



County of Santa Cruz

REDEVELOPMENT AGENCY

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January 4, 2004

APPROVED AND FILED BOARD OF SUPERVISORS

DATE: 1/13/04
COUNTY OF SANTA CRUZ
SUSAN A. MAURELLO
EX-OFFICIO CLERK OF THE BOARD

Agenda: January 13, 2004

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

[Signature]
DEPUTY

Measure J Issues

Dear Members of the Board:

As part of the 2003-04 budget, your Board transferred the administration of the County's Measure J program from the Planning Department to the **RDA**. During Budget Hearings, your Board also received a report from the RDA on a number of administrative issues associated with the Measure J program and the Agency was directed to report back on the January 13, 2004 agenda with a more complete report, after the Agency had assumed the full range of Measure J responsibilities and had completed the monitoring process begun by the Planning Department during FY 2002-03. In addition, on June 24, 2004, your Board also provided the Agency with further direction about addressing Measure J units subject to foreclosure and, requested a report back on or before March 2004 with a status report.

The primary Measure J issues discussed with your Board last year involved efforts to ensure Measure J compliance, to consider recommendations to change the method for sale and resale of Measure J homes, including the possibility of creating waiting lists and the County being more involved in the marketing process, and Measure J foreclosure issues. This report addresses these three issues, as well as other issues that **RDA** staff identified since it has taken over program administration.

BACKGROUND

The Measure J affordable housing program began in the late 1970's and has been amended several times over the years. Over time, through the contributions of private developers and non-profit housing developers, over 550 Measure J units have been developed, with nearly 380 of those being scattered site ownership units that constitute a significant portion of the County's supply of affordable ownership units with long term affordability controls.

As local housing prices have increased over the years, the difference in price between a Measure J unit and an equivalent market rate unit has grown considerably. At this point in time it is common to find a spread of \$200,000 - \$300,000 for these units. As a result, the Measure J housing stock not only contains a significant number of affordable housing units, but it has

become a major public asset for the community. In fact, as the number of Measure J units has grown over the years and the value of the subsidy below the market price for the units has increased, the public equity involved in this program has grown to almost \$75 million. When looked at from that perspective, it is an extremely valuable component of the County's affordable housing efforts and the proper management of the Measure J inventory, program compliance, the preservation of Measure J restrictions and establishing an equitable process for eligible households to acquire units is of paramount importance.

MEASURE J COMPLIANCE

Given the sizeable number of affordable units in the Measure J inventory, it is critical that the inventory is well managed, units are occupied in accordance with the income eligibility criteria, and that the affordability restrictions are maintained. The RDA has followed up on Planning Department efforts to monitor the Measure J ownership inventory. What follows is the summary of the key findings of this report and recommendations to address issues identified through the monitoring process.

Monitoring Report

Staff conducted a monitoring program for 378 owner-occupied Measure J units. This monitoring effort involved sending individual letters to owners of owner-occupied units in the County's data base, requesting they return to the RDA a signed declaration indicating that the recorded owner either 1) owns and occupies the unit; 2) continues to own and no longer occupies the unit; or 3) no longer owns the unit. A second set of letters was sent out to non-responders, and the results are as follows:

- Owners of 329 of units have returned a signed declaration that they own and occupy the unit and staff has confirmed occupancy by verifying the homeowner exemption;
- Owners of 31 other units have not provided the requested declaration, although a review of Recorder's records indicates that they claimed the homeowner's exemption, which is permitted under the ordinance as a form of owner-occupancy verification.
- Total compliance rate: 360 units, representing 95.2% of the inventory.
- The remaining 18 units fall into two categories: six who have indicated to County Staff that they own but do not occupy the unit and 12 that did not respond to the inquiries and do not have a homeowner's exemption.

Further analysis will verify the use of these Ownership units through certified mail and site visits and staff will proceed with enforcement measures, as appropriate.

As indicated above, 95.2% of the Measure J ownership inventory appears to be in compliance with the ordinance and staff is pursuing further efforts to ascertain the status of each of the remaining units. It appears likely that a small number of units are no longer occupied by the Measure J homebuyer, and may instead be rented out to non-income eligible households at above market rate rents. While we believe that the program's high compliance rate suggests that the program is operating very effectively, given the scarcity of affordable housing units in

¹ Although the ordinance does allow an owner to convert their unit to a rental unit, to do so, notice to the County is required, park fees must be paid, rent levels prescribed by the ordinance must be adhered to, and occupancy is limited to low income households.

the community, the significant public asset associated with each unit and the estimated \$250,000 replacement costs of an affordable unit in today's market, staff believes that every effort should be made to achieve 100% compliance. To this end staff has reviewed with County Counsel the enforcement mechanism currently in place for the program with an eye toward potential ordinance amendments to strengthen the Program's enforcement component. In addition, staff will evaluate the process for conversion of ownership units to rental.

Enforcement

The use of Measure J homes in violation of the affordable housing restrictions effectively removes units from the affordable housing stock. The current mechanism to enforce the County's Measure J restrictions allows the County to pursue unspecified civil actions and requires the owner to repay a tenant for any excess rents charged, but it does not provide the County with sufficient tools to meet compliance goals. In order to encourage 100% compliance, RDA and County Counsel staff recommends additional enforcement methods that will provide for a greater incentive for owners to adhere to Measure J occupancy restrictions.

While your Board has previously authorized the Agency to acquire units to prevent a foreclosure as a means to ensure that the unit remains in the County's affordable housing inventory, the current ordinance does not explicitly authorize the Agency to acquire units as a means to ensure program compliance. Staff believes that the County's interest would be best served if the ordinance specified that the County had the ability to acquire a Measure J unit if the owner converts the unit to a rental unit without obtaining approval from the County and rents the unit to non-income eligible households at a market rate level. Consistent with the approach taken with foreclosure, the County would either purchase the unit or designate an income eligible purchaser for the unit. Amendments to Section 17.10.050(c) have been prepared to specifically address this situation, after a reasonable cure period has lapsed. In addition, the language would subject the Measure J owner to civil penalties of up to \$2,500, and enable the rents collected by the owner in excess of the Measure J rent levels to be recaptured by the County. Proposed ordinance amendments are included as Attachment 1.

Staff believes that the recommended amendments will provide a sufficient incentive for Measure J owners to comply with the program requirements. Staff anticipates that this enforcement mechanism will rarely be utilized and will help encourage 100% program compliance. However, in an extreme case of non compliance, this approach will insure that an owner is no longer able to illegally collect rents and that the Measure J unit will remain part of the County's affordable housing stock.

FORECLOSURE

The greatest threat to Measure J affordability preservation is foreclosure, whereby a private party at the trustee's sale or a bank reclaims title to a property when a borrower fails to pay the mortgage. In the case of a Measure J home, foreclosure results in the loss of the County's affordability restrictions.

On June 24, 2003, the Agency presented your Board with a report on strategies involving the preservation of Measure J units that are subject to imminent foreclosure action. At that time, your Board authorized the Agency to pursue two options to help avert a foreclosure action and preserve the affordability of a Measure J unit. The first option involves the Agency providing a

loan to the homeowner for up to \$25,000 to cure the default, and include in the financing terms a provision that would grant the Agency the right to purchase the unit in the event that a future default occurs. In cases where staff determines that the homeowner is not in a position to sustain monthly housing costs, another option authorized by your Board allows the Agency to buy out the first lender's position, (thereby ending the foreclosure) and go to court to enforce an option agreement for purchase of the home. In both options, the Agency may also have to resort to pursuing a foreclosure action.

Currently, the initial sale or resale of Measure J units is strictly a private transaction between the buyer and the seller. The County's role in the transaction is limited to 1) certifying the income of potential purchasers; 2) ensuring that the unit is purchased by a first time homebuyer and that the household consists of an appropriate number of residents² and that the purchaser complies with the Board's requirement that he/she must either have resided within the County or have been employed within the County for the 60 days prior to the eligibility certification.³

Given the limited number of Measure J units and the demand in the community for affordable housing, questions have been raised about the process that is used to select Measure J purchasers. In addition, because the Agency's First Time Homebuyer Program (FTHB) also places Measure J-like resale restrictions on the units purchased through the program, the resale of FTHB units also raises the same question about how eligible purchasers are selected.

The heart of the question is: should the current system of selecting purchasers for resale restricted units remain within the sole discretion of the seller, or should the County establish a process that would guarantee any eligible household an equal opportunity to purchase a resale restricted unit?

As indicated in the October report, one option for ensuring more equal access to Measure J units would be to maintain a waiting list of eligible purchasers. For this system to operate most

² Last year, the Board amended County Code Section 17.10 specify that Measure J purchaser must have a household size equivalent to, or one person more than, the number of bedrooms.

³ This requirement was added to the ordinance in December 2002, and represented the County Counsel's recommendation to respond to the Board's interest that County residents occupy Measure J homes.

name of an eligible buyer prepared to purchase the unit in a timely manner.

Administering a waiting list is a complex, labor-intensive activity. Responsibilities would include the preparing information materials and application forms, reviewing submittals for eligibility, developing a mechanism to equitably determine the order of the eligible candidates, updating of the list over time and conducting on-going interactions with owners when they are trying to sell a resale-restricted unit. The waiting list could be maintained by County staff or through a contract with a non-profit agency. Given the cost involved with supporting either additional staff or contracted services, at that time your Board postponed taking action on this matter and when the housing functions were transferred to the Agency during 2003-04 budget actions, the Agency was asked to review this issue once the transition had been completed.

While staff has not completed its review of the options available to the County, given the scarcity of moderate income ownership opportunities and the large number of interested Measure J purchasers staff believes that the sale and resale process for Measure J units as well as the resale of FTHB should be redesigned to allow for any eligible household to have equal access to the limited number of resale restricted units that are available. Because this will result in the Agency playing a more active role in the sale and resale process used to identify purchasers, additional analysis is needed prior to proposing a specific recommendation to your Board. To this end, RDA staff has conducted a survey of other jurisdictions that manage waiting lists and handle the sale and re-sale process in-house, as well as jurisdictions that contract with a non-profit agency to handle this function. Staff is currently evaluating the administrative issues, costs and programmatic considerations for both options and proposes to return to your Board during Budget Hearings with a recommendation about how to handle this function beginning in FY 2004-05.

Board of Supervisors

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1. Accept and **file** this report;
2. Approve in concept the proposed ordinance amendments **to** County Code Section 17.10 to address enforcement and foreclosure issues (Attachment 1) and direct the Clerk of the Board to place the **final** ordinance on the next Board agenda; and
3. Direct Agency **staff** to develop recommendations to redesign the sale and resale process for resale restricted units as discussed in **this** letter, and to include appropriate recommendations in the proposed 2004-05 Budget.

Very truly yours,



Susan A. Mauriello
Redevelopment Agency Executive Director

cc: Planning Department
County Counsel

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