

---

**Appendix E:  
Federal and State  
Regulations Concerning  
Interested Parties, Public  
Involvement and  
Consultation**

---

---

---

---

## **Appendix E: Federal and State Regulations Concerning Interested Parties, Public Involvement and Consultation**

AMBAG and our partner agencies are required to satisfy statutory and regulatory guidelines in the structuring and implementation of its planning efforts. Federal and State legislation, as well as local preference and practice, are combined to shape the statutory environment that this 2019 Public Participation Plan must satisfy. The *2019 Public Participation Plan* has been created to comply with the following federal and state statutory requirements.

### ***Federal Legislation***

#### **Fixing America's Surface Transportation Act (FAST-Act)**

In 2015, President Obama signed into law a new transportation authorization, entitled Fixing America's Transportation Act. In accordance with 23 CFR 450.316, a metropolitan planning organization (MPO) is required to engage in a metropolitan planning process that creates opportunities for public involvement, participation, and consultation throughout the development of the Metropolitan Transportation Plan (MTP) and the Transportation Improvement Program (TIP). Under this requirement, MPOs must allow for:

- adequate public notice of public participation activities;
- review and comment at key decision points in the development of the MTP and TIP; and
- multiple, accessible participation formats, including electronic and in-person.

The MPO should develop a collaborative and comprehensive Public Participation Plan, in full collaboration with the public and stakeholder communities, to be used in the development of the MTP and TIP, as well as to frame the strategies for public and stakeholder communication and collaboration in all phases of the planning process. The Participation Plan itself must be prepared by the MPO with a 45-day public review and comment period. Similarly, states are required to have a documented public participation process.

#### **Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21)**

In 2012, President Obama signed into law a new two year transportation authorization, entitled Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) and is the first long-term highway authorization enacted since 2005. MAP-21 helps create a streamlined, performance-based and multimodal program to address the challenges facing the U.S. transportation system today. MAP-21 was also created to emphasize the need for more public involvement in regional transportation decision making. This federal law requires all Metropolitan Planning Organizations (MPO) such as AMBAG to “provide citizens, affected public agencies, representatives of public transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment” on all transportation-related projects and plans within

the Monterey Bay region. MAP-21 also requires AMBAG to coordinate transportation plans with the regional growth forecast, travel demand model and other related planning activities when developing and updating major planning documents such as our MTP/SCS and MTIP for the region.

### **Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)**

The public participation requirements of SAFETEA-LU, as defined in the *Final Rule for Metropolitan Transportation Planning* and adopted in 2005, has been used to shape the metropolitan transportation planning process. The elements required by SAFETEA-LU include that:

- The participation plan must be developed in consultation with interested parties
- The participation plan must include procedures for employing visualization techniques
- The participation plan must be available and accessible to the public, including in electronically accessible formats

Overall, Title 23 CFR §450.316 (a) specifies that “the MPO shall develop and use a documented participation plan that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.”

### **Title VI of the Civil Rights Act of 1964, and Civil Rights Restoration Act of 1987.**

Title VI of the Civil Rights Act of 1964 prevents government agencies receiving federal funding from discriminating on the basis of race, color, national origin or disability. The Civil Rights Restoration Act of 1987 extended Title VI’s applicability to all programs sponsored by federally-aided agencies, regardless of the program’s specific funding sources.

The concept of environmental justice emerged from these two regulations, and is founded on the principles of:

- Mitigating disproportionately high and adverse health or environmental effects on minority or low income populations
- Ensuring that all affected communities have the ability to participate fully in transportation decision making processes
- Preventing the denial, reduction or delay of receiving benefits by minority and low income populations

### **Executive Order 12372 - Intergovernmental Review of Federal Programs**

Executive Order 12372 calls for intergovernmental review of projects to ensure that federally funded or assisted projects do not inadvertently interfere with state and local plans and priorities. The Executive Order does not replace public participation, comment, or review requirements of other federal laws, such as the National Environmental Policy Act (NEPA), but

gives the states an additional mechanism to ensure federal agency responsiveness to state and local concerns.

### **Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations**

Adopted in 2011, Executive Order 12898 provides for the intergovernmental review of projects to ensure that federally funded or assisted projects do not inadvertently interfere with state and local plans and priorities. This order also requires every agency to incorporate environmental justice goals as part of its mission by addressing and identifying the disproportionately high and adverse human health or environmental effects of the agency's programs and policies on disadvantaged communities.

### **Executive Order 13166 - Improving Access to Services for Persons with Limited English Proficiency**

Executive Order 13166 requires agencies to identify and develop services to provide those with Limited English Proficiency (LEP) access to federally conducted and funded programs.

### **Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175 requires agencies to consult and coordinate with local Indian Tribal governments. In the Monterey Bay Area there are no federally recognized tribes, however, staff does notify and consult the local Esselen and Ohlone/Costanoan tribal governments.

### **Clean Air Act & the Air Quality Implementation Plan (Title 40 CFR § 93.105)**

As amended by the Clean Air Act, Title 40 CFR § 93.105 defines the procedures for interagency consultation, resolution of conflicts and public consultation. This includes establishing a proactive public involvement process, which is outlined in this plan.

### **Americans with Disabilities Act of 1990 (ADA), the Rehabilitation Act of 1973, & the Age Discrimination Act of 1975**

The Americans with Disabilities Act of 1990 amended Title 42 regarding public health and welfare, to ensure the protection of civil rights regarding discrimination based on disability. The Rehabilitation Act of 1973 prohibits discrimination on the basis of disability for any programs conducted by or receiving federal funding. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age for any program conducted by or receiving federal funding.

### **FTA Circular 4703.1 – Environmental Justice Policy Guidance for FTA Recipients**

Adopted in 2012, the purpose of this circular is to provide guidance to the recipients of FTA financial assistance in order to incorporate environmental justice principles into plans, projects, and activities that receive funding from FTA. The following guiding environmental justice principles must be considered through “all public outreach and participation efforts conducted by the FTA, its grantees and sub-grantees”:

- (1) To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low income populations.
- (2) To ensure the full and fair participation by all potentially affected communities in the transportation decision making process.

- (3) To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low income populations.

**Title 23: 450.316 from *Federal Register Vol. 72 No. 30***

Title 23: Highways; Part 450—Planning Assistance and Standards, 450.316 Interested parties, participation, and consultation.

(a) The Metropolitan Planning Organization (MPO) shall develop and use a documented participation plan that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The participation plan shall be developed by the MPO in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:

- (i) Providing adequate public notice of public participation activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed Metropolitan Transportation Plan (MTP) and the Metropolitan Transportation Improvement Program (MTIP);
- (ii) Providing timely notice and reasonable access to information about transportation issues and processes;
- (iii) Employing visualization techniques to describe the MTP and MTIP;
- (iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means online
- (v) Holding any public meetings at convenient and accessible locations and times;
- (vi) Demonstrating explicit consideration and response to public input received during the development of the MTP and MTIP;
- (vii) Seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low income and minority households, who may face challenges accessing employment and other services;
- (viii) Providing an additional opportunity for public comment, if the final MTP or MTIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

(2) When significant written and oral comments are received on the draft metropolitan transportation plan and TIP (including the financial plans) as a result of the participation process in this section or the interagency consultation process required under the EPA transportation conformity regulations (40 CFR part 93), a summary, analysis, and report on the disposition of comments shall be made as part of the final metropolitan transportation plan and TIP.

(3) A minimum public comment period of 45 calendar days shall be provided before the initial or revised participation plan is adopted by the MPO. Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable.

(b) In developing metropolitan transportation plans and TIPs, the MPO should consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation (including State and local planned growth, economic development, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities. In addition, metropolitan transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the area that are provided by:

(1) Recipients of assistance under title 49 U.S.C. Chapter 53;

(2) Governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the U.S. Department of Transportation to provide non-emergency transportation services; and

(3) Recipients of assistance under 23 U.S.C. 204.

(c) When the MPA includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(d) When the MPA includes Federal public lands, the MPO shall appropriately involve the Federal land management agencies in the development of the metropolitan transportation plan and the TIP.

(e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as

defined in paragraphs (b), (c), and (d) of this section, which may be included in the agreement(s) developed under §450.314.

FHWA/FTA has also provided frequently asked questions and answers on public involvement in transportation decision making in regards to Title 23 CFR 450 on their website:

[http://www.fhwa.dot.gov/planning/public\\_involvement/archive/q\\_and\\_a/index.cfm](http://www.fhwa.dot.gov/planning/public_involvement/archive/q_and_a/index.cfm)

### ***State Legislation***

#### **Government Code 11135**

Government Code 11135, subdivision (a) states that “no person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency that is funded directly by the state, or receives any financial assistance from the state.” The purpose of this code is to provide all citizens protection from discrimination from any program or activity that is either conducted, funded directly by, or receives any financial assistance from the state.

#### **Government Code 65080 & SB 375**

In 2008, SB 375 was passed by the state legislature, amending Government Code 65080 to include specific language for public participation activities required by MPOs as they develop their Sustainable Communities Strategy (SCS) for the long range Metropolitan Transportation Plan (MTP). Specifically, the contents of this plan are guided by the *2010 California Regional Transportation Plan Guidelines* produced by the California Transportation Commission. These activities, outlined further in chapter 5, includes holding additional meetings and workshops, extensive consultation and coordination, updating the public participation plan, as this document does, and providing a process for members of the public to receive updates and information regarding the development of the SCS. The specific language can be found in the California Government Code section 65080 (b) (2) (E).

#### **California Environmental Quality Act (CEQA)**

The California Environmental Quality Act (CEQA) (CPRC § 21000 et seq) requires transportation plans and programs developed by AMBAG and the RTPAs to undergo an extensive environmental review process.

The MTP and RTPs require approval by governing bodies, and as such, AMBAG and our partner RTPAs must prepare an Environmental Impact Report (EIR) that evaluates the significant environmental impacts of the proposed projects and determine ways to mitigate the impacts to below significance. In addition, specific projects may undergo individual EIR processes depending on their scope or inclusion in the long range transportation plan EIR.

The preparation of an EIR requires extensive consultation between our partner agencies and provides for a 45-day public review period.

## **The Brown Act**

The Brown Act (California Government Code § 54950-54963) regulates meetings of local public agencies. The Brown Act also applies to any committee or subsidiary body of a local agency, whether permanent or temporary, decision making or advisory, created by local agency governing boards. The Brown Act sets minimum standards for open meetings relative to notice posting, agenda distribution, access, location of meeting, and public input. The Brown Act requires agendas for regular meetings to allow members of the public to address the agency on any item of interest to the public within the purview of the particular agency. To give sufficient time for all interested parties to present their opinions, each agency may limit the amount of time per person for such public testimony.

### ***Sources for Full Text of Regulations on the web:***

- **Code of Federal Regulations (CFR):** <http://www.gpoaccess.gov/cfr/>
- **United States Code (USC):** <http://www.gpoaccess.gov/uscode/index.html>
- **Executive Orders:** <http://www.archives.gov/federal-register/executive-orders/>
- **California Government Code & Public Resources Code:** <http://www.leginfo.ca.gov/calaw.html>
- **California Code of Regulations:**  
<http://government.westlaw.com/linkedslice/default.asp?Action=TOC&RS=GVT 1.0&VR=2.0&SP=CCR-1000>