

**September 30, 2009 DISCUSSION DRAFT  
RTP GUIDELINES UPDATE  
Housing & Land-Use Workgroup**

**Land-Use Assumptions for Sustainable Communities Strategies of RTPs  
Relative to Regional Housing Needs Allocation (RHNA) Integration**

This discussion is the framework for the integration of the SCS of the RTP and the RHNA pursuant to SB 375. It includes discussion questions, which are put in context in the attached matrix which sets forth relevant portions of SCS requirements (with some paraphrasing) and RHNA-housing element requirements. Draft language proposed for inclusion in the SCS section of the RTP Guidelines update (Chapter 3.40) is indicated in italics and blue font in the middle (“Implications”) column (B). Questions or issues relevant to the proposed language or need for additional language is in the column to the right (C); and a draft timeline for the respective processes are attached.

This paper does not address the due date scheduling issues of the RTP and RHNA-Housing Element updates. At the time of this writing, the outcome of an enrolled bill (SB 575) which would affect the due date determination process is pending.

The matrix that follows addresses implementation of SB 375 provisions with existing law, including:

GC 65080 (b)(2)(B) & (J) of State Transportation Planning Law

Each MPO shall prepare a sustainable communities strategy (SCS) . . . *observing the following provisions of subd. (J), whereby an SCS . . .*

- does not regulate the use of land - local land-use policies and regulations are expressly not required to be consistent with the RTP of which the SCS is a component;
- cannot supersede land-use authority of cities and counties;
- is not subject to State approval (except ARB review of whether it meets the regional target);
- cannot restrict ARB’s authority;
- may not abrogate vested rights; and
- must meet federal conformity requirements.

State Housing Element Law

The SCS is required to consider the State housing goals of GC Sections 65580-81, which establishes decent housing to be among the State’s highest priorities, and references the State’s housing planning process. Cities and counties within metropolitan planning area (MPO) regions are required to update their housing elements in concert with the schedule for major updates of the RTP; at least every eight years within non-attainment MPOs, and at least every five years within attainment MPOs, unless an MPO elects for RTP update within four (instead of five) years.<sup>1</sup> The SCS is to integrate the RHNA for these updates, beginning with the fifth cycle.

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<sup>1</sup> Note also that a local government’s failure to adopt a housing element within 120 days of its statutory due date means that the local government will be required to update housing element every four years.

## Issues or Questions for Discussion\*

### Section I of the Matrix

1. a) The statutory timelines for the MPO's RHNA process (see Attachment A) must be considered in the conformity consultation process, e.g., such as the effect of a change in land-use assumptions that would affect the consistency of the development pattern of the SCS and RHNA.  
b) Staggering of interagency consultation with different MPOs is important, as there are practical limitations to how many can be accommodated simultaneously.
2. What is the process for determining local land-use assumptions for RTP forecast periods beyond the term of most general plans, or for unincorporated areas for which SOIs or MSRs have not been updated, within the region? Does it differ from the process for determining assumptions different from (shorter-term) designations of existing general plans?

### Section II of the Matrix

1. a) What should the length of time for the requirement to house all of the region's population be - 20 years, the length of the RTP planning period, whichever is longer, or something else?  
b) What does "house all the population of the region" mean? How will this forecast differ from that of prior RTPs?
3. a) What should the standard source of employment projections be, for the purpose of consistency between MPOs? Or what should the process be for agreeing upon a standard source?  
b) How should achievement of feasible balance between jobs and housing within the region" be determined?

As HCD's RHNA determination is at the regional level, it does not incorporate assumptions about the distribution of jobs or housing within the region; the housing distribution within the region is determined by the RHNA plan adopted by the MPO, and by cities and counties within their jurisdictions.

4. For RTP updates where a RHNA update is not scheduled, some of the RHNA from the prior update cycle will now have been accommodated by the addition of new housing. How will the MPO know the remaining balance to be accommodated by the SCS?

### Section III of the Matrix

1. If the MPO models residential uses, densities, and intensities at a smaller scale, e.g., TAZ, grid cells, what is the process for aggregating the assumptions for the RHNA to the "place" (city or unincorporated county) level? (In effect, the RHNA is to be consistent with the SCS, even if the SCS is not determined by the MPO to meet the regional target.)
- 2 & 3. Are there prospective alternatives to the "default densities" of GC 65583.2(c) of housing element law that could be used in formulating the SCS development pattern relative to the consistency determination for accommodating the lower-income portion of the RHNA?

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\*Some of above numbers are not consecutive, as they are numbered to correspond to paragraphs in other columns of the matrix.

**The Sustainable Communities Strategy Shall. . . .**

A	B	C
<p>I. GC 65080 b.2.(B) . . . subject to the requirements of Part 450 of Title 23 of, &amp; Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to utilize the <b>most recent planning assumptions considering local general plans and other factors</b> (<i>emp. added</i>). . . .                      (viii) allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C.Sec. 7506) (air quality conformity)</p>		
Relevant Guidance or Related Law	Implications <i>(italicized language proposed for guidelines)</i>	Issues/Questions
<ol style="list-style-type: none"> <li>1. Determined via an inter-agency consultation involving state, local, and federal transportation and air quality planners.<sup>i</sup> Assumptions that are older than five years should include justification for not using more recent information.<sup>2</sup> CFR 93.122: “distribution of employment and residences . . . must be reasonable.”</li> <li>2. CA law requires general plans to be current, with specific schedules for update of the housing and other elements.</li> <li>3. Regional housing needs allocations (RHNA) precede and are used for housing element updates. Housing elements often include programs to rezone sites to accommodate the RHNA, either from non-residential to residential or mixed-use, or to higher densities. Such rezonings might not yet be completed during the SCS development process.<sup>ii</sup></li> <li>4. The RHNA process requires adoption of methodology by the MPO considering prescribed statutory factors for which its member local governments provide input (aka “RHNA factors”).<sup>iii</sup></li> <li>5. LAFCO spheres of influence (SOI) and municipal service reviews (MSRs) are required to be periodically updated.<sup>iv</sup></li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Interagency consultation with transportation &amp; air quality agencies should include HCD relative to RHNA –housing element issues.</i></li> <li>2. <i>As the SCS is updated more often than local land use plans and considers other factors as well, the SCS will incorporate land use assumptions which differ from and extend beyond most existing general plans.</i></li> <li>3. <i>The SCS should <u>not</u> include existing general plan land use designations which:                      a) would preclude accommodating the existing RHNA for local governments which have not yet adopted a housing element to accommodate the RHNA of the 4<sup>th</sup> (current) cycle;                      b) have been identified by the local government’s updated housing element to be rezoned; or                      c) would preclude accommodating the next RHNA with which the RTP is to be integrated.</i></li> <li>4. <i>The RHNA factors (GC 65584.04(d)) should be considered in the SCS development.</i></li> <li>5. <i>Land-use assumptions of general plans or regarding SOIs/MSRs which are not consistent with these provisions of State law should not be incorporated into an SCS</i></li> </ol>	<ol style="list-style-type: none"> <li>1. a) The statutory timelines for the MPO’s RHNA process (see Attachmt. A) must be considered in the conformity consultation process, e.g., such as the effect of a change in land use assumptions that would affect the consistency of the development pattern of the SCS and RHNA.                      b) Staggering of interagency consultation with different MPOs is important, as there are practical limitations to how many can be accommodated simultaneously.</li> <li>2. What is the process for determining local land use assumptions for RTP forecast periods beyond the term of most general plans, or for unincorporated areas for which SOIs or MSRs have not been updated, within the region? Does it differ from the process for determining assumptions different from (shorter-term) designations of existing general plans?</li> </ol>

<sup>2</sup> CFR 93.110

	A	B	C
II.	(ii) identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the RTP taking into account net migration into the region, population growth, household formation and employment growth; (iii) identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Sec 65584; (vi) consider the state housing goals specified in Sections 65580 and 65581;		
	<b>Relevant Guidance or Related Law</b>	<b>Implications</b>	<b>Issues/Questions</b>
	<p>1. The RHNA is in effect the basis in State law for determination of housing sufficient to house the population for the short term – from the baseline through the end of the next housing element planning period. The RTP planning horizon is at least 20 years, but as long as 50 years.</p> <p>2. The RHNA determination by HCD occurs 24-26 mos. prior to the due date for housing element adoption. Prior to the determination, the MPO is to provide key assumptions to HCD regarding its population projections and household formation. The determination is made relative to DOF's population projections, with an allowance for projected population growth to vary by up to three percent.</p> <p>3. The MPO is to provide HCD with assumptions including the relationship between jobs and housing and any imbalance. HCD is to consider this in its regional determination, to “reflect achievement of feasible balance between jobs and housing within the region using the regional employment projections in the applicable le RTP.”<sup>3</sup></p> <p>The regional determination, including the consideration of the jobs-housing relationship is made at the <u>regionwide</u> (not jurisdiction) level. Per federal conformity review regs., if assumptions contradict historical trends, the conformity determination should include an explanation regarding why the assumptions are appropriate.</p> <p>4. The projection period for all RHNAs is not 8 years, nor are RHNAs prepared at the time of every RTP update.</p>	<p>1&amp;2. <i>The amount of housing forecast to be sufficient to house the region's population in the SCS must bear a reasonable relationship to the amount of housing determined pursuant to the RHNA portion of the SCS planning period, including to DOF's population projections. For example, the 20-year projection might be at least double that of the shorter-term RHNA period. When there is a RHNA update scheduled, the growth forecast for the SCS cannot be finalized prior to HCD's RHNA determination for the region pursuant to Government Code 65584.01.</i></p> <p>3.a. <i>Key data assumptions to be made available by the MPO during inter-agency consultation should include employment projections and the ages, gender and labor force portion of the projected population, as this is a primary basis for comparing population and employment projections.</i></p> <p>3. b. <i>The SCS shall forecast demonstrate that the development pattern can accommodate all economic segments of the population by incorporating a variety of housing affordable to households in at least the following State income limit categories: very low, low, moderate, and above moderate.</i></p> <p>4. <i>When an updated RHNA projection is not scheduled, an SCS must incorporate the housing distribution of the prior Final RHNA.</i></p>	<p>1. a) What should the length of time for the requirement to house all of the region's population be - 20 years, the length of the RTP planning period, whichever is longer, or something else?            b) What does “house all the population of the region” mean? How will this forecast differ from that of prior RTPs?</p> <p>3. a) What should the standard source of employment projections be, for the purpose of consistency between MPOs? Or what should the process be for agreeing upon a standard source?             b) How should achievement of feasible balance between jobs and housing within the region” be determined? As HCD's RHNA determination is at the regional level, it does not incorporate assumptions about the distribution of jobs or housing within the region; the housing distribution within the region is determined by the RHNA plan adopted by the MPO, and by cities and counties within their jurisdictions.</p> <p>4. For RTP updates where a RHNA update is not scheduled, some of the RHNA from the prior update cycle will now have been accommodated by the addition of new housing. How will the MPO know the remaining balance to be accommodated by the SCS?</p>

<sup>3</sup> GC 65584.01(c) & (d).

	A	B	C
	Relevant Guidance or Related Law	Implications	Issues/Questions
III.	<p>(vii) set forth a forecasted development pattern for the region . . . .</p> <p>(viii) identify the general location of uses, residential densities, and building intensities within the region;</p>		
	<ol style="list-style-type: none"> <li>1. The RHNA Plan’s allocations are to be consistent with the development pattern of the SCS.<sup>4</sup></li> <li>2. The RHNA determination by HCD for the region is for a total number of housing units by four income categories for the region. Income categories are as determined by HCD as of the most recent decennial Census using State definitions.<sup>5</sup> Each jurisdiction’s RHNA includes all four income categories. Each jurisdiction must receive an allocation of units for low- and very low income households. The RHNA for jurisdictions with a disproportionate share of households in one of the income categories as of the most recent decennial United States census must include lower proportion of housing need for that income category.</li> <li>3. The lower income categories generally coincide with higher densities. Every jurisdiction must identify multifamily zoning to accommodate lower-income households of their RHNA. Each community’s housing element must demonstrate appropriate zoning, to facilitate a variety of housing types, including multifamily rental housing, . . .<sup>6</sup></li> <li>4. Direct or indirect limitations of local development regulations cannot be used to reduce the RHNA.<sup>7</sup></li> <li>5. The MPO makes adjustments to a final RHNA plan pursuant to the revision request and appeals process, proportionally among jurisdictions if 7% or less of subregion or region wide RHNA.<sup>8</sup></li> <li>6. The RHNA determination by HCD and the COG is exempt from CEQA.</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>As zoning specific sites within their jurisdictions is the purview of local governments, consistency determinations of the SCS with the RHNA are applicable only at the boundaries of individual cities and counties, and not for individual sites within the city or unincorporated county.</i></li> <li>2&amp;3. <i>The SCS development pattern should reflect multifamily uses, including higher densities, sufficient to accommodate the lower income portion of the RHNA, for each local government. Either the “default densities” of GG 65583.2(c) of Housing Element law, or an equivalent standard, should be considered in formulating the SCS development pattern relative to the consistency determination for accommodating the lower income portion of the RHNA.</i></li> <li>4. <i>As the development pattern of the SCS and RHNA are to be consistent, the SCS forecast must be consistent with the provisions of Government Code 65584.04(f), whereby limits on building permits cannot be incorporated into the growth forecast.</i></li> <li>5. <i>The SCS, including the process for revision of the draft SCS, should consider the provisions of Government Code Section 65584.05(g) to maintain a basis for determining consistency of the RHNA.</i></li> </ol>	<ol style="list-style-type: none"> <li>1. If the MPO models residential uses, densities, and intensities at a smaller scale, e.g. TAZ, grid cells, what is the process for aggregating the assumptions for the RHNA to the “place” (city or unincorporated county) level? (In effect, the RHNA is to be consistent with the SCS, even if the SCS is not determined by the MPO to meet the regional target.)</li> <li>2.&amp;3. Are there prospective alternative to the “default densities” of GC 65583.2(c) of Housing Element law that could be used in formulating the SCS development pattern relative to the consistency determination for accommodating the lower income portion of the RHNA?</li> </ol>

<sup>4</sup> GC 65584.04(i)

<sup>5</sup> GC 65584(e)

<sup>6</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_home.php](http://www.hcd.ca.gov/hpd/housing_element2/SIA_home.php) See Appendix 1 of <http://www.hcd.ca.gov/hpd/hrc/plan/he/ab2348stat04ch724.pdf> for discussion of densities, including default density standards.

<sup>7</sup> GC 65584.04(f)

<sup>8</sup> GC 65584.05(g)

**Attachment: RHNA/Housing Element & RTP Statutory Process Timelines**

*(Timelines indicated are statutory)*

Regional Housing Need Allocation (RHNA)	Regional Transportation Plan (RTP) (w/Sustainable Communities Strategy - SCS)
<p align="center"><b>REGIONAL DETERMINATION</b></p> <p><i>(Regions may request to use RTP Projections, specified data and a six-year planning period: 6 mos. before HCD determination of region's need/30 mos. before housing element (HE) due date) (Region's housing need determination with subregions: 26 mos. before HE adoption) (Deadline to create Subregional Entity/COG notification: 28 mos. before HE adoption) (Allocation to subregions: 25 mos. before HE adoption)</i></p> <ul style="list-style-type: none"> <li>HCD and COG consult; <b>HCD issues regional determination: 24 mos. before HE adoption</b> (w/o subregional option)</li> </ul> <p align="center"><b>METHODOLOGY DEVELOPMENT</b></p> <ol style="list-style-type: none"> <li>Request/Obtain factor data from local jurisdictions: not more than 6 mos. prior to the proposed release of the RHNA methodology <i>(can begin prior to abv., but note 6 mos. caveat)</i></li> <li>COG issues proposed distribution methodology: 24 mos. before HE adoption (60-day public comment period)</li> <li>COG adopts the final RHNA methodology</li> </ol> <p align="center"><b>DRAFT ALLOCATIONS</b></p> <ol style="list-style-type: none"> <li><b>COG issues Draft Allocations consistent with development pattern of SCS: at least 18 mos. before HE adoption due date</b> (before RTP adoption)</li> <li>Local Jurisdictions may request revision of Draft Allocation: Within 60 days following receipt of the Draft Allocation</li> <li>COG responds to requests for revision of Draft Allocation: Within 60 days of requested revision</li> </ol> <p align="center"><b>LOCAL APPEALS</b></p> <ol style="list-style-type: none"> <li>Jurisdictions may appeal Draft RHNA: 60 days after the date established to hear appeals</li> <li>COG reviews and responds to appeal requests (within 45 days after appeal hearing)</li> <li>COG issues proposed Final RHNA, <b>with SCS development pattern consistency findings</b>; adopts within 45 days after completion of 60 day appeal period, inclusive of public hearing</li> </ol> <p align="center"><b>HCD APPROVAL</b></p> <ol style="list-style-type: none"> <li>Review of Final RHNA by HCD: within 60 days of adoption of Final RHNA <i>(HCD may revise RHNA if not consistent with initial regional determination)</i></li> </ol>	<p><i>(add regional variations- for SJV, ABAG-MTC &amp; for SCAG, add congestion management agency-subregional processes)</i></p> <ol style="list-style-type: none"> <li>MPO gathers data, develops models, begins update of regional growth forecast</li> <li>MPO adopts public participation plan for SCS and possibly an APS</li> <li>Prior to public participation process, MPO submits proposed methodology for estimating GHG reduction from its SCS (and APS if desired) to ARB for review and comment</li> <li>MPO conducts outreach &amp; public workshops, at least 1-3 workshops per county</li> <li>MPO conducts inter-agency consultation pursuant to federal conformity requirements</li> <li><b>MPO prepares draft SCS which must accommodate HCD's regional determination</b></li> <li>Draft EIR/RTP is prepared &amp; reviewed by the public and agencies for comment</li> </ol> <p><i>MPO must issue Draft SCS not less than 55 days before RTP adoption; must hold at least 2 if a single-county or 3- if a multi-county, public hearings on SCS</i></p> <ol style="list-style-type: none"> <li>MPO makes any revisions to Draft SCS/responds to DEIR comments</li> <li>MPO Certifies EIR &amp; Adopts RTP within either 4 years of its prior conformity date, or 5 yrs. of its prior adoption date if attainment MPO</li> <li>MPO submits RTP to FHWA/FTA for conformity</li> <li>MPO Submits SCS for review to ARB within 60 days of RTP adoption <i>(if regional target not met, MPO either amends RTP-SCS or submits Alternative Planning Strategy (APS))</i></li> </ol> <p align="center">*****</p> <p><i>For non-attainment regions, subsequent SCS (4 yrs. hence) must presumably integrate with prior RHNA, as new RHNA to be determined only for one of two RTP updates within 8 yrs.</i></p>
<p>Housing Element Adoption: within 18 mos. after RTP is adopted; must be adopted w/in 120 days of due date to avoid a 4-yr. update cycle.</p> <p align="right">HCD 9.28.09 6 of 7</p>	<p><i>If approved by FHWA, FTA &amp; EPA, federal approval starts RTP update clock for non-attainment MPOs: RTP must be updated within 4 years</i></p>

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<sup>i</sup> 40 CFR 93.110 provides the requirements for using the latest planning assumptions in conformity determinations.

<sup>ii</sup> The California Supreme Court has stated that local governments have an implied duty to keep their general plans current (*De Vita v. County of Napa* (1995) 9 Cal. 4<sup>th</sup> 763). OPR is to notify the Attorney General of those local governments whose general plans have not been revised within ten years (Government Code section 65040.5(b)). Historically, housing elements have been required to be updated approximately every 5 years; conservation and safety elements were required as of 2009 to be updated in 2009 or 2010 (AB 162, 2007); and jurisdictions within the San Joaquin Valley Air District were required to update their general plans for air quality issues in 2009 and 2010.

<sup>iii</sup> GC 65584.04

<sup>iv</sup> GC Secs. 56425-56430

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