MEMO

DATE: April 3, 2003

TO: The Community Economic and Human Development Committee (CEHD)

FROM: Alfredo B. Gonzalez, Senior Government Affairs Officer
Phone (213) 236-1886 – e-mail: gonzalez@scag.ca.gov

SUBJECT: **Support Assembly Bill 1158 (Lowenthal) General Plans-Housing Elements**

RECOMMENDED ACTION: Information Only

SUMMARY:
Staff has transmitted a letter of support and will work toward the passage of AB 1158 (Lowenthal). This bill embodies the positive work on regional issues that was accomplished during last year's SB 910 working group and is consistent with the direction established by the CEHD and the Regional Council.

BACKGROUND:
AB 1158 introduced by Assemblyman Alan Lowenthal (D-Long Beach) is analogous to the proposal developed by last year's SB 910 working group. As currently written, this bill will revise procedures for the allocation and review of shares of regional housing need without imposing any punitive penalties as originally sought by SB 910 (Dunn). Most importantly, the bill incorporates the Housing Element Reform Priorities that were adopted by the Regional Council on December 13, 2001. Those priorities are as follows:

- Housing need should be consistent with Regional Transportation Plan forecasts
- The State should assure consistency of housing planning with various other Statewide efforts (e.g. water planning)
- Communities should be allowed to address conflicts between housing need and limitations or extenuating circumstances at the local level.
- Communities that address housing needs should be rewarded through a system of incentives.

BILL STATUS:
AB 1158, introduced on February 21,2003 and has been referred to the Assembly Committees on Local Government and Housing and Community Development.

FISCAL IMPACT:
All work related to adopting the recommended staff action is contained within the adopted FY 02/03 budget and adopted 2003 SCAG Legislative Program and does not require the allocation of any additional financial resources.

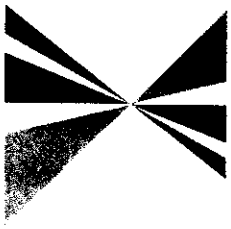
ATTACHMENTS:
Support Letter to Assemblyman Lowenthal
AB 1158 – Bill Text

A. Gonzalez
Memo to CEHD on AB 1158
docs# 83156

SOUTHERN CALIFORNIA
ASSOCIATION of GOVERNMENTS

March 21, 2003

SOUTHERN CALIFORNIA



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Riverside County Transportation Commission: Robin Lowe, Hemet

Ventura County Transportation Commission: Bill Davis, Simi Valley

Printed on Recycled Paper 559-1/16/03

The Honorable Alan Lowenthal
California State Assembly
State Capitol, Room 4146
Sacramento, CA 95814

SUBJECT: AB 1158 General Plans: Housing Elements

Dear Assembly Member Lowenthal:

On behalf of the Regional Council of the Southern California Association of Governments, I write to express SCAG's strong support of Assembly Bill 1158. This bill embodies the positive work on regional issues accomplished by the SB 910 working group last year.

AB 1158, which revises procedures for the allocation and review of shares of regional housing need without imposing punitive penalties, is consistent with the direction established by the SCAG Community, Economic and Human Development Committee and the SCAG Regional Council.

The bill incorporates SCAG's Housing Element Reform Priorities. They specify that housing need should be consistent with Regional Transportation Plan forecasts and that the State should assure consistency of housing planning with various other statewide efforts. Furthermore, SCAG believes communities should be allowed to address conflicts between housing need, limitations, and extenuating circumstances at the local level. Communities that address housing needs should be rewarded through a system of incentives.

SCAG strongly supports AB 1158, and we look forward to working with you and your colleagues to assure its passage. If you require any assistance from the SCAG staff, please feel free to contact Alfredo B. Gonzalez, Senior Government Affairs Officer, at 213-236-1886.

Sincerely,

Hal Bernson
President, SCAG
Councilmember, City of Los Angeles

AB 1158 Support Letter
CAE#83189

ASSEMBLY BILL No. 1158

Introduced by Assembly Member Lowenthal

February 21, 2003

An act to amend Sections 65582, 65585, and 65588 of, to add Sections 65584.01, 65584.02, 65584.03, 65584.04, and 65584.05 to, and to repeal and add Section 65584 of, the Government Code, relating to general plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1158, as introduced, Lowenthal. General plans: housing elements.

(1) Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. The assessment includes the locality's share of the regional housing need. That share is determined by the appropriate council of governments, subject to revision by the Department of Housing and Community Development. A city, county, or city and county is required to submit a draft housing element or draft amendment to its housing element to the department for a determination of whether the draft complies with state law governing housing elements.

This bill would revise the procedures for the submission and review of the draft housing element and for determining shares of the regional housing need. By imposing additional duties upon local officials, this bill would create a state-mandated local program.

(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

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.

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 65582 of the Government Code is
2 amended to read:
3 65582. As used in this article:
4 (a) "Community," "locality," "local government," or
5 "jurisdiction" means a city, city and county, or county.
6 (b) "Council of governments" means a single or multicounty
7 council created by a joint powers agreement pursuant to Chapter
8 5 (commencing with Section 6500) of Division ~~1~~ *7* of Title 1.
9 (c) "Department" means the Department of Housing and
10 Community Development.
11 (d) *"Existing and projected regional housing need" means a*
12 *projection developed for regional and local planning purposes to*
13 *represent the reasonably anticipated demand for housing within a*
14 *region during the planning period.*
15 *(e)* "Housing element" or "element" means the housing
16 element of the community's general plan, as required pursuant to
17 this article and subdivision (c) of Section 65302.
18 ~~(e)~~
19 *(f)* "Low- and moderate-income households" means persons
20 and families of low or moderate incomes as defined by Section
21 50093 of the Health and Safety Code.
22 SEC. 2. Section 65584 of the Government Code is repealed.
23 ~~65584. (a) For purposes of subdivision (a) of Section 65583,~~
24 ~~the share of a city or county of the regional housing needs includes~~

~~that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties that already have disproportionately high proportions of lower income households. Based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and in consultation with each council of governments, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the~~

~~assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The councils of governments shall provide each city and county with the department's information. The council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity if this responsibility is requested by a county and all cities in the county, a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or the governing body of a subregional agency established by the council of governments, in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process, timing, and other terms and conditions of that delegation of responsibility.~~

~~(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). If the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.~~

~~(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.~~

~~(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.~~

~~(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.~~

~~(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.~~

~~(C) The date of the hearing shall be at least 30 days from the date of the notification.~~

~~(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographical restraints on the production of housing.~~

~~(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grants a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the council of governments or the department.~~

~~(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.~~

~~(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:~~

~~(A) One or more cities within the county agree to increase its share or their shares in an amount that will make up for the reduction.~~

~~(B) The transfer of shares shall only occur between a county and cities within that county.~~

~~(C) The county's share of low-income and very low-income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.~~

~~(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a).~~

~~(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.~~

~~(d) (1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city or county that directly limits, by number, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.~~

~~(2) Paragraph (1) does not apply to any city or county that imposes a moratorium on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (e), adopt findings that specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.~~

~~(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.~~

~~(f) A fee may be charged to interested parties for any additional costs caused by the amendments made to subdivision (e) by Chapter 1684 of the Statutes of 1984 reducing from 45 to 7 days~~

~~the time within which materials and data shall be made available to interested parties.~~

~~(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.~~

SEC. 3. Section 65584 is added to the Government Code, to read:

65584. (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing need shall include that share of the housing need of persons at all income levels within the area significantly affected by the general plan of the city or county. While it is the intent of the Legislature that cities, counties, and cities and counties should undertake all necessary actions to encourage, promote, and facilitate the development of housing to accommodate the entire regional housing need, it is recognized, however, that future housing production may not equal the regional housing need established for planning purposes.

(b) The department, in consultation with each council of governments, shall determine each region's existing and projected housing need pursuant to Section 65584.01 at least two years prior to the scheduled revision required pursuant to Section 65588. The appropriate council of governments, or for cities and counties without a council of governments, the department, shall adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county at least one year prior to the scheduled revision for the region required by Section 65588. The allocation plan prepared by a council of governments shall be prepared pursuant to Sections 65584.04 and 65584.05 with the advice of the department. Notwithstanding any other provision of law, the due dates for the determinations of the department or for the councils of governments, respectively, regarding the regional housing need may be extended by not more than 60 days if the extension will enable access to more recent critical population or housing data from a pending or recent release of the United States Census Bureau or the Department of Finance. If the due date for the determination of the department or the council of governments is

extended for this reason, the department shall extend the corresponding housing element revision deadline pursuant to Section 65588 by not more than 60 days.

(c) During the period between the final acceptance of a regional housing need allocation plan by the department and the due date of the subsequent allocation plan for the next planning cycle, the council of governments, or the department for cities and counties without a council of governments, shall reduce the share of regional housing need of a county if all of the following conditions are met:

(1) One or more cities within the county agree to increase its share or their shares in an amount that will make up for the reduction.

(2) The transfer of shares shall only occur between a county and cities within that county.

(3) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(4) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria that were used to make the initial allocation of the county's share.

(d) (1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city or county that directly limits, by number or location, the population or population growth rate, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination of a reduction in the share of a city or county of the regional housing need.

(2) Paragraph (1) does not apply to any city or county that imposes a moratorium pursuant to Section 65858 on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision request, adopt findings that specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Notwithstanding any other provision of law, determinations made by the department, a council of governments, or a city or county pursuant to Section 65584.01, 65584.02, 65584.04, or 65584.05 shall be exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 4. Section 65584.01 is added to the Government Code, to read:

65584.01. (a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, shall determine the existing and projected need for housing for each region in the following manner:

(b) The department's determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and consultation with each council of governments. If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of 3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If no agreement is reached, then the population projection for the region shall be the population forecast for the region prepared by the Department of Finance as modified by the department as a result of discussions with the council of governments.

(c) (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and

consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(D) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs.

(E) Other characteristics of the composition of the projected population.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (E), inclusive, of paragraph (1) and the methodology it will use and shall provide these determinations to the council of governments.

(d) (1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). Within 30 days following notice of the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.

(2) The objection shall be based on either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b).

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

(e) The determinations of the department pursuant to this section shall be subject to judicial review.

(f) With respect to determinations of existing and projected regional housing need for the third housing element revision, the department shall comply with Section 65584 as it existed prior to January 1, 2004.

SEC. 5. Section 65584.02 is added to the Government Code, to read:

65584.02. (a) For cities and counties without a council of governments, the department shall determine and distribute the existing and projected housing need, in accordance with Section 65584.01 and this section. If the department determines that a county or counties, supported by a resolution adopted by the board or boards of supervisors, and a majority of cities within the county or counties representing a majority of the population of the county or counties, possess the capability and resources and agreed to accept the responsibility, with respect to its jurisdiction, for the distribution of the regional housing need, the department shall delegate this responsibility to the cities and county or counties.

(b) The distribution of regional housing need shall, based upon available data and in consultation with the cities and counties, take into consideration market demand for housing, the distribution of household growth within the county assumed in the regional transportation plan where applicable, employment opportunities and commuting patterns, the availability of suitable sites and public facilities, agreements between a county and cities in a county to direct growth towards incorporated areas of the county, or other considerations as may be requested by the affected cities or counties and agreed to by the department. As part of the allocation of the regional housing need, the department shall provide each city and county with data describing the assumptions

and methodology used in calculating its share of the regional housing need. The distribution of the regional housing need shall seek to reduce the concentration of additional capacity for lower income households allocated to cities or counties that already have disproportionately high proportions of lower income households.

(c) Within 90 days following the department's determination of a draft distribution of the regional housing need to the cities and the county, a city or county may propose to revise the determination of its share of the regional housing need in accordance with criteria set forth in the draft distribution. The proposed revised share shall be based upon comparable data available for all affected jurisdictions, and accepted planning methodology, and shall be supported by adequate documentation.

(d) (1) Within 60 days after the end of the 90-day time period for the revision by the cities or county, the department shall accept the proposed revision, modify its earlier determination, or indicate why the proposed revision is inconsistent with the regional housing need.

(2) If the department does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(3) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(4) The date of the hearing shall be at least 30 days from the date of the notification.

(5) Before making its final determination, the department shall consider all comments received and shall include a written response to each request for revision received from a city or county.

(e) If the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the department grants a revised allocation pursuant to subdivision (d), the department shall ensure that the total regional housing need is maintained. The department's final determination shall be in writing and shall include information explaining how its action is consistent with this section. If the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the department. The department, within its final determination,

may adjust the allocation of a city or county that was not the subject of a request for revision of the draft distribution.

(f) The department shall issue a final regional housing need allocation for all cities and counties within 45 days of the completion of the 60-day period.

(g) The determination of the department shall be subject to judicial review.

SEC. 6. Section 65584.03 is added to the Government Code, to read:

65584.03. (a) At least two years prior to the scheduled revision required by Section 65588, cities and a county, or counties, may form a subregional entity for the purpose of allocation of the subregion's existing and projected need for housing among its members in accordance with the allocation methodology established pursuant to Section 65584.04. The purpose of establishing a subregion shall be to recognize the community of interest and mutual challenges and opportunities for providing housing within a subregion. A subregion formed pursuant to this section may include a single county and each of the cities in that county, or any other combination of geographically contiguous local governments, and shall be approved by the adoption of a resolution by each of the local governments in the subregion as well as by the council of governments. All decisions of the subregion shall be approved by vote of the county or counties, if any, and the majority of the cities with the majority of population within a county or as provided for in rules adopted by the local governments comprising the subregion. Upon formation of the subregional entity, the entity shall notify the council of governments of this formation.

(b) Following the determination of regional housing needs pursuant to Section 65584.01, the council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity formed pursuant to subdivision (a), a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or the governing body of a subregional entity established by the council of governments, in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process,

1 timing, and other terms and conditions of that delegation of
2 responsibility. Each council of governments shall ensure that each
3 subregion within its jurisdiction fully allocates its delegated share
4 of the regional housing need in accordance with Section 65584.05.
5 SEC. 7. Section 65584.04 is added to the Government Code,
6 to read:
7 65584.04. (a) At least two years prior to a scheduled revision
8 required by Section 65588, each council of governments shall
9 develop a proposed methodology for distributing the existing and
10 projected regional housing need to cities, counties, and
11 subregions, where applicable pursuant to this section.
12 (b) (1) No more than six months prior to the development of
13 a proposed methodology for distributing the existing and projected
14 housing need, each council of governments shall conduct a survey
15 of each of its member jurisdictions to request, at a minimum,
16 information on both of the following:
17 (A) The jurisdiction's existing jobs and housing relationship.
18 (B) Opportunities and constraints to developing additional
19 housing and job opportunities in the jurisdiction.
20 (2) The information provided by a local government pursuant
21 to this section shall be used, to the extent possible, by the council
22 of governments as source information for the development of the
23 methodology developed pursuant to this section. The survey shall
24 state that none of the information received may be used as a basis
25 for reducing the total housing need established for the region
26 pursuant to Section 65584.01.
27 (3) If the council of governments does not issue the survey
28 required pursuant to this section, a city, county, or city and county
29 may submit information related to the items listed in paragraph (1).
30 (c) The proposed methodology, along with any relevant
31 underlying data and assumptions, and an explanation of how
32 information gathered from local governments pursuant to
33 subdivision (b) has been used to develop the proposed
34 methodology, and how each of the factors listed in this subdivision
35 is incorporated into the methodology shall be distributed to all
36 cities, counties, subregions, and members of the public who have
37 made a written request for the proposed methodology. A council
38 of governments for a region with a population of 1,000,000 or
39 more shall conduct three public hearings over a period of no less
40 than 90 days to receive oral and written comments on the proposed

methodology. A council of governments for a region with a population of less than 1,000,000 shall conduct at least one public hearing to receive oral and written comments on the proposed methodology. To the extent that sufficient data is available from local governments or other sources, each council of governments shall include the following factors to develop the methodology that allocates regional housing needs while continuing to take into consideration the information submitted pursuant to subdivision (b):

(1) The share of regional housing needs allocated to the local government in previous planning periods, and the relative share of housing units in each income category approved in the prior planning period. Information developed from this factor shall be used to promote a fair distribution between those jurisdictions that have historically approved housing development applications in conformance with their share of the regional housing need, and those jurisdictions that have not.

(2) The promotion of an intraregional balance between jobs and housing.

(3) The distribution of household growth assumed for purposes of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) 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 council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality but must consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.

(5) The market demand for housing.

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

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

(8) Federal or state laws, regulations, or regulatory actions that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(9) Agreements between a county and cities in a county to direct growth towards incorporated areas of the county.

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

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

(d) The council of governments shall assign the factors in subdivision (c) a numerical weight in accordance with the priorities of the council of governments. The distribution shall seek to reduce overconcentrations of lower income households in cities or counties that already have disproportionately high proportions of lower income households. Any ordinance, policy, or standard of a city or county that directly limits, by number or location, the population or population growth rate, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(e) In addition to the factors identified pursuant to subdivision (c), the council of governments shall identify any existing local, regional, or state incentives, such as a priority for funding, or other incentives, available to those local governments that are willing to accept a share of the regional housing need that exceeds the share that would be otherwise allocated to those local governments pursuant to the methodology established by the council of governments.

(f) Following the conclusion of the 90-day public comment period on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments as a result of comments received during the public comment period, each council of governments shall adopt a final regional housing need allocation methodology within 60 days and provide

notice of the adoption of the methodology to the jurisdictions within the region.

SEC. 8. Section 65584.05 is added to the Government Code, to read:

65584.05. (a) At least one and one-half years prior to the scheduled revision required by Section 65588, each council of governments shall distribute a draft allocation of regional housing needs to each local government and subregion, where applicable, based on the methodology adopted pursuant to Section 65584.04. The draft allocation shall include the underlying data and methodology on which the allocation is based. It is the intent of the Legislature that the draft allocation should be distributed prior to the completion of the update of the applicable regional transportation plan. The draft allocation shall distribute to localities and subregions, if any, within the region the entire regional share of housing need determined pursuant to Section 65584.01.

(b) Within 60 days following receipt of the draft allocation, a local government that is not part of a subregion, or the subregion, as applicable, may request a revision of its share of the regional housing need in accordance with the factors described in paragraphs (1) to (11), inclusive, of subdivision (c) of Section 65584.04, including any information submitted by the local government to the council of governments pursuant to subdivision (b) of that section. The request for a revised share shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation.

(c) Within 60 days after the request submitted pursuant to subdivision (b), the council of governments shall accept the proposed revision, modify its earlier determination, or indicate, based upon the information and methodology described in Section 65584.04, why the proposed revision is inconsistent with the regional housing need.

(d) If the council of governments does not accept the proposed revised share or modify the revised share to the satisfaction of the requesting party, the local government, or subregion, if applicable, may appeal its draft allocation based upon either or both of the following criteria:

(1) The council of governments failed to adequately consider the information submitted pursuant to subdivision (b) of Section 65584.04, or a significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted pursuant to that subdivision.

(2) The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by the council of governments pursuant to Section 65584.04.

(e) The council of governments shall conduct public hearings to hear all appeals within 60 days of the date established by the council of governments to file appeals. The city or county, or subregion if applicable, shall be notified within 15 days by certified mail, return receipt requested, of at least one public hearing on its appeal. The date of the hearing shall be at least 30 days from the date of the notification. Before taking action on an appeal, the council of governments shall consider all comments, recommendations, and available data based on accepted planning methodologies submitted by the appellant. The council of governments' final action on an appeal shall be in writing and shall include information and other evidence explaining how its action is consistent with this article. The council of governments' final action on an appeal may require the council of governments to adjust the allocation of a local government that is not the subject of an appeal.

(f) The council of governments shall issue a proposed final allocation within 45 days of the completion of the 60-day period for hearing appeals. The proposed final allocation plan shall include responses to all comments received on the proposed draft allocation and reasons for any significant revisions included in the final allocation.

(g) In the proposed final allocation plan, the council of governments shall adjust allocations to subregions and to local governments based upon the results of the appeals process specified in this section. If the adjustments total 7 percent or less of the regional housing need determined pursuant to Section 65584.01, then the council of governments shall distribute the adjustments proportionally to all subregions or local governments. If the adjustments total more than 7 percent of the regional housing need, then the council of governments shall develop a

1 methodology to distribute the amount greater than the 7 percent to
2 local governments and subregions. In no event shall the total
3 distribution of housing needs equal less than the regional housing
4 need, as determined pursuant to Section 65584.01. Two or more
5 local governments may agree to an alternate distribution of
6 appealed housing allocations between the affected local
7 governments. If two or more local governments agree to an
8 alternative distribution of appealed housing allocations that
9 maintains the total housing need originally assigned to these
10 communities, then the council of governments shall include the
11 alternative distribution in the final allocation plan.
12 (h) Within 60 days of the issuance of the proposed final
13 allocation plan pursuant to subdivision (g), each subregion
14 established pursuant to Section 65584.03 shall provide the council
15 of governments with its allocation of regional housing needs
16 within the subregion adopted by the county and the majority of
17 cities within the region with the majority of the population.
18 Allocations agreed to within a subregion may differ from the draft
19 allocations assigned local governments pursuant to this section,
20 but in no event shall the total allocation in the subregion equal less
21 than the total housing need allocated to the subregion pursuant to
22 subdivision (a) of Section 65584.05. If the council of governments
23 finds that the proposed allocation plan submitted by the subregion
24 does not equal the total housing need allocated to the subregion,
25 or if the subregion has not submitted an allocation within 60 days,
26 then the council of governments shall allocate the housing needs
27 to the individual local governments within the subregion to ensure
28 that total regional housing need is allocated.
29 (i) Within 45 days of receiving proposed subregional
30 allocations pursuant to subdivision (h), the council of
31 governments shall hold a public hearing to adopt a final allocation
32 plan. The council of governments shall have final authority to
33 determine the distribution of the region's existing and projected
34 housing need as determined pursuant to Section 65584.01. Within
35 60 days of adoption by the council of governments, the department
36 shall determine whether or not the final allocation plan is
37 consistent with the existing and projected housing need for the
38 region, as determined pursuant to Section 65584.01. The
39 department may revise the determination of the council of
40 governments if necessary to obtain this consistency. The

determination of the council of governments shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(j) Any authority of the council of governments to review and revise the share of a city or county of the regional housing need under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

SEC. 9. Section 65585 of the Government Code is amended to read:

65585. (a) In the preparation of its housing element, each city and county shall consider the guidelines adopted by the department pursuant to Section 50459 of the Health and Safety Code. Those guidelines shall *clearly explain the criteria by which a housing element will be reviewed for substantial compliance with the law and shall* be advisory to each city or county in the preparation of its housing element.

(b) At least 90 days prior to adoption of its housing element, or at least 60 days prior to the adoption of an amendment to this element, the planning agency shall submit a draft element or draft amendment to the department. The department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the draft in the case of an adoption or within 60 days of its receipt in the case of a draft amendment.

(c) In the preparation of its findings, the department may consult with any public agency, group, or person. The department shall receive and consider any written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

(d) In its written findings, the department shall determine whether the draft element or draft amendment substantially complies with the requirements of this article.

(e) Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by the department. If the department's findings are not available within the time limits set by this section, the legislative body may act without them.

(f) If the department finds that the draft element or draft amendment does not substantially comply with the requirements

of this article, the legislative body shall take one of the following actions:

(1) Change the draft element or draft amendment to substantially comply with the requirements of this article.

(2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with the requirements of this article despite the findings of the department.

(g) Promptly following the adoption of its element or amendment, the planning agency shall submit a copy to the department.

(h) The department shall, within 90 days, review adopted housing elements or amendments and report its findings to the planning agency.

SEC. 10. Section 65588 of the Government Code is amended to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every ~~five~~ *six* years, to reflect the results of this periodic review.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing

developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding subdivision (b) or the date of adoption of the housing elements previously in existence, the dates of revisions for the housing element shall be ~~modified~~ as follows:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: December 31, 2000, for the third revision, ~~and June 30, 2005~~ *December 31, 2006*, for the fourth revision, *and every six years thereafter.*

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: December 31, 2001, for the third revision, ~~and June 30, 2006~~ *December 31, 2008*, for the fourth revision, *and every six years thereafter.*

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2002, for the third revision, ~~and June 30,~~ *December 31,* 2007, for the fourth revision, *and every six years thereafter.*

(4) Local governments within the ~~regional jurisdiction of the~~ Association of Monterey Bay Area Governments: December 31, 2002, for the third revision, ~~and June 30,~~ *December 31,* 2007, for the fourth revision, *and every six years thereafter.*

(5) Local governments within the regional jurisdiction of the San Diego Association of Governments: December 31, 1999, for the third revision ~~cycle ending June 30, 1999, and June 30, 2004~~

December 31, 2005, for the fourth revision, *and every six years thereafter.*

(6) All other local governments *within a council of governments*: December 31, 2003, *for the fourth revision, and every six years thereafter.*

(7) All other local governments: December 31, 2004, for the third revision, and ~~June 30, 2008, for the fourth revision~~ *every six years thereafter.*

~~(7)~~

(8) Subsequent revisions shall be completed not less often than at ~~five-year~~ *six-year* intervals following the fourth revision.

(f) It is the intent of the amendments made to this section during the 2003–04 Regular Session to coordinate the determination of regional housing needs with the triennial update of the regional transportation plan pursuant to Section 134 of Title 23 of the United States Code. Any council of governments that is required by statute to update its transportation plan every four years may elect to either (1) adopt the update to its transportation plan on a three-year basis, or (2) continue with the four-year update cycle, but adopt an amended update in mid-cycle to coordinate with the regional housing need update at six-year intervals.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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