

## Senate Bill No. 1278

### CHAPTER 553

An act to amend Sections 65007, 65302.9, 65860.1, and 65865.5 of the Government Code, and to amend Section 9610 of the Water Code, relating to land use.

[Approved by Governor September 25, 2012. Filed with Secretary of State September 25, 2012.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1278, Wolk. Planning and zoning: flood protection: Sacramento-San Joaquin Valley.

(1) Existing law requires each city and county within the Sacramento-San Joaquin Valley to amend its general plan, as specified, within 24 months of the adoption of the Central Valley Flood Protection Plan by the Central Valley Flood Protection Board. Existing law requires the Central Valley Flood Protection Board, the Department of Water Resources, and local flood agencies to collaborate with cities or counties by providing the cities and counties with information and other technical assistance to assist with complying with these requirements.

This bill would instead require each city and county to amend its general plan, as specified, within 24 months of July 2, 2013.

(2) Existing law prohibits a city or county within the Sacramento-San Joaquin Valley from entering into a development agreement for property that is located in a flood hazard zone unless the city or county makes specified findings, including, among others, that certain conditions have been imposed by the city or county.

This bill would additionally authorize a city or county to make a finding that the property in an undetermined risk area, as defined, has met the urban level of flood protection, as specified.

(3) Existing law requires the Department of Water Resources to develop preliminary maps for the 100- and 200-year flood plains protected by project levees, as specified, and to provide the preliminary maps to cities and counties within the Sacramento-San Joaquin Valley.

This bill would additionally require the department, on or before July 2, 2013, to release floodplain maps, as specified, and the available data as to the water surface elevation of flooding in urban areas, as specified. The bill would provide that the department's issuance of floodplain maps are not subject to, among other things, the California Environmental Quality Act and the California Endangered Species Act. This bill would provide that the state or any state agency is not liable for any claim based upon the exercise or performance of a discretionary or ministerial function or duty pursuant to these provisions, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 65007 of the Government Code is amended to read:

65007. As used in this title, the following terms have the following meanings, unless the context requires otherwise:

(a) “Adequate progress” means all of the following:

(1) The total project scope, schedule, and cost of the completed flood protection system have been developed to meet the appropriate standard of protection.

(2) (A) Revenues that are sufficient to fund each year of the project schedule developed in paragraph (1) have been identified and, in any given year and consistent with that schedule, at least 90 percent of the revenues scheduled to be received by that year have been appropriated and are currently being expended.

(B) Notwithstanding subparagraph (A), for any year in which state funding is not appropriated consistent with an agreement between a state agency and a local flood management agency, the Central Valley Flood Protection Board may find that the local flood management agency is making adequate progress in working toward the completion of the flood protection system.

(3) Critical features of the flood protection system are under construction, and each critical feature is progressing as indicated by the actual expenditure of the construction budget funds.

(4) The city or county has not been responsible for a significant delay in the completion of the system.

(5) The local flood management agency shall provide the Department of Water Resources and the Central Valley Flood Protection Board with the information specified in this subdivision sufficient to determine substantial completion of the required flood protection. The local flood management agency shall annually report to the Central Valley Flood Protection Board on the efforts in working toward completion of the flood protection system.

(b) “Central Valley Flood Protection Plan” has the same meaning as that set forth in Section 9612 of the Water Code.

(c) “Developed area” has the same meaning as that set forth in Section 59.1 of Title 44 of the Code of Federal Regulations.

(d) “Flood hazard zone” means an area subject to flooding that is delineated as either a special hazard area or an area of moderate hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency. The identification of flood hazard zones 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.

(e) “National Federal Emergency Management Agency standard of flood protection” means the level of flood protection that is necessary to withstand flooding that has a 1-in-100 chance of occurring in any given year using criteria developed by the Federal Emergency Management Agency for application in the National Flood Insurance Program.

(f) “Nonurbanized area” means a developed area or an area outside a developed area in which there are fewer than 10,000 residents that is not an urbanizing area.

(g) “Project levee” means any levee that is part of the facilities of the State Plan of Flood Control.

(h) “Sacramento-San Joaquin Valley” means lands in the bed or along or near the banks of the Sacramento River or San Joaquin River, or their tributaries or connected therewith, or upon any land adjacent thereto, or within the overflow basins thereof, or upon land susceptible to overflow therefrom. The Sacramento-San Joaquin Valley does not include lands lying within the Tulare Lake basin, including the Kings River.

(i) “State Plan of Flood Control” has the same meaning as that set forth in subdivision (j) of Section 5096.805 of the Public Resources Code.

(j) “Tulare Lake basin” means the Tulare Lake Hydrologic Region as defined in the California Water Plan Update 2009, prepared by the Department of Water Resources pursuant to Chapter 1 (commencing with Section 10004) of Part 1.5 of Division 6 of the Water Code.

(k) “Undetermined risk area” means an urban or urbanizing area within a moderate flood hazard zone, as delineated on an official flood insurance rate map issued by the Federal Emergency Management Agency, which has not been determined to have an urban level of protection.

(l) “Urban area” means a developed area in which there are 10,000 residents or more.

(m) “Urbanizing area” means a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.

(n) “Urban level of flood protection” means the level of protection that is necessary to withstand flooding from a leveed riverine system that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources. “Urban level of flood protection” shall not mean shallow flooding or flooding from local drainage that meets the criteria of the national Federal Emergency Management Agency standard of flood protection.

SEC. 2. Section 65302.9 of the Government Code is amended to read:

65302.9. (a) Within 24 months of July 2, 2013, each city and county within the Sacramento-San Joaquin Valley shall amend its general plan to contain all of the following:

(1) (A) The data and analysis contained in the Central Valley Flood Protection Plan pursuant to Section 9612 of the Water Code, including, but not limited to, the locations of the facilities of the State Plan of Flood Control and the locations of the real property protected by those facilities.

(B) The locations of flood hazard zones, including, but not limited to, locations mapped by the Federal Emergency Management Agency Flood Insurance Rate Map or the Flood Hazard Boundary Map, locations that participate in the National Flood Insurance Program, locations of undetermined risk areas, and locations mapped by a local flood agency or flood district.

(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) An undetermined risk area shall be presumed to be at risk during flooding that has a 1-in-200 chance of occurring in any given year unless deemed otherwise by the State Plan of Flood Control, an official National Flood Insurance Program rate map issued by the Federal Emergency Management Agency, or a finding made by a city or county based on a determination of substantial evidence by a local flood agency.

(c) 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.

(d) 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.

(e) Notwithstanding any other law, this section shall apply 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.

(f) This section shall not be construed to limit or remove any liability of a city or county prior to the amendment of the general plan except as provided in Section 8307 of the Water Code.

SEC. 3. Section 65860.1 of the Government Code is amended to read:

65860.1. (a) 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 law, this section shall apply 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.

(c) This section shall not be construed to limit or remove any liability of a city or county prior to the amendment of the zoning ordinance except as provided in Section 8307 of the Water Code.

SEC. 4. Section 65865.5 of the Government Code is amended to read:

65865.5. (a) Notwithstanding any other law, after the amendments required by Sections 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 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 that 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.

(4) The property in an undetermined risk area has met the urban level of flood protection based on substantial evidence in the record.

(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) This section does not change or diminish existing requirements of local flood plain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

SEC. 5. Section 9610 of the Water Code is amended to read:

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

(2) The department shall use available information from the 2002 Sacramento and San Joaquin River Basins Comprehensive Study, preliminary and regulatory FEMA flood insurance rate maps, recent flood plain studies, and other sources to compile preliminary maps.

(3) 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.

(4) The department shall post this information on the board's 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 another 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.

(d) (1) On or before July 2, 2013, and for the purpose of providing information to cities and counties necessary for their determinations relating to level of flood protection, the department shall release flood plain maps that identify at a minimum the facilities of the State Plan of Flood Control and the available data as to the water surface elevation of flooding in urban areas in the event of the failure of the facilities of the State Plan of Flood Control during flooding that has a 1-in-200 chance of occurring in any given year.

(2) Concurrent with the release of these maps and for the purpose of assisting local agencies in determining their level of flood protection, the department shall make available levee reliability data for the facilities of the State Plan of Flood Control identified in the maps.

(e) The department's issuance of flood plain maps shall not be subject to any of the following:

(1) The review and approval of the Office of Administrative Law or to any other requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The California Environmental Quality Act or any other requirement of Division 13 (commencing with Section 21000) of the Public Resources Code.

(3) The California Endangered Species Act or any other requirement of Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(f) The state, or any state agency, shall not be liable for any claim based upon the exercise or performance of a discretionary or ministerial function or duty on the part of a state agency or a state employee or officer in carrying out this section.