for mapping described in Section 8612.

(5) Any correspondence, document, or information deemed relevant by the department.

(b) The department shall make the flood management report for each local agency available on the Internet Web site of the board and shall provide the report to all of the following entities:

(1) The local agency.

(2) Any city or county within the local agency's jurisdiction.

(3) Any public library located within the local agency's jurisdiction.

(c) The report shall be completed on or before December 31, 2008, and shall be updated annually.

9142. A local agency responsible for the operation and maintenance of a project levee may propose to the board an upgrade of the project levee if the local agency determines that the upgrade is appropriate. The local agency may implement that upgrade if approved by the board.

Central Valley Flood Protection Act of 2008

(from the Part 6 of Division 5 of the California Water Code)

CHAPTER 1. GENERAL PROVISIONS

9600. This act shall be known and may be cited as the Central Valley Flood Protection Act of 2008.

9601. The Legislature finds and declares all of the following:

(a) The Central Valley of California is experiencing unprecedented development, resulting in the conversion of historically agricultural lands and communities to densely populated residential and urban centers.

(b) The Legislature recognizes that by their nature, levees, which are earthen embankments typically founded on fluvial deposits, cannot offer complete protection from flooding, but can decrease its frequency.

(c) The Legislature recognizes that the level of flood protection afforded rural and agricultural lands by the original flood control system would not be adequate to protect those lands if they are developed for urban uses, and that a dichotomous system of flood protection for urban and rural lands has developed through many years of practice.

(d) The Legislature further recognizes that levees built to reclaim and protect agricultural land may be inadequate to protect urban development unless those levees are significantly improved.

(e) Cities and counties rely upon federal flood plain information when approving developments, but the information available is often out of date and the flood risk may be greater than that indicated using available federal information.

(f) The Legislature recognizes that the current federal flood standard is not sufficient in protecting urban and urbanizing areas within flood prone areas throughout the Central Valley.

(g) Linking land use decisions to flood risk and flood protection estimates comprises only one element of improving lives and property in the Central Valley. Federal, state, and local agencies may construct and operate flood protection facilities to reduce flood risks, but flood risks will nevertheless remain for those who choose to reside in Central Valley flood plains. Making those flood risks more apparent will help ensure that Californians make careful choices when deciding whether to build homes or live in Central Valley floodplains, and if so, whether to prepare for flooding or maintain flood insurance.

9602. Unless the context requires otherwise, the definitions set forth in this section govern the construction of this part.

- (a) "Board" means the Central Valley Flood Protection Board.
- (b) "Plan" means the Central Valley Flood Protection Plan.
- (c) "Project levee" means any levee that is part of the facilities of the State Plan of Flood Control, as defined in Section 5096.805 of the Public Resources Code.
- (d) "Public safety infrastructure" means public safety infrastructure necessary to respond to a flood emergency, including, but not limited to, street and highway evacuation routes, public utilities necessary for public health and safety, including drinking water and wastewater treatment facilities, and hospitals.
- (e) "Sacramento-San Joaquin Valley" means any lands in the bed or along or near the banks of the Sacramento River or San Joaquin River, or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom. The Sacramento-San Joaquin Valley does not include lands lying within the Tulare Lake basin, including the Kings River.
- (f) "State Plan of Flood Control" has the meaning set forth in subdivision (j) of Section 5096.805 of the Public Resources Code.
- (g) "System" means the Sacramento-San Joaquin River Flood Management System described in Section 9611.
- (h) "Urban area" has the same meaning as that set forth in subdivision (k) of Section 5096.805 of the Public Resources Code.
- (i) "Urban level of flood protection" means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the department.

9603. (a) The Central Valley Flood Protection Plan shall be a descriptive document, and neither the plan nor anything in this part shall be construed to expand the liability of the state for the operation or maintenance of any flood management facility beyond the scope of the State Plan of Flood Control, except as specifically determined by the board pursuant to Section 9611. Neither the development nor the adoption of the Central Valley Flood Protection Plan shall be construed to constitute any commitment by the state to provide, to continue to provide, or to maintain at, or to increase flood protection to, any particular level.

(b) The Central Valley Flood Protection Plan reflects a systemwide approach to protecting the lands currently protected from flooding by existing facilities of the State Plan of Flood Control. Any flood protection benefits accruing to lands or communities outside the State Plan of Flood Control are incidental and shall not constitute any commitment by the state to provide, to continue to provide, or to maintain at, or to increase flood protection to, any particular level.

CHAPTER 2. PLAN DEVELOPMENT

9610. (a) By July 1, 2008, the department shall develop preliminary maps for the 100 and 200 year floodplains protected by project levees. The 100 year floodplain maps shall be prepared using criteria developed or accepted by the Federal Emergency Management Agency (FEMA).

(1) The department shall use available information from the 2002 Sacramento-San Joaquin River Basin Comprehensive Study, preliminary and regulatory FEMA flood

insurance rate maps, recent floodplain studies and other sources to compile preliminary maps.

(2) The department shall provide the preliminary maps to cities and counties within the Sacramento-San Joaquin Valley for use as best available information relating to flood protection.

(3) The department shall post this information on the boards Internet Web site and may periodically update the maps as necessary.

(b) By July 1, 2008, the department shall give notice to cities in the Sacramento-San Joaquin Valley outside areas protected by project levees regarding maps and other information as to flood risks available from the Federal Emergency Management Agency or other federal, state or local agency.

(c) On or before December 31, 2010, the department shall prepare a status report on the progress and development of the Central Valley Flood Protection Plan pursuant to Section 9612. The department shall post this information on the board's Internet Web site, and make it available to the public.

9611. The Sacramento-San Joaquin River Flood Management System comprises all of the following:

(a) The facilities of the State Plan of Flood Control as that plan may be amended pursuant to this part.

(b) Any existing dam, levee, or other flood management facility that is not part of the State Plan of Flood Control if the board determines, upon recommendation of the department, that the facility does one or more of the following:

(1) Provides significant systemwide benefits for managing flood risks within the Sacramento-San Joaquin Valley.

(2) Protects urban areas within the Sacramento-San Joaquin Valley.

(c) Upon completion of the Central Valley Flood Protection Plan pursuant to this part, the department may identify and propose to the board additional structural and nonstructural facilities that may become facilities of the State Plan of Flood Control, consistent with the Central Valley Flood Protection Plan. The board may add those facilities to the State Plan of Flood Control based on a determination showing how the facility accomplishes the purposes identified in subdivision (b).

(d) For the purposes of subdivision (c), facilities that may become facilities of the State Plan of Flood Control include bypasses, floodway corridors, flood plain storage, or other projects that expand the capacity of the flood protection system in the Sacramento-San Joaquin Valley to provide flood protection.

9612. (a) The department shall prepare, and the board shall adopt, a plan identified as the Central Valley Flood Protection Plan in accordance with this part.

(b) No later than January 1, 2012, the department shall prepare the Central Valley Flood Protection Plan in accordance with this part, and shall transmit the plan to the board, which shall adopt the plan no later than July 1, 2012.

(c) The board shall hold at least two hearings to receive comments on the proposed plan. At least one hearing shall be held in the Sacramento Valley and at least one hearing shall be held in the San Joaquin Valley. The board shall also accept comments in writing with regard to the proposed plan.

(d) The board may make changes to the proposed plan to resolve issues raised in the hearings or to respond to comments received by the board. The board shall publish its proposed changes to the proposed plan at least two weeks before adopting the plan.

(e) The plan shall be updated in subsequent years ending in 2 and 7.

(f) The department or the board may appoint one or more advisory committees to assist in the preparation of the plan. If the department or the board appoints one or more advisory committees, the advisory committee or committees shall include representation by interested organizations.

9613. (a) Consistent with subdivision (b) of Section 5096.821 of the Public Resources Code, the department may implement flood protection improvements for urban areas protected by facilities of the State Plan of Flood Control before the adoption of Central Valley Flood Protection Plan if the director determines, in writing, that all of the following apply:

(1) The improvements are necessary and require state funding before the completion of the Central Valley Flood Protection Plan prepared pursuant to Section 9612.

(2) The improvements will reduce or avoid risk to human life in one or more urban areas.

(3) The improvements will not impair or impede future changes to regional flood protection or the Central Valley Flood Protection Plan.

(4) The improvements will be maintained by a local agency that has committed sufficient funding to maintain both the existing and improved facilities of the State Plan of Flood Control.

(5) The affected cities, counties, and other public agencies will have sufficient revenue resources for the operation and maintenance of the facility.

(6) Upon the allocation of funds for a project, the proposed project is ready for implementation.

(7) The improvements comply with existing law.

(b) The flood protection improvements authorized by this section may include improvements to specific facilities of the State Plan of Flood Control or acquisition of flood easements for floodways that support facilities of the State Plan of Flood Control to increase levels of flood protection for urban areas in accordance with subdivision (b) of Section 5096.821 of the Public Resources Code.

(c) The department and the board shall investigate and evaluate the feasibility of potential bypasses or floodways that would significantly reduce flood stage in the San Joaquin River Watershed, upstream and south of Paradise Cut.

9614. The plan shall include all of the following:

(a) A description of the Sacramento-San Joaquin River Flood Management System and the cities and counties included in the system.

(b) A description of the performance of the system and the challenges to modifying the system to provide appropriate levels of flood protection using available information.

(c) A description of the facilities included in the State Plan of Flood Control, including all of the following:

(1) The precise location and a brief description of each facility, a description of the population and property protected by the facility, the system benefits provided by the

facility, if any, and a brief history of the facility, including the year of construction, major improvements to the facility, and any failures of the facility.

(2) The design capacity of each facility.

(3) A description and evaluation of the performance of each facility, including the following:

(A) An evaluation of failure risks due to each of the following:

(i) Overtopping.

(ii) Under seepage and seepage.

(iii) Structural failure.

(iv) Other sources of risk, including seismic risks, that the department or the board determines are applicable.

(B) A description of any uncertainties regarding performance capability, including uncertainties arising from the need for additional engineering evaluations or uncertainties arising from changed conditions such as changes in estimated channel capacities.

(d) A description of each existing dam that is not part of the State Plan of Flood Control that provides either significant systemwide benefits for managing flood risks within the Sacramento-San Joaquin Valley or protects urban areas within the Sacramento-San Joaquin Valley.

(e) A description of each existing levee and other flood management facility not described in subdivision (d) that is not part of the State Plan of Flood Control that provides either significant systemwide benefits for managing flood risks within the Sacramento-San Joaquin Valley or protects an urban area as defined by subdivision (k) of Section 5096.805 of the Public Resources Code.

(f) A description of the probable impacts of projected climate change, projected land use patterns, and other potential flood management challenges on the ability of the system to provide adequate levels of flood protection.

(g) An evaluation of the structural improvements and repairs necessary to bring each of the facilities of the State Plan of Flood Control to within its design standard. The evaluation shall include a prioritized list of recommended actions necessary to bring each facility not identified in subdivision (h) to within its design standard.

(h) The evaluation shall include a list of facilities recommended to be removed from the State Plan of Flood Control. For each facility recommended for removal, the evaluation shall identify both of the following:

(1) The reasons for proposing the removal of the facility from the State Plan of Flood Control.

(2) Any additional recommended actions associated with removing the facility from the State Plan of Flood Control.

(i) A description of both structural and nonstructural methods for providing an urban level of flood protection to current urban areas where an urban area means the same as set forth in subdivision (k) of Section 5096.805 of the Public Resources Code. The description shall also include a list of recommended next steps to improve urban flood protection.

(j) A description of structural and nonstructural means for enabling or improving systemwide riverine ecosystem function, including, but not limited to, establishment of riparian habitat and seasonal inundation of available flood plains where feasible.

9615. For the purposes of preparing the plan, the department shall collaborate with the United States Army Corps of Engineers and the owners and operators of flood management facilities.

9616. (a) The plan shall include a description of both structural and nonstructural means for improving the performance and elimination of deficiencies of levees, weirs, bypasses, and facilities, including facilities of the State Plan of Flood Control, and, wherever feasible, meet multiple objectives, including each of the following:

(1) Reduce the risk to human life, health, and safety from flooding, including protection of public safety infrastructure.

(2) Expand the capacity of the flood protection system in the Sacramento-San Joaquin Valley to either reduce floodflows or convey floodwaters away from urban areas.

(3) Link the flood protection system with the water supply system.

(4) Reduce flood risks in currently nonurbanized areas.

(5) Increase the engagement of local agencies willing to participate in improving flood protection, ensuring a better connection between state flood protection decisions and local land use decisions.

(6) Improve flood protection for urban areas to the urban level of flood protection.

(7) Promote natural dynamic hydrologic and geomorphic processes.

(8) Reduce damage from flooding.

(9) Increase and improve the quantity, diversity, and connectivity of riparian, wetland, flood plain, and shaded riverine aquatic habitats, including the agricultural and ecological values of these lands.

(10) Minimize the flood management system operation and maintenance requirements.

(11) Promote the recovery and stability of native species populations and overall biotic community diversity.

(12) Identify opportunities and incentives for expanding or increasing use of floodway corridors.

(13) Provide a feasible, comprehensive, and long-term financing plan for implementing the plan.

(14) Identify opportunities for reservoir reoperation in conjunction with groundwater flood storage.

(b) The plan shall include a prioritized list of recommended actions to reduce flood risks and meet the objectives described in subdivision (a).

CHAPTER 3. PLAN IMPLEMENTATION

9620. Upon the adoption of the plan by the board, all of the following apply:

(a) The facilities identified pursuant to subdivision (a) of Section 9614 shall be deemed to be part of the system.

(b) The board shall act on the recommendations to remove facilities identified pursuant to subdivision (h) of Section 9614 from the State Plan of Flood Control.

(c) The department shall develop a recommended schedule and funding plan to implement the recommendations of the plan. To develop the recommended schedule and funding plan, the department may collaborate with local and federal agencies.

9621. Consistent with the adoption of the Central Valley Flood Protection Plan pursuant to this part, each county shall collaborate with cities within its jurisdiction to develop flood emergency plans within 24 months of the adoption of the plan.

9622. Consistent with the adoption of the Central Valley Flood Protection Plan pursuant to this part, each city, county, and city and county shall collaborate with the state and local flood management agencies to provide relocation assistance or other cost-effective strategies for reducing flood risk to existing economically disadvantaged communities located in nonurbanized areas.

9623. Consistent with the adoption of the Central Valley Flood Protection Plan pursuant to this part, each city, county, and city and county shall collaborate with the state and local flood management agencies to develop funding mechanisms to finance local flood protection responsibilities by January 1, 2010.

9624. Notwithstanding any other provision of law, this part applies to all cities, including charter cities, and counties included in the plan pursuant to Section 9614. The Legislature finds and declares that flood protection in the Sacramento-San Joaquin Valley is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution.

9625. (a) By January 1, 2010, the department shall develop cost-sharing formulas, as needed, for funds made available by the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code) and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code) for repairs or improvements of facilities included in the plan to determine the local share of the cost of design and construction.

(b) The cost-share formulas developed by the department shall be established pursuant to Section 12585.7.

(c) In developing cost-share formulas, the department shall consider the ability of local governments to pay their share of the capital costs of the project.

(d) Prior to finalizing cost-share formulas, the department shall conduct public meetings to consider public comments. The department shall post the draft cost-share formula on its Internet Web site at least 30 days before the public meetings. To the extent feasible, the department shall provide outreach to disadvantaged communities to promote access and participation in the meetings.



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