Meeting Summary—DRAFT

ULOP CRITERIA REFINEMENT WORKGROUP MEETING #1
Civic Center Galleria, West Sacramento
June 4, 2013 9:00 am to 3:00 pm

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Action items

1. CCP will send notes of today's meeting. (Due: June 12th)
2. DWR will identify three subgroups to address ULOP criteria refinement issues. (Due: June 12th)
3. DWR will schedule subgroup meetings and provide content materials for each subgroup (Due: June 13th)
4. Issues specific subgroups will meet to provide content material for the following work group meeting (Due: June 18th-July 3rd)
5. Next work group meeting is scheduled for July 16th 9:00am-3:00pm

Kick off and introductions

Meeting Facilitator Adam Sutkus (Center for Collaborative Policy) welcomed members and interested parties to the meeting and led introductions around the room. Mr. Sutkus noted the distinction between workgroup members and interested parties.

- Interested parties are invited to comment at designated times throughout the meeting but general discussions are limited to the workgroup members.
- The distinction between interested parties and members will become more pronounced as the process advances.

DWR welcome and opening remarks

Paul Marshall, Assistant Division Chief (Department of Water Resources, Flood Management Division) welcomed participants to the meeting and introduced the ULOP criteria refinement process:

The ULOP process has been ongoing since 2010. Mr. Marshall has taken the role of executive sponsor for the ULOP process after Rod Mayer, the previous executive sponsor, retired. This process was developed to meet legislative requirements, with the aim to develop ULOP criteria is implementable for local agencies and agreeable to both local agencies and DWR.

There is much work to be done in a short time period. The process will include the use of small groups to work simultaneously in order to move the process forward in a focused manner. All work and discussions during the small group meetings will be brought back to the larger work group plenary session to ensure that all participants are informed.

The process is limited to a tight time schedule in order to meet the time frame for any potential legislative changes. This process aims to conclude all discussions by September/October 2013 in order to affect potential legislative changes.

Mr. Marshall thanked participants for taking the time to engage in this process and commit to efficient use of time. Mr. Marshall encouraged participants to let him know if there are ways to improve the process.

Mr. Marshall introduced Central Valley Flood Protection Board (Board) member Joe Countryman, who reiterated that this process is very important.

Agenda and process review

Mr. Sutkus reviewed the meeting's materials including a workbook with selected attachments, PowerPoint presentation, a collaborative process handbook, and meeting evaluation form.

Mr. Sutkus reviewed the agenda. The meeting's purpose is to review a wide range of issues and perspectives. There will be no decision-making by the group in this process. In addition, the participants are asked for feedback on the overall scope and charter of the project. The goal is to have a transparent and open dialogue.

The morning portion of the meeting will elicit feedback on the overall scope and charter of the project and identifying different perspectives on a wide range of issues. The afternoon portion of the meeting will be a focused discussion on specific topics based on the morning discussion. Small groups will be formed to address specific topics and to report back to the larger workgroup.

Key questions for the meeting are: (a) what are the key issues that should be addressed first? and (b) how should small group(s) form to address specific issues?

Mr. Sutkus reviewed the meeting ground rules and the application of collaborative work to this process. Specifically, Mr. Sutkus stressed the important of recognizing the difference between positions and interests in reaching consensus on ideas through the application of a gradient of agreement.

Mr. Sutkus reiterated the distinction between members and interested parties. Members will be asked to participate in small group work. The larger group is invited to participate in this open process where involvement and input is provided by all. DWR will be posting meeting notes and information on the ULOP Web site to ensure transparency.

View from the field: Issue perspectives

Mr. Sutkus invited three members of the group to provide a snapshot of perspectives.

John Maguire, San Joaquin County: Mr. Maguire welcomed those who are new to the process, Board members, and the new DWR ULOP team. The ULOP criteria refinement process is important to cities and counties in regard to land use applications. Mr. Maguire recognized that much was accomplish in the first process.

Mr. Maguire shared some historical perspective of the process. The *Urban Levee Design Criteria* (ULDC) (2012) provides engineering standards that parallel the ULOP criteria. The related legislations include Senate Bill (SB) 5 (2007) and SB 1278 (2012). SB 5 established high standards of 200-year flood protection to the Sacramento-San Joaquin Valley to be triggered by new development. SB 1278 (2012) did not address all issues associated with implementing the ULOP requirements and there are unintended consequences to these omissions that need to be addressed. Mr. Maguire referred to the comma issue whereby the interpretation of the law suggests that all discretionary permits are subject to findings. A finding that 200-year level of

flood protection exists is needed before a discretionary permit can be approved for all types of developments regardless of risk. Another unintended consequence is the deterrence of infill and possible promotion of urban sprawl. SB 1278 (2012) left the need to define shallow flooding and other terms. Mr. Maguire referred to a letter regarding the April 2012 draft ULOP criteria that identified eight issues that are needed to be addressed in order to complete the ULOP criteria. (The letter and DWR's response were provided as attachments in the workgroup meeting workbook).

Jane Dolan, Board member: Ms. Dolan stated that with the new statute enacted in 2008, the entire State was given new directions and obligations, including the Board. The Board's main responsibility was the adoption of the Central Valley Flood Protection Plan (CVFPP). The Board had five new members join the process after the draft CVFPP was delivered to the Board in December 2012. Subsequently, the Board had six months to adopt the CVFPP, and with the input of many stakeholders, the CVFPP was adopted on time. The development of the ULOP criteria needs to be inclusive and consider the safety of citizens and property. Joe Countryman and Ms. Dolan are both Board liaisons to the ULOP criteria refinement process.

Susan Tatayon, The Nature Conservancy: Ms. Tatayon opened by thanking DWR and others for coming together to work on this process and making it open. Ms. Tatayon provided some historical perspective and timeline for the process. Recent events in the country have shaped flood policy and planning in California. Some key events that Ms. Tatayon highlighted included:

- The 2004 summer Jones Track levee failure which heightened awareness of levees conditions, especially of legacy levees.
- The 2005 Katrina flood when the levees system failed and many lives were lost.
- The devastation of the Katrina flood influenced California voters in 2006 to approve Proposition 20 and 84 to give money to improve flood protection.
- In 2007, the packaged landmark flood legislation passed and the governor signed it.
- In 2010, the U.S. Army Corps of Engineers (USACE) introduced a vegetation management plan that is still being debated.
- In 2011, DWR completed a major milestone and achievement with input from many work groups through the completion of the draft CVFPP. It was an open and transparent process.
- In 2012, the adoption process of the CVFPP was based on an open, public process that invited stakeholders to draft a resolution.

We are now moving forward to implement the plan and further define its intentions. Ms. Tatayon reminded the group that in drafting SB 5 (2007), some were contemplating a 500-year level of flood protection. Ms. Tatayon stated that it may be important to keep in mind the

effect of these decisions on water management because provisions for capacity in the rivers frees up storage capacity in the reservoirs.

John Cain, American Rivers: Mr. Cain stated he felt that legislative direction has already been compromised when SB 1278 changed the deadline for cities and counties to amend its general plan, giving them an additional year. He said that the ULOP is an important issue to the conservation community. The issue is controversial, particularly between the building industry and the environmental community. Mr. Cain is concerned about unsafe development in the floodplains and the need for moratorium on low lying development. Mr. Cain was interested in hearing more about the unintended consequences of the criteria in possibly promoting urban sprawl.

Mr. Sutkus followed up with a review of the pre-meeting assessment interviews. The general comments about the process included:

- The new process is an opportunity to move forward with the new DWR ULOP team.
- Small group processes can be effective but there needs to be a balance between small group and plenary discussions.
- Support for a partnership rather than imposition will foster positive dialogue.
- Recognition that key legislative elements govern this discussion.

Mr. Sutkus solicited comments from the participants regarding the perspectives that were introduced.

A participant asked for clarification on the timeline.
Response: General Plans must be updated by July 2015, and zoning ordinance updates by no more than 12 months following General Plan updates..

A participant asked for a clarification on small group discussions in the meeting.
Response: The discussion at this first work group meeting will be at a high level. Topic-specific subgroups will be formed to engage in content work prior to the next larger work group meeting.

A participant asked if the ULOP Criteria will be adopted as a guideline or regulation.
Response: This topic will be part of the overall discussion.

Framing the project: Scope and approach for the workgroup

Mr. Marshall reiterated that it is important to have the criteria be implementable. This new ULOP criteria refinement work group brings in a wide range of expertise and a balanced representation of Central Valley agencies and planners.

DWR shares the concerns of imprudent development in the flood zone. DWR wants to minimize risk in the floodplain and maximize safety of those already in the floodplain. California has one of the highest flood risk levels in the country. While other cities in the country claim to provide 500-year flood protection, the calculated risk in the Central Valley for some areas could be as low as 25 to 50 years. Mr. Marshall maintained that DWR serves the State of California and needs to protect and promote the State's stable economy.

Mr. Marshall encouraged all members to participate in the small groups that are key to moving the process forward. This process is advisory and will help DWR in meeting its requirement to develop criteria. Mr. Marshall introduced some members of the DWR ULOP team including Paul Larson, who has many years of experience in development engineering and Alan Waltner (not present), who is an experienced attorney in development law.

A participant asked for clarification on whether the criteria is being rewritten or being 'massaged'.
Response: The workgroup will be using the existing document as a baseline to work from, recognizing that if needed, sections can be redone.

A participant asked why the urgency on completing the ULOP criteria by October.
Response: Both criteria and legislation need to complement each other and address all issues are identified by the work group and DWR. The criteria need to be done to maximize the time that is needed to align the criteria with the legislation.

Charter Discussion

Mr. Sutkus proceeded to discuss the charter and solicit input from the participants. The work group is charged with providing feedback on issues that still need to be worked out but are based on the existing April 2012 draft ULOP criteria.

Finding: Participants discussed the use of the word "Finding" in the document. There was disagreement regarding its definition and application.

- There was an agreement that the difference between finding and determination needs to be further explained.
- SB 5 (2007) uses the word "finds" but it is not capitalized.
- There is a need to clarify the difference between find, Finding, and finding.
- For specific findings, it is unclear what process the local agencies need to go through.
- There is a question on the responsibility of the local agency to follow DWR's criteria.
- The process, to making a finding, needs to be as friendly as possible.

User-friendly document: The criteria should help local agencies to meet the ULOP requirements. It was recognized that some local agencies already have restrictive development

requirements and there is great variance between local agencies. The criteria should provide clear baseline requirements.

Mr. Marshall added that DWR would like an acceptable baseline. Many communities are protected by project levees and DWR's intent is to avoid increasing flood risk. DWR does that through notices to landowners about the risk of being behind a levee; producing a levee fragility document that discusses the risk around levees; and funding levee improvement projects. It is likely that the criteria, at a minimum, will be imposed on local agencies that receive funding from the State.

A participant commented that the 200-year level of flood protection requirements does not address risk for existing developments. Furthermore, the risk to those areas may increase if resources are diverted to other areas. A reference to AB 70 was made in regard to local agencies' liability when approving new development.
Response: Mr. Marshall responded that liability is a litigation risk. Regardless of efforts, there is still a chance of being taken to court. DWR is trying to do as much as possible upfront.

A participant commented that the criteria should reflect the associated risk of development.
Response: Mr. Marshall responded that it is anticipated that a process will address an entire area rather than a specific development (cell tower reference) and that a finding will be created for a long period of time. Mr. Marshall welcomed the idea of focusing the criteria on high risk areas and situations. **The criteria must be user-friendly, implementable, flexible, and reflect the level of risk and situation.**

A participant suggested that the SB 5 (2007) intent was to be applied to development behind protected by levees subject to deep flooding.
Response: Mr. Marshall responded that this issue should be further addressed in a small discussion.

Identifying key issues for focused review

Michele Ng, project manager, DWR, reviewed the ULOP criteria issues that were identified in the previous process as a starting point for discussion. In small groups, participants were invited to rank the issues' priority as high, medium, or low and identify any specific needs for consideration. A summary of the participants' responses is provided in the table below.

Ranking of Issues	
Potential ULOP Criteria Refinement Issues	**Ranking High, Medium, Low**
Geographic Scope	**3 High, 2 Medium**
Discretionary Permit Scope	**4 High**
200-Year Floodplain Maps	**4 High**
Shallow Flooding/Local Drainage Definitions	**4 High**
Urban Area/Developed Area	**2 High, 1 Medium**
Potential Taking	**2 High, 2 Medium**
Undetermined Risk Area	**1 Medium, 1 Low**
Infill Exception	**3 High, 1 Medium**
Adequate Progress	**1 High, 2 Medium, 1 Low**

Additional issues were proposed and added to the ULOP criteria issues during the discussion:

1. Process for locals to make a determination.
2. Incremental vs. comprehensive determination.
3. Process for finding that is "user friendly".
4. Procedure to establish substantial evidence in record.

Two issues were suggested but were taken off the table:

1. Legislative updates/ legislation clarifications (Overall consideration, not a specific issue)
2. Levee vegetation (Not a ULOP issue but reflected in the CVFPP and ULDC)

Participants were asked to list overall interests and goals for the ULOP criteria:

1. Economic activities
2. Safety
3. Grassroots political viability (i.e., is this acceptable to public?)
4. Appropriate placement of responsibility and liability for development
5. Interference with local land use discretion
6. Cost for doing this to the local agency
7. Availability of information to locals to amend their General Plans
8. Consistency with other statutes (e.g., California Environmental Quality Act (CEQA))

Small group discussions: Converging Local and State Interests

Mr. Sutkus began the afternoon session by explaining the need to consider different perspectives when developing the ULOP criteria. In addressing the issues, the goal is to maximize local implementability while recognizing State policy interests. At the request of one of the participants, the group further defined local implementability and State interests.

Local implementability concerns:

- Need a clear process to apply criteria
- Needs to be affordable/not cost prohibitive to implement
- Need to consider resource efficiency
- Needs to be available in a timely matter
- Needs to be integrated with other requirements

DWR issues:

- Avoid increasing risk.
- Provide public safety in areas where people both live and work.
- Implement the statute appropriately
- Areas that have not yet been mapped by FEMA are not affected by the ULOP requirements.

The DWR ULOP team identified three groups to discuss the proposed ULOP Criteria refinement issues. Participants self-selected the group that they wanted to join for the afternoon discussion. Participants were welcome to move between the groups during the activity.

Afternoon Discussion Groups	
Group I	• Geographic scope • Shallow flooding/local drainage definitions • Infill exceptions
Group II	• 200-year floodplain maps • Urban area/developed area definitions • Potential taking/vested rights • Undetermined risk area
Group III	• Discretionary permit scope • Adequate progress • Process/finding “user Friendly” • Incremental vs. comprehensive determinations • Procedure to establish substantial evidence in record

Several comments were made by the participants before breaking into the afternoon small group discussions:

- The document needs to be clear on how it will be used and applied by local agencies
- The process needs to be affordable, consider efficient use of resources, not cost prohibitive, and not tied to time.
- Based on SB 1278 (2012), DWR will provide mapping for informational purposes to urban areas protected by State Plan of Flood Control Facilities in the Central Valley. DWR is working on draft maps for ten different urban areas with additional work to be done in Stockton after July 2nd, 2013.
- The ULOP criteria document will describe the process for making findings related to an urban level of flood protection. The ULDC was already established for the design of levees, and hydrology and hydraulics calculations for a 200-year event.
- DWR is not currently providing maps necessary to make determinations related to ULOP. The local agencies are responsible for making determinations and developing maps.

Report back from afternoon group discussion

Geographic scope and shallow flooding/local drainage definitions

- Issues are similar and should be viewed together.
- A small group should be formed to provide definitions.
- The difference between the criteria and SB 5 (2007) needs to be clarified.
- Some participants felt that the intention of SB 5 (2007) was to address deep flooding rather than the interior shallow flooding.

Infill exceptions

- The distinction between infill and scattered development needs to be addressed.
- From DWR's perspective, there is a need to understand whether or not DWR has legal authority to address this before determining if a legislative fix is needed.
- Infill development makes sense and provides economic sustainability. That needs to be incorporated into the criteria and legislative fixes.
- Smart development is redevelopment of existing structures.
- Infill is not applicable to all areas. Infill development is not an option in Natomas whereas some areas near Stockton can only have infill development. This grey area needs to be clarified.

200-year floodplain mapping

- Local agencies do not have 200-year floodplain maps and request State funding for assistance for locals to develop the maps.

- The trigger date for mapping should be moved to allow for the time needed to develop the mapping, funding distribution, and legislative changes.
- There is some confusion regarding the DWR SB 1278 (2012) maps since they do not necessarily help with ULOP determinations.
- The SB 1278 (2012) maps are helpful in determining areas out of the 200-year flood plain.
- The SB 1278 (2012) 200-year flood plain maps show State Plan of Flood Control facility protection based on the FEMA definition.
- A question was raised on financial assistance when (?) levees fail.
- Areas within the FEMA 500-year floodplain are subject to ULOP requirements.
- It would be useful to show the critical areas.
- DWR is working on a mapping effort in the Stockton area that can help estimate costs to develop maps.
- The mapping process should account for redoing hydrology every twenty years.

Urban area/developed area definitions

- This issue requires the formation of a subgroup to revisit the definitions and potential legislation changes.
- The law does not preclude sprawl.
- Current definitions were used in SB 5 (2007) because there were existing definitions for these terms.

Potential taking

- The different ways to make determinations needs to be clarified (e.g., ability to elevate structures to meet ULOP requirements).
- This issue can be combined with undetermined risk area.
- Legislation change is needed to include 'undetermined risk area' in all three California Government Code sections (i.e., development agreements, discretionary/ministerial permits, tentative/parcel maps).
- This issue needs to be developed by planners.

Vested rights

- This issue is part of the potential taking conversation.

Discretionary permit scope

- The definition for discretionary permits needs to be discussed further.
- ULOP criteria revision is necessary along with legislative changes.
- Discretionary scope needs to be further defined.

Adequate progress/Make the process for findings "user friendly"

- Legislative changes are needed for adequate progress.
- Incremental versus comprehensive procedures need to be established (i.e., setting procedures for making ULOP determinations for both individual land use decision and to cover large areas).

- This process needs to be balanced between generality (not meeting legislative intent) and specificity (not implementable).

Next steps and closing thoughts

The next steps include the formation of subgroups to provide further discussion and guidance from the members on how to proceed with the ULOP criteria revisions. Dave Storer, American Planning Association, a work group member, suggested a worksheet format for the subgroups. The participants discussed the need to separate groups by expertise (Engineers/Planners) or keep diversity in the subgroups. The timing of addressing the issues was considered as well. Local agencies representatives suggested the importance of addressing the geographic scope first and the 200-year floodplain mapping to determine whether or not an agency is within the geographic scope.

The subgroups are expected to meet for a half-day prior to the next work group meeting, on July 16th. DWR will identify the specific subgroups and schedule the meetings with members.

Mr. Marshall thanked the participant for attending the meeting and provided important input to the ULOP criteria refinement process.

Next Steps

DWR will identify three subgroups and invite workgroup members to participate in working subgroup meetings prior to the next work group meeting.

Next meeting is scheduled for July 16th, 9:00am-3:00pm

(Location TBD)

Attendees

Members

1. Steve Pedrett (sub for George Booth), Sacramento County
2. Jami Childress-Byers, Governor's Office of Emergency Services
3. Andrea Clark, Downey Brand
4. Mark Cocke, City of Woodland Community Development
5. Joe Countryman, Central Valley Flood Protection Board member
6. Jane Dolan, Central Valley Flood Protection Board member
7. Brian Keating, Placer County Flood Control and Water Conservation District
8. John Maguire, San Joaquin Co Public Works
9. Paul McDougall, California Department of Housing and Community Development
10. Mike McDowell , City of Stockton Community Development Department
11. Scott Morgan, Governor's Office of Planning and Research
12. Barry O'Regan, San Joaquin County
13. Kyra Ross (for Connie Perkins), City of Sacramento
14. Ali Porbaha, Central Valley Flood Protection Board staff
15. John Powderly, City of West Sacramento
16. Antero (Terry) Rivasplata, American Planning Association (ICF International)
17. Luis Topete (for Don Rust), City of Oroville
18. David Storer , American Planning Association (Development Advisory Services, Inc.)
19. Susan Tatayon, The Nature Conservancy
20. Carl Walker , City of Roseville

Interested Parties

21. John Cain, American Rivers
22. Tracey Ferguson, Atkins
23. Les Harder, Sutter Butte Flood Control Agency (HDR Engineering)
24. Karen Keen, California State Association of Counties
25. Steve Pedretti, County of Sacramento
26. Mary Pitto, Regional Council of Rural Counties
27. Kyra Ross, EJA, City of Sacramento
28. Ronald Stork, Friends of the River
29. Luis Topete, City of Oroville

ULOP Team

30. Paul Marshall, DWR
31. Michele Ng, DWR
32. Allan Oto, DWR
33. Robin Brewer, DWR
34. Laura Hollender, DWR
35. Paul Larson, DWR
36. Rebecca Guo, MWH

Facilitation Team

37. Adam Sutkus, CCP-CSUS
38. Orit Kalman, CCP-CSUS