PROPOSED LEGISLATION FOR INCREASING HOUSING PRODUCTION IN THE SAN DIEGO REGION THROUGH REGIONAL CONTRIBUTION AGREEMENTS

Introduction

The SANDAG Executive Committee asked SANDAG staff to analyze a proposal from Mayor Mickey Cafagna. The proposal would allow a jurisdiction to transfer up to 20 percent of its regional housing needs assessment (RHNA) to another jurisdiction in exchange for payment in the form of redevelopment housing set aside funds, non-set aside redevelopment funds, Community Development Block Grant (CDBG) funds, or general fund monies through a regional contribution agreement.

To implement this proposal, two state laws likely would need to be changed:

- Community Redevelopment Law (CRL) would need to be changed to allow the use of housing set aside funds (also known as Low and Moderate Income Housing Funds) and other tax increment funds outside the jurisdiction in which they were generated; and

- Housing Element Law would need to be changed to allow the transfer of a portion of a jurisdiction’s RHNA numbers to another jurisdiction. Although currently allowed by state law, transfers are essentially prohibited because of the 31 conditions that are required for a transfer to take place.

A non-legislative approach would be to address the RHNA transfer issue as part of the upcoming RHNA process for the 2010-2015 housing element cycle, work on which will start this fiscal year. Depending on how the numbers are allocated, transfers may be unnecessary.

Recommendation

The Regional Planning Technical Working Group (TWG) should review Mayor Cafagna’s proposal, its pros and cons, and make a recommendation to the Regional Planning Committee (RPC) and SANDAG Executive Committee regarding whether to pursue this proposal. Options to consider include: 1) pursuing state legislation during the current legislative session; 2) considering the proposal in conjunction with the upcoming RHNA process for the 2010-2015 housing element cycle (during Fiscal Year 2009) with the possibility of proposing state legislation during the next legislative session; or 3) pursuing legislation in association with a Blueprint Planning related bill.
Discussion

Potential Advantages and Disadvantages of the Proposal and Other Relevant Issues

Some of the potential advantages and disadvantages of this proposal as noted during previous discussions by the TWG in September and December and in Committee Consultant reports on similar recent legislative proposals, and other relevant issues that should be considered include:

Advantages

- RHNA goals could be transferred to help the region achieve its smart growth goals, i.e., locating more housing near public transit.
- Jurisdictions taking additional units could receive funds to help defray the cost of providing lower income housing.
- Affordable housing funds could be used more efficiently by allowing them to be pooled and/or spent in lower cost areas.

Disadvantages

- The proposal may be inconsistent with environmental justice and fair housing goals and could result in charges of NIMBYism and/or economic/racial segregation.
- The costs associated with the acceptance of additional lower income housing needs goes beyond infrastructure and housing subsidies; ongoing cost burdens associated with this type of housing may be substantial.
- Jobs/housing imbalances and traffic congestion could be exacerbated if lower income housing is concentrated in certain areas.
- The proposal raises constitutional issues regarding whether tax increment money should be spent outside the community from which it originated. Although the state legislature has deemed housing fund expenditures outside a project area but within the jurisdiction to be a benefit to the project area, expenditures outside the jurisdiction becomes more suspect. In 1988, Legislative Counsel opined (with respect to SB 1719) that the use of these revenues outside the city in which they were generated does not fall within the meaning on Section 16 of Article XVI of the California Constitution that states that such funds should be used to cure blight within a project area.

Other Issues

- The geographic proximity of transferring jurisdictions should be considered. Criticism could be generated if transferring jurisdictions are not located near one another. Transfers within subregions may make the address this issue and help provide a better jobs/housing balance.
- Transit agencies should be included in the RHNA discussions.
- The potential for addressing this proposal during the upcoming RHNA process should be considered. The RHNA process is scheduled to occur between July 1, 2008, and June 30, 2009. Follow-up legislation could be proposed for the next two year legislative session (which begins
in January 2009) if needed to address specific geographic allocation issues and/or the pooling of
redevelopment funds for affordable housing/infrastructure.

Attachment: 1. Description of Proposal in Relation to State Law and Other Similar Legislation

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Description of Proposal in Relation to State Law and Other Similar Legislation

As discussed below, Mayor Cafagna’s proposal is similar to past legislative proposals (some of which have failed) and bills that have been signed into law, albeit with many conditions.

Redevelopment Law

Community Redevelopment Law (CRL) requires redevelopment agencies to set aside 20 percent of their annual property tax increment revenues in a Low and Moderate Income Housing Fund (L&M Fund) to increase, improve, and preserve affordable housing. These funds can be used to buy land, build on-site or off-site improvements, build structures, buy buildings, rehabilitate buildings, subsidize housing, pay bonds or other indebtedness, maintain mobile homes, preserve subsidized units, replace destroyed housing units, and other related uses.

Article XVI, Section 16 of the California Constitution provides that tax increment which accrues to a redevelopment agency must be used to pay indebtedness to finance the “redevelopment project.” As a general rule, this is interpreted to mean that the use of tax increment must benefit the project area. However, state law allows for L&M funds to be spent inside or outside a project area but within the territorial jurisdiction of the agency, upon a finding that the use will be of benefit to the project.

Current law also contains a number of exceptions to the rule that L&M funds must be spent within the jurisdiction as follows:

- There is a general statute that allowed, until January 1, 2008, contiguous redevelopment agencies located within adjoining cities within a single Metropolitan Statistical Area (MSA) to participate in a joint powers authority (JPA) for the purpose of pooling their L&M funds for affordable housing uses.
- The Contra Costa County Redevelopment Agency may use its L&M funds within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project Area.
- The Orange County Development Agency may use its L&M funds within the incorporated limits of any city within the County of Orange.
- The County of Solano and the cities of Fairfield, Suisun City, and Vacaville may create a joint powers agency for the purpose of pooling L&M funds in order to provide housing for the retention of Travis Air Force Base.

Each of these exceptions is subject to a number of conditions that ensure the efficient and beneficial use of the funds and that the expenditure outside the jurisdiction will not result in racial or economic segregation. Some of the conditions common to two or more of the exceptions that a jurisdiction must have met are:

- Completion of an up-to-date housing element approved by HCD;
- Fifty percent of its share of the regional housing need for very low and low income households must have been met;
• The redevelopment agency must have met or encumbered and contractually committed sufficient funds to meet its replacement housing need;

• Fund may only be used to pay for the direct costs of constructing, substantially rehabilitating, or preserving the affordability of housing units;

• The funds may not be spent in an area that has more than 50 percent minority or low income households;

• The development to be funded shall not result in any residential displacement from the site where the development is to be built;

• If less than all the units in the development are affordable to, and occupied by, low- or moderate-income persons, any agency assistance may not exceed the amount needed to make the housing affordable to, and occupied by, low or moderate income persons; and

• HCD shall review each use of funds for compliance.

Conditions applied to individual exceptions include:

• The agency is not subject to sanctions for failure to spend or encumber a housing fund excess surplus;

• The city in which the development will occur has approved the agency’s use of funds;

• The aggregate number of units assisted shall include at least 10 percent that are affordable to extremely low income households and 40 percent that are affordable to very low income households;

• The agency must make a finding that no other reasonable means of financing the housing is available in sufficient amount; and

• The agency shall transfer more than 50 percent of its low and moderate income housing funds.

In a July 7, 2003, Committee Consultant report on AB 1358 (Simitian) that would have given authority to a redevelopment agency in a city of less than 100,000 in San Mateo, Santa Clara, or Santa Cruz counties to spend low and moderate income housing set-aside funds outside a project area, but within five miles of the exterior boundary of the project area and in the same county, it was noted that similar pooling authority permitted by state law in the 1990s was not used and that most communities “want to use the scarce resources to benefit their own jurisdictions.” Also, the conditions that the Legislature applied to pooling, transfers, or expenditures outside an agency’s jurisdiction to guard against racial or economic segregation are difficult to meet, which may be another reason for the lack of interest in using the authority.

Housing Element Law – Regional Housing Needs Assessment (RHNA)

Current law requires that HCD calculate the statewide housing need and assign each council of governments (COG) its share. Each COG then distributes that state identified regional housing need to each of its jurisdictions in four income categories: very low, low, moderate and above moderate. Each jurisdiction is then required to identify sites for these housing needs in its housing element.
Existing law authorizes a city or county to transfer a percentage of its share of the regional housing needs to another city or county, if the transferring jurisdiction has first met (in the current or previous housing element cycle) at least 15 percent of its existing share of the region's affordable housing needs in the very low and lower income categories if it proposes to transfer not more than 15 percent, but prohibits a jurisdiction from transferring more than 500 units in a housing element cycle. Transfers are subject to 31 conditions -- a high bar.

According to a May 3, 2006, Committee Consultant report on AB 3042 (Evans) a bill that proposed (but did not pass) liberalized RHNA transfers, the conditions in existing law are intended to guard against: "more affluent cities and counties with strong NIMBY forces to get out from under their responsibilities to house moderate and low income households by transferring these housing needs to jurisdictions that may already have more than their share of such households, thereby exacerbating economic segregation, and indirectly contributing to racial discrimination and segregation as well."