



**Contra
Costa
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: June 21, 2016

Subject: General Plan and Zoning Text Amendments Related to 2007 Flood Legislation

RECOMMENDATION(S):

1. OPEN the public hearing, RECEIVE testimony, and CLOSE the public hearing.
 2. FIND, on the basis of the whole record before the County, for purposes of compliance with the California Environmental Quality Act (CEQA), that there is no possibility that the proposed project consisting of a General Plan Amendment [(GPA); County File #GP16-0002] and Ordinance Code/Zoning Text Amendment [(ZTA); County File #ZT16-0002], will have a significant effect on the environment, and that the project is therefore exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).
 3. ADOPT the proposed General Plan Amendment, amending the Land Use, Conservation, and Safety elements of the 2005-2020 Contra Costa County General Plan, to comply with State legislation relating to floodplain management, as part of the first consolidated General Plan Amendment for calendar year 2016.
 4. ADOPT Ordinance No. 2016-16, establishing flood hazard zone requirements, to comply with State legislation relating to floodplain management.
-

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **06/21/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: Candace Andersen, District II
Supervisor
Mary N. Piepho, District III
Supervisor
Karen Mitchoff, District IV
Supervisor
Federal D. Glover, District V
Supervisor

ABSENT: John Gioia, District I
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 21, 2016

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Will Nelson, (925)
674-7791

cc:

5. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

RECOMMENDATION(S): (CONT'D)

>

FISCAL IMPACT:

No impact to the General Fund. The proposed General Plan and Ordinance Code amendments are being funded 100% from the Land Development Fund, FY 2015/2016.

BACKGROUND:

I. PROJECT DESCRIPTION

The proposed project consists of a County-initiated GPA to update the Land Use, Conservation, and Safety elements of the General Plan and a ZTA to revise County Ordinance Code Chapter 82-28 – Floodplain Management, to comply with the requirements of the Assembly Bill (AB) 162, Senate Bill (SB) 5, and associated legislation regarding floodplain management and flood hazards.

II. ENVIRONMENTAL REVIEW

The proposed project consists of amendments to the County General Plan and Ordinance Code. Such amendments qualify as projects under CEQA and are therefore subject to environmental review. Staff has determined that the proposed project would not have a significant impact on the environment for the following reasons:

1. The amendments to the Ordinance Code merely codify State law and none of the proposed amendments to the General Plan (goals, policies, and implementation measures) confers a right or entitlement, or approves development, that would cause physical changes to the environment;
2. Many of the proposed amendments to the General Plan reinforce actions the County already takes to address flood hazards. Many others promote data collection, plan review and formulation, cooperation with other entities, and other actions that would not result in physical changes to the environment;
3. Specific project types mentioned in the proposed amendments to the General Plan, such as improving critical infrastructure to withstand the effects of flooding, would be subject to their own CEQA review, allowing any project-specific environmental impacts to be studied at the time the project was undertaken;
4. None of the proposed amendments to the General Plan would increase existing or planned densities, alter existing development patterns, or allow development to occur in areas where it is currently prohibited.

Based on the foregoing, pursuant to CEQA Guidelines section 15061(b)(3), the proposed project is exempt from CEQA because it can be seen with certainty that the project would

not have a significant effect on the environment.

III. BACKGROUND

In 2007 the State enacted six interrelated bills commonly referred to as the “2007 Flood Legislation”^[1] (Attachment 5). These bills, which became effective January 1, 2008, collectively added or amended sections in the California Government Code, Health and Safety Code, Public Resources Code, and Water Code. Together these bills outline a comprehensive approach to improving flood management at the state and local levels, with elements to address both the chance of flooding (e.g., improvements to reduce the probability that floods will occur) and the consequences when flooding does occur.

AB 162 and SB 5 are of particular importance to the County, as they require amendments to the County General Plan and zoning portion (Title 8) of the County Ordinance Code to address flood hazards and place restrictions on development in certain flood hazard areas. The amendments required under the legislation must be adopted no later than July 2, 2016.

From a regulatory perspective, perhaps the most significant change is that in an urban area^[2] or urbanizing area^[3] within the boundaries of the Sacramento-San Joaquin Valley, certain new development may be required to achieve the “urban level of flood protection.”^[4] Thus, instead of protecting against the 100-year flood event as currently done, certain new construction in these areas may be required to protect against the 200-year flood event unless the project qualifies for an exemption [such as being in an area subject to shallow flooding (i.e., less than three feet in depth)]. Methods to comply include elevating buildings higher than is currently required or achieving protection through planned or completed levee improvements that meet or will meet the 200-year standard. Currently the only unincorporated area that will be affected by this change is Discovery Bay. However, this may have significant repercussions for Discovery Bay because many of the unbuilt lots could be impacted, including those in already-entitled areas such as the original Discovery Bay development and Discovery Bay West Village 5 (aka The Lakes).

IV. STAFF ANALYSIS

A. Proposed Amendments to the General Plan: AB 162 requires amendments to the Land Use, Conservation, and Safety elements of the General Plan to address flood hazards. These and the proposed zoning text amendments must be consistent with the Central Valley Flood Protection Plan (CVFPP). The proposed General Plan text changes are shown as red strikeout (deletions) and underlined (insertions) text in Attachment 1. Four new figures are also included. The text changes were derived from the following sources:

1. Department of Water Resources (DWR), *Guidance on General Plan Amendments for Addressing Flood Risk*, September 2014: This guidebook contains numerous example goals, policies, and implementation measures determined to be consistent with the CVFPP. Many of the proposed General Plan text changes were sourced from this guidebook and adapted for Contra Costa County.

2. Central Valley Flood Protection Board, General Plan Safety Element Review Crosswalk, September 2014: This online tool allows agencies to compare their Safety Element with the requirements of AB 162 and identify any deficiencies that may exist by responding to a series of questions. Staff formulated new General Plan text to address areas where deficiencies were noted. For example, the text proposed for insertion in Safety Element Policy 10-38 responds to a question asking whether the Safety Element currently identifies construction methods to minimize damage in flood hazard zones.

3. County General Plan Safety Element: Several proposed goals and policies were adapted from goals and policies found in sections of the Safety Element that address other kinds of natural disasters, such as earthquakes and landslides.

4. State Statutes: Two proposed policies, Land Use Element Policy 2-211 and Safety Element Policy 10-55, were adapted directly from the language of AB 162 and SB 5, respectively.

The CVFPP focuses on improving floodplain management and reducing flood risk in areas protected by the facilities of the State Plan of Flood Control (SPFC). However, the SPFC Planning Area does not extend into Contra Costa County and no SPFC facilities are present within the County. The County General Plan already contains numerous goals, policies, and implementation measures addressing flood hazards, levee maintenance, and protection of waterways. Adoption of the proposed GPA will improve the County's planning practices regarding flooding in a manner consistent with the intent of the CVFPP.

B. Proposed Zoning Text Amendment: The Floodplain Management Ordinance was adopted in 1987 for the purpose of regulating development in areas subject to flooding as designated by the Federal Emergency Management Agency (FEMA). The ordinance has been amended several times, most recently in 2000.

Generally speaking, the ordinance requires new development in "special flood hazard areas" [\[5\]](#) to be constructed in a manner that resists flooding, thereby protecting life and property. For example, new buildings and structures must be anchored to prevent floatation and movement, habitable spaces must be elevated above the established base flood elevation, and flood-resistant materials must be used. Applicants must obtain a floodplain permit, which demonstrates compliance with the ordinance, prior to beginning construction within a flood hazard area.

The proposed amendments to County Ordinance Code Chapter 82-28 – Floodplain Management (Attachment 3) will establish requirements for new construction and new development in urban and urbanizing areas located in the portion of the County that is within the Sacramento-San Joaquin Valley, as mandated by Government Code sections 65865.5, 65962, and 66474.5 (Attachment 6).

The proposed ordinance references the amended Government Code sections listed above and has the effect of prohibiting the County from, 1) entering into a development agreement; 2) approving a discretionary permit or entitlement (land use permit, development plan, etc.) that would result in construction of a new building or increase occupancy, or a ministerial permit (building permit) for a new single-family residence; or 3) approving a tentative or parcel map unless it is able to make at least one of the following findings for the project:

(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.

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

The ordinance refers to a map that will be certified by the Director of the Department of Conservation and Development (DCD) and kept on file at the department offices. This map will depict, (1) the location of all flood hazards zones in the portion of the County within the Sacramento-San Joaquin Valley; and (2) the unincorporated urban and urbanizing areas in the Valley. A draft of the map is provided in Attachment 7. Only urban and urbanizing areas may be subject to the urban level of flood protection standard. As stated above, the only urban or urbanizing area affected by the ordinance is Discovery Bay.

C. County Planning Commission Hearing: The County Planning Commission considered the proposed project on June 14, 2016. No testimony was received. The Commission voted 4-0, with two commissioners absent and one seat vacant, to recommend approval to the Board of Supervisors.

D. Correspondence: In response to the public notice issued on this matter, DCD received

one letter from Reclamation District (RD) 799 (Attachment 8) requesting that the proposed GPA and ZTA be revised to require all permits and land use applications within 300 feet of a RD 799 levee and/or drainage facility to be referred to RD 799 for review and comment prior to approval. In staff's opinion, the proposed amendments should not be revised as requested. DCD's current practice is to notify appropriate agencies, including reclamation districts, of applications for land use entitlements within their jurisdiction. Applications for minor permits, such as residential additions, are not routed to outside agencies. RD 799's request to be notified of all permits and applications is unique. Instead of amending the General Plan and zoning ordinance, staff recommends that DCD work with RD 799 to identify and map the levees and facilities in question, and amend the regular application review process to notify RD 799 when their facilities may be impacted by development.

V. CONCLUSION

Under State law the County is required to amend the General Plan and Ordinance Code to address flood hazards. Adoption of the proposed amendments would not result in significant environmental impacts; would improve the County's planning practices related to flooding; and would allow the County to continue approving entitlements for development, building permits for single-family residences, and subdivision maps in the Discovery Bay area that meet the new state requirements. Therefore, staff recommends that the Board of Supervisors find the project to be exempt from CEQA and adopt the proposed General Plan and Ordinance Code amendments. The proposed GPA would be part of the first consolidated GPA of calendar year 2016 along with County File #GP16-0002, the proposed GPA amending Land Use Element Policy 3-98 for Buchanan Field Airport.

[1] "2007 Flood Legislation" includes Senate Bills (SB) 5 and 17, and Assembly Bills (AB) 5, 70, 156, and 162. Subsequent amending legislation includes AB 1165 (2009), SB 1070 (2010), SB 1278 (2012), AB 1965 (2012), and AB 1259 (2013).

[2] As defined under Government Code Section 65007(l), an "urban area" is a developed area in which there are 10,000 residents or more.

[3] As defined under Government Code Section 65007(m), an "urbanizing area" is 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.

[4] As defined under Government Code Section 65007(n), "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 California Department of Water Resources.

[5] "Special flood hazard area" generally refers to the 100-year flood zone, an area that has a 1-in-100 chance of flooding in any given year.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board votes not to adopt the proposed General Plan and Ordinance Code amendments, then the County will be out of compliance with the 2007 Flood Legislation. This may result in the County being unable to issue certain permits for development in the Discovery Bay area.

CLERK'S ADDENDUM

CLOSED the public hearing;

FOUND for purposes of compliance with the California Environmental Quality Act (CEQA), that there is no possibility that the proposed project consisting of a General Plan Amendment [(GPA) will have a significant effect on the environment, and that the project is therefore exempt from CEQA ;

ADOPTED the proposed General Plan Amendment, amending the Land Use, Conservation, and Safety elements of the 2005-2020 Contra Costa County General Plan, to comply with State legislation relating to floodplain management, as part of the first consolidated General Plan Amendment for calendar year 2016. ADOPTED Ordinance No. 2016-16, establishing flood hazard zone requirements, to comply with State legislation relating to floodplain management; and DIRECTED the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

ATTACHMENTS

Attachment 1 - Adopted County Planning Commission Resolution #11-2016

Attachment 2 - Proposed General Plan Amendment

Attachment 3 - Proposed Ordinance Code Amendment

Attachment 4 - Staff Report to County Planning Commission June 14, 2016

Attachment 5 - Assembly Bills 162 (2007), 1965 (2012), and 1259 (2013); and Senate Bills 5 (2007) and 1278 (2012)

Attachment 6 - Excerpts from the 2007 Flood Legislation Referenced in the Draft Ordinance Code Amendment

Attachment 7 - Draft Map of FEMA Flood Hazard Zones in Contra Costa County's Portion of the Sacramento-San Joaquin Valley and Urban or Urbanizing Areas

Attachment 8 - Correspondence from Reclamation District 799

Attachment 9 - Notification Materials