To: Executive Board
Association of Bay Area Governments

Fr: Finance & Personnel Committee
via Kenneth Moy, Legal Counsel

Re: *Per Diems*

Dt: October 29, 2008

The "Policies on ABAG Committee Formation, Structure, and Membership" (Policy) provisions for payment of *per diems* can be summarized as follows:

◊ All members of standing committees must be paid a *per diem* for each meeting (subject to express caps on the number of meetings) a member attends, unless waived by the member.

In general, *per diems* are paid to reimburse a member for the costs incurred to attend a meeting. The amount of the *per diem* is set and represents a reasonable estimate of the average overall costs incurred.[1] At the time the Policy was adopted, public meetings could not legally be conducted by teleconference. Therefore, the Policy does not address whether a *per diem* should be paid for attending a meeting by teleconference.

The Ralph M. Brown Act imposes the following requirements on attending a meeting by teleconference:

- Each teleconference attendee must call in from a place that is accessible to members of the general public.
- Each teleconference location must provide facilities that enable members of the public to hear the meeting and to address the body.
- Agenda and meeting notice must be posted at each teleconference location.

In light of these obligations, the Committee concluded that a per diem of seventy-five dollars ($75) is a reasonable estimate of costs incurred by a teleconference attendee to comply with these requirements and to attend at the teleconference site. Accordingly, the Committee recommends the Executive Board amend the Policy as attached.

All other provisions of the Policy regarding *per diems* remain unchanged.

RECOMMENDATION:

Amend the "Policies on ABAG Committee Formation, Structure, and Membership" as shown on attachment A to this memorandum.

cc: Henry Gardner
Herbert Pike

[1] The accuracy of the estimate is of practical consequence only in connection with a member's tax treatment of the *per diem*. Where the estimate is deemed to be reasonable, taxing authorities categorize the *per diem* as a non-income item. In setting the amount of the *per diem*, neither staff nor the policy making body makes any representations or guarantees regarding tax treatment of the payments.

ailing Address: P.O. Box 2050 Oakland, California 94604-2050 (510) 464-7900 Fax: (510) 464-7970 info@abag.ca.gov
Joseph P. Bort MetroCenter 101 Eighth Street Oakland, California 94607-4756

ATTACHMENT A

POLICIES ON ABAG COMMITTEE FORMATION, STRUCTURE, AND MEMBERSHIP

[ARTICLES I – III omitted]

IV. MEMBERSHIP

A. Standing Committees

1. With the exceptions provided in II.A(2.c), (4), (5), and (6) above, membership in standing committees is limited to elected officials of membership jurisdictions.

2. Non-elected officials of member jurisdictions may be selected by standing committees to serve as non-voting technical advisory members.

3. Representatives of the Mayor of the City and County of San Francisco may be represented on ABAG committees or task forces by an elected or appointive official.

4. Membership of the Administrative Committee includes the President, Vice-President and Immediate Past President; chairpersons of the Finance & Personnel, Legislative & Governmental Organization and Regional Planning Committees; two other members of the Executive Board; and one other member of the RPC. If a person is entitled to occupy more than one seat on the Administrative Committee, said person shall occupy one seat; and the President shall, as provided below, fill the other seat by appointing a member of the committee not represented by its chairperson. Committee chairpersons and committee representatives to the Administrative Committee shall each have an alternate who is a member of their respective committees. One member of the Executive Board shall serve as the alternate for both Executive Board representatives. Committee representatives and alternates shall be appointed by the President with the consent of the Executive Board pursuant to Article IX.F of the Bylaws.

5. Membership of the RPC includes a minimum of 18 elected officials of Association members, including a supervisor from each member county and a city representative from each county. Members also include the chair of the Bay Area Planning Directors' Association; one representative each from the Bay Area Air Quality Management District, the BCDC, the MTC, the Regional Water Quality Control Board and from a special district; and not less than 10 citizens to represent categories of special or public interest areas such as: business, economic development, environment, housing, labor, minorities, recreation; open space, public interest, and special districts.

6. Upon recommendation of the chair of the RPC, the President may appoint advisory committees to the RPC. Each advisory committee is headed by an RPC member. Membership on such committees is not limited to RPC member, and may include elected or non-elected officials of member jurisdictions, or citizens with special

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expertise. Advisory committee members, unless so designated by the Executive Board, do not receive a per diem pursuant to ABAG's Bylaws.

7. The President, Vice-President and Immediate Past President serve, ex-officio, on standing committees.

B. Program Committees

Each entity participating in a program shall appoint a representative to the Program Committee. Representatives may be elected or non-elected officials or management level employees of the participating entity.

C. Task Forces

Membership on task forces may be elected or non-elected officials of member jurisdictions, or citizens with special expertise.

D. Terms

General Assembly and Executive Board excepted, standing committee and task force members' terms expire every two years following the annual meeting of the General Assembly in the year in which the new President takes office.

E. Per Diem

In accordance with ABAG Bylaws VII A.(7), voting members of the Executive Board, or of a standing and/or joint committee, and where expressly designated by the Executive Board, individuals participating in special committees, task forces or other meetings, shall receive a per diem of $150 for each meeting attended in person and $75 for each meeting attended by teleconference. The per diem shall be paid for a maximum of forty-eight (48) meetings per year. Per diem may also be received by a Board or committee member representing the Association before an agency or body of the State or Federal government.

A. Technical Advisory Committees

Membership on technical advisory committees may be technical specialists, or professionals and/or elected officials and citizens with special expertise.

B. Other Governmental Agencies

Except as otherwise required by statute and except as set forth below, ABAG's official representatives and their alternates to any regional public entity shall be a member of or alternate to the Executive Board, including ABAG's President, Vice-President and Immediate Past President. The representatives and their alternates will be nominated by the President, and confirmed by a majority vote of the Board.

1. The four representatives appointed to BCDC shall be elected city officials from eligible jurisdictions in each of the North, South, East and West Bay Areas.

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2. Pursuant to the McAteer Petris Act, the representatives to BCDC select their own alternates. Alternates shall have the same qualifications required of the representative. Representatives are requested to submit to the Executive Board, for confirmation, the names of their alternates. The documented action shall be sent to BCDC. Should a BCDC representative decline to select his/her alternate, ABAG shall select the alternate in the same manner in which the representative is selected.

3. The representative to the DPC for the four West Delta cities, specified in the Delta Protection Act, is appointed by the President. The representative shall be an elected official from one of the four jurisdictions, providing that jurisdiction is a member of the Association.

Adopted November 14, 1974
Amended March 20, 1975
Amended June 15, 1978
Amended December 17, 1980
Amended February 19, 1981
Amended December 2, 1982
Amended April 15, 1993
Amended October 20, 1994
Amended November 20, 2008

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