

SB 5 AND NEW FLOOD CONTROL REGULATIONS



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Background

- Senate Bill 5 was approved in 2007
- Created “Urban Level Of Flood Protection” Requirement (200-Year)
- Higher level of flood protection than required by FEMA (100-year)
- Applies only to cities and counties in California’s Central Valley Watershed
- Requires cities and counties to amend their general plans and their zoning ordinances to reflect the new 200-Year requirements
- Cities and counties must make “SB 5 findings” before making certain land use decisions

Background (cont.)

- Clean-up legislation approved in September 2012 (SB 1278 (Wolk) and AB 1965 (Pan))
 - ▣ Added “Shallow Flooding” and “Local Drainage” exemptions to the law
 - ▣ Required DWR to prepare 200-year Floodplain maps for Urban areas by July 2, 2013
 - ▣ Extended deadline by 12 months for amendment of general plans and zoning ordinances (July 2, 2015 and July 2, 2016, respectively)

Urban Level of Flood Protection



- **“Urban level of flood protection”** means the level of protection that is necessary to withstand flooding that has a **1-in-200** chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources.
- **“Urban level of flood protection”** shall **not** mean **shallow flooding or flooding from local drainage.**

Applicable Location



- SB 5 applies if a property is:
 - ▣ Located within the Sacramento - San Joaquin Valley watershed
 - ▣ Located within an urban area of 10,000 residents or,
 - ▣ Located within an urbanizing area with will have 10,000 people within 10-years
 - ▣ Located within a flood hazard zone that is mapped as either a special flood hazard area or an area of moderate hazard on FEMA's Flood Insurance Rate Map (FIRM)
 - ▣ Located within a watershed of more than 10 square miles
 - ▣ Located within an area with a potential flood depth above 3.0 feet

Affected Land Use Decisions



- Cities and counties must make “SB 5 findings” for certain types of land use decisions.
 - Entering into a Development Agreement for all types of property development
 - Approving a tentative map
 - Approving a parcel or subdivision map
 - Approving a discretionary permit or other discretionary entitlement for all development projects
 - Approving a ministerial permit that would result in construction of a new residence

Findings



- Findings
 - ▣ Currently have 200-year flood protection
 - ▣ Imposed conditions to achieve 200-year flood protection
 - ▣ Making adequate progress toward 200-Year level by 2025
- Finding must be based upon Substantial Evidence
 - ▣ Depends on type of finding (could include CE report, review from Independent Panel of Experts)
 - ▣ A previous finding can be used to support a new finding, when applicable

What is “Adequate Progress”?

- Adequate Progress is defined under California Government Code Section 65007(a) as follows:
 1. The total project scope, schedule and cost of the completed flood protection system have been developed to meet the appropriate standard of protection
 2. Revenues sufficient to fund each year have been identified and, in any given year at least 90% of the revenues scheduled have been appropriated and are being expended
 3. Critical features of the flood protection system are under construction, and each critical feature is progressing as indicated by the actual expenditure of the construction budget.
 4. The city or county have not been responsible for a significant delay in completion.
 5. The local flood management agency shall provide DWR and the CVFPB with information sufficient to determine substantial completion of the required flood protection (annual report and determination of adequate progress)

Compliance

- SB 5 requires that cities and counties comply with criteria “consistent with, or developed by, DWR.”
- DWR has developed levee design criteria beyond U.S. Army Corps and FEMA requirements – ULDC (Urban Levee Design Criteria)
- DWR has developed procedures for the processing of land use applications - ULOP (Urban Level of Protection) Criteria
- Cities and counties can use either these criteria or other consistent criteria

Compliance (Cont.)



- DWR does not have enforcement authority
- DWR may include the ULOP Criteria in future requirements for State funding eligibility
- DWR currently does not have plans to convert the ULOP Criteria into regulations

New Federal Rules Also



- Revised Guidelines for Implementing Executive Order 11988, "Floodplain Management"
- New Executive Order 13690, "Establishing a Federal Flood Risk Management Standard" (FFRMS).
- Federally funded 'critical actions' must have 500-year protection.
- "Critical action shall mean any activity for which even a slight chance of flooding would be too great."
- Each Federal agency has to develop their own guidelines for implementing Executive Order 13690

What does it mean for you?



- Do you need to plan for 200-year protection for your facilities?
 - ▣ Not required specifically by the law
 - ▣ Do you need land use approvals from a land use agency?
 - ▣ Future state grants/funding may mandate
 - ▣ Is lack of 200-Year protection a disclosure issue for bond financing? Discuss with Bond Counsel

What does it mean for you?



- Will 200-Year requirement result in a ‘building moratorium’ for your service area?
- Master planning and facility expansion should consider and perhaps reevaluate pre-SB5 growth assumptions
- For cities/counties relying on “Adequate Progress” finding, are they just postponing the ‘moratorium’ to 2025 or will they be able to meet the deadline?

Where to find additional Information?



<http://www.water.ca.gov/floodsafe/urbancriteria/>

<http://www.water.ca.gov/cvfmp/guidance.cfm>

[http://www.water.ca.gov/floodsafe/urbancriteria/ULO
P_Criteria_Nov2013.pdf](http://www.water.ca.gov/floodsafe/urbancriteria/ULO
P_Criteria_Nov2013.pdf)

[http://www.water.ca.gov/floodsafe/urbancriteria/ULO
P-Draft-Criteria_2012.0404.pdf](http://www.water.ca.gov/floodsafe/urbancriteria/ULO
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