

ATTACHMENT ONE

LEGISLATIVE AND REGULATORY CHANGES TO SUPPORT SMART GROWTH PRINCIPLES AND PRACTICES

The Bay Area Alliance for Sustainable Communities is seeking the support of elected officials for the following legislative and regulatory changes aimed at supporting Smart Growth land use decision-making. Most broadly, these can be viewed as a combination of policies, incentives, and criteria, each of which addresses a fundamental aspect of planning in California that is in need of reform.

Concepts that have achieved full agreement within the Stakeholder Dialogue:

- 1) **Stabilize local revenue through fiscal reform.** Enable local governments to establish greater certainty of revenues in alignment with responsibilities to provide services, safety and housing.

Strategy: Return a greater share of property taxes to local jurisdictions.

Example: Pending bills related to this concept include a revenue swap from sales tax to property tax based on housing production performance, and a restored Vehicle License Fee to jurisdictions that meet housing production targets.

Discussion: Stakeholders reached full agreement about the concept of returning a greater share of property taxes to local jurisdictions. However, questions arise as to how to guide how the funds are spent. If more property tax is returned, what stops the municipality from planning and building dispersed, low-density growth? Can standards or criteria be established for the planning and building of infrastructure with new General Fund monies? Interest groups are likely to seek to higher standards over the expenditure of funds, while local governments are likely to oppose any restrictions on sources of new revenue.

- 2) **Reward sound land use planning.** The state's adoption of higher standards for planning and building infrastructure can create new avenues for the public and private sectors to plan and build along Smart Growth principles.

Strategy: Target a greater share of Caltrans dollars for transportation projects that comply with local Smart Growth plans or respond to Smart Growth principles.

Example: Local governments often aggressively compete for limited state infrastructure dollars. Create priority eligibility for cities that adopt model Smart Growth policies in the award of state competitive grants for infrastructure, commercial and industrial development, or other economic development. Similar to the experience of MTC's Transportation for

Livable Communities program, a revised award system can lead to the adoption of new Smart Growth policies in cities and counties.

Discussion: Incentive programs are always popular, and the Stakeholders reached full agreement about this concept. However, in a weak economy and indebted state budget, it is not realistic to create incentive programs with non-existent funds. In addition, because political pressure affects program resources, local governments are hesitant to depend on incentive programs for standard infrastructure needs. Finally, the creation of an incentive also implies a penalty – not winning a financial award – for cities that do not meet the programmatic standards, a politically unpopular consequence.

- 3) **Create incentives that complement infill and refill development.** Neighborhoods and local governments can develop infill housing that meets higher standards if infrastructure dollars are more readily available for public infrastructure improvements and community amenities.
Strategy: Reward local governments with infrastructure funds if they build high-density housing close to transit.

Example: The Metropolitan Transportation Commission’s Housing Incentive Program is a regional example of exactly this concept. While it has faced complex challenges in tying financial rewards to bricks-and-mortar housing production, with additional funds the program could have a larger impact on the housing development pattern in the Bay Area. ULI’s “Community Dividend” program is another example of this concept.

Discussion: Currently, local governments view housing as a fiscal drain on their revenues. This concept would sweeten the pot for building high-density infill housing. It would face the same advantages and challenges noted above for incentive programs. The Stakeholders reached full agreement about this concept.

Concepts that have not achieved full agreement within the Stakeholder Dialogue

Fiscal reform:

1. Lower the voter threshold for local tax and bond measures that will support infrastructure, transportation and housing planned and built along strict Smart Growth principles.

Example: Lower the threshold from 2/3 to a simple majority vote for Real Estate Transfer Tax when proceeds are used for affordable housing projects. With this change, local governments can more readily create a financial mechanism to fund affordable housing, and linking the transfer tax to housing need would meet linkage fee requirements.

Discussion: This concept did not achieve full agreement within the Bay Area Alliance. Similar to expanding CEQA exemptions, it is likely to be opposed by politically active statewide organizations, in order to avoid setting a precedent that could lead to vulnerabilities in other areas of law, regulation, or planning.

2. Establish tax increment financing at and surrounding transit stations . Enable tax-increment financing to go beyond the blight clause and be used for transit oriented development (TOD), subject to certain conditions. An Urban Land Institute recommendation, dubbed “TIF for TOD.”

Example: Tax increment financing (TIF) is a well-tested method of obtaining revenues to finance infrastructure improvements. Allowing jurisdictions to access TIF for transit-oriented development projects, in particular multi-family housing, will focus growth in areas where the existing transit system can support higher densities.

Housing production:

1. Enact policy changes that establish housing production benchmarks.

Example: Housing production benchmarks would be set for units to be produced based on the Housing Needs Determination per jurisdiction. If a jurisdiction can certify it has met or surpassed its targets in the Very Low, Low, Moderate and Above Moderate Household income categories, specified funds would be allocated to the jurisdiction.

Discussion: The question of benchmarks for housing production, as seen in the Regional Housing Needs Determination process every five to ten years, is highly controversial for local governments, who view it as an infringement on their local land use authority. Interest groups support benchmarks as a way of obtaining compliance from jurisdictions in meeting an acknowledged regional need. Among interest groups, views about how much the region *should* grow differ widely, and because benchmarks mean using specific numerical targets, such policy changes could also meet with opposition.

Regulatory reform:

1. CEQA modifications to encourage infill.

Example: A CEQA streamlining bill was passed in 1999 to expedite projects in downtown Oakland.

Discussion: Environmental groups typically oppose CEQA changes, fearing that such precedent can open the door to weakening the law. In addition, whether and in what way CEQA can be reformed for greenfield development that is aligned with Smart Growth principles remains an open question. Finally, a thorough

assessment of applicable CEQA waivers to encourage infill development needs to be done to better understand what regulations exist to support this form of development.

2. Construction defect litigation reform. While progress has been made recently in the area of construction defect law (*SB 800 - Burton, 2002*), more could be done to insulate developers and builders from inappropriate lawsuits that ultimately provide a disincentive to constructing attached housing.

Example: SB 800 grants builders the right to repair a home when a construction defect is found before a lawsuit may be filed. The bill also defines "construction defect."

Time will tell if the changes are sufficient to encourage insurers to come back into the market. It's too early to tell. SB 800 only discussed the relationship between builders and homeowners; It was silent on the relationship between those two groups and subcontractors. Subs, and their insurance companies, want more protection to step back into this market. Some of the problem is the requirements of insurance companies--builder insurers require the sub's insurers to indemnify them, even when the defect is clearly not the subs fault. As a result, a roofer may be sued for a problem resulting from improper installation of a window or plumbing.

Apparently Steinberg is interested in carrying this second bill to address these issues.

Discussion: While acknowledging its importance, Urban Land Institute and Bay Area Alliance members agreed that this concept can remain lower priority until the effects of 2002 legislation become known.

3. Flexibility in planning K-12 schools.

Example: California voters approved a \$13 billion school bond in November 2002, and will vote on a companion \$13 billion bond to in November 2004. The original bond included \$100 million for flexibility in planning and developing joint facilities, such as a school and community center, or a school and affordable housing. A number of groups are also advocating altering the state school design formulas to enable greater flexibility in building design.

Discussion: Bay Area Alliance members acknowledged the importance of this issue but also noted the well-known challenges of working with school districts. In addition, members felt that the location of schools (rehabilitation or construction of schools on urban sites, rather than new schools in edge areas without transit) needs to be addressed to ensure that design flexibility also adheres to a Smart Growth land use pattern.

4. Eliminate barriers to brownfields redevelopment.

Example: Pending bills would define and limit liability for prospective purchasers of brownfields, allow environmental remediation to be undertaken with bonds raised from a local assessment district, and streamline permitting for brownfield redevelopment projects.

Discussion: Interest groups have opposed efforts to ease brownfields redevelopment because of the inexact science of determining when remediation efforts have reached a level of safety for human use.