



# COUNTY OF SANTA CRUZ

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April 16, 2004

**Agenda: April 20, 2004**

Board of Supervisors  
county of santa Cruz  
701 Ocean Street, Room 500  
Santa Cruz, CA 95060

**Re: Housing Element; Affordable Housing Developer's Priority to  
Purchase Tax-Defaulted Property; Adequacy of Environmental Review**

Dear Members of the Board

During your Board's March 23, 2004 discussion of the draft amended Housing Element two questions arose which were directed to County Counsel. The first regarded the legality of a proposed new program which would grant developers of affordable housing priority to purchase **tax** defaulted land. The second question inquired whether the environmental review prepared for the Housing Element meets the requirements of the California Environmental Quality Act ("CEQA"). This letter responds to the first issue and, as discussed below, requests additional time to respond to the CEQA inquiry.

### Priority in the Purchase of Tax-Defaulted Properties

The proposed new Housing Action Program under Section 4.7.3 of the draft Housing Element, Goal 1 [Promote Production of Affordable Units] states:

#### "Affordable Housing Developers Priority to Purchase Tax Defaulted Property.

"Program Description: Coordinate with the Assessor's Office to provide developers of affordable housing first opportunity to purchase land foreclosed on and sold due to property tax default.

"Time Frame: 2004-2007

“Responsible Party: Assessor’s Office, Board of Supervisors, County Administrative Office.”

Your Board directed County Counsel to research whether such a preference for affordable housing developers was consistent with existing law.

As summarized below, State law has established a procedure pursuant to which non-profit organizations may purchase residential or vacant property which has been tax-defaulted for five or more years if housing on the property will be rehabilitated or constructed for sale or rent to low-income persons. When it applies, this procedure would be effectively exempt from the high-bidder/public auction process.

County Counsel believes that if implemented in the manner set forth in State law, the proposed program in the Housing Element is consistent with that State law.

Discussion.

When real property is subject to a lien for taxes which is declared by the tax collector to be in default, a five-year redemption period begins to run.<sup>1</sup> Five years or more after the property has become defaulted, the tax collector has the power to sell all or any portion of the property that has not been redeemed.<sup>2</sup>

The tax collector may sell such defaulted property only if approved by the Board of Supervisors, which also must approve the proposed minimum price at which the property could be sold.<sup>3</sup> After various notices are made, and up to the date of sale, a local taxing agency may file with the tax collector a resolution objecting to the sale with a proposed agreement to purchase the property at a price not less than the minimum bid.<sup>4</sup> If no such objections are filed, the tax collector ordinarily would “sell the property at public auction to the highest bidder at the time and place fixed.”<sup>5</sup>

However, in 1977, the statute was amended to allow any nonprofit organization to file a written objection to the sale of any residential or vacant real property which the nonprofit organization states in writing that it will rehabilitate for sale, rental or “otherwise use” to serve low-income persons! The objection must be accompanied by

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<sup>1</sup> *Van Petten v County of San Diego* (1995) 38 Cal.App.4<sup>th</sup> 43.

<sup>2</sup> Cal. Rev. Tax Code § 3691.

<sup>3</sup> Cal. Rev. Tax Code §§ 3694, 3698-3698.7.

<sup>4</sup> Cal. Rev. Tax Code § 3695.

<sup>5</sup> Cal. Rev. Tax Code § 3706.

<sup>6</sup> Cal. Rev. Tax Code § 3695.5.

77.4

an application to purchase the property that meets the requirements set forth in the Revenue and Taxation Code, commencing with in Section 3771 et seq.<sup>7</sup>

If a non-profit files such an objection and, before the date of the sale, applies in writing to purchase the property at a price not less than the minimum bid approved by the Board, then the tax collector "shall not proceed with the tax sale."<sup>8</sup>

Thus, using this procedure, State law already recognizes a "preference" by which non-profit developers of low-income housing may acquire tax-defaulted properties by objecting and filing written applications to purchase prior to the sale of the properties.

So long as the new program is implemented in a fashion consistent with the relevant provisions of the Revenue and Taxation Code (for instance, the objection/agreement procedures are complied with, and purchases are allowed only by non-profit developers) County Counsel believes the new program will be a lawful mechanism to promote production of affordable housing.

County Counsel also would like to clarify that such a preference would not apply to private foreclosure sales. Since such sales typically are conducted by private parties under state-mandated processes, the Assessor's Office would be uninvolved in private foreclosures. The language "foreclosed on and sold due to property tax default" should be detailed in any specific program adopted to avoid any confusion in this regard and assure consistency with State law.

#### CEQA Compliance.

County Counsel is still actively researching the question concerning the level of environmental review for the proposed Housing Element. Although County Counsel had hoped to have a written response to the Board by this time, it is estimated that a written opinion will be completed in response to the Board's request by May 7<sup>th</sup>.

#### **IT IS THEREFORE RECOMMENDED** that the Board

1. Direct Planning Staff to assure that when the Housing Action Program under Section 4.7.3 of the draft Housing Element, Goal 1 is brought back to the Board for final approval the program:

- (a) is consistent with state law as specified herein; and
- (b) clarifies that the program is intended to apply to tax sales and excludes private foreclosure sales; and

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<sup>7</sup> Cal. Rev. Tax Code § 3771, 3791.4.

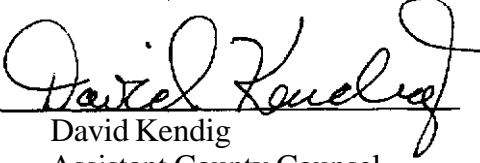
<sup>8</sup> Cal. Rev. Tax Code § 3695.5.

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2. Direct County Counsel to provide a written opinion to **the** Board concerning CEQA compliance on or before May **7,2004**.

Very **truly** yours,

DANA McRAE, COUNTY COUNSEL

By   
David Kendig  
Assistant County Counsel

RECOMMENDED:

  
SUSAN A. MAURIELLO

County Administrative Officer

77.4