

**Subject:** Re: RHNA Subregion  
**Date:** Monday, October 7, 2019 at 3:04:02 PM Pacific Daylight Time  
**From:** Pilar Lorenzana  
**To:** Mohsen, Raania, Andi Jordan  
**CC:** Gillian Adams, Alix Bockelman, Matt Maloney, Brad Paul, Pilar Lorenzana  
**Attachments:** 2019.10.07 DRAFT Form of Subregional Entity Agreement.docx

Good afternoon Raania and Andi.

As promised, we are circling back as promised on your four questions:

Q: Can you provide a draft of the agreement between ABAG and the subregion by October 4 to be reviewed by the Board?

A: Please see attached draft subregion delegation agreement.

Q: Why is there an “opt-out of subregion” date?

A: Many jurisdictions are more comfortable participating in a subregion if they know that it is not a binding decision. In the event that a jurisdiction opted out of the subregion it would receive its “default allocation” based on the ABAG allocation methodology.

Q: Why are there disparities between HCD and ABAG calendars? For example, why are the due dates for subregion formation different, February 2020 vs. August 2020?

A: The language in Housing Element Law assumes that the Council of Governments will adopt RHNA six months after the adoption of the Regional Transportation Plan/Sustainable Communities Strategy (or Plan Bay Area 2050 for our region). ABAG has chosen to adopt RHNA at the same time as Plan Bay Area 2050 in order to maximize opportunities for the Plan and RHNA to inform one another (which supports the requirement that there is consistency between the two) and to maximize the amount of time that jurisdictions have to work on their Housing Elements. By law, the Housing Element due date is determined by the adoption date for Plan Bay Area. For this cycle, the Housing Element due date will be December 2022. By adopting RHNA at the same time as the plan, jurisdictions will know their RHNA allocation and be able to start on Housing Elements in July 2021 instead of December 2021.

Q: Can the funds potentially available via AB 101 be used for a planning collaborative (not a subregion) focused on activities related to meeting the 6<sup>th</sup> RHNA cycle? And when are those funds available?

A: MTC/ABAG staff are finalizing a proposal for the initial disbursement of Trailer Bill funding. Key considerations of the proposal include supporting ABAG's RHNA efforts and identifying strategic opportunities to support local jurisdictions. We anticipate seeking approval from the ABAG Executive Board during their November meeting.

Thank you for your patience. We hope these are helpful and please reach out if there are any additional questions. By the way, Brad Paul and Gillian Adams will be on hand during Thursday's Board meeting. Once the agenda for the meeting has been finalized, please send our way.

Best,

SUBREGIONAL DELEGATION AGREEMENT  
BETWEEN ASSOCIATION OF BAY AREA GOVERNMENTS  
AND [NAME OF SUBREGIONAL ENTITY]  
FOR THE SIXTH REGIONAL HOUSING NEEDS ALLOCATION CYCLE  
(2022–2030)

This Delegation Agreement is entered into this \_\_\_ day of \_\_\_ by and between the Association of Bay Area Governments (“ABAG”), a California joint powers authority and council of governments as that term is used in the Housing Element Law (Gov. Code, §§ 65580–65589.11) and the [*name of subregional entity*] (“the Subregional Entity”), a subregional entity formed pursuant to Government Code section 65584.03.

RECITALS

- A. The Housing Element Law (Gov. Code, §§ 65580–65589.8) provides for a regional housing need allocation (“RHNA”) process described in Gov. Code, §§ 65584–65584.05, inclusive.
- B. ABAG is generally responsible under Government Code sections 65580–65589.11 (“the Housing Element Law”) for allocating the nine-county Bay Area region’s housing need determined by the state to each of the cities and counties in the region.
- C. State law allows cities and counties to form “subregional entities” for the specific purpose of allocating the subregion’s existing and projected need for housing among its members, and [*Name of Subregional Entity*] has formed pursuant to that authority.
- D. Government Code section 65584.03 requires ABAG and subregional entities to “enter into an agreement that sets forth the process, timing, and other terms and conditions of the delegation of responsibility by the council of governments to the subregion,” and it is the parties’ intention to enter into this agreement to satisfy that obligation and address other matters concerning the relationship between ABAG and the Subregional Entity.

NOW THEREFORE the parties agree as follows:

## AGREEMENT

1. *ABAG Responsibilities.* ABAG shall be responsible for the following:

1.1 *Notify Subregional Entity of Regional Determination.* As soon as practicable following its receipt, ABAG will notify the Subregional Entity of the Department of Housing and Community Development's Regional Housing Need Determination ("RHND") under subdivision (c)(1) of Government Code section 65584.01, anticipated in April 2020.

1.2 *Assign Subregional Share.* ABAG shall assign the Subregional Entity its share of the RHND pursuant to subdivision (c) of Government Code 65584.03

1.3 *Furnish background information.* ABAG shall furnish to the Subregional Entity background data and information for such factors outlined in subdivision (b)(2) and subdivision (e) of Government Code Section 65584.04 that may be necessary for Subregion's preparation of its Final Allocation of Local Housing Need. ABAG is not responsible for reformatting or re-tabulating such information at the subregional level or otherwise manipulating the data to meet the needs of the Subregional Entity.

1.4 *Prepare Default Allocations for Subregional Constituents.* In conjunction with the release of the proposed, draft, and final allocation methodologies, ABAG will prepare "Draft Default Allocations" for the constituents of the Subregional Entity along with its issuance of draft allocations for local agencies outside of subregions.

1.5 *Review Proposed Final Subregional Allocation Plan.* ABAG may review the Subregional Entity's proposed final subregional allocation issued pursuant to subdivision (e) of Government Code section 65584.05 in order to ensure its consistency with the applicable provisions of the Housing Element Law and the terms of this Agreement. In the event that the proposed final allocation issued by the Subregional Entity is inconsistent with the applicable provisions of the Housing Element Law or the terms of this Agreement, ABAG reserves the right to make the final housing need allocations to counties

and cities within the Subregional Entity in accordance with subdivision (d) of Government Code Section 65584.03.

2. *Subregional Entity Responsibilities.* ABAG hereby delegates to the Subregional Entity and the Subregional Entity hereby accepts all of the statutory requirements imposed on “delegate subregions,” including but not limited to:

2.1 Developing and seeking public comment on a proposed methodology for the subregion under Government Code sections 65584 and 65584.04.

2.2 Publishing a draft methodology for the subregion on its website and submitting it to the Department of Housing and Community Development pursuant to subdivision (h) of Government Code section 65584.04.

2.3 Distributing a draft allocation to each local government in the Subregional Entity, in accordance with subdivision (a) of Government Code section 65584.05. The Subregional Entity must distribute the entire subRHNA distributed to the Subregional Entity by ABAG pursuant to Section 1.1 of this Agreement and subdivision (c) Government Code section 65584.03.

2.4 Considering appeals of draft allocations submitted by constituents of the subregion pursuant to subdivisions (b)–(e) of Government Code section 65584.05.

2.5 Issuing a proposed final allocation plan and submitting to ABAG pursuant to subdivision (e) of Government Code section 65584.05. The Subregional Entity’s resolution approving the proposed final allocation plan shall be consistent with the requirements of subdivision (m) of Government Code Section 65584.04.

3. *Timing.* The current schedule for completion of the various tasks outlined above is set forth in Attachment A. Both parties agree to complete their responsibilities in accordance with the schedule. ABAG may amend the schedule from time to time, but it shall do so only after giving reasonable written notice to the Subregional Entity and obtaining the Subregional Entity’s agreement to the modification if the Subregional Entity is adversely affected.

4. *Other terms and conditions.*

4.1 *Withdrawal.*

a. Any constituent of the Subregional Entity may notify ABAG in writing that it is withdrawing from the Subregion prior to when the subregion's draft methodology is submitted to HCD, in which case ABAG will assign the withdrawing member its Draft Default Allocation subject to the timelines and procedures applicable to the other jurisdictions in the region, including but not limited to those governing appeals under subdivision (b) of Government Code section 65584.05.

b. Constituents of the Subregional Entity may not withdraw from the Subregional Entity after the subregion's draft methodology is submitted to HCD.

c. If an agency's withdrawal would cause the subregion to no longer meet the statutory requirements under subdivision (a) of Government Code section 65584.03 then the Subregional Entity's existence will automatically terminate. In such case, ABAG will assign the each constituent member its Draft Default Allocation subject to the timelines and procedures applicable to the other jurisdictions in the region, including but not limited to those governing appeals under subdivision (b) of Government Code section 65584.05.

4.2 *Termination.*

a. *Termination by Subregion.* The Subregional Entity shall have the right to terminate this Agreement without cause by giving written notice to ABAG prior to the subregion's submittal of the draft methodology to HCD.

b. *Termination by ABAG.* ABAG reserves its right under subdivision (d) of Government Code section 65584.03 to terminate this Agreement and make allocations to the constituents of the Subregional Entity if it determines, in its sole discretion, that the Subregional Entity has failed or will fail to complete the subregion process in a manner consistent with the Housing Element Law and with this Agreement, including an anticipated failure to

meet any aspect of the schedule established by section 3 above of this Agreement. Prior to making such a final determination, ABAG shall notify the Subregional Entity's representative of the asserted failure to comply with the Housing Element or this Agreement and provide a reasonable period of time in which to cure the failure.

c. *Studies.* In the event of such termination, all finished or unfinished documents, data, studies, reports or other materials prepared by the Subregional Entity relating to this Agreement shall be given to ABAG in order for ABAG to determine the local allocation of need for all cities and counties within the Subregional Entity.

4.3 *Recordkeeping.* The Subregional Entity shall maintain organized files of all public records and materials prepared or received in connection with any official business taken pursuant to this Agreement. The Subregional Entity shall also maintain a written record of any administrative proceeding conducted pursuant to this Agreement, whether by tape recording or by other means. Subregional Entity shall make such records available to ABAG upon written request to the Subregional Entity. The Subregional Entity shall maintain these records for a period of not less than three (3) years after submission of its final allocation to ABAG.

4.4 *Cooperation between the Parties/Dispute Resolution.* ABAG and The Subregional Entity are each undertaking the responsibilities of this Agreement for the benefit of their respective members. The Parties agree and acknowledge that it is their best interest to engage in cooperation and coordination with each other in order to carry out its responsibilities herein. In this spirit of cooperation, the Parties agree that neither party will seek any action in law or in equity. Disputes regarding the interpretation or application of any provision of this Agreement shall be resolved through good faith negotiations between the Parties. Changes in exigent circumstances or the RHNA Law may cause a party to conclude that this Agreement should be amended. If the Parties cannot agree on changes to this Agreement, the Parties can terminate this Agreement; in no event shall either Party seek any legal or equitable remedy against the other.

4.5 *Time is of Essence.* Time is expressly made of the essence with respect to the performance of the Parties and of each and every obligation and condition of this Agreement.

4.6 *Amendments in Writing.* This Agreement cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the Party to be charged.

4.7 *Entire Agreement.* This Agreement constitutes the entire understanding between the Parties. All prior agreements or understandings, whether oral or written, are superseded. Each Party is entering this Agreement based solely upon the representations set forth herein.

4.8 *Counterparts.* This Agreement may be executed in counterpart originals, and when the original signatures are assembled together, shall constitute a binding agreement of the Parties.

4.9 *Enforcement.* The parties agree not to seek any legal or equitable remedy, including, but not limited to specific performance, petition for a writ, or direct or consequential damages for alleged violations of this Agreement.

4.10 *Liability.* None of the parties to this Agreement assumes any responsibility for the acts or omissions of any other party.

4.11 *No Third Party Beneficiaries.* The parties to this Agreement do not and do not intend to create any third party beneficiaries to this Agreement.

4.12 *Validity.*

a. Each party hereby represents to the other(s) that the signatory to this Agreement has the requisite authority to execute this Agreement on their behalf. The other party is entitled to rely on such representation regardless of whatever information it may have to the contrary.

b. The following are the representatives with respect to any issues arising out of this Agreement, including but not limited to receipt of notices, the responses to notices or questions or representations regarding



the status of ABAG or the Subregional Entity or RHNA or the subregional allocation. Each party is entitled to rely on the actions, or inaction, of the Representative as though given by ABAG or the Subregion.

ABAG Representative:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Subregional Entity Contact:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

ASSOCIATION OF BAY AREA  
GOVERNMENTS

[Name of Subregional Entity]

by: \_\_\_\_\_

Therese W. McMillan  
Executive Director

by: \_\_\_\_\_

Authorized Representative

Approved as to form and content:

by: \_\_\_\_\_

\_\_\_\_\_