

Responsibilities by Agency for SB 375 Implementation

Metropolitan Planning Organizations (MPOs), Council of Governments (COGs), local governments, and State agencies are each involved in aspects of the development and implementation of Regional Transportation Plans, regional housing need plans, and localized general plans. These government agencies play different roles in regional planning; therefore, it is important to understand the distinction in land use authority and responsibilities of these agencies, and their respective roles in SB 375 implementation.

Local Governments

The California Constitution, Article XI, Sec. 7, establishes the land-use regulatory authority of cities and counties (so long as the exercise of such authority does not conflict with state law).¹ Because zoning ordinances and land use approvals within a locality are required to be consistent with that locality's general plan, general plans are the primary planning tools for local governments with respect to land-use regulation.² While State law specifies requirements for all general-plan elements (including housing elements), the content and procedural requirements related to housing elements are particularly explicit and extensive.³

The SB 375 amendments to the statutory provisions governing RTPs expressly acknowledge the authority of local governments to regulate land uses within their respective boundaries.⁴ As such, the RTP, including provisions of its SCS, does not (1) usurp existing local discretion over land-use regulation, or (2) supersede a general plan, specific plan or local zoning ordinance. Neither is a local government's general plan, including its housing element, required to be consistent with the SCS of the RTP or an Alternative Planning Strategy.

Local governments are responsible for preparing, implementing and periodically revising their housing elements to accommodate updated regional housing need allocations (RHNA's).⁵ In addition, local governments are responsible for reporting to the Governor's Office of Planning and Research (OPR) and HCD on: (1) the status of their general plan and progress in its implementation, (2) the progress in meeting their share of regional housing needs determined pursuant to Section 65584, and (3) local efforts to

¹ See also, *Candid Enterp., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal. 3d 878, 885 ("Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. Apart from this limitation, the 'police power [of a county or city] under this provision ... is as broad as the police power exercisable by the Legislature itself.'" [Internal citation omitted.]

² See Cal. Gov't. Code Section 65860. (All statutory references within this paper are to the California Government Code unless otherwise specified.)

³ See Cal. Gov't. Sections 655302(c) and 65580 *et seq.*

⁴ See Cal. Gov't Code section 65080(b)(2)(K); see also *Curtin's California Land Use and Planning Law* Cecily Talbert Barclay, Solano Press Books, pg. 625 (2010 ed.).

⁵ See Cal. Gov't. Code Section 65584 .

remove governmental constraints to the maintenance, improvement, and development of housing pursuant to section 65583(c)(3).⁶

A variety of resources, including for specified affordable housing development applications and/or State-administered local assistance funds⁷, are limited/denied to localities whose housing elements are found to be out of compliance with state law.

Metropolitan Planning Organizations (MPOs)

With the enactment of SB 375/SB 575, RHNA's are required to be integrated with updates of the regional transportation plans (RTPs) of MPOs.⁸ MPOs must include in their RTPs, Sustainable Community Strategies (SCS) that meet specified content requirements.⁹

MPOs are federally funded transportation policy-making organizations with five core functions:

- establish a local forum for transportation decision making;
- evaluate transportation alternatives and prepare an Overall Work Program;
- develop and update the long-range metropolitan transportation plan (RTP),
- develop a Transportation Improvement Program (TIP); and
- get the public involved.¹⁰

The MPOs are required to develop the Sustainable Community Strategy (SCS) in the RTPs. MPOs/COGs can employ regional strategies that cross jurisdictional boundaries within one region, but do not have regulatory or land use authority.¹¹

Councils of Government (COGs)

COGs are a form of joint powers authority, which, among other responsibilities, are charged with developing and implementing their respective regions' RHNA Plans.¹² Most, but not all, COGs are also MPOs and therefore implement the RHNA process as COGs and the RTP updates as MPOs.¹³ The Association of Bay Area Governments is

⁶ See Cal. Gov't. Sections 65581(b) and 65400.

⁷ See Cal. Gov't Code Section 65589.5(d) (commonly known as the "Housing Accountability Act" or the "anti-NIMBY law"). See also, "Incentives for Housing Element Compliance," HCD, 1/09; http://www.hcd.ca.gov/hpd/hrc/plan/he/loan_grant_hecompl011708.pdf

⁸ See Cal Gov't Code Section 65584 *et seq*

⁹ See Cal. Gov't Code section 65080(b)(2)(B).

¹⁰ See 23 CFR Part 450.316, and Cal. Gov't Code Section 65080(b)(2)(F)

¹¹ See Cal. Gov't Code section 65080(b)(2)(K); see also *Curtin's California Land Use and Planning Law* Cecily Talbert Barclay, Solano Press Books, pg. 625 (2010 ed.).

¹² See Cal Gov't Code Section 65584 *et seq*.

¹³ All but two MPOs are also COGs - the Bay Area's Metropolitan Transportation Commission (MTC) and Shasta County Regional Transportation Planning Agency (SCRTPA).

an example of a COG that is not an MPO; in this case the COG (ABAG) and the MPO (the Metropolitan Transportation Commission) collaborate in development of the RTP.¹⁴

State Agencies

Five State agencies have direct involvement in the implementation of SB 375:

- California Air Resources Board (ARB),
- California Transportation Commission (CTC),
- California Department of Transportation (Caltrans),
- California Department of Finance-Demographic Research Unit
- California Department of Housing & Community Development (HCD).¹⁵

In addition, the Strategic Growth Council (SGC) is responsible for supporting the planning and development of sustainable communities by identifying potential coordination among State agencies, recommending policies and investment strategies and priorities, distributing data and information, and managing and awarding grants and loans.¹⁶

All of these state agencies are responsible for coordination with the other federal, state, regional and local agencies referenced herein that implement SB 375. That said, except for ARB's acceptance or rejection of the MPO's determination regarding whether the SCS of its RTP would achieve the regional greenhouse gas emissions reduction target, neither an SCS or APS are to be subject to any state approval.¹⁷

Below are responsibilities specific to each State agency with regard to SB 375 implementation:

California Air Resource Board (ARB)

The ARB has three areas of responsibility in SB 375 implementation:

- 1) Establish and periodically update greenhouse gas reduction targets for affected regions, after considering: a) recommendations from a Regional Targets Advisory Committee (RTAC) regarding factors and methodologies to be considered in setting the targets, and b) technical information from the MPOs and affected air districts.
- 2) Review and comment on an MPO's proposed technical methodology for estimating the greenhouse gas emissions from its SCS or APS.

¹⁴ See Cal. Gov't Code Section 65080(b)(2)(C).

¹⁵ See Cal. Gov't Code Section 65588.

¹⁶ See Cal. Public Resource Code Section 75125.; see also, <http://sgc.ca.gov/index.html>

¹⁷ See Cal. Gov't Code Section 65080(b)(2)(J)-(K).

- 3) Review (and accept or reject within 60 days) an MPO's determination that its Sustainable Communities Strategy (SCS) or Alternative Planning Strategy (APS) would, if implemented, achieve the GHG reduction targets established by ARB for the region.¹⁸

California Transportation Commission (CTC)

The CTC is responsible for the programming and allocating of funds for the construction of highway, passenger rail and transit improvements throughout California. The Commission also advises and assists the Business, Transportation and Housing Agency and the Legislature in formulating and evaluating state policies and plans for California's transportation programs, including involvement in federal legislation.

The CTC's SB 375 responsibilities include:

1. Adopting the biennial five-year state transportation improvement program (STIP) and approving the biennial four-year state highway operation and protection program (SHOPP).
2. Adopting the biennial five-year fund estimate of State and Federal funds expected to be available for the STIP and SHOPP.
3. Allocating State funds for capital projects, consistent with the STIP and SHOPP.
4. Allocating State funds for capital grants from the Aeronautics Account and from the Environmental Enhancement and Mitigation Program Fund.
5. Adopting and maintaining guidelines for the development of the STIP and for the development of regional transportation plans (RTPs).¹⁹

The CTC has developed RTP guidelines which provide guidance for travel demand models used in the development of RTPs. Pursuant to Government Code Section 14522, the CTC in cooperation with the RTPa/MPOs, "may [also] prescribe study areas for analysis and evaluation by such agencies and guidelines for the preparation of RTPs."

California Department of Transportation (Caltrans)

Caltrans' Division of Transportation Planning has two offices that are most involved with the implementation of SB 375. Both the Caltrans' Office of Regional and Interagency Planning (ORIP)²⁰ and the Office of Community Planning Local Development – Intergovernmental review Program (OCP-LD-IGR)²¹ work cooperatively with twelve district offices to fulfill their responsibilities to guide and maintain California's regional transportation planning process and transportation infrastructure system, as follows:

- Administering the California Regional Blueprint Planning Program which supports collaborative regional planning efforts across California through grants, support

¹⁸ See Cal. Gov't Code Section 65080(b)(2)(A) and(J).

¹⁹ See Cal. Gov't Code Section 14522.

²⁰ See <http://www.dot.ca.gov/hq/tpp/offices/orip/index.html>

²¹ See <http://www.dot.ca.gov/hq/tpp/offices/ocp/index.html>

services and interagency coordination. A number of the MPOs have Regional Blueprint plans which may be considered in the SCS development process of their RTP updates.²²

- Serving as liaison and advocate for California's RTP program.
- Monitoring the regional transportation planning process through the Overall Work Program (OWP) and Regional Transportation Plan (RTP), coordinating the administration and funding of these documents.
- Reviewing and suggesting potential state and federal legislation that relate specifically to the regional transportation planning process, and is consistent and appropriate for its evolution.
- Analyzing impacts of new State and Federal legislation.
- Sharing expertise with land use authorities throughout their planning and decision-making processes, consistent with the requirements of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), Streets and Highways Code, and numerous planning and zoning laws that affect the Caltrans stewardship of the State Highway System (SHS).
- Reviewing local development and general plan proposals, and providing recommendations to avoid, eliminate, or reduce to insignificance, potential adverse impacts on the SHS and supportive transportation facilities, using 'best practices' analysis methodologies that focus on: improving person-capacity of our multi-modal transportation system; efficiently moving goods and services; and accurately describing transportation tradeoffs with other community values..

Updates of RTPs must also be submitted by MPOs to Caltrans.²³ Caltrans' responsibilities relative to RTPs include these specific ways to collaborate with Federal, State, and Regional partners to provide reliable information, guidance, and resources for regional transportation planning processes:

- Reviewing RTPs for fiscal constraint showing evidence that proposed projects in the TIP are fully funded through the cycle of the RTP.Receiving MPOs notices on proposed RTP adoption dates and posting the RTP adoptions schedule for the MPOs on its website (Government Code Section 65588);
- Reviewing and evaluating RTPs and regional transportation improvement programs (RTIPs) for identification of conflicts between the plans and programs;
- Supporting the development and updating of the RTP Guidelines which are adopted by the CTC;
- Coordinating planning and environmental review for transportation improvements by regional and local agencies to both the State highway system and supportive local transportation infrastructure.

²² See <http://calblueprint.dot.ca.gov/>

²³ See Cal. Gov't Code Section 65080.

HCDs SB 375 responsibilities are as follows:

- Coordinate with ARB, CTC, Caltrans and MPOs in the implementation of SB 375 provisions related to RHNA and housing elements.
- Communicate with MPOs in the RTP process to ensure the regional housing needs assessment (RHNA) is coordinated with the development of the SCS.
- Provide technical assistance and participate in consultation with COGs/MPOs, local governments and stakeholders re: State Housing law, including RHNA and Housing Element updates in particular (preceding and during process).
- Publishing Housing Element due date schedules (with Caltrans).
- Following consultation, issue RHNA determinations to COGs.
- Review and acceptance of RHNA Plans (authorized to adjust pursuant to express statutory provisions).
- Review and certify housing elements pursuant to State law, including review of adequate sites accommodating each local government's RHNA and implementing programs, including rezoning to accommodate the RHNA.
- Receive local governments' annual progress reports (APRs) regarding the status of their general plans and progress in implementation and in meeting their share of RHNA, as well as local efforts to remove governmental constraints to the maintenance, improvement, and development of housing.
- Administer housing assistance funding programs for which the housing element status and/or the timeliness of the APRs are utilized as funding eligibility or priority factors.²⁴

DOFs Demographic Research Unit

DOFs Demographic Research Unit (DRU) operates the State Census Data Center, conducts demographic research, and develops and regularly updates population and housing estimates and projections for use by State agencies, including those used for RHNA determinations.²⁵

²⁴ See Cal. Gov't Code Sections 65580 *et seq.* and 65400.

²⁵ See Cal. Gov't Code Section 65584; see also, <http://www.dof.ca.gov/research/demographic/>.