Planning, Zoning, and Development Laws

2005

Arnold Schwarzenegger, Governor

2005 Planning, Zoning, and Development Laws

STATE OF CALIFORNIA
Arnold Schwarzenegger, Governor

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March 2005

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STATE OF CALIFORNIA
Arnold Schwarzenegger, Governor

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MESSAGE FROM THE DIRECTOR

March 2005

Two important missions of the Governor's Office of Planning and Research (OPR) are to coordinate state and local planning activities and provide technical assistance to planning agencies statewide. The *Planning, Zoning and Development Laws* is an important tool provided by OPR to help land use professionals keep abreast of ever-changing land use laws and regulations. It is a compendium of state statutes related to land use planning, supplemented with legislative bill summaries and Attorney General opinions.

It is my sincere hope that this 2005 edition of the *Planning, Zoning and Development Laws* will help land use authorities and professionals discharge their duties in a comprehensive and responsible manner that fosters orderly development and environmental quality.

Sincerely,

Sean Walsh
Director

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(California Government Code Section 65000-66037)

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INTRODUCTION

The Governor's Office of Planning and Research (OPR) has compiled the *2005 Planning, Zoning, and Development Laws*. This publication is prepared as a convenient resource to local governments and the public. The last edition of the *Planning, Zoning, and Development Laws* was published in 2004. This 2005 edition includes statutory changes which were enacted in 2004 and are highlighted throughout the publication to alert readers to the most recent changes.

OPR staff receives hundreds of requests for technical assistance each year from local planning agencies. In an effort to address some of these technical assistance requests, the *2005 Planning, Zoning, and Development Laws* is comprised not only of state planning and zoning laws, but also excerpts from related statutes. These excerpts are located in the "Miscellaneous Planning-Related Laws" section, and include such subjects as common interest subdivisions, school and community college sites, airport land use planning, fees, Outdoor Advertising Act, zoning of health facilities and other types of care facilities, and local regulation of alcoholism recovery facilities. The appendix lists other planning-related statutes that are not set forth in the main text.

This publication is provided as a convenience and a discretionary state service. OPR makes no representation or warranty as to accuracy or completeness or the currency of this publication or the contents thereof. Reliance on this publication or any part thereof is entirely the responsibility and liability of the party using it. Nothing in this publication constitutes legal advice. Parties desiring legal advice pertaining to planning, zoning, and development laws, including those set forth herein, should consult competent legal counsel of their choice.

LEGISLATIVE SUMMARY

The following is a brief summary of the major planning and land use legislation enacted in 2004. The changes made by these bills are reflected in this edition of the Planning, Zoning and Development Laws. The full text of these bills is available on the Internet at www.leginfo.ca.gov.

AB 1192 (Chapter 10) – Amends § 65863 of the Government Code. This bill states that a city or county is solely responsible for compliance with the existing requirement to identify adequate housing sites to ensure no net loss in residential unit capacity according to their regional housing need allotment. When a housing project applicant requests a downsizing in the initial application which is inadequate according to that jurisdiction's share of the regional housing need, then the city or county may require the applicant to comply with this section.

AB 1268 (Chapter 179) - Adds § 65302.4 to the Government Code. This bill allows cities and counties to adopt "form-based codes." The text and diagrams in the land use element that address the location and extent of land uses and the zoning ordinances that implement these provisions may express community intentions regarding urban form and design. These expressions may differentiate neighborhoods, districts, and corridors; provide for a mixture of land uses and housing types within each; and provide specific measures for regulating relationships between buildings, and between buildings and outdoor public areas, including streets.

AB 1320 (Chapter 42) – Amends §65460.1, 65460.2, and 65460.4 of the Government Code. This bill makes it easier for cities and counties to designate transit villages. This bill requires that a transit village plan include all land within not less than a quarter mile of the exterior boundary of the parcel on which a transit station is located. Transit stations include a rail station, ferry terminal, bus hub, or bus transfer station. It would also require the plan to include any five of the specified demonstrable public benefits.

AB 1546 (Chapter 931) – Adds § 65089.11-.15 to the Government Code. This bill adds a new chapter to the congestion management provisions of state planning law. These new provisions apply specifically to the San Mateo County Association of Governments (SMCAG). It allows the SMCAG to collect a fee on registered vehicles in the county, in addition to basic vehicle registration fees. The money generated from these fees may be used to pay for traffic congestions management and stormwater pollution management.

AB 1827 (Chapter 576) – Adds § 54956.75 to the Government Code. This bill added language specifying that open session meetings be held after an audit report. This bill also amended § 54956.5 of the Government Code, but due to chaptering language, the changes this bill made to that section were superceded by the changes in AB 2782 (2004).

AB 2158 (Chapter 696) – Amends § 65582, adds § 65584.01-.07 and repeals and adds § 65584 of the Government Code. This bill added language relating to regional housing need. Topics covered include housing need calculation, housing and transportation planning, subregional entities, reduction in need, and final allocation. The latter section contains new language that reflects changes made in the other sections of this bill.

AB 2234 (Chapter 533) – Amends § 54957.1 and adds § 54956.81 to the Government Code. This bill authorizes the governing boards of retirement systems to make decisions regarding pension fund investments in a closed session. It requires those decisions to be disclosed at the first open meeting of the board, following the close of the transaction or transfer of assets, as specified. Existing law, the Ralph M. Brown Act, requires the actions and deliberations of legislative bodies to be conducted at open meetings, except in certain circumstances when closed sessions are allowed. The governing boards of local retirement systems are legislative bodies subject to that act.

AB 2252 (Chapter 697) – Repeals § 11003.5 of the Business and Professions Code which dealt with time share projects.

AB 2348 (Chapter 724) – Amends § 65583, 65583.1, 65589.5, and 65915; and adds 65583.2 to the Government Code. This bill revises the criteria for the inventory of housing sites that accommodate a city's or county's share of the regional housing need. The housing element requirements are amended for land inventory, adequate sites, and permitted uses. This bill strengthens the state anti-NIMBY and density bonus laws. This bill and SB 1818 (2004) both amended section 65915. Due to chaptering language, the changes in SB 1818 take precedence.

AB 2473 (Chapter 789) – Repeals and adds § 65860.5 to the Government Code. The new text of this section applies to approval of solar energy systems for residential, agricultural, and business purposes. This bill encourages the use of solar power and puts restrictions on local agencies' ability to deny a solar energy application.

AB 2782 (Chapter 784) – Amends § 54954.5 and adds § 54956.96 to the Government Code. This bill amended language relating to closed session item descriptions. The new section added deals with joint powers agency conferences, and incorporated changes from AB 1827 (2004). This bill also added language describing the duties and functions of the legislative body of a joint powers agency.

AB 3065 (Chapter 951) – Amends § 65302, repeals and amends § 65302.5 of the Government Code, and repeals § 4128.5 of the Public Resources Code. The bill requires cities and counties to submit both the draft element or draft amendment to the safety element and that an existing safety element pursuant to a specified schedule to the State Board of Forestry and Fire Protection and to local agencies that provide fire protection to territory in the city or county. Cities and counties have at least 90 days prior to the occurrence of specified actions by a city or county.

AB 3082 (Chapter 183) – Amends §65919 of the Government Code and §21670.1 of the Public Utilities Code. This is a spot bill that amended some grammar in the codes listed.

AB 502 (Chapter 439) – Adds § 65950.5 of the Government Code. This bill creates an expedited process for projects dealing with natural gas exploration. The permit's shortened time period must be agreed to in writing and the public agency responsible for the permit may employ private persons to meet the specified time limits. The bill would permit the public agency to charge the applicant a fee that does not exceed the estimated reasonable cost of implementing these provisions.

AB 72 (Chapter 358) – Adds § 1596.773 of the Health and Safety Code. This section added definitions for probation and revocation of child day care facilities.

SB 111 (Chapter 193) – Repeals § 29777 of the Public Resources Code which deals with costs for the Delta Protection Commission. Although this bill was passed, its effect was negated by the passage of SB 1264 (2004).

SB 1037 (Chapter 479) – Amends § 66453 and 66473.3 and repeals § 66473.2 of the Government Code. This bill changes the notification distance for other cities and counties about proposed subdivisions from three miles to any proposed subdivision within the other city or county's planning area. This bill also added language allowing a city or county to adopt an ordinance requiring the design of a subdivision to provide for cable television and internet services.

SB 1097 (Chapter 225) – Amends § 65040.9, 65040.12, 66031; repeals § 66036 of the Government Code. This bill updated the agencies to be consulted for the Military Handbook and Environmental Justice programs. This bill deleted the Office of Permit Assistance within the Trade and Commerce Agency as part of the selection criteria for mediation. Finally this bill deleted the report to the Legislature from the Office of Permit Assistance regarding mediation and resolution of land use disputes.

SB 1102 (Chapter 227) – Amends § 65583; Adds § 65584.1 and 65584.2 of the Government Code. This bill requires the Department of Housing and Community Development to adopt regulations requiring housing elements to address special housing needs. Because this bill was an urgency statute, the section, 66584.1 went into effect immediately. On January 1, 2005 the changes made by SB 1777 (2004) to the same section take effect. Finally, this bill creates a process to review allocation data from the Department of Housing and Community Development for the locality's share of regional housing need.

SB 1165 (Chapter 118) – Amends §54222, 66452.6, and 66473.7 of the Government Code. This bill eliminated a requirement for a local or state agency to submit a written offer to sell or lease surplus property to the program area agent. This bill also allows for an extension of the tentative map if the cost of construction and improvements outside the tentative map area exceeds $178,000. This bill also made a spot change relating to the section that discusses sufficiency of water supply.

SB 1233 (Chapter 615) – Amends § 21670.3, 21674.5, 21675, and 21675.1 of the Public Utilities Code. This bill changed the title of "comprehensive plan for airports" to "airport compatibility plan." All codes containing such language were updated accordingly.

SB 1264 (Chapter 286) – Amends §29777 of the Public Resources Code. This bill amended language relating to the Delta Protection Commission's reports on funding recommendations for its activities and operations to the Governor and Legislature. The Commission must not exceed its funds available for any fiscal year.

SB 1328 (Chapter 110) – Amends §65863.10, 65863.11, and 65863.13 of the Government Code. This bill

made changes regarding the types of assisted housing developments and prepayment on subdivisions that are considered assisted housing developments. The bill also explains the rent differences in units that are assisted under Section 8 of the United States Housing Act of 1937.

SB 1462 (Chapter 906) – Amends § 65352, 65404, 65940, and 65944 of the Government Code. This bill revises the information required in the application for projects located within 1,000 feet of a military installation, low-level flight path, or special use airspace. The public agency is required to provide a complete copy of the application to any branch of the United States Armed Forces as specified. This bill authorizes any branch of the United States Armed Forces to request consultation to avoid potential conflict, and to discuss alternatives and mitigation measures. The Department of Defense shall make electronic maps available on the Internet that identify military installations and special airspace. Once OPR certifies these maps, they are required to notify cities and counties of their availability and the requirement to utilize the maps in accordance with these sections within 30 days.

SB 1568 (Chapter 618) – Amends § 11010 of the Business and Professions Code. This bill allows the San Francisco Bay Conservation and Development Commission to post notice on property that is in their jurisdiction.

SB 1771 (Chapter 257) – Amends § 54954 of the Government Code. This bill revises criteria for selection of school district superintendents.

SB 1777 (Chapter 818) – Amends § 65584.1 of the Government Code. This bill authorizes the city or county to charge a fee not to exceed the total amount charged to the city or county by the council of governments for regional housing need assessment.

SB 18 (Chapter 905) – Amends § 65040.2, 65092, 65351, 65352, 65560 and adds § 65352.3, 65352.4, and 65562.5. This bill added language addressing concerns for Native American places, features, and objects to OPR's *General Plan Guidelines*. OPR shall amend the guidelines, in consultation with the California Native American Heritage Commission, to include advice on how to preserve or mitigate impacts to designated areas of Native American places, features, and objects. Cities and counties must consult with California Native American tribes prior to approval of any action to the General Plan, any specific plan, or Open Space Element. The appendix to the guidelines shall be made available by March 1, 2005. Finally, this bill included language for the consideration of the Open Space Element of the General Plan to include protection of Native American sacred, historical, and cultural sites.

SB 1818 (Chapter 928) – Amends § 65915 of the Government Code. This bill amends the same section as in AB 2348 (2004). Since this bill was chaptered after AB 2348, the changes in this bill take precedence. This bill reduced the amount of units that a developer must provide in order to receive a density bonus. A sliding scale was created for density bonuses based on the percentage of affordable units in the development. This bill imposes a new land donation rule and amends statewide parking standards.

SB 492 (Chapter 387) – Amends § 65585.1 of the Government Code. This bill extended the sunset date for the San Diego Association of Governments (SANDAG) to self-certify their housing element to June 30, 2010.

SB 699 (Chapter 916) – Amends § 65400 and repeals § 65307 of the Government Code. The bill requires the annual report on a city or county's general plan to include the degree to which the approved general plan complies with OPR's *General Plan Guidelines* for the preparation of the mandatory elements of the general plan; and the date of the last General Plan revision.

SB 855 (Chapter 644) – Amends § 1596.792 of the Health and Safety Code. This bill added a crisis nursery to the list of health care institutions eligible to receive reimbursement under the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program. The changes are in effect until January 1, 2008. There is a second section listed that goes into effect after that date.

SB 926 (Chapter 907) –Amends § 65053.5, 65053.6, 65302, and 65560 of the Government Code. This bill revises the general plan requirements for military bases and operating areas. The latter two code sections were previously amended in AB 3065 (§ 65302) and SB 18 (§ 65560). The sections are consistent between all bills, but both chapter numbers are given indicating that the code was amended by two different bills.

The following two bills were inadvertently omitted from the Legislative Summary of the 2004 Planning, Zoning, and Development Laws. They are provided here for information.

AB 171 (Chapter 424) – Statute of 2003; Amends § 54956.87 of the Government Code. This bill changed the requirements for meetings on health care plan trade secrets. For contract negotiation, the governing board of the health plan may meet in closed session. This bill also defined a "health plan trade secret."

AB 1717 (Chapter 525) – Statute of 2003; Amends §65082 of the Government Code. This bill changed the duration of the regional transportation improvement program from four to five years. It also allows the program to include a reserve of county shares to provide funds to match federal funds.

ATTORNEY GENERAL OPINIONS SUMMARY

The following are summaries of the Attorney General opinions relating to planning and land use published in 2004. Complete opinions are available on the Attorney General's website: http://caag.state.ca.us/opinions/.

Airport Land Use

03-705-Where streets within a residential subdivision adjacent to an airport are owned and maintained by an airport district but are part of the county road system, the county is solely responsible for regulating the operation of aircraft on the streets.

03-805-An airport land use commission may not exempt a specific plan adopted by a city or county from compliance with the commission's more stringent compatibility standards for land use, development density, and development intensity in the vicinity of a public use airport.

Mobilehome Parks

04-704-Notwithstanding the prohibition against discrimination based upon age contained in the Planning and Zoning Law, a city may adopt a zoning ordinance or issue a conditional use permit that limits a specified parcel of land to use as a mobilehome park for senior citizens.

PLANNING AND ZONING LAW

(California Government Code Section 65000-66037)

TITLE 7. PLANNING AND LAND USE

DIVISION 1. PLANNING AND ZONING

Additions and deletions to the code sections based on laws enacted in 2004 are noted in the text. Additions (with the exception of section numbers) are noted by **bold-faced type**, while asterisks (*******) denote the deletion of punctuation, words, phrases, sentences, or paragraphs.

Chapter 1. General Provisions

65000. Title

This title may be cited as the Planning and Zoning Law.

(Added by Stats. 1967, Ch. 123.)

65001. Definitions

The definitions and general provisions contained in this article govern the construction of this title unless the context otherwise requires.

(Amended by Stats. 1956 (Ex. Sess.), Ch. 33.)

65002. Street

"Street" includes street, highway, freeway, expressway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement and right-of-way, and other ways.

(Amended by Stats. 1965, Ch. 1880.)

65003. Right-of-Way

"Right-of-way" means any public or private right-of-way and includes any area required for public use pursuant to any general plan or specific plan.

(Amended by Stats. 1965, Ch. 1880.)

65006. Former Act

Chapters 1, 2, and 3 of this title are a continuation of the Conservation and Planning Act and any acts lawfully performed pursuant to such act or its predecessors, including but not limited to the adoption of master and official or precise plans and the creation of planning commissions, are continued in effect and deemed to fulfill the requirements of Chapters 1, 2, and 3 of this title.

(Amended by Stats. 1956 (Ex. Sess.), Ch. 33.)

65007. *(Repealed by Stats. 1984, Ch. 690.)*

65008. Discrimination Prohibited

(a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the individual or group of individuals. For purposes of this section, both of the following definitions apply:

(A) "Familial status" as defined in Section 12955.2.

(B) "Disability" as defined in Section 12955.3.

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) (1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter for any of the following reasons:

(A) Because of the method of financing**.**

(B) Because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the owners or intended occupants of the residential development or emergency shelter.

(C) Because the development or shelter is intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income.

(D) Because the development consists of a multifamily residential project that is consistent with both the jurisdiction's zoning ordinance and general plan as they existed on the date the application was deemed complete, ex-

cept that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(2) The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter because of, in whole or in part, (A) the method of financing or (B) the occupancy of the development by persons protected by this subdivision, including, but not limited to, persons and families of low and moderate income.

(c) For the purposes of this section, "persons and families of middle income" means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision

(e). The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter based in whole or in part on the fact that the development is subsidized, financed, insured, or otherwise assisted as described in this paragraph.

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e) Notwithstanding subdivisions (a) to (d), inclusive, nothing in this section or this title shall be construed to prohibit either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995.

(2) Any city, county, or city and county from extending preferential treatment to residential developments or emergency shelters assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, or other residential developments or emergency shelters intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families. This preferential treatment may include, but need not be limited to, reduction or waiver of fees or changes in architectural requirements, site development and property line requirements, building setback requirements, or vehicle parking requirements that reduce development costs of these developments.

(f) "Residential development," as used in this section, means a single-family residence or a multifamily residence, including manufactured homes, as defined in Section 18007 of the Health and Safety Code.

(g) This section shall apply to chartered cities.

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

(Amended by Stats. 1984, Ch. 1691; Amended by Stats. 1986, Ch. 639; Amended by Stats. 1992, Ch. 1298; Amended by Stats. 1994, Ch. 896; Amended by Stats. 1996, Ch. 295; Amended by Stats. 2001, Ch. 671; Amended by Stats, 2003, Ch. 793.)

Note: Stats. 1984, Ch. 1691, also reads:

SEC. 1. The Legislature finds and declares that because of economic, physical, and mental conditions that are beyond their control, thousands of individuals and families in California are homeless. Churches, local governments, and nonprofit organizations providing assistance to the homeless have been overwhelmed by a new class of homeless: families with children, individuals with employable skills, and formerly middle-class families and individuals with long work histories.

The programs provided by the state, local, and federal governments, and by private institutions, have been unable to meet existing needs and further action is necessary. The Legislature finds and declares that two levels of housing assistance are needed: an emergency fund to supplement temporary shelter programs, and a fund to facilitate the preservation of existing housing and the creation of new housing units affordable to very low income households. It is in the public interest for the State of California to provide this assistance.

The Legislature further finds and declares that there is a need for more information on the numbers of homeless and the causes of homelessness, and for systematic exploration of more comprehensive solutions to the problem. Both local and state government have a role to play in identifying, understanding, and devising solutions to the problem of homelessness.

Note: Stats. 1992, Ch. 1298 also reads:

SEC. 1. This act shall be known, and may be cited, as the Employee Housing Protection Act of 1992**.**

SEC. 2. The Legislature finds and declares all of the following:

(a) There has been a significant reduction in the number

and quality of housing units available for permanent and seasonal farmworkers in this state, and the lack of decent, affordable housing for farmworkers in the State of California has reached crisis proportions.

(b) The development of new farmworker housing has been discouraged by inappropriate state and local government actions, including requirements more appropriate for labor camps of the 1930s, rather than employee housing of the 1990s, and the loss of decent farmworker housing has been compounded by inadequate enforcement and ineffective laws.

(c) There are too many severely defective residential accommodations available to farmworkers, although most providers of employee housing under permit provide decent, safe, and sanitary housing. It is in the interests of the state not to further penalize the complying employee housing owners and operators with higher fees or reporting requirements; but, instead, to ensure that monitoring requirements and penalties focus on those who willfully or continually violate the employee housing laws.

(d) The economy of this state depends in significant part on the welfare of the agricultural economy, and viable agricultural business requires decent, safe, and sanitary housing for agricultural workers.

(e) It is in the interests of the state to provide public enforcement agencies with the means to effectively and efficiently enjoin or punish the actions of those in violation of the employee housing laws, and to provide sponsors of employee housing the means to facilitate the provisions of this housing.

65009. Statute of limitation to protest planning and zoning decisions

(a) (1) The Legislature finds and declares that there currently is a housing crisis in California and it is essential to reduce delays and restraints upon expeditiously completing housing projects.

(2) The Legislature further finds and declares that a legal action or proceeding challenging a decision of a city, county, or city and county has a chilling effect on the confidence with which property owners and local governments can proceed with projects. Legal actions or proceedings filed to attack, review, set aside, void, or annul a decision of a city, county, or city and county pursuant to this division, including, but not limited to, the implementation of general plan goals and policies that provide incentives for affordable housing, open-space and recreational opportunities, and other related public benefits, can prevent the completion of needed developments even though the projects have received required governmental approvals.

(3) The purpose of this section is to provide certainty for property owners and local governments regarding decisions made pursuant to this division.

(b) (1) In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing, except where the court finds either of the following:

(A) The issue could not have been raised at the public hearing by persons exercising reasonable diligence.

(B) The body conducting the public hearing prevented the issue from being raised at the public hearing.

(2) If a public agency desires the provisions of this subdivision to apply to a matter, it shall include in any public notice issued pursuant to this title a notice substantially stating all of the following: "If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or prior to, the public hearing."

(3) The application of this subdivision to causes of action brought pursuant to subdivision (d) applies only to the final action taken in response to the notice to the city or clerk of the board of supervisors. If no final action is taken, then the issue raised in the cause of action brought pursuant to subdivision (d) shall be limited to those matters presented at a properly noticed public hearing or to those matters specified in the notice given to the city or clerk of the board of supervisors pursuant to subdivision (d), or both.

(c) (1) Except as provided in subdivision (d), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

(A) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan. This paragraph does not apply where an action is brought based upon the complete absence of a general plan or a mandatory element thereof, but does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate.

(B) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance.

(C) To determine the reasonableness, legality, or validity of any decision to adopt or amend any regulation attached to a specific plan.

(D) To attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a development agreement. An action or proceeding to attack, review, set aside, void, or annul the decisions of a legislative body to adopt, amend, or modify a development agreement shall only extend to the specific portion of the development agreement that is the subject of the adoption, amendment, or modification. This paragraph applies to development agree-

ments, amendments, and modifications adopted on or after January 1, 1996.

(E) To attack, review, set aside, void, or annul any decision on the matters listed in Sections 65901 and 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit.

(F) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in subparagraphs (A), (B), (C), (D), and (E).

(2) In the case of an action or proceeding challenging the adoption or revision of a housing element pursuant to this subdivision, the action or proceeding may, in addition, be maintained if it is commenced and service is made on the legislative body within 60 days following the date that the Department of Housing and Community Development reports its findings pursuant to subdivision (h) of Section 65585.

(d) An action or proceeding shall be commenced and the legislative body served within one year after the accrual of the cause of action as provided in this subdivision, if the action or proceeding meets both of the following requirements:

(1) It is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of housing affordable to persons and families with low or moderate incomes, as defined in Section 50079.5 of the Health and Safety Code, or with very low incomes, as defined in Section 50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.

(2) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3 of this division, pursuant to Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2 (commencing with Section 65913). A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or clerk of the board of supervisors by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. A notice or cause of action brought by one party pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.

(e) Upon the expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding.

(f) Notwithstanding Sections 65700 and 65803, or any other provision of law, this section shall apply to charter cities.

(g) Except as provided in subdivision (d), this section shall not affect any law prescribing or authorizing a shorter period of limitation than that specified herein.

(h) Except as provided in paragraph (4) of subdivision (c), this section shall be applicable to those decisions of the legislative body of a city, county, or city and county made pursuant to this division on or after January 1, 1984.

(Amended by Stats. 1984, Ch. 1685; Stats. 1987, Ch. 218; Amended by Stats. 1995, Ch. 253; Amended by Stats. 1996, Ch. 799; Amended by Stats. 1999, Ch. 968; Amended by Stats. 2002, Ch. 221.)

65010. Inapplicability of formal rules of evidence or procedures in judicial actions

(a) Formal rules of evidence or procedure applicable in judicial actions and proceedings shall not apply in any proceeding subject to this title except to the extent that a public agency otherwise provides by charter, ordinance, resolution, or rule of procedure.

(b) No action, inaction, or recommendation by any public agency or its legislative body or any of its administrative agencies or officials on any matter subject to this title shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure subject to this title, unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.

(Added by Stats. 1984, Ch. 1009. Amended by Stats. 1985, Ch. 114.)

Chapter 1.5. Office of Planning and Research

Article 1. General Provision and Definitions

65025. Office

"Office" as used in this chapter means the Office of Planning and Research.

(Added by Stats. 1970, Ch. 1534.)

Note: Stats. 1970, Ch. 1534, also reads:

SEC. 4. The Office of Planning and Research shall give immediate and high priority to the development of land use policy. As a first component of such policy, the office shall

develop, in conjunction with appropriate state departments and federal, regional and local agencies, a statewide plan and implementation program for protecting land and water resources of the state which are of statewide significance in terms of the state's natural resource base and the preservation and enhancement of environmental quality and are threatened due to urban expansion, incompatible public or private use or development or other circumstances.

The planning program shall consider, but not be limited to:

1. Areas of outstanding scientific, scenic and recreation value.

2. Areas which are required as habitat for significant fish and wildlife resources, including rare and endangered species.

3. Forest and agricultural lands which are judged to be of major importance in meeting future needs for food, fiber and timber.

4. Areas which provide green space and open areas in and around high-density metropolitan development.

5. Areas which are required to provide needed access to coastal beaches, lakeshores, and riverbanks.

6. Areas which require special development regulation because of hazardous or special conditions, such as earthquake fault zones, unstable slide areas, flood plains, and watersheds.

7. Areas which serve as connecting links between major public recreation and open-space sites, such as utility easements, streambanks, trails, and scenic highway corridors.

8. Areas of major historic or cultural interest.

SEC. 5. The planning and implementation program shall consider the full range of powers, programs and actions by which state government may influence the use and development of land and water resources, including public acquisition, zoning, tax incentives, development regulations and acquisition of development rights.

65026. Functional Plan

"Functional plan" as used in this chapter, means an intermediate- or short-range plan for the operation of a discrete function of state government.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65027. Report

"Report" as used in this chapter, means the State Environmental Goals and Policy Report.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65028.1. Council

"Council," as used in this chapter, means the Planning Advisory and Assistance Council established pursuant to subdivision (a) of Section 65040.6.

(Added by Stats. 1976, Ch. 1386.)

65028.2. District

"District," as used in this chapter, means a regional planning district created by the Office of Planning and Research pursuant to Section 65040.4.

(Added by Stats. 1976, Ch. 1386.)

Article 2. Declaration of State Policy and Legislative Intent

65030. Land Resources

The Legislature finds and declares that California's land is an exhaustible resource, not just a commodity, and is essential to the economy, environment and general well-being of the people of California. It is the policy of the state and the intent of the Legislature to protect California's land resource, to insure its preservation and use in ways which are economically and socially desirable in an attempt to improve the quality of life in California.

(Repealed and added by Stats. 1976, Ch. 1386.)

65030.1. Growth planning

The Legislature also finds that decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan, and should proceed within the framework of officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors.

(Added by Stats. 1976, Ch. 1386.)

65030.2. Costs and benefits of growth

It is further the policy of the state and the intent of the Legislature that land use decisions be made with full knowledge of their economic and fiscal implications, giving consideration to short-term costs and benefits, and their relationship to long-term environmental impact as well as long-term costs and benefits.

(Added by Stats. 1976, Ch. 1386.)

65031. Environmental goals, policies, plans: Governor's executive functions

The Legislature further finds and declares that recommendation, continuous evaluation and execution of statewide environmental goals, policies and plans are included within the scope of the executive functions of the Governor and responsibility for assuring orderly administration of this process within state government should be assigned to a gov-

ernmental unit reporting directly to the Governor.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65032. Integration of planning and budgeting

The Legislature further finds and declares that analysis of the impact of individual programs on the achievement of statewide environmental goals and the necessity of allocating fiscal and other resources of the state among competing programs and needs requires integration of the planning and executive budget functions within state government.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65033. Public participation

The Legislature recognizes the importance of public participation at every level of the planning process. It is therefore the policy of the state and the intent of the Legislature that each state, regional, and local agency concerned in the planning process involve the public through public hearings, informative meetings, publicity and other means available to them, and that at such hearings and other public forums, the public be afforded the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(Repealed and added by Stats. 1976, Ch. 1386.)

65034. Legislative policy and actions on state planning

The Legislature further finds and declares that the state planning process should be designed to influence legislative policy and actions and therefore should specifically include: (1) provisions for regular review and positive action by the Legislature on statewide environmental goals, plans and policies; and (2) clear identification of legislative actions required to carry out statewide environmental goals.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65035. OPR as statewide land use planning agency

The Legislature finds that it is necessary to have one agency at the state level which is responsible for developing state land use policies, coordinating planning of all state agencies, and assisting and monitoring local and regional planning. The Legislature recognizes that the Office of Planning and Research in the office of the Governor, as the most appropriate state agency to carry out this statewide land use planning function. It is not the intent of the Legislature to vest in the Office of Planning and Research any direct operating or regulatory powers over land use, public works, or other state, regional, or local projects or programs.

(Repealed and added by Stats. 1976, Ch. 1386.)

65035.1. (*Repealed by Stats. 1996, Ch. 799.)*

65036. Functional state plan

It is the policy of the state and the intent of the Legislature to assure orderly planning for specific functions such as water development, transportation, natural resources, economic development and human resources by units of state government who exercise management responsibility for these functions. It is further the intent of the Legislature to provide, as part of the state planning process, that state functional plans proceed from common assumptions and forecasts of statewide growth and development, including those set forth in Section 21001 of the Public Resources Code.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65036.1. Authority council

The Legislature recognizes that the state planning process, particularly with regard to the preparation of statewide goals and policies, should incorporate the recommendations and views of an advisory council that is responsive to, and of some assistance to, the planning concerns that occur on a local and regional basis.

(Added by Stats. 1976, Ch. 1386.)

65036.5. *(Repealed by Stats. 1995, Ch. 686.)*

65036.6. Land agency procedure

The Legislature requests the Governor to direct one or more state agencies to examine, by January 1, 1996, the extent to which local agencies establish procedures to comply with Chapter 5 (commencing with Section 66000) and Chapter 8 (commencing with Section 66016) of Division 1 of Title 7 of the Government Code.

(Added by Stats. 1993, Ch. 764.)

Article 3. Establishment and Functions of Office of Planning and Research

65037. Establishment of OPR

The Office of Planning and Research is hereby established in state government in the Governor's office. The office shall be under the direct control of a director, who shall be responsible to the Governor.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65038. Appointment of director

For the purpose of administering this chapter, the Governor shall appoint the Director of State Planning and Research, who shall perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the office, including contracting for professional or consultant services in connection with

the work of the office.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65039. Director's salary

The Governor may appoint the Director of Planning and Research at a salary that shall be fixed pursuant to Section 12001.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025. Amended by Stats. 1998, Ch. 689)

Article 4. Powers and Duties

65040. Duties of OPR

The Office of Planning and Research shall serve the Governor and his or her Cabinet as staff for long-range planning and research, and constitute the comprehensive state planning agency. In this capacity the office shall:

(a) Assisted by the Planning Advisory and Assistance Council established pursuant to subdivision (a) of Section 65040.6, engage in the formulation, evaluation and updating of long-range goals and policies for land use, population growth and distribution, urban expansion, development, open space, resource preservation and utilization, air and water quality, and other factors which shape statewide development patterns and significantly influence the quality of the state's environment.

(b) Assist in the orderly preparation by appropriate state departments and agencies of intermediate- and short-range functional plans to guide programs of transportation, water management, open space, recreation and other functions which relate to the protection and enhancement of the state's environment.

(c) In conjunction with the council, evaluate plans and programs of departments and agencies of state government, identify conflicts or omissions, and recommend to the Governor and the Legislature new state policies, programs and actions, or amendments of existing programs, as required, to resolve conflicts, advance statewide environmental goals to respond to emerging environmental problems and opportunities, and to assure that all state policies and programs conform to the adopted land use planning goals and programs.

(d) Assist the Department of Finance in preparing, as part of the annual state budget, an integrated program of priority actions to implement state functional plans and to achieve statewide environmental goals and objectives and take other actions to assure that the program budget, submitted annually to the Legislature, contains information reporting the achievement of state goals and objectives by departments and agencies of state government.

(e) Coordinate the development of policies and criteria to ensure the federal grants-in-aid administered or directly expended by state government advance statewide environmental goals and objectives.

(f) Coordinate the development and operation of a statewide environmental monitoring system to assess the implications of present growth and development trends on the environment and to identify at an early time, potential threats to public health, natural resources and environmental quality.

(g) Coordinate, in conjunction with appropriate state, regional, and local agencies, the development of objectives, criteria and procedures for the orderly evaluation and report of the impact of public and private actions on the environmental quality of the state and as a guide to the preparation of environmental impact reports required of state and local agencies in Sections 21102 and 21150 of the Public Resources Code.

(h) Coordinate research activities of state government directed to the growth and development of the state and the preservation of environmental quality, render advice to the Governor, his or her Cabinet, to the Legislature, and any agency or department of state government, and provide information to, and cooperate with, the Legislature or any of its committees or officers.

(i) Coordinate the technical assistance provided by state departments and agencies in regional and local planning to assure that such plans are consistent with statewide environmental goals and objectives.

(j) Accept and allocate or expend grants and gifts from any source, public or private, for the purpose of state planning and undertake other planning and coordinating activities as will implement the policy and intent of the Legislature as set forth herein.

(k) Develop long-range policies to assist the state and local agencies in meeting the problems presented by the growth and development of urban areas and defining the complementary roles of the state, cities, counties, school districts, and special districts with respect to such growth.

(l) Encourage the formation and proper functioning of, and provide planning assistance to, city, county, district, and regional planning agencies.

(m) Assist local government in land use planning.

(Amended by Stats. 1976, Ch. 1386; Amended by Stats. 1995, Ch. 686.)

65040.1. State aviation plan

In developing a land use policy for the state, the Office of Planning and Research shall cooperate with the Department of Transportation and other federal, state, regional, and local agencies in their development of a viable, feasible, and attainable long-range master plan for aviation that will provide a framework for discussions, a program of accomplishments, and a means to resolve the complex problems of air transportation in California. Such policy and plan shall be guided by the environmental goals and policies of the

State Environmental Goals and Policy Report (Section 65041).

The office shall advise the Legislature, from time to time, of long-range budgetary projections of the state's share of the costs relating to the development of new airports and related communities. The projections and information relating to airports shall be provided by the Department of Transportation.

It is the intent of the Legislature that society not be compelled to tolerate environmental pollution and that there be provided a level of air service acceptable to society without unacceptable costs in terms of pollution, congestion, or dollars.

(Added by Stats. 1971, Ch. 1570; Amended by Stats. 1980, Ch. 212.)

65040.2. General plan guidelines

(a) In connection with its responsibilities under subdivision (l) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

(1) Military installations.

(2) Military operating areas.

(3) Military training areas.

(4) Military training routes.

(5) Military airspace.

(6) Other territory adjacent to those installations and areas.

(g) **By March 1, 2005, the guidelines shall contain advice, developed in consultation with the Native American Heritage Commission, for consulting with California Native American tribes for all of the following:**

(1) The preservation of, or the mitigation of impacts to, places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

(2) Procedures for identifying through the Native American Heritage Commission the appropriate California Native American tribes.

(3) Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

(4) Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects.

(h) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

(Added by Stats. 1975, Ch. 641; Amended by Stats. 1995, Ch. 686. Effective on October 10, 1995; Amended by Stats. 2001, Ch. 762; Amended by Stats. 2002, Ch. 971; Amended by Stats. 2004, Ch. 905.)

65040.3. Local technical assistance

When requested by a local or regional agency, the office may furnish information and technical and professional advice on the preparation, adoption, amendment, and implementation of general plans, specific plans, or other local or regional plans, the preparation, adoption, amendment, and enforcement of regulations, procedures, programs, and legislation required for the implementation of local or regional plans, and information and technical and professional advice concerning planning problems.

(Added by Stats. 1975, Ch. 641; Amended by Stats. 1996, Ch. 799.)

65040.4. Regional planning districts

(a) The office shall divide the state into regional planning districts. Insofar as possible, the districts shall be established to include:

(1) Natural physiographical regions containing complete watersheds of major streams, and the land upon which the waters of such watersheds are put to beneficial use.

(2) Areas having mutual, social, environmental, and commercial interests as exemplified by connecting routes of transportation, by trade and by common use of open space and recreation areas within the region.

(b) The regional planning districts established by the Council on Intergovernmental Relations pursuant to former Section 34216 shall remain in effect as the regional planning districts of the office until changed by the office.

(Added by Stats. 1975, Ch. 641.)

65040.5. Notification

(a) The office shall notify a city or county with a general plan that has not been revised within eight years.

(b) The office shall notify the Attorney General if a general plan of a city or county has not been revised within ten years.

(Added by Stats. 1975, Ch. 641; Repealed and added by Stats. 1993, Ch. 437.)

65040.6. Planning advisory and assistance council

(a) The Planning Advisory and Assistance Council is hereby created within the office, the membership of which shall be as follows: three city representatives; three county representatives; one representative of each district, provided that at least two of the district representatives are representatives of metropolitan areawide planning organizations and that at least one of the district representatives is a representative of a nonmetropolitan planning organization; and one representative of Indian tribes and bands which have reservations or rancherias within California. The city and county representatives appointed pursuant to this subdivision shall be selected by the director from nominees submitted by the League of California Cities and by the California State Association of Counties. Representatives of areawide planning organizations appointed pursuant to this subdivision shall be selected by the director from nominees submitted by the several areawide planning organizations within the state. Other district representatives shall be appointed by the director. The representative of Indian tribes and bands shall be a member of one tribe or band, and shall be selected by the director.

Appointment to the advisory council shall be for a term of two years, provided that the members of the first council shall classify themselves by lot so that one-half shall serve an initial term of one year and one-half shall serve an initial term of two years. Vacancies shall be filled in the same manner provided for the original appointment.

(b) The council shall provide such advice as may be necessary to assist the office in discharging the requirements of Sections 65040 to 65040.4, inclusive. In particular, the council shall:

(1) Assist the office in the preparation of the state long-range goals and policies, in the manner specified in subdivision (a) of Section 65040.

(2) Evaluate the planning functions of the various state agencies involved in planning, in the manner specified in subdivision (c) of Section 65040.

(3) Make appropriate decisions and provide such advice and assistance as may be required by federal statute or regulation in connection with any federal program administered by the office.

(c) The council shall meet on call of the director of the office, who shall convene at least two council meetings during each year.

(d) Council members shall serve without compensation, but they may be reimbursed for actual expenses incurred in connection with their duties.

(Amended by Stats. 1976, Ch. 1386; Amended by Stats. 1997, Ch. 580.)

65040.7. *(Repealed by Stats. 1995, Ch. 686.)*

65040.8. Housing cost impact assessment manual

The Office of Planning and Research shall develop a housing cost manual which may be used by local agencies in assessing the impact on housing costs of alternative land use proposals and land use regulatory programs of local agencies and as an aid in evaluating private land use proposals.

The manual shall present economic and technical criteria for local agencies to use in developing or acting on, or both, general plan elements, zoning regulations, subdivision map regulations, alternative land use proposals and policies, and private land use proposals. The manual shall include a step-by-step program which local agencies may follow, including, but not limited to, sources of data, methods of summarizing and using the data, formulas for evaluating the impacts on housing costs of land use and land use regulatory decisions, and a guideline on how to prepare a single statement of results.

The Office of Planning and Research shall complete the housing cost manual required by this section by January 1, 1981.

(Added by Stats. 1979, Ch. 854.)

65040.9. Military handbook

(a) On or before January 1, 2004, the Office of Planning and Research shall, if sufficient federal funds become available for this purpose, prepare and publish an advisory planning handbook for use by local officials, planners, and builders that explains how to reduce land use conflicts between the effects of civilian development and military readiness activities carried out on military installations, military operating areas, military training areas, military training routes, and military airspace, and other territory adjacent to those installations and areas.

(b) At a minimum, the advisory planning handbook shall

include advice regarding all of the following:

(1) The collection and preparation of data and analysis.

(2) The preparation and adoption of goals, policies, and standards.

(3) The adoption and monitoring of feasible implementation measures.

(4) Methods to resolve conflicts between civilian and military land uses and activities.

(5) Recommendations for cities and counties to provide drafts of general plan and zoning changes that may directly impact military facilities, and opportunities to consult with the military base personnel prior to approving development adjacent to military facilities.

(c) In preparing the advisory planning handbook, the office shall collaborate with the Office of Military Base Retention and Reuse *** **and the Business, Transportation and Housing Agency**. The office shall consult with persons and organizations with knowledge and experience in land use issues affecting military installations and activities.

(d) The office may accept and expend any grants and gifts from any source, public or private, for the purposes of this section.

(Repealed by Stats. 1993, Ch. 56; Added by Stats. 2002, Ch. 971; Amended by Stats. 2004, Ch. 225.)

65040.10. State Clearinghouse

As used in this article, "State Clearinghouse" means the office of that name established by executive action of the Governor or any successor office designated by the Governor as the clearinghouse for information from the Office of Management and Budget in accordance with the Intergovernmental Cooperation Act of 1968 (P.L. 90-577).

(Formerly Section 12035 of the Government Code; Amended and renumbered by Stats. 1996, Ch. 872.)

65040.11. Submittal to agency

The "State Clearinghouse" shall submit such information acquired by it pursuant to the application of the Intergovernmental Cooperation Act of 1968 (P.L. 90-577) to an agency designated for that purpose by concurrent resolution of the Legislature.

(Formerly Section 12036 of the Government Code; Amended and renumbered by Stats. 1996, Ch. 872.)

65040.12. Coordination of Environmental Justice Program

(a) The office shall be the coordinating agency in state government for environmental justice programs.

(b) The director shall do all of the following:

(1) Consult with the Secretaries of the California Environmental Protection Agency, the Resources Agency,*** and the Business, Transportation and Housing Agency, the Working Group on Environmental Justice established pursuant to Section 72002 of the Public Resources Code, any other appropriate state agencies, and all other interested members of the public and private sectors in this state.

(2) Coordinate the office's efforts and share information regarding environmental justice programs with the Council on Environmental Quality, the United States Environmental Protection Agency, the General Accounting Office, the Office of Management and Budget, and other federal agencies.

(3) Review and evaluate any information from federal agencies that is obtained as a result of their respective regulatory activities under federal Executive Order 12898, and from the Working Group on Environmental Justice established pursuant to Section 72002 of the Public Resources Code.

(c) When it adopts its next edition of the general plan guidelines pursuant to Section 65040.2, but in no case later than July 1, 2003, the office shall include guidelines for addressing environmental justice matters in city and county general plans. The office shall hold at least one public hearing prior to the release of any draft guidelines, and at least one public hearing after the release of the draft guidelines. The hearings may be held at the regular meetings of the Planning Advisory and Assistance Council.

(d) The guidelines developed by the office pursuant to subdivision (c) shall recommend provisions for general plans to do all of the following:

(1) Propose methods for planning for the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities.

(2) Propose methods for providing for the location, if any, of industrial facilities and uses that, even with the best available technology, will contain or produce material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety, in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings.

(3) Propose methods for providing for the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety.

(4) Propose methods for promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation.

(e) For the purposes of this section, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the development, adop-

tion, implementation, and enforcement of environmental laws, regulations, and policies.

(Added by Stats. 1999, Ch. 690; Amended by Stats. 2000, Ch. 728.; Amended by Stats. 2000, Ch. 690; Amended by Stats. 2001, Ch. 762, Amended by Stats. 2004, Ch. 225.)

Article 5. Statewide Environmental Goals and Policy Report

65041. Report required

The Governor shall prepare and thereafter shall cause to be maintained, regularly reviewed, and revised a comprehensive State Environmental Goals and Policy Report. In the preparation of the report, priority shall be given to the development of statewide land use policy, including the recommendations resulting from the land use planning and implementation program set forth in Section 65040.6, and including the recommendations of the Planning Advisory and Assistance Council established pursuant to subdivision (a) of Section 65040.6. The report shall contain, but not be limited to, the following:

(a) An overview, looking 20 to 30 years ahead, of state growth and development and a statement of approved state environmental goals and objectives, including those directed to land use, population growth and distribution, development, the conservation of natural resources, and air and water quality.

(b) Description of new and revised state policies, programs and other actions of the executive and legislative branches required to implement statewide environmental goals, including intermediate-range plans and actions directed to natural resources, human resources and transportation.

(c) On and after January 1, 2004, any revision to the report shall provide that the goals are consistent with the state planning priorities specified pursuant to Section 65041.1.

(Amended by Stats. 1976, Ch. 1386; Amended by Stats. 2002, Ch. 1016.)

65041.1. State planning priorities

The state planning priorities, which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities, shall be as follows:

(a) To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources.

(b) To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection.

(c) To encourage efficient development patterns by ensuring that any infrastructure associated with development, other than infill development, supports new development that does all of the following:

(1) Uses land efficiently.

(2) Is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b).

(3) Is located in an area appropriately planned for growth.

(4) Is served by adequate transportation and other essential utilities and services.

(5) Minimizes ongoing costs to taxpayers.

(Added by Stats. 2002, Ch. 1016; Amended by Stats. 2002, Ch. 1109.)

Note: Stats 2002, Ch. 1109, also reads: Nothing in Section 65041.1 of the Government Code is intended or shall be construed to affect the implementation of the CALFED Bay-Delta Program.

65042. Cooperation with OPR

Every officer, agency, department, or instrumentality of state government shall do all of the following:

(a) Cooperate in the preparation and maintenance of the State Environmental Goals and Policy Report.

(b) By January 1, 2005, ensure that their entity's functional plan is consistent with the state planning priorities specified pursuant to Section 65041.1 and annually demonstrate to the office, and to the Department of Finance when requesting infrastructure pursuant to subdivision (a) of Section 13102, how the plans are consistent with those priorities.

(c) Comply with any request for advice, assistance, information or other material.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025; Amended by Stats. 2002, Ch. 1016.)

65043. Public participation

The maximum public understanding and response to alternative statewide environmental goals, policies and actions shall be sought in the preparation and maintenance of the State Environmental Goals and Policy Report. The Governor shall consider the desirability of periodic public hearings, the formation of citizen advisory groups and other appropriate actions to accomplish this purpose.

(Added by Stats. 1970, Ch. 1534.)

65044. Legislative advice

Upon completion of the State Environmental Goals and Policy Report, the Governor, prior to approval, shall seek the advice of the Legislature and for this purpose shall transmit the report to the Speaker of the Assembly and to the Senate Rules Committee.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65045. Legislative study and comment

The Legislature may assign the report for study to one or more standing committees, or to a joint committee and may hold hearings, solicit testimony and take other appropriate action to secure review of the report. Following such review, the Legislature may act by resolution to approve the environmental goals and policies proposed in the report as an indication of legislative intent; or state findings and conclusions and offer changes, deletions or modifications in the environmental goals and policies of the report, or both.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65046. Governor's approval

The Governor shall consider any advice offered by the Legislature as provided in Section 65045 and, upon his approval, shall transmit the report to the Legislature, to state agencies, departments and boards, appropriate federal agencies and to the chief executive officer of every city and county in the state.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65047. Purposes of report

Upon approval by the Governor, the State Environmental Goals and Policy Report shall serve to:

(a) Record approved goals, policies and decisions of state government related to statewide growth and development and the

preservation of environmental quality.

(b) Advise the Legislature of statutory action required to implement state environmental goals and objectives.

(c) Inform other levels of government and the public at large of approved state environmental goals and objectives and the proposed direction of state programs and actions in achieving them.

(d) Provide a clear framework of goals and objectives as a guide to the preparation and evaluation of state functional plans.

(e) Serve as a basis for judgments about the design, location and priority of major public programs, capital projects and other actions, including the allocation of state resources for environmental purposes through the budget and appropriation process.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025.)

65048. Regular revision

(a) The State Environmental Goals and Policy Report shall be revised, updated, and transmitted by the Governor to the Legislature every four years. Any revision on and after January 1, 2004, shall be consistent with the state planning priorities specified pursuant to Section 65041.1. The Governor, may at any time, inform and seek advice of the Legislature on proposed changes in state environmental goals, objectives, and policies.

(b) The Office of Planning and Research shall report to the Governor and the Legislative annually on or before January 1 regarding the implementation of the State Environmental Goals and Policy Report. The office shall give priority to the preparation of this report, but shall fund the report only out of its existing resources.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025; Amended by Stats. 2002, Ch. 424; Amended by Stats. 2002, Ch. 1016; Amended by Stats. 2003, Ch. 296.)

65049. Use with budget

Following approval of the State Environmental Goals and Policy Report as provided in Section 65046, the report shall serve as a guide for state expenditures. In transmitting the annual budget to the Legislature, information shall be included relating proposed expenditures to the achievement of statewide goals and objectives set forth in the report.

(Added by Stats. 1970, Ch. 1534. See note following Section 65025; Amended by Stats. 2002, Ch. 1016.)

Article 6. Local Base Reuse Entities

65050. Local base reuse entities

(a) As used in this article, the following phrases have the following meanings:

(1) "Military base" means a military base that is designated for closure or downward realignment pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (P.L. 100-526), the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510), or any subsequent closure or realignment approved by the President of the United States without objection by the Congress.

(2) "Effective date of a base closure" means the date a base closure decision becomes final under the terms specified by federal law. These decisions become final 45 legislative days after the date the federal Base Closure Commission submits its recommendations to the President, he or she approves those recommendations, and the Congress does not disapprove those recommendations or adjourns.

(b) It is not the intent of the Legislature in enacting this section to preempt local planning efforts or to supersede any existing or subsequent authority invested in the Defense Conversion Council, as established by Article 3.7 (commencing with Section 15346). It is the intent of this article to provide a means of conflict resolution.

(c) For the purposes of this article, a single local base reuse entity shall be recognized pursuant to the provisions of this section for each military base closure in this state.

(d) The following entities or their successors, including, but not limited to, separate airport or port authorities, are recognized as the single local reuse entity for the military bases listed:

Military Base	**Local Reuse Entity**
George Air Force Base	Victor Valley Economic Development Authority
Hamilton Army Base	City of Novato
Mather Air Force Base	County of Sacramento
Norton Air Force Base	Inland Valley Development Authority
Presidio Army Base	City and County of San Francisco
Salton Sea Navy Base	Imperial County
Castle Air Force Base	County of Merced
Hunters Point Naval Annex	City and County of San Francisco
Long Beach Naval Station	City of Long Beach
MCAS Tustin	City of Tustin
Sacramento Army Depot	City of Sacramento
MCAS El Toro	Local redevelopment authority recognized by the United States Department of Economic Adjustment
March Air Force Base	March Joint Powers Authority
Mare Island Naval Shipyard	City of Vallejo
Naval Training Center, San Diego	City of San Diego
NS Treasure Island	City and County of San Francisco
NAS Alameda, San Francisco Bay Public Works Center, Alameda Naval Aviation Depot	Alameda Reuse and Redevelopment Authority
Oakland Navy Hospital	City of Oakland
Fort Ord Army Base	Fort Ord Reuse Authority

Any military base reuse authority created pursuant to Title 7.86 (commencing with Section 67800).

(e) For any military base that is closed and not listed in subdivision (d), a single local reuse entity shall be recognized for the base by the state if resolutions acknowledging the entity as the single base reuse entity are adopted by the affected county board of supervisors and the city council of each city located wholly or partly within the boundaries of a military base or having a sphere of influence over any portion of the base and are forwarded to the Defense Conversion Council and the Office of Planning and Research within 60 days after the effective date of a base closure decision or by March 1, 1995, whichever date is later.

(f) If the necessary resolutions are not adopted within the time limit specified in subdivision (e), the Director of the Office of Planning and Research may select a mediator, from a list submitted by the Defense Conversion Council containing no fewer than seven recommendations, to reach agreement among the affected jurisdictions on a single local reuse entity. In selecting a mediator, the director shall appoint a neutral person or persons, with experience in local land use issues, to facilitate communication between the disputants and assist them in reaching a mutually acceptable agreement.

(g) As a last resort, and only if no recognition is made pursuant to the procedure specified in subdivisions (e) and (f) within 120 days after a base closure decision has become final or within 120 days after the date on which this section becomes operative, whichever date is later, the Defense Conversion Council, created pursuant to Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2, shall hold public hearings and recognize a single local base reuse entity for each closing base for which agreement is reached among the local jurisdictions with responsibility for complying with Chapter 3 (commencing with Section 65100) and Chapter 4 (commencing with Section 65800) on the base, or recommend legislation or action by the local agency formation commission if necessary to implement a proposed recognition.

(h) In recognizing a single local reuse entity pursuant to this section, preference shall be given to existing entities and entities with responsibility for complying with Chapter 3 (commencing with Section 65100) and Chapter 4 (commencing with Section 65800).

(i) Any recognition of a single local reuse entity made pursuant to subdivision (e), (f), or (g) shall be submitted by the Director of the Office of Planning and Research to the Governor, the Legislature, and the United States Department of Defense.

(Added by Stats. 1994, Ch. 1261; Amended by Stats. 1996, Ch. 546.)

65051. Single local reuse authority

The single local base reuse authority shall be recognized by all state agencies as the single base reuse planning authority for the base. The state shall encourage the federal government and other local jurisdictions to recognize

similarly the authorities designated pursuant to Section 65050 for the purposes of reuse planning and property transfers pursuant to Title XXIX (commencing with Section 2901) of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 103-160).

(Added by Stats. 1994, Ch. 1261.)

65051.5. School facilities

If the City of Tustin, the Tustin Community Redevelopment Agency, or any agency or political subdivision of either, intends to or does acquire title to any real property that lies within the boundaries of the former Marine Corps Air Station-Tustin, then notwithstanding any other provision of law, including Chapter 4.9 (commencing with Section 65995), which the Legislature hereby finds and declares shall not relieve the City of Tustin or the Tustin Community Redevelopment Agency of their duties under Division 13 (commencing with Section 21000) of the Public Resources Code to fully mitigate all adverse environmental effects associated with the buildout of the Reuse Plan for MCAS-Tustin by designating adequate school sites at the former base to alleviate impacts on the Santa Ana Unified School District and the Rancho Santiago Community College District, neither the City of Tustin, nor the Tustin Community Redevelopment Agency, and none of their respective agencies and political subdivisions, may grant or issue any land use or other approvals, in the form of any general plan amendments, specific plans, zoning ordinances, redevelopment plans, development agreements, subdivision maps, or other development permits or entitlements, to allow any persons or entities to develop any commercial, residential, or other land uses on all or any portion of any real property at the Marine Corps Air Station-Tustin that the City of Tustin, the Tustin Community Redevelopment Agency, or any agency or political subdivision of either, intends to or does acquire from any source, unless those approvals require, as conditions of approval and mitigation measures for allowing the development of those land uses, the conveyance, or the irrevocable offer to dedicate, without charge, to the Santa Ana Unified School District and the Rancho Santiago Community College District, for purposes of constructing and operating a K-14 facility, (a) fee title to a 100-acre parcel of contiguous land situated within that portion of the Marine Corps Air Station-Tustin that falls within the existing boundaries of the Santa Ana Unified School District and the Rancho Santiago Community College District and includes all or some portions of the real property referred to as Parcels 4, 5, 6, 7, 8, and 14 as shown on Figure 2-3 of the approved Reuse Plan for the Marine Corps Air Station-Tustin, or (b) fee title to a portion of the Marine Corps Air Station-Tustin that consists of a portion of land that is approved in writing by the Santa Ana Unified School District and the Rancho Santiago Community College District and that does not include any property designated in the Marine Corps Air Station-Tustin Base Reuse Plan for any other public entity or nonprofit organization, including, without limitation, the County of Orange, the Orange County Sheriff-Coroner, and the Orange County Rescue Mission, but excluding the South Orange County Community College District. Those conditions of approval and mitigation measures shall require that the conveyance or offer to dedicate that 100-acre parcel to those districts shall be made within 12 months of the date on which the City of Tustin, the Tustin Community Redevelopment Agency, or any agency or political subdivision of either, first acquires that property from any source. The requirements of this section shall be deemed satisfied upon the conveyance of the property, described in (a) or (b), to the Santa Ana Unified School District and the Rancho Santiago Community College District. Prior to conveyance of this property, the Santa Ana Unified School District and the Rancho Santiago Community College District shall agree upon a legal description of the property. Notwithstanding any other provision of law, for purposes of Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure, use of land for classroom facilities, including, but not limited to, educational or training programs, by the Santa Ana Unified School District or the Rancho Santiago Community College District shall be irrebuttably presumed to be a more necessary public use than any other use at Marine Corps Air Station-Tustin. This section shall apply retroactively to all land use or other approvals relating to the Marine Corps Air Station-Tustin that are granted or issued by the City of Tustin, the Tustin Community Redevelopment Agency, or any agency or political subdivision of either, on or after January 1, 2001. Any such land use or other approvals granted or issued by any of these entities that do not comply with this section shall be invalid and of no force or effect.

(Added by Stats. 2001, Ch. 123.)

65052. Federal and state benefits

All state agencies shall consult with the affected single local reuse authority recognized pursuant to Section 65050 prior to submitting any public benefit conveyance requests to the federal government. The single local reuse entity is the only entity that is eligible for the following state benefits for use on the base, unless the entity notifies the relevant state agency that a city or county having jurisdiction over a portion of the base shall be eligible for the state benefit.

(a) State grants for base reuse planning.

(b) Local Area Military Base Recovery Act (LAMBRA) designation.

(c) Air emissions reduction credits for base property, as permitted by law.

(d) Targeted permit assistance pursuant to Chapter 11 (commencing with Section 15399.50) of Part 6.7 of Division 3 of Title 2.

(e) Consultation on toxic cleanup priorities.

(Added by Stats. 1994, Ch. 1261.)

65053. Duration of article

This article shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

(Added by Stats. 1994, Ch. 1261; Amended by Stats. 2000, Ch. 769)

Article 6.5. Single Local Retention Entities

65053.5. Single local base retention entity

(a) As used in this article, the following terms have the following meaning:

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

(2) "Affected local *** **government**" means any county or city **identified as** located wholly or partly within the boundaries of a military *** **installation or as** having a sphere of influence over any portion of the *** **installation** with responsibility for local zoning and planning decisions.

(b) The Legislature hereby finds and declares *** **all** of the following:

(1) Because of the tremendous economic impact that military *** **installations** have on the state, it is in the best interest of the state to facilitate their retention.

(2) It is the intent of the Legislature to encourage cooperation *** **among** affected local **governments** in **their** efforts to retain military **installations** in this state *** **by authorizing the creation of a joint powers authority pursuant to this section.**

(3) The Legislature also ***** encourages** affected local **governments to engage other community-based organizations in their** retention activities ***.

(c) For the purposes of this article, a local retention **authority** shall be recognized for each **active** military *** **installation** in this state.

(d) A list of *** **retention authorities** or their successors, including, but not limited to, separate airport or port authorities recognized as the local retention **authority** for the military **installations**, shall be maintained by the *** **Office of Military and Aerospace Support created pursuant to Section 13998.2. If multiple affected local governments are identified for a military installation as described in paragraph (2) of subdivision (a), those affected** counties and cities may ***, by resolution, **designate an existing joint powers authority or establish** a joint powers authority for the purposes of this article pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 ***.

(e) The state shall recognize a local retention **authority** for each active military *** **installation** if resolutions acknowledging the **authority as** the local retention *** **authority** are adopted by **all** county boards of supervisors and city *** **councils identified as described in *** paragraph (2) of subdivision (a) and are forwarded to the Office of Military and Aerospace Support on or before October 1, 2004.** If prior to January 1, *** **2004**, a local *** **government** was awarded grant moneys pursuant to **any predecessor to** Section *** 13998.8 for a **specific military installation and qualifies as an affected local government as described in paragraph (2) of subdivision (a),** the recipient *** **local government** shall be recognized by the state as the *** local retention **authority** unless resolutions acknowledging a **different *** authority are** adopted by *** **all** county *** **boards** of supervisors and city **councils *** identified as described in paragraph (2) of subdivision (a), and are forwarded to the Office of Military and Aerospace Support.**

(f) If the necessary resolutions are not adopted within the time limit specified in subdivision (e), the *** **Office of Military and *** Aerospace Support** shall *** **recognize a** local retention *** **authority** for each military *** **installation.**

(Added by Stats. 2001, Ch. 612; Amended by Stats. 2004, Ch. 907.)

65053.6. Local Base Retention Planning Authority

The *** local *** retention authority shall be recognized by all state agencies as the *** **local** retention planning authority for the *** **military installation**. The state shall encourage the federal government and other local jurisdictions to recognize similarly the authorities designated pursuant to Section 65053.5 for the purposes of retention activities.

(Added by Stats. 2001, Ch. 612; Amended by Stats. 2004, Ch. 907.)

65053.7. Duration of article

This article shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

(Added by Stats. 2001, Ch. 612.)

Article 7. California Small Business Advocate

65054. Office of Small Business Advocate

(a) The Legislature finds and declares that it is in the public interest to aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order

to preserve free competitive enterprise and maintain a healthy state economy.

(b) In order to advocate the causes of small business and to provide small businesses with the information they need to survive in the marketplace, there is created within the Office of Planning and Research the Office of Small Business Advocate.

(c) Post on its Internet website the name and telephone number of the small business liaison designated pursuant to Chapter 3.7 (commencing with Section 15379.50) of Part 6.7.

(Added by Stats. 2000, Ch. 1059.)

65054.1. Definitions

The following definitions apply to Sections 15334.5 to 15334.8, inclusive, unless otherwise indicated:

(a) "Advocate" means the California Small Business Advocate who is also the Director of the Office of Small Business Advocate.

(b) "Director" means the Director of the Office of Small Business Advocate.

(c) "Office" means the Office of Small Business Advocate.

(Added by Stats. 2000. Ch. 1059.)

65054.3. Director of the Office of Small Business Advocate

(a) The Director of the Office of Small Business Advocate shall be appointed by, and shall serve at the pleasure of, the Governor.

(b) The Governor shall appoint the employees that are needed to accomplish the purposes of Section 65054, this section, and Section 65054.4.

(c) The duties and functions of the advocate shall include all of the following:

(1) Serve as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations which affect small businesses.

(2) Represent the views and interests of small businesses before other state agencies whose policies and activities may affect small business.

(3) Enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by state government which are of benefit to small businesses, and information on how small businesses can participate in, or make use of, those programs and services.

(4) Issue a report every two years evaluating the efforts of state agencies and, where appropriate, specific departments that significantly regulate small businesses to assist minority and other small business enterprises, and making recommendations that may be appropriate to assist the development and strengthening of minority and other small business enterprises.

(5) Consult with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest.

(6) Determine the desirability of developing a set of rational, objective criteria to be used to define small business, and to develop that criteria, if appropriate.

(7) Seek the assistance and cooperation of all state agencies and departments providing services to, or affecting, small business, including the small business liaison designated pursuant to Section 15379.50, to ensure coordination of state efforts.

(8) Receive and respond to complaints from small businesses concerning the actions of state agencies and the operative effects of state laws and regulations adversely affecting those businesses.

(9) Counsel small businesses on how to resolve questions and problems concerning the relationship of small business to state government.

(10) Maintain, publicize, and distribute an annual list of persons serving as small business ombudsmen throughout state government.

(Added by Stats. 2000, Ch. 1059.)

65054.4. Reports and documents furnished to advocate

(a) Each agency of the state shall furnish to the advocate the reports, documents, and information that are public records and that the director deems necessary to carry out his or her functions under this chapter.

(b) The advocate shall prepare and submit a written annual report to the Governor and to the Legislature that describes the activities and recommendations of the office.

(c) The advocate may establish a centralized interactive telephone referral system to assist small and minority businesses in their operations, including governmental requirements, such as taxation, accounting, and pollution control, and to provide information concerning the agency from which more specialized assistance may be obtained. The advocate may establish and advertise a telephone number to serve this centralized interactive telephone referral system.

(Added by Stats. 2000, Ch. 1059.)

65054.5. Governor's Small Business Reform Task Force

(a) There is hereby created a Governor's Small Business Reform Task Force. The task force shall be chaired by the Director of the Office of Small Business Advocate and shall include representatives appointed by the Governor from the California Small Business Association, other small business

associations, and agency secretaries or their designees from state agencies heavily involved in small business regulation.

(b) The task force shall identify problems and ideas from the small business community concerning the regulation, communication, and assistance of state government with small business. The task force shall create a website to solicit public input, as well as, conduct at least four public hearings around the state to seek advice and recommendations.

(c) The task force shall conduct a study to consider the problems encountered by small businesses working with different levels of government, different offices in state and local government, and multiple jurisdictions, especially in the context of applying for and obtaining required permits and licenses. The study may include participation by the California League of Cities, county boards of supervisors, and small business representatives.

(d) The task force shall prepare and submit a report on or before May 1, 2002, to the Governor and the budget committee of each house of the Legislature with a discussion of its findings and recommendations.

(Added by Stats. 2000, Ch. 1059.)

Chapter 1.9. Rural Economic Development

(Repealed by Stats. 1999, Ch. 597).

Chapter 2. Regional Planning Districts

Article 1. General Provisions and Definitions

65060. Regional planning law

This chapter may be cited and shall be known as the Regional Planning Law.

(Added by Stats. 1963, Ch. 1811.)

65060.1. Policy

The Legislature finds and declares that the people of California have a fundamental interest in the orderly development of the urban regions of the State in which large segments of the State's population are concentrated.

(Added by Stats. 1963, Ch. 1811.)

65060.2. Regional planning rationale

The Legislature further finds and declares:

(a) That the State has a positive interest in the preparation and maintenance of a long-term, general plan for the physical development of each of the State's urban areas that can serve as a guide to the affected local governmental units within such areas and to the state departments and divisions that are charged with constructing state-financed public works within such urban areas.

(b) That continuing growth of the State, and particularly urban areas within the State, present problems which are not confined to the boundaries of any single county or city.

(c) That the planning activities of counties and cities can be strengthened and more effectively performed when conducted in relation to studies and planning of an urban regional character.

(d) That in order to assure, insofar as possible, the orderly and harmonious development of the urban areas of the State, and to provide for the needs of future generations, it is necessary to develop a means of studying, forecasting, and planning for the physical growth and development of these areas.

(Added by Stats. 1963, Ch. 1811.)

65060.3. District

"District," as used in this chapter, means a district created and operating under this chapter.

(Added by Stats. 1963, Ch. 1811.)

65060.4. Board

"Board," as used in this chapter, means the regional planning board.

(Added by Stats. 1963, Ch. 1811.)

65060.5. Official census

"Official census," as used in this chapter, means any decennial or special federal census, or an official estimate of the State Department of Finance.

(Added by Stats. 1963, Ch. 1811.)

65060.6. Region

"Region," as used in this chapter, means the area included within a district.

(Added by Stats. 1963, Ch. 1811.)

65060.7. Regional plan

"Regional plan," as used in this chapter, means a comprehensive, long-term general plan for the physical development of the region, and any land outside its boundaries which in the board's judgment bears relation to its planning. The regional plan shall consist of a text and a map or maps, and such recommendations of the regional planning board concerning current or future problems as may in its opinion affect the region as a whole and are proper for inclusion in the regional plan.

(Added by Stats. 1963, Ch. 1811.)

Article 2. Creation of Districts

65060.8. Advisory effect of regional plan

A regional plan shall be advisory only and shall not have any binding effect on the counties and cities located within the boundaries of the regional planning district for which the regional plan is adopted.

(Added by Stats. 1963, Ch. 1811.)

65061. Creation

There is hereby created a regional planning district in each of the regional areas designated by the Council on Intergovernmental Relations for the purposes of this chapter after a public hearing within the region. No county, city and county, or city shall be divided in determining the boundaries of a regional planning district.

(Amended by Stats. 1974, Ch. 544.)

65061.2. Boundaries

The boundaries of every regional planning district shall be coextensive with the boundaries of the region within which it is situated.

(Added by Stats. 1963, Ch. 1811.)

65061.3. Authority to act

A district shall not transact any business or exercise any of its powers under this chapter unless the legislative bodies of two-thirds of the counties and two-thirds of the cities, located within the boundaries of the district, by resolution declare that there is a need for such a district to function in the region.

(Added by Stats. 1963, Ch. 1811.)

65061.4. Conflict with direct planning

A district shall not transact any business or exercise any of its powers under this chapter if two-thirds of the cities and counties within the district are participating in regional planning pursuant to a joint powers agreement under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(Added by Stats. 1963, Ch. 1811.)

Article 3. City selection committees

65062. Appointment of city members

The city selection committee organized in each county within a district pursuant to Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1 of Title 5 shall meet within 60 days after the date upon which the district becomes operative for the purpose of making the first appointments to the district board as prescribed in Sections 65063.1 and 65063.3. Succeeding appointments to the board shall be made by such city selection committees as required by this chapter.

(Repealed and added by Stats. 1972, Ch. 1232.)

Article 4. Governing Body

65063. Regional planning board

The Regional Planning Board shall be the governing body of the district, and shall be selected as provided in this article.

(Repealed and added by Stats. 1963, Ch. 1811.)

65063.1. Membership

The number of members of the board to which each county is entitled shall be determined as follows:

(a) Each county having, within the district, a population of 350,000 or less shall have two (2) members of the regional planning board, one (1) appointed by the board of supervisors and one (1) appointed by the city selection committee.

(b) Each county having, within the district, a population of more than 350,000 and not more than 600,000 shall have four (4) members of the regional planning board. Two members shall be appointed by the board of supervisors and two (2) members shall be appointed by the city selection committee.

(c) Each county having, within the district, a population of more than 600,000 shall have six (6) members of the regional planning board. Three (3) members shall be appointed by the board of supervisors and three (3) members shall be appointed by the city selection committee.

The population figures as used herein shall be determined by the latest official census.

(Repealed and added by Stats. 1963, Ch. 1811.)

65063.2. Appointment of county members

Within 60 days after the date the district first becomes operative, the board of supervisors of each county in the district shall appoint as members of the regional planning board of said district the number authorized by Section 65063.1.

The members of the regional planning board appointed by boards of supervisors shall be members of said boards of supervisors.

(Repealed and added by Stats. 1963, Ch. 1811.)

65063.3. City members

The members of the regional planning board appointed by the city selection committee shall be mayors or members of the city councils of the cities.

(Repealed and added by Stats. 1963, Ch. 1811.)

65063.4. Dual offices

A member of the board of supervisors of any county, or a mayor or member of a city council of any city within any county, in the district may be appointed to and serve contemporaneously as a member of the regional planning board.

(Repealed and added by Stats. 1963, Ch. 1811.)

65063.5. Public members

After the members of the regional planning board to be appointed by the city selection committees and the county boards of supervisors have been designated, they shall meet and appoint one citizen-at-large member for each county included in the district who will be full members of the regional planning board. These citizens-at-large members shall be selected from among persons living within the district who have made outstanding contributions to, or have demonstrated an active interest in, matters of regional concern.

(Repealed and added by Stats. 1963, Ch. 1811.)

65063.6. Terms of office

The term of office of the member shall be four years and until the appointment and qualification of his successor; provided that the first members of the board shall classify themselves by lot within the city and county group and the citizen-at-large group so that approximately one-third (1/3) of the members of each group shall hold office for two (2) years, approximately one-third (1/3) shall hold office for three (3) years and approximately one-third (1/3) shall hold office for four (4) years. The power which originally appointed a member whose term has expired shall appoint his successor for a full term of four (4) years. Any member may be removed by the power appointing him.

(Added by Stats. 1963, Ch. 1811.)

65063.7. Loss of office

No supervisor, mayor or city councilman shall hold office on the regional planning board after ceasing to hold the office of supervisor, mayor or city councilman, respectively, and his membership on the board shall thereafter be considered vacant, except that any mayor who continues to hold office as a city councilman, or city councilman who continues to hold office as mayor, shall not be considered to have ceased to hold office under this section.

(Added by Stats. 1963, Ch. 1811.)

65063.8. Vacancies

Any vacancy on the regional planning board shall be filled for the unexpired term by appointment by the power which originally appointed the member whose position had become vacant.

(Added by Stats. 1963, Ch. 1811.)

65064. Employment of members

No person while serving as a member of the regional planning board shall be eligible to be appointed to any salaried office or employment in the service of the district nor shall he become eligible for such appointment within one (1) year after he has ceased to be a member.

(Added by Stats. 1963, Ch. 1811.)

65064.1. Governing power

The board is the governing body of the district and shall exercise all of the powers of the district, except as otherwise provided.

(Added by Stats. 1963, Ch. 1811.)

65064.2. Quorum

A majority of the members of the board constitutes a quorum for the transaction of business and may act for the board.

(Added by Stats. 1963, Ch. 1811.)

65064.3. Executive committee

The board may elect a chairman and other officers as it deems necessary from among its own members.

(Added by Stats. 1963, Ch. 1811.)

65064.4. Appointment of executive committee

The board may appoint an executive committee, consisting of the chairman of the board, and not more than eight or less than four other members of the board, and such executive committee may carry on the administrative and executive functions of the board between full meetings.

(Added by Stats. 1963, Ch. 1811.)

65064.5. Meetings

The board shall meet at least six times in each year, and may call additional meetings at its own discretion, or, during periods between meetings, at the discretion of the chairman or of a majority of the executive committee.

(Added by Stats. 1963, Ch. 1811.)

65064.6. Payments

Each member of the board shall receive the actual and necessary expenses incurred by him in the performance of his duties, plus a compensation of twenty dollars ($20) for each day attending the meetings of the board, but such compensation shall not exceed one thousand dollars ($1,000) in any one year.

(Added by Stats. 1963, Ch. 1811.)

65064.7. Committees

The provisions for the executive committee set forth in this article shall not be construed to limit the board or the

executive committee from setting up any other committees or groups which it may see fit.

(Added by Stats. 1963, Ch. 1811.)

Article 5. Powers and Duties of District

65065. General powers

The district shall have power to establish and maintain such offices as are judged best to facilitate the accomplishment of the purposes of the district, and to take by grant, purchase, devise, or gift, or to lease or rent, and to hold, use, and enjoy any property necessary or convenient to the establishment, maintenance, or operation of such offices, and to exchange or dispose of such property, except that the district shall not purchase real property.

(Added by Stats. 1963, Ch. 1811.)

65065.1. Functions

The district may perform the following four major functions:

(a) The district may prepare, maintain, and regularly review and revise, a regional plan as defined in Section 65060.7, and may, after at least two public hearings in different parts of the region and such other public meetings as may appear to it advisable, adopt such plan as the regional plan for the region. In preparing, adopting, maintaining, reviewing and revising the regional plan, the board shall take account of and seek to harmonize, within the framework of the needs of the regional community as a whole, the master or general plans of cities and counties within the region, and the plans and planning activities of state, federal and other public and private agencies, organizations and instrumentalities within the region and adjacent to it.

(b) The district, acting in its own judgment, may make, publish, or assist in making or publishing, studies or investigations of the resources of the region and of existing or emerging problems of any nature related to the physical growth and development, living conditions, beauty, or prosperity of the region, or any part thereof.

(c) The district may, acting in its own judgment, offer its facilities and services to assist in the solution of problems related to physical development involving two or more governing bodies, planning commissions, agencies, organizations or instrumentalities, public or private; and may otherwise participate in any program or activity intended to seek or find common or co-operative solutions to problems related to physical development or the integration of policies related to physical development and conservation within the region, or in any part thereof.

(Added by Stats. 1963, Ch. 1811.)

65065.2. Fiscal powers

The district shall have power to contract or otherwise participate in, and to accept grants, funds, or services from the federal government, its agencies or instrumentalities in connection with any federal program judged by the board to be relevant to its functions; and the board shall similarly have the power to contract or otherwise participate in, and to accept grants, funds, or services from the State, or any agency or instrumentality thereof, or any city, county, civic organization or private person in connection with any program judged by the board to be relevant to its function.

(Added by Stats. 1963, Ch. 1811.)

65065.3. Contracts

The district shall have power to contract with any person, firm, association, or corporation, or to contract for any other types of services judged by the board to be necessary or convenient for carrying out the purposes of the district.

(Added by Stats. 1963, Ch. 1811.)

65065.4. Personnel

The board, acting with the advice of the director, shall determine the compensation, number, and general duties of personnel employed by the district.

(Added by Stats. 1963, Ch. 1811.)

Article 6. Regional Planning Director

65066. Director

The board shall appoint a regional planning director.

(Repealed and added by Stats. 1963, Ch. 1811.)

65066.1. Duties

The regional planning director shall be the chief administrative and planning officer and technical adviser of the board. The director shall, subject to the supervision of the board:

(a) Direct and administer the preparation, maintenance, regular review and revision of the regional plan, and administer and execute all of the other functions and duties of the district set forth in this chapter.

(b) Appoint and remove personnel of the district.

(c) Serve, or designate personnel to serve, as executive secretary to the board.

(d) Perform such other duties and exercise such other powers as the board may delegate to him.

(Added by Stats. 1963, Ch. 1811.)

Article 7. Coordination of Local Planning

65067. Filling local plans

To facilitate effective and harmonious planning and development of the region, all county and city legislative bodies, and all county, city or other planning agencies within the district shall file with the board, for its information, all county or city master or general plans, the elements of such master or general plans, and any other published development plans, zoning ordinances, official maps, subdivision regulations, or amendments or revisions thereof. All agencies, organizations and instrumentalities of the State within the region shall file with the board, for its information, all public plans, maps, reports and other documents which are related to regional planning or physical development.

(Repealed and added by Stats. 1963, Ch. 1811.)

65067.1. Other plans

To facilitate further the effective and harmonious planning of the district, the board may request from the federal government, its agencies and instrumentalities, and from private organizations, agencies, or individuals, copies of those plans, maps, reports and other documents which are related to regional planning.

(Added by Stats. 1963, Ch. 1811.)

65067.2. Advice on plans

County or city legislative bodies, planning commissions, and all other county or city planning agencies within the district, and agencies, organizations and instrumentalities of the state and federal government within the district, and private planning consultants acting within the district, may submit proposals for any master or general plan, the elements of any master or general plan, any other plan, map, report, capital improvement program, proposed bond issue, or any other report or document or amendments or revisions thereto, prior to their adoption, to the regional planning board for its advice thereon, which advice the board shall give whenever in its opinion it is reasonably possible for it to do so. Such advice shall consist of a report as to the conformance of such proposals to the regional plan, the possible effect of such proposals on other portions of the region, and any other matters which in the judgment of the board may be of assistance to the body requesting such advice.

(Added by Stats. 1963, Ch. 1811.)

65067.3. Annual report

In addition to the other reports, studies and documents provided in this chapter, the board shall submit to the legislative bodies and to the planning agencies of all of the counties, cities, and to other governmental agencies and instrumentalities, official representatives, other agencies, organizations and individuals, public or private, designated by the board, an annual report on or before the first day of March. The annual report shall contain a report on the status of the regional plan, and descriptions of those sections of the regional plan which have been amended, revised, added or deleted during the year, and a brief report of other major activities.

(Added by Stats. 1963, Ch. 1811.)

Article 8. Financial provisions

65069. County loans

Pursuant to concurrent resolution adopted by the boards of supervisors of the several counties in which the district functions, such counties may lend to the district out of available funds an amount not to exceed seventy-five thousand dollars ($75,000) in order to enable the district to perform its functions and meet its obligations. The loan shall be repaid out of the first tax revenues of the district and shall be repaid out of such revenues prior to the payment of any other obligations of the district.

(Repealed and added by Stats. 1963, Ch. 1811.)

65069.1. Annual budget

Before the 15th day of June of each year the board shall estimate and determine the amount of money required by the district for purposes of the district during the ensuing fiscal year and shall apportion this amount to the counties included within the district, one-half according to the relative value of all the property in each county within the district as determined by the board and one-half in the proportion that the population of each county bears to the total population of the district. For the purposes of this section the board shall base its determination of the population of the several counties on the latest official census information available to it. The total amount of money required by the district for district purposes during any one fiscal year shall not exceed one-half cent ($0.005) on each one hundred dollars ($100) of the assessed valuation of all the property included in the district.

(Repealed and added by Stats. 1963, Ch. 1811.)

65069.2. Annual revenues

On or before the 15th day of June of each year, the board shall inform the boards of supervisors of each county of the amount apportioned to the county. Each board of supervisors shall levy an ad valorem tax on the taxable property within the county included within the district sufficient to secure the amount so apportioned to it and such taxes shall be levied and collected together with, and not separately from, the

taxes for county purposes and paid to the treasurer of each of the counties to the credit of the district.

The board of supervisors, in lieu of levying a tax to secure the amount so apportioned, and if funds are available in the county general fund, may require such amount to be paid by the county treasurer from the general fund of the county to the district treasury.

In lieu of levying a tax and in lieu of using money in the county general fund to secure all or part of the amount so apportioned to the county, the board of supervisors may, with the consent of the board, contribute to the district services of county officers or employees.

(Repealed and added by Stats. 1963, Ch. 1811.)

65069.3. Tax liens

Taxes levied by the board of supervisors for the benefit of the district shall be a lien upon all property within such county lying within the district and shall have the same force and effect as other liens for taxes. Their collection may be enforced in the same manner as liens for county taxes are enforced.

(Repealed and added by Stats. 1963, Ch. 1811.)

65069.4. County treasurers

The treasurers of the several counties within the district shall pay into the district treasury all funds held by them to the credit of the district.

(Repealed and added by Stats. 1963, Ch. 1811.)

65069.5. Budget procedures

The district board shall, in carrying out the provisions of this article, comply as nearly as possible with the provisions of Chapter 1 (commencing with Section 29000) of Division 3 of Title 3 of the Government Code.

(Repealed and added by Stats. 1963, Ch. 1811.)

Chapter 2.3. Long-Range Transportation Planning

65070. Long-range transportation planning

(a) The Legislature finds and declares, consistent with Section 65088, that it is in the interest of the State of California to have an integrated state and regional transportation planning process. It further finds that federal law mandates the development of a state and regional long-range transportation plan as a prerequisite for receipt of federal transportation funds. It is the intent of the Legislature that the preparation of these plans shall be a cooperative process involving local and regional government, transit operators, congestion management agencies, and the goods movement industry and that the process be a continuation of activities performed by each entity and be performed without any additional cost.

(b) The Legislature further finds and declares that the last attempt to prepare a California Transportation Plan occurred between 1973 and 1977 and resulted in the expenditure of over eighty million dollars ($80,000,000) in public funds and did not produce a usable document. As a consequence of that, the Legislature delegated responsibility for long-range transportation planning to the regional planning agencies and adopted a seven-year programming cycle instead of a longer range planning process for the state.

(c) The Legislature further finds and declares that the Transportation Blueprint for the Twenty-First Century (Chapters 105 and 106 of the Statutes of 1989) is a long-range state transportation plan that includes a financial plan and a continuing planning process through the preparation of congestion management plans and regional transportation plans, and identifies major interregional road networks and passenger rail corridors for the state.

(Added by Stats. 1992, Ch. 1177.)

65071. *(Repealed by Stats. 1997, Ch. 622.)*

65072. Plan contents

The California Transportation Plan shall include all of the following:

(a) A policy element that describes the state's transportation policies and system performance objectives. These policies and objectives shall be consistent with legislative intent described in Sections 14000, 14000.5, and 65088. For the plan to be submitted in December 1993, the policy element shall address any opportunities for changes or additions to state legislative policy direction or statute.

(b) A strategies element that shall incorporate the broad system concepts and strategies synthesized from the adopted regional transportation plans prepared pursuant to Section 65080. The California Transportation Plan shall not be project specific.

(c) A recommendations element that includes economic forecasts and recommendations to the Legislature and the Governor to achieve the plan's broad system concepts, strategies, and performance objectives.

(Added by Stats. 1992, Ch. 1177.)

65073. Submittal of plan

The department shall submit the California Transportation Plan to the Governor by December 1, 1993. The department shall make a draft of its proposed plan available to the Legislature, the commission, and the regional transportation planning agencies for review and comment. The commission may present the results of its review and comment to the Legislature and the Governor. The Legislature intends to hold public hearings and submit its

comments to the department and the Governor by conducting joint hearings of the Transportation Committees of the Senate and Assembly. The Governor shall adopt the plan and submit the plan to the Legislature and the Secretary of the United States Department of Transportation.

(Added by Stats. 1992, Ch 1177.)

65074. Transportation improvement program

The Department of Transportation shall prepare, in cooperation with the metropolitan planning agencies, a federal transportation improvement program in accordance with subsection (f) of Section 135 of Title 23 of the United States Code. The federal transportation improvement program shall be submitted by the department to the United States Secretary of Transportation, by October 1 of each even-numbered year.

(Amended by Stats. 1992, Ch. 1177.)

Chapter 2.5 Transportation Planning and Programming

(See note following Section)

65080. Regional transportation plans and programs

(a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:

(A) Measures of mobility and traffic congestion, including, but not limited to, vehicle hours of delay per capita and vehicle miles traveled per capita.

(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.

(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:

(i) Single occupant vehicle.

(ii) Multiple occupant vehicle or carpool.

(iii) Public transit including commuter rail and intercity rail.

(iv) Walking.

(v) Bicycling.

(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).

(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket.

(F) The requirements of this section may be met utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(G) For the region defined in Section 66502, the indicators specified in this paragraph shall be supplanted by the performance measurement criteria established pursuant to subdivision (e) of Section 66535, if that subdivision is added to the Government Code by Section 1 of Senate Bill 1995 of the 1999-2000 Regular Session.

(2) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element may describe all projects proposed for development during the 20-year life of the plan.

The action element shall consider congestion management programming activities carried out within the region.

(3) (A) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first five years of the financial element shall be based on the five-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new

sources of revenue, consistent with the policy element and action element.

(B) The financial element of transportation planning agencies with populations that exceed 200,000 persons may include a project cost breakdown for all projects proposed for development during the 20-year life of the plan that includes total expenditures and related percentages of total expenditures for all of the following:

(i) State highway expansion.

(ii) State highway rehabilitation, maintenance, and operations.

(iii) Local road and street expansion.

(iv) Local road and street rehabilitation, maintenance, and operation.

(v) Mass transit, commuter rail, and intercity rail expansion.

(vi) Mass transit, commuter rail, and intercity rail rehabilitation, maintenance, and operations.

(vii) Pedestrian and bicycle facilities.

(viii) Environmental enhancements and mitigation.

(ix) Research and planning.

(x) Other categories.

(c) Each transportation planning agency may also include other factors of local significance as an element of the regional transportation plan, including, but not limited to, issues of mobility for specific sectors of the community, including, but not limited to, senior citizens.

(d) Each transportation planning agency shall adopt and submit, every three years, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. The plan shall be consistent with federal planning and programming requirements. A transportation planning agency that does not contain an urbanized area may at its option adopt and submit a regional transportation plan once every four years beginning by September 1, 2001. Prior to adoption of the regional transportation plan, a public hearing shall be held, after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

(Amended by Stats. 1977, Ch. 1106; Amended by Stats. 1982, Ch. 681; Amended by Stats. 1987, Ch. 878; Amended by Stats. 1989, Ch. 106; Amended by Stats. 1992, Ch. 1177; Repealed and added by Stats. 1997, Ch. 622; Amended by Stats. 1999, Ch. 1007, Amended by Stats. 2000. Ch. 832; Stats. 2001, Ch. 115.)

Note: Stats. 1989, Ch. 106, also reads:

SEC. 1. This act shall be known and may be cited as the Katz-Kopp-Baker-Campbell Transportation Blueprint for the Twenty-First Century.

65080.1. Designation of transportation planning agency

Once preparation of a regional transportation plan has been commenced by or on behalf of a designated transportation planning agency, the Secretary of the Business, Transportation and Housing Agency shall not designate a new transportation planning agency pursuant to Section 29532 for all or any part of the geographic area served by the originally designated agency unless he or she first determines that redesignation will not result in the loss to California of any substantial amounts of federal funds.

(Added by Stats. 1974, Ch. 788; Amended by Stats. 1982, Ch. 681.)

65080.2. Transit development board

A transportation planning agency which has within its area of jurisdiction a transit development board established pursuant to Division 11 (commencing with Section 120000) of the Public Utilities Code shall include, in the regional transportation improvement program prepared pursuant to Section 65080, those elements of the transportation improvement program prepared by the transit development board pursuant to Section 120353 of the Public Utilities Code relating to funds made available to the transit development board for transportation purposes.

(Formerly 65080.1, Added by Stats. 1977, Ch. 1106; Amended and renumbered 65080.2 by Stats. 1978, Ch. 669.)

65080.3. Alternative planning scenario

(a) Each transportation planning agency with a population that exceeds 200,000 persons may prepare at least one "alternative planning scenario" for presentation to local officials, agency board members, and the public during the development of the triennial regional transportation plan and the hearing required under subdivision (c) of Section 65080.

(b) The alternative planning scenario shall accommodate the same amount of population growth as projected in the plan but shall be based on an alternative that attempts to reduce the growth in traffic congestion, make more efficient use of existing transportation infrastructure, and reduce the need for costly future public infrastructure.

(c) The alternative planning scenario shall be developed in collaboration with a broad range of public and private stakeholders, including local elected officials, city and county employees, relevant interest groups, and the general public. In developing the scenario, the agency shall consider all of the following:

(1) Increasing housing and commercial development around transit facilities and in close proximity to jobs and commercial activity centers.

(2) Encouraging public transit usage, ridesharing, walking, bicycling, and transportation demand management practices.

(3) Promoting a more efficient mix of current and future job sites, commercial activity centers, and housing opportunities.

(4) Promoting use of urban vacant land and "brownfield" redevelopment.

(5) An economic incentive program that may include measures such as transit vouchers and variable pricing for transportation.

(d) The planning scenario shall be included in a report evaluating all of the following:

(1) The amounts and locations of traffic congestion.

(2) Vehicle miles traveled and the resulting reduction in vehicle emissions.

(3) Estimated percentage share of trips made by each means of travel specified in subparagraph (C) of paragraph (1) of subdivision (b) of Section 65080.

(4) The costs of transportation improvements required to accommodate the population growth in accordance with the alternative scenario.

(5) The economic, social, environmental, regulatory, and institutional barriers to the scenario being achieved.

(e) If the adopted regional transportation plan already achieves one or more of the objectives set forth in subdivision (c), those objectives need not be discussed or evaluated in the alternative planning scenario.

(f) The alternative planning scenario and accompanying report shall not be adopted as part of the regional transportation plan, but it shall be distributed to cities and counties within the region and to other interested parties, and may be a basis for revisions to the transportation projects that will be included in the regional transportation plan.

(g) Nothing in this section grants transportation planning agencies any direct or indirect authority over local land use decisions.

(h) This section does not apply to a transportation plan adopted on or before September 1, 2001, proposed by a transportation planning agency with a population of less than 1,000,000 persons.

(Added by Stats. 2000, Ch. 832.)

65080.5. Regional transportation plans

(a) For each area for which a transportation planning agency is designated under subdivision (c) of Section 29532, or adopts a resolution pursuant to subdivision (c) of Section 65080, the Department of Transportation, in cooperation with the transportation planning agency, and subject to subdivision (e), shall prepare the regional transportation plan, and the updating thereto, for that area and submit it to the governing body or designated policy committee of the transportation planning agency for adoption. Prior to adoption, a public hearing shall be held, after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061. Prior to the adoption of the regional transportation improvement program by the transportation planning agency if it prepared the program, the transportation planning agency shall consider the relationship between the program and the adopted plan. The adopted plan and program, and the updating thereto, shall be submitted to the California Transportation Commission and the department pursuant to subdivision (b) of Section 65080.

(b) In the case of a transportation planning agency designated under subdivision (c) of Section 29532, the transportation planning agency may prepare the regional transportation plan for the area under its jurisdiction pursuant to this chapter, if the transportation planning agency, prior to July 1, 1978, adopts by resolution a declaration of intention to do so.

(c) In those areas that have a county transportation commission created pursuant to Section 130050 of the Public Utilities Code, the multicounty designated transportation planning agency, as defined in Section 130004 of that code, shall prepare the regional transportation plan and the regional transportation improvement program in consultation with the county transportation commissions.

(d) Any transportation planning agency which did not elect to prepare the initial regional transportation plan for the area under its jurisdiction, may prepare the updated plan if it adopts a resolution of intention to do so at least one year prior to the date when the updated plan is to be submitted to the California Transportation Commission.

(e) If the department prepares or updates a regional transportation improvement program or regional transportation plan, or both, pursuant to this section, the state-local share of funding the preparation or updating of the plan and program shall be calculated on the same basis as though the preparation or updating were to be performed by the transportation planning agency and funded under Sections 99311, 99313, and 99314 of the Public Utilities Code.

(Amended by Stats. 1977, Ch. 1106; Amended by Stats. 1982, Ch. 681.)

65081. *(Repealed by Stats. 1997, Ch. 622.)*

65081.1. Contents of plan

(a) After consultation with other regional and local transportation agencies, each transportation planning agency whose planning area includes a primary air carrier airport shall, in conjunction with its preparation of an updated regional transportation plan, include an airport ground access improvement program.

(b) The program shall address the development and extension of mass transit systems, including passenger rail service, major arterial and highway widening and extension projects, and any other ground access improvement projects the planning agency deems appropriate.

(c) Highest consideration shall be given to mass transit for airport access improvement projects in the program.

(d) If federal funds are not available to a transportation planning agency for the costs of preparing or updating an airport ground access improvement program, the agency may charge the operators of primary air carrier airports

within its planning area for the direct costs of preparing and updating the program. An airport operator against whom charges are imposed pursuant to this subdivision shall pay the amount of those charges to the transportation planning agency.

(Added by Stats. 1990, Ch. 878; Amended by Stats. 1997, Ch. 622.)

65081.3. Transportation corridors

(a) As a part of its adoption of the regional transportation plan, the designated county transportation commission, regional transportation planning agency, or the Metropolitan Transportation Commission may designate special corridors, which may include, but are not limited to, adopted state highway routes, which, in consultation with the Department of Transportation, cities, counties, and transit operators directly impacted by the corridor, are determined to be of statewide or regional priority for long-term right-of-way preservation.

(b) Prior to designating a corridor for priority acquisition, the regional transportation planning agency shall do all of the following:

(1) Establish geographic boundaries for the proposed corridor.

(2) Complete a traffic survey, including a preliminary recommendation for transportation modal split, which generally describes the traffic and air quality impacts of the proposed corridor.

(3) Consider the widest feasible range of possible transportation facilities that could be located in the corridor and the major environmental impacts they may cause to assist in making the corridor more environmentally sensitive and, in the long term, a more viable site for needed transportation improvements.

(c) A designated corridor of statewide or regional priority shall be specifically considered in the certified environmental impact report completed for the adopted regional transportation plan required by the California Environmental Quality Act, which shall include a review of the environmental impacts of the possible transportation facilities which may be located in the corridor. The environmental impact report shall include a survey within the corridor boundaries to determine if there exist any of the following:

(1) Rare or endangered plant or animal species.

(2) Historical or cultural sites of major significance.

(3) Wetlands, vernal pools, or other naturally occurring features.

(d) The regional transportation planning agency shall designate a corridor for priority acquisition only if, after a public hearing, it finds that the range of potential transportation facilities to be located in the corridor can be constructed in a manner which will avoid or mitigate significant environmental impacts or values identified in subdivision (c), consistent with the California Environmental Quality Act and the state and federal Endangered Species Acts.

(e) Notwithstanding any other provision of this section, a corridor of statewide or regional priority may be designated as part of the regional transportation plan only if it has previously been specifically defined in the plan required pursuant to Section 134 and is consistent with the plan required pursuant to Section 135 of Title 23 of the United States Code.

(Added by Stats. 1992, Ch. 745.)

65082. Five-Year Regional transportation improvement program

(a) **(1)** A **five**-year regional transportation improvement program shall be prepared, adopted, and submitted to the California Transportation Commission on or before *** December 15 of each odd-numbered year thereafter, updated every two years, pursuant to section 65080 and section 65080.5 and the guidelines adopted pursuant to section 14530.1, to include regional transportation improvement projects and programs proposed to be funded, in whole or in part, in the state transportation improvement program.

(2) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and be listed by relative priority, taking into account need, delivery milestone dates, *** and the availability of funding.

(b) Except for those counties that do not prepare a congestion management program pursuant to section 65088.3, congestion management programs adopted pursuant to section 65089 shall be incorporated into the regional transportation improvement program submitted to the commission by December 15 of each odd-numbered year.

(c) Local projects not included in a congestion management program shall not be included in the regional transportation improvement program. Projects and programs adopted pursuant to subdivision (a) shall be consistent with the capital improvement program adopted pursuant to paragraph (5) of subdivision (b) of section 65089, and the guidelines adopted pursuant to section 14530.1.

(d) Other projects may be included in the regional transportation improvement program if listed separately.

(e) Unless a county not containing urbanized areas of over 50,000 population notifies the Department of Transportation by July 1 that it intends to prepare a regional transportation improvement program for that county, the department shall, in consultation with the affected local agencies, prepare the program for all counties for which it prepares a regional transportation plan.

(f) The requirements for incorporating a congestion management program into a regional *** transportation improvement program specified in this section do not apply in those counties that do not prepare a congestion management pro-

gram in accordance with section 65088.3.

(g) The regional transportation improvement program may include a reserve of county shares for providing funds in order to match federal funds.

(Repealed and Added by Stats. 1977, Ch. 1106; Amended by Stats. 1981, Ch. 541; Repealed and added by Stats. 1989, Ch. 106; Amended by Stats. 1991, Ch. 164. Amended by Stats. 1992, Ch. 1243; Amended by Stats. 1996, Ch. 293; Amended by Stats. 1997, Ch. 622; Amended by Stats. 2003, Ch. 525.)

65083. *(Repealed by Stats. 2001, Ch. 115.)*

65084. County transportation director

In order to insure coordinated planning, development, and operation of transportation systems of all types and modes, the board of supervisors of each county may appoint a county director of transportation, and specify the extent of the responsibilities of such officer.

(Added by Stats. 1972, Ch. 1253.)

65085. Designation of county employee as director

The board of supervisors may designate any county officer who is properly qualified to serve as the county director of transportation.

(Added by Stats. 1972, Ch. 1253.)

65086. Long-term state highway system

The Department of Transportation, in consultation with transportation planning agencies, county transportation commissions, counties, and cities, shall carry out long-term state highway system planning to identify future highway improvements.

(Added by Stats. 1987, Ch. 878; Amended by Stats. 1997, Ch. 622.)

65086.4. Future development list of capacity

Projects on the state highway system shall comply with applicable state and federal standards to ensure systemwide consistency with operational, safety, and maintenance needs. The department may approve exceptions to this requirement that it determines to be appropriate.

(Added by Stats. 1990, Ch. 71; Repealed and added by Stats. 1997, Ch. 622.)

65086.5. Project studies report

(a) To the extent that the work does not jeopardize the delivery of the projects in the adopted state transportation improvement program, the Department of Transportation may prepare a project studies report for capacity-increasing state highway projects that are not included in the state transportation improvement program. Preparation of the project studies report shall be limited by the resources available to the department for that work, supplemented, as appropriate, by regional or local resources. The project studies report shall include the project-related factors of limits, description, scope, costs, and the amount of time needed for initiating construction.

(b) Whenever project studies reports are performed by an entity other than the Department of Transportation, the department shall review and approve the report.

(c) The Department of Transportation may be requested to prepare a project studies report for a capacity-increasing state highway project which is being proposed for inclusion in a future state transportation improvement program. The department shall have 30 days to determine whether it can complete the requested report in a timely fashion. If the department determines that it cannot complete the report in a timely fashion, the requesting entity may prepare the report. Upon submission of a project studies report to the department by the entity, the department shall complete its review and provide its comments to that entity within 60 days from the date of submission. The department shall complete its review and final determination of a report which has been revised to address the department's comments within 30 days following submission of the revised report.

(d) The Department of Transportation, in consultation with representatives of cities, counties, and regional transportation planning agencies, shall prepare draft guidelines for the preparation of project studies reports by all entities. The guidelines shall address the development of reliable cost estimates. The department shall submit the draft guidelines to the California Transportation Commission not later than July 1, 1991. The commission shall adopt the final guidelines not later than October 1, 1991. Guidelines adopted by the commission shall apply only to project studies reports commenced after October 1, 1991.

(Added by Stats. 1987, Ch. 878; Amended by Stats. 1990, Ch. 715.)

Chapter 2.6. Congestion Management

65088. Intent

The Legislature finds and declares all of the following:

(a) Although California's economy is critically dependent upon transportation, its current transportation system relies primarily upon a street and highway system designed to accommodate far fewer vehicles than are currently using the system.

(b) California's transportation system is characterized by fragmented planning, both among jurisdictions involved and among the means of available transport.

(c) The lack of an integrated system and the increase in the number of vehicles are causing traffic congestion that each day results in 400,000 hours lost in traffic, 200 tons of

pollutants released into the air we breathe, and three million one hundred thousand dollars ($3,100,000) added costs to the motoring public.

(d) To keep California moving, all methods and means of transport between major destinations must be coordinated to connect our vital economic and population centers.

(e) In order to develop the California economy to its full potential, it is intended that federal, state, and local agencies join with transit districts, business, private and environmental interests to develop and implement comprehensive strategies needed to develop appropriate responses to transportation needs.

(f) In addition to solving California's traffic congestion crisis, rebuilding California's cities and suburbs, particularly with affordable housing and more walkable neighborhoods, is an important part of accommodating future increases in the state's population because homeownership is only now available to most Californians who are on the fringes of metropolitan areas and far from employment centers.

(g) The Legislature intends to do everything within its power to remove regulatory barriers around the development of infill housing, transit-oriented development, and mixed use commercial development in order to reduce regional traffic congestion and provide more housing choices for all Californians.

(h) The removal of regulatory barriers to promote infill housing, transit-oriented development, or mixed use commercial development does not preclude a city or county from holding a public hearing nor finding that an individual infill project would be adversely impacted by the surrounding environment or transportation patterns.

(Added by Stats. 1989, Ch. 106; Amended by Stats. 2002, Ch. 505.)

65088.1. Definitions

As used in this chapter the following terms have the following meanings:

(a) Unless the context requires otherwise, "regional agency" means the agency responsible for preparation of the regional transportation improvement program.

(b) Unless the context requires otherwise, "agency" means the agency responsible for the preparation and adoption of the congestion management program.

(c) "Commission" means the California Transportation Commission.

(d) "Department" means the Department of Transportation.

(e) "Local jurisdiction" means a city, a county, or a city and county.

(f) "Parking cash-out program" means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space. "Parking subsidy" means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(g) "Infill opportunity zone" means a specific area designated by a city or county, pursuant to subdivision (c) of Section 65088.4, zoned for new compact residential or mixed use development within one-third mile of a site with an existing or future rail transit station, a ferry terminal served by either a bus or rail transit service, an intersection of at least two major bus routes, or within 300 feet of a bus rapid transit corridor, in counties with a population over 400,000. The mixed use development zoning shall consist of three or more land uses that facilitate significant human interaction in close proximity, with residential use as the primary land use supported by other land uses such as office, hotel, health care, hospital, entertainment, restaurant, retail, and service uses. The transit service shall have maximum scheduled headways of 15 minutes for at least 5 hours per day. A qualifying future rail station shall have broken ground on construction of the station and programmed operational funds to provide maximum scheduled headways of 15 minutes for at least 5 hours per day.

(h) "Interregional travel" means any trips that originate outside the boundary of the agency. A "trip" means a one-direction vehicle movement. The origin of any trip is the starting point of that trip. A roundtrip consists of two individual trips.

(i) "Level of service standard" is a threshold that defines a deficiency on the congestion management program highway and roadway system which requires the preparation of a deficiency plan. It is the intent of the Legislature that the agency shall use all elements of the program to implement strategies and actions that avoid the creation of deficiencies and to improve multimodal mobility.

(j) "Multimodal" means the utilization of all available modes of travel that enhance the movement of people and goods, including, but not limited to, highway, transit, nonmotorized, and demand management strategies including, but not limited to, telecommuting. The availability and practicality of specific multimodal systems, projects, and strategies may vary by county and region in accordance with the size and complexity of different urbanized areas.

(k) "Performance measure" is an analytical planning tool that is used to quantitatively evaluate transportation improvements and to assist in determining effective

implementation actions, considering all modes and strategies. Use of a performance measure as part of the program does not trigger the requirement for the preparation of deficiency plans.

(l) "Urbanized area" has the same meaning as is defined in the 1990 federal census for urbanized areas of more than 50,000 population.

(m) "Bus rapid transit corridor" means a bus service that includes at least four of the following attributes:

(1) Coordination with land use planning.

(2) Exclusive right-of-way.

(3) Improved passenger boarding facilities.

(4) Limited stops.

(5) Passenger boarding at the same height as the bus.

(6) Prepaid fares.

(7) Real-time passenger information.

(8) Traffic priority at intersections.

(9) Signal priority.

(10) Unique vehicles.

(Added by Stats. 1989, Ch. 106; Amended by Stats. 1990, Ch. 16; Amended by Stats. 1992, Ch. 554; Amended by Stats. 1994, Ch. 1146; Amended by Stats. 2002, Ch. 505.)

Note: Stats. 1992, Ch. 554 also reads:

SEC. 1. The Legislature hereby finds and declares all of the following :

(a) Existing local, state, and federal policies tend to encourage the provision of subsidized parking by employers.

(b) Subsidized parking creates a strong incentive for employees to commute to work in a single occupancy vehicle.

(c) Commuting in a single occupancy vehicle contributes to traffic congestion and air pollution.

(d) In Los Angeles and Orange Counties, more than 90 percent of the commuters receive free worksite parking, but less than 10 percent of employers provide an employee ridesharing or transit benefit.

65088.3. Exemption from the congestion management plan

This chapter does not apply in a county in which a majority of local governments, collectively comprised of the city councils and the county board of supervisors, which in total also represent a majority of the population in the county, each adopt resolutions electing to be exempt from the congestion management program.

(Added by Stats. 1996, Ch. 293.)

65088.4. Intent

(a) It is the intent of the Legislature to balance the need for level of service standards for traffic with the need to build infill housing and mixed use commercial developments within walking distance of mass transit facilities, downtowns, and town centers and to provide greater flexibility to local governments to balance these sometimes competing needs.

(b) Notwithstanding any other provision of law, level of service standards described in Section 65089 shall not apply to the streets and highways within an infill opportunity zone. The city or county shall do either of the following:

(1) Include these streets and highways under an alternative areawide level of service standard or multimodal composite or personal level of service standard that takes into account both of the following:

(A) The broader benefits of regional traffic congestion reduction by siting new residential development within walking distance of, and no more than one-third mile from, mass transit stations, shops, and services, in a manner that reduces the need for long vehicle commutes and improves the jobs-housing balance.

(B) Increased use of alternative transportation modes, such as mass transit, bicycling, and walking.

(2) Approve a list of flexible level of service mitigation options that includes roadway expansion and investments in alternate modes of transportation that may include, but are not limited to, transit infrastructure, pedestrian infrastructure, and ridesharing, vanpool, or shuttle programs.

(c) The city or county may designate an infill opportunity zone by adopting a resolution after determining that the infill opportunity zone is consistent with the general plan and any applicable specific plan. A city or county may not designate an infill opportunity zone after December 31, 2009.

(d) The city or county in which the infill opportunity zone is located shall ensure that a development project shall be completed within the infill opportunity zone not more than four years after the date on which the city or county adopted its resolution pursuant to subdivision (c). If no development project is completed within an infill opportunity zone by the time limit imposed by this subdivision, the infill opportunity zone shall automatically terminate.

(Added by Stats. 2002, Ch. 505.)

65088.5. Programs prepared by county transportation commission

Congestion management programs, if prepared by county transportation commissions and transportation authorities created pursuant to Division 12 (commencing with Section 130000) of the Public Utilities Code, shall be used by the regional transportation planning agency to meet federal requirements for a congestion management system, and shall be incorporated into the congestion management system.

(Added by Stats. 1996, Ch. 1154.)

65089. Congestion management program

(a) A congestion management program shall be developed, adopted, and updated biennially, consistent with the schedule for adopting and updating the regional transportation improvement program, for every county that includes an urbanized area, and shall include every city and the county. The program shall be adopted at a noticed public hearing of the agency. The program shall be developed in consultation with, and with the cooperation of, the transportation planning agency, regional transportation providers, local governments, the department, and the air pollution control district or the air quality management district, either by the county transportation commission, or by another public agency, as designated by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county.

(b) The program shall contain all of the following elements:

(1) (A) Traffic level of service standards established for a system of highways and roadways designated by the agency. The highway and roadway system shall include at a minimum all state highways and principal arterials. No highway or roadway designated as a part of the system shall be removed from the system. All new state highways and principal arterials shall be designated as part of the system, except when it is within an infill opportunity zone. Level of service (LOS) shall be measured by Circular 212, by the most recent version of the Highway Capacity Manual, or by a uniform methodology adopted by the agency that is consistent with the Highway Capacity Manual. The determination as to whether an alternative method is consistent with the Highway Capacity Manual shall be made by the regional agency, except that the department instead shall make this determination if either (i) the regional agency is also the agency, as those terms are defined in Section 65088.1, or (ii) the department is responsible for preparing the regional transportation improvement plan for the county.

(B) In no case shall the LOS standards established be below the level of service E or the current level, whichever is farthest from level of service A except when the area is in an infill opportunity zone. When the level of service on a segment or at an intersection fails to attain the established level of service standard outside an infill opportunity zone, a deficiency plan shall be adopted pursuant to Section 65089.4.

(2) A performance element that includes performance measures to evaluate current and future multimodal system performance for the movement of people and goods. At a minimum, these performance measures shall incorporate highway and roadway system performance, and measures established for the frequency and routing of public transit, and for the coordination of transit service provided by separate operators. These performance measures shall support mobility, air quality, land use, and economic objectives, and shall be used in the development of the capital improvement program required pursuant to paragraph (5), deficiency plans required pursuant to Section 65089.4, and the land use analysis program required pursuant to paragraph (4).

(3) A travel demand element that promotes alternative transportation methods, including, but not limited to, carpools, vanpools, transit, bicycles, and park-and-ride lots; improvements in the balance between jobs and housing; and other strategies, including, but not limited to, flexible work hours, telecommuting, and parking management programs. The agency shall consider parking cash-out programs during the development and update of the travel demand element.

(4) A program to analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems, including an estimate of the costs associated with mitigating those impacts. This program shall measure, to the extent possible, the impact to the transportation system using the performance measures described in paragraph (2). In no case shall the program include an estimate of the costs of mitigating the impacts of interregional travel. The program shall provide credit for local public and private contributions to improvements to regional transportation systems. However, in the case of toll road facilities, credit shall only be allowed for local public and private contributions which are unreimbursed from toll revenues or other state or federal sources. The agency shall calculate the amount of the credit to be provided. The program defined under this section may require implementation through the requirements and analysis of the California Environmental Quality Act, in order to avoid duplication.

(5) A seven-year capital improvement program, developed using the performance measures described in paragraph (2) to determine effective projects that maintain or improve the performance of the multimodal system for the movement of people and goods, to mitigate regional transportation impacts identified pursuant to paragraph (4).

The program shall conform to transportation-related vehicle emission air quality mitigation measures, and include any project that will increase the capacity of the multimodal system. It is the intent of the Legislature that, when roadway projects are identified in the program, consideration be given for maintaining bicycle access and safety at a level comparable to that which existed prior to the improvement or alteration. The capital improvement program may also include safety, maintenance, and rehabilitation projects that do not enhance the capacity of the system but are necessary to preserve the investment in existing facilities.

(c) The agency, in consultation with the regional agency, cities, and the county, shall develop a uniform data base on traffic impacts for use in a countywide transportation computer model and shall approve transportation computer

models of specific areas within the county that will be used by local jurisdictions to determine the quantitative impacts of development on the circulation system that are based on the countywide model and standardized modeling assumptions and conventions. The computer models shall be consistent with the modeling methodology adopted by the regional planning agency. The data bases used in the models shall be consistent with the data bases used by the regional planning agency. Where the regional agency has jurisdiction over two or more counties, the data bases used by the agency shall be consistent with the data bases used by the regional agency.

(d) (1) The city or county in which a commercial development will implement a parking cash-out program that is included in a congestion management program pursuant to subdivision (b), or in a deficiency plan pursuant to Section 65089.4, shall grant to that development an appropriate reduction in the parking requirements otherwise in effect for new commercial development.

(2) At the request of an existing commercial development that has implemented a parking cash-out program, the city or county shall grant an appropriate reduction in the parking requirements otherwise applicable based on the demonstrated reduced need for parking, and the space no longer needed for parking purposes may be used for other appropriate purposes.

(e) Pursuant to the federal Intermodal Surface Transportation Efficiency Act of 1991 and regulations adopted pursuant to the act, the department shall submit a request to the Federal Highway Administration Division Administrator to accept the congestion management program in lieu of development of a new congestion management system otherwise required by the act.

(Added by Stats. 1989, Ch. 106; Amended by Stats. 1990, Ch. 16; Amended by Stats. 1992, Ch. 1243; Amended by Stats. 1994, Ch. 114; Amended by Stats. 1995, Ch. 91; Amended by Stats. 1996, Ch. 293; Amended by Stats. 2001, Ch. 597; Amended by Stats. 2002, Ch. 505.)

65089.1. Trip reduction plan

(a) For purposes of this section, "plan" means a trip reduction plan or a related or similar proposal submitted by an employer to a local public agency for adoption or approval that is designed to facilitate employee ridesharing, the use of public transit, and other means of travel that do not employ a single-occupant vehicle.

(b) An agency may require an employer to provide rideshare data bases; an emergency ride program; a preferential parking program; a transportation information program; a parking cash-out program, as defined in subdivision (f) of Section 65088.1; a public transit subsidy in an amount to be determined by the employer; bicycle parking areas; and other noncash value programs which encourage or facilitate the use of alternatives to driving alone. An employer may offer, but no agency shall require an employer to offer, cash, prizes, or items with cash value to employees to encourage participation in a trip reduction program as a condition of approving a plan.

(c) Employers shall provide employees reasonable notice of the content of a proposed plan and shall provide the employees an opportunity to comment prior to submittal of the plan to the agency for adoption.

(d) Each agency shall modify existing programs to conform to this section not later than June 30, 1995. Any plan adopted by an agency prior to January 1, 1994, shall remain in effect until adoption by the agency of a modified plan pursuant to this section.

(e) Employers may include disincentives in their plans that do not create a widespread and substantial disproportionate impact on ethnic or racial minorities, women, or low-income or disabled employees.

(f) This section shall not be interpreted to relieve any employer of the responsibility to prepare a plan that conforms with trip reduction goals specified in Division 26 (commencing with Section 39000) of the Health and Safety Code, or the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(g) This section only applies to agencies and employers within the South Coast Air Quality Management District.

(Added by Stats. 1994, Ch. 534.)

65089.2. Incorporation into regional transportation improvement plan

(a) Congestion management programs shall be submitted to the regional agency. The regional agency shall evaluate the consistency between the program and the regional transportation plans required pursuant to Section 65080. In the case of a multicounty regional transportation planning agency, that agency shall evaluate the consistency and compatibility of the programs within the region.

(b) The regional agency, upon finding that the program is consistent, shall incorporate the program into the regional transportation improvement program as provided for in Section 65082. If the regional agency finds the program is inconsistent, it may exclude any project in the congestion management program from inclusion in the regional transportation improvement program.

(c) (1) The regional agency shall not program any surface transportation program funds and congestion mitigation and air quality funds pursuant to Section 182.6 and 182.7 of the Streets and Highways Code in a county unless a congestion management program has been adopted by December 31, 1992, as required pursuant to Section 65089. No surface transportation program funds or congestion mitigation and air quality funds shall be programmed for a project in a local jurisdiction that has been found to be in nonconformance with a congestion management program pursuant to Section 65089.5 unless the agency finds that the project is of regional significance.

(2) Notwithstanding any other provision of law, upon the designation of an urbanized area, pursuant to the 1990 federal census or a subsequent federal census, within a county which previously did not include an urbanized area, a congestion management program as required pursuant to Section 65089 shall be adopted within a period of 18 months after designation by the Governor.

(d) (1) It is the intent of the Legislature that the regional agency, when its boundaries include areas in more than one county, should resolve inconsistencies and mediate disputes which arise between agencies related to congestion management programs adopted for those areas.

(2) It is the further intent of the Legislature that disputes which may arise between regional agencies, or agencies which are not within the boundaries of a multicounty regional transportation planning agency, should be mediated and resolved by the Secretary of Business, Housing and Transportation Agency, or an employee of that agency designated by the secretary, in consultation with the air pollution control district or air quality management district within whose boundaries the regional agency or agencies are located.

(e) At the request of the agency, a local jurisdiction that owns, or is responsible for operation of, a trip-generating facility in another county shall participate in the congestion management program of the county where the facility is located. If a dispute arises involving a local jurisdiction, the agency may request the regional agency to mediate the dispute through procedures pursuant to subdivision (d) of Section 65089.2. Failure to resolve the dispute does not invalidate the congestion management program.

(Added by Stats. 1989, Ch. 106; Amended by Stats. 1992, Ch. 1177; Amended by Stats. 1994, Ch. 1146.)

65089.3. Monitoring

The agency shall monitor the implementation of all elements of the congestion management program. The department is responsible for data collection and analysis on state highways, unless the agency designates that responsibility to another entity. The agency may also assign data collection and analysis responsibilities to other owners and operators of facilities or services if the responsibilities are specified in its adopted program. The agency shall consult with the department and other affected owners and operators in developing data collection and analysis procedures and schedules prior to program adoption. At least biennially, the agency shall determine if the county and cities are conforming to the congestion management program, including, but not limited to, all of the following:

(a) Consistency with levels of service standards, except as provided in Section 65089.4.

(b) Adoption and implementation of a program to analyze the impacts of land use decisions, including the estimate of the costs associated with mitigating these impacts.

(c) Adoption and implementation of a deficiency plan pursuant to Section 65089.4 when highway and roadway level of service standards are not maintained on portions of the designated system.

(Added by Stats. 1989, Ch. 106; Amended by Stats. 1990, Ch. 16; Amended by Stats. 1992, Ch. 1243; Repealed and added by Stats. 1994, Ch. 1146; Amended by Stats. 1996, Ch. 293.)

65089.4. Deficiency plan

(a) A local jurisdiction shall prepare a deficiency plan when highway or roadway level of service standards are not maintained on segments or intersections of the designated system. The deficiency plan shall be adopted by the city or county at a noticed public hearing.

(b) The agency shall calculate the impacts subject to exclusion pursuant to subdivision (f) of this section, after consultation with the regional agency, the department, and the local air quality management district or air pollution control district. If the calculated traffic level of service following exclusion of these impacts is consistent with the level of service standard, the agency shall make a finding at a publicly noticed meeting that no deficiency plan is required and so notify the affected local jurisdiction.

(c) The agency shall be responsible for preparing and adopting procedures for local deficiency plan development and implementation responsibilities, consistent with the requirements of this section. The deficiency plan shall include all of the following:

(1) An analysis of the cause of the deficiency. This analysis shall include the following:

(A) Identification of the cause of the deficiency.

(B) Identification of the impacts of those local jurisdictions within the jurisdiction of the agency that contribute to the deficiency. These impacts shall be identified only if the calculated traffic level of service following exclusion of impacts pursuant to subdivision (f) indicates that the level of service standard has not been maintained, and shall be limited to impacts not subject to exclusion.

(2) A list of improvements necessary for the deficient segment or intersection to maintain the minimum level of service otherwise required and the estimated costs of the improvements.

(3) A list of improvements, programs, or actions, and estimates of costs, that will (A) measurably improve multimodal performance, using measures defined in paragraphs (1) and (2) of subdivision (b) of Section 65089, and (B) contribute to significant improvements in air quality, such as improved public transit service and facilities, improved nonmotorized transportation facilities, high occupancy vehicle facilities, parking cash-out programs, and transportation control measures. The air quality management district or the air pollution control district shall

establish and periodically revise a list of approved improvements, programs, and actions that meet the scope of this paragraph. If an improvement, program, or action on the approved list has not been fully implemented, it shall be deemed to contribute to significant improvements in air quality. If an improvement, program, or action is not on the approved list, it shall not be implemented unless approved by the local air quality management district or air pollution control district.

(4) An action plan, consistent with the provisions of Chapter 5 (commencing with Section 66000), that shall be implemented, consisting of improvements identified in paragraph (2), or improvements, programs, or actions identified in paragraph (3), that are found by the agency to be in the interest of the public health, safety, and welfare. The action plan shall include a specific implementation schedule. The action plan shall include implementation strategies for those jurisdictions that have contributed to the cause of the deficiency in accordance with the agency's deficiency plan procedures. The action plan need not mitigate the impacts of any exclusions identified in subdivision (f).

Action plan strategies shall identify the most effective implementation strategies for improving current and future system performance.

(d) A local jurisdiction shall forward its adopted deficiency plan to the agency within 12 months of the identification of a deficiency. The agency shall hold a noticed public hearing within 60 days of receiving the deficiency plan. Following that hearing, the agency shall either accept or reject the deficiency plan in its entirety, but the agency may not modify the deficiency plan. If the agency rejects the plan, it shall notify the local jurisdiction of the reasons for that rejection, and the local jurisdiction shall submit a revised plan within 90 days addressing the agency's concerns. Failure of a local jurisdiction to comply with the schedule and requirements of this section shall be considered to be nonconformance for the purposes of Section 65089.5.

(e) The agency shall incorporate into its deficiency plan procedures, a methodology for determining if deficiency impacts are caused by more than one local jurisdiction within the boundaries of the agency.

(1) If, according to the agency's methodology, it is determined that more than one local jurisdiction is responsible for causing a deficient segment or intersection, all responsible local jurisdictions shall participate in the development of a deficiency plan to be adopted by all participating local jurisdictions.

(2) The local jurisdiction in which the deficiency occurs shall have lead responsibility for developing the deficiency plan and for coordinating with other impacting local jurisdictions. If a local jurisdiction responsible for participating in a multi-jurisdictional deficiency plan does not adopt the deficiency plan in accordance with the schedule and requirements of paragraph (a) of this section, that jurisdiction shall be considered in nonconformance with the program for purposes of Section 65089.5.

(3) The agency shall establish a conflict resolution process for addressing conflicts or disputes between local jurisdictions in meeting the multi-jurisdictional deficiency plan responsibilities of this section.

(f) The analysis of the cause of the deficiency prepared pursuant to paragraph (1) of subdivision (c) shall exclude the following:

(1) Interregional travel.

(2) Construction, rehabilitation, or maintenance of facilities that impact the system.

(3) Freeway ramp metering.

(4) Traffic signal coordination by the state or multi-jurisdictional agencies.

(5) Traffic generated by the provision of low-income and very low income housing.

(6) (A) Traffic generated by high-density residential development located within one-fourth mile of a fixed rail passenger station, and

(B) Traffic generated by any mixed use development located within one-fourth mile of a fixed rail passenger station, if more than half of the land area, or floor area, of the mixed use development is used for high density residential housing, as determined by the agency. (g) For the purposes of this section, the following terms have the following meanings:

(1) "High density" means residential density development which contains a minimum of 24 dwelling units per acre and a minimum

density per acre which is equal to or greater than 120 percent of the maximum residential density allowed under the local general plan and zoning ordinance. A project providing a minimum of 75 dwelling units per acre shall automatically be considered high density.

(2) "Mixed use development" means development which integrates compatible commercial or retail uses, or both, with residential uses, and which, due to the proximity of job locations, shopping opportunities, and residences, will discourage new trip generation.

(Added by Stats. 1994, Ch. 1146.)

65089.5. Specific areas of nonconformance

(a) If, pursuant to the monitoring provided for in Section 65089.3, the agency determines, following a noticed public hearing, that a city or county is not conforming with the requirements of the congestion management program, the agency shall notify the city or county in writing of the specific areas of nonconformance. If, within 90 days of the receipt of the written notice of nonconformance, the city or county has not come into conformance with the congestion management program, the governing body of the agency

shall make a finding of nonconformance and shall submit the finding to the commission and to the Controller.

(b) (1) Upon receiving notice from the agency of nonconformance, the Controller shall withhold apportionments of funds required to be apportioned to that nonconforming city or county by Section 2105 of the Streets and Highways Code.

(2) If, within the 12-month period following the receipt of a notice of nonconformance, the Controller is notified by the agency that the city or county is in conformance, the Controller shall allocate the apportionments withheld pursuant to this section to the city or county.

(3) If the Controller is not notified by the agency that the city or county is in conformance pursuant to paragraph (2), the Controller shall allocate the apportionments withheld pursuant to this section to the agency.

(c) The agency shall use funds apportioned under this section for projects of regional significance which are included in the capital improvement program required by paragraph (5) of subdivision (b) of Section 65089, or in a deficiency plan which has been adopted by the agency. The agency shall not use these funds for administration or planning purposes.

(Formerly 65089.4., added by Stats. 1989, Ch. 106; Amended by Stats. 1990, Ch. 16; Amended by Stats. 1992, Ch. 444; Renumbered to 65089.5, and amended by Stats. 1994, Ch. 1146.)

65089.6. Cause of action

Failure to complete or implement a congestion management program shall not give rise to a cause of action against a city or county for failing to conform with its general plan, unless the city or county incorporates the congestion management program into the circulation element of its general plan.

(Formerly 65089.5, added by Stats. 1990, Ch. 16; Renumbered to 65089.6, and amended by Stats. 1994, Ch. 1146.)

65089.7. Limited exception

A proposed development specified in a development agreement entered into prior to July 10, 1989, shall not be subject to any action taken to comply with this chapter, except actions required to be taken with respect to the trip reduction and travel demand element of a congestion management program pursuant to paragraph (3) of subdivision (b) of Section 65089.

(Formerly 65089.6, added by Stats. 1990, Ch. 106; Renumbered to 65089.7 by Stats. 1994, Ch. 1146.)

65089.8. *(Repealed by Stats. 1994, Ch. 1146.)*

65089.9. Congestion management agencies

The study steering committee established pursuant to Section 6 of Chapter 444 of the Statutes of 1992 may designate at least two congestion management agencies to participate in a demonstration study comparing multimodal performance standards to highway level of service standards. The department shall make available, from existing resources, fifty thousand dollars ($50,000) from the Transportation Planning and Development Account in the State Transportation Fund to fund each of the demonstration projects. The designated agencies shall submit a report to the Legislature not later than June 30, 1997, regarding the findings of each demonstration project.

(Added by Stats. 1994, Ch. 1146.)

65089.10. Funds

Any congestion management agency that is located in the Bay Area Air Quality Management District and receives funds pursuant to Section 44241 of the Health and Safety Code for the purpose of implementing paragraph (3) of subdivision (b) of Section 65089 shall ensure that those funds are expended as part of an overall program for improving air quality and for the purposes of this chapter.

(Added by Stats. 1995, Ch. 950.)

Chapter 2.65 Management of Traffic Congestion and Stormwater Pollution in San Mateo County

65089.11. Fees on motor vehicles

(a) The City/County Association of Governments of San Mateo County, which has been formed by the resolutions of the board of supervisors within San Mateo County and a majority of the city councils within the county that represent a majority of the population in the incorporated area of San Mateo County, may impose a fee of up to four dollars ($4) on motor vehicles registered within San Mateo County. The City/County Association of Governments of San Mateo County may impose the fee only if the board of the association adopts a resolution providing for both the fee and a corresponding program for the management of traffic congestion and stormwater pollution within San Mateo County as set forth in Sections 65089.12 to 65089.15, inclusive. Adoption by the board requires a vote of approval by board members representing two-thirds of the population of San Mateo County.

(b) A fee imposed pursuant to this section shall not become operative until July 1, 2005, pursuant to the resolution adopted by the board in subdivision (a).

(c) The fee shall terminate on January 1, 2009, unless reauthorized by the Legislature.

(*Added by Stats. 2004, Ch. 931).*

65089.12. Designated use of fees collected

(a) The fees distributed to the City/County Association of Governments of San Mateo County pursuant to Section 9250.5 of the Vehicle Code shall be used for purposes of congestion management and stormwater pollution prevention as specified in its adopted congestion management program, pursuant to Section 65089, and its approved National Pollutant Discharge Elimination System permit issued pursuant to the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

(b) (1) The fees collected may be used to pay for those programs with a relationship or benefit to the motor vehicles that are paying the fee.

(2) Prior to imposing the fee, the board of the association shall make a finding of fact by a 2/3 vote that those programs bear a relationship or benefit to the motor vehicles that will pay the fee.

(c) The purpose of the Congestion Management Program is to address motor vehicle congestion.

(d) Only the stormwater pollution prevention programs that directly address the negative impact on creeks, streams, bays, and the ocean caused by motor vehicles and the infrastructure supporting motor vehicle travel are eligible for funding.

(e) Not more than 5 percent of the fees distributed to the City/County Association of Governments of San Mateo County shall be used by the association for its administrative costs associated with the program.

(*Added by Stats. 2004, Ch. 931).*

65089.13. Budget; Adoption

Prior to the imposition of the fee by the City/County Association of Governments of San Mateo County, a specific program with performance measures and a budget shall first be developed and adopted by the association at a noticed public hearing.

(*Added by Stats. 2004, Ch. 931).*

65089.14. Audit of Program

The City/County Association of Governments of San Mateo County shall have an independent audit performed on the program with the review and report provided to the board at a noticed public hearing.

(*Added by Stats. 2004, Ch. 931).*

65089.15. Report to Legislature

The City/County Association of Governments of San Mateo County shall provide a report to the Legislature on the program by July 1, 2006.

(*Added by Stats. 2004, Ch. 931).*

Chapter 2.7. Public Hearings

65090. Notice of hearing

(a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be published pursuant to Section 6061 in at least one newspaper of general circulation within the jurisdiction of the local agency which is conducting the proceeding at least 10 days prior to the hearing, or if there is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least three public places within the jurisdiction of the local agency.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a local agency considers the adoption or amendment of policies or ordinances affecting drive-through facilities, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

(*Added by Stats 2000, Ch. 785.)*

65091. Notification procedures

(a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways:

(1) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.

(2) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.

(3) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, the local agency may utilize records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing

a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.

(4) If the notice is mailed or delivered pursuant to paragraph (3), the notice shall also either be:

(A) Published pursuant to Section 6061 in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing.

(B) Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of the denial of, a drive-through facility permit. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled, is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

(Added by Stats. 2000, Ch. 785.)

65092. Request for notification

(a) When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. The local agency may charge a fee which is reasonably related to the costs of providing this service and the local agency may require each request to be annually renewed.

(b) As used in this chapter, "person" includes a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.

(Added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 1199; Amended by Stats. 2004, Ch. 905.)

65093. Failure to receive notice

The failure of any person or entity to receive notice given pursuant to this title, or pursuant to the procedures established by a chartered city, shall not constitute grounds for any court to invalidate the actions of a local agency for which the notice was given.

(Added by Stats. 1984, Ch. 1009.)

65094. Definition: Notice of public hearing

As used in this title, "notice of a public hearing" means a notice that includes the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

(Added by Stats. 1984, Ch. 1009.)

65095. Hearing continuation

Any public hearing conducted under this title may be continued from time to time.

(Added by Stats. 1984, Ch. 1009.)

65096. Cemeteries

(a) Notwithstanding any other provision of law, whenever a person applies to a city, including a charter city, county, or city and county, for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, general or specific plan amendment, or any entitlement for use which would permit all or any part of a cemetery to be used for other than cemetery purposes, the city, county, or city and county shall give notice pursuant to Sections 65091, 65092, 65093, and 65094.

(b) Those requesting notice shall be notified by the local agency at the address provided at the time of the request.

(c) Notwithstanding Section 65092, a local agency shall not require a request made pursuant to this section to be annually renewed.

(d) "Cemetery," as used in this section, has the same meaning as that word is defined in Section 8100 of the Health and Safety Code.

(Added by Stats. 1988, Ch. 1440.)

Chapter 3. Local Planning

Article 1. Local Planning

65100. Creation of Planning agency

There is in each city and county a planning agency with the powers necessary to carry out the purposes of this title. The legislative body of each city and county shall by ordinance assign the functions of the planning agency to a planning department, one or more planning commissions, administrative bodies or hearing officers, the legislative body itself, or any combination thereof, as it deems appropriate and necessary. In the absence of an assignment, the

legislative body shall carry out all the functions of the planning agency.

(Repealed and added by Stats. 1984, Ch. 690.)

65101. Creation of planning commission

(a) The legislative body may create one or more planning commissions each of which shall report directly to the legislative body. The legislative body shall specify the membership of the commission or commissions. In any event, each planning commission shall consist of at least five members, all of whom shall act in the public interest. If it creates more than one planning commission, the legislative body shall prescribe the issues, responsibilities, or geographic jurisdiction assigned to each commission. If a development project affects the jurisdiction of more than one planning commission, the legislative body shall designate the commission which shall hear the entire development project.

(b) Two or more legislative bodies may:

(1) Create a joint area planning agency, planning commission, or advisory agency for all or prescribed portions of their cities or counties which shall exercise those powers and perform those duties under this title that the legislative bodies delegate to it.

(2) Authorize their planning agencies, or any components of them, to meet jointly to coordinate their work, conduct studies, develop plans, hold hearings, or jointly exercise any power or perform any duty common to them.

(Repealed and added by Stats. 1984, Ch. 690; Amended by Stats. 1985, Ch. 617.)

65101.1. Hoopa Valley Business Council

The Hoopa Valley Business Council, as the governing body of the Hoopa Valley Indian Tribe, may participate as a legislative body, pursuant to subdivision (b) of Section 65101 on the Humboldt County Association of Governments and for that purpose may enter into a joint powers agreement with the parties thereto and shall be deemed to be a public agency for purposes of Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1. The Legislature finds and declares that the unique circumstances of Humboldt County necessitate this special law.

(Added by Stats. 1987, Ch. 73.)

65102. Local rules and procedures

A legislative body may establish for its planning agency any rules, procedures, or standards which do not conflict with state or federal laws.

(Repealed and added by Stats. 1984, Ch. 690.)

65103. Planning agency functions

Each planning agency shall perform all of the following functions:

(a) Prepare, periodically review, and revise, as necessary, the general plan.

(b) Implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances.

(c) Annually review the capital improvement program of the city or county and the local public works projects of other local agencies for their consistency with the general plan, pursuant to Article 7 (commencing with Section 65400).

(d) Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it.

(e) Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan.

(f) Promote the coordination of local plans and programs with the plans and programs of other public agencies.

(g) Perform other functions as the legislative body provides, including conducting studies and preparing plans other than those required or authorized by this title.

(Repealed and added by Stats. 1984, Ch. 690.)

65104. Appropriations for planning agency

The legislative body shall provide the funds, equipment, and accommodations necessary or appropriate for the work of the planning agency. If the legislative body, including that of a charter city, establishes any fees to support the work of the planning agency, the fees shall not exceed the reasonable cost of providing the service for which the fee is charged. The legislative body shall impose the fees pursuant to Section 66016.

(Repealed and added by Stats. 1984, Ch. 690; Amended by Stats. 1990, Ch. 1572.)

65105. Authority to perform functions: entry onto private land

In the performance of their functions, planning agency personnel may enter upon any land and make examinations and surveys, provided that the entries, examinations, and surveys do not interfere with the use of the land by those persons lawfully entitled to the possession thereof.

(Added by Stats. 1984, Ch. 690.)

65106. Public officials to furnish planning agency with available information

Upon request all public officials shall furnish to the planning agency within a reasonable time any available information as may be required for the work of the planning agency.

(Added by Stats. 1985, Ch. 617.)

Article 4. Long Range Planning Trust Fund

65250. Long range planning trust fund

(a) A city with a population in excess of three million may establish a Long Range Planning Trust Fund in accordance with subdivision (b) to consist of those moneys that are voluntarily paid by an assessee of real property on the property tax bill in an amount equal to one dollar ($1) for each parcel of assessed real property of one acre or less, or one dollar ($1) per acre, and any additional fractional portion thereof, for each parcel of assessed real property of more than one acre, and are collected and deposited pursuant to an agreement as described in subdivision (d).

(b) A city as described in subdivision (a) shall establish a Long Range Planning Trust Fund by a resolution, adopted by a majority vote of the city's governing body. That resolution shall require that moneys in the fund shall be expended upon the vote of that city's governing body only for purposes of long-term land use planning and general plan revisions.

(c) Upon adoption of a resolution pursuant to subdivision (b), a city may solicit voluntary contributions as described in subdivision (a), and upon receiving authorization to collect a contribution by an assessee of real property, may transmit to the county assessor, county auditor, and county tax collector any information regarding the assessee that may be necessary to collect the contribution pursuant to an agreement as specified in subdivision (d).

(d) The county assessor, county auditor, county tax collector and the adopting city may enter into a joint agreement for the collection and allocation of voluntary contributions as described in subdivision (a), that may provide for the collection of contributions by the tax collector. The agreement shall provide for the allocation to the county assessor, county auditor, and tax collector from moneys collected of amounts equal to the actual and reasonable costs incurred by those persons in collecting and allocating contributions.

(Added by Stats. 1992, Ch. 937; Amended by Stats. 1993, Ch. 589.)

Article 5. Authority for and Scope of General Plans

65300. Plan required

Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning. Chartered cities shall adopt general plans which contain the mandatory elements specified in Section 65302.

(Amended by Stats. 1984, Ch. 1009.)

65300.5. Internal consistency

In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.

(Added by Stats. 1975, Ch. 1104.)

65300.7. Local implementation

The Legislature finds that the diversity of the state's communities and their residents requires planning agencies and legislative bodies to implement this article in ways that accommodate local conditions and circumstances, while meeting its minimum requirements.

(Added by Stats. 1980, Ch. 837.)

65300.9. Balance of local situation/compliance with state and federal laws

The Legislature recognizes that the capacity of California cities and counties to respond to state planning laws varies due to the legal differences between cities and counties, both charter and general law, and to differences among them in physical size and characteristics, population size and density, fiscal and administrative capabilities, land use and development issues, and human needs. It is the intent of the Legislature in enacting this chapter to provide an opportunity for each city and county to coordinate its local budget planning and local planning for federal and state program activities, such as community development, with the local land use planning process, recognizing that each city and county is required to establish its own appropriate balance in the context of the local situation when allocating resources to meet these purposes.

(Added by Stats. 1984, Ch. 1009.)

65301. Adoption and format

(a) The general plan shall be so prepared that all or individual elements of it may be adopted by the legislative body, and so that it may be adopted by the legislative body for all or part of the territory of the county or city and such other territory outside its boundaries which in its judgment bears relation to its planning.

The general plan may be adopted in any format deemed appropriate or convenient by the legislative body, including the combining of elements. The legislative body may adopt all or part of a plan of another public agency in satisfaction of all or part of the requirements of Section 65302 if the plan of the other public agency is sufficiently detailed and its contents are appropriate, as determined by the legislative body, for the adopting city or county.

(b) The general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area.

(c) The general plan shall address each of the elements specified in Section 65302 to the extent that the subject of the element exists in the planning area. The degree of specificity and level of detail of the discussion of each such element shall reflect local conditions and circumstances. However, this section shall not affect the requirements of subdivision (c) of Section 65302, nor be construed to expand or limit the authority of the Department of Housing and Community Development to review housing elements pursuant to Section 50459 of the Health and Safety Code. The requirements of this section shall apply to charter cities.

(Amended by Stats. 1984, Ch. 1009. Amended by Stats. 1985, Ch. 67.)

65301.5. Judicial standard of review

The adoption of the general plan or any part or element thereof or the adoption of any amendment to such plan or any part or element thereof is a legislative act which shall be reviewable pursuant to Section 1085 of the Code of Civil Procedure.

(Added by Stats. 1980, Ch. 837.)

65302. Seven mandated elements

The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals.

The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

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

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

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

(B) The following definitions govern this paragraph:

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

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

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

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

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

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

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

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

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

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

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

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

(1) Highways and freeways.

(2) Primary arterials and major local streets.

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

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

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

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

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

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

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

(g) 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 hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(1) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

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

(Added by Stats. 1980, Ch. 837; Amended by Stats. 1982, Ch. 1263; Amended by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 1199; Amended by Stats. 1985, Ch. 114; Amended by Stats. 1989, Ch. 1255; Amended by Stats. 1992, Ch. 823; Amended by Stats. 1995, Ch. 881; Amended by Stats. 2002, Ch. 971; Amended by Stats. 2004, Ch. 951 and 907.)

65302.1 San Joaquin Valley Air Pollution Control District

(1) The San Joaquin Valley has a serious air pollution problem that will take the cooperation of land use and transportation planning agencies, transit operators, the development community, the San Joaquin Valley Air Pollution Control District and the public to solve. The solution to the problem requires changes in the way we have traditionally built our communities and constructed the transportation systems. It involves a fundamental shift in priorities from emphasis on mobility for the occupants of private automobiles to a multimodal system that more efficiently uses scarce resources. It requires a change in attitude from the public to support development patterns and transportation systems different from the status quo.

(2) In 2003 the district published a document entitled, Air Quality Guidelines for General Plans. This report is a comprehensive guidance document and resource for cities and counties to use to include air quality in their general plans. It includes goals, policies, and programs that when adopted in a general plan will reduce vehicle trips and miles traveled and improve air quality.

(3) Air quality guidelines are recommended strategies that do, when it is feasible, all of the following:

(A) Determine and mitigate project level and cumulative air quality impacts under the California Environmental Quality Act (CEQA) (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) Integrate land use plans, transportation plans, and air quality plans.

(C) Plan land uses in ways that support a multimodal transportation system.

(D) Local action to support programs that reduce congestion and vehicle trips.

(E) Plan land uses to minimize exposure to toxic air pollutant emissions from industrial and other sources.

(F) Reduce particulate matter emissions from sources under local jurisdiction.

(G) Support district and public utility programs to reduce emissions from energy consumption and area sources.

(4) The benefits of including air quality concerns within local general plans include, but are not limited to, all of the following:

(A) Lower infrastructure costs.

(B) Lower public service costs.

(C) More efficient transit service.

(D) Lower costs for comprehensive planning.

(E) Streamlining of the permit process.

(F) Improved mobility for the elderly and children.

(b) The legislative body of each city and county within the jurisdictional boundaries of the district shall amend the appropriate elements of its general plan, which may include, but are not limited to, the required elements dealing with land use, circulation, housing, conservation, and open space, to include data and analysis, goals, policies, and objectives, and feasible implementation strategies to improve air quality.

(c) The adoption of air quality amendments to a general plan to comply with the requirements of subdivision (d) shall include all of the following:

(1) A report describing local air quality conditions including air quality monitoring data, emission inventories, lists of significant source categories, attainment status and designations, and applicable state and federal air quality plans and transportation plans.

(2) A summary of local, district, state, and federal policies, programs, and regulations that may improve air quality in the city or county.

(3) A comprehensive set of goals, policies, and objectives that may improve air quality consistent with the strategies listed in paragraph (3) of subdivision (a).

(4) A set of feasible implementation measures designed to carry out those goals, policies, and objectives.

(d) At least 45 days prior to the adoption of air quality amendments to a general plan pursuant to this section, each city and county shall send a copy of its draft document to the district. The district may review the draft amendments to determine whether they may improve air quality consistent with the strategies listed in paragraph (3) of subdivision (a). Within 30 days of receiving the draft amendments, the district shall send any comments and advice to the city or county. The legislative body of the city or county shall consider the district's comments and advice prior to the final adoption of air quality amendments to the general plan. If the district's comments and advice are not available by the time scheduled for the final adoption of air quality amendments to the general plan, the legislative body of the city or county may act without them. The district's comments shall be advisory to the city or county.

(e) The legislative body of each city and county within the jurisdictional boundaries of the district shall comply with this section no later than one year from the date specified in Section 65588 for the next revision of its housing element that occurs after January 1, 2004.

(f) As used in this section, "district" means the San Joaquin Valley Air Pollution Control District.

SEC. 2. Nothing in this act shall be interpreted to expand the application of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the existing authorities of the affected local governments, or of the San Joaquin Valley Air Pollution Control District.

SEC. 3. The Legislature finds and declares that Sections 65104 and 66014 of the Government Code provide local agencies with authority to levy fees sufficient to pay for the program or level of service mandated by this act.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

(Added by Stats. 2003, Ch. 472.)

65302.2. Urban water management plan

Upon the adoption, or revision, of a city or county's general plan, on or after January 1, 1996, the city or county shall utilize as a source document any urban water management plan submitted to the city or county by a water agency.

(Added by Stats. 1995, Ch. 881.)

65302.3. Consistency with airport land use plans

(a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.

(b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.

(c) If the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

(d) In each county where an airport land use commission does not exist, but where there is a military airport, the general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport.

(Amended by Stats. 1984, Ch. 1009; Amended by Stats. 1987, Ch. 1018; Amended by Stats. 2002, Ch. 971.)

65302.4. Expressions of community intentions regarding urban form and design

The text and diagrams in the land use element that address the location and extent of land uses, and the zoning ordinances that implement these provisions, may also express community intentions regarding urban form and design. These expressions may differentiate neighborhoods, districts, and corridors, provide for a mixture of land uses and housing types within each, and provide specific measures for regulating relationships between buildings, and between buildings and outdoor public areas, including streets.

(Repealed by Stats. 1984, Ch. 1009; Added by Stats. 2004, Ch. 179.)

65302.5. Safety Element Submission

(a) At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

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

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

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

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

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

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

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

(D) 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, 2013.

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

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

(3) The State Board of Forestry and Fire Protection shall, and a local agency may, 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. The

State Board of Forestry and Fire Protection and local agency shall review the draft or existing safety element and may offer written recommendations for changes to the draft or existing safety element regarding both of the following:

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

(B) Methods and strategies for wildland fire risk reduction and prevention within state responsibility areas

and very high hazard severity zones.

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

(c) If the State Board of Forestry and Fire Protection or local agency's recommendations are not available within the time limits required by this section, the board of supervisors or city council may act without those recommendations. The board of supervisors or

city council shall take the recommendations into consideration at the next time it considers amendments **pursuant to paragraph (1) of subdivision (a).**

(Repealed by Stats. 1984, Ch. 1009; Added by Stats. 1989, Ch. 778; Repealed and Amended by Stats. 2004, Ch. 951).

65302.6. *(Repealed by Stats. 2001, Ch. 745.)*

65302.7 *(Repealed by Stats. 1984, Ch. 1009.)*

65302.8. Findings on housing limits

If a county or city, including a charter city, adopts or amends a mandatory general plan element which operates to limit the number of housing units which may be constructed on an annual basis, such adoption or amendment shall contain findings which justify reducing the housing opportunities of the region. The findings shall include all of the following:

(a) A description of the city's or county's appropriate share of the regional need for housing.

(b) A description of the specific housing programs and activities being undertaken by the local jurisdiction to fulfill the requirements of subdivision (c) of Section 65302.

(c) A description of how the public health, safety, and welfare would be promoted by such adoption or amendment.

(d) The fiscal and environmental resources available to the local jurisdiction.

(Added by Stats. 1980, Ch. 823.)

65302.9. (*Renumbered to Section 65850.1 by Stats. 1996, Ch. 799.)*

65303. Optional elements and subjects

The general plan may include any other elements or address any other subjects which, in the judgment of the legislative body, relate to the physical development of the county or city.

(Repealed and added by Stats. 1984, Ch. 1009.)

65303.4. Assistance in flood control and land management needs

The Department of Water Resources and the Department of Fish and Game may develop site design and planning policies to assist local agencies which request help in implementing the general plan guidelines for meeting flood control objectives and other land management needs.

(Added by Stats. 1984, Ch. 1130.)

65304. *(Repealed by Stats. 1984, Ch. 1009.)*

65305. *(Repealed by Stats. 1984, Ch. 1009.)*

65306. *(Repealed by Stats. 1984, Ch. 1009.)*

65307. Obsolete section

On or before October 1 of each year, the planning agency of each city or county shall comply with the provisions of Section 65400.

(Added by Stats. 1972, Ch. 902.)

Article 6. Preparation, Adoption, and Amendment of the General Plan

65350. Procedure

Cities and counties shall prepare, adopt, and amend general plans and elements of those general plans in the manner provided in this article.

(Repealed and added by Stats. 1984, Ch. 1009.)

65351. Public involvement

During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement **of** citizens **California Native American Indian tribes**, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 2004, Ch. 905.)

65352. Referral of plans

(a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall

refer the proposed action to all of the following entities:

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

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

(3) The local agency formation commission.

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

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

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

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

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

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

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

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

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 114. Effective June 28, 1985; Amended by Stats. 1991, Ch. 804; Amended by Stats. 1992, Ch. 631; Amended by Stats. 1993, Ch. 719; Amended by Stats. 1996, Ch. 799; Amended by Stats. 2004, Ch. 905.)

65352.2. Communication and coordination between cities, counties and school districts related to planning for school siting

(a) It is the intent of the Legislature in enacting this section to foster improved communication and coordination between cities, counties, and school districts related to planning for school siting.

(b) Following notification by a local planning agency pursuant to paragraph (2) of subdivision (a) of Section 65352, the governing board of any elementary, high school, or unified school district, in addition to any comments submitted, may request a meeting with the planning agency to discuss possible methods of coordinating planning, design, and construction of new school facilities and schoolsites in coordination with the existing or planned infrastructure, general plan, and zoning designations of the city and county in accordance with subdivision (d). If a meeting is requested, the planning agency shall meet with the school district within 15 days following notification.

(c) At least 45 days prior to completion of a school facility needs analysis pursuant to Section 65995.6, a master plan pursuant to Sections 16011 and 16322 of the Education Code, or other long-range plan, that relates to the potential expansion of existing schoolsites or the necessity to acquire additional schoolsites, the governing board of any school district shall notify and provide copies of any relevant and available information, master plan, or other long-range plan, including, if available, any proposed school facility needs analysis, that relates to the potential expansion of existing schoolsites or the necessity to acquire additional schoolsites, to the planning commission or agency of the city or county with land use jurisdiction within the school district. Following notification, or at any other time, the affected city or county may request a meeting in accordance with subdivision (d). If a meeting is requested, the school district shall meet with the city or county within 15 days following notification. After providing the information specified in this section within the 45-day time period specified in this subdivision, the governing board of the affected school district may complete the affected school facility needs analysis, master plan, or other long-range plan without further delay.

(d) At any meeting requested pursuant to subdivision (b) or (c) the parties may review and consider, but are not limited to, the following issues:

(1) Methods of coordinating planning, design, and construction of new school facilities and schoolsites in coordination with the existing or planned infrastructure, general plan, and zoning designations of the city and county.

(2) Options for the siting of new schools and whether or not the local city or counties existing land use element appropriately reflects the demand for public school facilities, and ensures that new planned development reserves location for public schools in the most appropriate locations.

(3) Methods of maximizing the safety of persons traveling to and from schoolsites.

(4) Opportunities to coordinate the potential siting of new schools in coordination with existing or proposed community revitalization efforts by the city or county.

(5) Opportunities for financial assistance which the local government may make available to assist the school district

with site acquisition, planning, or preparation costs.

(6) Review all possible methods of coordinating planning, design, and construction of new school facilities and schoolsites or major additions to existing school facilities and recreation and park facilities and programs in the community.

(Added by Stats. 2001, Ch. 396; Amended by Stats. 2003, Ch. 587.)

65352.3. Consultations with California Native American tribes to preserve or mitigate impacts

(a) (1) Prior to the adoption or any amendment of a city or county's general plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes that are on the contact list maintained by the Native American Heritage Commission for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code that are located within the city or county's jurisdiction.

(2) From the date on which a California Native American tribe is contacted by a city or county pursuant to this subdivision, the tribe has 90 days in which to request a consultation, unless a shorter timeframe has been agreed to by that tribe.

(b) Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Section 65040.2, the city or county shall protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

(Added by Stats. 2004, Ch. 905.)

65352.4. Consultation

For purposes of Section 65351, 65352.3, and 65562.5, "consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

(Added by Stats. 2004, Ch. 905.)

65352.5. Water supply coordination

(a) The Legislature finds and declares that it is vital that there be close coordination and consultation between California' water supply agencies and California's land use approval agencies to ensure that proper water supply planning occurs in order to accommodate projects that will result in increased demands on water supplies.

(b) It is, therefore, the intent of the Legislature to provide a standardized process for determining the adequacy of existing and planned future water supplies to meet existing and planned future demands on these water supplies.

(c) Upon receiving, pursuant to Section 65352, notification of a city's or a county's proposed action to adopt or substantially amend a general plan, a public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, shall provide the planning agency with the following information, as is appropriate and relevant:

(1) The current version of its urban water management plan, adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.

(2) The current version of its capital improvement program or plan, as reported pursuant to Section 31144.73 of the Water Code.

(3) A description of the source or sources of the total water supply currently available to the water supplier by water right or contract, taking into account historical data concerning wet, normal, and dry runoff years.

(4) A description of the quantity of surface water that was purveyed by the water supplier in each of the previous five years.

(5) A description of the quantity of groundwater that was purveyed by the water supplier in each of the previous five years.

(6) A description of all proposed additional sources of water supplies for the water supplier, including the estimated dates by which these additional sources should be available and the quantities of additional water supplies that are being proposed.

(7) A description of the total number of customers currently served by the water supplier, as identified by the following categories and by the amount of water served to each category:

(A) Agricultural users.

(B) Commercial users.

(C) Industrial users.

(D) Residential users.

(8) Quantification of the expected reduction in total water demand, identified by each customer category set forth in paragraph (7), associated with future implementation of water use reduction measures identified in the water supplier's urban water management plan.

(9) Any additional information that is relevant to determining the adequacy of existing and planned future water supplies to meet existing and planned future demands on these water supplies.

(Added by Stats. 1993, Ch. 1195; Amended by Stats. 1996, Ch. 1023.)

65353. Commission notice and hearing

(a) When the city or county has a planning commission authorized by local ordinance or resolution to review and

recommend action on a proposed general plan or proposed amendments to the general plan, the commission shall hold at least one public hearing before approving a recommendation on the adoption or amendment of a general plan. Notice of the hearing shall be given pursuant to Section 65090.

(b) If a proposed general plan or amendments to a general plan would affect the permitted uses or intensity of uses of real property, notice of the hearing shall also be given pursuant to paragraphs (1) and (2) of subdivision (a) of Section 65091.

(c) If the number of owners to whom notice would be mailed or delivered pursuant to subdivision (b) is greater than 1,000, a local agency may, in lieu of mailed or delivered notice, provide notice by publishing notice pursuant to paragraph (3) of subdivision (a) of Section 65091.

(d) If the hearings held under this section are held at the same time as hearings under Section 65854, the notice of the hearing may be combined.

(Repealed and added by Stats. 1984, Ch. 1009. Amended by Stats. 1988, Ch. 859.)

65354. Commission recommendations

The planning commission shall make a written recommendation on the adoption or amendment of a general plan. A recommendation for approval shall be made by the affirmative vote of not less than a majority of the total membership of the commission. The planning commission shall send its recommendation to the legislative body.

(Repealed and added by Stats. 1984, Ch. 1009.)

65354.5. Appeal procedure required

(a) A city or county with a planning agency, other than the legislative body itself, which has the authority to consider and recommend the approval, conditional approval, or disapproval of a proposed amendment to a general plan, shall establish procedures for any interested party to file a written request for a hearing by the legislative body with its clerk within five days after the planning agency acts on the proposed amendment. Notice of the hearing shall be given pursuant to Section 65090.

(b) The legislative body may establish a fee to cover the cost of establishing the procedures and conducting the hearing pursuant to subdivision (a). The legislative body shall impose the fee pursuant to Section 66016.

(Added by Stats. 1985, Ch. 1006; Amended by Stats. 1990, Ch. 1572.)

65355. Legislative body notice and hearing

Prior to adopting or amending a general plan, the legislative body shall hold at least one public hearing. Notice of the hearing shall be given pursuant to Section 65090.

(Repealed and added by Stats. 1984, Ch. 1009.)

65356. Referral of changes

The legislative body shall adopt or amend a general plan by resolution, which resolution shall be adopted by the affirmative vote of not less than a majority of the total membership of the legislative body. The legislative body may approve, modify, or disapprove the recommendation of the planning commission, if any. However, any substantial modification proposed by the legislative body not previously considered by the commission during its hearings, shall first be referred to the planning commission for its recommendation. The failure of the commission to report within 45 calendar days after the reference, or within the time set by the legislative body, shall be deemed a recommendation for approval.

(Repealed and added by Stats. 1984, Ch. 1009.)

65357. Copies of plans

(a) A copy of the adopted general plan or amendment to the general plan shall be sent to all public entities specified in Section 65352 and any other public entities that submitted comments on the proposed general plan or amendment to the general plan during its preparation. Failure to send the adopted general plan or amendment as provided in this section shall not affect its validity in any manner.

(b) Copies of the documents adopting or amending the general plan, including the diagrams and text, shall be made available to the general public as follows:

(1) Within one working day following the date of adoption, the clerk of the legislative body shall make the documents adopting or amending the plan, including the diagrams and text, available to the public for inspection.

(2) Within two working days after receipt of a request for a copy of the adopted documents adopting or amending the plan, including the diagrams and text, accompanied by payment for the reasonable cost of copying, the clerk shall furnish the requested copy to the person making the request.

(c) A city or county may charge a fee for a copy of the general plan or amendments to the general plan that is reasonably related to the cost of providing that document.

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 338.)

65358. Amendments

(a) If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan. An amendment to the general plan shall be initiated in the manner specified by the legislative body. Notwithstanding Section 66016, a legislative body that permits persons to request an amendment of the general plan may require that an amount equal to the estimated cost of preparing the amendment be deposited with the planning agency prior to the preparation of the amendment.

(b) Except as otherwise provided in subdivision (c) or (d), no mandatory element of a general plan shall be amended more frequently than four times during any calendar year. Subject to that limitation, an amendment may be made at any time, as determined by the legislative body. Each amendment may include more than one change to the general plan.

(c) The limitation on the frequency of amendments to a general plan contained in subdivision (b) does not apply to amendments of the general plan requested and necessary for a single development of residential units, at least 25 percent of which will be occupied by or available to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code. The specified percentage of low- or moderate-income housing may be developed on the same site as the other residential units proposed for development, or on another site or sites encompassed by the general plan, in which case the combined total number of residential units shall be considered a single development proposal for purposes of this section.

(d) This section does not apply to the adoption of any element of a general plan or to the amendment of any element of a general plan in order to comply with any of the following:

(1) A court decision made pursuant to Article 14 (commencing with Section 65750).

(2) Subdivision (b) of Section 65302.3.

(3) Subdivision (d) of Section 56032 of the Health and Safety Code.

(4) Subdivision (b) of Section 30500 of the Public Resources Code.

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 1990, Ch. 1572.)

65359. Local plan consistency

Any specific plan or other plan of the city or county that is applicable to the same areas or matters affected by a general plan amendment shall be reviewed and amended as necessary to make the specific or other plan consistent with the general plan.

(Repealed and added by Stats. 1984, Ch. 1009.)

65360. Deadline for new city/county to adopt plan

The legislative body of a newly incorporated city or newly formed county shall adopt a general plan within 30 months following incorporation or formation. During that 30-month period of time, the city or county is not subject to the requirement that a general plan be adopted or the requirements of state law that its decisions be consistent with the general plan, if all of the following requirements are met:

(a) The city or county is proceeding in a timely fashion with the preparation of the general plan.

(b) The planning agency finds, in approving projects and taking other actions, including the issuance of building permits, pursuant to this title, each of the following:

(1) There is a reasonable probability that the land use or action proposed will be consistent with the general plan proposal being considered or studied or which will be studied within a reasonable time.

(2) There is little or no probability of substantial detriment to or interference with the future adopted general plan if the proposed use or action is ultimately inconsistent with the plan.

(3) The proposed use or action complies with all other applicable requirements of state law and local ordinances.

(Repealed and added by Stats. 1984, Ch. 1009.)

65361. Extension of deadline to adopt plan

(a) Notwithstanding any other provision of law, upon application by a city or county, the Director of Planning and Research shall grant a reasonable extension of time not to exceed two years from the date of issuance of the extension, for the preparation and adoption of all or part of the general plan, if the legislative body of the city or county, after a public hearing, makes any of the following findings:

(1) Data required for the general plan shall be provided by another agency and it has not yet been provided.

(2) In spite of sufficient budgetary provisions and substantial recruiting efforts, the city or county has not been able to obtain necessary staff or consultant assistance.

(3) A disaster has occurred requiring reassignment of staff for an extended period or requiring a complete reevaluation and revision of the general plan, or both.

(4) Local review procedures require an extended public review process that has resulted in delaying the decision by the legislative body.

(5) The city or county is jointly preparing all or part of the general plan with one or more other jurisdictions pursuant to an existing agreement and timetable for completion.

(6) Other reasons exist that justify the granting of an extension, so that the timely preparation and adoption of a general plan is promoted.

(b) The director shall not grant an extension of time for the preparation and adoption of a housing element except in the case of a newly incorporated city or newly formed county that cannot meet the deadline set by Section 65360. Before the director grants an extension of time pursuant to this subdivision, he or she shall consult with the Director of Housing and Community Development.

(c) The application for an extension shall contain all of the following:

(1) A resolution of the legislative body of the city or county adopted after public hearing setting forth in detail the reasons why the general plan was not previously adopted as required by law or needs to be revised, including one or

more of the findings made by the legislative body pursuant to subdivision (a), and the amount of additional time necessary to complete the preparation and adoption of the general plan.

(2) A detailed budget and schedule for preparation and adoption of the general plan, including plans for citizen participation and expected interim action. The budget and schedule shall be of sufficient detail to allow the director to assess the progress of the applicant at regular intervals during the term of the extension. The schedule shall provide for adoption of a complete and adequate general plan within two years of the date of the application for the extension.

(3) A set of proposed policies and procedures which would ensure, during the extension of time granted pursuant to this section, that the land use proposed in an application for a subdivision, rezoning, use permit, variance, or building permit will be consistent with the general plan proposal being considered or studied.

(d) The director may impose any conditions on extensions of time granted that the director deems necessary to ensure compliance with the purposes and intent of this title. Those conditions shall apply only to those parts of the general plan for which the extension has been granted. In establishing those conditions, the director may adopt or modify and adopt any of the policies and procedures proposed by the city or county pursuant to paragraph (3) of subdivision (c).

(e) During the extension of time specified in this section, the city or county is not subject to the requirement that a complete and adequate general plan be adopted, or the requirements that it be adopted within a specific period of time. Development approvals shall be consistent with those portions of the general plan for which an extension has been granted, except as provided by the conditions imposed by the director pursuant to subdivision (d). Development approvals shall be consistent with any element or elements that have been adopted and for which an extension of time is not sought.

(f) If a city or county that is granted a time extension pursuant to this section determines that it cannot complete the elements of the general plan for which the extension has been granted within the prescribed time period, the city or county may request one additional extension of time, which shall not exceed one year, if the director determines that the city or county has made substantial progress toward the completion of the general plan. This subdivision shall not apply to an extension of time granted pursuant to subdivision (b).

(g) An extension of time granted pursuant to this section for the preparation and adoption of all or part of a city or county general plan is exempt from Division 13 (commencing with Section 21000) of the Public Resources Code.

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 1990, Ch. 1441; Amended by Stats. 1992, Ch. 837; Amended by Stats. 1996, Ch. 872.)

Note: Stats. 1992, Ch. 837, also reads:

SEC. 1. The Legislature finds and declares the following:

(a) The County of Nevada has initiated, but not yet completed, a comprehensive update to its 1975 Martis Valley General Plan and its 1980 Nevada County General Plan, which was initiated by the county in February of 1990.

(b) The county has made substantial progress toward the completion of an adequate general plan by appropriating funds for, and entering into, a one million thirty thousand dollar ($1,030,000) contract with a consulting firms for its preparation, assigning sufficient staff, creating and coordinating with various citizen committees to ensure broad-based input, and exhausting the remedies by Section 65361 of the Government Code to secure extensions of time to August 13, 1992, for preparation and adoption of a complete and adequate updated general plan.

(c) A draft of goals, objectives, and policy statements has been prepared and it is the goal of the county to complete the draft general plan by May of 1993.

(d) While substantial and study progress has been made, the preparation of the new general plan has been slowed as a result of the extensive citizen input that the county has fostered and due to the complexity of the project and personnel changes of the consultant.

(e) It is impossible for the county to adopt a complete and adequate updated general plan by the current August 13, 1992, deadline without being compelled to truncate procedures and severely reduce public involvement.

SEC. 3. Notwithstanding the time limits imposed by Sections 65302 and 65361 of the Government Code, the Director of Planning and Research shall grant the County of Nevada an extension of time to January 1, 1994, for the preparation and adoption of a complete element, as required by subdivision (c) of Section 65302. The director may modify the conditions attached to the County of Nevada's second extension which was granted on August 14, 1991. The purpose of this section is to permit the County of Nevada to continue to review and approve development proposals pending adoption of a complete and adequate general plan, in accordance with conditions imposed on the county by the Office of Planning and Research as a part of the August 16, 1991, extension approval or pursuant to any modifications to these conditions as the Director of the Office of Planning and Research may have granted or may grant.

SEC. 4. During the extension of time specified in Section 3 of this act, the County of Nevada shall not be subject to the requirement that a complete and adequate general plan be adopted or the requirement that it be adopted within a specific period of time. The County of Nevada shall comply with all other state laws.

SEC. 5. During the extension of time specified in Section 3 of this act, the County of Nevada shall comply with conditions imposed on the county by the Office of Planning and Research on August 16, 1991, or within any modifications to those conditions as the Director of Planning and Research may have granted or may grant, which compliance the Legislature finds is necessary to ensure full compliance with purposes and intent of the Planning and Zoning Law (Title 7 (commencing with Section 65000) of the Government Code).

SEC. 6. Section 3, 4, and 5 of this act shall remain in effect only until January 1, 1994, and as of that date are repealed, unless a later enacted statute which is enacted before January 1, 1994, deletes or extends that date.

SEC. 7. The Legislature finds and declares that, with regard to Sections 1, 2, 3, 4, and 5 of this act, and with regard to this section, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the following unique circumstances:

(a) Because of specific conditions in the County of Nevada and occurrences in its comprehensive general plan update process which do not exist in other counties, general plan preparations and the environmental and public reviews required and planned for the draft planning documents being prepared and readied for consideration by the County of Nevada are not finished, and more time is needed to permit completion of the process commenced with full public review and comment before adoption.

(b) These specific conditions and occurrences are:

(1) The 52 percent population growth of the county between 1980 and 1990 was unexpected, as was the burden that growth placed upon resources and infrastructure.

(2) The threat of litigation in 1990 challenging the adequacy of the Martis Valley General Plan due to that unprecedented growth prompted the county to request extensions from the Office of Planning and Research earlier in the process than desirable to allow a unified update of both plans, to avoid stopping all development during the update process, and to allow concentration of staff on the general plan revisions.

(3) The complexity of the project in proceeding with parallel procedures in the eastern and western portions of the county to consider their special needs and reviewing alternatives to deal with an infrastructure already strained by rapid growth.

(4) Early in the process, the unexpected difficulties in hiring staff and the subsequent unexpected changes in responsible and key personnel of the consultants, including the project manager, and departure of key staff people, including the assistant planning director, temporarily diverting staff from the update process.

(5) The commitment of the Board of Supervisors of Nevada County to seek and receive broad-based public input and consensus to the full extent possible, and to be kept advised at every stage of the update procedures.

(6) The expansion of scope of the update to include a public facilities element.

65362. Appeals

Any city, county, or city and county whose application for an extension of time under Section 65361 has been denied or approved with conditions by the director may appeal that denial or approval with conditions to the Planning Advisory and Assistance Council. The council may review the action of the director and act upon the application and approve, conditionally approve, or deny the application, and the decision of the council shall be final. If the council acts on an appeal and by doing so grants a one-year extension, that extension of time shall run from the date of the action by the council.

(Added by Stats. 1984, Ch. 1009.)

Article 7. Administration of General Plan

65400. Implementation of General Plan.

After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) *** Provide **by October 1 of each year** an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development *** that **includes all of the following:**

(1) The status of the plan and progress in its implementation ***.

(2) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

*** The housing **element** portion of the annual report**, as** required *** **by** *** **this paragraph, shall be prepared through the use of forms and definitions adopted by** the Department of Housing and Community Development pursuant to *** **the rulemaking provisions of** the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of *** Part 1 of Division 3 of Title 2).***

*** **(3) The degree to which its approved general plan complies with the guidelines developed and adopted pur-**

suant to Section 65040.2 and the date of the last revision to the general plan.

(Amended by Stats. 1984, Ch. 1009; Amended by Stats. 1990, Ch. 1441; Amended by Stats. 1992, Ch. 1030; Amended by Stats. 1993, Ch. 437; Amended by Stats. 1994, Ch. 1235; Amended by Stats. 1998, Ch. 796; Amended by Stats. 2004, Ch. 916.)

65401. Review of public works projects for conformity with plans

If a general plan or part thereof has been adopted, within such time as may be fixed by the legislative body, each county or city officer, department, board, or commission, and each governmental body, commission, or board, including the governing body of any special district or school district, whose jurisdiction lies wholly or partially within the county or city, whose functions include recommending, preparing plans for, or constructing, major public works, shall submit to the official agency, as designated by the respective county board of supervisors or city council, a list of the proposed public works recommended for planning, initiation or construction during the ensuing fiscal year. The official agency receiving the list of proposed public works shall list and classify all such recommendations and shall prepare a coordinated program of proposed public works for the ensuing fiscal year. Such coordinated program shall be submitted to the county or city planning agency for review and report to said official agency as to conformity with the adopted general plan or part thereof.

(Amended by Stats. 1970, Ch. 1590.)

65402. Restrictions on acquisition and disposal of real property

(a) If a general plan or part thereof has been adopted, no real property shall be acquired by dedication or otherwise for street, square, park or other public purposes, and no real property shall be disposed of, no street shall be vacated or abandoned, and no public building or structure shall be constructed or authorized, if the adopted general plan or part thereof applies thereto, until the location, purpose and extent of such acquisition or disposition, such street vacation or abandonment, or such public building or structure have been submitted to and reported upon by the planning agency as to conformity with said adopted general plan or part thereof. The planning agency shall render its report as to conformity with said adopted general plan or part thereof within forty (40) days after the matter was submitted to it, or such longer period of time as may be designated by the legislative body.

If the legislative body so provides, by ordinance or resolution, the provisions of this subdivision shall not apply to: (1) the disposition of the remainder of a larger parcel which was acquired and used in part for street purposes; (2) acquisitions, dispositions, or abandonments for street widening; or (3) alignment projects, provided such dispositions for street purposes, acquisitions, dispositions, or abandonments for street widening, or alignment projects are of a minor nature.

(b) A county shall not acquire real property for any of the purposes specified in paragraph (a), nor dispose of any real property, nor construct or authorize a public building or structure, in another county or within the corporate limits of a city, if such city or other county has adopted a general plan or part thereof and such general plan or part thereof is applicable thereto, and a city shall not acquire real property for any of the purposes specified in paragraph (a), nor dispose of any real property, nor construct or authorize a public building or structure, in another city or in unincorporated territory, if such other city or the county in which such unincorporated territory is situated has adopted a general plan or part thereof and such general plan or part thereof is applicable thereto, until the location, purpose and extent of such acquisition, disposition, or such public building or structure have been submitted to and reported upon by the planning agency having jurisdiction, as to conformity with said adopted general plan or part thereof. Failure of the planning agency to report within forty (40) days after the matter has been submitted to it shall be conclusively deemed a finding that the proposed acquisition, disposition, or public building or structure is in conformity with said adopted general plan or part thereof. The provisions of this paragraph (b) shall not apply to acquisition or abandonment for street widening or alignment projects of a minor nature if the legislative body having the real property within its boundaries so provides by ordinance or resolution.

(c) A local agency shall not acquire real property for any of the purposes specified in paragraph (a) nor dispose of any real property, nor construct or authorize a public building or structure, in any county or city, if such county or city has adopted a general plan or part thereof and such general plan or part thereof is applicable thereto, until the location, purpose and extent of such acquisition, disposition, or such public building or structure have been submitted to and reported upon by the planning agency having jurisdiction, as to conformity with said adopted general plan or part thereof. Failure of the planning agency to report within forty (40) days after the matter has been submitted to it shall be conclusively deemed a finding that the proposed acquisition, disposition, or public building or structure is in conformity with said adopted general plan or part thereof. If the planning agency disapproves the location, purpose or extent of such acquisition, disposition, or the public building or structure, the disapproval may be overruled by the local agency.

Local agency as used in this paragraph (c) means an agency of the state for the local performance of governmental

or proprietary functions within limited boundaries. Local agency does not include the state, or county, or a city.

(Amended by Stats. 1974, Ch. 700.)

65403. Optional school/special district CIPs: content and procedure requirements

(a) Each special district, each unified, elementary, and high school district, and each agency created by a joint powers agreement pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that constructs or maintains public facilities essential to the growth and maintenance of an urban population may prepare a five-year capital improvement program. This section shall not preclude, limit, or govern any other method of capital improvement planning and shall not apply to any district or agency unless it specifically determines to implement this section. As used in this section, "public facilities" means any of the following:

(1) Public buildings, including schools and related facilities.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including, but not limited to, streets, roads, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities. However, this section shall not apply to a special district which constructs or maintains parks and recreation facilities if the annual operating budget of the district does not exceed one hundred thousand dollars ($100,000).

(b) The five-year capital improvement program shall indicate the location, size, time of availability, means of financing, including a schedule for the repayment of bonded indebtedness, and estimates of operation costs for all proposed and related capital improvements. The five-year capital improvement program shall also indicate a schedule for maintenance and rehabilitation and an estimate of useful life of all existing and proposed capital improvements.

(c) The capital improvement program shall be adopted by, and shall be annually reviewed and revised by, resolution of the governing body of the district or local agency. Annual revisions shall include an extension of the program for an additional year to update the five-year program. At least 60 days prior to its adoption or annual revision, as the case may be, the capital improvement program shall be referred to the planning agency of each affected city and county within which the district or agency operates, for review as to its consistency with the applicable general plan, any applicable specific plans, and all elements and parts of the plan. Failure of the planning agency to report its findings within 40 days after receipt of a capital improvement program or revision of the program shall be conclusively deemed to constitute a finding that the capital improvement program is consistent with the general plan.

A district or local agency shall not carry out its capital improvement program or any part of the program if the planning agency finds that the capital improvement program or a part of the capital improvement program is not consistent with the applicable general plan, any specific plans, and all elements and parts of the plan. A district or local agency may overrule the finding and carry out its capital improvement program.

(d) Before adopting its capital improvement program, or annual revisions of the program, the governing body of each special district, each unified, elementary, and high school district, and each agency created by a joint powers agreement shall hold at least one public hearing. Notice of the time and place of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement program.

(Amended by Stats. 1984, Ch. 1009.)

65404. Conflict resolution process

(a) On or before January 1, 2005, the Governor shall develop *** processes to do all of the following:

(1) Resolve conflicting requirements of two or more state agencies for a local plan, permit, or development project.

(2) Resolve conflicts between state functional plans.

(3) Resolve conflicts between state infrastructure projects.

(4) Provide, to the extent permitted under federal law, for the availability of mediation between a branch of the United States Armed Forces, a local agency, and a project applicant, in circumstances where a conflict arises between a proposed land use within special use airspace beneath low-level flight paths, or within 1,000 feet of a military installation.

(b) The process may be requested by a local agency, project applicant, or one or more state agencies. The mediation process identified in paragraph (4) of subdivision (a) may also be requested by a branch of the United States Armed Forces.

(Added by Stats. 2002, Ch. 1016; Amended by Stats. 2004, Ch. 906.)

Article 8. Specific Plans

65450. Preparation of specific plan

After the legislative body has adopted a general plan, the planning agency may, or if so directed by the legislative body, shall, prepare specific plans for the systematic

implementation of the general plan for all or part of the area covered by the general plan.

(Repealed and added by Stats. 1984, Ch. 1009.)

65450.1. *(Repealed by Stats. 1984, Ch. 1009.)*

65451. Content of specific plan

(a) A specific plan shall include a text and a diagram or diagrams which specify all of the following in detail:

(1) The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.

(2) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.

(3) Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.

(4) A program of implementation measures including regulations, programs, public works projects, and financing measures necessary to carry out paragraphs (1), (2), and (3)

(b) The specific plan shall include a statement of the relationship of the specific plan to the general plan.

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 1199.)

65452. Optional subjects

The specific plan may address any other subjects which in the judgment of the planning agency are necessary or desirable for implementation of the general plan.

(Repealed and added by Stats. 1984, Ch. 1009.)

65453. Adoption/amendment procedure

(a) A specific plan shall be prepared, adopted, and amended in the same manner as a general plan, except that a specific plan may be adopted by resolution or by ordinance and may be amended as often as deemed necessary by the legislative body.

(b) A specific plan may be repealed in the same manner as it is required to be amended.

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 1199.)

65454. Consistency with general plan

No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan.

(Added by Stats. 1984, Ch. 1009.)

65455. Zoning, tentative map, parcel map, and public works project consistency with specific plan

No local public works project may be approved, no tentative map or parcel map for which a tentative map was not required may be approved, and no zoning ordinance may be adopted or amended within an area covered by a specific plan unless it is consistent with the adopted specific plan.

(Added by Stats. 1984, Ch. 1009.)

65456. Fees and charges

(a) The legislative body, after adopting a specific plan, may impose a specific plan fee upon persons seeking governmental approvals which are required to be consistent with the specific plan. The fees shall be established so that, in the aggregate, they defray but as estimated do not exceed, the cost of preparation, adoption, and administration of the specific plan, including costs incurred pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. As nearly as can be estimated, the fee charged shall be a prorated amount in accordance with the applicant's relative benefit derived from the specific plan. It is the intent of the Legislature in providing for such fees to charge persons who benefit from specific plans for the costs of developing those specific plans which result in savings to them by reducing the cost of documenting environmental consequences and advocating changed land uses which may be authorized pursuant to the specific plan.

(b) Notwithstanding Section 66016, a city or county may require a person who requests adoption, amendment, or repeal of a specific plan to deposit with the planning agency an amount equal to the estimated cost of preparing the plan, amendment, or repeal prior to its preparation by the planning agency.

(c) Copies of the documents adopting or amending the specific plan, including the diagrams and text, shall be made available to local agencies, and shall be made available to the general public as follows:

(1) Within one working day following the date of adoption, the clerk of the legislative body shall make the documents adopting or amending the plan, including the diagrams and text, available to the public for inspection.

(2) Within two working days after receipt of a request for a copy of the documents adopting or amending the plan, including the diagrams and text, accompanied by payment for the reasonable cost of copying, the clerk shall furnish the requested copy to the person making the request.

(d) A city or county may charge a fee for a copy of a specific plan or amendments to a specific plan in an amount that is reasonably related to the cost of providing that document.

(Added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 338 and Ch. 1199; Amended by Stats. 1990, Ch. 1572.)

65457. CEQA exemption

(a) Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. However, if after adoption of the specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption provided by this subdivision does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code. After a supplemental environmental impact report is certified, the exemption specified in this subdivision applies to projects undertaken pursuant to the specific plan.

(b) An action or proceeding alleging that a public agency has approved a project pursuant to a specific plan without having previously certified a supplemental environmental impact report for the specific plan, where required by subdivision (a), shall be commenced within 30 days of the public agency's decision to carry out or approve the project.

(c) This section does not supersede but provides an alternative procedure to Section 21080.7 of the Public Resources Code.

(Added by Stats. 1984, Ch. 1009.)

Article 8.5. Transit Village Development Planning Act of 1994

65460. Transit village plan

This act shall be known, and may be cited, as the Transit Village Development Planning Act of 1994.

(Added by Stats. 1994, Ch. 780.)

65460.1 Transit Village Plan Design

(a) The Legislature hereby finds and declares all of the following:

(1) Federal, state, and local governments in California are investing in new and expanded rail transit systems in areas throughout the state, including Los Angeles County, the San Francisco Bay area, San Diego County, Santa Clara County, and Sacramento County.

(2) This public investment in rail transit is unrivaled in the state's history and represents well over ten billion dollars ($10,000,000,000) in planned investment alone.

(3) Recent studies of transit ridership in California indicate that persons who live within a quarter-mile radius of rail transit stations utilize the transit system in far greater numbers than does the general public living elsewhere.

(4) The use of transit by persons living near rail transit stations is particularly important given the decline of transit ridership in California between 1980 and 1990. Transit's share of commute trips dropped in all California metropolitan areas—greater Los Angeles: 5.4 percent to 4.8 percent; San Francisco Bay area: 11.9 percent to 10.0 percent; San Diego: 3.7 percent to 3.6 percent; Sacramento: 3.7 percent to 2.5 percent.

(5) Only a few rail transit stations in California have any concentration of housing proximate to the station.

(6) Interest in clustering housing and commercial development around rail transit stations, called transit villages, has gained momentum in recent years.

(b) For purposes of this article, the following definitions shall apply:

(1) "Bus hub" means an intersection of three or more bus routes, with a minimum route headway of 10 minutes during peak hours.

(2) "District" means a transit village development district as defined in section 65460.4.

(3) "Peak hours" means the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday.

(4) "Transit station" means a rail or light-rail station, ferry terminal, bus hub, or bus transfer station.

(Added by Stats. 1994, Ch. 780, Amended by Stats. 2004, Ch. 42.)

65460.2. Characteristics of transit village

A city or county may prepare a transit village plan for a transit village development district that addresses the following characteristics:

(a) A neighborhood centered around a transit station that is planned and designed so that residents, workers, shoppers, and others find it convenient and attractive to patronize transit.

(b) A mix of housing types, including apartments, within not more than a quarter mile of the exterior boundary of the parcel on which the transit station is located.

(c) Other land uses, including a retail district oriented to the transit station and civic uses, including day care centers and libraries.

(d) Pedestrian and bicycle access to the transit station, with attractively designed and landscaped pathways.

(e) A *** transit system that should encourage and facilitate intermodal service, and access by modes other than single occupant vehicles.

(f) Demonstrable public benefits beyond the increase in transit usage, including **any five** of the following:

(1) Relief of traffic congestion.

(2) Improved air quality.

(3) Increased transit revenue yields.

(4) Increased stock of affordable housing.

(5) Redevelopment of depressed and marginal inner-city neighborhoods.

(6) Live-travel options for transit-needy groups.

(7) Promotion of infill development and preservation of natural resources.

(8) Promotion of a safe, attractive, pedestrian-friendly environment around transit stations.

(9) Reduction of the need for additional travel by providing for the sale of goods and services at transit stations.

(10) Promotion of job opportunities.

(11) Improved cost-effectiveness through the use of the existing infrastructure.

(12) Increased sales and property tax revenue.

(13) Reduction in energy consumption.

(g) Sites where a density bonus of at least 25 percent may be granted pursuant to specified performance standards.

(h) Other provisions that may be necessary, based on the report prepared pursuant to subdivision (b) of former section 14045, as enacted by section 3 of Chapter 1304 of the Statutes of 1990.

(Added by Stats. 1994, Ch. 780; Amended by Stats. 1997, Ch. 580; Amended by Stats. 2001, Ch. 115Amended by Stats. 2004, Ch. 42.)

65460.3. New development near transit stations

To increase transit ridership and to reduce vehicle traffic on the highways, local, regional, and state plans should direct new development close to the transit stations. These entities should provide financial incentives to implement these plans.

(Added by Stats. 1994, Ch. 780.)

65460.4. Transit village development district

A transit village development district shall include all land within not more than a quarter mile of the exterior boundary of the parcel on which is located a *** transit station designated by the legislative body of a city, county, or city and county that has jurisdiction over the station area.***

(Added by Stats. 1994, Ch. 780; Amended by Stats. 1997, Ch. 580; Amended by Stats. 2004, Ch. 42.)

65460.5. Transportation funding; expedited permits

A city or county establishing a district and preparing a plan pursuant to this article shall:

(a) Be eligible for available transportation funding.

(b) Receive assistance from the Office of Permit Assistance, pursuant to Section 15399.53, in establishing an expedited permit process pursuant to Section 15399.50, at the request of the city or county.

(Added by Stats. 1994, Ch. 780.)

65460.6. Congestion management

An agency responsible for the preparation and adoption of the congestion management program may exclude district impacts from the determination of conformance with level of service standards pursuant to subdivision (c) of Section 65089.3.

(Added by Stats. 1994, Ch. 780.)

65460.7. Similarity to general plan

(a) A transit village plan shall be prepared, adopted, and amended in the same manner as a general plan.

(b) A transit village plan may be repealed in the same manner as it is required to be amended.

(Added by Stats. 1994, Ch. 780.)

65460.8. Consistency with general plan

No transit village plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan.

(Added by Stats. 1994, Ch. 780.)

65460.9. Consistency with transit village plan

No local public works project may be approved, no tentative map or parcel map for which a tentative map was not required may be approved, and no zoning ordinance may be adopted or amended within an area covered by a transit village plan unless it is consistent with the adopted transit village plan.

(Added by Stats. 1994, Ch. 780.)

65460.10. Density bonus

A city, county, or city and county may require a developer to enter into a development agreement pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4 to implement a density bonus specified in the transit village plan pursuant to subdivision (g) of Section 65460.2.

(Added by Stats. 1994, Ch. 780.)

Article 10.5. Open Space

65560. Definitions

(a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; *** and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for re-

charge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

(Repealed and added by Stats. 1972, Ch. 251; Amended by Stats. 2002, Ch. 971; Amended by Stats. 2004, Ch. 905 and 907.)

65561. Policy

The Legislature finds and declares as follows:

(a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources.

(b) That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to urban dwellers because it will discourage noncontiguous development patterns which unnecessarily increase the costs of community services to community residents.

(c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods.

(d) That in order to assure that the interests of all its people are met in the orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands.

(e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open-space land.

(Added by Stats. 1970, Ch. 1590.)

65562. Intent

It is the intent of the Legislature in enacting this article:

(a) To assure that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible.

(b) To assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program.

(Added by Stats. 1970, Ch. 1590.)

65562.5. Consultations with California Native American tribes to determine level of confidentiality required

On and after March 1, 2005, if land designated, or proposed to be designated as open space, contains a place, feature, or object described in Sections 5097.9 and 5097.995 of the Public Resources Code, the city or county in which the place, feature, or object is located shall conduct consultations with the California Native American tribe, if any, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the specific identity, location, character, or use of the place, feature, or object and for the purpose of developing treatment with appropriate dignity of the place, feature, or object in any corresponding management plan.

(Added by Stats. 2004, Ch. 905.)

65563. Deadlines for adoption and submission of plan

On or before December 31, 1973, every city and county shall prepare, adopt and submit to the Secretary of the Resources Agency a local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its jurisdiction. Every city and county shall by August 31, 1972, prepare, adopt and submit to the Secretary of the Resources Agency, an interim open-space plan, which shall be in effect until December 31, 1973, containing, but not limited to, the following:

(a) The officially adopted goals and policies which will guide the preparation and implementation of the open-space plan; and

(b) A program for orderly completion and adoption of the open-space plan by December 31, 1973, including a description of the methods by which open-space resources will be inventoried and conservation measures determined.

(Amended by Stats. 1973, Ch. 120.)

65564. Implementation

Every local open-space plan shall contain an action program consisting of specific programs which the legislative body intends to pursue in implementing its open-space plan.

(Added by Stats. 1970, Ch. 1590.)

65566. Consistency of acquisitions, disposal, and regulation

Any action by a county or city by which open-space land or any interest therein is acquired or disposed of or its use restricted or regulated, whether or not pursuant to this part, must be consistent with the local open-space plan.

(Added by Stats. 1970, Ch. 1590.)

65567. Consistency of building permits, subdivision maps, zoning

No building permit may be issued, no subdivision map approved, and no open-space zoning ordinance adopted, unless the proposed construction, subdivision or ordinance is consistent with the local open-space plan.

(Added by Stats. 1970, Ch. 1590.)

65568. Provisions

If any provision of this article or the application thereof to any person is held invalid, the remainder of the article and the application of such provision to other persons shall not be affected thereby.

(Added by Stats. 1970, Ch. 1590.)

65570. Severability

(a) The Director of Conservation may establish, after notice and hearing, rules and regulations, and require reports from local officials and may employ, borrow, or contract for such staff or other forms of assistance as are reasonably necessary to carry out this section, Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2, and Section 612 of the Public Resources Code. In carrying out his or her duties under those sections, it is the intention of the Legislature that the director shall consult with the Director of Food and Agriculture and the Director of Planning and Research.

(b) Commencing July 1, 1986, and continuing biennially thereafter, the Department of Conservation shall collect or acquire information on the amount of land converted to or from agricultural use using 1984 baseline information as updated pursuant to this section for every county for which Important Farmland Series maps exist. On or before June 30, 1988, and continuing biennially thereafter, the department shall report to the Legislature on the data collected pursuant to this section. In reporting, the department shall specify, by category of agricultural land, the amount of land converted to, or from, agricultural use, by county and on a statewide basis. The department shall also report on the nonagricultural uses to which these agricultural lands were converted or committed.

For the purposes of this section, the following definitions apply unless otherwise specified:

(1) "Important Farmland Series maps" means those maps compiled by the United States Soil Conservation Service and updated and modified by the Department of Conservation.

(2) "Interim Farmland maps" means those maps prepared by the Department of Conservation for areas that do not have the current soil survey information needed to compile Important Farmland Series maps. The Interim Farmland maps shall indicate areas of irrigated agriculture, dry-farmed agriculture, grazing lands, urban and built-up lands, and any areas committed to urban or other nonagricultural uses.

(3) "Category of agricultural land" means prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and grazing land. "Grazing land" means land on which the existing vegetation, whether grown naturally or through management, is suitable for grazing or browsing of livestock.

(4) "Amount of land converted to agricultural use" means those lands which were brought into agricultural use or reestablished in agricultural use and were not shown as agricultural land on Important Farmland Series maps maintained by the Department of Conservation in the most recent biennial report.

(5) "Amount of land converted from agricultural use" means those lands which were permanently converted or committed to urban or other nonagricultural uses and were shown as agricultural land on Important Farmland Series maps maintained by the Department of Conservation and in the most recent biennial report.

(c) Beginning August 1, 1986, and continuing biennially thereafter, the Department of Conservation shall update and send counties copies of current Important Farmland Series maps. Counties may review the maps and notify the department within 90 days of any changes in agricultural land pursuant to subdivision (b) that occurred during the previous fiscal year, and note and request correction of any discrepancies or errors in the classification of agricultural lands on the maps. The department shall make those corrections requested by counties. The department shall provide staff assistance, as available, to collect or acquire information on the amount of land converted to, or from,

agricultural use for those counties for which Important Farmland Series maps exist.

(d) The Department of Conservation may also acquire any supplemental information which becomes available from new soil surveys and establish comparable baseline data for counties not included in the 1984 baseline, and shall report on the data pursuant to this section. The Department of Conservation may prepare Interim Farmland maps to supplement the Important Farmland Series maps. (e) The Legislature finds that the purpose of the Important Farmland Series maps and the Interim Farmland maps is not to consider the economic viability of agricultural lands or their current designation in the general plan. The purpose of the maps is limited to the preparation of an inventory of agricultural lands, as defined in this chapter, as well as land already committed to future urban or other nonagricultural purposes.

(Amended by Stats. 1983, Ch. 924; Amended by Stats. 1985, Ch. 1342; Amended by Stats. 1986, Ch. 1053.)

Article 10.6. Housing Elements

65580. Policy

The Legislature finds and declares as follows:

(a) The availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.

(b) The early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels.

(c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.

(d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.

(e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.

(Added by Stats. 1980, Ch. 1143; Amended by Stats. 1999, Ch. 967.)

65581. Intent

It is the intent of the Legislature in enacting this article:

(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.

(b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.

(c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.

(d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.

(Added by Stats. 1980, Ch. 1143.)

65582. Definitions

As used in this article:

(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.

(b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.

(c) "Department" means the Department of Housing and Community Development.

(d) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

***

(Added by Stats. 1980, Ch. 1143; Amended by Stats. 1989, Ch. 1140; Amended by Stats. 1990, Ch. 1441; Amended by Stats. 2004, Ch. 696.)

65583. Housing element content

The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a *** **qualification** of the locality's existing and projected housing needs for all in-

come levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. **The department shall adopt regulations to implement this paragraph, including parts of this paragraph determined by the department or any other state agency or a court to be a reimbursable state mandate. For any revision of a housing element required pursuant to Section 65588 that occurs subsequent to the adoption of those regulations, any actions undertaken by the locality beyond those specified in the regulations are at that locality's option and are not required by this section.**

(7) **At the option of local government,** an analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) (A) Identify adequate sites which will be made available through appropriate zoning and development standards and with services and facilities, including sewage collection and treatment, domestic water supply, and septic tanks and wells, needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b).

(i) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

(ii) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(B) For purposes of this paragraph, the phrase "use by right" shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

(Amended by Stats. 1984, Ch. 1691; Amended by Stats. 1986, Ch. 1383; Amended by Stats. 1989, Ch. 1451; Amended by Stats. 1991, Ch. 889. See notes immediately following and note following Section 65589.7; Amended by Stats. 1999, Ch. 967; Amended by Stats. 2001, Ch. 671;

Amended by Stats. 2002, Ch. 971 and 1038; Amended by Stats. 2004, Ch. 227.)

65583.1. Closed military bases; Housing Element

(a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for **substantial** compliance with *** **this article**, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for second units based on the number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph

(1) of subdivision (c) of Section 65583 *** **where** the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, *** **or the relocation is otherwise provided prior to displacement either as a condition of receivership, or provided by the property owner or the local government pursuant to Article 2.5 (commencing with Section 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or as otherwise provided by local ordinance; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been found by the local government or a court to be unfit for human habitation due to the existence of at least four violations** of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation. ***

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of *** **four** or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at *** **an** affordable **housing cost to either of the following:**

(I) Low-income households, if the unit will be made affordable to low-income households.

(II) Very low income households, if the unit will be made affordable to very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households **or if the acquired unit is occupied, the local government has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.**

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The *** unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than *** **55** years.

***

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) On July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

(Added by Stats. 1992, Ch. 1074; Amended by Stats. 1993, Ch. 589; Amended by Stats. 1996, Ch. 347; Amended by Stats. 1998, Ch. 796; Amended by Stats. 2002, Ch.1062; Amended by Stats. 2004, Ch. 724.)

65583.2. Inventory of land suitable for residential development

(a) A city's or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, "land suitable for residential development" includes all of the following:

(1) Vacant sites zoned for residential use.

(2) Vacant sites zoned for nonresidential use that allows residential development.

(3) Residentially zoned sites that are capable of being developed at a higher density.

(4) Sites zoned for nonresidential use that can be redeveloped for, and as necessary, rezoned for, residential use.

(b) The inventory of land shall include all of the following:

(1) A listing of properties by parcel number or other unique reference.

(2) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.

(3) For nonvacant sites, a description of the existing use of each property.

(4) A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.

(5) A general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities. This information need not be identified on a site-specific basis.

(6) Sites identified as available for housing for above-moderate income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.

(7) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction's general plan for reference purposes only.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency's calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulations requiring the development of a site at

a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (4) of subdivision (a) of Section 65583.

(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas: sites allowing at least 15 units per acre.

(ii) For unincorporated areas in all nonmetropolitan counties not included in clause (i): sites allowing at least 10 units per acre.

(iii) For suburban jurisdictions: sites allowing at least 20 units per acre.

(iv) For jurisdictions in metropolitan counties: sites allowing at least 30 units per acre.

(d) For purposes of this section, metropolitan counties, nonmetropolitan counties, and nonmetropolitan counties with micropolitan areas are as determined by the United States Census Bureau. Nonmetropolitan counties with micropolitan areas include the following counties: Del Norte, Humboldt, Lake Mendocino, Nevada, Tehama, and Tuolumne and such other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) A jurisdiction is considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction's population is greater than 100,000, in which case it is considered metropolitan. Counties, not including the City and County of San Francisco, will be considered suburban unless they are in a MSA of 2,000,000 or greater in population in which case they are considered metropolitan.

(f) A jurisdiction is considered metropolitan if the jurisdiction does not meet the requirements for "suburban area" above and is located in a MSA of 2,000,000 or greater in population, unless that jurisdiction's population is less than 25,000 in which case it is considered suburban.

(g) For sites described in paragraph (3) of subdivision (b) the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

(h) The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c) and at least 20 units per acre in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c). At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed-uses are not permitted.

(i) For purposes of this section and Section 65583, the phrase "use by right" shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of Division 13 (commencing with Section 21100) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not constitute a "project" for purposes of Division 13 (commencing with Section 21100) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(Added by Stats. 2004, Ch. 724.)

65584. Regional housing needs

(a) (1) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the department shall determine the existing and projected need for housing for each region pursuant to this article. 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. ***

(2) 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.

(c) 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 the department 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.

(d) The regional housing needs allocation plan shall be consistent with all of the following objectives:

(1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low and very low income households.

(2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns.

(3) Promoting an improved intraregional relationship between jobs and housing.

(4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census.

(e) For purposes of this section, "household income levels" are as determined by the department as of the most recent decennial census pursuant to the following code sections:

(1) Very low incomes as defined by Section 50105 of the Health and Safety Code.

(2) Lower incomes, as defined by Section 50079.5 of the Health and Safety Code.

(3) Moderate incomes, as defined by Section 50093 of the Health and Safety Code.

(4) Above moderate incomes are those exceeding the moderate income level of Section 50093 of the Health and Safety Code.

(f) Notwithstanding any other provision of law, determinations made by the department, a council of governments, or a city or county pursuant to this section or Section 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, 65584.06, or 65584.07 are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(Amended by Stats. 1984, Ch. 1684; Amended by Stats. 1989, Ch. 1451; Amended by Stats. 1990, Ch. 1441; Amended by Stats. 1998, Ch. 796; Amended by Stats. 2001, Ch. 159; Amended by Stats. 2003, Ch. 760; Amended by Stats. 2004, Ch. 696.)

65584.01. Elements of Regional Housing Need Calculation

(a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, where applicable, 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, in 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 ex-

isting 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 projection for the region prepared by the Department of Finance as may be 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 shall 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 and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (c), including analysis of why the proposed alternative would be a more 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.

(Added by Stats. 2004, Ch. 696.)

65584.02. Regional Housing and Transportation Planning

(a) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the existing and projected need for housing may be determined for each region by the department as follows, as an alternative to the process pursuant to Section 65584.01:

(1) In a region in which at least one subregion has accepted delegated authority pursuant to Section 65584.03, the region's housing need shall be determined at least 26 months prior to the housing element update deadline pursuant to Section 65588. In a region in which no subregion has accepted delegation pursuant to Section 65584.03, the region's housing need shall be determined at least 24 months prior to the housing element deadline.

(2) At least six months prior to the department's determination of regional housing need pursuant to paragraph (1), a council of governments may request the use of population and household forecast assumptions used in the regional transportation plan. For a housing element update due date pursuant to Section 65588 that is prior to January 2007, the department may approve a request that is submitted prior to December 31, 2004, notwithstanding the deadline in this paragraph. This

request shall include all of the following:

(A) Proposed data and assumptions for factors contributing to housing need beyond household growth identified in the forecast. These factors shall include allowance for vacant or replacement units, and may include other adjustment factors.

(B) A proposed planning period that is not longer than the period of time covered by the regional transportation improvement plan or plans of the region pursuant to Section 14527, but a period not less than five years, and not longer than six years.

(C) A comparison between the population and household assumptions used for the Regional Transportation Plan with population and household estimates and projections of the Department of Finance. The council of governments may include a request to extend the housing element deadline pursuant to Section 65588 to a date not to exceed two years, for the purpose of coordination with the scheduled update of a regional transportation plan pursuant to federal law.

(b) The department shall consult with the council of governments regarding requests submitted pursuant to paragraph (2) of subdivision (a). The department may seek advice and consult with the Demographic Research Unit of the Department of Finance, the State Department of Transportation, a representative of a contiguous council of governments, and any other party as deemed necessary. The department may request that the council of governments revise data, assumptions, or methodology to be used for the determination of regional housing need, or may reject the request submitted pursuant to paragraph (2) of subdivision (a). Subsequent to consultation with the council of governments, the department will respond in writing to requests submitted pursuant to paragraph (1) of subdivision (a).

(c) If the council of governments does not submit a request pursuant to subdivision (a), or if the department rejects the request of the council of governments, the determination for the region shall be made pursuant to Sections 65584 and 65584.01.

(Added by Stats. 2004, Ch. 696.)

65584.03. Subregional Entities

(a) At least 28 months prior to the scheduled housing element update required by Section 65588, at least two or more 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 as provided for in rules adopted by the local governments comprising the subregion or 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 counties.

(b) Upon formation of the subregional entity, the entity shall notify the council of governments of this formation. If the council of governments has not received notification from an eligible subregional entity at least 28 months prior to the scheduled housing element update required by Section 65588, the council of governments shall implement the provisions of Sections 65584 and 65584.04. The delegate subregion and the council of governments shall enter into an agreement that sets forth the process, timing, and other terms and conditions of the delegation of responsibility by the council of governments to the subregion.

(c) At least 25 months prior to the scheduled revision, the council of governments shall determine the share of regional housing need assigned to each delegate subregion. The share or shares allocated to the delegate subregion or subregions by a council of governments shall be in a proportion consistent with the distribution of households assumed for the comparable time period of the applicable regional transportation plan. Prior to allocating the regional housing needs to any delegate subregion or subregions, the council of governments shall hold at least one public hearing, and may consider requests for revision of the proposed allocation to a subregion. If a proposed revision is rejected, the council of governments shall respond with a written explanation of why the proposed revised share has not been accepted.

(d) Each delegate subregion shall fully allocate its share of the regional housing need to local governments within its subregion. If a delegate subregion fails to complete the regional housing need allocation process among its member jurisdictions in a manner consistent with this article and with the delegation agreement between the subregion and the council of governments, the allocations to member jurisdictions shall be made by the council of governments.

(Added by Stats. 2004, Ch. 696.)

65584.04. Methodology of Regional Housing Needs

(a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop a proposed methodology for distributing the existing and pro-

jected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to this section. The methodology shall be consistent with the objectives listed in subdivision (d) of Section 65584.

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

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

(3) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

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

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

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

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

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

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

(B) 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 shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.

(C) 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.

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

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

(4) The market demand for housing.

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

(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.

(7) High housing costs burdens.

(8) The housing needs of farmworkers.

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

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

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

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, 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 higher share than proposed in the draft allocation to those local governments by the council of governments or delegate subregion pursuant to Section 65584.05.

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

(Added by Stats. 2004, Ch. 696.)

65584.05. Draft and Final Allocation of Regional Housing Needs

(a) At least one and one-half years prior to the scheduled revision required by Section 65588, each council of governments and delegate subregion, as applicable, shall distribute a draft allocation of regional housing needs to each local government in the region or 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 housing need determined pursuant to Section 65584.01 or within subregions, as applicable, the subregion's entire share of the regional housing need determined pursuant to Section 65584.03.

(b) Within 60 days following receipt of the draft allocation, a local government may request from the council of governments or the delegate subregion, as applicable, a revision of its share of the regional housing need in accordance with the factors described in paragraphs (1) to (9), inclusive, of subdivision (d) 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 or delegate subregion, as applicable, 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 or delegate subregion, as applicable, does not accept the proposed revised share or modify the revised share to the satisfaction of the requesting party, the local government, may appeal its draft allocation based upon either or both of the following criteria:

(1) The council of governments or delegate subregion, as applicable, 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 or delegate subregion, as applicable, failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established pursuant to Section 65584.04.

(e) The council of governments or delegate subregion, as applicable, shall conduct public hearings to hear all appeals within 60 days of the date established to file appeals. The local government shall be notified within 10 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 and not more than 35 days from the date of the notification. Before taking action on an appeal, the council of governments or delegate subregion, as applicable, shall consider all comments, recommendations, and available data based on accepted planning methodologies submitted by the appellant. The final action of the council of governments or delegate subregion, as applicable, on an appeal shall be in writing and shall include information and other evidence explaining how its action is consistent with this article. The final action on an appeal may require the council of governments or delegate subregion, as applicable, to adjust the allocation of a local government that is not the subject of an appeal.

(f) The council of governments or delegate subregion, as applicable, 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 or delegate subregion, as applicable, shall adjust allocations 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, or, as applicable, total 7 percent or less of the subregion's share of the regional housing need as determined pursuant to Section 65584.03, then the council of governments or delegate subregion, as applicable, shall distribute the adjustments proportionally to all local governments. If the adjustments total more than 7 percent of the regional housing need, then the council of governments or delegate subregion, as applicable, shall develop a methodology to distribute the amount greater than the 7 percent to local governments. In no event shall the total distribution of housing need equal less than the regional housing need, as determined pursuant to Section 65584.01, nor shall the subregional distribution of housing need equal less than its share of the regional housing need as determined pursuant to Section 65584.03. Two or more local governments may agree to an alternate distribution of appealed housing allocations between the affected local governments. If two or more local governments agree to an alternative distribution of appealed housing allocations that maintains the total housing need originally assigned to these communities, then the council of governments shall include the alternative distribution in the final allocation plan.

(h) Within 45 days of the issuance of the proposed final allocation plan by the council of governments and each delegate subregion, as applicable, the council of governments shall hold a public hearing to adopt a final allocation plan. To the extent that the final allocation plan fully allocates the regional share of statewide housing need, as determined pursuant to Section 65584.01, the council of governments shall have final authority to determine the distribution of the region's existing and projected housing need as determined pursuant to Section 65584.01. Within 60 days of adoption by the council of governments, the department shall determine whether or not the final allocation plan is consistent with the existing and projected housing need for the region, as determined pursuant to Section 65584.01. The department may revise the determination of the council of governments if necessary to obtain this consistency.

(i) 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.

(Added by Stats. 2004, Ch. 696.)

65584.06. Revision Hearings

(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 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 has 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 toward 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. Consideration of suitable housing sites or land suitable for urban development is not limited to existing zoning ordinances and land use restrictions of a locality, but shall include consideration of the potential for increased residential development under alternative zoning ordinances and land use restrictions.

(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, within 30 days, the city or county may request a public hearing to review the determination.

(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 10 but not more than 15 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 local review period.

(Added by Stats. 2004, Ch. 696.)

65584.07. Reduction in Regional Housing Need

(a) During the period between adoption of a final regional housing needs allocation until the due date of the housing element update pursuant to Section 65588, the council of governments, or the department, whichever assigned the county's share, shall reduce the share of regional housing needs 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 equivalent to 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 approve the proposed reduction, if it determines that the conditions set forth in paragraphs (1), (2), and (3) above have been satisfied. The county and city or cities proposing the transfer shall submit an analysis of the factors and circumstances, with all supporting data, justifying the revision to the council of governments or the department. The council of governments shall submit a copy of its decision regarding the proposed reduction to the department.

(b) The county and cities which have executed transfers of regional housing need pursuant to this section shall amend their housing elements and submit them to the department for review pursuant to Section 65585.

All materials and data used to justify any revision shall be made available upon request to any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship. A fee may be charged to interested parties for any additional costs caused by the amendments made to former subdivision (c) of Section 65584 that reduced from 45 to 7 days the time within which materials and data were required to be made available to interested parties.

(c) In the event an incorporation of a new city occurs after the council of governments, or the department for areas with no council of governments, has made its final allocation under this section, the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments and the department, or to the department for areas with no council of governments. If the affected parties cannot reach a mutually acceptable agreement, then either party may request the council of governments, or the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and make the revised determination.

The revised determination shall be made within one year of the incorporation of the new city based upon the methodology described in subdivision (a) and shall reallocate a portion of the affected county's share of regional housing needs to the new city. The revised determination shall neither reduce the total regional housing needs nor change the previous allocation of the regional housing needs assigned by the council of governments or the department, where there is no council of governments, to other cities within the affected county.

(Added by Stats. 2004, Ch. 696.)

65584.1. Fee for Housing Needs

Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations *** **pursuant to Section 65584**. A city, county, or city and county may charge a fee, *** not *** **to exceed** the *** **amount charged in the**

aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of *** **the** fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose *** **the** fee pursuant to Section 66016 ***, **except that if the fee creates revenue in excess of actual costs, those revenues shall be refunded to the payers of the fee.**

(*Added by Stats. 2004, Ch. 227; Amended by Stats. 2004, Ch. 818.)*

65584.2. Review for Regional Housing Need

A local government may, but is not required to, conduct a review or appeal regarding allocation data provided by the department or the council of governments pertaining the locality's share of the regional housing need or the submittal of data or information for a proposed allocation, as permitted by this article.

(Added by Stats. 2004, Ch. 227)

65584.3. Certain cities

(a) A city that is incorporated to promote commerce and industry, that is located in the County of Los Angeles, and that has no residentially zoned land within its boundaries on January 1, 1992, may elect to adopt a housing element that makes no provision for new housing or the share of regional housing needs as determined pursuant to Section 65584 for the current and subsequent revisions of the housing element pursuant to Section 65588, for the period of time that 20 percent of all tax increment revenue accruing from all redevelopment projects, and required to be set aside for low- and moderate-income housing pursuant to Section 33334.2 of the Health and Safety Code, is annually transferred to the Housing Authority of the County of Los Angeles.

(b) (1) The amount of tax increment to be transferred each year pursuant to subdivision (a) shall be determined at the end of each fiscal year, commencing with the 1992-93 fiscal year. This amount shall be transferred within 30 days of the agency receiving each installment of its allocation of tax increment moneys, commencing in 1993.

(2) On or before December 31, 1992, the agency shall make an additional payment to the Housing Authority of the County of Los Angeles that eliminates any indebtedness to the low- and moderate-income housing fund pursuant to Section 33334.3. This amount shall be reduced by any amount actually expended by the redevelopment agency for principal or interest payments on agency bonds issued prior to the effective date of the act that adds this section, when that portion of the agency's tax increment revenue representing the low- and moderate-income housing set-aside funds was lawfully pledged as security for the bonds, and only to the extent that other tax increment revenue in excess of the 20-percent low- and moderate-income set-aside funds is insufficient in that fiscal year to meet in full the principal and interest payments.

(c) The Department of Housing and Community Development shall annually review the calculation and determination of the amount transferred pursuant to subdivisions (a) and (b). The department may conduct an audit of these funds if and when the Director of Housing and Community Development deems an audit appropriate.

(d) The amount transferred pursuant to subdivisions (a) and (b) shall fulfill the obligation of that city's redevelopment agency to provide for housing for low- and moderate-income families and individuals pursuant to Sections 33334.2 to 33334.16, inclusive, of the Health and Safety Code. The use of these funds for low- and moderate-income families in the region of the Southern California Association of Governments within which the city is located shall be deemed to be of benefit to the city's redevelopment project areas.

(e) (1) The amount transferred pursuant to subdivisions (a) and (b) to the Housing Authority of the County of Los Angeles shall be expended to provide housing and assistance, including, but not limited to, that specified in subdivision (e) of Section 33334.2 of the Health and Safety Code for low-and moderate-income families and individuals, in the region of the Southern California Association of Governments within which the city is located.

(2) Funds expended pursuant to this subdivision shall be expended in accordance with all of the following:

(A) The funds shall be expended for the construction of low- and moderate-income housing located no further than 15 miles from the nearest boundary line of the City of Industry.

(B) The low- and moderate-income housing constructed pursuant to this subdivision shall be in addition to any other housing required by the housing element of the general plan of the jurisdiction in which the low- and moderate-income housing is constructed.

(C) Funds may be encumbered by the Housing Authority of the County of Los Angeles for the purposes of this subdivision only after the authority has prepared a written plan for the expenditure of funds to be transferred to the authority pursuant to this subdivision and has filed a copy of this expenditure plan with the Department of Housing and Community Development.

(f) A city that meets the conditions specified in subdivision (d) shall continue to have responsibility for preparing a housing element pursuant to Section 65583 only to the extent to which the assessment of housing needs, statement of goals and objectives, and the five-year schedule of actions relate to the city's plan to maintain, preserve, and improve the housing that exists in the city on the effective date of the act which adds this section.

(g) This section shall not become operative unless and until a parcel of land, to be dedicated for the construction of

a high school, is transferred pursuant to a written agreement between the City of Industry and the Pomona Unified School District, and a copy of this agreement is filed with the County Clerk of the County of Los Angeles.

(Added by Stats. 1992, Ch. 1139.)

65584.5. Housing share transfer

(a) A city or county may transfer a percentage of its share of the regional housing needs to another city or county, if all of the following requirements are met:

(1) Both the receiving city or county and the transferring city or county comply with all of the conditions specified in subdivision (b).

(2) The council of governments or the department reviews the findings made pursuant to paragraph (2) of subdivision (c).

(3) The transfer does not occur more than once in a five-year housing element interval pursuant to subdivision (b) of Section 65588.

(4) The procedures specified in subdivision (c) are met.

(b) (1) Except as provided in paragraph (5) of subdivision (c) of Section 65584, a city or county transferring a share of its regional housing needs shall first have met, in the current or previous housing element cycle, at least 15 percent of its existing share of the region's affordable housing needs, as defined in Section 65584, in the very low and lower income category of income groups defined in Section 50052.5 of the Health and Safety Code if it proposes to transfer not more than 15 percent. In no event, however, shall the city or county transfer more than 500 dwelling units in a housing element cycle.

(2) A city or county shall transfer its regional housing needs in the same proportion by income group as the jurisdiction has met its regional housing needs.

(3) The transfer shall be only between jurisdictions that are contiguously situated or between a receiving city or county that is within 10 miles of the territory of the community of the donor city or county. If both the donor community and receiving community are counties, the donor county shall be adjacent to, in the same council of governments region as, and in the same housing market as, the receiving county. The sites on which any transferred housing units will be constructed shall be in the receiving city or county, and within the same housing market area as the jurisdiction of the donor city or county.

(4) The transferring and receiving city or county shall have adopted, and shall be implementing, a housing element in substantial compliance with Section 65583.

(5) The transferring city or county and the receiving city or county shall have completed, and provided to the department, the annual report required by subdivision (b) of Section 65400.

(c) (1) The donor city or county and the receiving city or county shall, at least 45 days prior to the transfer, hold a public hearing, after providing notice pursuant to Section 6062, to solicit public comments on the draft contract, including its terms, conditions, and determinations.

(2) The transferring and the receiving city or county shall do all of the following:

(A) Adopt a finding, based on substantial evidence on the record, that the transfer of the regional housing need pursuant to the terms of the agreement will not cause or exacerbate racial, ethnic, or economic segregation and will not create a detrimental financial impact upon the receiving city or county.

(B) Adopt a finding, based on substantial evidence on the record, that the transfer of the regional housing need will result in the construction of a greater number of similar type dwelling units than if the transfer does not occur.

(3) (A) The transferring city or county and the receiving city or county shall enter into an agreement to transfer units eligible under subdivision (b). A copy of this agreement shall be sent to the council of governments and the department to be kept on file for public examination.

(B) The agreement shall include a plan and schedule for timely construction of dwelling units, including, in addition to site identification, identification of and timeframes for applying for sufficient subsidy or mortgage financing if the units need a subsidy or mortgage financing, and a finding that sufficient services and public facilities will be provided.

(4) At least 60 days prior to the transfer, the receiving city or county planning agency and the transferring city or county planning agency shall submit to the department a draft amendment to reflect the identified transferred units. A transferring agency may reduce its housing needs only to the extent that it had not previously reduced its housing needs pursuant to paragraph (2) of subdivision (b) of Section 65583. A county planning agency that has its share of the regional housing need reduced pursuant to paragraph (5) of subdivision (c) of Section 65584 shall comply with this section. A receiving city or county shall, in addition to any other provisions of the article, identify in its housing element sufficient sites to meet its initial low- and moderate-income housing needs and sufficient sites to meet all transferred housing needs.

(5) The department shall review the draft amendment and report its written findings to the planning agency within 45 days of its receipt.

(6) The department's review shall follow the same procedure, requirements, and responsibilities of Sections 65583, 65585, 65587, and 65589.3. The court shall consider any written findings submitted by the department.

(d) No transfer made pursuant to this section shall affect the plans for a development that have been submitted to a city or county for approval 45 days prior to the adoption of the amendment to the housing element.

(e) No transfer made pursuant to this section shall be counted toward any ordinance or policy of a locality that

specifically limits the number of units that may be constructed.

(f) The Attorney General or any other interested person shall have authority to enforce the terms of the agreement and the provisions of this section.

(g) For a period of five years after the transfer occurs, the report required by subdivision (b) of Section 65400 shall include information on the status of transferred units, implementation of the terms and conditions of the transfer contract, and information on any dwelling units actually constructed, including the number, type, location, and affordability requirements in place for these units.

(h) (1) At least 60 days prior to the proposed transfer, the donor city or county shall submit the proposed agreement to the council of governments, or to the department if there is no council of governments that serves the city or county, for review. The governing board of the council or the director shall determine whether there is substantial evidence to support the terms, conditions, and determinations of the agreement and whether the agreement complies with the substantive and procedural requirements of this section. If the council or the director finds that there is substantial evidence to support the terms, conditions, and determinations of the agreement, and that the agreement complies with the substantive and procedural requirements of this section, the participating jurisdictions may proceed with the agreement. If the governing board or the director finds that there is not substantial evidence to support the terms, conditions, and findings of the agreement, or that the agreement does not comply with the substantive and procedural requirements of this section, the board or the director may make recommendations for revising or terminating the agreement. The participating jurisdictions shall then include those revisions, if any, or terminate the agreement.

(2) The council or the director may convene a committee to advise the council or the director in conducting this review. The donor city or county and the receiving community shall pay the council's or the department's costs associated with the committee. Neither the donor city or county, nor the receiving city or county, may expend moneys in its Low and Moderate Income Housing Fund of its redevelopment agency for costs associated with the committee.

(3) Membership of the committee appointed pursuant to paragraph (2) shall include all of the following:

(A) One representative appointed by the director.

(B) One representative appointed by the donor agency.

(C) One representative appointed by the receiving community.

(D) Two low- and moderate-income housing advocates, appointed by the director, who represent those persons in that region.

(i) (1) The receiving city or county shall construct the housing units within three years of the date that the transfer contract is entered into pursuant to this section. This requirement shall be met by documenting that a building permit has been issued and all fees have been paid.

(2) Any portion of a regional share allocation that is transferred to another jurisdiction, and that is not constructed within the three-year deadline set forth in paragraph (1), shall be reallocated by the council of governments to the transferring city or county, and the transferring city or county shall modify its zoning ordinance, if necessary, and amend its housing element to reflect the reallocated units.

(3) If, at the end of the five-year housing element planning period, any portion of a regional share allocation that is transferred to another jurisdiction is not yet constructed, the council of governments shall add the unbuilt units to the normal regional fair share allocation and reallocate that amount to either of the following:

(A) The receiving city, if the three-year deadline for construction has not yet occurred; or

(B) The transferring city, if the three-year deadline for construction has occurred.

(4) If the transferred units are not constructed within three years, the nonperforming jurisdictions participating in the transfer of regional share allocations shall be precluded from transferring their regional shares, pursuant to this section, for the planning period of the next periodic update of the housing element.

(j) On or after January 1, 2000, no transferring city or county shall enter into an agreement pursuant to this section unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

(k) If Article XXXIV of the California Constitution is applicable, the receiving city or county shall certify that it has sufficient authority under Article XXXIV of the California Constitution to allow development of units transferred pursuant to this section.

(l) The receiving city or county shall not, within three years of the date of the transfer agreement entered into pursuant to this section, or until transferred units are constructed, whichever is longer, enter into a contract to transfer units outside the territorial jurisdiction of the agency pursuant to this section.

(m) Communities that have transferred a portion of their share of the regional housing need to another city or county pursuant to this section shall comply with all other provisions of law for purposes of meeting the remaining regional housing need not transferred, including compliance with the provisions of Section 65589.5.

(n) As used in this section, "housing market area" means the area determined by a council of governments or the department pursuant to Section 65584, and based upon market demand for housing, employment opportunities, the availability of suitable sites and public facilities, and commuting patterns.

(o) This section shall not be construed to interfere with the right of counties to transfer shares of regional housing needs pursuant to paragraph (5) of subdivision (c) of Section 65584.

(Added by Stats. 1994, Ch. 1235.)

65584.6. Napa County

(a) The County of Napa may, during its current housing element planning period, identified in Section 65588, meet up to 15 percent of its existing share of the regional housing need for lower income households, as defined in Section 65584, by committing funds for the purpose of constructing affordable housing units, and constructing those units in one or more cities within the county, only after all of the following conditions are met:

(1) An agreement has been executed between the county and the receiving city or cities, following a public hearing held by the county and the receiving city or cities to solicit public comments on the draft agreement. The agreement shall contain information sufficient to demonstrate that the county and city or cities have complied with the requirements of this section and shall also include the following:

(A) A plan and schedule for timely construction of dwelling units.

(B) Site identification by street address for the units to be developed.

(C) A statement either that the sites upon which the units will be developed were identified in the receiving city's housing element as potential sites for the development of housing for lower-income households, or that the units will be developed on previously unidentified sites.

(D) The number and percentage of the county's lower-income housing needs previously transferred, for the appropriate planning period, pursuant to this section.

(2) The council of governments that assigned the county's share receives and approves each proposed agreement to meet a portion of the county's fair share housing allocation within one or more of the cities within the county after taking into consideration the criteria of subdivision (a) of Section 65584. If the council of governments fails to take action to approve or disapprove an agreement between the county and the receiving city or cities within 45 days following the receipt of the agreement, the agreement shall be deemed approved.

(3) The city or cities in which the units are developed agree not to count the units towards their share of the region's affordable housing need.

(4) The county and the receiving city or cities, based on substantial evidence on the record, make the following findings:

(A) Adequate sites with appropriate zoning exist in the receiving city or cities to accommodate the units to be developed pursuant to this section. The agreement shall demonstrate that the city or cities have identified sufficient vacant or underutilized or vacant and underutilized sites in their housing elements to meet their existing share of regional housing need, as allocated by the council of governments pursuant to subdivision (a) of Section 65584, in addition to the sites needed to construct the units pursuant to this section.

(B) If needed, additional subsidy or financing for the construction of the units is available.

(C) The receiving city or cities have housing elements that have been found by the Department of Housing and Community Development to be in compliance with this article.

(5) If the sites upon which units are to be developed pursuant to this section were previously identified in the receiving city's housing element as potential sites for the development of housing sufficient to accommodate the receiving city's share of the lower income household need identified in its housing element, then the receiving city shall have amended its housing element to identify replacement sites by street address for housing for lower-income households. Additionally, the Department of Housing and Community Development shall have received and reviewed the amendment and found that the city's housing element continues to comply with this article.

(6) The county and receiving city or cities shall have completed, and provided to the department, the annual report required by subdivision (b) of Section 65400.

(7) For a period of five years after a transfer occurs, the report required by subdivision (b) of Section 65400 shall include information on the status of transferred units, implementation of the terms and conditions of the transfer agreement, and information on any dwelling units actually constructed, including the number, type, location, and affordability requirements.

(8) The receiving city demonstrates that it has met, in the current or previous housing element cycle, at least 20 percent of its share of the regional need for housing for very low-income households allocated to the city pursuant to Section 65584.

(b) The credit that the county receives pursuant to this section shall not exceed 40 percent of the number of units that are affordable to lower income households and constructed and occupied during the same housing element cycle in unincorporated areas of the county. The county shall only receive the credit after the units have been constructed and occupied. Within 60 days of issuance of a certificate of occupancy for the units, the county shall inform the council of governments and the department in writing that a certificate of occupancy has been issued.

(c) Concurrent with the review by the council of governments prescribed by this section, the Department of Housing and Community Development shall evaluate the agreement to determine whether the city or cities are in

substantial compliance with this section. The department shall report the results of its evaluation to the county and city or cities for inclusion in their record of compliance with this section.

(d) If at the end of the five-year period identified in subdivision (c) of Section 65583, any percentage of the regional share allocation has not been constructed as provided pursuant to subdivision (a), or, after consultation with the department, the council of governments determines that the requirements of paragraphs (5) and (7) of subdivision (a) have not been substantially complied with, the council of governments shall add the unbuilt units to Napa County's regional share allocation for the planning period of the next periodic update of the housing element.

(e) Napa County shall not meet a percentage of its share of the regional share pursuant to subdivision (a) on or after June 30, 2007, unless a later enacted statute, that is enacted before June 30, 2007, deletes or extends that date.

(Added by Stats. 1996, Ch. 1018; Amended by Stats. 2000, Ch. 358.)

Note: Stats. 1996, Ch. 1018 also reads:

The Legislature finds and declares all of the following:

(a) In order to fulfill the purposes of Sections 65583 and 65584, housing should be developed in the jurisdictions to which the housing need is allocated.

(b) Due to circumstances unique to Napa County, and in order to provide additional and new housing for low- and moderate-income households, the county may meet a portion of its fair share housing needs allocation in one or more cities only within the county.

(c) Among the circumstances making it appropriate for Napa County to undertake this authority are both of the following:

(1) The county has 35,000 acres of world-famous vineyards and unincorporated area. The county's tourism industry relies on the vineyards and devotes its significant economic interests on those vineyards.

(2) The county has adopted a Housing Trust Fund program for residential development and a fee on industrial, commercial, and viticultural development in its unincorporated areas. The Housing Trust Fund currently generates approximately five hundred fifty thousand dollars (($550,000) per year to further affordable goals and strategies of the county's general plan, and these moneys can be effectively invested in partnership with the cities in the county in order to address affordable housing needs of county residents.

65585. Housing element guidelines

(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 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.

(Amended by Stats. 1983, Ch. 1250; Amended by Stats. 1984, Ch. 1009; Amended by Stats. 1990, Ch. 1441; Amended by Stats. 2000, Ch. 117.)

65585.1. SANDAG self-certification

(a) The San Diego Association of Governments (SANDAG), if it approves a resolution agreeing to participate in the self-certification process, and in consultation with the cities and county within its jurisdiction, its housing element advisory committee, and the department, shall work with a qualified consultant to determine the maximum number of housing units that can be constructed, acquired, rehabilitated, and preserved as defined in paragraph (11) of subdivision (e) of Section 33334.2 of the Health and Safety Code, and the maximum number of units

or households that can be provided with rental or ownership assistance, by each jurisdiction during the third and fourth housing element cycles to meet the existing and future housing needs for low- and very low income households as defined in Sections 50079.5, 50093, and 50105 of the Health and Safety Code, and extremely low income households. The methodology for determining the maximum number of housing units that can be provided shall include a recognition of financial resources and regulatory measures that local jurisdictions can use to provide additional affordable lower income housing. This process is intended to identify the available resources that can be used to determine the maximum number of housing units each jurisdiction can provide. The process acknowledges that the need to produce housing for low-, very low, and extremely low income households may exceed available resources. The department and SANDAG, with input from its housing element advisory committee, the consultant, and local jurisdictions, shall agree upon definitions for extremely low income households and their affordable housing costs, the methodology for the determination of the maximum number of housing units and the number each jurisdiction can produce at least one year before the due date of each housing element revision, pursuant to paragraph (4) of subdivision (e) of Section 65588. If SANDAG fails to approve a resolution agreeing to participate in this pilot program, or SANDAG and the department fail to agree upon the methodology by which the maximum number of housing units is determined, then local jurisdictions may not self-certify pursuant to this section.

(1) The "housing element advisory committee" should include representatives of the local jurisdictions, nonprofit affordable housing development corporations and affordable housing advocates, and representatives of the for-profit building, real estate and banking industries.

(2) The determination of the "maximum number of housing units" that the jurisdiction can provide assumes that the needs for low-, very low, and extremely low income households, including those with special housing needs, will be met in approximate proportion to their representation in the region's population.

(3) A "qualified consultant" for the purposes of this section means an expert in the identification of financial resources and regulatory measures for the provision of affordable housing for lower income households.

(b) A city or county within the jurisdiction of the San Diego Association of Governments that elects not to self-certify, or is ineligible to do so, shall submit its housing element or amendment to the department, pursuant to Section 65585.

(c) A city or county within the jurisdiction of the San Diego Association of Governments that elects to self-certify shall submit a self-certification of compliance to the department with its adopted housing element or amendment. In order to be eligible to self-certify, the legislative body, after holding a public hearing, shall make findings, based on substantial evidence, that it has met the following criteria for self-certification:

(1) The jurisdiction's adopted housing element or amendment substantially complies with the provisions of this article, including addressing the needs of all income levels.

(2) For the third housing element revision, pursuant to Section 65588, the jurisdiction met its fair share of the regional housing needs for the second housing element revision cycle, as determined by the San Diego Association of Governments.

In determining whether a jurisdiction has met its fair share, the jurisdiction may count each additional lower income household provided with affordable housing costs. Affordable housing costs are defined in Section 6918 for renters, and in Section 6925 for purchasers, of Title 25 of the California Code of Regulations, and in Sections 50052.5 and 50053 of the Health and Safety Code, or by the applicable funding source or program.

(3) For subsequent housing element revisions, pursuant to Section 65588, the jurisdiction has provided the maximum number of housing units as determined pursuant to subdivision (a), within the previous planning period.

(A) The additional units provided at affordable housing costs as defined in paragraph (2) in satisfaction of a jurisdiction's maximum number of housing units shall be provided by one or more of the following means:

(i) New construction.

(ii) Acquisition.

(iii) Rehabilitation.

(iv) Rental or ownership assistance.

(v) Preservation of the availability to lower income households of affordable housing units in developments which are assisted, subsidized, or restricted by a public entity and which are threatened with imminent conversion to market rate housing.

(B) The additional affordable units shall be provided in approximate proportion to the needs defined in paragraph (2) of subdivision (a).

(4) The city or county provides a statement regarding how its adopted housing element or amendment addresses the dispersion of lower income housing within its jurisdiction, documenting that additional affordable housing opportunities will not be developed only in areas where concentrations of lower income households already exist, taking into account the availability of necessary public facilities and infrastructure.

(5) No local government actions or policies prevent the development of the identified sites pursuant to Section 65583, or accommodation of the jurisdiction's share of the total regional housing need, pursuant to Section 65584.

(d) When a city or county within the jurisdiction of the San Diego Association of Governments duly adopts a self-certification of compliance with its adopted housing element or amendment pursuant to subdivision (c), all of the following shall apply:

(1) Section 65585 shall not apply to the city or county.

(2) In any challenge of a local jurisdiction's self-certification, the court's review shall be limited to determining whether the self-certification is accurate and complete as to the criteria for self-certification. Where there has not been a successful challenge of the self-certification, there shall be a rebuttable presumption of the validity of the housing element or amendment.

(3) Within six months after the completion of the revision of all housing elements in the region, the council of governments, with input from the cities and county within its jurisdiction, the housing element advisory committee, and qualified consultant shall report to the Legislature on the use and results of the self-certification process by local governments within its jurisdiction. This report shall contain data for the last planning period regarding the total number of additional affordable housing units provided by income category, the total number of additional newly constructed housing units, and any other information deemed useful by SANDAG in the evaluation of the pilot program.

(e) This section shall become inoperative on June 30, *** **2010**, and as of January 1, *** **2011**, is repealed, unless a later enacted statute that is enacted before January 1, *** **2011**, deletes or extends the dates on which it becomes inoperative and is repealed.

(Added by Stats. 1995, Ch. 58;, Amended by Stats. 2004, Ch. 387.)

Note: Stats. 1995, Ch. 589 also reads:

SEC. 1. The Legislature hereby finds and declares all of the following:

(a) That the San Diego Association of Governments, the council of governments in the San Diego region, serving as the Regional Planning and Growth Management Review Board, has adopted a Regional Growth Management Strategy, based on a voter-approved measure, that contains a regional housing element consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(b) That the Regional Growth Management Strategy has provided a program for measuring local government housing needs performance.

(c) That for this reason the San Diego region is uniquely suited to undertake a pilot program authorizing the local governments within the jurisdiction of the San Diego Association of Governments, in conjunction with the council of governments, the housing element advisory committee, and the Department of Housing and Community Development to establish performance standards for self-certification, and if eligible, to self-certify compliance of their adopted housing elements or amendments in accordance with the criteria for self-certification.

(Added by Stats. 1995, Ch. 589; Amended by Stats. 2001, Ch. 159.)

65585.2. Self-certified housing element

Notwithstanding any other provision of law, any city or county that has a housing element that has been self-certified pursuant to the requirements of Section 65585.1 shall be considered to be fully eligible to participate in any program created by, or receiving funds through, the Housing and Emergency Shelter Trust Fund Act of 2002 in an identical manner and to the same degree, as those local jurisdictions deemed in substantial compliance with the requirements of this article by the Department of Housing and Community Development pursuant to Section 65585.

(Added by Stats. 2002, Ch. 711.)

65586. Deadline for adoption

Local governments shall conform their housing elements to the provisions of this article on or before October 1, 1981. Jurisdictions with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977, and located in Subchapter 3 (commencing with Section 6300) of Chapter 6 of Part 1 of Title 25 of the California Administrative Code, shall be deemed in compliance with this article as of its effective date. A locality with a housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

(Added by Stats. 1980, Ch. 1143.)

65587. Deadline extension

(a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into

compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

(Amended by Stats. 1984, Ch. 1009; Amended by Stats. 1990, Ch. 1441.)

Note: Stats. 1984, Ch. 1009, also reads:

SEC. 44. It is the intent of the Legislature that the term "substantially complies," as used in subdivision (b) of Section 65587, be given the same interpretation as was given that term by the court in *Camp v. Board of Supervisors*, 123 Cal.App.3d 334, 348.

65587.1. *(Repealed by Stats. 1998, Ch. 689)*

65588. Periodic review and revision

(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 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, 2006, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: December 31, 2001, for the third revision, and June 30, 2007, for the fourth revision.

(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, 2008, for the fourth revision.

(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, 2008, for the fourth revision.

(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, 2005, for the fourth revision.

(6) All other local governments: December 31, 2003, for the third revision, and June 30, 2009, for the fourth revision.

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

(Amended by Stats. 1984, Ch. 208; Amended by Stats. 1993, Ch. 695; Amended by Stats. 1996, Ch. 39; Amended by Stats. 1997, Ch. 580; Amended by Stats. 1998, Ch. 819; Amended by Stats. 1999, Ch. 107; Amended by Stats. 2000, Ch. 117; Amended by Stats. 2001, Ch. 85; Amended by Stats. 2003, Ch. 58.)

65588.1. Housing element annual review

(a) The planning period of existing housing elements prepared pursuant to subdivision (b) of Section 65588 shall be extended through the housing element due date prescribed in subdivision (e) of Section 65588. Local governments shall continue to implement the housing program of existing housing elements and the annual review pursuant to Section 65400.

(b) The extension provided in this section shall not limit the existing responsibility under subdivision (b) of Section 65588 of any jurisdiction to adopt a housing element in conformance with this article.

(c) It is the intent of the Legislature that nothing in this section shall be construed to reinstate any mandates pursuant to Chapter 1143 of the Statutes of 1980 suspended by the Budget Act of 1993-94.

(Added by Stats. 1993, Ch. 695; Amended by Stats. 2000, Ch. 117)

65588.5. *(Repealed by Stats, 1993, Ch. 1678..)*

65589. Legal effect

(a) Nothing in this article shall require a city, county, or city and county to do any of the following:

(1) Expend local revenues for the construction of housing, housing subsidies, or land acquisition.

(2) Disapprove any residential development which is consistent with the general plan.

(b) Nothing in this article shall be construed to be a grant of authority or a repeal of any authority which may exist of a local government to impose rent controls or restrictions on the sale of real property.

(c) Nothing in this article shall be construed to be a grant of authority or a repeal of any authority which may exist of a local government with respect to measures that may be undertaken or required by a local government to be undertaken to implement the housing element of the local general plan.

(d) The provisions of this article shall be construed consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians.

(Added by Stats. 1980, Ch. 1143.)

65589.3. Rebuttable presumption

In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

(Added by Stats. 1990, Ch. 1441.)

65589.4. Multifamily residential housing project

(a) A multifamily residential housing project shall be a permitted use not subject to a conditional use permit on any parcel zoned for multifamily housing if it satisfies the requirements of subdivision (b) and either of the following:

(1) The project satisfies the criteria of Section 21159.22, 21159.23, or 21159.24 of the Public Resources Code.

(2) The project meets all of the following criteria:

(A) The project is subject to a discretionary decision other than a conditional use permit and a negative declaration or mitigated negative declaration has been adopted for the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). If no public hearing is held with respect to the discretionary decision, then the negative declaration or mitigated negative declaration for the project may be adopted only after a public hearing to receive comments on the negative declaration or mitigated negative declaration.

(B) The project is consistent with both the jurisdiction's zoning ordinance and general plan as it existed on the date the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(C) The project is located in an area that is covered by one of the following documents that has been adopted by the jurisdiction within five years of the date the application for the project was deemed complete:

(i) A general plan.

(ii) A revision or update to the general plan that includes at least the land use and circulation elements.

(iii) An applicable community plan.

(iv) An applicable specific plan.

(D) The project consists of not more than 100 residential units with a minimum density of not less than 12 units per acre.

(E) The project is located in an urbanized area as defined in Section 21071 of the Public Resources Code or within a census-defined place with population density of at least 5,000 persons per square mile or, if the project consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(F) The project is located on an infill site as defined in Section 21061.0.5 of the Public Resources Code.

(b) At least 10 percent of the units of the project shall be available at affordable housing cost to very low income households, as defined in Section 50105 of the Health and Safety Code, or at least 20 percent of the units of the housing development shall be available at affordable housing cost to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or at least 50 percent of the units of the housing development available at affordable housing cost to moderate-income households, consistent with Section 50052.5 of the Health and Safety Code. The developer of the project shall provide sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for very low, low-, or moderate-income households for a period of at least 30 years.

(c) Nothing in this section shall prohibit a local agency from applying design and site review standards in existence on the date the application was deemed complete.

(d) The provisions of this section are independent of any obligation of a jurisdiction pursuant to subdivision (c) of Section 65583 to identify multifamily sites developable by right.

(e) This section does not apply to the issuance of coastal development permits pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(Added by Stats. 2003, Ch. 793.)

65589.5. Legislative findings

(a) The Legislature finds and declares all of the following:

(1) The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low- or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) *** The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element ***** in substantial compliance with** this article. **This subdivision cannot be utilized to disapprove a housing development project defined in subdivision (a) if the development project is proposed on a site that is identified for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.**

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Divi-

sion 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with **objective, quantifiable**, written development standards, conditions, and policies appropriate to, and consistent with, meeting the *** **jurisdiction's share of** the *** **regional** housing *** **need** pursuant to *** Section *** **65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development project.** Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law *** **that** are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of either of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Neighborhood" means a planning area commonly identified as such in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(6) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in

this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney**'s** fees and costs of suit to the plaintiff or petitioner who proposed the housing development, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled.

(l) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure, all or part of the record may be filed (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(Added by Stats. 1982, Ch. 1438; Amended by Stats. 1990, Ch. 1439; Amended by Stats. 1991, Ch. 100; Amended by Stats. 1992, Ch. 1356; Amended by Stats. 1994, Ch. 896; Amended by Stats. 1999, Ch. 966; Amended by Stats. 1999, Ch. 968; Amended by Stats. 2001, Ch. 237; Amended by Stats. 2002, Ch. 147; Amended by Stats. 2003, Ch 793; Amended by Stats. 2004, Ch. 724)

65589.6. Action to challenge validity of project approval/ disapproval

In any action taken to challenge the validity of a decision by a city, county, or city and county to disapprove a project or approve a project upon the condition that it be developed at a lower density pursuant to Section 65589.5, the city, county, or city and county shall bear the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5.

(Added by Stats. 1984, Ch. 1104.)

65589.7. Delivery to special districts

(a) The housing element adopted by the legislative body and any amendments made to that element shall be delivered to all public agencies or private entities that provide water services at retail or sewer services within the territory of the legislative body. When allocating or making plans for the allocation of available and future resources or services designated for residential use, each public agency or private entity providing water services at retail or sewer services, shall grant a priority for the provision of these available and future resources or services to proposed housing developments which help meet the city's, county's, or city and county's share of the regional housing need for lower income households as identified in the housing element adopted by the legislative body and any amendments made to that element.

(b) This section is intended to neither enlarge nor diminish the existing authority of a city, county or city and county in adopting a housing element. Failure to deliver a housing element adopted by the legislative body or amendments made to that element, to a public agency or private entity providing water services at retail or sewer services shall not invalidate any action or approval of a development project. The special districts which provide water services at retail or sewer services related to development, as defined in subdivision (e) of Section 56426, are included within this section.

(c) As used in this section, "water services at retail" means supplying water directly to the end user or consumer of that water, and does not include sale by a water supplier to another water supplier for resale.

(Added by Stats. 1991, Ch. 889; Amended by Stats. 1992, Ch. 1356.)

Note: Stats. 1991, Ch. 889 also reads:

SEC. 5. The additional requirements and duties created by Sections 1, 2, and 4 of this act shall be applicable upon the next amendment or periodic review of the housing element by the legislative body.

65589.8. Affordable housing

A local government which adopts a requirement in its housing element that a housing development contain a fixed percentage of affordable housing units, shall permit a developer to satisfy all or a portion of that requirement by constructing rental housing at affordable monthly rents, as determined by the local government.

Nothing in this section shall be construed to expand or contract the authority of a local government to adopt an

ordinance, charter amendment, or policy requiring that any housing development contain a fixed percentage of affordable housing units.

(Added by Stats. 1983, Ch. 787.)

Article 10.7. Low- and Moderate-Income Housing Within the Coastal Zone

65590. Requirements for housing

(a) In addition to the requirements of Article 10.6 (commencing with Section 65580), the provisions and requirements of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone.

(b) The conversion or demolition 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, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit. In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.

For purposes of this subdivision, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or family was evicted from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this subdivision. If a substantial number of persons or families of low or moderate income were evicted from a single residential development within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this subdivision and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this subdivision.

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

(1) The conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer dwelling units.

(2) The conversion or demolition of a residential structure for purposes of a nonresidential use which is either "coastal dependent," as defined in Section 30101 of the Public Resources Code, or "coastal related," as defined in Section 30101.3 of the Public Resources Code. However, the coastal-dependent or coastal-related use shall be consistent with the provisions of the land use plan portion of the local government's local coastal program which has been certified as provided in Section 30512 of the Public Resources Code. Examples of coastal-dependent or coastal-related uses include, but are not limited to, visitor-serving commercial or recreational facilities, coastal-dependent industry, or boating or harbor facilities.

(3) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone, and three miles inland therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.

(4) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required by this subdivision. As otherwise required by this subdivision, the replacement units shall, (i) be located within the coastal zone if feasible, or, if location within the coastal zone is not feasible, shall be located within three miles of the coastal zone, and (ii) shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.

The requirements of this subdivision for replacement dwelling units shall not apply to the demolition of any residential structure which has been declared to be a public nuisance under the provisions of Division 13 (commencing with Section 17000) of the Health and Safety Code, or any local ordinance enacted pursuant to those provisions.

For purposes of this subdivision, no building, which conforms to the standards which were applicable at the time the building was constructed and which does not constitute a substandard building, as provided in Section 17920.3 of

the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Uniform Building Code as adopted within the jurisdiction for new construction.

(c) The conversion or demolition of any residential structure for purposes of a nonresidential use which is not "coastal dependent", as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location. If a local government makes this determination and authorizes the conversion or demolition of the residential structure, it shall require replacement of any dwelling units occupied by persons and families of low or moderate income pursuant to the applicable provisions of subdivision (b).

(d) New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees.

(e) Any determination of the "feasibility" of an action required to be taken by this section shall be reviewable pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.

(f) The housing provisions of any local coastal program prepared and certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code prior to January 1, 1982, shall be deemed to satisfy all of the requirements of this section. Any change or alteration in those housing provisions made on or after January 1, 1982, shall be subject to all of the requirements of this section.

(g) As used in this section:

(1) "Conversion" means a change of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a mobilehome, or a mobilehome lot in a mobilehome park, or a residential hotel to a nonresidential use.

(2) "Demolition" means the demolition of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, which has not been declared to be a public nuisance under Division 13 (commencing with Section 17000) of the Health and Safety Code or any local ordinance enacted pursuant to those provisions.

(3) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

(h) With respect to the requirements of Sections 65583 and 65584, compliance with the requirements of this section is not intended and shall not be construed as any of the following:

(1) A statutory interpretation or determination of the local government actions which may be necessary to comply with the requirements of those sections; except that compliance with this section shall be deemed to satisfy the requirements of paragraph (2) of subdivision (c) of Section 65583 for that portion of a local government's jurisdiction which is located within the coastal zone.

(2) A limitation on the program components which may be included in a housing element, or a requirement that a housing element be amended in order to incorporate within it any specific provision of this section or related policies. Any revision of a housing element pursuant to Section 65588 shall, however, take into account any low- or moderate-income housing which has been provided or required pursuant to this section.

(3) Except as otherwise specifically required by this section, a requirement that a local government adopt individual ordinances or programs in order to implement the requirements of this section.

(i) No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.

(j) Local governments may impose fees upon persons subject to the provisions of this section to offset administrative costs incurred in order to comply with the requirements of this section.

(k) This section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

(Amended by Stats. 1982, Ch. 1246.)

65590.1. Application of section

Any local government which receives an application as provided in Section 30600.1 of the Public Resources Code to apply the requirements of Section 65590 to a proposed development shall apply these requirements within 90 days from the date on which it has received that application and accepted it as complete. In the event that the local government has granted final discretionary approval to the proposed development, or has determined that no such approval was required, prior to receiving the application, it shall, nonetheless, apply the requirements and is hereby authorized to conduct proceedings as may be necessary or convenient for the sole purpose of doing so.

(Added by Stats. 1982, Ch. 43.)

Article 10.8. Water Conservation in Landscaping

65591. Title

This article may be cited and shall be known as the Water Conservation in Landscaping Act.

(Added by Stats. 1990, Ch. 1145; Renumbered by Stats. 1991, Ch. 1091.)

65591.2. Legislative findings

The Legislature finds and declares all of the following:

(a) The waters of the state are of limited supply and are subject to ever increasing demands.

(b) The continuation of California's economic prosperity is dependent on adequate supplies of water being available for future uses.

(c) It is the policy of the state to promote the conservation and efficient use of water and to prevent the waste of this valuable resource.

(d) Landscapes are essential to the quality of life in California by providing areas for active and passive recreation and as an enhancement to the environment by cleaning air and water, preventing erosion, offering fire protection, and replacing ecosystems lost to development.

(e) Landscape design, installation, and maintenance can and should be water efficient.

(Added by Stats. 1990, Ch. 1145; Renumbered by Stats. 1991, Ch. 1091.)

65591.5. Model ordinance

(a) It is the intent of the Legislature that the Department of Water Resources prepare and promote the use of a model water efficient landscape ordinance which local agencies may adopt.

(b) It is the intent of the Legislature that the Department of Water Resources adopt a model water efficient landscape ordinance based on recommendations from a task force representing the landscape, water, and building industries, local agencies, and others.

(c) It is the intent of the Legislature that the task force reach general agreement on those provisions which will be included in the model water efficient landscape ordinance.

(d) It is the intent of the Legislature that the task force consider the most recent information on efficient landscape irrigation technologies and those elements of existing water efficient landscape ordinances which have proven successful in reducing water consumption.

(e) It is the intent of the Legislature that the model water efficient landscape ordinance developed pursuant to this article promote the most efficient use of water in the landscape while respecting the economic, environmental, aesthetic, and lifestyle choices of individuals and property owners.

(Added by Stats. 1990, Ch. 1145.)

65592. Definitions

Unless the context requires otherwise, the definitions used in this section govern the construction of this article:

(a) "Department" means the Department of Water Resources.

(b) "Local agency" means any city, county, or city and county.

(c) "Water efficient landscape ordinance" means an ordinance or resolution adopted by a local agency to address the efficient use of water in landscaping.

(Added by Stats. 1990, Ch. 1145.)

65593. Model ordinance task force

Not later than February 1, 1991, the department shall appoint an advisory task force to work with department staff in the drafting of a model water efficient landscape ordinance. The task force shall consist of the following members:

(a) One member selected from a list provided by the League of California Cities.

(b) One member selected from a list provided by the County Supervisors Association of California.

(c) One member selected from a list provided by a recognized professional association in California representing water agencies.

(d) One member selected from a list provided by a recognized association in California representing commercial builders.

(e) One member selected from a list provided by a recognized professional association in California representing residential builders.

(f) One member representing a nonprofit environmental protection organization or a water conservation organization whose principal purpose includes promoting the efficient use of water or water conservation.

(g) One member selected from a list provided by a recognized professional association in California representing the nursery industry.

(h) One member selected from a list provided by a recognized professional association in California representing landscape contractors.

(i) One member selected from a list provided by a recognized professional association in California representing landscape architects.

(j) One member selected from a list provided by a recognized professional association in California representing the manufacturers or designers of irrigation equipment.

(k) One member representing the Green Industry Council of California.

(l) One member selected from a list provided by a recognized association in California representing the growers or producers of turf grass.

(m) One member selected by the Director of Water Resources.

Membership of the task force shall, to the extent practicable, be representative of the state's cultural, racial, and ethnic diversity and gender balance.

All meetings of the task force shall be subject to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

The Legislature declares that some individuals appointed as members of the task force must be chosen as representatives of the industries and professions impacted by local water conservation ordinances, and that their representation of these industries and professions does serve the general public interest as they have unique information, expertise, and experience on the issue of water conservation and landscaping that should be taken into consideration by the department as it considers the development of model water conservation ordinances. Therefore, for purposes of persons who hold this office, the industries and professions which are represented on the task force constitute the public generally within the meaning of Section 87103 of the Government Code in those decisions impacting those specific industries and professions, unless the results of their actions taken as task force members have a material financial effect on those members distinguishable from their effect on other members of their respective industries and professions generally.

The task force shall submit the recommended model local water efficient landscape ordinance to the department on or before May 1, 1991.

The department shall adopt a model local water efficient landscape ordinance based on the recommendations of the task force.

The task force shall cease to exist on the date the department adopts a model local water efficient landscape ordinance or January 1, 1992, whichever occurs first.

(Added by Stats. 1990, Ch. 1145.)

65594. State adoption of model ordinance

(a) Not later than January 1, 1992, after holding a public hearing, the department, based on recommendations of the task force established pursuant to Section 65593, shall adopt a model local water efficient landscape ordinance which each local agency may adopt.

(b) In developing the model ordinance, the task force shall recognize and promote the benefits of consistent local ordinances in areas having similar climatic, geological, or topographical conditions.

(c) The department shall notify and deliver a copy of the model local water efficient landscape ordinance to the Joint Legislative Budget Committee. The Joint Legislative Budget Committee shall have 60 days to review the model ordinance before it is formally adopted by the department.

(d) Not later than January 31, 1992, the department shall distribute the adopted model ordinance to all local agencies and other interested parties.

(e) The department shall promote the benefits of consistent local ordinances in areas having similar climatic, geological, or topographical areas.

(Added by Stats. 1990, Ch. 1145.)

65595. Local ordinance deadline

If by January 1, 1993, a local agency has not adopted a water efficient landscape ordinance or has not adopted findings based on climatic, geological, or topographical conditions, or water availability, which state that a water efficient landscape ordinance is unnecessary, the model water efficient landscape ordinance adopted by the department pursuant to subdivision (a) of Section 65594 shall take effect on January 1, 1993, and shall be enforced by the local agency and have the same force and effect as if adopted by the local agency.

(Added by Stats. 1990, Ch. 1145.)

65596. Local consideration of model ordinance

To the extent feasible, local agencies that adopt a water efficient landscape ordinance after the model water efficient landscape ordinance is adopted by the department, shall consider the provisions of the model.

(Added by Stats. 1990, Ch. 1145.)

65597. Model ordinance provisions

The proposed model ordinance shall contain, but not be limited to, the following:

(a) Provisions for water conservation through the appropriate use and groupings of plants that are well adapted to particular sites and to particular climatic, geological, or topographical conditions. The model ordinance shall not prohibit or require specific plant species, but it may include conditions for the use of plant species. However, the model

shall not include conditions which have the effect of prohibiting or requiring specific plant species.

(b) Provisions for the use of automatic irrigation systems and seasonal irrigation schedules, incorporating water conservation design and utilizing methods appropriate for specific terrains, soil types, wind conditions, temperatures, and other environmental factors, in order to ensure a high degree of water efficiency.

(c) Provisions for grading and drainage to promote healthy plant growth and to prevent excessive erosion and runoff, and the use of mulches in shrub areas, garden beds, and landscaped areas where appropriate.

(d) Provisions for the use of recycled water supplied through dual distribution systems, if feasible and cost effective, and subject to appropriate health standards.

(e) Provisions to educate water users on the efficient use of water and the benefits of doing so.

(f) Provisions addressing regional differences where necessary and feasible, including fire prevention needs.

(g) Provisions to exempt landscaping which is part of a registered historical site, where feasible.

(h) Provisions for the use of economic incentives to promote the efficient use of water, where feasible.

(i) Provisions for landscape maintenance practices which foster long-term landscape water conservation. Landscape maintenance practices may include, but are not limited to, performing routine irrigation system repair and adjustments, scheduling irrigation based on CIMIS (California Irrigation Management Information System), conducting water audits, and prescribing the amount of water applied per landscaped acre.

(Added by Stats. 1990, Ch. 1145; Amended by Stats. 1995, Ch. 28.)

65598. Cemetery exemption

The proposed model ordinance shall exempt cemeteries from all provisions of the ordinance except those provisions adopted to conform with subdivisions (e), (h), and (i) of Section 65597. In adopting language specific to cemeteries, the task force shall recognize their special landscape management needs.

(Added by Stats. 1990, Ch. 1145.)

65599. Filing deadline

Not later than January 31, 1993, each local agency shall file with the department a copy of the water efficient landscape ordinance adopted pursuant to Section 65595, or adopted before the effective date of this article, or the findings which state that a water efficient landscape ordinance is unnecessary. Not later than July 1, 1993, the department shall prepare and submit a report to the Legislature summarizing the status of water efficient landscape ordinances adopted by local agencies.

(Added by Stats. 1990, Ch. 1145.)

65600. Local agency; noncompliance

Any actions or proceedings to attach, review, set aside, void, or annul the act, decision, or findings of a local agency on the ground of noncompliance with this article shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

(Added by Stats. 1990, Ch. 1145.)

Article 10.9. Water Recycling in Landscaping

65601. Title

This article shall be known and may be cited as the Water Recycling in Landscaping Act.

(Added by Stats. 1967, Ch. 1467.)

65602. Legislative findings

The Legislature finds and declares all of the following:

(a) The waters of the state are of limited supply and are subject to ever-increasing demands.

(b) The continuation of California's economic prosperity is dependent on adequate supplies of water being available for future uses.

(c) It is the policy of the state to promote the efficient use of water through the development of water recycling facilities.

(d) Landscape design, installation, and maintenance can and should be water efficient.

(e) The use of potable domestic water for landscaped areas is considered a waste or unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water is available that meets the conditions described in Section 13550 of the Water Code.

(Added by Stats. 1967, Ch. 1467.)

65603. Definitions

Unless the context requires otherwise, the definitions used in this section govern the construction of this article:

(a) "Designated recycled water use area" means areas within the boundaries of the local agency that can or may in the future be served with recycled water in lieu of potable water and are so designated by the local agency.

(b) "Local agency" means any city, county, or city and county.

(c) "Recycled water producer" means any local public or private entity that produces recycled water in accordance with the conditions described in Section 13550 of the Water Code.

(Added by Stats. 1967, Ch. 1467.)

65604. Notification

If a recycled water producer determines that within 10 years the recycled water producer will provide recycled water within the boundaries of a local agency that meets all

of the conditions described in Section 13550 of the Water Code, the recycled water producer shall notify the local agency of that fact and shall identify in the notice the area that is eligible to receive the recycled water, and the necessary infrastructure that the recycled water producer or retail water supplier will provide to support delivery of the recycled water.

(Added by Stats. 1967, Ch. 1467.)

65605. Recycled water ordinance

(a) Within 180 days of receipt of notification from a recycled water producer pursuant to Section 65604, the local agency shall adopt and enforce a recycled water ordinance pursuant to this article.

(b) The ordinance shall include, but not be limited to, provisions that do all of the following:

(1) State that it is the policy of the local agency that recycled water determined to be available pursuant to Section 13550 of the Water Code shall be used for nonpotable uses within the designated recycled water use area set forth by the local agency when the local agency determines that there is not an alternative higher or better use for the recycled water, its use is economically justified, and its use is financially and technically feasible for projects under consideration by the local agency.

(2) Designate the areas within the boundaries of the local agency that can or may in the future use recycled water, including, but not limited to, existing urban areas in lieu of potable water.

(3) Establish general rules and regulations governing the use and distribution of recycled water in accordance with applicable laws and regulations.

(4) Establish that the use of the recycled water is determined to be available pursuant to Section 13550 of the Water Code in new industrial, commercial, or residential subdivisions located within the designated recycled water use areas for which a tentative map or parcel map is required pursuant to Section 66426. These provisions shall require a separate plumbing system to serve nonpotable uses in the common areas of the subdivision, including, but not limited to, golf courses, parks, greenbelts, landscaped streets, and landscaped medians. The separate plumbing system to serve nonpotable uses shall be independent of the plumbing system provided to serve domestic, residential, and other potable water uses in the subdivision.

(5) Require that recycled water service shall not commence within the designated recycled water use area in any service area of a private utility, as defined in Section 1502 of the Public Utilities Code, or to any service area of a public agency retail water supplier that is not a local agency, as defined in subdivision (b) of Section 65603, except in accordance with a written agreement between the recycled water producer and the private utility or public agency retail water supplier that shall be made available in a timely manner by the recycled water producer to the local agency adopting the ordinance pursuant to this article.

(Added by Stats. 1967, Ch. 1467.)

65606. Exceptions

The recycled water ordinance adopted by a local agency pursuant to Section 65605 shall not apply to either of the following:

(a) A tentative map as defined in Section 66424.5, or a development, as defined in Section 65927, that was approved by the local agency prior to the receipt of notification from a recycled water producer pursuant to Section 65604.

(b) A subdivision map application that is deemed complete pursuant to Section 65943 prior to the local agency's receipt of a notice from a recycled water producer pursuant to Section 65604.

(Added by Stats. 2000, Ch. 510.)

65607. Inapplicability

(a) This article shall not apply to any local agency that adopted a recycled water ordinance or other regulation requiring the use of recycled water in its jurisdiction prior to January 1, 2001.

(b) This article does not alter any rights, remedies, or obligations that may exist pursuant to Chapter 7 (commencing with Section 13500) of Division 7 of the Water Code.

(c) This article does not alter any rights, remedies, or obligations that may exist pursuant to Chapter 8.5 (commencing with Section 1501) of Part 1 of Division 1 of the Public Utilities Code.

(Added by Stats. 2000, Ch. 510.)

Article 13. Applicability of Chapter

65700. Charter cities

(a) The provisions of this chapter shall not apply to a charter city, except to the extent that the same may be adopted by charter or ordinance of the city; except that charter cities shall adopt general plans in any case, and such plans shall be adopted by resolution of the legislative body of the city, or the planning commission if the charter so provides, and such plans shall contain the mandatory elements required by Article 5 (commencing with Section 65300) of Chapter 3 of this title.

(b) Notwithstanding subdivision (a), the provisions of Sections 65590 and 65590.1 shall be applicable to charter cities.

(Amended by Stats. 1982, Ch. 43.)

Article 14. Actions or Proceedings

65750. Definitions

As used in this article, unless the context requires otherwise:

(a) "Petition" includes any form of pleading brought pursuant to Section 65751, whether it is a petition, complaint, cross-complaint, complaint in intervention, or any other form.

(b) "Petitioner" includes a petitioner, plaintiff, cross-complainant, or intervenor who files an action of any kind pursuant to Section 65751.

(Repealed and added by Stats. 1984, Ch. 1039).

Note: Stats. 1984, Ch. 1039, also reads:

SEC. 12. It is the intent of the Legislature that the term "substantial compliance," as used in Article 14 (commencing with Section 65750) of Chapter 3 of Division 1 of Title 7 of the Government Code be given the same interpretation as was given that term by the court in Camp v. Board of Supervisors, 123 Cal.App.3d 334 at page 348.

65751. Judicial standard of review

Any action to challenge a general plan or any element thereof on the grounds that such plan or element does not substantially comply with the requirements of Article 5 (commencing with Section 65300) shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

(Amended by Stats. 1984, Ch. 1039. See note following Section 65750.)

65752. Priority of judicial challenges

All actions brought pursuant to Section 65751, including the hearing of any such action on appeal from the decision of a lower court, shall be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be speedily heard and determined.

(Added by Stats. 1982, Ch. 27.)

65753. Procedures for hearing/trial

(a) The petitioner shall request a hearing or trial on the alternative writ or peremptory writ of mandate, and any other party may request a hearing or trial, within 90 days of the date the petitioner files the petition for a writ of mandate pursuant to Section 65751. If no request for a hearing or trial is filed within 90 days of the date that petition is filed, the action or proceeding may be set for hearing or trial or dismissed on the motion of any party other than the petitioner or may be dismissed on the court's own motion.

(b) Within 30 days of the filing of the request for a hearing or trial pursuant to subdivision (a), the court shall set a date for a hearing or trial on the action or part of an action brought pursuant to Section 65751. The hearing or trial shall be set to be heard at the earliest possible date that the business of the court permits, but not more than 120 days after the filing of a request for hearing under this section. The court may continue for a reasonable time the date of the hearing or trial upon written motion and a finding of good cause. However, if the court grants a continuance to a respondent, it shall, upon the written motion of the petitioner and upon the petitioner meeting the requirements of Section 65757, grant the relief provided in Section 65757 as temporary relief but shall not enjoin any housing developments which comply with applicable provisions of law and which may be developed without having an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element.

(Amended by Stats. 1984, Ch. 1039. See note following Section 65750.)

65754. Action to challenge validity of general plan: substantial compliance finding

In any action brought to challenge the validity of the general plan of any city, county, or city and county, or any mandatory element thereof, if the court, in a final judgment in favor of the plaintiff or petitioner, finds that the general plan or any mandatory element of the general plan does not substantially comply with the requirements of Article 5 (commencing with Section 65300):

(a) The city, county, or city and county shall bring its general plan or relevant mandatory element or elements thereof into compliance with the requirements of Article 5 (commencing with Section 65300) within 120 days.

Notwithstanding the provisions of subdivision (b) of Section 65585, the planning agency of the city, county, or city and county shall submit a draft of its revised housing element or housing element amendment at least 45 days prior to its adoption to the Department of Housing and Community Development for its review, notifying the department that the element is subject to the review procedure set forth in this section.

The department shall review the draft element or amendment and report its findings to the planning agency within 45 days of receipt of the draft. The legislative body shall consider the department's findings prior to final adoption of the housing element or amendment if the department's findings are reported to the planning agency within 45 days after the department receives that draft element or amendment.

(b) The city or county, including the chartered cities specified in subdivision (d) of Section 65860, shall, in accordance with Section 65860, bring its zoning ordinance into consistency with its general plan or relevant mandatory element or elements thereof within 120 days after the general plan has been amended in accordance with subdivision (a).

(Amended by Stats. 1984, Ch. 1039. See note following Section 65750.)

65754.5. Finding on noncompliance: prohibition of court to enjoin housing development pending court action/final decision

(a) During the pendency of any action described in Section 65754, or when issuing a final judgment in favor of the plaintiff or petitioner finding that the general plan or any element thereof does not conform to the requirements of Article 5 (commencing with Section 65300), the court shall not enjoin the development of any housing development with respect to which all of the following conditions are met:

(1) The legislative body of the city, county, or city and county has approved a development project, as defined by Section 65928, for housing or a specific plan for the housing development and determined the development project for housing or the specific plan to be consistent with the general plan of the city, county, or city and county.

(2) The legislative body of the city, county, or city and county has certified an environmental impact report or a negative declaration for the development project for housing or for the specific plan for housing pursuant to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, and no legal action was brought within the applicable statute of limitations period relating to that environmental impact report or negative declaration.

(3) The owner of the land upon which the housing is proposed to be developed, in satisfaction of any requirements imposed and in reliance upon any action taken by the city, county, or city and county pursuant to paragraphs (1) and (2), has irrevocably committed one million dollars ($1,000,000), or more, for public infrastructure, including, but not limited to, roads, and water and sewer facilities.

(4) The proposed housing development may be developed without having an impact upon the city, county, or city and county's ability to implement an adequate housing element or to properly adopt an adequate housing element if the court determines, in the pending action, that the general plan or plan element is inadequate. The court shall apply the provisions of Section 65760 to determine whether a housing development will have an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element.

(b) The provisions of this section shall be applicable to any legal action pending on January 1, 1984, and to every action commenced on or after that date.

(c) This section shall not be construed to preclude a public agency from exercising discretion, in a manner authorized by any other provision of law, to alter plans, zoning, or subsequent development approvals applicable to those lands, or from enacting and enforcing further regulations upon their use.

(Added by Stats. 1983, Ch. 911.)

Note: Stats. 1983, Ch. 911, also reads:

SEC. 1. The Legislature finds and declares that it is an objective of state government to facilitate the development of more reasonably priced housing in California. In order to accomplish this objective, the Legislature finds that stabilizing the planning process by which this housing is approved by local governments will help to lower housing prices.

The Legislature further finds that local governments, because of the lack of public funds, are increasingly requesting that private developers fund necessary supportive infrastructure in addition to the developers' role in providing new housing stock. The cost of this infrastructure adds to the cost of the final housing stock associated with the infrastructure, as the developers must pass these increased costs on to consumers.

The Legislature recognizes that a judicial decision, holding that the general plan of a city, county, or city and county is inadequate, can prevent the approval and development of housing projects even though the projects are not directly affected by the portions of the general plan found to be inadequate. The Legislature also recognizes that a court action challenging the adequacy of the general plan of a city, county, or city and county, if not resolved expeditiously, has a chilling effect on the confidence with which developers and local governments can proceed with housing projects. The Legislature further recognizes that extensive delays in adjudicating questions about the adequacy of a local general plan can render development projects previously approved by local governments economically infeasible. The Legislature finds that additional methods are needed to expedite judicial review of challenges to a general plan and to ensure that court actions challenging the adequacy of a general plan do not unnecessarily inhibit the provision of affordable housing.

65755. Judicial action to enforce substantial compliance

(a) The court shall include, in the order or judgment rendered pursuant to Section 65754, one or more of the following provisions for any or all types or classes of developments or any or all geographic segments of the city, county, or city and county until the city, county, or city and county has substantially complied with the requirements of Article 5 (commencing with Section 65300):

(1) Suspend the authority of the city, county, or city and county pursuant to Division 13 (commencing with Section 17910) of the Health and Safety Code, to issue building permits, or any category of building permits, and all other related permits, except that the city, county, or city and county shall continue to function as an enforcement agency for review of permit applications for appropriate codes and standards compliance, prior to the issuance of building permits and other related permits for residential housing for that city, county, or city and county.

(2) Suspend the authority of the city, county, or city and county, pursuant to Chapter 4 (commencing with Section

65800) to grant any and all categories of zoning changes, variances, or both.

(3) Suspend the authority of the city, county, or city and county, pursuant to Division 2 (commencing with Section 66410), to grant subdivision map approvals for any and all categories of subdivision map approvals.

(4) Mandate the approval of all applications for building permits, or other related construction permits, for residential housing where a final subdivision map, parcel map, or plot plan has been approved for the project, where the approval will not impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element, and where the permit application conforms to all code requirements and other applicable provisions of law except those zoning laws held to be invalid by the final court order, and changes to the zoning ordinances adopted after such final court order which were enacted for the purpose of preventing the construction of a specific residential development.

(5) Mandate the approval of any or all final subdivision maps for residential housing projects which have previously received a tentative map approval from the city, county, or city and county pursuant to Division 2 (commencing with Section 66410) when the final map conforms to the approved tentative map, the tentative map has not expired, and where approval will not impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element.

(6) Mandate that notwithstanding the provisions of Sections 66473.5 and 66474, any tentative subdivision map for a residential housing project shall be approved if all of the following requirements are met:

(A) The approval of the map will not significantly impair the ability of the city, county, or city and county to adopt and implement those elements or portions thereof of the general plan which have been held to be inadequate.

(B) The map complies with all of the provisions of Division 2 (commencing with Section 66410), except those parts which would require disapproval of the project due to the inadequacy of the general plan.

(C) The approval of the map will not affect the ability of the city, county, or city and county to adopt and implement an adequate housing element.

(D) The map is consistent with the portions of the general plan not found inadequate and the proposed revisions, if applicable, to the part of the plan held inadequate.

(b) Any order or judgment of a court which includes the remedies described in paragraphs (1), (2), or (3) of subdivision (a) shall exclude from the operation of that order or judgment any action, program, or project required by law to be consistent with a general or specific plan if the court finds that the approval or undertaking of the action, program, or project complies with both of the following requirements:

(1) That it will not significantly impair the ability of the city, county, or city and county to adopt or amend all or part of the applicable plan as may be necessary to make the plan substantially comply with the requirements of Article 5 (commencing with Section 65300) in the case of a general plan, or Article 8 (commencing with Section 65450) in the case of a specific plan.

(2) That it is consistent with those portions of the plan challenged in the action or proceeding and found by the court to substantially comply with applicable provisions of law.

The party seeking exclusion from any order or judgment of a court pursuant to this subdivision shall have the burden of showing that the action, program, or project complies with paragraphs (1) and (2).

(Amended by Stats. 1984, Ch. 1039. See note following Section 65750.)

65756. Use of expert witness

If the court orders a reference of any action brought pursuant to this article or pursuant to any provision of law which grants a court the authority to appoint expert witnesses, monitors, masters, or other third party judicial assistants used in complex litigation, the referee, monitor, master, or third party judicial assistant so appointed shall report their findings to the court within not more than 90 days following that reference.

(Amended by Stats. 1984, Ch. 1039. See note following Section 65750.)

65757. Restrictions on temporary relief

During the pendency of any action described in Section 65754, the court may, upon a showing of probable success on the merits, grant the relief provided in Section 65755 as temporary relief. In any order granting temporary relief, the court shall not enjoin during the pendency of the action any housing developments which comply with applicable provisions of law and which may be developed without having an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element. Any housing developments permitted to proceed during the pendency of the action shall not be subject to the restrictions specified in subdivision (a) or (b) of Section 65754 as part of any final judgment.

(Added by Stats. 1982, Ch. 27.)

65758. Timing of final judgment

If the court orders any temporary relief in an action or proceeding subject to this article, any party to the action or proceeding may file with the court a written request that the court make a final determination in the action or proceeding, and the court shall thereafter make a final determination and enter judgment within 180 days of the date the request was filed, unless the party who filed the request files a

withdrawal of the request with the court prior to the filing by the court of its memorandum of intended decision.

(Amended by Stats. 1984, Ch. 1039. See note following Section 65750.)

65759. CEQA requirements

In any action brought under this section:

(a) The California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, does not apply to any action necessary to bring its general plan or relevant mandatory elements of the plan into compliance with any court order or judgment under this article.

(1) The local agency shall, however, prepare an initial study, within the time limitations specified in Section 65754, to determine the environmental effects of the proposed action necessary to comply with the court order. The initial study shall contain substantially the same information as is required for an initial study pursuant to subdivision (c) of Section 15080 of Title 14 of the California Code of Regulations.

(2) If as a result of the initial study, the local agency determines that the action may have a significant effect on the environment, the local agency shall prepare, within the time limitations specified in Section 65754, an environmental assessment, the content of which substantially conforms to the required content for a draft environmental impact report set forth in Article 9 (commencing with Section 15140) of Title 14 of the California Code of Regulations. The local agency shall include notice of the preparation of the environmental assessment in all notices provided for the amendments to the general plan proposed to comply with the court order.

(3) The environmental assessment shall be deemed to be a part of the general plan and shall only be reviewable as provided in this article.

(4) The local agency may comply with the provisions of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, in any action necessary to bring its general plan or the plan's relevant mandatory elements into compliance with any court order or judgment under this section so long as it does so within the time limitations specified in Section 65754.

(b) The court for good cause shown may grant not more than two extensions of time, not to exceed a total of 240 days, in order to meet the requirements imposed by Section 65754.

(Added by Stats. 1982, Ch. 27; Amended by Stats. 1991, Ch. 1183.)

65760. Determination of housing development impact

In determining whether a housing development will have an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element, the court shall consider all relevant factors. There is a conclusive presumption that any housing development, 25 percent of which units are affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code, can be developed without having an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element, except where the approval of a housing development may prevent the city, county, or city and county from complying with the final judgment of the court.

(Amended by Stats. 1984, Ch. 1039. See note following Section 65750.)

65761. Restrictions: granting judicial relief

In no event shall any court grant as relief in any action brought pursuant to this article the revocation of any building permits or related permits for the construction of residential housing which has been issued prior to the filing of the complaint in such action.

Nothing in this section shall be construed as a limitation on the ability to bring an action and to grant relief for a violation of Article 10.5 (commencing with Section 65560).

(Added by Stats. 1982, Ch. 27.)

65762. Court action: failure to comply with applicable laws

Nothing in this article shall prohibit a court from invalidating any development permit based on failure to comply with the Subdivision Map Act, Division 2 (commencing with Section 66401) of Title 7 of the Government Code, the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, the Planning and Zoning Law, Title 7 (commencing with Section 65000) of the Government Code, or other applicable laws.

The procedures and remedies set forth in this article shall not be construed to affect the substantive standards of court review of a general plan or of other local government land use decisions. The remedies set forth in this article are interim measures which shall have no application after a general plan has been revised to substantially comply with state law.

(Added by Stats. 1984, Ch. 1039. See note following Section 65750.)

65763. Applicability

(a) The provisions of this article apply to all actions, proceedings, and causes of action set forth in this article, whether commenced or alleged by the filing of a petition, complaint, cross-complaint, complaint in intervention, or otherwise.

(b) Nothing in this article shall be deemed or construed to create any cause of action in or to confer standing to sue upon any person, entity, public officer, or agency in the State of California, or any other public officer or agency.

(Added by Stats. 1984, Ch. 1039. See note following Section 65750.)

Chapter 4. Zoning Regulations

Article 1. General Provisions

65800. Purpose

It is the purpose of this chapter to provide for the adoption and administration of zoning laws, ordinances, rules and regulations by counties and cities, as well as to implement such general plan as may be in effect in any such county or city. Except as provided in Article 4 (commencing with Section 65910) and in Section 65913.1, the Legislature declares that in enacting this chapter it is its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.

(Amended by Stats. 1980, Ch. 1152.)

65801. *(Repealed by Stats. 1984, Ch. 1009.)*

65802. Exclusive method

No provisions of this code, other than the provisions of this chapter, and no provisions of any other code or statute shall restrict or limit the procedures provided in this chapter by which the legislative body of any county or city enacts, amends, administers, or provides for the administration of any zoning law, ordinance, rule or regulation.

(Repealed and added by Stats. 1965, Ch. 1880.)

65803. Charter cities

Except as otherwise provided, this chapter shall not apply to a charter city, except to the extent that the same may be adopted by charter or ordinance of the city.

(Repealed and added by Stats. 1965, Ch. 1880; Amended by Stats. 1986, Ch. 190.)

65804. Minimum standards

It shall be the purpose of this section to implement minimum procedural standards for the conduct of city and county zoning hearings. Further, it is the intent of the Legislature that this section provide those standards to insure uniformity of, and public access to, zoning and planning hearings while maintaining the maximum control of cities and counties over zoning matters.

The following procedures shall govern city and county zoning hearings:

(a) All local city and county zoning agencies shall develop and publish procedural rules for conduct of their hearings so that all interested parties shall have advance knowledge of procedures to be followed. The procedural rules shall incorporate the procedures in Section 65854.

(b) When a matter is contested and a request is made in writing prior to the date of the hearing, all local city and county planning agencies shall insure that a record of all their hearings shall be made and duly preserved, a copy of which shall be available at cost. The city or county may require a deposit from the person making the request.

(c) When a planning staff report exists, the report shall be made public prior to or at the beginning of the hearing and shall be a matter of public record.

(d) When any hearing is held on an application for a change of zone for parcels of at least 10 acres, a staff report with recommendations and the basis for those recommendations shall be included in the record of the hearing.

Notwithstanding Section 65803, this section shall apply to chartered cities.

(Added by Stats. 1971, Ch. 1714; Amended by Stats. 1996, Ch. 842.)

Note: Stats. 1996, Ch. 842 also reads:

The Legislature finds and declares that property owners have the right to public notice regarding proposals that affect the permitted use of property, including proposals to adopt or amend zoning ordinances. The Legislature further finds and declares that the right to notice regarding the permitted uses of property is an issue of statewide concern, affecting all property owners, and not a municipal affair. In enacting this act, it is the intent of the Legislature to establish clear and uniform standards for local officials to give notice of proposed zoning decisions that affect the permitted use of property.

Article 2. Adoption of Regulations

65850. Regulation by ordinance

The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

(a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.

(b) Regulate signs and billboards.

(c) Regulate all of the following:

(1) The location, height, bulk, number of stories, and size of buildings and structures.

(2) The size and use of lots, yards, courts, and other open spaces.

(3) The percentage of a lot which may be occupied by a building or structure.

(4) The intensity of land use.

(d) Establish requirements for off-street parking and loading.

(e) Establish and maintain building setback lines.

(f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

(Amended by Stats. 1970, Ch. 1590; Amended by Stats. 1985, Ch. 1199; Amended by Stats. 1994, Ch. 597; Amended by Stats. 1995, Ch. 436; Amended by Stats. 1998, Ch. 689.)

65850.1. Hazardous material use: application for building permit

(a) The legislative body of any city or county may adopt an ordinance or other regulation governing the issuance of permits to engage in the use of property for occasional commercial filming on location. This section shall not limit the discretion of a city or county to limit, condition, or deny the use of property for occasional commercial filming on location to protect the public health, safety, or welfare.

(b) All ordinances and regulations enacted by a city or county regulating by permit the use of property for occasional commercial filming on location shall not be subject to zoning ordinances or other land use regulations of that jurisdiction unless the filming ordinance or regulation expressly states that it is subject to, or governed by, those zoning ordinances or other land use regulations.

(c) The use of property for occasional commercial filming on location engaged in pursuant to a filming permit issued by a city or county shall be permitted in any zone unless the zoning ordinance or other land use regulations of the jurisdiction expressly prohibit filming in that zone.

(Formerly 65302.9; Added by Stats. 1994, Ch. 687; Amended and renumbered by Stats. 1996, Ch. 799.)

65850.2. Hazardous material use: risk assessment

(a) Each city and each county shall include, in its information list compiled pursuant to Section 65940 for development projects, or application form for projects that do not require a development permit other than a building permit, both of the following:

(1) The requirement that the owner or authorized agent shall indicate whether the owner or authorized agent will need to comply with the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code or the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county.

(2) The requirement that the owner or authorized agent certify whether or not the proposed project will have more than a threshold quantity of a regulated substance in a process or will contain a source or modified source of hazardous air emissions.

(b) A city or county shall not find the application complete pursuant to Section 65943 or approve a development project or a building permit for a project that does not require a development permit other than a building permit, in which a regulated substance will be present in a process in quantities greater than the applicable threshold quantity, unless the owner or authorized agent for the project first obtains, from the administering agency with jurisdiction over the facility, a notice of requirement to comply with, or determination of exemption from, the requirement to prepare and submit an RMP. Within five days of submitting the project application to the city or county, the applicant shall submit the information required pursuant to paragraph (2) of subdivision (a) to the administering agency. This notice of requirement to comply with, or determination of exemption from, the requirement for an RMP shall be provided by the administering agency to the applicant, and the applicant shall provide the notice to the city or county within 25 days of the administering agency receiving adequate information from the applicant to make a determination as to the requirement for an RMP. The requirement to submit an RMP to the administering agency shall be met prior to the issuance of a certificate of occupancy or its substantial equivalent. The owner or authorized agent shall submit, to the city or county, certification from the air pollution control officer that the owner or authorized agent has provided the disclosures required pursuant to Section 42303 of the Health and Safety Code.

(c) A city or county shall not issue a final certificate of occupancy or its substantial equivalent unless there is verification from the administering agency, if required by law, that the owner or authorized agent has met, or is meeting, the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code, and the requirements for a permit, if required by law, from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the owner or authorized agent. (d) The city or county, after considering the recommendations of the administering agency or air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction of the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.

(f) Counties and cities may adopt a schedule of fees for applications for compliance with this section sufficient to recover their reasonable costs of carrying out this section.

Those fees shall be used only for the implementation of this section.

(g) As used in this section, the following terms have the following meaning:

(1) "Administering agency," "process," "regulated substance," "RMP," and "threshold quantity" have the same meaning as set forth for those terms in Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located.

As determined by the air pollution control officer, "hazardous air emissions" also means emissions into the ambient air of any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(h) Any misrepresentation of information required by this section shall be grounds for denial, suspension, or revocation of project approval or permit issuance. The owner or authorized agent required to comply with this section shall notify all future occupants of their potential duty to comply with the requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(i) This section does not apply to applications solely for residential construction.

(Added by Stats. 1988, Ch. 1589; Repealed and added by Stats. 1991, Ch. 1183; Amended by Stats. 1996, Ch. 715; Amended by Stats. 1997, Ch. 17.)

65850.3. Amateur radio station antenna structures; regulation by city or county ordinance; legislative intent

Any ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, shall not preclude amateur radio service communications, shall reasonably accommodate amateur radio service communications, and shall constitute the minimum practicable regulation to accomplish the city' s or county's legitimate purpose.

It is the intent of the Legislature in adding this section to the Government Code, to codify in state law the provisions of Section 97.15 of Title 47 of the Code of Federal Regulations, which expresses the Federal Communications Commission's limited preemption of local regulations governing amateur radio **station facilities.**

(Added by Stats. 2003, Ch. 50.)

65850.4. Regulation of sexually oriented businesses by counties or cities; legislative intent and declarations

(a) The legislative body of any county or city may regulate, pursuant to a content neutral ordinance, the time, place, and manner of operation of sexually oriented businesses, when the ordinance is designed to serve a substantial governmental interest, does not unreasonably limit alternative avenues of communication, and is based on narrow, objective, and definite standards. The legislative body is entitled to rely on the experiences of other counties and cities and on the findings of court cases in establishing the reasonableness of the ordinance and its relevance to the specific problems it addresses, including the harmful secondary effects that the business may have on the community and its proximity to churches, schools, residences, establishments dispensing alcohol, and other sexually oriented businesses.

(b) For purposes of this section, a sexually oriented business is one whose primary purpose is the sale or display of matter that, because of its sexually explicit nature, may, pursuant to state law or local regulatory authority, be offered only to persons over the age of 18 years.

(c) This section shall not be construed to preempt the legislative body of any city or county from regulating a sexually oriented business or similar establishment in the manner and to the extent permitted by the United States Constitution and the California Constitution.

(d) It is the intent of the Legislature to authorize the legislative body of any city or county to enter into a legally sanctioned and appropriate cooperative agreement, consortium, or joint powers authority with other adjacent cities or counties regarding regulation of established negative secondary effects of adult or sexually oriented businesses if the actions taken by the legislative body are consistent with this section.

(e) The Legislature finds and declares that in order to encourage the legislative body of a city or county in regulating adult or sexually oriented businesses or similar businesses under this section, the legislative body may consider any harmful secondary effects such a business may have on adjacent cities and counties and its proximity to churches, schools, residents, and other businesses located in adjacent cities or counties.

Added by Stats. 1998, Ch. 552; Amended by *Stats. 1999, Ch. 5500.)*

65850.5. Approval of Solar Energy Systems

(a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and

agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(Added by Stats. 1978, Ch. 1154; Amended by Stats. 2001, Ch. 873; Repealed and Added by Stats. 2004, Ch. 789.)

65851. Establishment of zoning districts

For such purposes the legislative body may divide a county, a city, or portions thereof, into zones of the number, shape and area it deems best suited to carry out the purpose of this chapter.

(Added by Stats. 1965, Ch. 1880.)

65852. Uniformity

All such regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones.

(Repealed and added by Stats. 1965, Ch. 1880.)

65852.1. "Granny" housing

Notwithstanding Section 65906, any city, including a charter city, county, or city and county may issue a zoning variance, special use permit, or conditional use permit for a dwelling unit to be constructed, or which is attached to or detached from, a primary residence on a parcel zoned for a single-family residence, if the dwelling unit is intended for the sole occupancy of one adult or two adult persons who are 62 years of age or over, and the area of floor space of the attached dwelling unit does not exceed 30 percent of the existing living area or the area of the floor space of the detached dwelling unit does not exceed 1,200 square feet.

This section shall not be construed to limit the requirements of Section 65852. 2, or the power of local governments to permit second units.

Note: Stats. 1986, Ch. 156, also reads:

SEC. 2. This act shall become operative April 1, 1987.

(Added by Stats. 1982, Ch. 1440; Amended by Stats. 1986, Ch. 156; Amended by Stats. 1990, Ch. 1150; Amended by Stats. 1994, Ch. 580.)

Note: Stats. 1982, Ch. 1440, also reads:

SEC. 1. (a) The Legislature finds and declares that there is a tremendous unmet need for new housing to shelter California's population. The unmet housing needs will be further aggravated by the severe cutbacks in federal housing programs.

(b) The Legislature finds and declares that California's existing housing resources are vastly underutilized due in large part to the changes in social patterns. The improved utilization of this state's existing housing resources offers an innovative and cost-effective solution to California's housing crisis.

(c) The Legislature finds and declares that the state has a role in increasing the utilization of California's housing resources and in reducing the barriers to the provision of affordable housing.

(d) The Legislature finds and declares that there are many benefits associated with the creation of second-family residential units on existing single-family lots, which include:

(1) Providing a cost-effective means of serving development through the use of existing infrastructures, as contrasted to requiring the construction of new costly infrastructures to serve development in undeveloped areas.

(2) Providing relatively affordable housing for low-and moderate-income households without public subsidy.

(3) Providing a means for purchasers of new or existing homes, or both, to meet payments on high interest loans.

(4) Providing security for homeowners who fear both criminal intrusion and personal accidents while alone.

65852.150. Local second unit ordinances

The Legislature finds and declares that second units are a valuable form of housing in California. Second units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. Homeowners who create second units benefit from added income, and an increased sense of security.

It is the intent of the Legislature that any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units and that provisions in these ordinances relating to matters including unit size, parking, fees and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance.

(Added by Stats. 1994, Ch. 580.)

65852.2. Standards to evaluate proposed second residential units

(a) (1) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

(A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of second units.

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling.

No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area," means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that

the local government shall not be required to hold public hearings for coastal development permit applications for second units.

(Added by Stats. 1982, Ch. 1440; Amended by Stats. 1986, Ch. 156; Amended by Stats. 1990, Ch. 1150; Amended by Stats. 1994, Ch. 580; Amended by Stats. 2002, Ch. 1062)

65852.3. Local manufactured homes zoning

(a) A city, including a charter city, county, or city and county, shall allow the installation of manufactured homes certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Secs. 5401 et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code, on lots zoned for conventional single-family residential dwellings. Except with respect to architectural requirements, a city, including a charter city, county, or city and county, shall only subject the manufactured home and the lot on which it is placed to the same development standards to which a conventional single-family residential dwelling on the same lot would be subject, including, but not limited to, building setback standards, side and rear yard requirements, standards for enclosures, access, and vehicle parking, aesthetic requirements, and minimum square footage requirements. Any architectural requirements imposed on the manufactured home structure itself, exclusive of any requirement for any and all additional enclosures, shall be limited to its roof overhang, roofing material, and siding material. These architectural requirements may be imposed on manufactured homes even if similar requirements are not imposed on conventional single-family residential dwellings. However, any architectural requirements for roofing and siding material shall not exceed those which would be required of conventional single-family dwellings constructed on the same lot. At the discretion of the local legislative body, the city or county may preclude installation of a manufactured home in zones specified in this section if more than 10 years have elapsed between the date of manufacture of the manufactured home and the date of the application for the issuance of a permit to install the manufactured home in the affected zone. In no case may a city, including a charter city, county, or city and county, apply any development standards that will have the effect of precluding manufactured homes from being installed as permanent residences.

(b) At the discretion of the local legislative body, any place, building, structure, or other object having a special character or special historical interest or value, and which is regulated by a legislative body pursuant to Section 37361, may be exempted from this section, provided the place, building, structure, or other object is listed on the National Register of Historic Places.

(Added by Stats. 1980, C. 1142; Amended by Stats. 1988, C. 1571; Amended by Stats. 1994, Ch. 896.)

65852.4. Exemption from requirement

A city, including a charter city, a county, or a city and county, shall not subject an application to locate or install a manufactured home certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code, on a lot zoned for a single-family residential dwelling, to any administrative permit, planning, or development process or requirement, which is not identical to the administrative permit, planning, or development process or requirement which would be imposed on a conventional single-family residential dwelling on the same lot. However, a city, including a charter city, county, or city and county, may require the application to comply with the city's, county's, or city and county's architectural requirements permitted by Section 65852.3 even if the architectural requirements are not required of conventional single-family residential dwellings.

(Added by Stats. 1988, C. 1572.)

65852.5. Mobile home roof overhangs

Notwithstanding the provisions of Section 65852.3, no city, including a charter city, county, or city and county, may impose size requirements for a roof overhang of a manufactured home subject to the provisions of Section 65852. 3, unless the same size requirements also would be imposed on a conventional single-family residential dwelling constructed on the same lot. However, when there are no size requirements for roof overhangs for both manufactured homes and conventional single-family residential dwellings, a city, including a charter city, county, city and county, may impose a roof overhang on manufactured homes not to exceed 16 inches.

(Added by Stats. 1990, Ch. 426; Amended by Stats. 1990, Ch. 1223.)

65852.6. Homing pigeons

(a) It is the policy of the state to permit breeding and the maintaining of homing pigeons consistent with the preservation of public health and safety.

(b) For purposes of this section, a "homing pigeon," sometimes referred to as a racing pigeon, is a bird of the order Columbae. It does not fall in the category of "fowl" which includes chickens, turkeys, ducks, geese, and other domesticated birds other than pigeons.

(Added by Stats. 1990, Ch. 329; Amended by Stats. 1991, Ch. 1091.)

65852.7. Mobile home parks

A mobilehome park, as defined in Section 18214 of the Health and Safety Code, shall be deemed a permitted land use on all land planned and zoned for residential land use as designated by the applicable general plan; provided,

however, that a city, county, or a city and county may require a use permit. For purposes of this section, "mobilehome park" also means a mobilehome development constructed according to the requirements of Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code, and intended for use and sale as a mobilehome condominium or cooperative park, or as a mobilehome planned unit development. The provisions of this section shall apply to a city, including a charter city, a county, or a city and county.

(Added by Stats. 1981, Ch. 974.)

Note: Stats. 1981, Ch. 974, also reads:

SEC. 1. The Legislature finds and declares that an intensifying shortage of mobilehome park spaces in many areas of the state degrades the quality of life of many Californians now living in mobilehome parks, and narrows the housing options open to many other Californians who cannot afford conventional single-family homes. The Legislature further finds and declares that there is a need to eliminate the distinctions between mobilehome park developments and conventional forms of residential land use.

65852.8. *(Repealed by Stats. 1984, Ch. 1443.)*

65852.9. Unused school sites: zoning

(a) The Legislature recognizes that unused school sites represent a potentially major source of revenue for school districts and that current law reserves a percentage of unused school sites for park and recreational purposes. It is therefore the intent of the Legislature to ensure that unused school sites not leased or purchased for park or recreational purposes pursuant to Article 5 (commencing with Section 39390) of Chapter 3 of Part 20 of the Education Code can be developed to the same extent as is permitted on adjacent property. It is further the intent of the Legislature to expedite the process of zoning such property to avoid unnecessary costs and delays to the school district; however, school districts shall be charged for the administrative costs of such rezoning.

(b) If all of the public entities enumerated in Section 39394 of the Education Code decline a school district's offer to sell or lease school property pursuant to Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 of the Education Code, the city or county having zoning jurisdiction over the property shall, upon request of the school district, zone the school site as defined in Section 39392 of the Education Code, consistent with the provisions of the applicable general and specific plans and compatible with the uses of property surrounding the school site. The school site shall be given the same land use control treatment as if it were privately owned. In no event shall the city or county, prior to the school district's sale or lease of the school site, rezone the site to open-space, park or recreation, or similar designation unless the adjacent property is so zoned, or if so requested or agreed to by the school district.

A rezoning effected pursuant to this section shall be subject to any applicable procedural requirements of state law or of the city or county.

A school district which requests a zoning change pursuant to this section shall, in the fiscal year in which the city or county incurs costs in effecting the requested zoning change, reimburse the city or county for the actual costs incurred by it.

(Added by Stats. 1985, Ch. 822.)

65852.11. Mobile home park rent control

(a) No city or county, including a charter city, county, or city and county, which has adopted or enacted a local rent control ordinance for mobilehome park spaces, shall adopt or enforce any ordinance, rule, or regulation that prohibits or limits the duration of rental agreements or leases for any space contained within any manufactured housing community, as defined in Section 18801 of the Health and Safety Code, or within any mobilehome park, as defined in Section 18214 of the Health and Safety Code, that is new construction, if the enactment operates to circumvent the provisions of Section 798.7 of the Civil Code.

(b) As used in this section, "new construction" means:

(1) For mobilehome parks, any newly constructed space, pursuant to Section 798.7 of the Civil Code.

(2) For manufactured housing communities, any space initially held out for rent after January 1, 1993.

(c) A mobilehome park that is considered "new construction" pursuant to this section, and that complies with Section 18801 of the Health and Safety Code, may be converted to a manufactured housing community without losing its "new construction" designation.

(Added by Stats. 1993, Ch. 858.)

65852.25. Legal nonconforming multifamily dwellings

(a) No local agency shall enact or enforce any ordinance, regulation, or resolution that would prohibit the reconstruction, restoration, or rebuilding of a multifamily dwelling that is involuntarily damaged or destroyed by fire, other catastrophic event, or the public enemy.

(b) Notwithstanding subdivision (a), a local agency may prohibit the reconstruction, restoration, or rebuilding of a multifamily dwelling that is involuntarily damaged or destroyed by fire, other catastrophic event, or the public enemy, if the local agency determines that:

(1) The reconstruction, restoration, or rebuilding will be detrimental or injurious to the health, safety, or general welfare of persons residing or working in the neighborhood, or will be detrimental or injurious to property and improvements in the neighborhood.

(2) The existing nonconforming use of the building or structure would be more appropriately moved to a zone in

which the use is permitted, or that there no longer exists a zone in which the existing nonconforming use is permitted.

(c) The dwelling may be reconstructed, restored, or rebuilt up to its predamaged size and number of dwelling units, and its nonconforming use, if any, may be resumed.

(d) Any reconstruction, restoration, or rebuilding undertaken pursuant to this section shall conform to all of the following:

(1) The California Building Standards Code as that code was in effect at the time of reconstruction, restoration, or rebuilding.

(2) Any more restrictive local building standards authorized pursuant to Sections 13869.7, 17958.7, and 18941.5 of the Health and Safety Code, as those standards were in effect at the time of reconstruction, restoration, or rebuilding.

(3) The State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code) for work on qualified historical buildings or structures.

(4) Local zoning ordinances, so long as the predamage size and number of dwelling units are maintained.

(5) Architectural regulations and standards, so long as the predamage size and number of dwelling units are maintained.

(6) A building permit which shall be obtained within two years after the date of the damage or destruction.

(e) A local agency may enact or enforce an ordinance, regulation, or resolution that grants greater or more permissive rights to restore, reconstruct, or rebuild a multifamily dwelling.

(f) Notwithstanding subdivision (a), a local agency may prohibit the reconstruction, restoration, or rebuilding of a multifamily dwelling that is involuntarily damaged or destroyed by fire, other catastrophic event, or by the public enemy, if the building is located in an industrial zone.

(g) For purposes of this section, "multifamily dwelling" is defined as any structure designed for human habitation that is divided into two or more independent living quarters.

(Added by Stats. 1994, Ch. 743.)

65853. Zoning amendments procedures

A zoning ordinance or an amendment to a zoning ordinance, which amendment changes any property from one zone to another or imposes any regulation listed in Section 65850 not theretofore imposed or removes or modifies any such regulation theretofore imposed shall be adopted in the manner set forth in Sections 65854 to 65857, inclusive. Any other amendment to a zoning ordinance may be adopted as other ordinances are adopted.

When the legislative body has requested the planning commission to study and report upon a zoning ordinance or amendment which is within the scope of this section and the planning commission fails to act upon such request within a reasonable time, the legislative body may, by written notice, require the planning commission to render its report within 40 days. Upon receipt of the written notice the planning commission, if it has not done so, shall conduct the public hearing as required by Section 65854. Failure to so report to the legislative body within the above time period shall be deemed to be approval of the proposed zoning ordinance or amendment to a zoning ordinance.

(Amended by Stats. 1972, Ch. 384.)

65854. Public hearing: notice

The planning commission shall hold a public hearing on the proposed zoning ordinance or amendment to a zoning ordinance. Notice of the hearing shall be given pursuant to Section 65090 and, if the proposed ordinance or amendment to a zoning ordinance affects the permitted uses of real property, notice shall also be given pursuant to Section 65091.

(Amended by Stats. 1975, Ch. 249; Amended by Stats. 1984, Ch. 1009.)

65854.5. *(Repealed by Stats. 1984, Ch. 1009.)*

65855. Planning commission recommendations to legislative body

After the hearing, the planning commission shall render its decision in the form of a written recommendation to the legislative body. Such recommendation shall include the reasons for the recommendation, the relationship of the proposed ordinance or amendment to applicable general and specific plans, and shall be transmitted to the legislative body in such form and manner as may be specified by the legislative body.

(Amended by Stats. 1972, Ch. 639.)

65856. Notice and hearing by legislative body

(a) Upon receipt of the recommendation of the planning commission, the legislative body shall hold a public hearing. However, if the matter under consideration is an amendment to a zoning ordinance to change property from one zone to another, and the planning commission has recommended against the adoption of such amendment, the legislative body shall not be required to take any further action on the amendment unless otherwise provided by ordinance or unless an interested party requests a hearing by filing a written request with the clerk of the legislative body within five days after the planning commission files its recommendations with the legislative body.

(b) Notice of the hearing shall be given pursuant to Section 65090.

(Amended by Stats. 1984, Ch. 1009.)

65857. Commission review of legislative body's changes

The legislative body may approve, modify or disapprove the recommendation of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation, but the planning commission shall not be required to hold a public hearing thereon. Failure of the planning commission to report within forty (40) days after the reference, or such longer period as may be designated by the legislative body, shall be deemed to be approval of the proposed modification.

(Amended by Stats. 1973, Ch. 600.)

65858. Urgency measure: interim zoning ordinance

(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. In addition, any interim ordinance adopted pursuant to this section that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing may not be extended except upon written findings adopted by the legislative body, supported by substantial evidence on the record, that all of the following conditions exist:

(1) The continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date that the ordinance is adopted by the legislative body.

(2) The interim ordinance is necessary to mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1).

(3) There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1) as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance.

(d) Ten days prior to the expiration of that interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.

(f) Notwithstanding subdivision (e), upon termination of a prior interim ordinance, the legislative body may adopt another interim ordinance pursuant to this section provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance.

(g) For purposes of this section, "development of multifamily housing projects" does not include the demolition, conversion, redevelopment, or rehabilitation of multifamily housing that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or that will result i an increase in the price or reduction of the number of affordable units in a multifamily housing project.

(h) For purposes of this section, "projects with a significant component of multifamily housing" means projects in which multifamily housing consists of at least one-third of the total square footage of the project.

(Amended by Stats. 1982, Ch. 1108; Amended by Stats. 1984, Ch. 1009; by Stats. 1988, Ch. 1408; by Stats. 1992, Ch. 231; by Stats. 1997, Ch. 129; by Stats. 2001, Ch. 939.)

Note: Ch. 129 also reads:

In enacting this act to amend Section 65858 of the Government Code by adding subdivision (f) to that section, it is the intent of the Legislature that an ordinance that complies with that subdivision and was in existence on or before April 14, 1997, shall not be invalidated if challenged pursuant to subdivision (e) of Section 65858 of the Government Code.

65859. Prezoning

(a) A city may, pursuant to this chapter, prezone unincorporated territory to determine the zoning that will apply to that territory upon annexation to the city.

The zoning shall become effective at the same time that the annexation becomes effective.

(b) Pursuant to Section 56375, those cities subject to that provision shall complete prezoning proceedings as required by law.

(c) If a city has not prezoned territory which is annexed, it may adopt an interim ordinance pursuant to Section 65858.

(Amended by Stats. 1980, Ch. 1132; Amended by Stats. 1994, Ch. 939.)

65860. Zoning consistency with general plan

(a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:

(1) The city or county has officially adopted such a plan.

(2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.

(b) Any resident or property owner within a city or a county, as the case may be, may bring an action or proceeding in the superior court to enforce compliance with subdivision (a). Any such action or proceeding shall be governed by Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure. No action or proceeding shall be maintained pursuant to this section by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance.

(c) In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.

(d) Notwithstanding Section 65803, this section shall apply in a charter city of 2,000,000 or more population to a zoning ordinance adopted prior to January 1, 1979, which zoning ordinance shall be consistent with the general plan of the city by July 1, 1982.

(Amended by Stats. 1979, Ch. 304; Amended by Stats. 1998, Ch. 689.)

65861. Procedure without commission

When there is no planning commission, the legislative body of the city or county shall do all things required or authorized by this chapter of the planning commission.

(Added by Stats. 1965, Ch. 1880; Amended by Stats. 1995, Ch. 686.)

65862. Hearings for inconsistency

When inconsistency between the general plan and zoning arises as a result of adoption of or amendment to a general plan, or any element thereof, hearings held pursuant to Section 65854 or 65856 for the purpose of bringing zoning into consistency with the general plan, as required by Section 65860, may be held at the same time as hearings held for the purpose of adopting or amending a general plan, or any element thereof. However, the hearing on the general plan amendment may, at the discretion of the local agency, be concluded prior to any consideration of adoption of a zoning change.

It is the intent of the Legislature, in enacting this section, that local agencies shall, to the extent possible, concurrently process applications for general plan amendments and zoning changes which are needed to permit development so as to expedite processing of such applications.

(Repealed and added by Stats. 1980, Ch. 1152.)

65863. Inventory or programs of adequate sites to meet regional housing needs

(a) Each city, county, or city and county shall ensure that its inventory or programs of adequate sites pursuant to paragraph (3) of subdivision (a) of Section 65583 and paragraph (1) of subdivision (c) of Section 65583 can accommodate its share of the regional housing need pursuant to Section 65584, throughout the planning period.

(b) No city, county, or city and county shall, by administrative, quasi-judicial, or legislative action, reduce, require, or permit the reduction of the residential density for any parcel to a lower residential density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law, Article 10.6 (commencing with Section 65580) of Chapter 3, unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:

(1) The reduction is consistent with the adopted general plan, including the housing element.

(2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584.

(c) If a reduction in residential density for any parcel would result in the remaining sites in the housing element

not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584, the jurisdiction may reduce the density on that parcel provided it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

(d) The requirements of this section shall be in addition to any other law that may restrict or limit the reduction of residential density.

(e) If a court finds that an action of a city, county, or city and county is in violation of this section, the court shall award to the plaintiff or petitioner who proposed the housing development, reasonable attorney's fees and costs of suit, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section or the court finds that the action was frivolous. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(f) This section requires that a city, county, or city and county be solely responsible for compliance with this section, unless a project applicant requests in his or her initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584. In that case, the city, county, or city and county may require the project applicant to comply with this section. The submission of an application for purposes of this subdivision does not depend on the application being deemed complete or being accepted by the city, county, or city and county.

(g) This section shall not be construed to apply to parcels that, prior to January 1, 2003, were either (1) subject to a development agreement, or (2) parcels for which an application for a subdivision map had been submitted.

(Added by Stats. 2002, Ch. 706; Amended by Stats. 2004, Ch. 10).

65863.4. Nonconforming use ordinance

(a) Prior to noticing a public hearing on a proposed zoning ordinance or amendment to a zoning ordinance reducing the density permitted on property authorized for multifamily dwelling uses, the planning commission and legislative body shall approve a nonconforming use ordinance for multifamily dwellings that are involuntarily damaged or destroyed, which may be conditioned on the approval of an ordinance or amendment to a zoning ordinance reducing the density permitted on property authorized for multifamily dwelling uses.

(b) The planning commission and legislative body shall hold a public hearing on the proposed nonconforming use ordinance. Notice of the public hearing shall be given pursuant to Section 65090. If this hearing is held at the same time as a hearing under Section 65353 or 65854, notice for the hearings may be combined.

(c) A nonconforming multifamily dwelling ordinance need not apply to multifamily dwellings which have been abandoned for a specified period prior to being involuntarily damaged or destroyed, or to multifamily dwellings constituting a public nuisance prior to being involuntarily damaged or destroyed.

(d) For purposes of this section, "multifamily dwelling" means any structure designed for human habitation that has been divided into two or more legally created independent living quarters.

(e) This section shall not apply to either of the following:

(1) A city, county, or city and county that has adopted a nonconforming use ordinance that applies to multifamily dwellings that are involuntarily damaged or destroyed.

(2) A proposed zoning ordinance or amendment to a zoning ordinance reducing the density permitted on property authorized for multifamily dwelling uses, that has been requested by the owner of the property authorized for multifamily dwelling uses.

(Added by Stats. 1993, Ch. 969.)

65863.5. Notice to assessor

Whenever the zoning covering a property is changed from one zone to another or a zoning variance or conditional use permit is granted with respect to any property, the governing body of the city or county shall, within 30 days, notify the county assessor of such action.

Notwithstanding Section 65803, this section shall apply to charter cities.

(Amended by Stats. 1980, Ch. 411.)

65863.6. Growth limitation ordinance findings

In carrying out the provisions of this chapter, each county and city shall consider the effect of ordinances adopted pursuant to this chapter on the housing needs of the region in which the local jurisdiction is situated and balance these needs against the public service needs of its residents and available fiscal and environmental resources. Any ordinance adopted pursuant to this chapter which, by its terms, limits the number of housing units which may be constructed on an annual basis shall contain findings as to the public health, safety, and welfare of the city or county to be promoted by the adoption of the ordinance which justify reducing the housing opportunities of the region.

(Amended by Stats. 1981, Ch. 714.)

65863.7. Proposed mobile home park: conversions

(a) Prior to the conversion of a mobilehome park to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at the same time as the notice of the change is provided to the residents pursuant to paragraph (2) of subdivision (f) of Section 798.56 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or park resident may request, and shall have a right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a mobilehome park results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Section 66016 to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

(Added by Stats. 1980, Ch. 879; Amended by Stats. 1985, Ch. 1260; Amended by Stats. 1986, Ch. 190; Amended by Stats. 1988, Ch. 910; Amended by Stats. 1990, Ch. 1572.)

65863.8. Notification

A local agency to which application has been made for the conversion of a mobilehome park to another use shall, at least 30 days prior to a hearing or any other action on the application, inform the applicant in writing of the provisions of Section 798.56 of the Civil Code and all applicable local requirements which impose upon the applicant a duty to notify residents and mobilehome owners of the mobilehome park of the proposed change in use, and shall specify therein the manner in which the applicant shall verify that residents and mobilehome owners of the mobilehome park have been notified of the proposed change in use. Neither a hearing on the application, nor any other action thereon, shall be taken by the local agency before the applicant has satisfactorily verified that the residents and mobilehome owners have been so notified, in the manner prescribed by law or local regulation.

(Added by Stats. 1982, Ch. 1397, Amended by Stats. 1988, Ch. 910; Amended by Stats. 1993, Ch. 265.)

65863.9. Permit expiration

Unless an earlier expiration appears on the face of the permit, any permit which is issued by a local agency in conjunction with a tentative subdivision map for a planned unit development shall expire no sooner than the approved tentative map, or any extension thereof, whichever occurs later.

Local coastal development permits issued by a local agency in conjunction with a tentative subdivision map for a planned unit development shall expire no sooner than the approved tentative map, and any extension of the map shall be in accordance with the applicable local coastal program, if any, which is in effect.

(Added by Stats. 1984, Ch. 990.)

65863.10. Assisted housing development

(a) As used in this section, the following terms have the following meaning:

(1) "Affected public entities" means the mayor of the city in which the assisted housing development is located, or, if located in an unincorporated area, the chair of the board of supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.

(2) "Affected tenant" means a tenant household residing in an assisted housing development, as defined in paragraph

(3), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(3) "Assisted housing development" means a multifamily rental housing development that receives governmental assistance under any of the following programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec1715l(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec1701q).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec1701s).

(D) Programs under Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec1485).

(E) Section 42 of the Internal Revenue Code.

(F) Section 142(d) of the Internal Revenue Code (tax-exempt private activity mortgage revenue bonds).

(G) Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds).

(H) Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant program).

(I) Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program).

(J) Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care program, and surplus federal property disposition program.

(K) Grants and loans made by the Department of Housing and Community Development, including the Rental Housing Construction Program, CHRP-R, and other rental housing finance programs.

(L) Chapter 1138 of the Statutes of 1987.

(M) The following assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement with a county or city:

(i) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(ii) Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code.

(iii) The sale or lease of public property at or below market rates.

(iv) The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Chapter 4.3 (commencing with Section 65915). Assistance pursuant to this subparagraph shall not include the use of tenant-based Housing Choice Vouchers (Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o), excluding subparagraph (13) relating to project-based assistance). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county, city, or city and county.

(4) "City" means a general law city, a charter city, or a city and county.

(5) "Expiration of rental restrictions" means the expiration of rental restrictions for an assisted housing development described in *** paragraph (3) unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50 percent of the units.

(6) *** **"Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.**

(7) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in paragraph (3) that would have the effect of removing the current **rent or occupancy or rent and occupancy** restrictions contained in the applicable laws and the regulatory agreement.

(8) "Termination" means an owner's decision not to extend or renew its participation in a federal, state, or local government subsidy program or private, nongovernmental subsidy program for an assisted housing development described in paragraph (3), either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

(9) "Very low income" means having an income as defined in Section 50052.5 of the Health and Safety Code.

(b) (1) At least 12 months prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected tenant household residing in the assisted hous-

ing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice. The notice shall contain all of the following:

(A) In the event of termination, a statement that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension thereto.

(B) In the event of the expiration of rental restrictions, a statement that the restrictions will expire, and in the event of prepayment, termination, or the expiration of rental restrictions whether the owner intends to increase rents **during the 12 months following prepayment, termination, or the expiration of rental restrictions to a level** greater than permitted under Section 42 of the Internal Revenue Code.

(C) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance.

(D) The anticipated date of the termination, prepayment of the federal or other program or expiration of rental restrictions, and the identity of the federal **or other** program described in subdivision (a).

(E) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement.

(F) A statement of the possibility that the housing may remain in the federal **or other** program after the proposed date of termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's or other program operator's offer.

(G) A statement **whether** other governmental assistance *** **will** be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment.

(H) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development, will be provided at least six months prior to the anticipated date of termination of the subsidy contract, or expiration of rental restrictions, or prepayment.

(I) A statement of notice of opportunity to submit an offer to purchase, as required in Section 65863.11.

(2) Notwithstanding paragraph (1), if an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment at least 12 months prior to the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities, the owner shall be deemed in compliance with this subdivision, if the notice is in compliance with all federal laws. However, the federally required notice does not satisfy the requirements of Section 65863.11.

(c) (1) At least six months prior to the anticipated date of termination of a subsidy contract, expiration of rental restrictions or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions *** shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice.

(2) The notice to the tenants shall contain all of the following:

(A) The anticipated date of the termination or prepayment of the federal **or other** program, or **the** expiration of rental restrictions, and the identity of the federal **or other** program, as described in subdivision (a).

(B) The current rent and **rent** anticipated for the unit **during** the **12 months immediately following the** date of the prepayment or termination of the federal **or other** program, or expiration of rental restrictions.

(C) A statement that a copy of the notice will be sent to the city, county, or city and county, where the assisted housing development is located, to the appropriate local public housing authority, if any, and to the Department of Housing and Community Development.

(D) A statement of the possibility that the housing may remain in the federal **or other** program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's **or other program administrator's** offer or that a rent increase may not take place due to the expiration of rental restrictions.

(E) A statement of the owner's intention to participate in any current replacement *** subsidy program made available to the affected tenants.

(F) The name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

(3) In addition to the information provided in the notice to the affected tenant, the notice to the affected public entities shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract

or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The owner shall also attach a copy of any federally required notice of the termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change. The information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

(d) The owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions *** shall provide additional notice of any significant changes to the notice required by subdivision (c) within seven business days to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. "Significant changes" shall include, but not be limited to, any changes to the date of termination or prepayment, or expiration of rental restrictions or the anticipated new rent.

(e) An owner who is subject to the requirements of this section shall also provide a copy of any notices issued to existing tenants pursuant to subdivision (b), (c), or (d) to any prospective tenant at the time he or she is interviewed for eligibility.

(f) This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant and project records, or to update any information in his or her records. The owner shall not be held liable for any inaccuracies contained in these records or from other sources, nor shall the owner be liable to any party for providing this information.

(g) For purposes of this section, service of the notice to the affected tenants, the city**,** county, *** **or** city and county, the appropriate local public housing authority, if any, and the Department of Housing and Community Development by the owner pursuant to subdivisions (b) *** **to (e), inclusive,** shall be made by first-class mail postage prepaid.

(h) Nothing in this section shall enlarge or diminish the authority, if any, that a city, county, city and county, affected tenant, or owner may have, independent of this section.

(i) If, prior to January 1, 2001, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (c) of Section 65863.11, and has complied with this section as it existed prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section.

(j) Injunctive relief shall be available to any party identified in paragraph (1) or (2) of subdivision (a) who is aggrieved by a violation of this section.

(k) The Director of Housing and Community Development shall approve forms to be used by owners to comply with subdivisions (b) and (c). Once the director has approved the forms, an owner shall use the approved forms to comply with subdivisions (b) and (c).

(l) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

(Added by Stats. 1987, Ch. 1383; Amended by Stats. 1990, Ch. 1438; Amended by Stats. 1999, Ch. 26; Amended by Stats. 2002, Ch. 1038; Amended by Stats. 2003, Ch.255, Amended by Stats. 2004, Ch. 110 Effective July 1, 2005.)

65863.11. Definitions

(a) Terms used in this section shall be defined as follows:

(1) "Assisted housing development" and "development" mean a multifamily rental housing development as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(2) "Owner" means an individual, corporation, association, partnership, joint venture, or business entity that holds title to an assisted housing development.

(3) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) "Tenant association" means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development and that represents the interest of at least a majority of the tenants in the assisted housing development.

(5) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(6) "Very low income" means having an income as defined in Section 50052.5 of the Health and Safety Code.

(7) "Local nonprofit organizations" means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community based and have a proven track record of local community service.

(8) "Local public agencies" means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) "Regional or national organizations" means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or

community development projects for persons and families of low or moderate income and very low income.

(10) "Regional or national public agencies" means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(11) "Use restriction" means any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) "Profit-motivated organizations and individuals" means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations Code, that carry on as a business for profit.

(13) "Department" means the Department of Housing and Community Development.

(14) "Offer to purchase" means an offer from a qualified or nonqualified entity that is nonbinding on the owner.

(15) "Expiration of rental restrictions" has the meaning given in paragraph (5) of subdivision (a) of Section 65863.10.

(b) An owner of an assisted housing development shall not terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner of an assisted housing development in which there will be the expiration of rental restrictions must also provide each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(c) An owner of an assisted housing development shall not sell, or otherwise dispose of, the development *** **at any time within** the *** **five years prior to the expiration** of *** **rental** restrictions *** **or at any time if the owner is eligible for prepayment or termination within five years** unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(d) The entities to whom an opportunity to purchase shall be provided include only the following:

(1) The tenant association of the development.

(2) Local nonprofit organizations and public agencies.

(3) Regional or national nonprofit organizations and regional or national public agencies.

(4) Profit-motivated organizations or individuals.

(e) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (d) shall do all of the following:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by itself or through a management agent.

(2) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for either a 30-year period from the date that the purchaser took legal possession of the housing or the remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those households who have occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher. This obligation shall be recorded prior to the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor. An owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

(f) If an assisted housing development is not economically feasible, as defined in paragraph (3) of subdivision (h) of Section 17058 of the Revenue and Taxation Code, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as

is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) (1) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to subdivision (b) or (c), or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, the owner shall first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (o), as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given prior to or concurrently with the notice required pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

(2) If the owner already has a bona fide offer to purchase from an entity prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall not be required to comply with this subdivision. However, the owner shall notify the department of this exemption and provide the department a copy of the offer.

(h) The initial notice of a bona fide opportunity to submit an offer to purchase shall contain all of the following:

(1) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, the terms of assumable financing, if any; the terms of the subsidy contract, if any; and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(2) A statement that each of the type of entities listed in subdivision (d) has the right to purchase the development under this section.

(3) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, itemized lists of monthly operating expenses, capital improvements as determined by the owner made within each of the two preceding calendar years, the amount of project reserves, and copies of the two most recent financial and physical inspection reports on the development, if any, filed with the federal, state, or local agencies.

(4) A statement that the owner will make available to each of the entities listed in subdivision (d), within 15 business days of a request therefor, the most recent rent roll listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date the notice of intent was made pursuant to Section 65863.10, and a statement of the vacancy rate at the development for each of the two preceding calendar years.

(5) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10, unless the notice of opportunity to submit an offer to purchase is delivered more than 12 months prior to the anticipated date of termination, prepayment, or expiration of rental restrictions.

(i) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development. A qualified entity's bona fide offer to purchase shall identify whether it is a tenant association, nonprofit organization, public agency, or profit-motivated organizations or individuals and shall certify, under penalty of perjury, that it is qualified pursuant to subdivision (e). During the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, an owner shall accept a bona fide offer to purchase only from a qualified entity. During this 180-day period, the owner shall not accept offers from any other entity.

(j) When a bona fide offer to purchase has been made to an owner, and the offer is accepted, a purchase agreement shall be executed.

(k) Either the owner or the qualified entity may request that the fair market value of the property, as a development, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the members of the Appraisers Institute. This appraisal shall be nonbinding on either party with respect to the sales price of the development offered in the bona fide offer to purchase, or the acceptance or rejection of the offer.

(l) During the 180-day period following the initial 180-day period required pursuant to subdivision (i), an owner may accept an offer from a person or an entity that does not qualify under subdivision (e). This acceptance shall be made subject to the owner providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested. The qualified entity shall have 30 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and

families of very low, low, and moderate income in accordance with paragraph (2) of subdivision (e). The owner shall notify the department regarding how the buyer is meeting the requirements of paragraph (2) of subdivision (e).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (p).

(n) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (e) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section 65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the name of the owner as grantor, and may be relied upon by good faith purchasers and encumbrances for value and without notice of a failure to comply with the provisions of this section.

Any person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(o) The department shall undertake the following responsibilities and duties:

(1) Maintain a form containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (d) that have either contacted the department with an expressed interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination, prepayment, or removal of government assistance or to the owner of an assisted housing development in which there will be the expiration of rental restrictions. If the department does not make the list available at any time, the owner shall only be required to send a written copy of the opportunity to submit an offer to purchase notice to the qualified entities which directly contact the owner and to post a copy of the notice in the common area pursuant to subdivision (g).

(p) (1) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the opportunity to purchase and right of first refusal under this section, that has been adversely affected by an owner's failure to comply with this section.

(2) An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (d), unless the owner has actual knowledge that the purchaser is not a qualified entity.

(3) If the person or entity is not an entity as specified in subdivision (d), that fact, in the absence of actual knowledge as described in paragraph (2), shall not give rise to any claim against the owner for a violation of this section.

(q) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale, or other disposition of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination or expiration of any low-income use restrictions that apply to the development.

(r) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

(Added by Stats. 1990, Ch. 1437; Amended by Stats. 1995, Ch. 790; Amended by Stats. 1999, Ch. 26; Amended by Stats. 2002, Ch. 1038; Amended by Stats. 2004, Ch. 110 Effective July 1, 2005.)

65863.12. Floating home marina: conversion report

(a) Prior to the conversion of a floating home marina to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a floating home marina or cessation of use of the land as a floating home marina, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the floating home marina to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced floating home marina residents, the report shall address the availability of adequate replacement housing in floating home marinas and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each floating home in the floating home marina at least 15 days prior to the hearing,

if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each floating home in the floating home marina at the same time as the notice of the change is provided to the residents pursuant to subdivision (f) of Section 800.71 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or any resident may request, and shall have a right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced floating home marina residents to find adequate housing in a floating home marina. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a floating home marina results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5 to cover any costs incurred by the local agency in implementing this section. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the floating home marina has operated, or as a result of any other zoning or planning decision, action, or inaction. However, a state or local governmental agency is not required to take steps to mitigate the adverse impact of the change pursuant to subdivision (e).

(j) This section applies to any floating home marina as defined in Section 800.4 of the Civil Code, and to any marina or harbor (1) which is managed by a nonprofit organization, the property, assets, and profits of which may not inure to any individual or group of individuals, but only to another nonprofit organization; (2) the rules and regulations of which are set by majority vote of the berthholders thereof; and (3) which contains berths for fewer than 25 floating homes.

(Added by Stats. 1991, Ch. 942.)

65863.13. Notice prior to prepayment not required; conditions in agreement recorded

(a) An owner shall not be required to provide a notice *** as required by Section 65863.10 **or Section 65863.11** if *** all of the following conditions are contained in a regulatory agreement that has been recorded against the property:

(1) No **low-income** tenant **whose rent was restricted and or subsidized and** who resides in the development *** **within 12 months of** the *** **date** *** **that the rent restrictions are, or subsidy is, scheduled to expire or terminate** shall be involuntarily displaced on a permanent basis as a result of the *** **action by the owner** unless the tenant has breached the terms of the lease.

(2) The owner shall accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available, and if that assistance is at a level to maintain the project's fiscal viability. The property shall be deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the regulated rent levels established pursuant to *** paragraph **(7).**

(3) The owner shall accept all enhanced Section 8 vouchers, if the tenants receive them, and all other Section 8 vouchers for future vacancies.

(4) The owner shall not terminate a tenancy **of a low-income household** at the end of a lease term without demonstrating a breach of the lease.

(5) The owner may, in selecting eligible applicants for admission, utilize criteria that permit consideration of the amount of income, as long as the owner adequately considers other factors relevant to an applicant's ability to pay rent.

(6)*** **For housing developments in which only a portion of the units are assisted pursuant to paragraph (3) of subdivision (a) of Section 65863.10, a new regulatory agreement, consistent with this section, is recorded that restricts the rents of the assisted units to an equal or greater level of affordability than under the previously existing agreement so that they are affordable to households at the same or a lower percentage of area median income.**

(7) For *** **housing developments that have units with** project-based Section 8 assistance upon the effective date of prepayment and subsequently *** become unassisted by any form of Section 8 assistance, rents shall not exceed *** 30 percent of **60** percent of the area median income ***. If any form of Section 8 assistance is or becomes available, *** **the owner shall apply for and accept, if awarded, the Section 8 assistance.** Rent and occupancy levels *** **shall then** be set in accordance with federal regulations for the Section 8 program.

(8) For unassisted units and units that do not have project-based Section 8 assistance upon the effective date of prepayment of a federally insured, federally held, or formerly federally insured or held mortgage and subsequently remain unassisted or become unassisted by any form of Section 8 assistance, rents shall not exceed the greater of (i) 30 percent of 50 percent of the area median income, or (ii) for projects insured under Section 241(f)

of the National Housing Act, the regulated rents, expressed as a percentage of area median income. If any form of Section 8 assistance is or becomes available, the owner shall apply for and accept, if awarded, the Section 8 assistance. Rent and occupancy levels shall then be set in accordance with federal regulations governing the Section 8 program.

(9) If a previously unassisted unit becomes assisted, as evidenced by the recordation of a regulatory agreement, and is occupied by a non-low-income household at the time of the recordation of the new regulatory agreement, the owner shall qualify for the exemption under this section as long as the owner charges the over-income household a rent that does not exceed 30 percent of the household's gross monthly income until the termination of the tenancy, at which time the rent chargeable for the unit shall be restricted in accordance with applicable regulatory agreements.

(b) As used in this section, "regulatory agreement" means an agreement with a governmental agency for the purposes of any governmental program, which agreement applies to the development that would be subject to the notice requirement in Section 65863.10 and which obligates the owner and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for the greater of the *** term of the existing federal**, state, or local** government assistance specified in subdivision (a) of Section 65863.10 or 30 years.

(c) Section 65863.11 shall not apply to any development for which the owner is exempt from the notice requirements of Section 65863.10 pursuant to this section.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

(Added by Stats. 2001, Ch. 117; Amended by Stats. 2003, Ch. 255; Amended by Stats. 2004,Ch. 110 Effective July 1, 2005 .)

Article 2.5. Development Agreements

65864. Policy

The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

(Amended by Stats. 1984, Ch. 143.)

65865. Authority to enter into an agreement

(a) Any city, county, or city and county, may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property as provided in this article.

(b) Any city may enter into a development agreement with any person having a legal or equitable interest in real property in unincorporated territory within that city's sphere of influence for the development of the property as provided in this article. However, the agreement shall not become operative unless annexation proceedings annexing the property to the city are completed within the period of time specified by the agreement. If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

(c) Every city, county, or city and county, shall, upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the property owner or other person having a legal or equitable interest in the property.

(d) A city, county, or city and county may recover from applicants the direct costs associated with adopting a resolution or ordinance to establish procedures and requirements for the consideration of development agreements.

(e) For any development agreement entered into on or after January 1, 2004, a city, county, or city and county shall comply with Section 66006 with respect to any fee it receives or cost it recovers pursuant to this article.

(Amended by Stats. 1984, Ch. 751; Amended by Stats. 1986, Ch. 857; Amended by Stats. 2003, Ch. 288.)

65865.1. Demonstration of good faith compliance

Procedures established pursuant to Section 65865 shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied

in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

(Added by Stats. 1979, Ch. 934.)

65865.2. Agreement contents

A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

(Amended by Stats. 1984, Ch. 143.)

65865.3. Newly incorporated city or annexed area; validity of development agreement entered into prior to incorporation or annexation; duration of validity; modification or suspension of agreement

(a) Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation. The holder of the development agreement and the city shall have the same rights and obligations with respect to each other as if the property had remained in the unincorporated territory of the county.

(b) The city may modify or suspend the provisions of the development agreement if the city determines that the failure of the city to do so would place the residents of the territory subject to the development agreement, or the residents of the city, or both, in a condition dangerous to their health or safety, or both.

(c) Except as otherwise provided in subdivision (d), this section applies to any development agreement which meets all of the following requirements:

(1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county enters into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation, or, in the case of an annexation without an election pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.

(3) The annexation proposal is initiated by the city. If the annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.

(d) This section does not apply to any territory subject to a development agreement if that territory is incorporated and the effective date of the incorporation is prior to January 1, 1987.

(Added by Stats. 1986, Ch. 857; Amended by Stats. 1989, Ch. 664.)

Note: Stats. 1986, Ch. 857 also states:

SEC. 4. The Legislature declares that the amendment to Section 65865.3 of the Government Code limiting the period of time that a development agreement shall remain valid in a newly incorporated city shall not be construed as an indication by the Legislature as to the appropriate duration of other development agreements.

65865.4. Enforceability

Unless amended or canceled pursuant to Section 65868, or modified or suspended pursuant to Section 65869.5, and except as otherwise provided in subdivision (b) of Section 65865.3, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the city, county, or city and county entering the agreement, which alters or amends the rules, regulations, or policies specified in Section 65866.

(Added by Stats. 1979, Ch. 934; Amended by Stats. 1986, Ch. 857.)

65866. Regulations affecting property subject to development agreement

Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent

actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

(Added by Stats. 1979, Ch. 934.)

65867. Hearings

A public hearing on an application for a development agreement shall be held by the planning agency and by the legislative body. Notice of intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

(Amended by Stats. 1984, Ch. 1009.)

65867.5. Findings of consistency

(a) A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

(Added by Stats. 1979, Ch. 934; Amended by Stats. 2001, Ch. 642.)

65868. Amendment

A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided by Section 65867. An amendment to an agreement shall be subject to the provisions of Section 65867.5.

(Added by Stats. 1979, Ch. 934.)

65868.5. Recordation

No later than 10 days after a city, county, or city and county enters into a development agreement, the clerk of the legislative body shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

(Added by Stats. 1979, Ch. 934.)

65869. Exemption

A development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.

(Added by Stats. 1979, Ch. 934.)

65869.5. Modification/suspension

In the event that state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

(Added by Stats. 1979, Ch. 934.)

Article 2.7. Covenants for Easement

65870. Enabling ordinance

Any city or county may adopt an ordinance for the imposition of covenants pursuant to this article.

(Added by Stats. 1985, Ch. 996.)

65871. Covenant of easement

(a) In addition to any other method for the creation of an easement, an easement may be created pursuant to an ordinance adopted implementing this article, by a recorded covenant of easement made by an owner of real property to the city or county. An easement created pursuant to this article may be for parking, ingress, egress, emergency access, light and air access, landscaping, or open-space purposes.

(b) At the time of recording of the covenant of easement, all the real property benefited or burdened by the covenant shall be in common ownership. The covenant shall be effective when recorded and shall act as an easement pursuant to Chapter 3 (commencing with Section 801) of Title 2 of Part 2 of Division 2 of the Civil Code, except that it shall not merge into any other interest in the real property. Section 1104 of the Civil Code shall be applicable to conveyance of the affected real property.

(c) A covenant of easement recorded pursuant to this section shall describe the real property to be subject to the easement and the real property to be benefited thereby. The covenant of easement shall also identify the approval, permit, or designation granted which relied upon or required the covenant.

(d) A covenant executed pursuant to this section shall be enforceable by the successors in interest to the real property benefited by the covenant.

(Added by Stats. 1985, Ch. 996.)

65873. Recordation

The covenant of easement shall be recorded in the county where all or a portion of the restricted property is located and shall contain a legal description of the real property and be executed by the owner of the real property. From and after the time of its recordation, the covenant shall impart notice thereof to all persons to the extent afforded by the recording laws of this state. Upon recordation, the burdens of the covenant shall be binding upon, and the benefits of the covenant shall inure to, all successors in interest to the real property.

(Added by Stats. 1985, Ch. 996.)

65874. Release procedure

(a) The ordinance adopted pursuant to Section 65870 shall provide a procedure for the release of the covenant. The procedure shall require a public hearing by the agency designated by the ordinance for that purpose. The hearing shall be held at the request of any person whether or not that person has title to the real property.

(b) Upon a determination that the restriction of the property is no longer necessary to achieve the land use goals of the city or county, a release shall be recorded by the city or county in the county where the restricted property is located.

(c) The ordinance may provide for the imposition of fees to recover the reasonable costs of processing the release from those persons requesting the release pursuant to this section.

(Added by Stats. 1985, Ch. 996.)

65875. Standing to enforce or challenge

Nothing in this article shall create in any person other than the city or county and the owner of the real property burdened or benefited by the covenant standing to enforce or to challenge the covenant or any amendment thereto or release therefrom.

(Added by Stats. 1985, Ch. 996.)

Article 2.9. Guidebook for Jobs-Housing Balance

65890.1. Legislative intent

The Legislature finds and declares that:

(a) State land use patterns should be encouraged that balance the location of employment-generating uses with residential uses so that employment-related commuting is minimized.

(b) Balance in employment and residential land use patterns reduces traffic congestion and may contribute to improvement of air quality in urban areas.

(c) Balancing of employment-generating land uses and residential land uses improves economic and housing opportunities and reduces loss of economic productivity caused by transportation delay.

(d) The attainment of a more balanced land use pattern requires the cooperation of government agencies with the private sector to assure that public and private decisions affecting land use take into consideration the need to seek balance in the location of employment-generating land uses and residential land uses.

(e) Local agencies and state agencies should cooperate to facilitate the balancing of employment-generating land uses and residential land uses and provisions of transportation to serve these uses.

(f) Local governments have the primary responsibility to plan for local land use patterns, within the parameters established by state law to achieve statewide needs.

(g) Housing must be provided for the estimated 3 million new workers and their families expected to be added to the California economy in the 1990's.

(h) It is the intent of the Legislature to move toward the goal that every California worker have available the opportunity to reside close to his or her jobsite.

(Added by Stats. 1990, Ch. 843.)

65890.3. Guidebook

The Department of Housing and Community Development shall prepare a guidebook for use by cities, counties, councils of government, state agencies, and the private sector in the planning and development of a housing supply to meet the need created by employment growth. The guidebook shall be prepared in time for use following the availability of the 1990 Census of Population and Housing.

(Added by Stats. 1990, Ch. 843.)

65890.5. Contents

(a) The guidebook shall include the following:

(1) Methodologies for measuring the balance of jobs and housing.

(2) Methodologies for analysis of the projected needed housing supply to serve projected employment growth.

(3) Methodologies to encourage the balance of jobs and housing.

(4) Incentives which local, regional, and state agencies may offer to the private sector to encourage developments and design which will facilitate an improved balance between employment generating land use and residential land use.

(5) Methodologies cities and counties may use to analyze trip generation and vehicle miles traveled to and from employment centers.

(6) Methodologies cities and counties may use to achieve more efficient use of transportation facilities serving major employment centers.

(7) Descriptions of successful and unsuccessful efforts by cities or counties to move toward improved jobs-housing balance.

(b) The guidebook shall seek to describe and evaluate the various tools available to local, regional, and state governments to measure, evaluate, and improve the balance of jobs and housing and to mitigate the undesirable effects of any imbalance between jobs and housing. The guidebook shall describe efforts by cities, counties, and regional agencies to improve the balance of jobs and housing.

(c) The department shall consult with interested parties and organizations such as academic institutions, environmental groups, businesses, labor unions, real estate groups, housing advocacy groups, cities, counties, and regional agencies. The final guidebook shall be completed no later than December 31, 1993.

(d) Within two years of final publication of the guidebook, the Assembly Office of Research shall complete a study of the effectiveness of the guidebook as a decisionmaking tool by public agencies and the private sector to facilitate improved jobs-housing balance. The study shall include the office's recommendations for legislation needed to improve the effectiveness of decisionmaking as it relates to achieving jobs-housing balance, if any.

(Added by Stats. 1990, Ch. 843.)

Article 2.10. Inter-Regional Partnership (IRP) State Pilot Project to Improve the Balance of Jobs and Housing

65891. Title

This article may be cited and shall be known as the Inter-Regional Partnership (IRP) State Pilot Project to Improve the Balance of Jobs and Housing.

(Added by Stats. 2000, Ch. 80.)

65891.1. Definitions

For the purposes of this article, the following terms have the following meanings:

(a) "Inter-Regional Partnership" or "IRP" means an organization of elected officials from the Counties of Alameda, Contra Costa, Santa Clara, San Joaquin, and Stanislaus and a number of cities therein, that was formed under the sponsorship of the three regional councils of government, the Association of Bay Area Governments (ABAG), the San Joaquin Council of Governments, and the Stanislaus Council of Governments, that oversee regional land use and transportation planning for the five counties.

(b) "Incentives" include, subject to negotiations with appropriate state and local agencies, the following:

(1) Providing tax credit priority for development of multifamily residential construction in areas with job surpluses and for job generating projects in areas with housing surpluses.

(2) Providing a return of property tax for development of affordable housing in areas with job surpluses and for job generating projects in areas with housing surpluses.

(3) Pooling of redevelopment funds.

(4) Tax-increment financing for jobs-housing opportunity zones based on the redevelopment model.

(c) "Jobs-housing opportunity zone" means a zone selected by the IRP State Pilot Project for the purpose of mitigating current and future imbalances of jobs and housing in the Counties of Alameda, Contra Costa, Santa Clara, San Joaquin, and Stanislaus that has the following characteristics:

(1) Is no smaller than 50 acres and no larger than 500 acres.

(2) Contains significant portions of land that are vacant, underutilized, and suitable for urban use.

(3) Is created for the purpose of either providing needed workforce housing if there is a surplus of jobs or providing jobs for the area's workers if there is a surplus of housing.

(4) Is eligible to receive incentives, subject to negotiation with appropriate resource agencies.

(5) Is serviced by adequate infrastructure and transit service, or has commitments to provide adequate infrastructure and transit service, to support significant proposed development.

(6) Is intended to support development that will improve the jobs-housing imbalance across the five-county IRP area.

(Added by Stats. 2000, Ch. 80.)

65891.2. Intent

It is the intent of the Legislature to establish the Inter-Regional Partnership (IRP) as a state-supported pilot project to test and evaluate a variety of policies and incentives designed to mitigate current and future imbalances of jobs

and housing in the Counties of Alameda, Contra Costa, Santa Clara, San Joaquin, and Stanislaus.

(Added by Stats. 2000, Ch. 80.)

65891.3. Legislative findings

The Legislature finds and declares all of the following:

(a) California will experience significant population growth in the coming decades. In the San Francisco Bay Area, one million new residents are forecast by the year 2020. An equal number of new jobs are expected during the same time period. However, less than 500,000 new housing units are expected to be built in an already costly and competitive housing market.

(b) Under the current land use and policy framework, central valley communities expect to double or triple in size, but most of them will not attract equivalent numbers of new jobs. Instead, thousands of central valley residents are expected to commute far into the bay area, often driving two hours or more each way. The challenges to transportation, air quality, and social quality of life are enormous. Projections estimate the current number of less than 100,000 daily Altamont Pass commuters will more than double to 250,000 by the year 2020.

(c) These growth-related issues cut across county and regional boundaries. The Inter-Regional Partnership is intended to provide a forum for neighboring jurisdictions governed by different regional councils of government to deal collaboratively with land use, transportation, and air quality issues that affect a five county region, while also complementing existing collaborative regional organizations, including, but not limited to, the Bay Area Alliance for Sustainable Development, the Bay Area Council, the Silicon Valley Manufacturing Group, the Great Valley Center, and others, in order to support optimal intra-regional accountability for growth.

(d) The IRP State Pilot Project will stand as an important example for other regions in the state in dealing with multijurisdictional problem solving and addressing land use planning across metropolitan borders.

(e) The need for communication and cooperation among these jurisdictions is underscored by the fact that Alameda County recently sued the City of Tracy in San Joaquin County concerning the environmental impacts of a planned housing development on the western edge of the county where a majority of residents would be assumed to commute into the San Francisco Bay Area through Alameda County.

(f) These interjurisdictional planning issues are not unique to the IRP's five county area; several other expanding metropolitan areas in California are beginning to experience similar problems. However, the geographic imbalance in housing and job growth in the IRP area is among the country's most extreme examples, and, driven by continued employment growth in the Silicon Valley, is predicted to worsen significantly in the coming years.

(g) The housing market in the Silicon Valley is now the most expensive in the nation. Land being developed for housing in the San Joaquin Valley is some of the highest quality agricultural land in the world.

(h) The IRP area is the best place in the state, and probably one of the best in the country, to implement a pilot program designed to mitigate the myriad of problems associated with unbalanced and uncoordinated growth.

(i) By implementing this pilot program, the state will play an important role in creating a more sustainable future pattern of land use in the IRP area.

(j) Active investment of state resources to balance job growth and housing growth will reduce the need for costly transportation infrastructure investments in the future.

(k) The current path of land development in the five county area will have very costly transportation and environmental impacts if efforts are not made soon to link job growth to housing production.

(Added by Stats. 2000, Ch. 80.)

65891.4. Establishment

(a) The Inter-Regional Partnership (IRP) State Pilot Project to Improve the Balance of Jobs and Housing is hereby established.

(b) The Department of Housing and Community Development shall be the state agency responsible for monitoring the IRP State Pilot Project.

(c) The pilot project shall consist of two phases: (1) research and development, as specified in Section 65891.5, and (2) implementation, as specified in Section 65891.7.

(Added by Stats. 2000, Ch. 80.)

65891.5. First phase

(a) During the first year after the date that funding is received, the IRP shall complete all the necessary research, outreach, and negotiation to allow the successful establishment of jobs-housing opportunity zones throughout the five IRP counties. The IRP shall collaborate with local governments and existing regional and subregional organizations committed to improving inter-regional jobs-housing balance. During this phase, a series of outreach meetings shall be held with local jurisdictions and the public to review and comment on the data and make recommendations for locations of jobs-housing opportunity zones. Public input and participation shall be encouraged throughout phase one of the IRP pilot project. Local jurisdictions wishing to participate in the pilot project shall enter into agreements with the IRP to pursue the regional goals and objectives of opportunity zones within their jurisdictions.

(b) The first phase shall provide all of the following:

(1) An integrated Geographic Information System (GIS) designed, where feasible, to be compatible with existing

regional GIS systems. The IRP's GIS system shall enable easy comparison of data on land use and transportation trends and alternative scenarios across the five county area. The GIS mapping shall focus on obtaining existing data from a variety of sources, including, but not limited to, the Bay Area Regional Livability Footprint Project that integrates land use with transportation, housing, job, economic, social equity, and environmental overlays, and integrating them into a single system to allow accurate analysis and scenario work on an interregional scale. The Legislature finds and declares hat the IRP's GIS system will be a crucial tool for use in determining the location of proposed jobs-housing opportunity zones.

(2) General types of data to be assembled in the GIS system shall include:

(A) Demographic data, including population and employment by census tract.

(B) Projected growth data consisting of information on where growth, including jobs generation and new housing location, is predicted to occur over a 20-year period. (C) Transportation information such as traffic capacity and usage, transit access and usage, and journey- to-work data.

(D) Land use information, including general plan layers and zoning designations. It is the intent of the Legislature that to reduce costs and setup time, the IRP's GIS undertaking shall not include parcel-level data.

(E) Basic environmental data, including floodplains, slopes, contamination, prime soils, open space, and important natural resources both inside and outside of urbanized areas.

(3) A refined description of the incentive program for application to the jobs-housing opportunity zones within the IRP counties. This list shall include thorough descriptions of fiscal and nonfiscal policy and regulatory incentives. A variety of state departments shall be involved in determining what incentives might be made available, including, but not limited to, the Office of Planning and Research, the Department of Housing and Community Development, the California Housing Finance Agency, the Department of Transportation, and the Department of Conservation.

(4) Recommendations for establishing five to 10 official Inter-Regional Partnership Jobs-Housing Opportunity Zones located throughout the five county area. Using the GIS system and conferring with interested regional organizations and with local jurisdictions, the IRP shall propose a series of jobs-housing opportunity zones. Each zone shall have specific goals and a description of the type of action desired to attain these goals, including recommended state sponsored incentives intended to encourage the desired results. The types of incentives requested may vary by zone location and type. Zones located near, or with good transit access to, existing major employment centers may receive incentives designed to promote reasonably priced housing development. Zones located far from existing employment centers, but near, or with good transit access to, significant work force housing supply, may receive incentives designed to promote employment development. Adoption of land use policies that protect agriculture and natural resources and promote compact, higher density, mixed use, transit-oriented development may be required as selection criteria for jobs-housing opportunity zones.

(Added by Stats. 2000, Ch. 80.)

65891.7. Second phase

(a) During the second phase of the pilot project, opportunity zones shall be established. Negotiation between the state, the IRP, and local jurisdictions shall result in formal agreements to implement specific jobs-housing opportunity zones.

(b) Results of the second phase shall include:

(1) Final selection of not less than 5 nor more than 10 official IRP Jobs-Housing Opportunity Zones that shall be equitably distributed among each of the five IRP counties.

(2) Reports that include results of GIS analysis and clearly illustrate the benefits of prescribed developments toward creating an interregional jobs-housing balance. Desired outcomes and actions for each zone shall be included in the report.

(3) The IRP shall enter into a memorandum of understanding with each jurisdiction having one or more of the selected zones for the pilot program and with appropriate state agencies outlining outcomes and incentives to be awarded for stated outcomes.

(Added by Stats. 2000, Ch. 80.)

65891.8. Goals

(a) The goals of the IRP and the pilot project are to:

(1) Encourage economic investment, including job creation, near available housing.

(2) Encourage housing to be located near major employment centers.

(3) Encourage development along corridors served by transit and near transit stations.

(4) Encourage more sustainable and effective transportation between job and housing centers.

(b) The IRP shall contract with a qualified consultant to conduct an evaluation of the pilot project. Ongoing monitoring and evaluation shall be conducted throughout the implementation of phases one and two. After zones have been selected and projects begin on each of the zones, the progress of each project shall be evaluated. The evaluation shall assess the gap between jobs and housing by comparing the ratio between the number of jobs and the number of housing units in a local jurisdiction with a designated IRP Jobs-Housing Opportunity Zone, before an opportunity zone project has been approved and after it has

been completed. The comparison shall be based on an optimum balance of jobs and housing being one and one-half jobs for one housing unit, as determined by the Department of Finance. The following data shall be used in determining that a jobs-housing balance has been mitigated in a jurisdiction:

(1) The number of building permits issued as provided by the California Industrial Research Bureau.

(2) The number of jobs generated, as determined by the Employment Development Department.

(c) An interim report shall be submitted by the IRP to the Department of Housing and Community Development on or before July 31, 2004. A final report shall be submitted by the IRP to the Department on or before July 31, 2008.

(Added by Stats. 2000, Ch. 80; Amended by Stats. 2003, Ch. 501.)

65891.9. Funding

Funding for the IRP State Pilot Project shall be provided in the 2000-01 Budget Act. The IRP State Pilot Project shall begin on January 1, 2001.

(Added by Stats. 2000, Ch. 80.)

65891.10. Voluntary local participation

No local jurisdiction shall be required to participate in the pilot project. This article shall have no fiscal impact on any local jurisdiction.

(Added by Stats. 2000, Ch. 80.)

65891.11. Repealer

The department may administer the programs set forth in this article, and the funds transferred by Item 2240-112-0001 of the Budget Act of 2000 to the Housing Rehabilitation Loan Fund established by Section 50661 of the Health and Safety Code, pursuant to guidelines that shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2.

(Added by Stats. 2000, Ch. 80.)

65891.12. Duration of article

This article shall become inoperative on July 31, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2003, Ch. 501.)

Article 2.11 Wind Energy

65892.13. Small wind energy systems

(a) The Legislature finds and declares all of the following:

(1) California has a shortage of reliable electricity supply, which has led the Governor to proclaim a state of emergency and to issue numerous Executive orders to lessen, and mitigate the effects of, the shortage. The Executive orders, among other things, expedite and shorten the processing of applications for existing and new power plants, establish an emergency siting process for peaking and renewable power plants, and relax existing air pollutant emission requirements in order to allow power generation facilities to continue generating much needed electricity.

(2) Wind energy is an abundant, renewable, and nonpolluting energy resource. When converted to electricity, it reduces our dependence on nonrenewable energy resources and reduces air and water pollution that result from conventional sources. Distributed small wind energy systems also enhance the reliability and power quality of the power grid, reduce peak power demands, increase instate electricity generation, diversify the state's energy supply portfolio, and make the electricity supply market more competitive by promoting consumer choice.

(3) In 2000, the Legislature and Governor recognized the need to promote all feasible adoption of clean, renewable, and distributed energy sources by enacting the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code). As set forth in Section 399.6 of the Public Utilities Code, the stated objectives of the act include to "increase, in the near term, the quantity of California's electricity generated by instate renewable energy resources while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents."

(4) Small wind energy systems, designed for onsite home, farm, and small commercial use, are recognized by the Legislature and the State Energy Resources Conservation and Development Commission as an excellent technology to help achieve the goals of increased instate electricity generation, reduced demand on the state electric grid, increased consumer energy independence, and nonpolluting electricity generation. In June 2001, the commission adopted a Renewable Investment Plan that includes one hundred one million two hundred fifty thousand dollars ($101,250,000) over the next five years, in the form of a 50-percent buydown incentive for the purchasers of "emerging renewable technologies," including small wind energy systems.

(5) In light of the state's electricity supply shortage and its existing program to encourage the adoption of small wind energy systems, it is the intent of the Legislature that any ordinances regulating small wind energy systems adopted by local agencies have the effect of providing for the installation and use of small wind energy systems and that provisions in these ordinances relating to matters including, but not limited to, parcel size, tower height, noise, notice, and setback requirements do not unreasonably restrict the ability of homeowners, farms, and small businesses to install

small wind energy systems in zones in which they are authorized by local ordinance. It is the policy of the state to promote and encourage the use of small wind energy systems and to limit obstacles to their use.

(b) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of small wind energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that this section apply to all local agencies, including, but not limited to, charter cities, charter counties, and charter cities and counties.

(c) The following definitions govern this section:

(1) "Small wind energy system" means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity that does not exceed the allowable rated capacity under the Emerging Renewables Fund of the Renewables Investment Plan administered by the California Energy Commission and which will be used primarily to reduce onsite consumption of utility power.

(2) "Tower height" means the height above grade of the fixed portion of the tower, excluding the wind turbine.

(d) Any local agency may, by ordinance, provide for the installation of small wind energy systems in the jurisdiction outside an "urbanized area," as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code pursuant to this section. The local agency may establish a process for the issuance of a conditional use permit for small wind energy systems.

(1) The ordinance may impose conditions on the installation of small wind energy systems that include, but are not limited to, notice, tower height, setback, view protection, aesthetics, aviation, and design safety requirements. However, the ordinance shall not require conditions on notice, tower height, setbacks, noise level, turbine approval, tower drawings, and engineering analysis, or line drawings that are more restrictive than the following:

(A) Notice of an application for installation of a small wind energy system shall be provided to property owners within 300 feet of the property on which the system is to be located.

(B) Tower heights of not more than 65 feet shall be allowed on parcels between one and five acres and tower heights of not more than 80 feet shall be allowed on parcels of five acres or more, provided that the application includes evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the system.

(C) Setbacks for the system tower shall be no farther from the property line than the height of the system, provided that it also complies with any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code.

(D) Decibel levels for the system shall not exceed the lesser of 60 decibels (dBA), or any existing maximum noise levels applied pursuant to the noise element of a general plan for the applicable zoning classification in a jurisdiction, as measured at the closest neighboring inhabited dwelling, except during short-term events such as utility outages and severe wind storms.

(E) The system's turbine must have been approved by the California Energy Commission as qualifying under the Emerging Renewables Fund of the commission's Renewables Investment Plan or certified by a national program recognized and approved by the Energy Commission.

(F) The application shall include standard drawings and an engineering analysis of the system's tower, showing compliance with the Uniform Building Code or the California Building Standards Code and certification by a professional mechanical, structural, or civil engineer licensed by this state. However, a wet stamp shall not be required, provided that the application demonstrates that the system is designed to meet the most stringent wind requirements (Uniform Building Code wind exposure D), the requirements for the worst seismic class (Seismic 4), and the weakest soil class, with a soil strength of not more than 1,000 pounds per square foot, or other relevant conditions normally required by a local agency.

(G) The system shall comply with all applicable Federal Aviation Administration requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports, and the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code).

(H) The application shall include a line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.

(2) The ordinance may require the applicant to provide information demonstrating that the system will be used primarily to reduce onsite consumption of electricity. The ordinance may also require the application to include evidence, unless the applicant does not plan to connect the system to the electricity grid, that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator.

(3) A small wind energy system shall not be allowed where otherwise prohibited by any of the following:

(A) A local coastal program and any implementing regulations adopted pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) The California Coastal Commission, pursuant to the California Coastal Act, Division 20 (commencing with

Section 30000) of the Public Resources Code.

(C) The regional plan and any implementing regulations adopted by the Tahoe Regional Planning Agency pursuant to the Tahoe Regional Planning Compact, Title 7.4 (commencing with Section 66800) of the Government Code.

(D) The San Francisco Bay Plan and any implementing regulations adopted by the San Francisco Bay Conservation and Development Commission pursuant to the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code.

(E) A comprehensive land use plan and any implementing regulations adopted by an airport land use commission pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Division 9 of Part 1 of the Public Utilities Code.

(F) The Alquist-Priolo Earthquake Fault Zoning Act, Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

(G) A local agency to protect the scenic appearance of the scenic highway corridor designated pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(H) The terms of a conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Division 2 of Part 2 of the Civil Code.

(I) The terms of an open-space easement entered into pursuant to the Open-Space Easement Act of 1974, Chapter 6.6 (commencing with Section 51070) of Division 1 of Title 5 of the Government Code.

(J) The terms of an agricultural conservation easement entered into pursuant to the California Farmland Conservancy Program Act, Division 10.2 (commencing with Section 10200) of the Public Resources Code.

(K) The terms of a contract entered into pursuant to the Williamson Act, Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code.

(L) The listing of the proposed site in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(4) If the governing authority of the restricted military airspace known as "R-2515" files a detailed diagram of that restricted military airspace with a local agency, and if a local agency receives an application to install a small wind energy system on a site that is within that restricted military airspace, then the local agency shall promptly forward a copy of that application to the governing authority of that restricted military airspace. If the governing authority of the restricted military airspace known as "R-2515" provides written comments regarding that application, the local agency shall consider those comments before acting on the application.

(5) In the event a small wind energy system is proposed to be sited in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agricultural Code.

(6) Notwithstanding the requirements of paragraph (1), a local agency may, if it deems it necessary due to circumstances specific to the proposed installation, provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the installation is proposed.

(7) Nothing in this section shall be construed to alter or affect existing law regarding the authority of local agencies to review an application.

(e) Notwithstanding subdivision (f), any local agency that has not adopted an ordinance in accordance with subdivision (d) by July 1, 2002, may adopt such an ordinance at a later date, but any applications that are submitted between July 1, 2002, and the adopted date of the ordinance must be approved pursuant to subdivision (f).

(f) Any local agency that has not adopted an ordinance pursuant to subdivision (d) on or before July 1, 2002, shall approve applications for small wind energy systems by right if all of the following conditions are met:

(1) The size of the parcel where the system is located is at least one acre and is outside an "urbanized area," as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(2) The tower height on parcels that are less than five acres does not exceed 80 feet.

(3) No part of the system, including guy wire anchors, extends closer than 30 feet to the property boundary, provided that it also complies with any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code.

(4) The system does not exceed 60 decibels (dBA), as measured at the closest neighboring inhabited dwelling, except during short-term events such as utility outages and severe wind storms.

(5) The system's turbine has been approved by the State Energy Resources Conservation and Development Commission as qualifying under the Emerging Renewables Fund of the commission's Renewables Investment Plan or certified by a national program recognized and approved by the Energy Commission.

(6) The application includes standard drawings and an engineering analysis of the tower, showing compliance with the Uniform Building Code or the California Building Standards Code and certification by a licensed professional engineer. A wet stamp is not required if the application demonstrates that the system is designed to meet the most stringent wind requirements (Uniform Building Code wind exposure D), the requirements for the worst seismic class (Seismic 4), and the weakest soil class, with a soil strength

of not more than 1,000 pounds per square foot, or other relevant conditions normally required by a local agency.

(7) The system complies with all applicable Federal Aviation Administration requirements, including any necessary approvals for installations close to airports, and the requirements of the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code).

(8) The application includes a line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.

(9) Unless the applicant does not plan to connect the system to the electricity grid, the application includes evidence, that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator.

(10) A small wind energy system shall not be allowed where otherwise prohibited by any of the following:

(A) A local coastal program and any implementing regulations adopted pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) The California Coastal Commission, pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.

(C) The regional plan and any implementing regulations adopted by the Tahoe Regional Planning Agency pursuant to the Tahoe Regional Planning Compact, Title 7.4 (commencing with Section 66800) of the Government Code.

(D) The San Francisco Bay Plan and any implementing regulations adopted by the San Francisco Bay Conservation and Development Commission pursuant to the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code.

(E) A comprehensive land use plan and any implementing regulations adopted by an airport land use commission pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Division 9 of Part 1 of the Public Utilities Code.

(F) The Alquist-Priolo Earthquake Fault Zoning Act, Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

(G) A local agency to protect the scenic appearance of the scenic highway corridor designated pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(H) The terms of a conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Division 2 of Part 2 of the Civil Code.

(I) The terms of an open-space easement entered into pursuant to the Open-Space Easement Act of 1974, Chapter 6.6 (commencing with Section 51070) of Division 1 of Title 5 of the Government Code.

(J) The terms of an agricultural conservation easement entered into pursuant to the California Farmland Conservancy Program Act, Division 10.2 (commencing with Section 10200) of the Public Resources Code.

(K) The terms of a contract entered into pursuant to the Williamson Act, Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code.

(L) On a site listed in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(11) If the governing authority of the restricted military airspace known as "R-2515" files a detailed diagram of that restricted military airspace with a local agency, and if a local agency receives an application to install a small wind energy system on a site that is within that restricted military airspace, then the local agency shall promptly forward a copy of that application to the governing authority of that restricted military airspace. If the governing authority of the restricted military airspace known as "R-2515" provides written comments regarding that application, the local agency shall consider those comments before acting on the application.

(12) In the event that a proposed site for a small wind energy system is in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agricultural Code.

(13) No other local ordinance, policy, or regulation shall be the basis for a local agency to deny the siting and operation of a small wind energy system under this subdivision.

(14) No changes in the general plan shall be required to implement this subdivision. Any local agency, when amending its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the approval of small wind energy systems, must do so in a manner consistent with the requirements of this subdivision and the Permit Streamlining Act (commencing with Section 65920).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the siting and operation of small wind energy systems.

(h) A local agency shall review an application for a small wind energy system as expeditiously as possible pursuant to the timelines established in the Permit Streamlining Act (commencing with Section 65920).

(i) Fees charged by a local agency to review an application for a small wind energy system shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(j) Any requirement of notice to property owners imposed pursuant to subdivision (d) shall ensure that responses to the notice are filed in a timely manner.

(k) This section shall become inoperative on July 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends that date.

(Added by Stats. 2001, Ch. 562; Added by Stats. 2002, (Title 7, Div. 11, Ch. 4, Art. 2.11, heading (Sec. 65892.13 et seq.)) Ch. 664; Amended by Stats. 2002, Ch. 328; Amended by Stats. 2002, Ch. 664.)

Article 3. Administration

65900. Creation of administrative body

The legislative body of a city or county may, by ordinance, create and establish either a board of zoning adjustment, or the office of zoning administrator or both. It may also, by ordinance, create and establish a board of appeals. Members of a board of zoning adjustment and members of a board of appeals may receive compensation for their attendance at each meeting of their respective boards in a sum to be fixed by the legislative body by which they are appointed. In addition, they may also receive reasonable traveling expenses to and from the usual place of business of such board to any place of meeting of the board within the county or city.

(Added by Stats. 1965, Ch. 1880.)

65901. Powers

(a) The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefore and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance. The board of zoning adjustment or the zoning administrator may also exercise any other powers granted by local ordinance, and may adopt all rules and procedures necessary or convenient for the conduct of the board's or administrator's business.

(b) In accordance with the requirements for variances specified in Section 65906, the legislative body of the city or county may, by ordinance, authorize the board of zoning adjustment or zoning administrator to decide applications for variance from the terms of the zoning ordinance without a public hearing on the application. That ordinance shall specify the kinds of variances which may be granted by the board of zoning adjustment or zoning administrator, and the extent of variation which the board of zoning adjustment or zoning administrator may allow.

(Amended by Stats. 1984, Ch. 1009; Stats. 1985, Ch. 1199.)

65902. Administration by planning commission

In the event that neither a board of zoning adjustment or the office of a zoning administrator has been created and established, the planning commission shall exercise all of the functions and duties of said board or said administrator.

The legislative body of a county may provide that an area planning commission shall exercise all of the functions and duties of a board of zoning adjustment or a zoning administrator in a prescribed portion of the county.

(Amended by Stats. 1971, Ch. 462.)

65903. Board of appeals

A board of appeals, if one has been created and established by local ordinance, shall hear and determine appeals from the decisions of the board of zoning adjustment or the zoning administrator, as the case may be. Procedures for such appeals shall be as provided by local ordinance. Such board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision, or determination as should be made, and such action shall be final.

(Added by Stats. 1965, Ch. 1880.)

65904. Appeals to legislative body

If a board of appeals has not been created and established the local legislative body shall exercise all of the functions and duties of the board of appeals in the same manner and to the same effect as provided in Section 65903.

(Added by Stats. 1965, Ch. 1880.)

65905. Public hearing: Use permits, variances, or equivalent

(a) Except as otherwise provided by this article, a public hearing shall be held on an application for a variance from the requirements of a zoning ordinance, an application for a conditional use permit or equivalent development permit, a proposed revocation or modification of a variance or use permit or equivalent development permit, or an appeal from the action taken on any of those applications.

(b) Notice of a hearing held pursuant to subdivision (a) shall be given pursuant to Section 65091.

(Repealed and added by Stats. 1984, Ch. 1009.)

65906. Variances

Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall

not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The provisions of this section shall not apply to conditional use permits.

(Amended by Stats. 1974, Ch. 607.)

65906.5. Parking variances

Notwithstanding Section 65906, a variance may be granted from the parking requirements of a zoning ordinance in order that some or all of the required parking spaces be located offsite, including locations in other local jurisdictions, or that in-lieu fees or facilities be provided instead of the required parking spaces, if both the following conditions are met:

(a) The variance will be an incentive to, and a benefit for, the nonresidential development.

(b) The variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities.

(Added by Stats. 1980, Ch. 1125.)

65907. *(Repealed by Stats. 1996, Ch. 799.)*

65908. Record of notice of judicial action

(a) Any agency which institutes a judicial action or proceeding to enforce zoning regulations may file a notice of the pendency of the action or proceeding in the county recorder's office of the county where the property affected by the action or proceeding is situated. The notice shall be filed at the time of the commencement of the action or proceeding, and, upon recordation of such notice as provided in this subdivision, shall have the same effect as a notice recorded pursuant to Section 409 of the Code of Civil Procedure.

The county recorder shall record and index the notice of pendency of action or proceeding in the index of grantors and any other index relative to the property in question.

(b) Any notice of pendency of action or proceeding filed pursuant to subdivision (a) may, upon motion of a party to the action or proceeding, be vacated upon an appropriate showing of need therefor by an order of a judge of the court in which the action or proceeding is pending. A certified copy of the order of vacation may be recorded in the office of the recorder of the county where the notice of pendency of action is recorded, and upon such recordation the notice of pendency of the action or proceeding shall not constitute constructive notice of any of the matters contained therein nor create any duty of inquiry in any person thereafter dealing with the property described therein. Such an order of vacation shall not be appealable, but the party aggrieved by such order may, within 20 days after service of written notice of the order, or within such additional time not exceeding 20 days as the court may, within the original 20 days, allow, but in no event later than 60 days after entry of the order, petition the proper reviewing court to review such order by writ of mandate. No such order of vacation shall be effective, nor shall it be recorded in the office of any county recorder, until the time within which a petition for writ of mandate may be filed pursuant to this subdivision has expired.

(Added by Stats. 1970, Ch. 96.)

65909. Unreasonable permit conditions prohibited

No local governmental body, or any agency thereof, may condition the issuance of any building or use permit or zone variance on any or all of the following:

(a) The dedication of land for any purpose not reasonably related to the use of the property for which the variance, building, or use permit is requested.

(b) The posting of a bond to guarantee installation of public improvements not reasonably related to the use of the property for which the variance, building, or use permit is requested.

(Added by Stats. 1971, Ch. 306; Amended by Stats. 1983, Ch. 101.)

65909.5. Fees

The legislative body of any county or city, including a charter city, may establish reasonable fees for the processing of use permits, zone variances, or zone changes pursuant to the procedures required or authorized by this chapter or local ordinance, but the fees shall not exceed the amount reasonably required to administer the processing of such permits or zone variances. The fees shall be imposed pursuant to Sections 66014 and 66016.

(Added by Stats. 1981, Ch. 914; Amended by Stats. 1990, Ch. 1572.)

Article 4. Open-Space Zoning

65910. Mandate to adopt open-space zoning

Every city and county by December 31, 1973, shall prepare and adopt an open-space zoning ordinance consistent with the local open-space plan adopted pursuant to Article 10.5 (commencing with Section 65560) of Chapter 3 of this title.

(Amended by Stats. 1973, Ch. 120.)

65911. Open-space variances

Variances from the terms of an open-space zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size,

shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

This section shall be literally and strictly interpreted and enforced so as to protect the interest of the public in the orderly growth and development of cities and counties and in the preservation and conservation of open-space lands.

(Added by Stats. 1970, Ch. 1590.)

65912. Taking of private property

The Legislature hereby finds and declares that this article is not intended, and shall not be construed, as authorizing the city or the county to exercise its power to adopt, amend or repeal an open-space zoning ordinance in a manner which will take or damage private property for public use without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or of the United States.

(Added by Stats. 1970, Ch. 1590.)

Chapter 4.2. Housing Development Approvals

65913. Policy

(a) The Legislature finds and declares that there exists a severe shortage of affordable housing, especially for persons and families of low and moderate income, and that there is an immediate need to encourage the development of new housing, not only through the provision of financial assistance, but also through changes in law designed to do all of the following:

(1) Expedite the local and state residential development process.

(2) Assure that local governments zone sufficient land at densities high enough for production of affordable housing.

(3) Assure that local governments make a diligent effort through the administration of land use and development controls and the provision of regulatory concessions and incentives to significantly reduce housing development costs and thereby facilitate the development of affordable housing, including housing for elderly persons and families, as defined by Section 50067 of the Health and Safety Code.

These changes in the law are consistent with the responsibility of local government to adopt the program required by subdivision (c) of Section 65583.

(b) The Legislature further finds and declares that the costs of new housing developments have been increased, in part, by the existing permit process and by existing land use regulations and that vitally needed housing developments have been halted or rendered infeasible despite the benefits to the public health, safety, and welfare of those developments and despite the absence of adverse environmental impacts. It is, therefore, necessary to enact this chapter and to amend existing statutes which govern housing development so as to provide greater encouragement for local and state governments to approve needed and sound housing developments.

(Added by Stats. 1980, Ch. 1152; Amended by Stats. 1985, Ch. 1117.)

65913.1. Local residential zoning of vacant land

(a) In exercising its authority to zone for land uses and in revising its housing element pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3, a city, county, or city and county shall designate and zone sufficient vacant land for residential use with appropriate standards, in relation to zoning for nonresidential use, and in relation to growth projections of the general plan to meet housing needs for all income categories as identified in the housing element of the general plan. For the purposes of this section:

(1) "Appropriate standards" means densities and requirements with respect to minimum floor areas, building setbacks, rear and side yards, parking, the percentage of a lot that may be occupied by a structure, amenities, and other requirements imposed on residential lots pursuant to the zoning authority which contribute significantly to the economic feasibility of producing housing at the lowest possible cost given economic and environmental factors, the public health and safety, and the need to facilitate the development of housing affordable to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and to persons and families of lower income, as defined in Section 50079.5 of the Health and Safety Code. However, nothing in this section shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to construct this housing.

(2) "Vacant land" does not include agricultural preserves pursuant to Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5.

(b) Nothing in this section shall be construed to require a city, county, or city and county in which less than 5 percent of the total land area is undeveloped to zone a site within an urbanized area of that city, county, or city and county for residential uses at densities that exceed those on adjoining

residential parcels by 100 percent. For the purposes of this section, "urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202-15203, and as periodically updated.

(Added by Stats. 1980, Ch. 1152; Amended by Stats. 2001, Ch. 939.)

65913.2. Subdivision design standards not to preclude housing for all economic segments of community

In exercising its authority to regulate subdivisions under Division 2 (commencing with Section 66410), a city, county, or city and county shall:

(a) Refrain from imposing criteria for design, as defined in Section 66418, or improvements, as defined in Section 66419, for the purpose of rendering infeasible the development of housing for any and all economic segments of the community. However, nothing in this section shall be construed to enlarge or diminish the authority of a city, county, or city and county under other provisions of law to permit a developer to construct such housing.

(b) Consider the effect of ordinances adopted and actions taken by it with respect to the housing needs of the region in which the local jurisdiction is situated.

(c) Refrain from imposing standards and criteria for public improvements including, but not limited to, streets, sewers, fire stations, schools, or parks, which exceed the standards and criteria being applied by the city, county, or city and county at that time to its publicly financed improvements located in similarly zoned districts within that city, county, or city and county.

(Amended by Stats. 1983, Ch. 367.)

65913.3. *(Repealed by Stats. 1990, Ch. 56.)*

65913.4. *(Repealed by Stats. 1990, Ch. 31.)*

65913.5. *(Added by Stats. 1990, Ch. 1304. Repealed by Stats. 2001, Ch. 115)*

65913.7. Enforcement of compliance with judicial action

If a court finds that an action of a city, county, or city and county is in violation of Section 65913.1 or 65913.2, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

(Added by Stats. 1982, Ch. 1355.)

65913.8. Limits on improvement fees

A fee, charge, or other form of payment imposed by a governing body of a local agency for a public capital facility improvement related to a development project may not include an amount for the maintenance or operation of an improvement when the fee, charge, or other form of payment is required as a condition of the approval of a development project, or required to fulfill a condition of the approval. However, a fee, charge, or other form of payment may be required for the maintenance and operation of an improvement meeting the criteria of either subdivision (a) or (b), as follows:

(a) The improvement is (1) designed and installed to serve only the specific development project on which the fee, charge, or other form of payment is imposed, (2) the improvement serves 19 or fewer lots or units, and (3) the local agency makes a finding, based upon substantial evidence, that it is infeasible or impractical to form a public entity for maintenance of the improvement or to annex the property served by the improvement to an entity as described in subdivision (b).

(b) The improvement is within a water district, sewer maintenance district, street lighting district, or drainage district. In these circumstances, a payment for maintenance or operation may be required for a period not to exceed 24 months when, subsequent to the construction of the improvement, either the local agency forms a public entity or assessment district to finance the maintenance or operation, or the area containing the improvement is annexed to a public entity that will finance the maintenance or operation, whichever is earlier. The local agency may extend a fee, charge, or other form of payment pursuant to this section once for whatever duration it deems reasonable beyond the 24-month period upon making a finding, based upon substantial evidence, that this time period is insufficient for creation of, or annexation to, a public entity or an assessment district that would finance the maintenance or operation.

As used in this section, "development project" and "local agency" have the same meaning as provided in subdivisions (a) and (c) of Section 66000.

(Added by Stats. 1988, Ch. 1330.)

65913.9. Applicability

This chapter shall apply to all cities, including charter cities, counties, and cities and counties. The Legislature finds and declares that the development of a sufficient supply of housing to meet the needs of all Californians is a matter of statewide concern.

(Amended by Stats. 1982, Ch. 1355.)

65914. Attorney's fees

(a) In any civil action or proceeding, including but not limited to an action brought pursuant to Section 21167 of the Public Resources Code, against a public entity which has issued planning, subdivision, or other approvals for a housing development, to enjoin the carrying out or approval of a housing development or to secure a writ of mandate relative to the approval of, or a decision to carry out the housing development, the court, after entry of final judgment and the time to appeal has elapsed, and after notice to the plaintiff or plaintiffs, may award all reasonably incurred costs of suit, including attorney's fees, to the prevailing public entity or nonprofit housing corporation that is the real party in interest and the permit applicant of the low- and moderate-income housing if it finds all of the following:

(1) The housing development meets or exceeds the requirements for low-and moderate-income housing as set forth in Section 65915.

(2) The action was frivolous and undertaken with the primary purpose of delaying or thwarting the low- or moderate-income nature of the housing development or portions thereof.

(3) The public entity or nonprofit housing corporation that is the real party in interest and the permit applicant of the low- and moderate-income housing making application for costs under this section has prevailed on all issues presented by the pleadings and the public entity or nonprofit housing corporation that is the real party in interest and the permit applicant of the low- and moderate-income housing actively, through counsel or otherwise, took part on a continuing basis in the defense of the lawsuit.

(4) A demand for a preliminary injunction was made by the plaintiff and denied by a court of competent jurisdiction, or the action or proceeding was dismissed as a result of a motion for summary judgment by any defendant, and the denial or dismissal was not reversed on appeal.

(b) In any appeal of any action described in subdivision (a), the reviewing court may award all reasonably incurred costs of suit, including attorney's fees, to the prevailing public entity or nonprofit housing corporation that is the real party in interest and the permit applicant of the low- and moderate-income housing if the court reviews and upholds the trial court's findings with respect to paragraphs (1) to (4), inclusive, of subdivision (a).

(Added by Stats. 1981, Ch. 969; Amended by Stats. 2003, Ch. 793.)

Chapter 4.3. Density Bonuses and Other Incentives

65915. Incentives for lower income housing development

(a) When an applicant *** **seeks** a *** **density bonus for a housing development within, or for the donation of land for housing within,** the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this *** **section**. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall *** grant a density bonus and *** **incentives or** concessions *** **described** in subdivision *** **(d)** when the applicant for the housing development **seeks and** agrees *** to construct at least any one of the following:

(1) *** **Ten** percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) *** **Five** percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) *** **A senior citizen** housing development *** as defined in Section**s** 51.3 **and 51.12** of the Civil Code.

(4) *** **Ten** percent of the total dwelling units in a condominium project as defined in subdivision (f) of**, or in a planned development as defined in subdivision (k) of,** Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure *** **that**, the **initial occupant of the** moderate-income units that are directly related to the receipt of the density bonus in **the** condominium project as defined in subdivision (f) of**, or in the planned unit development as defined in subdivision (k) of,** Section 1351 of the Civil Code**, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety**

Code. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale.

(d) (1) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(*** **A**) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(*** **B**) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least *** **20** percent, unless a lesser percentage

is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. *** The *** **amount of density bonus to which the *** applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.** The *** density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of**, or a planned development as defined in subdivision (k) of,** Section 1351 of the Civil Code, in which at least *** **10** percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a "density bonus" of at least *** **5** percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. **For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent.** All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units *** **that** is equal to *** **10** percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) **When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:**

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(4) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(5) The land is transferred to the local agency or to a housing developer approved by the local agency. The local

agency may require the applicant to identify and transfer the land to the developer.

(6) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

*** **(j)** "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes *** **a** *** **subdivision or a planned unit development or condominium project, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential** units **or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units**. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(*** **k**) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(*** **l**) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required **that results in identifiable, financially sufficient, and actual cost reductions.**

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable**, financially sufficient,** and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

***(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) *** **Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.**

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" **includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or** other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

(Amended by Stats. 1984, Ch. 1333. No repealer; Amended by Stats. 1989, Ch. 842; Amended by Stats. 1990, Ch. 31. Effective September 11, 1990; Amended by Stats. 1991, Ch. 1091; Amended by Stats. 1999, Ch. 968.; Amended by Stats. 2000, Ch. 556; Amended by Stats. 2002, Ch. 1062; Amended by Stats. 2003, Ch. 430; Amended by Stats. 2004, Ch. 928.)

65915.5. Condo conversion incentives for low income housing development

(a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

(Added by Stats. 1983, Ch. 634.)

65916. Direct financial contribution

Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

(Added by Stats. 1979, Ch. 1207.)

65917. Policy

In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the

absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

(Amended by Stats. 1982, Ch. 1263; Amended by Stats. 1989, Ch. 842; Amended by Stats. 2001, Ch. 115.)

65917.5. Commercial density bonus

(a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for any purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. Any penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for childcare services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998, by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

(Added by Stats. 1989, Ch. 1323.)

Note: Stats. 1989, Ch. 1323 also reads:

SEC. 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to encourage greater development of facilities by the private sector at points of employment concentration.

(b) It is the intent of the Legislature to encourage and foster a public and private cooperative approach to providing child care services in California communities.

(c) It is in the best interest of the state to develop and foster incentive driven programs to encourage commercial and industrial developers to provide children's centers, which can meet the needs of the city, including a charter city, city and county, or county.

(d) It is the intent of the Legislature to provide advisory guidelines which may be adopted by a city council, including a charter city council, city and county board of supervisors, or county board of supervisors, for floor area ratio bonuses as one approach in addressing the unmet need for child care services in California communities.

(e) It is in the best interest of the state to provide advisory guidelines which assist in reducing travel time for families by increasing onsite child care facilities in developments such as business, industrial parks, and retail centers. It is also in the best interest of the state to create incentives for developers which will help to foster and attract business and tenants in new developments.

(f) It is the intent of the Legislature to provide guidelines for local jurisdictions and the private sector which will increase the number of facilities which are developed specifically for children that can enrich and nurture their physical and cognitive growth.

(g) It is further the intent of the Legislature that every city council, including a charter city council, city and county board of supervisors, or county board of supervisors, shall consider adopting the floor area ratio bonus guidelines into their local general plans.

65918. Charter cities

The provisions of this chapter shall apply to charter cities.

(Added by Stats. 1979, Ch. 1207.)

Chapter 4.4. Interagency Referrals

65919. Definitions

As used in this chapter**,** the following terms *** **have the following meanings**:

(a) "Affected city" means a city within whose planning review area an affected territory is located.

(b) "Affected territory" means an area of land located in the unincorporated portion of a county *** **that** is the subject *** **of** one or more proposed actions.

(c) "Proposed action" means a proposal to adopt or amend all or part of a general or specific plan or to adopt or amend a zoning ordinance, but does not include action taken by an ordinance *** that became effective immediately pursuant to subdivision (b) or (d) of section 25123 or pursuant to section 65858.

(d) "Planning review area" means the territory included in a general plan or in any specific plan of a city or county. A planning review area in the case of a city shall not extend beyond whichever of the following includes the largest area and, in the case of a county, shall not extend beyond the territory described in paragraph (2) or (3), whichever includes the largest area:

(1) The area included within the sphere of influence of the city.

(2) A radius of one mile outside the boundary of the city which area shall not include any territory within the sphere of influence of another city.

(3) An area *** that is agreed upon and designated by a county and a city within the county.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443; Amended by Stats. 2004, Ch. 182.)

65919.1. County-city procedure to refer land use proposals

A county and a city may agree upon a procedure for referral by the county to the city or by the city to the county of proposed actions and for comment upon those proposals. In the absence of that agreement, the procedures prescribed by this chapter shall be followed.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.2. City desiring county referral of proposed action

A city which desires referrals from a county or a county which desires referrals from a city pursuant to this chapter

shall file with the county or the city, as the case may be, a map or other appropriate document which indicates the portion of the county or the city, as the case may be, in its planning review area.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.3. County referral of proposed action to affected cities

Except as otherwise provided in Section 65919.10, before the board of supervisors acts on a proposed action, the county shall refer the proposed action to each affected city, and before the city council acts on a proposed action, the city shall refer the proposed action to the county, in accordance with the procedure set forth in Sections 65919.4 and 65919.5.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.4. Notification of proposed action to affected city

(a) Not later than the date the county notices the public hearing on a proposed action before the county planning commission, the county shall notify an affected city of the nature of the proposed action.

(b) Not later than the date the city notices the public hearing on a proposed action before the city planning commission, the city shall notify the county of the nature of the proposed action.

(c) The information in the notification shall not be less than the information contained in the notice of public hearing. The notification required by this section and by Section 65919.8 shall be given by first-class mail or by hand delivery. The notice shall also indicate the earliest date on which the board of supervisors or city council, as the case may be, can act on the proposed action or the modification to the proposed action.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.5. City's review period

The board of supervisors or city council to which the proposed action is referred pursuant to Section 65919.3 shall have 45 days from the date the county or city, as the case may be, mails or delivers the proposed action, or such longer time as the county or city, as the case may be, specifies or allows at the request of the affected city or county, as the case may be, to review and to comment and to make recommendations on the consistency of the proposed action with applicable general and specific plans and zoning ordinances of the affected city or county. If the affected city or county does not provide the comments and recommendations to the referring county or city within the 45-day period, or such longer time as the referring county or city has specified or allowed at the request of the affected city or county, the board of supervisors or city council may act without considering those comments.

If the affected city or county provides the comments and recommendations prior to the time that the planning commission acts on the proposed action, the planning commission shall also consider the comments and recommendations.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.6. County review of city's comments

Before acting upon a proposed action, the county shall consider comments and recommendations received from each affected city and the city shall consider comments and recommendations received from the county.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.7. Referral of modified land use proposal

If the board of supervisors or city council modifies and refers a proposed action back to the planning commission pursuant to Section 65356 or 65857, the board of supervisors or city council, as the case may be, shall at the same time refer the modification to the proposed action to each affected city or county in accordance with Sections 65919.8 and 65919.9.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.8. City's review period of modified proposal

The referral shall reasonably describe the modification to the proposed action. Any city or county to which the modification is referred shall have 25 days from the date of the referral, or such longer time as the referring county or city specifies or allows at the request of the affected city or county, to review and to comment and to make recommendations on the consistency of the proposed action with applicable general and specific plans and zoning ordinances of the affected city or county. If the affected city or county does not provide the comments and recommendations to the referring county or city within the 25-day period, or such longer time as the referring county or city has specified or allowed at the request of the affected city or county, the board of supervisors or city council may act without considering those comments. If the affected city or county provides the comments and recommendations prior to the time that the planning commission acts on the proposed action, the planning commission shall also consider the comments and recommendations.

If the planning commission fails to act, the modification may become effective pursuant to Section 65356 or 65857, without consideration of the comments and recommendations.

(Added by Stats. 1983, Ch. 860.)

65919.9. County review of city's comments

Prior to acting on the modification, the board of supervisors shall consider the comments and recommendations received from each affected city and the city council shall consider the comments and recommendations from the county.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.10. Zoning proposal

If the proposed action is a change in a zoning ordinance, the county or city need not refer the zoning proposal to an affected city or county, as the case may be, if the zoning proposal is consistent with the general plan and the general plan proposal was referred and acted upon pursuant to Sections 65919.4 to 65919.9, inclusive, as applicable.

(Added by Stats. 1983, Ch. 860; Amended by Stats. 1986, Ch. 443.)

65919.11. Failure to comply with requirements

Failure to comply with the procedural requirements of this chapter shall not affect the validity of any proposed action.

(Added by Stats. 1983, Ch. 860.)

65919.12. *(Added by Stats. 1983, Ch. 860; Repealed by Stats. 1989, Ch. 1255.)*

Chapter 4.5. Review and Approval of Development Projects

Article 1. General Provisions

65920. Permit Streamlining Act

(a) This chapter shall be known and may be cited as the Permit Streamlining Act.

(b) Notwithstanding any other provision of law, the provisions of this chapter shall apply to all public agencies to the extent specified in this chapter, except that the time limits specified in Division 2 (commencing with Section 66410) of Title 7 shall not be extended by operation of this chapter.

(Amended by Stats. 1982, Ch. 87; Amended by Stats. 1996, Ch. 799.)

65921. Policy

The Legislature finds and declares that there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects. Consequently, the provisions of this chapter shall be applicable to all public agencies, including charter cities.

(Added by Stats. 1977, Ch. 1200.)

65922. Exemptions

The provisions of this chapter shall not apply to the following:

(a) Activities of the State Energy Resources Development and Conservation Commission established pursuant to Division 15 (commencing with Section 25000) of the Public Resources Code.

(b) Administrative appeals within a state or local agency or to a state or local agency.

(Amended by Stats. 1982, Ch. 87.)

65922.1. Exception

During a year declared by the State Water Resources Control Board or the Department of Water Resources to be a critically dry year, or during a drought emergency declared by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2, the time limits established by this chapter shall not apply to applications to appropriate water pursuant to Part 2 (commencing with Section 1200) of Division 2 of, to petitions for change pursuant to Chapter 10 (commencing with Section 1700) of Part 2 of Division 2 of, or to petitions for certification pursuant to Section 13160 of, the Water Code for projects involving the diversion or use of water.

(Added by Stats. 1991, Ch. 12.)

65922.3. – 65923.5. *(Repealed by stats. 1993, Ch. 56)*

65923.8. Informing applicant of OPA existence

Any state agency which is the lead agency for a development project shall inform the applicant for a permit that the Office of Permit Assistance has been created in the Office of Planning and Research to assist, and provide information to, developers relating to the permit approval process.

(Added by Stats. 1983, Ch. 1263.)

65924. Deadlines

With respect to any development project an application for which has been accepted as complete prior to January 1, 1978, the deadlines specified in Sections 65950 and 65952 shall be measured from January 1, 1978. With respect to such application received prior to January 1, 1978, but not determined to be complete as of that date, a determination that the application is complete or incomplete shall be made not later than 60 days after the effective date of the act amending this section in 1978.

(Amended by Stats. 1978, Ch. 1113.)

Article 2. Definitions

65925. Definitions

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

(Added by Stats. 1977, Ch. 1200.)

65926. Air pollution control district

"Air pollution control district" means any district created or continued in existence pursuant to the provisions of Part 3 (commencing with Section 40000) of Division 26 of the Health and Safety Code.

(Added by Stats. 1977, Ch. 1200.)

65927. Development

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511 of the Public Resources Code).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Nothing in this section shall be construed to subject the approval or disapproval of final subdivision maps to the provisions of this chapter.

"Development" does not mean a "change of organization", as defined in Section 56021 or a "reorganization", as defined in Section 56073.

(Amended by Stats. 1978, Ch. 1113; Amended by Stats. 1986, Ch. 688; Amended by Stats. 1992, Ch. 1003.)

65928. Development project

"Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate. "Development project" does not include any ministerial projects proposed to be carried out or approved by public agencies.

(Amended by Stats. 1978, Ch. 1113.)

65928.5. Geothermal field development

"Geothermal field development project" means a development project as defined in Section 65928 which is composed of geothermal wells, resource transportation lines, production equipment, roads, and other facilities which are necessary to supply geothermal energy to any particular heat utilization equipment for its productive life, all within an area delineated by the applicant.

(Added by Stats. 1978, Ch. 1271.)

65929. Lead agency

"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project.

(Added by Stats. 1977, Ch. 1200.)

65930. Local agency

"Local agency" means any public agency other than a state agency. For purposes of this chapter, a redevelopment agency is a local agency and is not a state agency.

(Amended by Stats. 1978, Ch. 1113.)

65931. Project

"Project" means any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(Added by Stats. 1977, Ch. 1200.)

65932. Public agency

"Public agency" means any state agency, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

(Added by Stats. 1977, Ch. 1200.)

65933. Responsible agency

"Responsible agency" means a public agency, other than the lead agency, which has responsibility for carrying out or approving a project.

(Added by Stats. 1977, Ch. 1200.)

65934. State agency

"State agency" means any agency, board, or commission of state government. For all purposes of this chapter, the term "state agency" shall include an air pollution control district.

(Added by Stats. 1977, Ch. 1200.)

Article 3. Applications for Development Projects

65940. List specifying required data for development project

(a) Each state agency and each local agency shall compile one or more lists *** **that** shall specify in detail the information that will be required from any applicant for a development project. *** **Each local agency shall revise** the *** list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.

(b) (1) The list of information required from any applicant shall include, where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.

(2) The information described in paragraph (1) shall be based on information provided by the Office of Planning and Research pursuant to paragraph (2) of subdivision (d) as of the date of the application. Cities, counties, and cities and counties shall comply with paragraph (1) within 30 days of receiving this notice from the office.

(c) (1) A city, county, or city and county that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).

(2) A city, county, or city and county that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).

(d) (1) Subdivision (b) as it relates to the identification of special use airspace, low-level flight paths, military installations, and urbanized areas shall not be operative until the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations, at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(2) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet.

(Amended by Stats. 1982, Ch. 84; Amended by Stats. 1986, Ch. 1048 and Ch. 1019; Amended by Stats. 1987, Ch. 985; Amended by Stats. 1992, Ch. 1200; Amended by Stats. 2004, Ch. 906.)

65940.5. Waivers of time limits

(a) No list compiled pursuant to Section 65940 shall include an extension or waiver of the time periods prescribed by this chapter within which a state or local agency shall act upon an application for a development project.

(b) No application shall be deemed incomplete for lack of an extension or waiver of time periods prescribed by this chapter within which a state or local government agency shall act upon the application.

(c) Except for the extension of the time limits pursuant to Section 65950.1, no public agency shall require an extension or waiver of the time limits contained in this chapter as a condition of accepting or processing the application for a development project.

(Added by Stats. 1986, Ch. 396; Amended by Stats. 1993, Ch. 1068; Amended by Stats. 1998, Ch. 283)

65941. Required criteria for completeness

(a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code.

(c) Consistent with this chapter, a responsible agency shall, at the request of the applicant, commence processing a permit application for a development project prior to final action on the project by a lead agency to the extent that the information necessary to commence the processing is available. For purposes of this subdivision, "lead agency" and "responsible agency" shall have the same meaning as those terms are defined in Section 21067 of the Public Resources Code and Section 21069 of the Public Resources Code, respectively.

(Amended by Stats. 1978, Ch. 1113; Amended by Stats 1993, Ch. 1131.)

65941.5. Application

Each public agency shall notify applicants for development permits of the time limits established for the review and approval of development permits pursuant to

Article 3 (commencing with Section 65940) and Article 5 (commencing with Section 65950), of the requirements of subdivision (e) of Section 65962.5, and of the public notice distribution requirements under applicable provisions of law. The public agency shall also notify applicants regarding the provisions of Section 65961. The public agency may charge applicants a reasonable fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

(Added by Stats. 1983, Ch. 1263; Amended by Stats. 1987, Ch. 985.)

65942. Revisions

The information and the criteria specified in Sections 65940, 65941, 65941.5 shall be revised as needed so that they shall be current and accurate at all times. Any revisions shall apply prospectively only and shall not be a basis for determining that an application is not complete pursuant to Section 65943 if the application was received before the revision is effective except for revisions for the following reasons resulting from the conditions which were not known and could not have been known by the public agency at the time the application was received:

(a) To provide sufficient information to permit the public agency to make the determination required by Section 21080.1 of the Public Resources Code, as provided by Section 65941.

(b) To comply with the enactment of new or revised federal, state, or local requirements, except for new or revised requirements of a local agency which is also the lead agency.

(Amended by Stats. 1983, Ch. 1263; Amended by Stats. 1987, Ch. 802 and Ch. 803.)

65943. 30-day review period

(a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant' s written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

(Amended by Stats. 1979, Ch. 1207; Amended by Stats. 1984, Ch. 1723; Amended by Stats. 1987, Ch. 1985; Amended by Stats. 1989, Ch. 612.)

65943.5. Appeal

(a) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving a permit application to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(b) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving an application for the issuance of an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection under either of the following circumstances:

(1) The environmental agency has not adopted an appeals process pursuant to subdivision (c) of Section 65943.

(2) The environmental agency declines to accept an appeal for a decision pursuant to subdivision (c) of Section 65943.

(c) For purposes of subdivision (b), "environmental permit" has the same meaning as defined in Section 71012 of the Public Resources Code, and "environmental agency" has the same meaning as defined in Section 71011 of the Public Resources Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 of the Public Resources Code.

(Added by Stats. 1993, Ch. 419.)

65944. Agency acceptance of application

(a) After a public agency accepts an application as complete, the agency shall not subsequently request of an applicant any new or additional information which was not specified in the list prepared pursuant to Section 65940. The agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application.

(b) The provisions of subdivision (a) shall not be construed as requiring an applicant to submit with his or her initial application the entirety of the information which a public agency may require in order to take final action on the application. Prior to accepting an application, each public agency shall inform the applicant of any information included in the list prepared pursuant to Section 65940 which will subsequently be required from the applicant in order to complete final action on the application.

(c) This section shall not be construed as limiting the ability of a public agency to request and obtain information which may be needed in order to comply with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) (1) After a public agency accepts an application as complete, and if the project applicant has identified that the proposed project is located within 1,000 feet of a military installation or within special use airspace or beneath a low-level flight path in accordance with Section 65940, the public agency shall provide a copy of the complete application to any branch of the United States Armed Forces that has provided the Office of Planning and Research with a single California mailing address within the state for the delivery of a copy of these applications. This subdivision shall apply only to development applications submitted to a public agency 30 days after the Office of Planning and Research has notified cities, counties, and cities and counties of the availability of Department of Defense information on the Internet pursuant to subdivision (d) of Section 65940.

(2) Except for a project within 1,000 feet of a military installation, the public agency is not required to provide a copy of the application if the project is located entirely in an "urbanized area." An urbanized area is any urban location that meets the definition used by the United State Department of Commerce's Bureau of Census for "urban" and includes locations with core census block groups containing at least 1,000 people per square mile and surrounding census block groups containing at least 500 people per square mile.

(e) Upon receipt of a copy of the application as required in subdivision (d), any branch of the United States Armed Forces may request consultation with the public agency and the project applicant to discuss the effects of the proposed project on military installations, low-level flight paths, or special use airspace, and potential alternatives and mitigation measures.

(f) (1) Subdivisions (d), (e), and (f) as these relate to low-level flight paths, special use airspace, and urbanized areas shall not be operative until the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations, at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(2) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet. Cities, counties, and cities and counties shall comply with subdivision (d) within 30 days of receiving this notice from the office.

(Amended by Stats. 1982, Ch. 84; Amended by Stats. 2004, Ch. 906.)

65945. Applicant's request for notification at proposed land use action

(a) At the time of filing an application for a development permit with a city or county, the city or county shall inform the applicant that he or she may make a written request to receive notice from the city or county of a proposal to adopt or amend any of the following plans or ordinances:

(1) A general plan.

(2) A specific plan.

(3) A zoning ordinance.

(4) An ordinance affecting building permits or grading permits.

The applicant shall specify, in the written request, the types of proposed action for which notice is requested. Prior to taking any of those actions, the city or county shall give notice to any applicant who has requested notice of the type of action proposed and whose development project is pending before the city or county if the city or county determines that the proposal is reasonably related to the applicant's request for the development permit. Notice shall

be given only for those types of actions which the applicant specifies in the request for notification.

The city or county may charge the applicant for a development permit, to whom notice is provided pursuant to this subdivision, a reasonable fee not to exceed the actual cost of providing that notice. If a fee is charged pursuant to this subdivision, the fee shall be collected as part of the application fee charged for the development permit.

(b) As an alternative to the notification procedure prescribed by subdivision (a), a city or county may inform the applicant at the time of filing an application for a development permit that he or she may subscribe to a periodically updated notice or set of notices from the city or county which lists pending proposals to adopt or amend any of the plans or ordinances specified in subdivision (a), together with the status of the proposal and the date of any hearings thereon which have been set.

Only those proposals which are general, as opposed to parcel-specific in nature, and which the city or county determines are reasonably related to requests for development permits, need be listed in the notice. No proposal shall be required to be listed until such time as the first public hearing thereon has been set. The notice shall be updated and mailed at least once every six weeks; except that a notice need not be updated and mailed until a change in its contents is required.

The city or county may charge the applicant for a development permit, to whom notice is provided pursuant to this subdivision, a reasonable fee not to exceed the actual cost of providing that notice, including the costs of updating the notice, for the length of time the applicant requests to be sent the notice or notices.

(Added by Stats. 1983, Ch. 1263.)

65945.3. Applicant's request for notification of proposed action on local permit process

At the time of filing an application for a development permit with a local agency, other than a city or county, the local agency shall inform the applicant that he or she may make a written request to receive notice of any proposal to adopt or amend a rule or regulation affecting the issuance of development permits.

Prior to adopting or amending any such rule or regulation, the local agency shall give notice to any applicant who has requested such notice and whose development project is pending before the agency if the local agency determines that the proposal is reasonably related to the applicant's request for the development permit. The local agency may charge the applicant for a development permit, to whom notice is provided pursuant to this section, a reasonable fee not to exceed the actual cost of providing that notice. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

(Added by Stats. 1983, Ch. 1263.)

65945.5. Applicant's request for notification of proposed action on state permit process

At the time of filing an application for a development permit with a state agency, the state agency shall inform the applicant that he or she may make a written request to receive notice of any proposal to adopt or amend a regulation affecting the issuance of development permits and which implements a statutory provision.

Prior to adopting or amending any such regulation, the state agency shall give notice to any applicant who has requested such notice and whose development project is pending before the state agency if the state agency determines that the proposal is reasonably related to the applicant's request for the development permit.

(Added by Stats. 1983, Ch. 1263.)

65945.7. Error in procedures

No action, inaction, or recommendation regarding any ordinance, rule, or regulation subject to this Section 65945, 65945.3, or 65945.5 by any legislative body, administrative body, or the officials of any state or local agency shall be held void or invalid or be set aside by any court on the ground of any error, irregularity, informality, neglect or omission (hereinafter called "error") as to any matter pertaining to notices, records, determinations, publications or any matters of procedure whatever, unless after an examination of the entire case, including evidence, the court shall be of the opinion that the error complained of was prejudicial, and that by reason of such error the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

(Added by Stats. 1983, Ch. 1263.)

65946. *(Repealed by Stats. 1993, Ch. 56)*

Article 5. Approval of Development Permits

65950. Time limits for lead agency

(a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) Ninety days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section

21100 or 21151 of the Public Resources Code for the development project and all of the following conditions are met:

(A) The development project is affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(3) Sixty days from the date of adoption by the lead agency of the negative declaration if a negative declaration is completed and adopted for the development project.

(4) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act.

(b) Nothing in this section precludes a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of this section, "lead agency" and "negative declaration" shall have the same meaning as those terms are defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

(Amended by Stats. 1983; Amended by Stats. 1989, Ch. 847; Amended by Stats. 1993, Ch. 1068; Amended by Stats. 1996, Ch. 80; Amended by Stats. 1998, Ch. 283; Amended by Stats. 1999, Ch. 967.)

65950.1. Extension of time

Notwithstanding Section 65950, if there has been an extension of time pursuant to Section 21100.2 or 21151.5 of the Public Resources Code to complete and certify the environmental impact report, the lead agency shall approve or disapprove the project within 90 days after certification of the environmental impact report.

(Added by Stats. 1983, Ch. 1240.)

65950.5. Written agreement to expedite public agency actions

(a) If an applicant for a development project for natural gas exploration or production and a public agency agree in writing to expedite the public agency's actions pursuant to Article 3 (commencing with Section 65940) or this article, the public agency may provide the services, contract with a private entity, or employ persons on a temporary basis to perform the services necessary to meet those time limits.

(b) The private entities or persons temporarily employed by the public agency may, pursuant to a contract or agreement with the public agency, perform any of the functions necessary to comply with the requirements of Article 3 (commencing with Section 65940), this article, or local ordinances adopted pursuant to those articles, except those functions reserved by those articles or local ordinances to the legislative body of a local agency.

(c) A public agency may charge the applicant a fee that does not exceed the estimated reasonable cost of providing the service pursuant to this section. A local agency shall comply with Section 66014, Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020).

(Added by Stats. 2004, Ch. 439.)

65951. Waiver of time limits

In the event that a combined environmental impact report-environmental impact statement is being prepared on a development project pursuant to Section 21083.6 of the Public Resources Code, a lead agency shall approve or disapprove the project within 90 days after the combined environmental impact report-environmental impact statement has been completed and adopted.

(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1998, Ch. 283.)

65952. Time limits for responsible agency

(a) Any public agency which is a responsible agency for a development project that has been approved by the lead agency shall approve or disapprove the development project within whichever of the following periods of time is longer:

(1) Within 180 days from the date on which the lead agency has approved the project.

(2) Within 180 days of the date on which the completed application for the development project has been received and accepted as complete by that responsible agency.

(b) At the time a decision by a lead agency to disapprove a development project becomes final, applications for that project which are filed with responsible agencies shall be deemed withdrawn.

(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1988, Ch. 1187.)

65952.1. Time limits for map approval/disapproval

(a) Except as otherwise provided in subdivision (b), where a development project consists of a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), the time limits established by Sections 65950 and 65952 shall apply to the approval or disapproval of the tentative map, or the parcel map for which a tentative map is not required.

(b) The time limits specified in Sections 66452.1, 66452.2, and 66463 for tentative maps and parcel maps for which a tentative map is not required, shall continue to apply and are not extended by the time limits specified in subdivision (a).

(Added by Stats. 1982, Ch. 87.; Amended by Stats. 1989, Ch. 847.)

65952.2. Approval or disapproval of project

No public agency shall disapprove an application for a development project in order to comply with the time limits specified in this chapter. Any disapproval of an application for a development project shall specify reasons for disapproval other than the failure to timely act in accordance with the time limits specified in this chapter.

(Added by Stats. 1993, Ch. 1068.)

65953. Maximum limits

All time limits specified in this article are maximum time limits for approving or disapproving development projects. All public agencies shall, if possible, approve or disapprove development projects in shorter periods of time.

(Added by Stats. 1977, Ch. 1200.)

65954. Conflict with federal rules

The time limits established by this article shall not apply in the event that federal statutes or regulations require time schedules which exceed such time limits.

(Added by Stats. 1977, Ch. 1200.)

65955. Inapplicability

The time limits established by this article shall not apply to applications to appropriate water where such applications have been protested pursuant to Chapter 4 (commencing with Section 1330) of Part 2 of Division 2 of the Water Code, or to petitions for changes pursuant to Chapter 10 (commencing with Section 1700) of Part 2 of Division 2 of the Water Code.

(Amended by Stats. 1978, Ch. 1113.)

65956. Criteria for approval/disapproval

(a) If any provision of law requires the lead agency or responsible agency to provide public notice of the development project or to hold a public hearing, or both, on the development project and the agency has not provided the public notice or held the hearing, or both, at least 60 days prior to the expiration of the time limits established by Sections 65950 and 65952, the applicant or his or her representative may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency to provide the public notice or hold the hearing, or both, and the court shall give the proceedings preference over all other civil actions or proceedings, except older matters of the same character.

(b) In the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the time limits required by this article, the failure to act shall be deemed approval of the permit application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred. If the applicant has provided seven days advance notice to the permitting agency of the intent to provide public notice, then no earlier than 60 days from the expiration of the time limits established by Sections 65950 and 65952, an applicant may provide the required public notice using the distribution information provided pursuant to Section 65941.5. If the applicant chooses to provide public notice, that notice shall include a description of the proposed development substantially similar to the descriptions which are commonly used in public notices by the permitting agency, the location of the proposed development, the permit application number, the name and address of the permitting agency, and a statement that the project shall be deemed approved if the permitting agency has not acted within 60 days. If the applicant has provided the public notice required by this section, the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided. If the applicant provides notice pursuant to this section, the permitting agency shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

(c) Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65944, inclusive, may constitute grounds for disapproving a development project.

(d) Nothing in this section shall diminish the permitting agency's legal responsibility to provide, where applicable, public notice and hearing before acting on a permit application.

(Amended by Stats. 1982, Ch. 460; Stats. 1987, Ch. 985.)

65956.5. Appeal

(a) Prior to an applicant providing advance notice to an environmental agency of the intent to provide public notice pursuant to subdivision (b) of Section 65956 for action on an environmental permit, the applicant may submit an appeal in writing to the governing body of the environmental agency, or if there is no governing body, to the director of the environmental agency, as provided by the environmental agency, for a determination regarding the failure by the

environmental agency to take timely action on the issuance or denial of the environmental permit in accordance with the time limits specified in this chapter.

(b) There shall be a final written determination by the environmental agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The final written determination by the environmental agency shall specify both of the following:

(1) The reason or reasons for failing to act pursuant to the time limits in this chapter.

(2) A date by which the environmental agency shall act on the permit application.

(c) Notwithstanding any other provision of this chapter, any appeal submitted pursuant to subdivision (a) involving an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection if the environmental agency declines to accept the appeal for a decision pursuant to subdivision (a) or the environmental agency does not make a final written determination pursuant to subdivision (b).

(d) Any appeal submitted pursuant to subdivision (a) involving an environmental permit to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(e) For purposes of this section, "environmental permit" has the same meaning as defined in Section 71012 of the Public Resources Code, and "environmental agency" has the same meaning as defined in Section 71011 of the Public Resources Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 of the Public Resources Code.

(Added by Stats. 1993, Ch. 419.)

65957. Extension of time limits

The time limits established by Sections 65950, 65950.1, 65951, and 65952 may be extended once upon mutual written agreement of the project applicant and the public agency for a period not to exceed 90 days from the date of the extension. No other extension, continuance, or waiver of these time limits either by the project applicant or the lead agency shall be permitted, except as provided in this section and Section 65950.1. Failure of the lead agency to act within these time limits may result in the project being deemed approved pursuant to the provisions of subdivision (b) of Section 65956.

(Amended by Stats. 1983, Ch. 1240; Amended by Stats. 1998, Ch. 283)

65957.1. Multiple approvals

In the event that a development project requires more than one approval by a public agency, such agency may establish time limits (1) for submitting the information required in connection with each separate request for approval and (2) for acting upon each such request; provided, however, that the time period for acting on all such requests shall not, in aggregate, exceed those limits specified in Sections 65950 and 65952.

(Added by Stats. 1978, Ch. 1113.)

65957.5. District director's recommendations; appeal

(a) Whenever the director of a Department of Transportation highway district recommends to a public agency considering an application to subdivide real property or to issue a construction permit that the agency impose certain conditions on its approval of the application, the applicant may appeal the district director's recommendation.

(b) The Department of Transportation shall adopt regulations prescribing procedures for effecting an appeal pursuant to subdivision (a). The appeal shall be made in writing to the Director of Transportation. The director's decision on the appeal shall be rendered within 60 calendar days after receipt of the appeal, and the director's written determination shall be transmitted to the appellant and to the agency to whom the appealed recommendation was made. The adopted regulations shall require the appellant to pay to the department a fee of not more than 50 percent of the estimated administrative cost to the department of conducting the appeal.

(c) The appeal process, including the director's written determination, shall be completed at least 60 days prior to completion of the period of public review for a draft environmental impact report or a negative declaration prescribed by Section 21091 of the Public Resources Code.

(Added by Stats. 1993, Ch. 796.)

Article 5.5

(commencing with Section 65958 repealed by stats. 1993, Ch. 1195).

Article 5.6. Environmental Permits

65959. Environmental permits

The Legislature hereby finds and declares that the California Environmental Protection Agency was established to enhance the state's protection of the environment by, among other things, more effectively coordinating the permit actions of the departments or boards within the agency which issue environmental permits and by ensuring timely responses to applicants for permits in order to reduce costs associated with compliance with the state's environmental protection statutes and programs. It is the intent of this article to provide a mechanism by which the California Environmental Protection Agency may further this objective of environmental protection by bringing relevant agencies together to foster the integration of requests

for information, promote speedy and cost-effective compliance, and synchronize, to the maximum extent feasible, the environmental permit requirements imposed on applicants by the departments or boards within the agency.

(Added by Stats. 1992, Ch. 952.)

65959.1. Environmental permit

For purposes of this article, "environmental permit" means any permit issued by the Department of Toxic Substances Control for the storage, treatment, handling, or disposal of hazardous waste, as defined in Section 25117 of the Health and Safety Code, or any waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

(Added by Stats. 1992, Ch. 952.)

65959.2. Permitting team

(a) At the request of an applicant for more than one environmental permit, the Secretary for Environmental Protection may, using existing staff and budgetary resources, convene a permitting team for the project composed of permit writers and other appropriate personnel from the board or department responsible for review of the project and the issuance of an environmental permit. The permitting team shall identify all statutory and regulatory requirements for the issuance of the environmental permits and provide that information to the applicant in order to facilitate, to the maximum extent feasible, the uniform, consistent, and expeditious processing of environmental permit applications.

(b) At the request of the applicant, the Secretary for Environmental Protection may solicit the participation of relevant federal, state, and local agencies on the permitting team to facilitate cooperation, reduce duplication, and assist in conflict resolution.

(Added by Stats. 1992, Ch. 952.)

65959.3. Authority

This article does not confer any new or additional authority over the issuance of environmental permits on the California Environmental Protection Agency or diminish in any way the existing authority of any other state or local agency.

(Added by Stats. 1992, Ch. 952.)

Article 6. Development Permits for Classes of Projects

65960. Geothermal projects

Notwithstanding any other provision of law, if any person applies for approval of a geothermal field development project, then only one permit from the lead agency and one permit from each responsible agency shall be required for all drilling, construction, operation, and maintenance activities required during the course of the productive life of the project, including, but not limited to, the drilling of makeup wells, redrills, well cleanouts, pipeline hookups, or any other activity necessary to the continued supply of geothermal steam to a powerplant. The lead agency and each responsible agency may approve such permits for less than full field development if the applicant submits such an application. Such permits shall include (1) any conditions or stipulations deemed necessary by the lead or responsible agency, including appropriate mitigation measures within the statutory jurisdiction of such agency, and (2) a monitoring program capable of assuring the permittee's conformance with all such conditions or stipulations. This section shall not apply to any permit whose issuance is a ministerial act by the permitting agency.

(Added by Stats. 1978, Ch. 1271.)

65961. Building permit requirements

Notwithstanding any other provision of law, upon approval or conditional approval of a tentative map for a subdivision of single- or multiple-family residential units, or upon recordation of a parcel map for such a subdivision for which no tentative map was required, during the five year period following recordation of the final map or parcel map for the subdivision, a city, county, or city and county shall not require as a condition to the issuance of any building permit or equivalent permit for such single- or multiple-family residential units, conformance with or the performance of any conditions that the city or county could have lawfully imposed as a condition to the previously approved tentative or parcel map. Nor shall a city, county, or city and county withhold or refuse to issue a building permit or equivalent permit for failure to conform with or perform any conditions that the city, county, or city and county could have lawfully imposed as a condition to the previously approved tentative or parcel map. However, the provisions of this section shall not prohibit a city, county, or city and county from doing any of the following:

(a) Imposing conditions or requirements upon the issuance of a building permit or equivalent permit which could have been lawfully imposed as a condition to the approval of a tentative or parcel map if the local agency finds it necessary to impose the condition or requirement for any of the following reasons:

(1) A failure to do so would place the residents of the subdivision or of the immediate community, or both, in a condition perilous to their health or safety, or both.

(2) The condition is required in order to comply with state or federal law.

(b) Withholding or refusing to issue a building permit or equivalent permit if the local agency finds it is required to do so in order to comply with state or federal law.

(c) Assuring compliance with the applicable zoning ordinance.

(d) This section shall also apply to a city or city and county which incorporates on or after January 1, 1985, and which includes within its boundaries any areas included in the tentative or parcel map described in this section.

When the incorporation includes areas included in the tentative or parcel map described in this section, "a condition that the city could have lawfully imposed as a condition to the previously approved tentative or parcel map," as used in this section, refers to conditions the county could have imposed had there been no incorporation.

(Added by Stats. 1982, Ch. 1449; Amended by Stats. 1984, Ch. 504; Amended by Stats. 1987, Ch. 193.)

Note: Stats. 1982, Ch. 1449, also reads:

SEC. 4. With the exception of those provisions of this act which may be declarative of existing law, the provisions of this act shall operate only prospectively and shall not apply to tentative maps or parcel maps for which no tentative map was required, which were approved, conditionally approved, or disapproved prior to July 1, 1983.

65962. *(Repealed by Stats. 1990, Ch. 1572.)*

65962.5. List relating to hazardous waste

(a) The Department of Toxic Substances Control shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.

(2) All land designated as hazardous waste property or border zone property pursuant to Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(3) All information received by the Department of Toxic Substances Control pursuant to Section 25242 of the Health and Safety Code on hazardous waste disposals on public land.

(4) All sites listed pursuant to Section 25356 of the Health and Safety Code.

(5) All sites included in the Abandoned Site Assessment Program.

(b) The State Department of Health Services shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis pursuant to Section 116395 of the Health and Safety Code.

(c) The State Water Resources Control Board shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code.

(2) All solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of Section 13273 of the Water Code.

(3) All cease and desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge of wastes that are hazardous materials.

(d) The local enforcement agency, as designated pursuant to Section 18051 of Title 14 of the California Code of Regulations, shall compile as appropriate, but at least annually, and shall submit to the California Integrated Waste Management Board, a list of all solid waste disposal facilities from which there is a known migration of hazardous waste. The California Integrated Waste Management Board shall compile the local lists into a statewide list, which shall be submitted to the Secretary for Environmental Protection and shall be available to any person who requests the information.

(e) The Secretary for Environmental Protection shall consolidate the information submitted pursuant to this section and distribute it in a timely fashion to each city and county in which sites on the lists are located. The secretary shall distribute the information to any other person upon request. The secretary may charge a reasonable fee to persons requesting the information, other than cities, counties, or cities and counties, to cover the cost of developing, maintaining, and reproducing and distributing the information.

(f) Before a lead agency accepts as complete an application for any development project which will be used by any person, the applicant shall consult the lists sent to the appropriate city or county and shall submit a signed statement to the local agency indicating whether the project and any alternatives are located on a site that is included on any of the lists compiled pursuant to this section and shall specify any list. If the site is included on a list, and the list is not specified on the statement, the lead agency shall notify the applicant pursuant to Section 65943. The statement shall read as follows:

HAZARDOUS WASTE AND SUBSTANCES STATEMENT

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section 65962.5 of the Government Code.

Accordingly, the project applicant is required to submit a signed statement that contains the following information:

Name of applicant:
Address:
Phone number:
Address of site (street name and number if available, and ZIP Code):
Local agency (city/county):
Assessor's book, page, and parcel number:
Specify any list pursuant to Section 65962.5 of the Government Code:
Regulatory identification number:
Date of list:

_____
Applicant, Date

(g) The changes made to this section by the act amending this section, that takes effect January 1, 1992, apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943.

(Added by Stats. 1986, Ch. 1048; Amended by Stats. 1990, Ch. 537; Amended by Stats. 1991, Ch. 1212; Amended by Stats. 1996, Ch. 1023.)

65963.1. Land use decisions or permits for hazardous waste facilities

Except as otherwise provided in Article 8.7 (commencing with Section 25199) of Chapter 6.5 of Division 20 of the Health and Safety Code, this chapter applies to the making of a land use decision or the issuance of a permit for a hazardous waste facility project by a public agency, as defined in Section 25199.1 of the Health and Safety Code, including, but not limited to, all of the following actions:

(a) The approval of land use permits and conditional use permits, the granting of variances, the subdivision of property, and the modification of existing property lines pursuant to this division or Division 2 (commencing with Section 66410) of Title 7, and, for purposes of this chapter, "project" includes an activity requiring any of those actions.

(b) The issuance of hazardous waste facility permits by the State Department of Health Services pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(c) The issuance of waste discharge requirements by California regional water quality control boards pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code.

(d) The issuance of authority to construct permits by the district board of an air pollution control district or an air quality management district pursuant to Division 26 (commencing with Section 39000) of the Health and Safety Code.

(e) The issuance of solid waste facilities permits by the enforcement agency pursuant to Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3.

(Added by Stats. 1986, Ch. 1504.)

65964. Definitions

(a) For the purposes of this section, the following definitions apply:

(1) "Permitting agency" means a city or county, or an air pollution control district, as defined in Section 65926, authorized to issue a permit or other preconstruction authorization to construct a Phase 3 reformulated gasoline project.

(2) "Phase 3 Reformulated Gasoline Project" means a project to construct or modify a facility consisting of processing units or other equipment necessary to produce California Phase 3 Reformulated Gasoline, as required to be produced pursuant to paragraph 6 of Executive Order D-5-99, and that is located within the physical boundaries of an existing oil refinery or terminal.

(b) A permitting agency for a phase 3 reformulated gasoline project shall undertake all reasonable efforts to expedite action on the permit or other authorization with the objective of acting upon the permit or other authorization within 12 months of receiving a completed application for a permit or other authorization, if the permit applicant has made reasonable efforts to cooperate with the permitting agency in expediting the processing of the permit or other authorization.

(c) The permitting agency, or a permit applicant with the concurrence of the permitting agency, may request the State Air Resources Board or the State Energy Resources Conservation and Development Commission, or both agencies, to provide appropriate assistance to the permitting agency to assist that agency in achieving the objective of acting upon the permit or other authorization within 12 months.

(d) Upon receipt of a request made pursuant to subdivision (c), the State Air Resources Board or the State Energy Resources Conservation and Development Commission, or both agencies, shall provide appropriate assistance to a permitting agency with the objective of acting upon a permit for a phase 3 reformulated gasoline project within 12 months.

(e) Nothing in this section shall affect any of the following:

(1) The authority or obligation of a public agency under any law, regulation, or ordinance.

(2) The ability of a public agency to hold a public hearing upon, to comment upon, or to impose conditions upon, a reformulated gasoline project.

(3) The rights or remedies of any party pursuant to any law, regulation, or ordinance.

(f) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

(Added by Stats. 1999, Ch. 812.)

Chapter 4.7. School Facilities

65970. Policy

The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.

(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California.

(Added by Stats. 1977, Ch. 955.)

65971. Local findings

(a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

(Added by Stats. 1977, Ch. 955; Amended by Stats. 1985, Ch. 1498; Amended by Stats. 1994, Ch. 1228.)

65972. Development prohibited unless findings made

Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

(1) That an ordinance pursuant to Section 65974 has been adopted, or

(2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974.

(Added by Stats. 1977, Ch. 955.)

65973. Definitions

As used in this chapter the following terms means:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings

owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

(Added by Stats. 1977, Ch. 955; Amended by Stats. 1985, Ch. 1498.)

65974. Interim facilities provided by dedication or fee as condition of approval

(a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. However, in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(Amended by Stats. 1982, Ch. 923; Amended by Stats. 1985, Ch. 1498; Amended by Stats. 1986, Ch. 887; Amended by Stats. 1994, Ch. 1228.)

65974.5. Other facilities

Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local

ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the subject of the proposed expenditure.

(Added by Stats. 1989, Ch. 1209.)

65975. Use of fees or dedications

(a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.) of a school project to be constructed in an attendance area where fees have been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code.

(Added by Stats. 1983, Ch. 1254.)

65976. Schedule for land use of fees

As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

(Added by Stats. 1977, Ch. 955; Amended by Stats. 1985, Ch. 1498.)

65977. Two districts

Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter.

(Added by Stats. 1977, Ch. 955.)

65978. Separate account and filing of report

Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. The report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

(Amended by Stats. 1984, Ch. 1062.)

65979. Limitation on levy of fees and dedication of land

(a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

(Amended by Stats. 1980, Ch. 1354; Amended by Stats. 1985, Ch. 1498; Amended by Stats. 1986, Ch. 136.)

65980. Definitions

For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" and shall include no other facilities.

(c) "Interim facilities" are limited to any of the following:

(1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(2) Temporary classroom toilet facilities not constructed with permanent foundations.

(3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2).

(Amended by Stats. 1980, Ch. 1354; Amended by Stats. 1985, Ch. 1498.)

65980.1. Interim facilities: Lodi Unified School District

Notwithstanding Section 69580, for the purposes of Section 65974, interim facilities shall include leased residential dwellings used by the Lodi Unified School District for school purposes.

(Added by Stats. 1983, Ch. 82.)

Note: Stats. 1983, Ch. 82, also reads:

SEC. 2. Due to the unique circumstances concerning the school facilities in the Lodi Unified School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

65981. Recommendation of fees to be assessed

If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

(Added by Stats. 1979, Ch. 282.)

Chapter 4.8 Environmental Improvement Authorizations

65990. Projects to improve environmental conditions

Notwithstanding any other provision of law, if a person applies for any authorization required by a public agency for the construction, operation, or removal of any article, machine, equipment, or contrivance for the purpose of improving an adverse environmental condition arising from an existing facility, the authorization shall include only those conditions or stipulations related to the improvement of the adverse environmental condition.

(Added by Stats. 1981, Ch. 175.)

65991. No limit on monitoring

This chapter is not a limitation on the authority of a public agency to require a monitoring program that is capable of assuring the applicant's conformance with all conditions or stipulations of the authorization.

(Added by Stats. 1981, Ch. 175.)

65992. No limit on CEQA

This chapter is not a limitation on the authority of any public agency pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(Added by Stats. 1981, Ch. 175.)

65993. No limit on mitigation

As to any portion of a project for which an authorization is required that is not essential and directly related to the improvement of the adverse environmental condition, this chapter is not a limitation on the ability of a public agency to require any conditions or stipulations deemed necessary by the approving agency, including appropriate mitigation measures, within the jurisdiction of the agency.

(Added by Stats. 1981, Ch. 175.)

Chapter 4.9. Payments of Fees, Charges, Dedications, or Other Requirements Against a Development Project

65995. Limits on school faculty exactions

(a) Except for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents ($1.93) per square foot of assessable space. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial construction, thirty-one cents ($0.31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting.

(c) (1) Notwithstanding any other provision of law, during the term of a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential construction, neither Section 17620 of the Education Code nor this chapter applies to that residential construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that

satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

(B) A building permit is issued before January 1, 2000.

(d) For purposes of this chapter, "construction" means new construction and reconstruction of existing building for residential, commercial, or industrial. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the financing of school facilities and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district' s ability to accommodate enrollment.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

(g) (1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities. For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

(Added by Stats. 1986, Ch. 887; Amended by Stats. 1988, Ch. 29; Amended by Stats. 1989, Ch. 1209; Amended by Stats. 1992, Ch. 1354; Amended by Stats. 1998, Ch. 407.)

Note: ACA 6 was rejected by the voters at the November 2, 1993 election.

65995.1. Housing for senior citizens

(a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a

residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code.

(c) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a) or (b).

(Added by Stats. 1988, Ch. 29; Amended by Stats. 1989, Ch. 1209; Amended by Stats. 1990, Ch. 633; Amended by Stats. 1991, Ch. 536.)

65995.2. Mobile homes for older persons

(a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply.

(Added by Stats. 1989, Ch. 1209.)

65995.3. Additional fee

(a) In addition to the fee, charge, dedication, or other requirement specified in subdivision (b) of Section 65995, an additional fee, charge, dedication, or other requirement of one dollar ($1) per square foot of assessable space may be levied by the governing board of a school district against that residential construction described in subparagraphs (B) and (C) of paragraph (1) of subdivision (a) of Section 53080 for the construction or reconstruction of school facilities.

(b) This section shall remain in effect only until the date that Assembly Constitutional 6 of the 1991-1992 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section is repealed.

(Added by Stats. 1992, Ch. 1354.)

65995.5. School facilities

(a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district' s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision

(f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

(Added by Stats. 1998, Ch. 407; Amended by Stats. 1999, Ch. 858.)

65995.6. New school facilities for unhoused pupils

(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school

building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a school site or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

(Added by Stats. 1998, Ch. 407; Amended by Stats. 1999, Ch. 858.)

65995.7. State funds for new school facility construction

(a) (1) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house. For the purposes of making this determination, the board shall not consider whether funds are available for, or whether it is making preliminary apportionments or final

apportionments pursuant to, Article 11 (commencing with Section 17078.10).

(2) Paragraph (1) shall become inoperative commencing on the effective date of the measure that amended this section to add this paragraph, and shall remain inoperative through the earlier of either of the following:

(A) November 5, 2002, if the voters reject the Kindergarten University Public Education Facilities Bond Act of 2002, after which date paragraph (1) shall again become operative.

(B) The date of the 2004 direct primary election after which date paragraph (1) shall again become operative.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

(Added by Stats. 1998, Ch. 407; Amended by Stats. 2001, Ch. 33; Amended by Stats. 2002, Ch. 33.)

65996. Mitigating environmental effects relating to school facilities

(a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7.

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

(c) For purposes of this section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section.

(f) This section shall become inoperative during any time that Section 65997 is operative and this section shall become operative at any time that Section 65997 is inoperative.

(Added by Stats. 1986, Ch. 887, Amended by Stats. 1988, Ch. 160; Amended by Stats. 1989, Ch. 1209; Added by Stats. 1992, Ch. 1354; Amended by Stats. 1998, Ch. 407.)

65997. Mitigation of environmental effects

(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).

(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.

(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.

(5) Section 17620 of the Education Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) (1) This section shall become operative on or after any statewide election in 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2) (A) This section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7.

(Repealed by Stats. 1994, Ch. 19; Added by Stats. 1998, Ch. 407.)

65998. Authority to reserve or designate school sites

(a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a school site.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

(Added by Stats. 1998, Ch. 407.)

(Chapter 5. [commencing with Section 66100] repealed by Stats. 1984, Ch. 1009.)

(Chapter 5. [commencing with Section 66000] added by Stats. 1987, Ch. 927.)

Chapter 5. Fees for Development Projects

66000. Definitions

As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services and community amenities.

(Added by Stats. 1987, Ch. 927; Amended by Stats. 1988, Ch. 418; Amended by Stats. 1990, Ch. 1572; Amended by Stats. 1996, Ch. 549.)

66000.5. Mitigation Fee Act

This chapter, Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012),

Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) shall be known and may be cited as the Mitigation Fee Act.

(Added by Stats. 1996, Ch. 799.)

66001. Basis for fees: refunds

(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(1) Identify the purpose to which the fee is to be put.

(2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

(3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon. By means consistent with the intent of this section, a local agency may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

(Added by Stats. 1987, Ch. 927; Amended by Stats. 1988, Ch. 418; Amended by Stats. 1996, Ch. 569.)

66002. Capital improvement plan

(a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in

the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987 -88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

(Added by Stats. 1987, Ch. 927.)

66003. Exception

Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

(Added by Stats. 1987, Ch. 927; Amended by Stats. 1988, Ch. 418; Amended by Stats. 1989, Ch. 170.)

66004. Fee establishment or increase

The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

(Added by Stats. 1988, Ch. 418; Amended by Stats. 1990, Ch. 1572.)

66005. Reasonable cost for imposition of fees or exactions

(a) When a local agency imposes any fee or exaction as a condition of approval of a proposed development, as defined by Section 65927, or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

(b) This section does not apply to fees or monetary exactions expressly authorized to be imposed under Sections 66475.1 and 66477.

(c) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

(Added by Stats. 1986, Ch. 1203, Formerly 65959, Renumbered and Amended by Stats. 1988, Ch. 418.)

66006. Procedures for development fees collected

(a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) (1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

(Added by Stats. 1983, Ch. 921; Amended by Stats. 1987, Ch. 1002; Formerly 53077, Amended and Renumbered by Stats. 1988, Ch. 418; Amended by Stats. 1989, Ch. 170; Amended by Stats. 1992, Ch. 169; Amended by Stats. 1996, Ch. 569.)

66006.5. In-lieu dedications for transportation

(a) A city or county which imposes an assessment, fee, or charge, other than a tax, for transportation purposes may, by ordinance, prescribe conditions and procedures allowing real property which is needed by the city or county for local transportation purposes, or by the state for transportation projects which will not receive any federal funds, to be donated by the obligor in satisfaction or partial satisfaction of the assessment, fee, or charge.

(b) To facilitate the implementation of subdivision (a), the Department of Transportation shall do all of the following:

(1) Give priority to the refinement, modification, and enhancement of procedures and policies dealing with right-of-way donations in order to encourage and facilitate those donations.

(2) Reduce or simplify paperwork requirements involving right-of-way procurement.

(3) Increase communication and education efforts as a means to solicit and encourage voluntary right-of-way donations.

(4) Enhance communication and coordination with local public entities through agreements of understanding that address state acceptance of right-of-way donations.

(Added by Stats. 1989, Ch. 857.)

Note: Stats. 1989 Ch. 857 also reads:

SEC. 1. (a) The Legislature makes the following findings and declarations:

(1) Numerous areas throughout the state are experiencing rapid expansion of residential, commercial, industrial, and business activities, which is producing increased traffic levels.

(2) Many property owners have expressed a willingness to donate real property or property rights for transportation improvements to accommodate these increases in traffic.

(3) The cost of right-of-way acquisition is often a significant and, in some cases, even a prohibitive cost element in many transportation improvement projects.

(4) The voluntary donation of right-of-way can result in direct benefits to property owners, developers and the community at large, and can greatly assist in reducing the costs associated with transportation improvement projects.

(5) It is in the best interest and welfare of the citizens of California for the state and counties and cities to actively foster donations of right-of-way for transportation purposes.

(b) It is the intention of the Legislature, through the enactment of this act, to encourage and facilitate donations of right-of-way by willing donors in all areas where transportation improvements are to be made.

66007. Residential development fees

(a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received.

If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling

when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

(Added by Stats. 1986, Ch. 685; Amended by Stats. 1987, Ch. 1184; Formerly 53077.5, Amended and Renumbered by Stats. 1988, Ch. 912; Amended by Stats. 1989, Ch. 1217; Amended by Stats. 1992, Ch. 231; Amended by Stats. 1998, Ch. 689.)

66008. Expenditure of public improvement fees

A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (f) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

(Added by Stats. 1996, Ch. 569.)

66009. *(Repealed by Stats. 1990, Ch. 1572.)*

Chapter 6. Fees for Development Projects Reconstructed After a Natural Disaster

66010. Definitions

As used in this chapter:

(a) "Development project" means a development project as defined in Section 66000.

(b) "Fee" means a monetary exaction or a dedication, other than a tax or special assessment, which is required by a local agency of the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees for processing

applications for governmental regulatory actions or approvals.

(c) "Local agency" means a local agency, as defined in Section 66000.

(d) "Public facilities" means public facilities, as defined in Section 66000.

(e) "Reconstruction" means the reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction.

(Amended by Stats. 1990, Ch. 1572.)

66011. Judicial action

No fee may be applied by a local agency to the reconstruction of any residential, commercial, or industrial development project that is damaged or destroyed as a result of a natural disaster, as declared by the Governor. Any reconstruction of real property, or portion thereof, which is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion which exceeds substantially equivalent construction may be assessed a fee. The term substantially equivalent, as used in this section, shall have the same meaning as the term in subdivision (c) of Section 70 of the Revenue and Taxation Code.

(Added by Stats. 1988, Ch. 162.)

Chapter 7. Fees for Specific Purposes

66012. Fees

(a) Notwithstanding any other provision of law which prescribes an amount or otherwise limits the amount of a fee or charge which may be levied by a city, county, or city and county, a city, county, or city and county shall have the authority to levy any fee or charge in connection with the operation of an aerial tramway within its jurisdiction.

(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the auditor, or if there is no auditor, the fiscal officer, of the city, county, or city and county shall, upon request of the legislative body of the city, county, or city and county, conduct a study and determine whether the fee or charge is reasonable.

(Added by Stats. 1990, Ch. 1572.)

66013. Limits on fees for connection of sewer and water

(a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) As used in this section:

(1) "Sewer connection" means the connection of a structure or project to a public sewer system.

(2) "Water connection" means the connection of a structure or project to a public water system, as defined in subdivision (f) of Section 116275 of the Health and Safety Code.

(3) "Capacity charge" means a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

(4) "Local agency" means a local agency as defined in Section 66000.

(5) "Fee" means a fee for the physical facilities necessary to make a water connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.

(c) A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected. Any interest income earned from the investment of moneys in the capital facilities fund shall be deposited in that fund.

(d) For a fund established pursuant to subdivision (c), a local agency shall make available to the public, within 180 days after the last day of each fiscal year, the following information for that fiscal year:

(1) A description of the charges deposited in the fund.

(2) The beginning and ending balance of the fund and the interest earned from investment of moneys in the fund.

(3) The amount of charges collected in that fiscal year.

(4) An identification of all of the following:

(A) Each public improvement on which charges were expended and the amount of the expenditure for each improvement, including the percentage of the total cost of the public improvement that was funded with those charges if more than one source of funding was used.

(B) Each public improvement on which charges were expended that was completed during that fiscal year.

(C) Each public improvement that is anticipated to be undertaken in the following fiscal year.

(5) A description of each interfund transfer or loan made from the capital facilities fund. The information provided, in the case of an interfund transfer, shall identify the public improvements on which the transferred moneys are, or will

be, expended. The information, in the case of an interfund loan, shall include the date on which the loan will be repaid, and the rate of interest that the fund will receive on the loan.

(e) The information required pursuant to subdivision (d) may be included in the local agency's annual financial report.

(f) The provisions of subdivisions (c) and (d) shall not apply to any of the following:

(1) Moneys received to construct public facilities pursuant to a contract between a local agency and a person or entity, including, but not limited to, a reimbursement agreement pursuant to Section 66003.

(2) Charges that are used to pay existing debt service or which are subject to a contract with a trustee for bondholders that requires a different accounting of the charges, or charges that are used to reimburse the local agency or to reimburse a person or entity who advanced funds under a reimbursement agreement or contract for facilities in existence at the time the charges are collected.

(3) Charges collected on or before December 31, 1998.

(g) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or capacity charge subject to this section shall be brought pursuant to Section 66022.

(h) Fees and charges subject to this section are not subject to the provisions of Chapter 5 (commencing with Section 66000), but are subject to the provisions of Sections 66016, 66022, and 66023.

(i) The provisions of subdivisions (c) and (d) shall only apply to capacity charges levied pursuant to this section.

(Added by Stats. 1990, Ch. 1572; Amended by Stats. 1996, Ch. 1023; Amended by Stats. 1998, Chapter 644)

66014. Limits on fees

(a) Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 or under any other authority; those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) The fees charged pursuant to subdivision (a) may include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations.

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

(Added by Stats. 1990; Ch. 1572; Amended by Stats. 2002, Ch. 963.)

Chapter 8. Procedures for Adopting Various Fees

66016. Public meeting

(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not

delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

(Added by Stats. 1990, Ch. 1572. Amended by Stats. 1992, Ch. 487; Amended by Stats. 1992, Ch. 487; Amended by Stats. 1995, Ch. 657, and Stats. 1995, Ch. 686.)

66017. 60-day delay

(a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner that 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

(Added by Stats. 1990, Ch. 1572.)

66018. Public hearing

(a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

(c) This section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service.

(Added by Stats. 1990, Ch. 1572.)

66018.5. Local agency defined

"Local agency," as used in this chapter, has the same meaning as provided in Section 66000.

(Added by Stats. 1990, Ch. 1572.)

Chapter 9. Protests, Legal Actions, and Audits

66020. Protest to residential exactions

(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable

provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

(Added by Stats. 1990, Ch. 1572.; Amended by Stats. 1992, Ch. 605; Amended by Stats. 1996, Ch. 549.)

66021. A party to exactions; protest procedures

(a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction as provided in Section 66020.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

(Added by Stats. 1990, Ch. 1572; Amended by Stats. 1998, Ch. 689)

66022. Challenge to new fees and service charges

(a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be

commenced within 120 days of the effective date of the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

(Added by Stats. 1990, Ch. 1572.)

66023. Audit request

(a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is,

therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

(Added by Stats. 1990, Ch. 1572.)

66024. Burden of proof

(a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

(Added by Stats. 1990, Ch. 1572.)

66025. Local agency defined

"Local agency," as used in this chapter, means a local agency as defined in Section 66000.

(Added by Stats. 1990, Ch. 1572.)

Chapter 9.3. Mediation and Resolution of Land Use Disputes

66030. Findings

(a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

(Added by Stats. 1994, Ch. 300.)

66031. Mediation subjects

(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) *** Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency *** **that** can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

(Added by Stats. 1994, Ch. 300; Amended by Stats. 1995, Ch. 686; Amended by Stats. 1996, Ch. 799; Amended by Stats. 2003, Ch. 296; Amended by Stats. 2004, Ch. 225.)

66032. Time periods

a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

(Added by Stats. 1994, Ch. 300; amended by Stats. 1997, Ch. 772.)

66033. Mediation report

a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

(Added by Stats. 1994, Ch. 300; Amended by Stats. 1997, Ch. 772.)

66034. Settlement conference

If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

(Added by Stats. 1994, Ch. 300.)

66035. Implementation

The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

(Added by Stats. 1994, Ch. 300.)

66036. *(Repealed by Stats. 2004, Ch. 225.)*

66037. Expiration of chapter revisions

No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

(Added by Stats. 1994, Ch. 300.)

THE SUBDIVISION MAP ACT

(California Government Code 66410-66499.58)

DIVISION 2. SUBDIVISIONS

Additions and deletions to the code sections based on laws enacted in 2003 are noted in the text. Additions (with the exception of section numbers) are noted by **bold-faced type**, while asterisks (*******) denote the deletion of punctuation, words, phrases, sentences, or paragraphs.

Chapter 1. General Provisions and Definitions

Article 1. General Provisions

66410. Short title

This division may be cited as the Subdivision Map Act.

(Added by Stats. 1974, Ch. 1536.)

66411. Local ordinance

Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. Each local agency shall, by ordinance, regulate and control the initial design and improvement of common interest developments as defined in Section 1351 of the Civil Code and subdivisions for which this division requires a tentative and final or parcel map. In the development, adoption, revision, and application of such ordinance, the local agency shall comply with the provisions of Section 65913.2. The ordinance shall specifically provide for proper grading and erosion control, including the prevention of sedimentation or damage to offsite property. Each local agency may by ordinance regulate and control other subdivisions, provided that the regulations are not more restrictive than the regulations for those subdivisions for which a tentative and final or parcel map are required by this division, and provided further that the regulations shall not be applied to short-term leases (terminable by either party on not more than 30 days' notice in writing) of a portion of the operating right-of-way of a railroad corporation as defined by Section 230 of the Public Utilities Code unless a showing is made in individual cases, under substantial evidence, that public policy necessitates the application of the regulations to those short-term leases in individual cases.

(Amended by Stats. 1980, Ch. 1152; Amended by Stats. 1988, Ch. 1388.)

66411.1. Limitations on improvements

(a) Notwithstanding Section 66428, whenever a local ordinance requires improvements for a division of land which is not a subdivision of five or more lots, the regulations shall be limited to the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created. Requirements for the construction of offsite and onsite improvements shall be noticed by a statement on the parcel map, on the instrument evidencing the waiver of the parcel map, or by a separate instrument and shall be recorded on, concurrently with, or prior to the parcel map or instrument of waiver of a parcel map being filed for record.

(b) Notwithstanding Section 66428, fulfillment of the construction requirements shall not be required until the time a permit or other grant of approval for development of the parcel is issued by the local agency or, where provided by local ordinances, until the time the construction of the improvements is required pursuant to an agreement between the subdivider and the local agency, except that in the absence of an agreement, a local agency may require fulfillment of the construction requirements within a reasonable time following approval of the parcel map and prior to the issuance of a permit or other grant of approval for the development of a parcel upon a finding by the local agency that fulfillment of the construction requirements is necessary for either of the following reasons:

(1) The public health and safety.

(2) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

(Amended by Stats. 1977, Ch. 234; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1994, Ch. 655.)

66411.5. Deferred performance of exaction obligations

(a) Notwithstanding any other provision of this division, whenever a parcel map or final map is required to effectuate a judicial partition of property pursuant to subdivision (b) and pursuant to Section 872.040 of the Code of Civil Procedure, the local agency approving the parcel map or final map may establish the amount of any monetary exaction or any dedication or improvement requirement authorized by law as a condition of approving the parcel map or final map, but shall not require payment of the exaction, the undertaking of the improvement, or posting of security for

future performance thereof and shall not accept any required offer of dedication until the time specified in subdivision (b).

(b) This section applies to judicial partition of real property which is subject to a contract under Article 3 (commencing with Section 51240) of Chapter 7 of Part 1 of Division 1 of Title 5 and which will remain subject to that contract subsequent to the filing of the parcel map or final map. With respect to any parcel created by a parcel map or final map subject to this section, payment of exactions and acceptance of offers of dedication under this section shall be deferred by the local agency until the contract terminates or is canceled as to that parcel, except that no deferral is required under this subdivision as to fees and assessments that are due and payable for governmental services provided to the parcel prior to termination or cancellation of the contract. The applicants for a parcel map or final map subject to this section shall be personally liable for performance of obligations deferred under this section at the time they become due.

(Added by Stats. 1988, Ch. 494.)

66412. Application of division; exclusions

This division shall be inapplicable to:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(4) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the project shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the project.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is "individually owned" if and only if the stockholder of that unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(5) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the cooperative shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, "agricultural purposes" means the cultivation of food or fiber, or the grazing or pasturing of livestock.

(Amended by Stats. 1984, Ch. 306; Amended by Stats. 1985, Ch. 1504; Amended by Stats. 1990, Ch. 1001; Amended by Stats. 1992, Ch. 1003.; Amended by Stats. 2000, Ch. 26; Amended by Stats. 2001, Ch. 873.)

66412.1. Inapplicability of financing or leasing

This division shall also be inapplicable to:

(a) The financing or leasing of any parcel of land, or any portion thereof, in conjunction with the construction of commercial or industrial buildings on a single parcel, unless the project is not subject to review under other local agency ordinances regulating design and improvement.

(b) The financing or leasing of existing separate commercial or industrial buildings on a single parcel.

(Amended by Stats. 1982, Ch. 87.)

66412.2. Applicability

This division shall not apply to the construction, financing, or leasing of dwelling units pursuant to Section 65852.1 or second units pursuant to Section 65852.2, but this division shall be applicable to the sale or transfer, but not leasing, of those units.

(Added by Stats. 1983, Ch. 1013.)

66412.3. Consideration of regional housing needs

In carrying out the provisions of this division, each local agency shall consider the effect of ordinances and actions adopted pursuant to this division on the housing needs of the region in which the local jurisdiction is situated and balance these needs against the public service needs of its residents and available fiscal and environmental resources.

(Amended and renumbered by Stats. 1983, Ch. 1013. Was formerly 66412.2.)

66412.5. Inapplicability

When so provided by local ordinance, this division shall be inapplicable to subdivisions of four parcels or less for construction of removable commercial buildings having a floor area of less than 100 square feet.

(Added by Stats. 1977, Ch. 412.)

66412.6. Minor land division validation

a) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

(b) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance. Owners of parcels or units of land affected by the provisions of this subdivision shall be required to obtain a certificate of compliance or a conditional certificate of compliance pursuant to Section 66499.35 prior to obtaining a permit or other grant of approval for development of the parcel or unit of land. For purposes of determining whether the parcel or unit of land complies with the provisions of this division and of local ordinances enacted pursuant thereto, as required pursuant to subdivision (a) of Section 66499.35, the presumption declared in this subdivision shall not be operative.

(c) This section shall become operative January 1, 1995.

(Amended by Stats. 1981, Ch. 1184.; Amended, repealed, and added by Stats. 1988, Ch. 1041; Amended by Stats. 1993, Ch. 500.)

66412.7. Effect of recordation

A subdivision shall be deemed established for purposes of subdivision (d) of Section 66499.30 and any other provision of this division on the date of recordation of the final map or parcel map, except that in the case of (1) maps filed for approval prior to March 4, 1972, and subsequently approved by the local agency or (2) subdivisions exempted from map requirements by a certificate of exception (or the equivalent) applied for prior to such date and subsequently issued by the local agency pursuant to local ordinance, the subdivision shall be deemed established on the date the map or application for a certificate of exception (or the equivalent) was filed with the local agency.

(Added by Stats. 1980, Ch. 479.)

66412.8 Projects located in Los Angeles County

(a) A project located in Los Angeles County that is approved by a public agency before the effective date of the act adding this section is not in violation of any requirement of this division by reason of the failure to construct a roadway across the property transferred to the state pursuant to subdivision (c) of Section 21080.29 of the Public Resources Code and to construct a bridge over the adjacent Ballona Channel in Los Angeles County, otherwise required as a condition of approval of a vesting tentative map or a tentative map, if all of the following conditions apply:

(1) The improvements specified in subdivision (a) are not constructed, due in whole or in part, to the project owner's or developer's relinquishment of easement rights to construct the improvements.

(2) The easement rights specified in paragraph (1) are relinquished in connection with the acquisition by the State of California, acting by and through the Wildlife Conservation Board of the Department of Fish and Game, of a wetlands project that is a minimum of 400 acres in size and located in the coastal zone.

(b) Where the easement rights have been relinquished, any municipal ordinance or regulation adopted by a charter city or a general law city shall be inapplicable to the extent that the ordinance or regulation requires construction of the transportation improvements specified in subdivision (a), or would otherwise require reprocessing or resubmittal of a permit or approval, including, but not limited to, a final recorded map, a vesting tentative map, or a tentative map, as a result of the transportation improvements specified in subdivision (a) not being constructed.

(Added by Stats. 2003, Ch. 739.)

66413. Effect of annexation

(a) When any area in a subdivision as to which a final map has been finally approved by a board of supervisors and filed for record pursuant to this division is thereafter annexed to a city, the final map and any agreements relating to the subdivision shall continue to govern the subdivision.

(b) When any area in a subdivision or proposed subdivision as to which a tentative map or vesting tentative map has been filed but a final map has not been finally approved, or as to which a parcel map is required by this division or local ordinance but the final act required to make the parcel map effective has not been taken, is annexed to a city, all procedures and regulations required by this division or by local ordinance of the annexing city shall be deemed to commence as of the effective date of the annexation and the map shall comply with the requirements of any applicable ordinance of the city to which the area is annexed.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1986, Ch. 613.)

66413.5. Effect of incorporation

(a) When any area in a subdivision or proposed subdivision as to which a tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map if it meets all of the conditions of the tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), and other requirements of this division.

(b) When any area in a subdivision or proposed subdivision as to which a vesting tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map and give effect to the vesting tentative map as provided in Chapter 4.5 (commencing with Section 66498.1), if the final map meets all of the conditions of the vesting tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), Chapter 4.5 (commencing with Section 66498.1), and other requirements of this division.

(c) Notwithstanding subdivisions (a) and (b), the newly incorporated city may condition or deny a permit, approval, or extension, or entitlement if it determines either of the following:

(1) Failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required, in order to comply with state or federal law.

(d) The rights conferred by this section shall expire if a final map application is not timely filed prior to the expiration

of the tentative or vesting tentative map. Prior to the approval of the final map, the rights conferred by this section shall be subject to the applicable time periods set forth in Section 66452.6, which shall not exceed eight years from the date of the incorporation unless an applicant and the newly incorporated city mutually agree to a longer period provided by this division.

(e) An approved tentative map or vesting tentative map shall not limit a newly incorporated city from imposing reasonable conditions on subsequent required approvals or permits necessary for the development, and authorized by the ordinances, policies, and standards described in Section 66474.2.

(f) Except as otherwise provided in subdivision (g), this section applies to any approved tentative map or approved vesting tentative map that meets both of the following requirements:

(1) The application for the tentative map or the vesting tentative map is submitted prior to the date that the first signature was affixed to the petition for incorporation pursuant to Section 56704, regardless of the validity of the first signature, or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county approved the tentative map or the vesting tentative map prior to the date of the election on the question of incorporation.

(g) This section does not apply to any territory for which the effective date of the incorporation is prior to January 1, 1999.

(h) It is not the intent of the Legislature to influence or affect any litigation pending on or initiated before January 1, 1999.

(Added and repealed by Stats. 1988, Ch. 1330; Amended by Stats. 1991, Ch. 354; Amended by Stats. 1998, Ch. 689.)

66413.7. *(Renumbered to 66455.9 by Stats. 1997, Ch. 580.)*

Article 2. Definitions

66414. Definitions

The definitions in this article apply to the provisions of this division only and do not affect any other provisions of law.

(Added by Stats. 1974, Ch. 1536.)

66415. Advisory agency

"Advisory agency" means a designated official or an official body charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property, the imposing of requirements or conditions thereon, or having the authority by local ordinance to approve, conditionally approve or disapprove maps.

(Added by Stats. 1974, Ch. 1536.)

66416. Appeal board

"Appeal board" means a designated board or other official body charged with the duty of hearing and making determinations upon appeals with respect to divisions of real property, the imposition of requirements or conditions thereon, or the kinds, nature and extent of the design or improvements, or both, recommended or decided by the advisory agency to be required.

(Added by Stats. 1974, Ch. 1536.)

66416.5. City engineer

(a) "City engineer" means the person authorized to perform the functions of a city engineer. The land surveying functions of a city engineer may be performed by a city surveyor, if that position has been created by the local agency.

(b) A city engineer registered as a civil engineer after January 1, 1982, shall not be authorized to prepare, examine, or approve the surveying maps and documents. The examinations, certifications, and approvals of the surveying maps and documents shall only be performed by a person authorized to practice land surveying pursuant to the Professional Land Surveyors Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(c) Nothing contained in this provision shall prevent a city engineer from delegating the land surveying functions to a person authorized to practice land surveying. Where there is no person authorized to practice land surveying within the city or agency, nothing shall prevent the city engineer from contracting with a person who is authorized to practice land surveying to perform the land surveying functions.

(*Added by Stats. 1988, Ch. 100; Amended by Stats. 1996, Ch. 872.)*

66417. County surveyor

(a) "County surveyor" includes county engineer, if there is no county surveyor.

(b) A county engineer registered as a civil engineer after January 1, 1982, shall not be authorized to prepare, examine, or approve the surveying maps and documents. The examinations, certifications, and approvals of the surveying maps and documents shall only be performed by a person authorized to practice land surveying pursuant to the Professional Land Surveyors Act (Chapter 15 (commencing

with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1996, Ch. 872.)

66418. Design

"Design" means: (1) street alignments, grades and widths; (2) drainage and sanitary facilities and utilities, including alignments and grades thereof; (3) location and size of all required easements and rights-of-way; (4) fire roads and firebreaks; (5) lot size and configuration; (6) traffic access; (7) grading; (8) land to be dedicated for park or recreational purposes; and (9) other specific physical requirements in the plan and configuration of the entire subdivision that are necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan as required pursuant to Section 66473.5.

(Added by Stats. 1974, Ch. 1536. Amended by Stats. 1984, Ch. 1187; Amended by Stats. 2002, Ch. 1109.)

66418.1. Development

"Development" means the uses to which the land which is the subject of a map shall be put, the buildings to be constructed on it, and all alterations of the land and construction incident thereto.

(Added by Stats. 1984, Ch. 1113. See note following Section 66498.1.)

66418.2. Environmental subdivision

(a) "Environmental subdivision" means a subdivision of land pursuant to this division for biotic and wildlife purposes that meets all of the conditions specified in subdivision (b).

(b) Prior to approving or conditionally approving an environmental subdivision, the local agency shall find each of the following:

(1) That factual biotic or wildlife data, or both, are available to the local agency to support the approval of the subdivision, prior to approving or conditionally approving the environmental subdivision.

(2) That provisions have been made for the perpetual maintenance of the property as a biotic or wildlife habitat, or both, in accordance with the conditions specified by any local, state, or federal agency requiring mitigation.

(3) That an easement will be recorded in the county in which the land is located to ensure compliance with the conditions specified by any local, state, or federal agency requiring the mitigation. The easement shall contain a covenant with a county, city, or nonprofit organization running with the land in perpetuity, that the landowner shall not construct or permit the construction of improvements except those for which the right is expressly reserved in the instrument. Where the biotic or wildlife habitat, or both, are compatible, the local agency shall consider requiring the easement to contain a requirement for the joint management and maintenance of the resulting parcels. This reservation shall not be inconsistent with the purposes of this section and shall not be incompatible with maintaining and preserving the biotic or wildlife character, or both, of the land.

(4) The real property is at least 20 acres in size, or if it is less than 20 acres in size, the following conditions are met:

(A) The land is contiguous to other land that would also qualify as an environmental subdivision.

(B) The other land is subject to a recorded perpetual easement that restricts its use to a biotic or wildlife habitat, or both.

(C) The total combined acreage of the lands would be 20 acres or more.

(D) Where the biotic or wildlife habitat, or both, are compatible, the land and the other land will be jointly managed and maintained.

(c) Notwithstanding subdivision (a) of Section 66411.1, any improvement, dedication, or design required by the local agency as a condition of approval of an environmental subdivision shall be solely for the purposes of ensuring compliance with the conditions required by the local, state, or federal agency requiring the mitigation.

(d) After recordation of an environmental subdivision, a subdivider may only abandon an environmental subdivision by reversion to acreage pursuant to Chapter 6 (commencing with Section 66499.11) if the local agency finds that all of the following conditions exist:

(1) None of the parcels created by the environmental subdivision has been sold or exchanged.

(2) None of the parcels is being used, set aside, or required for mitigation purposes pursuant to this section.

(3) Upon abandonment and reversion to acreage pursuant to this subdivision, the easement for biotic and wildlife purposes is extinguished.

(e) If the environmental subdivision is abandoned and reverts to acreage pursuant to subdivision (d), all local, state, and federal requirements shall apply.

(f) This section shall apply only upon the written request of the landowner at the time the land is divided. This section is not intended to limit or preclude subdivision by other lawful means for the mitigation of impacts to the environment, or of the land devoted to these purposes, or to require the division of land for these purposes.

(Added by Stats. 1995, Ch. 955; Amended by Stats. 1997, Ch. 580; Amended by Stats. 2002, Ch. 1109; Amended by Stats. 2003, Ch. 76.)

66419. Improvement

(a) "Improvement" refers to any street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof.

(b) "Improvement" also refers to any other specific improvements or types of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approved by the local agency, or by a combination thereof, is necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan.

(Added by Stats. 1974, Ch. 1536. Amended by Stats. 1984, Ch. 1187.)

66420. Local agency

"Local agency" means a city, county or city and county.

(Added by Stats. 1974, Ch. 1536.)

66421. Local ordinance

"Local ordinance" refers to a local ordinance regulating the design and improvement of subdivisions, enacted by the legislative body of any local agency under the provisions of this division or any prior statute, regulating the design and improvements of subdivisions, insofar as the provisions of the ordinance are consistent with and not in conflict with the provisions of this division.

(Added by Stats. 1974, Ch. 1536.)

66422. Certificate of exception

"Certificate of exception" means a valid authorization to subdivide land, issued by the County of Los Angeles pursuant to an ordinance thereof, adopted between September 22, 1967, and March 4, 1972, and which at the time of issuance did not conflict with this division or any statutory predecessor thereof.

(Added by Stats. 1988, Ch. 1041.)

66423. Subdivider

"Subdivider" means a person, firm, corporation, partnership or association who proposes to divide, divides or causes to be divided real property into a subdivision for himself or for others except that employees and consultants of such persons or entities, acting in such capacity, are not "subdividers."

(Amended by Stats. 1976, Ch. 660.)

66424. Subdivision

"Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 of the Civil Code, a community apartment project, as defined in subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the Civil Code.

(Amended by Stats. 1982, Ch. 87; Amended by Stats. 1992, Ch. 400; Amended by Stats. 1994, Ch. 458.)

66424.1. Repeat subdivision

Nothing in Section 66424 shall prevent a purchaser of a unit of land created under the provisions of this division or a local ordinance enacted pursuant thereto, from subdividing the land one or more times, pursuant to the provisions of this division prior to the time that an equalized county assessment roll has been completed reflecting the creation of the unit proposed to be subdivided.

Nothing contained in this chapter shall prevent the same subdivider of a unit of land created under the provisions of this division, or a local ordinance enacted pursuant thereto, from making consecutive subdivisions of the same parcel or any portion thereof. Further, local agencies shall not, by ordinance or policy, prohibit consecutive subdivision of the same parcel or any portion thereof either by the same subdivider or a subsequent purchaser because the parcel was previously subdivided.

Nothing contained in this section shall limit the authority of a local agency to impose appropriate conditions or requirements on the consecutive subdivisions.

(Amended by Stats. 1977, Ch. 234; Amended by Stats. 1986, Ch. 35.)

66424.5. Tentative map

(a) "Tentative map" refers to a map made for the purpose of showing the design and improvement of a proposed subdivision and the existing conditions in and around it and need not be based upon an accurate or detailed final survey of the property.

(b) "Vesting tentative map" refers to a map which meets the requirements of subdivision (a) and Section 66452.

(Amended by Stats. 1984, Ch. 1113. See note following Section 66498.1.)

66424.6. Designation of remainder parcel/finding

(a) When a subdivision, as defined in Section 66424, is of a portion of any unit or units of improved or unimproved land, the subdivider may designate as a remainder that portion which is not divided for the purpose of sale, lease, or financing. Alternatively, the subdivider may omit entirely

that portion of any unit of improved or unimproved land which is not divided for the purpose of sale, lease, or financing. If the subdivider elects to designate a remainder, the following requirements shall apply:

(1) The designated remainder shall not be counted as a parcel for the purpose of determining whether a parcel or final map is required.

(2) For a designated remainder parcel described in this subdivision, the fulfillment of construction requirements for improvements, including the payment of fees associated with any deferred improvements, shall not be required until a permit or other grant of approval for development of the remainder parcel is issued by the local agency or, where provided by local ordinance, until the construction of the improvements, including the payment of fees associated with any deferred improvements, is required pursuant to an agreement between the subdivider and the local agency. In the absence of that agreement, a local agency may require fulfillment of the construction requirements, including the payment of fees associated with any deferred improvements, within a reasonable time following approval of the final map and prior to the issuance of a permit or other grant of approval for the development of a remainder parcel upon a finding by the local agency that fulfillment of the construction requirements is necessary for reasons of:

(A) The public health and safety; or

(B) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

(b) If the subdivider elects to omit all or a portion of any unit of improved or unimproved land which is not divided for the purpose of sale, lease, or financing, the omitted portion shall not be counted as a parcel for purposes of determining whether a parcel or final map is required, and the fulfillment of construction requirements for offsite improvements, including the payment of fees associated with any deferred improvements, shall not be required until a permit or other grant of approval for development is issued on the omitted parcel, except where allowed pursuant to paragraph (2) of subdivision (a).

(c) The provisions of subdivisions (a) and (b) providing for deferral of the payment of fees associated with any deferred improvements shall not apply if the designated remainder or omitted parcel is included within the boundaries of a benefit assessment district or community facilities district.

(d) A designated remainder or any omitted parcel may subsequently be sold without any further requirement of the filing of a parcel map or final map, but the local agency may require a certificate of compliance or conditional certificate of compliance.

(Added by Stats. 1979, Ch. 383; Amended by Stats. 1985, Ch. 1504; Amended by Stats. 1991, Ch. 907.)

Chapter 2. Maps

Article 1. General Provisions

66425. Applicability

The necessity for tentative, final and parcel maps shall be governed by the provisions of this chapter.

(Added by Stats. 1974, Ch. 1536.)

66426. Requirements for map

A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs:

(a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body.

(b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.

(c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths.

(d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.

(e) The land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2.

(f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

(Amended by Stats. 1979, Ch. 1192; Amended by Stats. 1995, Ch. 955; Amended by Stats. 2003, Ch.76.)

66426.5. Exceptions for conveyance to public agencies

Any conveyance of land to a governmental agency, public entity, public utility or subsidiary of a public utility for conveyance to that public utility for rights-of-way shall not be considered a division of land for purposes of computing the number of parcels. For purposes of this section, any conveyance of land to a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

(Added by Stats. 1982, Ch. 87; Amended by Stats. 1994, Ch. 458; Amended by Stats. 2001, Ch. 176.)

66427. Requirement for condominiums, community apartments, and cooperative projects

(a) A map of a condominium project, a community apartment project, or of the conversion of five or more existing dwelling units to a stock cooperative project need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the governing body have the right to refuse approval of a parcel, tentative, or final map of the project on account of the design or the location of buildings on the property shown on the map not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium.

(b) A map need not include a condominium plan or plans, as defined in subdivision (e) of section 1351 of the Civil Code, and the governing body may not refuse approval of a parcel, tentative, or final map of the project on account of the absence of a condominium plan.

(c) Fees and lot design requirements shall be computed and imposed with respect to those maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project.

(d) Nothing herein shall be deemed to limit the power of the legislative body to regulate the design or location of buildings in a project by or pursuant to local ordinances.

(e) If the governing body has approved a parcel map or final map for the establishment of condominiums on property pursuant to the requirements of this division, the separation of a three-dimensional portion or portions of the property from the remainder of the property or the division of that three-dimensional portion or portions into condominiums shall not constitute a further subdivision as defined in Section 66424, provided each of the following conditions has been satisfied:

(1) The total number of condominiums established is not increased above the number authorized by the local agency in approving the parcel map or final map.

(2) A perpetual estate or an estate for years in the remainder of the property is held by the condominium owners in undivided interests in common, or by an association as defined in subdivision (a) of Section 1351 of the Civil Code, and the duration of the estate in the remainder of the property is the same as the duration of the estate in the condominiums.

(3) The three-dimensional portion or portions of property are described on a condominium plan or plans, as defined in subdivision (e) of Section 1351 of the Civil Code.

(Amended by Stats. 1979, Ch. 1192; Amended by Stats. 1992, Ch. 400; Amended by Stats. 2003, Ch. 434.)

66427.1. Conversion findings

The legislative body shall not approve a final map for a subdivision to be created from the conversion of residential real property into a condominium project, a community apartment project, or a stock cooperative project unless it finds all of the following:

(a) Each of the tenants of the proposed condominium, community apartment project or stock cooperative project has received, pursuant to Section 66452.9, written notification of intention to convert at least 60 days prior to the filing of a tentative map pursuant to Section 66452. There shall be a further finding that each such tenant, and each person applying for the rental of a unit in such residential real property, has, or will have, received all applicable notices and rights now or hereafter required by this chapter or Chapter 3 (commencing with Section 66451). In addition, a finding shall be made that each tenant has received 10 days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request. The written notices to tenants required by this subdivision shall be deemed satisfied if such notices comply with the legal requirements for service by mail.

(b) Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given written notification within 10 days of approval of a final map for the proposed conversion.

(c) Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given 180 days' written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion. The provisions of this subdivision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

(d) Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

(e) This section shall not diminish, limit or expand, other than as provided herein, the authority of any city, county, or city and county to approve or disapprove condominium projects.

(Amended by Stats. 1980, Ch. 1128. See note following Section 66424.)

66427.2. Applicability to conversions

Unless applicable general or specific plans contain definite objectives and policies, specifically directed to the

conversion of existing buildings into condominium projects or stock cooperatives, the provisions of Sections 66473.5, 66474, and 66474.61, and subdivision (c) of Section 66474.60 shall not apply to condominium projects or stock cooperatives, which consist of the subdivision of airspace in an existing structure, unless new units are to be constructed or added.

A city, county, or city and county acting pursuant to this section shall approve or disapprove the conversion of an existing building to a stock cooperative within 120 days following receipt of a completed application for approval of such conversion.

This section shall not diminish, limit or expand, other than as provided herein, the authority of any city, county, or city and county to approve or disapprove condominium projects.

(Amended by Stats. 1979, Ch. 1192.)

66427.4. Report: impact of mobile home park conversion

(a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks.

(b) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(c) The legislative body, or an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.

(d) This section establishes a minimum standard for local regulation of conversions of mobilehome parks into other uses and shall not prevent a local agency from enacting more stringent measures.

(e) This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership.

(Added by Stats. 1982, Ch. 983; Amended by Stats. 1991, Ch. 745; Amended by Stats. 1995, Ch. 256.)

66427.5. Filings: economic displacement

At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner: (a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on he map by the advisory agency or, if there is no advisory agency, by the legislative body.

(d) (1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.

(3) The survey shall be obtained pursuant to a written ballot.

(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:

(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount

greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

(Added by Stats. 1991, Ch. 745; Amended by Stats. 1995, Ch. 256; Amended by Stats. 2002, Ch. 1143.)

66428. Tentative map required

(a) Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section. A parcel map shall not be required for either of the following:

(1) Subdivisions of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code, that are created by short-term leases (terminable by either party on not more than 30 days' notice in writing).

(2) Land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

(b) A local agency shall, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this division, including the requirements for a parcel map imposed by Section 66426. The procedure may include provisions for waiving the requirement for a tentative and final map for the construction of a condominium project on a single parcel. The ordinance shall require a finding by the legislative body or advisory agency, that the proposed division of land complies with requirements established by this division or local ordinance enacted pursuant thereto as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of this division or local ordinance enacted pursuant thereto. In any case, where the requirement for a parcel map is waived by local ordinance pursuant to this section, a tentative map may be required by local ordinance.

(c) If a local ordinance does not require a tentative map where a parcel map is required by this division, the subdivider shall have the option of submitting a tentative map, or if he or she desires to obtain the rights conferred by Chapter 4.5 (commencing with Section 66498.1), a vesting tentative map.

(Amended by Stats. 1984, Ch. 1113. See note following Section 66498.1; Amended by Stats. 1989, Ch. 831; Amended by Stats. 1990, Ch. 1498; Amended by Stats. 1991, Ch. 745; Amended by Stats. 1994, Ch. 458; Amended by Stats. 2001, Ch. 176.)

66428.1. Map waiver for mobile home park conversion to condominium

(a) When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field survey is performed, the requirement for a parcel map or a tentative and final map shall be waived unless any of the following conditions exist:

(1) There are design or improvement requirements necessitated by significant health or safety concerns.

(2) The local agency determines that there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and final map.

(3) The existing parcels which exist prior to the proposed conversion were not created by a recorded parcel or final map.

(4) The conversion would result in the creation of more condominium units or interests than the number of tenant lots or spaces that exist prior to conversion.

(b) The petition signed by owners of mobilehomes in a mobilehome park proposed for conversion to resident ownership pursuant to subdivision (a) shall read as follows:

MOBILEHOME PARK PETITION AND DISCLOSURE STATEMENT

SIGNING THIS PETITION INDICATES YOUR SUPPORT FOR CONVERSION OF THIS MOBILEHOME PARK TO RESIDENT OWNERSHIP. THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF ____, COUNTY OF ____, STATE OF CALIFORNIA, DESCRIBED AS ____. THE TOTAL COST FOR CONVERSION AND PURCHASE OF THE PARK IS $___ TO $____, EXCLUDING FINANCING COSTS. THE TOTAL COST TO YOU FOR CONVERSION AND PURCHASE OF YOUR OWNERSHIP INTEREST IS $___ TO $____, EXCLUDING FINANCING COSTS. IF TWO-THIRDS OF THE RESIDENTS IN THIS PARK SIGN THIS PETITION INDICATING THEIR INTENT TO PURCHASE THE MOBILEHOME PARK FOR PURPOSES OF CONVERTING IT TO RESIDENT OWNERSHIP, THEN THE REQUIREMENTS FOR A NEW PARCEL, OR TENTATIVE AND FINAL SUBDIVISION MAP IN COMPLIANCE WITH THE SUBDIVISION MAP ACT MUST BE WAIVED, WITH CERTAIN VERY LIMITED EXCEPTIONS. WAIVING THESE PROVISIONS OF LAW ELIMINATES

NUMEROUS PROTECTIONS WHICH ARE AVAILABLE TO YOU.

_____
Buyer, unit #, date

_____
Petitioner, date

(c) The local agency shall provide an application for waiver pursuant to this section. After the waiver application is deemed complete pursuant to Section 65943, the local agency shall approve or deny the application within 50 days. The applicant shall have the right to appeal that decision to the governing body of the local agency.

(d) If a tentative or parcel map is required, the local agency shall not impose any offsite design or improvement requirements unless these are necessary to mitigate an existing health or safety condition. No other dedications, improvements, or in-lieu fees shall be required by the local agency. In no case shall the mitigation of a health or safety condition have the effect of reducing the number, or changing the location, of existing mobilehome spaces.

(e) If the local agency imposes requirements on an applicant to mitigate a health or safety condition, the applicant and the local agency shall enter into an unsecured improvement agreement. The local agency shall not require bonds or other security devices pursuant to Chapter 5 (commencing with Section 66499) for the performance of that agreement. The applicant shall have a period of one year from the date the agreement was executed to complete those improvements.

(f) If the waiver application provided for in this section is denied by the local agency pursuant to the provisions of subdivision (a), the applicant may proceed to convert the mobilehome park to a tenant-owned, condominium ownership interest, but shall file a parcel map or a tentative and final map. The local agency may not require the applicant to file and record a tentative and final map unless the conversion creates five or more parcels shown on the map. The number of condominium units or interests created by the conversion shall not determine whether the filing of a parcel or a tentative and final map shall be required.

(g) For the purposes of this section, the meaning of "resident ownership" shall be as defined in Section 50781 of the Health and Safety Code.

(Added by Stats. 1991, Ch. 745.)

66429. Recording maps

Of the maps required by this division, only final and parcel maps may be filed for record in the office of the county recorder.

(Added by Stats. 1974, Ch. 1536.)

66430. Consent of all owners

No final map or parcel map required by this chapter or local ordinance which creates a subdivision shall be filed with the local agency without the written consent of all parties having any record title interest in the real property proposed to be subdivided, except as otherwise provided in this division.

(Added by Stats. 1974, Ch. 1536.)

66431. Duties of county surveyor/city engineer

Upon mutual agreement of their respective legislative bodies, the county surveyor may perform any or all of the duties assigned to the city engineer, including required certifications or statements. Whenever these duties have been divided between the county surveyor and city engineer, each officer shall state the duties performed by him or her.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1987, Ch. 982.)

Article 2. Final Maps

66433. Applicability

The content and form of final maps shall be governed by the provisions of this article.

(Added by Stats. 1974, Ch. 1536.)

66434. Content of final map

The final map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor, shall be based upon a survey, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches or 460 by 660 millimeters. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch or 025 millimeters. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) All survey and mathematical information and data necessary to locate all monuments and to locate and retrace any and all interior and exterior boundary lines appearing on the map shall be shown, including bearings and distances of straight lines, and radii and arc length or chord bearings

and length for all curves, and any information which may be necessary to determine the location of the centers of curves and ties to existing monuments used to establish the subdivision boundaries.

(d) Each parcel shall be numbered or lettered and each block may be numbered or lettered. Each street shall be named or otherwise designated. The subdivision number shall be shown together with the description of the real property being subdivided.

(e) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated. The map shall show the definite location of the subdivision, and particularly its relation to surrounding surveys.

If the map includes a "designated remainder" parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter of survey, but only by deed reference to the existing boundaries of the remainder parcel.

A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(f) On and after January 1, 1987, no additional requirements shall be included that do not affect record title interests. However, the map shall contain a notation or reference to additional information required by a local ordinance adopted pursuant to Section 66434.2.

(g) Any public streets or public easements to be left in effect after the subdivision shall be adequately delineated on the map. The filing of the final map shall constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data or other official record creating these public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map. Before a public easement vested in another public entity may be abandoned pursuant to this section, that public entity shall receive notice of the proposed abandonment. No public easement vested in another public entity shall be abandoned pursuant to this section if that public entity objects to the proposed abandonment.

(Amended by Stats. 1982, Ch. 87.; Amended by Stats. 1985, Ch. 1504; Amended by Stats. 1994, Ch. 458; Amended by Stats. 1995, Ch. 579; Amended by Stats. 1997, Ch. 580; Amended by Stats. 2001, Ch. 176.)

66434.1. Owner's development lien

In the event that an owner's development lien has been created pursuant to the provisions of Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code on the real property or portion thereof subject to the final map, a notice shall be placed on the face of the final map specifically referencing the book and page in the county recorder's office in which the resolution creating the owner's development lien was recorded. The notice shall state that the property subdivided is subject to an owner's development lien and that each parcel created by the recordation of the final map shall be subject to a prorated amount of the owner's development lien on a per acre or portion thereof basis.

(Added by Stats. 1979, Ch. 282; Amended by Stats. 2001, Ch. 176.)

66434.2. Local option to require additional data

(a) On or after January 1, 1987, a city or county may, by ordinance, require additional information to be filed or recorded simultaneously with a final or parcel map. The additional information shall be in the form of a separate document or an additional map sheet which shall indicate its relationship to the final or parcel map, and shall contain a statement that the additional information is for informational purposes, describing conditions as of the date of filing, and is not intended to affect record title interest. The document or additional map sheet may also contain a notation that the additional information is derived from public records or reports, and does not imply the correctness or sufficiency of those records or reports by the preparer of the document or additional map sheet.

(b) Additional survey and map information may include, but need not be limited to: building setback lines, flood hazard zones, seismic lines and setbacks, geologic mapping, and archaeological sites.

(Added by Stats. 1985, Ch. 883.)

66434.5. Filing of soil reports

When a soils report, geologic report, or soils and geologic report has been prepared specifically for the subdivision, each report shall be kept on file for public inspection by the city or county having jurisdiction.

(Amended by Stats. 1982, Ch. 87.)

66435. Certificates and acknowledgments

Prior to filing, those certificates, statements, and acknowledgments set forth in this article shall appear on the final map and may be combined where appropriate.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1988, Ch. 1408.)

66435.1. Recording separate instruments

Notwithstanding any other provision of this article, local agencies may require that those certificates, statements, and acknowledgments required by Sections 66436 and 66443, be made by separate instrument to be recorded concurrently with the final map being filed for record.

(Added by Stats. 1982, Ch. 87; Amended by Stats. 1988, Ch. 1408.)

66435.2. Referencing on final map

Whenever a certificate, statement, or acknowledgment is made by separate instrument, there shall appear on the final map a reference to the separately recorded document. This reference shall be completed by the county recorder pursuant to Section 66468.1.

(Added by Stats. 1982, Ch. 87; Amended by Stats. 1987, Ch. 982.)

66436. Owner's consent

(a) A statement, signed and acknowledged by all parties having any record title interest in the subdivided real property, consenting to the preparation and recordation of the final map is required, except in the following circumstances:

(1) A lien for state, county, municipal, or local taxes or special assessments, a trust interest under bond indentures, or mechanics' liens do not constitute a record title interest in land for the purpose of this chapter or any local ordinance.

(2) The signature of either the holder of beneficial interests under trust deeds or the trustee under the trust deeds, but not both, may be omitted. The signature of either shall constitute a full and complete subordination of the lien of the deed of trust to the map and any interest created by the map.

(3) Signatures of parties owning the following types of interests may be omitted if their names and the nature of their respective interests are stated on the final map:

(A) (i) Rights-of-way, easements or other interests which cannot ripen into a fee, except those owned by a public entity, public utility, or subsidiary of a public utility for conveyance to the public utility for rights-of-way. If, however, the legislative body or advisory agency determines that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement, the signature of the public entity or public utility may be omitted. Where that determination is made, the subdivider shall send, by certified mail, a sketch of the proposed final map, together with a copy of this section, to any public entity or public utility which has previously acquired a right-of-way or easement.

(ii) If the public entity or utility objects to either recording the final map without its signature or the determination of the legislative body or advisory agency that the division and development of the property will not unreasonably interfere with the full and complete exercise of its right-of-way or easement, it shall so notify the subdivider and the legislative body or advisory agency within 30 days after receipt of the materials from the subdivider.

(iii) If the public entity or utility objects to recording the final map without its signature, the public entity or utility so objecting may affix its signature to the final map within 30 days of filing its objection with the legislative body or advisory agency.

(iv) If the public entity or utility either does not file an objection with the legislative body or advisory agency or fails to affix its signature within 30 days of filing its objection to recording the map without its signature, the local agency may record the final map without the signature.

(v) If the public entity or utility files an objection to the determination of the legislative body or advisory agency that the division and development of the property will not unreasonably interfere with the exercise of its right-of-way or easement, the legislative body or advisory agency shall set the matter for public hearing to be held not less than 10 nor more than 30 days of receipt of the objection. At the hearing, the public entity or public utility shall present evidence in support of its position that the division and development of the property will unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement.

(vi) If the legislative body or advisory agency finds, following the hearing, that the development and division will in fact unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement, it shall set forth those conditions whereby the unreasonable interference will be eliminated and upon compliance with those conditions by the subdivider, the final map may be recorded with or without the signature of the objector. If the legislative body or advisory agency finds that the development and division will in fact not unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement, the final map may be recorded without the signature of the objector, notwithstanding the objections.

(vii) Failure of the public entity or public utility to file an objection pursuant to this section shall in no way affect its rights under a right-of-way or easement.

(viii) No fee shall be charged by a public entity, public utility, subsidiary of a public utility, or objector for signing, omitting a signature, or objecting pursuant to this section.

(B) Rights-of-way, easements, or reversions, which by reason of changed conditions, long disuse, or laches appear to be no longer of practical use or value and signatures are impossible or impractical to obtain. A statement of the circumstances preventing the procurement of the signatures shall also be stated on the map.

(C) Interests in, or rights to, minerals, including but not limited to, oil, gas, or other hydrocarbon substances.

(4) Real property originally patented by the United States or by the State of California, which original patent reserved interest to either or both of those entities, may be included in the final map without the consent of the United States or the State of California to the map or to dedications made by it.

(b) No monetary liability shall be incurred by, and no cause of action shall arise against, a local agency, a party, the subdivider, the subdivider's agent, or the engineer or land surveyor who prepared the map, on account of the omission of any signature, which omission is authorized by this section.

(c) A notary acknowledgment shall be deemed complete for recording without the official seal of the notary, so long as the name of the notary, the county of the notary's principal place of business, and the notary's commission expiration date are typed or printed below or immediately adjacent to the notary's signature in the acknowledgment.

(Amended by Stats. 1982, Ch. 87; Amended by Stats. 1985, Ch. 1504; Amended by Stats. 1986, Ch. 789; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1989, Ch. 847.)

66439. Dedications

(a) Dedications of, or offers to dedicate interests in, real property for specified public purposes shall be made by a statement on the final map, signed and acknowledged by those parties having any record title interest in the real property being subdivided, subject to the provisions of Section 66436.

(b) In the event any street shown on a final map is not offered for dedication, the statement may contain a declaration to this effect. If the statement appears on the final map and if the map is approved by the legislative body, the use of the street or streets by the public shall be permissive only.

(c) An offer of dedication of real property for street or public utility easement purposes shall be deemed not to include any public utility facilities located on or under the real property unless, and only to the extent that, an intent to dedicate the facilities is expressly declared in the statement.

(Amended by Stats. 1975, Ch. 24; Amended by Stats. 1987, Ch. 982.)

66440. Acceptance/rejection of dedication

The final map shall contain a certificate or statement for execution by the clerk of each approving legislative body stating that the body approved the map and accepted, accepted subject to improvement, or rejected, on behalf of the public, any real property offered for dedication for public use in conformity with the terms of the offer of dedication.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1987, Ch. 982.)

66441. Certificate

A statement by the engineer or surveyor responsible for the survey and final map is required. His or her statement shall give the date of the survey, state that the survey and final map were made by him or her or under his or her direction, and that the survey is true and complete as shown.

The statement shall also state that all the monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified later date. The statement shall also state that the monuments are, or will be, sufficient to enable the survey to be retraced.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1987, Ch. 982.)

66442. Certification by city engineer/county surveyor

(a) If a subdivision for which a final map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and state that:

(1) He or she has examined the map.

(2) The subdivision as shown is substantially the same as it appeared on the tentative map, and any approved alterations thereof.

(3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map have been complied with.

(4) He or she is satisfied that the map is technically correct.

(b) City or county engineers registered as civil engineers after January 1, 1982, shall only be qualified to certify the statements of paragraphs (1), (2), and (3) of subdivision (a). The statement specified in paragraph (4) shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers' Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code). The county surveyor, the city surveyor, or the city engineer, as the case may be, or other public official or employee qualified and authorized to perform the functions of one of those officials, shall complete and file with his or her legislative body his or her certificate or statement, as required by this section, within 20 days from the time the final map is submitted to him or her by the subdivider for approval.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1987, Ch. 982; Amended by Stats 1988, Ch. 100; Amended by Stats. 1991, Ch. 738.)

66442.5. Engineer's/Surveyor's statement

The following statements shall appear on a final map:

(a) Engineer's (surveyor's) statement:

This map was prepared by me or under my direction and is based upon a field survey in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of (name of person authorizing map) on (date). I hereby state that this final map substantially conforms to the conditionally approved tentative map.

(Signed) _____
R.C.E. (or L.S.) No. _____

(b) Recorder's certificate or statement.

Filed this ___ day of ____, 20__, at ____m. in Book ____ of ____, at page ____, at the request of _____.

Signed _____
County Recorder
(Added by Stats. 2001, Ch. 176.)

66443. Local requirements

In addition to the certificates, statements, and acknowledgments required herein for final maps, the maps shall contain other certificates and acknowledgments as are required by local ordinance.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1988, Ch. 1408.)

Article 3. Parcel Maps

66444. Applicability

The content and form of parcel maps shall be governed by the provisions of this article.

(Added by Stats. 1974, Ch. 1536.)

66445. Parcel map: preparation, content, and procedures

The parcel map shall be prepared by, or under the direction of, a registered civil engineer or licensed land surveyor, shall show the location of streets and property lines bounding the property, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates or statements, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches or 460 by 660 millimeters. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch or 025 millimeters. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) Each parcel shall be numbered or lettered and each block may be numbered or lettered. Each street shall be named or otherwise designated. The subdivision number shall be shown together with the description of the real property being subdivided.

(d) (1) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated.

(2) The map shall show the location of each parcel and its relation to surrounding surveys. If the map includes a "designated remainder" parcel or similar parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter of survey, but only by deed reference to the existing boundaries of the remainder parcel.

(3) A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(e) Subject to the provisions of Section 66436, a statement, signed and acknowledged by all parties having any record title interest in the real property subdivided, consenting to the preparation and recordation of the parcel map is required, except that less inclusive requirements may be provided by local ordinance.

With respect to a division of land into four or fewer parcels, where dedications or offers of dedications are not required, the statement shall be signed and acknowledged by the subdivider only. If the subdivider does not have a record title ownership interest in the property to be divided, the local agency may require that the subdivider provide the local agency with satisfactory evidence that the persons with record title ownership have consented to the proposed division. For purposes of this paragraph, "record title ownership" means fee title of record unless a leasehold interest is to be divided, in which case "record title ownership" means ownership of record of the leasehold interest. Record title ownership does not include ownership of mineral rights or other subsurface interests that have been severed from ownership of the surface.

(f) Notwithstanding any other provision of this article, local agencies may require that those statements and acknowledgments required pursuant to subdivision (e) be made by separate instrument to be recorded concurrently with the parcel map being filed for record.

(g) On and after January 1, 1987, no additional survey and map requirements shall be included on a parcel map that do not affect record title interests. However, the map shall contain a notation of reference to survey and map information required by a local ordinance adopted pursuant to Section 66434.2.

(h) Whenever a certificate or acknowledgment is made by separate instrument, there shall appear on the parcel map a reference to the separately recorded document. This reference shall be completed by the county recorder pursuant to Section 66468.1.

(i) If a field survey was performed, the parcel map shall contain a statement by the engineer or surveyor responsible for the preparation of the map that states that all monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified date, and that the monuments are, or will be, sufficient to enable the survey to be retraced.

(j) Any public streets or public easements to be left in effect after the subdivision shall be adequately delineated on the map. The filing of the parcel map shall constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data or other official record creating these public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map. Before a public easement vested in another public entity may be abandoned pursuant to this section, that public entity shall receive notice of the proposed abandonment. No public easement vested in another public entity shall be abandoned pursuant to this section if that public entity objects to the proposed abandonment.

(Amended by Stats. 1983, Ch. 1195; Amended by Stats. 1985, Ch. 1504; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1994, Ch. 458; Amended by Stats. 1995, Ch. 579; Amended by Stats. 1997, Ch. 580; Amended by Stats. 2001, Ch. 176.)

66447. Dedications or offers

If dedications or offers of dedication are required, they may be made either by a statement on the parcel map or by separate instrument, as provided by local ordinance. If dedications or offers of dedication are made by separate instrument, the dedications or offers of dedication shall be recorded concurrently with, or prior to, the parcel map being filed for record.

The dedication or offers of dedication, whether by statement or separate instrument, shall be signed by the same parties and in the same manner as set forth in Section 66439 for dedications by a final map.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1987, Ch. 982.)

66448. Field survey

In all cases where a parcel map is required, such map shall be based upon a field survey made in conformity with the Land Surveyors Act when required by local ordinance, or, in absence of such requirement, shall be based either upon a field survey made in conformity with the Land Surveyors Act or be compiled from recorded or filed data when sufficient survey information exists on filed maps to locate and retrace the exterior boundary lines of the parcel map if the location of at least one of these boundary lines can be established from an existing monumented line.

(Added by Stats. 1974, Ch. 1536.)

66449. Necessary certificates

The following statements shall appear on a parcel map:

(a) Engineer's (surveyor's) statement:

This map was prepared by me or under my direction (and was compiled from record data) (and is based upon a field survey) in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of (name of person authorizing map) on (date). I hereby state that this parcel map substantially conforms to the approved or conditionally approved tentative map, if any.

(Signed) _____
R.C.E. (or L.S.) No. _____

(b) Recorder's certificate or statement.

Filed this ___ day of ____, 20__, at ____m. in Book ____ of ____, at page ____, at the request of _____.

Signed _____
County Recorder

(Amended by Stats. 1978, Ch. 335; Amended by Stats. 1987, Ch. 982; Amended by Stats. 2001, Ch. 176.)

66450. City or county certificate

(a) If a subdivision for which a parcel map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and the stamp of his or her seal and state that:

(1) He or she examined the map.

(2) The subdivision as shown is substantially the same as it appeared on the tentative map, if required, and any approved alterations thereof.

(3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map, if required, have been complied with.

(4) He or she is satisfied that the map is technically correct.

(b) City or county engineers registered as civil engineers after January 1, 1982, shall only be qualified to certify the

statements of paragraphs (1), (2), and (3) of subdivision (a). The statement specified in paragraph (4) of subdivision (a) shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers' Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(c) The county surveyor, city engineer, or city surveyor, as the case may be, or other public official or employee qualified and authorized to perform the functions of one of those officials, shall complete his or her certificate or statement, as required by this section, within 20 days from the time the parcel map is submitted to him or her by the subdivider for approval. The completed parcel map shall be delivered to the county recorder or, if required by local ordinance, filed with the legislative body prior to delivery to the county recorder, within the same 20-day period.

(Amended by Stats. 1975, Ch. 24; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1988, Ch. 100; Repealed and added by Stats. 1991, Ch. 738; Amended by Stats. 1993, Ch. 906.)

Chapter 3. Procedure

Article 1. General Provisions

66451. Applicability

The procedures set forth in this chapter shall govern the processing, approval, conditional approval or disapproval and filing of tentative, final and parcel maps and the modification thereof. Local ordinances may modify such procedures to the extent authorized by this chapter.

(Added by Stats. 1974, Ch. 1536.)

66451.1. Extensions of time limits

(a) The time limits specified in this chapter for reporting and acting on maps may be extended by mutual consent of the subdivider and the advisory agency or legislative body required to report or act. However, no advisory agency or legislative body, may require a routine waiver of time limits as a condition of accepting the application for, or processing of tentative, final, or parcel maps, unless the routine waiver is obtained for the purpose of permitting concurrent processing of related approvals or an environmental review on the same development project.

(b) At the time that the subdivider makes an application pursuant to this division, a local agency shall determine whether or not it is able to meet the time limits specified in this chapter for reporting and acting on maps. If the local agency determines that it will be unable to meet such time limits, such agency shall, upon request of a subdivider and for the purpose of meeting such time limits, contract or employ a private entity or persons on a temporary basis to perform such services as necessary to permit the agency to meet such time limits. However, a local agency need not enter into such a contract or employ such persons if it determines either that (1) no such entities or persons are available or qualified to perform such services or (2) the local agency would be able to perform services in a more rapid fashion than would any available and qualified persons or entities.

Such entities or persons employed by a local agency may, pursuant to an agreement with the local agency, perform all functions necessary to process tentative, final, and parcel maps and to comply with other requirements imposed pursuant to this division or by local ordinances adopted pursuant to this division, except those functions reserved by this division or local ordinance to the legislative body. A local agency may charge the subdivider fees in an amount necessary to defray costs directly attributable to employing or contracting with entities or persons performing services pursuant to this section.

(Amended by Stats. 1980, Ch. 1152.)

66451.2. Fees

The local agency may establish reasonable fees for the processing of tentative, final and parcel maps and for other procedures required or authorized by this division or local ordinance, but the fees shall not exceed the amount reasonably required by such agency to administer the provisions of this division. The fees shall be imposed pursuant to the Mitigation Fee Act, consisting of Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1.

(Amended by Stats. 1981, Ch. 914.)

66451.3. Public hearing notice

(a) Unless otherwise provided by this division, notice of a hearing held pursuant to this division shall be given pursuant to Sections 65090 and 65091.

(b) If the proposed subdivision is a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, the notice shall also be given by the local agency by United States mail to each tenant of the subject property, and shall also include notification of the tenant's right to appear and be heard. The requirements of this subdivision may be satisfied by service of the notice in compliance with the requirements for service of legal process by mail.

(c) Pursuant to Section 66451.2, fees may be collected from the subdivider for expenses incurred under this section.

(d) Any interested person may appear at the hearing and shall be heard.

(Amended by Stats. 1984, Ch. 1009.)

66451.4. Time limit and basis for denial

No advisory agency or legislative body shall disapprove an application for a tentative, final, or parcel map in order to comply with the time limits specified in this chapter unless there are reasons for disapproval other than the failure to timely act in accordance with the time limits specified in this chapter.

(*Repealed by Stats. 1984, Ch. 100; Added by Stats. 1994, Ch. 977.)*

66451.5. (*Repealed by Stats. 1984, Ch. 1009.)*

66451.6. Prohibition of fees as condition to mobile home park conversion approval

No fee shall be charged by a local agency as a condition to the approval of a tentative, final, or parcel map for a subdivision, or a division of land which is not a subdivision, which consists of the conversion of a mobilehome park to condominium or stock cooperative ownership interests, except regulatory fees charged for the issuance of a permit and those fees authorized by Section 66451.2.

(Added by Stats. 1984, Ch. 286.)

66451.7. Time limit for action

Applications for an exception from the Subdivision Map Act pursuant to Section 66412, and applications for parcel map waivers pursuant to Section 66428, shall be acted upon by a local agency within 60 days of the application being deemed complete pursuant to Section 65943.

(Added by Stats. 1994, Ch. 977.)

Article 1.5. Merger of Parcels

66451.10. Exclusive authority for merger of contiguous parcels

(a) Notwithstanding Section 66424, except as is otherwise provided for in this article, two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units, or any of them.

(b) This article shall provide the sole and exclusive authority for local agency initiated merger of contiguous parcels. On and after January 1, 1984, parcels may be merged by local agencies only in accordance with the authority and procedures prescribed by this article. This exclusive authority does not, however, abrogate or limit the authority of a local agency or a subdivider with respect to the following procedures within this division:

(1) Lot line adjustments.

(2) Amendment or correction of a final or parcel map.

(3) Reversions to acreage.

(4) Exclusions.

(5) Tentative, parcel, or final maps which create fewer parcels.

(Added by Stats. 1983, Ch. 845; Amended by Stats. 1986, Ch. 727.)

Note: Stats. 1983, Ch. 845, also reads:

SEC. 4. The repeal of subdivision (b) of Section 66424.2, by Section 1 of this act, shall not be construed to affect the status of any parcel deemed unmerged pursuant to that subdivision. Any parcel unmerged pursuant to that subdivision, and which has not subsequently been merged, shall for the purposes of this act be considered a separate parcel.

66451.11. Continuous parcel/common ownership merger requirements

A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) With respect to any affected parcel, one or more of the following conditions exists:

(1) Comprises less than 5,000 square feet in area at the time of the determination of merger.

(2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.

(3) Does not meet current standards for sewage disposal and domestic water supply.

(4) Does not meet slope stability standards.

(5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.

(6) Its development would create health or safety hazards.

7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

The ordinance may establish the standards specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged.

This subdivision shall not apply if one of the following conditions exist:

(A) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(B) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(C) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(D) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(E) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (C) and (D) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

(Amended by Stats. 1984, Ch. 102. See note following Section 66451.10; Amended by Stats. 1985, Ch. 796; Amended by Stats. 1995, Ch. 162.)

Note: Stats. 1984, Ch. 102, also reads:

SEC. 5.6. It is the intent of the Legislature, in amending the first paragraph of Section 66451.11 of the Government Code, to restore the preexisting requirement of law that established as a necessary precondition for a merger of contiguous parcels or units of land held in common ownership the requirement that one or more of the parcels or units of land not conform to standards for minimum parcel size to permit use or development under the zoning ordinance of the local agency applicable to any such parcels or units of land. The restoration of this requirement is intended to correct its inadvertent deletion in Chapter 845 of the Statutes of 1983 and shall therefore be construed as not constituting a change in, but, as declaratory of preexisting law.

It is further the intent of the Legislature in repealing Sections 66451.25 to 66451.29, inclusive, and in amending Section 66451.19, of the Government Code, to relieve counties of the obligation to mail a general notice of potential mergers, in that specific notices are required to be given pursuant to Sections 66451.13 and 66451.19 of the Government Code, as amended by this act.

It is also the intent of the Legislature in eliminating the delayed operative date of July 1, 1984, formerly contained in Sections 66451.11 to 66451.18, inclusive, of the Government Code, that a local agency may adopt a merger ordinance which complies with these provisions, and which may then become effective on or after the effective date of this act, rather than on or after July 1, 1984.

66451.12. Effective date of merger

A merger of parcels becomes effective when the local agency causes to be filed for record with the recorder of the county in which the real property is located, a notice of merger specifying the names of the record owners and particularly describing the real property.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11.)

66451.13. Notice of hearing of intention to determine status

Prior to recording a notice of merger, the local agency shall cause to be mailed by certified mail to the then current

record owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the recorder of the county in which the real property is located on the date that notice is mailed to the property owner.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11; Amended by Stats. 1993, Ch. 59; Amended by Stats. 1995, Ch. 162.)

66451.14. Owner's request for hearing on determination of status

At any time within 30 days after recording of the notice of intention to determine status, the owner of the affected property may file with the local agency a request for a hearing on determination of status.

(Amended by Stats. 1984, Ch. 102; See notes following Sections 66451.10 and 66451.11.)

66451.15. Hearing on determination of status

Upon receiving a request for a hearing on determination of status from the owner of the affected property pursuant to Section 66451.14, the local agency shall fix a time, date, and place for a hearing to be conducted by the legislative body or an advisory agency, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the local agency's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the local agency and the property owner.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11; Amended by Stats. 1985, Ch. 796.)

66451.16. Determination of status

At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance.

At the conclusion of the hearing, the local agency shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. If the merger ordinance so provides, a determination of nonmerger may be made whether or not the affected property meets the standards for merger specified in Section 66451.11. A determination of merger shall be recorded within 30 days after conclusion of the hearing, as provided for in Section 66451.12.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11.)

66451.17. Time limit for requesting a hearing

If, within the 30-day period specified in Section 66451.14, the owner does not file a request for a hearing in accordance with Section 66451.16, the local agency may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. A determination of merger shall be recorded as provided for in Section 66451.12 no later than 90 days following the mailing of notice required by Section 66451.13.

(Amended by Stats. 1984, Ch. 102, 1984. See notes following Sections 66451.10 and 66451.11.)

66451.18. Determination of nonmerger

If, in accordance with Section 66451.16 or 66451.17, the local agency determines that the subject property shall not be merged, it shall cause to be recorded in the manner specified in Section 66451.12 a release of the notice of intention to determine status, recorded pursuant to Section 66451.13, and shall mail a clearance letter to the then current owner of record.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11.)

66451.19. Merger ordinances

(a) Except as provided in Sections 66451.195, 66451.301, and 66451.302, a city or county shall no later than January 1, 1986, record a notice of merger for any parcel merged prior to January 1, 1984. After January 1, 1986, no parcel merged prior to January 1, 1984, shall be considered merged unless a notice of merger has been recorded prior to January 1, 1986.

(b) Notwithstanding the provisions of Sections 66451.12 to 66451.18, inclusive, a city or county having a merger ordinance in existence on January 1, 1984, may, until July 1, 1984, continue to effect the merger of parcels pursuant to that ordinance, unless the parcels would be deemed not to have merged pursuant to the criteria specified in Section 66451.30. The local agency shall record a notice of merger for any parcels merged pursuant to that ordinance.

(c) At least 30 days prior to recording a notice of merger pursuant to subdivision (a) or (b), the local agency shall advise the owner of the affected parcels, in writing, of the intention to record the notice and specify a time, date, and place at which the owner may present evidence to the legislative body or advisory agency as to why the notice should not be recorded.

(d) The failure of a local agency to comply with the requirements of this article for the merger of contiguous parcels or units of land held in common ownership shall render void and ineffective any resulting merger or recorded notice of merger and no further proceedings under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale,

lease, or financing of those contiguous parcels or units, or any of them, until such time as the parcels or units of land have been lawfully merged by subsequent proceedings initiated by the local agency which meet the requirements of this article.

(e) The failure of a local agency to comply with the requirements of any prior law establishing requirements for the merger of contiguous parcels or units of land held in common ownership, shall render voidable any resulting merger or recorded notice of merger. From and after the date the local agency determines that its actions did not comply with the prior law, or a court enters a judgment declaring that the actions of the agency did not comply with the prior law, no further proceedings under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of such contiguous parcels or units, or any of them, until such time as the parcels or units of land have been lawfully merged by subsequent proceedings initiated by the local agency which meet the requirements of this article.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11; Amended by Stats. 1985, Ch. 796; Amended by Stats. 1986, Ch. 727.)

66451.195. Deadline for recording a notice of merger for certain parcels

(a) Counties more than 20,000 square miles in size shall have until January 1, 1990, to record a notice of merger for parcels of 4,000 square feet or less prior to the time of merger, which were merged prior to January 1, 1984, and for those parcels no parcel merged prior to January 1, 1984, shall be considered merged unless the notice of merger has been recorded prior to January 1, 1990. Counties recording notices of merger pursuant to this subdivision shall comply with the notice requirements of Section 66451.19.

(b) This section shall not be applicable to any parcels or units which meet the criteria of subdivision (a) but which were transferred, or for which the owner has applied for a building permit, during the period between January 1, 1986, and the effective date of this section.

(Added by Stats. 1986, Ch. 727.)

66451.20. Resolution of intention to amend merger ordinance

Prior to amending a merger ordinance which was in existence on January 1, 1984, in order to bring it into compliance with Section 66451.11, the legislative body of the local agency shall adopt a resolution of intention and the clerk of the legislative body shall cause notice of the adoption of the resolution to be published in the manner prescribed by Section 6061. The publication shall have been completed not less than 30 days prior to adoption of the amended ordinance.

(Added by Stats. 1983, Ch. 845. See note following Section 66451.10; Amended by Stats. 1993, Ch. 59; Amended by Stats. 1995, Ch. 162.)

66451.21. Hearing/notice: resolution of intention to adopt merger ordinance

Prior to the adoption of a merger ordinance in conformance with Section 66451.11, by a city or county not having a merger ordinance on January 1, 1984, the legislative body shall adopt a resolution of intention to adopt a merger ordinance and fix a time and place for a public hearing on the proposed ordinance, which shall be conducted not less than 30 nor more than 60 days after adoption of the resolution. The clerk of the legislative body shall cause a notice of the hearing to be published in the manner prescribed by Section 6061. Publication shall have been completed at least seven days prior to the date of the hearing. The notice shall:

(a) Contain the text of the resolution.

(b) State the time and place of the hearing.

(c) State that at the hearing all interested persons will be heard.

(Added by Stats. 1983, Ch. 845. See note following Section 66451.10; Amended by Stats. 1993, Ch. 59; Amended by Stats. 1995, Ch. 162.)

66451.22. Napa County; agricultural lands

(a) The Legislature hereby finds and declares that:

(1) The agricultural area of Napa County has become extremely important over the last 25 years as a premier winegrape growing region of worldwide importance and should thereby be protected from parcelization.

(2) The county has determined that because of the land's extraordinary agricultural value as a winegrape production area and the fact that the county's tourism industry entrusts its significant economic interests to its agricultural and open-space lands, the highest and best use for the agricultural land in the Napa Valley is for agricultural production.

(3) The full potential build-out of parcels not previously recognized in Napa County's agricultural preserve and watershed areas could devastate the wine industry of California and Napa County.

(4) To adequately protect the value and productivity of the county' s agricultural lands, Napa County needs relief from the Subdivision Map Act's implied preemption of local ordinances that may require merger of parcels that do not meet current zoning and design and improvement standards as well as the provisions that recognize parcels created prior to, or before, the current Subdivision Map Act.

(b) Notwithstanding any other provision of law, the County of Napa may adopt ordinances to require, as a condition of the issuance of any permit or the grant of any approval necessary to develop any real property which includes in whole or in part an undeveloped substandard

parcel, that the undeveloped substandard parcel be merged into any other parcel or parcels that are contiguous to it and were held in common ownership on or after the effective date of this act, whether or not the contiguous parcels are a part of the development application, except as otherwise provided in subdivisions (d) and (e).

(c) For purposes of this section, "undeveloped substandard parcel" means a parcel or parcels that qualify as undeveloped pursuant to subdivision (a) of Section 66451.11, are located in areas designated as Agricultural Resource (AR) or Agricultural, Watershed, and Open Space (AWOS) on the General Plan Map of Napa County and are inconsistent with the parcel size established by the general plan and any applicable specific plan.

(d) Any ordinance adopted by the County of Napa pursuant to subdivision (b) shall exempt the following:

(1) Undeveloped substandard parcels for which a conditional or unconditional certificate of compliance has been issued pursuant to subdivision (a) or (b) of Section 66499.35, so long as the application for the certificate of compliance, together with the documentation required by the County of Napa on or before August 1, 1997, to commence the processing of an application, is filed on or before the effective date of this act; provided that this exemption shall not be applicable to conditional certificates of compliance, whenever issued, if the parcels involved were created on or after January 1, 1997, in a manner not in compliance with this division or local ordinances enacted pursuant thereto.

(2) Substandard parcels created by the recordation of a final or parcel map approved by the County of Napa on or after December 29, 1955.

(3) Substandard parcels lawfully created by the recordation of a record of survey prior to February 27, 1969.

(4) Notwithstanding Section 1093 of the Civil Code, property that in the most recently recorded deed, mortgage, patent, deed of trust, contract of sale, or other instrument of conveyance or security document, described by means of a consolidated legal description, whether or not such legal description is comprised of one or more previously existing legal descriptions, provided the owner of same prior to filing an application for development records a document merging any underlying parcel lines that may exist.

(e) Notwithstanding the provisions of subdivision (b), the Board of Supervisors of the County of Napa shall not require merger or condition or deny the issuance of any permit or the grant of any approval necessary to develop any real property in a manner that would constitute a taking of the landowner's property in violation of the United States and California Constitutions.

(f) Nothing contained in this section shall be construed as affecting the right of the County of Napa, pursuant to the provisions of Article 1.5 (commencing with Section 66451.10) and Article 1.7 (commencing with Section 66451.30), to merge any parcels of land in the unincorporated area of that county, including, but not limited to, any parcels eligible for the exemption as described in subdivision (d) of Section 66451.22.

(Added by Stats. 1997, Ch. 837.)

66451.23. Napa County; public hearing

Prior to adopting any ordinance authorized by Section 66451.22, the legislative body of the County of Napa shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed ordinance in addition to the noticed public hearing at which the legislative body proposes to enact the ordinance.

(Added by Stats. 1997, Ch. 837.)

Article 1.7. Unmerger of Parcels

(Sections 66451.25 through 66451.29 repealed by Stats. 1984, Ch. 102. See note following section 66451.11.)

66451.30. Parcel unmerger criteria when notice recorded after January 1, 1984

Any parcels or units of land for which a notice of merger had not been recorded on or before January 1, 1984, shall be deemed not to have merged if on January 1, 1984:

(a) The parcel meets each of the following criteria:

(1) Comprises at least 5,000 square feet in area.

(2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.

(3) Meets current standards for sewage disposal and domestic water supply.

(4) Meets slope density standards.

(5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.

(6) Development of the parcel would create no health or safety hazards.

(7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

(b) And, with respect to such parcel, none of the following conditions exist:

(1) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(2) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(3) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the

site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(4) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(5) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (A) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (B) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (3) and (4), "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

Each city or county, as applicable, may establish the standards specified in paragraphs (3) to (7), inclusive, of subdivision (a), which shall be applicable to parcels deemed not to have merged pursuant to this section.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11. Amended by Stats. 1985, Ch. 796.)

66451.301. Exceptions to local merger ordinance if merger not recorded by January 1, 1988

If any parcels or units of land merged under a valid local merger ordinance which was in effect prior to January 1, 1984, but for which a notice of merger had not been recorded before January 1, 1988, and one or more of the merged parcels or units of land is within one of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 66451.30, the parcels or units of land shall be deemed not to have merged unless all of the following conditions exist:

(a) The parcels or units are contiguous and held by the same owner.

(b) One or more of the contiguous parcels or units do not conform to minimum parcel size under the applicable general plan, specific plan, or zoning ordinance.

(c) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(d) The parcels or units which do not conform to minimum parcel size were not created by a recorded parcel or final map.

If all the conditions described in subdivisions (a), (b), (c), and (d) above exist, only a parcel or unit of land which does not conform to minimum parcel size shall remain merged with a contiguous parcel.

(Added by Stats. 1985, Ch. 796.)

66451.302. Notification to property owners affected by Section 66451.301

(a) By January 1, 1987, a city or county or city and county which has within its boundaries, parcels or units of land which are or may be subject to the provisions of Section 66451.301, shall send a notice to all owners of real property affected by Section 66451.301 in substantially the following form:

"The city or county sending you this notice has identified one or more parcels of land which you own as potentially subject to a new state law regarding the merger of substandard parcels which are located in one or more of the following categories:

(1) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(2) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, is in a timberland production zone as defined in subdivision (g) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(3) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(4) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(5) (In coastal counties only) Within the coastal zone, as defined in Section 30103 of the Public Resources Code,

one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based."

"The new state law contained in Section 66451.301 of the Government Code, generally provides for parcels or units of land located in one or more of the above-described areas which were merged prior to January 1, 1984, and for which the local agency did not record a notice of merger by January 1, 1988, the parcels are deemed unmerged on January 1, 1988, unless all of the following conditions exist:

(a) The parcels or units are contiguous and held by the same owner.

(b) One or more of the contiguous parcels or units do not conform to minimum parcel size under the applicable general plan, specific plan, or zoning ordinance.

(c) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or necessary structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(d) The parcels or units which do not conform to minimum parcel size were not created by a recorded parcel or final map.

In order to determine whether this new law applies to your property, you should immediately contact the ____ Department of (City or County) to assist you in determining the application of the new law."

"WARNING. Your failure to act may result in the loss of valuable legal rights regarding the property."

(Added by Stats. 1985, Ch. 796.)

66451.31. Determination of merger/unmerger

Upon application made by the owner and payment of any fees authorized by Section 66451.33, the local agency shall make a determination that the affected parcels have merged or, if meeting the criteria of Section 66451.30, are deemed not to have merged.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11.)

66451.32. Notification upon determination

(a) Upon a determination that the parcels meet the standards specified in Section 66451.30, the local agency shall issue to the owner and record with the county recorder a notice of the status of the parcels which shall identify each parcel and declare that the parcels are unmerged pursuant to this article.

(b) Upon a determination that the parcels have merged and do not meet the criteria specified in Section 66451.30, the local agency shall issue to the owner and record with the county recorder, a notice of merger as provided in Section 66451.12.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 66451.11.)

66451.33. Fees

A city or county may impose a fee not to exceed those permitted by Chapter 13 (commencing with Section 54990) of Part 1, payable by the owner, for those costs incurred with respect to a parcel for which application for a determination that the parcels meet the criteria of Section 66451.30 is made.

(Amended by Stats. 1984, Ch. 102. See notes following Sections 66451.10 and 66451.11.)

Article 2. Tentative Maps

66452. Filing of a tentative map

(a) A tentative map shall be filed with the clerk of the advisory agency or, if there is no advisory agency, with the clerk of the legislative body, or with any other officer or employee of the local agency as may be designated by local ordinance.

(b) A vesting tentative map shall be filed and processed in the same manner as a tentative map except as otherwise provided by this division or by a local ordinance adopted pursuant to this division.

(c) At the time a vesting tentative map is filed it shall have printed conspicuously on its face the words "Vesting Tentative Map."

(Amended by Stats. 1984, Ch. 1113. See note following Section 66498.1.)

66452.1. Review by advisory agency

(a) If the advisory agency is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, it shall make its written report on the tentative map to the legislative body within 50 days after the filing thereof with its clerk.

(b) If the advisory agency is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, it shall take that action within 50 days

after the filing thereof with its clerk and report its action to the subdivider.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources Code. The time periods specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(Amended by Stats. 1982, Ch. 87; Amended by Stats. 1989, Ch. 847.)

66452.2. Hearing schedule

(a) If there is an advisory agency which is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, at the next regular meeting of the legislative body following the filing of the advisory agency's report with it, the legislative body shall fix the meeting date at which the tentative map will be considered by it, which date shall be within 30 days thereafter and the legislative body shall approve, conditionally approve, or disapprove the tentative map within that 30-day period.

(b) If there is no advisory agency, the clerk of the legislative body shall submit the tentative map to the legislative body at its next regular meeting which shall approve, conditionally approve or disapprove that map within 50 days thereafter.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources Code. The time periods specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(Amended by Stats. 1982, Ch. 87; Amended by Stats. 1989, Ch. 847.)

66452.3. Staff report

Any report or recommendation on a tentative map by the staff of the local agency to the advisory agency or legislative body shall be in writing and a copy thereof served on the subdivider and on each tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to any hearing or action on such map by such advisory agency or legislative body. Pursuant to Section 66451.2, fees may be collected from the subdivider for expenses incurred under this section.

(Amended by Stats. 1980, Ch. 1128.)

66452.4. Approval by inaction

(a) If no action is taken upon a tentative map by an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map or by the legislative body within the time limits specified in this chapter or any authorized extension thereof, the tentative map as filed, shall be deemed to be approved, insofar as it complies with other applicable requirements of this division and any local ordinances, and it shall be the duty of the clerk of the legislative body to certify or state his or her approval.

(b) Once a tentative map is deemed approved pursuant to subdivision (a), a subdivider shall be entitled, upon request of the local agency or the legislative body, to receive a written certification of approval.

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

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1987, Ch. 982; Amended by Stats. 2003, Ch. 434.)

66452.5. Appeals

(a) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.

The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.

Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of filing the appeal. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.

After the filing of an appeal, the legislative body shall set the matter for hearing. The hearing shall be held within

30 days after the date of a request therefor filed by the subdivider or the appellant. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal. The decision shall comply with the provisions of Sections 66473, 66473.5, and 66474, and shall include any findings required by those sections.

(c) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision (b) of this section. If no further appeal is taken, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it shall be the duty of the clerk of the legislative body to certify or state that approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify or state that approval.

(d) Any interested person adversely affected by a decision of the advisory agency or appeal board may file an appeal with the governing body concerning any decision of the advisory agency or appeal board.

The appeal shall be filed with the clerk of the governing body within 10 days after the action of the advisory agency or appeal board which is the subject of the appeal. Upon the filing of the appeal, the governing body shall set the matter for hearing. The hearing shall be held within 30 days after the filing of the appeal. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

Upon conclusion of the hearing, the governing body shall, within 10 days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. It may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings which are not inconsistent with the provisions of this chapter or local ordinance adopted pursuant to this chapter.

(e) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this subdivision shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider or from persons appealing or filing an appeal for expenses incurred under this section.

(Amended by Stats. 1982, Ch. 479; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1988, Ch. 1408.)

66452.6. Expiration of tentative map

(a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred **seventy-eight thousand dollars ($178,000)** or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) **Commencing January 1, 2005, and each calendar year thereafter, the amount of one hundred seventy-eight thousand dollars ($178,000)** shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdi-

vision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of five years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

(Amended by Stats. 1984, Ch. 1302 and Ch. 1113. See note following Section 66498.1; Amended by Stats. 1985, Ch. 852 and Ch. 688; Amended by Stats. 1986, Ch. 789; Amended by Stats. 1988, Ch. 1330; Amended by Stats. 1989, Ch. 1268; Amended by Stats. 1991, Ch. 907; Amended by Stats. 1996, Ch. 894; Amended by Stats. 1998, Ch. 689; Amended by Stats. 2002, Ch. 1013; Amended by Stats. 2004, Ch. 118.)

66452.7. *(Repealed by Stats. 1996, Ch. 872.)*

66452.8. Notice of proposed conversion to prospective tenants

(a) Commencing at a date not less than 60 days prior to the filing of a tentative map pursuant to Section 66452, the subdivider or his or her agent shall give notice of such filing, in the form outlined in subdivision (b), to each person applying after such date for rental of a unit of the subject property immediately prior to the acceptance of any rent or deposit from the prospective tenant by the subdivider.

(b) The notice shall be as follows:

"To the prospective occupant(s) of

_____:

(Address)

The owner(s) of this building, at (address), has filed or plans to file a tentative map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). No units may be sold in this building unless the conversion is approved by the (city, county, or city and county) and until after a public report is issued by the Department of Real Estate. If you become a tenant of this building, you shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

_____

(Signature of owner or owner's agent)

_____

(Date)

I have received this notice on _____.
(Date)

_____

(Prospective tenant's signature)

(c) Failure by a subdivider or his or her agent to give the notice required in subdivision (a) shall not be grounds to deny the conversion. However, if the subdivider or his or her agent fails to give notice pursuant to this section, he or she shall pay to each prospective tenant who becomes a tenant and who was entitled to such notice, and who does not purchase his or her unit pursuant to subdivision (d) of Section 66427.1, an amount equal to the sum of the following:

(1) Actual moving expenses incurred when moving from the subject property, but not to exceed five hundred dollars ($500).

(2) The first month's rent on the tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed five hundred dollars ($500).

The requirements of this subdivision constitute a minimum state standard. However, nothing in this subdivision shall be construed to prohibit any city, county, or city and county from requiring, by ordinance or charter provision, a subdivider to compensate any tenant, whose tenancy is terminated as the result of a condominium, community apartment project, or stock cooperative conversion, in amounts or by services which exceed those set forth in paragraphs (1) and (2) of this subdivision. In the case of such a requirement by any city, county, or city and county, a subdivider who meets the compensation requirements of the local ordinance or charter provision shall be deemed to satisfy the requirements of this subdivision.

(Amended by Stats. 1981, Ch. 603.)

66452.9. Notice of filing tentative map to existing

(a) Pursuant to the provisions of subdivision (a) of Section 66427.1, the subdivider shall give notice 60 days prior to the filing of a tentative map pursuant to Section 66452 in the form outlined in subdivision (b), to each tenant of the subject property.

(b) The notice shall be as follows:

"To the occupant(s) of

_____:

(Address)

The owner(s) of this building, at (address), plans to file a tentative map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). You shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

_____

(Signature of owner or owner's agent)

_____

(Date)

The written notices to tenants required by this section shall be deemed satisfied if such notices comply with the legal requirements for service by mail.

(Amended by Stats. 1981, Ch. 603.)

66452.10. Stock cooperative conversions

A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a community apartment project, as defined in Section 11004 of the Business and Professions Code, shall not be converted to a condominium, as defined in Section 783 of the Civil Code, unless the required number of (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or project, as specified in the bylaws, or other organizational documents, have voted in favor of the conversion. If the bylaws or other organizational documents do not expressly specify the number of votes required to approve the conversion, a majority vote of the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or project shall be required. Upon approval of the conversion as set forth above and in compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative or project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances or other documents, a majority of owners in the cooperative or project shall be required to execute the conveyances and other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative or project. The provisions of Section 66499.31 shall not apply to a violation of this section.

(Added by Stats. 1982, Ch. 1426.; Added by Stats. 2000, Ch. 26.)

66452.11. Statutory extension

(a) The expiration date of any tentative subdivision map or parcel map for which a tentative map has been approved that has not expired on the date that the act that adds this section becomes effective shall be extended by 24 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6 or 66463.5.

(c) Any legislative, administrative, or other approval by any agency of the State of California that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 24 months if this approval has not expired on the date that the act that adds this section becomes effective.

(Added by Stats. 1993, Ch. 407.)

66452.12. Other permits

(a) Any permit issued by a local agency in conjunction with a tentative subdivision map for a planned unit development shall expire pursuant to Section 65863.9.

(b) Conditions or requirements for the issuance of a building permit or equivalent permit may be imposed pursuant to Section 65961.

(Added by Stats. 1994, Ch. 458.)

66452.13. Expiration date of maps; subdivisions

(a) The expiration date of any tentative or vesting tentative subdivision map or parcel map for which a tentative map or vesting tentative map has been approved, that has not expired on or before the date the act that adds this section becomes effective shall be extended by 12 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.11, 66452.6, or 66463.5.

(c) Any legislative, administrative, or other approval by any state agency that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 12 months if this approval has not expired on the date that the act that adds this section becomes effective. This extension shall be in addition to any extension provided for in Section 66452.11.

(Added by Stats. 1996, Ch. 46.)

Article 2.5. New Rental Housing: Conversion

66452.50. Binding agreement to make units available for rental

(a) Notwithstanding any other provision of this division, a local agency may, upon application by a subdivider, in connection with the approval of a tentative or final map for the proposed construction of a condominium development, which requires the obtaining of a tentative or final map under provisions of this division or local ordinances enacted pursuant thereto, enter into a binding agreement with the subdivider mandating that the units be first made available for rental housing for a period of not less than 10 years from the date a certificate of occupancy has been issued for the units within the development; provided that (1) at the expiration of the 10-year period the units within the development may be sold to individual purchasers, in accordance with the approved final map authorizing the development without further proceedings under the provisions of this division or local ordinances enacted pursuant thereto, and (2), except as otherwise provided in

subdivision (b), during the period the units are required to be made available for rental purposes, the units are insured or are to be insured or co-insured pursuant to the provisions of Chapter 4 (commencing with Section 51850) of Part 4 of Division 31 of the Health and Safety Code, and (3) each tenant of a unit within the development shall be given 180 days' written notice prior to actual conversion. Such notice shall include an offer of an exclusive right to contract for his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or on terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date written notice of actual conversion was sent to the tenant.

Any such agreement shall be in writing, particularly describe the real property and set forth the name or names of the record title owner of the real property affected thereby, and be executed by the person authorized to act on behalf of the local agency and by the subdivider. From the date of execution of the agreement, it shall be binding upon the local agency, the subdivider, and their successors. The fact that a condominium development is subject to such an agreement shall be set forth on the face of any tentative or final map approved by the local agency and the agreement shall be recorded in the office of the county recorder in the county in which the real property is located on or before the date of recordation of the final map.

(b) Multifamily rental housing financed on or after January 1, 1983, with the proceeds of sale of tax-exempt bonds sold pursuant to any laws of this state shall not be subject to the requirements of condition (2) prescribed in the first paragraph of subdivision (a), but shall be subject to all the requirements of the law pursuant to which the bonds are being issued, including, but not limited to, any requirement in such law that the housing be maintained as rental housing for a period in excess of 10 years.

(Amended by Stats. 1983, Ch. 84.)

Note: Stats. 1983, Ch. 84, also reads:

SEC. 2. In order to achieve successful financing of urgently needed multifamily rental housing developments in this state, it is frequently necessary to file a subdivision map allowing conversion to condominium units in order to assure or facilitate refinancing after a certain number of years under the terms of the project loan. Such conversion is required under federal tax law to be deferred for a given number of years and agreements so providing are a common requirement of the financing program.

Section 66452.50 of the Government Code, as added by Chapter 1447 of the Statutes of 1982, is susceptible to the construction that mortgage insurance under Chapter 4 (commencing with Section 51850) of Part 4 of Division 31 of the Health and Safety Code must be taken out in order to be able to enter into such an agreement. In order to allow the financing of urgently needed multifamily rental housing units to proceed without that insurance, it is essential that this act take effect immediately.

66452.51. Notice of conversion to prospective tenants

Prior to the acceptance of any rent or deposit from a prospective tenant, the following notice shall be provided:

To the prospective occupant(s) of : (Address)

The owner(s) of this building at (address), have received a tentative map with (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative), no sooner than (date). You will be notified at least 180 days prior to the actual conversion. Further, if you still reside in your unit, you will be given an exclusive right to purchase your unit.

_____

(Signature of owner or owner's agent)

_____

(Date)

I have received this notice on _____(date).

_____

(Prospective tenant's signature)

(Added by Stats. 1982, Ch. 1447.)

Article 3. Review of Tentative Map by Other Agencies

66453. Review by adjacent agencies

(a) A local agency may make recommendations concerning proposed subdivisions in any adjoining city, or in any adjoining unincorporated territory *** **for any** proposed subdivision *** within the **planning area** of the requesting local agency. A local agency wishing to make recommendations concerning proposed subdivisions shall file with the local agency having jurisdiction over the subdivisions a map indicating the territory for which it wishes to make recommendations. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the requesting local agency.

(c) Within 15 days of receiving a copy of a proposed subdivision map, the requesting local agency may submit recommendations to the local agency having jurisdiction. The local agency having jurisdiction shall consider these recommendations before acting on the tentative map.

(Added by Stats. 1974, Ch. 1536. Effective March 1, 1975; Amended by Stats. 1994, Ch. 1075; Amended by Stats. 2004, Ch. 479.)

66454. Effect of annexation

Any subdivider may file with a city the tentative map of a proposed subdivision of unincorporated territory adjacent to such city. The map, in the discretion of the city, may be acted upon in the manner provided in Article 2 (commencing with Section 66452) of this chapter, except that if it is approved, such approval shall be conditioned upon annexation of the property to such city within such period of time as shall be specified by the city, and such approval shall not be effective until annexation of such property to the city has been completed. If annexation is not completed within the time specified or any extension thereof, then the approval of such map by such adjacent city shall be null and void. No subdivision of unincorporated territory may be effected by approval of a map by a city unless annexation thereof to the city is completed prior to the approval of the final map thereof.

(Added by Stats. 1974, Ch. 1536.)

66455. Department of Transportation review

(a) The Department of Transportation may file with the legislative body of any local agency having jurisdiction, a map or an amended map of any territory within one mile on either or both sides of any state highway routing if the department believes the subdivision would have an effect upon an existing or a future state highway in that territory, the route of which has been adopted by the California Transportation Commission. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the district office of the department in which the proposed subdivision is located.

(c) Within 15 days after receiving a copy of the proposed subdivision map, the department may make recommendations to the local agency regarding the effect of the proposed subdivision upon the highway or highway route. The local agency shall consider these recommendations before acting on the tentative map.

(Amended by Stats. 1982, Ch. 681; Amend by Stats. 1994, Ch. 1075.)

66455.1. Subdivisions within one mile of DWR facility

(a) The Department of Water Resources may file with the legislative body of any local agency having jurisdiction, a map or amended map of any territory within one mile on either or both sides of any facility of the State Water Resources Development System, if the department believes a proposed subdivision may have an effect upon any existing or planned future facility of the State Water Resources Development System in that territory. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the office of the department nearest the subdivision, unless the department specifies a different office on the territorial map filed with the local agency.

(c) Within 15 days after receiving a copy of a proposed subdivision map, the department may make recommendations to the local agency regarding the effect of the proposed subdivision upon the State Water Resources Development System or proposed additions to the system. The local agency having jurisdiction shall consider any recommendations before acting on the tentative map.

(Added by Stats. 1990, Ch. 243; Amended by Stats. 1994, Ch. 1075.)

66455.3. Water supply notice

Not later than five days after a city or county has determined that a tentative map application for a proposed subdivision, as defined in Section 66473.7, is complete pursuant to Section 65943, the local agency shall send a copy of the application to any water supplier that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the subdivision.

(Added by Stats. 2001, Ch. 642.)

66455.5. *(Repealed by Stats. 1996, Ch. 872.)*

66455.7. School district review

(a) Within five days of a tentative map application being determined to be complete pursuant to Section 65943, the local agency shall send a notice of this determination to the governing board of any elementary school, high school, or unified school district within the boundaries of which the subdivision is proposed to be located. The notice shall identify information about the location of the proposed subdivision, the number of units, density, and any other information which would be relevant to the affected school district.

(b) Within 15 days after receiving the notice, the school district may make recommendations to the local agency regarding the effect of the proposed subdivision upon the school district. If the school district fails to respond within 15 days, the failure to respond shall be deemed approval of the proposed subdivision. The local agency having jurisdiction shall consider any recommendations before acting on the tentative subdivision map.

(Added by Stats. 1976, Ch. 5; Amended by Stats. 1994, Ch. 1075.)

66455.9. Notice of proposed site; proximity to airport runway; Department of Education report

Whenever there is consideration of an area within a development for a public school site, the advisory agency shall give the affected districts and the State Department of Education written notice of the proposed site. The written notice shall include the identification of any existing or proposed runways within the distance specified in Section 17215 of the Education Code. If the site is within the distance of an existing or proposed airport runway as described in Section 17215 of the Education Code, the department shall notify the State Department of Transportation as required by the section and the site shall be investigated by the State Department of Transportation required by Section 17215.

(Originally numbered 66413.7 and added by Stats. 1989, Ch. 1209; Renumbered by Stats. 1997, Ch. 580.)

Article 4. Final Maps

66456. Survey

After the approval or conditional approval of the tentative map and prior to the expiration of such map, the subdivider may cause the real property included within the map, or any part thereof, to be surveyed and a final map thereof prepared in accordance with the approved or conditionally approved tentative map.

(Added by Stats. 1974, Ch. 1536.)

66456.1. Multiple final maps

Multiple final maps relating to an approved or conditionally approved tentative map may be filed prior to the expiration of the tentative map if: (a) the subdivider, at the time the tentative map is filed, informs the advisory agency of the local agency of the subdivider's intention to file multiple final maps on such tentative map, or (b) after filing of the tentative map, the local agency and the subdivider concur in the filing of multiple final maps. In providing such notice, the subdivider shall not be required to define the number or configuration of the proposed multiple final maps. The filing of a final map on a portion of an approved or conditionally approved tentative map shall not invalidate any part of such tentative map. The right of the subdivider to file multiple final maps shall not limit the authority of the local agency to impose reasonable conditions relating to the filing of multiple final maps.

(Amended by Stats. 1982, Ch. 87.)

66456.2. Improvement plan time limits

(a) An improvement plan being processed in conjunction with either an approved tentative, parcel, or final map shall be prepared by a registered civil engineer and acted on within 60 working days of its submittal, except that at least 15 working days shall be provided for processing any resubmitted improvement plan. The 60 working day period shall not include any days during which the improvement plan has been returned to the applicant for correction, has been subject to review by other than the local agency or, following that review, has been returned to the applicant for correction.

(b) The time limits specified in this section for acting on improvement plans may be extended by mutual consent of the subdivider and the advisory agency or legislative body required to act. However, no advisory agency or legislative body may require a routine waiver of time limits as a condition of accepting the improvement plan. A routine waiver may be obtained for the purpose of permitting concurrent processing of other requirements related to the improvement plan or map.

(c) If, at the time of submittal or resubmittal, the local agency or designee determines it is unable to meet the time limits of this section, the local agency or designee shall, upon request of the subdivider and for purposes of meeting the time limits, contract or employ a private entity or persons on a temporary basis to perform services necessary to permit the agency or designee to meet the time limits. However, a local agency or designee need not enter into a contract or employ those persons if it determines either of the following:

(1) No entities or persons are available or qualified to perform the services.

(2) The local agency or designee would be able to perform services in a more rapid fashion by modifying its own work schedule than would any available and qualified persons or entities.

A local agency may charge the subdivider fees in an amount necessary to defray costs directly attributable to employing or contracting with entities or persons performing services pursuant to this section.

(d) "Improvement plan" means the plan for public improvement as described in Sections 66418 and 66419.

(Added by Stats. 1987, Ch. 1085.)

66457. Filing final or parcel map

(a) A final map or parcel map conforming to the approved or conditionally approved tentative map, if any, may be filed with the legislative body for approval after all required certificates or statements on the map have been signed and, where necessary, acknowledged.

(b) If the subdivision lies entirely within the territory of a city, the map shall be filed with the city. If the subdivision lies entirely within unincorporated territory, the map shall be filed with the county. If the subdivision lies partially within two or more territories, the map shall be filed with each, and each shall act thereon as provided in this chapter.

(Amended by Stats. 1984, Ch. 337; Amended by Stats. 1986, Ch. 789; Amended by Stats. 1987, Ch. 982.)

66458. Approval by legislative body; approval by inaction

(a) The legislative body shall, at the meeting at which it receives the map or, at its next regular meeting after the meeting at which it receives the map, approve the map if it conforms to all the requirements of this chapter and any local subdivision ordinance applicable at the time of approval or conditional approval of the tentative map and any rulings made thereunder. If the map does not conform, the legislative body shall disapprove the map.

(b) If the legislative body does not approve or disapprove the map within the prescribed time, or any authorized extension thereof, and the map conforms to all requirements and rulings, it shall be deemed approved, and the clerk of the legislative body shall certify or state its approval thereon.

(c) The meeting at which the legislative body receives the map shall be the date on which the clerk of the legislative body receives the map.

(d) The legislative body may provide, by ordinance, for the approval or disapproval of final maps by the city or county engineer, surveyor, or other designated official. The legislative body may also provide, by ordinance, that the official may accept, accept subject to improvement, or reject dedications and offers of dedications that are made by a statement on the map. Any ordinance adopted pursuant to this subdivision shall provide that (1) the designated official shall notify the legislative body at its next regular meeting after the official receives the map that the official is reviewing the map for final approval, (2) the designated official shall approve or disapprove the final map within 10 days following the meeting of the legislative body that was preceded by the notice in (4) below, (3) the designated official's action may be appealed to the legislative body, (4) the clerk of the legislative body shall provide notice of any pending approval or disapproval by a designated official, which notice shall be attached and posted with the legislative body's regular agenda and shall be mailed to interested parties who request notice, and (5) the legislative body shall periodically review the delegation of authority to the designated official. Except as specifically authorized by this subdivision, the processing of final maps shall conform to all procedural requirements of this division.

(Amended by Stats. 1980, Ch. 403; Amended by Stats. 1986, Ch. 789; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1998, Ch. 604.)

66459. Required notice prior to execution of rental agreement

(a) If a final map has been approved for a condominium project, community apartment project, or stock cooperative project, and the subdivider or subsequent owner of the project, on or after January 1, 1993, rents a dwelling in that project, he or she shall, prior to offering the separate interest for sale to the general public, deliver the following notice, printed in at least 14-point bold print, prior to the execution of the rental agreement:

TO THE PROSPECTIVE TENANTS OF

_____

(address)

THE UNIT YOU MAY RENT HAS BEEN APPROVED FOR SALE TO THE PUBLIC AS A CONDOMINIUM PROJECT, COMMUNITY APARTMENT PROJECT, OR STOCK COOPERATIVE PROJECT (WHICHEVER APPLIES). THE RENTAL UNIT MAY BE SOLD TO THE PUBLIC, AND, IF IT IS OFFERED FOR SALE, YOUR LEASE MAY BE TERMINATED. YOU WILL BE NOTIFIED AT LEAST 90 DAYS PRIOR TO ANY OFFERING TO SELL. IF YOU STILL LAWFULLY RESIDE IN THE UNIT, YOU WILL BE GIVEN A RIGHT OF FIRST REFUSAL TO PURCHASE THE UNIT.

_____

(signature of owner or owner's agent)

_____

(dated)

(b) The condominium project, community apartment project, or stock cooperative project shall not be referred to in a lease or rental agreement as an "apartment" or "apartments" on or after the date of the approval by the local agency of the final map for the condominium project, community apartment project, or stock cooperative project in which the final map was approved on or after January 1, 1993.

(c) Any tenant of a condominium project, community apartment project, or stock cooperative project pursuant to this section shall be given at least 90 days' written notice of the intention to sell the rental unit to the general public. This subdivision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or other obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

(d) Any tenant who lawfully resides in a condominium project, community apartment project, or stock cooperative project pursuant to this section shall be given a right of first refusal by the subdivider or subsequent owner of the project for the purchase of his or her rental unit upon the same terms and conditions that the unit will be initially offered to the general public or terms and conditions more favorable to the tenant. This right to purchase shall run for a period of 90 days from the date of the notice, unless the tenant gives written notice within the 90-day period of his or her intention not to exercise that right.

(e) Failure to comply with this section shall not invalidate the transfer of title to real property.

(f) This section shall not apply to any of the following:

(1) An owner of four dwelling units or less.

(2) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, or transfers by a sale under a power of sale after a default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, and any subsequent transfer by a mortgagor or beneficiary of a deed of trust who accepts a deed in lieu of foreclosure or purchases the property at a foreclosure sale.

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust. For purposes of this paragraph, a "fiduciary" means a state- or federally-chartered bank, trust company, savings association, savings bank, credit union, or industrial loan company.

(Added by Stats. 1992, Ch. 1098.)

Note: Stats. 1992, Ch. 1098 also reads:

SEC. 2. Notwithstanding any other provision of law, no provision of this act shall be introduced as evidence, either directly, by referring to the name or contents of the statute, or indirectly, through the testimony of any expert or lay witness, or otherwise referred to in any way in any action pending, as of the effective date of this act, in which a claim is asserted relating to the noticing of tenants when the subdivider of a condominium project, community apartment project, or stock cooperative project makes a unit or units available for rental housing prior to offering that unit or those units for sale to the general public.

66462. Completion of improvements

(a) If, at the time of approval of the final map by the legislative body, any public improvements required by the local agency pursuant to this division or local ordinance have not been completed and accepted in accordance with standards established by the local agency by ordinance applicable at the time of the approval or conditional approval of the tentative map, the legislative body, as a condition precedent to the approval of the final map, shall require the subdivider to enter into one of the following agreements specified by the local agency:

(1) An agreement with the local agency upon mutually agreeable terms to thereafter complete the improvements at the subdivider's expense.

(2) An agreement with the local agency to thereafter do either of the following:

(A) Initiate and consummate proceedings under an appropriate special assessment act or the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 for the financing and completion of all of the improvements.

(B) If the improvements are not completed under a special assessment act or the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5, to complete the improvements at the subdivider's expense.

(b) The standards may be adopted by reference, without posting or publishing them, if they have been printed in book or booklet form and three copies of the books or booklets have been filed for use and examination by the public in the office of the clerk of the legislative body.

(c) The local agency entering into any agreement pursuant to this section shall require that performance of the agreement be guaranteed by the security specified in Chapter 5 (commencing with Section 66499).

(d) The legislative body may provide, by ordinance, that the agreement entered into pursuant to this section may be entered into by a designated official, in accordance with standards adopted by the local agency. The designated official's action may be appealed to the legislative body for conformance with this chapter and any applicable local subdivision ordinance. Any ordinance adopted pursuant to this subdivision shall provide that the legislative body shall periodically review this delegation of authority to the designated official.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1986, Ch. 1102; Amended by Stats. 1998, Ch. 604)

66462.5. Incomplete offsite improvements

(a) A city, county, or city and county shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the final map is filed with the local agency, to permit the improvements to be made. In such cases, unless the city, county or city and county requires the subdivider to enter into an agreement pursuant to subdivision (c), the city, county, or city and county shall, within 120 days of the filing of the final map, pursuant to Section 66457, acquire by negotiation or commence proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article 3 (commencing with Section 1255.410) of Chapter 6 of that title.

(b) If a city, county, city, and county has not required the subdivider to enter into an agreement pursuant to subdivision (c) and if a city, county, or city and county fails to meet the 120-day time limitation, the condition for construction of offsite improvements shall be conclusively deemed to be

waived. The waiver shall occur whether or not the city, county, or city and county has postponed or refused approval of the final map pursuant to subdivision (a).

(c) Prior to approval of the final map the city, county, or city and county may require the subdivider to enter into an agreement to complete the improvements pursuant to Section 66462 at such time as the city, county, or city and county acquires an interest in the land which will permit the improvements to be made.

(d) Nothing in this section precludes a city, county, or city and county from requiring a subdivider to pay the cost of acquiring offsite real property interests required in connection with a subdivision.

(e) "Offsite improvements," as used in this section, does not include improvements that are necessary to assure replacement or construction of housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(Amended by Stats. 1983, Ch. 910; Amended by Stats. 2003, Ch. 728.)

Article 5. Parcel Maps

66463. Procedures for parcel map process/compliance with ordinance

(a) Except as otherwise provided for in this code, the procedure for processing, approval, conditional approval, or disapproval and filing of parcel maps and modifications thereof shall be as provided by local ordinance. The provisions of Sections 66477.1, 66477.2, and 66477.3 relating to dedications and offers of dedication on final maps, shall apply to dedications and offers of dedications on parcel maps.

(b) Whenever a local agency provides, by ordinance, for the approval, conditional approval, or disapproval of parcel maps by the county engineer, surveyor, or other designated official, the local agency may also, by ordinance, provide that the officer may accept or reject dedications and offers of dedication that are made by a statement on the map.

(c) Whenever a local agency provides, by ordinance, for the approval of parcel maps by the legislative body, the parcel maps shall be filed pursuant to the procedure for final maps as prescribed by Sections 66457 and 66458.

(d) The time limits for action or approval of a tentative map and parcel map for which a tentative map is not required shall be no longer than the time limits contained in Sections 66452.1 and 66452.2.

(Amended by Stats. 1984, Ch. 337; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1989, Ch. 847.)

66463.1. Multiple parcel maps

Multiple parcel maps filed pursuant to Section 66426 relating to an approved or conditionally approved tentative map may be filed prior to the expiration of the tentative map if either condition is satisfied:

(a) The subdivider, at the time the tentative map is filed, provides a written notice to the advisory agency or the local agency of the subdivider's intention to file multiple parcel maps on the tentative map.

(b) After filing of the tentative map, the local agency and the subdivider concur in the filing of multiple parcel maps.

In providing the notice specified in subdivision (a), the subdivider shall not be required to define the number or configuration of the proposed multiple parcel maps. The filing of a parcel map on a portion of an approved or conditionally approved tentative map shall not invalidate any part of the tentative map. The right of the subdivider to file multiple parcel maps shall not limit the authority of the local agency to impose reasonable conditions relating to the filing of multiple parcel maps.

(Added by Stats. 1991, Ch. 907.)

66463.5. Expiration of tentative map

(a) When a tentative map is required, an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

(b) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no parcel map of all or any portion of the real property included within the tentative map shall be filed without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(c) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of five years. Prior to the expiration of an approved or conditionally approved tentative map, upon the application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(d) (1) The period of time specified in subdivision (a) shall not include any period of time during which a development moratorium, imposed after approval of the

tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) Once a moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(e) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (c), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is, or was, pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(f) For purposes of this section, a development moratorium shall include a water or sewer moratorium or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a parcel map.

(g) Notwithstanding subdivisions (a), (b), and (c), for the purposes of Chapter 4.5 (commencing with Section 66498.1), subdivisions (b), (c), and (d) of Section 66498.5 shall apply to vesting tentative maps prepared in connection with a parcel map except that, for purposes of this section, the time periods specified in subdivisions (b), (c), and (d) of Section 66498.5 shall be determined from the recordation of the parcel map instead of the final map.

(Added by Stats. 1984, Ch. 1302; Amended by Stats. 1986, Ch. 789; Amended by Stats. 1994, Ch. 977; Amended by Stats. 1996, Ch. 46; Amended by Stats. 2000, Ch. 506.)

Article 6. Filing Maps with County Recorder

66464. Transmittal to county recorder

(a) Unless otherwise provided by the county, if the final map or parcel map is not subject to Section 66493, after the approval by the city of a final map of a subdivision or a parcel map, the city clerk shall transmit the map to the county recorder.

(b) If a final map or parcel map is subject to Section 66493, after all certificates or statements and security required under Section 66493 have been filed and deposited with the clerk of the board of supervisors and approved by the county, the clerk of the board of supervisors shall certify or state that the certificates and statements have been filed and deposits have been made and shall transmit the final map or parcel map to the county recorder.

(c) After the approval by the county of a final or parcel map of a subdivision within unincorporated territory, the map shall be transmitted ultimately to the county recorder.

(Amended by Stats. 1983, Ch. 1224; Amended by Stats. 1985, Ch. 114; Amended by Stats. 1987, Ch. 982; Amended by Stats. 2001, Ch. 176.)

66465. Owner's consent

The subdivider shall present to the county recorder evidence that, at the time of the filing of the final or parcel map in the office of the county recorder, the parties consenting to such filing are all of the parties having a record title interest in the real property being subdivided whose signatures are required by this division, as shown by the records in the office of the recorder, otherwise the map shall not be filed.

For purposes of this section and Sections 66436, 66439, and 66447, a public entity which has obtained a prejudgment order for possession of property pursuant to Section 1255.410 of the Code of Civil Procedure shall be deemed to be the record title owner of the property or property interests described in the order, provided the order for possession has not been stayed or vacated pursuant to Section 1255.420, 1255.430, or 1255.440 of the Code of Civil Procedure, no motion therefor is pending before the court, and the time prescribed by Section 1255.420 of the Code of Civil Procedure for filing a motion for relief from the order has passed.

(Amended by Stats. 1979, Ch. 309.)

66466. Review by county recorder

(a) The county recorder shall have not more than 10 days within which to examine a final or parcel map and either accept or reject it for filing.

(b) If the county recorder rejects a final or parcel map for filing, the county recorder shall, within 10 days thereafter, mail notice to the subdivider and the city engineer if the map is within a city, or the county surveyor if the map is within the unincorporated area, that the map has been rejected for filing, giving the reasons therefor, and that the map is being returned to the city clerk if the map is within a city, or to the clerk of the board if the map is within the unincorporated area, for action by the legislative body. Upon receipt of the map, the clerk shall place the map on the agenda of the next regular meeting of the legislative body and the legislative body shall, within 15 days thereafter,

rescind its approval of the map and return the map to the subdivider unless the subdivider presents evidence that the basis for the rejection by the county recorder has been removed. The subdivider may consent to a continuance of the matter; however, the prior approval of the legislative body shall be deemed rescinded during any period of continuance. If a map is returned to the county recorder, the county recorder shall have a new 10-day period to examine the map and either accept or reject it for filing.

(c) If the county recorder accepts the map for filing, the acceptance shall be certified on the face thereof. The map shall be securely fastened in a book of subdivision maps, in a book of parcel maps, or in a book of cities and towns which shall be kept for that purpose, or in any other manner as will assure that the maps will be kept together. The map shall become a part of the official records of the county recorder upon its acceptance by the county recorder for filing. If the preparer of the map provides a postage-paid, self-addressed envelope or postcard with the filing of the map, the county recorder shall provide the preparer of the map with the filing data within 10 days of the filing of the map. For the purposes of this subdivision, "filing data" includes the date, book or volume, and the page at which the map is filed by the county recorder.

(d) The fee for filing and indexing the map is as prescribed in Section 27372 of the Government Code.

(e) The original map shall be stored for safekeeping in a reproducible condition. The county recorder may maintain for public reference a set of counter maps that are prints of the original maps and produce the original maps for comparison upon demand.

(f) Upon the filing of any map, including amended maps and certificates of correction for recordation pursuant to this section or any record of survey pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code), the surveyor or engineer who prepared the document shall transmit a copy of the document, including all recording information, to the county surveyor, who shall maintain an index, by geographic location, of the documents. The county surveyor may charge a fee not to exceed the fee charged for recording the document, for purposes of financing the costs of maintaining the index of the documents.

The requirements of this subdivision shall not apply to any county that requires a document filed pursuant to this section to be transmitted to the county surveyor and requires that official to maintain an index of those documents.

(Amended by Stats. 1980, Ch. 403; Amended by Stats. 1991, Ch. 350.)

66467. Filing of maps where not required

This chapter shall not prevent filing in the office of the county recorder of a final or parcel map of a subdivision for which a final or parcel map is not required, provided such map meets the requirements of this division and any local ordinance.

(Added by Stats. 1974, Ch. 1536.)

66468. Effect of filing

The filing for record of a final or parcel map by the county recorder shall automatically and finally determine the validity of such map and when recorded shall impart constructive notice thereof.

(Added by Stats. 1974, Ch. 1536.)

66468.1. Cross-referencing

Whenever separate documents are to be recorded concurrently with the final or parcel map pursuant to Section 66435.1 or 66445, the county recorder shall complete the cross-reference to such concurrently recorded separate documents.

(Added by Stats. 1982, Ch. 87.)

66468.2. Delegation of authority

The board of supervisors may, by resolution, authorize any county officer to:

(a) Perform the duties required of the clerk of the board of supervisors under this article.

(b) Approve the security for payment of taxes required pursuant to subdivision (b) of Section 66464 if that county officer also performs the other duties required of the clerk of the board of supervisors under that subdivision.

(Added by Stats. 1984, Ch. 866; Amended by Stats. 1990, Ch. 1001.)

Article 7. Correction and Amendment of Maps

66469. Amendment of filed or parcel map

After a final map or parcel map is filed in the office of the county recorder, it may be amended by a certificate of correction or an amending map for any of the following purposes:

(a) To correct an error in any course or distance shown thereon.

(b) To show any course or distance that was omitted therefrom.

(c) To correct an error in the description of the real property shown on the map.

(d) To indicate monuments set after the death, disability, retirement from practice, or replacement of the engineer or surveyor charged with responsibilities for setting monuments.

(e) To show the proper location or character of any monument which has been changed in location or character originally was shown at the wrong location or incorrectly as to its character.

(f) To correct any additional information filed or recorded pursuant to Section 66434.2, if the correction does not impose any additional burden on the present fee owners of the real property and does not alter any right, title, or interest in the real property reflected on the recorded map.

(g) To correct any other type of map error or omission as approved by the county surveyor or city engineer that does not affect any property right, including, but not limited to, lot numbers, acreage, street names, and identification of adjacent record maps.

As used in this section, "error" does not include changes in courses or distances from which an error is not ascertainable from the data shown on the final or parcel map.

(Amended by Stats. 1977, Ch. 234; Amended by Stats. 1990, Ch. 1001; Amended by Stats. 1996, Ch. 894; Amended by Stats. 2001, Ch. 176.)

66470. Procedures for amendment

The amending map or certificate of correction shall be prepared and signed by a registered civil engineer or licensed land surveyor. An amending map shall conform to the requirements of Section 66434, if a final map, or subdivisions (a) to (d), inclusive, and (f) to (i), inclusive, of Section 66445, if a parcel map. The amending map or certificate of correction shall set forth in detail the corrections made and show the names of the fee owners of the real property affected by the correction or omission on the date of the filing or recording of the original recorded map. Upon recordation of a certificate of correction, the county recorder shall within 60 days of recording transmit a certified copy to the county surveyor or county engineer who shall maintain an index of recorded certificates of correction.

The county recorder may charge a fee, in addition to the fee charged for recording the certificate of correction, which shall be transmitted to the county surveyor or the county engineer, as compensation for the cost of maintaining an index of recorded certificates of correction. The amount of this additional fee shall not exceed the fee which is charged for recording the certificate of correction.

If the property affected by a map is located within a city, the county recorder shall, upon request of the city engineer, provide copies of recorded certificates of correction to the city engineer.

(Amended by Stats. 1977, Ch. 234; Amended by Stats. 1985, Ch. 883; Amended by Stats. 1993, Ch. 906. Amended by Stats. 2001, Ch. 176.)

66471. Review of amending map; review of certificate of correction

(a) If the subdivision is in unincorporated territory, the county surveyor shall examine the amending map or certificate of correction and if the only changes made are those set forth in Section 66469, he or she shall certify to this fact on the amending map or certificate of correction. If the subdivision is in the city, such examination and certification shall be by the city surveyor or city engineer.

(b) As to a certificate of correction, the county surveyor, city surveyor, or city engineer shall have 20 working days in which to examine the certificate of correction for compliance with Sections 66469 and 66470, endorse a statement on it of his or her examination and certification, and present it to the county recorder for recordation. In the event the submitted certificate of correction fails to comply with Sections 66469 and 66470, the county surveyor, city surveyor, or city engineer shall return it within the same 20 working days to the person who presented it, together with a written statement of the changes necessary to make it conform to the requirements of Sections 66469 and 66470. The licensed land surveyor or registered civil engineer submitting the certificate of correction may then make the changes in compliance with Sections 66469 and 66470 and resubmit the certificate of correction to the county surveyor, city surveyor, or city engineer for approval. The county surveyor, city surveyor, or city engineer shall have 10 working days after resubmission and approval of the certificate of correction to present it to the county recorder for recordation.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1992, Ch. 634.)

66472. Effect of amendment

The amending map or certificate of correction certified by the county surveyor, city surveyor, or city engineer shall be filed or recorded in the office of the county recorder in which the original map was filed. Upon that filing or recordation, the county recorder shall index the names of the fee owners of the real property reflected on the original recorded map, and the appropriate tract designation shown on the amending map or certificate of correction in the general index and map index respectively. Thereupon, the original map shall be deemed to have been conclusively so corrected, and thereafter shall impart constructive notice of all those corrections in the same manner as though set forth upon the original map.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1992, Ch. 634; Amended by Stats. 2001, Ch. 176.)

66472.1. Further modifications

In addition to the amendments authorized by Section 66469, after a final map or parcel map is filed in the office of the county recorder, the recorded final map may be modified by a certificate of correction or an amending map, if authorized by local ordinance, if the local agency finds that there are changes in circumstances that make any or all of the conditions of the map no longer appropriate or necessary and that the modifications do not impose any additional burden on the fee owners of the real property, and if the modifications do not alter any right, title, or interest

in the real property reflected on the recorded map, and the local agency finds that the map as modified conforms to Section 66474. Any modification shall be set for public hearing as provided for in Section 66451.3 of this division. The legislative body shall confine the hearing to consideration of and action on the proposed modification.

(Added by Stats. 1981, Ch. 1184; Amended by Stats. 2001, Ch. 176.)

Chapter 4. Requirements

Article 1. General

66473. Conditions for approval/disapproval: finding required

A local agency shall disapprove a map for failure to meet or perform any of the requirements or conditions imposed by this division or local ordinance enacted pursuant thereto; provided that a final map shall be disapproved only for failure to meet or perform requirements or conditions which were applicable to the subdivision at the time of approval of the tentative map; and provided further that such disapproval shall be accompanied by a finding identifying the requirements or conditions which have not been met or performed. Such local ordinance shall include, but need not be limited to, a procedure for waiver of the provisions of this section when the failure of the map is the result of a technical and inadvertent error which, in the determination of the local agency, does not materially affect the validity of the map.

(Amended by Stats. 1976, Ch. 21.)

66473.1. Energy conservation

(a) The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

(b) (1) Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

(2) Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

(c) In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and that provision shall not result in reducing allowable densities or the percentage of a lot that may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map is filed.

(d) The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

(e) For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

(Added by Stats. 1978, Ch. 1154; Amended by Stats. 2001, Ch. 873.)

66473.2. *(Repealed by Stats. 2004, Ch. 439.)*

66473.3. Cable Television and Internet Services

The legislative body of a city or county may, by ordinance, require the design of a subdivision for which a tentative map or parcel map is required pursuant to Section 66426 to provide **for** *** appropriate cable television systems *** **and for communication systems, including, but not limited to, telephone and Internet** services**,** to each *** parcel in the subdivision.

"Appropriate cable television systems," as used in this section, means those franchised or licensed to serve the geographical area in which the subdivision is located.

This section shall not apply to the conversion of existing dwelling units to condominiums, community apartments, or stock cooperatives.

(Added by Stats. 1985, Ch. 917, Amended by Stats. 2004, Ch, 479.)

66473.5. Findings: consistency with general and specific plans

No local agency shall approve a tentative map, or a parcel map for which a tentative map was not required, unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1.

A proposed subdivision shall be consistent with a general plan or a specific plan only if the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan.

(Amended by Stats. 1983, Ch. 101.)

66473.6. Telephone or cable TV replacement, undergrounding, and relocation: cost reimbursement

Whenever a city or county imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding, or permanently or temporarily relocating existing facilities of a telephone corporation or cable television system, the developer or subdivider shall reimburse the telephone corporation or cable television system for all costs for the replacement, undergrounding, or relocation. All these costs shall be billed after they are incurred, and shall include a credit for any required advance payments and for the salvage value of any facilities replaced. In no event shall the telephone corporation or cable television system be reimbursed for costs incurred in excess of the cost to replace the facilities with substantially similar facilities.

(Added by Stats. 1985, Ch. 865.)

66473.7. Sufficiency of water supply

(a) For the purposes of this section, the following definitions apply:

(1) "Subdivision" means a proposed residential development of more than 500 dwelling units, except that for a public water system that has fewer than 5,000 service connections, "subdivision" means any proposed residential development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) "Sufficient water supply" means the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses. In determining "sufficient water supply," all of the following factors shall be considered:

(A) The availability of water supplies over a historical record of at least 20 years.

(B) The applicability of an urban water shortage contingency analysis prepared pursuant to section 10632 of the Water Code that includes actions to be undertaken by the public water system in response to water supply shortages.

(C) The reduction in water supply allocated to a specific water use sector pursuant to a resolution or ordinance adopted, or a contract entered into, by the public water system, as long as that resolution, ordinance, or contract does not conflict with section 354 of the Water Code.

(D) The amount of water that the water supplier can reasonably rely on receiving from other water supply projects, such as conjunctive use, reclaimed water, water conservation, and water transfer, including programs identified under federal, state, and local water initiatives such as CALFED and Colorado River tentative agreements, to the extent that these water supplies meet the criteria of subdivision (d).

(3) "Public water system" means the water supplier that is, or may become as a result of servicing the subdivision included in a tentative map pursuant to subdivision (b), a public water system, as defined in section 10912 of the Water Code, that may supply water for a subdivision.

(b) (1) The legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, shall include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be requested by the subdivision applicant or local agency, at the discretion of the local agency, and shall be based on written verification from the applicable public water system within 90 days of a request.

(2) If the public water system fails to deliver the written verification as required by this section, the local agency or any other interested party may seek a writ of mandamus to compel the public water system to comply.

(3) If the written verification provided by the applicable public water system indicates that the public water system is unable to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision, then the local agency may make a finding, after consideration of the written verification by the applicable public water system, that additional water supplies not accounted for by the public water system are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(4) If the written verification is not provided by the public water system, notwithstanding the local agency or other interested party securing a writ of mandamus to compel compliance with this section, then the local agency may make a finding that sufficient water supplies are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(c) The applicable public water system's written verification of its ability or inability to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision as required by subdivision (b) shall be supported by substantial evidence. The substantial evidence may include, but is not limited to, any of the following:

(1) The public water system's most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with section 10610) of Division 6 of the Water Code.

(2) A water supply assessment that was completed pursuant to Part 2.10 (commencing with section 10910) of Division 6 of the Water Code.

(3) Other information relating to the sufficiency of the

water supply that contains analytical information that is substantially similar to the assessment required by section 10635 of the Water Code.

(d) When the written verification pursuant to subdivision (b) relies on projected water supplies that are not currently available to the public water system, to provide a sufficient water supply to the subdivision, the written verification as to those projected water supplies shall be based on all of the following elements, to the extent each is applicable:

(1) Written contracts or other proof of valid rights to the identified water supply that identify the terms and conditions under which the water will be available to serve the proposed subdivision.

(2) Copies of a capital outlay program for financing the delivery of a sufficient water supply that has been adopted by the applicable governing body.

(3) Securing of applicable federal, state, and local permits for construction of necessary infrastructure associated with supplying a sufficient water supply.

(4) Any necessary regulatory approvals that are required in order to be able to convey or deliver a sufficient water supply to the subdivision.

(e) If there is no public water system, the local agency shall make a written finding of sufficient water supply based on the evidentiary requirements of subdivisions (c) and (d) and identify the mechanism for providing water to the subdivision.

(f) In making any findings or determinations under this section, a local agency, or designated advisory agency, may work in conjunction with the project applicant and the public water system to secure water supplies sufficient to satisfy the demands of the proposed subdivision. If the local agency secures water supplies pursuant to this subdivision, which supplies are acceptable to and approved by the governing body of the public water system as suitable for delivery to customers, it shall work in conjunction with the public water system to implement a plan to deliver that water supply to satisfy the long-term demands of the proposed subdivision.

(g) The written verification prepared under this section shall also include a description, to the extent that data is reasonably available based on published records maintained by federal and state agencies, and public records of local agencies, of the reasonably foreseeable impacts of the proposed subdivision on the availability of water resources for agricultural and industrial uses within the public water system's service area that are not currently receiving water from the public water system but are utilizing the same sources of water. To the extent that those reasonably foreseeable impacts have previously been evaluated in a document prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code) or the National Environmental Policy Act (Public Law 91-190) for the proposed subdivision, the public water system may utilize that information in preparing the written verification.

(h) Where a water supply for a proposed subdivision includes groundwater, the public water system serving the proposed subdivision shall evaluate, based on substantial evidence, the extent to which it or the landowner has the right to extract the additional groundwater needed to supply the proposed subdivision. Nothing in this subdivision is intended to modify state law with regard to groundwater rights.

(i) This section shall not apply to any residential project proposed for a site that is within an urbanized area and has been previously developed for urban uses, or where the immediate contiguous properties surrounding the residential project site are, or previously have been, developed for urban uses, or housing projects that are exclusively for very low and low-income households.

(j) The determinations made pursuant to this section shall be consistent with the obligation of a public water system to grant a priority for the provision of available and future water resources or services to proposed housing developments that help meet the city's or county's share of the regional housing needs for lower income households, pursuant to section 65589.7.

(k) The County of San Diego shall be deemed to comply with this section if the Office of Planning and Research determines that all of the following conditions have been met:

(1) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C as approved by the voters of the County of San Diego in November 1988, which required the development of a regional growth management plan and directed the establishment of a regional planning and growth management review board.

(2) Each public water system, as defined in section 10912 of the Water Code, within the County of San Diego has adopted an urban water management plan pursuant to Part 2.6 (commencing with section 10610) of the Water Code.

(3) The approval or conditional approval of tentative maps for subdivisions, as defined in this section, by the County of San Diego and the cities within the county requires written communications to be made by the public water system to the city or county, in a format and with content that is substantially similar to the requirements contained in this section, with regard to the availability of a sufficient water supply, or the reliance on projected water supplies to provide a sufficient water supply, for a proposed subdivision.

(l) Nothing in this section shall preclude the legislative body of a city or county, or the designated advisory agency, at the request of the applicant, from making the determinations required in this section earlier than required pursuant to subdivision **(a)**.

(m) Nothing in this section shall be construed to create a

right or entitlement to water service or any specific level of water service.

(n) Nothing in this section is intended to change existing law concerning a public water system's obligation to provide water service to its existing customers or to any potential future customers.

(o) Any action challenging the sufficiency of the public water system's written verification of a sufficient water supply shall be governed by section 66499.37.

(Added by Stats. 2001, Ch. 642, Amended by Stats. 2004, Ch. 118.)

66474. Findings: grounds for denial

A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

(a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.

(b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

(c) That the site is not physically suitable for the type of development.

(d) That the site is not physically suitable for the proposed density of development.

(e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

(f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

(g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

(Amended by Stats. 1982, Ch. 518.)

66474.01. Tentative map approval with EIR and finding

Notwithstanding subdivision (e) of Section 66474, a local government may approve a tentative map, or a parcel map for which a tentative map was not required, if an environmental impact report was prepared with respect to the project and a finding was made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

(Added by Stats. 1985, Ch. 738; Amended by Stats. 1994, Ch. 1294.)

66474.1. Finding of substantial compliance prohibits denial

A legislative body shall not deny approval of a final or parcel map if it has previously approved a tentative map for the proposed subdivision and if it finds that the final or parcel map is in substantial compliance with the previously approved tentative map.

(Amended by Stats. 1982, Ch. 87.)

66474.2. Tentative map approval

(a) Except as otherwise provided in subdivision (b) or (c), in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code.

(b) Subdivision (a) shall not apply to a local agency which, before it has determined an application for a tentative map to be complete pursuant to Section 65943, has done both of the following:

(1) Initiated proceedings by way of ordinance, resolution, or motion.

(2) Published notice in the manner prescribed in subdivision (a) of Section 65090 containing a description sufficient to notify the public of the nature of the proposed change in the applicable general or specific plans, or zoning or subdivision ordinances.

A local agency which has complied with this subdivision may apply any ordinances, policies, or standards enacted or instituted as a result of those proceedings which are in effect on the date the local agency approves or disapproves the tentative map.

(c) If the subdivision applicant requests changes in applicable ordinances, policies or standards in connection with the same development project, any ordinances, policies or standards adopted pursuant to the applicant's request shall apply.

(Added by Stats. 1982, Ch. 1449. See note following 65961; Amended by Stats. 1988, Ch. 548; Amended by Stats. 1989, Ch. 847.)

66474.3. Effect of previous initiative measure

(a) If the legislative body of a city or county finds, based upon substantial evidence in the record, that any project for

which a tentative map or a vesting tentative map has been approved will be affected by a previously enacted initiative measure to the extent that there is likely to be a default on land-secured bonds issued to finance infrastructure on the project, the legislative body shall allow that portion of the project served by that infrastructure to proceed in a manner consistent with the approved tentative map or vesting tentative map.

(b) For purposes of this section, land-secured bond means any bond issued pursuant to the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), or the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5, so long as the bond was issued and sold at least 90 days before the proposed initiative was adopted by either popular vote at an election or by ordinance adopted by the legislative body.

(c) Notwithstanding subdivision (a), the legislative body may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

(1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required, in order to comply with state or federal law.

(d) An approved or conditionally approved tentative or vesting tentative map shall be subject to the periods of time set forth in Section 66452.6.

(e) The rights conferred by this section shall expire if a final map is not approved prior to the expiration of the tentative map or of the vesting tentative map.

(f) An approved or conditionally approved tentative map or vesting tentative map shall not limit a legislative body from imposing reasonable conditions on subsequent required approvals or permits necessary for the development and authorized by the ordinances, policies, and standards described in Section 66474.2 or 66498.1.

(Added by Stats. 1988, Ch. 1561.)

66474.4. Land subject to Williamson Act contract

(a) The legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it finds that either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land, and if the legislative body finds that the land is subject to any of the following:

(1) A contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5), including an easement entered into pursuant to Section 51256.

(2) An open-space easement entered into pursuant to the Open-Space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51074) of Part 1 of Division 1 of Title 5).

(3) An agricultural conservation easement entered into pursuant to Chapter 4 (commencing with Section 10260) of Division 10.2 of the Public Resources Code.

(4) A conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Part 2 of Division 2 of the Civil Code.

(b) (1) For purposes of this section, land shall be conclusively presumed to be in parcels too small to sustain their agricultural use if the land is (A) less than 10 acres in size in the case of prime agricultural land, or (B) less than 40 acres in size in the case of land that is not prime agricultural land.

(2) For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (A) at least 10 acres in size in the case of prime agricultural land, or (B) at least 40 acres in size in the case of land that is not prime agricultural land.

(c) A legislative body may approve a subdivision with parcels smaller than those specified in this section if the legislative body makes either of the following findings:

(1) The parcels can nevertheless sustain an agricultural use permitted under the contract or easement, or are subject to a written agreement for joint management pursuant to Section 51230.1 and the parcels that are jointly managed total at least 10 acres in size in the case of prime agricultural land or 40 acres in size in the case of land that is not prime agricultural land.

(2) One of the parcels contains a residence and is subject to Section 428 of the Revenue and Taxation Code; the residence has existed on the property for at least five years; the landowner has owned the parcels for at least 10 years; and the remaining parcels shown on the map are at least 10 acres in size if the land is prime agricultural land, or at least 40 acres in size if the land is not prime agricultural land.

(d) No other homesite parcels as described in paragraph (2) of subdivision (c) may be created on any remaining parcels under contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5) for at least 10 years following the creation of a homesite parcel pursuant to this section.

(e) This section shall not apply to land that is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with

Section 51200) of Division 1 of Title 5) when any of the following has occurred:

(1) A local agency formation commission has approved the annexation of the land to a city and the city will not succeed to the contract as provided in Sections 51243 and 51243.5.

(2) Written notice of nonrenewal of the contract has been served, as provided in Section 51245, and, as a result of that notice, there are no more than three years remaining in the term of the contract.

(3) The board or council has granted tentative approval for cancellation of the contract as provided in Section 51282.

(f) This section shall not apply during the three-year period preceding the termination of a contract described in paragraph (1) of subdivision (a).

(g) This section shall not be construed as limiting the power of legislative bodies to establish minimum parcel sizes larger than those specified in subdivision (a).

(h) This section does not limit the authority of a city or county to approve a tentative or parcel map with respect to land subject to an easement described in this section for which agriculture is the primary purpose if the resulting parcels can sustain uses consistent with the intent of the easement.

(i) This section does not limit the authority of a city or county to approve a tentative or parcel map with respect to land subject to an easement described in this section for which agriculture is not the primary purpose if the resulting parcels can sustain uses consistent with the purposes of the easement.

(j) Where an easement described in this section contains language addressing allowable land divisions, the terms of the easement shall prevail.

(k) The amendments to this section made in the 2002 portion of the 2001-02 Regular Session of the Legislature shall apply only with respect to contracts or easements entered into on or after January 1, 2003.

(Added by Stats. 1984, Ch. 1111; Amended by Stats. 1985, Ch. 788; Amended by Stats. 1990, Ch. 841; Amended by Stats. 1999, Ch. 1018; Amended by Stats. 2002, Ch. 613.)

66474.5. *(Repealed by Stats. 2001, Ch. 176.)*

66474.6. Impact on community sewer system/optional disapproval with findings

The governing body of any local agency shall determine whether the discharge of waste from the proposed subdivision into an existing community sewer system would result in violation of existing requirements prescribed by a California regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. In the event that the governing body finds that the proposed waste discharge would result in or add to violation of requirements of such board, it may disapprove the tentative map or maps of the subdivision.

(Added by Stats. 1974, Ch. 1536.)

66474.7. Delegation of duties

The responsibilities of the governing body under the provisions of Sections 66473.5, 66474, 66474.1 and 66474.6 may be assigned to an advisory agency or appeal board provided the governing body adopts an ordinance which allows any interested person to appeal any decision of the advisory agency or the appeal board relative to such matters to the governing body. Such appellant shall be entitled to the same notice and rights regarding testimony as are accorded a subdivider under Section 66452.5.

(Added by Stats. 1974, Ch. 1536.)

66474.8. Local grading and drainage standards

No ordinance, regulation, policy, or procedure which regulates or prescribes standards for grading or drainage, adopted by or applicable to a local agency pursuant to Section 17922 or 17958 of the Health and Safety Code, shall apply to the construction of design or improvement work, including the rough grading of lots within the subdivision, performed pursuant to, or in connection with an approved or conditionally approved tentative map, final map, or parcel map unless the local agency has no other applicable ordinance, regulation, policy, or procedure which regulates or prescribes standards for grading or drainage for subdivision design or improvement.

(Added by Stats. 1985, Ch. 1504.)

66474.9. Conditions requiring subdivider to indemnify the local agency

(a) Except as provided in subdivision (b), a local agency may not require, as a condition for a tentative, parcel, or final map application or approval, that the subdivider or an agent of the subdivider, defend, indemnify, or hold harmless the local agency or its agents, officers, and employees from any claim, action, or proceeding against the local agency as a result of the action or inaction of the local agency, advisory agency, appeal board, or legislative body in reviewing, approving, or denying the map.

(b) (1) A local agency may require, as a condition for a tentative, parcel, or final map application or approval, that the subdivider defend, indemnify, and hold harmless the local agency or its agents, officers, and employees from any claim, action, or proceeding against the local agency or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the local agency, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37.

(2) Any condition imposed pursuant to this subdivision shall include the requirement that the local agency promptly

notify the subdivider of any claim, action, or proceeding and that the local agency cooperate fully in the defense. If the local agency fails to promptly notify the subdivider of any claim, action, or proceeding, or if the local agency fails to cooperate fully in the defense, the subdivider shall not thereafter be responsible to defend, indemnify, or hold harmless the local agency.

(c) Nothing contained in this section prohibits the local agency from participating in the defense of any claim, action, or proceeding, if both of the following occur:

(1) The agency bears its own attorney's fees and costs.

(2) The agency defends the action in good faith.

(d) The subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the subdivider.

(Added by Stats. 1986, Ch. 789.)

66474.10. Review of conditions

If the legislative body or advisory agency determines that engineering or land surveying conditions are to be imposed on a tentative map or a parcel map for which a tentative map was not required, those conditions shall be reviewed by the city engineer, city surveyor, county engineer or county surveyor, as appropriate, to determine compliance with generally accepted engineering or surveying practices.

(Added by Stats. 1989, Ch. 847.)

Article 2. Advisory Agencies

66474.60. Procedures for cities over 2,800,00

(a) In cities having a population of more than 2,800,000, the design, improvement and survey data of subdivisions and the form and content of tentative and final maps thereof, and the procedure to be followed in securing official approval are governed by the provisions of this chapter and by the additional provisions of local ordinances dealing with subdivisions, the enactment of which is required by this chapter.

(b) Local ordinances may provide a proper and reasonable fee to be collected from the subdivider for the examination of tentative and final maps.

(Amended by Stats. 1982, Ch. 518.)

66474.61. Findings: grounds for map denial

In cities having a population of more than 2,800,000, the advisory agency, appeal board or legislative body shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

(a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.

(b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

(c) That the site is not physically suitable for the type of development.

(d) That the site is not physically suitable for the proposed density of development.

(e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

(f) That the design of the subdivision or the type of improvements is likely to cause serious public health problems.

(g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the legislative body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public.

This subdivision shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

(Added by Stats. 1982, Ch. 518.)

66474.62. Finding of substantial compliance

In cities having a population of more than 2,800,000, a legislative body shall not deny approval of a final subdivision map pursuant to subdivision (c) of Section 66474.60 or Section 66474.61 if it, the advisory agency or the appeal board has previously approved a tentative map for the proposed subdivision and if it finds that the final map is in substantial compliance with the previously approved tentative map and with the conditions to the approval thereof.

(Added by Stats. 1974, Ch. 1536.)

66474.63. Impact on community sewer system/optional disapproval with findings

In cities having a population of more than 2,800,000, the advisory agency, appeal board or legislative body shall determine whether the discharge of waste from the proposed subdivision into an existing community sewer system would result in violation of existing requirements prescribed by a California regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. In the event that the advisory agency, appeal board or legislative body finds that the proposed waste discharge would result in or add to violation of requirements of such

board, the body making such finding may disapprove the tentative map or maps of the subdivision.

(Added by Stats. 1974, Ch. 1536.)

66474.64. Notice to subdivider

In cities having a population of more than 2,800,000, if the legislative body authorizes the advisory agency to report its action directly to the subdivider, the advisory agency shall, prior to making its report to the subdivider upon a subdivision as defined in this chapter, give notice of hearing in such manner as may be prescribed by local ordinance to the subdivider and to all property owners within 300 feet of the proposed subdivision and pursuant thereto shall conduct a public hearing at which time all persons interested in or affected by such proposed subdivision shall be heard.

(Added by Stats. 1974, Ch. 1536.)

Article 3. Dedications

66475. Dedication for streets, access, drainage

There may be imposed by local ordinance a requirement of dedication or irrevocable offer of dedication of real property within the subdivision for streets, alleys, including access rights and abutter's rights, drainage, public utility easements and other public easements. Such irrevocable offers may be terminated as provided in subdivisions (c) and (d) of Section 66477.2.

(Added by Stats. 1974, Ch. 1536.)

66475.1. Bicycle paths

Whenever a subdivider is required pursuant to Section 66475 to dedicate roadways to the public, the subdivider may also be required to dedicate additional land as may be necessary and feasible to provide bicycle paths for the use and safety of the residents of the subdivision.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 2001, Ch. 873.)

66475.2. Local transit facilities

(a) There may be imposed by local ordinance a requirement of a dedication or an irrevocable offer of dedication of land within the subdivision for local transit facilities such as bus turnouts, benches, shelters, landing pads and similar items that directly benefit the residents of a subdivision. The irrevocable offers may be terminated as provided in subdivisions (c) and (d) of Section 66477.2.

(b) Only the payment of fees in lieu of the dedication of land may be required in subdivisions that consist of the subdivision of airspace in existing buildings into condominium projects, stock cooperatives, or community apartment projects, as those terms are defined in Section 1351 of the Civil Code.

(Amended by Stats. 1979, Ch. 1192; Amended by Stats. 2001, Ch. 873.)

66475.3. Sunlight easements

For divisions of land for which a tentative map is required pursuant to Section 66426, the legislative body of a city or county may by ordinance require, as a condition of the approval of a tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided that such ordinance contains all of the following:

(1) Specifies the standards for determining the exact dimensions and locations of such easements.

(2) Specifies any restrictions on vegetation, buildings and other objects which would obstruct the passage of sunlight through the easement.

(3) Specifies the terms or conditions, if any, under which an easement may be revised or terminated.

(4) Specifies that in establishing such easements consideration shall be given to feasibility, contour, configuration of the parcel to be divided, and cost, and that such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.

(5) Specifies that the ordinance is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

For the purposes of this section, "solar energy systems" shall be defined as set forth in Section 801.5 of the Civil Code.

For purposes of this section, "feasibility" shall have the same meaning as set forth in Section 66473.1 for the term "feasible".

(Added by Stats. 1978, Ch. 1154.)

66475.4. Definition: dedication

(a) As used in this section, "dedication" means a transfer by a subdivider to a city, county, or city and county of title to real property or any interest therein, or of an easement or right in real property, the transfer of facilities, or the installation of improvements as defined in Section 66419, or any combination thereof.

(b) A dedication requirement imposed as a condition of approval of a tentative map is invalid to the extent to which it is determined by a court to be excessive. A dedication requirement is excessive to the extent it is not reasonably necessary to meet public needs arising as a result of the subdivision. If, at the time of imposition of the dedication requirement, a city, county, or city and county provides a mechanism for determining the amount of compensation for that portion of the dedication requirement which is excessive, and the manner of payment thereof, this section shall not apply.

(c) A dedication requirement claimed to be excessive in whole or in part, which is imposed as a condition of approval of a tentative map, may be reviewed by a writ of administrative mandate pursuant to Section 1094.5 of the Code of Civil Procedure. In such a proceeding, the petitioner must have protested in the administrative record the imposition of the dedication, or portion of the dedication, claimed to be excessive. The petition for the writ shall be filed within the time prescribed by Section 66499.37.

(d) If the dedication requirement is determined to be excessive, in whole or in part, the court shall order the city, county, or city and county which imposed the requirement to elect, within 45 days of the date of its order, to take one of the following actions:

(1) To require amendment of the tentative subdivision map or redesign of the subdivision, taking into account the court's decision and the requirements of Sections 66473.1, 66473.5, 66474, and 66474.6.

(2) To pay just compensation for that portion of the dedication determined to be excessive.

(3) To require amendment of the tentative subdivision map by deletion or modification of the dedication found to be excessive.

(e) If the city, county, or city and county elects to pay compensation, the amount of compensation shall be determined as provided by Chapters 8 (commencing with Section 1260.010) and 9 (commencing with Section 1263.010) of Title 7 of Part 3 of the Code of Civil Procedure.

(f) If the city, county, or city and county elects to require redesign of the map or to delete or modify the excessive dedication requirement, the court shall order the action to be taken within 120 days or such longer period of time as determined by the court upon application of either party. The court shall retain jurisdiction to ensure compliance with its order.

(g) If, within 45 days after the date of the court's order, the city, county, or city and county does not elect to take one of the actions specified in paragraph (1) or (3) of subdivision (d), it shall be conclusively presumed to have elected to pay just compensation.

(h) The provisions of this section do not apply to any mitigation measures imposed by local agencies pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) to mitigate adverse environmental impacts identified in an environmental document prepared for the project under that act.

(i) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

(Added by Stats. 1984, Ch. 1722; Amended by Stats. 1987, Ch. 803.)

66476. Waiver of access rights

There may be imposed by local ordinance a requirement that dedications or offers of dedication of streets include a waiver of direct access rights to any such street from any property shown on a final or parcel map as abutting thereon and if the dedication is accepted, any such waiver shall become effective in accordance with its provisions.

(Added by Stats. 1974, Ch. 1536.)

66477. Local requirements for park and recreation dedications (Quimby Act)

(a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

(3) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreation facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in Section 1351 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or a county, the amount and location of land to be dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section 1351 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) This section shall be known and may be cited as the Quimby Act.

(Amended by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 286; Amended by Stats. 1986, Ch. 291; Amended by Stats. 1998, Ch. 689.)

66477.1. Acceptance/rejection, termination and abandonment of dedication offer

(a) At the time the legislative body or the official designated pursuant to Section 66458 approves a final map, the legislative body or the designated official shall also accept, accept subject to improvement, or reject any offer of dedication. The clerk of the legislative body shall certify or state on the map the action by the legislative body or designated official.

(b) The legislative body of a county, or a county officer designated by the legislative body, may accept into the county road system, pursuant to Section 941 of the Streets and Highways Code, any road for which an offer of dedication has been accepted or accepted subject to improvements.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1985, Ch. 114; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1988, Ch. 132; Amended by Stats. 1998, Ch. 604)

66477.2. Rescission of rejection, termination and abandonment of dedication offer

(a) If at the time the final map is approved, any streets, paths, alleys, public utility easements, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements are rejected, subject to Section 771.010 of the Code of Civil Procedure, the offer of dedication shall remain open and the legislative body may by resolution at any later date, and without further action by the subdivider, rescind its action and accept and open the streets, paths, alleys, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements for public use, which acceptance shall be recorded in the office of the county recorder.

(b) In the case of any subdivision fronting upon the ocean coastline or bay shoreline, the offer of dedication of public access route or routes from public highways to land below the ordinary high watermark shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any public waterway, river, or stream, the offer of dedication of public access route or routes from public highways to the bank of the waterway, river, or stream and the public easement along a portion of the bank of the waterway, river, or stream shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any lake or reservoir which is owned in part or entirely by any public agency, including the state, the offer of dedication of public access route or routes from public highways to any water of the lake or reservoir shall be accepted within five years after the approval of the final map; all other offers of dedication may be accepted at any time.

(c) Offers of dedication which are covered by subdivision (a) may be terminated and abandoned in the same manner as prescribed for the summary vacation of streets by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

(d) Offers of dedication which are not accepted within the time limits specified in subdivision (b) shall be deemed abandoned.

(e) Except as provided in Sections 66499.16, 66499.17, and 66499.18, if a resubdivision or reversion to acreage of the tract is subsequently filed for approval, any offer of dedication previously rejected shall be deemed to be terminated upon the approval of the map by the legislative body. The map shall contain a notation identifying the offer or offers of dedication deemed terminated by this subdivision.

(Amended by Stats. 1982, Ch. 87; Amended by Stats. 1994, Ch. 458.)

66477.3. Dedication acceptance ineffective until map filed

Acceptance of offers of dedication on a final map shall not be effective until the final map is filed in the office of the county recorder or a resolution of acceptance by the legislative body is filed in such office.

(Added by Stats. 1974, Ch. 1536.)

66477.5. Reconveyance of dedications

(a) The local agency to which property is dedicated in fee for public purposes, or for making public improvements or constructing public facilities, other than for open space, parks, or schools, shall record a certificate with the county recorder in the county in which the property is located. The certificate shall be attached to the map and shall contain all of the following information:

(1) The name and address of the subdivider dedicating the property.

(2) A legal description of the real property dedicated.

(3) A statement that the local agency shall reconvey the property to the subdivider if the local agency makes a determination pursuant to this section that the same public purpose for which the property was dedicated does not exist, or the property or any portion thereof is not needed for public utilities, as specified in subdivision (c).

(b) The subdivider may request that the local agency make the determination that the same public purpose for which the dedication was required still exists, after payment of a fee which shall not exceed the amount reasonably required to make the determination. The determination may be made by reference to a capital improvement plan as specified in Section 65403 or 66002, an applicable general or specific plan requirement, the subdivision map, or other public documents that identify the need for the dedication.

(c) If a local agency has determined that the same public purpose for which the dedication was required does not exist, it shall reconvey the property to the subdivider or the successor in interest, as specified in subdivision (a), except for all or any portion of the property that is required for that same public purpose or for public utilities.

(d) If a local agency decides to vacate, lease, sell, or otherwise dispose of the dedicated property the local agency shall give at least 60 days notice to the subdivider whose name appears on the certificate before vacating, leasing,

selling, or otherwise disposing of the dedicated property. This notice is not required if the dedicated property will be used for the same public purpose for which it was dedicated.

(e) This section shall only apply to property required to be dedicated on or after January 1, 1990.

(Repealed by Stats. 1984, Ch. 896; Amended by Stats. 1989, Ch. 822.)

66478. School purposes

Whether by request of a county board of education or otherwise, a city or county may adopt an ordinance requiring any subdivider who develops or completes the development of one or more subdivisions in one or more school districts maintaining an elementary school to dedicate to the school district, or districts, within which such subdivisions are to be located, such land as the local legislative body shall deem to be necessary for the purpose of constructing thereon such elementary schools as are necessary to assure the residents of the subdivision adequate public school service. In no case shall the local legislative body require the dedication of an amount of land which would make development of the remaining land held by the subdivider economically unfeasible or which would exceed the amount of land ordinarily allowed under the procedures of the State Allocation Board.

An ordinance adopted pursuant to this section shall not be applicable to a subdivider who has owned the land being subdivided for more than 10 years prior to the filing of the tentative maps in accordance with Article 2 (commencing with Section 66452) of Chapter 3 of this division. The requirement of dedication shall be imposed at the time of approval of the tentative map. If, within 30 days after the requirement of dedication is imposed by the city or county, the school district does not offer to enter into a binding commitment with the subdivider to accept the dedication, the requirement shall be automatically terminated. The required dedication may be made any time before, concurrently with, or up to 60 days after, the filing of the final map on any portion of the subdivision. The school district shall, in the event that it accepts the dedication, repay to the subdivider or his successors the original cost to the subdivider of the dedicated land, plus a sum equal to the total of the following amounts:

(a) The cost of any improvements to the dedicated land since acquisition by the subdivider.

(b) The taxes assessed against the dedicated land from the date of the school district's offer to enter into the binding commitment to accept the dedication.

(c) Any other costs incurred by the subdivider in maintenance of such dedicated land, including interest costs incurred on any loan covering such land.

If the land is not used by the school district, as a school site, within 10 years after dedication, the subdivider shall have the option to repurchase the property from the district for the amount paid therefor.

The school district to which the property is dedicated shall record a certificate with the county recorder in the county in which the property is located. The certificate shall contain the following information:

(1) The name and address of the subdivider dedicating the property.

(2) A legal description of the real property dedicated.

(3) A statement that the subdivider dedicating the property has an option to repurchase the property if it is not used by the school district as a school site within 10 years after dedication.

(4) Proof of the acceptance of the dedication by the school district and the date of the acceptance. The certificate shall be recorded not more than 10 days after the date of acceptance of the dedication. The subdivider shall have the right to compel the school district to record such certificate, but until such certificate is recorded, any rights acquired by any third party dealing in good faith with the school district shall not be impaired or otherwise affected by the option right of the subdivider.

If any subdivider is aggrieved by, or fails to agree to the reasonableness of any requirement imposed pursuant to this section, he may bring a special proceeding in the superior court pursuant to Section 66499.37.

(Added by Stats. 1974, Ch. 1536.)

Article 3.5. Public Access to Public Resources

66478.1. Intent

It is the intent of the Legislature, by the provisions of Sections 66478.1 through 66478.10 of this article to implement Section 4 of Article X of the California Constitution insofar as Sections 66478.1 through 66478.10 are applicable to navigable waters.

(Amended by Stats. 1975, Ch. 24; Amended by Stats. 1986, Ch. 1019.)

66478.2. State policy: growth and natural resources

The Legislature finds and declares that the public natural resources of this state are limited in quantity and that the population of this state has grown at a rapid rate and will continue to do so, thus increasing the need for utilization of public natural resources. The increase in population has also increased demand for private property adjacent to public natural resources through real estate subdivision developments which resulted in diminishing public access to public natural resources.

(Added by Stats. 1974, Ch. 1536.)

66478.3. State policy: increased public access

The Legislature further finds and declares that it is essential to the health and well-being of all citizens of this state that public access to public natural resources be increased. It is the intent of the Legislature to increase public access to public natural resources.

(Added by Stats. 1974, Ch. 1536.)

66478.4. Access to navigable waters

(a) No local agency shall approve either a tentative or a final map of any proposed subdivision to be fronted upon a public waterway, river, or stream which does not provide, or have available, reasonable public access by fee or easement from a public highway to that portion of the bank of the river or stream bordering or lying within the proposed subdivision.

(b) Reasonable public access shall be determined by the local agency in which the proposed subdivision is to be located. In making the determination of what shall be reasonable access, the local agency shall consider all of the following:

(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of riverbank and the various appropriate recreational, educational, and scientific uses, including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific collection, and teaching.

(4) The likelihood of trespass on private property and reasonable means of avoiding these trespasses.

(c) A public waterway, river, or stream for the purposes of Sections 66477.2, 66478.4, 66478.5 and 66478.6 means those waterways, rivers and streams defined in Sections 100 through 106 of the Harbors and Navigation Code, any stream declared to be a public highway for fishing pursuant to Sections 25660 through 25662 of the Government Code, the rivers listed in Section 1505 of the Fish and Game Code as spawning areas, all waterways, rivers and streams downstream from any state or federal salmon or steelhead fish hatcheries.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 2002, Ch. 1109.)

66478.5. Easement along waterways

(a) No local agency shall approve either a tentative or a final map of any proposed subdivision to be fronted upon a public waterway, river, or stream which does not provide for a dedication of a public easement along a portion of the bank of the river or stream bordering or lying within the proposed subdivision.

(b) The extent, width and character of the public easement shall be reasonably defined to achieve reasonable public use of the public waterway, river, or stream consistent with public safety. The reasonableness and extent of the easement shall be determined by the local agency in which the proposed subdivision is to be located. In making the determination for reasonably defining the extent, width, and character of the public easement, the local agency shall consider all of the following:

(1) That the easement may be for a foot trail, bicycle trail, or horse trail.

(2) The size of the subdivision.

(3) The type of riverbank and the various appropriate recreational, educational and scientific uses including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific collection and teaching.

(4) The likelihood of trespass on private property and reasonable means of avoiding these trespasses.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 2002, Ch. 1109.)

66478.6. Designation on map

Any public access route or routes and any easement along the bank of a public waterway, river, or stream provided by the subdivider shall be expressly designated on the tentative or final map, and this map shall expressly designate the governmental entity to which the route or routes are dedicated and its acceptance of the dedication.

(Amended by Stats. 1975, Ch. 24; Amended by Stats. Ch. 1109.)

66478.7. No limitation on parks

Nothing in this article shall be construed to limit any powers or duties in connection with or affect the operation of beaches or parks in this state or to limit or decrease the authority, powers, or duties of any public agency or entity.

(Added by Stats. 1974, Ch. 1536.)

66478.8. Alternative access/availability finding

Nothing in Sections 66478.1 to 66478.10, inclusive, of this article shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable public access otherwise required by this article is not provided through or across the subdivision itself, if the local agency makes a finding that the reasonable public access is otherwise available within a reasonable distance from the subdivision and identifies the location of the reasonable public access.

The finding shall be set forth on the face of the tentative or final map.

(Amended by Stats. 1975, Ch. 24; Amended by Stats. 2002, Ch. 1109.)

66478.9. Inapplicability: power facilities

Nothing in Section 66478.5 shall apply to the site of electric power generating facilities.

(Added by Stats. 1974, Ch. 1536.)

66478.10. Inapplicability: industrial subdivisions

Nothing in Sections 66478.1 through 66478.10 of this article shall apply to industrial subdivisions.

(Added by Stats. 1974, Ch. 1536.)

66478.11. Access to coastline

(a) No local agency shall approve either the tentative or the final map of any subdivision fronting upon the coastline or shoreline which subdivision does not provide or have available reasonable public access by fee or easement from public highways to land below the ordinary high water mark on any ocean coastline or bay shoreline within or at a reasonable distance from the subdivision.

Any public access route or routes provided by the subdivider shall be expressly designated on the tentative or final map, and the map shall expressly designate the governmental entity to which the route or routes are dedicated.

(b) Reasonable public access, as used in subdivision (a), shall be determined by the local agency in which the subdivision lies.

(c) In making the determination of what shall be reasonable public access, the local agency shall consider:

(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of coastline or shoreline and the various appropriate recreational, educational, and scientific uses, including, but not limited to, diving, sunbathing, surfing, walking, swimming, fishing, beachcombing, taking of shellfish and scientific exploration.

(4) The likelihood of trespass on private property and reasonable means of avoiding the trespass.

(d) Nothing in this section shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable public access otherwise required by this section is not provided through or across the subdivision itself, if the local agency makes a finding that the reasonable public access is otherwise available within a reasonable distance from the subdivision and identifies the location of the reasonable public access.

The finding shall be set forth on the face of the tentative or final map.

(e) The provisions of this section shall not apply to the final map of any subdivision the tentative map of which has been approved by a local agency prior to the effective date of this section.

(f) The provisions of this section shall not apply to the final or tentative map of any subdivision which is in compliance with the plan of any planned development or any planned community which has been approved by a local agency prior to December 31, 1968. The exclusion provided by this subdivision shall be in addition to the exclusion provided by subdivision (e).

(g) Nothing in this section shall be construed as requiring the subdivider to improve any access route or routes which are primarily for the benefit of nonresidents of the subdivision area.

(h) Any access route or routes provided by the subdivider pursuant to this section may be conveyed or transferred to any state or local agency by the governmental entity to which the route or routes have been dedicated, at any future time, by mutual consent of such governmental entity and the particular state or local agency. The conveyance or transfer shall be recorded by the recipient state or local agency in the office of the county recorder of the county in which the route or routes are located.

(Amended by Stats. 1975, Ch. 24; Amended by Stats. 2002, Ch. 1109.)

66478.12. Access to reservoir or lake

(a) No local agency shall approve either the tentative or the final map of any subdivision fronting upon any lake or reservoir which is owned in part or entirely by any public agency including the state, which subdivision does not provide or have available reasonable access by fee or easement from public highways to any water of the lake or reservoir upon which the subdivision borders either within the subdivision or a reasonable distance from the subdivision.

Any public access route or routes provided by the subdivider shall be expressly designated on the tentative or final map, and the map shall expressly designate the governmental entity to which the route or routes are dedicated and its acceptance of the dedication.

(b) Reasonable access, as used in subdivision (a), shall be determined by the local agency in which the subdivision lies.

(c) In making the determination of what shall be reasonable access, the local agency shall consider:

(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of shoreline and the various appropriate recreational, educational, and scientific uses, including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific exploration, and teaching.

(4) The likelihood of trespass on private property and reasonable means of avoiding the trespasses.

(d) Nothing in this section shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable access otherwise required by this section is not provided through or across the subdivision itself, if the local agency makes a finding that the reasonable access is otherwise available within a reasonable distance from the subdivision and identifies the location of the reasonable public access.

The finding shall be set forth on the face of the tentative or final map.

(e) The provisions of this section shall not apply to the final map of any subdivision the tentative map of which has been approved by a local agency prior to the effective date of this section.

(f) Any access route or routes provided by the subdivider pursuant to this section may be conveyed or transferred to any state or local agency by the governmental entity to which the route or routes have been dedicated, at any future time, by mutual consent of the governmental entity and the particular state or local agency. The conveyance or transfer shall be recorded by the recipient state or local agency in the office of the county recorder of the county in which the route or routes are located.

(Amended by Stats. 1975, Ch. 24; Amended by Stats. 2002, Ch. 1109.)

66478.13. Application to certain land decisions

No local agency shall issue any permit or grant any approval necessary to develop any real property which is excluded from regulation under this division as a subdivision pursuant to subdivision (d) of Section 66426 because such property is in excess of 40 acres and was created as such a parcel after December 31, 1969, when such property fronts on the coastline or a shoreline, unless it finds that reasonable public access has been provided from public highways to land below the ordinary high-water mark or any ocean coastline or bay shoreline or any water of a lake or reservoir upon which the real property fronts.

"Reasonable public access" as used in this section shall be determined by the local agency in which the real property lies. In making such determination the local agency shall use the same criteria as those set forth in subdivisions (c) and (d) of Section 66478.11 and subdivisions (c) and (d) of Section 66478.12.

(Added by Stats. 1974, Ch. 1536.)

66478.14. Subdivision to benefit

Nothing in this article shall be construed as requiring the subdivider to improve any route or routes which are primarily for the benefit of nonresidents of the subdivision area or nonowners of the real property in question.

(Added by Stats. 1974, Ch. 1536.)

Article 4. Reservations

66479. Authority to impose reservation of lands for public use

There may be imposed by local ordinance a requirement that areas of real property within the subdivision be reserved for parks, recreational facilities, fire stations, libraries, or other public uses, subject to the following conditions:

(a) The requirement is based upon an adopted specific plan or an adopted general plan containing policies and standards for those uses, and the required reservations are in accordance with those policies and standards.

(b) The ordinance has been in effect for a period of at least 30 days prior to the filing of the tentative map.

(c) The reserved area is of such size and shape as to permit the balance of the property within which the reservation is located to develop in an orderly and efficient manner.

(d) The amount of land reserved will not make development of the remaining land held by the subdivider economically unfeasible.

The reserved area shall conform to the adopted specific or general plan and shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period; in such event, the subdivider shall make those changes as are necessary to permit the reserved area to be developed for the intended purpose consistent with good subdividing practices.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1984, Ch. 1009.)

66480. Binding agreement to acquire reservation

The public agency for whose benefit an area has been reserved shall at the time of approval of the final map or parcel map enter into a binding agreement to acquire such reserved area within two years after the completion and acceptance of all improvements, unless such period of time is extended by mutual agreement. The purchase price shall be the market value thereof at the time of the filing of the tentative map plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including interest costs incurred on any loan covering such reserved area.

(Added by Stats. 1974, Ch. 1536.)

66481. Binding agreement to acquire reservation

If the public agency for whose benefit an area has been reserved does not enter into such a binding agreement, the reservation of such area shall automatically terminate.

(Added by Stats. 1974, Ch. 1536.)

66482. Additional authority

The authority granted by this article is additional to all other authority granted by law to local agencies relating to subdivisions and shall in no way be construed as a limitation on or diminution of any such authority.

(Added by Stats. 1974, Ch. 1536.)

Article 5. Fees

66483. Calculation of costs/findings

There may be imposed by local ordinance a requirement for the payment of fees for purposes of defraying the actual or estimated costs of constructing planned drainage facilities for the removal of surface and storm waters from local or neighborhood drainage areas and of constructing planned sanitary sewer facilities for local sanitary sewer areas, subject to the following conditions:

(a) The ordinance has been in effect for a period of at least 30 days prior to the filing of the tentative map or parcel map if no tentative map is required.

(b) The ordinance refers to a drainage or sanitary sewer plan adopted for a particular drainage or sanitary sewer area which contains an estimate of the total costs of constructing the local drainage or sanitary sewer facilities required by the plan, and a map of such area showing its boundaries and the location of such facilities.

(c) The drainage or sanitary sewer plan, in the case of a city situated in a county having a countywide general drainage or sanitary sewer plan, has been determined by resolution of the legislative body of the county to be in conformity with such a county plan; or in the case of a city situated in a county not having such a plan but in a district having such a plan, has been determined by resolution of the legislative body of the district to be in conformity with the district general plan; or in the case of a city situated in a county having such a plan and in a district having such a plan, has been determined by resolution of the legislative body of the county to be in conformity with such a plan and by resolution of the legislative body of the district to be in conformity with the district general plan.

(d) The costs, whether actual or estimated, are based upon findings by the legislative body which has adopted the local plan, that subdivision and development of property within the planned local drainage area or local sanitary sewer area will require construction of the facilities described in the drainage or sewer plan, and that the fees are fairly apportioned within such areas either on the basis of benefits conferred on property proposed for subdivision or on the need for such facilities created by the proposed subdivision and development of other property within such areas.

(e) The fee as to any property proposed for subdivision within such a local area does not exceed the pro rata share of the amount of the total actual or estimated costs of all facilities within such area which would be assessable on such property if such costs were apportioned uniformly on a per-acre basis.

(f) The drainage or sanitary sewer facilities planned are in addition to existing facilities serving the area at the time of the adoption of such a plan for the area.

Such fees shall be paid to the local public agencies which provide drainage or sanitary sewer facilities, and shall be deposited by such agencies into a "planned local drainage facilities fund" and a "planned local sanitary sewer fund," respectively. Separate funds shall be established for each local drainage and sanitary sewer area.

Moneys in such funds shall be expended solely for the construction or reimbursement for construction of local drainage or sanitary sewer facilities within the area from which the fees comprising the fund were collected, or to reimburse the local agency for the cost of engineering and administrative services to form the district and design and construct the facilities. The local ordinance may provide for the acceptance of considerations in lieu of the payment of fees.

A local agency imposing or requesting the imposition of, fees pursuant to this section, including the agencies providing the facilities, may advance money from its general fund to pay the costs of constructing such facilities within a local drainage or sanitary sewer area and reimburse the general fund for such advances from the planned local drainage or sanitary sewer facilities fund for the local drainage or sanitary sewer area in which the drainage or sanitary sewer facilities were constructed.

A local agency receiving fees pursuant to this section may incur an indebtedness for the construction of drainage or sanitary sewer facilities within a local drainage or sanitary sewer area; provided that the sole security for repayment of such indebtedness shall be moneys in the planned local drainage or sanitary sewer facilities fund.

(Amended by Stats. 1975, Ch. 365.)

66483.1. Surplus funds

After completion of the facilities and the payment of all claims from any "planned local drainage facilities fund" or any "planned local sanitary sewer fund," the legislative body of a county or city shall determine by resolution the amount of the surplus, if any, remaining in any of those funds. Any surplus shall be used, in those amounts as the legislative body may determine, for one or more of the following purposes:

(a) For transfer to the general fund of the county or city, provided that the amount of the transfer shall not exceed 5 percent of the total amount expended from the particular fund, and provided that the funds transferred are used to support the operation and maintenance of those facilities for which the fees were collected;

(b) For the construction of additional or modified facilities within the particular drainage or sanitary sewer area; or

(c) As a refund in the manner provided in Section 66483.2.

(Amended by Stats. 1981, Ch. 914.)

66483.2. Refund of surplus

Any surplus remaining shall be refunded as follows:

(a) There shall be refunded to the current owners of property for which a fee was previously collected, the balance of such moneys in the same proportion which each individual fee collected bears to the total of all individual fees collected from the particular drainage or sewer area;

(b) Where property for which a fee was previously collected has subsequently been subdivided into more than one lot, each current owner of a lot shall share in the refund payable to the owners of the property for which a fee was previously collected in the same proportion which the area of each individual lot bears to the total area of the property for which a fee was previously collected; and

(c) There shall be transferred to the general fund of the county or city any remaining portion of the surplus which has not been paid to or claimed by the persons entitled thereto within two years from the date either of the completion of the improvements, or the adoption by the legislative body of a resolution declaring a surplus, whichever is later to occur.

(Added by Stats. 1975, Ch. 365.)

66484. Fees for bridges or major thoroughfares

(a) A local ordinance may require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares. The ordinance may require payment of fees pursuant to this section if all of the following requirements are satisfied:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation or flood control provisions thereof which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to the state highway system, if the circulation element, transportation or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65091 and shall include preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the county in which the area of benefit is located. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing agency shall make provision for payment of the share of improvement costs apportioned to those lands from other sources.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit. (5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. The fees shall not be expended to reimburse the cost of existing bridge facility construction.

(6) The ordinance provides that if, within the time when protests may be filed under the provisions of the ordinance, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under the provisions of this section.

(b) Any protest may be withdrawn by the owner protesting, in writing, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

(c) If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body may commence

new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section prohibits a legislative body, within that one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

(d) Nothing in this section precludes the processing and recordation of maps in accordance with other provisions of this division if the proceedings are abandoned.

(e) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge is required to be constructed, a fund may be so established covering all of the bridge projects in the benefit area. Money in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the local agency for the cost of constructing the improvement.

(f) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(g) A local agency imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund for any advances from planned bridge facility or major thoroughfares funds established to finance the construction of those improvements.

(h) A local agency imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. However, the sole security for repayment of that indebtedness shall be moneys in planned bridge facility or major thoroughfares funds.

(i) The term "construction" as used in this section includes design, acquisition of right-of-way, administration of construction contracts, and actual construction.

(j) The term "construction," as used in this section, with respect to the unincorporated area of San Diego County only, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction," with respect to the unincorporated area of San Diego County only, also includes reasonable administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, San Diego, California (1967 = 100), as published by the United States Department of Commerce for the purpose of constructing bridges and major thoroughfares. "Administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(k) Nothing in this section precludes a county or city from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(Amended by Stats. 1975, Ch. 24; Amended by Stats. 1984, Ch. 1009; Amended by Stats. 1988, Ch. 1408.)

66484.3. County of Orange: fees for bridges and thoroughfares

(a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which

are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution, except that the resolution of a city or county which has entered into a joint exercise of powers agreement pursuant to subdivision (f), relating to constructing bridges over waterways, railways, freeways, and canyons or constructing major thoroughfares by the joint powers agency, may be modified by the joint powers agency following public notice and a public hearing, if the joint powers agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area.

Except as otherwise provided in subdivision (g), moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. A city or county imposing fees pursuant to this section may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls, except that a joint powers agency, which is the lending agency, may, notwithstanding subdivision (c), make toll revenues and fees imposed pursuant to this section available to another joint powers agency, which is the borrowing agency, established for the purpose of designing, financing, and constructing coordinated and interrelated major thoroughfares, in the form of a subordinated loan, to pay for the cost of construction and toll collection of major thoroughfares other than the major thoroughfares for which the toll or fee is charged, if the lending agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1, and if the borrowing agency is required to pay interest on the loan to the lending agency at a rate equal to the interest rate charged on funds loaned from the Pooled Money Investment Account. Prior to executing the loan, the lending agency shall make all of the following findings:

(1) The major thoroughfare for which the toll or fee is charged will benefit from the construction of the major thoroughfare to be constructed by the borrowing agency or will benefit financially by a sharing of revenues with the borrowing agency.

(2) The lending agency will possess adequate financial resources to fund all costs of construction of existing and future projects that it plans to undertake prior to the final maturity of the loan, after funding the loan, and taking into consideration its then existing funds, its present and future obligations, and the revenues and fees it expects to receive.

(3) The funding of the loan will not materially impair its financial condition or operations during the term of the loan.

Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any

calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Fees paid pursuant to an ordinance adopted pursuant to this section may be utilized to defray all direct and indirect financing costs related to the construction of the bridges and major thoroughfares by the joint powers agency. Because the financing costs of bridges and major thoroughfares for which a toll charge shall be established or collected represent a necessary element of the total cost of those bridges and major thoroughfares, the joint powers agency constructing those facilities may include a charge for financing costs in the calculation of the fee rate. The charge shall be based on the estimated financing cost of any eligible portion of the bridges and major thoroughfares for which tolls shall be collected. The eligible portion shall be any or all portions of the major thoroughfare for which a viable financial plan has been adopted by the joint powers agency on the basis of revenues reasonably expected by the joint powers agency to be available to the thoroughfare, after consultation with representatives of the fee payers. For purposes of calculating the charge, financing costs shall include only reasonable allowances for payments and charges for principal, interest, and premium on indebtedness, letter of credit fees and charges, remarketing fees and charges, underwriters' discount, and other costs of issuance, less net earnings on bridge and major thoroughfare funds by the joint powers agency prior to the opening of the facility to traffic after giving effect to any payments from the fund to preserve the federal income tax exemption on the indebtedness. For purposes of calculating the charge for financing costs in the calculation of the fee rate only, financing costs shall not include any allowance for the cost of any interest paid on indebtedness with regard to each eligible portion after the estimated opening of the portion to traffic as established by the joint powers agency. Any and all challenges to any financial plan or financing costs adopted or calculated pursuant to this section shall be governed by subdivision (k).

(i) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(j) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(k) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding.

This subdivision shall also apply to modifications of fee programs.

(l) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

(m) Nothing in this section prohibits the succession of all powers, obligations, liabilities, and duties of any joint powers agency created pursuant to subdivision (l) to an entity with comprehensive countywide transportation planning and operating authority which is statutorily created in the County of Orange and which is statutorily authorized to assume those powers, obligations, liabilities, and duties.

(Added by Stats. 1984, Ch. 708; Amended by Stats. 1985, Ch. 195; Amended by Stats. 1986, Ch. 839; Amended by Stats. 1987, Ch. 1175; Amended by Stats. 1987, Ch. 1349; Amended by Stats. 1987, Ch. 1402; Amended by Stats. 1990, Ch. 1567.)

Note: Stats. 1984, Ch. 708, also reads:

SEC. 2. The Legislature finds and declares that unique circumstances which exist in the County of Orange dictate the necessity of providing an alternative procedure for that county and the cities within that county, as set forth in Section 1 of this act, and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

66484.5. Fee for groundwater recharge

(a) The legislative body of a local agency may adopt an ordinance requiring the payment of a fee as a condition of approval of a subdivision requiring a final or parcel map, or as a condition of issuing a building permit in an area of

benefit under a groundwater recharge facility plan adopted as provided in this section, for the purpose of constructing recharge facilities for the replenishment of the underground water supply in that area of benefit. The ordinance may require payment of fees pursuant to this section if, at the time of payment, all of the following requirements are satisfied:

(1) A groundwater recharge facility plan for the area to be benefited has been adopted by the legislative body of the local agency. The legislative body shall not adopt the plan until it has given notice to, and consulted with, the water agency then obligated to furnish water to the area to be benefited and the water agency has formally and in writing approved the plan.

(2) The ordinance has been in effect for a period of at least 30 days prior to the filing of the tentative map, parcel map if no tentative map is required, or the application for a building permit.

(3) The ordinance provides that before any groundwater recharge facility plan is adopted there will be a public hearing held by the legislative body for the proposed area of benefit.

Notice of the hearing on a proposed area of benefit shall be given pursuant to Section 65091 and shall include preliminary information concerning the groundwater recharge facility plan, including the proposed boundaries of the area of benefit, the availability of surface water, the planned facilities for the area of benefit, estimated costs, and the proposed method of fee apportionment.

Written notice of the public hearing shall be given by personal service or mail to the water agency responsible for furnishing water to the area of benefit involved in the hearing prior to or at the time notice is given by mail or by publication and posting. The proposal contained in the mailed, published, or posted notice shall be jointly prepared and agreed upon by the local agency and the water agency before that notice is given. The water agency may participate in the hearings.

(4) The ordinance provides that the groundwater recharge facility plan shall be established at the public hearing and, if approved, adopted by the legislative body. The plan shall include the boundaries of the area of benefit, the availability of surface water, the planned facilities for the area of benefit and the estimated cost thereof, a fair method of allocating the costs within the area of benefit, and the apportionment of fees within the area. The plan, as adopted by the local agency and approved by the water agency, shall be incorporated in a resolution of the legislative body and a certified copy of the plan shall be recorded with the county recorder. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or a parcel map or as a condition of issuing a building permit for the property or portions of the property. Where the area of benefit includes lands not otherwise subject to the payment of fees pursuant to this section, the legislative body shall make provision for payment of the share of improvement costs apportioned to that land by other means.

(5) The ordinance provides that if, within the time when protests may be filed under the provisions of the ordinance, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of the property to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under the provisions of this section.

(b) Any protests may be withdrawn in writing by the owner who made the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

(c) If any majority protest is directed against only a portion of the improvement, then all further proceedings under this section as to that portion of the improvement so protested against shall be barred for a period of one year. The legislative body, however, may commence new proceedings which do not include the area, acquisitions, or improvements which were the subject of the successful protest. Nothing in this section prohibits the legislative body, within that one-year period, from commencing and carrying on new proceedings for that portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

(d) Nothing in this section precludes the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

(e) Subsequent to the adoption of a plan, the local agency may itself construct, operate, and maintain the groundwater recharge facilities, or it may designate the water agency furnishing the water or designate or create another agency to do all or any one of these things as authorized by law. In the event any agency other than the local agency adopting such ordinances is so designated, the services so rendered shall be pursuant to a written agreement entered into between the local agency and the other agency.

(f) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned recharge facility fund. A fund shall be established for each area of benefit. Money in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited.

The fees shall not be expended to reimburse the cost of recharge facilities in existence prior to the adoption of the

groundwater recharge facility plan for that area.

(g) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(h) A local agency imposing fees pursuant to this section may advance money from its general fund to pay the cost of constructing the improvements and may reimburse the general fund for those advances from planned recharge facility funds collected to finance the construction of these improvements.

(i) A local agency imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of recharge facilities. However, the sole security for repayment of that indebtedness shall be money in planned recharge facility funds.

(j) Recharge facilities shall not be constructed unless the water agency approves the design of the facilities to be constructed and has reached an agreement with the local agency establishing the terms and conditions under which the water will be furnished. If the water agency finds that the facilities have been constructed in accordance with the approved design, the agency shall furnish water for the groundwater recharge facilities.

(k) If the water agency is an irrigation district or other entity obligated by law to apportion water among the landowners within the area of benefit, the water agency shall receive credit upon the obligation for any water delivered for groundwater recharge under the agreement and shall be relieved of any further obligation to deliver the amount of water for which it has received such credit to the landowners or lands within that area.

(l) Nothing contained in this section entitles a local agency to collect a fee from a landowner who presently receives and continues to receive and use the landowner's pro rata share of surface water from the agency responsible for that area or from a landowner who has not applied for approval of a final or parcel map or a building permit.

(m) A credit for fees paid as authorized by this section shall be applied against any assessment levied by the local agency to construct the planned recharge facilities.

(n) The term "construction," as used in this section, includes design, acquisition of land or easements, administration of construction contracts, and actual construction.

(o) The term "water agency," as used in this section, means the public or other entity that will furnish water for the operation and use of a recharge facility under a groundwater recharge facility plan adopted by a local agency pursuant to this section.

(p) Nothing in this section precludes a county or city from providing funds for the construction of recharge facilities to defray costs not allocated to the area of benefit.

(Added by Stats. 1978, Ch. 620; Amended by Stats. 1984, Ch. 1009.)

Article 6. Reimbursement

66485. Authority to require dedication of improvements

There may be imposed by local ordinance a requirement that improvements installed by the subdivider for the benefit of the subdivision shall contain supplemental size, capacity, number, or length for the benefit of property not within the subdivision, and that those improvements be dedicated to the public. Supplemental length may include minimum sized offsite sewer lines necessary to reach a sewer outlet in existence at that time.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1983, Ch. 704.)

66486. Agreement for reimbursement

In the event of the installation of improvements required by an ordinance adopted pursuant to Section 66485, the local agency shall enter into an agreement with the subdivider to reimburse the subdivider for that portion of the cost of those improvements, including an amount attributable to interest, in excess of the construction required for the subdivision.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1983, Ch. 704.)

66487. Revenues for reimbursement

In order to pay the costs as required by the reimbursement agreement, the local agency may:

(a) Collect from other persons, including public agencies, using such improvements for the benefit of real property not within the subdivision, a reasonable charge for such use.

(b) Contribute to the subdivider that part of the cost of the improvements that is attributable to the benefit of real property outside the subdivision and levy a charge upon the real property benefited to reimburse itself for such cost, together with interest thereon, if any, paid to the subdivider.

(c) Establish and maintain local benefit districts for the levy and collection of such charge or costs from the property benefited.

(Added by Stats. 1974, Ch. 1536.)

66488. Use of drainage/sewer plan by other agencies

Any local agency within a local drainage or sanitary sewer area may adopt the plan and map designated in Section 66483 and impose a reasonable charge on property within the area which, in the opinion of the legislative body, is benefited by such drainage or sanitary sewer facilities. The charge collected must be paid to the local agency or subdivider constructing such drainage or sanitary sewer facilities, and any local agency within the drainage or sanitary sewer area may enter into a reimbursement agreement with the subdivider.

(Added by Stats. 1974, Ch. 1536.)

66489. Area of benefit

Any local agency may establish an area of benefit pursuant to Section 66484 and may impose a reasonable charge on property within the area which in the opinion of the legislative body, is benefited by the construction of the bridge or major thoroughfare. The charge collected shall be paid to the local agency or subdivider constructing the bridge, and any local agency having jurisdiction over any property which, in the opinion of the legislative body, is benefited by the construction of the bridge or major thoroughfare may enter into a reimbursement agreement with the subdivider.

(Added by Stats. 1974, Ch. 1536.)

Article 7. Soils Report

66490. Preliminary report

A preliminary soils report, prepared by a civil engineer registered in this state, and based upon adequate test borings, shall be required for every subdivision for which a final map is required by this division and may be required by local ordinance for other subdivisions.

(Added by Stats. 1974, Ch. 1536.)

66491. Optional requirements waiver

With respect to the soils report, a local ordinance may provide that:

(a) The preliminary soils report may be waived if the local agency determines that, due to the knowledge it has as to the soils qualities of the soils of the subdivision, no preliminary analysis is necessary.

(b) The preliminary soils report may be submitted to the city engineer or county engineer for review. The city engineer or county engineer may review the preliminary soils report and may require additional information or reject the report if it is found to be incomplete, inaccurate, or unsatisfactory.

(c) If the preliminary soils report indicates the presence of critically expansive soils or other soils problems which, if not corrected, would lead to structural defects, a soils investigation of each lot in the subdivision may be required.

(d) If the preliminary soils report indicates the presence of rocks or liquids containing deleterious chemicals which, if not corrected, could cause construction materials such as concrete, steel, and ductile or cast iron to corrode or deteriorate, a soils investigation of each potentially affected lot in the subdivision may be required.

(e) Any soils investigation required pursuant to this section shall be done by a civil engineer registered in this state, who shall recommend the corrective action which is likely to prevent structural damage to each structure proposed to be constructed in the area where the soils problem exists.

(f) The local agency may approve the subdivision or portion thereof where soils problems described in subdivision (c) or (d) exist if it determines that the recommended action is likely to prevent structural damage to each structure to be constructed, and as a condition to the issuance of any building permit may require that the approved recommended action be incorporated in the construction of each structure.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1989, Ch. 133; Amended by Stats. 1991, Ch. 668.)

Article 8. Taxes and Assessments

66492. Certificates: tax and Assessments liens

Prior to the filing of the final map or parcel map with the legislative body, the subdivider shall, in accordance with procedures established by the county, file with the county recorder of the county in which any part of the subdivision is located, a certificate or statement from the official computing redemptions in any public agency in which any part of the subdivision is located, showing that, according to the records of that office, there are no liens against the subdivision or any part thereof for unpaid, state, county, municipal or local taxes or special assessments collected as taxes, except taxes or special assessments not yet payable.

This section shall not be applicable to amending maps filed in accordance with the provisions of Section 66469.

(Amended by Stats. 1983, Ch. 1224; Amended by Stats. 1985, Ch. 1199; Amended by Stats. 1987, Ch. 982; Amended by Stats. 1993, Ch. 906.)

66493. Security for payment of taxes/special assessments

(a) Whenever any part of the subdivision is subject to a lien for taxes or special assessments collected as taxes which are not yet payable, the final map or parcel map shall not be recorded until the owner or subdivider does both of the following:

(1) Files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located a certificate or statement prepared by the appropriate state or local official giving his or her estimate of those taxes or assessments.

(2) Executes and files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located, security conditioned upon the payment of all state, county, municipal, and local taxes and the current installment of principal and interest of all special assessments collected as taxes, which at the time the final map is recorded are a lien against the property, but which are not yet payable.

(b) If the land being subdivided is a portion of a larger parcel shown on the last preceding tax roll as a unit, the security for payment of taxes need be only for the sum which may be determined by the county to be sufficient to pay the

current and delinquent taxes on the land being subdivided, together with all accrued penalties and costs if those taxes have been or are allowed to become delinquent. Separate assessor's parcel numbers shall be given to the portion of the larger parcel which is not within the proposed subdivision and to the parcel or parcels which are within the proposed subdivision.

If the land being subdivided is tax-defaulted, it may be redeemed without the redemption of the remainder of the larger parcel of which it is a part pursuant to the Revenue and Taxation Code as if it were held in ownership separate from and other than the ownership of the remainder.

(c) A county may, by ordinance, require that if a property owner or subdivider deposits cash to secure the payment of the estimated taxes or special assessments required in paragraph (a) or (b), the county tax collector shall draw upon the cash deposit, at the request of the taxpayer, to pay the taxes or special assessments when they are payable.

(d) A county may, by ordinance, after consultation with the tax collector, waive the requirement to secure the payment of estimated taxes or special assessments, as required by subdivision (a) or (b), for a final parcel map of four or fewer parcels or for a lot line adjustment.

(e) Whenever land subject to a special assessment or bond which may be paid in full is divided by the line of a lot or parcel of the subdivision, that assessment or bond shall be paid in full; security shall be filed with the clerk of the board of supervisors, payable to the county as trustee for the assessment bondholders for the payment of the special assessment or bond; or the responsibility for payment of the assessment shall be certified as segregated pursuant to subdivision (f).

(f) Whenever land subject to a special assessment for payment of a bond would be divided by the line of a lot or parcel of a subdivision, and the special assessment is not paid in full or secured pursuant to subdivision (e), the final map or parcel map shall not be recorded until the owner or subdivider files with the clerk of the board of supervisors of the county a certificate prepared by the clerk of the legislative body that created the assessment district. The certificate shall certify that the legislative body has determined that provision has been made for segregation of the responsibility of each of the proposed new parcels for a portion of the assessment payment obligation in the manner provided in the statute pursuant to which the assessments were levied or to which the bonds were issued.

(g) In computing the amount of security for "taxes" in subdivision (a) or "current taxes" in subdivision (b), it shall only be necessary to consider amounts shown on the regular assessment roll or shown on any supplemental rolls prepared pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(h) This section shall not be applicable to amending maps filed in accordance with Section 66469.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1983, Ch. 1224; Amended by Stats. 1985, Ch. 114; Amended by Stats. 1986, Ch. 1420; Amended by Stats. 1987, Ch. 1388; Amended by Stats. 1993, Ch. 906.)

66494. Delinquency

(a) If the taxes or special assessments are allowed to become delinquent, the county shall recover from the security the principal sum of the security without proof of loss. The county shall apply the sum received in payment of any or all of such taxes or special assessments, including penalties and costs, if any, accruing thereto, to the proper state, county, municipal or district officers, for the satisfaction of the tax and special assessment liens and shall pay the balance, if any, over to the surety or depositor.

(b) If the taxes or special assessments are allowed to become delinquent and the security consists of a deposit of money, negotiable bond or instrument of credit, the clerk, subject to any rules of the board of supervisors with respect thereto, shall apply the proceeds thereof to the payment of such taxes and special assessments, including penalties and costs. Any excess proceeds shall be deposited in the county treasury for the benefit of the persons entitled thereto.

(c) If authorized by prior agreement with the subdivider or his or her sureties, when secured taxes become due the amount of taxes and special assessments may be paid to the county tax collector from the security deposit, or the negotiable paper or instrument of credit may be cashed and any excess proceeds placed in the county treasury subject to refund claim by the subdivider.

(Amended by Stats. 1981, Ch. 392.)

66494.1. Authority to delegate duties of clerk of board of supervisors

The board of supervisors may, by resolution, authorize any county officer to perform the duties required of the clerk of the board of supervisors under this article.

(Added by Stats. 1984, Ch. 866.)

Article 9. Monuments

66495. Survey monuments

At the time of making the survey for the final map or parcel map unless the survey is not required pursuant to Section 66448, the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Section 8771 of the Business and Professions Code so that another engineer or surveyor may readily retrace the survey. He shall also set such additional monuments as may be required by local ordinance. The local agency shall require that at least one exterior boundary line of the land being subdivided be adequately monumented or referenced before the map is recorded.

(Amended by Stats. 1977, Ch. 234.)

66496. Interior monuments

Interior monuments need not be set at the time the map is recorded, if the engineer or surveyor certifies on the map that the monuments will be set on or before a specified later date, and if the subdivider furnishes to the legislative body security guaranteeing the payment of the cost of setting such monuments.

(Added by Stats. 1974, Ch. 1536.)

66497. Notice of setting monuments

Within five days after the final setting of all monuments has been completed, the engineer or surveyor shall give written notice to the subdivider, and to the city engineer or the county surveyor or any other public official or employee authorized to receive these notices, that the final monuments have been set.

Upon payment to the engineer or surveyor for setting the final monuments, the subdivider shall present to the legislative body evidence of the payment and receipt thereof by the engineer or surveyor. In the case of a cash deposit, the legislative body shall pay the engineer or surveyor for the setting of the final monuments from the cash deposit, if so requested by the depositor.

If the subdivider does not present evidence to the legislative body that the engineer or surveyor has been paid for the setting of the final monuments, and if the engineer or surveyor notifies the legislative body that payment has not been received from the subdivider for the setting of the final monuments, the legislative body shall, within three months from the date of the notification, pay to the engineer or surveyor from any deposit the amount due.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1985, Ch. 1504.)

66498. Substitution of engineer

In the event of the death, disability or retirement from practice of the engineer or surveyor charged with the responsibility for setting monuments, or in the event of his refusal to set such monuments, the legislative body may direct the county surveyor or city engineer, or such engineer or surveyor as it may select, to set such monuments. If the original engineer or surveyor is replaced by another, the former may, by letter to the county surveyor or city engineer, release his obligation to set the final monuments to the surveyor or engineer who replaced him. When the monuments are so set, the substitute engineer or surveyor shall amend any map filed pursuant to this division in accordance with the provisions of Sections 66469 to 66472, inclusive. All provisions of this article relating to payment shall apply to the services performed by the substituted engineer or surveyor.

(Amended by Stats. 1979, Ch. 383.)

Chapter 4.5. Development Rights

66498.1. Filing of vesting tentative maps

(a) Whenever a provision of this division requires that a tentative map be filed, a vesting tentative map may instead be filed.

(b) When a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2. However, if Section 66474.2 is repealed, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.

(c) Notwithstanding subdivision (b), the local agency may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

(1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required in order to comply with state or federal law.

(d) The rights conferred by this section shall expire if a final map is not approved prior to the expiration of the vesting tentative map. If the final map is approved, the rights conferred by this section shall be subject to the periods of time set forth in subdivisions (b), (c), and (d) of Section 66498.5.

(e) Consistent with subdivision (b), an approved or conditionally approved vesting tentative map shall not limit a local agency from imposing reasonable conditions on subsequent required approvals or permits necessary for the development and authorized by the ordinances, policies, and standards described in subdivision (b).

(Added by Stats. 1984, Ch. 1113; Amended by Stats. 1986, Ch. 613.)

Note: Stats. 1984, Ch. 1113, also reads:

SEC. 1. By this enactment, the Legislature intends to accomplish all of the following objectives:

(a) To establish a procedure for the approval of tentative maps that will provide certain statutorily vested rights to a subdivider.

(b) To ensure that local requirements governing the development of a proposed subdivision are established in accordance with Section 66498.1 of the Government Code when a local agency approves or conditionally approves a vesting tentative map. The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the

approving local agency, provided the time periods established by this enactment have not elapsed.

(c) To ensure that local agencies have maximum discretion, consistent with Section 66498.1 of the Government Code, in the imposition of conditions on any approvals occurring subsequent to the approval or conditional approval of the vesting tentative map, so long as that discretion is not exercised in a manner which precludes a subdivider from proceeding with the proposed subdivision.

66498.2. Amendment to vesting tentative map

If the ordinances, policies, or standards described in subdivision (b) of Section 66498.1 are changed subsequent to the approval or conditional approval of a vesting tentative map, the subdivider, or his or her assignee, at any time prior to the expiration of the vesting tentative map pursuant to subdivisions (b), (c), and (d) of Section 66498.5, may apply for an amendment to the vesting tentative map to secure a vested right to proceed with the changed ordinances, policies, or standards. An application shall clearly specify the changed ordinances, policies, or standards for which the amendment is sought.

(Added by Stats. 1984, Ch. 1113. See note following Section 66498.1; Amended by Stats. 1986, Ch. 613.)

66498.3. Amendment to vesting tentative map

(a) Whenever a subdivider files a vesting tentative map for a subdivision whose intended development is inconsistent with the zoning ordinance in existence at that time, that inconsistency shall be noted on the map. The local agency may deny a vesting tentative map or approve it conditioned on the subdivider, or his or her designee, obtaining the necessary change in the zoning ordinance to eliminate the inconsistency. If the change in the zoning ordinance is obtained, the approved or conditionally approved vesting tentative map shall, notwithstanding subdivision (b) of Section 66498.1, confer the vested right to proceed with the development in substantial compliance with the change in the zoning ordinance and the map, as approved.

(b) The rights conferred by this section shall be for the time periods set forth in subdivisions (b), (c), and (d) of Section 66498.5.

(Added by Stats. 1984, Ch. 1113. See note following Section 66498.1; Amended by Stats. 1986, Ch. 613.)

66498.4. Development approval/permits

Notwithstanding any provision of this chapter, a property owner or his or her designee may seek approvals or permits for development which depart from the ordinances, policies, and standards described in subdivision (b) of Section 66498.1 and subdivision (a) of Section 66498.3, and local agencies may grant these approvals or issue these permits to the extent that the departures are authorized under applicable law.

(Added by Stats. 1984, Ch. 1113. See note following Section 66498.1; Amended by Stats. 1986, Ch. 613.)

66498.5. Filing not prerequisite to development approval

(a) If a subdivider does not seek the rights conferred by this chapter, the filing of a vesting tentative map shall not be a prerequisite to any approval for any proposed subdivision, permit for construction, or work preparatory to construction.

(b) The rights conferred by a vesting tentative map as provided by this chapter shall last for an initial time period, as provided by ordinance, but shall not be less than one year or more than two years beyond the recording of the final map. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, the one-year initial time period shall begin for each phase when the final map for that phase is recorded.

(c) The initial time period shall be automatically extended by any time used by the local agency for processing a complete application for a grading permit or for design or architectural review, if the time used by the local agency to process the application exceeds 30 days from the date that a complete application is filed. At any time prior to the expiration of the initial time period provided by this section, the subdivider may apply for a one-year extension. If the extension is denied by an advisory agency, the subdivider may appeal that denial to the legislative body within 15 days.

(d) If the subdivider submits a complete application for a building permit during the periods of time specified in subdivision (c), the rights conferred by this chapter shall continue until the expiration of that permit, or any extension of that permit granted by the local agency.

(Added by Stats. 1984, Ch. 1113. See note following Section 66498.1; Amended by Stats. 1986, Ch. 613.)

66498.6. Effect on local/state/federal requirements

(a) This chapter does not enlarge, diminish, or alter the types of conditions which may be imposed by a local agency on a development, nor in any way diminish or alter the power of local agencies to protect against a condition dangerous to the public health or safety.

(b) The rights conferred by this chapter shall relate only to the imposition by local agencies of conditions or requirements created and imposed by local ordinances. Nothing in this chapter removes, diminishes, or affects the obligation of any subdivider to comply with the conditions and requirements of any state or federal laws, regulations, or policies and does not grant local agencies the option to disregard any state or federal laws, regulations, or policies.

(Added by Stats. 1984, Ch. 1113. See note following Section 66498.1; Amended by Stats. 1986, Ch. 613.)

66498.7. Applicability

(a) Until December 31, 1987, this chapter shall apply only to residential developments.

(b) On and after January 1, 1988, an ordinance adopted pursuant to subdivision (g) of Section 66452.6 may differentiate between residential and nonresidential developments in prescribing the initial time period after which the rights conferred by a vesting tentative map shall expire. In no event, however, shall that period be less for residential developments than for nonresidential developments.

(Added by Stats. 1984, Ch. 1113. See note following Section 66498.1; Amended by Stats. 1985, Ch. 995.)

66498.8. Implementation

(a) On or before January 1, 1986, a city, county, or city and county shall adopt ordinances or resolutions necessary or appropriate for the implementation of this chapter.

(b) If a city, county, or city and county receives a written request to implement this chapter, it shall adopt any ordinances or resolutions it determines necessary or appropriate to implement this chapter. The city, county, or city and county shall adopt the ordinances or resolutions not more than 120 days from the date the request is made and any fee is paid to cover the direct expenses the city, county, or city and county determines it will incur in processing the ordinances or resolutions. The city, county, or city and county may arrange, with the person making the request, to collect fees from subdividers filing vesting tentative maps and to reimburse the person requesting the ordinance or resolution for any costs so advanced by that person.

(c) The local agency may charge subdividers who file vesting tentative maps a fee in an amount sufficient to recover the direct costs associated with establishing and adopting ordinances or resolutions pursuant to subdivision (a) or (b).

(d) No ordinances or resolutions adopted pursuant to subdivision (a) may require more information than that related to ordinances, resolutions, policies, or standards for the design, development, or improvement relating to the conferred rights, except where necessary:

(1) To permit the public agency to make the determination required by Section 21080.1 of the Public Resources Code, as provided by Section 65941.

(2) To comply with federal or state requirements.

(Added by Stats. 1984, Ch. 1113. See note following Section 66498.1; Repealed and Added by Stats. 1985, Ch. 249; Amended by Stats. 1989, Ch. 717.)

66498.9. Legislative objectives

By the enactment of this article, the Legislature intends to accomplish all of the following objectives:

(a) To establish a procedure for the approval of tentative maps that will provide certain statutorily vested rights to a subdivider.

(b) To ensure that local requirements governing the development of a proposed subdivision are established in accordance with Section 66498.1 when a local agency approves or conditionally approves a vesting tentative map. The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency, provided the time periods established by this article have not elapsed.

(c) To ensure that local agencies have maximum discretion, consistent with Section 66498.1, in the imposition of conditions on any approvals occurring subsequent to the approval or conditional approval of the vesting tentative map, so long as that discretion is not exercised in a manner which precludes a subdivider from proceeding with the proposed subdivision.

(Added by Stats. 1986, Ch. 613.)

Chapter 5. Improvement Security

66499. Security for improvements

(a) Whenever this division or a local ordinance authorizes or requires the furnishing of security in connection with the performance of any act or agreement, if the developer is not a nonprofit corporation described in subdivision (c) of Section 66499.3, the security shall be one of the following at the option of and subject to the approval of the local agency and if the developer is a nonprofit corporation described in subdivision (c) of Section 66499.3, the security shall be one of the following, subject to the approval of the local agency:

(1) Bond or bonds by one or more duly authorized corporate sureties.

(2) A deposit, either with the local agency or a responsible escrow agent or trust company, at the option of the local agency, of money or negotiable bonds of the kind approved for securing deposits of public moneys.

(3) An instrument of credit from an agency of the state, federal, or local government when any agency of the state, federal, or local government provides at least 20 percent of the financing for the portion of the act or agreement requiring security, or from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment, or a letter of credit issued by such a financial institution.

(4) A lien upon the property to be divided, created by contract between the owner and the local agency, if the local agency finds that it would not be in the public interest to require the installation of the required improvement sooner than two years after the recordation of the map.

(5) Any form of security, including security interests in real property, which is acceptable to the local agency and specified by ordinance thereof.

(b) Any contract or security interest in real property entered into as security for performance pursuant to paragraph (4) or paragraph (5) of subdivision (a) shall be recorded with the county recorder of the county in which the subject real property is located. From the time of recordation of the written contract or document creating a security interest, a lien shall attach to the real property particularly described therein and shall have the priority of a judgment lien in an amount necessary to complete the agreed to improvements. The recorded contract or security document shall be indexed in the Grantor Index to the names of all record owners of the real property as specified on the map and in the Grantee Index to the local agency approving the map.

The local agency may at any time release all or any portion of the property subject to any lien or security interest created by this subdivision or subordinate the lien or security interest to other liens or encumbrances if it determines that security for performance is sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the completion of agreed upon improvements.

(Amended by Stats. 1982, Ch. 657; Amended by Stats. 1988, Ch. 1308.)

66499.1. Bond form

Except as provided in Section 66499.3, a bond or bonds by one or more duly authorized corporate sureties to secure the faithful performance of any agreement shall be in substantially the following form:

Whereas, The Board of Supervisors of the County of ____ (or the City Council of the City of ____), State of California, and ____ (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated ____, 20_, and identified as project ____, is hereby referred to and made a part hereof; and

Whereas, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and ____, as surety, are held and firmly bound unto the County of ____, (or City of ____) hereinafter called ("____"), in the penal sum of ____ dollars ($____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless ____, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county (or city) in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on ____, 20_.

Appropriate modifications shall be made in such form if the bond is being furnished for the performance of an act not provided for by agreement.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1988, Ch. 1308.)

66499.2. Mechanic's lien bond form

A bond or bonds by one or more duly authorized corporate sureties for the security of laborers and materialmen shall be in substantially the following form:

Whereas, The Board of Supervisors of the County of ____ (or City Council of the City of ____), State of California, and ____ (hereinafter designated as "the principal") have entered into an agreement whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated ____, 20_, and identified as project ____, is hereby referred to and made a part hereof; and

Whereas, Under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the County of ____ (or the City of ____) to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, are held firmly bound unto the County of ____ (or the City of ____) and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of ____ dollars ($____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county (or city) in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on ____, 20__.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 2001, Ch. 176.)

66499.3. Amount of security

Security to guarantee the performance of any act or agreement shall be in the following amounts:

(a) An amount determined by the legislative body, not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or of the act to be performed, conditioned upon the faithful performance of the act or agreement; and

(b) An additional amount determined by the legislative body, not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or the performance of the required act, securing payment to the contractor, to the subcontractors, and to persons furnishing labor, materials, or equipment to them for the improvement or the performance of the required act.

(c) Whenever an entity required to furnish security in accordance with subdivisions (a) and (b) is a California nonprofit corporation, funded by the United States of America or one of its agencies, or funded by this state or one of its agencies, the entity shall not be required to comply with subdivisions (a) and (b), if the following conditions are met:

(1) A letter or letters of credit are provided pursuant to paragraph (3) of subdivision (a) of Section 66499 for 100 percent of the contract of improvements or the contractor installing the improvements has bonded to the nonprofit corporation and the local agency as co-obligee the amount of 100 percent of the contract for the faithful performance of the work, and has further bonded to the nonprofit corporation and the local agency as co-obligee an amount of not less than 50 percent of the contract for the payment of labor and materials, and those bonds comply with the provisions of this chapter.

(2) All moneys under the control of the nonprofit corporation and payable to the contractor by the nonprofit corporation are deposited in a depository complying with the provisions of this chapter, and out of which moneys progress payments are conditioned upon:

(A) The contractor's certification to the nonprofit corporation that all labor performed in the work, and all materials furnished to and installed in the work, have been paid for in full to the date of the certification.

(B) The written approval of the nonprofit corporation.

(C) Review and approval of progress payment billings by local government.

(D) Final payment to the contractor not being made until 30 days shall have expired after the filing and recording of the notice of completion of the work and acceptance of the work by, and a waiver of lien rights provided by the contractor to, the local agency in writing.

(3) All certifications as to progress payments shall be delivered through the United States mail to the nonprofit corporation. The term "progress payments" means payments made in compliance with the schedule of partial payments agreed upon in the contract for the work. No less than 10 percent of the total contract price shall be retained for the 60 days following the filing of the notice of completion.

(d) Subject to the limitations of Section 66499.9, an amount determined by the legislative body necessary for the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof

against any defective work or labor done, or defective materials furnished.

(Amended by Stats. 1982, Ch. 489; Amended by Stats. 1988, Ch. 1308.)

66499.4. Additional security

As a part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the local agency in successfully enforcing the obligation secured.

(Added by Stats. 1974, Ch. 1536.)

66499.5. Improved security

If the required subdivision improvements are financed and installed pursuant to special assessment proceedings, the local agency at its option may provide by local ordinance that, upon the furnishing by the contractor of the faithful performance and labor and material bonds required by the special assessment act being used, the improvement security of the subdivider may be reduced by an amount corresponding to the amount of such bonds so furnished by the contractor.

(Added by Stats. 1974, Ch. 1536.)

66499.6. Trust fund

Such money, negotiable bond or instrument of credit shall be a trust fund to guarantee performance and shall not be subject to enforcement of a money judgment by any creditors of the depositor until the obligation secured thereby is performed to the satisfaction of the local agency.

(Amended by Stats. 1982, Ch. 497.)

66499.7. Release of security

The security furnished by the subdivider shall be released in whole or in part in the following manner: (a) Security given for faithful performance of any act or agreement shall be released upon the performance of the act or final completion and acceptance of the required work, or the legislative body may provide for the partial release of the security upon the partial performance of the act or the acceptance of the work as it progresses, under rules established by the legislative body. If the security furnished by the subdivider is a letter of credit, the legislative body shall release the letter of credit by returning the original letter of credit to the issuer of the letter of credit upon performance of the act or final completion and acceptance of the required work. In the event that the legislative body is unable to return the original letter of credit to the issuer of the letter of credit, the security shall be released by written notice sent by certified mail to the subdivider and issuer of the letter of credit within 30 days of the acceptance of the work. The written notice shall contain a statement that the work for which the security was furnished has been performed or completed and accepted by the legislative body, a description of the project subject to the letter of credit and the notarized signature of the authorized representative of the legislative body.

(b) Security securing the payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, after passage of the time within which claims of lien are required to be recorded pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil Code and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body, and if no claims have been recorded, the security shall be released in full.

The release shall not apply to any required guarantee and warranty period required by Section 66499.9 for the guarantee or warranty nor to the amount of the security deemed necessary by the local agency for the guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorneys' fees.

The legislative body may authorize any of its public officers or employees to authorize release or reduction of the security in accordance with the conditions hereinabove set forth and in accordance with any rules that it may prescribe.

(Amended by Stats. 1983, Ch. 1195; Amended by Stats. 1988, Ch. 1308.)

66499.8. Release subject to approval of another agency

In all cases where the performance of the obligation for which the security is required is subject to the approval of another agency, the local agency shall not release the security until the obligation is performed to the satisfaction of such other agency. Such agency shall have two months after completion of the performance of the obligation to register its satisfaction or dissatisfaction. If at the end of that period it has not registered its satisfaction or dissatisfaction, it shall be conclusively deemed that the performance of the obligation was done to its satisfaction.

(Added by Stats. 1974, Ch. 1536.)

66499.9. Liability on security

Any liability upon the security given for the faithful performance of any act or agreement shall be limited to:

(a) The performance of the work covered by the agreement between the subdivider and the legislative body or the performance of the required act.

(b) The performance of any changes or alterations in such work; provided, that all such changes or alterations do not exceed 10 percent of the original estimated cost of the improvement.

(c) The guarantee and warranty of the work, for a period of one year following completion and acceptance thereof,

against any defective work or labor done or defective materials furnished, in the performance of the agreement with the legislative body or the performance of the act.

(d) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(Added by Stats. 1974, Ch. 1536.)

66499.10. Suit against holders of security

Where the security is conditioned upon the payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment to them for the improvement of the performance of an act and takes the form of a deposit of money or negotiable bonds, a suit to recover the amount due the claimant may be maintained against the holder of such deposit. Where the security takes the form of a surety bond, or surety bonds, the right of recovery shall be in a suit against the surety. Where the security takes the form of an instrument of credit, the cause of action shall be against the financial institution obligating itself on such instrument of credit.

(Added by Stats. 1974, Ch. 1536.)

Chapter 6. Reversions and Exclusions

Article 1. Reversion to Acreage

66499.11. Authority

Subdivided real property may be reverted to acreage pursuant to the provisions of this article.

(Added by Stats. 1974, Ch. 1536.)

66499.12. Initiation of proceedings

Proceedings for reversion to acreage may be initiated by the legislative body on its own motion or by petition of all of the owners of record of the real property within the subdivision.

(Added by Stats. 1974, Ch. 1536.)

66499.13. Form of petition

The petition shall be in a form prescribed by the local agency and shall contain the following:

(a) Adequate evidence of title to the real property within the subdivision.

(b) Sufficient data to enable the legislative body to make all of the determinations and findings required by this article.

(c) A final map which delineates dedications which will not be vacated and dedications which are a condition to reversion.

(d) Such other pertinent information as may be required by the local agency.

(Added by Stats. 1974, Ch. 1536.)

66499.14. Fees

The legislative body may establish a fee for processing reversions to acreage pursuant to this article in an amount which will reimburse the local agency for all costs incurred in processing such reversion to acreage. Such fee shall be paid by the owners at the time of filing the petition for reversion to acreage, or if the proceedings for reversion to acreage are initiated by the legislative body on its own motion shall be paid by the person or persons requesting the legislative body to proceed pursuant to this article before such initiation of proceedings.

(Added by Stats. 1974, Ch. 1536.)

66499.15. Public hearing

A public hearing shall be held on the proposed reversion to acreage. Notice thereof shall be given in the time and manner provided in Section 66451.3.

(Added by Stats. 1974, Ch. 1536.)

66499.16. Findings

Subdivided real property may be reverted to acreage only if the legislative body finds that:

(a) Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and

(b) Either:

(1) All owners of an interest in the real property within the subdivision have consented to reversion; or

(2) None of the improvements required to be made have been made within two years from the date the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is the later; or

(3) No lots shown on the final or parcel map have been sold within five years from the date such map was filed for record.

(Added by Stats. 1974, Ch. 1536.)

66499.17. Conditions of reversion

As conditions of reversion the legislative body shall require:

(a) Dedications or offers of dedication necessary for the purposes specified by local ordinance following reversion.

(b) Retention of all previously paid fees if necessary to accomplish the purposes of this division or local ordinance adopted pursuant thereto.

(c) Retention of any portion of required improvement security or deposits if necessary to accomplish the purposes of this division of local ordinance adopted pursuant thereto.

(Added by Stats. 1974, Ch. 1536.)

66499.18. When effective

Reversion shall be effective upon the final map being filed for record by the county recorder, and thereupon all

dedications and offers of dedication not shown thereon shall be of no further force or effect.

(Added by Stats. 1974, Ch. 1536.)

66499.19. Effect of reversion

When a reversion is effective, all fees and deposits shall be returned to the current owner of the property and all improvement security released, except those retained pursuant to Section 66499.17.

(Added by Stats. 1974, Ch. 1536; Added by Stats. 2000., Ch. 506.)

66499.20. Tax bond

A tax bond shall not be required in reversion proceedings.

(Added by Stats. 1974, Ch. 1536.)

66499.20-1/4. Use of parcel map for merger

A city or county may, by ordinance, authorize a parcel map to be filed under the provisions of this chapter for the purpose of reverting to acreage land previously subdivided and consisting of four or less contiguous parcels under the same ownership. Any map so submitted shall be accompanied by evidence of title and nonuse or lack of necessity of any public streets or public easements which are to be vacated or abandoned. Any public streets or public easements to be left in effect after the reversion shall be adequately delineated on the map. After approval of the reversion by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal reversion to acreage of the land affected thereby, and shall also constitute abandonment of all public streets or public easements not shown on the map, provided however that written notation of each abandonment is listed by reference to the recording data creating those public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map. The filing of the map shall also constitute a merger of the separate parcels into one parcel for purposes of this chapter and shall thereafter be shown as such on the assessment roll subject to the provisions of Section 66445. Except as provided in subdivision (f) of Section 66445, on any parcel map used for reverting acreage, a certificate shall appear signed and acknowledged by all parties having any record title interest in the land being reverted, consenting to the preparation and filing of the parcel map.

(Amended and renumbered by Stats. 1982, Ch. 87; Amended by Stats. 1993, Ch. 906.)

66499.20-1/2. Merger and resubdivision

Subdivided lands may be merged and resubdivided without reverting to acreage by complying with all the applicable requirements for the subdivision of land as provided by this division and any local ordinances adopted pursuant thereto. The filing of the final map or parcel map shall constitute legal merging of the separate parcels into one parcel and the resubdivision of such parcel, and the real property shall thereafter be shown with the new lot or parcel boundaries on the assessment roll. Any unused fees or deposits previously made pursuant to this division pertaining to the property shall be credited pro rata towards any requirements for the same purposes which are applicable at the time of resubdivision. Any public streets or public easements to be left in effect after the resubdivision shall be adequately delineated on the map. After approval of the merger and resubdivision by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal merger and resubdivision of the land affected thereby, and shall also constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data creating these public streets or public easements, and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map.

(Amended and renumbered by Stats. 1982, Ch. 87; Amended by Stats. 1993, Ch. 906.)

66499.203/4. Merger without reversion to acreage

A city or county may, by ordinance, authorize the merger of contiguous parcels under common ownership without reverting to acreage. Such ordinance shall require the recordation of an instrument evidencing the merger.

(Added by Stats. 1982, Ch. 87.)

Article 2. Exclusions

66499.21. Exclusion by court

The superior court of the county in which a subdivision is situated may cause all or any portion of the real property included within the boundaries of the subdivision to be excluded from such subdivision and the recorded map to be altered or vacated, in accordance with the procedures set forth in this article.

(Added by Stats. 1974, Ch. 1536.)

66499.22. Procedure

A proceeding for exclusion shall be initiated by filing a petition therefor in the offices of the county surveyor and clerk of the board of supervisors of the county in which the subdivision or the portion thereof sought to be excluded is situated. The petition shall accurately and distinctly describe the real property sought to be excluded by reference to the recorded map or by any accurate survey, shall show the names and addresses of all owners of real property in the subdivision or in the portion thereof sought to be excluded

as far as the same are known to the petitioners, and shall set forth the reasons for the requested exclusion. The petition shall be signed and verified by the owners of at least two-thirds of the total area of the real property sought to be excluded.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 2002, Ch. 221.)

66499.23. New map

The petition shall be accompanied by a new map showing the boundaries of the subdivision as it appears after the exclusion and alteration. The new map shall designate as numbered or lettered parcels those portions excluded and show the acreage of each parcel. If the map can be compiled from data available, an actual field survey shall not be required. If the map meets with the approval of the county surveyor, a statement by an engineer or surveyor shall not be required.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1987, Ch. 982.)

66499.24. Notice

Upon the filing of a petition pursuant to this article, any judge of the superior court of the county in which the real property is situated shall make an order directing the clerk of the court to give notice of the filing of the petition. The notice shall be for once a week for a period of not less than five consecutive weeks and shall be given by publication in some newspaper of general circulation within the county, or if there is no newspaper published therein, by posting in three of the principal places in the county; provided, that if such real property or any portion thereof is situated within a city, the notice shall be given by publication in some newspaper of general circulation within the city, or if there is no newspaper published therein, by posting in three of the principal places in the city. Such notice shall contain a statement of the nature of the petition together with a direction that any person may file his written objection to the petition at any time before the expiration of the time of publication or posting. Upon expiration of the time of publication or posting, an affidavit showing such publication or posting shall be filed with the clerk of the court.

(Added by Stats. 1974, Ch. 1536.)

66499.25. Hearing

The court may, if no objection has been filed, proceed without further notice to hear the petition. If during the hearing the petitioners produce to the court satisfactory evidence of the necessity of the exclusion of the real property, that the owners of two-thirds of the area of the real property sought to be excluded are the petitioners, and that there is no reasonable objection to making such exclusion, the court may proceed to exclude the real property sought to be excluded by the petition, and order the alteration or vacation of the recorded map, and enter its decree accordingly.

(Added by Stats. 1974, Ch. 1536.)

66499.26. Material objection

If objection is made to the petition which, in the judgment of the court is material, the court shall proceed to hear such objection and may adjourn the proceedings to such time as may be necessary upon proper notice to the petitioners and the objectors.

(Added by Stats. 1974, Ch. 1536.)

66499.27. Effect on public streets

The exclusion of any real property or the alteration or vacation of any recorded map pursuant to this article shall not affect or vacate the whole or any part of any public street or highway.

(Added by Stats. 1974, Ch. 1536.)

66499.28. Filing of court decree

A certified copy of the decree of the superior court excluding any real property or ordering the alteration or vacation of any recorded map pursuant to this article shall be recorded in the office of the county recorder of the county in which such real property is situated. The county recorder shall make upon the face of any such recorded map a memorandum stating briefly that such recorded map has been altered or vacated, whichever the case may be, and giving the date and reference of such decree.

(Added by Stats. 1974, Ch. 1536.)

66499.29. Filing with local agency

At the time a certified copy of the decree of court is recorded, a copy of the new map required by Section 66499.23 shall be filed for record with the county recorder who shall file it in accordance with the provisions of Section 66466. A copy of the new map shall also be filed with the local agency. A reference to this map shall be sufficient identification of the real property for reassessment purposes.

(Added by Stats. 1974, Ch. 1536.)

Chapter 7. Enforcement and Judicial Review

Article 1. Prohibition and Penalty

66499.30. Final map compliance

(a) No person shall sell, lease, or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a final map is required by this division or local ordinance, until the final

map thereof in full compliance with this division and any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(b) No person shall sell, lease or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a parcel map is required by this division or local ordinance, until the parcel map thereof in full compliance with this division and any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(c) Conveyances of any part of a division of real property for which a final or parcel map is required by this division or local ordinance shall not be made by parcel or block number, initial or other designation, unless and until the final or parcel map has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(d) Subdivisions (a), (b), and (c) do not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with or exempt from any law (including a local ordinance), regulating the design and improvement of subdivisions in effect at the time the subdivision was established.

(e) Nothing contained in subdivisions (a) and (b) shall be deemed to prohibit an offer or contract to sell, lease, or finance real property or to construct improvements thereon where the sale, lease, or financing, or the commencement of construction, is expressly conditioned upon the approval and filing of a final subdivision map or parcel map, as required under this division.

(f) Nothing in subdivisions (a) to (e), inclusive, shall in any way modify or affect Section 11018.2 of the Business and Professions Code.

(g) For purposes of this section, the limitation period for commencing an action, either civil or criminal, against the subdivider or an owner of record at the time of a violation of this division or of a local ordinance enacted pursuant to this division, shall be tolled for any time period during which there is no constructive notice of the transaction constituting the violation, because the owner of record, at the time of the violation or at any time thereafter, failed to record a deed, lease, or financing document with the county recorder.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1982, Ch. 87; Amended by Stats. 1987, Ch. 799.)

Note: Stats. 1982, Ch. 87 also reads:

SEC. 32. The amendments made to Section 66499.30 of the Government Code by this act are intended to overrule Attorney General's Opinion No. 80-407 (July 10, 1980) and to authorize a person to offer or contract to sell, lease, finance, or convey, or construct improvements on a parcel of real property where the offer or contract is expressly conditioned upon the approval and filing of a final subdivision map or parcel map, as required by the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

66499.31. Violation/penalties

Each violation of this division by a person who is the subdivider or an owner of record, at the time of the violation, of property involved in the violation shall be punishable by imprisonment in the county jail not exceeding one year or in the state prison, by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment. Every other violation of this division is a misdemeanor.

(Repealed and added by Stats. 1987, Ch. 799.)

Article 2. Remedies

66499.32. Voidable conveyance

(a) Any deed of conveyance, sale or contract to sell real property which has been divided, or which has resulted from a division, in violation of the provisions of this division, or of the provisions of local ordinances enacted pursuant to this division, is voidable at the sole option of the grantee, buyer or person contracting to purchase, his heirs, personal representative, or trustee in insolvency or bankruptcy within one year after the date of discovery of the violation of the provisions of this division or of local ordinances enacted pursuant to the provisions of this division, but the deed of conveyance, sale or contract to sell is binding upon any successor in interest of the grantee, buyer or person contracting to purchase, other than those above enumerated, and upon the grantor, vendor, or person contracting to sell, or his assignee, heir or devisee.

(b) Any grantee, or his successor in interest, of real property which has been divided, or which has resulted from a division, in violation of the provisions of this division or of local ordinances enacted pursuant thereto, may, within one year of the date of discovery of such violation, bring an action in the superior court to recover any damages he has suffered by reason of such division of property. The action may be brought against the person who divided the property in violation of the provisions of this division or of local ordinances enacted pursuant thereto and against any successors in interest who have actual or constructive knowledge of such division of property.

The provisions of this section shall not apply to the conveyance of any parcel of real property identified in a certificate of compliance filed pursuant to Section 66499.35 or identified in a recorded final map or parcel map, from and after the date of recording.

The provisions of this section shall not limit or affect in any way the rights of a grantee or his successor in interest under any other provision of law.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1975, Ch. 24.)

66499.33. Alternative remedies

This division does not bar any legal, equitable or summary remedy to which any aggrieved local agency or other public agency, or any person, firm, or corporation may otherwise be entitled, and any such local agency or other public agency, or such person, firm, or corporation may file a suit in the superior court of the county in which any real property attempted to be subdivided or sold, leased, or financed in violation of this division or local ordinance enacted pursuant thereto is located, to restrain or enjoin any attempted or proposed subdivision or sale, lease, or financing in violation of this division or local ordinance enacted pursuant thereto.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1982, Ch. 87.)

66499.34. Permit denial if contrary to public health/safety

No local agency shall issue any permit or grant any approval necessary to develop any real property which has been divided, or which has resulted from a division, in violation of the provisions of this division or of the provisions of local ordinances enacted pursuant to this division if it finds that development of such real property is contrary to the public health or the public safety. The authority to deny such a permit or such approval shall apply whether the applicant therefor was the owner of record at the time of such violation or whether the applicant therefor is either the current owner of record or a vendee of the current owner of record pursuant to a contract of sale of the real property with, or without, actual or constructive knowledge of the violation at the time of the acquisition of his or her interest in such real property.

If a city or a county issues a permit or grants approval for the development of any such real property, it may impose only those conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest in such real property, and which has been established at such time by this division or local ordinance enacted pursuant thereto, except that where the applicant was the owner of record at the time of the initial violation of the provisions of this division or of local ordinances enacted pursuant thereto who, by a grant of the real property created a parcel or parcels in violation of this division or local ordinances enacted pursuant thereto, and such person is the current owner of record of one or more of the parcels which were created as a result of the grant in violation of the division or local ordinances enacted pursuant thereto, then the local agency may impose such conditions as would be applicable to a current division of the property, and except that if a conditional certificate of compliance has been filed for record under the provisions of subdivision (b) of Section 66499.35, only such conditions stipulated in that certificate shall be applicable.

The issuance of a permit or grant of approval for development of real property, or with respect to improvements that have been completed prior to the time a permit or grant of approval for development was required by local ordinances in effect at the time of the improvement, or with respect to improvements that have been completed in reliance upon a permit or grant of approval for development, shall constitute "real property which has been approved for development," for the purposes of subdivision (c) of Section 66499.35, and upon request by the person owning the real property or a vendee of such person pursuant to a contract of sale, the local agency shall issue a certificate of compliance for the affected real property.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1982, Ch. 87; Amended by Stats. 1984, Ch. 864.)

Note: Stats. 1982, Ch. 87 also reads:

SEC. 33. Amendments made to Section 66499.34 by this act are intended to eliminate the statutory authorization whereby a person who divides real property in violation of the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or local ordinances enacted pursuant thereto is himself or herself entitled to obtain a permit to develop such property based solely on conditions which could have been imposed upon such person at the time of the unlawful division.

66499.35. Certificate of compliance

(a) Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division and of local ordinances enacted pursuant to this division. If a local agency determines that the real property complies, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate of compliance shall identify the real property and shall state that the division of the real property complies with applicable provisions of this division and of local ordinances enacted pursuant to this division. The local agency may impose a reasonable fee to cover the cost of issuing and recording the certificate of compliance.

(b) If a local agency determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant to this division, it shall issue a conditional certificate of compliance. A local agency may, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and that had been established at that time by this division or local ordinance enacted pursuant to this division, except that where the applicant was the owner of record at the time of the initial violation of the provisions of this division or of

the local ordinances who by a grant of the real property created a parcel or parcels in violation of this division or local ordinances enacted pursuant to this division, and the person is the current owner of record of one or more of the parcels which were created as a result of the grant in violation of this division or those local ordinances, then the local agency may impose any conditions that would be applicable to a current division of the property. Upon making the determination and establishing the conditions, the city or county shall cause a conditional certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate shall serve as notice to the property owner or vendee who has applied for the certificate pursuant to this section, a grantee of the property owner, or any subsequent transferee or assignee of the property that the fulfillment and implementation of these conditions shall be required prior to subsequent issuance of a permit or other grant of approval for development of the property.

Compliance with these conditions shall not be required until the time that a permit or other grant of approval for development of the property is issued by the local agency.

(c) A certificate of compliance shall be issued for any real property that has been approved for development pursuant to Section 66499.34.

(d) A recorded final map, parcel map, official map, or an approved certificate of exception shall constitute a certificate of compliance with respect to the parcels of real property described therein.

(e) An official map prepared pursuant to subdivision (b) of Section 66499.52 shall constitute a certificate of compliance with respect to the parcels of real property described therein and may be filed for record, whether or not the parcels are contiguous, so long as the parcels are within the same section or, with the approval of the city engineer or county surveyor, within contiguous sections of land.

(f) (1) Each certificate of compliance or conditional certificate of compliance shall include information the local agency deems necessary, including, but not limited to, all of the following:

(A) Name or names of owners of the parcel.

(B) Assessor parcel number or numbers of the parcel.

(C) The number of parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.

(D) Legal description of the parcel or parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.

(E) A notice stating as follows:

This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act and local ordinances enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcel may require issuance of a permit or permits, or other grant or grants of approval.

(F) Any conditions to be fulfilled and implemented prior to subsequent issuance of a permit or other grant of approval for development of the property, as specified in the conditional certificate of compliance.

(2) Local agencies may process applications for certificates of compliance or conditional certificates of compliance concurrently and may record a single certificate of compliance or a single conditional certificate of compliance for multiple parcels. Where a single certificate of compliance or conditional certificate of compliance is certifying multiple parcels, each as to compliance with the provisions of this division and with local ordinances enacted pursuant thereto, the single certificate of compliance or conditional certificate of compliance shall clearly identify, and distinguish between, the descriptions of each parcel.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1982, Ch. 87; Amended by Stats. 1983, Ch. 677; Amended by Stats. 1988, Ch. 1041; Amended by Stats. 1993, Ch. 500; Amended by Stats. 1994, Ch. 655; Amended by Stats. 2001, Ch. 873; Amended by Stats. 2002, Ch. 1109.)

66499.36. Notice of violation

Whenever a local agency has knowledge that real property has been divided in violation of the provisions of this division or of local ordinances enacted pursuant to this division, it shall cause to be mailed by certified mail to the then current owner of record of the property a notice of intention to record a notice of violation, describing the real property in detail, naming the owners thereof, and stating that an opportunity will be given to the owner to present evidence. The notice shall specify a time, date, and place for a meeting at which the owner may present evidence to the legislative body or advisory agency why the notice should not be recorded. The notice shall also contain a description of the violations and an explanation as to why the subject parcel is not lawful under subdivision (a) or (b) of Section 66412.6.

The meeting shall take place no sooner than 30 days and no later than 60 days from date of mailing. If, within 15 days of receipt of the notice, the owner of the real property fails to inform the local agency of his or her objection to recording the notice of violation, the legislative body or advisory agency shall record the notice of violation with the county recorder. If, after the owner has presented evidence, it is determined that there has been no violation, the local agency shall mail a clearance letter to the then current owner of record. If, however, after the owner has presented evidence, the legislative body or advisory agency determines that the property has in fact been illegally

divided, the legislative body or advisory agency shall record the notice of violation with the county recorder.

The notice of violation, when recorded, shall be deemed to be constructive notice of the violation to all successors in interest in such property. The county recorder shall index the names of the fee owners in the general index.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1984, Ch. 864.)

Article 3. Judicial Review

66499.37. Scope of review

Any action or proceeding to attack, review, set aside, void or annul the decision of an advisory agency, appeal board or legislative body concerning a subdivision, or of any of the proceedings, acts or determinations taken, done or made prior to such decision, or to determine the reasonableness, legality or validity of any condition attached thereto, shall not be maintained by any person unless such action or proceeding is commenced and service of summons effected within 90 days after the date of such decision. Thereafter all persons are barred from any such action or proceeding or any defense of invalidity or unreasonableness of such decision or of such proceedings, acts or determinations. Any such proceeding shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain and forcible entry and unlawful detainer proceedings.

(Added by Stats. 1974, Ch. 1536; Amended by Stats. 1980, Ch. 1152.)

OFFICIAL MAPS

(California Government Code)

DIVISION 3. OFFICIAL MAPS

66499.50. Applicability

This division applies to all counties and, whether incorporated or not, to all cities, towns and villages in this state.

(Added by Stats. 1975, Ch. 24.)

66499.51. Definitions

As used in this division:

(a) "City council or board of supervisors" includes the proper corresponding governing board and authority in each place where the division applies.

(b) "City engineer" and "county surveyor" includes the like or corresponding officer, subject to the direction of the corresponding governing board and authority in each place where the division applies.

(c) If there is no city engineer or county surveyor subject to such direction, the corresponding board and authority may employ competent engineers and surveyors to the extent necessary for the carrying out of the purposes of this division in the places subject to its jurisdiction, and the persons so appointed shall have the same authority and shall perform the same duties as are given to and enjoined upon city engineers and county surveyors, respectively, in like cases. The services of engineers and surveyors so employed shall be contracted for, examined, passed upon, audited and paid as are other debts contracted by such governing boards and authorities.

(Added by Stats. 1975, Ch. 24.)

66499.52. Preparation of official map

(a) Whenever any city, town or subdivision of land is platted or divided into lots or blocks, and whenever any addition to any city, town or subdivision is laid out into lots or blocks for the purpose of sale or transfer, the city engineer or the county surveyor, under the direction and with the approval of the city council or board of supervisors, may make an official map of the city, town or subdivision, giving to each block on the map a number, and to each lot or subdivision in the block a separate number or letter, and giving names to the streets, avenues, lanes, courts, commons or parks, as may be delineated on the official map.

(b) In a city or county which has adopted the procedure prescribed herein, any surveyor or engineer, under the review of the city engineer or county surveyor, may prepare an official map to be filed for record pursuant to subdivisions (d) and (e) of Section 66499.35. The map shall be prepared in accordance with the map format specifications of subdivisions (a) to (f), inclusive, of Section 66434. Payment for the services of the city engineer or county surveyor, and any charges required by local ordinance to be paid for the cost of processing the official map by the city engineer or county surveyor, shall be the responsibility of the applicant. The official map shall include an engineer's or surveyor's certificate stating that the map was prepared pursuant to the provisions of this section, and an approval certificate of the city engineer or county surveyor. The certificate shall be signed, and, below or immediately adjacent to the signature, indicate the license or registration number with expiration date of the registered civil engineer or licensed land surveyor preparing and approving the official map.

(Amended by Stats. 1983, Ch. 677.)

66499.53. Compilation of maps, resurvey, renumber, change of street names

The engineer or surveyor, under the direction and with the approval of the city council or board of supervisors, may compile the map from maps on file, or may resurvey or renumber the blocks, or renumber or reletter the lots in the blocks, or change the names of streets.

(Added by Stats. 1975, Ch. 24.)

66499.54. Certification

Each and every map made and adopted under this division shall be certified under the hands of a majority of the members and the presiding officer and secretary and official seal, if any, of the authority adopting the same. The certificate shall set forth in full the resolution adopting the map, with the date of adoption.

(Added by Stats. 1975, Ch. 24.)

66499.55. Filing with recorder

The map, so certified, shall be forthwith filed in the office of the county recorder of the county wherein the platted lands are situate. The recorder shall immediately securely fasten and bind each map so filed in one of a series of firmly bound books to be provided, together with the proper indexes thereof and appropriately marked for the reception of the maps provided for in this division.

(Added by Stats. 1975, Ch. 24.)

66499.56. Designation of final map

The map shall become an official map for all the purposes of this division when certified, filed and bound, but not before.

(Added by Stats. 1975, Ch. 24.)

66499.57. Description of lots or blocks by reference to map

Whenever the city council or board of supervisors adopts a map prepared under this division as the official map of the subdivision, town, city or county, it shall be lawful and sufficient to describe the lots or blocks in any deeds, conveyances, contracts, or obligations affecting any of the lots or blocks as designated on the official map, a reference sufficient for the identification of the map being coupled with the description.

(Added by Stats. 1975, Ch. 24.)

66499.58. Filing surveys and field notes

All surveys and the field notes thereof made by any engineer or surveyor, under the provisions of this division, or in surveying officially any lots or parcels of land in any city, town or county for the purposes of any map under this division, shall be filed in the office of the surveyor or engineer, as the case may be, and shall become a part of the public records of the city, town or county.

MISCELLANEOUS PLANNING-RELATED LAWS

CIVIL CODE EXCERPTS

Common Interest Subdivisions

783. Condominium

A condominium is an estate in real property described in subdivision (f) of Section 1351. A condominium may, with respect to the duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4) any combination of the foregoing.

(Repealed and Added by Stats. 1985, Ch. 874.)

783.1. Stock cooperative

In a stock cooperative, as defined in subdivision (m) of Section 1351, both the separate interest, as defined in paragraph (4) of subdivision (l) of Section 1351, and the correlative interest in the stock cooperative corporation, however designated, are interests in real property.

(Added by Stats. 1985, Ch. 874.)

1351. Definitions

As used in this title, the following terms have the following meanings:

(a) "Association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

(b) "Common area" means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing. However, the common area for a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

(c) "Common interest development" means any of the following:

(1) A community apartment project.

(2) A condominium project.

(3) A planned development.

(4) A stock cooperative.

(d) "Community apartment project" means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

(e) "Condominium plan" means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the following:

(A) The record owner of fee title to that property included in the condominium project.

(B) In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years.

(C) In the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests.

(D) The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. Further, in the event a conversion to condominiums of a community apartment project or stock cooperative has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, the certificate need only be signed by those owners, trustees, beneficiaries, and mortgagees approving the conversion.

A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required pursuant to this subdivision.

(f) A "condominium project" means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. The

portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

(g) "Declarant" means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

(h) "Declaration" means the document, however denominated, which contains the information required by Section 1353.

(i) "Exclusive use common area" means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

(1) Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(2) Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(j) "Governing documents" means the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the common interest development or association. (k) "Planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1.

(l) "Separate interest" has the following meanings:

(1) In a community apartment project, "separate interest" means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, "separate interest" means an individual unit, as specified in subdivision (f).

(3) In a planned development, "separate interest" means a separately owned lot, parcel, area, or space.

(4) In a stock cooperative, "separate interest" means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common areas.

The estate in a separate interest may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(m) "Stock cooperative" means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners' interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

A "stock cooperative" includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.

(Added by Stats. 1985, Ch. 874; Amended by Stats. 1987, Ch. 357; Amended by Stats. 1989, Ch.1150; Amended by Stats. 1991, Ch. 263.; Added by Stats. 2000, Ch. 26.)

1372. Uniform treatment

Unless a contrary intent is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless of whether the common interest development is a community apartment project, condominium project, planned development, or stock cooperative.

(Former Section 1370 was repealed by Stats. 1985, Ch. 874; Added and Renumbered by Stats. 1985, Ch. 874. Amended by Stats. 1989, Ch. 1150.)

BUSINESS AND PROFESSIONS CODE EXCERPTS

Chapter 2. Advertisers (Outdoor Advertising Act)

Article 1. General Provisions

5200. Outdoor advertising Act

This chapter of the Business and Professions Code constitutes the chapter on advertisers. It may be cited as the Outdoor Advertising Act.

(Added by Stats. 1970, Ch. 991.)

5201. Construction

Unless the context otherwise requires, the general provisions set forth in this article govern the construction of this chapter.

(Added by Stats. 1970, Ch. 991.)

5202. Advertising display

"Advertising display" refers to advertising structures and to signs.

(Added by Stats. 1970, Ch. 991.)

5203. Advertising structure

"Advertising structure" means a structure of any kind or character erected, used, or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting or other advertisement of any kind whatsoever may be placed, including statuary, for advertising purposes.

"Advertising structure" does not include:

(a) Official notices issued by any court or public body or officer;

(b) Notices posted by any public officer in performance of a public duty or by any person in giving legal notice;

(c) Directional, warning or information structures required by or authorized by law or by federal, state or county authority.

(d) A structure erected near a city or county boundary, which contains the name of such city or county and the names of, or any other information regarding, civic, fraternal or religious organizations located therein.

(Added by Stats. 1970, Ch. 991.; Amended by Stats. 1993, Ch. 991.)

5204. Bonus segment

"Bonus segment" means any segment of an interstate highway which was covered by the Federal Aid Highway Act of 1958 and the Collier-Z'berg Act, namely, any such segment which is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956.

(Added by Stats. 1970, Ch. 991.)

5205. Business area

"Business area" means an area within 1,000 feet, measured in each direction, from the nearest edge of a commercial or industrial building or activity and which is zoned under authority of state law primarily to permit industrial or commercial activities or an unzoned commercial or industrial area.

(Added by Stats. 1970, Ch. 991.)

5206. Centerline of the highway

"Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled way of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(Added by Stats. 1970, Ch. 991.)

5207. *(Repealed by Stats. 1993, Ch. 991.)*

5208. Collier-Z'berg Act

"Collier-Z'berg Act" refers to Chapter 128, Statutes of 1964 (First Extraordinary Session).

(Added by Stats. 1970, Ch. 991.)

5208.6. Department

"Department" means the Department of Transportation.

(Added by Stats. 1992, Ch. 649.)

5209. Director

"Director" refers to the Director of Transportation of the State of California.

(Amended by Stats. 1977, Ch. 579.)

5210. Federal Aid Highway Act of 1958

"Federal Aid Highway Act of 1958" refers to Section 131 of Title 23 of the United States Code, as in effect before October 22, 1965.

(Added by Stats. 1970, Ch. 991.)

5211. Flashing

"Flashing" is a light or message that changes more than once every four seconds.

(Added by Stats. 2000, Ch. 787.)

5212. Freeway

"Freeway," for the purposes of this chapter only, means a divided arterial highway for through traffic with full control of access and with grade separations at intersections.

(Added by Stats. 1970, Ch. 991.)

5213. Highway

"Highway" includes roads, streets, boulevards, lanes, courts, places, commons, trails, ways or other rights-of-way or easements used for or laid out and intended for the public passage of vehicles or of vehicles and persons.

(Added by Stats. 1970, Ch. 991.)

5214. Highway Beautification Act of 1965

"Highway Beautification Act of 1965" refers to Section 131 of Title 23 of the United States Code, as in effect October 22, 1965.

(Added by Stats. 1970, Ch. 991.)

5215. Interstate highway

"Interstate highway" means any highway at any time officially designated as a part of the national system of interstate and defense highways by the director and approved by appropriate authority of the federal government.

(Added by Stats. 1970, Ch. 991.)

5216. Landscaped freeway

(a) "Landscaped freeway" means a section or sections of a freeway that is now, or hereafter may be, improved by the planting at least on one side or on the median of the freeway right-of-way of lawns, trees, shrubs, flowers, or other ornamental vegetation requiring reasonable maintenance.

(b) Planting for the purpose of soil erosion control, traffic safety requirements, including light screening, reduction of fire hazards, or traffic noise abatement, shall not change the character of a freeway to a landscaped freeway.

(c) Notwithstanding subdivision (a), if an agreement to relocate advertising displays from within one area of a city or county to an area adjacent to a freeway right-of-way has been entered into between a city or county and the owner of an advertising display, then a "landscaped freeway" shall not include the median of a freeway right-of-way.

(Added by Stats. 1970, Ch. 991; Amended by Stats. 2002, Ch. 972.)

5216.1. Lawfully erected

"Lawfully erected" means, in reference to advertising displays, advertising displays which were erected in compliance with state laws and local ordinances in effect at the time of their erection or which were subsequently brought into full compliance with state laws and local ordinances, except that the term does not apply to any advertising display whose use is modified after erection in a manner which causes it to become illegal. There shall be a rebuttable presumption pursuant to Section 606 of the Evidence Code that an advertising display is lawfully erected if it has been in existence for a period of five years or longer without the owner having received written notice during that period from a governmental entity stating that the display was not lawfully erected.

(Added by Stats. 1983, Ch. 653.)

5216.2. *(Renumbered 5216.3 and amended by Stats. 2000, Ch. 787)*

5216.3. Main-traveled way

"Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. Main-traveled way does not include facilities such as frontage roads, ramps, auxiliary lanes, parking areas, or shoulders.

(Added by Stats. 1983, Ch. 653.; Formerly 5216.2, Renumbered and amended by Stats. 2000, Ch. 787)

5216.4. Message Center

"Message Center" is an advertising display where the message is changed more than once every two minutes, but no more than once every four seconds.

(Added by Stats. 2000, Ch. 787)

5216.5. Nonconforming advertising display

"Nonconforming advertising display" means an advertising display that was lawfully placed, but that does not conform to the provisions of this chapter, or the administrative regulations adopted pursuant to this chapter, that were enacted subsequent to the date of placing.

(Added by Stats. 1993, Ch. 991.; Formerly 5216.3, Renumbered and amended by Stats. 2000, Ch. 787)

5216.6. Officially designated scenic highway

(a) "Officially designated scenic highway or scenic byway" means any state highway that has been officially designated and maintained as a state scenic highway pursuant to Sections 260, 261, 262, and 262.5 of the Streets and Highways Code or that has been officially designated a scenic byway as referred to in Section 131 (s) of Title 23 of the United States Code.

(b) "Officially designated scenic highway or scenic byway" does not include routes listed as part of the State Scenic Highway system, Streets and Highway Code, Section 263, et seq., unless those routes, or segments of those routes, have been designated as officially designated state scenic highways.

(Added by Stats. 1993, Ch. 991.; Formerly 5216.4, Renumbered and amended by Stats. 2000, Ch. 787)

5217. *(Repealed by Stats. 2000, Ch. 787.)*

5218. Penalty segment

"Penalty segment" means any segment of a highway located in this state which was not covered by the Federal Aid Highway Act of 1958 and the Collier-Z'berg Act but which is covered by the Highway Beautification Act of 1965, namely, any segment of an interstate highway which is constructed upon right-of-way, any part of the width of which was acquired prior to July 1, 1956, and any segment of a primary highway.

(Added by Stats. 1970, Ch. 991.)

5219. Person

"Person" includes natural person, firm, cooperative, partnership, association, limited liability company, and corporation.

(Amended by Stats. 1983, Ch. 653; Amended by Stats, 1994, Ch. 1010.)

5220. Primary highway

"Primary highway" means any highway, other than an interstate highway, designated as a part of the federal-aid primary system in existence on June 1, 1991, and any highway that is not in that system but which is in the National Highway System.

(Added by Stats. 1970, Ch. 991; Amended by Stats. 1993, Ch. 1292.)

5221. Sign

"Sign" refers to any card, cloth, paper, metal, painted or wooden sign of any character placed for outdoor advertising purposes on or to the ground or any tree, wall, bush, rock, fence, building, structure or thing, either privately or publicly owned, other than an advertising structure.

"Sign" does not include any of the following:

(a) Official notices issued by any court or public body or officer.

(b) Notices posted by any public officer in performance of a public duty or by any person in giving any legal notice.

(c) Directional warning or information signs or structures required by or authorized by law or by federal, state or county authority.

(d) A sign erected near a city or county boundary that contains the name of that city or county and the names of, or any other information regarding, civic, fraternal, or religious organizations located within that city or county.

(Added by Stats. 1970, Ch. 991.)

5222.1. State Highway System

"State highway system" means the state highway system as described in Section 300 of the Streets and Highways Code.

(Added by Stats. 1993, Ch. 991.)

5222. Right-of-way

"660 feet from the edge of the right-of-way" means 660 feet measured from the edge of the right-of-way horizontally along a line normal or perpendicular to the centerline of the highway.

(Added by Stats. 1970, Ch. 991.)

5223. Unzoned commercial or industrial area

"Unzoned commercial or industrial area" means an area not zoned under authority of state law in which the land use is characteristic of that generally permitted only in areas which are actually zoned commercial or industrial under authority of state law, embracing all of the land on which one or more commercial or industrial activities are conducted, including all land within 1,000 feet, measured in each direction, from the nearest edge of the commercial or industrial building or activity on such land. As used in this section, "commercial or industrial activities" does not include the outdoor advertising business or the business of wayside fresh product vending.

(Added by Stats. 1970, Ch. 991.)

5224. Visible

"Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(Added by Stats. 1970, Ch. 991.)

5225. Place

The verb, "to place" and any of its variants, as applied to advertising displays, includes the maintaining and the erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving or otherwise fastening, affixing or making visible any advertising display on or to the ground or any tree, bush, rock, fence, post, wall, building, structure or thing. It does not include any of the foregoing activities when performed incident to the change of an advertising message or customary maintenance of the advertising display.

(Added by Stats. 1970, Ch. 991.)

5226. Regulation of advertising adjacent to interstate or primary highways

The regulation of advertising displays adjacent to any interstate highway or primary highway as provided in Section 5405 is hereby declared to be necessary to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in such highways, to preserve the scenic beauty of lands bordering on such highways, and to insure that information in the specific interest of the traveling public is presented safely and effectively, recognizing that a reasonable freedom to advertise is necessary to attain such objectives. The Legislature finds:

(a) Outdoor advertising is a legitimate commercial use of property adjacent to roads and highways.

(b) Outdoor advertising is an integral part of the business and marketing function, and an established segment of the national economy, and should be allowed to exist in business areas, subject to reasonable controls in the public interest.

(Added by Stats. 1970, Ch. 991.)

5227. Exception ordinances

It is the intention of the Legislature to occupy the whole field of regulation by the provisions of this chapter except that nothing in this chapter prohibits enforcement of any or all of its provisions by persons designated so to act by appropriate ordinances duly adopted by any county of this state nor does anything prohibit the passage by any county of reasonable land use or zoning regulations affecting the placing of advertising displays in accordance with the provisions of the Planning Law, Chapter 1 (commencing with Section 65000) of Title 7 of the Government Code, relating to zoning, or, with reference to signs or structures pertaining to the business conducted or services rendered or goods produced or sold upon the property upon which such advertising signs or structures are placed, ordinances subjecting such signs or structures to building requirements.

(Added by Stats. 1970, Ch. 991.)

5228. Legislative intent

It is declared to be the intent of the Legislature in enacting the provisions of this chapter regulating advertising displays adjacent to highways included in the national system of interstate and defense highways or the federal-aid primary highway system to establish minimum standards with respect thereto.

(Added by Stats. 1970, Ch. 991.)

5229. Compliance with law or local ordinances

The provisions of this chapter shall not be construed to permit a person to place or maintain in existence on or adjacent to any street, road or highway, including any interstate or state highway, any outdoor advertising prohibited by law or by any ordinance of any city, county or city and county.

(Added by Stats. 1970, Ch. 991.)

5230. Local zoning ordinances may be more restrictive

The governing body of any city, county, or city and county may enact ordinances, including, but not limited to, land use or zoning ordinances, imposing restrictions on advertising displays adjacent to any street, road, or highway equal to or greater than those imposed by this chapter, if Section 5412 is complied with. No city, county, or city and county may allow an advertising display to be placed or maintained in violation of this chapter.

(Amended by Stats. 1982, Ch. 494; Amended by Stats. 1983, Ch. 653.)

5231. Local regulations; license or permits

The governing body of any city or city and county may enact ordinances requiring licenses or permits, or both, in addition to those imposed by this chapter, for the placing of advertising displays in view of any highway, including a highway included in the national system of interstate and defense highways or the federal-aid primary highway system, within its boundaries.

(Amended by Stats. 1983, Ch. 653.)

Article 2. Administration

5250. Orders and regulations; enforcement authority

The director may make orders and regulations for the enforcement of this chapter and may authorize the Department of Transportation to enforce its provisions.

(Amended by Stats. 1976, Ch. 1079; Amended by Stats. 1982, Ch. 681.)

5251. Regulations; highways constructed upon right-of-way

Regulations promulgated by the director prior to November 8, 1967, concerning interstate highways constructed upon rights-of-way, the entire width of which was acquired after July 1, 1956, shall be continued in effect to the extent necessary to comply with the agreement with the Secretary of Commerce specified in Section 131(j) of Title 23 of the United States Code.

(Added by Stats. 1970, Ch. 991.)

5252. Applications/licenses/permits

The director shall prescribe the form of all applications, licenses, permits and other appurtenant written matter.

(Added by Stats. 1970, Ch. 991.)

5253. Issuance

The director shall furnish requisite forms for applications, licenses and permits provided for in this chapter and may appoint a representative or agent in each of the counties throughout the state for the purpose of issuing the licenses and permits and collecting fees therefor as provided in this chapter. The agent or representative, in the discretion of the director, may be the county clerk in each county.

In the event of the appointment of the county clerk in any county by the director, the county clerk shall so act. Upon the issuance of any such license or permit by the authorized agent of the director, the agent shall immediately forward a copy thereof to the director.

(Added by Stats. 1970, Ch. 991.)

5254. Enforcement

The director may enforce the penalties for failure to comply with the provisions of this chapter.

(Added by Stats. 1970, Ch. 991.)

Article 3. Application of Chapter

5270. Exclusiveness of chapter

The regulation of the placing of advertising displays by this chapter, insofar as such regulation may affect the placing of advertising displays within view of the public highways of this state in unincorporated areas, shall be exclusive of all other regulations for the placing of advertising displays within view of the public highways of this state in unincorporated areas whether fixed by a law of this state or by a political subdivision thereof.

(Added by Stats. 1970, Ch. 991.)

5271. Areas subject to regulation

Except as otherwise provided in this chapter, the provisions of this chapter apply only to the placing of advertising displays within view of highways located in unincorporated areas of this state, except that the placing of advertising displays within 660 feet from the edge of the right-of-way of, and the copy of which is visible from, interstate highways or primary highways, including the portions of such highways located in incorporated areas, shall be governed by this chapter.

(Amended by Stats. 1980, Ch. 1278.)

5272. Displays; exceptions

With the exception of the provisions contained in Article 4 (commencing with Section 5300) and Sections 5400 and 5404, inclusive, nothing contained in this chapter applies to any advertising display that is not a message center display defined by paragraph (1) of subdivision (d) of Section 5405 and which is used exclusively for any of the following purposes:

(a) To advertise the sale, lease, or exchange of real property upon which the advertising display is placed.

(b) To advertise directions to, and the sale, lease, or exchange of, real property for which the advertising display is placed; provided, that the exemption of this paragraph shall not apply to advertising displays visible from a highway and subject to the Highway Beautification Act of 1965 (23 U.S.C., Sec. 131).

(c) To designate the name of the owner or occupant of the premises or to identify the premises.

(d) To advertise the business conducted or services rendered or the goods produced or sold upon the property upon which the advertising display is placed if the display is upon the same side of the highway and within 1,000 feet of the point on the property or within 1,000 feet of the entrance to the site at which the business is conducted or services are rendered or goods are produced or sold.

(Added by Stats. 1982, Ch. 68; Amended by Stats. 1983, Ch. 653; Amended by Stats. 1992, Ch. 773; Amended by Stats. 1993, Ch. 991.)

5273. On-premise displays within redevelopment projects

For the purpose of this chapter, advertising displays advertising those businesses and activities developed within the boundary limits of, and as a part of, an individual redevelopment agency project may, with the consent of the redevelopment agency governing the project, be considered to be on the premises anywhere within the limits of that project when all of the land is contiguous or is separated only by a public highway or public facilities developed or relocated for inclusion within the project as a part of the original redevelopment plan for a period not to exceed 10 years or the completion of the project, whichever first occurs, after which Sections 5272 and 5405 apply, unless an arrangement has been made for extension of the period between the redevelopment agency and the department for good cause. The 10-year period for existing displays shall commence on January 1, 1986.

(Added by Stats. 1985, Ch. 1448.)

5273.5. Redevelopment project areas

(a) Notwithstanding Section 5273, for the purposes of this chapter, in the City of Buena Park in Orange County, the Cities of Commerce, Covina, and South Gate in Los Angeles County, and the City of Victorville in San Bernardino County, advertising displays advertising those businesses and activities developed within the boundary limits of, and as a part of, any redevelopment agency project area or areas may, with the consent of the redevelopment agency governing the project area, be considered to be on the premises anywhere within the legal boundaries of the redevelopment agency's project area or areas for a period not to exceed 10 years or the completion of the project, whichever occurs first, after which Sections 5272 and 5405 apply, unless an arrangement has been made for extension of the period between the redevelopment agency and the department for good cause.

(b) The governing body of a redevelopment agency in the cities set forth in subdivision (a), upon approving the purchase, lease, or other authorization for the erection of an advertising display pursuant to this section, shall prepare, adopt, and submit to the department an application for the issuance of a permit that, at a minimum, includes a finding that the advertising display would not result in a concentration of displays that will have a negative impact on the safety or aesthetic quality of the community. The department shall only deny the application if the proposed structure violates Sections 5400 to 5405, inclusive, or subdivision (d) of Section 5408, or if the display would cause

a reduction in federal-aid highway funds as provided in Section 131 of Title 23 of the United States Code.

(Added by Stats. 1999, Ch. 818.)

5274. Advertising display

(a) None of the provisions of this chapter, except those in Article 4 (commencing with Section 5300), Sections 5400 to 5404, inclusive, and subdivision (d) of Section 5405, apply to an on-premises advertising display that is visible from an interstate or primary highway and located within a business center, if the display is placed and maintained pursuant to Chapter 2.5 (commencing with Section 5490) and meets all of the following conditions:

(1) The display is placed within the boundaries of an individual development project, as defined in Section 65928 of the Government Code, for commercial, industrial, or mixed commercial and industrial purposes, as shown on a subdivision or site map approved by a city, county, or city and county, and is developed and zoned for those purposes.

(2) The display identifies the name of the business center, if named.

(3) Each business identified on the display is located within the business center and on the same side of an interstate or primary highway where the display is located.

(4) The governing body of the city, county, or city and county has adopted ordinances for the display pursuant to Sections 5230 and 5231 for the area where the display will be placed, and the display meets city, county, or city and county ordinances.

(5) The display results in a consolidation of allowable displays within the business center, so that fewer displays will be erected as a result of the display.

(6) Placement of the display does not cause a reduction of federal aid highway funds as provided in Section 131 of Title 23 of the United States Code.

(Added by Stats. 1996, Ch. 495; Amended by Stats. 1997, Ch. 471; Amended by Stats. 1998, Ch. 471.)

Article 4. Licenses

5300. Business of outdoor advertising; definitions

(a) A person engages in the business of outdoor advertising whenever, personally or through employees, that person places an advertising display, changes the advertising message of an advertising display that does not pertain exclusively to that person' s business and is visible to a state highway or freeway.

(b) A manufacturer or distributor of a product for sale to the general public does not engage in the business of outdoor advertising when furnishing a sign pertaining to the product to a retailer of that product for installation on the retailer's place of business or when installing on the retailer's place of business a sign containing advertising pertaining to the product, the name or the business of the retailer.

(Added by Stats. 1970, Ch. 991; Amended by Stats. 1971, Ch. 81.)

5301. Fee; duration and renewal of license; necessity of license

No person shall engage in or carry on the business or occupation of outdoor advertising without first having paid the license fee provided by this chapter. The fee is payable annually in advance on the first day of July of each year to the director or his authorized agent. Each license shall remain in force for the term of one year from and after the first day of July, and may be renewed annually.

A license shall be obtained whether or not the advertising display requires a permit.

(Added by Stats. 1970, Ch. 991.)

5302. Expiration of license; apportionment of fee

All licenses issued on or after the first day of July shall expire on the 30th day of June following the date of issue. Fees for original licenses issued after the first day of July of each year shall be apportioned and collected on the basis of one-twelfth of the fee for each month or part thereof remaining in the fiscal year.

(Added by Stats. 1970, Ch. 991.)

5303. Application; effect of license

Every application for a license shall be made on a form to be furnished by the director. It shall state the full name of the applicant and the post office address of his fixed place of business and shall contain a certification that the applicant has obtained a copy of the provisions of this chapter and any regulations adopted thereunder and is aware of their contents.

The issuance of a license entitles the holder to engage in or carry on the outdoor advertising business and to apply for permits during the term of the license.

(Amended by Stats. 1983, Ch. 653.)

Article 5. *(Repealed by Stats. 1983, Ch. 653.)*

Article 6. Permits

5350. Permit requirement

No person shall place any advertising display within the areas affected by the provisions of this chapter in this state without first having secured a written permit from the director or from his authorized agent.

(Added by Stats. 1970, Ch. 991.)

5351. Permits; advertising display

Every person desiring a permit to place any advertising display shall file an application with the director or with his authorized agent.

(Amended by Stats. 1984, Ch. 1003.)

5352. *(Repealed by Stats. 1993, Ch. 991.)*

5353. Form and content of application

The application shall be filed on a blank to be furnished by the director or by his agent. It shall set forth the name and address of the applicant and shall contain a general description of the property upon which it is proposed to place the advertising display for which a permit is sought and a diagram indicating the location of the proposed advertising display on the property, in such a manner that the property and the location of the proposed advertising display may be readily ascertained and identified.

(Added by Stats. 1970, Ch. 991.)

5354. Evidence of consent to placement of display

(a) The applicant for any permit shall offer written evidence that both the owner or other person in control or possession of the property upon which the location is situated and the city or the county with land use jurisdiction over the property upon which the location is situated have consented to the placing of the advertising display.

(b) At the written request of the city or county with land use jurisdiction over the property upon which a location is situated, the department shall reserve the location and shall not issue a permit for that location to any applicant, other than the one specified in the request, in advance of receiving written evidence as provided in subdivision (a) and for a period of time not to exceed 90 days from the date the department received the request.

(c) In addition to the 90-day period set forth in subdivision (b), an additional period of 30 days may be granted at the discretion of the department upon any proof, satisfactory to the department and provided by the city or county making the original request for a 90-day period, of the existence of extenuating circumstances meriting an additional 30 days. There shall be a conclusive presumption in favor of the department that the granting or denial of the request for an additional 30 days was made in compliance with this subdivision.

(Added by Stats. 1970, Ch. 991; Amended by Stats. 2002, Ch. 972)

5355. Description of display

An application for a permit to place a display shall contain a description of the display, including its material, size, and subject and the proposed manner of placing it.

(Amended by Stats. 1983, Ch. 653.)

5356. *(Repealed by Stats. 1983, Ch. 653.)*

5357. License number

If the applicant for a permit is engaged in the outdoor advertising business, the application shall contain the number of the license issued by the director.

(Added by Stats. 1970, Ch. 991.)

5358. Issuance of permit

When the application is in full compliance with this chapter and if the advertising display will not be in violation of any other state law, the director or the director's authorized agent shall, within 10 days after compliance and upon payment by the applicant of the fee provided by this chapter, issue a permit to place the advertising display for the remainder of the calendar year in the year in which the permit is issued and for an additional four calendar years.

(Amended by Stats. 1983, Ch. 653; Amended by Stats. 1997, Ch. 152.)

5359. Effect of permit; change of copy; zoning requirements

(a) The issuance of a permit for the placing of an advertising display includes the right to change the advertising copy without obtaining a new permit and without the payment of any additional permit fee.

(b) The issuance of a permit does not affect the obligation of the owner of the advertising display to comply with a zoning ordinance applicable to the advertising display under the provisions of this chapter nor does the permit prevent the enforcement of the applicable ordinance by the county.

(Added by Stats. 1970, Ch. 991; Amended by Stats. 1997, Ch. 152.)

5360. Renewal; expiration

(a) The director shall establish a permit renewal term of five years, which shall be reflected on the face of the permit.

(b) The director shall adopt regulations for permit renewal that include procedures for late renewal within a period not to exceed one year from the date of permit expiration. Any permit that was not renewed after January 1, 1993, is deemed revoked.

(Added by Stats. 1970, Ch. 991; Amended by Stats. 1997, Ch. 152.)

5361. Identification number

Each permit provided in this chapter shall carry an identification number and shall entitle the holder to place the advertising display described in the application.

(Added by Stats. 1970, Ch. 991.)

5362. Display of permit

No person shall place any advertising display unless there is securely fastened upon the front thereof an identification

number plate of the character specified in Section 5363. The placing of any advertising display without having affixed thereto an identification number plate is prima facie evidence that the advertising display has been placed and is being maintained in violation of the provisions of this chapter, and any such display shall be subject to removal as provided in Section 5463.

(Added by Stats. 1970, Ch. 991.)

5363. Identification number plates

Identification number plates shall be furnished by the director. Identification number plates shall bear the identification number of the advertising display to which they are assigned.

(Added by Stats. 1970, Ch. 991.)

5364. Pre-November 7, 1967 displays within cities

The provisions of this article shall apply to any advertising display which was lawfully placed and which was in existence on November 7, 1967, adjacent to an interstate or primary highway and within the limits of an incorporated area, but for which a permit has not heretofore been required. A permit which is issued pursuant to this section shall be deemed to be a renewal of an original permit for an existing advertising display.

(Added by Stats. 1975, Ch. 1074.)

5365. Highway redesignation within incorporated city

When a highway within an incorporated area is designated as an interstate or a primary highway, each advertising display maintained adjacent to such highway shall thereupon become subject to all of the provisions of this act. For purposes of applying the provisions of this act, each such display shall be considered as though it had been placed along an interstate or a primary highway during all of the time that it had been in existence. Within 30 days of notification by the director of such highway designation, the owner of each advertising display adjacent to such highway shall notify the director of the location of such display on a form prescribed by the director. The director shall issue a permit for each such advertising display on the basis of the notification from the display owner; provided that such permits will be issued and renewed only if the owner pays the fees required by subdivision (b) of Section 5485. Each permit issued pursuant to this section shall be deemed to be a renewal of an original permit for an existing advertising display.

(Added by Stats. 1975, Ch. 1074.)

5366. Local ordinance violation prohibited

The issuance of a permit pursuant to this chapter does not allow any person to erect an advertising display in violation of any ordinance of any city, county, or city and county.

(Added by Stats. 1983, Ch. 653.)

Article 7. Regulations

5400. Name of owner of structure

No advertising structure may be maintained unless the name of the person owning or maintaining it, is plainly displayed thereon.

(Added by Stats. 1970, Ch. 991.)

5401. Wind resistance

No advertising structure shall be placed unless it is built to withstand a wind pressure of 20 pounds per square foot of exposed surface. Any advertising structure not conforming to this section shall be removed as provided in Section 5463.

(Added by Stats. 1970, Ch. 991.)

5402. Prohibited display copy

No person shall display or cause or permit to be displayed upon any advertising structure or sign, any statements or words of an obscene, indecent or immoral character, or any picture or illustration of any human figure in such detail as to offend public morals or decency, or any other matter or thing of an obscene, indecent or immoral character.

(Added by Stats. 1970, Ch. 991.)

5403. Prohibited display locations

No advertising display shall be placed or maintained in any of the following locations or positions or under any of the following conditions or if the advertising structure or sign is of the following nature:

(a) If within the right-of-way of any highway.

(b) If visible from any highway and simulating or imitating any directional, warning, danger or information sign permitted under the provisions of this chapter, or if likely to be mistaken for any permitted sign, or if intended or likely to be construed as giving warning to traffic, by, for example, the use of the words “stop” or “slow down.”

(c) If within any stream or drainage channel or below the floodwater level of any stream or drainage channel where the advertising display might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.

(d) If not maintained in safe condition.

(e) If visible from any highway and displaying any red or blinking or intermittent light likely to be mistaken for a warning or danger signal.

(f) If visible from any highway which is a part of the interstate or primary systems, and which is placed upon trees,

or painted or drawn upon rocks or other natural features.

(g) If any illumination shall impair the vision of travelers on adjacent highways. Illuminations shall be considered vision impairing when its brilliance exceeds the values set forth in Section 21466.5 of the Vehicle Code.

(h) If visible from a state regulated highway displaying any flashing, intermittent, or moving light or lights.

(i) If, in order to enhance the display's visibility, the owner of the display or anyone acting on the owner's behalf removes, cuts, cuts down, injures, or destroys any tree, shrub, plant, or flower growing on property owned by the department that is visible from the highway without a permit issued pursuant to Section 670 of the Streets and Highways Code.

(Added by Stats. 1970, Ch. 991; Amended by Stats. 2001, Ch. 284.)

5404. Location of displays

No advertising display shall be placed outside of any business district as defined in the Vehicle Code or outside of any unincorporated city, town or village, or outside of any area that is subdivided into parcels of not more than 20,000 square feet each in area in any of the following locations or positions, or under any of the following conditions, or if the advertising display is of the following nature:

(a) If within a distance of 300 feet from the point of intersection of highway or of highway and railroad right-of-way lines, except that this does not prevent the placing of advertising display on that side of an intercepted highway that is opposite the point of interception. But in case any permanent building, structure or other object prevents any traveler on any such highway from obtaining a clear view of approaching vehicles for a distance of 300 feet, then advertising displays may be placed on such buildings, structure or other object if such displays will not further obstruct the vision of those approaching the intersection or interception, or if any such display does not project more than one foot therefrom.

(b) If placed in such a manner as to prevent any traveler on any highway from obtaining a clear view of approaching vehicles for a distance of 500 feet along the highway.

(Added by Stats. 1970, Ch. 991.)

5405. Displays prohibited; exceptions; message center displays

Notwithstanding any other provision of this chapter, no advertising display shall be placed or maintained within 660 feet from the edge of the right-of-way of, and the copy of which is visible from, any interstate or primary highway, other than any of the following:

(a) Directional or other official signs or notices that are required or authorized by law, including, but not limited to, signs pertaining to natural wonders and scenic and historical attractions, and which comply with regulations adopted by the director relative to their lighting, size, number, spacing, and any other requirements as may be appropriate to implement this chapter which are consistent with national standards adopted by the United States Secretary of Transportation pursuant to subdivision (c) of Section 131 of Title 23 of the United States Code.

(b) Advertising displays advertising the sale or lease of the property upon which they are located, if all advertising displays within 660 feet of the edge of the right-of-way of a bonus segment comply with the regulations adopted under Sections 5251 and 5415.

(c) Advertising displays which advertise the business conducted, services rendered, or goods produced or sold upon the property upon which the advertising display is placed, if the display is upon the same side of the highway as the advertised activity; and if all advertising displays within 660 feet of the right-of-way of a bonus segment comply with the regulations adopted under Sections 5251, 5403, and 5415; and except that no advertising display shall be placed after January 1, 1971, if it contains flashing, intermittent, or moving lights (other than that part necessary to give public service information, including, but not limited to, the time, date, temperature, weather, or similar information, or a message center display as defined in subdivision (d)).

(d) (1) Message center displays that comply with all requirements of this chapter. The illumination or the appearance of illumination resulting in a message change of a message center display is not the use of flashing, intermittent, or moving light for purposes of subdivision (b) of Section 5408, except that no message center display may include any illumination or message change that is in motion or appears to be in motion or that changes in intensity or exposes its message for less than four seconds. No message center display may be placed within 1,000 feet of another message center display on the same side of the highway. No message center display may be placed in violation of Section 131 of Title 23 of the United States Code.

(2) Any message center display located beyond 660 feet from the edge of the right-of-way of an interstate or primary highway and permitted by a city, county, or city and county on or before December 31, 1988, is in compliance with Article 6 (commencing with Section 5350) and Article 7 (commencing with Section 5400) for purposes of this section.

(3) Any message center display legally placed on or before December 31, 1996, which does not conform with this section may continue to be maintained under its existing criteria if it advertises only the business conducted, services rendered, or goods produced or sold upon the property upon which the display is placed.

(4) This subdivision does not prohibit the adoption by a city, county, or city and county of restrictions or prohibitions affecting off-premises message center displays which are equal to or greater than those imposed by this subdivision, if that ordinance or regulation does not restrict or prohibit on-premises advertising displays, as defined in Chapter 2.5 (commencing with Section 5490).

(e) Advertising displays erected or maintained pursuant to regulations of the director, not inconsistent with the national policy set forth in subdivision (f) of Section 131 of Title 23 of the United States Code and the standards promulgated thereunder by the Secretary of Transportation, and designed to give information in the specific interest of the traveling public.

(Added by Stats. 1970, Ch. 991; Amended by Stats. 1975, Ch. 1074; Amended by Stats 1989, Ch. 691.)

5405.3. Temporary political signs

Nothing in this chapter, including, but not limited to, Section 5405, shall prohibit the placing of temporary political signs, unless a federal agency determines that such placement would violate federal regulations. However, no such sign shall be placed within the right-of-way of any highway or within 660 feet of the edge of and visible from the right-of-way of a landscaped freeway.

A temporary political sign is a sign which:

(a) Encourages a particular vote in a scheduled election.

(b) Is placed not sooner than 90 days prior to the scheduled election and is removed within 10 days after that election.

(c) Is no larger than 32 square feet.

(d) Has had a statement of responsibility filed with the department certifying a person who will be responsible for removing the temporary political sign and who will reimburse the department for any cost incurred to remove it.

(Added by Stats. 1979, Ch. 1054.)

5405.5. Farm product outlay advertising displays

In addition to those displays permitted pursuant to Section 5405, displays erected and maintained pursuant to regulations of the director, which will not be in violation of Section 131 of Title 23 of the United States Code, and which identify the location of a farm produce outlet where farmers sell directly to the public only those farm or ranch products they have produced themselves, may be placed or maintained within 660 feet from the edge of the right-of-way so that the copy of the display is visible from a highway.

The advertising displays shall indicate the location of the farm products but not the price of any product and shall not be larger than 150 square feet.

(Added by Stats. 1985, Ch. 517.)

5405.6. Display on Metropolitan Transportation Authority property

Notwithstanding any other provision of law, no outdoor advertising display that exceeds 10 feet in either length or width, shall be built on any land or right-of-way owned by the Los Angeles County Metropolitan Transportation Authority, including any of its rights-of-way, unless the authority complies with any applicable provisions of this chapter, the federal Highway Beautification Act of 1965 (23 U.S.C.A. Sec. 131), and any local regulatory agency's rules or policies concerning outdoor advertising displays. The authority shall not disregard or preempt any law, ordinance, or regulation of any city, county, or other local agency involving any outdoor advertising display.

(Added by Stats. 2001, Ch. 928.)

5406. Bonus segment exception: industrial or commercial zones

The provisions of Sections 5226 and 5405 shall not apply to bonus segments which traverse and abut on commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to and abutting on the national system of interstate and defense highways is subject to municipal regulation or control, or which traverse and abut on other business areas where the land use, as of September 21, 1959, was clearly established by state laws as industrial or commercial, provided that advertising displays within 660 feet of the edge of the right-of-way of such bonus segments shall be subject to the provisions of Section 5408.

(Added by Stats. 1970, Ch. 991.)

5407. Penalty segment exception: cessation of business activity

The provisions of Sections 5226 and 5405 shall not apply to penalty segments which are located, or which are to be located, in business areas and which comply with Section 5408, except that Sections 5226 and 5405 shall apply to unzoned commercial or industrial areas in which the commercial or industrial activity ceases and is removed or permanently converted to other than a commercial or industrial activity, and displays in such areas shall be removed not later than five years following the cessation, removal, or conversion of the commercial or industrial activity.

(Added by Stats. 1970, Ch. 991.)

5408. Prohibitions limiting displays in business areas

In addition to the advertising displays permitted by Section 5405 to be placed within 660 feet of the edge of the right-of-way of interstate or primary highways, advertising displays conforming to the following standards, and not in

violation of any other provision of this chapter, may be placed in those locations if placed in business areas:

(a) Advertising displays may not be placed that exceed 1,200 square feet in area with a maximum height of 25 feet and a maximum length of 60 feet, including border and trim, and excluding base or apron supports and other structural members. This subdivision shall apply to each facing of an advertising display. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which will encompass the entire advertisement. Two advertising displays not exceeding 350 square feet each may be erected in a facing. Any advertising display lawfully in existence on August 1, 1967, that exceeds 1,200 square feet in area, and that is permitted by city or county ordinance, may be maintained in existence.

(b) Advertising displays may not be placed that are so illuminated that they interfere with the effectiveness of, or obscure any official traffic sign, device, or signal; nor shall any advertising display include or be illuminated by flashing, intermittent, or moving lights (except that part necessary to give public service information such as time, date, temperature, weather, or similar information); nor shall any advertising display cause beams or rays of light to be directed at the traveled ways if the light is of an intensity or brilliance as to cause glare or to impair the vision of any driver, or to interfere with any driver's operation of a motor vehicle.

(c) Advertising displays may not be placed to obstruct, or otherwise physically interfere with, an official traffic sign, signal, or device or to obstruct, or physically interfere with, the vision of drivers in approaching, merging, or intersecting traffic.

(d) No advertising display shall be placed within 500 feet from another advertising display on the same side of any portion of an interstate highway or a primary highway that is a freeway. No advertising display shall be placed within 500 feet of an interchange, or an intersection at grade, or a safety roadside rest area on any portion of an interstate highway or a primary highway that is a freeway and if the interstate or primary highway is located outside the limits of an incorporated city and outside the limits of an urban area. No advertising display shall be placed within 300 feet from another advertising display on the same side of any portion of a primary highway that is not a freeway if that portion of the primary highway is located outside the limits of an incorporated city and outside the limits of an urban area. No advertising display shall be placed within 100 feet from another advertising display on the same side of any portion of a primary highway that is not a freeway if that portion of the primary highway is located inside the limits of an incorporated city or inside the limits of an urban area.

(e) Subdivision (d) does not apply to any of the following:

(1) Advertising displays that are separated by a building or other obstruction in a manner that only one display located within the minimum spacing distances set forth herein is visible from the highway at any one time.

(2) Double-faced, back-to-back, or V-type advertising display, with a maximum of two signs per facing, as permitted in subdivision (a).

(3) Advertising displays permitted by subdivisions (a) to (c), inclusive, of Section 5405. The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway.

(4) Any advertising display lawfully in existence on August 1, 1967, which does not conform to this subdivision but that is permitted by city or county ordinances.

(f) "Urban area," as used in subdivision (d), shall be determined in accordance with Section 101(a) of Title 23 of the United States Code.

(Amended by Stats. 1975, Ch. 1074.)

5408.1. Displays on nonbusiness area

(a) No advertising display shall be placed or maintained beyond 660 feet from the edge of the right-of-way of an interstate or primary highway if such advertising display is located outside of an urban area or within that portion of an urban area that is not a business area, is visible from the main traveled way of such highway, and is placed with the purpose of its message being read from such main traveled way, unless such advertising display is included within one of the classes of displays permitted by Section 5405 to be placed within 660 feet from the edge of such highway. Such display may be placed or maintained within the portion of an urban area that is also a business area if such display conforms to the criteria for size, spacing and lighting set forth in Section 5408.

(b) Any advertising display which was lawfully in existence on the effective date of the enactment of this section, but which does not conform to the provisions of this section, shall not be required to be removed until January 1, 1980. If federal law requires the state to pay just compensation for the removal of any such display, it may remain in place after January 1, 1980, and until just compensation is paid for its removal pursuant to Section 5412.

(c) For purposes of this section, an urban area means an area so designated in accordance with the provisions of Section 101 of Title 23 of the United States Code.

(Amended by Stats. 1975, Ch. 1074.)

5408.2. Displays on Route 10 in L.A. County

Notwithstanding any other provision of this chapter, an advertising display is a lawfully erected advertising display and, upon application and payment of the application fee, the director shall issue a permit for the display if it meets all of the following conditions:

(a) The display was erected on property adjacent to State Highway Route 10 (Interstate 10) in the unincorporated area of the County of Los Angeles in order to replace a display which was required to be removed because the property on which it was located was acquired by the State of California to facilitate construction of the busway on Route 10 in the County of Los Angeles.

(b) Upon proper application, the display could have qualified for a permit at the time it was erected, except for Sections 5351 and 5408 and Article 5 (commencing with Section 5320) as in effect at the time.

(c) The display conforms to Section 5408 as in effect on January 1, 1984.

(d) The display was in existence on January 1, 1984.

(Added by Stats. 1984, Ch. 1003.)

5408.3. Adoption of ordinances to establish standards for spacing and signs of advertising displays

Notwithstanding Section 5408, a city or a county with land use jurisdiction over the property may adopt an ordinance that establishes standards for the spacing and sizes of advertising displays that are more restrictive than those imposed by the state.

(Added by Stats. 2002, Ch. 972)

5408.5. Displays on bus passenger shelters or beaches

In addition to the advertising displays permitted by Sections 5405 and 5408, advertising displays located on bus passenger shelters or benches and conforming to the following standards may be placed on or adjacent to a highway:

(a) The advertising display may not be within 660 feet of and visible from any federal-aid interstate or primary rural highway, and any advertising display within 660 feet of and visible from any urban highway shall be consistent with federal law and regulations.

(b) The advertising display shall meet traffic safety standards of the public entity having operational authority over the highway. These standards may include provisions requiring a finding and certification by an appropriate official that the proposed advertising display does not constitute a hazard to traffic.

(c) Bus passenger shelters or benches with advertising displays may only be placed at approved passenger loading areas.

(d) Bus passenger shelters or benches with advertising displays may only be placed in accordance with a permit or agreement with the public entity having operational authority over the highway adjacent to where, or upon which, the advertising display is to be placed.

(e) Any advertising display on bus passenger shelters or benches may not extend beyond the exterior limits of the shelter or bench.

(f) There may not be more than two advertising displays on any bus passenger shelter.

(g) Advertising displays placed on bus passenger shelters or benches pursuant to a permit or agreement with a local public entity shall not be subject to the state permit requirements specified in Article 6 (commencing with Section 5350).

(Added by Stats. 1982, Ch. 771; Amended by Stats. 1988, Ch. 452.)

5408.7. City and County of San Francisco; outdoor display

(a) It is the intent of the Legislature that this section shall not serve as a precedent for other changes to the law regarding outdoor advertising displays on, or adjacent to, highways. The Legislature recognizes that the streets in the City and County of San Francisco that are designated as state or federal highways are unique in that they are also streets with street lights, sidewalks, and many of the other features of busy urban streets. At the same time, these streets double as a way, and often the only way, for people to move through the city and county from one boundary to another. The Legislature recognizes the particular topography of the City and County of San Francisco, the popularity of the area as a tourist destination, the high level of foot traffic, and the unique design of its highways.

(b) For purposes of this section, "street furniture" is any kiosk, trash receptacle, bench, public toilet, news rack, or public telephone placed on, or adjacent to, a street designated as a state or federal highway.

(c) In addition to the advertising displays permitted by Sections 5405, 5408, and 5408.5, advertising displays located on street furniture may be placed on, or adjacent to, any street designated as a state or federal highway within the jurisdiction of a city and county, subject to all of the following conditions:

(1) The advertising display meets the traffic safety standards of the city and county. These standards may include provisions requiring a finding and certification by an appropriate official of the city and county that the proposed advertising display does not constitute a hazard to traffic.

(2) Any advertising display that is within 660 feet of, and visible from, any street designated as a state or federal highway shall be consistent with federal law and regulations.

(3) Advertising displays on street furniture shall be placed in accordance with a permit or agreement with the city and county.

(4) Advertising displays on street furniture shall not extend beyond the exterior limits of the street furniture.

(d) Advertising displays placed on street furniture pursuant to a permit or agreement with the city and county shall not be subject to the state permit requirements of Article 6 (commencing with Section 5350). This subdivision does

not affect the authority of the state to enforce compliance with federal law and regulations, as required by paragraph (2) of subdivision (c).

(e) (1) The city and county shall, upon written notice of any suit or claim of liability against the state for any injury arising out of the placement of an advertising display approved by the city and county pursuant to subdivision (c), defend the state against the claim and provide indemnity to the state against any liability on the suit or claim.

(2) For the purposes of this subdivision, "indemnity" has the same meaning as defined in Section 2772 of the Civil Code.

(f) (1) This section shall become inoperative not later than 60 days from the date the director receives notice from the United States Secretary of Transportation that future operation of this section will result in a reduction of the state's share of federal highway funds pursuant to Section 131 of Title 23 of the United States Code.

(2) Upon receipt of the notice described in paragraph (1), the director shall notify in writing the Secretary of State and the City and County of San Francisco of that receipt.

(3) This section shall be repealed on January 1 immediately following the date the Secretary of State receives the notice required under paragraph (2).

(Added by Stats. 1999, Ch. 320.)

5409. *(Repealed by Stats. 1983, Ch. 653.)*

5410. Maintenance of certain displays until July 1, 1970

Any advertising display located within 660 feet of the edge of the right-of-way of, and the copy of which is visible from, any penalty segment, or any bonus segment described in Section 5406 which display was lawfully maintained in existence on the effective date of this section but which was not on that date in conformity with the provisions of this article, may be maintained, and shall not be required to be removed until July 1, 1970. Any other sign which is lawful when erected, but which does not on January 1, 1968, or any time thereafter, conform to the provisions of this article, may be maintained, and shall not be required to be removed, until the end of the fifth year after it becomes nonconforming; provided that this section shall not apply to advertising displays adjacent to a landscaped freeway.

(Added by Stats. 1970, Ch. 991.)

5411. *(Repealed by Stats. 1983, Ch. 653.)*

5412. Just compensation

Notwithstanding any other provision of this chapter, no advertising display which was lawfully erected anywhere within this state shall be compelled to be removed, nor shall its customary maintenance or use be limited, whether or not the removal or limitation is pursuant to or because of this chapter or any other law, ordinance, or regulation of any governmental entity, without payment of compensation, as defined in the Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure), except as provided in Sections 5412.1, 5412.2, and 5412.3. The compensation shall be paid to the owner or owners of the advertising display and the owner or owners of the land upon which the display is located.

This section applies to all displays which were lawfully erected in compliance with state laws and local ordinances in effect when the displays were erected if the displays were in existence on November 6, 1978, or lawfully erected after November 6, 1978, regardless of whether the displays have become nonconforming or have been provided an amortization period. This section does not apply to on-premise displays as specified in Section 5272 or to displays which are relocated by mutual agreement between the display owner and the local entity.

"Relocation," as used in this section, includes removal of a display and construction of a new display to substitute for the display removed.

It is a policy of this state to encourage local entities and display owners to enter into relocation agreements which allow local entities to continue development in a planned manner without expenditure of public funds while allowing the continued maintenance of private investment and a medium of public communication. Cities, counties, cities and counties, and all other local entities are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the display owner and the city, county, city and county, or other local entity, and to adopt ordinances or resolutions providing for relocation of displays.

(Added by Stats. 1982, Ch. 494, Amended by Stats. 1984, Ch. 554.)

5412.1. Removal without compensation

A city, county, or city and county, whose ordinances or regulations are otherwise in full compliance with Section 5412, is not in violation of that section if the entity elects to require the removal without compensation of any display which meets all the following requirements:

(a) The display is located within an area shown as residential on a local general plan as of either the date an ordinance or regulation is enacted or becomes applicable to the area which incorporates the provisions of this section.

(b) The display is located within an area zoned for residential use either on the date on which the removal requirement is adopted or becomes applicable to the area.

(c) The display is not located within 660 feet from the edge of the right-of-way of an interstate or primary highway with its copy visible from the highway, nor is placed or maintained beyond 660 feet from the edge of the right-of-way of an interstate or primary highway with the purpose of its message being read from the main traveled way.

(d) The display is not required to be removed because of an overlay zone, combining zone, or any other special zoning district whose primary purpose is the removal or control of signs.

(e) The display is allowed to remain in existence for the period of time set forth below after the enactment or amendment after January 1, 1983, of any ordinance or regulation necessary to bring the entity requiring removal into compliance with Section 5412, and after giving notice of the removal requirement:

Fair Market Value on Date of Notice	*Minimum Years of Removal Requirement Allowed*
Under $1,999	2
$2,000 to $3,999	3
$4,000 to $5,999	4
$6,000 to $7,999	5
$8,000 to $9,999	6
$10,000 and over	7

The amounts provided in this section shall be adjusted each January 1 after January 1, 1983, in accordance with the changes in building costs, as indicated in the United States Department of Commerce Composite Cost Index for Construction Costs.

(Added by Stats. 1982, Ch. 494.)

5412.2. Removal in incorporated agricultural areas

A city or city and county, whose ordinances or regulations are otherwise in full compliance with Section 5412, is not in violation of that section if the entity elects to require the removal without compensation of any display which meets all the following requirements:

(a) The display is located within an incorporated area shown as agricultural on a local general plan as of either the date an ordinance or regulation is enacted or becomes applicable to the area which incorporates the provisions of this section.

(b) The display is located within an area zoned for agricultural use either on the date on which the removal requirement is adopted or becomes applicable to the area.

(c) The display is not located within 660 feet from the edge of the right-of-way of an interstate or primary highway with its copy visible from the highway, nor is placed or maintained beyond 660 feet from the edge of the right-of-way of an interstate or primary highway with the purpose of its message being read from the main traveled way.

(d) The display is not required to be removed because of an overlay zone, combining zone, or any other special zoning district whose primary purpose is the removal or control of signs.

(e) The display is allowed to remain in existence for the period of time set forth below after the enactment or amendment after January 1, 1983, of any ordinance or regulation necessary to bring the entity requiring removal into compliance with Section 5412, and after giving notice of the removal requirement:

Fair Market Value on Date of Notice	*Minimum Years of Removal Requirement Allowed*
Under $1,999	2
$2,000 to $3,999	3
$4,000 to $5,999	4
$6,000 to $7,999	5
$8,000 to $9,999	6
$10,000 and over	7

The amounts provided in this section shall be adjusted each January 1 after January 1, 1983, in accordance with the changes in building costs as indicated in the United States Department of Commerce Composite Cost Index for Construction Costs.

(Added by Stats. 1982, Ch. 494.)

5412.3. Removal in unincorporated areas

A county whose ordinances or regulations are otherwise in full compliance with Section 5412, is not in violation of that section if the county elects to require the removal without compensation of any display which meets all the following requirements:

(a) The display is located within an unincorporated area shown as agricultural on a local general plan as of either the date an ordinance or regulation is enacted or becomes applicable to the area which incorporates the provisions of this section.

(b) The display is located within an area zoned for agricultural use either on the date on which the removal requirement is adopted or becomes applicable to the area.

(c) The display is not located within 660 feet from the edge of the right-of-way of an interstate or primary highway with its copy visible from the highway, nor is placed or maintained beyond 660 feet from the edge of the right-of-way of an interstate or primary highway with the purpose of its message being read from the main traveled way.

(d) The display is not required to be removed because of an overlay zone, combining zone, or any other special zoning district whose primary purpose is the removal or control of signs.

(e) The display is allowed to remain in existence for the period of time set forth below after the adoption or amendment after January 1, 1983, of any ordinance or regulation necessary to bring the entity requiring removal into compliance with Section 5412, and after giving notice of the removal requirement:

Fair Market Value on Date of Notice	Minimum Years of Removal Requirement Allowed
Under $1,999	3.0
$2,000 to $3,999	4.5
$4,000 to $5,999	6.0
$6,000 to $7,999	7.5
$8,000 to $9,999 .	9.0
$10,000 and over	10.5

The amounts provided in this section shall be adjusted each January 1 after January 1, 1983, in accordance with the changes in building costs, as indicated in the United States Department of Commerce Composite Cost Index for Construction Costs.

(Added by Stats. 1982, Ch. 494.)

5412.4. Compensation where cases commenced prior to January 1, 1982

Section 5412 shall not be applied in any judicial proceeding which was filed and served by any city, county, or city and county prior to January 1, 1982, except that Section 5412 shall be applied in litigation to prohibit the removal without compensation of any advertising display located within 660 feet from the edge of the right-of-way of an interstate or primary highway with its copy visible from the highway, or any advertising display placed or maintained beyond 660 feet from the edge of the right-of-way of an interstate or primary highway that is placed with the purpose of its message being read from the main traveled way of the highway.

(Added by Stats. 1982, Ch. 494.)

5412.5. *(Repealed by Stats. 1981, Ch. 424.)*

5412.6. Compensation required

The requirement by a governmental entity that a lawfully erected display be removed as a condition or prerequisite for the issuance or continued effectiveness of a permit, license, or other approval for any use, structure, development, or activity other than a display constitutes a compelled removal requiring compensation under Section 5412, unless the permit, license, or approval is requested for the construction of a building or structure which cannot be built without physically removing the display.

(Added by Stats. 1985, Ch. 439.)

5413. Negotiations for compensation

Prior to commencing judicial proceedings to compel the removal of an advertising display, the director may elect to negotiate with the person entitled to compensation in order to arrive at an agreement as to the amount of compensation to be paid. If the negotiations are unsuccessful, or if the director elects not to engage in negotiations, a civil proceeding may be instituted as set forth in Section 5414.

To facilitate the negotiations, the Department of Transportation shall prepare a valuation schedule for each of the various types of advertising displays based on all applicable data. The schedule shall be updated at least once every two years. The schedule shall be made available to any public entity requesting a copy.

(Amended by Stats. 1980, Ch. 1278.)

5414. Legal action to determine compensation

Proceedings to compel the removal of displays and to determine the compensation required by this chapter shall be conducted pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(Amended by Stats. 1980, Ch. 1278.)

5415. Regulations governing erection and maintenance

The director shall prescribe and enforce regulations for the erection and maintenance of advertising displays permitted by Sections 5226, 5405, and 5408 consistent with Section 131 of Title 23 of the United States Code and the national standards promulgated thereunder by the Secretary of Transportation; provided, that the director shall not prescribe regulations imposing stricter requirements for the size, spacing or lighting of advertising displays than are prescribed by Section 5408 and provided that the director shall not prescribe regulations to conform to changes in federal law or regulations made after November 8, 1967, without prior legislative approval.

Notwithstanding any other provisions of this chapter, no outdoor advertising shall be placed or maintained adjacent to any interstate highway or primary highway in violation of the national standards promulgated pursuant to subsections (c) and (f) of Section 131 of Title 23 of the United States Code, as such standards existed on November 8, 1967.

(Added by Stats. 1970, Ch. 991.)

5416. Agreements with United States

The director shall seek, and may enter into, agreements with the Secretary of Transportation of the United States and shall take such steps as may be necessary from time to time to obtain, and may accept, any allotment of funds as provided by subdivision (j) of Section 131 of Title 23 of the United States Code, as amended from time to time, and such steps as may be necessary from time to time to obtain funds allotted pursuant to Section 131 for the purpose of paying the 75 percent federal share of the compensation required by subdivision (g) of Section 131 of Title 23 of the United States Code.

(Added by Stats. 1970, Ch. 991.)

5417. Allocation of funds for compensation

From state funds appropriated by the Legislature for such purposes and from federal funds made available for such purposes, the California Transportation Commission may allocate funds to the director for payment of compensation authorized by this chapter.

(Amended by Stats. 1980, Ch. 1278.)

5418. Allocation from state highway funds to match federal funds

The California Transportation Commission is authorized to allocate sufficient funds from the State Highway Account in the State Transportation Fund that are available for capital outlay purposes to match federal funds made available for the removal of outdoor advertising displays.

(Added by Stats. 1971, Ch. 1782; Amended by Stats. 1977, Ch. 1106.)

5418.1. Allocation of funds; priorities

When allocating funds pursuant to Section 5418, the commission shall consider, and may designate for expenditure, all or any part of such funds in accordance with the following order of priorities for removal of those outdoor advertising displays for which compensation is provided pursuant to Section 5412:

(a) Hardship situations involving outdoor advertising displays located adjacent to highways which are included within the state scenic highway system, including those nonconforming outdoor advertising displays which are offered for immediate removal by the owners thereof.

(b) Hardship situations involving outdoor advertising displays located adjacent to other highways, including those nonconforming outdoor advertising displays which are offered for removal by the owners thereof.

(c) Nonconforming outdoor advertising displays located adjacent to highways which are included within the state scenic highway system.

(d) Nonconforming outdoor advertising displays which are generally used for product advertising, and which are located in unincorporated areas.

(e) Nonconforming outdoor advertising displays which are generally used for product advertising located within incorporated areas.

(f) Nonconforming outdoor advertising displays which are generally used for non-motorist-oriented directional advertising.

(g) Nonconforming outdoor advertising displays which are generally used for motorist-related directional advertising.

(Added by Stats. 1971, Ch. 1782.)

5419. Agreement with United States

(a) The director shall seek agreement with the Secretary of Transportation of the United States, or his successor, under provisions of Section 131 of Title 23 of the United States Code, to provide for effective control of outdoor advertising substantially as set forth herein, provided that such agreement can vary and change the definition of "unzoned commercial or industrial area" as set forth in Section 5222 and the definition of "business area" as set forth in Section 5223, or other sections related thereto, and provided further that if such agreement does vary from such sections it shall not be effective until the Legislature by statute amends the sections to conform with the terms of the agreement. If agreement is reached on these terms, the director shall execute the agreement on behalf of the state.

(b) In the event an agreement cannot be achieved under subdivision (a), the director shall promptly institute proceedings of the kind provided for in subdivision (l) of Section 131 of Title 23 of the United States Code, in order to obtain a judicial determination as to whether this chapter and the regulations promulgated thereunder provide effective control of outdoor advertising as set forth therein. In such action the director shall request that the court declare rights, status, and other legal relations and declare whether the standards, criteria, and definitions contained in the agreement proposed by the director are consistent with customary use. If such agreement is held by the court in a final judgment to be invalid in whole or in part as inconsistent with customary use or as otherwise in conflict with Section 131 of Title 23 of the United States Code, the director shall promptly negotiate with the Secretary of Transportation, or his successor, a new agreement or agreements which shall conform to this chapter, as interpreted by the court in such action.

(Added by Stats. 1970, Ch. 991.)

Chapter 2.5 On-Premises Advertising Displays

5490. Applicability: "on premises advertising displays"

(a) This chapter applies only to lawfully erected on-premises advertising displays.

(b) As used in this chapter, "on-premises advertising displays" means any structure, housing, sign, device, figure, statuary, painting, display, message placard, or other contrivance, or any part thereof, that has been designed, constructed, created, intended, or engineered to have a useful life of 15 years or more, and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes:

(1) To designate, identify, or indicate the name or business of the owner or occupant of the premises upon which the advertising display is located.

(2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been lawfully erected.

(c) As used in this chapter, "introduced or adopted prior to March 12, 1983," means an ordinance or other regulation of a city or county which was officially presented before, formally read and announced by, or adopted by the legislative body prior to March 12, 1983.

(d) This chapter does not apply to advertising displays used exclusively for outdoor advertising pursuant to the Outdoor Advertising Act (Chapter 2 (commencing with Section 5200)).

(e) As used in this chapter, illegal advertising displays do not include legally erected, but nonconforming, displays for which the applicable amortization period has not expired.

(f) As used in this chapter, "abandoned advertising display" means any display remaining in place or not maintained for a period of 90 days which no longer advertises or identifies an ongoing business, product, or service available on the business premise where the display is located.

(g) (1) For the purpose of this chapter, an on-premises advertising display that is located within the boundaries of a development project, as defined by Section 65928 of the Government Code, that identifies the name of the development project, its business logo, or the goods, wares, and services existing or available within the development project, shall continue to be deemed an on-premise advertising display regardless of any of the following occurrences:

(A) The creation or construction, in or about the project, of a common parking area, driveway, thruway, alley, passway, public or private street, roadway, overpass, divider, connector, or easement intended for ingress or egress, regardless of where or when created or constructed, and whether or not created or constructed by the project developer or its successor, or by reason of government regulation or condition.

(B) The sale, transfer, or conveyance of an individual lot, parcel, or parcels less than the whole, within the development project.

(C) The sale, transfer, conveyance, or change of name or identification of a business within the development project.

(D) The subdivision of the parcel that includes the development project in accordance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

(2) This subdivision shall not be applicable in any case in which its application would result in a loss of federal highway funds by the State of California.

(3) This subdivision applies to all counties and general law or charter cities.

(Repealed and Added by Stats. 1986, Ch. 513; Amended by Stats. 1987, Ch. 1281; Amended by Stats. 1996, Ch. 495; Amended by Stats. 1998, Ch. 471)

5491. Removal of illegal or abandoned signs

Notwithstanding any provision of Chapter 2 (commencing with Section 5200), except as provided in this chapter, no on-premises advertising display which is used for any of the purposes set forth and conforming to Section 5490 shall be compelled to be removed or abated, and its customary maintenance, use, or repair shall not be limited, whether or not removal or limitation is required because of any ordinance or regulation of any city or county, without the payment of fair and just compensation.

(Added by Stats. 1983, Ch. 1232.)

5491.1. Inventory of illegal or abandoned signs

(a) Any city or county adopting or amending any ordinance or regulation that regulates or prohibits the use of any on-premises advertising display that is more restrictive than existing law, shall include provisions in that ordinance or regulation for the identification and inventorying of all displays within its territorial limits that are determined to be illegal or abandoned pursuant to the law that is in effect prior to the adoption of, or amendment to, the ordinance or regulation.

(b) The required identification and inventory shall commence not later than 120 days from the date on which the ordinance or regulation is adopted or amended and shall be completed in a timely manner. The population of the city or county, as determined by the most recent federal census, the number of on-premise advertising displays located within the city or county, and other relevant factors may serve as a guide for the purposes of determining what constitutes "a timely manner" for the purposes of this subdivision.

(c)(1) Upon the completion of the required identification and inventory, the city or county shall consider, at a public hearing with opportunity for public comment, whether there is a need for the ordinance or regulation described in subdivision (a) to take effect.

(2)(A) Any applicable amortization schedule for the ordinance or regulation adopted or amended pursuant to this section shall not expire until at least six months after the date on which the city or county confirms, pursuant to paragraph (1), that there is a continuing need for that ordinance or regulation to take effect, unless the amortization period specified in the ordinance is for a longer term, in which case the remaining term shall apply.

(B) Until the city or county provides, pursuant to paragraph (1), that there is a continuing need for the ordinance or regulation to take effect, the new ordinance shall not apply to a change of copy, change of color, maintenance, or repair made to a sign which conformed to

the prior ordinance unless those changes, maintenance, or repairs involve a change in location or structure of the sign.

(d) An identification and inventory is not required if a city or county has undertaken and completed an identification and inventory of illegal or abandoned displays not more than three years prior to the date on which the ordinance or regulation described in subdivision (a) is adopted or amended.

(e) This section does not apply if a city or county adopts or amends an ordinance or regulation that regulates only new on-premises advertising displays. For purposes of this section, a "new on-premise advertising display" means a display whose structure or housing has not been permanently affixed to its intended premise on the date on which the ordinance or regulation is adopted.

(Added by Stats. 1987, Ch. 1281; Repealed and added by Stats. 1996, Ch. 1150.)

5491.2. Fee exemption

(a) A city or county may impose reasonable fees upon all owners or lessees of on-premises business advertising displays for the purpose of covering its actual cost of inventorying and identifying illegal or abandoned advertising displays which are within its jurisdiction. A city or county may exempt from the payment of these fees the owner of a display identifying an achievement award, the name of a farm, or the name of a business for which the farm produces, if the display is located on an operating farm within an agricultural preserve established pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code), and if the city or county finds that the exemption will further the purposes of the agricultural preserve.

(b) The actual cost to the city or county may be fixed upon a determination of the total estimated reasonable cost. The amount of that cost and the fee to be charged is exclusively within the discretion of the city or county.

(Added by Stats. 1987, Ch. 1281; Amended by Stats. 1990, Ch. 215.)

5492. Payment of fair market value

For purposes of compliance with Section 5491, fair and just compensation is presumed to be paid upon the payment of the fair market value of the on-premises advertising display as of the date written notice is given to the owner of the display requiring conformance or removal thereof.

Fair market value consists of the actual cost of removal for the display, the actual cost to repair any damage caused to the real property or improvements thereon as a result of the removal of the display, and the actual cost to duplicate the advertising display required to be removed as of the date written notice requiring removal for nonconformance is given to the owner by the governmental body requiring conformance or removal.

(Added by Stats. 1983, Ch. 1232.)

5493. Alternatives to fair and just compensation

(a) As an alternative to payment of fair and just compensation under Section 5492, a city or county may pay fair and just compensation to the owner of the on-premises advertising display by paying the actual replacement cost to the owner for an on-premises advertising display which shall conform with the laws in effect that are applicable to the owner's business premises, and shall include, as part of the actual replacement cost, the actual cost for removal of the nonconforming on-premises advertising display and the actual cost of the repair to the real property caused by the removal of the display.

(b) The sum payable as fair and just compensation to the owner of any on-premises advertising display shall be the greater of the two methods provided in subdivision (a) of this section or Section 5492 as the basis for fair and just compensation. In any event, before any on-premises advertising display is required to be removed, the fair and just compensation required by subdivision (a) of this section or Section 5492 shall be paid.

(Added by Stats. 1983, Ch. 1232.)

5494. Amortization of lawfully erected, nonconforming signs

The ordinances and regulations of any city or county, introduced or adopted prior to March 12, 1983, which have provided for amortization, and which make nonconforming any lawfully in place erected on-premises advertising displays, shall not be subject to Section 5491.

(a) All on-premises advertising displays which become nonconforming as a result of any such ordinance or regulation are presumed illegal once the amortization period provided by the ordinance or regulation rendering them nonconforming has lapsed and conformance has not been accomplished.

(b) If property containing on-premises advertising displays is annexed to a city or county which introduced or adopted, prior to March 12, 1983, an ordinance regulating on-premises advertising displays, the city or county may apply its ordinance or regulation to the annexed property, and the display shall be deemed illegal upon expiration of any applicable amortization provided by such ordinance or regulation. The amortization period is deemed to commence in such event upon the date of annexation.

(c) When amortization has not been provided in any applicable preexisting ordinance, annexed nonconforming displays ordered to conform to ordinances or regulations of any city or county shall be subject to the requirements of Section 5491.

(d) Amendments or modifications to ordinances or regulations of any city or county adopted prior to March 12, 1983, including amendments which require removal of additional displays or displays which had previously been made conforming, shall be subject to the requirements of

Section 5491 if such amendment or modification makes the ordinance being amended or modified more restrictive or prohibitive.

(e) Ordinances or regulations of any city or county introduced or adopted prior to March 12, 1983, which have terminated or will terminate, may be reenacted and are not subject to Section 5491 if reenacted within 12 months of their termination, and if upon reenactment they are not made more restrictive or prohibitive than the preexisting ordinance or regulation.

(Repealed and Added by Stats. 1986, Ch. 513.)

5495. Removal of display without compensation

A city or county whose ordinances or regulations are introduced or adopted after March 12, 1983, and any amendments or modifications to those ordinances and regulations, are not in violation of Section 5491 if the entity elects to require the removal without compensation of any on-premise advertising display which meets all of the following requirements:

(a) The display is located within an area shown as residential or agricultural on a local general plan as of the date the display was lawfully erected.

(b) The display is located within an area zoned for residential or agricultural use on the date the display was lawfully erected.

(c) The display is not required to be removed because of an overlay zone, combining zone, special sign zone, or any other special zoning district whose primary purpose is the removal or control of advertising displays.

(d) The display is allowed to remain in existence after March 12, 1983, for a period of 15 years from the date of adoption of the ordinance or regulation. For purposes of this section, every sign has a useful life of 15 years. Fair and just compensation for signs required to be removed during the 15-year period and before the amortization period has lapsed shall be entitled to fair and just compensation which is equal to 1/15 of the duplication cost of construction of the display being removed multiplied by the number of years of useful life remaining for the sign as determined by this section.

(Added by Stats. 1983, Ch. 1232.)

5495.5. Legal ordinance/regulations to remove displays

A city or county with an ordinance or regulation introduced or adopted prior to March 12, 1983, which is applicable to designated areas within the city or county less than the entire city or county is not in violation of Section 5491 for an ordinance or regulation introduced or adopted on or after March 12, 1983, even though it requires removal of on-premises advertising displays in additional portions of the city or county, if the city or county adopts not more than two such ordinances or regulations on or after March 12, 1983, and if the total effect of the ordinance, or regulation is to apply to less than the entire city or county, and such new ordinance or regulation provides reasonable amortization for conformance. "Reasonable amortization," for purposes of this section, shall not be less than 15 years from the date each such ordinance or regulation was adopted. If these conditions are not met, the city or county is subject to Section 5491 with respect to all those ordinances and regulations.

(Repealed and Added by Stats. 1986, Ch. 513.)

5496. Uncompensated deactivation of flashing/rotating

A city or county, whose ordinances or regulations are otherwise in full compliance with Section 5491 is not in violation of that section if it elects to deactivate, without compensation, any flashing or rotating features of the on-premises advertising display, unless the flashing or rotating feature of the display has historical significance.

(Added by Stats. 1983, Ch. 1232.)

5497. Uncompensated removal of displays

A city or county, whose ordinances or regulations were introduced or adopted after March 12, 1983, or any amendments to those ordinances and regulations, is not in violation of Section 5491 if it elects to require the removal, without compensation, of any on-premise advertising display which meets any of the following criteria:

(a) Any advertising display erected without first complying with all ordinances and regulations in effect at the time of its construction and erection or use.

(b) Any advertising display which was lawfully erected anywhere in this state, but whose use has ceased, or the structure upon which the display has been abandoned by its owner, for a period of not less than 90 days. Costs incurred in removing an abandoned display may be charged to the legal owner.

(c) Any advertising display which has been more than 50 percent destroyed, and the destruction is other than facial copy replacement, and the display cannot be repaired within 30 days of the date of its destruction.

(d) Any advertising display whose owner, outside of a change of copy, requests permission to remodel and remodels that advertising display, or expand or enlarge the building or land use upon which the advertising display is located, and the display is affected by the construction, enlargement, or remodeling, or the cost of construction, enlargement, or remodeling of the advertising display exceeds 50 percent of the cost of reconstruction of the building.

(e) Any advertising display whose owner seeks relocation thereof and relocates the advertising display.

(f) Any advertising display for which there has been an agreement between the advertising display owner and the city or county, for its removal as of any given date.

(g) Any advertising display which is temporary.

(h) Any advertising display which is or may become a danger to the public or is unsafe.

(i) Any advertising display which constitutes a traffic hazard not created by relocation of streets or highways or by acts of any city or county.

(j) Ordinances adopted by a city within three years of its incorporation, which incorporation occurs after March 12, 1982, shall not be subject to Section 5491 except as provided by Section 5494.

(k) Notwithstanding subdivision (j), for any city or county incorporated after January 1, 1989, an ordinance initially adopted within three years of incorporation, or any amendment thereto within that three-year period, may require removal without compensation, except that no removal without compensation may be required within 15 years from the effective date of that ordinance or amendment.

(Added by Stats. 1983, Ch. 1232; Amended by Stats. 1988, Ch. 991.)

5498. Exemptions

(a) Sections 5491 and 5495 do not apply to redevelopment project areas created pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), planned commercial districts, or to areas listed or eligible for listing on the National Register of Historical Places, or areas registered by the Department of Parks and Recreation as a state historical landmark or point of historical interest pursuant to Section 5021 of the Public Resources Code, or areas created as historic zones or individually designated properties by a city or county, pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Division 1 of Title 5 of the Government Code.

(b) As used in this section, "planned commercial districts" means areas subject to binding agreements, including, but not limited to, conditions, covenants, restrictions, which do all of the following:

(1) Affect on-premise advertising displays.

(2) Are at least as restrictive as any ordinance of a city or county, which affects on-premise advertising displays at the time the agreement was entered into.

(3) Contain a binding financing commitment sufficient to carry out the agreements.

(Added by Stats. 1983, Ch. 1232.)

5498.1. Preemption of local regulations for change in existing display

A city or county may not deny, refuse to issue, or condition the issuance of a business license or a permit to construct a new legal on-premises advertising display upon the removal, conformance, repair, modification, or abatement of any other on-premises advertising display on the same real property where the business is to be or has been maintained if both of the following apply:

(a) The other display is located within the same commercial complex which is zoned for commercial occupancy or use, but at a different business location from that for which the permit or license is sought.

(b) The other display is not owned or controlled by the permit applicant, and the permit applicant is not the agent of the person who owns or controls the other display.

(Added by Stats. 1987, Ch. 1281.)

5498.2. Preemption of local regulations adopted after March 12, 1983 on amortization schedule

(a) During the amortization period for a nonconforming legally in place on-premises advertising display's continued use, a city or county may not deny, refuse to issue, or condition the issuance of a permit for modification or alteration to the display upon change of ownership of any existing business if the modification or alteration does not include a structural change in the display.

(b) Subdivision (a) of this section does not apply to any ordinance introduced or adopted prior to March 12, 1983, or adopted pursuant to subdivision (j) of Section 5497, if the ordinance contains no specific amortization schedule, but instead requires conformity upon change of ownership.

(Added by Stats. 1987, Ch. 1281.)

5499. Display height

Regardless of any other provision of this chapter or other law, no city or county shall require the removal of any on-premises advertising display on the basis of its height or size by requiring conformance with any ordinance or regulation introduced or adopted on or after March 12, 1983, if special topographic circumstances would result in a material impairment of visibility of the display or the owner's or user's ability to adequately and effectively continue to communicate with the public through the use of the display. Under these circumstances, the owner or user may maintain the advertising display at the business premises and at a location necessary for continued public visibility at the height or size at which the display was previously erected and, in doing so, the owner or user is in conformance.

(Repealed and Added by Stats. 1986, Ch. 513.)

Chapter 2.6 Ordinances Governing On-Premise Advertising Displays

5499.1. Definitions

For purposes of this chapter only:

(a) "Illegal on-premises advertising display" means any of the following:

(1) An on-premises advertising display erected without first complying with all ordinances and regulations in effect at the time of its construction and erection or use.

(2) An on-premises advertising display that was legally erected, but whose use has ceased, or the structure upon which the display is placed has been abandoned by its owner, not maintained, or not used to identify or advertise an ongoing business for a period of not less than 90 days.

(3) An on-premises advertising display that was legally erected which later became nonconforming as a result of the adoption of an ordinance, the amortization period for the display provided by the ordinance rendering the display nonconforming has expired, and conformance has not been accomplished.

(4) An on-premises advertising display which is a danger to the public or is unsafe.

(5) An on-premises advertising display which is a traffic hazard not created by relocation of streets or highways or by acts of the city or county.

(b) "On-premises advertising display" means any structure, housing, sign, device, figure, statuary, painting, display, message placard, or other contrivance, or any part thereof, which is designed, constructed, created, engineered, intended, or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes:

(1) To designate, identify, or indicate the name of the business of the owner or occupant of the premises upon which the advertising display is located.

(2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display is erected.

(c) "Enforcement officer" means the public employee or officer designated by the legislative body of the city or county to perform the duties imposed by this chapter on the enforcement officer.

(Added by Stats. 1987, Ch. 1281.)

5499.2. Resolution for abatement of illegal displays

(a) The legislative body of a city or county may declare, by resolution, as public nuisances and abate all illegal on-premises advertising displays located within its jurisdiction. The resolution shall describe the property upon which or in front of which the nuisance exists by giving its lot and block number according to the county or city assessment map and its street address if known. Any number of parcels of private property may be included in one resolution.

(b) Prior to adoption of the resolution by the legislative body, the clerk of the legislative body shall send not less than a 10 days' written notice to all persons owning property described in the proposed resolution. The notice shall be mailed to each person on whom the described property is assessed on the last equalized assessment roll available on the date the notice is prepared. The notice shall state the date, time, and place of the hearing and generally describe the purpose of the hearing and the nature of the illegality of the display.

(Added by Stats. 1987, Ch. 1281.)

5499.3. Posting notice of resolution

After adoption of the resolution, the enforcement officer shall cause notices to be conspicuously posted on or in front of the property on or in front of which the display exists.

(Added by Stats. 1987, Ch. 1281.)

5499.4. Format of notice

The notice shall be substantially in the following form:

NOTICE TO REMOVE ILLEGAL ADVERTISING DISPLAY

Notice is hereby given that on the ____ day of ____, 20__, the (name of the legislative body) of (city or county) adopted a resolution declaring that an illegal advertising display is located upon or in front of this property which constitutes a public nuisance and must be abated by the removal of the illegal display. Otherwise, it will be removed, and the nuisance abated by the city (or county). The cost of removal will be assessed upon the property from or in front of which the display is removed and will constitute a lien upon the property until paid. Reference is hereby made to the resolution for further particulars. A copy of this resolution is on file in the office of the clerk of the legislative body.

All property owners having any objection to the proposed removal of the display are hereby notified to attend a meeting of the (name of the legislative body) of (city or county) to be held (give date, time, and place), when their objections will be heard and given due consideration.

Dated this _____ day of _____, 20__

_____

(Title)

(City or County of _____)

(Added by Stats. 1987, Ch. 1281; Amended by Stats. 2002, Ch. 221.)

5499.5. Time limit for notice

The notices shall be posted at least 10 days prior to the time for hearing objections by the legislative body of the city or county.

(Added by Stats. 1987, Ch. 1281.)

5499.6. Written notice

In addition to posting notice of the resolution and notice of the meeting when objections will be heard, the legislative body of the city or county shall direct its clerk to mail written notice of the proposed abatement to all persons owning

property described in the resolution. The clerk shall cause the written notice to be mailed to each person on whom the described property is assessed in the last equalized assessment roll available on the date the resolution was adopted by the legislative body.

In cities where the county assessor performs the functions of the city assessor, the county assessor, at the request of the city clerk, shall, within 10 days thereafter, mail to the city clerk a list of the names and addresses of all of the persons owning property described in the resolution. The address of the owners shown on the assessment roll is conclusively deemed to be the proper address for the purpose of mailing the notice. The city shall reimburse the county for the actual cost of furnishing the list, and the cost shall be a part of the costs of abatement.

The notices mailed by the clerk shall be mailed at least 10 days prior to the time for hearing objections by the legislative body.

The notices mailed by the clerk shall be substantially in the form provided by Section 5499.4.

(Added by Stats. 1987, Ch. 1281.)

5499.7. Public hearing requirement

At the time stated in the notices, the legislative body of the city or county shall hear and consider all objections to the proposed removal of the on-premises advertising display. It may continue the hearing from time to time. By motion or resolution at the conclusion of the hearing, the legislative body shall allow or overrule any objections. At that time, the legislative body acquires jurisdiction to proceed and perform the work of removal.

The decision of the legislative body is final. If objections have not been made or after the legislative body has disposed of those made, it shall order the enforcement officer to abate the nuisance by having the display removed. The order shall be made by motion or resolution.

(Added by Stats. 1987, Ch. 1281.)

5499.8. Enforcement

The enforcement officer may enter private property to abate the nuisance.

(Added by Stats. 1987, Ch. 1281.)

5499.9. Reimbursement for abatement costs

Before the enforcement officer arrives, any property owner may remove the illegal on-premises advertising display at the owner's own expense.

Nevertheless, in any case in which an order to abate is issued, the legislative body of the city or county, by motion or resolution, may further order that a special assessment and lien shall be limited to the costs incurred by the city or county, as the case may be, in enforcing abatement upon the property, including investigation, boundary determination, measurement, clerical, and other related costs.

(Added by Stats. 1987, Ch. 1281.)

5499.10. Process for reimbursement costs

(a) The enforcement officer shall keep an account of the cost of abatement of an illegal on-premises advertising display in front of or on each separate parcel of property where the work is done by him or her. He or she shall submit to the legislative body of the city or county for confirmation an itemized written report showing that cost.

(b) A copy of the report shall be posted for at least three days, prior to its submission to the legislative body, on or near the chamber door of the legislative body, with notice of the time of submission.

(c) At the time fixed for receiving and considering the report, the legislative body shall hear it with any objections of the property owners liable to be assessed for the abatement. It may modify the report if it is deemed necessary. The legislative body shall then confirm the report by motion or resolution.

(Added by Stats. 1987, Ch. 1281.)

5499.11. Contract to lowest bidder for abatement of nuisance

Abatement of the nuisance may, in the discretion of the legislative body of the city or county, be performed by contract awarded by the legislative body on the basis of competitive bids let to the lowest responsible bidder. In that event, the contractor shall keep the account and submit the itemized written report for each separate parcel of property required by Section 5499.10.

(Added by Stats. 1987, Ch. 1281.)

5499.12. Special assessment against parcel

(a) The cost of abatement in front of or upon each parcel of property, and the cost incurred by the city or county, as the case may be, in enforcing abatement upon the parcels, including investigation, boundary determination, measurement, clerical, and other related costs, are a special assessment against that parcel. After the assessment is made and confirmed, a lien attaches on the parcel upon recordation of the order confirming the assessment in the office of the county recorder of the county in which the property is situated. However, if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the assessment would become delinquent, the lien which would otherwise be imposed by this section shall not attach to the real property and the costs of abatement and the costs of enforcing abatement, as confirmed, relating to the

property shall be transferred to the unsecured roll for collection.

(b) After confirmation of the report, a copy shall be given to the city or county assessor and the tax collector, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes.

(c) If the county assessor and the tax collector assess property and collect taxes for the city, the city shall file a certified copy of the report with the county auditor on or before August 10. The description of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.

(d) The county auditor shall enter each assessment on the county tax roll opposite the parcel of land.

(e) The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If delinquent, the amount is subject to the same penalties and procedures of foreclosure and sale provided for ordinary municipal taxes.

The legislative body may determine that, in lieu of collecting the entire assessment at the time and in the manner of ordinary municipal taxes, assessments of fifty dollars ($50) or more may be made in annual installments, not to exceed five, and collected one installment at a time at the time and in the manner of ordinary municipal taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for foreclosure and sale provided for ordinary municipal taxes. The payment of assessments so deferred shall bear interest on the unpaid balance at a rate to be determined by the legislative body, but not to exceed 6 percent per annum.

(f) As an alternative method, the county tax collector, at his or her discretion, may collect the assessments without reference to the general taxes by issuing separate bills and receipts for the assessments.

(g) Laws relating to the levy, collection, and enforcement of county taxes apply to these special assessments.

(h) The lien of the assessment has the priority of the taxes with which it is collected.

(Added by Stats. 1987, Ch. 1281.)

5499.13. Time limits for abatement costs

The enforcement officer may receive the amount due on the abatement cost and issue receipts at any time after the confirmation of the report and until 10 days before a copy is given to the assessor and tax collector or, where a certified copy is filed with the county auditor, until August 1 following the confirmation of the report.

(Added by Stats. 1987, Ch. 1281.)

5499.14. Refund procedure for erroneous assessments

The legislative body of the city or county may order a refund of all or part of an assessment pursuant to this chapter if it finds that all or part of the assessment has been erroneously levied. An assessment, or part thereof, shall not be refunded unless a claim is filed with the clerk of the legislative body on or before November 1 after the assessment became due and payable. The claim shall be verified by the person who paid the assessment or by the person's guardian, conservator, executor, or administrator.

(Added by Stats. 1987, Ch. 1281.)

5499.15. Local responsibility

If the legislative body finds that property damage was caused by the negligence of a city or county officer or employee in connection with the abatement of a nuisance pursuant to this chapter, a claim for those damages may be paid from the city or county general fund.

(Added by Stats. 1987, Ch. 1281.)

5499.16. Alternative

The proceedings provided by this chapter are an alternative to any procedure established by ordinance pursuant to any other provision of law.

(Added by Stats. 1987, Ch. 1281.)

Chapter 1. Subdivided Lands

Article 1. General Provisions

11003. Planned development

"Planned development" has the same meaning as specified in subdivision (k) of Section 1351 of the Civil Code.

(Added by Stats. 1965, Ch. 988. Repealed and added by Stats. 1985, Ch. 874.)

11003.2. Stock cooperative

"Stock cooperative" has the same meaning as specified in subdivision (m) of Section 1351 of the Civil Code, except that, as used in this chapter, a "stock cooperative" does not include a limited-equity housing cooperative.

(Amended by Stats. 1979, Ch. 1068, Repealed and added by Stats. 1985, Ch. 874.)

11003.5. Time-share project (*Repealed by Stats. 2004, Ch. 697.)*

11004. Community apartment project

"Community apartment project" has the same meaning as specified in subdivision (d) of Section 1351 of the Civil Code.

(Added by Stats. 1955, Ch. 1013, Repealed and added by Stats. 1985, Ch. 874.)

11010. Notice of Intention to Sell or Lease

(a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.

(6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities. For subdivided lands that were subject to the imposition of a condition pursuant to subdivision (b) of Section 66473.7 of the Government Code, the true statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply obtained pursuant to Section 66473.7 of the Government Code.

(7) A true statement of the use or uses for which the proposed subdivision will be offered.

(8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(9) A true statement of the amount of indebtedness that is a lien upon the subdivision or any part thereof, and that was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.

(10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.

(11) (A) As to each school district serving the subdivision, a statement from the appropriate district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the appropriate school district.

(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice of intention and application for issuance of a public report shall immediately provide the department with the name, address, and telephone number of that district.

(12) (A) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision. **If the property is located within an airport influence area, the following statement shall be included in the notice of intention:**

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(B) For purposes of this section, an "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

(13) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(14) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(15) *** **On or after July 1, 2005, as to property located within the jurisdiction of the San Francisco Bay Conservation and Development Commission, a statement that the property is so located and the following notice:**

NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Com-

mission. Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

(16) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

(Added by Stats.1943, Ch. 127; Amended by Stats.1943; Amended by Stats.1953, Ch. 73; Amended by Stats.1963, Ch. 927; Amended by Stats.1965; Amended by Stats.1967, Ch. 1136; Amended by Stats.1969, Ch. 482; Amended by Stats.1972, Ch. 1312; Amended by Stats.1975, Ch. 879; Amended by Stats.1978, Ch. 521; Amended by Stats.1980, Ch. 1105; Amended by Stats.1980, Ch. 1152; Amended by Stats.1980, Ch. 1335; Amended by Stats.1980, Ch. 1336; Amended by Stats.1984, Ch. 345; Amended by Stats. 1988, Ch. 1365; Amended by Stats. 1989, Ch. 1209; Amended by Stats. 1991, Ch. 263; Amended by Stats. 2001, Ch. 642; Amended by Stats. 2002, Ch. 496; Amended by Stats. 2004, Ch. 618.)

Note: *Stats. 1989, Ch. 1209 also reads:*

SEC 2. The Legislature finds and declares as follows:

(a) Certain school districts in this state are recipients of state school construction apportionments under the State School Building Aid Law of 1952. Each of those recipient districts is required under statute to make specified repayments to the state on the basis of a designated property tax rate to be applied to property within the district.

(b) The school facilities funding program currently employed by this state is the Leroy F. Greene State School Building Lease-Purchase Law of 1976, under which sufficient funding is not available to meet the school facilities needs of school districts throughout the state.

(c) The application of local funding sources to district school facilities needs is encouraged, therefore, in order to alleviate the statewide demand on the state program of school facilities funding. Pursuant to that purpose, the statutory repayment schedule applicable under the State School Building Aid Law of 1952 should be revised so as to reduce the property tax rate in a qualified recipient school district, thus facilitating the approval of a general obligation bond measure within the district.

(Amended by Stats. 1989, Ch. 1209.)

11010.11. Disclosure regarding right of buyer to negotiate property inspections with the seller

Notwithstanding any provision in the purchase contract to the contrary, if the subdivision is to be used for residential purposes, the subdivision public report shall disclose that a prospective buyer has the right to negotiate with the seller to permit inspections of the property by the buyer, or the buyer's designee, under terms mutually agreeable to the prospective buyer and seller.

(Added by Stats. 2001, Ch. 307.)

Motor Vehicle Fuel with Beer/Wine, Zoning and Concurrent Sales

23790. Retailer's License; Zoning

No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions:

(a) The premises retain the same type of retail liquor license within a license classification.

(b) The licensed premises are operated continuously without substantial change in mode or character of operation.

For purposes of this subdivision, a break in continuous operation does not include:

(1) A closure for not more than 30 days for purposes of repair, if that repair does not change the nature of the licensed premises and does not increase the square footage of the business used for the sale of alcoholic beverages.

(2) The closure for restoration of premises rendered totally or partially inaccessible by an act of God or a toxic accident, if the restoration does not increase the square footage of the business used for the sale of alcoholic beverages.

(Added by Stats. 1953, Ch. 152; Amended by Stats. 1982, Ch. 474; Amended by Stats. 1989, Ch. 95.)

23790.5. Concurrent retailing of motor vehicle fuel and beer and wine

(a) It is the intent of the Legislature in enacting this section to ensure that local government shall not be preempted in the valid exercise of its land use authority pursuant to Section 23790, including, but not limited to, enacting an ordinance requiring a conditional use permit. It is also the intent of the Legislature to prevent the legislated prohibition of the concurrent retailing of beer and wine for off-premises consumption and motor vehicle fuel where the retailing of each is otherwise allowable.

(b) (1) No city, county, or city and county shall, by ordinance or resolution adopted on or after January 1, 1988, legislatively prohibit the concurrent retailing of motor vehicle fuel and beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows motor vehicle fuel and off-sale beer and wine to be retailed on separate sites.

(2) On and after January 1, 1989, no city, county, or city and county ordinance or resolution adopted prior to May 5, 1987, shall have legal effect if it legislatively prohibits the concurrent retailing of motor vehicle fuel with beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows beer and wine and motor vehicle fuel to be retailed on separate sites.

(3) On and after July 1, 1988, no city, county, or city and county ordinance or resolution adopted on or after May 5, 1987, shall have legal effect if it legislatively prohibits the concurrent retailing of motor vehicle fuel with beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows beer and wine and motor vehicle fuel to be retailed on separate sites.

(4) This section shall not apply to a prohibition by a city, county, or city and county of the sale of beer and wine in conjunction with the sale of motor vehicle fuel if that prohibition occurs as a result of the prohibition of the combining of the sale of motor vehicle fuel with a broader class of products or uses which includes alcoholic beverages or beer and wine as a named or unnamed part of that larger class, if that prohibition was enacted before August 1, 1985.

(c) Subject to the restrictions and limitations of subdivision (b), this section shall not prevent a city, county, or city and county from denying permission, or granting conditional permission, to an individual applicant to engage in the concurrent retailing of motor vehicle fuel with beer and wine for off-premises consumption pursuant to a valid conditional use permit ordinance based on appropriate health, safety, or general welfare standards contained in the ordinance if that conditional use permit ordinance contains all of the following:

(1) A requirement for written findings.

(2) A provision for an administrative appeal if the governing body has delegated its power to issue or deny a conditional use permit.

(3) Procedures for notice of a hearing, conduct of a hearing, and an opportunity for all parties to present testimony.

(4) A requirement that the findings be based on substantial evidence in view of the whole record to justify the ultimate decision.

(d) Notwithstanding any other provision of law, establishments engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption shall abide by the following conditions:

(1) No beer or wine shall be displayed within five feet of the cash register or the front door unless it is in a permanently affixed cooler as of January 1, 1988.

(2) No advertisement of alcoholic beverages shall be displayed at motor fuel islands.

(3) No sale of alcoholic beverages shall be made from a drive-in window.

(4) No display or sale of beer or wine shall be made from an ice tub.

(5) No beer or wine advertising shall be located on motor fuel islands and no self-illuminated advertising for beer or wine shall be located on buildings or windows.

(6) Employees on duty between the hours of 10 P.M. and 2 A.M. who sell beer or wine shall be at least 21 years of age.

The standards contained in this subdivision are minimum state standards which do not limit local regulation otherwise permitted under this section.

(e) If there is a finding that a licensee or his or her employee has sold any alcoholic beverages to a minor at an establishment engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption, the alcoholic beverage license at the establishment shall be suspended for a minimum period of 72 hours. For purposes of Section 23790, the effect of such a license suspension shall not constitute a break in the continuous operation of the establishment nor a substantial change in the mode or character of operation.

(f) The provisions of this section apply to charter cities.

(Added by Stats. 1987, Ch. 176; Amended by Stats. 1991, Ch. 108.)

23791. Zoning Law Applicability

Nothing in this division interferes with the powers of cities conferred upon them by Sections 65850 to 65861, inclusive, of the Government Code.

(Added by Stats. 1953, Ch. 152; Amended by Stats. 1961, Ch. 252 ; Amended by Stats. 1967, Ch. 232.)

EDUCATION CODE EXCERPTS

SCHOOL FACILITIES

Chapter 4. Property: Sales, Lease, Exchange

Article 8. Joint Occupancy

17515. Authority to enter into leases and agreements, building

Any school district may enter into leases and agreements

relating to real property and buildings to be used jointly by the district and any private person, firm, or corporation pursuant to this article. As used in this article, "building" includes onsite and offsite facilities, utilities and improvements that, as agreed upon by the parties, are appropriate for the proper operation or function of the building to be occupied jointly by the district and the private person, firm, or corporation. It also includes the permanent improvement of school grounds. Any building, or portion thereof, that is used by a private person, firm, or corporation pursuant to this section shall be subject to the zoning and building **code** requirements of the local jurisdiction in which the building is situated.

Section 53094 of the **Government Code** shall not be applicable to uses of school district property or buildings authorized by this section, except in the case of property or buildings used solely for educational purposes.

(Added by Stats, 1996, Ch. 277.)

Article 9. Joint Use

17533. Uses other than public or education-related uses; zoning, use permits and construction and safety requirements

A local agency having general planning jurisdiction may require adherence to appropriate zoning ordinances, use permits, construction or safety codes, by a school district seeking to lease a portion of a school building for uses other than public or education-related uses.

(Added by Stats, 1996, Ch. 277.)

Chapter 6. Development Fees, Charges, and Dedications

17620. School district extractions; limitations; collection of fees

(a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of a commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(2) For purposes of this section, "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(3) For purposes of this section, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential development project within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in

paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

(Added by Stats. 1996, Ch. 277; Amended by Stats. 1998, Ch. 407.)

17621. Adoption of fees

(a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 if the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from

the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

(Added by Stats. 1996, Ch. 277; Amended by Stats. 1998, Ch. 689.)

17622. Fees

(a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 17620 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 17620, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 17620. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

(Added by Stats. 1996, Ch. 277.)

17623. Congruent school districts

In the event the fee authorized pursuant to Section 17620 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995 of the Government Code, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(a) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(b) In the event the affected school districts are unable to reach an agreement pursuant to subdivision (a), the districts shall jointly submit the dispute to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

(Added by Stats. 1996, Ch. 277.)

17624. Rebate

(a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 17620 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less

the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995 of the Government Code.

(Added by Stats. 1996, Ch. 277.)

17625. Application to manufactured housing and mobilehomes

(a) Notwithstanding any other provision of law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 17620 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 53080 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 17620 is required as to any manufactured home or mobilehome, that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 17620 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, “manufactured home,” “mobilehome,” and “mobilehome park” have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079. 5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space

or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under section 17620, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under 17620, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2 of the Government Code.

(Added by Stats. 1996, Ch. 277.)

17626. Reconstruction

(a) A fee, charge, dedication, or other requirement authorized under Section 17620, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7 of the Government Code, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered an enclosed space, as defined in Section 65995 of the Government Code, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995 of the Government Code.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

(Added by Stats. 1996, Ch. 277.)

Note: Sections 17620 -17626 of the Education Code are nearly identical to the former Sections 53080 - 53080.15 of the Government Code. Sections 53080 - 53080.15 were repealed by Stats. 1996, Ch. 277

COMMUNITY COLLEGES, EDUCATION FACILITIES:

Chapter 1. School Sites

Article 2. School Sites

81033. Community college sites: investigation, report, and recommendations of board of governors

(a) The governing board of a community college district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 81130.5, shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective college site is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geological hazard damage.

The geological and soil engineering studies of the site shall be of a nature that will preclude siting of a college in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation also shall include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area that is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code. A copy of the report of each investigation conducted pursuant to this section shall be submitted to the board of governors.

(b) Geological and soil engineering studies as described in subdivision (a) shall be made, within the boundaries of any special studies zone, for the construction of any school

building as defined in Section 81130.5 or, if the estimated cost exceeds twenty thousand dollars ($20,000), for the reconstruction or alteration of or addition to that building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any building on a site located outside of the boundaries of any special studies zone. These studies need not be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 7 (commencing with Section 81130) and to the Chancellor's office of the California Community Colleges. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

(c) To promote the safety of students, comprehensive community planning, and greater educational usefulness of community college sites, the governing board of each community college district, if the proposed site is within two miles, measured by air line, of that point on an airport runway, or runway proposed by an airport master plan, which is nearest the site and excluding them if the property is not so located, before acquiring title to property for a new community college site or for an addition to a present site, shall give the board of governors notice in writing of the proposed acquisition and shall submit any information required by the board of governors.

Immediately after receiving notice of the proposed acquisition of property which is within two miles, measured by air line, of that point on an airport runway, or runway proposed by an airport master plan, which is nearest the site, the board of governors shall notify the Division of Aeronautics of the Department of Transportation, in writing, of the proposed acquisition. The Division of Aeronautics shall make an investigation and report to the board of governors within 30 working days after receipt of the notice. If the Division of Aeronautics is no longer in operation, the board of governors, in lieu of notifying the Division of Aeronautics, shall notify the Federal Aviation Administration or any other appropriate agency, in writing, of the proposed acquisition for the purpose of obtaining from the authority or other agency any information or assistance it may desire to give.

The board of governors shall investigate the proposed site and, within 35 working days after receipt of the notice, shall submit to the governing board a written report and its recommendations concerning acquisition of the site. The governing board shall not acquire title to the property until the report of the board of governors has been received. If the report does not favor the acquisition of the property for a community college site or an addition to a present community college site, the governing board shall not acquire title to the property until 30 days after the department's report is received and until the board of governors' report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation within the community college district, or if there is no such newspaper, then in a newspaper of general circulation within the county in which the property is located.

(d) If, with respect to a proposed site located within two miles of an operative airport runway, the report of the board of governors submitted to a community college district governing board under subdivision (c) does not favor the acquisition of the site on the sole or partial basis of the unfavorable recommendation of the Division of Aeronautics of the Department of Transportation, no state agency or officer shall grant, apportion, or allow to that community college district for expenditure in connection with that site, any state funds otherwise made available under any state law whatever for community college site acquisition or college building construction, or for expansion of existing sites and buildings, and no funds of the community college district or of the county in which the district lies shall be expended for those purposes. However, this section shall not be applicable to sites acquired prior to January 1, 1966, or to any additions or extensions to those sites.

If the recommendation of the Division of Aeronautics is unfavorable, the recommendation shall not be overruled without the express approval of the board of governors and the State Allocation Board.

(e) No action undertaken by the board of governors or by any other state agency or by any political subdivision pursuant to this chapter, or in compliance with this chapter, shall be construed to affect any rights arising under Section 19 of Article I of the California Constitution.

(Added by Stats. 1976, Ch. 1010; Amended by Stats. 1977, Ch. 36; Amended by Stats. 1981, Ch. 470; Amended by Stats. 1984, Ch. 1009; Amended by Stats. 1990, Ch. 1372.)

Chapter 5. Community College Revenue Bond Act of 1961

81951. Powers of board over project

At all times the operation, maintenance, control, repair, construction, reconstruction, alteration, and improvement of any project are vested in the board subject to authorized leases permitted by any indenture. The board shall comply

with all applicable county and city zoning, building, and health regulations.

(Added by Stats. 1982, Ch. 251)

ELECTIONS CODE EXCERPTS

4009.5. *(Repealed by Stats. 1994, Ch. 920)*

MEASURES SUBMITTED TO VOTERS

Chapter 2: County Elections

Article 1. Initiative

9111. Proposed measure impacts

(a) During the circulation of the petitioner before taking either action described in subdivision (a) and (b) of Section 9116, or Section 9118, the board of supervisors may refer the proposed initiative measure to any county agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs.

(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(5) Its impact on the community's ability to attract and retain business and employment.

(6) Its impact on the uses of vacant parcels of land.

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(8) Any other matters the board of supervisors request to be in the report.

(b) The report shall be presented to the board of supervisors within the time prescribed by the board of supervisors, but no later than 30 days after the county elections official certifies to the board of supervisors the sufficiency of the petition.

(Added by Stats. 1994, Ch. 920; Amended by Stats. 2000, Ch. 496.)

9212. Report from city agencies on effect of proposed initiative measure

(a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 9214, or Section 9215, the legislative body may refer the proposed initiative measure to any city agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.

(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(5) Its impact on the community's ability to attract and retain business and employment.

(6) Its impact on the uses of vacant parcels of land.

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(8) Any other matters the legislative body requests to be in the report.

(b) The report shall be presented to the legislative body within the time prescribed by the legislative body, but no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition.

(Added by Stats. 1994, Ch. 920; Amended by Stats. 2000, Ch. 496.)

GOVERNMENT CODE EXCERPTS

Additional Surplus Land Statute from the Government Code

25539.4. Additional disposal sites; surplus land utilized for affordable housing

(a) The Legislature recognizes that real property of counties can be utilized, in accordance with a county's best

interests, to provide housing affordable to persons or families of low or moderate income. Therefore, notwithstanding any other provision of law, whenever the board of supervisors determines that any real property or interest therein owned, or to be purchased, by the county can be used to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the county's best interests, the county may sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property or interest therein at less than fair market value, or purchase an interest in the real property, to provide that affordable housing without complying with other provisions of this article.

(b) Not less than 80 percent of the area of any parcel of property disposed of pursuant to the provisions of this section shall be used for the development of housing.

(c) Not less than 40 percent of the total number of those housing units developed on any parcel pursuant to this section shall be affordable to households whose incomes are equal to or less than 75 percent of the maximum income of lower income households, and at least half of which shall be affordable to very low income households.

(d) Dwelling units produced for persons and families of low or moderate income under this section shall be restricted by regulatory agreement to remain continually affordable to those persons and families for the longest feasible time, but not less than 30 years, pursuant to a method prescribed by the county.

(e) The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the county as grantee.

(f) The definitions of "persons and families of low and moderate income," "lower income households," and "very low income households" set forth in Sections 50079.5, 50093, and 50105 of the Health and Safety Code shall apply to this section.

(Added by Stats. 1980, Ch. 861; Amended by Stats. 1988, Ch. 1604.)

MUNICIPAL ADVISORY COUNCILS DIVISION 4. EMPLOYEES

31010. Municipal advisory councils; content of resolution

The board of supervisors of any county may by resolution establish and provide funds for the operation of a municipal advisory council for any unincorporated area in the county to advise the board on such matters which relate to that area as may be designated by the board concerning services which are or may be provided to the area by the county or other local governmental agencies, including but not limited to advice on matters of public health, safety, welfare, public works, and planning. Unless the board of supervisors specifically provides to the contrary, a municipal advisory council may represent the community to any state, county, city, special district or school district, agency or commission, or any other organization on any matter concerning the community. The board may pay from available funds such actual and necessary expenses of travel, lodging, and meals for the members of the council while on such official business as may be approved by the board.

The resolution establishing any such municipal advisory council shall provide for the following:

(a) The name of the municipal advisory council.

(b) The qualifications, number, and method of selection of its members, whether by election or appointment.

(c) Its designated powers and duties.

(d) The unincorporated area or areas for which the municipal advisory council is established.

(e) Whether the establishment of the council should be submitted to the voters and the method for such submission; provided that if an election is required pursuant to subdivision (b), such election shall be held at the same time as an election held pursuant to this subdivision.

(f) Such other rules, regulations and procedures as may be necessary in connection with the establishment and operation of the municipal advisory council.

(Added by Stats. 1971, Ch. 348; Amended by Stats. 1975, Ch. 336; Amended by Stats. 1978, Ch. 41.)

Additional Surplus Land Statute from the Government Code

37364. City property for affordable housing

(a) The Legislature reaffirms its finding that the provision of housing for all Californians is a concern of vital statewide

importance. The Legislature recognizes that real property of cities can be utilized, in accordance with a city's best interests, to provide housing affordable to persons and families of low or moderate income. Therefore, notwithstanding any provision of a city's charter, or any other provision of law, whenever the legislative body of a city determines that any real property or interest therein owned or to be purchased by the city can be used to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the city's best interests, the city may sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property or interest therein at less than fair market value, or purchase an interest in the real property, to provide that affordable housing under whatever terms and conditions the city deems best suited to the provision of such housing.

(b) Not less than 80 percent of the area of any parcel of property disposed of pursuant to this section shall be used for development of housing.

(c) Not less than 40 percent of the total number of those housing units developed on any parcel pursuant to this section shall be affordable to households whose incomes are equal to, or less than, 75 percent of the maximum income of lower income households, and at least half of which shall be affordable to very low income households.

(d) Dwelling units produced for persons and families of low or moderate income under this section shall be restricted by regulatory agreement to remain continually affordable to those persons and families for the longest feasible time, but not less than 30 years, pursuant to a method prescribed by the city. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the city as grantee.

(e) The provisions of this section shall apply to all cities, including charter cities.

(f) The definitions of "persons and families of low and moderate income," "lower income households," and "very low income households" set forth in Sections 50079, 50093, and 50105 of the Health and Safety Code shall apply to this section.

(Added by Stats. 1980, Ch. 861; Amended by Stats. 1988, Ch. 1604.)

CITIES AND COUNTIES

Chapter 1. General

Article 2. Powers and Duties of Legislative Bodies

50030. Cities/counties; telecommunications facilities fees

Any permit fee imposed by a city, including a chartered city, a county, or a city and county, for the placement, installation, repair, or upgrading of telecommunications facilities such as lines, poles, or antennas by a telephone corporation that has obtained all required authorizations to provide telecommunications services from the Public Utilities Commission and the Federal Communications Commission, shall not exceed the reasonable costs of providing the service for which the fee is charged and shall not be levied for general revenue purposes.

(Added by Stats. 1996, Ch. 300; Amended by Stats. 1997, Ch. 17.)

AIRPORT APPROACHES ZONING

Chapter 2. Public Property

Article 6.5 Airport Approaches Zoning Law

50485. Title

This article shall be known and may be cited as the "Airport Approaches Zoning Law."

(Added by Stats. 1953, Ch. 1741.)

50485.1. Definitions

As used in this article, unless the context otherwise requires:

"Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

"Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

"Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this article.

"City or county" means any city, county, or city and county.

"Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, city or county, or district, and includes any trustee, receiver, or assignee.

"Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead lines.

"Tree" means any object of natural growth.

(Added by Stats. 1953, Ch. 1741.)

50485.2. Airport hazards; nuisance; police power; public purpose

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of the aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented by appropriate exercise of the police power or the authority conferred by Article 2.6 (commencing with Section 21652) of Part 1 of Division 9 of the Public Utilities Code.

It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which a city or county may raise and expend public funds and acquire land or property interests therein.

(Added by Stats. 1953, Ch. 1741; Amended by Stats. 1975, Ch. 1240.)

50485.3. Adoption of regulations

In order to prevent the creation or establishment of airport hazards, every city or county having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(Added by Stats. 1953, Ch. 1741.)

50485.4. Airport zoning regulations and comprehensive zoning ordinance

In the event that a city or county has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

In the event of conflict between any airport zoning regulations adopted under this article and any other regulations applicable to the same area whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the city or county which adopted the airport zoning regulations or by some other city or county, the more stringent limitation or requirement shall govern and prevail.

(Added by Stats. 1953, Ch. 1741.)

50485.5. Hearing; notice

No airport zoning regulations shall be adopted, amended or changed under this article except by action of the legislative body of the city or county in question after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published pursuant to Section 6066 in an official paper, or a paper of general circulation, in the city or county in which is located the airport hazard area to be zoned.

(Added by Stats. 1953, Ch. 1741; Amended by Stats. 1957, Ch. 357.)

50485.6. Airport zoning commission

Prior to the initial zoning of any airport hazard area under this article, the city or county which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the city or county shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city or county planning commission already exists, it shall be appointed as the airport zoning commission.

(Added by Stats. 1953, Ch. 1741.)

50485.7. Reasonable regulations; considerations

All airport zoning regulations adopted under this article shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this article. In determining what regulations it may adopt, each city or county shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(Added by Stats. 1953, Ch. 1741.)

50485.8. Nonconforming uses

No airport zoning regulations adopted under this article shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in Section 50485.10.

(Added by Stats. 1953, Ch. 1741.)

50485.9. Administration and enforcement

All airport zoning regulations adopted under this article shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the city or county adopting the regulations, if satisfactory to that city or county. The duties of any administrative agency designated pursuant to this article shall include that of hearing and deciding all applications for permits and variances under Section 50485.10.

(Added by Stats. 1953, Ch. 1741.)

50485.10. Nonconforming uses; permits for repairs, alterations, etc.; variances

Any airport zoning regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted. No such permit shall be required to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of the existing structure.

Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this article, may apply to the administrative agency for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this article; provided, that any variance may be allowed subject to any reasonable conditions that the administrative agency may deem necessary to effectuate the purpose of this article.

In granting any permit or variance under this section, the administrative agency may, if it deems such action advisable to effectuate the purposes of this article and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the city and county, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

(Added by Stats. 1953, Ch. 1741.)

50485.11. Petition court for review

Any person aggrieved or taxpayer affected by any decision of the administrative agency or of any governing body of a city or county, may petition a court for a review of the matter in accordance with law.

The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the administrative agency. The findings of fact of the administrative agency, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the administrative agency shall be considered by the court unless such objection shall have been urged before the administrative agency, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

In any case in which airport zoning regulations adopted under this article, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this State or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

(Added by Stats. 1953, Ch. 1741.)

50485.12. Violations

Each violation of this article or of any regulations, orders, or rulings promulgated or made pursuant to this article, shall constitute a misdemeanor. In addition, the city or county adopting zoning regulations under this article may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this article, or of airport zoning regulations adopted under this article, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to

effectuate the purpose of this article and of the regulations adopted and orders and rulings made pursuant thereto.

(Added by Stats. 1953, Ch. 1741.)

50485.13. *(Repealed by Stats. 1975, Ch. 1240.)*

50485.14. Effect on general zoning powers

Neither this article nor anything expressed in it is intended to be or is to be construed as a denial of the power of local governing bodies and agencies to provide for zoning regulations pursuant to Article XI, Section 11, of the Constitution.

(Added by Stats. 1953, Ch. 1741.)

POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES

Chapter 1. General

Article 5. Regulation of Local Agencies by Counties and Cities

53090. Definitions

As used in this article:

(a) "Local agency" means an agency of the state for the local performance of governmental or proprietary function within limited boundaries. "Local agency" does not include the state, a city, a county, a rapid transit district, or a rail transit district whose board of directors is appointed by public bodies or officers or elected from election districts within the area comprising the district, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code.

(b) "Building ordinances" means ordinances of a county or city regulating building and construction and removal of buildings, including ordinances relating to the matters set forth in Section 38660 and similar matters, and including ordinances relating to building permits and building inspection.

(Added by Stats. 1959, Ch. 4907; Amended by Stats. 2002, Ch.341.)

53091. Compliance with local ordinances

(a) Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.

(b) On projects for which state school building aid is requested by a local agency for construction of school facilities, the county or city planning commission in which the local agency is located shall consider in its review for approval information relating to attendance area enrollment, adequacy of the site upon which the construction is proposed, safety features of the site and proposed construction, and present and future land utilization, and report thereon to the State Allocation Board. If the local agency is situated in more than one city or county or partly in a city and partly in a county, the local agency shall comply with the ordinances of each county or city with respect to the territory of the local agency that is situated in the particular county or city, and the ordinances of a county or city shall not be applied to any portion of the territory of the local agency that is situated outside the boundaries of the county or city. Notwithstanding the preceding provisions of this section, this section does not require a school district or the state when acting under the State Contract Act (Article 1 (commencing with Section 10100) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code) to comply with the building ordinances of a county or city.

(c) Each local agency required to comply with building ordinances and zoning ordinances pursuant to this section and each school district whose school buildings are inspected by a county or city pursuant to Section 53092 shall be subject to the applicable ordinances of a county or city requiring the payment of fees, but the amount of those fees charged to a local agency or school district shall not exceed the amount charged under the ordinance to nongovernmental agencies for the same services or permits.

(d) Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency.

(e) Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are subject to Section 12808.5 of the Public Utilities Code, or electrical substations in an electrical transmission system that receives electricity at less than 100,000 volts. Zoning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency, if the zoning ordinances make provision for those facilities.

(Amended by Stats. 1977, Ch. 435; Amended by Stats. 1984, Ch. 976; Amended by Stats. 2001, Ch. 396; Amended by Stats. 2002, Ch. 267.)

53092. Delegation of authority

The State Director of Public Works, upon recommendation of the Division of Architecture, may delegate to any county or city all or part of the powers and duties of the Division of Architecture relating to the inspection of construction of school buildings of school districts within the county or city if, as determined by the Division of Architecture, the county or city has an adequate building inspection program. No delegation under this

section shall become effective without the consent of the legislative body of the county or city to which the delegation is made.

(Added by Stats. 1959, Ch. 2110.)

53093. *(Repealed by Stats. 1970, Ch. 172.)*

53094. School districts

(a) Notwithstanding any other provision of this article, this article does not require a school district to comply with the zoning ordinances of a county or city unless the zoning ordinance makes provision for the location of public schools and unless the city or county has adopted a general plan.

(b) Notwithstanding subdivision (a), the governing board of a school district, that has complied with the requirements of Section 65352.2 of this code and Section 21151.2 of the Public Resources Code, by a vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district. The governing board of the school district may not take this action when the proposed use of the property by the school district is for nonclassroom facilities, including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings.

(c) The governing board of the school district shall, within 10 days, notify the city or county concerned of any action taken pursuant to subdivision (b). If the governing board has taken such an action, the city or county may commence an action in the superior court of the county whose zoning ordinance is involved or in which is situated the city whose zoning ordinance is involved, seeking a review of the action of the governing board of the school district to determine whether it was arbitrary and capricious. The city or county shall cause a copy of the complaint to be served on the board. If the court determines that the action was arbitrary and capricious, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by the school district.

(Formerly 53084; Added by Stats. 2000, Ch. 404; Renumbered and amended by Stats. 2001, Ch. 734.)

53095. Other statutes

The provisions of this article shall prevail over Sections 17215 and 81035 of the Education Code and over Section 65402 of the Government Code.

(Amended by Stats. 1978, Ch. 380.)

53096. Exemptions from local zoning

(a) Notwithstanding any other provision of this article, the governing board of a local agency, by vote of four-fifths of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property if the local agency at a noticed public hearing determines by resolution that there is no feasible alternative to its proposal. The governing board may not render a zoning ordinance inapplicable to a proposed use of property when the proposed use of the property by the local agency is for facilities not related to storage or transmission of water or electrical energy, including, but not limited to, warehouses, administrative buildings or automotive storage and repair buildings. The governing board of a local agency may make these determinations at the time it approves an environmental impact report on its proposal required by Division 13 (commencing with Section 21000) of the Public Resources Code. Mailed notice of the public hearing shall be provided at least 10 days prior to the hearing, to the owners of all property within 300 feet of the location of the proposed facility and a notice shall be posted in a conspicuous place at the proposed site of the facility. If mailed notice as required above would result in notice to more than 250 persons, as an alternative to mailed notice, notice may be given by placing a display advertisement of at least one-fourth page in a newspaper of general circulation within the area affected by the proposed facility and by posting the notice in a conspicuous place at the proposed site of the facility.

(b) The board shall, within 10 days, notify the city or county, whose zoning ordinance has been rendered inapplicable under subdivision (a), of its action. If the governing board has taken this action, the city or county may commence an action in the superior court of the county whose zoning ordinance is involved or in which is situated the city whose zoning ordinance is involved, seeking a review of the action of the governing board to determine whether it was supported by substantial evidence. The evidence before the court shall include the record of the proceedings before the city, county, and district. The city or county shall cause a copy of the complaint to be served on the board. If the court determines that the action was not supported by substantial evidence, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by the local agency.

(c) "Feasible" as used in this section means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(Added by Stats. 1977, Ch. 435; Amended by Stats. 2002, Ch. 267.)

53097. School districts; design and construction

Notwithstanding any other provisions of this article, the governing board of a school district shall comply with any city or county ordinance (1) regulating drainage improvements and conditions, (2) regulating road improvements and conditions, or (3) requiring the review and approval of grading plans as these ordinance provisions relate to the design and construction of onsite improvements which affect drainage, road conditions, or grading, and shall

give consideration to the specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements. If a school district elects not to comply with the requirements of city or county ordinances relating to the design and construction of offsite improvements, the city or county shall not be liable for any injuries or for any damage to property caused by the failure of the school district to comply with those ordinances.

(Added by Stats. 1984, Ch. 657; Amended by Stats. 1990, Ch. 275.)

53097.3. School district authority to render city or county ordinance inapplicable to a charter school facility

Notwithstanding any other provision of this article, no school district may render a city or county ordinance inapplicable to a charter school facility pursuant to this article, unless the facility is physically located within the geographical jurisdiction of that school district.

(Added by Stats. 2002, Ch. 935.)

53097.5. School districts; compliance with ordinance

A county or city may inspect school buildings, as defined in Section 39141 of the Education Code, pursuant to guidelines adopted pursuant to Section 16500 of the Health and Safety Code or pursuant to any local ordinance regulating substandard conditions in buildings used for human habitation. The results of the inspections shall be forwarded to the office of the State Architect.

(Added by Stats, 1989, Ch. 953.)

SURPLUS LAND

Chapter 5. Property

Article 8. Surplus Land

54220. Intent

(a) The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose.

(b) The Legislature reaffirms its belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes. This article shall not apply to surplus residential property as defined in Section 54236.

(c) The Legislature reaffirms its declaration of the importance of appropriate planning and development near transit stations, to encourage the clustering of housing and commercial development around such stations. Studies of transit ridership in California indicate that a higher percentage of persons who live or work within walking distance of major transit stations utilize the transit system more than those living elsewhere. The Legislature also notes that the Federal Transit Administration gives priority for funding of rail transit proposals to areas that are implementing higher-density, mixed-use development near major transit stations.

(Amended by Stats. 1982, Ch. 1442; Amended by Stats. 2003, Ch. 772.)

54221. Definitions

(a) As used in this article, the term "local agency" means every city, whether organized under general law or by charter, county, city and county, and district, including school districts of any kind or class, empowered to acquire and hold real property.

(b) As used in this article, the term "surplus land" means land owned by any agency of the state, or any local agency, that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange.

(c) As used in this article, the term "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) As used in this article, the term "persons and families of low or moderate income" means the same as provided under Section 50093 of the Health and Safety Code.

(e) As used in this article, the term "exempt surplus land" means either of the following:

(1) Surplus land which is transferred pursuant to Section 25539.4.

(2) Surplus land which is (A) less than 5,000 square feet in area, (B) less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less, or (C) has no record access and is less than 10,000 square feet in area; and is not contiguous to land owned by a state or local agency which is used for park, recreational, open-space, or low- and moderate-income housing purposes and is not located within an enterprise zone pursuant to Section 7073 nor a designated program area as defined in Section 7082. If the surplus land is not sold to an owner of contiguous land, it is not considered exempt surplus land and is subject to the provisions of this article.

(f) Notwithstanding subdivision (e), the following properties are not considered exempt surplus land and are subject to the provisions of this article:

(1) Lands within the coastal zone.

(2) Lands within 1,000 yards of a historical unit of the State Parks System.

(3) Lands within 1,000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places.

(4) Lands within the Lake Tahoe region as defined in Section 66905.5.

(Amended by Stats. 1982, Ch. 1442; Amended by Stats. 1988, Ch. 964.)

54222. Public notice by shelter

Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low-and moderate-income housing shall be sent to any local public entity as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall, upon written request, be sent a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by first-class mail and shall include the location and a description of the property. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency which may succeed to its powers.

(c) A written offer to sell or lease land suitable for school facilities construction or use by a school district for open-space purposes shall be sent to any school district in whose jurisdiction the land is located.

(d) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.

(e) A written offer to sell or lease for the purpose of developing property located within an infill opportunity zone designated pursuant to Section 65088.4 or within an area covered by a transit village plan adopted pursuant to the Transit Village Development Planning Act of 1994, Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7 shall be sent to any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located.

(f) ***The entity or association desiring to purchase or lease the surplus land for any of the purposes authorized by this section shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

***

(Amended by Stats. 1984, Ch. 45; Amended by Stats. 1988, Ch. 1350; Amended by Stats. 1992, Ch. 404; Amended by Stats. 2003, Ch.772; Amended by Stats. 2004, Ch. 118.)

54222.3. Disposal of exempt surplus land

Section 54222 shall not apply to the disposal of exempt surplus land as defined in Section 54221 by an agency of the state or any local agency.

(Added by Stats. 1988, Ch. 964.)

54223. Negotiations for sale or lease terms

After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 60 days, the land may be disposed of without further regard to this article.

(Amended by Stats. 1982, Ch. 1442.)

54224. Transfer

Nothing in this article shall preclude a local agency, housing authority, or redevelopment agency which purchases land from a disposing agency pursuant to this article from reconveying the land to a nonprofit or for-profit housing developer for development of low- and moderate-income housing as authorized under other provisions of law.

(Added by Stats. 1982, Ch. 1442.)

54225. Terms of sale

Any public agency selling surplus land to an entity described in Section 54222 for park or recreation purposes, for open-space purposes, for school purposes, or for low- and moderate- income housing purposes may provide for a payment period of up to 20 years in any contract of sale or sale by trust deed of such land.

(Amended by Stats. 1984, Ch. 1303.)

54226. Legislative intent

Nothing in this article shall be interpreted to limit the power of any agency of the state or any local agency to sell or lease surplus land at fair market value or at less than fair

market value, and nothing in this article shall be interpreted to empower any agency of the state or any local agency to sell or lease surplus land at less than fair market value. No provision of this article shall be applied when it conflicts with any other provision of statutory law.

(Added by Stats. 1982, Ch. 1442.)

54227. Multiple offers

In the event that the state or any local agency disposing of surplus land receives offers for the purchase or lease of such land from more than one of the entities to which notice and an opportunity to purchase or lease shall be given pursuant to this article, the state or local agency shall give first priority to the entity which agrees to use the site for housing for persons and families of low or moderate income, except that first priority shall be given to an entity which agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

(Added by Stats. 1982, Ch. 1442.)

54230. Inventory

The board of supervisors of any county may establish a central inventory of all surplus governmental property located in such county.

(Added by Stats. 1974, Ch. 1339.)

54230.5. Noncompliance

The failure by the state or a local agency to comply with the provisions of this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value.

(Added by Stats. 1974, Ch. 1339.)

54231. Highway lands

Land acquired by a local agency for highway purposes through the expenditure of funds allocated pursuant to Chapter 3 (commencing with Section 2100) of Division 3 of the Streets and Highways Code may be retained by the local agency, or transferred to another local agency, for public park and recreational purposes if the land is no longer necessary for highway purposes, and if the local agency having jurisdiction over such land determines that the use of such land for public park and recreational purposes is the highest and best use of the land.

(Added by Stats. 1975, Ch. 852.)

54232. Site development

Land retained or transferred for public park and recreational purposes pursuant to Section 54231 shall be developed within 10 years, and shall be used for at least 25 years, following such retention or transfer for such purposes in accordance with the general plan for the city or county in which the land is located. Otherwise, the land shall be sold by the local agency, and the funds received from the sale shall be used for highway purposes. If the land originally had been transferred for such purposes, it shall revert to the original acquiring local agency for such sale.

(Added by Stats. 1975, Ch. 852.)

THE BROWN ACT

Chapter 9. Meetings

54950. Declaration, intent; sovereignty

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

(Added by Stats, 1953, Ch. 1588)

54950.5. Short Title

This chapter shall be known as the Ralph M. Brown Act.

(Added by Stats. 1961, Ch. 115)

54951. Local agency

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

(Added by Stats. 1953, Ch. 1588; Amended by Stats. 1959, Ch. 1417)

54951. *Repealed by Stats 1993, Ch. 1138.*

54952. Legislative body, definition

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legis-

lative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

(Added by Stats. 1953, Ch. 1588; Amended by Stats. 1961, Ch. 1671, Stats. 1993, Ch. 1138, Stats. 1996, Ch. 1134, Stats. 2002, Ch. 1073.)

54952.1. Member of a legislative body of a local agency; conduct

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

(Added by Stats. 1993, Ch. 1137; Amended by Stats. 1994, Ch. 32.)

54952.2. Meeting; prohibited devices for obtaining collective concurrence; exclusions from chapter

(a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person.

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

(Added by Stats 1993, Ch. 1137; Amended by Stats 1994, Ch. 32)

54952.6. Action taken

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

(Added by Stats. 1961, Ch. 1671)

54952.7. Copies of chapter to members of legislative body of local agencies

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

(Added by Stats. 1980, Ch. 1284. Amended by Stats. 1981, Ch. 968; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1993, Ch. 1138.)

54953. Meetings to be open and public; attendance

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by roll call.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

(Added by Stats. 1953, Ch. 1588. Amended by Stats. 1988, Ch. 399; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32; Stats. 1997, Ch. 253; Stats. 1998, Ch. 260.)

54953.1. Testimony of members before grand jury

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

(Added by Stats. 1979, Ch. 950.)

54953.2. Legislative body meetings to meet protections and prohibitions of the Americans with Disabilities Act

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(Added by Stats. 2002, Ch. 300.)

54953.3. Conditions to attendance

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

(Added by Stats. 1957, Ch. 85; Amended by Stats. 1981, Ch. 968.)

54953.5. Right to record proceedings; conditions; tape or film records made by or under direction of local agencies

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to

record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a video or tape player made available by the local agency.

(Added by Stats. 1980, Ch. 1284. Amended by Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32.)

54953.6. Prohibitions or restrictions on broadcasts of proceedings of legislative body; reasonable findings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

(Added by Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137. Amended by Stats. 1994, Ch. 32.)

54953.7. Allowance of greater access to meetings than minimal standards in this chapter

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

(Added by Stats. 1981, Ch. 968.)

54954. Time and place of regular meetings; special meetings; emergencies

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of **an applicant for the position of** the superintendent of *** **the** district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

(Added by Stats. 1953, Ch. 1588,. Amended by Stats. 1993, Ch. 1136; Ameneded by Stats. 1993, Ch. 1137; Amended by Stats. 1994, Ch. 32; Amended by Stats. 1997, Ch. 253; Amended by Stats. 1998, Ch. 260; Amended by Stats. 2004, Ch. 257.)

54954.1. Mailed notice to persons who filed written request; time; duration and renewal of requests; fee

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

(Added by Stats. 1973, Ch. 1070. Amended by Stats. 1990, Ch. 1198; Stats. 1997, Ch. 253; Stats. 2002, Ch. 300.)

54954.2. Agenda; posting; action on other matters

(a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section **54954.**3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(Added by Stats. 1986, Ch. 641; Amended by Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32; Stats. 1997, Ch. 253; Stats. 2002, Ch. 300.)

54954.3. Opportunity for public to address legislative body; adoption of regulations; public criticism of policies

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the leg-

islative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(Added by Stats. 1986, Ch. 641. Amended by Stats. 1991, Ch. 66; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32.)

54954.4. Reimbursements to local agencies and school districts for costs

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

(Added by Stats. 1991, Ch. 238)

54954.5. Closed session item descriptions

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers) or Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency

may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question) or Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency.) Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

(Added by Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Amended by Stats. 1994, Ch. 32; Amended by Stats. 1996, Ch. 182; Amended by Stats. 1998, Ch. 260; Amended by Stats. 1998, Ch. 876; Amended by Stats. 2002, Ch. 1120; Amended by Stats. 2004, Ch. 784.)

54954.6. New or increased taxes or assessments; public meetings and public hearings; joint notice requirements

(a)(1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the

same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b)(1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c)(1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The estimated amount of the assessment per parcel. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an as-

sessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

(Added by Stats. 1992, Ch. 1234; Amended by Stats. 1993, Ch. 1194; Stats. 1994, Ch. 860; Stats. 1995, Ch. 258; Stats. 1997, Ch. 38.)

54955. Adjournment; adjourned meetings

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for pecial meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, by law, or other rule.

(Added by Stats. 1953, Ch. 1588; Amended by Stats. 1955, Ch. 760; Stats. 1959, Ch. 647.)

54955.1. Continuance

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately folowing the meeting at which the order or declaration of continuance was adopted or made.

(Added by Stats. 1965, c. 469.)

54956. Special meetings; call; notice

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(Added by Stats. 1953, Ch. 1588; Amended by Stats. 1955, Ch. 760; Stats. 1980, Ch. 1284; Stats. 1986, Ch. 641; Stats. 1994, Ch. 32; Stats. 1997, Ch. 253.)

54956.5. Emergency meetings in emergency situations

(a) For purposes of this section, " emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stop-

page, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one- hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b)(1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two- thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

(Added by Stats. 1979, Ch. 223; Amended by Stats. 1981, Ch. 968; Stats. 1986, Ch. 641; Stats. 2002, Ch. 175.)

54956.6. Fees

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

(Added by Stats. 1980, Ch. 1284.)

54956.7. Closed sessions, license applications; rehabilitated criminals

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

(Added by Stats. 1982, Ch. 298.)

54956.75. Open session for audit report

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of

State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

(Added by Stats. 2004, Ch. 576).

54956.8. Real property transactions; closed meeting with negotiator

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of

payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiator, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

(Added by Stats. 1984, Ch. 1126; Amended by Stats. 1994, Ch. 32; Stats. 1998, Ch. 260.)

54956.81. Investment Transaction Meetings

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

(Added by Stats. 2004, Ch. 533)

54956.86. Charges or complaints from members of local agency health plans; closed hearings; members' rights

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to his section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

(Added by Stats. 1996, Ch. 182.)

54956.87. Records of certain health plans; meetings on health plan trade secrets

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, **formulas** or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision *** (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) **Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment.** The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

(Added by Stats. 1999, Ch. 769; Amended by Stats. 2003, Ch. 424.)

54956.9. Pending litigation; closed session; lawyer-client privilege; notice; memorandum

Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(a) Litigation, to which the local agency is a party, has been initiated formally.

(b)(1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(3) For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(F) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the subdivision of this section that authorizes the closed session. If the session is closed pursuant to subdivision (a), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

(Added by Stats. 1984, Ch. 1126; Amended by Stats. 1987, Ch. 1320; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32.)

54956.95. Closed sessions; insurance pooling; tort liability losses; public liability losses; workers' compensation liability

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability

losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

(Added by Stats. 1989, Ch. 882)

54956.96. Legislative Body of Joint Powers Agency

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

(Added by Stats. 2004, Ch. 784.)

54957. Closed sessions; personnel matters; exclusion of witnesses

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b)(1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term " employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

(Added by Stats. 1953, Ch. 1588; Amended by Stats. 1957, Ch. 1314; Stats. 1959, Ch. 647; Stats. 1961, Ch 1671; Stats. 1971, Ch 587; Stats. 1975, Ch. 959; Stats. 1980, Ch. 1284; Stats. 1982, Ch. 298; Stats. 1993, Ch. 1136 and Ch. 1137; Stats. 1994, Ch. 32; Stats. 2002, Ch. 1120.)

54957.1. Closed sessions; public report of action taken

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

(Added by Stats. 1975, Ch. 959; Amended by Stats. 1977, Ch. 89; Stats. 1980, Ch. 181 and Ch. 1284; Stats. 1993,

Ch. 1136 and 1137; Stats. 1994, Ch. 32; Amended by Stats. 2004, Ch. 533.)

54957.2. Minute book record of closed sessions; inspection

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

(Added by Stats. 1976, Ch. 1363; Amended by Stats. 1980, Ch. 1284; Stats. 1981, Ch. 968.)

54957.5. Agendas and other writings distributed for discussion or consideration at public meetings; public records; inspection; closed sessions

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

(Added by Stats. 1980, Ch. 1284; Amended by Stats. 1981, Ch 968; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32; Stats. 1998, Ch. 260; Stats. 1999, Ch. 769; Stats. 2002, Ch. 300.)

54957.6. Closed sessions; salaries, salary schedules or fringe benefits

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee"

shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

(Added by Stats. 1968, Ch. 1272; Amended by Stats. 1980, Ch. 1284; Stats. 1984, Ch. 62; Stats. 1985, Ch. 366; Stats. 1986, Ch. 248; Stats. 1993, Ch. 1138; Stats. 1994, Ch. 32; Stats. 1998, Ch 260.)

54957.7. Disclosure of items to be discussed in closed sessions

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

(Added by Stats. 1980, Ch. 1284; Amended by Stats. 1981, Ch. 968; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137.)

54957.8. Closed sessions; legislative body of a multijurisdictional drug law enforcement agency

Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional drug law enforcement agency, or an advisory body of a multijurisdictional drug law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional drug law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

"Multijurisdictional drug law enforcement agency," for purposes of this section, means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, which provides drug law enforcement services for the parties to the joint powers agreement.

The Legislature finds and declares that this section is within the public interest, in that its provisions are necessary to prevent the impairment of ongoing law enforcement investigations, to protect witnesses and informants, and to permit the discussion of effective courses of action in particular cases.

(Added by Stats. 1988, Ch. 55.)

54957.9. Disorderly conduct of general public during meeting; clearing of room

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

(Added by Stats. 1970, Ch. 1610; Amended by Stats. 1981, Ch. 968.)

54957.10. Closed sessions; local agency employee application for early withdrawal of funds in deferred compensation plan; financial hardship

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

(Added by Stats. 2001, Ch. 45.)

54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

(Added by Stats. 1953, Ch. 1588.)

54959. Penalty for unlawful meeting

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

(Added by Stats. 1961, Ch. 1671; Amended by Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32.)

54960. Actions to stop or prevent violations of meeting provisions; applicability of meeting provisions; validity of rules or actions on recording closed sessions

(a) The district attorney or any interested person may

commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency which has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording.

(ii) An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

(Added by Stats. 1961, Ch. 1671; Amended by Stats. 1969, Ch. 494; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32.)

54960.1. Unlawful action by legislative body; action for mandamus or injunction; prerequisites

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c)(1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with

Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

(Added by Stats. 1986, Ch. 641; Amended by Stats. 1987, Ch. 1327; Stats. 1992, Ch. 1234; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1994, Ch. 32; Stats. 2002, Ch. 454.)

54960.5. Costs and attorney fees

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a legislative body of the local agency has violated this chapter. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

(Added by Stats. 1975, Ch. 959; Amended by Stats. 1981, Ch. 968; Stats. 1986, Ch. 641.)

54961. Meetings prohibited in facilities; grounds; identity of victims of tortious sexual conduct or child abuse

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

(Added by Stats. 1970, Ch. 383; Amended by Stats. 1981, Ch. 968; Stats. 1993, Ch. 1136; Stats. 1993, Ch. 1137; Stats. 1993, Ch. 1138; Stats. 1994, Ch. 32.)

54962. Closed session by legislative body prohibited

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

(Added by Stats. 1987, Ch. 1320; Amended by Stats. 1988, Ch. 1346, Stats. 1993, Ch. 1136, Stats. 1993, Ch. 1137, Stats. 1993, Ch. 1138, Stats. 1994, Ch. 32, Stats. 1995, Ch. 529.)

54963. Confidential information acquired during an authorized closed legislative session; authorization by legislative body; remedies for violation; exceptions

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has

willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grandjury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

(Added by Stats. 2002, Ch. 1119.)

PUBLIC UTILITIES CODE

AIRPORT LAND USE PLANNING

Chapter 4. Airports and Air Navigation Facilities

Article 3.5. Airport Land Use Commission

21670. Creation; membership

(a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the

function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.

(f) It is the intent of the Legislature to clarify that, for the purposes of this article, that special districts**,** school districts, and community college districts are included among the local agencies that are subject to airport land use laws and other requirements of this article.

(Amended by Stats. 1982, Ch. 1041; Amended by Stats. 1984, Ch. 1117; Amended by Stats. 1987, Ch. 1018; Amended by Stats. 1993, Ch. 59; Amended by Stats. 1994, Ch. 644; Amended by Stats. 2003, Ch. 351.)

21670.1. Action by designated body; local option

(a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.

(b) A body designated pursuant to subdivision (a) *** **that** does not include among its membership at least two members having *** expertise in aviation, as defined in subdivision (e) of section 21670, shall, when acting in the capacity of an airport land use commission, be augmented so that body, as augmented, will have at least two members having that expertise. The commission shall be constituted pursuant to this section on and after March 1, 1988.

(c) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of section 21670, if the board of supervisors of a county and each affected city in that county each makes a determination that proper land use planning pursuant to this article can be accomplished pursuant to this subdivision, then a commission need not be formed in that county.

(2) If the board of supervisors of a county and each affected city makes a determination that proper land use planning may be accomplished and a commission is not formed pursuant to paragraph (1), that county and the appropriate affected cities having jurisdiction over an airport, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:

(A) Adopt processes for the preparation, adoption, and amendment of the airport land use compatibility plan for each airport that is served by a scheduled airline or operated for the benefit of the general public.

(B) Adopt processes for the notification of the general public, landowners, interested groups, and other public agencies regarding the preparation, adoption, and amendment of the airport land use compatibility plans.

(C) Adopt processes for the mediation of disputes arising from the preparation, adoption, and amendment of the airport land use compatibility plans.

(D) Adopt processes for the amendment of general and specific plans to be consistent with the airport land use compatibility plans.

(E) Designate the agency that shall be responsible *** **for** the preparation, adoption, and amendment of each airport land use compatibility plan.

(3) The Division of Aeronautics of the department shall review the processes adopted pursuant to paragraph (2), and shall approve the processes if the division determines that the processes are consistent with the procedure required by this article and will do all of the following:

(A) Result in the preparation, adoption, and implementation of plans within a reasonable amount of time.

(B) Rely on the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with section 77.1) of Title 14 of the Code of Federal Regulations.

(C) Provide adequate opportunities for notice to, review of, and comment by the general public, landowners, interested groups, and other public agencies.

(4) If the county does not comply with the requirements of paragraph (2) within 120 days, then the airport land use compatibility plan and amendments shall not be considered adopted pursuant to this article and a commission shall be established within 90 days of the determination of noncompliance by the division and an airport land use compatibility plan shall be adopted pursuant to this article within 90 days of the establishment of the commission.

(d) A commission need not be formed in a county that has contracted for the preparation of airport land use compatibility plans with the Division of Aeronautics under the California Aid to Airports Program (**Chapter 4** *** (commencing with section 4050) **of Title 21** of the California Code of Regulations), Project Ker-VAR 90-1, and that submits all of the following information to the Division of Aeronautics for review and comment that the county and the cities affected by the airports within the county, as defined by the airport land use compatibility plans:

(1) Agree to adopt and implement the airport land use compatibility plans that have been developed under contract.

(2) Incorporated the height, use, noise, safety, and density criteria that are compatible with airport operations as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with section 77.1) of Title 14 of the Code of Federal Regulations, as part of the general and specific plans for the county and for each affected city.

(3) If the county does not comply with this subdivision on or before May 1, 1995, then a commission shall be established in accordance with this article.

(e) (1) A commission need not be formed in a county if all of the following conditions are met:

(A) The county has only one public use airport that is owned by a city.

(B) (i) The county and the affected city adopt the elements in paragraph (2) of subdivision (d), as part of their general and specific plans for the county and the affected city.

(ii) The general and specific plans shall be submitted, upon adoption, to the Division of Aeronautics. If the county and the affected city do not submit the elements specified in paragraph (2) of subdivision (d), on or before May 1, 1996, then a commission shall be established in accordance with this article.

(Added by Stats. 1970, Ch. 1182; Amended by Stats. 1980, Ch. 725; Amended by Stats. 1987, Ch. 1018; Amended by Stats. 1994, Ch. 644; Amended by Stats. 1995, Ch. 66; Amended by Stats. Ch. 438; Amended by Stats. 2004 Ch. 182.)

21670.2. County of Los Angeles

(a) Sections 21670 and 21670.1 do not apply to the County of Los Angeles. In that county, the county regional planning commission has the responsibility for coordinating the airport planning of public agencies within the county. In instances where impasses result relative to this planning, an appeal may be made to the county regional planning commission by any public agency involved. The action taken by the county regional planning commission on an appeal may be overruled by a four-fifths vote of the governing body of a public agency whose planning led to the appeal.

(b) By January 1, 1992, the county regional planning commission shall adopt the airport land use compatibility plans required pursuant to Section 21675.

(c) Sections 21675.1, 21675.2, and 21679.5 do not apply to the County of Los Angeles until January 1, 1992. If the airport land use compatibility plans required pursuant to Section 21675 are not adopted by the county regional planning commission by January 1, 1992, Sections 21675.1 and 21675.2 shall apply to the County of Los Angeles until the airport land use compatibility plans are adopted.

(Added by Stats. 1970, Ch. 1182; Amended by Stats. 1990, Ch. 54; Amended by Stats. 2002, Ch. 438.)

21670.3. San Diego Airport Land Use Compatibility Plan

(a) Sections 21670 and 21670.1 do not apply to the County of San Diego. In that county, the San Diego County Regional Airport Authority, as established pursuant to Section 170002, is responsible for coordinating the airport planning of public agencies within the county and shall, on or before June 30, 2005, after reviewing the existing *** **airport** land use **compatibility** plan adopted pursuant to Section 21675, adopt *** an **airport** land use **compatibility** plan.

(b) Any *** **airport** land use **compatibility** plan developed pursuant to Section 21675 and adopted pursuant to Section 21675.1 by the San Diego Association of Governments shall remain in effect until June 30, 2005, unless the San Diego County Regional Airport Authority adopts a plan prior to that date pursuant to subdivision (a).

(Added by Stats. 2001, Ch. 946; Amended by Stats. 2004, Ch. 615.)

21670.4. Exemptions

(a) As used in this section, "intercounty airport" means any airport bisected by a county line through its runways, runway protection zones, inner safety zones, inner turning zones, outer safety zones, or sideline safety zones, as defined by the department' s Airport Land Use Planning Handbook and referenced in the airport land use compatibility plan formulated under Section 21675.

(b) It is the purpose of this section to provide the opportunity to establish a separate airport land use commission so that an intercounty airport may be served by a single airport land use planning agency, rather than having to look separately to the airport land use commissions of the affected counties.

(c) In addition to the airport land use commissions created under Section 21670 or the alternatives established under Section 21670.1, for their respective counties, the boards of supervisors and city selection committees for the affected counties, by independent majority vote of each county's two delegations, for any intercounty airport, may do either of the following:

(1) Establish a single separate airport land use commission for that airport. That commission shall consist of seven members to be selected as follows:

(A) One representing the cities in each of the counties, appointed by that county's city selection committee.

(B) One representing each of the counties, appointed by the board of supervisors of each county.

(C) One from each county having expertise in aviation, appointed by a selection committee comprised of the managers of all the public airports within that county.

(D) One representing the general public, appointed by the other six members of the commission.

(2) In accordance with subdivision (a) or (b) of Section 21670.1, designate an existing appropriate entity as that airport's land use commission.

(Added by Stats. 1997, Ch. 81; Amended by Stats. 2002, Ch. 438.)

21671. Locally owned airports

In any county where there is an airport operated for the general public which is owned by a city or district in another county or by another county, one of the representatives provided by paragraph (1) of subdivision (b) of Section 21670 shall be appointed by the city selection committee of mayors of the cities of the county in which the owner of

that airport is located, and one of the representatives provided by paragraph (2) of subdivision (b) of Section 21670 shall be appointed by the board of supervisors of the county in which the owner of that airport is located.

(Added by Stats. 1967, Ch. 852; Amended by Stats. 1982, Ch. 1041; Amended by Stats. 1984, Ch. 1117; Amended by Stats. 1987, Ch. 1018.)

21671.5. Commission members; fees

(a) Except for the terms of office of the members of the first commission, the term of office of each member shall be four years and until the appointment and qualification of his or her successor. The members of the first commission shall classify themselves by lot so that the term of office of one member is one year, of two members is two years, of two members is three years, and of two members is four years. The body that originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing that member. The expiration date of the term of office of each member shall be the first Monday in May in the year in which that member's term is to expire. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant. The chairperson of the commission shall be selected by the members thereof.

(b) Compensation, if any, shall be determined by the board of supervisors.

(c) Staff assistance, including the mailing of notices and the keeping of minutes and necessary quarters, equipment, and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge.

(d) Notwithstanding any other provisions of this article, the commission shall not employ any personnel either as employees or independent contractors without the prior approval of the board of supervisors.

(e) The commission shall meet at the call of the commission chairperson or at the request of the majority of the commission members. A majority of the commission members shall constitute a quorum for the transaction of business. No action shall be taken by the commission except by the recorded vote of a majority of the full membership.

(f) The commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission that has not adopted the airport land use compatibility plan required by Section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.

(g) In any county that has undertaken by contract or otherwise completed airport land use compatibility plans for at least one-half of all public use airports in the county, the commission may continue to charge fees necessary to comply with this article until June 30, 1992, and, if the airport land use compatibility plans are complete by that date, may continue charging fees after June 30, 1992. If the airport land use compatibility plans are not complete by June 30, 1992, the commission shall not charge fees pursuant to subdivision

(f) until the commission adopts the land use plans.

(Added by Stats. 1967, Ch. 852; Amended by Stats. 1972, Ch. 419, Amended by Stats. 1989, Ch. 306; Amended by Stats. 1990, Ch. 1572; Amended by Stats. 1991, Ch. 140; Amended by Stats. 2002, Ch. 438.)

21672. Rules and regulations

Each commission shall adopt rules and regulations with respect to the temporary disqualification of its members from participating in the review or adoption of a proposal because of conflict of interest and with respect to appointment of substitute members in such cases.

(Added by Stats. 1967, Ch. 852.)

21673. Creation of a commission

In any county not having a commission or a body designated to carry out the responsibilities of a commission, any owner of a public airport may initiate proceedings for the creation of a commission by presenting a request to the board of supervisors that a commission be created and showing the need therefor to the satisfaction of the board of supervisors.

(Added by Stats. 1967, Ch. 852; Amended by Stats. 1987, Ch. 1018.)

21674. Powers and duties

The commission has the following powers and duties, subject to the limitations upon its jurisdiction set forth in Section 21676:

(a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses.

(b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare.

(c) To prepare and adopt an airport land use compatibility plan pursuant to Section 21675.

(d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.

(e) The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

(f) In order to carry out its responsibilities, the commission may adopt rules and regulations consistent with this article.

(Amended by Stats. 1975, Ch. 1052; Amended by Stats. 1982, Ch. 1041; Amended by Stats. 1987, Ch. 1018; Amended by Stats. 2002, Ch. 438.)

21674.5. Caltrans training programs

(a) The Department of Transportation shall develop and implement a program or programs to assist in the training and development of the staff of airport land use commissions, after consulting with airport land use commissions, cities, counties, and other appropriate public entities.

(b) The training and development program or programs are intended to assist the staff of airport land use commissions in addressing high priority needs, and may include, but need not be limited to, the following:

(1) The establishment of a process for the development and adoption of airport land use compatibility plans.

(2) The development of criteria for determining **the** airport *** influence **area**.

(3) The identification of essential elements that should be included in the airport land use compatibility plans.

(4) Appropriate criteria and procedures for reviewing proposed developments and determining whether proposed developments are compatible with the airport use.

(5) Any other organizational, operational, procedural, or technical responsibilities and functions that the department determines to be appropriate to provide to commission staff and for which it determines there is a need for staff training or development.

(c) The department may provide training and development programs for airport land use commission staff pursuant to this section by any means it deems appropriate. Those programs may be presented in any of the following ways:

(1) By offering formal courses or training programs.

(2) By sponsoring or assisting in the organization and sponsorship of conferences, seminars, or other similar events.

(3) By producing and making available written information.

(4) Any other feasible method of providing information and assisting in the training and development of airport land use commission staff.

(Added by Stats. 1990, Ch. 1008; Amended by Stats. 2004, Ch. 615.)

21674.7. Planning handbook

(a) An airport land use commission that formulates, adopts, or amends an airport land use compatibility plan shall be guided by information prepared and updated pursuant to Section 21674.5 and referred to as the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation.

(b) It is the intent of the Legislature to discourage incompatible land uses near existing airports. Therefore, prior to granting permits for the renovation or remodeling of an existing building, structure, or facility, and before the construction of a new building, it is the intent of the Legislature that local agencies shall be guided by the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations, to the extent that the criteria has been incorporated into the plan prepared by a commission pursuant to Section 21675. This subdivision does not limit the jurisdiction of a commission as established by this article. This subdivision does not limit the authority of local agencies to overrule commission actions or recommendations pursuant to Sections 21676, 21676.5, or 21677.

(Added by Stats. 1994, Ch. 644; Amended by Stats. 2002, Ch. 438; Amended by Stats. 2003, Ch. 351.)

21675. Airport Land Use Compatibility Plan

(a) Each commission shall formulate *** **an airport** land use **compatibility** plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The **commission's airport land use compatibility** plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years. In formulating **an airport** land use **compatibility** plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the *** **airport influence** area. The *** **airport** land use compatibility plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission shall include, within its **airport land use compatibility** plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission sur-

rounding any military airport for all of the purposes specified in subdivision (a). The **airport land use compatibility** plan shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport. This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The *** **airport influence area** shall be established by the commission after hearing and consultation with the involved agencies.

(d) The commission shall submit to the Division of Aeronautics of the department one copy of the **airport land use compatibility** plan and each amendment to the plan.

(e) If *** **an airport** land use **compatibility** plan does not include the matters required to be included pursuant to this article, the Division of Aeronautics of the department shall notify the commission responsible for the plan.

(Added by Stats. 1981, Ch. 714; Amended by Stats. 1984, Ch. 1117; Amended by Stats. 1987, Ch. 1018; Amended by Stats. 1989, Ch. 306; Amended by Stats. 1990, Ch. 563; Amended by Stats. 2002, Ch. 438 & 971; Amended by Stats. 2004, Ch. 615.)

21675.1. Deadline; city and county actions

(a) By June 30, 1991, each commission shall adopt the airport land use compatibility plan required pursuant to Section 21675, except that any county that has undertaken by contract or otherwise completed airport land use compatibility plans for at least one-half of all public use airports in the county, shall adopt that airport land use compatibility plan on or before June 30, 1992.

(b) Until a commission adopts an airport land use compatibility plan, a city or county shall first submit all actions, regulations, and permits within the vicinity of a public airport to the commission for review and approval. Before the commission approves or disapproves any actions, regulations, or permits, the commission shall give public notice in the same manner as the city or county is required to give for those actions, regulations, or permits. As used in this section, "vicinity" means land that will be included or reasonably could be included within the airport land use compatibility plan. If the commission has not designated *** **an airport influence** area for the airport land use compatibility plan, then "vicinity" means land within two miles of the boundary of a public airport.

(c) The commission may approve an action, regulation, or permit if it finds, based on substantial evidence in the record, all of the following:

(1) The commission is making substantial progress toward the completion of the airport land use compatibility plan.

(2) There is a reasonable probability that the action, regulation, or permit will be consistent with the airport land use compatibility plan being prepared by the commission.

(3) There is little or no probability of substantial detriment to or interference with the future adopted airport land use compatibility plan if the action, regulation, or permit is ultimately inconsistent with the airport land use compatibility plan.

(d) If the commission disapproves an action, regulation, or permit, the commission shall notify the city or county. The city or county may overrule the commission, by a two-thirds vote of its governing body, if it makes specific findings that the proposed action, regulation, or permit is consistent with the purposes of this article, as stated in Section 21670.

(e) If a city or county overrules the commission pursuant to subdivision (d), that action shall not relieve the city or county from further compliance with this article after the commission adopts the airport land use compatibility plan.

(f) If a city or county overrules the commission pursuant to subdivision (d) with respect to a publicly owned airport that the city or county does not operate, the operator of the airport is not liable for damages to property or personal injury resulting from the city's or county's decision to proceed with the action, regulation, or permit.

(g) A commission may adopt rules and regulations that exempt any ministerial permit for single-family dwellings from the requirements of subdivision (b) if it makes the findings required pursuant to subdivision (c) for the proposed rules and regulations, except that the rules and regulations may not exempt either of the following:

(1) More than two single-family dwellings by the same applicant within a subdivision prior to June 30, 1991.

(2) Single-family dwellings in a subdivision where 25 percent or more of the parcels are undeveloped.

(Added by Stats. 1989, Ch. 306; Amended by Stats. 1991, Ch. 140; Amended by Stats. 2002, Ch. 438; Amended by Stats. 2004, Ch. 615.)

21675.2. Remedies

(a) If a commission fails to act to approve or disapprove any actions, regulations, or permits within 60 days of receiving the request pursuant to Section 21675.1, the applicant or his or her representative may file an action pursuant to Section 1094.5 of the Code of Civil Procedure to compel the commission to act, and the court shall give the proceedings preference over all other actions or proceedings, except previously filed pending matters of the same character.

(b) The action, regulation, or permit shall be deemed approved only if the public notice required by this subdivision has occurred. If the applicant has provided seven days advance notice to the commission of the intent to provide public notice pursuant to this subdivision, then, not earlier than the date of the expiration of the time limit established by Section 21675.1, an applicant may provide the required public notice. If the applicant chooses to provide public notice, that notice shall include a description

of the proposed action, regulation, or permit substantially similar to the descriptions which are commonly used in public notices by the commission, the location of any proposed development, the application number, the name and address of the commission, and a statement that the action, regulation, or permit shall be deemed approved if the commission has not acted within 60 days. If the applicant has provided the public notice specified in this subdivision, the time limit for action by the commission shall be extended to 60 days after the public notice is provided. If the applicant provides notice pursuant to this section, the commission shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

(c) Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65946, inclusive, of the Government Code, may constitute grounds for disapproval of actions, regulations, or permits.

(d) Nothing in this section diminishes the commission's legal responsibility to provide, where applicable, public notice and hearing before acting on an action, regulation, or permit.

(Added by Stats. 1989, Ch. 306.)

21676. Land use consistency

(a) Each local agency whose general plan includes areas covered by an airport land use compatibility plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the airport land use compatibility plan. If the plan or plans are inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its airport land use compatibility plans. The local agency may propose to overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the public record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(c) Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the public agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the public agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the public agency governing body may act without them. The comments by the division or the commission are advisory to the public agency governing body. The public agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from

the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the airport land use compatibility plan.

(Added by Stats. 1970, Ch. 1182; Amended by Stats. 1982, Ch. 1041; Amended by Stats. 1987, Ch. 1018; Amended by Stats. 2002, Ch. 438; Amended by Stats. 2003, Ch. 351.)

21676.5. Local agency plan revisions

(a) If the commission finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670, the commission may require that the local agency submit all subsequent actions, regulations, and permits to the commission for review until its general plan or specific plan is revised or the specific findings are made. If, in the determination of the commission, an action, regulation, or permit of the local agency is inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall hold a hearing to reconsider its plan. The local agency may propose to overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(b) Whenever the local agency has revised its general plan or specific plan or has overruled the commission pursuant to subdivision (a), the proposed action of the local agency shall not be subject to further commission review, unless the commission and the local agency agree that individual projects shall be reviewed by the commission.

(Added by Stats. 1984, Ch. 1117; Amended by Stats. 2002, Ch. 438; Amended by Stats. 2003, Ch. 351.)

21677. County of Marin

Notwithstanding the two-thirds vote required by Section 21676, any public agency in the County of Marin may overrule the Marin County Airport Land Use

Commission by a majority vote of its governing body. At least 45 days prior to the decision to overrule the commission, the public agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the public agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the public agency governing body may act without them. The comments by the division or the commission are advisory to the public agency governing body. The public agency governing body shall include comments from the commission and the division in the public record of the final decision to overrule the commission, which may be adopted by a majority vote of the governing body.

(Added by Stats. 1975, Ch. 934; Amended by Stats. 1984, Ch. 144; Amended by Stats. 2003, Ch. 351.)

21678. Public agency override

With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676**,** 21676.5, or 21677 overrules a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to overrule the commission's action or recommendation.

SEC. 7. 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.

(Added by Stats. 1982, Ch. 1041; Amended by Stats. 1984, Ch. 1117; Amended by Stats. 1987, Ch. 1018; Amended by Stats. 2003, Ch. 351.)

21679. Land use without an airport land use plan present

(a) In any county in which there is no airport land use commission or other body designated to assume the responsibilities of an airport land use commission, or in which the commission or other designated body has not adopted an airport land use compatibility plan, an interested

party may initiate proceedings in a court of competent jurisdiction to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, that directly affects the use of land within one mile of the boundary of a public airport within the county.

(b) The court may issue an injunction that postpones the effective date of the zoning change, zoning variance, permit, or regulation until the governing body of the local agency that took the action does one of the following:

(1) In the case of an action that is a legislative act, adopts a resolution declaring that the proposed action is consistent with the purposes of this article stated in Section 21670.

(2) In the case of an action that is not a legislative act, adopts a resolution making findings based on substantial evidence in the record that the proposed action is consistent with the purposes of this article stated in Section 21670.

(3) Rescinds the action.

(4) Amends its action to make it consistent with the purposes of this article stated in Section 21670, and complies with either paragraph (1) or (2), whichever is applicable.

(c) The court shall not issue an injunction pursuant to subdivision (b) if the local agency that took the action demonstrates that the general plan and any applicable specific plan of the agency accomplishes the purposes of an airport land use compatibility plan as provided in Section 21675.

(d) An action brought pursuant to subdivision (a) shall be commenced within 30 days of the decision or within the appropriate time periods set by Section 21167 of the Public Resources Code, whichever is longer.

(e) If the governing body of the local agency adopts a resolution pursuant to subdivision (b) with respect to a publicly owned airport that the local agency does not operate, the operator of the airport shall be immune from liability for damages to property or personal injury from the local agency's decision to proceed with the zoning change, zoning variance, permit, or regulation.

(f) As used in this section, "interested party" means any owner of land within two miles of the boundary of the airport or any organization with a demonstrated interest in airport safety and efficiency.

(Added by Stats. 1987, Ch. 1018; Amended by Stats. 2002, Ch. 438.)

21679.5. Litigation moratorium

(a) Until June 30, 1991, no action pursuant to Section 21679 to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, directly affecting the use of land within one mile of the boundary of a public airport, shall be commenced in any county in which the commission or other designated body has not adopted an airport land use compatibility plan, but is making substantial progress toward the completion of the airport land use compatibility plan.

(b) If a commission has been prevented from adopting the airport land use compatibility plan by June 30, 1991, or if the adopted airport land use compatibility plan could not become effective, because of a lawsuit involving the adoption of the airport land use compatibility plan, the June 30, 1991, date in subdivision (a) shall be extended by the period of time during which the lawsuit was pending in a court of competent jurisdiction.

(c) Any action pursuant to Section 21679 commenced prior to January 1, 1990, in a county in which the commission or other designated body has not adopted an airport land use compatibility plan, but is making substantial progress toward the completion of the airport land use compatibility plan, which has not proceeded to final judgment, shall be held in abeyance until June 30, 1991. If the commission or other designated body adopts an airport land use compatibility plan on or before June 30, 1991, the action shall be dismissed. If the commission or other designated body does not adopt an airport land use compatibility plan on or before June 30, 1991, the plaintiff or plaintiffs may proceed with the action.

(d) An action to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, directly affecting the use of land within one mile of the boundary of a public airport for which an airport land use compatibility plan has not been adopted by June 30, 1991, shall be commenced within 30 days of June 30, 1991, or within 30 days of the decision by the local agency, or within the appropriate time periods set by Section 21167 of the Public Resources Code, whichever date is later.

(Added by Stats. 1989, Ch. 306; Amended by Stats. 2002, Ch. 438.)

PUBLIC RESOURCES CODE EXCERPTS

SAFETY ELEMENT REVIEW - FIRE PROTECTION

Chapter 1. Prevention and Control of Fires

Article 3. Responsibility for Fire Protection

700. Definitions

As used in this chapter:

(a) "Board" means the State Board of Forestry and Fire Protection.

(b) "Department" means the Department of Forestry and Fire Protection.

(c) "Director" means the Director of Forestry and Fire Protection.

(Amended by Stats. 1988, Ch. 160.)

ALQUIST-PRIOLO EARTHQUAKE ZONING ACT

Chapter 7.5 Earthquake Fault Zoning

2621. Title

This chapter shall be known, and may be cited, as the Alquist-Priolo Earthquake Fault Zoning Act.

(Added by Stats. 1972, Ch. 1354; Amended by Stats. 1975, Ch. 61; Amend by Stats. 1993, Ch. 197.)

2621.5. Purpose statement

(a) It is the purpose of this chapter to provide for the adoption and administration of zoning laws, ordinances, rules, and regulations by cities and counties in implementation of the general plan that is in effect in any city or county. The Legislature declares that this chapter is intended to provide policies and criteria to assist cities, counties, and state agencies in the exercise of their responsibility to prohibit the location of developments and structures for human occupancy across the trace of active faults. Further, it is the intent of this chapter to provide the citizens of the state with increased safety and to minimize the loss of life during and immediately following earthquakes by facilitating seismic retrofitting to strengthen buildings, including historical buildings, against ground shaking.

(b) This chapter is applicable to any project, as defined in Section 2621.6, which is located within a delineated earthquake fault zone, upon issuance of the official earthquake fault zones maps to affected local jurisdictions, except as provided in Section 2621.7.

(c) The implementation of this chapter shall be pursuant to policies and criteria established and adopted by the board.

(Added by Stats. 1972, Ch. 1354; Amended by Stats. 1975, Ch. 61; Amended by Stats. 1979, Ch. 1131; Amended by Stats. 1993, Ch. 916.)

2621.6. Definitions

a) As used in this chapter, "project" means either of the following:

(1) Any subdivision of land which is subject to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), and which contemplates the eventual construction of structures for human occupancy.

(2) Structures for human occupancy, with the exception of either of the following:

(A) Single-family wood-frame or steel-frame dwellings to be built on parcels of land for which geologic reports have been approved pursuant to paragraph (1).

(B) A single-family wood-frame or steel-frame dwelling not exceeding two stories when that dwelling is not part of a development of four or more dwellings.

(b) For the purposes of this chapter, a mobilehome whose body width exceeds eight feet shall be considered to be a single-family wood-frame dwelling not exceeding two stories.

(Added by Stats. 1975, Ch. 61; Amended by Stats. 1979, Ch. 1131; Amended by Stats. 1992, Ch. 506.)

Note: Stats. 1992, Ch. 1390, also reads**:**

SEC. 1. Due to the numerous structures which were destroyed in the East Bay Fire on October 1991, the hardships experienced by fire victims, and the need to process the extraordinary number of rebuilding authorizations by the Cities of Oakland and Berkeley, it is the intent of the Legislature to exempt structures which were damaged or destroyed in the East Bay Fire from the Alquist-Priolo Special Studies Zone Act (Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code) if it can be determined that the structures are not situated on a fault trace.

2621.7. Applicability; exemption

This chapter, except Section 2621.9, shall not apply to any of the following:

(a) The conversion of an existing apartment complex into a condominium.

(b) Any development or structure in existence prior to May 4, 1975, except for an alteration or addition to a structure that exceeds the value limit specified in subdivision (c).

(c) An alteration or addition to any structure if the value of the alteration or addition does not exceed 50 percent of the value of the structure.

(d) (1) Any structure located within the jurisdiction of the City of Berkeley or the City of Oakland which was damaged by fire between October 20, 1991, and October 23, 1991, if granted an exemption pursuant to this subdivision.

(2) The city may apply to the State Geologist for an exemption and the State Geologist shall grant the exemption only if the structure located within the earthquake fault zone is not situated upon a trace of an active fault line, as delineated in the official earthquake fault zone map or in more recent geologic data, as determined by the State Geologist.

(3) When requesting an exemption, the city shall submit to the State Geologist all of the following information:

(A) Maps noting the parcel numbers of proposed building sites that are at least 50 feet from an identified fault and a statement that there is not any more recent information to indicate a geologic hazard.

(B) Identification of any sites that are within 50 feet of an identified fault.

(C) Proof that the property owner has been notified that the granting of an exemption is not any guarantee that a geologic hazard does not exist.

(4) The granting of the exemption does not relieve a seller of real property or an agent for the seller of the obligation to disclose to a prospective purchaser that the property is located within a delineated earthquake fault zone, as required by Section 2621.9.

(e) (1) Alterations which include seismic retrofitting, as defined in Section 8894.2 of the Government Code, to any of the following listed types of buildings in existence prior to May 4, 1975:

(A) Unreinforced masonry buildings, as described in subdivision (a) of Section 8875 of the Government Code.

(B) Concrete tilt-up buildings, as described in Section 8893 of the Government Code.

(C) Reinforced concrete moment resisting frame buildings as described in Applied Technology Council Report 21 (FEMA Report 154).

(2) The exemption granted by paragraph (1) shall not apply unless a city or county acts in accordance with all of the following:

(A) The building permit issued by the city or county for the alterations authorizes no greater human occupancy load, regardless of proposed use, than that authorized for the existing use permitted at the time the city or county grants the exemption. This may be accomplished by the city or county making a human occupancy load determination that is based on, and no greater than, the existing authorized use, and including that determination on the building permit application as well as a statement substantially as follows: "Under subparagraph (A) of paragraph (2) of subdivision (e) of Section 2621.7 of the Public Resources Code, the occupancy load is limited to the occupancy load for the last lawful use authorized or existing prior to the issuance of this building permit, as determined by the city or county."

(B) The city or county requires seismic retrofitting, as defined in Section 8894.2 of the Government Code, which is necessary to strengthen the entire structure and provide increased resistance to ground shaking from earthquakes.

(C) Exemptions granted pursuant to paragraph (1) are reported in writing to the State Geologist within 30 days of the building permit issuance date.

(3) Any structure with human occupancy restrictions under subparagraph (A) of paragraph (2) shall not be granted a new building permit that allows an increase in human occupancy unless a geologic report, prepared pursuant to subdivision (d) of Section 3603 of Title 14 of the California Code of Regulations in effect on January 1, 1994, demonstrates that the structure is not on the trace of an active fault, or the requirement of a geologic report has been waived pursuant to Section 2623.

(4) A qualified historical building within an earthquake fault zone that is exempt pursuant to this subdivision may be repaired or seismically retrofitted using the State Historical Building Code, except that, notwithstanding any provision of that building code and its implementing regulations, paragraph (2) shall apply.

(Added by Stats. 1975, Ch. 61; Amended by Stats. 1993, Ch. 916.)

2621.8. Liability

Notwithstanding Section 818.2 of the Government Code, a city or county which knowingly issues a permit that grants an exemption pursuant to subdivision (e) of Section 2621.7 that does not adhere to the requirements of paragraph (2) of subdivision (e) of Section 2621.7, may be liable for earthquake-related injuries or deaths caused by its failure to so adhere.

(*Added by Stats. 1975, Ch. 61; Amended by Stats. 1992, Ch. 506; Repealed and added by Stats. 1993, Ch. 916.)*

2621.9. Disclosure statement to real estate purchasers

(a) A person who is acting as an agent for a transferor of real property that is located within a delineated earthquake fault zone, or the transferor, if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a delineated earthquake fault zone.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within a delineated earthquake fault zone.

(2) A map that includes the property has been provided to the city or county pursuant to Section 2622, and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Transfer Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a delineated earthquake fault hazard zone, the agent shall mark

"Yes" on the Natural Hazard Disclosure Statement. The agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1103.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subdivision.

(e) For purposes of the disclosures required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(f) For purposes of this section, Section 1103.13 of the Civil Code shall apply.

(g) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(Added by Stats. 1975, Ch. 61; Amended by Stats. 1990, Ch. 1168; Amended by Stats. 1991, Ch. 250; Amended by Stats. 1992, Ch. 506; Amended by Stats. 1993, Ch. 197.)

2622. Delineation of special studies zones; maps; notice by counties

(a) In order to assist cities and counties in their planning, zoning, and building-regulation functions, the State Geologist shall delineate, by December 31, 1973, appropriately wide earthquake fault zones to encompass all potentially and recently active traces of the San Andreas, Calaveras, Hayward, and San Jacinto Faults, and such other faults, or segments thereof, as the State Geologist determines to be sufficiently active and well-defined as to constitute a potential hazard to structures from surface faulting or fault creep. The earthquake fault zones shall ordinarily be one-quarter mile or less in width, except in circumstances which may require the State Geologist to designate a wider zone.

(b) Pursuant to this section, the State Geologist shall compile maps delineating the earthquake fault zones and shall submit those maps to all affected cities, counties, and state agencies, not later than December 31, 1973, for review and comment. Concerned jurisdictions and agencies shall submit all comments to the State Mining and Geology Board for review and consideration within 90 days.

Within 90 days of that review, the State Geologist shall provide copies of the official maps to concerned state agencies and to each city or county having jurisdiction over lands lying within that zone.

(c) The State Geologist shall continually review new geologic and seismic data and shall revise the earthquake fault zones or delineate additional earthquake fault zones when warranted by new information. The State Geologist shall submit all revised maps and additional maps to all affected cities, counties, and state agencies for their review and comment. Concerned jurisdictions and agencies shall submit all comments to the State Mining and Geology Board for review and consideration within 90 days. Within 90 days of that review, the State Geologist shall provide copies of the revised and additional official maps to concerned state agencies and to each city or county having jurisdiction over lands lying within the earthquake fault zone.

(d) In order to ensure that sellers of real property and their agents are adequately informed, any county that receives an official map pursuant to this section shall post a notice within five days of receipt of the map at the offices of the county recorder, county assessor, and county planning commission, identifying the location of the map and the effective date of the notice.

(Added by Stats. 1972, Ch. 1354; Amended by Stats. 1975, Ch. 61; Amended by Stats. 1990, Ch. 1168; Amended by Stats. 1993, Ch. 197.)

2623. Geologic reports

(a) The approval of a project by a city or county shall be in accordance with policies and criteria established by the State Mining and Geology Board and the findings of the State Geologist. In the development of those policies and criteria, the State Mining and Geology Board shall seek the comment and advice of affected cities, counties, and state agencies. Cities and counties shall require, prior to the approval of a project, a geologic report defining and delineating any hazard of surface fault rupture. If the city or county finds that no undue hazard of that kind exists, the geologic report on the hazard may be waived, with the approval of the State Geologist.

(b) After a report has been approved or a waiver granted, subsequent geologic reports shall not be required, provided that new geologic data warranting further investigations is not recorded.

(c) The preparation of geologic reports that are required pursuant to this section for multiple projects may be undertaken by a geologic hazard abatement district.

(Added by Stats. 1972, Ch. 1354; Amended by Stats. 1974, Ch. 1341; Amended by Stats. 1975, Ch. 61; Amended by Stats. 1993, Ch. 916.)

2624. Local policies; criteria and fees

Notwithstanding any provision of this chapter, cities and counties may do any of the following:

(1) Establish policies and criteria which are stricter than those established by this chapter.

(2) Impose and collect fees in addition to those required under this chapter.

(3) Determine not to grant exemptions authorized under this chapter.

(Added by Stats. 1972, Ch. 1354; Amended by Stats. 1975, Ch. 61; Amended by Stats. 1993, Ch. 916.)

2625. Fees; sufficiently detailed geologic reports

(a) Each applicant for approval of a project may be charged a reasonable fee by the city or county having jurisdiction over the project.

(b) Such fees shall be set in an amount sufficient to meet, but not to exceed, the costs to the city or county of administering and complying with the provisions of this chapter.

(c) The geologic report required by Section 2623 shall be in sufficient detail to meet the criteria and policies established by the State Mining and Geology Board for individual parcels of land.

(Added by Stats. 1972, Ch. 1354; Amended by Stats. 1974, Ch. 1341; Amended by Stats. 1975, Ch. 61.)

2630. Seismic Safety Commission

In carrying out the provisions of this chapter, the State Geologist and the board shall be advised by the Seismic Safety Commission.

(Added by Stats. 1975, Ch. 1131; Amended by Stats. 1976, Ch. 1243.)

Chapter 7.8 Seismic Hazards Mapping

2690. Title

This chapter shall be known and may be cited as the Seismic Hazards Mapping Act.

(Added by Stats. 1990, Ch. 1168.)

2691. Legislative findings

The Legislature finds and declares all of the following:

(a) The effects of strong ground shaking, liquefaction, landslides, or other ground failure account for approximately 95 percent of economic losses caused by an earthquake.

(b) Areas subject to these processes during an earthquake have not been identified or mapped statewide, despite the fact that scientific techniques are available to do so.

(c) It is necessary to identify and map seismic hazard zones in order for cities and counties to adequately prepare the safety element of their general plans and to encourage land use management policies and regulations to reduce and mitigate those hazards to protect public health and safety.

(Added by Stats. 1990, Ch. 1168; Amended by Stats. 1991, Ch. 550.)

2692. Legislative intent

(a) It is the intent of the Legislature to provide for a statewide seismic hazard mapping and technical advisory program to assist cities and counties in fulfilling their responsibilities for protecting the public health and safety from the effects of strong ground shaking, liquefaction, landslides, or other ground failure and other seismic hazards caused by earthquakes.

(b) It is further the intent of the Legislature that maps and accompanying information provided pursuant to this chapter be made available to local governments for planning and development purposes.

(c) It is further the intent of the Legislature that the Division of Mines and Geology, in implementing this chapter, shall, to the extent possible, coordinate its activities with, and use existing information generated from, the earthquake fault zones mapping program pursuant to Chapter 7.5 (commencing with Section 2621), the landslide hazard identification program pursuant to Chapter 7.7 (commencing with Section 2670), and the inundation maps prepared pursuant to Section 8589.5 of the Government Code.

(Added by Stats. 1990, Ch. 1168; Amended by Stats. 1991, Ch. 550; Amended by Stats. 1993, Ch. 916.)

2692.1. Tsunami and seiche

The State Geologist may include in maps compiled pursuant to this chapter information on the potential effects of tsunami and seiche when information becomes available from other sources and the State Geologist determines the information is appropriate for use by local government. The State Geologist shall not be required to provide this information unless additional funding is provided both to make the determination and to distribute the tsunami and seiche information.

(Added by Stats. 1991, Ch. 550.)

2693. Definitions

As used in this chapter:

(a) "City" and "county" includes the City and County of San Francisco.

(b) "Geotechnical report" means a report prepared by a certified engineering geologist or a civil engineer practicing within the area of his or her competence, which identifies seismic hazards and recommends mitigation measures to reduce the risk of seismic hazard to acceptable levels.

(c) "Mitigation" means those measures that are consistent with established practice and that will reduce seismic risk to acceptable levels.

(d) "Project" has the same meaning as in Chapter 7.5 (commencing with Section 2621), except as follows:

(1) A single-family dwelling otherwise qualifying as a project may be exempted by the city or county having jurisdiction of the project.

(2) "Project" does not include alterations or additions to any structure within a seismic hazard zone which do not exceed either 50 percent of the value of the structure or 50 percent of the existing floor area of the structure.

(e) "Commission" means the Seismic Safety Commission.

(f) "Board" means the State Mining and Geology Board.

(Added by Stats. 1990, Ch. 1168; Amended by Stats. 1991, Ch. 550.)

2694. Disclosure statement to real estate purchasers

(a) A person who is acting as an agent for a transferor of real property that is located within a seismic hazard zone, as designated under this chapter, or the transferor, if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a seismic hazard zone.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or transferor's agent, has actual knowledge that the property is within a seismic hazard zone.

(2) A map that includes the property has been provided to the city or county pursuant to Section 2622, and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Transfer Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a seismic hazard zone, the agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1103.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subdivision.

(e) For purposes of the disclosures required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(f) For purposes of this section, Section 1103.13 of the Civil Code applies.

(g) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(Added by Stats. 1990, Ch. 1168; Amended by Stats. 1991, Ch. 250.)

2695. State duties; advisory committee; local review

(a) On or before January 1, 1992, the board, in consultation with the director and the commission, shall develop all of the following:

(1) Guidelines for the preparation of maps of seismic hazard zones in the state.

(2) Priorities for mapping of seismic hazard zones. In setting priorities, the board shall take into account the following factors:

(A) The population affected by the seismic hazard in the event of an earthquake.

(B) The probability that the seismic hazard would threaten public health and safety in the event of an earthquake.

(C) The willingness of lead agencies and other public agencies to share the cost of mapping within their jurisdiction.

(D) The availability of existing information.

(3) Policies and criteria regarding the responsibilities of cities, counties, and state agencies pursuant to this chapter. The policies and criteria shall address, but not be limited to, the following:

(A) Criteria for approval of a project within a seismic hazard zone, including mitigation measures.

(B) The contents of the geotechnical report.

(C) Evaluation of the geotechnical report by the lead agency.

(4) Guidelines for evaluating seismic hazards and recommending mitigation measures.

(5) Any necessary procedures, including, but not limited to, processing of waivers pursuant to Section 2697, to facilitate the implementation of this chapter.

(b) In developing the policies and criteria pursuant to subdivision (a), the board shall consult with and consider the recommendations of an advisory committee, appointed by the board in consultation with the commission, composed of the following members:

(1) An engineering geologist registered in the state.

(2) A seismologist.

(3) A civil engineer registered in the state.

(4) A structural engineer registered in the state.

(5) A representative of city government, selected from a list submitted by the League of California Cities.

(6) A representative of county government, selected from a list submitted by the County Supervisors Association of California.

(7) A representative of regional government, selected from a list submitted by the Council of Governments.

(8) A representative of the insurance industry.

(9) The Insurance Commissioner.

All of the members of the advisory committee shall have expertise in the field of seismic hazards or seismic safety.

(c) At least 90 days prior to adopting measures pursuant to this section, the board shall transmit or cause to be transmitted a draft of those measures to affected cities, counties, and state agencies for review and comment.

(Added by Stats. 1990, Ch. 1168; Amended by Stats. 1991, Ch. 104. Amended by Stats. 1992, Ch. 999.)

2696. Seismic hazard zone maps; maps reviewed by and provided to governmental agencies

(a) The State Geologist shall compile maps identifying seismic hazard zones, consistent with the requirements of Section 2695. The maps shall be compiled in accordance with a time schedule developed by the director and based upon the provisions of Section 2695 and the level of funding available to implement this chapter.

(b) The State Geologist shall, upon completion, submit seismic hazard maps compiled pursuant to subdivision (a) to the board and all affected cities, counties, and state agencies for review and comment. Concerned jurisdictions and agencies shall submit all comments to the board for review and consideration within 90 days. Within 90 days of board review, the State Geologist shall revise the maps, as appropriate, and shall provide copies of the official maps to each state agency, city, or county, including the county recorder, having jurisdiction over lands containing an area of seismic hazard.

The county recorder shall record all information transmitted as part of the public record.

(c) In order to ensure that sellers of real property and their agents are adequately informed, any county that receives an official map pursuant to this section shall post a notice within five days of receipt of the map at the office of the county recorder, county assessor, and county planning agency, identifying the location of the map, any information regarding changes to the map, and the effective date of the notice.

(Added by Stats. 1990, Ch. 1168, Amended by Stats. 1992, Ch. 999.)

2697. Geotechnical report; policy and criteria consideration

(a) Cities and counties shall require, prior to the approval of a project located in a seismic hazard zone, a geotechnical report defining and delineating any seismic hazard. If the city or county finds that no undue hazard of this kind exists, based on information resulting from studies conducted on sites in the immediate vicinity of the project and of similar soil composition to the project site, the geotechnical report may be waived. After a report has been approved or a waiver granted, subsequent geotechnical reports shall not be required, provided that new geologic datum, or data, warranting further investigation is not recorded. Each city and county shall submit one copy of each approved geotechnical report, including the mitigation measures, if any, that are to be taken, to the State Geologist within 30 days of its approval of the report.

(b) In meeting the requirements of this section, cities and counties shall consider the policies and criteria established pursuant to this chapter. If a project's approval is not in accordance with the policies and criteria, the city or county shall explain the reasons for the differences in writing to the State Geologist, within 30 days of the project's approval.

(Added by Stats. 1990, Ch. 1168.)

2698. Local policies and criteria

Nothing in this chapter is intended to prevent cities and counties from establishing policies and criteria which are more strict than those established by the board.

(Added by Stats. 1990, Ch. 1168.)

2699. Maps and safety element

Each city and county, in preparing the safety element to its general plan pursuant to subdivision (g) of Section 65302 of the Government Code, and in adopting or revising land use planning and permitting ordinances, shall take into account the information provided in available seismic hazard maps.

(Added by Stats. 1990, Ch. 1168.)

2699.5. Seismic hazards identification fund

(a) There is hereby created the Seismic Hazards Identification Fund, as a special fund in the State Treasury.

(b) Upon appropriation by the Legislature, the moneys in the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund shall be allocated to the division for purposes of this chapter and Chapter 8 (commencing with Section 2700).

(c) On and after July 1, 2004, the Seismic Hazards Identification Fund shall be known as the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund.

(Added by Stats. 1990, Ch. 1168; Amended by Stats. 1991, Ch. 104.)

2699.6. Operative date; April 1, 1991

This chapter shall become operative on April 1, 1991.

(Added by Stats. 1990, Ch. 1168.)

GEOLOGY, MINES AND MINING

Chapter 8. Strong-Motion Instrumentation Program

2705. Building permit fees; rate of assessment

(a) Counties and cities shall collect a fee from each applicant for a building permit. Each such fee shall be equal to a specific amount of the proposed building construction for which the building permit is issued as determined by the local building officials. The fee amount shall be assessed in the following way:

(1) Group R occupancies, as defined in the 1985 Uniform Building Code and adopted in Part 2 (commencing with Section 2-101) of Title 24 of the California Code of Regulations, one to three stories in height, except hotels and motels, shall be assessed at the rate of ten dollars ($10) per one hundred thousand dollars ($100,000), with appropriate fractions thereof.

(2) All other buildings shall be assessed at the rate of twenty-one dollars ($21) per one hundred thousand dollars ($100,000), with appropriate fractions thereof.

(3) The fee shall be the amount assessed under paragraph (1) or (2), depending on building type, or fifty cents ($0.50), whichever is the higher.

(b) (1) In lieu of the requirements of subdivision (a), a county or city may elect to include a rate of ten dollars ($10) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, in its basic building permit fee for any Group R occupancy defined in paragraph (1) of subdivision (a), and a rate of twenty-one dollars ($21) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, for all other building types. A county or city electing to collect the fee pursuant to this subdivision need not segregate the fees in a fund separate from any fund into which basic building permit fees are deposited.

(2) "Building," for the purpose of this chapter, is any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

(c) (1) A city or county may retain up to 5 percent of the total amount it collects under subdivision (a) or (b) for data utilization, for seismic education incorporating data interpretations from data of the strong-motion instrumentation program and the seismic hazards mapping program, and, in accordance with paragraph (2), for improving the preparation for damage assessment after strong seismic motion events.

(2) A city or county may use any funds retained pursuant to this subdivision to improve the preparation for damage assessment in its jurisdiction only after it provides the Department of Conservation with information indicating to the department that data utilization and seismic education activities have been adequately funded.

(d) Funds collected pursuant to subdivision (a) and (b), less the amount retained pursuant to subdivision (c), shall be deposited in the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund, as created by Section 2699.5.

(Added by Stats. 1990, Ch. 1168; Amended by Stats. 1991, Ch. 550; Amended by Stats. 1992, Ch. 346; Amended by Stats. 2003, Ch. 240.)

2705.5. Fees; seismic hazards identification fund

The Division of Mines and Geology shall advise counties and cities as to that portion of the total fees allocated to the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund, so that this information may be provided to building permit applicants.

(Added by Stats. 1991, Ch. 550; Amended by Stats. 2003, Ch. 240.)

2706. Fees; strong-motion instrumentation fund

Funds collected pursuant to subdivision (a) and (b) of Section 2705, less the amount retained pursuant to subdivision (c) of Section 2705, shall be deposited in the State Treasury in the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund as created by section 2699.5, to be used exclusively for the purposes of this chapter and Chapter 7.8 (Commencing with Section 2690).

(Added by Stats. 1990, Ch. 1168; Amended by Stats. 2003, Ch. 240.)

SURFACE MINING AND RECLAMATION ACT OF 1975

Chapter 9. Surface Mining and Reclamation Act

Article 4. State Policy for the Reclamation of Mined Lands

2761. Identification by OPR

(a) On or before January 1, 1977, and, as a minimum, after the completion of each decennial census, the Office of Planning and Research shall identify portions of the following areas within the state which are urbanized or are subject to urban expansion or other irreversible land uses which would preclude mineral extraction:

(1) Standard metropolitan statistical areas and such other areas for which information is readily available.

(2) Other areas as may be requested by the board.

(b) In accordance with a time schedule, and based upon guidelines adopted by the board, the State Geologist shall classify, on the basis solely of geologic factors, and without

regard to existing land use and land ownership, the areas identified by the Office of Planning and Research, any area for which classification has been requested by a petition which has been accepted by the board, or any other areas as may be specified by the board, as one of the following:

(1) Areas containing little or no mineral deposits.

(2) Areas containing significant mineral deposits.

(3) Areas containing mineral deposits, the significance of which requires further evaluation.

The State Geologist shall require the petitioner to pay the reasonable costs of classifying an area for which classification has been requested by the petitioner.

(c) The State Geologist shall transmit the information to the board for incorporation into the state policy and for transmittal to lead agencies.

(Added by Stats. 1975, Ch. 1131; Amended by Stats. 1980, Ch. 800; Amended by Stats. 1990, Ch. 1097.)

2762. Local general plan policies; EIR preparation; public notice; mineral deposit evaluation

(a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, every lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan which will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use which affect areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) Every lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) Any subsequent amendment of the mineral resource management policy previously reviewed by the board shall also require review and comment by the board.

(d) If any area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing any environmental document required by Division 13 (commencing with Section 21000), or in any event if no such document is required, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(1) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(2) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role.

The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, when the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located therein. The results of such evaluation shall be transmitted to the State Geologist and the board.

(Added by Stats. 1975, Ch. 1131; Amended by Stats. 1990, Ch. 1097.)

2763. Areas of regional significance; areas of statewide significance

(a) If an area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the board as an area of statewide significance, and the lead agency either has

designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

(Added by Stats. 1980, Ch. 800; Amended by Stats. 1990, Ch. 1097.)

2764. Planning in the vicinity of existing surface mines; findings; general and specific plans; applicability

(a) Upon the request of an operator or other interested person and payment by the requesting person of the estimated cost of processing the request, the lead agency having jurisdiction shall amend its general plan, or prepare a new specific plan or amend any applicable specific plan, that shall, with respect to the continuation of the existing surface mining operation for which the request is made, plan for future land uses in the vicinity of, and access routes serving, the surface mining operation in light of the importance of the minerals to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction.

(b) In adopting amendments to the general plan, or adopting or amending a specific plan, the lead agency shall make written legislative findings as to whether the future land uses and particular access routes will be compatible or incompatible with the continuation of the surface mining operation, and if they are found to be incompatible, the findings shall include a statement of the reasons why they are to be provided for, notwithstanding the importance of the minerals to their market region as a whole or their previous designation by the board, as the case may be.

(c) Any evaluation of a mineral deposit prepared by a lead agency for the purpose of carrying out this section shall be transmitted to the State Geologist and the board.

(d) The procedure provided for in this section shall not be undertaken in any area that has been designated pursuant to Article 6 (commencing with Section 2790) if mineral resource management policies have been established and incorporated in the lead agency's general plan in conformance with Article 4 (commencing with Section 2755).

(Added by Stats. 1986, Ch. 82.)

4125. State responsibility areas

(a) The board shall classify all lands within the state, without regard to any classification of lands made by or for any federal agency or purpose, for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state. The prevention and suppression of fires in all areas that are not so classified is primarily the responsibility of local or federal agencies, as the case may be.

(b) On or before July 1, 1991, and every 5th year thereafter, the department shall provide copies of maps identifying the boundaries of lands classified as state responsibility pursuant to subdivision (a) to the county assessor for every county containing any of those lands. The department shall also notify county assessors of any changes to state responsibility areas within the county resulting from periodic boundary modifications approved by the board.

(c) A notice shall be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map, and of any information received by the county subsequent to the receipt of the map regarding changes to state responsibility areas within the county.

(Added by Stats. 1965, Ch. 1144.)

4128.5. *(Repealed by Stats. 2004, Ch. 951)*

OPEN-SPACE ELEMENTS AND TRAILS

Chapter 1. State Parks and Monuments

Article 6. California Recreational Trails

5076. Open-space elements and trail considerations

In developing the open-space element of a general plan as specified in subdivision (e) of Section 65302 of the Government Code, every city and county shall consider demands for trail-oriented recreational use and shall consider such demands in developing specific open-space programs. Further, every city, county, and district shall consider the feasibility of integrating its trail routes with appropriate segments of the state system.

(Added by Stats. 1974, Ch. 1461.)

DELTA PROTECTION ACT OF 1992

21080.22. Preparation of General Plans

(a) This division does not apply to activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Section 29763, except that the approval of general plan amendments by the Delta Protection Commission is subject to the requirements of this division.

(b) For purposes of Section 21080.5, a general plan amendment is a plan required by the regulatory program of the Delta Protection Commission.

(Added by Stats. 1992, Ch. 898.)

Chapter 1. Findings and Declarations

29700. Title

This division shall be known, and may be cited, as the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992.

(Added by Stats. 1992, Ch. 898.)

29701. Sacramento and San Joaquin Delta; natural resources

The Legislature finds and declares that the Sacramento-San Joaquin Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources, and it is the policy of the state to recognize, preserve, and protect those resources of the delta for the use and enjoyment of current and future generations.

(Added by Stats. 1992, Ch. 898.)

29702. Goals of the state

The Legislature further finds and declares that the basic goals of the state for the delta are the following:

(a) Protect, maintain, and, where possible, enhance and restore the overall quality of the delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities.

(b) Assure orderly, balanced conservation and development of delta land resources.

(c) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.

(Added by Stats. 1992, Ch. 898.)

29703. Agricultural lands; retention; value

The Legislature further finds and declares as follows:

(a) The delta is an agricultural region of great value to the state and nation and the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value.

(b) The agricultural land of the delta, while adding greatly to the economy of the state, also provides a significant value as open space and habitat for water fowl using the Pacific Flyway, as well as other wildlife, and the continued dedication and retention of that delta land in agricultural production contributes to the preservation and enhancement of open space and habitat values. (c) Agricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses.

(Added by Stats. 1992, Ch. 898.)

29704. Flood control; levee system; maintenance

The Legislature further finds and declares that the leveed islands and tracts of the delta and portions of its uplands are floodprone areas of critical statewide significance due to the public safety risks and the costs of public emergency responses to floods, and that improvement and ongoing maintenance of the levee system is a matter of continuing urgency to protect farmlands, population centers, the state's water quality, and significant natural resource and habitat areas of the delta. The Legislature further finds that improvements and continuing maintenance of the levee system will not resolve all flood risks and that the delta is inherently a floodprone area wherein the most appropriate land uses are agriculture, wildlife habitat, and, where specifically provided, recreational activities, and that most of the existing levee systems are degraded and in need of restoration, improvement, and continuing management.

(Added by Stats. 1992, Ch. 898.)

29705. Wildlife habitats; protection

The Legislature further finds and declares that the delta's wildlife and wildlife habitats, including waterways, vegetated unleveed channel islands, wetlands, and riparian forests and vegetation corridors, are highly valuable, providing critical wintering habitat for waterfowl and other migratory birds using the Pacific Flyway, as well as certain plant species, various rare and endangered wildlife species of birds, mammals, and fish, and numerous amphibians, reptiles, and invertebrates, that these wildlife species and their habitat are valuable, unique, and irreplaceable resources of critical statewide significance, and that it is the policy of the state to preserve and protect these resources and their diversity for the enjoyment of current and future generations.

29706. Resources; deterioration

The Legislature further finds and declares that the resource values of the delta have deteriorated, and that further deterioration threatens the maintenance and sustainability of the delta's ecology, fish and wildlife populations, recreational opportunities, and economic productivity.

(Added by Stats. 1992, Ch. 898.)

29707. Delta land use planning; management

The Legislature further finds and declares that there is no process by which state and national interests and values can be protected and enhanced for the delta, and that, to protect the regional, state, and national interests for the long-term agricultural productivity, economic vitality, and ecological health of the delta resources, it is necessary to provide and implement delta land use planning and management by local governments.

(Added by Stats. 1992, Ch. 898.)

29708. Cities, towns; historical; economic values

The Legislature further finds and declares that the cities, towns, and settlements within the delta are of significant historical, cultural, and economic value and that their continued protection is important to the economic and cultural vitality of the region.

(Added by Stats. 1992, Ch. 898.)

29709. Regulation of land use

The Legislature further finds and declares as follows:

(a) Regulation of land use and related activities that threaten the integrity of the delta's resources can best be advanced through comprehensive regional land use planning implemented through reliance on local government in its local land use planning procedures and enforcement.

(b) In order to protect regional, state, and national interests in the long-term agricultural productivity, economic vitality, and ecological health of delta resources, it is important that there be a coordination and integration of activities by the various agencies whose land use activities and decisions cumulatively impact the delta.

(Added by Stats. 1992, Ch. 898.)

29710. Delta; agricultural and recreation

The Legislature further finds and declares that agricultural, recreational, and other uses of the delta can best be protected by implementing projects that protect wildlife habitat before conflicts arise.

(Added by Stats. 1992, Ch. 898.)

29711. Ports of Sacramento and Stockton; economics

The Legislature further finds and declares that the inland ports of Sacramento and Stockton constitute economic and water dependent resources of statewide significance, fulfill essential functions in the maritime industry, and have long been dedicated to transportation, agricultural, commercial, industrial, manufacturing, and navigation uses consistent with federal, state, and local regulations, and that those uses should be maintained and enhanced.

(Added by Stats. 1992, Ch. 898.)

29712. Delta waterways; recreation; economic

The Legislature further finds and declares as follows:

(a) The delta's waterways and marinas offer recreational opportunities of statewide and local significance and are a source of economic benefit to the region, and, due to increased demand and usage, there are public safety problems associated with that usage requiring increased coordination by all levels of government.

(b) Recreational boating within the delta is of statewide and local significance and is a source of economic benefit to the region, and to the extent of any conflict or inconsistency between this division and any provisions of the Harbors and Navigation Code, regarding regulating the operation or use of boating in the delta, the provisions of the Harbors and Navigation Code shall prevail.

(Added by Stats. 1992, Ch. 898.)

29713. Wildlife and agriculture; easements

The Legislature further finds and declares that the voluntary acquisition of wildlife and agricultural conservation easements in the delta promotes and enhances the traditional delta values of agriculture, habitat, and recreation.

(Added by Stats. 1992, Ch. 898.)

29714. Private property; public use

The Legislature further finds and declares that, in enacting this division, it is not the intent of the Legislature to authorize any governmental agency acting pursuant to this division to exercise their power in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the California Constitution or the United States Constitution.

(Added by Stats. 1992, Ch. 898.)

29715. Water code

To the extent of any conflict or inconsistency between this division and any provision of the Water Code, the provisions of the Water Code shall prevail.

(Added by Stats. 1992, Ch. 898.)

29716. Jurisdiction

Nothing in this division authorizes the commission to exercise any jurisdiction over matters within the jurisdiction of, or to carry out its powers and duties in conflict with the powers and duties of, any other state agency.

(Added by Stats. 1992, Ch. 898.)

Chapter 2. Definitions

29720. Definitions

Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

(Added by Stats. 1992, Ch. 898.)

29720.5. Aggrieved person

"Aggrieved person" has the same meaning as defined in Section 29117.

(Added by Stats. 1992, Ch. 898.)

29721. Commission

"Commission" means the Delta Protection Commission created by Section 29735.

(Added by Stats. 1992, Ch. 898.)

29722. Delta

"Delta" means the Sacramento-San Joaquin Delta, as defined in Section 12220 of the Water Code, for all provisions of this division, other than Chapter 3 (commencing with Section 29735). For the purposes of Chapter 3 (commencing with Section 29735), "delta" means the area of the delta minus the area contained in Alameda County.

(Added by Stats. 1992, Ch. 898.)

29723. Development

(a) "Development" means on, in, over, or under land or water, the placement or erection of any solid material or structure; discharge of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivisions pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), and any other division of land including lot splits, except where the land division is brought about in connection with the purchase of the land by a public agency for public recreational or fish and wildlife uses or preservation; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes.

(b) "Development" does not include any of the following:

(1) All farming and ranching activities, as specified in subdivision (e) of Section 3482.5 of the Civil Code.

(2) The maintenance, including the reconstruction of damaged parts, of structures, such as marinas, dikes, dams, levees, riprap (consistent with Chapter 1.5 (commencing with Section 12306) of Part 4.8 of Division 6 of the Water Code), breakwater, causeways, bridges, ferries, bridge abutments, docks, berths, and boat sheds. "Maintenance" includes, for this purpose, the rehabilitation and reconstruction of levees to meet applicable standards of the United States Army Corps of Engineers or the Department of Water Resources.

(3) The construction, repair, or maintenance of farm dwellings, buildings, stock ponds, irrigation or drainage ditches, water wells, or siphons, including those structures and uses permitted under the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code).

(4) The construction or maintenance of farm roads, or temporary roads for moving farm equipment.

(5) The dredging or discharging of dredged materials, including maintenance dredging or removal, as engaged in by any marina, port, or reclamation district, in conjunction with the normal scope of their customary operations, consistent with existing federal, state, and local laws.

(6) The replacement or repair of pilings in marinas, ports, and diversion facilities.

(7) Projects within port districts, including, but not limited to, projects for the movement, grading, and removal of bulk materials for the purpose of activities related to maritime commerce and navigation.

(8) The planning, approval, construction, operation, maintenance, reconstruction, alteration, or removal by a state agency or local agency of any water supply facilities or mitigation or enhancement activities undertaken in connection therewith.

(9) Construction, reconstruction, demolition, and land divisions within existing zoning entitlements, and development within, or adjacent to, the unincorporated towns of the delta, as permitted in the Delta Area Community Plan of Sacramento County and the general plan of Yolo County, authorized prior to January 1, 1992.

(10) Exploration or extraction of gas and hydrocarbons.

(11) The planning, approval, construction, repair, replacement, alteration, reconstruction, operation, maintenance, or removal of oxidation and water treatment facilities owned by the City of Stockton or the City of Lodi, or facilities owned by any local agency within or adjacent to the unincorporated towns of the delta consistent with the general plan of the County of Sacramento or the County of Yolo, as the case may be.

(Added by Stats. 1992, Ch. 898.)

29724. Local agency

"Local agency" means any local agency, other than a local government, formed pursuant to general law or special act for the local performance of governmental or proprietary functions within limited boundaries or which maintains facilities within the delta. "Local agency" includes, but is not limited to, a port, water agency, flood control district, county service area, maintenance district or area,

improvement district or improvement area, mosquito abatement district, resource conservation district, irrigation district, reclamation district, sanitary or sewer district, or any other zone or area, formed for the purpose of designating an area within which either an assessment or a property tax rate will be levied to pay for a service or improvement benefiting that area or a special function will be carried out within that area.

(Added by Stats. 1992, Ch. 898.)

29725. Local government

"Local government" means the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities of Sacramento, Stockton, Tracy, Antioch, Pittsburg, Isleton, Lathrop, Brentwood, Rio Vista, West Sacramento, and Oakley, and any other cities that may be incorporated in the future in the primary zone.

(Added by Stats. 1992, Ch. 898.)

29726. Pacific flyway

"Pacific Flyway" means the identified migratory bird flight path, including feeding and nesting habitat, as described in the Central Valley Habitat Joint Venture component of the North American Waterfowl Management Plan (NAWMP-1986).

(Added by Stats. 1992, Ch. 898.)

29727. Port

"Port" means the Port of Sacramento and the Port of Stockton, including all the land owned or leased by those ports.

(Added by Stats. 1992, Ch. 898.)

29728. Primary zone

"Primary zone" means the delta land and water area of primary state concern and statewide significance which is situated within the boundaries of the delta, as described in Section 12220 of the Water Code, but that is not within either the urban limit line or sphere of influence line of any local government's general plan or currently existing studies, as of January 1, 1992. The precise boundary lines of the primary zone includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission. Where the boundary between the primary zone and secondary zone is a river, stream, channel, or waterway, the boundary line shall be the middle of that river, stream, channel, or waterway.

(Added by Stats. 1992, Ch. 898.)

29730. Restoration

"Restoration" means actions which return a degraded or deteriorated area to a level of increased productivity, environmental quality, or beneficial values.

(Added by Stats. 1992, Ch. 898.)

29731. Secondary zone

"Secondary zone" means all the delta land and water area within the boundaries of the delta not included within the primary zone, subject to the land use authority of local government, and that includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission.

(Added by Stats. 1992, Ch. 898.)

29732. Sphere of influence line

"Sphere of influence line" refers to those boundaries of local governments as defined in Sections 56425 and 56426 of the Government Code.

(Added by Stats. 1992, Ch. 898.)

29733. Unincorporated towns

"Unincorporated towns" means the communities of Walnut Grove, Clarksburg, Courtland, Hood, Locke, and Ryde.

(Added by Stats. 1992, Ch. 898.)

29734. Urban limit line

"Urban limit line" means that general plan line established and approved by any local government within the delta which delineates boundaries beyond which urban development is not publicly proposed by local government, as of January 1, 1992.

(Added by Stats. 1992, Ch. 898.)

Chapter 3. Organization

29735. Delta Protection Commission

There is hereby created the Delta Protection Commission consisting of 19 members as follows:

(a) One member of the board of supervisors of each of the five counties within the delta whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of the county.

(b) Three elected city council members shall be selected and appointed by city selection committees, from regional and area councils of government, one in each of the following areas:

(1) One from the north delta, consisting of the Counties of Yolo and Sacramento.

(2) One from the south delta, consisting of the County of San Joaquin.

(3) One from the west delta, consisting of the Counties of Contra Costa and Solano.

(c) (1) One member each from the board of directors of five different reclamation districts which are located within the primary zone who are residents of the delta, and who are elected by the trustees of reclamations districts within the following areas:

(A) Two members from the area of the North Delta Water Agency as described in Section 9.1 of the North Delta Water Agency Act Chapter 283 of the Statutes of 1973), provided at least one member is also a member of the Delta Citizens Municipal Advisory Council.

(B) One member from the west delta consisting of the area of Contra Costa County within the delta.

(C) One member from the area of the Central Delta Water Agency as described in Section 9.1 of the Central Delta Water Agency Act *(Chapter 1133 of the Statutes of 1973)*.

(D) One member from the area of the South Delta Water Agency as described in Section 9.1 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973).

(2) Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area. For purposes of this section, each reclamation district shall have one vote. The north delta area shall conduct separate votes to select each of its two members.

(d) The Director of Parks and Recreation or the director's sole designee.

(e) The Director of Fish and Game or the director's sole designee.

(f) The Director of Food and Agriculture or the director's sole designee.

(g) The executive officer of the State Lands Commission or the executive officer's sole designee.

(h) The Director of Boating and Waterways or the director's sole designee.

(i) The Director of Water Resources or the director's sole designee.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1994, Ch. 1155.)

29736. Membership; term of office

The term of office of the members of the commission shall be for four years, and a member may serve for one or more consecutive terms.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 2000, Ch. 505.)

29737. Membership; compensation

Members shall serve without compensation, but the expenses of each member incurred in connection with official duties shall be paid by the commission.

(Added by Stats. 1992, Ch. 898.)

29738. Appointments; vacancies

The position of a member of the commission shall be considered vacated upon the loss of any qualification required for appointment, and in that event the appointing authority shall appoint a successor within 30 days of the occurrence of the vacancy. Upon the occurrence of the first vacancy among any of the members listed in subdivision (d), (e), (f), (g), (h), or (i) of Section 29735, the Director of Conservation or the director's designee shall serve as the successor member.

(Added by Stats. 1992, Ch. 898.)

29739. Chairperson, vice chairperson; vacancies

The commission shall elect from its own members a chairperson and vice chairperson whose terms of office shall be two years, and who may be reelected. If a vacancy occurs in either office, the commission shall fill the vacancy for the unexpired term.

(Added by Stats. 1992, Ch. 898.)

29740. Nonvoting member

One nonvoting member who shall be a Member of the Senate, appointed by the Senate Committee on Rules, and one nonvoting member who shall be a Member of the Assembly, appointed by the Speaker of the Assembly, both of whom represent areas within the primary zone, shall meet with, and participate in the activities of, the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purpose of this division, those Members of the Legislature shall constitute a joint interim investigating committee on the subject of this division, and as such shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

(Added by Stats. 1992, Ch. 898.)

29741. First meeting

The time and place of the first meeting of the commission shall be prescribed by the Governor, but in no event shall it be scheduled for a date later than January 31, 1993. All meetings after the first meeting shall be held in a city within the delta.

(Added by Stats. 1992, Ch. 898.)

Chapter 4. Powers and Duties of the Commission

29750. Meetings; public notice

The commission shall meet at least bimonthly. All meetings shall be open to the public as required by law. Notice of the time and place of all regular and special meetings shall be published at least once in a newspaper of general circulation whose area of circulation is throughout the delta. Notice of any meeting shall be published at least seven days prior to the meeting date.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1996, Ch. 568.)

29751. Quorum

A majority of the voting members of the commission shall constitute a quorum for the transaction of the business of the commission. A majority vote of the voting members present shall be required to take action with respect to any matter unless otherwise specified in this division. The vote of each member shall be individually recorded.

(Added by Stats. 1992, Ch. 898)

29752. Rules and regulations

The commission shall adopt its own rules, regulations, and procedures necessary for its organization and operation.

(Added by Stats. 1992, Ch. 898)

29753. Advisory committees

The commission shall appoint agricultural, environmental, and recreational advisory committees for the purpose of providing the commission with timely comments, advice, and information. The commission may appoint committees from its membership or may appoint additional advisory committees from members of other interested public agencies and private groups. The commission shall seek advice and recommendations from advisory committees appointed by local government which are involved in subject matters affecting the delta.

(Added by Stats. 1992, Ch. 898)

29754. Regulations; procedure; plans

The commission shall establish and maintain an office within the delta, and for this purpose the commission may rent or own property and equipment. Any rule, regulation, procedure, plan, or other record of the commission which is of such a nature as to constitute a public record under state law shall be available for inspection and copying during regular office hours.

(Added by Stats. 1992, Ch. 898)

29755. Executive director; salary; policies

The commission shall appoint, and fix the salary of, an executive director who shall have charge of administering the affairs of the commission, including entering into contracts, subject to the directions and policies of the commission. The executive director shall, subject to the approval of the commission, appoint those employees that are necessary to carry out the functions of the commission.

(Added by Stats. 1992, Ch. 898.)

29756. Acquisition; conservation easements

The commission may promote, facilitate, and administer the acquisition of voluntary private and public wildlife and agricultural conservation easements in the delta.

(Added by Stats. 1992, Ch. 898.)

29756.5. Joint habitat restoration

The commission may act as the facilitating agency for the implementation of any joint habitat restoration or enhancement programs located within the primary zone of the delta.

(Added by Stats. 1998, Ch. 584.)

29757. Funding; public and private resources

The commission may apply for and accept federal grants or other federal funds and receive gifts, donations, rents, royalties, state funds derived from bond sales, the proceeds of taxes or funds from any other state revenue sources, or any other financial support from public or private sources.

(Added by Stats. 1992, Ch. 898.)

29758. Campaign spending limits

All members of the commission are subject to Title 9 (commencing with Section 85100) of the Government Code.

(Added by Stats. 1992, Ch. 898.)

Chapter 5. Resource Management Plan

29760. Long-term resource management plan

(a) Not later than October 1, 1994, the commission shall prepare and adopt, by a majority vote of the membership of the commission, and thereafter review and maintain, a comprehensive long-term resource management plan for land uses within the primary zone of the delta. The resource management plan shall consist of the map of the primary zone and text or texts setting forth a description of the needs and goals for the delta and a statement of the policies, standards, and elements of the resource management plan.

(b) The resource management plan shall meet the following requirements:

(1) Protect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the delta.

(2) Conserve and protect the quality of renewable resources.

(3) Preserve and protect agricultural viability.

(4) Restore, improve, and manage levee systems by promoting strategies, including, but not limited to, methods and procedures which advance the adoption and implementation of coordinated and uniform standards among governmental agencies for the maintenance, repair, and construction of both public and private levees.

(5) Preserve and protect delta dependent fisheries and their habitat.

(6) Preserve and protect riparian and wetlands habitat, and promote and encourage a net increase in both the acreage and values of those resources on public lands and through voluntary cooperative arrangements with private property owners.

(7) Preserve and protect the water quality of the delta, both for instream purposes and for human use and consumption.

(8) Preserve and protect open-space and outdoor recreational opportunities.

(9) Preserve and protect private property interests from trespassing and vandalism.

(10) Preserve and protect opportunities for controlled public access and use of public lands and waterways consistent with the protection of natural resources and private property interests.

(11) Preserve, protect, and maintain navigation.

(12) Protect the delta from any development that results in any significant loss of habitat or agricultural land.

(13) Promote strategies for the funding, acquisition, and maintenance of voluntary cooperative arrangements, such as conservation easements, between property owners and conservation groups that protect wildlife habitat and agricultural land, while not impairing the integrity of levees.

(14) Permit water reservoir and habitat development that is compatible with other uses.

(c) The resource management plan shall not supersede the authority of local governments over areas within the secondary zone.

(d) To facilitate, in part, the requirements specified in paragraphs (8), (9), (10), and (11) of subdivision (b), the commission shall include in the resource management plan, in consultation with all law enforcement agencies having jurisdiction in the delta, a strategy for the implementation of a coordinated marine patrol system throughout the delta that will improve law enforcement and coordinate the use of resources by all jurisdictions to ensure an adequate level of public safety. The strategic plan shall identify resources to implement that coordination. The commission shall have no authority to abrogate the existing authority of any law enforcement agency.

(e) To the extent that any of the requirements specified in this section are in conflict, nothing in this division shall deny the right of the landowner to continue the agricultural use of the land.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1994, Ch. 1155; Stats. 1998, Ch. 584.)

29761. Comments and recommendations

The Director of the Office of Planning and Research shall submit comments and recommendations on the resource management plan for the commission's consideration, prior to the plan's adoption.

(Added by Stats. 1992, Ch. 898.)

29761.5. Management plan; copies

Not later than January 7, 1995, the commission shall transmit copies of the resource management plan to the Governor. Copies of the resource management plan shall be made available, upon request, to Members of the Legislature.

(Added by Stats. 1994, Ch. 1155; Amended by Stats. 1998, Ch. 584.)

29762. Adoption of plan; public hearings

The commission shall adopt, by a majority vote of the membership of the commission, the resource management plan after at least three public hearings, with at least one hearing held in a city in the north delta, the south delta, and the west delta.

(Added by Stats. 1992, Ch. 898. Amended by Stats. 1998, Ch. 584.)

29763. Local government; amendments

Within 180 days from the date of the adoption of the resource management plan or any amendments by the commission, all local governments shall submit to the commission proposed amendments that will cause their general plans to be consistent with the criteria in Section 29763.5 with respect to land located within the primary zone.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1998, Ch. 584.)

29763.5. Proposed general plan amendments; approval

The commission shall act on proposed local government general plan amendments within 60 days from the date of submittal of the proposed amendments. The commission shall approve the proposed general plan amendments by a majority vote of the commission membership, with regard to lands within the primary zone, only after making all of the following written findings as to the potential impact of the proposed amendments, to the extent that those impacts will not increase requirements or restrictions upon agricultural practices in the primary zone, based on substantial evidence in the record:

(a) The general plan, and any development approved or proposed that is consistent with the general plan, are consistent with the resource management plan.

(b) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in wetland or riparian loss.

(c) The general plan, and development approved or proposed that is consistent with the general plan, will not result in the degradation of water quality.

(d) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in increased nonpoint source pollution.

(e) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or reduction of Pacific Flyway habitat.

(f) The general plan, and any development approved or proposed that is consistent with the general plan, will not

result in reduced public access, provided the access does not infringe on private property rights.

(g) The general plan, and any development approved or proposed that is consistent with the general plan, will not expose the public to increased flood hazard.

(h) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on public or private land.

(i) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or impairment of levee integrity.

(j) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact navigation.

(k) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.

(Added by Stats. 1992, Ch. 898. Amended by Stats. 1998, Ch. 584.)

29763.8. General plan amendments

A local government shall adopt its proposed general plan amendments within 120 days after their approval by the commission.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1994, Ch. 1155.)

29764. Local general plans; primary zone and secondary zone

This division does not confer any permitting authority upon the commission or require any local government to conform their general plan, or land use entitlement decisions, to the resource management plan, except with regard to lands within the primary zone. The resource management plan does not preempt local government general plans for lands within the secondary zone.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1998, Ch. 584.)

29765. General plans; approval; primary zone

Prior to the commission approving the general plan amendments of the local government, the local government may approve development within the primary zone only after making all of the following written findings on the basis of substantial evidence in the record:

(a) The development will not result in wetland or riparian loss.

(b) The development will not result in the degradation of water quality.

(c) The development will not result in increased nonpoint source pollution or soil erosion, including subsidence or sedimentation.

(d) The development will not result in degradation or reduction of Pacific Flyway habitat.

(e) The development will not result in reduced public access, provided that access does not infringe upon private property rights.

(f) The development will not expose the public to increased flood hazards.

(g) The development will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on private or public land.

(h) The development will not result in the degradation or impairment of levee integrity.

(i) The development will not adversely impact navigation.

(j) The development will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.

(Added by Stats. 1992, Ch. 898.)

29766. Public property; local government; preservation

Nothing in this division shall deny the right of private or public property owners and local governments to establish agriculture preserves and enter into contracts pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code) or apply other enforceable restrictions or zoning within the primary zone or the secondary zone.

(Added by Stats. 1992, Ch. 898.)

29767. Eminent domain

The commission may not exercise the power of eminent domain in implementing the resource management plan, unless requested by the landowner.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1998, Ch. 584.)

Chapter 6. Appeal and Judicial Review

29770. Filing appeal

(a) Any person who is aggrieved by any action taken by a local government or other local agency in implementing the resource management plan, or otherwise taken pursuant to this division, may file an appeal with the commission. The ground for an appeal and the commission consideration of an appeal shall be that an action, as to land located exclusively within the primary zone, is inconsistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, or this division. The appeal shall be heard by the commission within 60 days from the date of the filing

of the appeal, unless the commission, either itself or by delegation to the executive director, determines that the issue raised on appeal is not within the commission's jurisdiction or does not raise an appealable issue.

(b) The commission shall, by regulation, adopt administrative procedures governing those appeals.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1998, Ch. 584.)

29771. Denial of appeal

After a hearing on an appealed action, the commission shall either deny the appeal or remand the matter to the local government or local agency for reconsideration, after making specific findings. Upon remand, the local government or local agency may modify the appealed action and resubmit the matter for review to the commission. A proposed action appealed pursuant to this section shall not be effective until the commission has adopted written findings, based on substantial evidence in the record, that the action is consistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, and this division.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1998, Ch. 584.)

29772. Judicial review

An aggrieved person may seek judicial review of any action taken by the commission in adopting the resource management plan or any action taken by a local government or other local agency that is appealable pursuant to subdivision (a) of Section 29770, by filing a petition for writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure within 60 days from the date that the commission action was taken or, if appealed to the commission, within 60 days from the final decision of the commission on the appeal.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1998, Ch. 584.)

Chapter 7. Financial Provisions

29775. *Repealed by Stats. 1996, Ch. 568.*

29776. Delta protection fund

The Sacramento-San Joaquin Delta Protection Fund is hereby created in the State Treasury. Any money in the Sacramento-San Joaquin Delta Protection Fund is available, upon appropriation by the Legislature, for support of the commission in an amount not to exceed two hundred fifty thousand dollars ($250,000) in any fiscal year.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1996, Ch. 568.)

29777. Report; costs

*** The commission shall not incur costs in excess of the amount of funds available for expenditure by the commission in any fiscal year.

(Added by Stats. 1992, Ch. 898, Repealed by Stats. 2004, Ch. 193 Amended by Stats. 2004, Ch. 286.)

Chapter 8. Annual Report

29780. Progress report

On January 1 of each year, the commission shall submit to the Governor and the Legislature a report describing the progress that has been made in achieving the objectives of this division. The report shall include, but not be limited to, all of the following information:

(a) An evaluation of the effectiveness of the resource management plan in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and in undertaking other functions prescribed in this division.

(b) An update of the resource management plan, using baseline conditions set forth in the original resource management plan.

(c) The status of the environmental thresholds established by the commission in the original resource management plan.

(Added by Stats. 1992, Ch. 898; Amended by Stats. 1998, Ch. 584.)

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the California Environmental License Plate Fund to the Delta Protection Commission as a loan for costs incurred for organization and operation of the commission, including costs incurred for preparation and adoption of the regional plan, as defined in Section 29729 of the Public Resources Code. The loan shall be repaid to the California Environmental License Plate Fund not later than December 31, 1998.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments

sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act takes effect pursuant to the California Constitution.

HEALTH AND SAFETY CODE EXCERPTS

HEALTH FACILITIES ZONING

1267.8. Care facilities

(a) An intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled —nursing or a congregate living health facility shall meet the same fire safety standards adopted by the State Fire Marshal pursuant to Sections 13113, 13113.5, 13143, and 13143.6 that apply to community care facilities, as defined in Section 1502, of similar size and with residents of similar age and ambulatory status. No other state or local regulations relating to fire safety shall apply to these facilities and the requirements specified in this section shall be uniformly enforced by state and local fire authorities.

(b) An intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing or a congregate living health facility shall meet the same seismic safety requirements applied to community care facilities of similar size with residents of similar age and ambulatory status. No additional requirements relating to seismic safety shall apply to such facilities.

(c) Whether or not unrelated persons are living together, an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing which serves six or fewer persons or a congregate living health facility shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which is related to the residential use of property pursuant to this article.

For the purposes of all local ordinances, an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing which serves six or fewer persons or a congregate living health facility shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the intermediate care facility/developmentally disabled habilitative or intermediate care facility/developmentally disabled—nursing or a congregate living health facility is a business run for profit or differs in any other way from a single-family residence.

This section does not forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing which serves six or fewer persons or a congregate living health facility as long as such restrictions are identical to those applied to other single-family residences.

This section does not forbid the application to an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing or a congregate living health facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity, as long as that ordinance does not distinguish intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing or a congregate living health facility from other single-family dwellings and that the ordinance does not distinguish residents of the intermediate care facility/developmentally disabled habilitative or intermediate care facility/developmentally disabled—nursing which serves six or fewer persons or a congregate living health facility from persons who reside in other single-family dwellings.

No conditional use permit, zoning variance, or other zoning clearance shall be required of an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing which serves six or fewer persons or a congregate living health facility which is not required of a single-family residence in the same zone.

Use of a single-family dwelling for purposes of an intermediate care facility/developmentally disabled habilitative serving six or fewer persons or an intermediate care facility/developmentally disabled—nursing which serves six or fewer persons or a congregate living health facility shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section supersedes Section 13143 to the extent these provisions are applicable to intermediate care facility/developmentally disabled habilitative providing care for six or fewer residents or an intermediate care facility/

developmentally disabled—nursing serving six or fewer persons or a congregate living health facility.

(Amended by Stats. 1985, Ch. 1496; Stats. 1986, Ch. 1459.)

1267.9. Care facilities; overconcentration

(a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of intermediate care facilities/development ally disabled habilitative, intermediate care facilities/developmentally disabled-nursing, congregate living health facilities, or pediatric day health and respite care facilities, as defined in Section 1760.2, which impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new intermediate care facility/developmentally disabled habilitative license, a new intermediate care facility/developmentally disabled-nursing license, a congregate living health facility, or a pediatric day health and respite care facility license if the director determines that the location is in such proximity to an existing intermediate care facility/developmentally disabled habilitative, an intermediate care facility/developmentally disabled-nursing, a congregate living health facility, or a pediatric day health and respite care facility as would result in overconcentration.

(b) As used in this section, "overconcentration" means that if a new license is issued, either of the following will occur:

(1) There will be intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled-nursing, residential care facilities, as defined in Section 1502, or pediatric day health and respite care facilities which are separated by a distance of less than 300 feet, as measured from any point upon the outside walls of the structures housing the facilities.

(2) There will be congregate living health facilities serving persons who are terminally ill, diagnosed with a life-threatening illness, or catastrophically and severely disabled, as defined in Section 1250, which are separated by a distance of less than 1,000 feet, as measured from any point upon the outside walls of the structures housing the facilities.

Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet or 1,000 feet, whichever is applicable, with the approval of the city or county in which the proposed facility will be located.

(c) At least 45 days prior to approving any application for a new intermediate care facility/developmentally disabled habilitative, a new intermediate care facility/developmentally disabled-nursing, a congregate living health facility, or a pediatric day health and respite care facility, the director shall notify, in writing, the city or county planning authority in which the facility will be located, of the proposed location of the facility.

(d) Any city or county may request denial of the license applied for on the basis of overconcentration of intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled-nursing, a congregate living health facility, or a pediatric day health and respite care facility.

(e) Nothing in this section authorizes the director, on the basis of overconcentration, to refuse to renew an intermediate care facility/development ally disabled habilitative license, an intermediate care facility/developmental disabled-nursing license, a congregate living health facility license, or a pediatric day health and respite care facility license, or to refuse to grant a license upon a change of ownership of an existing intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled-nursing, a congregate living health facility, or a pediatric day health and respite care facility where there is no change in the location of the facility.

(f) Foster family homes and residential care facilities for the elderly shall not be considered in determining overconcentration of intermediate care facilities/developmentally disabled-habilitative, intermediate care facilities/developmentally disabled-nursing, residential care facilities, as defined in Section 1502, congregate living health facilities, or pediatric day health and respite care facilities.

(Added by Stats. 1985, Ch. 1496; Amended by Stats. 1988, Ch. 898; Amended by Stats 1989, Ch. 1393; Amended by Stats. 1990, Ch. 1227.)

COMMUNITY CARE FACILITIES ZONING

1566.3. Zoning preemption

Whether or not unrelated persons are living together, a residential facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, a residential facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential facility is a business run for profit or differs in any other way from a family dwelling.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions

on building heights, setback, lot dimensions, or placement of signs of a residential facility which serves six or fewer persons as long as such restrictions are identical to those applied to other family dwellings of the same type in the same zone.

This section shall not be construed to forbid the application to a residential care facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone; and if the ordinance does not distinguish residents of the residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

Use of a family dwelling for purposes of a residential facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1. 5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent such sections are applicable to residential facilities providing care for six or fewer residents.

For the purposes of this section, "family dwelling," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

(Added by Stats. 1978, Ch. 891; Amended by Stats. 1987, Ch. 1092.)

1567.1. Zoning and wards of the juvenile court

It is further the intent of the Legislature that, where city or county zoning restrictions unreasonably impair the ability of a county to serve the needs of its residents who are wards of the juvenile court, the removal of these restrictions is hereby encouraged and is a matter of high state interest.

(Added by Stats. 1978, Ch. 889.)

RESIDENTIAL CARE FACILITIES FOR THE ELDERLY ZONING

1568.083. Interpretation of regulations; limited state preemption

(a) The department, State Fire Marshal, or local fire officials shall not make a de facto determination of a resident's ambulatory or nonambulatory status based on a resident's placement in the facility. Interpretation of regulations related to fire safety in residential care facilities shall be made to provide flexibility to allow residents to remain in the least restrictive environment. (b) This chapter shall not preempt the application of any local zoning requirements to residential care facility, except as provided for in Section 1568.0831.

(Added by Stats. 1990, Ch. 1333.)

1568.0831. Zoning preemption; fire inspection clearances and other authorizations; real property transfer instruments

(a) (1) Whether or not unrelated persons are living together, a residential care facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this chapter. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this chapter.

(2) For the purpose of all local ordinances, a residential care facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential care facility is a business run for profit or differs in any other way from a family dwelling.

(3) This section shall not be construed to prohibit any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential care facility which serves six or fewer persons as long as the restrictions are identical to those applied to other family dwellings of the same type in the same zone.

(4) This section shall not be construed to prohibit the application to a residential care facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone and if the ordinance does not distinguish residents of residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

(5) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

(6) Use of a family dwelling for purposes of a residential care facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes.

However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent these sections are applicable to residential care facilities serving six or fewer persons.

(b) No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to a residential care facility because of a failure to comply with local ordinances from which the facilities are exempt under subdivision (a), provided that the applicant otherwise qualifies for the fire clearance, license, permit, or similar authorization.

(c) For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, a residential care facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

(d) Nothing in this chapter shall authorize the imposition of rent regulations or controls for licensed residential care facilities.

(e) Licensed residential care facilities shall not be subject to controls on rent imposed by any state or local agency or other local government or entity.

(Added by Stats. 1990, Ch. 1333; Amended by Stats. 1991, Ch. 832.)

1569.85. Zoning preemption

Whether or not unrelated persons are living together, a residential care facility for the elderly which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, a residential care facility for the elderly which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of the aged, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential care facility for the elderly is a business run for profit or differs in any other way from a family dwelling.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential care facility for the elderly which serves six or fewer persons as long as the restrictions are identical to those applied to other family dwellings of the same type in the same zone.

This section shall not be construed to forbid the application to a residential care facility for the elderly of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities for the elderly which serve six or fewer persons from other family dwellings of the same type in the same zone; and if the ordinance does not distinguish residents of the residential care facilities for the elderly from persons who reside in other family dwellings of the same type in the same zone.

No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility for the elderly which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

Use of a family dwelling for purposes of a residential care facility for the elderly serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent these sections are applicable to residential care facilities for the elderly providing care for six or fewer residents.

For the purposes of this section, "family dwelling," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

(Added by Stats. 1986, Ch. 844; Amended by Stats. 1987, Ch. 1092.)

FAMILY DAY CARE HOMES ZONING

1596.70. Title

This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with 1597.30) may be cited as the California Child Day Care Facilities Act.

(Added by Stats. 1984, Ch. 1615; Amended by Stats. 1985, Ch. 1064.)

1596.71. Applicability

This chapter applies to Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30). This chapter also applies to Chapter 3.65 (commencing with Section 1597.70).

(Added by Stats. 1984, Ch. 1615.)

1596.72. Legislative intent

The Legislature finds all of the following:

(a) That child day care facilities can contribute positively to a child's emotional, cognitive, and educational development.

(b) That it is the intent of this state to provide a comprehensive, quality system for licensing child day care facilities to ensure a quality day care environment.

(c) That this system of licensure requires a special understanding of the unique characteristics and needs of the children served by child day care facilities.

(d) That it is the intent of the Legislature to establish within the State Department of Social Services an organizational structure to separate licensing of child day care facilities from those facility types administered under Chapter 3 (commencing with Section 1500).

(e) That good quality child day care services are an essential service for working parents.

(Added by Stats. 1984, Ch. 1615; Amended by Stats. 1985, Ch. 1064.)

1596.73. Purpose

The purposes of this act are to:

(a) Streamline the administration of child care licensing and thereby increase the efficiency and effectiveness of this system.

(b) Encourage the development of licensing staff with knowledge and understanding of children and child care needs.

(c) Provide providers of child care with technical assistance about licensing requirements.

(d) Enhance consumer awareness of licensing requirements and the benefits of licensed child care.

(e) Recognize that affordable, quality licensed child care is critical to the well-being of parents and children in this state.

(Added by Stats. 1984, Ch. 1615; Amended by Stats. 1985, Ch. 1064.)

1596.74. Definitions

Unless the context otherwise requires, the definitions contained in this chapter govern the construction of this chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30).

(Added by Stats. 1984, Ch. 1615.)

1596.75. Child

"Child" means a person who is under 18 years of age who is being provided care and supervision in a child day care facility, except where otherwise specified in this act.

(Added by Stats. 1984, Ch. 1615.)

1596.750. Child day care facility

"Child day care facility" means a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes.

(Added by Stats. 1984, Ch. 1615, Amended by Stats. 1994, Ch. 690.)

1596.76. Day care center

"Day care center" means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers.

(Added by Stats. 1984, Ch. 1615; Amended by Stats. 2002, Ch. 1022.)

1596.77. Department

"Department" means the State Department of Social Services.

(Added by Stats. 1984, Ch. 1615.)

1596.770. Director

"Director" means the Director of Social Services.

(Added by Stats. 1984, Ch. 1615.)

1596.771. Employer-sponsored child care center

"Employer-sponsored child care center" means any child day care facility at the employer's site of business operated directly or through a provider contract by any person or entity having one or more employees, and available exclusively for the care of children of that employer, and of the officers, managers, and employees of that employer.

(Added by Stats. 1994, Ch. 690.)

1596.773. Probation; Revocation

(a) "Probation" means the period of time that a licensed child day care facility is required to comply with specific terms and conditions set forth by the department in order to stay or postpone the revocation of the facility's license.

(b) "Revocation" means an administrative action taken by the department to void or rescind the license of a child day care facility because of serious or chronic violations of licensing laws or regulations by the facility.

(Added by Stats. 2004, Ch. 358.)

1596.775. Findings

The Legislature finds and declares all of the following:

(a) There is a severe shortage of child care for school age children throughout California, with many school age children going home to an empty, unsupervised setting after school.

(b) For nearly five years several counties have participated in a pilot program that allows for a family day care home to care for two additional children above the current number allowed pursuant to licensing regulations.

(c) As part of the pilot program, a study was conducted by the Assembly Office of Research. The results of the study demonstrated that the pilot program achieved all of the following results:

(1) Increased access to care for school age children.

(2) Participating providers encountered few problems and strongly support expansion of the program.

(3) Parents of children in the pilot program family day care homes strongly support the program.

(4) Participating providers with additional children were no more likely to receive substantiated complaints from licensing officials than nonparticipants.

(5) Local governments and planning officials saw little or no impact on their licensing policies and procedures.

(6) Overall quality of care was not adversely affected.

(Added by Stats. 1996, Ch. 18.)

1596.78. Family day care home

(a) "Family day care home" means a home that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home.

(b) "Large family day care home" means a home that provides family day care for 7 to 14 children, inclusive, including children under the age of 10 years who reside at the home, as set forth in Section 1597.465 and as defined in regulations.

(c) "Small family day care home" means a home that provides family day care for eight or fewer children, including children under the age of 10 years who reside at the home, as set forth in Section 1597.44 and as defined in regulations.

(*Added by Stats. 1984, Ch. 1615; Amended by Stats. 1989, Ch. 70;*

1596.79. Person

"Person" means an individual, partnership, association, corporation, limited liability company, or governmental entity, such as the state, a county, city, special district, school district, community college district, chartered city, or chartered city and county.

(Added by Stats. 1984, Ch. 1615; Amended by Stats. 1985, Ch. 1064; Amended by Stats. 1994, Ch. 1010.)

1596.790. Planning agency

"Planning agency" means the agency designated pursuant to Section 65100 of the Government Code.

(Added by Stats. 1984, Ch. 1615.)

1596.791. Provider

"Provider" means a person who operates a child day care facility and is licensed pursuant to Chapter 3.5 (commencing with Section 1596.90) or 3.6 (commencing with Section 1597.30).

(Added by Stats. 1984, Ch. 1615.)

1596.792. Inapplicability

This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of their children *** **when** no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of that may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for grades K-12, inclusive, in the public school district where the program is located, or operated only during periods when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when

students are "normally not in session," the State Department of Social Services shall, *** **when** appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and *** **that** satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(l) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

(n) Any crisis nursery, as defined in subdivision (a) of Section 1516.

(o) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 5. Section 1596.792 is added to the Health and Safety Code, to read:

1596.792. Inapplicability

This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of their children when no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of that may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for grades K-12, inclusive, in the public school district where the program is located, or operated only during periods when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and that satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(l) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

(n) *** **This section shall become operative on January 1, 2008.**

***

(Added by Stats. 1984, Ch. 1615; Amended by Stats. 1985, Ch. 1064; Amended by Stats. 1987, Ch. 1487; Amended by Stats. 1990, Ch. 388; Amended by Stats. 1991, Ch. 316; Amended by Stats. 1992, Ch. 625, Amended by Stats. 1993, Ch. 280; Amended by Stats. 1995, Ch. 372; Amended by Stats. 1997, Ch. 942; Amended by Stats. 2004, Ch. 644, Section 5 takes effect January 1, 2008.)

1596.7925. *(Repealed by section language, January 1, 2001.)*

1596.793. Exemption of specific recreation programs

This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) do not apply to recreation programs conducted for children by the Girl Scouts, Boy Scouts, Boys Club, Girls Club, or Camp Fire, or similar organizations as determined by regulations of the department. Child day care programs conducted by these organizations and the fees charged for that specific purpose are subject to the requirements of this chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30).

(Added by Stats. 1985, Ch. 1110; Amended by Stats. 1986, Ch. 714.)

1596.795. No smoking ordinance

(a) The smoking of tobacco in a private residence that is licensed as a family day care home shall be prohibited during the hours of operation as a family day care home and in those areas of the family day care home where children are

present. Nothing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to smoking in a family day care home if the ordinance is more stringent than this section.

(b) The smoking of tobacco on the premises of a licensed day care center shall be prohibited.

(Added by Stats. 1986, Ch. 407; Amended by Stats. 1993, Ch. 335.)

1597.40. Policy

(a) It is the intent of the Legislature that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development. It is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting.

The Legislature declares this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning, building and fire codes and regulations governing the use or occupancy of family day care homes for children, except as specifically provided for in this chapter, and to prohibit any restrictions relating to the use of single-family residences for family day care homes for children except as provided by this chapter.

(b) Every provision in a written instrument entered into relating to real property which purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family day care home for children, is void and every restriction or prohibition in any such written instrument as to the use or occupancy of the property as a family day care home for children is void.

(c) Except as provided in subdivision (d), every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

(d) (1) A prospective family day care home provider, who resides in a rental property, shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home.

(2) For family day care home providers who have relocated an existing licensed family day care home program to a rental property on or after January 1, 1997, less than 30 days' written notice may be provided in cases where the department approves the operation of the new location of the family day care home in less than 30 days, or the home is licensed in less than 30 days, in order that service to the children served in the former location not be interrupted.

(3) A family day care home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.

(4) Notwithstanding any other provision of law, upon commencement of, or knowledge of, the operation of a family day care home on his or her property, the landlord or property owner may require the family day care home provider to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family day care homes. In no event, however, shall the total security deposit charged exceed the maximum allowable under existing law.

(5) Section 1596.890 shall not apply to this subdivision.

(Renumbered—formerly 1597.501—and Amended by Stats. 1983, Ch. 1233; Amended by Stats. 1996, Ch. 449.)

1597.41. *(Repealed by Stats. 1996, Ch. 11.)*

1597.43. Family day care homes; residentially zoned

The Legislature finds and declares all of the following:

(a) Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses. Family day care homes draw clients and vehicles to their sites during a limited time of day and do not require the attendance of a large number of employees and equipment.

(b) The uses of congregate care facilities are distinguishable from the uses of family day care homes operated under the standards of state law. For purposes of this section, a "congregate care facility" means a "residential facility," as defined in paragraph (1) of subdivision (a) of Section 1502. Congregate care facilities are used throughout the day and night, and the institutional uses of these facilities are primary uses of the facilities, not accessory uses, and draw a large number of employees, vehicles, and equipment compared to that drawn to family day care homes.

(c) The expansion permitted for family day care homes by Sections 1597.44 and 1597.465 is not appropriate with respect to congregate care facilities, or any other facilities with quasi-institutional uses. Therefore, with these provisions, the Legislature does not intend to alter the legal standards governing congregate care facilities and these provisions are not intended to encourage, or be a precedent for, changes in statutory and case law governing congregate care facilities.

(Added by Stats. 1996, Ch. 18.)

1597.44. Small family day care homes; children

A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

(a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

(b) No more than two infants are cared for during any time when more than six children are cared for.

(c) The licensee notifies each parent that the facility is caring for two additional school age children and that there may be up to seven or eight children in the home at one time.

(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

(Added by Stats. 1996, Ch. 18; Amended by Stats. 2003, Ch. 744.)

1597.45. Small family day care homes

All of the following shall apply to small family day care homes:

(a) The use of single-family residence as a small family day care home shall be considered a residential use of property for the purposes of all local ordinances.

(b) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home.

(c) Use of a single-family dwelling for purposes of a small family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law) or for purposes of local building codes.

(d) A small family day care home shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of Chapter 1 of Part 2, except that a small family day care home shall contain a fire extinguisher and smoke detector device that meet standards established by the State Fire Marshal.

(Added by Stats. 1983, Ch. 1233. Amended by Stats. 1989, Ch. 70.)

1597.46. Large family day care homes

All of the following shall apply to large family day care homes:

(a) A city, county, or city and county shall not prohibit large family day care homes on lots zoned for single-family dwellings, but shall do one of the following:

(1) Classify these homes as a permitted use of residential property for zoning purposes.

(2) Grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise level generated by children. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, if any, or if there is no zoning administrator by the person or persons designated by the planning agency to grant such permits, upon the certification without a hearing.

(3) Require any large family day care home to apply for a permit to use a lot zoned for single-family dwellings. The zoning administrator, if any, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits shall review and decide the applications. The use permit shall be granted if the large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise levels generated by children. The local government shall process any required permit as economically as possible, and fees charged for review shall not exceed the costs of the review and permit process. Not less than 10 days prior to the date on which the decision will be made on the application, the zoning administrator or person designated to handle such use permits shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100 foot radius of the exterior boundaries of the proposed large family day care home. No hearing on the application for a permit issued pursuant to this paragraph shall be held before a decision is made unless a hearing is requested by the applicant or other affected person. The applicant or other affected person may appeal the decision. The appellant shall pay the cost, if any of the appeal.

(b) A large family day care home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) Use of a single-family dwelling for the purposes of a large family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law), or for purposes of local building and fire codes.

(d) Large family day care homes shall be considered as single-family residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, except with respect to any additional standards specifically designed to promote the fire and life safety of the children in these homes adopted by the State Fire Marshal pursuant to this subdivision. The State Fire Marshal

shall adopt separate building standards specifically relating to the subject of fire and life safety in large family day care homes which shall be published in Title 24 of the California Administrative Code. These standards shall apply uniformly throughout the state and shall include, but not be limited to: (1) the requirement that a large family day care home contain a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal; (2) specification as to the number of required exits from the home; and (3) specification as to the floor or floors on which day care may be provided. Enforcement of these provisions shall be in accordance with Sections 13145 and 13146. No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulation relating to the subject of fire and life safety in large family day care homes which is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to single-family residences in which day care is not provided.

(e) No later than April 1, 1984, the State Fire Marshal shall adopt the building standards required in subdivision (d) and any other regulations necessary to implement the provisions of this section.

(Added by Stats. 1983, Ch. 1233.)

1597.465. Large family day care homes; children

A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

(a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

(b) No more than three infants are cared for during any time when more than 12 children are being cared for.

(c) The licensee notifies a parent that the facility is caring for two additional school age children and that there may be up to 13 or 14 children in the home at one time.

(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

(Added by Stats. 1996, Ch. 18; Amended by Stats. 2003, Ch. 744.)

1597.47. Single family residential restrictions

The provisions of this chapter shall not be construed to preclude any city, county, or other local public entity from placing restrictions on building heights, setback, or lot dimensions of a family day care facility as long as such restrictions are identical to those applied to other single-family residences. The provisions of this chapter shall not be construed to preclude the application to a family day care facility for children of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. The provisions of this chapter also shall not be construed to prohibit or restrict the abatement of nuisances by a city, county, or city and county. However, such ordinance or nuisance abatement shall not distinguish family day care facilities from other single-family dwellings, except as otherwise provided in this chapter.

(Added by Stats. 1983, Ch. 1233.)

MOBILE HEALTH CARE UNITS

1765.105. Parent facility; definition

As used in this chapter, the following definitions shall apply:

(a) "Parent facility" means a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, or a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(b) (1) "Mobile service unit" or "mobile unit" means a special purpose commercial coach as defined in Section 18012.5, or a commercial coach as defined in Section 18001.8, that provides services as set forth in Section 1765.110, and meets any of the following criteria:

(A) Is approved pursuant to this chapter by the state department as a service of a licensed health facility, as defined in Section 1250.

(B) Is approved by the state department pursuant to this chapter as a service of a licensed clinic, as defined in Section 1200.

(C) Is licensed pursuant to this chapter by the state department as a clinic, as defined in Section 1200.

(D) Is licensed pursuant to this chapter as an "other" type of approved mobile unit by the state department. "Other" types of approved mobile units shall be limited to mobile units performing services within new health facility or clinic licensure categories created after the effective date of this chapter. The State Department of Health Services shall not create a new health facility or clinic licensure category under this subparagraph absent a legislative mandate.

(2) "Mobile service unit" or "mobile unit" does not mean a modular, relocatable, or transportable unit that is designed to be placed on a foundation when it reaches its destination, nor does it mean any entity that is exempt from licensure pursuant to Section 1206.

(Added by Stats. 1993, Ch. 1020.)

1765.155. Zoning approval

(a) The licensed parent facility or clinic shall be responsible for obtaining approvals for the site or sites of the mobile unit from the local planning, zoning, and fire authorities, as required.

(b) The mobile unit shall be situated for safe and comfortable patient access. The mobile unit shall comply

with all local parking laws. Any parking restrictions developed by a parent facility or clinic for mobile units shall be strictly enforced by the parent facility or clinic.

(c) The parent facility or clinic shall ensure that there is sufficient lighting around the perimeter of the site from which the mobile unit provides any services.

(Added by Stats. 1993, Ch. 1020.)

LOCAL REGULATION OF ALCOHOLISM RECOVERY FACILITIES

11834.02. Definitions

(a) As used in this chapter, "alcoholism or drug abuse recovery or treatment facility" or "facility" means any premises, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

(b) As used in this chapter, "adults" may include, but is not limited to, all of the following:

(1) Mothers over 18 years of age and their children.

(2) Emancipated minors, which may include, but is not limited to, mothers under 18 years of age and their children.

(c) As used in this chapter, "emancipated minors" means persons under 18 years of age who have acquired emancipation status pursuant to Section 7002 of the Family Code.

(d) Notwithstanding subdivision (a), an alcoholism or drug abuse recovery or treatment facility may serve adolescents upon the issuance of a waiver granted by the department pursuant to regulations adopted under subdivision (c) of Section 11834.50.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1988, Ch. 646; Amended by Stats. 1989, Ch. 919; Amended by Stats. 1992, Ch. 620; Amended by Stats. 1993, Ch. 219; Renumbered—formerly 11834.11—and amended by Stats. 1993, Ch. 741.)

11834.12. *(Renumbered to 11834.30 by Stats. 1993, Ch. 741.)*

11834.17. State fire marshal; building ordinances

No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulations relating to the subject of fire and life safety in alcoholism and drug abuse recovery facilities which is more restrictive than those standards adopted by the State Fire Marshal.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1987, Ch. 880; Amended by Stats. 1989, Ch. 919.)

11834.18. Rent control preempted

(a) Nothing in this chapter shall authorize the imposition of rent regulations or controls for licensed alcoholism or drug abuse recovery or treatment facilities.

(b) Licensed alcoholism and drug abuse recovery or treatment facilities shall not be subject to controls on rent imposed by any state or local agency or other local government or entity.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1989, Ch. 919.)

11834.20. Applicability

The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need.

The provisions of this article apply equally to any chartered city, general law city, county, city and county, district, and any other local public entity.

For the purposes of this article, "six or fewer persons" does not include the licensee or members of the licensee's family or persons employed as facility staff.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1989, Ch. 919.)

11834.22. Fee limitations

An alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 11834.23, local bond assessments, and other fees, charges, and assessments to which other single-family dwellings are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1989, Ch. 919.)

11834.23. Zoning preemption

Whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or

zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons as long as the restrictions are identical to those applied to other single-family residences.

This section shall not be construed to forbid the application to an alcoholism or drug abuse recovery or treatment facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. However, the ordinance shall not distinguish alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons from other single-family dwellings or distinguish residents of alcoholism or drug abuse recovery or treatment facilities from persons who reside in other single-family dwellings.

No conditional use permit, zoning variance, or other zoning clearance shall be required of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons that is not required of a single-family residence in the same zone.

Use of a single-family dwelling for purposes of an alcoholism or drug abuse recovery facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent those sections are applicable to alcoholism or drug abuse recovery or treatment facilities serving six or fewer residents.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1989, Ch. 919.)

11834.24. Permits, licenses; denial prohibited

No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to an alcoholism or drug abuse recovery or treatment facility because of a failure to comply with local ordinances from which the facility is exempt under Section 11834.23, if the applicant otherwise qualifies for a fire clearance, license, permit, or similar authorization.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1989, Ch. 919.)

11834.25. Transfer of real property

For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1989, Ch. 919.)

11834.30. License

No person, firm, partnership, association, corporation, or local governmental entity shall operate, establish, manage, conduct, or maintain an alcoholism or drug abuse recovery or treatment facility to provide recovery, treatment, or detoxification services within this state without first obtaining a current valid license issued pursuant to this chapter.

(Added by Stats. 1984, Ch. 1667; Amended by Stats. 1988, Ch. 646; Amended by Stats. 1989, Ch. 919; Renumbered—formerly 11834.12—and amended by Stats. 1993, Ch. 741.)

OCCUPANCY STANDARDS AND ZONING VARIANCES

17922.9. Two-car garages

(a) The Legislature hereby finds and declares that the provision of an adequate level of affordable housing, in and of itself, is a fundamental responsibility of the state and that a generally inadequate supply of decent, safe, and sanitary housing affordable to persons of low and moderate income threatens orderly community and regional development, including job creation, attracting new private investment, and creating the physical, economic, social, and environmental conditions to support continued growth and security of all areas of the state.

The Legislature further finds and declares that many rural communities depend on mortgage financing available through the Farmers Home Administration and that the continued construction of affordable housing is a priority for the state. However, the Legislature, in requiring waiver of certain local requirements respecting adequacy of garages and carports and house size, does not endorse the restrictive Farmers Home Administration regulations that preclude financing of two-car garages and houses exceeding a maximum size.

The Legislature further finds and declares that inadequate housing supplies have a negative impact on regional development and are, therefore, a matter of statewide interest and concern.

(b) Notwithstanding any local ordinance, charter provision, or regulation to the contrary, if the applicant for a building permit for construction of a qualifying residential structure submits with the application a conditional loan commitment letter or letter of intent to finance issued by the Farmers Home Administration of the United States Department of Agriculture for the structure, the city, county, or city and county issuing the building permit shall not impose any requirement on the permit respecting the size or capacity of any appurtenant garage or carport or house size which exceeds the size or capacity that the Farmers Home Administration will finance under its then applicable regulations and policies. "Qualifying residential structure," as used in this section, means any single-family or multifamily residential structure financed by the Farmers Home Administration and which is restricted pursuant to federal law to ownership or occupancy by households with incomes not exceeding the income criteria for persons and families of low and moderate income, as defined by Section 50093, or more restrictive income criteria.

(c) This section does not preclude a city, county, or city and county from requiring the provision of one uncovered, paved parking space located outside the required setback and outside the driveway approach to the garage or covered parking space plus a garage or covered parking space that does not exceed the size and capacity allowed for Farmers Home Administration financing. However, this setback requirement may not exceed the setbacks applicable to single-family dwelling units in the same zoning district that have two-car garages.

(Added by Stats. 1988, Ch. 97; Amended by Stats. 1994, Ch. 198.)

17959.5. Local use zone variances

The housing appeals board may, upon appeal or upon application by the owner, grant variances from local use zone requirements in order to permit an owner-occupant of a dwelling to construct an addition to a dwelling to meet occupancy standards relating the number of persons in a household to the number of rooms or bedrooms. This power of the housing appeals board shall be in addition to, and shall not otherwise affect, the powers of other governmental boards and agencies to allow local use zone variances.

(Added by Stats. 1977, Ch. 847; Amended by Stats. 1994, Ch. 198.)

WELFARE AND INSTITUTIONS CODE

LANTERMAN-PETRIS-SHORT ACT CHAPTER 1. GENERAL PROVISIONS

5115. Legislative intent

The Legislature hereby finds and declares:

(a) It is the policy of this state, as declared and established in this section and in the Lanterman Developmental Disabilities Services Act, Division 4.5 (commencing with Section 4500), that mentally and physically handicapped persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability.

(b) In order to achieve uniform statewide implementation of the policies of this section and those of the Lanterman Developmental Disabilities Services Act, it is necessary to establish the statewide policy that the use of property for the care of six or fewer mentally disordered or otherwise handicapped persons is a residential use of such property for the purposes of zoning.

(Amended by Stats. 1978, Ch. 891.)

Note: Stats. 1972, Ch. 1148, reads:

SEC. 18. The provisions of Section 5115 of the Welfare and Institutions Code relating to the residential use for purposes of zoning of homes for the care of six or fewer mentally disordered or otherwise handicapped persons, shall be applicable to Chapter 2 (commencing with Section 1400) of Division 2 of the Health and Safety Code.

Nothing in this act shall be construed as authorizing local agencies to impose stricter zoning or building and safety standards upon existing institutions than existed prior to its enactment.

5116. Zoning preemption

Pursuant to the policy stated in Section 5115, a state-authorized, certified, or licensed family care home, foster home, or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children, shall be considered a residential use of property for the purposes of zoning if such homes provide care on a 24-hour a day basis.

Such homes shall be a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings.

(Amended by Stats. 1978, Ch. 891.)

5117. Lanterman Mental Retardation Act

In order to further facilitate achieving the purposes of this act and the Lanterman Mental Retardation Act of 1969, it is desirable that there be a consolidation of the facilities standard setting, licensure and ratesetting functions of the

various state departments under the jurisdiction of the Health and Welfare Agency.

(Amended by Stats. 1979, Ch. 373.)

5120. Zoning discrimination prohibited

It is the policy of this state as declared and established in this act and in the Lanterman-Petris-Short Act that the care and treatment of mental patients be provided in the local community. In order to achieve uniform statewide implementation of the policies of this act, it is necessary to establish the statewide policy that, notwithstanding any other provision of law, no city or county shall discriminate in the enactment, enforcement, or administration of any zoning laws, ordinances, or rules and regulations between the use of property for the treatment of general hospital or nursing home patients and the use of property for the psychiatric care and treatment of patients, both inpatient and outpatient.

Health facilities for inpatient and outpatient psychiatric care and treatment shall be permitted in any area zoned for hospitals or nursing homes, or in which hospitals and nursing homes are permitted by conditional use permit.

(Amended by Stats. 1972, Ch. 559.)

STREETS AND HIGHWAYS CODE EXCERPTS

Caltrans-Authorized Leases of areas above and below highways

Article 3. The Department of Transportation

104.12. Zoning and the use of leased areas above and below state highways

(a) The department may lease to public agencies or private entities for any term not to exceed 99 years the use of areas above or below state highways, subject to any reservations, restrictions, and conditions that it deems necessary to ensure adequate protection to the safety and the adequacy of highway facilities and to abutting or adjacent land uses. Authorized emergency vehicles, as defined in Section 165 of the Vehicle Code, which are on active duty and are not merely being stored, shall be given preference in the use of these areas, and no payment of consideration shall be required for this use of the areas by these vehicles. Prior to entering into any lease, the department shall determine that the proposed use is not in conflict with the zoning regulations of the local government concerned. The leases shall be made in accordance with procedures to be prescribed by the commission, except that, in the case of leases with private entities, the leases shall only be made after competitive bidding unless the commission finds, by unanimous vote, that in certain cases competitive bidding would not be in the best interests of the state. The possibilities of entering into the leases, and the consequent benefits to be derived therefrom, may be considered by the department in designing and constructing the highways.

Revenues from the leases shall be deposited in the State Highway Account. If leased property was provided to the department for state highway purposes through donation or at less than fair market value, the lease revenues shall be shared with the donor or seller if so provided by contract when the property was acquired. If the donor or seller was a local agency which no longer exists at the time the department enters into the lease, the local agency's share of lease revenues shall be paid to the county or counties within which the local agency was situated.

(b) Notwithstanding subdivision (a), in any case where sufficient land or airspace exists within the right-of-way of any highway, constructed in whole or in part with federal-aid highway funds, to accommodate needed passenger, commuter, or high-speed rail, magnetic levitation systems, and highway and nonhighway public mass transit facilities, the department may make the land or airspace available, with or without charge, to a public entity for those purposes, subject to any reservations, restrictions, or conditions that it determines necessary to ensure adequate protection to the safety and adequacy of highway facilities and to abutting or adjacent land uses.

(c) The department shall consider future lease potential of areas above or below state highway projects when planning new state highway projects. This consideration shall be accomplished by intradepartmental consultation between offices concerned with project development and airspace lease development.

(Amended by Stats. 1971, Ch. 1053; Amended by Stats. 1980, Ch. 777; Amended by Stats. 1986, Ch. 500; Amended by Stats. 1988, Ch. 82; Amended by Stats. 1989, Ch. 1081; Amended by Stats. 1992, Ch. 513.)

104.16. Emergency shelter lease

(a) Any airspace under a freeway, or real property acquired for highway purposes, in the City and County of San Francisco, which is not excess property, may be leased by the department to the city and county or another political subdivision or a state agency for purposes of an emergency shelter or feeding program.

(b) The lease shall be for one dollar ($1) per month. The lease amount may be paid in advance of the term covered in order to reduce the administrative costs associated with the payment of the monthly rental fee. The lease shall require the payment of an administrative fee not to exceed five hundred dollars ($500) per year, unless the department determines that a higher administrative fee is necessary, for the department's cost of administering the lease.

(c) The Legislature finds and declares that the lease of real property pursuant to this section serves a public purpose.

(Added by Stats. 1993, Ch. 750.)

APPENDIX

The purpose of this appendix is to provide short references to codes that are of general interest to planners, but which are not among the codes selected for inclusion in the **Planning, Zoning, and Development Laws**.

Note: Financing and related acts are marked with an asterisk (*). References to the California Constitution are abbreviated as Cal. Const. California codes are abbreviated as follows:

California Administrative Code Cal.Adm.Code
Business and Professions Code Bus.& Prof.C.
Civil Code ..... Civ.C.
Elections Code ..... Elec.C.
Fish and Game Code ..... Fish & G.C.
Government Code ..... Gov.C.
Health and Safety Code ..... Health & S.C.
Public Resources Code ..... Pub.Res.C.
Public Utilities Code ..... Pub.Util.C.
Revenue and Taxation Code ..... Rev.& T.C.
Streets and Highways Code ..... Str.& H.C.
Water Code ..... Water C.
Welfare and Institutions Code .. Welf.& Inst.C.

Annexations - see Cortese-Knox Local Government Reorganization Act

BCDC - see San Francisco Bay Conservation and Development Commission Act

Benefit Assessment Act of 1982 (Gov.C. 54703 et seq.)*

Bicycle Paths (Str.& H.C. 1712)

California Bikeways Act (Str.& H.C. 2370-2394)

California Coastal Act (Pub.Res.C. 30000-30900)

California Endangered Species Act (Fish & G.C. 2050 et seq.)

California Environmental Quality Act (CEQA) (Pub.Res.C. 21000 et seq.)

California Environmental Quality Act (CEQA) Guidelines (Cal.Adm.Code Title 14, sections 15000 et seq.)

California Land Conservation Act of 1965 (Gov.C. 51200 et seq.) - For Property Tax Assessment of Land Under Contract See Rev.& T.C. 421 et seq.)

California Noise Control Act of 1973 (Health & S.C. 46000-46080)

California Recreational Trails Act (Pub.Res.C. 5070 et seq.)

California Solar Rights Act of 1978 (Civ.C. 714)

California Timberland Productivity Act of 1982 (Gov.C. 51100 et seq.)

California Urban Forestry Act of 1978 (Pub.Res.C. 4799.06-4799.12)

City Ordinances (Gov.C. 36900 et seq.)

Coastal Conservancy - see State Coastal Conservancy

Community Redevelopment Law (Health & S.C. 33000 et seq.)

Community Rehabilitation District Law of 1985 (Gov.C. 53370 et seq.)*

Conservation Easements (Civ.C. 815-816)

Cortese-Knox Local Government Reorganization Act (Gov.C. 56000 et seq.)

County Ordinance Adoption (Gov.C. 25120)

County Service Area Law (Gov.C. 25210 et seq.)*

Dam Failure Inundation Maps (Gov.C. 8589.5)

Endangered Species - see California Endangered Species Act

Enterprise Zones (Gov.C. 7070 et seq.)

Flood Plain Regulations (Water C. 8400-8415)

Forest Practices Act of 1973 (Pub.Res.C. 4511-4628)

Geologic Hazard Abatement Districts (Pub.Res.C. 36500 et seq.)

Geothermal Elements (Pub.Res.C. 3715.5) - see also Warren-Alquist Act[2]

Handicapped Access to Public Accommodations (Cal.Adm.Code, Title 24)[3]

Handicapped Adaptability and Accessibility (Apartments) Regulations (Cal.Adm.Code, Title 24)[4]

Hazardous Waste Planning (Tanner) (Gov.C. 65963.1, 66780.8; Health & S.C. 25135, 25199)[5]

Highway Interchange Districts (Str.& H.C. 740-742)

Historical Property Contracts (Gov.C. 50280 et seq.)

Historical Property Under Historical Property Contract, Property Tax Assessment (Rev.& T.C. 439 et seq.)

Housing Authorities (Health & S.C. 34200-34380)

Improvement Act of 1911 (Str.& H.C. 5000 et seq.)*

Improvement Bond Act of 1915 (Str.& H.C. 8500 et seq.)*

Incorporations of Cities - see Cortese-Knox Local Government Reorganization Act

Infrastructure Financing District (Gov.C. 53395 et seq.)

Initiative and Referendum (Cal.Const. Art. IV, sec. 1; Cal.Const. Art. II, sec. 8-11; Elec.C. 3700 et seq.; Elec.C. 4000 et seq.)

Integrated Financing District Act (Gov.C. 53175 et seq.)*

Joint Powers Agreements (Gov.C. 6500 et seq.)

LAFCO - see Cortese-Knox Local Government Reorganization Act

Landscaping and Lighting Act of 1972 (Str.& H.C. 22500 et seq.)*

Mello-Roos Community Facilities Act (Gov.C. 53311 et seq.)*

Mobilehome Parks Act (Health & S.C. 18200 et seq.)

Mobilehome Parks Administrative Regs. (Cal.Adm.Code Title 25, Chap. 2)

Mobilehome-Related Statutes (Civ.C. 798.56; Health & S.C. 18015, 18030.5, 18800 et seq., 25232, 50007.5)

Municipal Advisory Councils (Gov.C. 31010)

Municipal Improvement Act of 1913 (Str. & H.C. 10000 et seq.)*

Municipal Lighting Maintenance District Act of 1927 (Str.& H.C. 18600 et seq.)*

Noise Control - see California Noise Control Act of 1973

Noise Insulation Standards (Cal.Adm.Code Title 24, Chap. 2-35)

Open-Space Districts - see Regional Park, Park and Open-Space, and Open-Space Districts

Open-Space Easements (Gov.C. 51050 et seq.)

Open-Space Easement Act of 1974 (Gov.C. 51070 et seq.)

Open-Space Land Enforceably Restricted, Property Tax Assessment (Rev.& T.C. 421 et seq.)

Open Space Maintenance District (Gov.C. 50575 et seq.)*

Open Spaces and Areas, Preservation by City or County Acquisition of Interests or Rights (Gov.C. 6950 et seq.)

Outdoor Advertising: California Administrative Code Regulations (Cal.Adm.Code Title 4, Chap. 6, or see Calif. Dept. of Transportation's *Outdoor Advertising California Administrative Code Title 4, Chapter 6*)

Parking and Business Improvement Law of 1979 (Str.& H.C. 36500 et seq.)*

Parking District Law of 1951 (Str.& H.C. 35100 et seq.)*

Parking Law of 1949 (Str.& H.C. 32500 et seq.)*

Pedestrian Mall Law of 1960 (Str.& H.C. 11000 et seq.)*

Police Power (Cal.Const., Art. XI, sec. 7)

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Recreational Trails - see California Recreational Trails Act

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Regional Park, Park and Open-Space, and Open-Space Districts (Pub.Res.C. 5500 et seq.)

Right-to-Farm (Civ.C. 3482.5)

San Francisco Bay Conservation and Development Commission Act (Gov.C. 66600 et seq.)

Scenic Easements - see Open-Space Easements

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Special Taxes (Gov.C. 50075 et seq.)*

State Coastal Conservancy (Pub.Res.C. 31000 et seq.)

Street Lighting Act of 1919 (Str. & H.C. 18000 et seq.)*

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Subdivided Lands Act (Bus.& Prof.C. 11000-11200)

Timberland Production Zone - see California Timberland Productivity Act of 1982

Timberland Production Zone and Timber, Property Tax Assessment (Rev.& T.C.423.9, 431 et seq.)

Timberland Productivity Act - see California Timberland Productivity Act of 1982

Trails - see California Recreational Trails Act

Tree Planting Act of 1931 (Str.& H.C. 22000 et seq.)*

Urban Development Incentive Act of 1982 (Health & S.C. 56001-56048)

Urban Forestry - see California Urban Forestry Act of 1978

Vehicle Parking District Law of 1943 (Str.& H.C. 31500 et seq.)*

Warren-Alquist State Energy Resources Conservation and Development Act (Pub.Res.C. 25000 et seq.)

Wild and Scenic Rivers Act (Pub.Res.C. 5093.50 et seq.)

Williamson Act - see California Land Conservation Act of 1965

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Note: *California Codes are abbreviated as follows:*

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California Civil Code	CC
California Education Code	EDC
California Health and Safety Code	HSC
California Public Resources Code	PRC
California Public Utilities Code	PUC
California Streets and Highways Code	SHC
California Welfare and Institutions Code	WIC

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