



# County of Santa Cruz

0457

---

---

## REDEVELOPMENT AGENCY

701 OCEAN STREET, ROOM 510, SANTA CRUZ, CA 950604000

(931) 4642290 FAX: (931) 4643420 TDD: (931) 454-2123

TOM BURNS, AGENCY ADMINISTRATOR

May 22, 2001

Agenda: June 5, 2001

Board of Directors  
County of Santa Cruz Redevelopment Agency  
701 Ocean Street  
Santa Cruz, CA 95060

### **CDBG Loan Protection and Measure J Unit Preservation Programs**

Dear Members of the Board:

Occasionally, Redevelopment Agency staff receive notices of default by first mortgagees against properties with CDBG housing rehabilitation program second loans. Under the current guidelines adopted in 1995, the Agency has very limited options to assist homeowners in this circumstance and no authority to bid on homes to protect the County's interest in the rare event of a trustee's sale.

Similarly, when Measure J properties go into default and foreclosure, the Agency's Measure J Unit Preservation program is an effective tool to preserve unit affordability, but only with cooperative owners that are willing to sell. In other circumstances, Measure J units can still be lost from this important program.

The purpose of this letter is twofold. The first is to establish a new program entitled the "CDBG Loan Protection Program" which would establish a funding source for trustee's sale bids and would authorize the Agency Administrator, after review and concurrence of the County Loan Review Board, to bid on CDBG foreclosed properties. The second purpose is to expand the Agency's Measure J Unit Preservation Program by authorizing the Agency Administrator, in conjunction with civil proceedings by County Counsel to enforce the County's option to purchase, to expend funds for purchase and resale of Measure J units.

### **CDBG Loan Protection Program**

#### Background

In 1995 your Board assigned to the Agency the responsibility for handling all aspects of

the County's Housing Rehabilitation Loan portfolio. The portfolio was funded by various CDBG grant awards between 1980 and 1995. Currently 39 outstanding County loans totaling approximately \$900,000 are serviced by the Agency.

When a default is declared by a first lender with the County in second position, the Agency has very limited options to protect County CDBG loans. In most instances, when faced with the loss of their home and built-up equity, owners cure the default themselves. However, if an owner has no financial means to cure the default, their only remaining option is to attempt to sell the home before the trustee's sale date.

Under the Santa Cruz County and Santa Cruz County Redevelopment Agency Housing Rehabilitation Program Guidelines (the "Guidelines") last adopted by your Board in April, 1998, the Agency can assist owners in this circumstance after concurrence by the Loan Review Board, by providing a cash advance of up to \$5,000 to reinstate and prepay the mortgage. In exchange for the advance of funds and to insure that the owner is sincere in their desire to sell, the owner enters into a real estate sales contract with an agent of their choice who actively markets and sells the property. The Agency retains an option to purchase should the home not sell within a reasonable period of time. In this manner the County's loan is eventually paid back.

#### Agency's Limited Options With Uncooperative Owners

Sometimes, however, owners are unwilling or unable to cure the default or have little or no equity to preserve. When there is no incentive for the owner to sell, the County is at risk of losing its entire loan balance. In this circumstance, the Agency's only remaining option under foreclosure law is to bid on the home at the final trustee's sale. The bid amount must be enough to pay off all superior liens, arrears and penalties, plus the outstanding amount of the County's loan principal and interest.

In most instances the Agency would be outbid by another party and the County's loan would be paid off in full by the trustee after the sale. In the rare event of an Agency purchase, the Agency would then have the ability and resources to take further action to recover the County's loan. Those actions might include renting the home temporarily, making necessary repairs and selling the home to an income eligible family with long term affordability covenants.

#### Program Description

Although, in our experience, it is very unusual for homes in default to be sold at a trustee's sale, it is still a possibility for which we should be prepared. Furthermore, due to late notices or releases of stay in bankruptcy proceedings, there may be insufficient time for Board authorization on a case-by-case basis to allow the Agency to participate in the trustee's sale bid. We therefore recommend the adoption of a new Agency administered "CDBG Loan Protection Program" to protect and recover County CDBG loans in the event of a trustee's sale in accordance with the guidelines set forth in Attachment 1.

## **Changes to Measure J Unit Preservation Program**

### Background

In 1995 your Board also approved the Agency's Measure J Unit Preservation Program. This program provides a subsidy of up to \$25,000 to preserve Measure J units at risk of loss due to foreclosure. This is accomplished in cooperation with County Planning Department staff by first offering short term loans to owners to reinstate and prepay their mortgages. The owner agrees to list and sell their home to a Measure J eligible purchaser. The Agency retains an option to purchase the property should the home not sell within a reasonable period of time. In the unlikely event that the Agency exercises its option, it can assign its purchase option to an eligible low income household, and offer down payment assistance "silent second" loans in exchange for new and enhanced affordability covenants.

### Discussion and Program Description

Similar to the CDBG loans discussed above, this program is only effective with cooperative owners. With uncooperative owners, or owners who have vacated their properties, units may be sold at trustee's sale and lost from the Measure J program. To stop this from occurring, the County retains an option to purchase units in default under the provisions of County Code Chapter 17. IO. When necessary, County Counsel enforces this contract provision through civil proceedings to stop foreclosures and make units available for purchase by Measure J eligible households or the County itself.

While it would be very unusual for the County to purchase a unit, it is still a possibility for which we should be prepared. Currently there is no budgeted funding source for purchase of Measure J units by the County. Furthermore, depending on the outcome of the County's civil suit, there may be insufficient time for Board authorization prior to trustee's sale and the loss of a unit. We therefore recommend changes to the Agency's Measure J Unit Preservation Program to allow the Agency Administrator, in cooperation with County Planning Department staff and County Counsel, to expend funds for purchase of Measure J units in accordance with the amended program guidelines and procedures set forth in Attachment 2.

### **Conclusion / Recommendations**

Under current guidelines and in response to a foreclosure action, the Agency has limited options to protect both County CDBG second loans and Measure J unit affordability. To protect County interests, the Agency must be in position in a timely manner to either bid on homes in the event of a trustee's sale, or purchase homes prior to a trustee's sale. The adoption of the CDBG Loan Protection Program,, as well as the changes to the Measure J Unit Preservation Program will assure the repayment of all CDBG loans and the preservation of existing Measure J units. Adequate financing is provided in the current years appropriations of the Agency's Low and Moderate Income Housing Fund to finance these programs for the balance of the current fiscal year and the proposed FY 2001-02

Budget includes recommended appropriations for these programs.

It is therefore RECOMMENDED that your Board as the Board of Directors of the Redevelopment Agency,

1. Approve the CDBG Loan Protection Program as outlined in attached program description (Attachment 1);
2. Authorize the Redevelopment Agency Administrator to expend sufficient funds for trustee's sale bids for the purpose of protecting CDBG loan balances;
3. Authorize the Auditor-Controller to produce cashier's checks for trustee's sale bids as requested by the Agency Administrator for the purpose of protecting CDBG loan balances;
4. Approve changes to the Measure J Unit Preservation Program as outlined in the attached program description (Attachment 2);
5. Authorize the Auditor-Controller to produce cashier's checks, or other instruments acceptable to the court or trustee, as requested by the Agency Administrator for purchase of Measure J units;
6. Authorize the Agency Administrator to take all further necessary actions to preserve and protect units purchased under the CDBG Loan Protection Program and the Measure J Unit Preservation Program as outlined in the attached program descriptions; and
7. Authorize County Counsel to intervene in future foreclosure actions to preserve the County's position consistent with the programs outlined in this letter.

Very truly yours,



Tom Burns  
Redevelopment Agency Administrator  
TB:rmcb

RECOMMENDED:



Susan A. Mauriello  
Redevelopment Agency Director

Attachments

- cc. RDA  
Planning Department  
Auditor-Controller  
County Counsel

### **CDBG Loan Protection Program Guidelines and Procedures**

- 1) Upon receipt of a notice of default against a property with a CDBG Housing Rehabilitation loan, Agency staff will immediately contact the homeowner and offer financial assistance under the Housing Rehabilitation Program Guidelines to cure the default temporarily and to market and sell the home.
- 2) When this type of assistance is either declined by a homeowner or is inappropriate to the situation, Agency staff will verify all secured liens superior to the County's deed of trust, order an appraisal to determine the market value of the property and request any other reports needed to determine the trustee's sale bid amount. The cost of these reports will be charged to the homeowner.
- 3) After compiling all necessary information, Agency staff will convene a Loan Review Board meeting to review the case and recommend a maximum bid amount at the trustee's sale.
- 4) The Agency Administrator will then request that the County Auditor-Controller issue a cashiers check, or other instrument acceptable to the trustee, for bid at the trustee's sale consistent with the recommendations of the Loan Review Board.
- 5) Agency staff will attend the trustee sale and submit the Agency's bid on the property. In the unlikely event that the Agency is the winning bidder and takes possession of the property, the Agency Administrator will take further necessary actions to protect the property and resell it at a price that will repay the CDBG loan balance and reimburse the Agency for the costs to purchase and resell the unit.

### **Measure J Unit Preservation Program Guidelines and Procedures**

The Agency's Measure J Unit Preservation Program (the "Program") guidelines are amended as follows:

- 1) When Program assistance is either declined by a homeowner or is inappropriate to the situation, Agency staff will verify all secured liens superior to the defaulting party's deed of trust, order an appraisal to determine the market value of the property and request any other reports needed to determine the total dollar amount of liens secured by the property.
- 2) Agency staff will do a drive by inspection of the property to estimate its relative condition.
- 3) Agency staff will refer the case to County Counsel for civil proceedings to stop the foreclosure and enforce the County's option to purchase under County Code Chapter 17.10.090.
- 4) The maximum price paid by the Agency on behalf of the County for a Measure J unit in default shall be the amount set by County Counsel's civil proceedings and the final court judgement. In no case shall the amount be more than that set by County Code Chapter 17.10.
- 5) The Agency Administrator will then request that the County Auditor-Controller issue a cashier's check, or other instrument acceptable to the court or trustee, for purchase of the Measure J unit consistent with the final court judgement.
- 6) The Agency Administrator will take further necessary actions to protect the property and resell it to a Measure J eligible low to moderate income household.