

San Diego Association of Governments
EXECUTIVE COMMITTEE

February 14, 2003

AGENDA REPORT NO.: **3-B**

Action Requested: APPROVE

HOUSING ELEMENT SELF-CERTIFICATION PILOT PROGRAM:
REPORT TO THE LEGISLATURE AND LEGISLATIVE PROPOSALS

Introduction

In 1995, legislation was passed and signed by the Governor to establish a pilot program that would allow jurisdictions in the San Diego region to self-certify the housing elements of their general plans if they met certain criteria. This report addresses two issues related to this legislation.

Report to the State Legislature

The self-certification law requires that SANDAG report to the Legislature on the use and results of the self-certification process following the completion of the revision of all housing elements in the region. The law states that "the report shall contain data for the last planning period regarding the total number of additional affordable housing units provided by income category, the total number of additional newly constructed housing units, and any other information deemed useful by SANDAG in the evaluation of the program." Attached is a draft of the report to the Legislature. The report describes the self-certification program, provides data regarding the number of affordable housing opportunities added during the 1991-99 housing element cycle, lists the jurisdictions that self-certified their housing elements, discusses some of the impediments to implementation of the program, and evaluates the effectiveness and merit of the program.

Legislative Proposals

Two changes are proposed to state law regarding the housing element self-certification program: a) extension of the sunset date to allow jurisdictions to self-certify their 2009-14 housing elements (an option that does not exist under the current law), and b) grant full eligibility for all state funds and programs to jurisdictions that self-certify their housing elements. This legislation is consistent with SANDAG's 2003 Legislative Program and would allow a more thorough and complete evaluation of the self-certification program. It also would eliminate discrimination against self-certifying jurisdictions for state funding, which has acted as a disincentive to use the program.

Based on the recommendation of the Regional Housing Task Force, it is my

RECOMMENDATION

that the Executive Committee approve the report to the Legislature on the use and results of the self-certification pilot program and direct SANDAG to pursue legislation to extend the sunset date for the pilot housing element self-certification program, and to grant full eligibility for all state funds and programs to jurisdictions that self-certify their housing elements.

Discussion

Report to the State Legislature

Following the recent housing element cycle, SANDAG is required to report to the state legislature on the use and results of the self-certification process by local governments in the San Diego region. The Regional Housing Task Force has reviewed the attached report and recommends its approval.

The report makes the following findings and conclusions about the housing element self-certification pilot program:

- Eleven of the 19 jurisdictions in the region self-certified their housing elements.
- Jurisdictions that self-certified their housing elements met a higher percentage of their affordable housing needs during the 1991-99 housing element cycle than jurisdictions that did not self-certify.
- The self-certification pilot program provides an incentive for actual production of affordable housing: exemption of local governments from state housing element review.
- The Department of Housing and Community Development's (HCD) position that self-certified housing elements are not equivalent to housing elements that are found in compliance with state law damaged the viability of the pilot program.
- Six of the eleven jurisdictions that self-certified their housing elements submitted their self-certified elements to HCD for a finding of compliance to preserve their eligibility for state funds. In some cases these reviews took several months to complete, resulted in only minor changes to the housing elements, and required additional environmental review and public hearings.
- The process of establishing the self-certification program focused attention on the need for, and the ability of, jurisdictions to provide affordable housing. Continuation of the program will draw additional attention to the need to provide affordable housing for low income households and families.
- The self-certification program provides a cost savings for both state and local government, which is important in light of our current budget crisis.

Legislative Proposal to Extend the Sunset Date

Section 65585.1 (e) of the Government Code states that, "This section [housing element self-certification] shall become inoperative on June 30, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date." Based on this section of the law, local jurisdictions in the San Diego region only have one more opportunity to self-certify their housing elements – in June 2004, when they complete their 2004-09 housing element. Their ability to self-certify will be based on whether they achieved their affordable housing goals during the 1999-2004 housing element cycle.

SANDAG and the Regional Housing Task Force believe that the pilot program should be allowed to operate for another housing element cycle in order to more fully evaluate its effectiveness and success. This recommendation is made in light of state policies and legislation that requires jurisdictions to submit their self-certified housing elements to HCD for a determination of compliance in order to be

eligible for certain state funds and programs. This policy damaged the viability of the self-certification program by denying access to state funding and programs to jurisdictions that self-certified their housing elements unless they also submitted them to HCD.

If the sunset date is extended to allow jurisdictions the ability to self-certify their 2009-14 housing elements, SANDAG will need to develop a new set of affordable housing goals during the next six to nine months. These goals would have to be met during the 2004-09 housing element cycle if a jurisdiction wishes to self-certify its 2009-14 housing element.

Legislative Proposal to Grant Full Eligibility for State Funds and Programs

Legislation was proposed at the end of the legislative session last year that would have granted full eligibility for all state funds and programs to jurisdictions that self-certified their housing elements. This legislation was amended at the end of the session to apply only to Proposition 46 funds, the statewide housing bond that passed in November. A bill that would provide self-certified jurisdictions with full eligibility for all state funds and programs is proposed. If approved, this bill will allow the self-certification program to be implemented without the threat of restricted access to state funds and programs, and improve our ability to gauge its success and potential for permanency.

GARY L. GALLEGOS
Executive Director

Attachment

Key Staff Contact: Michael McLaughlin, (619)595-5343; mmc@sandag.org

DRAFT
HOUSING ELEMENT SELF-CERTIFICATION
REPORT TO THE LEGISLATURE

FEBRUARY 14, 2003



San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101

INTRODUCTION

California law requires cities and counties to prepare a housing element of their general plan every five years, and that jurisdictions submit these elements to the state Department of Housing and Community Development (HCD) for a determination of substantial compliance with state law.

In 1995, AB 1715 (Goldsmith), sponsored by the San Diego Association of Governments (SANDAG), created a pilot program that allows jurisdictions in the San Diego region to self-certify their housing elements. Jurisdictions that choose the self-certification option are exempt from the HCD review requirement.

State law requires that SANDAG report to the Legislature on the use and results of the self-certification process following completion of the revision of all housing elements in the region. The law states that "the report shall contain data for the last planning period regarding the total number of additional newly constructed housing units, and any other information deemed useful by SANDAG in the evaluation of the program."

This report describes the self-certification program, provides data on the number of affordable housing opportunities added during the 1991-99 housing element cycle, lists the jurisdictions that self-certified their housing elements, discusses the impediments to implementation of the program that have arisen, and evaluates the effectiveness and merits of the program.

FINDINGS AND CONCLUSIONS

The report makes the following findings and conclusions about the self-certification program:

1. Eleven of the 19 jurisdictions in the region have self-certified their housing elements. These include: Chula Vista, Coronado, El Cajon, Escondido, Imperial Beach, La Mesa, National City, Oceanside, San Marcos, Santee (processing housing element with general plan update), and Vista.
2. Jurisdictions that self-certified their housing elements met a higher percentage of their affordable housing needs during the 1991-99 housing element cycle than jurisdictions that did not self-certify.
3. The self-certification pilot program provides an incentive for actual production of affordable housing: exemption of local governments from state housing element review. This incentive is a powerful tool to help achieve the state's housing goals in a more cost-effective manner.
4. The Department of Housing and Community Development's (HCD) position that self-certified housing elements are not equivalent to housing elements that are found in compliance with state law damaged the viability of the pilot program.
5. Six of the 11 jurisdictions that self-certified their housing elements submitted their self-certified elements to HCD for a finding of compliance to preserve their eligibility for state funds. In some cases these reviews took several months to complete, resulted in only minor changes to the housing elements, and required additional environmental review and public hearings.

6. The process of establishing the self-certification program focused attention on the need for, and the ability, of jurisdictions to provide affordable housing for low income households and families.
7. The self-certification program provides a cost savings for both state and local government, which is important in light of the state's current budget crisis.
8. Continuation of the program would draw attention to an often ignored need: the actual provision of housing for low income households and families.

BACKGROUND

San Diego jurisdictions view the housing element self-certification option as having three purposes:

1. to give jurisdictions more flexibility in how they meet affordable housing goals,
2. to focus on housing production rather than paper generation, and
3. to allow jurisdictions the option of self-certifying their housing elements, and therefore bypass HCD's review and "certification," based on the achievement of specific affordable housing goals.

The San Diego region's pilot program was born out of earlier statewide discussions and legislative proposals to reform housing element law. The idea of allowing jurisdictions to self-certify their housing elements based on meeting some type of affordable housing performance goals was raised during these discussions, but consensus regarding how to set those goals could not be reached.

Because SANDAG had developed such goals in the past, had experience with self-certification as a part of its regional growth management work, and had a Housing Element Advisory Committee in place, legislation for a pilot self-certification program was pursued. The San Diego region wanted to place the emphasis on results (actual production of housing, especially affordable housing) rather than plan preparation and processes.

SELF-CERTIFICATION CRITERIA

Following the passage of AB 1715, SANDAG's Housing Element Advisory Committee, which included representatives of the local jurisdictions, nonprofit affordable housing developers and affordable housing advocates, the for profit building, real estate, and banking industries, and HCD, was charged with determining a goal for the number of additional affordable housing opportunities each jurisdiction should provide to be eligible for the self-certification option. The Housing Element Advisory Committee also established procedures for jurisdictions who wished to self-certify their housing elements.

The bill creating the pilot program stated five criteria for self-certification in Section 65585.1(c) of the Government Code.¹ To summarize, a jurisdiction choosing to self-certify its housing element

¹ The criteria are described on page 1 of SANDAG's "Housing Element Self-Certification Report: Implementation of a Pilot Program for the San Diego Region," June 1998.

must prepare an updated housing element that substantially complies with state law, with the same content and analysis that is required of those who seek a finding of compliance from HCD. The bill allowed for self-certification to be used for the third (1999-2004) and fourth (2004-09) revisions of the housing elements.

Affordable Housing Goals

In addition to preparing a housing element that meets the requirements of state law, a jurisdiction must show that it has met its affordable housing goals, which are defined in the law as the maximum number of housing units that can be constructed, acquired, rehabilitated, and preserved and the maximum number of units or households that can be provided with rental or ownership assistance to meet the needs of low, very low and extremely low income households during the preceding housing element cycle.

To self-certify the third housing element revision (due December 31, 1999) jurisdictions must have met their fair share of the regional housing needs during the 1991-99 housing element cycle, as determined by SANDAG. The fair share goals for each jurisdiction were set forth in SANDAG's 1990 Regional Housing Needs Statement.² These goals were originally prepared to ensure that assistance to low income households was provided in an equitable manner throughout the region i.e., that each jurisdiction was addressing its fair share of the region's affordable housing needs. The fair share goals were primarily based on the amount of resources that were available to meet the needs. The goal was set at 2.5 percent per year of the existing and projected low income housing needs – or 12.5 percent for the five year cycle.

For the housing element due in 2004 (the fourth revision), the bill stated that jurisdictions must meet an affordable housing goal, which is based on available financial resources and regulatory measures. The work of the Housing Element Advisory Committee centered on the development of this goal. In developing the affordable housing goals, the Committee, working with a consultant, took a number of factors into consideration including: the size of the jurisdiction, its financial resources (e.g. availability of redevelopment funds) both past and future, and past and future potential use of regulatory measures such as inclusionary housing programs. The goals set for the 1999-2004 housing element cycle are distributed into three income categories: low, very low, and extremely low as required by the law.³

Both SANDAG and HCD were required to agree on the methodology for setting the affordable housing goals that, if met, would allow jurisdictions to self-certify their 2004-09 housing elements. HCD Director Richard Mallory testified in support of the methodology and program at the time of adoption by the SANDAG Board in June 1998.

Credit System for Counting Affordable Housing Opportunities

To assess progress toward meeting the affordable housing goals for the 1999-2004 housing element cycle, a credit system was created to account for the differences in the difficulty involved in implementing various housing programs. For example, the energy and political capital required to build a new low income housing project for families far exceeds that needed to implement a

² Ibid. Table 1

³ Ibid. Table 2 and Appendices III and IV contains detailed information regarding how the affordable housing goals were set.

shared housing program or even to acquire and rehabilitate an existing apartment building.

The credit system assigns base values ranging from .9 to 1.1 for each eligible housing program. Additional credits are given depending on such program/project characteristics as the term of affordability for low income households and the size of the unit created.⁴

Principles and Guidelines for Program Eligibility

Principles and Guidelines for Program Eligibility were developed by the Housing Element Advisory Committee to help guide jurisdictions in their determination regarding the types of programs they can count toward meeting the affordable housing goals for self-certification.⁵

Additional Self-Certification Criteria and Requirements

In addition to preparing a housing element and meeting its affordable housing goal, jurisdictions must provide a statement with additional information on low-income housing dispersion; for example, they must document that additional affordable housing opportunities will not be developed only in areas where concentrations of lower income households already exist. Finally, to be eligible for self-certification, no local government actions or policies may prevent the development of the sites jurisdictions have identified as available to meet future housing needs.

To complete the self-certification process, a jurisdiction is required to:

1. hold a public hearing;
2. make findings, based on substantial evidence, that it has met the relevant criteria for housing element self-certification (contained in Section 65585.1 of the Government Code);
3. adopt the updated housing element; and
4. submit a self-certification letter of compliance to the Department of Housing and Community Development along with its adopted housing element, for HCD's information, not approval.

EVALUATION OF THE SELF-CERTIFICATION PROGRAM

Twelve of the 19 jurisdictions within the San Diego region were eligible to self-certify their 1999-2004 housing elements, the due date for which was December 31, 1999. All of these jurisdictions (with the exception of the County of San Diego) have self-certified their housing elements or plan to do so. These include Chula Vista, Coronado, El Cajon, Escondido, Imperial Beach, La Mesa, National City, Oceanside, San Marcos, Santee (currently processing housing element with general plan update), and Vista. These jurisdictions met all the criteria for self-certification, including having a housing element in substantial compliance with state law and providing their fair share of the region's affordable housing goals, thus meeting a higher percentage of their affordable housing needs during the 1991-99 housing element cycle than jurisdictions that did not self-certify (Table1).⁶

Table 1

⁴ Ibid. Appendix III contains full description of Credit System

⁵ Ibid. Appendix II contains full description of Principles and Guidelines for Program Eligibility

⁶ Housing Element Compliance List, SANDAG, January 2003

**HOUSING ELEMENT COMPLIANCE REPORT
As of February 10, 2003**

<u>JURISDICTION</u>	<u>COMPLIANCE STATUS</u>
Carlsbad	IN
Chula Vista	SC/ IN
Coronado	SC
Del Mar	IN
El Cajon	SC
Encinitas	Out (In review)
Escondido	SC (Working with HCD on compliance)
Imperial Beach	SC
La Mesa	SC/ IN
Lemon Grove	IN
National City	SC
Oceanside	SC/ IN
Poway	IN
San Diego	IN
San Diego County	IN
San Marcos	SC/ IN
Santee	Out (Will self-certify)
Solana Beach	IN
Vista	SC/IN

IN: Found in compliance by the State Department of Housing and Community Development (HCD)

SC/ IN: Indicates that jurisdiction self-certified and had Housing Element found in compliance by HCD

OUT: Jurisdiction has not yet completed Housing Element update

A full accounting of the number of additional housing opportunities provided by each jurisdiction is included in Table 2,⁷ and Table 3 includes information about the total number of additional newly constructed housing units.⁸

⁷ Affordable Housing Production Report, SANDAG, September 2001

⁸ SANDAG INFO, Housing and Population Estimates, September/October 2000

Table 2
AFFORDABLE HOUSING PERFORMANCE REPORT
SAN DIEGO REGION
July 1, 1991 - June 30, 1999

Jurisdiction	Affordable Housing Provided*	Affordable Housing Goal	% of Affordable Housing Goal Met	Fair Share Housing Need**	% of Fair Share Need Met
Carlsbad	814	1,125	72%	9,000	9%
Chula Vista	2,320	1,058	219%	8,466	27%
Coronado	387	259	149%	2,073	19%
Del Mar	9	65	14%	521	2%
El Cajon	1,941	470	413%	3,761	52%
Encinitas	240	538	45%	4,307	6%
Escondido	2,071	846	245%	6,765	31%
Imperial Beach	217	42	517%	335	65%
La Mesa	624	452	138%	3,612	17%
Lemon Grove	113	174	65%	1,391	8%
National City	555	37	1500%	298	186%
Oceanside	1,677	967	173%	7,734	22%
Poway	160	565	28%	4,518	4%
San Diego	9,177	9,319	98%	74,529	12%
San Marcos	551	528	104%	4,221	13%
Santee	794	655	121%	5,239	15%
Solana Beach	99	194	51%	1,552	6%
Vista	775	458	169%	3,662	21%
<u>County Unincorporated</u>	<u>4,160</u>	<u>3,979</u>	<u>105%</u>	<u>31,828</u>	<u>13%</u>
Regional Total	26,684	21,731	123%	173,812	15%

*This number includes a wide variety of housing programs, including: Acquisition, Rehabilitation, Rent Subsidy Programs, Home Buyer Assistance, Preservation, Second Dwelling Units, Illegal Unit Conversions, and Transitional Housing

** Fair Share Need estimates the number of lower income households that need assistance. This term is no longer used by SANDAG.

Table 3
TOTAL HOUSING UNITS COMPLETED BY JURISDICTION
1990-1999

<u>Jurisdiction</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>Total</u>	<u>1998-1999 Change</u>	
											<u>1990-1999</u>	<u>Numeric</u>	<u>Percent</u>
Carlsbad	741	361	152	131	224	612	688	800	1,254	1,551	6,514	297	24%
Chula Vista	1,872	670	713	512	714	931	817	985	1,095	1,989	10,298	894	82%
Coronado	57	42	74	76	25	20	26	18	30	7	375	-23	-77%
Del Mar	21	9	13	4	10	1	3	4	7	6	78	-1	-14%
El Cajon	31	80	74	17	25	173	61	25	22	68	576	46	209%
Encinitas	156	118	118	46	52	78	86	80	359	421	1,514	62	17%
Escondido	736	316	275	263	266	171	417	333	409	369	3,555	-40	-10%
Imperial Beach	100	91	109	30	22	12	12	9	15	10	410	-5	-33%
La Mesa	111	172	37	69	29	69	10	9	3	3	512	0	0%
Lemon Grove	60	66	33	36	20	9	23	54	37	5	343	-32	-86%
National City	58	105	18	17	17	98	15	9	12	0	349	-12	-100%
Oceanside	1,991	1,081	885	496	589	459	649	697	875	510	8,232	-365	-42%
Poway	336	218	167	121	89	56	116	60	260	139	1,562	-121	-47%
San Diego	6,921	4,860	4,570	3,213	2,912	2,233	2,394	3,362	5,646	4,904	41,015	-742	-13%
San Marcos	569	600	345	355	494	335	224	276	253	462	3,913	209	83%
Santee	63	84	65	14	108	366	140	66	90	143	1,139	53	59%
Solana Beach	50	16	8	4	6	11	6	1	28	33	163	5	18%
Vista	806	307	270	209	34	126	80	117	205	178	2,332	-27	-13%
<u>County Unincorporated</u>	<u>2,781</u>	<u>3,290</u>	<u>955</u>	<u>667</u>	<u>986</u>	<u>621</u>	<u>663</u>	<u>1,309</u>	<u>761</u>	<u>2,149</u>	<u>14,182</u>	<u>1,388</u>	<u>182%</u>
Region Total	17,460	12,486	8,881	6,280	6,622	6,381	6,430	8,214	11,361	12,947	97,062	1,586	14%

Sources: SANDAG, local jurisdiction Building Departments, California Department of Finance

No jurisdictions that self-certified have had their housing elements challenged by a third party for adequacy.

Equivalency of Self-Certification with State Review Issue

Not long after SANDAG adopted the self-certification implementation program in June 1998, an issue arose that undermined and seriously threatened the viability of the self-certification pilot program. At the beginning of 2000, SANDAG became aware that eligibility for certain state programs was contingent upon having a housing element found in compliance with state law by HCD. SANDAG brought this issue to the attention of HCD via a letter to Director Julie Bornstein.⁹

After meeting with SANDAG staff and Housing Element Advisory Committee members, HCD took the position that a self-certified housing element is not equivalent to an element reviewed and found in compliance with state law by HCD staff. This reversal by HCD is relevant because a number of funding sources for affordable housing and smart growth, including some administered by HCD, require applicants to have a housing element that has been found in compliance by HCD, or give priority to cities whose housing elements have been found in compliance by HCD. Such requirements put cities that choose to self-certify their housing elements at a disadvantage for funds compared to those not self-certifying, and reduce their ability to produce affordable housing.

Programs with Housing Element Compliance Requirements

One example is the HELP program, sponsored by the California Housing Finance Agency (CalHFA). This program provides \$100 million over five years for use by local government entities for unmet affordable housing needs. The following language is included in the program announcement:

Housing Elements - To participate in the HELP Program, jurisdictions are required to have housing elements that conform to requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code. Applicants shall ensure that on the final due date for proposals under this announcement that the Web site for the California Department of Housing and Community Development (HCD) indicates that the city or county in which the program or project will be located has a compliant housing element (i.e., to be compliant, a Housing Element must be approved by HCD and adopted by the applicable city or county).

Another example of state funds jeopardized by HCD's position is the California Infrastructure Bank's practice of awarding bonus points for an HCD approved housing element. The Infrastructure State Revolving Fund Program, which can be used to finance public development projects such as city streets, highways, water supply, flood control, educational facilities, public transit, and public safety facilities, awards ten bonus points to jurisdictions with a housing element approved by HCD.

⁹ Letter to Julie Bornstein, Director of the California Department of Housing and Community Development from Kenneth Sulzer, Executive Director of SANDAG

Finally, the HCD-administered Jobs-Housing Balance Program was originally planned to be restricted to jurisdictions with an HCD-approved housing element until its funding source was changed to Proposition 46 housing bond funds instead of the General Fund. These funds are to be used to attract jobs and businesses to jurisdictions that are “housing rich” and “jobs poor.”

While a number of programs do not require HCD certification of housing elements (including most HCD-administered programs for affordable housing such as the Multifamily Housing Program), it is likely that other programs may require HCD approval and fail to recognize self-certification in the future.

HCD Position on Self-certification

HCD provided SANDAG with four justifications for its position regarding self-certification: first, the legislature did not explicitly equate self-certification with an HCD determination of substantial compliance for purposes of State funding priority; second, funding agencies such as the California Infrastructure and Economic Development Bank and the California Housing Finance Authority are free to establish any criteria they wish for funds distribution; third, SANDAG’s self-certification program is a pilot program, and its application should be limited until it has been evaluated; and fourth, a self-certifying jurisdiction may submit its self-certified housing element to HCD for approval and, in doing so, become eligible for funding sources that do not recognize self-certification.¹⁰

SANDAG’s Ongoing Work on Self-certification Issue

In the late summer of 2000, SANDAG worked with members of the Legislature on potential remedies to the problem discussed above. Potential remedies discussed at the time included an expedited (two week) review and/or limited review of self-certified housing elements by HCD. Legislation that would recognize self-certification as equivalent to a finding of compliance by HCD also was discussed. HCD committed to an expedited review of self-certified housing elements during these discussions, but never formalized the commitment.

On September 22, 2000 the SANDAG Board directed staff to work with the state on ways to preserve the viability of the self-certification program, without jeopardizing state funding opportunities for the San Diego region. It was (and continues to be) the Board’s view that HCD’s position on self-certification undermines the goals of the self-certification program. While self-certification is indeed a pilot program, if a jurisdiction must go through the state review process to be eligible for a variety of sources of funding, there is no longer an incentive to self-certify, and the program is effectively nullified.¹¹

Since these issues surrounding self-certification have surfaced, six of the ten jurisdictions that have self-certified have submitted their housing elements for a determination of compliance from HCD.¹² Some of these reviews were done in accordance with the promised expedited review, however, a number of reviews were not completed within the expedited time frame. The review of some of the housing elements took a number of months to complete, and in some cases

¹⁰ Letter to Kenneth Sulzer from Julie Bornstein, Director, California Department of Housing and Community Development, July 11, 2000.

¹¹ SANDAG Board of Directors Agenda Report No.: 00-9-13-B, September 22, 2000

¹² Housing Element Compliance List, SANDAG, January 2003

jurisdictions were required to make changes to their housing elements that were minor and not substantive. An application in 2001 by the City of Vista for CalHFA HELP funds for a transitional housing project was jeopardized because of the requirements and lengthy review process. Two of the six jurisdictions were not asked to make changes to their self-certified housing elements.

During 2001, additional legislation was proposed that included the housing element compliance requirement. The bill in question was SB 211 (Torlakson), which proposed allowing redevelopment agencies a time extension based on meeting certain criteria, including housing element compliance. SANDAG asked that jurisdictions with self-certified housing elements be eligible for this extension, and language to that end was included in the bill signed by the Governor in the fall of 2001.¹³ In January 2002, however, SANDAG was informed that, in agreeing to sign the bill, the Governor had requested that Senator Torlakson remove the provision that recognized self-certified housing elements. Although this provision was eventually retained, SANDAG continued to remain concerned about the viability of the pilot program, given the number of places that the requirement for an HCD-reviewed housing element continued to appear.

In August 2002, Senator Dede Alpert agreed to author legislation that would give jurisdictions that self-certified their housing elements equal access to all state funds and programs. At the end of the legislative session this bill, SB 1432 (Alpert) was changed to give self-certifying jurisdictions equal access only to Proposition 46, housing bond funds.¹⁴

In his signing message, the Governor indicated strong support for SANDAG's pilot self-certification program. He stated:

I am signing SB 1432, because this legislation clarifies that local governments in San Diego County which self-certify their housing elements, ... are fully eligible to obtain any housing bond funds which will become available if Proposition 46 is approved by the voters....In 1995, the Legislature established an alternative pilot project for San Diego County which enabled local governments which met established housing performance standards to self-certify their housing elements, without sending their elements to HCD for review. Given that state review of local housing elements has long been controversial, this pilot project offered the creative solution of exempting local governments from state review, and returning a measure of local control, in exchange for actual housing production. The San Diego program can not be properly evaluated as a pilot project if certification under this program is not treated in the identical manner as those housing elements certified by HCD....I support rewarding performance rather than process.

PROPOSED SELF-CERTIFICATION LEGISLATION

In view of the issues surrounding the self-certification pilot program, SANDAG is pursuing two changes to state law regarding the housing element self-certification program: a) an extension of

¹³ SANDAG Board of Directors Agenda Report No.: 01-6-3, June 22, 2001

¹⁴ SB 1432 (Alpert)

the sunset date to allow jurisdictions to self-certify their 2009-14 housing elements (an option that does not exist under the current law), and b) granting full eligibility for all state funds and programs to jurisdictions that self-certify their housing elements. This legislation is consistent with SANDAG's 2003 Legislative Program and the Governor's statement of support for SB 1432.

Legislative Proposal to Extend the Sunset Date

Section 65585.1 (e) of the Government Code states that, "This section [housing element self-certification] shall become inoperative on June 30, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date." Based on this section of the law, local jurisdictions in the San Diego region only have one more opportunity to self-certify their housing elements – in June 2004, when they complete their 2004-09 housing element. Their ability to self-certify will be based on whether they achieved their affordable housing goals during the 1999-2004 housing element cycle.

SANDAG and the Regional Housing Task Force believe that the pilot program should be allowed to operate for another housing element cycle in order to allow a more thorough and complete evaluation of its effectiveness and success. This recommendation is made in light of the damage done to the program by state policies and legislation that requires jurisdictions to submit their self-certified housing elements to HCD for a determination of compliance in order to be eligible for certain state funds and programs. This policy damaged the viability of the self-certification program by denying access to state funding and programs to jurisdictions that self-certified their housing elements unless they also submitted them to HCD.

If the sunset date is extended to allow jurisdictions the ability to self-certify their 2009-14 housing elements, SANDAG will need to develop a new set of affordable housing goals during the next six to nine months. These goals would have to be met during the 2004-09 housing element cycle if a jurisdiction wishes to self-certify its 2009-14 housing element.

Legislative Proposal to Grant Full Eligibility for State Funds and Programs

Legislation was proposed at the end of the legislative session last year that would have granted full eligibility for all state funds and programs to jurisdictions that self-certified their housing elements. This legislation was amended at the end of the session to apply only to Proposition 46 funds, the statewide housing bond that passed in November 2002. A bill that would provide self-certified jurisdictions with full eligibility for all state funds and programs is proposed. If approved, this bill will allow the self-certification program to be implemented without the threat of restricted access to state funds and programs, and improve the Legislature's ability to gauge its success and potential for permanency.

CONCLUSION

The housing element self-certification program gives San Diego jurisdictions an incentive to go beyond simply planning for affordable housing, to actually producing affordable housing. This incentive is a powerful tool to help achieve the state's housing goals in a more cost-effective manner. The goals set through the self-certification program have motivated local jurisdictions to provide more affordable housing, and the process of developing the program helped jurisdictions recognize their ability to do more affordable housing based on the performance of their peers.

HCD's position on self-certification is contrary to the spirit and intent of the legislation, and penalizes the San Diego region for its innovative program. The committee's and the legislature's work to devise a program that succeeded in balancing the concerns of all parties involved will have been wasted if SANDAG's proposed legislation is not passed. Continuance of this program will continue to draw attention to an often ignored community need: affordable housing for low income families and households and will provide a potential cost savings to both state and local government.