



# SOUTHERN CALIFORNIA ASSOCIATION of GOVERNMENTS

## **RHNA SUBREGIONAL DELEGATION GUIDELINES**

### **Meaning of "Subregional Entity" and Notification Deadline**

Under the law, SCAG may delegate to a "subregional entity" the responsibility of preparing a subregional housing need allocation for the jurisdictions within the particular subregional entity, that will be included as part of SCAG's Regional Housing Need Allocation (RHNA) Plan. Specifically, California Government Code Section 65584.03 provides as follows:

"...[A]t least two or more cities and a county, or counties, may form a subregional entity for the purpose of allocation of the subregion's existing and projected need for housing among its members in accordance with the allocation methodology established pursuant to Section 65584.04. The purpose of establishing a subregion shall be to recognize the community of interest and mutual challenges and opportunities for providing housing within a subregion. A subregion formed pursuant to this section may include a single county and each of the cities in that county or any other combination of geographically contiguous local governments and shall be approved by the adoption of a resolution by each of the local governments in the subregion as well as by the council of governments. All decisions of the subregion shall be approved by vote as provided for in rules adopted by the local governments comprising the subregion or shall be approved by vote of the county or counties, if any, and the majority of the cities with the majority of population within a county or counties."

The subregional entity must notify SCAG at least 28 months before the scheduled Housing Element update of its formation. In the case of SCAG's 5<sup>th</sup> cycle RHNA, notification by the proposed subregional entity must be provided to SCAG by June 30, 2011. Submittal of the required adopting resolution, a sample of which is attached herein as Exhibit A, shall occur prior to approval of the Delegation Agreement between SCAG and the subregional entity.

### **Delegation – Scope of Responsibilities**

After a subregional entity has notified SCAG of its formation and intent to accept delegation of the RHNA process, SCAG and the subregional entity will enter into an agreement that set forth the process, timing, and other terms and conditions of the delegation of responsibilities by SCAG to the respective subregion. By accepting delegation, the subregional entity would be tasked

with all of the responsibilities related to distributing the housing need for the jurisdictions within the subregion. This includes developing a subregional allocation methodology, releasing a draft subregional housing allocation plan by income groups using the approved subregional allocation methodology, determining the revision requests and appeals submitted by jurisdictions within the subregion regarding its draft subregional housing allocations, preparing and approving the final subregional housing allocation, and conducting the required public hearings. A sample Delegation Agreement is attached herein as Exhibit B.

In developing its subregional allocation methodology, it should be noted that if the subregional entity adopts a social equity/fair share adjustment as part of its subregional allocation methodology that is different from the one adopted by SCAG, and applies the adjustment to its subregional total, a gap in certain income categories will emerge between the subregion and the rest of the applicable county. To address the issue, the subregional entity agrees that it will be responsible for maintaining its exact subregional housing target by income categories assigned by SCAG. After the delegated subregion applies its social equity/fair share adjustment, the subregional entity may exercise its discretion to distribute any missing or extra units in each income category to its own jurisdictions, so as to meet the exact subregional housing total and income distribution assigned by SCAG.

SCAG anticipates receiving the Regional Housing Need Determination from the State of California Department of Housing and Community Development (HCD) in August 2011. A subregional housing target will be issued afterwards by SCAG to the subregional entity as part of a required public hearing. These targets will be based upon such factors as the delegate subregions' share of the household growth from January 1, 2011 to December 31, 2021, a healthy market vacancy rate, and replacement needs based upon demolitions from all jurisdictions within the delegated subregion.

The subregional entity's share of the regional housing target is to be consistent with the distribution of households assumed for the comparable time period within the 2012 Regional Transportation Plan/Sustainable Communities Strategy. The final subregional allocation will be submitted to SCAG for approval before SCAG prepares its final RHNA plan.

In the event a subregional entity fails to fulfill its responsibilities provided under state law or in accordance with the subregional Delegation Agreement, SCAG will be required to develop and make final allocation to members of the subregional entity, according to the regionally adopted method pursuant to Government Code Section 65584 and 65584.04.

### **Financial Assistance for Delegation**

SCAG staff has budgeted approximately \$200,000 as financial assistance for subregional delegation. In order to best utilize these limited funds, SCAG

shall provide \$1000 for each local jurisdiction in a subregional entity who accepts delegation, based upon dividing \$200,000 into the total number of jurisdictions in the SCAG region (which is approximately 200 since there are 190 cities and 6 counties in the SCAG region). The amount of the respective financial assistance for the subregional entity and its distribution shall be outlined in the Delegation Agreement.

**Proposed Timeline for Subregional Delegation**

The following represents the proposed time for RHNA subregional delegation:

By June 30, 2011	Notice of Intent submitted by proposed Subregional Entity
By July 30, 2011	SCAG to provide Subregional Entity with Growth Forecast information and survey information regarding AB 2158 factors
By August 31, 2011	State HCD to provide SCAG with Regional Housing Need Determination
By August 31, 2011	Deadline for SCAG and Subregional Entity to enter into Delegation Agreement (adopting resolutions to be approved beforehand)
By Sept. 30, 2011	SCAG to provide Subregional Entity with Subregional Housing Need Determination as part of public hearing
By Oct. 31, 2011	SCAG releases its proposed Regional Allocation Methodology; Subregional Entity releases its proposed Subregional Allocation Methodology
By Dec. 31, 2011	SCAG approves final Regional Allocation Methodology; Subregional Entity approves final Subregional Allocation Methodology; last day for Subregional Entity to terminate Delegation Agreement and relinquishes its delegation responsibilities
By April 5, 2012	SCAG releases Draft RHNA Plan; Subregional Entity Releases Draft Subregional Housing Allocation Plan
Spring-Summer 2012	Revisions requests and/or appeals (if any) processes by SCAG and Subregional Entity
By August 31, 2012	Subregional Entity to approve its Final Subregional Housing Allocation Plan and submit it to SCAG

By October 4, 2012	SCAG to approve its Final RHNA Plan, which incorporates the Final Subregional Housing Allocation Plan by the Subregional Entity; Submittal of Final RHNA Plan to State HCD
By December 4, 2012	Deadline for HCD to approve SCAG's Final RHNA Plan
October 31, 2013	Deadline for updates of Local Housing Elements

Attachments to these Guidelines:

Exhibit A – Sample Delegation Resolution

Exhibit B – Sample Delegation Agreement

**Exhibit A to the RHNA Subregional Delegation Guidelines**

**RESOLUTION OF (NAME OF LOCAL JURISDICTION)  
ESTABLISHING SUBREGIONAL ENTITY FOR PURPOSES  
OF DEVELOPING SUBREGIONAL HOUSING ALLOCATION PLAN TO BE  
INCLUDED IN REGIONAL HOUSING ALLOCATION PLAN BY THE  
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

Whereas, the California Legislature has declared, in Government Code Section 65580, that the availability of housing is of vital state importance, and it is a goal of the State of California to expand housing opportunities and accommodate housing needs of Californians in all economic levels;

Whereas, counties and cities within California, in order to ensure attainment of the State's housing goal, are required under state law to adopt a general plan, which must include a housing element, which identifies and analyzes existing and projected housing needs, and enumerates goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement and development of housing to meet the needs of all economic segments of the community;

Whereas, Government Code Section 65583(a) requires each such housing element to provide an assessment of the "share" of regional housing needs which must be borne by a local jurisdiction, and an inventory of resources and constraints relevant to the meeting of those needs;

Whereas, the Southern California Association of Governments (SCAG) is a joint powers authority agency representing six counties: Los Angeles, Orange, San Bernardino, Riverside, Ventura and Imperial; and is mandated by the federal and state law to research and develop long range regional plans related to transportation, growth, waste management, air quality and housing;

Whereas, SCAG, in consultation with the California Department of Housing and Community Development ("HCD" herein), is required to determine the existing and projected need for housing for the SCAG region pursuant to Government Code Sections 65584 et seq. by way of preparation of a Regional Housing Needs Assessment ("RHNA");

Whereas, counties and cities use the RHNA to prepare updates to its respective housing elements, and specifically, its assessment of its "share" of the regional housing needs;

Whereas, SCAG is preparing the fifth update of the RHNA and intends to submit the RHNA to HCD on or about October 4, 2012. Counties and cities within the SCAG region thereafter are required to prepare and submit their respective updated housing elements to HCD by October 30, 2013; and

Whereas, SCAG is authorized under current state law to delegate the responsibility of allocating the projected housing need for jurisdictions with a subregion to a subregional entity by way of a written agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the (City Council/Board of Supervisors) of the (Name of Local Jurisdiction):

1. The (Name of Local Jurisdiction) agrees to form a “subregional entity” within the meaning set forth in Government Code Section 65583 with the jurisdictions of \_\_\_\_\_ (collectively referred to herein as “Subregion”). This Subregion desires to accept delegation of the responsibility of allocating the total housing need for the local governments in its Subregion, under the terms and conditions of a written agreement to be entered into between the Subregion and SCAG.

2. The (Name of Local Jurisdiction) authorizes \_\_\_\_\_ to act on behalf of the Subregion for purposes of facilitating the application of this Resolution.

**APPROVED AND ADOPTED** by the (City Council/Board of Supervisors) of the (Name of Local Jurisdiction) on this \_\_\_\_ day of \_\_\_\_\_, 2011.

**DELEGATION AGREEMENT  
CONCERNING HOUSING NEEDS ASSESSMENT  
BETWEEN THE SOUTHERN CALIFORNIA ASSOCIATION OF  
GOVERNMENTS AND (NAME OF SUBREGIONAL ENTITY)**

This Delegation Agreement (“Agreement” herein) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Southern California Association of Governments, a joint powers authority established under California law (hereinafter referred to as “SCAG”), and the (NAME OF SUBREGIONAL ENTITY), a \_\_\_\_\_ (hereinafter referred to as “Subregion”), collectively referred to herein as the “Parties.”

RECITALS

The following recitals are a substantive part of this Agreement, and are incorporated herein by this reference.

A. The California Legislature has declared, in Government Code Section 65580, that the availability of housing is of vital state importance, and it is a goal of the State of California to expand housing opportunities and accommodate housing needs of Californians in all economic levels.

B. Counties and cities within California, in order to ensure attainment of the State’s housing goal, are required under state law to adopt a general plan, which must include a housing element, which identifies and analyzes existing and projected housing needs, and enumerates goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement and development of housing to meet the needs of all economic segments of the community.

C. Government Code Section 65583(a) requires each such housing element to provide an assessment of the “share” of regional housing needs which must be borne by a local jurisdiction, and an inventory of resources and constraints relevant to the meeting of those needs.

D. SCAG is a joint powers authority agency representing six counties: Los Angeles, Orange, San Bernardino, Riverside, Ventura and Imperial; and is mandated by the federal and state law to research and develop long range regional plans related to transportation, growth, waste management, air quality and housing.

E. SCAG, in consultation with the California Department of Housing and Community Development (“HCD” herein), is required to determine the existing and projected need for housing for the SCAG region pursuant to Government Code Sections 65584 et seq. by way of preparation of a Regional Housing Needs Assessment (“RHNA”). Copies of Government Code Section 65584 et seq. are attached with this Agreement as Exhibit “A.”

F. Counties and cities use the RHNA to prepare updates to its respective housing elements, and specifically, its assessment of its “share” of the regional housing needs.

G. SCAG is preparing the fifth update of the RHNA and intends to submit the RHNA to HCD on or about October 4, 2012. Counties and cities within the SCAG region thereafter are required to prepare and submit their respective updated housing elements to HCD by October 30, 2013.

H. SCAG is authorized under current state law to delegate the responsibility of allocating the projected housing need for jurisdictions with a subregion to a subregional entity by way of a written agreement.

J. The Subregion is a “subregional entity” within the meaning set forth in Government Code Section 65583 and desires to accept delegation of the responsibility of allocating the total housing need for the local governments in its subregion, under the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

**I. Parties and Purpose.**

- A. The Executive Director of SCAG, or his designee, and the \_\_\_\_\_ of Subregion, or his designee, are authorized to execute this Agreement and carry out the responsibilities of the Parties herein.
- B. The purpose of this Agreement is to establish the responsibilities of the Parties associated with preparation of the fifth update of RHNA as they relate to delegation of the housing allocation process.

**II. Definitions:**

For purposes of this Agreement, the following terms shall be defined as follows:

“*Final Subregional Housing Allocation*” shall mean the final allocation made by Subregion for each city or county with the Subregion, of its share of the Total Subregional Allocation, which shall be issued by the Subregion after conclusion of the appeal and trade and transfer process, as described in Section IV, subsections D and E, below.

“*Final RHNA Plan*” shall mean the final allocation of regional housing need to cities and counties within the SCAG region adopted by SCAG for submittal to HCD.

*“Integrated Growth Forecast”* shall mean the growth scenario established by SCAG for the 2012 Regional Transportation Plan and 2012 RHNA and ties housing to transportation planning.

*“Subregional Allocation Methodology”* shall mean the methodology to be used by Subregion in distributing the Total Subregional Allocation to the local jurisdictions within the Subregion.

*“Total Regional Allocation”* shall mean the share of the statewide housing need assigned to the SCAG region by HCD.

*“Total Subregional Allocation”* shall mean the share of the Total Regional Allocation assigned to the Subregion by SCAG.

### **III. Duties of SCAG:**

For purposes of this Agreement, SCAG shall be responsible for the following duties:

- A. Furnishing Total Subregional Allocation. SCAG shall furnish to Subregion the Total Subregional Allocation.
- B. Furnishing background information regarding Integrated Growth Forecast and AB 2158 factors. SCAG shall furnish to Subregion background data and information regarding SCAG’s Integrated Growth Forecast and survey information regarding AB 2158 factors, which may be necessary for Subregion’s preparation of its Final Allocation of Local Housing Need.
- C. Review of Subregional Allocation Methodology. SCAG shall review the Subregional Allocation Methodology to ensure its consistency with the applicable provisions of Government Code Section 65584 et seq., and the terms of this Agreement.
- D. Review of Final Subregional Housing Allocation. SCAG shall review the Final Subregional Housing Allocation established by Subregion in order to ensure its consistency with the applicable provisions of Government Code Section 65584 et seq., and the terms of this Agreement. In the event that the Final Allocation of Local Housing Need established by Subregion is inconsistent with the applicable provisions of Government Code Section 65584 et seq., or the terms of this Agreement, SCAG reserves the right to make the final housing need allocations to counties and cities within the Subregion in accordance with subdivision (d) of Government Code Section 65584.03.

**IV. Duties of Subregion:**

For purposes of this Agreement, the Subregion in accepting delegation shall be responsible for the following duties:

- A. Determination of Subregional Allocation Methodology. Subregion shall develop and adopt a Subregional Allocation Methodology in accordance with the provisions of Government Code Section 65584 et seq., including but not limited to Government Code Section 65584 and 65584.04. If the Subregion adopts a social equity/fair share adjustment as part of its Subregional Allocation Methodology that is different from the social equity/fair share adjustment adopted by SCAG, and applies the adjustment to its subregional total, a gap in certain income categories will emerge between the Subregion and the rest of the applicable county. To address the issue, the Subregion shall be responsible for maintaining its Total Subregional Allocation by income categories assigned by SCAG. After the Subregion applies its social equity/fair share adjustment, the Subregion may exercise its discretion to distribute any missing or extra units in each income category to its own jurisdictions, so as to maintain the Total Subregional Allocation by income category as assigned by SCAG.
- B. Determination of Final Subregional Housing Allocation. Subregion shall determine the Final Subregional Housing Allocation for each city and/or county contained within the boundaries of the Subregion in accordance with the applicable requirements of Government Code Section 66584 et seq. Subregion's determination of the Final Subregional Housing Allocation shall be consistent with the Integrated Growth Forecast and the Subregional Allocation Methodology. This determination shall be made in a cooperative manner with the affected city or county governments.
- C. Maintain Total Subregional Allocation. In determining the Final Subregional Housing Allocation, the Subregion shall maintain the Total Subregional Allocation. Maintenance of the Total Subregional Allocation shall mean to account for the total housing need originally assigned to Subregion by SCAG. By way of example, this means a downward adjustment in one jurisdiction's allocation as a result of the Subregion's grant of the jurisdiction's appeal shall be offset by an upward adjustment in the allocation(s) of another jurisdiction(s) in the Subregion.
- D. Administer Revision Requests and Appeals Processes. The Subregion shall administer and facilitate revision requests and appeals processes for local jurisdictions within the Subregion seeking to revise or appeal the original local housing need allocation made by SCAG as part of the draft Subregional Housing Allocation plan. The Subregion shall administer the revision requests and appeals processes in accordance with the applicable provisions of Government Code Section 66584.05. The Subregion shall

adjust allocations to local governments based upon the results of the revision requests and appeals processes, and follow the provisions set forth in subdivision (g) of Government Code Section 65584.05 relating to adjustments. Local jurisdictions shall have no separate right of appeal to SCAG.

- E. Administer Trade and Transfer Process. The Subregion may administer a “trade and transfer process” prior to adoption of its Final Subregional Housing Allocation. This trade and transfer process may involve the Subregion facilitating negotiations between two or more cities relating to an alternate distribution of housing allocations between the affected cities. If the alternate distribution maintains the total housing need originally assigned to these communities, the Subregion shall include the alternate distribution in Subregion’s Final Subregional Housing Allocation. The trade and transfer process may commence before the start of the revision requests and appeals processes and continue until the Subregion’s adoption of its Final Subregional Housing Allocation. Trades and transfers may also occur outside of the Subregion provided the Total Subregional Allocation is maintained or accounted for. To the extent that SCAG develops guidelines relating to a trade and transfer process, Subregion’s administration of its trade and transfer shall be consistent with these guidelines.
  
- F. Compliance with RHNA Subregional Delegation Timeline and Submission of Subregion’s Final Subregional Housing Allocation. Subregion shall comply and adhere to the SCAG RHNA Timeline, attached hereto as Exhibit “B.” Subregion shall deliver its Final Subregional Housing Allocation to SCAG in time to be included as part of SCAG’s public hearing relating to the adoption of SCAG’s Final RHNA Plan, unless this Agreement is terminated pursuant to Section VI herein.
  
- G. Records Maintenance. The Subregion shall maintain organized files of all public records and materials prepared or received in connection with any official business taken pursuant to this Agreement. Subregion shall also maintain a written record of any administrative proceeding conducted pursuant to this Agreement, whether by tape recording or by other means. Subregion shall make such records available to SCAG upon written request to Subregion. Subregion shall maintain these records for a period of not less than three (3) years after submission of its Final Subregional Housing Allocation to SCAG.

V. **Financial Assistance.**

In consideration for Subregion’s agreement to undertake all delegation duties required by this Agreement, SCAG shall provide to Subregion financial assistance in the maximum amount of \_\_\_\_\_ **(fill in amount which is based upon**

**\$1,000 for each local government in the Subregion**), hereinafter referred to as “Financial Assistance”. Subregion shall utilize the Financial Assistance solely to implement the terms of this Agreement, including but not limited to, providing staffing (both administrative and technical) to undertake the delegation duties required herein. Subregion shall be responsible for any additional costs required to implement this Agreement that is above the amount of Financial Assistance.

SCAG shall disburse the Financial Assistance to Subregion based upon the following performance milestones:

1. Full Execution of Agreement: Disbursement of 25% of Financial Assistance;
2. Release of draft Subregional Housing Allocation plan: Disbursement of 25% of Financial Assistance;
3. Completion of Revision Requests/Appeals Processes: Disbursement of 25% of Financial Assistance; and
4. Delivery to SCAG and approval by SCAG of Final Subregional Housing Allocation: Disbursement of 25% of Financial Assistance.

Subregion shall submit sufficient documentation to SCAG to evidence its completion of the above-mentioned performance milestones prior to disbursement of the Financial Assistance. By way of example, in order to evidence completion of the appeals process, Subregion shall submit a written report to SCAG detailing the appeal process, including information relating to the number of appeals and its respective outcomes. SCAG shall have the right to request and review additional information from Subregion in order to approve disbursement of the Financial Assistance.

## **VI. Termination of Agreement.**

- A. Termination by Subregion. Subregion shall have the right to terminate this Agreement without cause by giving written notice to SCAG by no later than December 31, 2011, of its intent to terminate. In such event all finished or unfinished documents, data, studies, reports or other materials prepared by Subregion relating to this Agreement shall be given to SCAG. In the event of termination, Subregion shall forfeit any Financial Assistance not disbursed by SCAG.
- B. Termination by SCAG. SCAG shall have the right to terminate this Agreement with cause, including but not limited to, if SCAG has a reasonable basis to conclude that Subregion shall be unable to fulfill in a timely and proper manner its duties under this Agreement. SCAG shall provide written notice to Subregion of its intent to terminate this Agreement, which shall be effective ten (10) days from the date on the notice. In the event of such termination, all finished or unfinished documents, data, studies, reports or other materials prepared by Subregion relating to this Agreement shall be given to SCAG in order for SCAG to determine the local allocation of need

for all cities and counties within the Subregion. As a result of termination of this Agreement, SCAG reserves the right to distribute the share of regional housing need to cities and counties within the Subregion. In the event of termination by SCAG, Subregion shall forfeit any Financial Assistance not disbursed by SCAG.

**VII. Other Provisions.**

- A. Notices. All notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by U.S. mail, certified, or by reputable document delivery service such as Federal Express. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices shall be delivered as follows:

SCAG: Southern California Assn. of Governments  
Attn: Douglas Williford,  
Deputy Executive Director of Planning  
818 West Seventh Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017-3435

Subregion: (Name of Subregional Entity)  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. Prohibition against Assignment/Subcontract. Subregion shall not assign or subcontract any rights, duties or obligation in this Agreement.
- C. Governing Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.
- D. 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.
- E. 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.
- F. Interpretation; Days. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever the word "day" or "days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a

reference is made herein to a particular Section of this Agreement, it shall mean and include all subsections and subparts thereof.

- G. Exhibits. All exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.
  
- H. Cooperation between the Parties/Dispute Resolution. SCAG and Subregion 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.
  
- I. 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. This Agreement may be executed in counterpart originals, and when the original signatures are assembled together, shall constitute a binding agreement of the Parties.

[Signature Page to follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by its duly authorized officers, shall become effective as of the date in which the last of the Parties, whether SCAG or Subregion, executes this document.

**SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS  
("SCAG")**

**(NAME OF SUBREGIONAL ENTITY)  
("Subregion")**

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Joann Africa, Chief Counsel

By \_\_\_\_\_  
Counsel for Subregion

## Exhibit “A” to RHNA Delegation Agreement

### California Govt. Code Sections 65584-65584.05 (“RHNA” Statutes)

#### **§ 65584. Existing and projected regional housing needs; share of city or county needs; determination; objectives; household income levels; exemption from environmental regulations**

(a)(1) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the department shall determine the existing and projected need for housing for each region pursuant to this article. For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing need shall include that share of the housing need of persons at all income levels within the area significantly affected by the general plan of the city or county.

(2) While it is the intent of the Legislature that cities, counties, and cities and counties should undertake all necessary actions to encourage, promote, and facilitate the development of housing to accommodate the entire regional housing need, it is recognized, however, that future housing production may not equal the regional housing need established for planning purposes.

(b) The department, in consultation with each council of governments, shall determine each region's existing and projected housing need pursuant to Section 65584.01 at least two years prior to the scheduled revision required pursuant to Section 65588. The appropriate council of governments, or for cities and counties without a council of governments, the department, shall adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county at least one year prior to the scheduled revision for the region required by Section 65588. The allocation plan prepared by a council of governments shall be prepared pursuant to Sections 65584.04 and 65584.05 with the advice of the department.

(c) Notwithstanding any other provision of law, the due dates for the determinations of the department or for the council of governments, respectively, regarding the regional housing need may be extended by the department by not more than 60 days if the extension will enable access to more recent critical population or housing data from a pending or recent release of the United States Census Bureau or the Department of Finance. If the due date for the determination of the department or the council of governments is extended for this reason, the department shall extend the corresponding housing element revision deadline pursuant to Section 65588 by not more than 60 days.

(d) The regional housing needs allocation plan shall be consistent with all of the following objectives:

(1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households.

(2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns.

(3) Promoting an improved intraregional relationship between jobs and housing.

(4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census.

(e) For purposes of this section, “household income levels” are as determined by the department as of the most recent decennial census pursuant to the following code sections:

- (1) Very low incomes as defined by Section 50105 of the Health and Safety Code.
- (2) Lower incomes, as defined by Section 50079.5 of the Health and Safety Code.
- (3) Moderate incomes, as defined by Section 50093 of the Health and Safety Code.
- (4) Above moderate incomes are those exceeding the moderate-income level of Section 50093 of the Health and Safety Code.
- (f) Notwithstanding any other provision of law, determinations made by the department, a council of governments, or a city or county pursuant to this section or Section 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, 65584.06, 65584.07, or 65584.08 are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

**§ 65584.01. Existing and projected regional housing needs; manner of determination**

(a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, where applicable, shall determine the existing and projected need for housing for each region in the following manner:

(b) The department's determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments. If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of 3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If no agreement is reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.

(c)(1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(D) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs.

(E) Other characteristics of the composition of the projected population.

(F) The relationship between jobs and housing, including any imbalance between jobs and housing.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (F), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments.

(d)(1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). The region's existing and projected housing need shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan. Within 30 days following notice of the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.

(2) The objection shall be based on and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (c), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to subdivision (c).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

#### **§ 65584.02. Existing and projected regional housing needs; alternative manner of determination**

(a) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the existing and projected need for housing may be determined for each region by the department as follows, as an alternative to the process pursuant to Section 65584.01:

(1) In a region in which at least one subregion has accepted delegated authority pursuant to Section 65584.03, the region's housing need shall be determined at least 26 months prior to the housing element update deadline pursuant to Section 65588. In a region in which no subregion has accepted delegation pursuant to Section 65584.03, the region's housing need shall be determined at least 24 months prior to the housing element deadline.

(2) At least six months prior to the department's determination of regional housing need pursuant to paragraph (1), a council of governments may request the use of population and household forecast assumptions used in the regional transportation plan. This request shall include all of the following:

(A) Proposed data and assumptions for factors contributing to housing need beyond household growth identified in the forecast. These factors shall include allowance for vacant or replacement units, and may

include other adjustment factors.

(B) A proposed planning period that is not longer than the period of time covered by the regional transportation improvement plan or plans of the region pursuant to Section 14527, but a period not less than five years, and not longer than six years.

(C) A comparison between the population and household assumptions used for the Regional Transportation Plan with population and household estimates and projections of the Department of Finance.

(b) The department shall consult with the council of governments regarding requests submitted pursuant to paragraph (2) of subdivision (a). The department may seek advice and consult with the Demographic Research Unit of the Department of Finance, the State Department of Transportation, a representative of a contiguous council of governments, and any other party as deemed necessary. The department may request that the council of governments revise data, assumptions, or methodology to be used for the determination of regional housing need, or may reject the request submitted pursuant to paragraph (2) of subdivision (a). Subsequent to consultation with the council of governments, the department will respond in writing to requests submitted pursuant to paragraph (1) of subdivision (a).

(c) If the council of governments does not submit a request pursuant to subdivision (a), or if the department rejects the request of the council of governments, the determination for the region shall be made pursuant to Sections 65584 and 65584.01.

**§ 65584.03. Subregional entity for allocation of existing and projected housing needs; notification of formation; determination; failure to complete allocation**

(a) At least 28 months prior to the scheduled housing element update required by Section 65588, at least two or more cities and a county, or counties, may form a subregional entity for the purpose of allocation of the subregion's existing and projected need for housing among its members in accordance with the allocation methodology established pursuant to Section 65584.04. The purpose of establishing a subregion shall be to recognize the community of interest and mutual challenges and opportunities for providing housing within a subregion. A subregion formed pursuant to this section may include a single county and each of the cities in that county or any other combination of geographically contiguous local governments and shall be approved by the adoption of a resolution by each of the local governments in the subregion as well as by the council of governments. All decisions of the subregion shall be approved by vote as provided for in rules adopted by the local governments comprising the subregion or shall be approved by vote of the county or counties, if any, and the majority of the cities with the majority of population within a county or counties.

(b) Upon formation of the subregional entity, the entity shall notify the council of governments of this formation. If the council of governments has not received notification from an eligible subregional entity at least 28 months prior to the scheduled housing element update required by Section 65588, the council of governments shall implement the provisions of Sections 65584 and 65584.04. The delegate subregion and the council of governments shall 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.

(c) At least 25 months prior to the scheduled revision, the council of governments shall determine the share of regional housing need assigned to each delegate subregion. The share or shares allocated to the delegate subregion or subregions by a council of governments shall be in a proportion consistent with the distribution of households assumed for the comparable time period of the applicable regional transportation plan. Prior to allocating the regional housing needs to any delegate subregion or subregions, the council of governments shall hold at least one public hearing, and may consider requests for revision of the proposed allocation to a subregion. If a proposed revision is rejected, the council of governments shall respond with a written explanation of why the proposed revised share has not been accepted.

(d) Each delegate subregion shall fully allocate its share of the regional housing need to local governments within its subregion. If a delegate subregion fails to complete the regional housing need allocation process among its member jurisdictions in a manner consistent with this article and with the delegation agreement between the subregion and the council of governments, the allocations to member jurisdictions shall be made by the council of governments.

**§ 65584.04. Methodology for distributing existing and projected regional housing need to cities and counties; development; survey of member jurisdictions; public participation; factors; adoption following public comment period; coordination with regional transportation plan**

(a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to this section. The methodology shall be consistent with the objectives listed in subdivision (d) of Section 65584.

(b)(1) No more than six months prior to the development of a proposed methodology for distributing the existing and projected housing need, each council of governments shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors listed in subdivision (d) that will allow the development of a methodology based upon the factors established in subdivision (d).

(2) The council of governments shall seek to obtain the information in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible.

(3) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

(4) If the council of governments fails to conduct a survey pursuant to this subdivision, a city, county, or city and county may submit information related to the items listed in subdivision (d) prior to the public comment period provided for in subdivision (c).

(c) Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Participation by organizations other than local jurisdictions and councils of governments shall be solicited in a diligent effort to achieve public participation of all economic segments of the community. The proposed methodology, along with any relevant underlying data and assumptions, and an explanation of how information about local government conditions gathered pursuant to subdivision (b) has been used to develop the proposed methodology, and how each of the factors listed in subdivision (d) is incorporated into the methodology, shall be distributed to all cities, counties, any subregions, and members of the public who have made a written request for the proposed methodology. The council of governments, or delegate subregion, as applicable, shall conduct at least one public hearing to receive oral and written comments on the proposed methodology.

(d) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that allocates regional housing needs:

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction,

including all of the following:

- (A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.
- (B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.
- (C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.
- (D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.
- (3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.
- (4) The market demand for housing.
- (5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.
- (6) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.
- (7) High-housing cost burdens.
- (8) The housing needs of farmworkers.
- (9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.
- (10) Any other factors adopted by the council of governments.
- (e) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (d) was incorporated into the methodology and how the methodology is consistent with subdivision (d) of Section 65584. The methodology may include numerical weighting.
- (f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments by the council of governments or delegate subregion pursuant to Section 65584.05.

(h) Following the conclusion of the 60-day public comment period described in subdivision (c) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, each council of governments, or delegate subregion, as applicable, shall adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion as applicable, and to the department.

(i)(1) It is the intent of the Legislature that housing planning be coordinated and integrated with the regional transportation plan. To achieve this goal, the allocation plan shall allocate housing units within the region consistent with the development pattern included in the sustainable communities strategy.

(2) The final allocation plan shall ensure that the total regional housing need, by income category, as determined under Section 65584, is maintained, and that each jurisdiction in the region receive an allocation of units for low- and very low income households.

(3) The resolution approving the final housing need allocation plan shall demonstrate that the plan is consistent with the sustainable communities strategy in the regional transportation plan.

**§ 65584.05. Draft allocation of regional housing needs; distribution; request for revisions and modification; appeal; public hearings; proposed final allocation and adoption of final plan; authority of council of governments**

(a) At least one and one-half years prior to the scheduled revision required by Section 65588, each council of governments and delegate subregion, as applicable, shall distribute a draft allocation of regional housing needs to each local government in the region or subregion, where applicable, based on the methodology adopted pursuant to Section 65584.04. The draft allocation shall include the underlying data and methodology on which the allocation is based. It is the intent of the Legislature that the draft allocation should be distributed prior to the completion of the update of the applicable regional transportation plan. The draft allocation shall distribute to localities and subregions, if any, within the region the entire regional housing need determined pursuant to Section 65584.01 or within subregions, as applicable, the subregion's entire share of the regional housing need determined pursuant to Section 65584.03.

(b) Within 60 days following receipt of the draft allocation, a local government may request from the council of governments or the delegate subregion, as applicable, a revision of its share of the regional housing need in accordance with the factors described in paragraphs (1) to (9), inclusive, of subdivision (d) of Section 65584.04, including any information submitted by the local government to the council of governments pursuant to subdivision (b) of that section. The request for a revised share shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation.

(c) Within 60 days after the request submitted pursuant to subdivision (b), the council of governments or delegate subregion, as applicable, shall accept the proposed revision, modify its earlier determination, or indicate, based upon the information and methodology described in Section 65584.04, why the proposed revision is inconsistent with the regional housing need.

(d) If the council of governments or delegate subregion, as applicable, does not accept the proposed revised share or modify the revised share to the satisfaction of the requesting party, the local government may appeal its draft allocation based upon either or both of the following criteria:

(1) The council of governments or delegate subregion, as applicable, failed to adequately consider the information submitted pursuant to subdivision (b) of Section 65584.04, or a significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted pursuant to that subdivision.

(2) The council of governments or delegate subregion, as applicable, failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established pursuant to Section 65584.04.

(e) The council of governments or delegate subregion, as applicable, shall conduct public hearings to hear all appeals within 60 days after the date established to file appeals. The local government shall be notified within 10 days by certified mail, return receipt requested, of at least one public hearing on its appeal. The date of the hearing shall be at least 30 days and not more than 35 days after the date of the notification. Before taking action on an appeal, the council of governments or delegate subregion, as applicable, shall consider all comments, recommendations, and available data based on accepted planning methodologies submitted by the appellant. The final action of the council of governments or delegate subregion, as applicable, on an appeal shall be in writing and shall include information and other evidence explaining how its action is consistent with this article. The final action on an appeal may require the council of governments or delegate subregion, as applicable, to adjust the allocation of a local government that is not the subject of an appeal.

(f) The council of governments or delegate subregion, as applicable, shall issue a proposed final allocation within 45 days after the completion of the 60-day period for hearing appeals. The proposed final allocation plan shall include responses to all comments received on the proposed draft allocation and reasons for any significant revisions included in the final allocation.

(g) In the proposed final allocation plan, the council of governments or delegate subregion, as applicable, shall adjust allocations to local governments based upon the results of the revision request process and the appeals process specified in this section. If the adjustments total 7 percent or less of the regional housing need determined pursuant to Section 65584.01, or, as applicable, total 7 percent or less of the subregion's share of the regional housing need as determined pursuant to Section 65584.03, then the council of governments or delegate subregion, as applicable, shall distribute the adjustments proportionally to all local governments. If the adjustments total more than 7 percent of the regional housing need, then the council of governments or delegate subregion, as applicable, shall develop a methodology to distribute the amount greater than the 7 percent to local governments. In no event shall the total distribution of housing need equal less than the regional housing need, as determined pursuant to Section 65584.01, nor shall the subregional distribution of housing need equal less than its share of the regional housing need as determined pursuant to Section 65584.03. Two or more local governments may agree to an alternate distribution of appealed housing allocations between the affected local governments. If two or more local governments agree to an alternative distribution of appealed housing allocations that maintains the total housing need originally assigned to these communities, then the council of governments shall include the alternative distribution in the final allocation plan.

(h) Within 45 days after the issuance of the proposed final allocation plan by the council of governments and each delegate subregion, as applicable, the council of governments shall hold a public hearing to adopt a final allocation plan. To the extent that the final allocation plan fully allocates the regional share of statewide housing need, as determined pursuant to Section 65584.01, the council of governments shall have final authority to determine the distribution of the region's existing and projected housing need as determined pursuant to Section 65584.01. The council of governments shall submit its final allocation plan to the department within three days of adoption. Within 60 days after the department's receipt of the final allocation plan adopted by the council of governments, the department shall determine whether or not the

final allocation plan is consistent with the existing and projected housing need for the region, as determined pursuant to Section 65584.01. The department may revise the determination of the council of governments if necessary to obtain this consistency.

(i) Any authority of the council of governments to review and revise the share of a city or county of the regional housing need under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

Exhibit “B” to RHNA Delegation Agreement

RHNA Subregional Delegation Timeline

By June 30, 2011	Notice of Intent submitted by proposed Subregional Entity
By July 30, 2011	SCAG to provide Subregional Entity with Growth Forecast information and survey information regarding AB 2158 factors
By August 31, 2011	State HCD to provide SCAG with Regional Housing Need Determination
By August 31, 2011	Deadline for SCAG and Subregional Entity to enter into Delegation Agreement (adopting resolutions to be approved beforehand)
By Sept. 30, 2011	SCAG to provide Subregional Entity with Subregional Housing Need Determination as part of public hearing
By Oct. 31, 2011	SCAG releases its proposed Regional Allocation Methodology; Subregional Entity releases its proposed Subregional Allocation Methodology
By Dec. 31, 2011	SCAG approves final Regional Allocation Methodology; Subregional Entity approves final Subregional Allocation Methodology; last day for Subregional Entity to terminate Delegation Agreement and relinquishes its delegation responsibilities
By April 5, 2012	SCAG releases Draft RHNA Plan; Subregional Entity Releases Draft Subregional Housing Allocation Plan
Spring-Summer 2012	Revisions requests and/or appeals (if any) processed by SCAG and Subregional Entity
By August 31, 2012	Subregional Entity to approve its Final Subregional Housing Allocation Plan and submit it to SCAG
By October 4, 2012	SCAG to approve its Final RHNA Plan, which incorporates the Final Subregional Housing Allocation Plan by the Subregional Entity; Submittal of Final RHNA Plan to State HCD
By December 4, 2012	Deadline for HCD to approve SCAG’s Final RHNA Plan
October 31, 2013	Deadline for updates of Local Housing Elements

