

Introduced by Senator Kehoe

(Coauthors: Assembly Members Davis and De La Torre)

February 18, 2010

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 land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1207, as introduced, Kehoe. Land use: general plan: safety element: fire hazard impacts.

(1) The Planning and Zoning Law requires the legislative body of a city or county to adopt a comprehensive, long-term general plan that includes various elements, including, among others, a safety element for the protection of the community from unreasonable risks associated with, among other things, wildland and urban fires. The safety element includes requirements for state responsibility areas, as defined, and very high fire hazard severity zones, as defined.

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 necessary to address the risk of fire in state responsibility areas and very high fire hazard severity zones, taking into account specified considerations, including, among others, the most recent version of the Office of Planning and Research's "Fire Hazard Planning" document, which this bill would require the office to update on or before January 1, 2012. By imposing new duties on a city or county with regard to reviewing and updating its general plan, this bill would impose a state-mandated local program.

(2) The California Environmental Quality Act (CEQA) requires a lead agency to prepare 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 the Office of Planning and Research to prepare and develop guidelines for the implementation of CEQA by public agencies.

This bill would require the office, on or after January 1, 2011, at the time of the next update of the guidelines for 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 in state responsibility areas and high fire hazard severity zones. This bill would also require the Secretary of the Natural Resources Agency to certify and adopt these recommended proposed changes or amendments.

(3) 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, 2012, 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:

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

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

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

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

(B) The following definitions govern this paragraph:

(i) “Military readiness activities”—~~mean~~ *means* all of the following:

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

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

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

3 (ii) “Military installation” means a base, camp, post, station,
4 yard, center, homeport facility for any ship, or other activity under
5 the jurisdiction of the United States Department of Defense as
6 defined in paragraph (1) of subsection (e) of Section 2687 of Title
7 10 of the United States Code.

8 (b) (1) A circulation element consisting of the general location
9 and extent of existing and proposed major thoroughfares,
10 transportation routes, terminals, any military airports and ports,
11 and other local public utilities and facilities, all correlated with the
12 land use element of the plan.

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

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

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

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

1 in Section 65352.5, if that information has been submitted by the
2 water agency to the city or county.

3 (2) The conservation element may also cover all of the
4 following:

5 (A) The reclamation of land and waters.

6 (B) Prevention and control of the pollution of streams and other
7 waters.

8 (C) Regulation of the use of land in stream channels and other
9 areas required for the accomplishment of the conservation plan.

10 (D) Prevention, control, and correction of the erosion of soils,
11 beaches, and shores.

12 (E) Protection of watersheds.

13 (F) The location, quantity and quality of the rock, sand and
14 gravel resources.

15 (3) Upon the next revision of the housing element on or after
16 January 1, 2009, the conservation element shall identify rivers,
17 creeks, streams, flood corridors, riparian habitats, and land that
18 may accommodate floodwater for purposes of groundwater
19 recharge and stormwater management.

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

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

28 (A) Highways and freeways.

29 (B) Primary arterials and major local streets.

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

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

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

38 (F) Other ground stationary noise sources, including, but not
39 limited to, military installations, identified by local agencies as
40 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 day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

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

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

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

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

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

(i) Flood hazard zones. As used in this subdivision, "flood hazard zone" means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency. The identification of a flood hazard zone 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.

1 (ii) National Flood Insurance Program maps published by
2 FEMA.

3 (iii) Information about flood hazards that is available from the
4 United States Army Corps of Engineers.

5 (iv) Designated floodway maps that are available from the
6 Central Valley Flood Protection Board.

7 (v) Dam failure inundation maps prepared pursuant to Section
8 8589.5 that are available from the Office of Emergency Services.

9 (vi) Awareness Floodplain Mapping Program maps and 200-year
10 flood plain maps that are or may be available from, or accepted
11 by, the Department of Water Resources.

12 (vii) Maps of levee protection zones.

13 (viii) Areas subject to inundation in the event of the failure of
14 project or nonproject levees or floodwalls.

15 (ix) Historical data on flooding, including locally prepared maps
16 of areas that are subject to flooding, areas that are vulnerable to
17 flooding after wildfires, and sites that have been repeatedly
18 damaged by flooding.

19 (x) Existing and planned development in flood hazard zones,
20 including structures, roads, utilities, and essential public facilities.

21 (xi) Local, state, and federal agencies with responsibility for
22 flood protection, including special districts and local offices of
23 emergency services.

24 (B) Establish a set of comprehensive goals, policies, and
25 objectives based on the information identified pursuant to
26 subparagraph (A), for the protection of the community from the
27 unreasonable risks of flooding, including, but not limited to:

28 (i) Avoiding or minimizing the risks of flooding to new
29 development.

30 (ii) Evaluating whether new development should be located in
31 flood hazard zones, and identifying construction methods or other
32 methods to minimize damage if new development is located in
33 flood hazard zones.

34 (iii) Maintaining the structural and operational integrity of
35 essential public facilities during flooding.

36 (iv) Locating, when feasible, new essential public facilities
37 outside of flood hazard zones, including hospitals and health care
38 facilities, emergency shelters, fire stations, emergency command
39 centers, and emergency communications facilities or identifying

1 construction methods or other methods to minimize damage if
2 these facilities are located in flood hazard zones.

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

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

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

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

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

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

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

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

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

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

37 (i) Avoiding or minimizing the wildfire hazards associated with
38 new development, such as building materials that are not fire
39 resistant, flammable vegetation, insufficient defensible space or
40 fuel breaks, 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 the potential for ignition or spread of
4 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 ~~(3)~~

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

26 ~~(4)~~

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

36 ~~(5)~~

37 (6) Prior to the periodic review of its general plan and prior to
38 preparing or revising its safety element, each city and county shall
39 consult the California Geological Survey of the Department of
40 Conservation, the Central Valley Flood Protection Board, if the

1 city or county is located within the boundaries of the Sacramento
2 and San Joaquin Drainage District, as set forth in Section 8501 of
3 the Water Code, and the Office of Emergency Services for the
4 purpose of including information known by and available to the
5 department, the office, and the board required by this subdivision.

6 ~~(6)~~

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

12 SEC. 3. Section 65302.5 of the Government Code is amended
13 to read:

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

37 ~~(1)~~

38 (b) (1) The draft element of or draft amendment to the safety
39 element of a county or a city's general plan shall be submitted to
40 the State Board of Forestry and Fire Protection and to every local

1 agency that provides fire protection to territory in the city or county
2 at least 90 days prior to either of the following:

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

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

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

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

20 (B) Local governments within the regional jurisdiction of the
21 Southern California Association of Governments: December 31,
22 2011.

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

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

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

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

33 (3) The State Board of Forestry and Fire Protection shall, and
34 a local agency may, review the draft or an existing safety element
35 and ~~report its written recommendations~~ *recommend changes* to
36 the planning agency within 60 days of its receipt of the draft or
37 existing safety element. ~~The State Board of Forestry and Fire~~
38 ~~Protection and local agency shall review the draft or existing safety~~
39 ~~element and may offer written recommendations for changes to~~
40 ~~the draft or existing safety element~~ 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, and natural resources from unreasonable risks associated with wildland fires.

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

~~(b)~~

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

~~(c)~~

(5) If the State Board of Forestry and Fire ~~Protection~~ *Protection's* or local agency's recommendations are not available within the time limits required by this section, the board of supervisors or city council may act without those recommendations. The board of supervisors or city council shall take the recommendations into consideration at the next time it considers amendments ~~pursuant to paragraph (1) of subdivision (a) to the~~ *safety element*.

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

21083.01. (a) On or after January 1, 2011, at the time of the next review of the guidelines prepared and developed to implement this division pursuant to subdivision (f) of Section 21083, the Office of Planning and Research, in cooperation with the Department of Forestry and Fire Protection, shall prepare, develop, and transmit to the Secretary of the Natural Resources Agency recommended proposed changes or amendments to the initial study of the guidelines implementing this division for the inclusion of questions related to fire hazard impacts for projects located on lands classified as state responsibility areas, as defined in Section

1 4102, and on lands classified as very high fire hazard severity
2 zones, as defined in subdivision (i) of Section 51177 of the
3 Government Code.

4 (b) Upon receipt and review, the Secretary of the Natural
5 Resources Agency shall certify and adopt the recommended
6 proposed changes or amendments prepared and developed by the
7 Office of Planning and Research pursuant to subdivision (a).

8 SEC. 5. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 a local agency or school district has the authority to levy service
11 charges, fees, or assessments sufficient to pay for the program or
12 level of service mandated by this act, within the meaning of Section
13 17556 of the Government Code.