

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1259

Introduced by Assembly Member Olsen

February 22, 2013

An act to amend ~~Section 85320 of the Water~~ Sections 65962 and 66474.5 of the Government Code, relating to ~~water resources: flood management.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1259, as amended, Olsen. Sacramento-San Joaquin ~~Delta: Delta Plan: Bay Delta Conservation Plan: Valley.~~

Existing law requires each city and county within the Sacramento-San Joaquin Valley, within 24 months of the adoption of the Central Valley Flood Protection Plan, to amend its general plan to include specified data, policies, and implementation measures. The city or county is also required, within 36 months of the adoption of the Central Valley Flood Protection Plan, but not more than 12 months after the amendment of its general plan, to amend its zoning ordinance to be consistent with the general plan, as amended.

After the general plan amendments and zoning ordinance amendments have become effective, the city or county, unless it makes one of 3 specified findings, is prohibited from approving specified permits that would result in specified construction located within a flood hazard zone, and is required to deny approval of a tentative map, or a parcel map for which a tentative map was not required, for a subdivision located within the flood hazard zone.

This bill would include, among the findings that exempt a city or county from the above-described prohibition and requirement, a finding

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

~~The Sacramento-San Joaquin Delta Reform Act of 2009 establishes the Delta Stewardship Council, which is required to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan) by January 1, 2012. The act requires the council to consider for inclusion in the Delta Plan a multispecies conservation plan called the Bay Delta Conservation Plan (BDCP), and requires the incorporation of the BDCP into the Delta Plan if the BDCP meets certain requirements.~~

~~This bill would make a technical, nonsubstantive change in this provision.~~

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

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

1 SECTION 1. Section 65962 of the Government Code is
2 amended to read:

3 65962. (a) Notwithstanding any other ~~provision~~ of law, after
4 the amendments required by Sections 65302.9 and 65860.1 have
5 become effective, each city and county within the Sacramento-San
6 Joaquin Valley shall not approve a discretionary permit or other
7 discretionary entitlement, or a ministerial permit that would result
8 in the construction of a new residence, for a project that is located
9 within a flood hazard zone unless the city or county finds, based
10 on substantial evidence in the record, one of the following:

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

16 (2) The city or county has imposed conditions on the permit or
17 discretionary entitlement that will protect the project to the urban
18 level of flood protection in urban and urbanizing areas or the
19 national Federal Emergency Management Agency standard of
20 flood protection in nonurbanized areas.

21 (3) The local flood management agency has made adequate
22 progress on the construction of a flood protection system which
23 will result in flood protection equal to or greater than the urban

1 level of flood protection in urban or urbanizing areas or the national
2 Federal Emergency Management Agency standard of flood
3 protection in nonurbanized areas for property located within a
4 flood hazard zone, intended to be protected by the system. For
5 urban and urbanizing areas protected by project levees, the urban
6 level of flood protection shall be achieved by 2025.

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

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

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

20 *SEC. 2. Section 66474.5 of the Government Code is amended*
21 *to read:*

22 66474.5. (a) Notwithstanding any other ~~provision of~~ law, after
23 the amendments required by Sections 65302.9 and 65860.1 have
24 become effective, the legislative body of each city and county
25 within the Sacramento-San Joaquin Valley shall deny approval of
26 a tentative map, or a parcel map for which a tentative map was not
27 required, for a subdivision that is located within a flood hazard
28 zone unless the city or county finds, based on substantial evidence
29 in the record, one of the following:

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

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

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

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

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

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

23 SECTION 1. ~~Section 85320 of the Water Code is amended to~~
 24 ~~read:~~

25 ~~85320. (a) The Bay Delta Conservation Plan (BDCP) shall be~~
 26 ~~considered for inclusion in the Delta Plan in accordance with this~~
 27 ~~chapter.~~

28 ~~(b) The BDCP shall not be incorporated into the Delta Plan and~~
 29 ~~the public benefits associated with the BDCP shall not be eligible~~
 30 ~~for state funding, unless the BDCP does all of the following:~~

31 ~~(1) Complies with Chapter 10 (commencing with Section 2800)~~
 32 ~~of Division 3 of the Fish and Game Code.~~

33 ~~(2) Complies with Division 13 (commencing with Section~~
 34 ~~21000) of the Public Resources Code, including a comprehensive~~
 35 ~~review and analysis of all of the following:~~

36 ~~(A) A reasonable range of flow criteria, rates of diversion, and~~
 37 ~~other operational criteria required to satisfy the criteria for approval~~
 38 ~~of a natural community conservation plan as provided in~~
 39 ~~subdivision (a) of Section 2820 of the Fish and Game Code, and~~
 40 ~~other operational requirements and flows necessary for recovering~~

1 the Delta ecosystem and restoring fisheries under a reasonable
2 range of hydrologic conditions, which will identify the remaining
3 water available for export and other beneficial uses.

4 (B) A reasonable range of Delta conveyance alternatives,
5 including through-Delta, dual conveyance, and isolated conveyance
6 alternatives and including further capacity and design options of
7 a lined canal, an unlined canal, and pipelines.

8 (C) The potential effects of climate change, possible sea level
9 rise up to 55 inches, and possible changes in total precipitation
10 and runoff patterns on the conveyance alternatives and habitat
11 restoration activities considered in the environmental impact report.

12 (D) The potential effects on migratory fish and aquatic resources.

13 (E) The potential effects on Sacramento River and San Joaquin
14 River flood management.

15 (F) The resilience and recovery of Delta conveyance alternatives
16 in the event of catastrophic loss caused by earthquake or flood or
17 other natural disaster.

18 (G) The potential effects of each Delta conveyance alternative
19 on Delta water quality.

20 (e) The department shall consult with the council and the Delta
21 Independent Science Board during the development of the BDCP.
22 The council shall be a responsible agency in the development of
23 the environmental impact report. The Delta Independent Science
24 Board shall review the draft environmental impact report and shall
25 submit its comments to the council and the Department of Fish
26 and Game.

27 (d) If the Department of Fish and Game approves the BDCP as
28 a natural community conservation plan pursuant to Chapter 10
29 (commencing with Section 2800) of Division 3 of the Fish and
30 Game Code, the council shall have at least one public hearing
31 concerning the incorporation of the BDCP into the Delta Plan.

32 (e) If the Department of Fish and Game approves the BDCP as
33 a natural community conservation plan pursuant to Chapter 10
34 (commencing with Section 2800) of Division 3 of the Fish and
35 Game Code and determines that the BDCP meets the requirements
36 of this section, and the BDCP has been approved as a habitat
37 conservation plan pursuant to the federal Endangered Species Act
38 (16 U.S.C. Section 1531 et seq.), the council shall incorporate the
39 BDCP into the Delta Plan. The Department of Fish and Game's

1 ~~determination that the BDCP has met the requirements of this~~
2 ~~section may be appealed to the council.~~

3 ~~(f) The department, in coordination with the Department of Fish~~
4 ~~and Game, or any successor agencies charged with BDCP~~
5 ~~implementation, shall report to the council on the implementation~~
6 ~~of the BDCP at least once a year, including the status of monitoring~~
7 ~~programs and adaptive management.~~

8 ~~(g) The council may make recommendations to BDCP~~
9 ~~implementing agencies regarding the implementation of the BDCP.~~
10 ~~BDCP implementing agencies shall consult with the council on~~
11 ~~these recommendations. These recommendations shall not change~~
12 ~~the terms and conditions of the permits issued by state and federal~~
13 ~~regulatory agencies.~~