

- **Board of Directors**  
**Communications and Legislation Committee**

August 21, 2007 Board Meeting

---

8-7

---

**Subject**

---

Express support for AB 162 (Wolk, D-Davis) - Land use: water supply

---

**Description**

---

**Summary.** Assembly Bill 162, amended July 17, 2007 ([Attachment 1](#)), by Assembly Member Lois Wolk, chair of the Assembly Water, Parks & Wildlife Committee, would change general planning laws to expand the flood management requirements to be included in general plans and includes provisions to allow for exclusion of urban development where flood protection is inadequate.

**Background.** Under existing state law, every city and county, through its respective planning agency, is required to adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside the city or county physical boundaries which bears relation to its planning in the planning agency's judgment. Each general plan must contain the seven required elements: a land use element, a circulation element, a housing element, a conservation element, an open space element, a noise element, and a safety element. State law does not require cities and counties to regularly revise their general plans, except that the housing element must be revised at least every five years. AB 162 would specifically make changes that affect four of the general plan elements: land use, conservation, safety and housing.

**AB 162 Proposed Changes to General Plans.** AB 162 would make the following changes to current general planning laws:

- **Proposed Land Use Element Changes:** Identify and annually review the areas covered by the general plan that are subject to flooding as identified by floodplain mapping prepared by the Federal Emergency Management Agency (FEMA) or the Department of Water Resources (DWR).
- **Proposed Conservation Element Changes:** Include coordination with flood management, water conservation, or groundwater agencies, and, upon the next revision of the Housing Element on or after January 1, 2009, the Conservation Element shall identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management.
- **Proposed Safety Element Changes:** Include the following in the Safety Element upon the next revision of the Housing Element on or after January 1, 2009:
  - Identify information regarding flood hazards
  - Establish goals, policies, and objectives on flood hazards
  - Establish implementation measures
  - Identify new information not previously available
  - Use existing approved floodplain management ordinances
- **Requirements for Sacramento and San Joaquin Drainage District:** Each city and county located within the boundaries of the Sacramento and San Joaquin Drainage District must submit the draft elements or draft amendments to the Safety Elements for review by the Reclamation Board and every local agency that provides flood protection.

- Excluding developable urban land subject to flooding: Each council of governments, or delegate subregion as applicable, in determining available land suitable for urban development, may exclude lands where the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding such that the development of housing on that land would be infeasible because of cost or other considerations. Information from the Reclamation Board, the Army Corps of Engineers, or other sources may be used to support such determinations.

**Analysis of Bill.** Although Metropolitan is not a land use planning agency and does not prepare general plans, passage of AB 162 would benefit Metropolitan as a Delta stakeholder. Since AB 162 provisions increase flood management requirements in the general planning process, these proposed changes would apply to future urban land development within the Delta. More specifically, the AB 162 provisions to allow appropriate planning agencies to exclude urban land development where flood management infrastructure is not adequate could prevent inappropriate urban development in Delta areas prone to flooding, thereby avoiding future potential flood damage liability costs that may be incurred by the state. Such liability would divert resources that should be used for Delta restoration.

Metropolitan's Policy Principles on Long-Term Sustainability in the Sacramento-San Joaquin River Delta, adopted in April 2006, are consistent with the goals of AB 162. An ongoing theme of the adopted Policy Principles is for the long-term Delta Vision to consider the flood risk factors and provide for environmental and economic uses of the Delta land resources. The Policy Principles state that in developing a Delta Vision Policy, elected officials, policymakers, and stakeholders must consider current and potential future uses of the Delta, including local land use, in an open public process to develop a comprehensive and cost-effective plan for the Delta's future purposes and management. This is consistent with the open public process for development of general plans. Further, the Policy Principles also state that alternative land use practices in the Delta must be evaluated as part of the long-term Delta Vision.

## Policy

---

By Minute Item 46637, the Board adopted policy principles regarding long-term actions for the Sacramento-San Joaquin River Delta as described in the Revised Board Letter 8-3, dated April 11, 2006, signed by the General Manager on April 4, 2006.

## California Environmental Quality Act (CEQA)

---

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

## Board Options

---

### Option #1

Adopt the CEQA determination and authorize the General Manager to express Metropolitan's support for AB 162 as amended July 17, 2007.

**Fiscal Impact:** Unknown, but potentially significant cost savings through avoided costs to state and local agencies to pay future flood damage by discouraging urban development in flood prone areas

**Business Analysis:** The bill proposes prudent changes to increase flood management requirements within the general planning process, as well as the ability for planning agencies to potentially exclude urban

development where flood protection is inadequate. Without such changes to the general planning process, the state could continue to be at significant risk for financial liability for flood damage to urban developments, in particular, within the Delta.

**Option #2**

Take no position on AB 162.

**Fiscal Impact:** Unknown, but potentially significant costs to state and local agencies to pay for flood damage. If urban development continues unchecked in flood prone areas subject to general plans, potential flood damage costs could be significant.

**Business Analysis:** The expenditure of public resources on repairing flood damage rather than restoring the Delta would ultimately increase the costs of water supplies for all users of the State Water Project.

**Staff Recommendation**

---

Option #1

  
\_\_\_\_\_  
Linda Waade  
Deputy General Manager, External Affairs

8/9/2007  
Date

  
\_\_\_\_\_  
Jeffrey Kightlinger  
General Manager

8/9/2007  
Date

**Attachment 1 – Assembly Bill 162**

BLA #5598

AMENDED IN SENATE JULY 17, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

---

---

**ASSEMBLY BILL**

**No. 162**

**Introduced by Assembly Member Wolk**

January 22, 2007

---

---

An act to amend Sections 65302, 65303.4, 65352, and 65584.04 of, and to add Section 65302.7 to, the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 162, 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 Resources. *The bill also* would require, upon the next revision of the housing element, on or after January 1, ~~2008~~, 2009, the conservation element of the general plan to identify rivers, creeks, streams, flood corridors, riparian habitat, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management. By

**AB 162**

— 2 —

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~~, 2009, the safety element to identify, among other things, information regarding flood hazards and *to* establish a set of comprehensive goals, policies, and objectives, based on specified information for the protection of the community from, among other things, the unreasonable risks of flooding.

The bill would also require the planning agency, upon each revision of the housing element to review, and if necessary, to identify new information that was not available during the previous revision of the safety element and would provide criteria by which cities and counties that have floodplain management ordinances may comply with these provisions.

(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 *with* 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 each city and county located within the boundaries of the Sacramento and San Joaquin Drainage District to submit the draft element or draft amendment to the safety element *of its general plan* 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.

(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~~ *needs* 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 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 and  
5 text setting forth objectives, principles, standards, and plan  
6 proposals. The plan shall include the following elements:

**AB 162**

— 4 —

1 (a) A land use element that designates the proposed general  
2 distribution and general location and extent of the uses of the land  
3 for housing, business, industry, open space, including agriculture,  
4 natural resources, recreation, and enjoyment of scenic beauty,  
5 education, public buildings and grounds, solid and liquid waste  
6 disposal facilities, and other categories of public and private uses  
7 of land. The location and designation of the extent of the uses of  
8 the land for public and private uses shall consider the identification  
9 of land and natural resources pursuant to paragraph (3) of  
10 subdivision (d). The land use element shall include a statement of  
11 the standards of population density and building intensity  
12 recommended for the various districts and other territory covered  
13 by the plan. The land use element shall identify and annually  
14 review those areas covered by the plan that are subject to flooding  
15 identified by floodplain mapping prepared by the Federal  
16 Emergency Management Agency (FEMA) or the Department of  
17 Water Resources. The land use element shall also do both of the  
18 following:

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

24 (2) Consider the impact of new growth on military readiness  
25 activities carried out on military bases, installations, and operating  
26 and training areas, when proposing zoning ordinances or  
27 designating land uses covered by the general plan for land, or other  
28 territory adjacent to military facilities, or underlying designated  
29 military aviation routes and airspace.

30 (A) In determining the impact of new growth on military  
31 readiness activities, information provided by military facilities  
32 shall be considered. Cities and counties shall address military  
33 impacts based on information from the military and other sources.

34 (B) The following definitions govern this paragraph:

35 (i) "Military readiness activities" mean all of the following:

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

38 (II) Operation, maintenance, and security of any military  
39 installation.

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

3 (ii) "Military installation" means a base, camp, post, station,  
4 yard, center, homeport facility for any ship, or other activity under  
5 the jurisdiction of the United States Department of Defense as  
6 defined in paragraph (1) of subsection (e) of Section 2687 of Title  
7 10 of the United States Code.

8 (b) A circulation element consisting of the general location and  
9 extent of existing and proposed major thoroughfares, transportation  
10 routes, terminals, any military airports and ports, and other local  
11 public utilities and facilities, all correlated with the land use  
12 element of the plan.

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

15 (d) (1) A conservation element for the conservation,  
16 development, and utilization of natural resources including water  
17 and its hydraulic force, forests, soils, rivers and other waters,  
18 harbors, fisheries, wildlife, minerals, and other natural resources.  
19 The conservation element shall consider the effect of development  
20 within the jurisdiction, as described in the land use element, on  
21 natural resources located on public lands, including military  
22 installations. That portion of the conservation element including  
23 waters shall be developed in coordination with any countywide  
24 water agency and with all district and city agencies, including  
25 flood management, water conservation, or groundwater agencies  
26 that have developed, served, controlled, managed, or conserved  
27 water of any type for any purpose in the county or city for which  
28 the plan is prepared. Coordination shall include the discussion and  
29 evaluation of any water supply and demand information described  
30 in Section 65352.5, if that information has been submitted by the  
31 water agency to the city or county.

32 (2) The conservation element may also cover all of the  
33 following:

34 (A) The reclamation of land and waters.

35 (B) Prevention and control of the pollution of streams and other  
36 waters.

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

39 (D) Prevention, control, and correction of the erosion of soils,  
40 beaches, and shores.

**AB 162**

— 6 —

1 (E) Protection of watersheds.

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

4 (3) Upon the next revision of the housing element on or after  
5 January 1, ~~2008~~, 2009, the conservation element shall identify  
6 rivers, creeks, streams, flood corridors, riparian habitats, and land  
7 that may accommodate floodwater for purposes of groundwater  
8 recharge and stormwater management.

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

11 (f) (1) A noise element which shall identify and appraise noise  
12 problems in the community. The noise element shall recognize the  
13 guidelines established by the Office of Noise Control in the State  
14 Department of Health Care Services and shall analyze and quantify,  
15 to the extent practicable, as determined by the legislative body,  
16 current and projected noise levels for all of the following sources:

17 (A) Highways and freeways.

18 (B) Primary arterials and major local streets.

19 (C) Passenger and freight on-line railroad operations and ground  
20 rapid transit systems.

21 (D) Commercial, general aviation, heliport, helistop, and military  
22 airport operations, aircraft overflights, jet engine test stands, and  
23 all other ground facilities and maintenance functions related to  
24 airport operation.

25 (E) Local industrial plants, including, but not limited to, railroad  
26 classification yards.

27 (F) Other ground stationary noise sources, including, but not  
28 limited to, military installations, identified by local agencies as  
29 contributing to the community noise environment.

30 (2) Noise contours shall be shown for all of these sources and  
31 stated in terms of community noise equivalent level (CNEL) or  
32 day-night average level ( $L_{dn}$ ). The noise contours shall be prepared  
33 on the basis of noise monitoring or following generally accepted  
34 noise modeling techniques for the various sources identified in  
35 paragraphs (1) to (6), inclusive.

36 (3) The noise contours shall be used as a guide for establishing  
37 a pattern of land uses in the land use element that minimizes the  
38 exposure of community residents to excessive noise.

39 (4) The noise element shall include implementation measures  
40 and possible solutions that address existing and foreseeable noise

1 problems, if any. The adopted noise element shall serve as a  
2 guideline for compliance with the state's noise insulation standards.

3 (g) (1) A safety element for the protection of the community  
4 from any unreasonable risks associated with the effects of  
5 seismically induced surface rupture, ground shaking, ground  
6 failure, tsunami, seiche, and dam failure; slope instability leading  
7 to mudslides and landslides; subsidence, liquefaction, and other  
8 seismic hazards identified pursuant to Chapter 7.8 (commencing  
9 with Section 2690) of Division 2 of the Public Resources Code,  
10 and other geologic hazards known to the legislative body; flooding;  
11 and wild land and urban fires. The safety element shall include  
12 mapping of known seismic and other geologic hazards. It shall  
13 also address evacuation routes, military installations, peakload  
14 water supply requirements, and minimum road widths and  
15 clearances around structures, as those items relate to identified fire  
16 and geologic hazards.

17 (2) The safety element, upon the next revision of the housing  
18 element on or after January 1, ~~2008~~, 2009, shall also do the  
19 following:

20 (A) Identify information regarding flood hazards, including,  
21 but not limited to, the following:

22 (i) Flood hazard zones. As used in this subdivision, "flood  
23 hazard zone" means an area subject to flooding that is delineated  
24 as either a special hazard area or an area of moderate or minimal  
25 hazard on an official flood insurance rate map issued by the Federal  
26 Emergency Management Agency. The identification of a flood  
27 hazard zone does not imply that areas outside the flood hazard  
28 zones or uses permitted within flood hazard zones will be free  
29 from flooding or flood damage.

30 (ii) National Flood Insurance Program maps published by  
31 FEMA.

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

34 (iv) Designated floodway maps that are available from the  
35 Reclamation Board.

36 (v) Dam failure inundation maps prepared pursuant to Section  
37 8589.5 that are available from the Office of Emergency Services.

38 (vi) Awareness Floodplain Mapping Program maps that are  
39 available from the Department of Water Resources.

**AB 162**

— 8 —

- 1 (vii) Areas subject to inundation in the event of the failure of  
2 levees or floodwalls.
- 3 (viii) Historical data on flooding, including locally prepared  
4 maps of areas that are subject to flooding, areas that are vulnerable  
5 to flooding after wildfires, and sites that have been repeatedly  
6 damaged by flooding.
- 7 (ix) Existing and planned development in flood hazard zones,  
8 including structures, roads, utilities, and essential public facilities.
- 9 (x) Local, state, and federal agencies with responsibility for  
10 flood protection, including special districts and local offices of  
11 emergency services.
- 12 (B) Establish a set of comprehensive goals, policies, and  
13 objectives based on the information identified pursuant to  
14 subparagraph (A), for the protection of the community from the  
15 unreasonable risks of flooding, including, but not limited to:
- 16 (i) Avoiding or minimizing the risks of flooding to new  
17 development.
- 18 (ii) Evaluating whether new development should be located in  
19 flood hazard zones, and identifying construction methods or other  
20 methods to minimize damage if new development is located in  
21 flood hazard zones.
- 22 (iii) Maintaining the structural and operational integrity of  
23 essential public facilities during flooding.
- 24 (iv) Locating, when feasible, new essential public facilities  
25 outside of flood hazard zones, including hospitals and health care  
26 facilities, emergency shelters, fire stations, emergency command  
27 centers, and emergency communications facilities or identifying  
28 construction methods or other methods to minimize damage if  
29 these facilities are located in flood hazard zones.
- 30 (v) Establishing cooperative working relationships among public  
31 agencies with responsibility for flood protection.
- 32 (C) Establish a set of feasible implementation measures designed  
33 to carry out the goals, policies, and objectives established pursuant  
34 to subparagraph (B).
- 35 (3) After the initial revision of the safety element pursuant to  
36 paragraph (2), upon each revision of the housing element, the  
37 planning agency shall review and, if necessary, revise the safety  
38 element to identify new information that was not available during  
39 the previous revision of the safety element.

1 (4) Cities and counties that have floodplain management  
2 ordinances that have been approved by FEMA that substantially  
3 comply with this section, or have substantially equivalent  
4 provisions to this subdivision in their general plans, may use that  
5 information in the safety element to comply with this subdivision,  
6 and shall summarize and incorporate by reference into the safety  
7 element the other general plan provisions or the flood plain  
8 ordinance, specifically showing how each requirement of this  
9 subdivision has been met.

10 (5) Prior to the periodic review of its general plan and prior to  
11 preparing or revising its safety element, each city and county shall  
12 consult the California Geological Survey of the Department of  
13 Conservation, the Reclamation Board, if the city or county is  
14 located within the boundaries of the Sacramento and San Joaquin  
15 Drainage District, as set forth in Section 8501 of the Water Code,  
16 and the Office of Emergency Services for the purpose of including  
17 information known by and available to the department, the office,  
18 and the board required by this subdivision.

19 (6) To the extent that a county's safety element is sufficiently  
20 detailed and contains appropriate policies and programs for  
21 adoption by a city, a city may adopt that portion of the county's  
22 safety element that pertains to the city's planning area in  
23 satisfaction of the requirement imposed by this subdivision.

24 SEC. 2. Section 65302.7 is added to the Government Code, to  
25 read:

26 65302.7. (a) For the purposes of complying with Section  
27 65302.5, each county or city located within the boundaries of the  
28 Sacramento and San Joaquin Drainage District, as set forth in  
29 Section 8501 of the Water Code, shall submit the draft element  
30 of, or draft amendment to, the safety element to the Reclamation  
31 Board and to every local agency that provides flood protection to  
32 territory in the city or county at least 90 days prior to the adoption  
33 of, or amendment to, the safety element of its general plan.

34 (b) The Reclamation Board and each local agency described in  
35 paragraph (1) shall review the draft or an existing safety element  
36 and report their respective written recommendations to the planning  
37 agency within 60 days of the receipt of the draft or existing safety  
38 element. The Reclamation Board and each local agency shall  
39 review the draft or existing safety element and may offer written

**AB 162**

— 10 —

1 recommendations for changes to the draft or existing safety element  
2 regarding both of the following:

3 (1) Uses of land and policies in areas subjected to flooding that  
4 will protect life, property, and natural resources from unreasonable  
5 risks associated with flooding.

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

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

19 (d) If the Reclamation Board's or the local agency's  
20 recommendations are not available within the time limits required  
21 by this section, the board of supervisors or the city council may  
22 act without those recommendations. The board of supervisors or  
23 city council shall consider the recommendations at the next time  
24 it considers amendments to its safety element.

25 SEC. 3. Section 65303.4 of the Government Code is amended  
26 to read:

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

33 SEC. 4. Section 65352 of the Government Code is amended  
34 to read:

35 65352. (a) Prior to action by a legislative body to adopt or  
36 substantially amend a general plan, the planning agency shall refer  
37 the proposed action to all of the following entities:

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

- 1 (2) An elementary, high school, or unified school district within  
2 the area covered by the proposed action.
- 3 (3) The local agency formation commission.
- 4 (4) An areawide planning agency whose operations may be  
5 significantly affected by the proposed action, as determined by the  
6 planning agency.
- 7 (5) A federal agency if its operations or lands within its  
8 jurisdiction may be significantly affected by the proposed action,  
9 as determined by the planning agency.
- 10 (6) (A) The branches of the United States Armed Forces that  
11 have provided the Office of Planning and Research with a  
12 California mailing address pursuant to subdivision (d) of Section  
13 65944 when the proposed action is within 1,000 feet of a military  
14 installation, or lies within special use airspace, or beneath a  
15 low-level flight path, as defined in Section 21098 of the Public  
16 Resources Code, provided that the United States Department of  
17 Defense provides electronic maps of low-level flight paths, special  
18 use airspace, and military installations at a scale and in an  
19 electronic format that is acceptable to the Office of Planning and  
20 Research.
- 21 (B) Within 30 days of a determination by the Office of Planning  
22 and Research that the information provided by the Department of  
23 Defense is sufficient and in an acceptable scale and format, the  
24 office shall notify cities, counties, and cities and counties of the  
25 availability of the information on the Internet. Cities, counties, and  
26 cities and counties shall comply with subparagraph (A) within 30  
27 days of receiving this notice from the office.
- 28 (7) A public water system, as defined in Section 116275 of the  
29 Health and Safety Code, with 3,000 or more service connections,  
30 that serves water to customers within the area covered by the  
31 proposal. The public water system shall have at least 45 days to  
32 comment on the proposed plan, in accordance with subdivision  
33 (b), and to provide the planning agency with the information set  
34 forth in Section 65352.5.
- 35 (8) The Bay Area Air Quality Management District for a  
36 proposed action within the boundaries of the district.
- 37 (9) On and after March 1, 2005, a California Native American  
38 tribe, that is on the contact list maintained by the Native American  
39 Heritage Commission, with traditional lands located within the  
40 city or county's jurisdiction.

**AB 162**

— 12 —

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

9 (c) (1) This section is directory, not mandatory, and the failure  
10 to refer a proposed action to the other entities specified in this  
11 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 amended  
16 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 the  
22 region or within the subregion, where applicable pursuant to this  
23 section. The methodology shall be consistent with the objectives  
24 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 established  
31 in subdivision (d).

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

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

1 be used as a basis for reducing the total housing need established  
2 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 may  
5 submit information related to the items listed in subdivision (d)  
6 prior to the public comment period provided for in subdivision  
7 (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 (d)  
19 is incorporated into the methodology, shall be distributed to all  
20 cities, counties, any subregions, and members of the public who  
21 have made a written request for the proposed methodology. The  
22 council of governments, or delegate subregion, as applicable, shall  
23 conduct at least one public hearing to receive oral and written  
24 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, shall  
28 include the following factors to develop the methodology that  
29 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 from  
39 providing necessary infrastructure for additional development  
40 during the planning period.

**AB 162**

— 14 —

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 urban  
6 development to existing zoning ordinances and land use restrictions  
7 of a locality, but shall consider the potential for increased  
8 residential development under alternative zoning ordinances and  
9 land use restrictions. The determination of available land suitable  
10 for urban development may exclude lands where the flood  
11 management infrastructure designed to protect that land is not  
12 adequate to avoid the risk of flooding such that the development  
13 of housing on that land would be infeasible because of cost or  
14 other considerations. Information from the Reclamation Board,  
15 the Army Corps of Engineers, or other sources may be used to  
16 support determinations made pursuant to this subparagraph.

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

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

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

27 (4) The market demand for housing.

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

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

34 (7) High-housing ~~costs~~ *cost* burdens.

35 (8) The housing needs of farmworkers.

36 (9) The housing needs generated by the presence of a private  
37 university or a campus of the California State University or the  
38 University of California within any member jurisdiction.

39 (10) 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 methodology  
4 and how the methodology is consistent with subdivision (d) of  
5 Section 65584. The methodology may include numerical weighting.

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

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

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

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