



Agenda Date: 6/7/2005
Agenda Placement: 10C

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Britt Ferguson for Nancy Watt - County Executive Officer
County Executive Office
REPORT BY: Andrew Carey, Management Analyst, 253-4477
SUBJECT: State budget Fiscal Year 2005-2006: Flood Control budget trailer bill

RECOMMENDATION

Discussion and possible action concerning any and all issues related to the State Fiscal Year 2005-2006 budget, proposed Flood Control budget trailer bill language. (Unanimous vote of the Board members present required)

EXECUTIVE SUMMARY

On May 17th, 2005, the Senate Budget and Fiscal Review Subcommittee No. 2 approved budget trailer bill language that would require new subdivisions to have "adequate" flood protection before being approved. The trailer bill language would prohibit cities and counties from approving a development unless sufficient flood protection was in place to protect new residential developments. The trailer bill language would place severe restrictions on permitting residential development behind levees and raise the standard for flood protection from 100 year to 150 year and finally to 200 year flood protection.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

On May 17th, 2005, the Senate Budget and Fiscal Review Subcommittee No. 2 approved budget trailer bill language that would require new subdivisions to have "adequate" flood protection before being approved. The trailer bill language would prohibit cities and counties from approving a development unless sufficient flood protection was in place to protect new residential developments. The trailer bill language would place severe restrictions on permitting residential development behind levees and raise the standard for flood protection from 100 year to 150 year and finally to 200 year flood protection.

The trailer bill language is one component of the State's response to the *Paterno* decision, where the Third District Court of Appeal's held the State of California solely liable for flood damage resulting from a broken levee in Yuba County in 1986. The State's liability for damages in the *Paterno* case is estimated at approximately \$500,000. The County's legislative advocate, Don Peterson, has indicated that the issue of reducing the State's liability for future levee breaks and other flood control failures has strong bipartisan support in the Legislature.

In an effort to reduce the State's liability for flood control projects in the future, the proposed budget bill trailer language would add the following provisions to the Government Code:

(a) On or after January 1, 2006, a city, county, or city and county shall not approve a subdivision map that includes a residential use where the property is protected by a flood control levee unless:

1. the first habitable floor of the residential use is at least one foot above the maximum flood level that would result if the levee failed in a reasonably foreseeable flood event based on substantial evidence in the written record, or
2. the levee provides, based on substantial evidence in the written record, the following levels of flood protection against a reasonably foreseeable flood:
 - i. not less than one percent probability of of flooding of the residential use in any one year for a subdivision approved before January 1, 2008
 - ii. not less than 0.75 percent probability of of flooding of the residential use in any one year for a subdivision approved on or after January 1, 2008 and before January 1, 2012
 - iii. not less than 0.50 percent probability of of flooding of the residential use in any one year for a subdivision approved after January 1, 2012.

The above requirements would apply for building permits as well.

Staff from the Napa County Department of Public Works and the Napa County Flood Control and Water Conservation District (NCFCWCD) have expressed concerns about the impact the budget bill trailer language might have on in-progress flood control projects. Issues of concern are:

- | By January 1, 2008, the trailer bill language would require 150 year flood protection, and 200 year flood protection by January 1, 2012. However, flood control projects currently in progress in Napa County have been designed to Army Corp of Engineers 100 year flood protection standards. The bill does not make an exception for existing or in-progress Army Corp of Engineers constructed flood control projects.
- | NCFCWCD is responsible for maintaining the flood walls and levees in perpetuity. However, the trailer bill language does not provide an exception for flood control projects where the local district has assumed full responsibility for maintaining flood protection.
- | Upon completion of in-progress flood control projects, the Federal Emergency Management Agency (FEMA)

will be taking the flood protected area out of their flood plain designation making flood insurance unnecessary once current projects have been completed. It is unclear what impact the trailer bill language would have on flood insurance requirements for FEMA approved flood control projects.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Britt Ferguson