

SOME WORRY FLOOD LAW WILL BE A DISASTER



Mike Self stands in his lot on Gettysburg Place, between Porter Avenue and Douglas Road. CRAIG SANDERS/The Record

By **Alex Breitler**

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Mike Self climbed around a fence last week onto one of his properties, a slim finger of undeveloped land poking through an urban neighborhood near Lincoln Center.

Self, head of the Builders' Exchange of Stockton, bought the land several years ago, figuring a half dozen homes could be planted there once the economy turned around.

But another obstacle might stand in Self's way: a somewhat forgotten, but soon-to-be-implemented 2007 state law requiring cities to plan for a higher level of flood protection.

Among other consequences, local officials say the law could stifle environmentally friendlier infill projects like the one proposed by Self.

They say the law could encourage sprawl - precisely opposite the intent of the city's 2008 legal settlement with the Sierra Club and then-California Attorney General Jerry Brown.

"It's kind of mind-boggling," Self said. "It's a lack of vision - or lack of knowing - that the law is going to just wreak havoc on a town that is trying to make an economic recovery."

Written in the wake of Hurricane Katrina by then-state Sen. Michael Machado, D-Linden, Senate Bill 5 requires communities to update their general plans and zoning ordinances to reflect risk from a 200-year flood, or a flood that has a 0.5 percent chance of happening any given year.

To date, the standard for urban flood protection has been the less severe 100-year flood, with which most of the city is in compliance.

Machado's law doesn't impact federal maps requiring some residents to buy flood insurance. But it will change how communities up and down the Valley are allowed to grow in the future.

Basically, local governments will be prohibited from approving new developments in "flood hazard zones" - in Stockton, that's most everywhere - unless they can show the area has 200-year protection, or can show progress toward meeting that goal.

The only other option is to place conditions on development, such as requiring homes to be raised above the expected level of a flood.

What all this will do is push growth out toward the Delta, warned Jim Giottonini, director of the San Joaquin Area Flood Control Agency, in a memo earlier this spring.

It's easier to upgrade levees on rural Delta tracts to achieve 200-year protection than it is to make improvements in existing portions of the city, Giottonini wrote. The latter would require upgrades along miles of existing upstream levees, and neighboring property owners would have to agree to pay.

Technically, when the new law takes effect in 2016, a single lot in the middle of the city could not be built upon unless the entire area achieved 200-year protection, or the building was elevated. Preliminary maps released by the state earlier this month suggest this could be an issue in much of Stockton, particularly the west side of the city.

Giottonini urged planners in local government agencies to pay more attention to the law, and it appears they have.

"This is totally the opposite of encouraging smart growth," Michael McDowell, planning manager for Stockton's Community Development Department, said last week. "This has the potential to significantly affect Stockton."

In another wrinkle, one interpretation of the law - caused by what local officials consider to be an errant comma - suggests the rules apply not only to new construction but also to run-of-the-mill use permits issued by cities or counties.

In other words, if you wanted to add outdoor seating to a restaurant, put up a sign or install a new drive-through window at an existing business, you might have to prove you have 200-year flood protection, even though those improvements have little or nothing to do with the goal of protecting life and property.

"We could be forced to deny a simple alcohol permit for a Walgreens," McDowell told the city's Development Oversight Commission at a meeting last month.

But many of these details are not quite firm, according to the state Department of Water Resources, which is administering the law. The state has formed a working group with local officials to sort through their concerns, said Michele Ng, a state civil engineer.

The group recommended that the law apply only to new residences, and Water Resources "will consider that interpretation," Ng said.

Infill development is trickier because it can be difficult to define.

In some areas of shallow flood waters, builders might need to raise structures only a foot or two to comply, said Michael Mierzwa, flood policy advisor for Water Resources.

The issue becomes tougher in areas where the water might be 10 feet deep or more, but even then there are solutions, such as building one-story homes on top of garages.

At any rate, Mierzwa said, the risk that prompted the law cannot be denied.

While other flood-prone parts of California escape most of the new rules - a fact which local officials argue puts Stockton at an economic disadvantage - Mierzwa said Valley floods are likely to be "exceptionally fast" and of extended duration. They are also more likely to occur during the winter, when the water is especially cold and dangerous.

"When water comes in, literally we're a bowl and the water stays once it gets here," Mierzwa said. "So we get the short-term damage, but also longer-term economic damages."

A state report issued earlier this spring found 540,000 people in the San Joaquin River watershed live within a floodplain, with \$40 billion in homes and other structures at risk of flood damage.

Machado, who authored the legislation, said it wasn't perfect but did bring about a heightened awareness of flood control issues.

"Mine was a very straightforward and simple intention: In light of all the concerns over Katrina, to improve the level of flood control from 100 years to 200 years, and do it in a manner that allowed communities that were deficient to build up to that over time," Machado said.

He said he also wanted new development to be responsible for paying for flood control infrastructure, as opposed to taxpayers.

Walking across his property, Self said many people might be surprised how many empty lots like this one exist across the city, offering an opportunity for sprawling Stockton to grow inward - if the new law will allow it.

In the past, red-tape from city planners was the biggest hassle Self had to deal with.

That's gotten better with changes in city management. Now it's state policy that worries him.

"I hope common sense can come into the equation," he said.

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