

AMENDED IN ASSEMBLY JULY 13, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 505

Introduced by Senator Kehoe

(Coauthors: Assembly Members Davis and De La Torre)

February 26, 2009

An act to amend Sections 65302 and 65302.5 of, and to add Section 65040.7 to, the Government Code, and to add Section 21083.01 to the Public Resources Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 505, as amended, Kehoe. Local planning: fire hazard impacts.

(1) Existing law authorizes the Office of Planning and Research (OPR) to furnish information and technical and professional advice on the preparation, adoption, amendment, and implementation of specified plans, including general plans, when requested by a local or regional agency.

This bill would require OPR, on or before January 1, 2011, to update its "Fire Hazard Planning" document prepared as part of the General Plan Technical Advice Series and issued in November of 2003.

(2) 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. The safety element includes requirements for state responsibility areas and very high fire hazard severity zones.

This bill would revise the safety element requirements for state responsibility areas and very high fire hazard severity zones, as specified, and require the safety element, prior to January 1, 2015, and thereafter upon each revision of the housing element, to be reviewed and updated as ~~needed~~ *necessary* to address the risk of fire for land classified as state responsibility areas and very high fire hazard severity zones. The bill would require the review to ~~consider~~ *include consideration of* the advice contained within the most recent publication of the OPR's "Fire Hazard Planning" document *and other specified information. The bill would also require the city or county to establish a set of goals, policies, and objectives based upon specified information regarding fire hazards, and to establish a set of feasible implementation measures designed to carry out those goals, policies, and objectives.* By imposing new duties on local officials for the adoption of a general plan, the bill would create a state-mandated local program.

(3) The Planning and Zoning Law requires the State Board of Forestry and Fire Protection and the local agency to review the draft or existing safety element and to report its written recommendations to the planning agency within 60 days of its receipt of the draft or existing safety element. The State Board of Forestry and Fire Protection and the local agency are authorized to offer written recommendations for changes to the draft or existing safety element regarding uses of land, policies, and methods for wildland fire risk reduction and prevention in state responsibility areas and very high fire hazard severity zones.

This bill would instead require the State Board of Forestry and Fire Protection, and authorize the local agency, to review the draft or existing safety element and recommend changes to the planning agency regarding uses of land, policies, and methods for wildland fire risk reduction and prevention in state responsibility areas and very high fire hazard severity zones within 60 days of the receipt of the draft or existing safety element.

~~(3)~~

(4) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect

on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA requires OPR to prepare and develop proposed guidelines for the implementation of CEQA by public agencies.

This bill would require OPR, on or after January 1, 2010, at the time of the next update of guidelines implementing CEQA, in cooperation with the Department of Forestry and Fire Protection, to prepare, develop, and transmit to the Secretary of the Natural Resources Agency recommended proposed changes or amendments to the initial study for the inclusion of questions related to fire hazard impacts for projects located on lands in state responsibility areas, as defined, and on lands classified as very high fire hazard severity zones, as defined. The Natural Resources Agency would be required to certify and adopt the recommended proposed changes or amendments prepared and developed by the OPR in accordance with these provisions.

(4)

(5) 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 no reimbursement is required by this act for a specified reason.

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 65040.7 is added to the Government
2 Code, to read:
3 65040.7. On or before January 1, 2011, the Office of Planning
4 and Research shall update its “Fire Hazard Planning” document
5 prepared as part of the General Plan Technical Advice Series and
6 issued in November of 2003.
7 SEC. 2. Section 65302 of the Government Code is amended
8 to read:
9 65302. The general plan shall consist of a statement of
10 development policies and shall include a diagram or diagrams and
11 text setting forth objectives, principles, standards, and plan
12 proposals. The plan shall include the following elements:
13 (a) A land use element that designates the proposed general
14 distribution and general location and extent of the uses of the land

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

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

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

28 (A) In determining the impact of new growth on military
29 readiness activities, information provided by military facilities
30 shall be considered. Cities and counties shall address military
31 impacts based on information from the military and other 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 under
3 the jurisdiction of the United States Department of Defense as
4 defined in paragraph (1) of subsection (e) of Section 2687 of Title
5 10 of the United States Code.

6 (b) (1) 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 the
10 land use element of the plan.

11 (2) (A) Commencing January 1, 2011, upon any substantive
12 revision of the circulation element, the legislative body shall
13 modify the circulation element to plan for a balanced, multimodal
14 transportation network that meets the needs of all users of streets,
15 roads, and highways for safe and convenient travel in a manner
16 that is suitable to the rural, suburban, or urban context of the
17 general plan.

18 (B) For purposes of this paragraph, “users of streets, roads, and
19 highways” means bicyclists, children, persons with disabilities,
20 motorists, movers of commercial goods, pedestrians, users of public
21 transportation, and seniors.

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

24 (d) (1) A conservation element for the conservation,
25 development, and utilization of natural resources including water
26 and its hydraulic force, forests, soils, rivers and other waters,
27 harbors, fisheries, wildlife, minerals, and other natural resources.
28 The conservation element shall consider the effect of development
29 within the jurisdiction, as described in the land use element, on
30 natural resources located on public lands, including military
31 installations. That portion of the conservation element including
32 waters shall be developed in coordination with any countywide
33 water agency and with all district and city agencies, including
34 flood management, water conservation, or groundwater agencies
35 that have developed, served, controlled, managed, or conserved
36 water of any type for any purpose in the county or city for which
37 the plan is prepared. Coordination shall include the discussion and
38 evaluation of any water supply and demand information described
39 in Section 65352.5, if that information has been submitted by the
40 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) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) (1) A noise element that shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(A) Highways and freeways.

(B) Primary arterials and major local streets.

(C) Passenger and freight on-line railroad operations and ground rapid transit systems.

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

(E) Local industrial plants, including, but not limited to, railroad classification yards.

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

(2) Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or

1 day-night average level (L_{dn}). The noise contours shall be prepared
2 on the basis of noise monitoring or following generally accepted
3 noise modeling techniques for the various sources identified in
4 paragraphs (1) to (6), inclusive.

5 (3) The noise contours shall be used as a guide for establishing
6 a pattern of land uses in the land use element that minimizes the
7 exposure of community residents to excessive noise.

8 (4) The noise element shall include implementation measures
9 and possible solutions that address existing and foreseeable noise
10 problems, if any. The adopted noise element shall serve as a
11 guideline for compliance with the state's noise insulation standards.

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

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

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

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

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

- 1 (iii) Information about flood hazards that is available from the
2 United States Army Corps of Engineers.
- 3 (iv) Designated floodway maps that are available from the
4 Central Valley Flood Protection Board.
- 5 (v) Dam failure inundation maps prepared pursuant to Section
6 8589.5 that are available from the Office of Emergency Services.
- 7 (vi) Awareness Floodplain Mapping Program maps and 200-year
8 flood plain maps that are or may be available from, or accepted
9 by, the Department of Water Resources.
- 10 (vii) Maps of levee protection zones.
- 11 (viii) Areas subject to inundation in the event of the failure of
12 project or nonproject levees or floodwalls.
- 13 (ix) Historical data on flooding, including locally prepared maps
14 of areas that are subject to flooding, areas that are vulnerable to
15 flooding after wildfires, and sites that have been repeatedly
16 damaged by flooding.
- 17 (x) Existing and planned development in flood hazard zones,
18 including structures, roads, utilities, and essential public facilities.
- 19 (xi) Local, state, and federal agencies with responsibility for
20 flood protection, including special districts and local offices of
21 emergency services.
- 22 (B) Establish a set of comprehensive goals, policies, and
23 objectives based on the information identified pursuant to
24 subparagraph (A), for the protection of the community from the
25 unreasonable risks of flooding, including, but not limited to:
 - 26 (i) Avoiding or minimizing the risks of flooding to new
27 development.
 - 28 (ii) Evaluating whether new development should be located in
29 flood hazard zones, and identifying construction methods or other
30 methods to minimize damage if new development is located in
31 flood hazard zones.
 - 32 (iii) Maintaining the structural and operational integrity of
33 essential public facilities during flooding.
 - 34 (iv) Locating, when feasible, new essential public facilities
35 outside of flood hazard zones, including hospitals and health care
36 facilities, emergency shelters, fire stations, emergency command
37 centers, and emergency communications facilities or identifying
38 construction methods or other methods to minimize damage if
39 these facilities are located in flood hazard zones.

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

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

6 (3) Prior to January 1, 2015, and thereafter upon each revision
7 of the housing element made pursuant to Section 65588, the safety
8 element shall be reviewed and updated as ~~needed~~ necessary to
9 address the risk of fire for land classified as state responsibility
10 areas, as defined in Section 4102 of the Public Resources Code,
11 and land classified as very high fire hazard severity zones, as
12 defined in Section 51177. This review shall consider the advice
13 included in the most recent publication of “Fire Hazard Planning”
14 (Office of Planning and Research, General Plan Technical Advice
15 Series) and shall also include all of the following:

16 (A) Information regarding fire hazards, including, but not limited
17 to, all of the following:

18 (i) Fire hazard severity zone maps available from the Department
19 of Forestry and Fire Protection.

20 (ii) Historical data on wildfires, including maps prepared by
21 local agencies displaying areas that have been historically subject
22 to wildfires.

23 (iii) Information about wildfire hazard areas that may be
24 available from the United States Geological Survey.

25 (iv) General location and distribution of existing and planned
26 development in very high fire hazard severity zones, including
27 structures, roads, utilities, and essential public facilities.

28 (v) Local, state, and federal agencies with responsibility for fire
29 protection, including special districts and local offices of
30 emergency services.

31 (B) Establish a set of goals, policies, and objectives based on
32 the information identified pursuant to subparagraph (A) for the
33 protection of the community from the unreasonable risk of wildfire,
34 including, but not limited to, all of the following:

35 (i) Avoiding or minimizing the ~~unreasonable risks of wildfire~~
36 ~~to new development.~~ *wildfire hazards associated with new*
37 *development, such as building materials that are not fire resistant,*
38 *flammable vegetation, insufficient defensible space or fuel breaks,*
39 *and lack of appropriate emergency road access.*

1 (ii) Identifying construction design or methods, including fire
2 resistive construction materials, fuels management methods, or
3 other methods, to minimize ~~damage~~ *the potential for ignition or*
4 *spread of a structure fire to wildlands or surrounding areas* if new
5 development is located in a state responsibility area or in a very
6 high fire hazard severity zone.

7 (iii) Locating, when feasible, new essential public facilities
8 outside of high fire risk areas, including, but not limited to,
9 hospitals and health care facilities, emergency shelters, emergency
10 command centers, and emergency communications facilities, or
11 identifying construction methods or other methods to minimize
12 damage if these facilities are located in a state responsibility area
13 or very high fire hazard severity zone.

14 (iv) Working cooperatively with public agencies with
15 responsibility for fire protection.

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

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

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

33 (6) Prior to the periodic review of its general plan and prior to
34 preparing or revising its safety element, each city and county shall
35 consult the California Geological Survey of the Department of
36 Conservation, the Central Valley Flood Protection Board, if the
37 city or county is located within the boundaries of the Sacramento
38 and San Joaquin Drainage District, as set forth in Section 8501 of
39 the Water Code, and the Office of Emergency Services for the

1 purpose of including information known by and available to the
2 department, the office, and the board required by this subdivision.

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

8 SEC. 3. Section 65302.5 of the Government Code is amended
9 to read:

10 65302.5. (a) At least 45 days prior to adoption or amendment
11 of the safety element, each county and city shall submit to the
12 California Geological Survey of the Department of Conservation
13 one copy of a draft of the safety element or amendment and any
14 technical studies used for developing the safety element. The
15 division may review drafts submitted to it to determine whether
16 they incorporate known seismic and other geologic hazard
17 information, and report its findings to the planning agency within
18 30 days of receipt of the draft of the safety element or amendment
19 pursuant to this subdivision. The legislative body shall consider
20 the division's findings prior to final adoption of the safety element
21 or amendment unless the division's findings are not available
22 within the above prescribed time limits or unless the division has
23 indicated to the city or county that the division will not review the
24 safety element. If the division's findings are not available within
25 those prescribed time limits, the legislative body may take the
26 division's findings into consideration at the time it considers future
27 amendments to the safety element. Each county and city shall
28 provide the division with a copy of its adopted safety element or
29 amendments. The division may review adopted safety elements
30 or amendments and report its findings. All findings made by the
31 division shall be advisory to the planning agency and legislative
32 body.

33 (b) (1) The draft element of or draft amendment to the safety
34 element of a county or a city's general plan shall be submitted to
35 the State Board of Forestry and Fire Protection and every local
36 agency that provides fire protection to territory in the city or county
37 at least 90 days prior to either of the following:

38 (A) The adoption or amendment to the safety element of its
39 general plan for each county that contains state responsibility areas.

(B) The adoption or amendment to the safety element of its general plan for each city or county that contains a very high fire hazard severity zone as defined pursuant to subdivision (b) of Section 51177.

(2) A county that contains state responsibility areas and a city or county that contains a very high fire hazard severity zone as defined pursuant to subdivision (b) of Section 51177 shall submit for review the safety element of its general plan to the State Board of Forestry and Fire Protection and every local agency that provides fire protection to territory in the city or county in accordance with the following dates, as specified, unless the local government submitted the element within five years prior to that date:

(A) Local governments within the regional jurisdiction of the San Diego Association of Governments: December 31, 2010.

(B) Local governments within the regional jurisdiction of the Southern California Association of Governments: December 31, 2011.

(C) Local governments within the regional jurisdiction of the Association of Bay Area Governments: December 31, 2012.

(D) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2013.

(E) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2014.

(F) All other local governments: December 31, 2015.

(3) The State Board of Forestry and Fire Protection shall, and a local agency may, review the draft or an existing safety element and ~~report its written recommendations to the planning agency within 60 days of its receipt of the draft or existing safety element.~~ The State Board of Forestry and Fire Protection and the local agency shall review the draft or existing safety element within 60 days of its receipt and may offer written recommendations for changes to the draft or existing safety element *recommend changes to the planning agency within 60 days of its receipt* regarding both of the following:

(A) Uses of land and policies in state responsibility areas and very high fire hazard severity zones that will protect life, property,

1 and natural resources from unreasonable risks associated with
2 wildland fires.

3 (B) Methods and strategies for wildland fire risk reduction and
4 prevention within state responsibility areas and very high *fire*
5 hazard severity zones.

6 (4) Prior to the adoption of its draft element or draft amendment,
7 the board of supervisors of the county or the city council of a city
8 shall consider the recommendations, if any, made by the State
9 Board of Forestry and Fire Protection and any local agency that
10 provides fire protection to territory in the city or county. If the
11 board of supervisors or city council determines not to accept all
12 or some of the recommendations, if any, made by the State Board
13 of Forestry and Fire Protection or local agency, the board of
14 supervisors or city council shall communicate in writing to the
15 State Board of Forestry and Fire Protection or the local public
16 agency its reasons for not accepting the recommendations.

17 (5) If the State Board of Forestry and Fire Protection's or local
18 agency's recommendations are not available within the time limits
19 required by this section, the board of supervisors or city council
20 may act without those recommendations. The board of supervisors
21 or city council shall take the recommendations into consideration
22 at the next time it considers amendments to the safety element.

23 SEC. 4. Section 21083.01 is added to the Public Resources
24 Code, to read:

25 21083.01. (a) On or after January 1, 2010, at the time of the
26 next review of the guidelines prepared and developed to implement
27 this division pursuant to subdivision (f) of Section 21083, the
28 Office of Planning and Research, in cooperation with the
29 Department of Forestry and Fire Protection, shall prepare, develop,
30 and transmit to the Secretary of the Natural Resources Agency
31 recommended proposed changes or amendments to the initial study
32 of the guidelines implementing this division for the inclusion of
33 questions related to fire hazard impacts for projects located on
34 lands classified as state responsibility areas, as defined in Section
35 4102, and on lands classified as very high fire hazard severity
36 zones, as defined in subdivision (i) of Section 51177 of the
37 Government Code.

38 (b) Upon receipt and review, the Natural Resources Agency
39 shall certify and adopt the recommended proposed changes or

1 amendments prepared and developed by the Office of Planning
2 and Research pursuant to subdivision (a).
3 SEC. 5. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 a local agency or school district has the authority to levy service
6 charges, fees, or assessments sufficient to pay for the program or
7 level of service mandated by this act, within the meaning of Section
8 17556 of the Government Code.

O