

# SENATE COMMITTEE ON GOVERNANCE & FINANCE

April 6, 2016

## *Committee Background*

This background paper prepares the members of the Senate Governance and Finance Committee for the April 6, 2016, hearing on the Office of Planning and Research's (OPR) *2016 Draft Update* to its *General Plan Guidelines*. This paper summarizes (1) California's current and future planning challenges, (2) statutory requirements for general plans, and (3) OPR's general plan guidelines and major changes in the 2016 draft update. It also examines the state role in local planning.

### *California's Planning Challenges*

California is a growing and diverse state. California's sustained growth means that there are more people using the same amount of land, particularly in the state's coastal metropolitan areas. This creates significant challenges for housing affordability, transportation infrastructure, and the environment. At the same time, other communities—particularly disadvantaged communities in unincorporated areas—lack services such as drinking water that more urbanized and affluent areas take for granted. These challenges are nothing new: planners have struggled for decades with how best to accommodate growth while preserving the unique character of its communities and the unique assets of the state.

Cities and counties will also have to cope with new types of challenges in the future. Technological changes enable land uses that weren't previously envisioned. Services enabled by the "sharing economy," including platforms like AirBNB, merge residential housing with commercial enterprises and present challenges to local land use regulation, which traditionally has segregated uses into different areas through zoning. Self-driving cars have the potential to revolutionize how people and goods move around the state, but greenhouse gas emissions from the transportation sector contribute to climate change. These changes mean land use patterns and transportation infrastructure are likely to change significantly in the future.

Technology also presents opportunities if properly used to enhance local planning and service delivery. As noted in a February 2016 report by the President's Council of Advisors on Science and Technology, the proliferation of sensors and data analytics has allowed cities to identify buildings at risk of fire, monitor air quality, and reduce congestion. Connected infrastructure, such as smart meters for energy and water, can help reduce demand for new infrastructure. Proper planning can help ensure that cities and counties successfully take advantage of these opportunities.

### ***General Plans, Generally***

California law requires each city and county to develop and periodically update a "comprehensive, long term general plan" for development within its boundaries and on any land relevant to its planning efforts. A widely cited truism, coined in 1990 by the California Supreme Court, describes the general plan as "the constitution for all future development." The general plan presents a vision and a set of principles for the community going forward and forms the basis for many subsequent land use decisions, such as zoning ordinances.

The Planning and Zoning Law spells out the procedures that local officials must follow when adopting and amending their general plans. Among other required content, it must state the community's development policies and include seven mandatory elements that use text and diagrams to plan out certain aspects of the community, specifically:

- **Land Use.** The land use element describes the general location and intensity of various types of land uses, such as industrial, residential, and open space. It also identifies land subject to flooding, for timber production, and for military bases and associated activities.
- **Circulation.** The circulation element describes the infrastructure needed to move people and goods around the community. This includes transportation methods that meet the needs of all users of streets and roads, as well as water and electricity infrastructure.
- **Housing.** The housing element identifies existing and projected housing needs and the resources and constraints relevant to meeting those needs. It also must identify adequate sites for housing across all income levels, as determined by its share of the applicable

Regional Housing Needs Assessment (RHNA).<sup>1</sup> Each city and county must update its housing element at least every eight years to meet its assigned regional housing needs, including a schedule of actions for achieving the community’s housing goals and objectives.

- **Conservation.** The conservation element specifies how natural resources (such as water, forests, and minerals) will be conserved, developed, and used, considering the effect of development on those resources.
- **Open space.** The open space element designates land to be kept largely unimproved to serve uses that require open spaces, including environmental preservation, natural resource production, outdoor recreation, and protection of historical sites.
- **Noise.** The noise element analyzes noise problems in the community and must include diagrams of noise levels emitted from sources such as highways and stationary noise sources, as well as mitigation measures to address noise problems.
- **Safety.** The safety element catalogs risks associated with earthquakes and other seismic hazards, flooding, and fires and includes feasible implementation measures to reduce risks associated with those disasters. By 2022, the safety element must also address climate adaptation and resiliency strategies.

**Internal Consistency.** Each element must be consistent internally and with other elements in the general plan, and no element may supersede another. For example, a general plan is likely to be found inconsistent if the land use element and circulation element use different assumptions about the sufficiency of existing transportation infrastructure in the community. A general plan may also include optional elements deemed necessary to address matters of particular importance to a community, such as economic development, water, and climate change. Optional elements, once adopted, have the same force in law as the mandatory elements.

**General Plan Revisions.** Although only the housing element must be updated on a particular schedule, each city and county must periodically review and revise its general plan to ensure that it is current. In practice, this does not always occur. For example, of those jurisdictions that responded to OPR’s most recent annual survey on the status of cities’ and counties’ general plans, more than 60 percent had at least one element that had not been revised in the past ten years.

---

<sup>1</sup> To determine each city or county’s share of the RHNA, first the Department of Housing and Community Development forecasts housing needs statewide for various income groups. This forecast is then parceled out to regional Councils of Governments as the RHNA, and each COG allocates a “fair share” of the needs to its members.

**Consistency with Local Land Use Decisions.** As the “constitution” for future development, the general plan guides most subsequent land use decisions. The California Supreme Court held that “any subordinate land use action that is not consistent with the general plan . . . is invalid at the time it is passed.” While consistency is not defined in statute, courts have invalidated land use decisions in cases where the decisions were clearly contrary to, or did not further the purposes of, the general plan. Land use decisions that must be consistent include:

- Zoning ordinances;
- Exactions and development fees;
- Specific plans;
- Conditional use permits;
- Subdivision approvals;
- Siting of public works; and
- Development agreements.

### ***General Plan Guidelines and Major Changes in the 2016 Draft***

State law requires OPR to develop guidelines to assist cities and counties in preparing and maintaining their general plans. OPR’s *General Plan Guidelines* (1) recommend the information that local planners should collect, (2) suggest goals, policies, and objectives that local general plans could adopt, and (3) list a wide range of feasible implementation measures to carry out those local goals.

Although the guidelines are only advisory, courts have looked to the guidelines as a model to determine whether local governments have adequately complied with statutory requirements. The *Guidelines* represent the Governor’s vision, at the Legislature’s direction, for land use policy, processes, and outcomes. Originally, the *Guidelines* were only required to address the seven mandatory elements. However, over the years, the Legislature has directed OPR to adopt guidelines on new topics, including environmental justice (2001), military readiness (2002), preservation of Native American cultural resources (2004), complete streets (2008), and fire hazards (2012). The *Guidelines* also incorporate the state’s three statutory planning priorities: to promote infill development, to conserve environmental and agricultural resources, and to encourage efficient development patterns.

State law requires OPR to regularly revise the guidelines, but since there is no statutory schedule for updates, the last comprehensive update was in 2003. In 2015, OPR released a draft update to the guidelines, which is expected to be finalized later this summer.

**Major Changes.** In the current *Update*, OPR is proposing several changes since the last revision in 2003. Some of these changes reflect and build on legislative requirements, while others reflect the Administration’s priorities. In part, the *Update* incorporates information contained in existing OPR publications that address specific issues where legislation mandated an update to

the *Guidelines* but did not set a deadline. So in some areas (including fire hazard planning, tribal consultation, military planning, and complete streets) the *Update* introduces little in the way of new policy direction. Rather, the *Update* focuses on several other areas, including ensuring social equity, mitigating and adapting to climate change, decreasing vehicle miles traveled, and conserving agricultural land. In addition, OPR plans to develop a water chapter by the end of the year that consolidates guidance on issues such as groundwater and drought management.

**Ensuring Social Equity.** The Legislature required the *Guidelines* to include recommendations for cities and counties to incorporate environmental justice concerns into their general plans by 2003. Environmental justice efforts often focus on blocking discriminatory siting of environmental harms near communities with less political power.

Since then, environmental justice concerns have been incorporated in a broader social equity movement. For example, SB 244 (Wolk, 2011) required every general plan to identify disadvantaged unincorporated communities and analyze infrastructure needs for those communities within the land use element. Accordingly, the 2016 *Update* includes a Social Equity chapter offering recommendations on how cities and counties can ensure that all communities can gain access to the necessary services, receive adequate protection from environmental harms, and have equitable economic opportunities. To those ends, the Social Equity chapter recommends policies such as:

- Enhancing infrastructure resilience to problems such as a water source contamination;
- Establishing buffer zones between agricultural or industrial uses and residential areas; and
- Siting school facilities to avoid mutual impacts to nearby businesses and students.

**Mitigating and Adapting to Climate Change.** Reflecting the increasing focus on climate change in California, the draft *Update* includes a chapter devoted to encouraging cities and counties to consider climate change as a priority to be incorporated throughout their general plans. It provides guidance on adapting to climate change, reducing greenhouse gases through local government action, and using available planning tools, such as Cal-Adapt—a state-developed tool for visualizing climate change. In addition, the final 2016 *Update* will help local governments meet the requirements of SB 379 (Jackson, 2015), which requires each city and county to update its safety element to develop strategies for climate adaptation and resiliency, based on an assessment of the potential damages from climate change.

**Decreasing Vehicle Miles Traveled (VMT).** Prior editions of the *General Plan Guidelines* focused on “level of service,” (a measure of traffic flow that considers speed and travel delays) to evaluate transportation system performance. However, the state has recently emphasized the use of VMT as a more appropriate measure of transportation impacts in order to promote infill development and reduce greenhouse gas emissions. For example, in response to a legislative

requirement, OPR issued a draft revision to its guidelines for complying with the California Environmental Quality Act (CEQA) that establishes VMT—instead of level of service—as the best metric for determining the significance of transportation impacts under CEQA. The 2016 *Update* similarly recommends deemphasizing level of service or using it in conjunction with other metrics when considering transportation decisions.

**Conserving Agricultural Land.** Conservation of environmental and agricultural resources was established as one of the State’s three planning priorities by SB 857 (Wiggins, 2002). Although the 2003 *Guidelines* recommend analyzing and appropriately considering the role of agricultural land in a general plan, the 2016 *Update* emphasizes conservation. The *Update* lists numerous recommended objectives and policies for agricultural land conservation, highlighting examples such as Yolo County’s efforts to discourage the conversion of agricultural land to other uses and the City of Woodland’s requirement that new development minimize potential conflicts with adjacent agricultural operations.

### ***State Role in Local Planning***

The *Guidelines* are emblematic of the way the state approaches influencing local planning processes—largely by requiring local governments to follow certain processes and recommending objectives, rather than mandating outcomes or decisions. Local land use decisions—such as determining how dense development can be, where development may occur, and what infrastructure is needed to serve development—have major impacts on the state’s ability to achieve its goals for greenhouse gas reduction, environmental sustainability, and adequate housing. The general plan affects most of these decisions, and the *Guidelines* have an important role in shaping them.

Similarly, the state has offered incentives for land use decisions that meet the state’s goals, particularly with the Sustainable Communities and Climate Protection Act of 2008 (SB 375, Steinberg, 2008), which offers incentives for sustainable development. However, most state laws do not prevent local governments from taking actions contrary to state priorities, nor compel governments to further them. Will these approaches be sufficient in the future to ensure that local governments’ land use policies advance the state’s priorities for development? The Committee may wish to consider the following questions:

- **Is additional state direction on local planning warranted?** Notwithstanding the state’s overall light touch, the Legislature has created stronger requirements for general plans when issues of particular importance arise. In the arena of housing, state law requires cities and counties to take steps to meet their share of regional housing needs or face the possibility of losing the ability to stop some developments. The Legislature also requires general plans to include measures to reduce fire risk, flood risk, and most recently,

climate change impacts. Similar steps could be taken to implement the “human right to water,” which was enacted in 2012 (AB 685, Eng).

- **Should the state provide direction on outcomes?** Where the state prescribes certain actions, the requirements largely mandate local governments to follow specific *processes*, rather than to achieve specific *outcomes*. In addition, the requirements on the content of general plans are often enforced through litigation, rather than undergoing regular review to ensure that the state’s priorities are met.
- **How can general plans be strengthened as a tool for local governments?** There remain some areas where even general plans that meet the full letter and intent of the law to encourage infill development may be challenged. For example, earlier this year, the Senate Governance & Finance Committee passed SB 313 (Monning, 2015), which requires school districts to provide reasons for overriding local zoning—which generally must be consistent with the relevant general plan—in an effort to prevent schools from serving as an anchor for “leapfrog development” that encroaches on agricultural land or other open spaces. SB 313 did not prohibit such siting decisions, instead adding to the procedural requirements school districts must follow.
- **Are there enough incentives for land use planning that meets its goals?** Some of the state’s previous land use policy incentives have also been weakened in recent years. The Williamson Act encourages land owners and local governments to partner to protect agricultural land from development in exchange for lower property taxes. The state previously paid counties for their lost property tax revenues, but in 2009-10 those payments stopped. Development pressures were lower during the recession, but in the future local governments may hesitate to designate land for agriculture in their general plans if the fiscal effect is unmitigated. Similarly, although some funding for general planning has been available in past bonds, those funds are largely exhausted.