

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 437

Sacramento, California

June 10, 2005

Present: Chairperson Anne Sheehan
Representative of the Director of the Department of Finance
Member Nicholas Smith
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Jan Boel
Representative of the Director of the Office of Planning and Research

Vacant: Local Elected Officials (2)
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:31 a.m.

HEARING AND DECISION PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 6.5 (action)

Paula Higashi, Executive Director, swore in the parties and witnesses intending to testify before the Commission.

Item 1 Adoption of Proposed Statement of Decision: Butte County Application for Finding of Significant Financial Distress, Welfare & Institutions Code Section 17000.6

Shirley Opie, Project Manager, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflects the Commission's preliminary decision on May 26, 2005, regarding the Butte County application on a finding of significant financial distress.

Staff recommended that the Commission adopt the proposed Statement of Decision. Staff also recommended that the Commission adopt an effective date of July 2, 2005. Ms. Opie noted that the 12-month period of significant financial distress will begin on September 1, 2005, which is 60 days following the effective date of the decision.

Parties were represented as follows: Paul McIntosh, on behalf of the County of Butte; and Michael Herald, with the Western Center on Law and Poverty and on behalf of Legal Services of Northern California.

Mr. McIntosh stated that he was available to answer questions.

Mr. Herald noted that at the May 26 hearing, Butte County cited a recent Attorney General opinion to illustrate the kind of relief from certain housing mandates it may receive from reducing general assistance. He indicated that after reviewing the opinion, he found nothing in it to support

the County's articulation of impact. He stated his belief that the opinion is not applicable to the matter.

In addition, Mr. Herald acknowledged that procedurally, the Commission could not consider additional information. However, with regard to the effects of the triple flip on estimating property tax and vehicle license fee revenues, he stated that there was a great likelihood that property tax revenues may be \$7 million or greater, which would completely meet the unmet needs gap. Thus, he noted for the record his belief that Butte County failed to make a compelling case for relief and to demonstrate beyond clear and convincing evidence that basic county services could not be maintained.

Mr. McIntosh disputed Mr. Herald's comments. He asserted that vehicle license fees will grow on a statewide basis, but with the triple flip in place, the County does not benefit. He also stated that the growth in property tax rates were taken into account in the fiscal forecast. Mr. McIntosh supported staff's findings.

Member Boel made a motion to adopt the proposed Statement of Decision. With a second by Member Smith, the motion carried unanimously.

**REQUEST FOR RECONSIDERATION OF PRIOR STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE SECTION 17559 AND CALIFORNIA CODE
OF REGULATIONS, TITLE 2, ARTICLE 7, SECTION 1188.4**

Item 2 Statement of Decision Adopted on March 30, 2005, *Regional Housing Needs Determination: Councils of Governments*
Reconsideration of Statutes 1980, Chapter 1143, Claim No. 3929,
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)
Southern California Association of Governments, Sacramento Area
Council of Governments, California Association of Councils of
Governments, and San Diego Association of Governments, Requesters

Camille Shelton, Senior Commission Counsel, presented this item. She stated that pursuant to Government Code section 17559 and section 1188.4 of the Commission's regulations, the Councils of Governments requested reconsideration of the Commission's decision adopted on March 30, 2005. Ms. Shelton noted that the request raises the same arguments made by the Councils of Governments through written and oral testimony at the March hearing. However, based on the evidence in the record, staff concluded that the Commission does not have jurisdiction to consider the request for reconsideration because the petition was not timely filed and the time for any action by the Commission to reconsider has lapsed. Thus, the request is deemed denied by operation of law.

Staff recommended that the Commission adopt the revised staff analysis and take no action on the request for reconsideration.

Karen Tachiki represented the Southern California Association of Governments.

Ms. Tachiki stated that she was having difficulty reconciling the procedural and jurisdictional issues that staff raised. She believed that staff was seeking to elevate form over substance because while staff acknowledges receipt of the filing, it is denied because the courier's receipt did not have an exact time stamp. Regarding the jurisdiction issue, she pointed out that the 30-day period for reconsideration lapsed because the hearing date set by staff was after the 30 days. She asserted that the parties had no power to set the hearing date. Moreover, Ms. Tachiki

pointed out that this hearing was meaningless because there were not five members present. She maintained her argument that councils of governments are eligible claimants under the law and that nothing changed since the Board of Control rendered its original decision.

Ms. Shelton responded that Commission staff received the request for reconsideration on May 6, 2005. However, she noted that the Commission's regulations, which have the force of law, require that, if a common carrier is used, there must be a showing that the document was delivered to the carrier before the end of the business day. In this case, there was no such evidence in the record. As to the lapse of time, Ms. Shelton stated that the 30-day period expired on June 5, but that staff made an inadvertent mistake. She explained that the Commission is an administrative agency with limited jurisdiction, so if the Commission acts beyond its jurisdiction, the decision would be considered void.

Member Smith noted that Ms. Tachiki's comment about the requirement for five affirmative votes was correct. However, Ms. Shelton stated that the Commission has no control over the appointments made to the body. She indicated that requesters can challenge decisions in court without having to come before the Commission on a reconsideration.

Member Smith encouraged everyone to write to the Governor to ask him to appoint a full Commission.

Chairperson Sheehan stated that appointment interviews were being conducted. She affirmed that staff is limited in terms of selecting hearing dates, and stated that all future requests for reconsideration should be done in a timely fashion to avoid this same situation.

Ms. Tachiki added that the statute under which the Commission's jurisdiction derives and that sets the 30-day limit also indicates that the 30 days begins when the Statement of Decision is issued. She noted that by the literal language of the statute, the Statement of Decision should be issued by delivery or mail, not by electronic mail.

Ms. Shelton responded that the Commission's regulations, which implemented the Government Code statute being referenced, allow for an electronic mail delivery by consent of the Commission or the parties. She stated that consent of the parties was attained for the electronic delivery of all comments and written documents related to reconsiderations.

Member Boel made a motion to adopt the staff analysis. With a second by Member Lujano, the motion carried unanimously.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED ORDER TO SET-ASIDE PARAMETERS AND GUIDELINES (Tentative)

- Item 3 *Regional Housing Needs Determination: Councils of Governments*,
Statutes 1980, Chapter 1143 (AB 2853)
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)

Eric Feller, Commission Counsel, presented this item. He stated that the Commission, on reconsideration, found that this program is not a reimbursable mandate. Thus, staff recommended that the Commission adopt the proposed order to set aside the *Regional Housing Needs Determination: Councils of Governments* Parameters and Guidelines effective July 1, 2004. He stated that this recommendation accurately reflects the Commission's

March 30, 2005 decision.

Karen Tachiki represented the Southern California Association of Governments. She stated that she had nothing to add to the record.

Member Boel made motion to adopt the proposed order to set aside the parameters and guidelines. With a second by Member Lujano, the motion carried 3-0. Member Smith abstained.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
4. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
5. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
6. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
7. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
8. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]
10. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the

Superior Court of the State of California, County of Los Angeles.
CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]

11. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]
12. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Case No. BS092146, in the Superior Court of the State of California, County of Los Angeles, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*]
13. *City of Newport Beach v. Commission on State Mandates, et al.*, Case Number BS095456, in the Superior Court of the State of California, County of Los Angeles, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526. Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and upon motion by Member Smith and second by Member Boel, Chairperson Sheehan adjourned the meeting at 10:00 a.m.

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director



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PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:30 a.m.

DATE: Friday, June 10, 2005

PLACE: State Capitol, Room 437
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

ORIGINAL

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
(Commission Chair)
Representative for TOM CAMPBELL
Director
Department of Finance

JAN BOEL
Acting Director
State Office of Planning and Research

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

NICHOLAS SMITH
Representative for STEVE WESTLY
State Controller

--oOo--

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
Chief Legal Counsel

ERIC FELLER
Commission Counsel

SHIRLEY OPIE
Manager

CAMILLE SHELTON
Senior Commission Counsel

--oOo--

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 1:

For the County of Butte:

PAUL McINTOSH
Chief Administrative Officer
Administrative Center
County of Butte
25 County Center Drive
Oroville, CA 95965

For Western Center on Law and Poverty:

MICHAEL HERALD
Western Center on Law and Poverty
1107 Ninth Street, Suite 802
Sacramento, CA 95814

Appearing re Item 2 and Item 3:

For Southern California Association of Governments
(SCAG):

KAREN L. TACHIKI
Chief Counsel
Southern California Association of Governments (SCAG)
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

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1 BE IT REMEMBERED that on Friday, June 10, 2005,
2 commencing at the hour of 9:31 a.m., thereof, at the
3 State Capitol, Room 437, Sacramento, California, before
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
5 following proceedings were held:

6 --oOo--

7 CHAIR SHEEHAN: The meeting of the Commission on
8 State Mandates will come to order.

9 Paula, can you call the roll for us?

10 MS. HIGASHI: Ms. Boel?

11 MEMBER BOEL: Here.

12 MS. HIGASHI: Mr. Lujano?

13 MEMBER LUJANO: Here.

14 MS. HIGASHI: Mr. Smith?

15 MEMBER SMITH: Here.

16 MS. HIGASHI: And Ms. Sheehan?

17 CHAIR SHEEHAN: Here.

18 We have a quorum.

19 MS. HIGASHI: At this point, what I'd like to do is
20 have all of the parties and witnesses who intend to be
21 before the Commission today, to please stand, for the
22 swearing in of witnesses and parties.

23 Please raise your right hands.

24 Do you solemnly swear or affirm that the testimony
25 which you're about to give is true and correct, based

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1 upon your personal knowledge, information or belief?

2 (A chorus of "I dos" was heard.)

3 MS. HIGASHI: Thank you.

4 This brings us to our first item, which will be
5 presented by Ms. Opie.

6 CHAIR SHEEHAN: Thanks.

7 MS. OPIE: Good morning. The sole issue before the
8 Commission is whether the proposed Statement of Decision
9 accurately reflects the preliminary decision made by the
10 Commission at the May 26th, 2005, hearing on the Butte
11 County application on a finding of significant financial
12 distress.

13 Staff recommends that the Commission adopt the
14 attached proposed Statement of Decision, which accurately
15 reflects the Commission's preliminary decision that was
16 adopted on May 26th.

17 Staff also recommends that the Commission adopt an
18 effective date of July 2nd, 2005. The 12-month period of
19 significant financial distress will begin on September 1,
20 2005, 60 days following the effective date of the
21 decision.

22 CHAIR SHEEHAN: Okay, would the witnesses like to
23 come forward?

24 Mr. McIntosh, I know you're here.

25 And anyone else?

1 Mr. Herald, come on forward.

2 MR. McINTOSH: Madam Chair, I'm simply here to
3 respond to any questions or rebut any testimony.

4 CHAIR SHEEHAN: Great.

5 Mr. Herald, do you want to begin then?

6 MR. HERALD: Thank you, Madam Chair.

7 I'm Mike Herald, legislative advocate for the
8 Western Center on Law and Poverty; and I'm here on behalf
9 of Legal Services in Northern California and the indigent
10 clients we represent. I just want to make two brief
11 points on the record here today.

12 At the previous hearing, the County stated that a
13 finding of significant financial distress by the
14 Commission would result in benefits beyond the monetary
15 relief the county may receive from reducing general
16 assistance.

17 The County cited a recent Attorney General opinion
18 as an example of the kind of additional relief. In this
19 case, it would be relief from certain housing mandates,
20 according to the County.

21 Western Center has had an opportunity to review the
22 AG opinion mentioned by the County; and we find nothing
23 in it to really to support the County's articulation of
24 its impact in this regard. Simply put, the AG found that
25 a local government had to include federal and state

1 housing funds in their calculation of how many actual
2 housing units they've constructed over a five-year period
3 of their housing element.

4 It does not stand for the proposition that a finding
5 of significant financial distress by the Commission would
6 reduce the housing element obligation, in any manner.
7 The housing element calculation is based on available
8 housing funds, not all funds that the County has; and,
9 thus, I don't believe has any applicability to this
10 matter. We wouldn't want anyone to believe that a
11 finding today by the Commission would, in fact, have that
12 result.

13 And then, lastly, I just want to follow up on a
14 comment that I made at the previous hearing. I
15 understand today that, procedurally, you're not really
16 going to be able to consider additional information; but
17 I have had the opportunity -- I've had conversations with
18 several people about the effects of the so-called triple
19 flip on estimating property tax and VLF revenues for this
20 budget; and there doesn't seem to be as much uncertainty
21 among people that I've spoken with, in both the Capitol,
22 independent fiscal experts, independent county
23 governments, as there appears to be in the staff
24 recommendation.

25 In fact, what I'm hearing, is that we're not only

1 going to have a sizable increase in VLF, more than the
2 counties probably anticipate, but certainly a sizable
3 increase in property tax due to the increased assessments
4 that we are seeing all across the state, and certainly in
5 the northern part of the state, where Butte is.

6 And, indeed, the County has no problem estimating
7 increased property taxes for their 2005-06 budget. I
8 just got a copy of it this week.

9 And I don't know if the sergeant can pass these out,
10 or if we have someone who could do this for us. They're
11 tabbed.

12 Thank you, ma'am.

13 "Additional duties as required," isn't that what
14 your job description probably says?

15 In this budget, the County estimates increased
16 property tax revenues for their 2005-06 budget at
17 \$7 million. It's a 24 percent increase over the 2004-05
18 increase, which was a 57 percent increase.

19 You know, we think that there's a great likelihood
20 that property tax revenues will, at this number, either
21 be at \$7 million or even higher, completely meeting the
22 unmet need gap, the gap between unmet needs and county
23 flexibility.

24 Again, we understand, procedurally, you're not
25 permitted to consider this new information; but we just

1 thought it was important to put this on the record for
2 the Commission.

3 We think it underscores a basic point. We think
4 the county of Butte has failed to make a compelling case
5 for relief. They have failed to demonstrate beyond clear
6 and convincing evidence that basic county services could
7 not be maintained.

8 We think the Commission is required to weigh all
9 these factors and use their best judgment about whether
10 a compelling case has been made. Our belief is that the
11 county has failed to even meet the lower threshold of the
12 preponderance of the evidence.

13 CHAIR SHEEHAN: Thank you, Mr. Herald.

14 Do you want to comment on any of this, Mr. McIntosh,
15 or address any of the issues that he raised?

16 MR. McINTOSH: Thank you, Madam Chair. I'm Paul
17 McIntosh, the Chief Administrative Officer for Butte
18 County.

19 I would just simply dispute everything that
20 Mr. Herald has said. VLF is going to grow on a statewide
21 basis. But the County is getting none of that, now that
22 the triple flip is in place. We have taken into account
23 the growth in property taxes in our fiscal forecast.

24 We support the findings made by your staff. It's
25 been an exhaustive analysis and a true analysis of our

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1 budget and our fiscal situation; and we beg that you
2 adopt the motion before you.

3 CHAIR SHEEHAN: Thank you.

4 Any questions? Mr. Smith, do you have any
5 questions?

6 MEMBER SMITH: No questions.

7 CHAIR SHEEHAN: No?

8 MEMBER BOEL: No.

9 MEMBER LUJANO: No.

10 CHAIR SHEEHAN: All right, then if there's no
11 further discussion, the Chair will entertain a motion.

12 MEMBER BOEL: I move that we adopt the proposed
13 Statement of Decision.

14 MEMBER SMITH: Second.

15 CHAIR SHEEHAN: So we have a motion and a second.

16 If there is no further discussion, all those in
17 favor, signify by saying "aye."

18 *(A chorus of "ayes" was heard.)*

19 CHAIR SHEEHAN: Any opposed?

20 *(No audible response was heard.)*

21 CHAIR SHEEHAN: No abstentions?

22 *(No audible response was heard.)*

23 CHAIR SHEEHAN: That is adopted.

24 MR. McINTOSH: Thank you.

25 CHAIR SHEEHAN: Okay, Item Number 2, Paula.

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1 MS. HIGASHI: Item 2 is the request for
2 reconsideration of the Commission's prior Statement of
3 Decision. And this item will be introduced by
4 Ms. Shelton.

5 MS. SHELTON: Good morning.

6 CHAIR SHEEHAN: Good morning.

7 MS. SHELTON: This is a request for reconsideration
8 made pursuant to Government Code 17559 and section 1188.4
9 of the Commission's regulations by Councils of
10 Governments on the Commission's decision adopted on
11 March 30th, 2005.

12 The request for reconsideration raises the same
13 arguments made by the Councils of Governments through
14 written and oral testimony at the Commission hearing in
15 March. With the exception of one abstention, the
16 Commission unanimously disagreed with the arguments
17 raised by the Councils of Governments after a full
18 hearing on the merits. Based on the evidence in the
19 record, staff concludes that the Commission does not have
20 jurisdiction to consider this request for reconsideration
21 because the petition was not timely filed, and the time
22 for any action by the Commission on the reconsideration
23 has lapsed. Thus, the request is deemed denied by
24 operation of law.

25 Staff recommends that the Commission adopt this

1 analysis and take no action on the request for
2 reconsideration for lack of jurisdiction.

3 Will the parties and representatives please state
4 your names for the record?

5 MS. TACHIKI: Yes, I'm Karen Tachiki, Chief Counsel
6 for the Southern California Association of Governments.

7 CHAIR SHEEHAN: Great. Go ahead, Ms. Tachiki.

8 MS. TACHIKI: Thank you for the opportunity to come
9 before you today and to renew, essentially, our arguments
10 made, as the staff has pointed out at the prior hearing;
11 because we, of course, strongly believe in the legal
12 merits of the case that we put before you and that we
13 have reiterated in our pleadings.

14 I might note at the outset that we're kind of having
15 a little difficulty, I suppose, reconciling the
16 procedural/jurisdictional issues that the staff is
17 raising at this point where, on the one hand, in our
18 view, they seem to be seeking to elevate form over
19 substance by their comments that the Federal Express
20 receipt didn't have the exact time posted on it, despite
21 the fact they acknowledged that they, in fact, received
22 the filing.

23 On the other hand, they seem to reserve to
24 themselves a wide latitude of discretion on procedural
25 issues, such that yesterday afternoon, I received a

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1 completely different and new issue raised by the
2 Commission staff, hardly allowing a great deal of time
3 to prepare for the hearing.

4 Moreover, the new issue which they raise, and which
5 they say that your jurisdiction has lapsed -- because
6 even if we assume a timely filing, the 30 days elapsed,
7 I might point out to you that the lapse of time is
8 because the hearing date, which was set by the staff
9 and/or the Commission, was set after the 30 days.
10 We have -- the parties have no power to set that hearing
11 date.

12 So essentially, I find it a little odd that the COGs
13 are here, essentially on the one hand, pleading that we
14 have no money to do certain things; and yet a hearing is
15 set, which essentially is meaningless, under your staff's
16 analysis, and requires, though, that we expend the time
17 and effort to come here to appear before you, to make our
18 record.

19 Also, I would point out, I think a similar argument
20 that ABAG made earlier, the hearing under your own rules
21 apparently is also meaningless because there aren't five
22 of you here today. So no matter what I say to you, I
23 can't win. I would just sort of point those out.

24 And in light of the fact, I guess, that we can't
25 win, I would take just a brief opportunity, I think, to

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1 renew our legal arguments to make our record, that we,
2 in fact, believe that we are eligible claimants under
3 the law; and that nothing has changed since the original
4 decision was rendered by the Board of Control.

5 I'd be pleased to answer any questions.

6 CHAIR SHEEHAN: Okay. Does staff want to address
7 the -- we have two issues. One is the jurisdiction, the
8 timing issue, in terms of the filing of the appeal; and
9 then any of the substantive issues, which I think were
10 addressed in the original discussion that we had.

11 But, Camille, do you want to go ahead and address
12 both of those?

13 MS. SHELTON: Sure. First, let me say that we are
14 not raising form over substance. We did receive the
15 request for consideration on May 6th. But we're required
16 to follow the Commission's regulations. They do have the
17 force of law. And under the regulations, we are allowed
18 to accept a document the day after the due date.

19 But the regulations, as silly as they may be -- and
20 they are the law -- they do require a showing. If you
21 use an overnight common carrier, you need to show that
22 you delivered the document to the common carrier before
23 the end of the business hours on that day. And we just
24 don't have the evidence in the record.

25 With respect to the lapse of time for the Commission

1 hearing today, that was an inadvertent mistake. That was
2 caught yesterday morning. It was a miscalendaring of the
3 hearing. The 30 days would have expired on June 5th, and
4 today is June 10th. It was not intentional. It was a
5 mistake.

6 The Commission is an administrative agency, with
7 limited jurisdiction. And if the Commission acts beyond
8 its jurisdiction, then any decision beyond the
9 jurisdiction would be considered void. And so that is
10 the reason for the amended analysis that was issued
11 yesterday.

12 MEMBER SMITH: A question, Madam Chair.

13 CHAIR SHEEHAN: Yes.

14 MEMBER SMITH: About the five affirmative votes, how
15 do we -- I mean, she's right.

16 MS. SHELTON: We have no control over the
17 appointments made to the body. As I said, the
18 regulations have the force of law, and they are binding
19 on the Commission. And when the Commission adopted those
20 regulations years ago, they wanted to promote the idea
21 of finality of decisions. They wanted to make it
22 difficult for, you know, parties to come forward and
23 request reconsideration because they wanted their
24 original decision to stand; and the fact that these
25 reconsiderations are not a prerequisite to filing a writ

1 in court. They can challenge decisions in court without
2 having to come here on a reconsideration.

3 MEMBER SMITH: All right. I understand making it
4 difficult, but impossible is a whole 'nother story. I'm
5 not saying it's anyone-in-here's fault, but I encourage
6 everyone to write to the Governor, to ask him to appoint
7 a full Commission.

8 CHAIR SHEEHAN: I can tell you, they are working
9 on -- or taking names from cities, counties, school
10 boards, and interviewing people currently. So I
11 certainly am sympathetic to that.

12 Any other questions? Or, Paula, did you want to
13 address any of the issues?

14 MS. HIGASHI: No.

15 CHAIR SHEEHAN: You know, with regard to the time
16 thing, I do think the staff is limited, in terms of the
17 dates.

18 I guess what I would say is, with regard to having
19 received the timely -- if it could work in terms of
20 scheduling. But I think the first 30 days, you know,
21 that was the difficult issue, in terms of when it is.

22 I mean, I guess what I would say is, if we do have
23 issues before us in the future, in terms of petitioning
24 for reconsideration, I would encourage all parties to do
25 it in a very timely fashion, so that we do not get stuck

1 in this situation again. Because certainly, at least
2 speaking for myself, and I'm sure the other Commission
3 members, it's not easy because of procedural issues to
4 not have to be able to address substantive issues.

5 So, unfortunately, we are a bit stuck. I think
6 Ms. Shelton is right, in terms of preserving all of your
7 rights and options in terms of the judicial forum.

8 MS. TACHIKI: I certainly don't disagree with that
9 analysis.

10 But I guess one other thought I might add, is the
11 statute under which your jurisdiction in this case
12 derives and that sets the 30-day limit, also indicates
13 that the 30 days begin to run when you issue your
14 Statement of Decision. And the issuance of that
15 Statement of Decision, by the literal language of the
16 statute, is by delivery or mail. It does not say
17 "delivery by e-mail."

18 MS. SHELTON: May I respond to that?

19 CHAIR SHEEHAN: Sure.

20 MS. SHELTON: The Commission's regulations which
21 implemented that Government Code statute does allow for
22 a mail delivery by consent of the Commission or by
23 consent of the parties. And with all of these
24 reconsiderations that have gone on, that have been
25 directed by the Legislature, we have attained consent by

1 the parties; and the delivery of all comments and written
2 documents for purposes of these reconsiderations would be
3 sent in by e-mail. All of our notices were sent by
4 e-mail.

5 We have, in the record, the e-mail notice,
6 indicating that it was posted on the Web site, and also
7 here's an e-mail copy for you. And we also did mail. We
8 did both. So actual notice was received on April 5th.

9 CHAIR SHEEHAN: So any further -- I mean, as I say,
10 it is issued, I think, for all of us moving forward, in
11 terms of being sensitive to timeliness on these things,
12 if we know we disagree with an issue or want to seek
13 reconsideration in terms of the timing.

14 Because I know, even with e-mail now, with regular
15 mail or Fed Ex, things can happen. So I would encourage
16 people, moving forward, to make sure we do it in a timely
17 manner because we do not want to have to get stuck on
18 things. I don't like doing things because of procedural
19 issues and can't get to the substance of the underlying
20 discussion.

21 So, with no further discussion or questions, is
22 there a motion?

23 MEMBER BOEL: Well, let me ask a question.

24 CHAIR SHEEHAN: Sure.

25 MEMBER BOEL: Do we take a motion on no action?

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1 MS. SHELTON: It's just a motion to adopt the
2 analysis, so that we can send it out in the mail, as
3 closure of this item.

4 MEMBER BOEL: Okay, I move that we adopt the staff
5 analysis.

6 CHAIR SHEEHAN: Is there a second?

7 MEMBER LUJANO: Second.

8 CHAIR SHEEHAN: All right, no further discussion.
9 All those in favor, signify by saying "aye."

10 *(A chorus of "ayes" was heard.)*

11 CHAIR SHEEHAN: Any opposed?

12 *(No audible response was heard.)*

13 CHAIR SHEEHAN: Abstentions?

14 *(No audible response was heard.)*

15 CHAIR SHEEHAN: Thank you.

16 So that does pass.

17 MS. HIGASHI: This brings us to Item 3.

18 Mr. Feller, if you would introduce this item.

19 CHAIR SHEEHAN: Okay.

20 MR. FELLER: Good morning.

21 CHAIR SHEEHAN: Good morning.

22 MR. FELLER: On August 16th, 2004, SB 1102 was
23 enacted to require the Commission to consider the
24 *Regional Housing Needs Determination: Councils of*
25 *Governments* mandate, and if necessary, revise the

1 Parameters and Guidelines.

2 On March 30, 2005, the Commission reconsidered this
3 mandate, finding that it is not reimbursable. So based
4 on this decision, staff recommends that the Commission
5 adopt the proposed order to set aside the Parameters and
6 Guidelines for the *Regional Housing Needs Determination:*
7 *Councils of Governments* program, effective July 1, 2004,
8 which accurately reflects the Commission's March 30,
9 2005, decision.

10 Would the parties and witnesses please state your
11 name for the record?

12 MS. TACHIKI: Karen Tachiki, Chief Counsel for the
13 Southern California Association of Governments.

14 CHAIR SHEEHAN: All right, any additional things you
15 want to say?

16 MS. TACHIKI: No. I think, in light of your prior
17 action, there's really nothing additional that we would
18 want to add to the record at this time.

19 CHAIR SHEEHAN: Okay, thank you.

20 Any questions or discussions from the Members?

21 *(No audible response was heard.)*

22 CHAIR SHEEHAN: If not, is there a motion?

23 MEMBER BOEL: I move that we adopt the proposed
24 order to set aside the Parameters and Guidelines on this
25 issue.

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1 CHAIR SHEEHAN: All right, is there a second?

2 MEMBER LUJANO: Second.

3 CHAIR SHEEHAN: All right, no further discussion;
4 all those in favor, signify by saying "aye."

5 *(A chorus of "ayes" was heard.)*

6 CHAIR SHEEHAN: Any opposed?

7 *(No audible response was heard.)*

8 CHAIR SHEEHAN: Abstentions?

9 MEMBER SMITH: Abstention.

10 CHAIR SHEEHAN: And the record will note that the
11 Controller's representative abstained on that vote.

12 All right, so that motion carries.

13 Public comment at this time? Are there any
14 individuals from the public who would like to address
15 the Commission at this time, before we go into closed
16 session?

17 *(No audible response was heard.)*

18 CHAIR SHEEHAN: There being none, then the
19 Commission will meet in closed executive session pursuant
20 to Government Code section 11126, subdivision (e), to
21 confer with and receive advice from legal counsel for
22 consideration and action, as necessary and appropriate,
23 on the pending litigation listed in the public notice and
24 the agenda and any potential litigation; and under
25 Government Code section 11126, subdivision (a), and

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1 17526, to confer on personnel matters listed on the
2 published notice and agenda.

3 So we will be back shortly.

4 *(The Members of the Commission met in closed*
5 *executive session from 9:50 a.m. to 9:59 a.m.)*

6 CHAIR SHEEHAN: All right, we are back on the public
7 record for the June 10th meeting of the Commission on
8 State Mandates. And in closed session we discussed the
9 pending litigation with the Members; and all required
10 reports from closed session having been made and no
11 further business to discussion discuss, I will entertain
12 a motion to adjourn.

13 MEMBER SMITH: So moved.

14 MEMBER BOEL: Second.

15 CHAIR SHEEHAN: We have a motion and a second.

16 All those in favor, say "aye."

17 *(A chorus of "ayes" was heard.)*

18 CHAIR SHEEHAN: Any opposed?

19 *(No audible response was heard.)*

20 CHAIR SHEEHAN: We are adjourned today.

21 *(Proceedings concluded at 10:00 a.m.)*

22 --oOo--

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

That the testimony of said witnesses was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on June 20th, 2005.

Daniel P. Feldhaus

Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter

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