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AMENDED IN SENATE JUNE 7, 2006

AMENDED IN ASSEMBLY JANUARY 23, 2006

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY APRIL 6, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 802

Introduced by Assembly Member Wolk

February 18, 2005

An act to amend Sections 65302, 65302.5, 65303.4, 65352, 65584.04, and 66014 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 802, as amended, Wolk. Land use: water supply.

(1) The Planning and Zoning Law requires a city or county general plan to include specified mandatory elements, including a land use element that designates the proposed general distribution and general location and extent of the uses of the land for various purposes and a conservation element that considers, among other things, the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations, and provides that the conservation element may also cover, among other things, flood control.

The bill would require the land use element to identify *and annually review those* areas covered by the general plan that are subject to

flooding as identified by floodplain mapping prepared by the Federal Emergency Management Agency or the Department of Water Resources and would require, upon the next revision of the housing element on or after January 1, 2008, the conservation element of the general plan to identify rivers and other waters, creeks, and streams, flood corridors, riparian habitat, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management. By imposing new duties on local public officials, the bill would create a state-mandated local program.

(2) The Planning and Zoning Law also requires that a city or county general plan contain a safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides, subsidence, liquefaction, and other seismic, geologic, and fire hazards.

This bill would also require, upon the next revision of the housing element, on or after January 1, 2008, the safety element to identify, among other things, ~~flood hazard zones~~ *information regarding flood hazards* and establish ~~policies to avoid or minimize flood risk for new development, as specified~~ *a set comprehensive goals, policies, and objectives, based on specified information for the protection of the community from, among other things, the unreasonable risks of flooding.*

(3) The Planning and Zoning Law also requires, prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county to consult with the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services, as specified, and requires that at specified times prior to adoption or amendment of the safety element each city and county submit one copy of a draft or amendment of the safety element to specified state agencies and local governments for review pursuant to specified procedures.

The bill would also require ~~that the state Reclamation Board be included in this process for consultation and review if the~~ *each city and county is located within the boundaries of the Sacramento and San Joaquin Drainage District to submit the draft element or draft amendment to the safety element to the Reclamation Board and every local agency that provides flood protection to territory in the city or county at least 90 days prior to the adoption of, or amendment to, the*

safety element, of its general plan. The bill would also require the Reclamation Board and a local agency to review the draft or an existing safety element and report its written recommendations to the planning agency within 60 days of its receipt of the draft or existing safety element, as specified. ~~The bill would authorize the Reclamation Board to develop site design and planning policies to assist local agencies that request help in implementing the general plan guidelines for meeting flood control objectives and other land management needs.~~

(4) The Planning and Zoning Law requires, prior to action by a legislative body to adopt or substantially amend a general plan, that the planning agency refer the proposed action to specified state, local, and federal agencies.

The bill would also require that the proposed action be referred to the Reclamation Board when the proposed action is within the boundaries of the Sacramento and San Joaquin Drainage District.

(5) The Planning and Zoning Law requires at least 2 years prior to a scheduled revision of a local government's housing element that each council of governments, or delegate subregion, as applicable, develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to specified provisions. That law requires that the methodology be consistent with specified objectives that include, among other things, a determination of the availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities.

The bill would provide that the determination of available land suitable for urban development may exclude lands where the flood management infrastructure designed to protect the jurisdiction is not adequate to avoid the risk of flooding such that the development of housing would be impractical due to cost or other considerations.

(6) The bill would authorize a local agency to charge fees to cover the costs reasonably necessary to prepare and revise plans and policies to address flood hazard areas and flood risk.

~~(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions:~~

~~(7) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*~~

~~*This bill would provide that no reimbursement is required by this act for a specified reason.*~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65302 of the Government Code is
2 amended to read:
3 65302. The general plan shall consist of a statement of
4 development policies and shall include a diagram or diagrams
5 and text setting forth objectives, principles, standards, and plan
6 proposals. The plan shall include the following elements:
7 (a) A land use element that designates the proposed general
8 distribution and general location and extent of the uses of the
9 land for housing, business, industry, open space, including
10 agriculture, natural resources, recreation, and enjoyment of
11 scenic beauty, education, public buildings and grounds, solid and
12 liquid waste disposal facilities, and other categories of public and
13 private uses of land. The *location and* designation of the extent
14 of the uses of the land for public and private uses shall consider
15 the identification of land and natural resources pursuant to
16 ~~subparagraph (C) of paragraph (1) of subdivision (d).~~ The land
17 *paragraph (3) of subdivision (d).* The land use element shall
18 include a statement of the standards of population density and
19 building intensity recommended for the various districts and
20 other territory covered by the plan. The land use element shall
21 identify *and annually review those* areas covered by the plan that
22 are subject to flooding as identified by floodplain mapping
23 prepared by the Federal Emergency Management Agency or the
24 Department of Water Resources. The land use element shall also
25 do both of the following:

1 (1) Designate in a land use category that provides for timber
2 production those parcels of real property zoned for timberland
3 production pursuant to the California Timberland Productivity
4 Act of 1982, Chapter 6.7 (commencing with Section 51100) of
5 Part 1 of Division 1 of Title 5.

6 (2) Consider the impact of new growth on military readiness
7 activities carried out on military bases, installations, and
8 operating and training areas, when proposing zoning ordinances
9 or designating land uses covered by the general plan for land, or
10 other territory adjacent to military facilities, or underlying
11 designated military aviation routes and airspace.

12 (A) In determining the impact of new growth on military
13 readiness activities, information provided by military facilities
14 shall be considered. Cities and counties shall address military
15 impacts based on information from the military and other
16 sources.

17 (B) The following definitions govern this paragraph:

18 (i) “Military readiness activities” mean all of the following:

19 (I) Training, support, and operations that prepare the men and
20 women of the military for combat.

21 (II) Operation, maintenance, and security of any military
22 installation.

23 (III) Testing of military equipment, vehicles, weapons, and
24 sensors for proper operation or suitability for combat use.

25 (ii) “Military installation” means a base, camp, post, station,
26 yard, center, homeport facility for any ship, or other activity
27 under the jurisdiction of the United States Department of Defense
28 as defined in paragraph (1) of subsection (e) of Section 2687 of
29 Title 10 of the United States Code.

30 (b) A circulation element consisting of the general location
31 and extent of existing and proposed major thoroughfares,
32 transportation routes, terminals, any military airports and ports,
33 and other local public utilities and facilities, all correlated with
34 the land use element of the plan.

35 (c) A housing element as provided in Article 10.6
36 (commencing with Section 65580).

37 (d) (1) A conservation element for the conservation,
38 development, and utilization of natural resources including water
39 and its hydraulic force, forests, soils, rivers and other waters,
40 harbors, fisheries, wildlife, minerals, and other natural resources.

1 The conservation element shall consider the effect of
2 development within the jurisdiction, as described in the land use
3 element, on natural resources located on public lands, including
4 military installations. That portion of the conservation element
5 including waters shall be developed in coordination with any
6 countywide water agency and with all district and city agencies,
7 including flood management, water conservation, or groundwater
8 agencies that have developed, served, controlled, managed or
9 conserved water of any type for any purpose in the county or city
10 for which the plan is prepared. Coordination shall include the
11 discussion and evaluation of any water supply and demand
12 information described in Section 65352.5, if that information has
13 been submitted by the water agency to the city or county.

14 (2) The conservation element may also cover the following:

15 (A) The reclamation of land and waters.

16 (B) Prevention and control of the pollution of streams and
17 other waters.

18 (C) Regulation of the use of land in stream channels and other
19 areas required for the accomplishment of the conservation plan.

20 (D) Prevention, control, and correction of the erosion of soils,
21 beaches, and shores.

22 (E) Protection of watersheds.

23 (F) The location, quantity, and quality of the rock, sand and
24 gravel resources.

25 (3) Upon the next revision of the housing element on or after
26 January 1, 2008, the conservation element shall identify ~~rivers~~
27 ~~and other waters~~, *rivers, creeks, and streams*, flood corridors,
28 riparian habitat, and land that may accommodate floodwater for
29 purposes of groundwater recharge and stormwater management.

30 (e) An open-space element as provided in Article 10.5
31 (commencing with Section 65560).

32 (f) A noise element which shall identify and appraise noise
33 problems in the community. The noise element shall recognize
34 the guidelines established by the Office of Noise Control in the
35 State Department of Health Services and shall analyze and
36 quantify, to the extent practicable, as determined by the
37 legislative body, current and projected noise levels for all of the
38 following sources:

39 (1) Highways and freeways.

40 (2) Primary arterials and major local streets.

1 (3) Passenger and freight on-line railroad operations and
2 ground rapid transit systems.

3 (4) Commercial, general aviation, heliport, helistop, and
4 military airport operations, aircraft overflights, jet engine test
5 stands, and all other ground facilities and maintenance functions
6 related to airport operation.

7 (5) Local industrial plants, including, but not limited to,
8 railroad classification yards.

9 (6) Other ground stationary noise sources, including, but not
10 limited to, military installations, identified by local agencies as
11 contributing to the community noise environment.

12 Noise contours shall be shown for all of these sources and
13 stated in terms of community noise equivalent level (CNEL) or
14 day-night average level (L_{dn}). The noise contours shall be
15 prepared on the basis of noise monitoring or following generally
16 accepted noise modeling techniques for the various sources
17 identified in paragraphs (1) to (6), inclusive.

18 The noise contours shall be used as a guide for establishing a
19 pattern of land uses in the land use element that minimizes the
20 exposure of community residents to excessive noise.

21 The noise element shall include implementation measures and
22 possible solutions that address existing and foreseeable noise
23 problems, if any. The adopted noise element shall serve as a
24 guideline for compliance with the state's noise insulation
25 standards.

26 (g) A safety element for the protection of the community from
27 any unreasonable risks associated with the effects of seismically
28 induced surface rupture, ground shaking, ground failure, tsunami,
29 seiche, and dam failure; slope instability leading to mudslides
30 and landslides; subsidence, liquefaction and other seismic
31 hazards identified pursuant to Chapter 7.8 (commencing with
32 Section 2690) of the Public Resources Code, and other geologic
33 hazards known to the legislative body; flooding; and wild land
34 and urban fires. The safety element shall include mapping of
35 known seismic and other geologic hazards. It shall also address
36 evacuation routes, military installations, peakload water supply
37 requirements, and minimum road widths and clearances around
38 structures, as those items relate to identified fire and geologic
39 hazards.

- 1 (1) The safety element, upon the next revision of the housing
2 element on or after January 1, 2008, shall also do the following:
- 3 (A) ~~Identify flood hazard zones and establish policies to avoid~~
4 ~~or minimize flood risk for new development using the~~
5 ~~information listed in clauses (i) to (vi), inclusive. Identification of~~
6 ~~flood hazard zones does not imply that land outside the flood~~
7 ~~hazard zones or uses permitted within such zones will be free~~
8 ~~from flooding or flood damage. Information upon which the local~~
9 ~~governing body may rely to identify flood hazard zones include:~~
- 10 (i) ~~National Flood Insurance Program maps published by~~
11 ~~FEMA.~~
- 12 (ii) ~~Information available from the United States Army Corps~~
13 ~~of Engineers.~~
- 14 (iii) ~~State Reclamation Board designated floodway maps.~~
- 15 (iv) ~~Dam failure inundation maps prepared pursuant to Section~~
16 ~~8589.5 available from the Office of Emergency Services.~~
- 17 (v) ~~Historical data on flooding, including locally prepared~~
18 ~~maps of flood-prone areas and repetitive flood damage sites or~~
19 ~~areas vulnerable to postwildfire flooding.~~
- 20 (vi) ~~The Department of Water Resources's Awareness~~
21 ~~Floodplain Mapping Program maps.~~
- 22 (2) ~~Identify existing and planned development in flood hazard~~
23 ~~zones, including structures, roads, and utilities. This requirement~~
24 ~~to identify existing and planned development in flood hazard~~
25 ~~zones may be addressed in the land use element of the General~~
26 ~~Plan.~~
- 27 (3) ~~Identify areas subject to inundation in the event of levee or~~
28 ~~floodwall failure.~~
- 29 (4) ~~Identify essential infrastructure that may be impacted by~~
30 ~~flooding and develop policies for infrastructure integrity during~~
31 ~~flood emergencies to ensure rapid restoration, if necessary.~~
- 32 (5) ~~Establish policies that locate new essential disaster~~
33 ~~response facilities such as hospitals, shelters, and emergency~~
34 ~~response entities out of flood hazard zones.~~
- 35 (6) ~~Establish general policies to evaluate whether new~~
36 ~~development should be located in flood hazard zones or to~~
37 ~~identify construction methods or other methods to minimize~~
38 ~~flood damage if development is located in flood hazard zones.~~
- 39 (7) ~~Identify local, state, and federal flood agencies with~~
40 ~~responsibility for flood protection, including special districts and~~

1 offices of emergency services, and establish cooperative working
2 relationships with those agencies.

3 ~~(8) Following the initial update of the safety element pursuant~~
4 ~~to this subdivision, upon each revision of the housing element,~~
5 ~~cities and counties shall review and update if necessary the~~
6 ~~identified flood hazard zones in the safety element to be~~
7 ~~consistent with any updated flood hazard maps, from the sources~~
8 ~~listed in clauses (i) to (vi), inclusive, of subparagraph (A) of~~
9 ~~paragraph (1) that were not available during the previous update~~
10 ~~of the safety element.~~

11 ~~(9) Cities and counties that have a FEMA-approved~~
12 ~~Floodplain Management Ordinance that substantially complies~~

13 ~~(A) Identify information regarding flood hazards, including,~~
14 ~~but not limited to, the following:~~

15 ~~(i) Flood hazard zones. As used in this subdivision, “flood~~
16 ~~hazard zone” means an area subject to flooding that is~~
17 ~~delineated as either a special hazard area or an area of~~
18 ~~moderate or minimal hazard on an official flood insurance rate~~
19 ~~map issued by the Federal Emergency Management Agency. The~~
20 ~~identification of a flood hazard zone does not imply that areas~~
21 ~~outside the flood hazard zones or uses permitted within flood~~
22 ~~hazard zones will be free from flooding or flood damage.~~

23 ~~(ii) National Flood Insurance Program maps published by the~~
24 ~~Federal Emergency Management Agency.~~

25 ~~(iii) Information about flood hazards that is available from the~~
26 ~~United States Army Corps of Engineers.~~

27 ~~(iv) Designated floodway maps that are available from the~~
28 ~~Reclamation Board.~~

29 ~~(v) Dam failure inundation maps prepared pursuant to Section~~
30 ~~8589.5 that are available from the Office of Emergency Services.~~

31 ~~(vi) Awareness Floodplain Mapping Program maps that are~~
32 ~~available from the Department of Water Resources.~~

33 ~~(vii) Areas subject to inundation in the event of the failure of~~
34 ~~levees or floodwalls.~~

35 ~~(viii) Historical data on flooding, including locally prepared~~
36 ~~maps of areas that are subject to flooding, areas that are~~
37 ~~vulnerable to flooding after wildfires, and sites that have been~~
38 ~~repeatedly damaged by flooding.~~

1 (ix) Existing and planned development in flood hazard zones,
2 including structures, roads, utilities, and essential public
3 facilities.

4 (x) Local, state, and federal agencies with responsibility for
5 flood protection, including special districts and local offices of
6 emergency services.

7 (B) Establish a set of comprehensive goals, policies, and
8 objectives, based on the information identified pursuant to
9 subparagraph (A), for the protection of the community from the
10 unreasonable risks of flooding, including, but not limited to:

11 (i) Avoiding or minimizing the risks of flooding to new
12 development.

13 (ii) Evaluating whether new development should be located in
14 flood hazard zones, and identifying construction methods or
15 other methods to minimize damage if new development is located
16 in flood hazard zones.

17 (iii) Maintaining the structural and operational integrity of
18 essential public facilities during flooding.

19 (iv) Locating new essential public facilities outside of flood
20 hazard zones, including hospitals and healthcare facilities,
21 emergency shelters, fire stations, emergency command centers,
22 and emergency communications facilities.

23 (v) Establishing cooperative working relationships among
24 public agencies with responsibility for flood protection.

25 (C) A set of feasible implementation measures designed to
26 carry out the goals, policies, and objectives established pursuant
27 to subparagraph (B).

28 (2) After the initial revision of the safety element pursuant to
29 paragraph (1), upon each revision of the housing element, the
30 planning agency shall review and, if necessary, revise the safety
31 element to identify new information that was not available during
32 the previous revision of the safety element.

33 (3) Cities and counties that have Floodplain Management
34 Ordinances that have been approved by the Federal Emergency
35 Management Agency that substantially complies with this
36 section, or have substantially equivalent provisions to this
37 subdivision in their general plans, may use that information in the
38 safety element to comply with this subdivision, and shall
39 summarize and incorporate by reference into the safety element
40 the other general plan provisions or the floodplain ordinance,

1 specifically showing how each requirement of this subdivision
2 has been met.

3 ~~(10)~~

4 (4) Prior to the periodic review of its general plan and prior to
5 preparing or revising its safety element, each city and county
6 shall consult the Division of Mines and Geology of the
7 Department of Conservation, the Reclamation Board, if the city
8 and county is located within the boundaries of the Sacramento
9 and San Joaquin Drainage District, as set forth in Section 8501 of
10 the Water Code, and the Office of Emergency Services for the
11 purpose of including information known by and available to the
12 department, office, and board required by this subdivision.

13 ~~(11)~~

14 (5) To the extent that a county's safety element is sufficiently
15 detailed and contains appropriate policies and programs for
16 adoption by a city, a city may adopt that portion of the county's
17 safety element that pertains to the city's planning area in
18 satisfaction of the requirement imposed by this subdivision.

19 ~~(12) As used in this subdivision, "Flood hazard zone" means~~
20 ~~an area subject to flooding that is delineated as either a special~~
21 ~~hazard area or an area of moderate or minimal hazard on an~~
22 ~~official flood insurance rate map issued by the Federal~~
23 ~~Emergency Management Agency.~~

24 SEC. 2. Section 65302.5 of the Government Code is amended
25 to read:

26 65302.5. (a) At least 45 days prior to adoption or amendment
27 of the safety element, each county and city shall submit to the
28 Division of Mines and Geology of the Department of
29 Conservation one copy of a draft of the safety element or
30 amendment and any technical studies used for developing the
31 safety element. The division may review drafts submitted to it to
32 determine whether they incorporate known seismic and other
33 geologic hazard information, and report its findings to the
34 planning agency within 30 days of receipt of the draft of the
35 safety element or amendment pursuant to this subdivision. The
36 legislative body shall consider the division's findings prior to
37 final adoption of the safety element or amendment unless the
38 division's findings are not available within the above prescribed
39 time limits or unless the division has indicated to the city or
40 county that the division will not review the safety element. If the

1 division's findings are not available within those prescribed time
2 limits, the legislative body may take the division's findings into
3 consideration at the time it considers future amendments to the
4 safety element. Each county and city shall provide the division
5 with a copy of its adopted safety element or amendments. The
6 division may review adopted safety elements or amendments and
7 report its findings. All findings made by the division shall be
8 advisory to the planning agency and legislative body.

9 (1) The draft element of or draft amendment to the safety
10 element of a county or a city's general plan shall be submitted to
11 the State Board of Forestry and Fire Protection and to every local
12 agency that provides fire protection to territory in the city or
13 county at least 90 days prior to either of the following:

14 (A) The adoption or amendment to the safety element of its
15 general plan for each county that contains state responsibility
16 areas.

17 (B) The adoption or amendment to the safety element of its
18 general plan for each city or county that contains a very high fire
19 hazard severity zone as defined pursuant to subdivision (b) of
20 Section 51177.

21 (2) A county that contains state responsibility areas and a city
22 or county that contains a very high fire hazard severity zone as
23 defined pursuant to subdivision (b) of Section 51177, shall
24 submit for review the safety element of its general plan to the
25 State Board of Forestry and Fire Protection and to every local
26 agency that provides fire protection to territory in the city or
27 county in accordance with the following dates as specified,
28 unless the local government submitted the element within five
29 years prior to that date:

30 (A) Local governments within the regional jurisdiction of the
31 San Diego Association of Governments: December 31, 2010.

32 (B) Local governments within the regional jurisdiction of the
33 Southern California Association of Governments: December 31,
34 2011.

35 (C) Local governments within the regional jurisdiction of the
36 Association of Bay Area Governments: December 31, 2012.

37 (D) Local governments within the regional jurisdiction of the
38 Council of Fresno County Governments, the Kern County
39 Council of Governments, and the Sacramento Area Council of
40 Governments: June 30, 2013.

1 (E) Local governments within the regional jurisdiction of the
2 Association of Monterey Bay Area Governments: December 31,
3 2014.

4 (F) All other local governments: December 31, 2015.

5 (3) The State Board of Forestry and Fire Protection shall, and
6 a local agency may, review the draft or an existing safety element
7 and report its written recommendations to the planning agency
8 within 60 days of its receipt of the draft or existing safety
9 element. The State Board of Forestry and Fire Protection and
10 local agency shall review the draft or existing safety element and
11 may offer written recommendations for changes to the draft or
12 existing safety element regarding both of the following:

13 (A) Uses of land and policies in state responsibility areas and
14 very high fire hazard severity zones that will protect life,
15 property, and natural resources from unreasonable risks
16 associated with wildland fires.

17 (B) Methods and strategies for wildland fire risk reduction and
18 prevention within state responsibility areas and very high hazard
19 severity zones.

20 (b) Prior to the adoption of its draft element or draft
21 amendment, the board of supervisors of the county or the city
22 council of a city shall consider the recommendations made by the
23 State Board of Forestry and Fire Protection and any local agency
24 that provides fire protection to territory in the city or county. If
25 the board of supervisors or city council determines not to accept
26 all or some of the recommendations, if any, made by the State
27 Board of Forestry and Fire Protection or local agency, the board
28 of supervisors or city council shall communicate in writing to the
29 State Board of Forestry and Fire Protection or to the local
30 agency, its reasons for not accepting the recommendations.

31 (c) If the State Board of Forestry and Fire Protection or local
32 agency's recommendations are not available within the time
33 limits required by this section, the board of supervisors or city
34 council may act without those recommendations. The board of
35 supervisors or city council shall take the recommendations into
36 consideration at the next time it considers amendments pursuant
37 to paragraph (1) of subdivision (a).

38 ~~(d) At least 45 days prior to adoption or amendment of the~~
39 ~~safety element, each county and city located within the~~
40 ~~boundaries of the Sacramento and San Joaquin Drainage District~~

1 shall submit to the Reclamation Board one copy of a draft of the
2 safety element or amendment and any technical studies used for
3 developing the safety element. The board may review drafts
4 submitted to it to determine whether they incorporate known
5 flood hazard information, and report its findings to the planning
6 agency within 30 days of receipt of the draft of the safety
7 element or amendment pursuant to this subdivision. The
8 legislative body shall consider the findings submitted by the
9 board prior to final adoption of the safety element or amendment
10 unless the board's findings are not available within the above
11 prescribed time limits, if the board's findings are not available
12 within those time limits, the legislative body may take the
13 board's findings into consideration at the time it considers future
14 amendments to the safety element or amendments. The board
15 may review adopted safety elements or amendments and report
16 its findings. All findings made by the board shall be advisory to
17 the planning agency and legislative body.

18 (1) ~~The draft element of or draft amendment to the safety~~
19 ~~element of a general plan of a county or city subjected to this~~
20 ~~subdivision shall be submitted to every local agency that~~

21 *(d) (1) Each county or city located within the boundaries of*
22 *the Sacramento and San Joaquin Drainage District, as set forth*
23 *in Section 8501 of the Water Code, shall submit the draft element*
24 *of, or draft amendment to, the safety element to the Reclamation*
25 *Board and to every local agency that provides flood protection to*
26 *territory in the city or county at least 90 days prior to the*
27 *adoption or amendment to of, or amendment to, the safety*
28 *element of its general plan for each county that contains areas*
29 *subjected to flooding. of its general plan.*

30 (2) The Reclamation Board and a local agency ~~may~~ shall
31 review the draft or an existing safety element and report its
32 written recommendations to the planning agency within 60 days
33 of its receipt of the draft or existing safety element. The board or
34 a local agency shall review the draft or existing safety element
35 and may offer written recommendations for changes to the draft
36 or existing safety element regarding both of the following:

37 (A) Uses of land and policies in areas subjected to flooding
38 that will protect life, property, and natural resources from
39 unreasonable risks associated with flooding.

1 (B) Methods and strategies for flood risk reduction and
2 protection within areas subjected to flooding.

3 (3) Prior to the adoption of its draft element or draft
4 amendments to the safety element, the board of supervisors of the
5 county or the city council of a city shall consider the
6 recommendations made by the Reclamation Board and any local
7 agency that provides flood protection to territory in the city or
8 county. If the board of supervisors or city council determines not
9 to accept all or some of the recommendations, if any, made by
10 the Reclamation Board or local agency, the board of supervisors
11 or city council shall make findings that state its reasons for not
12 accepting a recommendation and shall communicate those
13 findings in writing to the Reclamation Board or to the local
14 agency.

15 (4) If the Reclamation Board's or local agency's
16 recommendations are not available within the time limits
17 required by this section, the board of supervisors or city council
18 may act without those recommendations. The board of
19 supervisors or city council shall consider the recommendations at
20 the next time it considers ~~amendments pursuant to paragraph (1)~~
21 ~~of subdivision (d):~~ *amendments to its safety element.*

22 SEC. 3. Section 65303.4 of the Government Code is amended
23 to read:

24 65303.4. The Department of Water Resources or the
25 Reclamation Board, as appropriate, and the Department of Fish
26 and Game may develop site design and planning policies to assist
27 local agencies which request help in implementing the general
28 plan guidelines for meeting flood control objectives and other
29 land management needs.

30 SEC. 4. Section 65352 of the Government Code is amended
31 to read:

32 65352. (a) Prior to action by a legislative body to adopt or
33 substantially amend a general plan, the planning agency shall
34 refer the proposed action to all of the following entities:

35 (1) A city or county, within or abutting the area covered by the
36 proposal, and any special district that may be significantly
37 affected by the proposed action, as determined by the planning
38 agency.

39 (2) An elementary, high school, or unified school district
40 within the area covered by the proposed action.

1 (3) The local agency formation commission.

2 (4) An areawide planning agency whose operations may be
3 significantly affected by the proposed action, as determined by
4 the planning agency.

5 (5) A federal agency if its operations or lands within its
6 jurisdiction may be significantly affected by the proposed action,
7 as determined by the planning agency.

8 (6) (A) The branches of the United States Armed Forces that
9 have provided the Office of Planning and Research with a
10 California mailing address pursuant to subdivision (d) of Section
11 65944 when the proposed action is within 1,000 feet of a military
12 installation, or lies within special use airspace, or beneath a
13 low-level flight path, as defined in Section 21098 of the Public
14 Resources Code, provided that the United States Department of
15 Defense provides electronic maps of low-level flight paths,
16 special use airspace, and military installations at a scale and in an
17 electronic format that is acceptable to the Office of Planning and
18 Research.

19 (B) Within 30 days of a determination by the Office of
20 Planning and Research that the information provided by the
21 Department of Defense is sufficient and in an acceptable scale
22 and format, the office shall notify cities, counties, and cities and
23 counties of the availability of the information on the Internet.
24 Cities, counties, and cities and counties shall comply with
25 subparagraph (A) within 30 days of receiving this notice from the
26 office.

27 (7) A public water system, as defined in Section 116275 of the
28 Health and Safety Code, with 3,000 or more service connections,
29 that serves water to customers within the area covered by the
30 proposal. The public water system shall have at least 45 days to
31 comment on the proposed plan, in accordance with subdivision
32 (b), and to provide the planning agency with the information set
33 forth in Section 65352.5.

34 (8) The Bay Area Air Quality Management District for a
35 proposed action within the boundaries of the district.

36 (9) On and after March 1, 2005, a California Native American
37 tribe, that is on the contact list maintained by the Native
38 American Heritage Commission, with traditional lands located
39 within the city or county's jurisdiction.

1 (10) The Reclamation Board for a proposed action within the
2 boundaries of the Sacramento and San Joaquin Drainage District,
3 *as set forth in Section 8501 of the Water Code.*

4 (b) Each entity receiving a proposed general plan or
5 amendment of a general plan pursuant to this section shall have
6 45 days from the date the referring agency mails it or delivers it
7 in which to comment unless a longer period is specified by the
8 planning agency.

9 (c) (1) This section is directory, not mandatory, and the
10 failure to refer a proposed action to the other entities specified in
11 this section does not affect the validity of the action, if adopted.

12 (2) To the extent that the requirements of this section conflict
13 with the requirements of Chapter 4.4 (commencing with Section
14 65919), the requirements of Chapter 4.4 shall prevail.

15 SEC. 5. Section 65584.04 of the Government Code is
16 amended to read:

17 65584.04. (a) At least two years prior to a scheduled revision
18 required by Section 65588, each council of governments, or
19 delegate subregion as applicable, shall develop a proposed
20 methodology for distributing the existing and projected regional
21 housing need to cities, counties, and cities and counties within
22 the region or within the subregion, where applicable pursuant to
23 this section. The methodology shall be consistent with the
24 objectives listed in subdivision (d) of Section 65584.

25 (b) (1) No more than six months prior to the development of a
26 proposed methodology for distributing the existing and projected
27 housing need, each council of governments shall survey each of
28 its member jurisdictions to request, at a minimum, information
29 regarding the factors listed in subdivision (d) that will allow the
30 development of a methodology based upon the factors
31 established in subdivision (d).

32 (2) The council of governments shall seek to obtain the
33 information in a manner and format that is comparable
34 throughout the region and utilize readily available data to the
35 extent possible.

36 (3) The information provided by a local government pursuant
37 to this section shall be used, to the extent possible, by the council
38 of governments, or delegate subregion as applicable, as source
39 information for the methodology developed pursuant to this
40 section. The survey shall state that none of the information

1 received may be used as a basis for reducing the total housing
2 need established for the region pursuant to Section 65584.01.

3 (4) If the council of governments fails to conduct a survey
4 pursuant to this subdivision, a city, county, or city and county
5 may submit information related to the items listed in subdivision
6 (d) prior to the public comment period provided for in
7 subdivision (c).

8 (c) Public participation and access shall be required in the
9 development of the methodology and in the process of drafting
10 and adoption of the allocation of the regional housing needs.
11 Participation by organizations other than local jurisdictions and
12 councils of governments shall be solicited in a diligent effort to
13 achieve public participation of all economic segments of the
14 community. The proposed methodology, along with any relevant
15 underlying data and assumptions, and an explanation of how
16 information about local government conditions gathered pursuant
17 to subdivision (b) has been used to develop the proposed
18 methodology, and how each of the factors listed in subdivision
19 (d) is incorporated into the methodology, shall be distributed to
20 all cities, counties, any subregions, and members of the public
21 who have made a written request for the proposed methodology.
22 The council of governments, or delegate subregion, as applicable,
23 shall conduct at least one public hearing to receive oral and
24 written comments on the proposed methodology.

25 (d) To the extent that sufficient data is available from local
26 governments pursuant to subdivision (b) or other sources, each
27 council of governments, or delegate subregion as applicable,
28 shall include the following factors to develop the methodology
29 that allocates regional housing needs:

30 (1) Each member jurisdiction’s existing and projected jobs and
31 housing relationship.

32 (2) The opportunities and constraints to development of
33 additional housing in each member jurisdiction, including all of
34 the following:

35 (A) Lack of capacity for sewer or water service due to federal
36 or state laws, regulations or regulatory actions, or supply and
37 distribution decisions made by a sewer or water service provider
38 other than the local jurisdiction that preclude the jurisdiction
39 from providing necessary infrastructure for additional
40 development during the planning period.

1 (B) The availability of land suitable for urban development or
2 for conversion to residential use, the availability of underutilized
3 land, and opportunities for infill development and increased
4 residential densities. The council of governments may not limit
5 its consideration of suitable housing sites or land suitable for
6 urban development to existing zoning ordinances and land use
7 restrictions of a locality, but shall consider the potential for
8 increased residential development under alternative zoning
9 ordinances and land use restrictions. The determination of
10 available land suitable for urban development may exclude lands
11 where the flood management infrastructure designed to protect
12 ~~the jurisdiction that~~ *land* is not adequate to avoid the risk of
13 flooding such that the development of housing ~~would be~~
14 ~~impractical due to~~ *on that land would be infeasible because of*
15 cost or other considerations. Information from the Reclamation
16 Board, the Army Corps of Engineers, or other sources may be
17 used to support determinations made pursuant to this
18 subparagraph.

19 (C) Lands preserved or protected from urban development
20 under existing federal or state programs, or both, designed to
21 protect open space, farmland, environmental habitats, and natural
22 resources on a long-term basis.

23 (D) County policies to preserve prime agricultural land, as
24 defined pursuant to Section 56064, within an unincorporated
25 area.

26 (3) The distribution of household growth assumed for
27 purposes of a comparable period of regional transportation plans
28 and opportunities to maximize the use of public transportation
29 and existing transportation infrastructure.

30 (4) The market demand for housing.

31 (5) Agreements between a county and cities in a county to
32 direct growth toward incorporated areas of the county.

33 (6) The loss of units contained in assisted housing
34 developments, as defined in paragraph (8) of subdivision (a) of
35 Section 65583, that changed to non-low-income use through
36 mortgage prepayment, subsidy contract expirations, or
37 termination of use restrictions.

38 (7) High housing costs burdens.

39 (8) The housing needs of farmworkers.

40 (9) Any other factors adopted by the council of governments.

1 (e) The council of governments, or delegate subregion, as
 2 applicable, shall explain in writing how each of the factors
 3 described in subdivision (d) was incorporated into the
 4 methodology and how the methodology is consistent with
 5 subdivision (d) of Section 65584. The methodology may include
 6 numerical weighting.

7 (f) Any ordinance, policy, voter-approved measure, or
 8 standard of a city or county that directly or indirectly limits the
 9 number of residential building permits issued by a city or county
 10 shall not be a justification for a determination or a reduction in
 11 the share of a city or county of the regional housing need.

12 (g) In addition to the factors identified pursuant to subdivision
 13 (d), the council of governments, or delegate subregion, as
 14 applicable, shall identify any existing local, regional, or state
 15 incentives, such as a priority for funding or other incentives
 16 available to those local governments that are willing to accept a
 17 higher share than proposed in the draft allocation to those local
 18 governments by the council of governments or delegate
 19 subregion pursuant to Section 65584.05.

20 (h) Following the conclusion of the 60-day public comment
 21 period described in subdivision (c) on the proposed allocation
 22 methodology, and after making any revisions deemed appropriate
 23 by the council of governments, or delegate subregion, as
 24 applicable, as a result of comments received during the public
 25 comment period, each council of governments, or delegate
 26 subregion, as applicable, shall adopt a final regional, or
 27 subregional, housing need allocation methodology and provide
 28 notice of the adoption of the methodology to the jurisdictions
 29 within the region, or delegate subregion as applicable, and to the
 30 department.

31 SEC. 6. Section 66014 of the Government Code is amended
 32 to read:

33 66014. (a) Notwithstanding any other provision of law, when
 34 a local agency charges fees for zoning variances; zoning changes;
 35 use permits; building inspections; building permits; filing and
 36 processing applications and petitions filed with the local agency
 37 formation commission or conducting preliminary proceedings or
 38 proceedings under the Cortese-Knox-Hertzberg Local
 39 Government Reorganization Act of 2000, Division 3
 40 (commencing with Section 56000) of Title 5; the processing of

1 maps under the provisions of the Subdivision Map Act, Division
 2 2 (commencing with Section 66410) of Title 7; or planning
 3 services under the authority of Chapter 3 (commencing with
 4 Section 65100) of Division 1 of Title 7 or under any other
 5 authority; those fees may not exceed the estimated reasonable
 6 cost of providing the service for which the fee is charged, unless
 7 a question regarding the amount of the fee charged in excess of
 8 the estimated reasonable cost of providing the services or
 9 materials is submitted to, and approved by, a popular vote of
 10 two-thirds of those electors voting on the issue.

11 (b) The fees charged pursuant to subdivision (a) may include
 12 the costs reasonably necessary to prepare and revise the plans
 13 and policies that a local agency is required to adopt before it can
 14 make any necessary findings and determinations. The fees
 15 charged pursuant to subdivision (a) may also include the costs
 16 reasonably necessary to prepare and revise plans and policies to
 17 address flood hazard areas and flood risk.

18 (c) Any judicial action or proceeding to attack, review, set
 19 aside, void, or annul the ordinance, resolution, or motion
 20 authorizing the charge of a fee subject to this section shall be
 21 brought pursuant to Section 66022.

22 ~~SEC. 7. If the Commission on State Mandates determines that~~
 23 ~~this act contains costs mandated by the state, reimbursement to~~
 24 ~~local agencies and school districts for those costs shall be made~~
 25 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
 26 ~~4 of Title 2 of the Government Code.~~

27 *SEC. 7. The Legislature finds and declares that the*
 28 *amendment to subdivision (b) of Section 66014 of the*
 29 *Government Code made by Section 6 of this act is declaratory of*
 30 *existing law and does not constitute a change to the existing law.*

31 *SEC. 8. No reimbursement is required by this act pursuant to*
 32 *Section 6 of Article XIII B of the California Constitution because*
 33 *a local agency or school district has the authority to levy service*
 34 *charges, fees, or assessments sufficient to pay for the program or*
 35 *level of service mandated by this act, within the meaning of*
 36 *Section 17556 of the Government Code.*