

ASSEMBLY BILL

No. 3022

Introduced by Assembly Member Umberg

February 24, 2006

An act to amend Section 11010 of the Business and Professions Code, to amend Section 1103 of the Civil Code, and to amend Section 65302 of the Government Code, relating to flood control.

LEGISLATIVE COUNSEL'S DIGEST

AB 3022, as introduced, Umberg. Flood control: safety element.

(1) The Planning and Zoning Law requires that a city or county general plan consist of various elements, including, among other things, land use, circulation, housing, open space, conservation, and safety elements, which are required to meet specified requirements. The safety element is for the protection of the community from unreasonable risks associated with, among other things, the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, dam failure, and wild land and urban fires.

Existing law also requires any person who intends to offer subdivided lands within this state for sale or lease to file with the Department of Real Estate an application for a public report that contains specified information. Existing law also requires any person who intends to make a specified transfer of residential property to disclose natural hazards.

This bill would require on or after January 1, 2008, as specified, that the safety element address flood management factors, that include, among other things, residential areas determined to be in a 100-year flood plain. By imposing new duties on local agencies, the bill would create a state-mandated local program.

The bill would also require an express, written disclosure that any subdivided lands offered for sale or lease or any residential property that is transferred, as specified, contain a statement that the property is located within a 100-year flood plain.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. Section 11010 of the Business and Professions
- 2 Code is amended to read:
- 3 11010. (a) Except as otherwise provided pursuant to
- 4 subdivision (c) or elsewhere in this chapter, any person who
- 5 intends to offer subdivided lands within this state for sale or lease
- 6 shall file with the Department of Real Estate an application for a
- 7 public report consisting of a notice of intention and a completed
- 8 questionnaire on a form prepared by the department.
- 9 (b) The notice of intention shall contain the following
- 10 information about the subdivided lands and the proposed
- 11 offering:
 - 12 (1) The name and address of the owner.
 - 13 (2) The name and address of the subdivider.
 - 14 (3) The legal description and area of lands.
 - 15 (4) A true statement of the condition of the title to the land,
 - 16 particularly including all encumbrances thereon.
 - 17 (5) A true statement of the terms and conditions on which it is
 - 18 intended to dispose of the land, together with copies of any
 - 19 contracts intended to be used.
 - 20 (6) A true statement of the provisions, if any, that have been
 - 21 made for public utilities in the proposed subdivision, including
 - 22 water, electricity, gas, telephone, and sewerage facilities. For
 - 23 subdivided lands that were subject to the imposition of a

1 condition pursuant to subdivision (b) of Section 66473.7 of the
2 Government Code, the true statement of the provisions made for
3 water shall be satisfied by submitting a copy of the written
4 verification of the available water supply obtained pursuant to
5 Section 66473.7 of the Government Code.

6 (7) A true statement of the use or uses for which the proposed
7 subdivision will be offered.

8 (8) A true statement of the provisions, if any, limiting the use
9 or occupancy of the parcels in the subdivision.

10 (9) A true statement of the amount of indebtedness that is a
11 lien upon the subdivision or any part thereof, and that was
12 incurred to pay for the construction of any onsite or offsite
13 improvement, or any community or recreational facility.

14 (10) A true statement or reasonable estimate, if applicable, of
15 the amount of any indebtedness which has been or is proposed to
16 be incurred by an existing or proposed special district, entity,
17 taxing area, assessment district, or community facilities district
18 within the boundaries of which, the subdivision, or any part
19 thereof, is located, and that is to pay for the construction or
20 installation of any improvement or to furnish community or
21 recreational facilities to that subdivision, and which amounts are
22 to be obtained by ad valorem tax or assessment, or by a special
23 assessment or tax upon the subdivision, or any part thereof.

24 (11) A notice pursuant to Section 1102.6c of the Civil Code.

25 (12) (A) As to each school district serving the subdivision, a
26 statement from the appropriate district that indicates the location
27 of each high school, junior high school, and elementary school
28 serving the subdivision, or documentation that a statement to that
29 effect has been requested from the appropriate school district.

30 (B) In the event that, as of the date the notice of intention and
31 application for issuance of a public report are otherwise deemed
32 to be qualitatively and substantially complete pursuant to Section
33 11010.2, the statement described in subparagraph (A) has not
34 been provided by any school district serving the subdivision, the
35 person who filed the notice of intention and application for
36 issuance of a public report shall immediately provide the
37 department with the name, address, and telephone number of that
38 district.

39 (13) (A) The location of all existing airports, and of all
40 proposed airports shown on the general plan of any city or

1 county, located within two statute miles of the subdivision. If the
2 property is located within an airport influence area, the following
3 statement shall be included in the notice of intention:

4

5

NOTICE OF AIRPORT IN VICINITY

6

This property is presently located in the vicinity of an
7 airport, within what is known as an airport influence area. For that
8 reason, the property may be subject to some of the annoyances or
9 inconveniences associated with proximity to airport operations
10 (for example: noise, vibration, or odors). Individual sensitivities
11 to those annoyances can vary from person to person. You may wish to
12 consider what airport annoyances, if any, are associated with the
13 property before you complete your purchase and determine whether they
14 are acceptable to you.

15

16

(B) For purposes of this section, an “airport influence area,”
17 also known as an “airport referral area,” is the area in which
18 current or future airport-related noise, overflight, safety, or
19 airspace protection factors may significantly affect land uses or
20 necessitate restrictions on those uses as determined by an airport
21 land use commission.

22

(14) A true statement, if applicable, referencing any soils or
23 geologic report or soils and geologic reports that have been
24 prepared specifically for the subdivision.

25

(15) A true statement of whether or not fill is used, or is
26 proposed to be used in the subdivision and a statement giving the
27 name and the location of the public agency where information
28 concerning soil conditions in the subdivision is available.

29

(16) On or after July 1, 2005, as to property located within the
30 jurisdiction of the San Francisco Bay Conservation and
31 Development Commission, a statement that the property is so
32 located and the following notice:

33

NOTICE OF SAN FRANCISCO BAY CONSERVATION
34 AND DEVELOPMENT COMMISSION JURISDICTION

35

This property is located within the jurisdiction of the San
36 Francisco Bay Conservation and Development Commission. Use
37 and development of property within the commission’s
38 jurisdiction may be subject to special regulations, restrictions,
39 and permit requirements. You may wish to investigate and

1 determine whether they are acceptable to you and your intended
2 use of the property before you complete your transaction.

3 (17) (A) *For any property that is determined to be entirely or*
4 *partially within a 100-year flood plain, a true statement that*
5 *contains all of the following:*

6
7 *NOTICE OF 100-YEAR FLOOD PLAIN*

8
9 *This property is located within a 100-year flood plain.*
10 *Flooding may cause significant risk to life and property. The*
11 *State of California recommends that property owners in a*
12 *100-year flood plain obtain flood insurance, such as the*
13 *insurance provided by the Federal Emergency Management*
14 *Agency (FEMA) through the National Flood Insurance*
15 *Program.*

16
17 (B) *Information about purchasing subsidized federal flood*
18 *insurance.*

19 (18) Any other information that the owner, his or her agent, or
20 the subdivider may desire to present.

21 (c) The commissioner may, by regulation, or on the basis of
22 the particular circumstances of a proposed offering, waive the
23 requirement of the submission of a completed questionnaire if the
24 commissioner determines that prospective purchasers or lessees
25 of the subdivision interests to be offered will be adequately
26 protected through the issuance of a public report based solely
27 upon information contained in the notice of intention.

28 SEC. 2. Section 1103 of the Civil Code is amended to read:

29 1103. (a) Except as provided in Section 1103.1, this article
30 applies to the transfer by sale, exchange, installment land sale
31 contract, as defined in Section 2985, lease with an option to
32 purchase, any other option to purchase, or ground lease coupled
33 with improvements, of any real property described in subdivision
34 (c), or residential stock cooperative, improved with or consisting
35 of not less than one nor more than four dwelling units.

36 (b) Except as provided in Section 1103.1, this article shall
37 apply to a resale transaction entered into on or after January 1,
38 2000, for a manufactured home, as defined in Section 18007 of
39 the Health and Safety Code, that is classified as personal property
40 intended for use as a residence, or a mobilehome, as defined in

1 Section 18008 of the Health and Safety Code, that is classified as
2 personal property intended for use as a residence, if the real
3 property on which the manufactured home or mobilehome is
4 located is real property described in subdivision (c).

5 (c) This article shall apply to the transactions described in
6 subdivisions (a) and (b) only if the transferor or his or her agent
7 is required by one or more of the following to disclose the
8 property’s location within a hazard zone:

9 (1) A person who is acting as an agent for a transferor of real
10 property that is located within a special flood hazard area (any
11 type Zone “A” or “V”) designated by the Federal Emergency
12 Management Agency, or the transferor if he or she is acting
13 without an agent, shall disclose to any prospective transferee the
14 fact that the property is located within a special flood hazard area
15 if either:

16 (A) The transferor, or the transferor’s agent, has actual
17 knowledge that the property is within a special flood hazard area.

18 (B) The local jurisdiction has compiled a list, by parcel, of
19 properties that are within the special flood hazard area and a
20 notice has been posted at the offices of the county recorder,
21 county assessor, and county planning agency that identifies the
22 location of the parcel list.

23 (2) A person who is acting as an agent for a transferor of real
24 property that is located within an area of potential flooding
25 designated pursuant to Section 8589.5 of the Government Code,
26 or the transferor if he or she is acting without an agent, shall
27 disclose to any prospective transferee the fact that the property is
28 located within an area of potential flooding if either:

29 (A) The transferor, or the transferor’s agent, has actual
30 knowledge that the property is within an inundation area.

31 (B) The local jurisdiction has compiled a list, by parcel, of
32 properties that are within the inundation area and a notice has
33 been posted at the offices of the county recorder, county assessor,
34 and county planning agency that identifies the location of the
35 parcel list.

36 (3) A transferor of real property that is located within a very
37 high fire hazard severity zone, designated pursuant to Section
38 51178 of the Government Code, shall disclose to any prospective
39 transferee the fact that the property is located within a very high

1 fire hazard severity zone and is subject to the requirements of
2 Section 51182 of the Government Code if either:

3 (A) The transferor, or the transferor's agent, has actual
4 knowledge that the property is within a very high fire hazard
5 severity zone.

6 (B) A map that includes the property has been provided to the
7 local agency pursuant to Section 51178 of the Government Code
8 and a notice has been posted at the offices of the county recorder,
9 county assessor, and county planning agency that identifies the
10 location of the map and any information regarding changes to the
11 map received by the local agency.

12 (4) A person who is acting as an agent for a transferor of real
13 property that is located within an earthquake fault zone,
14 designated pursuant to Section 2622 of the Public Resources
15 Code, or the transferor if he or she is acting without an agent,
16 shall disclose to any prospective transferee the fact that the
17 property is located within a delineated earthquake fault zone if
18 either:

19 (A) The transferor, or the transferor's agent, has actual
20 knowledge that the property is within a delineated earthquake
21 fault zone.

22 (B) A map that includes the property has been provided to the
23 city or county pursuant to Section 2622 of the Public Resources
24 Code and a notice has been posted at the offices of the county
25 recorder, county assessor, and county planning agency that
26 identifies the location of the map and any information regarding
27 changes to the map received by the county.

28 (5) A person who is acting as an agent for a transferor of real
29 property that is located within a seismic hazard zone, designated
30 pursuant to Section 2696 of the Public Resources Code, or the
31 transferor if he or she is acting without an agent, shall disclose to
32 any prospective transferee the fact that the property is located
33 within a seismic hazard zone if either:

34 (A) The transferor, or the transferor's agent, has actual
35 knowledge that the property is within a seismic hazard zone.

36 (B) A map that includes the property has been provided to the
37 city or county pursuant to Section 2696 of the Public Resources
38 Code and a notice has been posted at the offices of the county
39 recorder, county assessor, and county planning agency that

1 identifies the location of the map and any information regarding
2 changes to the map received by the county.

3 (6) A transferor of real property that is located within a state
4 responsibility area determined by the board, pursuant to Section
5 4125 of the Public Resources Code, shall disclose to any
6 prospective transferee the fact that the property is located within
7 a wildland area that may contain substantial forest fire risks and
8 hazards and is subject to the requirements of Section 4291 if
9 either:

10 (A) The transferor, or the transferor’s agent, has actual
11 knowledge that the property is within a wildland fire zone.

12 (B) A map that includes the property has been provided to the
13 city or county pursuant to Section 4125 of the Public Resources
14 Code and a notice has been posted at the offices of the county
15 recorder, county assessor, and county planning agency that
16 identifies the location of the map and any information regarding
17 changes to the map received by the county.

18 (d) (1) *This article shall apply to the transfer of any property*
19 *that is determined to be entirely or partially within a 100-year*
20 *flood plain. The transferor or the transferor’s agent shall provide*
21 *a true statement that contains all of the following:*

22
23 *NOTICE OF 100-YEAR FLOOD PLAIN*
24

25 *This property is located within a 100-year flood plain.*
26 *Flooding may cause significant risk to life and property. The*
27 *State of California recommends that property owners in a*
28 *100-year flood plain obtain flood insurance, such as the*
29 *insurance provided by the Federal Emergency Management*
30 *Agency through the National Flood Insurance Program.*

31
32 (2) *Information about purchasing subsidized federal flood*
33 *insurance.*

34 (e) Any waiver of the requirements of this article is void as
35 against public policy.

36 SEC. 3. Section 65302 of the Government Code is amended
37 to read:

38 65302. The general plan shall consist of a statement of
39 development policies and shall include a diagram or diagrams

1 and text setting forth objectives, principles, standards, and plan
2 proposals. The plan shall include the following elements:

3 (a) A land use element that designates the proposed general
4 distribution and general location and extent of the uses of the
5 land for housing, business, industry, open space, including
6 agriculture, natural resources, recreation, and enjoyment of
7 scenic beauty, education, public buildings and grounds, solid and
8 liquid waste disposal facilities, and other categories of public and
9 private uses of land. The land use element shall include a
10 statement of the standards of population density and building
11 intensity recommended for the various districts and other
12 territory covered by the plan. The land use element shall identify
13 areas covered by the plan which are subject to flooding and shall
14 be reviewed annually with respect to those areas. The land use
15 element shall also do both of the following:

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

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

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

32 (B) The following definitions govern this paragraph:

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

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

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

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

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

6 (b) A circulation element consisting of the general location
7 and extent of existing and proposed major thoroughfares,
8 transportation routes, terminals, any military airports and ports,
9 and other local public utilities and facilities, all correlated with
10 the land use element of the plan.

11 (c) A housing element as provided in Article 10.6
12 (commencing with Section 65580).

13 (d) A conservation element for the conservation, development,
14 and utilization of natural resources including water and its
15 hydraulic force, forests, soils, rivers and other waters, harbors,
16 fisheries, wildlife, minerals, and other natural resources. The
17 conservation element shall consider the effect of development
18 within the jurisdiction, as described in the land use element, on
19 natural resources located on public lands, including military
20 installations. That portion of the conservation element including
21 waters shall be developed in coordination with any countywide
22 water agency and with all district and city agencies that have
23 developed, served, controlled or conserved water for any purpose
24 for the county or city for which the plan is prepared.
25 Coordination shall include the discussion and evaluation of any
26 water supply and demand information described in Section
27 65352.5, if that information has been submitted by the water
28 agency to the city or county. The conservation element may also
29 cover the following:

- 30 (1) The reclamation of land and waters.
- 31 (2) Prevention and control of the pollution of streams and
32 other waters.
- 33 (3) Regulation of the use of land in stream channels and other
34 areas required for the accomplishment of the conservation plan.
- 35 (4) Prevention, control, and correction of the erosion of soils,
36 beaches, and shores.
- 37 (5) Protection of watersheds.
- 38 (6) The location, quantity and quality of the rock, sand and
39 gravel resources.
- 40 (7) Flood control.

1 The conservation element shall be prepared and adopted no
2 later than December 31, 1973.

3 (e) An open-space element as provided in Article 10.5
4 (commencing with Section 65560).

5 (f) A noise element which shall identify and appraise noise
6 problems in the community. The noise element shall recognize
7 the guidelines established by the Office of Noise Control in the
8 State Department of Health Services and shall analyze and
9 quantify, to the extent practicable, as determined by the
10 legislative body, current and projected noise levels for all of the
11 following sources:

12 (1) Highways and freeways.

13 (2) Primary arterials and major local streets.

14 (3) Passenger and freight on-line railroad operations and
15 ground rapid transit systems.

16 (4) Commercial, general aviation, heliport, helistop, and
17 military airport operations, aircraft overflights, jet engine test
18 stands, and all other ground facilities and maintenance functions
19 related to airport operation.

20 (5) Local industrial plants, including, but not limited to,
21 railroad classification yards.

22 (6) Other ground stationary noise sources, including, but not
23 limited to, military installations, identified by local agencies as
24 contributing to the community noise environment.

25 Noise contours shall be shown for all of these sources and
26 stated in terms of community noise equivalent level (CNEL) or
27 day-night average level (L_{dn}). The noise contours shall be
28 prepared on the basis of noise monitoring or following generally
29 accepted noise modeling techniques for the various sources
30 identified in paragraphs (1) to (6), inclusive.

31 The noise contours shall be used as a guide for establishing a
32 pattern of land uses in the land use element that minimizes the
33 exposure of community residents to excessive noise.

34 The noise element shall include implementation measures and
35 possible solutions that address existing and foreseeable noise
36 problems, if any. The adopted noise element shall serve as a
37 guideline for compliance with the state's noise insulation
38 standards.

39 (g) A safety element for the protection of the community from
40 any unreasonable risks associated with the effects of seismically

1 induced surface rupture, ground shaking, ground failure, tsunami,
2 seiche, and dam failure; slope instability leading to mudslides
3 and landslides; subsidence, liquefaction and other seismic
4 hazards identified pursuant to Chapter 7.8 (commencing with
5 Section 2690) of the Public Resources Code, and other geologic
6 hazards known to the legislative body; flooding; and wild land
7 and urban fires. The safety element shall include mapping of
8 known seismic and other geologic hazards. It shall also address
9 evacuation routes, military installations, peakload water supply
10 requirements, and minimum road widths and clearances around
11 structures, as those items relate to identified fire and geologic
12 hazards.

13 (1) Prior to the periodic review of its general plan and prior to
14 preparing or revising its safety element, each city and county
15 shall consult the Division of Mines and Geology of the
16 Department of Conservation and the Office of Emergency
17 Services for the purpose of including information known by and
18 available to the department and the office required by this
19 subdivision.

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

25 (3) *The safety element shall address flood management factors*
26 *which shall include, for areas determined to be in a 100-year*
27 *flood plain and to the extent the local agency deems appropriate*
28 *for residential for sale units, a consideration of all of the*
29 *following:*

30 (A) *A requirement that the appropriate transferor notify the*
31 *transferee pursuant to paragraph (17) of subdivision (b) of*
32 *Section 11010 of the Business and Professions Code or Section*
33 *1103 of the Civil Code*

34 (B) *A safety plan.*

35 (C) *A requirement that the insurance policy referred to in*
36 *paragraph (17) of subdivision (b) of Section 11010 of the*
37 *Business and Professions Code be in place for the first four years*
38 *of occupancy of each new residential unit.*

1 *(h) Subdivision (g) shall not become effective until the first*
2 *time the housing element is amended or any two other elements*
3 *are otherwise amended after January 1, 2008.*

4 SEC. 4. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

O