

**COUNTY OF SACRAMENTO  
CALIFORNIA**

For the Agenda of:  
September 29, 2009  
2:15 p.m.

To: Board of Supervisors

From: Department of Water Resources

Subject: Status Update Of Levee Decertification And Interim Delta Floodplain Policy  
(Item 64, 5/12/2009)

Supervisory  
District: Nottoli

Contact: Michael Peterson, Principal Civil Engineer, 874-8913

**Overview**

This is a report back from the May 12, 2009 discussion on Levee Decertification and Interim Delta Floodplain Policy. At that time the Board directed staff to continue to issue building permits in levee decertification areas, provided a Levee Risk Disclosure Agreement is signed by the applicant, and to report back today with an update on this issue.

**Recommendations**

It is recommended that the Board approve the Attached Resolution directing the Department of Water Resources to immediately apply the Floodplain Management Ordinance in reviewing pending and future projects in the Delta, including the recognition of levee decertification areas as the best available information, and to utilize Levee Disclosure Agreements to inform applicants of the change in levee status but not as an alternative to complying with the Ordinance. The practical result is that staff will require new homes and substantial improvements to be constructed above the potential flood elevation.

**Measures/Evaluation**

Not applicable to this item.

**Fiscal Impact**

There is no fiscal impact resulting from this item. This request is consistent with applicable elements of the 11-Point Budget Plan.

**BACKGROUND**

Since 2006 FEMA has undertaken a nationwide Flood Insurance Rate Map Modernization Project, which includes strict scrutiny of levees that are currently shown on the maps as providing protection from the 1-percent annual recurrence flood. This project has identified

several levees in Sacramento County which are currently shown to provide 100-year protection but which will necessarily be decertified by FEMA and the surrounding areas mapped into a Special Flood Hazard Area. (See attached map).

On March 18, 2009, FEMA made its determination of which levees in Sacramento County will lose their accreditation and which will continue to be provisionally accredited. Levees are deaccredited because there is no assurance (documentation, engineering certification, etc.) that the levees can provide protection from the 1-percent-annual-chance flood, also referred to as the base flood. FEMA also stated that the areas landward of those levees will be designated as a Special Flood Hazard Area (Zone A or AE), meaning that large areas are subject to flood inundation risk, and that certain building restrictions will be applied when FEMA completes its remapping.

On August 25, 2009, FEMA informed Water Resources that it intends to release draft maps for Sacramento County in November 2009, with an effective date to follow ten months later in September 2010.

## **DISCUSSION**

In order to allow development to continue in deaccredited areas of the Delta, the Board directed staff to continue allowing development at grade, with the execution of a Levee Risk Disclosure Agreement. This policy was originally recommended to, and supported by, the Board on July 24, 2007, and again restated on May 22, 2009. However, review of the Sacramento County Floodplain Management Ordinance prior to the May 22, 2009 board hearing found that this policy direction is in conflict with the Ordinance. This conflict was raised by staff in general terms in the May 22, 2009 staff report; however, the specifics of the conflict were not expressed clearly by staff.

In accordance with section 903-02 of the County of Sacramento Floodplain Management Ordinance, the confirmed deaccreditation of specific levees by FEMA constitutes the best available information regarding the ability of those levees to protect against a 100-year event. There is no consideration in the Ordinance as to setting an interim time period for this information to be recognized. While a similar change in levee status occurred in Natomas, the long-term project to bring the levee conditions up to standard was designed, funded, and underway at the time. This provided a level of confidence to allow development to continue in Natomas without elevating prior to the final effective date for new flood maps. For the Delta the extent of any work to bring levees to current standard is unknown, there is no design or construction project underway, and there is no available funding in the foreseeable future that could carry out such improvements as likely would be required.

As part of approval of any development project in such an area and the issuance of a Floodplain Management Permit for any project, the County Floodplain Administrator (or designee) must be able, according to section 905-04 (B) (3) of the Floodplain Management Ordinance, to find that:

*The site is reasonably safe from flooding. Factors to be considered include, but are not limited to,*

- (i) vehicle access to the site in times of flood;*
- (ii) the expected heights, velocity, duration, rate of rise and sediment transport of the floodwater expected at the site;*
- (iii) structures, encroachments and materials on neighboring and upstream properties;*
- (iv) the susceptibility of the proposed development to flood damage;*
- (v) the risk of injury or damage which the development poses to life and property during periods of inundation; and*
- (vi) the importance of the services to be provided by the development.*

In light of the above determinations, staff has found it difficult to make, in good faith, the findings of safety for certain development project types not already allowed by the Ordinance to be constructed below the floodplain (barns and garages). Further, discussions with County Counsel have concluded that the use of the Levee Disclosure Agreement does not eliminate the need for staff to make the requisite findings of safety, as dictated by section 905-04 (B) (3), and it does not allow staff to ignore FEMA's determination of levee decertification areas in assessing the flood risk to a development project.

Given these limitations, unless a developer with a pending or proposed project agrees to construct above the base flood elevation, as required by the Ordinance, staff cannot approve the issuance of a Floodplain Management Permit for projects in decertification areas. Barns and garages are always allowed in the Delta below the flood hazard elevation. Commercial and industrial projects may be considered below the flood hazard elevation on a case-by-case basis if designed in a manner deemed to be flood-proofed. All new homes and substantial improvements or repairs must be elevated above the flood hazard.

In cases where Water Resources' review of a project results in a requirement to elevate or flood proof as necessary to comply with the Ordinance and FEMA regulations, section 907-03 of the Ordinance currently allows for an appeal process for applicants who are dissatisfied with any such determination. Such appeal is to be made to the Board in writing, and the Board must consider whether granting a variance may negatively affect the County's standing in the National Flood Insurance Program. If deemed as such, then adequate public notice and a public hearing must occur prior to your Board acting on the appeal.

Staff in the past has sought to identify an interim period before the County would recognize FEMA's decision on decertification areas in the Delta in the review of project applications, but the Ordinance does not provide for this interim period. Further, given that the Ordinance does already provide an option for appeal for applicants who are not satisfied with a decision of the Floodplain Administrator and that the possibility of future improvements in the Delta is questionable, staff believes that creating an interim period prior to recognizing the decertification areas is not prudent. Staff believes it is prudent to recognize FEMA's decisions

on decertification as the best available information and to review all projects, pending or otherwise, against this information and in conformance with the entirety of the Ordinance.

Thus, it is respectfully recommended that the Board direct Water Resources to immediately apply the Floodplain Management Ordinance in reviewing pending and future projects in the Delta, including the recognition of levee decertification areas, as the best available information and to utilize Levee Disclosure Agreements to inform applicants of the change in levee status but not as an alternative to complying with the Ordinance.

### **FINANCIAL ANALYSIS**

There is no direct fiscal impact resulting from this item, however, development could be affected due to the stricter regulations. The extent of the impact to development is unknown.

Respectfully submitted,

APPROVED:  
TERRY SCHUTTEN  
County Executive

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KEITH DEVORE, Director  
Department of Water Resources

By: \_\_\_\_\_  
PAUL J. HAHN, Administrator  
Municipal Services Agency

Attachment: Resolution  
Levee Decertification Map (North Delta)

cc: Delta Reclamation Districts 3, 349, 551, 744, 746, 755, 813  
Delta Citizens Municipal Advisory Committee  
Tricia Stevens-Planning Department