MEMORANDUM OF UNDERSTANDING

DELEGATION OF SUBRHNA RESPONSIBILITIES TO THE NAPA COUNTY SUBREGIONS

The following local governments (Attachment A) that have formed a "subregion" (Subregion) as described in Government Code Section 65584.03 (all subsequent references to the Government Code will be "Govt C.") and the Association of Bay Area Governments (ABAG) which is the "council of governments" for the San Francisco Bay Area as described in Govt C. Section 65582(b) enter into this Memorandum of Understanding (MOU) based on the following common understanding:

A. The Housing Element Law (Govt C. Sections 65580 – 65589.8, inclusive) provides for a regional housing need allocation (RHNA) process described in Govt C. Sections 65584 – 65584.05, inclusive.

B. For the fifth revision of RHNA, Govt C. Section 65584.03 provides that certain combinations of local governments may form a subregion to perform RHNA for themselves (SubRHNA).

C. The statute:
   (1) has explicit directions to ABAG and the Subregion on how to conduct RHNA and SubRHNA;
   (2) explicitly describes some of the discretion granted ABAG and the Subregion in choosing processes and outcomes for RHNA and SubRHNA;
   (3) leaves some patent (known) ambiguities as to how RHNA and SubRHNA are to be conducted; and
   (4) may also leave some latent (unknown) ambiguities.

D. The current schedule for the fifth revision of the RHNA for the San Francisco Bay Region is set forth in Attachment B. The schedule in Attachment B may be modified only after written notice to each subregion and only after the agreement of any subregion adversely affected by the proposed change.

ABAG and the Subregion agree to undertake their respective implementation of RHNA and SubRHNA under this Delegation Agreement (Agreement) in the following manner:

1. Formation of Subregion

   The Subregion has submitted to ABAG resolutions adopted by the governing bodies of each local government in the subregion authorizing the local government's participation in the Subregion for the purpose of carrying out SubRHNA.

2. Data Collection and Development

   The RHNA Law requires ABAG to conduct a data survey ABAG will provide the Subregion with the data it collects and develops. Subregion acknowledges that ABAG does not have the resources to reformat or retabulate data at the subregional level or otherwise manipulate the data at the Subregion's request.

3. Regional Housing Need Determination: Subregional Share

   HCD has released the regional housing need determination (RHND) on February 24, 2012 (See Attachment B for the current schedule for RHNA and SCS activities). As soon as practical after receipt of the RHND from HCD, ABAG will notify the Subregion of the RHND.

   ABAG will determine each subregion's share of the RHND in two (2) steps:

   a. The Subregion's share of total dwelling units in the RHND will be the ratio between the Subregion's total household growth and the region's total household growth for the period from 2014 to 2022 as reflected in the "Preferred Scenario" to be adopted by ABAG in May 2012 as part of the 'Sustainable Communities Strategy" to be included in the Regional Transportation Plan. The precise method for allocating total dwelling units to the subregions will be released for comment by the ABAG Executive Board on May 17, 2012. A public hearing on the allocation to subregions will be included as part of the public hearing scheduled at the ABAG Regional Planning Committee meeting of June 6, 2012. Final adoption of the allocation to subregions will occur the ABAG Executive Board meeting of July 19, 2012.

   b. The method for allocating the Subregion's share of RHND by income will be the same method that is used for allocating the region's share of the RHND by income in ABAG's final RHNA methodology scheduled for adoption by the ABAG Executive Board on July 19, 2012.

4. Release of Initial Draft Allocations

   ABAG will issue initial draft allocations, including allocations for each of the local governments that are members of the Subregion (Draft Default Allocations), no later than July 20, 2012 and will close the period for local jurisdictions to request a revision effective September 18, 2012.

5. Possible Default and Dissolution of Subregion

   a. If prior to ABAG's deadline for requests for revisions (currently set for September 18, 2012) any member of the Subregion notifies ABAG in writing that it is withdrawing from the Subregion, then the withdrawing member will participate in the RHNA using their Draft Default Allocations subject to the timelines and procedures applicable to the other jurisdictions in the region, including but not limited to those governing requests for revisions under Govt C. section 65584.05(b).

   b. If prior to ABAG's deadline for appeals (currently set for January 11, 2013), any member of the Subregion notifies ABAG in writing that it is withdrawing from the Subregion, then the withdrawing member will participate in the RHNA using their Draft Default Allocations subject to the timelines and procedures applicable to the other jurisdictions in the region, including but not limited to those governing appeals under Govt C. section 65584.05(d).

   c. Members of a subregion may not withdraw from the Subregion after ABAG's deadline for appeals.

6. Final Allocations

    a. ABAG will issue the final RHNA, including allocations for each of the local governments that are members of the Subregion (Final Default Allocations) on the same date as it issues final allocations for the region (currently scheduled for April 12, 2013). ABAG is currently scheduled to conduct a public hearing on, and adopt, the Final RHNA on May 16, 2013.

    b. The Subregion will adopt its final SubRHNA by February 1, 2013 pursuant to a resolution containing consistency findings that meet the requirements of Govt. C. section 65584.04(i)(3) and transmit the final SubRHNA and a certified copy of the resolution to ABAG for inclusion in the final RHNA.

    c. ABAG will either accept the final SubRHNA and the consistency findings made in the SubRHNA resolution or notify the Subregion of the flaws in the consistency findings. If the latter occurs, ABAG and the Subregion will meet and agree an approach that will meet the requirements in Govt C. section 65584.04(i)(3).

7. Amendments to and Enforcement of this Agreement and Liability

    a. ABAG and the Subregion are each undertaking the responsibility to conduct a State mandated process (RHNA and SubRHNA, respectively) for the benefit of their respective members. This Agreement memorializes what each party understands is the cooperation and coordination needed for each to carry out its RHNA or SubRHNA responsibilities at the time this Agreement is executed. Changes in exigent circumstances or the RHNA Law may cause a party to conclude that this Agreement should be amended. All amendments to this Agreement must be in writing and executed by the original signatories, or their designees.

    b. If the parties cannot agree on changes to this Agreement or if one or both parties believes the other is in breach of this Agreement, the parties agree that none of them will seek any legal or equitable remedy, including, but not limited to specific performance, petition for a writ or direct or consequential damages.

    c. None of the parties to this Agreement assumes any responsibility for the acts or omissions of any other party. None of the parties to this Agreement intends to create any third party beneficiaries of this Agreement.

8. 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(ies) is(are) entitled to rely on such representation regardless of whatever information it may have to the contrary.

b. The following are the Contact Persons for ABAG and the Subregion 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 Subregion or RHNA or SubRHNA. Each party is entitled to rely on the actions, or inaction, of the Contact Person as though given by ABAG or the Subregion.

ABAG Contact:
Name: _____
Address: _____
City: _____
State/Zip: _____
Telephone: _____

Subregion Contact
Name: _____
Address: _____
City: _____
State/Zip: _____
Telephone: _____

ASSOCIATION OF BAY AREA GOVERNMENTS

By_____
Ezra Rapport, Executive Director

APPROVED AS TO FORM AND CONTENT:

By_____
Kenneth K. Moy, Legal Counsel

SUBREGION

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND CONTENT:

By_____

Name: _____

Title: _____

Attachment A: Jurisdictions that Have Formed a Subregion

Napa County
American Canyon
Calistoga
Napa
St. Helena
Yountville
Unincorporated Napa County

San Mateo County
Atherton
Belmont
Brisbane
Burlingame
Colma
Daly City
East Palo Alto
Foster City
Half Moon Bay
Hillsborough
Menlo Park
Millbrae
Pacifica
Portola Valley
Redwood City
San Bruno
San Carlos
San Mateo
South San Francisco
Woodside
Unincorporated San Mateo County

Solano County
Benicia
Dixon
Fairfield
Rio Vista
Suisun City
Vacaville
Vallejo
Unincorporated Solano County

2014-2022 RHNA / SCS Schedule

This schedule aligns the milestones for the RHNA with those of the SCS/RTP. The dates for each milestone take statutory requirements for public comment, local government response, etc. into account.

		ABAG RHNA Milestones	SubRHNA Milestones	SCS/RTP Milestones
1	Subregions Form		Mar. 2011	
2	Present SCS Alternative Scenario Concepts for Initial Review			June 10, 2011
3	Release Block Grant Concept			July 2011
4	Review RHNA Methodology Concepts at ABAG Executive Board	Sept. 2011		
5	Transportation Project Assessment to MTC Planning Committee			Oct./Nov. 2011
6	Release SCS Alternative Scenario Results for Public Review			Dec. 2011
7	County Public Workshops			Jan. 2012
8	Dept. of Housing and Community Development (HCD) Issues RHND[1]	Feb. 24, 2012		
9	Release Draft SCS Preferred Scenario & OneBayArea Grant Proposal			Mar. 2012
10	Release Preliminary Draft RHNA Method	Mar. 2012		
11	MTC and ABAG Adopt SCS Preferred Scenario & OneBayArea Grant			May 2012
12	EIR Kick-Off (Scoping) Public Meeting			May 2012
13	ABAG Releases Draft Method and Assigns Preliminary Subregional Shares[2] *Action to be taken by ABAG Executive Board*	May 17, 2012		
14	Public hearing on Draft Method and Preliminary Subregional Shares at ABAG Regional Planning Committee[3]	June 6, 2012		
15	ABAG Adopts Final Method *Action to be taken by ABAG Executive Board*	July 19, 2012		
16	ABAG Releases Draft Allocation[4] *Action to be taken by ABAG Executive Board*	July 20, 2012		
17	Deadline for Local Requests for Revisions to Draft Allocation[5]	Sept. 18, 2012		
18	Release Draft SCS/RTP and Draft EIR			Nov. 2012
19	Release Draft Air Quality Conformity Analysis			Jan. 2013
20	ABAG Responds to Requests for Revisions[6]	By Nov. 15, 2012		
21	Deadline for Local Appeals to Draft Allocation	Jan. 11, 2013		
22	Respond to Comments on Draft SCS/RTP EIR and Air Quality Conformity Analysis			Feb. 2013
23	Public Hearing on Local Appeals of ABAG Response to Revision Requests[7]	Between Feb. 20 -25, 2013		
24	Deadline for Subregions to Submit Final Allocation and Resolution of Consistency with the SCS to ABAG for Review and Possible Consultation		Feb. 1, 2013	
25	ABAG Issues Final Allocation[8]	April 12, 2013		
26	Adopt RTP/SCS, Certify EIR, Make Conformity Determination			April 2013
27	ABAG Adopts Final Allocation at Public Hearing[9] *Action to be taken by ABAG Executive Board*	May 16, 2013		
28	Local Governments Adopt Housing Element Revision	Oct. 2014		

[1] The date for HCD to determine the RHND has been set at this date by mutual agreement between ABAG and HCD.

[2] The survey of local governments regarding the statutory RHNA factors must be conducted within the 6 months prior to this date. GC §65584.04(b)

[3] GC §65584.04(h) requires a public hearing and 60-day comment period on the draft method.

[4] There is no statutory requirement that there be a gap between adoption of the final method and issuance of the draft RHNA.

[5] Local jurisdictions have 60 days to review allocation and request revisions. GC §65584.05(b)

[6] ABAG has up to 60 days to respond to requests for revisions, may be compressed. GC §65584.05(c)

[7] A hearing must take place no earlier than 40 days and no more than 45 days after the deadline to file appeals. GC §65584.05(e)

[8] Must occur within 45 days after completion of appeal process. Could be compressed to 0 days. GC §65584.05(f)

[9] Must occur within 45 days of issuance of final allocation. No minimum interval required. GC §65584.05(h)