

BACKGROUND INFORMATION

SENATE BILL (SB) 5 (CENTRAL VALLEY FLOOD PROTECTION ACT OF 2008, CHAPTER 364, STATS. 2007)

In 2007, five interrelated pieces of legislation were enacted to address the problem of flood protection and liability. The legislative package also made \$5 billion in State bonds available for flood protection improvements. The Central Valley Flood Protection Act of 2008 (Chapter 364, Stats. 2007), commonly referred to as SB 5, contained provisions for local agencies to incorporate flood risk considerations into land use planning. This legislation primarily focused on flood requirements for the Sacramento-San Joaquin Valley within an area defined as the Sacramento-San Joaquin Hydrologic Regions, which includes the City of Stockton (Exhibit 1 - Hydraulic Regions Map).

SB 5 identified the California Department of Water Resources (DWR) as the agency responsible for preparing a strategic Central Valley Flood Protection Plan by July 1, 2012. The Flood Protection Plan was primarily intended to identify necessary improvements to state flood control facilities and establish flood protection building standards where flood levels are anticipated to exceed three feet for a 200-year flood event.

A 200-year flood event is generally considered a flood of a magnitude that statistically occurs once every 200 years, or has a 0.5% likelihood of occurring in any given year. SB 5 defines this as the "urban level of flood protection." The Central Valley Flood Protection Board adopted the Flood Protection Plan by the July 1, 2012 deadline. The Central Valley Flood Protection Board is a State regulatory agency charged with overseeing the flood management system in the California's Central Valley.

SB 5 required each city and county within the Sacramento-San Joaquin Valley, including charter cities like Stockton, to amend its general plan by July 2, 2015, to include data and analysis from the State's Flood Protection Plan and goals and policies for the protection of lives and property that will reduce the risk of flood damage from a 200-year flood event (Government Code § 65302.9). Further, SB 5 required each city and county to amend its zoning ordinance by July 2, 2016, to incorporate new findings related to development in the 200-year floodplain and ensure the code is consistent with the general plan.

On June 23, 2015, the City Council approved a General Plan Amendment to comply with SB 5 (Resolution 2015-06-23-1601). The Amendment generally consisted of policy changes to provide for the City to regulate new and existing urban development within floodplains in accordance with the Federal (100-year) and State (200-year) requirements. Policy changes included setback and easements requirements for new urban development and called for planning for 200-year flood protection and upgrading the protection system to the 200-year design standard, where feasible.

On May 24, 2016, the City Council approved an amendment to Stockton Municipal Code Titles 15 - Buildings and Construction and 16 - Development Code to comply with SB 5 (Resolution 2016-05-24-1605). Effective July 2, 2016, the City began implementation to

ensure that specific findings related to 200-year flood protection are made prior to approving certain projects located within a flood hazard zone.

SMC Section 16.90 Floodplain Management Findings, specifies that the City's review authority for make a finding related to 200-year flood protection, for any of the following land-use decisions:

- Entering into a development agreement for all types of property development.
- Approving a discretionary permit or other discretionary entitlement that would result in the construction of a new building or construction that would result in an increase in allowed occupancy for an existing building.
- Approving a ministerial permit that would result in the construction of a new residence.
- Approving a tentative map consistent with the Subdivision Map Act for all subdivisions.
- Approving a tentative parcel map or a parcel map for which a tentative parcel map is not required, consistent with the Subdivision Map Act.

A "finding" is commonly required for land use decisions to provide evidence on the record to support the decision. The City's Development Code contains certain findings within each of the specific land use application sections that shall be made by the review authority (City Council, Planning Commission, Community Development Director) prior to making a decision for approval.

SB 5 introduces new findings related to 200-year level of flood protection and one of these findings must be made prior to approving any of the above land use applications. SMC Section 16.90.020A provides for the following findings to be made, based on substantial evidence in the record:

1. The facilities of the State Plan of Flood Control or other flood management facilities protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in non-urbanized areas;
2. The City has imposed conditions on a development agreement, map, permit, or entitlement that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in non-urbanized areas;
3. The local flood management agency has made adequate progress (as defined in California Government Code § 65007) on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in non-urbanized areas for

property located within a flood hazard zone, intended to be protected by the system;

4. The property in an undetermined risk area has met the urban level of flood protection;
5. The property is located in an area of potential flooding of three (3) feet or less from a storm event that has a 1-in-200 chance of occurring in any given year, from sources other than local drainage, in urban and urbanizing areas; or
6. The property is located within a watershed with a contributing area of 10 or fewer square miles in urban and urbanizing areas.

Finding numbers 4 and 6 above do not pertain to Stockton; however, because these findings were included in the SB 5 regulations, the City incorporated them into its Code. Thus, the city is reliant on making one of the four applicable City findings (numbers 1, 2, 3, or 5).

As indicated above, whichever finding is made shall be based on substantial evidence in the record. The State Department of Water Resources developed guidance ("Urban Level of Flood Protection Criteria", dated November 2013), as required by SB 5 to help cities with determining the level and type of evidence required to support the findings. The State also assisted in developing a 200-year floodplain map which shows the anticipated depth of the flooding throughout the Stockton metropolitan area in the event of a 200-year flood (see Exhibit 2 – 200-Year Floodplain Map).

Shallow flooding areas (up to three feet or less of flooding) are not considered to be within the 200-year floodplain (shown in blue on the map). The map identifies a significant portion of the westerly side of the City near Interstate 5 and some isolated areas within the central and easterly side of the City as being inundated in excess of three feet during a 200-year event (shown in yellow, orange, and red on the map). It is important to understand that this map which was prepared to comply with the State law, is independent of the FEMA 100-year flood maps, which are associated with the National Flood Insurance Program.

Since the City began implementing the 200-year flood regulation, the 200-year map has served as the substantial evidence for making a finding (number 5 above) for approval of projects located in the "blue" shallow flooding areas. For projects located in the deeper floodplain areas (yellow, orange and red areas on the map), the city is relying on the State's criteria for guidance on type and level of evidence to support its floodplain finding. This entails the applicant hiring a qualified civil engineer to establish the 200-year flood depth for the project property and specifying the necessary improvements to protect the property to the 200-year level of protection. For projects in the yellow and orange areas (flood depths between 4 to 10 feet), engineering reports typically have been recommending the project's finished floor be elevated (with fill or increased foundation) to the required floodplain height. The city can impose this improvement on the project and make a finding (#2 above) for approval based on the engineer's report as evidence.

For projects located in the red areas on the map, which may be up to 20' in flood depth, elevation of building structures may not be feasible. For these areas, more extensive physical flood protection improvements to the levee protection system become necessary. Substantial engineering analysis is required (prepared by a licensed civil engineer) to confirm if the existing levee system is sufficient or if specified improvements are necessary to achieve 200-year protection. The project proponent is responsible for funding the City's commissioning of an independent panel of experts to peer review the civil engineer's report in conformance with the SB 5 standards.

If it is determined that 200-year levee protection improvements are feasible, a developer can choose to obtain permits from the respective flood control agencies and incrementally construct the improvements over a specified number of years. An SB 5 Finding (#3) of adequate progress can be made if incremental progress occurs on the improvements over a predetermined number of years. In summary, "Adequate Progress" (as defined in California Government Code § 65007 (a)), generally means the 1) total project scope, schedule and cost of the flood protection system improvements have been developed, 2) sufficient revenues to fund each year of the project schedule have been identified, 3) critical features of the flood protection system are under construction, and 4) the local flood management agency has annually submitted progress reports to the State Department of Water Resources and Central Valley Flood Protection Board. SB 5 regulation allows adequate progress to be used until the year 2025. By 2025, flood protection improvements are to be completed.

**Figure 1-1. Sacramento and San Joaquin Hydrologic Regions**

